**ALASKA STATE LEGISLATURE**
**HOUSE JUDICIARY STANDING COMMITTEE**
March 18, 2002
1:10 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**

HOUSE BILL NO. 393
"An Act relating to unfair and deceptive trade practices and to the sale of business opportunities; amending Rules 4 and 73, Alaska Rules of Civil Procedure; and providing for an effective date."

- HEARD AND HELD

CS FOR SENATE BILL NO. 169(FIN)
"An Act providing that the delinquency laws are inapplicable to minors who are at least 16 years of age and are accused of felony crimes against persons directed at victims because of the victims' race, sex, color, creed, physical or mental disability, ancestry, or national origin."

- HEARD AND HELD

HOUSE BILL NO. 295
"An Act relating to prohibiting the use of cellular telephones when operating a motor vehicle; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

**PREVIOUS ACTION**

BILL: HB 393

SHORT TITLE:SALES OF BUSINESS OPPORTUNITIES
SPONSOR(S): REPRESENTATIVE(S)STEVENS

| Jrn-Date | Jrn-Page | | Action |
|---|---|---|---|
| 02/08/02 | 2182 | (H) | READ THE FIRST TIME - REFERRALS |
| 02/08/02 | 2182 | (H) | L&C, JUD |
| 02/25/02 | | (H) | L&C AT 3:15 PM CAPITOL 17 |
| 02/25/02 | | (H) | Heard & Held |
| 02/25/02 | | (H) | MINUTE(L&C) |
| 02/27/02 | | (H) | L&C AT 3:15 PM CAPITOL 17 |
| 02/27/02 | | (H) | Moved Out of Committee |
| 02/27/02 | | (H) | MINUTE(L&C) |
| 03/01/02 | 2435 | (H) | L&C RPT 2DP 5NR |
| 03/01/02 | 2435 | (H) | DP: CRAWFORD, HAYES; NR: ROKEBERG, |
| 03/01/02 | 2435 | (H) | MEYER, KOTT, HALCRO, MURKOWSKI |
| 03/01/02 | 2435 | (H) | FN1: INDETERMINATE(LAW) |
| 03/01/02 | 2445 | (H) | FIN REFERRAL ADDED AFTER JUD |
| 03/18/02 | | (H) | JUD AT 1:00 PM CAPITOL 120 |

BILL: SB 169
SHORT TITLE:HATE CRIMES: AUTOMATIC WAIVER OF MINORS
SPONSOR(S): SENATOR(S) DONLEY

| Jrn-Date | Jrn-Page | | Action |
|---|---|---|---|
| 03/29/01 | 0859 | (S) | READ THE FIRST TIME - REFERRALS |
| 03/29/01 | 0859 | (S) | JUD, FIN |
| 04/30/01 | | (S) | JUD AT 4:45 PM BELTZ 211 |
| 04/30/01 | | (S) | -- Time Change -- |
| 04/30/01 | | (S) | MINUTE(JUD) |
| 05/01/01 | 1394 | (S) | JUD RPT 4DP 1NR |
| 05/01/01 | 1394 | (S) | DP: TAYLOR, COWDERY, THERRIAULT, |
| 05/01/01 | 1394 | (S) | DONLEY; NR: ELLIS |
| 05/01/01 | 1394 | (S) | FN1: INDETERMINATE(COR) |
| 05/03/01 | | (S) | FIN AT 9:00 AM SENATE FINANCE 532 |
| 05/03/01 | | (S) | Scheduled But Not Heard |
| 05/03/01 | | (S) | FIN AT 6:30 PM SENATE FINANCE 532 |
| 05/03/01 | | (S) | Moved CS(FIN) Out of Committee -- Time Change -- |
| 05/03/01 | | (S) | MINUTE(FIN) |
| 05/04/01 | | (S) | RLS AT 1:00 PM FAHRENKAMP 203 |

| | | | |
|---|---|---|---|
| 05/04/01 | | (S) | -- Time Change -- |
| 05/04/01 | | (S) | MINUTE(RLS) |
| 05/04/01 | 1485 | (S) | FIN RPT CS 5DP 1DNP 2NR NEW TITLE |
| 05/04/01 | 1486 | (S) | DP: DONLEY, HOFFMAN, OLSON, WARD, |
| 05/04/01 | 1486 | (S) | LEMAN; NR: KELLY, WILKEN; DNP: GREEN |
| 05/04/01 | 1486 | (S) | FN1: INDETERMINATE(COR) |
| 05/04/01 | 1506 | (S) | READ THE SECOND TIME |
| 05/04/01 | 1506 | (S) | FIN CS ADOPTED UNAN CONSENT |
| 05/04/01 | 1507 | (S) | ADVANCED TO 3RD READING FLD Y12 N6 A2 |
| 05/04/01 | 1507 | (S) | ADVANCED TO THIRD READING 5/5 CALENDAR |
| 05/04/01 | 1493 | (S) | RULES TO 1ST SUP CALENDAR 5/4/01 |
| 05/05/01 | 1554 | (S) | ADVANCED TO THIRD READING 5/6 CALENDAR |
| 05/06/01 | 1566 | (S) | READ THE THIRD TIME CSSB 169(FIN) |
| 05/06/01 | 1567 | (S) | RETURN TO SECOND FOR AM 1 UNAN CONSENT |
| 05/06/01 | 1567 | (S) | AM NO 1 FAILED Y7 N12 A1 |
| 05/06/01 | 1567 | (S) | AUTOMATICALLY IN THIRD READING |
| 05/06/01 | 1568 | (S) | PASSED Y14 N6 |
| 05/06/01 | 1568 | (S) | LEMAN NOTICE OF RECONSIDERATION |
| 05/06/01 | 1569 | (S) | RECON TAKEN UP SAME DAY UNAN CONSENT |
| 05/06/01 | 1569 | (S) | PASSED ON RECONSIDERATION Y13 N6 A1 |
| 05/06/01 | 1609 | (S) | TRANSMITTED TO (H) |
| 05/06/01 | 1609 | (S) | VERSION: CSSB 169(FIN) |
| 05/06/01 | 1615 | (H) | READ THE FIRST TIME - REFERRALS |
| 05/06/01 | 1615 | (H) | JUD, FIN |
| 05/06/01 | 1615 | (H) | REFERRED TO JUDICIARY |
| 03/06/02 | | (H) | JUD AT 1:00 PM CAPITOL 120 |
| 03/06/02 | | (H) | <Bill Postponed to 03/18/02> |
| 03/18/02 | | (H) | JUD AT 1:00 PM CAPITOL 120 |

**WITNESS REGISTER**

REPRESENTATIVE GARY STEVENS
Alaska State Legislature

Capitol Building, Room 428
Juneau, Alaska 99801
POSITION STATEMENT: Sponsor of HB 393.

CHRYSTAL SMITH, Special Assistant
Office of the Attorney General
Department of Law (DOL)
PO Box 110300
Juneau, Alaska 99811-0300
POSITION STATEMENT: During discussion of HB 393 responded to questions.

CYNTHIA DRINKWATER, Assistant Attorney General
Fair Business Practices Section
Civil Division (Anchorage)
Department of Law (DOL)
1031 West 4th Avenue, Suite 200
Anchorage, Alaska 99501-1994
POSITION STATEMENT: During discussion of HB 393 provided comments and responded to questions.

JOHN W. HESSE, II, Senior Attorney & Director
Government Relations
Direct Selling Association (DSA)
1275 Pennsylvania Avenue, NW, Suite 800
Washington, DC 20004-2411
POSITION STATEMENT: During discussion of HB 393 provided comments, suggested an amendment, and responded to questions.

BRYAN HARRISON, Corporate Government Affairs
Alticor Inc.
7575 Fulton Street East
Ada, Michigan 49355
POSITION STATEMENT: During discussion of HB 393 provided comments and responded to questions.

ANNE CREWS, Vice President
Corporate Affairs
Mary Kay Inc.
PO Box 799045
Dallas, Texas 75379-9045
POSITION STATEMENT: During discussion of HB 393 provided comments, suggested an amendment, and responded to questions.

VALERIE J. DEWEY
PO Box 72757
Fairbanks, Alaska 99707

POSITION STATEMENT: During discussion of HB 393 relayed her experience as the victim of a business-opportunity scam.

PAM LaBOLLE, President
Alaska State Chamber of Commerce
217 2nd Street
Juneau, Alaska 99801
POSITION STATEMENT: Provided comments during discussion of HB 393.

SENATOR DAVE DONLEY
Alaska State Legislature
Capitol Building, Room 506
Juneau, Alaska 99801
POSITION STATEMENT: Sponsor of SB 169.

ROBERT BUTTCANE, Legislative & Administrative Liaison
Division of Juvenile Justice (DJJ)
Department of Health & Social Services (DHSS)
PO Box 110635
Juneau, Alaska 99811-0635
POSITION STATEMENT: Testified in opposition to SB 169 and responded to questions.

LINDA WILSON, Deputy Director
Public Defender Agency (PDA)
Department of Administration
900 West 5th Avenue, Suite 200
Anchorage, Alaska 99501-2090
POSITION STATEMENT: Testified in opposition to SB 169.

CANDACE BROWER, Program Coordinator/Legislative Liaison
Office of the Commissioner - Juneau
Department of Corrections (DOC)
431 North Franklin Street, Suite 400
Juneau, Alaska 99801
POSITION STATEMENT: During discussion of SB 169 provided comments.

**ACTION NARRATIVE**

TAPE 02-31, SIDE A
Number 0001

CHAIR NORMAN ROKEBERG called the House Judiciary Standing Committee meeting to order at 1:10 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.

HB 393 - SALES OF BUSINESS OPPORTUNITIES

Number 0010

CHAIR ROKEBERG announced that the first order of business would be HOUSE BILL NO. 393, "An Act relating to unfair and deceptive trade practices and to the sale of business opportunities; amending Rules 4 and 73, Alaska Rules of Civil Procedure; and providing for an effective date."

Number 0015

REPRESENTATIVE GARY STEVENS, Alaska State Legislature, sponsor, said that HB 393 focuses on consumer protection, particularly with regard to several scams lately discovered. He referred to a Redbook magazine article in members' packets titled "So you want to work at home?" that details some of the scams that are taking place. He noted that advertisements for business opportunities, sometimes referred to as "biz opps," often use phrases like "Work at home - earn money"; unfortunately, many of these are not legitimate businesses. He remarked that HB 393 would have no impact on legitimate businesses, but does try to control those businesses that are really scams. "What you'll find here is a pretty comprehensive statute regulating the sale of these biz opps," he added. All sorts of these biz opps - from work-at-home schemes such as medical billing and stuffing envelopes, to the sale of vending machines, greeting card display racks, "900 numbers," and other products - promise high earnings, which rarely materialize.

REPRESENTATIVE STEVENS remarked that with the adoption of HB 393, Alaska will join approximately "half of the other states" that have regulations pertaining to the sale of business opportunities. House Bill 393 requires "these companies" to register with the state, to disclose information to buyers, to use escrow accounts to assure delivery of business assets, and to provide a 30-day right of cancellation to the buyer. In addition to these consumer safeguards, he noted that HB 393 provides for civil and criminal penalties for violators. He indicated that the goal is to prevent these scams from happening to begin with, rather than spending a lot of law-enforcement resources on the problem after people have been bilked.

Number 0225

REPRESENTATIVE STEVENS drew attention to Amendment 1 (Revised), which would extend the disclosure provisions to include violations of similar laws from other states and of federal securities-related Acts; Amendment 2, which would alter the provisions pertaining to escrow account requirements to include a 30-day restriction on release; and Amendment 3, which would provide an exemption for registered securities. In response to questions, he concurred that although the House Labor and Commerce Standing Committee had discussed the prospect of raising - from $200 to $500 - the exemption for business opportunities costing under that amount, it did not do so. Noting that HB 393 is not intended to impact legitimate businesses such as Mary Kay [Inc.], Amway [Corporation], or Avon [Products, Inc.], for example, he said that the exemption found on page 12, lines 20-21, excludes from the provisions of HB 393 legitimate business opportunities that are sold for less than $200.

CHAIR ROKEBERG asked whether there are any statutes, currently, that regulate the sale of business opportunities.

REPRESENTATIVE STEVENS said that "there are laws after the fact," but HB 393 would require these businesses [that sell business opportunities] to register with the state beforehand. He remarked that in other states, similar legislation requiring registration has stopped a lot of scams from occurring. "Certainly [there] are laws that protect the consumer ..., but the problem is [that] it takes a lot of time and you can't find these businesses - they have no address, they have no principal figures you can attach any crimes to - so these people go pretty much unscathed," he noted.

CHAIR ROKEBERG asked for a description of the violations that would constitute a class C felony and of those that would constitute a class A misdemeanor.

REPRESENTATIVE STEVENS asked to defer the discussion on that issue to Department of Law representatives.

REPRESENTATIVE MEYER asked why a $200-cap was picked for the exemption.

Number 0530

CHRYSTAL SMITH, Special Assistant, Office of the Attorney General, Department of Law (DOL), said that the $200-cap was

recommended by the [Fair Business Practices] Section of the DOL. She elaborated:

> They looked at the kinds of scams that they saw happening and the laws in other states that ... recommended a $200 level. I know there are some states that have a $500 level, [but] ... when our consumer protection attorneys spoke with ... their counterparts in other states, many of them said, "You don't want it to be as high as $500, there's a lot of this kind of scam business that falls between the $350-$300 to $500 range, [and] a lot of pricing them at $499."
>
> At least two of the states which had a $500 level have come back ...: one, I believe, ... to a $300 level, and one to a $250 or ... a $350 [level]. But I know there's been backward movement. I know there are some interests out there who are trying to encourage us to go up to a $500 [level], and I think we just think that's too high. ... I know you had some concerns about maybe it should be $100 or $50. I think that we just kind of settled on a $200 [level], as anything under that is de minimis in terms of a loss to the consumer and we just saw it as being [a] bigger governmental burden than maybe we were prepared to take on.

REPRESENTATIVE MEYER asked whether leaving the cap at $200 would, in effect, be saying that scams below $200 will be tolerated.

MS. SMITH said yes, noting that the amount of an exemption cap, if any, is a policy decision that the legislature has to make. To the question of whether the amount should be lower than $200, she replied that there is a cost-benefit issue to be considered.

REPRESENTATIVE JAMES asked whether businesses must obtain an Alaska business license if in Alaska they sell business opportunities.

MS. SMITH said that currently, they don't have to be "registered as a business through a business opportunity and we don't need a lot of information; I'm not sure whether they need to go through the [Department of Community and Economic Development (DCED)] and get a regular business license."

Number 0753

REPRESENTATIVE JAMES opined that requiring such businesses to get a business license would be a simpler process.

MS. SMITH noted that one of the problems encountered is that "sometimes you can't find these people." She pointed out that HB 393 is not intended to put undue burdens on anybody. Rather, it is to scare "scammers" so that they don't try to operate in Alaska or, when they do, to allow the state to go directly after them for failure to register, as opposed to waiting for somebody to come in and complain, because scam companies often change names and locations.

REPRESENTATIVE JAMES pointed out that there are provisions in HB 393 that require businesses that sell business opportunities to obtain a $75,000 bond and pay a registration fee.

MS. SMITH mentioned that the registration fee would be established by regulation, and it is estimated to be between $100 and $150.

REPRESENTATIVE JAMES expressed the concern that provisions of HB 393 might be too tough for valid businesses and thus would be overcorrecting the problem.

REPRESENTATIVE STEVENS reiterated that it is not his intention to make it hard on legitimate businesses, but rather to "catch those that are causing the problems for consumers." He acknowledged, however, that "it's a tough line to figure out where we should be; we don't want to run away legitimate business."

CHAIR ROKEBERG asked whether $75,000 surety bonds are available and, if so, what they cost.

REPRESENTATIVE STEVENS remarked that the DOL has that information and could respond to that issue.

Number 0959

CYNTHIA DRINKWATER, Assistant Attorney General, Fair Business Practices Section, Civil Division (Anchorage), Department of Law (DOL), said that the area of biz opps is a field that frequently exhibits unfair or deceptive business practices, and 23 other states have some kind of registration or disclosure requirements. Most [of those 23] states require registration,

but not all of them. She opined that HB 393 is especially important because it protects consumers in general and vulnerable consumers in particular, because often these scams are targeted at people who don't have options to work outside the home, such as senior citizens, people with disabilities, or people with limited education or job skills.

MS. DRINKWATER opined that HB 393 would provide effective consumer protection by requiring sellers of business opportunities to make very important disclosures to potential buyers. Sellers would be required to use [state-developed written] contracts; would be required "to licensure with disclosure statements" pertaining to financial and registration history; and would be required to provide details about the total amounts involved in the contracts, about the delivery dates, and about services provided by the sellers. All in all, she added, HB 393 would allow consumers to make informed decisions before they "invest" their money.

MS. DRINKWATER noted that from an enforcement perspective, registration should be required and is important because it enables the state to contact these companies, should it wish to pursue actions against them. Via HB 393, the state could gather information about the nature of the biz opps, how they are being advertised, and who the sellers are. She said that she anticipates that there will be a lot of sellers of biz opps that won't register, because that is frequently the case in other states, but via the enforcement provisions of HB 393, the state can write those businesses "cease and desist" letters and, if necessary, conduct further investigations. She noted that HB 393 would provide for enforcement and protections that mere business licenses do not afford.

Number 1204

MS. DRINKWATER, referring to the issue of the $200 exemption threshold, remarked that that amount is a compromise. Many states have a $500 threshold, below which sellers of biz opps do not have to register, but a number of other states - at least nine other states - have a threshold ranging between $200 and $300; in addition, she pointed out, one of the model Acts has a $250 threshold. She, too, remarked that according to an informal survey of the states with similar legislation, almost all of them recommend having a lower threshold because scam artists simply adjust the sales price so that it is below any established threshold and because anything [over $200] constitutes a substantial amount of money for many people,

though even $200 is a significant amount of money in terms of a loss to consumers. She also noted that none of the states polled indicated that a $200 threshold has proven to be an administrative burden.

MS. DRINKWATER, referring to the criminal penalties provided for on page 12 of HB 393, explained that the felony violations pertain to the registration requirements, the bond requirements, the disclosure statements, the escrow accounts, the use of a written contract, and untrue statements made by the seller. She noted that this penalty scheme is consistent - though not an exact match - with other states: 14 have criminal provisions, and 10 of those have felony provisions.

MS. DRINKWATER, referring to the list of exemptions beginning on page 12, noted that in addition to the exemption for biz opps being sold for less than $200, there is an exemption for: "sales demonstration equipment, materials, or samples for use in sales demonstrations and not for resale, or product inventory sold to the buyer at a bona fide wholesale price".

REPRESENTATIVE BERKOWITZ asked how the criminal charges proposed in HB 393 intersect with existing potential charges located in AS 11.46.710 - deceptive business practices - and in AS 11.46.180 - theft by deception. He opined that there is some intersection there that could result in some confusion based on different standards and definitions.

Number 1611

MS. DRINKWATER said that only the first [paragraph] of AS 11.46.710 could apply to the sale of a business opportunity; that paragraph refers to making a false statement in an advertisement or communication to the public. She acknowledged that there may be some overlap, but pointed out that she has never seen that statute used for prosecution purposes. She noted that if the Internet is used in violating AS 11.46.710(a)(1), it is a class C felony; otherwise, it is a class A misdemeanor. She remarked that AS 11.46.180 simply allows prosecution of individuals who are involved in biz opp scams, and whether the penalty is a class A misdemeanor or a class C felony depends solely on the amount of money or property involved.

REPRESENTATIVE BERKOWITZ asked whether all statutes thus far discussed would work in a complimentary fashion, rather than in opposition to each other.

MS. DRINKWATER indicated that she could not foresee the statutes conflicting with each other, and that it would not be a problem to "provide for criminal enforcement" in HB 393. Turning to the issue of the $75,000 surety bond, she explained that that amount is on the higher end when compared to other statutorily required bonds. There are three other states that require a $75,000 bond, but more frequently the bond is $50,000; however, as a practical matter, she remarked, there is not a huge difference between those two types of bonds, though requiring a $75,000 bond would provide significantly more protection for consumers. She explained that the cost of a bond is roughly $20 for every $1,000 worth of bond protection; thus a $75,000 surety bond could cost approximately $1,500, and a $50,000 surety bond could cost approximately $1,000. She opined that for legitimate businesses, the difference in the cost would not create a "make it or break it" situation.

REPRESENTATIVE MEYER pointed out, however, that a $75,000 bond costs 50 percent more than a $50,000 bond, and that is a significant difference. He said his concern is that some legitimate businesses will simply decide not to do business in Alaska. He asked whether requiring a written contract would be intimidating to people in rural Alaska, and whether it is a common practice in other states.

Number 1870

MS. DRINKWATER indicated that requiring a written contract is a common practice in other states. She posited that doing so is important when considering how these transactions often occur. One method, for example, involves inviting people to a "seminar" on how to run an e-commerce business or how to conduct some kind of business on the Internet, and once consumers get into the seminar, they are subjected to high-pressure sales tactics and become convinced that they have to signup right then and there. And, unfortunately, a lot of them do sign up then, even though in retrospect, after they are away from that situation, they often wonder what possessed them to do so. These scam artists are very skilled at persuading people to act in ways that they might not otherwise act, had they been given a little time for reflection. Thus, she opined, a written contract is very important, especially since it would set out all the important terms.

REPRESENTATIVE MEYER agreed; a written contract is just good business. He asked whether, under the provisions of HB 393, a person could be charged with both a felony and a misdemeanor.

MS. DRINKWATER said yes, though not for the same conduct, just under different provisions.

REPRESENTATIVE MEYER sought confirmation that a class C felony can include imprisonment up to five years, and a class A misdemeanor up to one year.

MS. DRINKWATER confirmed that.

CHAIR ROKEBERG mentioned that under HB 393, Alaska would be treating scam artists "tougher than moose poachers."

Number 1993

MS. DRINKWATER, referring to Amendment 1 (Revised), explained that it clarifies what information needs to be disclosed, including violations of [state and federal] securities laws and violations of consumer protection laws both in Alaska and in other jurisdictions. In addition, the state would have the ability to deny, suspend, or revoke a person's registration in certain situations. Amendment 1 (Revised) reads [original punctuation provided]:

Page 2, line 24:
Delete "and"

Page 3, line 2, following "person":
Delete "."
Insert "; and"

Page 3, following line 2:
Insert a new paragraph to read:
"(4) disclosures of criminal convictions, civil judgments, orders, consent decrees, and administrative determinations involving allegations of violations of AS 45.55 (securities laws) or a law of another jurisdiction with substantially similar provisions, or violations of 15 U.S.C. 77a - 77bbbb (Securities Exchange Act of 1933), 15 U.S.C. 78a - 78lll (Securities Exchange Act of 1934), or 15 U.S.C. 80a-1 - 80b-21 (Investment Company Act of 1940/Investment Advisers Act of 1940)."

**Page 5, line 20, following AS 45.66.020(b)(3):**
**Insert "and (4)"**

Page 11, line 15, following "property;":
Delete "or"

Page 11, line 19, following "jurisdiction;":
Insert "or"

Page 11, following line 19:
Insert a new sub-subparagraph to read:
"(iii) violations of AS 45.55 (securities laws) or a law of another jurisdiction with substantially similar provisions, or violations of 15 U.S.C. 77a - 77bbbb (Securities Exchange Act of 1933), 15 U.S.C. 78a - 78lll (Securities Exchange Act of 1934), or 15 U.S.C. 80a-1 - 80b-21 (Investment Company Act of 1940/Investment Advisers Act of 1940);"

Page 11, line 23, following "chapter":
Insert "or a law of another jurisdiction with substantially similar provisions"

Page 11, line 29:
Following "45.50.561":
Insert " or a law of another jurisdiction with substantially similar provisions"
Following ";"
Delete "or"

Page 11, line 30, following "AS 45.68":
Insert "or laws of another jurisdiction with substantially similar provisions"

Page 11, following line 30:
Insert a new sub-subparagraph to read:
"(vi) violations of AS 45.55 (securities laws) or a law of another jurisdiction with substantially similar provisions, or violations of 15 U.S.C. 77a - 77bbbb (Securities Exchange Act of 1933), 15 U.S.C. 78a - 78lll (Securities Exchange Act of 1934), or 15 U.S.C. 80a-1 - 80b-21 (Investment Company Act of 1940/Investment Advisers Act of 1940); or"

Number 2082

MS. DRINKWATER, referring to Amendment 2, explained that it clarifies the escrow arrangements and allows any money held in an escrow account, which is any amount over 20 percent of the "initial payment", to be held for 30 days, which is the same amount of time the buyer has in which to cancel the contract. Amendment 2 reads [original punctuation provided]:

Page 7, line 17:
Delete "seller may not"
Insert "escrow account holder may not"

Page 7, line 18, following "(c)":
Insert "and (d)"

Page 7, line 19, following "shall":
Insert "provide to the escrow account holder a copy of the signed contract between the buyer and the seller. The seller shall"

Page 7, line 25, following "provided":
Insert "in (d) of this section or"

Page 7, line 26, following "until":
Insert "30 days have passed since the buyer signed the contract and"

Page 7, line 27, following "escrow":
Insert "account"

Page 7, line 29, following "escrow":
Insert "account"

Page 7, following line 30:
Insert a new subsection to read:
"(d) Upon notification by the buyer that the contract has been cancelled under AS 45.66.130, the escrow account holder shall release the money held in the escrow account to the buyer."

Page 8, line 11, following "escrow":
Insert "account"

MS. DRINKWATER, referring to Amendment 3, explained that it merely clarifies the exemption pertaining to the sale of

registered securities. Amendment 3 reads [original punctuation provided]:

Page 13, line 3:
Delete "regulated"
Insert "registered"

Page 13, line 4:
Delete "regulation"
Insert "registration"

Number 2204

JOHN W. HESSE, II, Senior Attorney & Director, Government Relations, Direct Selling Association (DSA), testified via teleconference. He explained that the DSA, a trade association established in 1910, represents more than 150 companies that market their products and businesses to consumers. He elaborated:

> They're independent sales people, primarily through home parties or person-to-person sales. Our member companies include commercial names that you may be aware of - Amway, Avon, Mary Kay, Shaklee, to name a few. Our industry generates $83 billion in worldwide sales, [$25.5] billion in the United States. We have a sales force of 11 million people in the United States, and on average there are 30,000 direct sellers in every congressional district, and so we estimate that in Alaska there are approximately 30,000 direct sellers, [though] that number varies from time to time because people move in and out of our business on a monthly, if not a weekly, basis.
>
> [The Direct Selling Association (DSA)] and its members have been involved in the effort to curb fraud in the sale of business opportunities at the federal and at the state levels since the late 1970s.... We believe that business-opportunity fraud undermines vital public confidence in industries like direct selling, which utilize and depend upon individual entrepreneurship. We further believe that clear distinctions can be draw between direct selling and business opportunities because [the] investment required to participate in a direct selling opportunity is comparatively low.

Number 2295

MR. HESSE continued:

Our issue with the legislation before you - HB 393 - is that the dollar threshold contained in the exemption section is too low. And if I could at this time, I'll just try and address some of the concerns and [resistance] that has been raised around that number, and sort of why ... we've been involved since the late 1970s, beginning with the Federal Trade Commission's [FTC's] adoption of its trade-regulation rule on business opportunities and franchises. Largely our concern in this area is to be good corporate citizens and to support good public policies.

And, in that regard, we support clear and distinct laws that are not only clear for lawyers, but are clear for individuals - normal citizens - like our Avon ladies and Mary Kay sales representatives and Amway distributors. We believe that laws should be drafted so the government authority is tailored to address a specific social law. In this case, business opportunities generally - almost all business opportunity schemes - represent out-of-state opportunities that run ads in local newspapers and then send in salespeople to subject the individuals who may have responded to the ad to a high-pressure sale; you give them a short amount of time to close the sale.

The perpetrators are professionals and they appear to be legitimate companies. Most are repeat offenders [from] ... other states. The goal [for] ... these criminals is to force their victims to make a hasty decision, to tell them that they have a limited opportunity or a closed group of people involved, and they will seek a large, upfront investment, typically more than the $200, or even the $500 that we think represents good public policy in this area. Our concern, not only with the $200 figure, but with the exemption that was raised - the additional exemption that's crafted in an attempt to protect us - is that Avon ladies and Mary Kay distributors and Amway distributors not only resell the products that they purchase from the companies, but they also consume

them. Some may purchase products to use as gifts, either in their circles of friends that they travel in, or among their families.

Number 2390

MR. HESSE went on to say:

In addition, polling other attorney generals is sort of like polling police officers on whether or not search warrants should be required. Of course they're going to say the dollar threshold should be as low as possible just like a police officer is going to complain about the requirement that they obtain a search warrant before they enter someone's house. The Federal Trade Commission regulates business opportunities beginning at $500 and up. The proposal before you proposes to regulate business opportunities, we believe, between $200 and $500, and we're not sure what scams ... are occurring in Alaska that this particular law would reach that the Federal Trade Commission rule does not reach.

To be clear, only three states have a threshold as low as $200, and we believe that it might be a more useful exercise to focus on prevention efforts: consumer education, the assistance of your local newspapers in screening so-called questionable ads, and posting consumer warnings in the sections where they also post business-opportunity advertisements. It's unclear to us that that's actually occurring. In short, business-opportunity statutes contain thresholds to restrict strict compliance modes on business opportunities where people invest a large amount of money upfront. They focus limited valuable state resources on situations where people can be seriously harmed, and they reassure small businesses, like direct sellers, that they will be protected from inadvertent coverage.

MR. HESSE concluded by requesting that the "dollar threshold" be changed to $500, or at least as close to that amount as possible, and moved from the exemption section and crafted into the definition of "business opportunity" so that it's clear who is covered and who is not. In response to a question, he said the DSA does not have any concerns regarding the amount of bond.

TAPE 02-31, SIDE B
Number 2500

MR. HESSE, in response to a question, explained that when an Avon lady signs up to be an Avon lady, for example, typically she believes in the products that they're selling, and that is a hallmark of the industry. All of the sales reps, presumably, believe in and use the products that they turn around and sell; that is how the industry markets its products, and that is what makes it a successful stream of distribution and differentiates it from mass advertisers. He elaborated:

> Our companies typically start with very low budgets or very small businesses. Sometimes they're fortunate enough to grow beyond that, but, by and large, they don't have the dollars to put into mass advertising that allows other manufacturers and retailers of the products to get their products known and purchased by the general public. And so they rely on a sales force that's, number one, knowledgeable and, number two, will be using these products. ... All I was merely pointing out was that if someone believes in and uses the product, they're likely to pass it on, and that person is not a sophisticated individual and they're not going to know whether or not their activities are ... within whatever legal parameters are drawn. And that's why we argue for the clear distinction, in as simple terms as we can get, which would be the dollar threshold.

CHAIR ROKEBERG mentioned a concern regarding sales representatives who have to purchase a certain amount of the product - and then wind up having to use it themselves - in order to maintain their sales representative status.

MR. HESSE indicated that the industry maintains several protections against burdening sales representatives with unwanted inventory; most companies that belong the DSA subscribe to a code of ethics that requires them to purchase back any remaining inventory if a distributor or independent sales consultant decides to leave the business.

CHAIR ROKEBERG asked whether, under the provision regarding the exemption threshold, independent sales representatives would have to be registered and bonded if they purchased more than $200 worth of inventory.

Number 2363

REPRESENTATIVE STEVENS said no. In response to further questions, he confirmed that the registration and bonding provisions apply only to the parent companies and only if what they sell to potential independent sales representatives exceeds the $200 threshold, unless what is sold qualifies as "sales demonstration equipment, materials, or samples for use in sales demonstrations and not for resale, or product inventory sold to the buyer at a bona fide wholesale price".

MS. SMITH added that companies such as Avon, Amway, and others that sell kits of sample materials to sales representatives, who then order items at a wholesale price and resell them to customers, would be excluded via the aforementioned exemption - [paragraph] (5) - on page 12. She explained that the kinds of companies that would be required to be registered - and it would be the company itself, not the sales person, that is required to be registered - are those, for example, that offer to help someone find places for vending machines, or that "sell" the opportunity to stuff envelopes, or that have seminars which "teach" certain computer/Internet skills. She mentioned hearing from an individual who had bought software that was supposed to turn the individual into a medical transcriber.

REPRESENTATIVE JAMES noted that the ads she has seen on television and in the paper don't mention any price; they simply say to call an "800 number." How would one know whether the initial cost is going to be under the $200 threshold? A company could just suck its victims in, $25 at a time. Scams can do damage even at a $50 level, she noted. She opined that there ought not be any threshold exemption, since HB 393 is not intended to affect the sellers of legitimate business opportunities.

Number 2183

BRYAN HARRISON, Corporate Government Affairs, Alticor Inc., testified via teleconference. He explained that Alticor is the parent company of Amway and Quixtar Inc., both of which are direct selling companies. He indicated that he agreed with Mr. Hesse's comments. He added that although a $200-threshold may not pose a great administrative burden from a governmental perspective, it could prove to be too great a burden on the individual who is trying to go into direct sales. He noted that direct sales is not a get-rich-quick scheme, rather it is a supplementary income, and $1,500 for a bond could equal the

entire annual income of many who participate in direct sales. He expressed the concern that HB 393, as currently written, could strongly discourage people from entering into a direct-sales type of enterprise. With regard to the dollar level at which schemes are perpetrated, he observed that most of the problem occurs at a higher level, which is why other states and the FTC set a $500 threshold.

CHAIR ROKEBERG asked whether, in pyramid-type companies such as Amway, the provisions of HB 393 could affect those individuals that rise to the distributor level.

MR. HARRISON opined that there is that potential in the sense that many legitimate companies have multilevel marketing, and so it's possible that the cost of entering into one of those types of businesses could break the $200 threshold.

REPRESENTATIVE JAMES opined that because the $200 threshold would apply only to companies selling a business opportunity, HB 393 would not affect companies such as Amway, Avon, or Quixtar that use direct sales to market products.

CHAIR ROKEBERG remarked that "there seems to be some crossover with product value."

REPRESENTATIVE STEVENS assured members that any bonding requirement or administrative burden engendered by HB 393 would never be on the person doing the selling; it would never be on the Avon, Amway, Shaklee, or Quixtar distributor. He reiterated that the exemption regarding product inventory being sold at a bona fide wholesale price ensures that direct sales representatives would be excluded from the requirements of HB 393.

CHAIR ROKEBERG asked whether the provisions in HB 393 would apply to those sales representatives that reach the level of wholesaler.

Number 1935

MR. HARRISON acknowledged that according to the explanations given by the sponsor and the DOL representatives, it would not.

REPRESENTATIVE JAMES asked whether someone going door-to-door selling meat, for example, would be considered a direct seller.

MS. SMITH said yes. The sale of a business opportunity is the sale to the person who is going to market [a product]; thus it is "company bogus 'X'" - which is probably located out of state and which has been trying to sell its bogus product or bogus business scheme to people throughout the United States - that has to register as selling a business opportunity. She elaborated:

> If you decide that you're going to go to the seminar and buy "bogus scheme 'X,'" then you don't have to register or ... do anything, you just have to buy it, and [HB 393] is intended to protect you from being taken advantage of by "company bogus 'X.'" If they did not register, we can get them right away because they're not registered. If they did register, and then it turns out that they have violated certain things or they didn't tell us that they were arrested in four other states for ... scamming people, then we can go after them that way. But it's not the person who's coming to your door to sell you something, it's the "recruiter of those people" I guess is how you define it.

REPRESENTATIVE JAMES asked whether HB 393 would apply to companies that "sell" the knowledge of how to make money from real estate transactions.

MS. SMITH pointed out that industries which are already regulated under federal or state statutes, such as real estate, securities, and franchises, are exempted from HB 393.

Number 1758

ANNE CREWS, Vice President, Corporate Affairs, Mary Kay Inc., testified via teleconference. She noted that Mary Kay has sales force members - independent beauty consultants - operating in Alaska, and that the Mary Kay career offers a great, casual income-earning opportunity for women, enabling them to come in and out of the business according to their personal needs. She elaborated:

> One of the attractions of a Mary Kay career not only is the relatively low startup costs, but also the lack of red tape. And if a Mary Kay career was ever determined to be a business opportunity - to require bonding, escrow, registration, and all the other requirements - you would probably see a mass exodus of

women from the career. We want to echo [the] DSA's emphasis that we need to draw as clear a line as we can between the casual direct selling opportunities and business opportunities. I did want to emphasis that Mary Kay [Inc.] and [the] DSA and its member companies are champions of good consumer protection, and we applaud the state in trying to deal with the fraudulent schemes, which you all are grappling with.

However, I think this discussion has brought out all sorts of important issues including the confusion of ... who and what this law would really cover. We think, as we read it right now, corporations like Mary Kay, as well as our independent individual beauty consultants, would be covered. You're ... working with a balancing act here: How do you catch the truly significant risks without capturing the legitimate opportunities and perhaps driving them out of the state because of all the requirements.

I'd like to speak to a couple of specific things regarding the exemption, which you mentioned, [that] would exclude direct selling from the coverage. It would be a partial exemption, if you will, for direct selling. Some direct selling perhaps would charge a startup fee, some direct selling opportunities would perhaps require purchase of inventory and the purchase may not be at a wholesale sale; so, ... there's just a lot of confusion. And we respect the conversation that you all have had so far, and think that ... the solution would be to ... raise the threshold to $500, which would clearly exempt the direct selling opportunities.

MS. CREWS noted that she would be faxing the committee written comments from two of Mary Kay's independent sales directors located in Alaska, both of whom support a $500 threshold. In response to the question of how a $500 threshold would benefit her cliental, she explained that it would be large enough to exclude the cost of purchasing the startup kit - a sales kit - which is required of women who want to enter into a Mary Kay career. In response to the question of whether the startup kit is sold at a wholesale price, she relayed that the kits are sold at a "not for profit" price, so there is a small markup.

Number 1520

EUGENE E. DAU, State Legislative Committee, AARP, noted that members have in their packets a letter from AARP supporting HB 393. He relayed that many seniors on fixed incomes tend to be susceptible to the promise of being able to earn money while staying at home; unfortunately, when they respond, they often wind up losing money. He remarked that he has seen many of the different ads promoting fraudulent business opportunities, none of which bother to mention the name of the company. He pointed out that legitimate businesses such as Mary Kay and Avon, for example, wouldn't run that type of nameless ad. He reiterated that the AARP supports HB 393, and surmised that its passage would eliminate a lot of the misleading ads. In response to a question, he said that the ads for fraudulent biz opps don't state how much money is required as a startup fee; they just promise that those who respond will make a lot of money. He indicated that he would like to see such advertisements stopped.

Number 1339

VALERIE J. DEWEY testified via teleconference, and relayed her experience as the victim of a business-opportunity scam. She explained that for the past couple of years, she has been working with the Better Business Bureau in Fairbanks and with the Office of the Attorney General, in both Alaska and California, in an effort to resolve the problems that resulted from her becoming ensnared in a fraudulent business opportunity. The business opportunity that she became involved in was touted as one in which she could make money on the Internet by purchasing bulk inventory at a wholesale price and reselling it at a retail price, with a portion of the profits going to her and the remaining going back to the company that sold her this "business."

MS. DEWEY explained that she had attended a seminar in which she was led to believe that by signing up, she would receive everything she'd need to operate this business from her home, including a computer, the software with which to run it, and the training to get her started, none of which, unfortunately, actually materialized. At the seminar, she paid $300 initially and signed paperwork allowing the company to withdraw $69.95 per month directly from her bank account. Without her knowledge, however, the company actually withdrew [approximately $2,900]. As a result, her former AAA credit rating has been destroyed and she has had to deal with creditors calling her at all hours of the day and night. She concluded by asking the committee to continue funding the Better Business Bureau, particularly in the Fairbanks area.

CHAIR ROKEBERG asked Ms. Dewey what the contractual obligation was that she had signed up for.

MS. DEWEY said that she could not recall the specific details, but reiterated that she has lost a total of $3,200 and has had her credit rating spoiled. She indicated that her reason for testifying today is to try to help keep this sort of situation from happening to other Alaskans.

CHAIR ROKEBERG asked Ms. Dewey whether she has pursued any civil action against those that defrauded her.

MS. DEWEY said that that is probably going to be her next step, and although she has talked to a local attorney, she has not yet done anything formally. She indicated that she is still working on getting her credit rating cleared up.

CHAIR ROKEBERG advised her to get a letter from the Office of the Attorney General so that she could present it to any collection agencies that are still seeking money from her. He added, "You have the right to have that removed from your credit record."

Number 0844

PAM LaBOLLE, President, Alaska State Chamber of Commerce, said her organization feels that it is important to have legislation [regulating] business opportunities, and would like to see unfortunate situations such as occurred to Ms. Dewey eliminated. She acknowledged, however, that the direct sellers have a concern regarding the definition of business opportunities and how "it could be fixed," and surmised that the main problem revolves around clarifying the threshold issue. She referred to Ms. Crews's comments regarding the Mary Kay sales kits, and suggested that it should be clarified that such kits would be exempted from the provisions of HB 393.

MS. LaBOLLE referred to comments made regarding a model Act that sets the threshold at $250, and said that currently, three states use a $200 threshold, six states use between a $250 and a $300 threshold, and fourteen states use a $500 threshold. She opined that the concerns regarding HB 393 would be resolved by adopting a $250 to $300 threshold and changing the definition of what a business opportunity is; "we're so close to having everyone be happy with this, if we could just have the

definition be clearer and the threshold raised even as much as $50 or $100 above what it is now."

REPRESENTATIVE JAMES said that although she is not clear how HB 393 will be implemented, it appears to her that the people who are worried about the threshold amount are not the people who are going to be affected by this bill.

MS. LaBOLLE surmised that those who are worried feel that portions of HB 393 need clarification to ensure that it will not affect them.

REPRESENTATIVE JAMES asked whether direct sellers are required to have an Alaska business license.

MS. SMITH said that certainly the distributor - the company - is required to have a business license.

CHAIR ROKEBERG mentioned that so are the individuals who are selling the products.

REPRESENTATIVE JAMES surmised, then, that those people - those direct sellers - would not fall into the category affected by HB 393.

Number 0450

MS. SMITH agreed. The people who are selling products to the consumer, who are selling door-to-door, who are having the Amway parties or the Tupperware parties, are not the ones who would be required to register under the provisions of HB 393. If anybody were to be required to register, she added, it would the Mary Kay corporation, for example; however, under the exemptions beginning on page 12, not even those parent companies would be required to register. To clarify, she said that the exemption states: "This chapter does not apply to a sale of or an offer to sell ... (5) sales demonstration equipment, materials, or samples for use in sales demonstrations and not for resale, or product inventory sold to the buyer at a bona fide wholesale price". She opined that this exemption already includes sales kits. In response to a question, she said that companies like Amway that advertise for sales representatives would not be required to register either, because they are selling sales kits.

MS. DRINKWATER said that she concurs with that interpretation. She added that almost all the other states that have this type

of legislation also have this exemption, and it is one that is supported by the DSA in comments made to the FTC. She noted that the goal of that exemption is to preclude direct sellers and their distributors from the provisions of HB 393.

REPRESENTATIVE JAMES suggested if that is indeed the case, and direct sellers and their distributors are exempted via the aforementioned language, then perhaps there is no need for a threshold exemption of any amount.

CHAIR ROKEBERG remarked that the current language is ambiguous and should be clarified.

REPRESENTATIVE STEVENS expressed a willingness to work on a committee substitute (CS) that would include the amendments discussed and clarify the exclusion of legitimate companies such as Amway, Avon, and Mary Kay, for example.

CHAIR ROKEBERG announced that HB 393 would be held over.

SB 169 - HATE CRIMES: AUTOMATIC WAIVER OF MINORS

TAPE 02-32, SIDE A
Number 0020

CHAIR ROKEBERG announced that the last order of business would be CS FOR SENATE BILL NO. 169(FIN), "An Act providing that the delinquency laws are inapplicable to minors who are at least 16 years of age and are accused of felony crimes against persons directed at victims because of the victims' race, sex, color, creed, physical or mental disability, ancestry, or national origin."

Number 0072

SENATOR DAVE DONLEY, Alaska State Legislature, sponsor, said that SB 169 would amend existing statute in order to automatically waive juveniles over 16 years of age to adult court when charged with a violent felony against a person because of that person's race, sex, color, creed, physical or mental disability, ancestry, or national origin. He noted that the language being added to AS 47.12.030(a) [defining the foregoing attributes of victims] comes directly from AS 12.55.155(22), which is an aggravating factor when sentencing adults. He opined that because the juvenile [justice] system (JJS) is closed off from public accountability, waiving juveniles to adult court when they commit violent hate crimes is

justified; by prosecuting these crimes out in the open, the deterrent effect will be enhanced and society in general will know that justice has been done.

SENATOR DONLEY said he thinks it is certainly a higher level of "crime against society" when the motivation behind a violent crime is some sort of hate, based on the [statutory] definition. He noted that there have been major efforts over the last few years to toughen the criminal justice laws as they pertain to juveniles, as well as proposals to utilize a dual sentencing scheme as an alternative to mandatory waiver to adult court. But unfortunately, to date, the dual sentencing law has never been utilized; the one time it might have been used, "it was turned down," and thus it is not a viable option, he opined. "I think when these kind of crimes do occur, the better public policy is to put them out before the public so the public knows ... that they've occurred and knows what the final resolution of the criminal justice process involving those crimes is," he stated.

SENATOR DONLEY mentioned that another point of concern he'd heard regarding SB 169 is that when minors are waived to adult court, they end up incarcerated in adult facilities. He pointed out, however, that it is against both federal and state law to incarcerate a juvenile in an adult facility without some sort of segregation. He acknowledged that although his sponsor statement mentions that there has never been an incident of a juvenile being abused while in an adult facility, he did hear of one possible incident that might have occurred last year, but he has not been able to confirm that information.

Number 0337

SENATOR DONLEY reiterated that hate crimes rise to a higher level of significance and concern to society, and that SB 169 would assure society that justice would be done with regard to someone over 16 years of age who commits a violent hate crime. He remarked that he is very sensitive to the concerns of folks who are opposed to "thought crime" legislation; however, because violent hate crimes pose a great threat to society, he thinks that [SB 169] creates a better public policy.

CHAIR ROKEBERG asked for a description of the dual sentencing law, which was passed in 1998.

SENATOR DONLEY explained:

> The dual sentencing proposal simply said that for certain types of juveniles, you could sentence them both as adults and as juveniles for certain types of crimes, and that if they failed in the juvenile system, then they would go to the adult system and ... be subject to punishment under the adult system.

CHAIR ROKEBERG asked: "So how is that applicable, the way your bill is drafted now?"

SENATOR DONLEY replied that it was only applicable in the sense that during the Senate hearings on this legislation, dual sentencing was offered as an alternative: the administration preferred dual sentencing to automatic waiver. He opined, however, that the dual sentencing law simply hasn't worked during the two years since its enactment. In response to a question, he said that he did not know why that provision has never been utilized; he was simply told that it had not been utilized.

CHAIR ROKEBERG noted that in the "paintball incident" that occurred last year in Anchorage, one of the individuals was tried as an adult and the other two as juveniles. He asked whether that incident provided the impetus for SB 169.

Number 0589

SENATOR DONLEY replied that although that incident certainly raised the public consciousness regarding hate crimes, SB 169 neither was created in response to that incident nor is being offered as a solution to the problem. He noted that in that incident, there was the question of whether that crime rose to the level of a felony, and since SB 169 would only apply in felony situations, it would not have affected the two juveniles involved had they only been charged with a misdemeanor. He opined that SB 169 stands on its own merit; if someone who is at least 16 years of age is indeed charged with a felony hate crime, it is perfectly appropriate to extend the existing automatic waiver to those crimes. In response to a question, he mentioned that in members' packets is a handout detailing the differences between class C felony and class A misdemeanor crimes against a person.

REPRESENTATIVE BERKOWITZ remarked that the list in SB 169 that pertains to victims' attributes does not include sexual orientation. He asked why that was left out.

SENATOR DONLEY reiterated that the list in SB 169 comes directly from and is identical to AS 12.55.155(22), the existing aggravator for adult sentencing.

REPRESENTATIVE BERKOWITZ asked: "Do you think that this would be strengthened by adding sexual orientation?"

SENATOR DONLEY replied: "I don't have a strong opinion on it other than that I believe that it's absolutely consistent with existing law; it's the only other place in law that I found in the sentencing laws where this kind of ... criteria was adopted. And [it] seemed appropriate for this measure also."

REPRESENTATIVE BERKOWITZ asked: "If we were to add sexual orientation here, would you think it'd be appropriate to add it in the aggravator section as well?"

SENATOR DONLEY remarked that doing so would require a title change.

REPRESENTATIVE BERKOWITZ noted that that was not impossible.

SENATOR DONLEY acknowledged that it would not be impossible to change the title, but argued that he wouldn't support it because there is a strong philosophical opinion [against adding sexual orientation to the list] and because he thinks that SB 169 has a much better chance of success if the language stays the way it is, consistent with existing law.

Number 0819

REPRESENTATIVE JAMES asked whether the term "creed" includes religion.

SENATOR DONLEY said that because he has not performed an exhaustive search to determine whether "creed" is statutorily defined and, if so, how it is defined, he could only hazard a guess as to its meaning.

REPRESENTATIVE MEYER asked whether currently, the "hate aggravator" could be applied to a juvenile.

SENATOR DONLEY explained that first it would be up to the prosecutor to decide whether to "ask for that as an aggravator," and then it would be up to the judge to decide whether to "assess it as an aggravator."

REPRESENTATIVE MEYER remarked that SB 169 has a zero fiscal note. He asked whether this means that it would cost the same to incarcerate a juvenile in an adult facility as it would in a juvenile facility.

SENATOR DONLEY clarified that the [Department of Corrections (DOC)] submitted an indeterminate fiscal note because there is no way of knowing how many cases SB 169 might apply to.

CHAIR ROKEBERG opined that it would probably be a rare occurrence. In addition, after reading from an unspecified source, he noted that "creed" is defined as: "a [formal] statement of religious belief - confession of faith."

REPRESENTATIVE KOOKESH said that although he appreciates the intent of the legislation, it seems as though SB 169 doesn't really do anything to change the statutes with regard to "crimes related to bias or hate." He asked Senator Donley what he thinks SB 169 accomplishes.

Number 1014

SENATOR DONLEY, in response, reiterated some of his earlier comments regarding how detrimental hate crimes are to society and how minors are currently treated in the JJS. He opined that automatically waiving minors 16 years of age and older to adult court for committing violent hate crimes is a significant change to the statutes and would be good public policy on multiple levels.

REPRESENTATIVE KOOKESH asked what was being done with regard to how adults who commit violent hate crimes are treated. After acknowledging that SB 169 is not intended to be a comprehensive "hate crimes bill," he said that there are still areas that need to be addressed, and asked Senator Donley for his assurance that he will assist in those efforts. He noted, for example, that Representative Berkowitz raised the issue of sexual orientation, and said that that is a segment of the population that still needs to be protected. He asked: "How do we intend to do that? Or do we?"

SENATOR DONLEY replied that he could not speak for either the entire Senate or the entire House, but thinks that SB 169 is a good, stand-alone change in existing law, that it makes good public-policy sense, and that it is consistent with existing laws. He said that he would treat other proposals on the basis of their merits, as they are brought forth.

REPRESENTATIVE BERKOWITZ asked Senator Donley to estimate how many cases SB 169 might apply to on an annual basis.

SENATOR DONLEY offered that one case is too many and he hopes that there won't be any; however, as illustrated by the DOC fiscal note, the number of cases is not something that can be determined at this time. He noted that if the provisions of SB 169 are used even once, it will have a significant effect on society, particularly in small communities.

Number 1205

REPRESENTATIVE COGHILL opined that the felony behavior that would bring a minor into adult court would have to be "more significant than is written here." He remarked that youths involved in the JJS are more apt to be nurtured than are individuals involved in the adult correctional system. He said he is wondering whether waiving juveniles into the adult system would simply be "creating a felony before we really get there" and thus creating more problems down the road. He noted that because "every one of us" is subject to some form of hate crime, according to the list in SB 169, he did not know that anybody needed special protection.

SENATOR DONLEY noted that "the cutoff" for a class C felony is assault in the third degree, which is when a person "(1) recklessly ... (B) causes physical injury to another person by means of a dangerous instrument. He also noted that there is [extensive] case law defining "dangerous instrument". When a person intends to place another person in fear of death or serious physical injury by using a dangerous instrument, he remarked, it becomes a pretty significant crime. He opined that society should take such behavior seriously, and that SB 169 constitutes a "reasonable public policy call."

REPRESENTATIVE COGHILL remarked, however, that "we're taking a tool away from the judge, [in] this particular case, because we're making it a mandatory [waiver to adult court]." He indicated that he is not sure that he "can go that way just yet."

REPRESENTATIVE MEYER asked whether the waiver to adult court could be optional rather than mandatory. He offered that there are some 16-year-olds who are a danger to society; with regard to hate crimes, however, the problem may not stem so much from the kids but rather from their parents. He expressed the

concern that if someone is automatically waived to [adult court and thus to] an adult facility, there won't be much hope for his/her rehabilitation.

SENATOR DONLEY offered that there is not a mandatory minimum sentence for a class C felony; therefore, incarceration in an adult facility would not be mandatory.

Number 1482

ROBERT BUTTCANE, Legislative & Administrative Liaison, Division of Juvenile Justice (DJJ), Department of Health & Social Services (DHSS), said that Alaska should not, under any conditions, abide acts of hate. Hate must be confronted and corrected at every level and at every opportunity. He continued:

> I understand that there is a special need to look at hate crimes separate from regular crimes, because when a person acts against another person on the basis of some hate category, not only is the victim impacted by that, but the group to which the victim belongs is also impacted by that act. So I think it is proper that this body does discuss these issues. On behalf of the Department of Health & Social Services, I want to be on record, however, in opposition to Senate Bill 169. We see this bill as ineffective, with the potential for significant detrimental impact to the welfare of the public good, for four reasons.
>
> One, it is incomplete in terms of its inclusion of bias categories. Two, it includes crimes that do not rise to the level of this type of punishment or response. Three, the current waiver laws on the books now are sufficient to address the most egregious acts of juveniles by waiving them into the adult system. And four, there are a multitude of better options available to respond to crimes of hate and bias than what is proposed in [SB 169].

MR. BUTTCANE elaborated:

> Number one, any bias crime that does not include the categories of sexual orientation and economic disadvantage is simply incomplete. Whatever you may feel about the governor's tolerance commission of this last year, over and over and over that group heard

from people throughout this state who were living on the street, who are impoverished, who say that they have been subjected to the acts of other people, because of their poverty; not to include economic disadvantage is [an] error. Aside from racial issues, in our high schools the second most common biasing category a student will express against another student is either their actual or perceived sexual orientation.

The state does not include these items in the aggravating factors under the sentencing statute of Title 12, nor do we give our [State Commission for Human Rights] authority over sexual orientation cases. We have hidden ourselves from a problem that is present in our schools and in our communities. To exclude these [categories] perpetuates a deficiency in the current statute, and while this bill would be consistent with current statute, it is incomplete nonetheless.

Number 1646

Number two, this bill extends automatic juvenile waiver into adult court for crimes that do not warrant this extreme response. It does include [class] B and C felony crimes against persons. When you look in the sentencing statutes of Title 12, a [class] B felony can receive imprisonment up to ten years. That's the maximum. When you look at an assault in the third degree, that can be up to five years' [imprisonment]. Now, admittedly, for a first-time [offense], a 16-year-old appearing in front of an adult sentencing judge for one of these offenses is not at all likely to get the maximum imprisonment sentence; I grant that.

But when you look [at] a [class] B felony as including the types of crimes where you take property from another by force - not involving a weapon, but taking property from another by force - what do you do with those 16- and 17-year-olds that we get every Halloween, who have bullied sacks of candy away from kids? They utter some type of racial or ethnic slur in that act, and now they will be subject to a [class] B felony - robbery in the second degree - in the adult

court. It is likely, at a [class] B felony level, they would get some prison time to serve.

MR. BUTTCANE:

Assault [in the third degree involving a] dangerous instrument - I have personally processed case referrals from law enforcement where kids have gotten angry at parents, they pick up broom handles and toilet plungers, they waive them at the parents, and they say, "I am going to kill you"; and in that moment, they mean it. They have committed an assault in the third degree, have been arrested by law enforcement and charged with that offense. Should [they], in those circumstances, utter some type of racial or some type of bias slur, that would subject them to the penalties of the adult system. Now, are the penalties of the adult system proper? If you look at the reality that the most someone could get for waiving a toilet plunger at someone, with a racial slur, would be five years in jail - if you were 16 years old, you got five years - do the math: they're out at 21.

There is an article that was submitted by the Coalition for Juvenile Justice in March of 2001 that characterizes national statistics that state two-thirds of the children sentenced to adult prisons in this country are released before they are 21, and more than 90 percent are released before age 30. Upon release, these people re-offend earlier and more seriously than those who were processed in the juvenile system. That's the research that is supported over and over again.

Number 1760

Waiver of juveniles into the adult system is significantly a detrimental public policy. It is one that will cost us. If you can imagine a 16-year-old going into jail for five years, should it ever happen: he's graduated from crime school, he's still young, he's still virile, [and] he is now more hateful, more angry, and more predatory on our communities and our safety and our public. This is bad public policy.

MR. BUTTCANE continued:

Number three, waiver for the most egregious offenses is already in existence. When a child 16 and 17 years of age commits an act of homicide - an unclassified or a class A felony - against anyone in this state, they are treated as an adult offender. For those crimes, they are typically receiving sentences of 20, 30, 50, 80 years; they will not be released immediately on the community again, so they don't pose that risk of being released more quickly. In 1995, the governor convened a group of citizens, business people, care providers, legislators, and others - law enforcement people - from around the state, who met through a series of meetings in what was called the Governor's Conference on Youth and Justice. One of the 100-plus recommendations out of that body that crossed both the political boundaries [and] social boundaries was that there would be no expansion of Alaska's automatic waiver.

It was argued on the Senate floor, ... when this bill was passed out of the Senate, that a juvenile, by law, cannot serve time in an adult prison. That is true: juveniles may not, by law - both state and federal law - be placed in adult prisons. Alaska's automatic waiver law, however, removes the category of minority from 16- and 17-year-olds who are charged with these crimes. If you go to the bill and you go to page 1, lines 11, 12, and 13, [there] is the sentence: "The minor shall be charged, held, released on bail, prosecuted, sentenced, and incarcerated in the same manner as an adult." That is the current law of our waiver statute. Someone 16 and 17 years old, simply charged with one of these crimes after having injected an element of bias or hate, would be subject to all of the response and sanction of the adult system - bad public policy.

Number 1913

Last, there are options. There [are] better options that have been proffered around the country as this nation has tackled the issue of hate. The Sentencing Project out of Washington, D.C.; the American Youth Policy Forum; the Community Relations [Service] section of the U.S. Department of Justice; the Office of Juvenile Justice and Delinquency Prevention; the

Anti-Defamation League; indeed, even the Alaska [Federation] of Natives have put forward proposals that are considerably more progressive and responsive, to confront and address hate crime behaviors, than what [SB 169] does. The options that are proffered as best-practice responses to hate crimes focus on families. So, not only are we addressing the behaviors of individual youth, but we include interventions that involve parents.

A response to hate crimes should always include some kind of diversity tolerance training for the juvenile and the parent. This bill does not do that. It is also recommended that mediation and conflict resolution be used as preventative and responsive actions to hate crimes, to heal that separateness, that judgment, that bias that we hold against ourselves and one another. Howard Zhare (ph), a national authority on restorative justice, states that the most effective sanction that one can impose against an offender is where the offender takes personal responsibility for the repair of the harm to their victim. In the juvenile system, when we receive a crime of bias, that is our expectation, that the young offender take personal responsibility and work to repair the harm that was caused to their victim, the victim's group, and the victim's community.

Number 1998

MR. BUTTCANE concluded:

Putting someone in the adult penal system, in a prison in Lemon Creek or Spring Creek, is a limited response. It serves no public good. It isolates an individual. It presupposes that a 16-year-old will self-correct in one of the most segregated, isolated, crime-infested areas - our prisons - that we have. It's the wrong response. It is not individual; the juvenile system provides an individual response. It does not include the parent; the juvenile system does. It does not make amends to the community; it simply gives the community some retribution for that act. It doesn't make an amends to the victim, in terms of any kind of understanding of the group; it doesn't develop any levels of tolerance or understanding or appreciation. For these reasons, the [Department of Health & Social

Services] is opposed to the proposal before you this day.

REPRESENTATIVE MEYER asked what the rate of recidivism is at a juvenile detention center like the McLaughlin Youth Center.

MR. BUTTCANE said that this year's DHSS "missions and measures" [statement] shows a 55-percent "non-reoffense rate" following release from a juvenile institution. He added that juveniles are followed for two years after their release, even into the adult system. He mentioned that the McLaughlin Youth Center has had close to a 60-percent success rate - or non-reoffense rate. He confirmed that the national study of which he spoke earlier indicates that when those who go into the adult system at the age of 16 are released, they are more likely to re-offend and the offenses tend to be more serious. He also noted that members' packets contain a handout highlighting some of the national statistics regarding juvenile waivers.

REPRESENTATIVE MEYER asked whether, in rural Alaska, it is always possible to segregate juvenile offenders from adult offenders.

MR. BUTTCANE said no; although every effort is made keep them separate, it is not always possible in small, rural jails. "It is not unheard of that an adult offender will be released from a jail holding facility so that a juvenile can be held until such time that they could be transported to a juvenile facility for processing," he added.

Number 2153

LINDA WILSON, Deputy Director, Public Defender Agency (PDA), Department of Administration, testified via teleconference, noting that the paintball incident from last year focused a lot of attention on the criminal justice system as it pertained to hate crimes and the treatment of juveniles. It was a very disturbing crime, she remarked, and it generated a close examination, which was a good and productive thing. One of the results of this exam was the formation of the governor's tolerance commission, which held extensive meetings out of which a report and recommendations ensued.

MS. WILSON said that in light of that, the PDA strongly opposes SB 169 as a way to address "these" concerns. She remarked that notwithstanding a misperception that the juvenile [justice] system in Alaska has failed, it is not a failure; rather, it is

"alive and well and doing wonderful in terms of addressing offenses committed by juveniles." It is much better to keep youthful offenders in the juvenile [justice] system than to put them into the adult system, she opined, remarking that it was [nearly] a hundred years ago, in 1909, that the juvenile [justice] system was started because of problems resulting from putting kids in adult jails.

MS. WILSON indicated that children in adult jails are preyed upon, are far more likely to be assaulted, and have a higher rate of suicide. And - notwithstanding any perception to the contrary - children who are automatically waived under the provision being amended by SB 169 do not get segregated from adults. These children are sharing cells with adults. Children are only segregated when they are in the juvenile [justice] system. If a child is charged under AS 47.12.030(a), he/she will immediately be arrested and put in with the adult population, and, upon conviction, will also serve his/her sentence there. She pointed out that when children are incarcerated with adults, there is the additional problem of criminal adults becoming the moral mentors of impressionable children; thus the higher rate of recidivism should come as no surprise.

Number 2253

MS. WILSON opined that kids who commit hate crimes are probably the best suited for the treatment available in the juvenile justice system. In the juvenile system, the whole family can become involved - and is sometimes even required to become involved - in the solution and disposition of a case. This is certainly not the case in the adult system, she remarked. The situation in Alaska doesn't need to be fixed, she opined, because in serious cases, the department can protect the public and can have these minors institutionalized up to their 19th birthday. The department can work with the minor and his/her family for a much longer period of time. She pointed out that the department currently has the ability to seek a waiver in cases where the minor is not amenable to treatment, or can elect to waive in serious situations. Notwithstanding these possibilities, in the majority of situations it is much better to keep juveniles in the [juvenile] system. The automatic waivers in Title 47.12 are narrowly prescribed, she noted, and should not be expanded.

MS. WILSON suggested that when considering the expansion of the criteria for automatic waiver, the committee should also think

ahead to what is going to happen to the juvenile when he/she gets out of jail. That person would then be a convicted felon and, as such, his/her future will be very restricted and uncertain. It could be very hard for these offenders to overcome the moniker of being convicted felons; they could have difficulty getting jobs, serving in the military, or getting educations. And although many juveniles have done horrible, stupid things and need to be held accountable, this can be accomplished in the juvenile [justice] system; they do not need to automatically go to the adult system. In conclusion, Ms. Wilson suggested that the committee give consideration to other pending legislation as alternatives to SB 169.

REPRESENTATIVE JAMES, after remarking that she has had experience with reform schools, commented that because of the differences between children ages 14-15 and children ages 16-17, the younger children in that environment would be better off if they are not exposed to the 16- and 17-year-olds.

Number 2420

CANDACE BROWER, Program Coordinator/Legislative Liaison, Office of the Commissioner - Juneau, Department of Corrections (DOC), concurred with Mr. Buttcane and Ms. Wilson that when juveniles are waived into the adult system, they are integrated into the adult population. She elaborated:

> When someone is arrested as a waived juvenile, they go to an adult facility. We make every effort that we can to ... protect the safety of the juveniles that come before us, but one of the things that we do, that we don't do for other offenders, is we evaluate each and every juvenile for a period of time and segregation to try [to] determine whether or not they're safe to go into ... general population.... If it's determined that they're not safe to go in, then they have to remain segregated for the duration of their ... incarceration or until they go to another facility and are deemed able to go into [general] population. That creates quite a bit of work and hardship for our staff as well as for the juveniles that are waived.

MS. BROWER remarked that going into adult prison is a very serious thing, and contended that if a juvenile is waived into an adult facility because of a hate crime, he/she will only

emerge more hateful as a result of being integrated into the adult population.

TAPE 02-32, SIDE B
Number 2489

MS. BROWER mentioned that [there have been] instances of adult offenders' assaulting juvenile offenders, and recounted that in the mid-80s, the state had to pay a $1-million lawsuit for just such an incident, which occurred in Ketchikan. Therefore, although the DOC tries very hard to prevent such assaults, they do occur, and reducing the level of offense will only increase the number of children - and, in particular, more vulnerable children - who get waived into the adult system, she remarked. "Sixteen-year-old kids are kids, regardless of how mature they might want to be; they're still kids and they are at risk," she pointed out, and they will put an additional burden on the DOC as it strives to protect them from the adult population. In conclusion, she, too, suggested that the committee should consider other pending legislation as it strives to deal with the issue of hate crimes.

CHAIR ROKEBERG announced that SB 169 would be held over.

**ADJOURNMENT**

Number 2412

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:33 p.m.