ALASKA STATE LEGISLATURE
SENATE JUDICIARY COMMITTEE
March 27, 2002
1:40 p.m.

MEMBERS PRESENT

Senator Robin Taylor, Chair
Senator Dave Donley, Vice Chair
Senator John Cowdery
Senator Gene Therriault
Senator Johnny Ellis

MEMBERS ABSENT

All Members Present

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 40(FIN)
"An Act providing for the revocation of driving privileges by a court for a driver convicted of a violation of traffic laws in connection with a fatal motor vehicle or commercial motor vehicle accident; amending Rules 43 and 43.1, Alaska Rules of Administration; and providing for an effective date."
MOVED SCS CSHB 40(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 157(JUD) am
"An Act relating to trust companies and providers of fiduciary services; amending Rules 6 and 12, Alaska Rules of Civil Procedure, Rule 40, Alaska Rules of Criminal Procedure, Rules 204, 403, 502, 602, and 611, Alaska Rules of Appellate Procedure, and Rules 7.2 and 7.3, Alaska Rules of Professional Conduct; and providing for an effective date."
MOVED SCS CSHB 157(JUD) OUT OF COMMITTEE

SENATE BILL NO. 263
"An Act relating to the subsequent acquisition of title to, or an interest in, real property by a person to whom the property has purportedly been granted in fee or fee simple; and providing for an effective date."
MOVED CSSB 263(JUD) OUT OF COMMITTEE

SENATE BILL NO. 204
"An Act relating to wildfires and other natural disasters."
SCHEDULED BUT NOT HEARD

SENATE BILL NO. 313
"An Act repealing a provision relating to legislative approval of construction projects of the Alaska Aerospace Development Corporation."
SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

HB 40 – See Judiciary minutes dated 2/20/02.
HB 157 - See Labor and Commerce minutes dated 1/29/02.
SB 263 - See Labor and Commerce minutes dated 2/12/02 and Judiciary minutes dated 3/4/02.

WITNESS REGISTER

Ms. Anne Carpeneti
Assistant Attorney General
Criminal Division
Department of Law
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Testified on HB 40.

Ms. Kim Ross
Staff to Senator John Cowdery
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Read testimony from Mr. Alan Christopherson on HB 40 into the record.

Mr. Chuck Hosack
Deputy Director
Division of Motor Vehicles
Department of Administration
PO Box 110200
Juneau, AK 99811-0200
POSITION STATEMENT: Testified on HB 40.

Ms. Mary Chrisopherson
No address given
POSITION STATEMENT: Testified on HB 40.

Ms. Robin Phillips
Staff to Representative Lisa Murkowski
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Introduced HB 157.

Mr. Terry Lutz
Chief Financial Institution Examiner

Division of Banking, Securities & Corporations
Department of Community & Economic Development
P.O. Box 110807
Juneau, AK 99811-0807
POSITION STATEMENT: Testified on HB 157.

Mr. Terry Elder
Director
Division of Banking, Securities & Corporations
Department of Community & Economic Development
P.O. Box 110807
Juneau, AK 99811-0807
POSITION STATEMENT: Testified on HB 157.

Mr. Joe Newhouse
Newhouse & Vogler, CPAs
237 E. Fireweed Lane
Anchorage, AK 99503
POSITION STATEMENT: Testified on HB 157.

Mr. Dave Shaftel
550 W. 7th Ave.
Anchorage, AK 99501
POSITION STATEMENT: Testified in support of HB 157.

Mr. Dick Thwaites
Chairman
Alaska Trust Company
604 W. 2nd Ave.
Anchorage, AK 99501
POSITION STATEMENT: Testified in support of HB 157.

Mr. Kevin Sullivan
Baxter, Bruce & Sullivan
P.O. Box 32819
Juneau, AK 99803-2819
POSITION STATEMENT: Testified on HB 157.

Mr. Douglas Blattmachr
President
Alaska Trust Company
1029 W. Third Ave., Suite 601
Anchorage, AK 99501-1981
POSITION STATEMENT: Testified in support of HB 157.

Ms. Annette Kreitzer
Staff to Senator Loren Leman
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Testified on SB 263.

Mr. Bryan Merrell
First American Title Company of Alaska
3035 C St.
Anchorage, AK 99503
POSITION STATEMENT: Testified on SB 263.

Mr. Jon Tillinghast
Sealaska Corporation
One Sealaska Plaza Suite 300
Juneau, AK 99801
POSITION STATEMENT: Testified on SB 263.

ACTION NARRATIVE

TAPE 02-12, SIDE A
1:40 p.m.

CHAIRMAN ROBIN TAYLOR called the Senate Judiciary Committee meeting to order at 1:40 p.m. Present were Senators Cowdery, Donley and Chairman Taylor. Senators Ellis and Therriault arrived shortly thereafter.

The first order of business before the committee was HB 40.

#HB 40

HB 40-REVOKE DRIVER'S LIC. FOR FATAL ACCIDENT

MS. ANNE CARPENETI, Assistant Attorney General, Department of Law (DOL), noted that the committee had already heard HB 40 and a CS was drafted according to suggestions made by Senators Donley and Therriault. She explained the following changes in the J version:

- On page 2, line 1, the word “shall” was changed to “may” to allow for the discretion of the court in the revocation of a driver’s license.
- On page 2, line 10, the possible term of revocation was changed from one year to up to three years to give the court more discretion in consideration of circumstances.
- Page 3, lines 1-4 deleted the provision that the findings of the court would not be admissible in subsequent civil, criminal or administrative action. A provision was inserted allowing the family of the victim to testify at proceedings addressing revocation.
- Page 3, line 21 changed the effective date to September 1, 2002 rather than 2001.

CHAIRMAN TAYLOR said those were excellent changes.

SENATOR DONLEY asked if the Administration supported the CS.

MS. CARPENETI said yes.

SENATOR DONLEY moved the J version of HB 40 as the working document.

There being no objection, the J version of HB 40 was adopted as the working document.

CHAIRMAN TAYLOR asked if there were any further questions for Ms. Carpeneti. There were none.

MS. KIM ROSS, Staff to Senator Cowdery, read the following testimony from Mr. Alan Christopherson:

> I understand that Sen. Robin Taylor, Sen. Dave Donley, Sen. John Cowdery and others are reviewing HB 40. I would like the committee to readdress the applicable law(s) regarding uninsured motorists. As background, our family is fully insured for four vehicles by two national insurance firms.
>
> The reason for my testimony is that my wife's auto has been struck by two different uninsured motorists in the last three years. The most recent incident occurred last week and the other three years ago. In both cases, the uninsured motorist was allowed to leave the scene of the accident and in both cases the motorists have been unwilling or unable to pay. In the case of the first driver, we understand that he is still driving three years after our accident without insurance.
>
> Although our insurance policies include uninsured drivers coverage, our experience has shown that not all repair costs such as the use of rental cars during repairs are compensated by this coverage. Often, insurance companies attempt to recover these costs after the fact by the legal system or by garnishing a motorist's future Permanent Fund Dividend. We found these processes to be slow and flawed. We did receive partial compensation from the first accident, although only a portion of our costs were repaid by the insurance company three years after the accident.

I understand the intent of the original bill was to require each driver to show proof of insurance within ten days after an accident or lose the privilege of an Alaska driver's license. Before writing this testimony I called the Anchorage Chief of Police about this subject. He had me talk with a sergeant in Internal Affairs, who confirmed that the current laws related to uninsured motorists are not effective. He told me (as I suspected) many uninsured motorists continue to drive without a license or insurance. The police suggest they could use tougher laws with regard to uninsured motorists. In the case of my wife's most recent accident by an uninsured motorist, the police could only recommend to the uninsured motorist that he provide compensation before he drove away.

Please consider adopting a law similar to what I understand the state of Arizona has in effect. If the operator of the vehicle does not have a valid insurance certificate for the vehicle, it is immediately impounded. The vehicle is not released until proof of insurance is provided.

Please send the growing number of uninsured drivers a message that they cannot continue to drive and put others at financial risk.

As Sen. Cowdery and I know from our recent visit to Elmendorf AFB we were required to show a valid drivers license, a current vehicle registration and proof of insurance to drive on the base. I think the same rules should apply to the streets of Anchorage.

I realize that the issues related to uninsured motorist insurance and the bill before the committee is more complicated than the ideas I have presented in my testimony. I trust that your committee will fully study all available options and will determine the best course of action.

I would like to thank the committee for hearing my comments and for your tireless efforts in these and other important matters before the State of Alaska.

Sincerely, Alan Christopherson

1:45 p.m.

CHAIRMAN TAYLOR said his staff, Senator Cowdery and Senator Donley had all communicated with Mr. Christopherson. He said while his testimony was not directly related to the bill, it did relate to the revocation or suspension of driving privileges. He asked Ms. Carpeneti to tell the committee what DOL was doing to enforce the law requiring the revocation of the license of a person without insurance who was involved in an accident. He said Mr. Christopherson's testimony indicated that the Chief of Police in Anchorage believed the law was not being enforced. He asked why it wasn't being enforced.

MS. CARPENETI said she didn't know which statute Mr. Christopherson was referring to. She said she would be happy to talk with the Division of Motor Vehicles (DMV) to find out.

CHAIRMAN TAYLOR said a former legislator did subrogation work to collect for damages on behalf of insurance companies. The insurance companies would refer cases in which their liability coverage had paid for the damages and the person causing the accident had not paid them. He said the former legislator told him about three years previously that Governor Knowles' administration made a decision to not revoke driver's licenses because it was too much work and they had higher priority issues to deal with. He communicated with DMV and was informed that they were revoking licenses. He said Mr. Christopherson's testimony indicated that DMV wasn't following up on people who failed to pay for the damages they had caused. He said they should be revoking the driver's license until the money had been paid.

SENATOR DONLEY said during a budget reduction proposal DMV said they would have to stop enforcing the Motor Vehicle Safety Responsibility Act that paralleled the Mandatory Motor Vehicle Insurance provisions. He remembered working with DMV to provide funding to continue enforcement. He had not heard that DMV wasn't enforcing the Motor Vehicle Safety Responsibility Act. He would be very disappointed if they were not.

MR. CHUCK HOSACK, Deputy Director, DMV, confirmed that DMV was enforcing both the Mandatory Motor Vehicle Insurance provisions and the Motor Vehicle Safety Responsibility Act. He said both the laws involved loss of a driver's license if a person was in an accident and didn't provide proof of insurance. He said the Mandatory Motor Vehicle Insurance provisions applied to all drivers involved in an accident, whether they were the at-fault driver or an innocent party. He said DMV looked at the accident report to determine whether there was a possibility that a person

could be held liable. At that point, the financial responsibility law went into effect and the driver's license could be suspended for up to three years or until the damages from the accident were paid. He said DMV had identified those functions as possible program reductions in years past but never had to cut them because funding was made available.

SENATOR DONLEY asked if the person got their driver's license back after three years whether they paid the damages or not.

MR. HOSACK said one of the provisions for getting a license back after three years was an SR-22 insurance policy. He thought the reason for the three-year period was because civil liability limitations ran out after three years.

SENATOR DONLEY said a judgment didn't expire after three years.

MR. HOSACK said that was correct. He said the suspension continued until the judgment was satisfied.

CHAIRMAN TAYLOR thought a judgment had to be renewed every six years if a person failed to execute.

SENATOR COWDERY said revocation of a driver's license wasn't a very good penalty because people continued to drive without a license. He asked if the vehicle could be impounded.

MR. HOSACK said when a person was pulled over by a police officer they could be cited for driving while their license was suspended or revoked. He said their license could be revoked again and they could get jail time in some cases. He wasn't aware of a vehicle forfeiture or impoundment provision.

SENATOR DONLEY believed there was mandatory jail time for second offenses.

MS. CARPENETI said that was correct. She said there was a ten-day jail time for the first offense, which could be suspended on the condition that the person perform 80 hours of community service. She said there was a mandatory jail time of ten days for the second offense.

SENATOR COWDERY said that didn't seem adequate. He knew of a person in the Wasilla area who was driving with a suspended license and tried to use his brother's license when he was pulled over. He said the man got ten days for that second offense. He said if the problem was going to be solved, the vehicle must be impounded regardless of ownership. He said we weren't getting

the attention of people who had had their license revoked with the penalties in place.

SENATOR THERRIAULT said Mr. Christopherson's testimony led him to believe that if a police officer pulled somebody without insurance over, the officer would allow the person to get back in the car and drive home and tell them not to do it anymore. He asked if police officers could impound the vehicle of a person driving without insurance.

SENATOR COWDERY said Mr. Christopherson told him the person was able to get in their car and drive home after the accident. He thought there were problems with the law.

SENATOR THERRIAULT asked if that was a choice the officer made.

MR. HOSACK said there was no requirement to carry proof of insurance in the automobile and therefore an officer wouldn't ask for proof of insurance during a normal traffic stop.

SENATOR THERRIAULT said there was an accident in Mr. Christopherson's case.

MR. HOSACK said in the case of an accident the officer indicated whether the person had insurance on the accident report. He said enforcement then fell to DMV to take action against the license of a person who didn't provide proof of insurance. He said there was no law allowing the officer to impound the vehicle at the accident scene.

SENATOR THERRIAULT asked if the officer would still allow the person to drive away if he was told there was no insurance on a vehicle that had been in an accident.

MR. HOSACK said yes.

CHAIRMAN TAYLOR asked why the persons who impacted Mr. Christopherson's vehicles would still be driving.

MR. HOSACK said they were probably driving without licenses. He said DMV or the court could take the license away but once the person left the office or the court it was very difficult to keep them from driving. He said even if their car was taken away they could find another vehicle to drive. He said they would almost have to be locked up for the term of their suspension to be kept from driving.

CHAIRMAN TAYLOR asked if Mr. Hosack could work with Mr.

Christopherson's wife to determine whether the parties had Alaska driver's licenses.

2:00 p.m.

MR. HOSACK said he could.

CHAIRMAN TAYLOR thought insurance companies notified DMV if they were unable to get reimbursement for damages caused by an uninsured driver.

SENATOR DONLEY asked if the burden was on the perpetrator.

MR. HOSACK said it was. He said they had to provide DMV with proof of insurance. He said DMV did random spot checks as well. He said their best indicator was the injured party's insurance company. He said if the insurance company paid out of their uninsured motorist claim they would go to the at-fault party to get reimbursement. He said if they couldn't get reimbursement, they oftentimes notified the DMV. DMV then checked their system and could take action on the license.

CHAIRMAN TAYLOR said there were a couple of good triggering events that motivated DMV to revoke licenses.

SENATOR DONLEY asked for an estimate of how many licenses were suspended under the Mandatory Motor Vehicle Insurance provisions and the Motor Vehicle Safety Responsibility Act the previous year.

MR. HOSACK said he didn't have those numbers readily available. He said DMV did collect those numbers and he would get them to the committee.

SENATOR DONLEY said he asked the Division of Insurance (DOI) to compare the number of accidents to the number of those that had suspended licenses. He said DOI estimated 18% of motorists were uninsured.

MR. HOSACK said DMV checked the percentage of the number of accident reports that involved uninsured motorists. He said DMV had to take action on 14% to 16% of those licenses in the previous three years.

CHAIRMAN TAYLOR asked if there were any further questions for Mr. Hosack. There were none.

MS. CARPENETI clarified that ten days was the mandatory minimum

sentence for a second offense. She said it was a class A misdemeanor so the person could be put in jail for up to one year.

CHAIRMAN TAYLOR asked Ms. Mary Christopherson to provide testimony.

MS. MARY CHRISTOPHERSON said she seemed to run into only those drivers who were uninsured. She said one insurance company estimated that 22% to 30% of motorists in Alaska were uninsured. She said she had been in two accidents in the past ten years. In both cases the other party was uninsured. She said in both cases the other party was able to get into their car and drive away after the accident report was filed. She said it took over three years to get reimbursed for one of the accidents in which there was substantial damage to her vehicle. She paid $100 per year for uninsured motorist insurance coverage with a $250 deductible. She also had to pay $280 for a rental car. She said the person was probably still driving without insurance. She said people who didn't obey the laws regarding insurance coverage weren't going to care if their license was taken away. She said the vehicle needed to be impounded when they got into an accident and they could get their car back after they proved they had insurance.

CHAIRMAN TAYLOR thanked Ms. Christopherson for her testimony. He said that wasn't the bill in front of the committee. He said Senator Cowdery had indicated a strong interest in such a bill. He and Senator Donley had been working on the issue for several years.

SENATOR DONLEY said they had been told for many years that it would be cost-prohibitive to confiscate motor vehicles. He said it was good news that the Municipality of Anchorage had proved the opposite and made a profit with their drunk driving vehicle confiscation program. He said the key to dealing with the problem at the state level would be to authorize local governments to pass ordinances that would allow them to confiscate vehicles if people were driving with a suspended license or without insurance.

SENATOR COWDERY said he carried his proof of insurance in his pocket. He thought many people got the proof of insurance and just didn't put it in their vehicle. He thought one or two impoundments would get their attention. He said he would like to work toward that and thought he could fit the language in a bill he had coming before the committee.

CHAIRMAN TAYLOR asked if there was anybody else who wished to testify on HB 40. There was nobody.

SENATOR DONLEY moved SCS CSHB 40(JUD) out of committee with attached fiscal note and individual recommendations.

There being no objection, SCS CSHB 40(JUD) moved out of committee with attached fiscal note and individual recommendations.
#

The next order of business before the committee was HB 157.

#HB 157

HB 157-TRUST COMPANIES & FIDUCIARIES

MS. ROBIN PHILLIPS, Staff to Representative Lisa Murkowski, read the following sponsor statement:

> At the request of the Division of Banking and Securities, [Representative Murkowski] introduced House Bill 157, the Revised Alaska Trust Company Act. The purpose of this bill is to update the existing Trust Company Act which has not undergone any major revisions since its adoption during the territorial days of 1949. If enacted, this legislation will be a tool that will enhance the process of formation, operation, supervision and regulation of the trust industry in Alaska.
>
> Recent changes to Alaska trust laws make creation of trust charters in Alaska more desirable. However, the Alaska Trust Act does not provide guidance as to who or what needs a charter, nor guidance for the formation and organization of a trust entity, or provisions for permissible activities including interstate or intrastate business expansion.
>
> The bill repeals existing AS 06.25 and replaces it with AS 06.26 “Providers of Fiduciary Services.” This chapter clarifies who may provide fiduciary services in Alaska, expands on who may be a trust company, what their powers may be, and covers specific items such as certificate of authority, required capital, operations of offices, and the like.
>
> [We] have worked with local trust companies, trust attorneys and the Division to formulate this

> legislation. This bill meets the needs of the Division to adequately regulate new and existing trust companies and also for those providing fiduciary services without being a burden to their overall business activities. [We] urge your support of this legislation.

CHAIRMAN TAYLOR asked for a background on uniform trust acts and how HB 157 related to uniform trust acts adopted in other states.

MR. TERRY LUTZ, Chief Financial Institution Examiner, Division of Banking, Securities & Corporations (DBSC), said they contacted between 15 and 20 states while putting HB 157 together. He said they also used portions of a model act from the Conference of State Bank Supervisors.

CHAIRMAN TAYLOR asked about the involvement of the Bar Association, attorneys and other professionals.

MR. LUTZ said they contacted the Bar Association and many attorneys and had received many comments and questions from them. He said there was also a lot of input from the trust industry. He noted there were only two state chartered trust companies in Alaska. He said there wasn't much input from banks because he didn't believe any of them were involved in the trust business.

CHAIRMAN TAYLOR asked if Mr. Lutz had looked at the issues raised by Theresa Bannister, Legislative Council, concerning federal preemption.

MR. LUTZ said he wasn't aware of those issues.

CHAIRMAN TAYLOR read the following from Ms. Bannister's memorandum dated March 27, 2002:

> Please be aware that there may be a federal preemption issue present in this bill to the extent that financial institutions organized under federal law are covered by the requirements of the new chapter. Although proposed AS 06.26.010(4)-(5) exclude national banks and federally chartered savings associations, the exclusion is limited to those associations and banks that have their principal offices in this state. Whenever you have a financial institution established under federal law, it is possible that it may not be subject to the particular state regulation involved. From the limited research that I have been able to do, it appears that some state laws limiting the right and power of a national bank under federal law may not be binding on a

> national bank and that if there is a conflict between state law and federal law that cannot otherwise be reconciled or resolved, federal law will prevail. I do not know if this is a serious problem, but I wanted to bring it to your attention as you review the bill.

MR. LUTZ didn't know to what extent federal law might preempt HB 157. He said DBSC regulated nine different types of entities and there were federal laws that preempted state law with a lot of those entities. He said there wasn't much that could be done about that.

CHAIRMAN TAYLOR assumed DBSC and other states that used the model act had addressed most of the federal preemption issues.

MR. LUTZ said most of the acts they looked at had been rewritten recently so he assumed most of the bill would not have a problem with preemption.

SENATOR DONLEY said Sec. 06.26.670 dealt with dissenting shareholders of a proposed merger. He asked for an example of a merger or a consolidation of a trust that could occur.

MR. LUTZ said that provision was necessary in case there were trust companies in Alaska that wished to merge.

CHAIRMAN TAYLOR said it was interesting that the model code considered the possibility because mergers weren't uncommon. He appreciated the fact that it provided for a continuity of responsibility and integrity as far as finances and capitalization required and types of officers involved. He said that protection was in HB 157 so a company couldn't merge its way into or out of some level of liability.

SENATOR DONLEY asked if there was anything in HB 157 that would affect how trusts functioned in regards to the rights of beneficiaries.

MR. LUTZ didn't believe so. He said that would be in other areas of law that covered trusts. He said HB 157 didn't attempt to regulate trusts, only the trust companies and the way they did business.

SENATOR DONLEY asked for the Chairman's intent in dealing with the concerns raised by Ms. Bannister.

CHAIRMAN TAYLOR said Ms. Bannister suggested a sort of savings clause that said if a portion of the legislation was preempted by

federal law it didn't apply.

SENATOR DONLEY asked about the second concern raised in the memorandum:

> Also, we have noticed another oddity, not caused by the committee's amendment. AS 06.26.900(7) authorizes examinations of subsidiaries of private trust companies, but does not specifically mention private trust companies themselves.

MR. TERRY ELDER, Director, DBSC, said private trust companies didn't offer services to the public and while they were subject to examination they weren't routinely examined. He said there might be a problem if DBSC was only able to examine private trust company subsidiaries and not private trust companies themselves. He said DBSC would normally only be verifying whether or not they were in fact private and not offering services to the public.

CHAIRMAN TAYLOR said they would be examined if they offered services to the public.

MR. ELDER said they would be routinely examined. He didn't anticipate examining private trust companies on a regular basis. He said they would also examine private trust companies to see if there was a violation of the law.

CHAIRMAN TAYLOR asked why they would be examining the subsidiaries.

MR. ELDER thought the only issue they would have with a private trust company would be whether they were in fact a private trust company and they wouldn't look beyond that. He said they could deal with that issue with the trust company itself and not with the subsidiaries unless the company was offering services to the public through a subsidiary.

MR. LUTZ thought the language meant examining a series of trust companies and private fiduciaries.

SENATOR DONLEY thought the problem was with the conjunctive and "subsidiaries of" should apply to trust companies and private trust companies. He thought the section should read, "perform examinations of trust companies, private trust companies, branch offices, representative offices, and subsidiaries of trust companies and private trust companies."

CHAIRMAN TAYLOR asked if taking out the first "and" and putting a comma in place of it would take care of the problem.

SENATOR DONLEY thought they wanted the subsidiaries of both types of trust companies to be covered. He thought the drafters would be able to fix the problem.

MR. ELDER also thought it was just a matter of rearranging the sentence.

SENATOR DONLEY moved the B version of HB 157 as the working document.

There being no objection, the B version of HB 157 was adopted as the working document.

SENATOR DONLEY moved conceptual Amendment #1 to redraft AS 06.26.900(7) on page 53 to include both subsidiaries and primary companies of both private trust companies and trust companies.

There being no objection, Amendment #1 was adopted.

TAPE 02-12, SIDE B

2:30 p.m.

MR. JOE NEWHOUSE said he was a certified public accountant (CPA) with the firm of Newhouse & Vogler in Anchorage. He said he had been in the CPA business for about 20 years.

He was contacted three years previously by an attorney in Connecticut asking him to serve as trustee on some trusts, providing a more cost-effective service for smaller estate planning trusts. He acted as a trustee for about 50 of those types of trusts. He said most of those trusts were simple life insurance trusts with a savings account of about $10,000 and maybe a CD. He noted this was not much in the way of liquid assets. He didn't manage the assets of the trusts and didn't want to. He said his duties included taking some gifts into the trusts, paying for life insurance premiums, sending notices to the beneficiaries, running a tally at the end of the year and filing a tax return if required.

MR. NEWHOUSE said Alaska trusts were attractive to many of the attorney's clients. He said they had to set up trusts through a trust company or an Alaska resident. Trust services were well within the scope of what attorneys and CPAs could and did do on a regular basis. He said the Alaska Trust Company had a minimum fee that was fairly expensive and he thought Alaska USA did as well. He said his fees were at most 25% of what the trust companies were charging.

He said he wanted to offer testimony supporting some language to reduce regulation for attorneys and CPAs providing trust services. He understood HB 157 would potentially limit the number of trusts he could serve as a trustee for.

CHAIRMAN TAYLOR said there was nothing in the bill that limited him.

MR. NEWHOUSE said he was worried about potential regulation. He thought Chairman Taylor had also spoken with Mr. Kevin Sullivan regarding these issues.

CHAIRMAN TAYLOR said the concerns Mr. Sullivan had shared with him were that the Department of Community & Economic Development (DCED) might in the future constrain or regulate professionals who were doing small amounts of trust work. DCED told him they were only concerned when and if an individual practitioner or firm took on so many trusts that they were primarily a trust company. He noted that DCED could not tell him what number of trusts that might be. He said when they felt that had happened they might feel some form of bonding or additional liability coverage and annual reviews might be in order.

He and Mr. Sullivan had looked at an amendment to limit trustees to 20 trusts, each of which was not to exceed $50,000 in liquidity. He was fearful that establishing a number might be premature because five years down the road, each trustee might be handling 50 trusts. He said at that point somebody would have to come back to the legislature and put a bill through the process to change that arbitrary number. He said the law of unintended consequences had often come back to haunt him. He estimated that 10% to 15% of the legislation coming before the committee that year was nothing more than clean-up language changing some number that was put into some bill with the best of intentions. He said that was the reason he backed off that amendment. He thought they were better off to trust the professionals within DCED. He said if trustees felt they were subject to regulations that appeared to be onerous or without good cause, it would be just as easy to get a bill introduced to debate the policy calls before the legislature.

MR. NEWHOUSE appreciated Chairman Taylor’s comments. He said not capping trusts at a certain number was a wise thing to do. He was fearful that there might be over-regulation down the road. He said not limiting the number would alleviate some of that threat. He said trusts were an ancillary part of his business he didn’t intend to spend a lot of time on. He said the attorney from Connecticut referred 75% of the approximately 50 trusts he

managed. He did not actively pursue trusts as part of his business. He said his firm was in general practice and they weren't ever going to get away from that. He said trust laws were intended to bring money into Alaska. He wanted to make sure that there wasn't anything in HB 157 that was going to create an oligopoly where the big companies had more opportunities than the attorneys and CPAs because of regulations.

He said CPAs were required to carry errors & omissions insurance. He said that insurance policy required them to write down the trusts they served as trustee for and the assets in those trusts to provide for adequate protection.

CHAIRMAN TAYLOR asked if there were any further questions for Mr. Newhouse. There were none.

MR. DAVE SHAFTEL said he was a member of an informal group of estate planning attorneys who worked with the legislature regarding estate planning and estate trust legislation. He said they reviewed HB 157 carefully and worked with Representative Murkowski's office and Mr. Lutz on the bill. He said they were supportive of the bill.

He said there were some exemptions they were concerned about to make sure that family members and friends could serve as trustees. Those exemptions were put into HB 157. They were also concerned that charitable organizations would be able to serve as trustees and those provisions were also added to the bill. He asked about the amendment that was to be offered regarding private trust companies.

CHAIRMAN TAYLOR said that was in the CS.

MR. SHAFTEL said they were very supportive of that amendment dealing with private trust companies, which were used extensively on the east coast. He had just returned from a convention where there was an hour and a half presentation dealing with family offices and private trust companies. He said this was an area that may develop further work for the financial industry in Alaska.

CHAIRMAN TAYLOR thanked Mr. Shaftel for his testimony and his years of work in the field and the assistance he provided to the committee.

MR. DICK THWAITES, Chairman, Alaska Trust Company, said he was an attorney in Anchorage. He said the Alaska Trust Company supported HB 157. He thought it clarified a lot of issues. They

supported the exemptions mentioned earlier and thought the committee should rely on the administration to make decisions.

CHAIRMAN TAYLOR asked where Alaska's original trust laws came from and how long it had been since they had been changed or modified.

MR. THWAITES noted that HB 157 didn't address trust law. It addressed trust company regulation law. He said that came from 1949. He said most of the other trust law came from territorial statutes and federal common law. Adopting uniform probate code in 1969 amended that. He said there were certain provisions that dealt with trusts but not very extensively. He said they started working on the new trust laws in 1995 and the first of those laws passed in 1997.

He said those laws placed Alaska in the forefront as the preeminent state finance jurisdiction in the United States. He said Alaska still had that lead although Delaware, Rhode Island, South Dakota and Nevada were attempting to catch up. He said Delaware recently passed laws similar to Alaska's. He said Delaware had a lot of weight because everybody thought of Delaware as the banking jurisdiction of the United States and for corporations. He said Alaska, being a small state, had a fair amount of luck establishing itself as the preeminent jurisdiction. He said we're trying to keep things a little bit ahead of the Internal Revenue Service and Delaware.

CHAIRMAN TAYLOR asked if there were any further questions for Mr. Thwaites. There were none. He thanked Mr. Thwaites for the hard work that he and his colleagues had done. He also thanked DBSC for their effort on HB 157.

MR. KEVIN SULLIVAN, Baxter, Bruce & Sullivan, read the following testimony:

> My name is [Kevin Sullivan]. I am a lawyer [with] the law firm of Baxter, Bruce & Sullivan here in Juneau. Approximately 90% of my practice is estate planning work – wills, trusts, post mortem administration, wealth transfer, and related matters.
>
> [The] purpose of my testimony is to inform the committee of the type of work I do that will be impacted by this legislation and to give committee members the opportunity to ask questions should there be interest.

As background, the AK Trust Act and AK Community Property Trust Act were intended, in part, to bring trust business to Alaska.

As a consequence of my estate planning work, I attend conferences, continuing legal education seminars and other events where I have met lawyers from different states. When the AK Trust Act and Alaska Community Property Act became law, I was asked by lawyers Outside to serve as a trustee for trusts that their clients wanted to establish in Alaska. This work is a small and ancillary part of my practice.

In terms of administration, as a lawyer I have a $2 million Errors & Omissions insurance policy and I have a letter from my insurer expressly addressing my service as a trustee pursuant to the Acts and outlining that such trustee service is covered by my policy. Given the structure of the trusts for which I serve and that I do not manage any trust assets, my insurer indicates that my work is within the policy definition of professional services and legal services for an attorney who acts as a trustee.

In terms of structure of these trusts:

- I often serve with [a] co-trustee and both co-trustees must act jointly – a checks and balances [system].

- Assets held in a trust are typically a small deposit account – less than $10,000, and an insurance policy or limited partnership interests, or limited liability Company interests – assets that are not publicly traded. I do not manage liquid assets and have no desire to manage or hold substantial liquid assets. Concerning the goal of protection of beneficiaries, my access to the liquid assets of a trust is virtually nonexistent given the structure of these trusts.

- These trusts have very low activity – for example, I may pay an annual premium on an insurance policy or receive a distribution and then disburse the funds as payment on a note for the [purpose] of limited partnership interests. Transaction activity.

- Lawyers I work with have told me they want me to serve in this capacity because I am more responsive than an institutional trustee, and provide a much lower cost alternative for these small trusts.

- I have never [engaged] in any advertising for this service whatsoever.

I understand the purpose of this legislation, in part, is to better determine the type and volume of trust activity occurring here in Alaska.

As drafted, the exemption portion of the bill provides that the state Department of Community and Economic Development will establish the number of trusts for which I may serve as a trustee. Further, when establishing that number, the Department shall consider protection of the public, effect on efficient delivery of trust services at a reasonable cost and the likelihood that the particular exemption can make the trust services available to persons who need the service.

I have been communicating with Dept. staff on this issue for some time and I have been assured that the Dept. will be responsive to the statutory direction, and that the intent of this legislation is not to disrupt existing business relationships or activity customarily addressed by lawyers and certified public accountants. I welcome the opportunity to work with the Department in that regard.

CHAIRMAN TAYLOR thanked Mr. Sullivan for his testimony and the amount of work he had put in on HB 157. He wanted to establish for the record that HB 157 did not intend to allow DCED to pass regulations to constrict or restrict the trustee activities that attorneys and CPAs were starting to participate in. He thought at some point in the future DCED would wish to regulate and he hoped the standards Mr. Sullivan enunciated were sufficient guidance to DCED to act on behalf of the public good. He said the public would need the low-cost services that would be provided by CPAs and attorneys. He said as long as the CPAs and attorneys didn't get involved in the administrative aspects of liquid assets, everything should be fine.

He had some fear that we would start to see the things that were going on in Anchorage with the CAPA problems where people had

opportunities to play with private trust assets and were doing so without much regulation or opportunity for enforcement of those fiduciary responsibilities. He had faith that DCED would take a period of time to get a feel for what the trust business was all about and they would work with people such as Mr. Sullivan to determine the appropriate level of regulation.

MR. DOUGLAS BLATTMACHR, President, Alaska Trust Company, expressed support for HB 157.

SENATOR TAYLOR asked if there was anybody else who wished to provide testimony on HB 157. There was nobody.

SENATOR COWDERY moved SCS CSHB 157(JUD) out of committee with attached fiscal note and individual recommendations.

There being no objection, SCS CSHB 157(JUD) moved out of committee with attached fiscal note and individual recommendations.
#

The final order of business before the committee was SB 263.

#SB 263

SB 263-AFTER ACQUIRED TITLE IN REAL PROPERTY

CHAIRMAN TAYLOR asked Ms. Annette Kreitzer if she had any further testimony to provide on SB 263.

MS. ANNETTE KREITZER, Staff to Senator Loren Leman, sponsor of SB 263, said she had completed her remarks. She said Chairman Taylor was going to speak with a gentleman who testified at the previous meeting.

CHAIRMAN TAYLOR said he had heard from the gentleman but had been unable to come to any conclusions regarding his concerns. He did not have any amendments to offer. He asked if there was anybody who wished to testify on SB 263.

MR. BRYAN MERRELL, First American Title Company of Alaska, said he was the gentleman they were speaking of. He said he had a lengthy conversation with Mr. Jon Tillinghast and others from Sealaska and they weren't able to come to a resolution to answer his concerns. He said they could attempt to fashion the bill so that it only applied to the situation facing Sealaska but he had concerns regarding the constitutionality of doing so. He said others in his industry were concerned as well. He said the Land

Title Association for the state of Alaska, which was made up of underwriters and title insurance agents throughout the state, voted at its board meeting to oppose SB 263 because of those concerns. He said those concerns had not changed and he hadn't seen any suggestions which would alleviate those concerns.

CHAIRMAN TAYLOR asked Mr. Merrell to reiterate his concerns.

MR. MERRELL said his concerns came from changing an aspect of the common law to address one particular situation that had arisen with Sealaska. He was also concerned with the exception to the rule for state-related entities, which meant the rule wouldn't apply uniformly. He said that would cause anomalies in attempting to examine and produce a title report or title policy related to a piece of property and make it difficult for an examiner to make a determination of the intent of the parties. He said the situation might arise where a quitclaim deed would be issued involving formerly state-owned property. He said there was confusion and concern about how far it could go and when it would stop automatic pass through a title when a quitclaim deed was used rather than a warranty deed. He couldn't find any other state that had made a similar exception. He said many times quitclaim deeds were used to transfer titles in and amongst family members, not realizing the potential effect of passing after-acquired interest and whether or not that would continue passing through family members. He said there were no stopping points and nothing to indicate when that would or wouldn't happen.

CHAIRMAN TAYLOR asked if he had discussed amending the bill to more narrowly constrain it. He said SB 263 as written would apply to people and corporations that may have conveyed by quitclaim deed. He said it specifically excluded the Legislature, a state agency, the executive branch, the judicial branch, the University of Alaska and the Alaska Railroad Corporation. He said if the railroad granted a quitclaim deed to somebody, they wouldn't be required to convey any after-acquired interest. But if he as a private person conveyed by quitclaim deed, any after-acquired interest would be conveyed. He suggested removing subsection (b) on page 2 and rewriting subsection (a) on page 1 so it would specifically apply to Native corporations.

MR. MERRELL said they had not discussed that solution. He said the concept was somewhat attractive. He said subsection (b) was added at the request of the administration because they didn't want the new rule to apply to them.

CHAIRMAN TAYLOR said the State had tentatively selected certain lands, some of which had been sold. He said some might have been issued a quitclaim deed because the State didn't have full title or final patent or because the State cannot convey subsurface rights. He said a change in the law by Congress could cause Alaskans to own subsurface rights, just as Native corporations did. He noted that Congress had said it was permissible to own subsurface rights for one type of owner but not another. He said instead of trying to figure out who should be excluded, they should try to figure out who wanted to be included.

MR. JON TILLINGHAST, Sealaska Corporation, said he drafted an amendment to that end that would work for them. He said subsection (a) could read something like, "In addition to any estate passed by the grantor under AS 34.15.070, whenever a person purports by either (1) a warranty deed or (2) in the case of real property conveyed under the Alaska Native Claims Settlement Act, a quitclaim deed to grant real property and then subsequently acquired interest then the title passes." He said the new rule would apply in two situations: the warranty deed for everybody; and the quitclaim deed for property conveyed under the Alaska Native Claims Settlement Act (ANSCA). He said subsection (b) could be deleted entirely.

CHAIRMAN TAYLOR liked that solution because it limited the new rule enough so that the title companies would know that would be the only situation they would have to worry about in their search for defects in title.

MR. TILLINGHAST was confident it would withstand special legislation criticism.

CHAIRMAN TAYLOR moved Amendment #1 to insert Mr. Tillinghast's words into subsection (a) beginning on page 1 and delete subsection (b) on page 2. He asked if Sec. 3 and Sec. 4 were still necessary.

MR. TILLINGHAST said they were.

CHAIRMAN TAYLOR asked if there was any objection to Amendment #1.

There being no objection, Amendment #1 was adopted.

CHAIRMAN TAYLOR asked if Mr. Tillinghast had anything further to provide. He did not. He asked Mr. Merrell if he understood the amendment.

MR. MERRELL believed he did and believed it would alleviate their

concerns. He noted that he would like to see the language.

CHAIRMAN TAYLOR thanked Mr. Merrell and Mr. Tillinghast for their participation. He asked if there was anybody else who wished to provide testimony on SB 263. There was nobody.

SENATOR ELLIS moved CSSB 263(JUD) out of committee with attached zero fiscal note and individual recommendations.

There being no objection, CSSB 263(JUD) moved out of committee with attached fiscal note and individual recommendations.
#

ADJOURNMENT

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