

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS COMMITTEE

March 15, 2001
3:35 p.m.

MEMBERS PRESENT

Senator Gene Therriault, Chair
Senator Randy Phillips, Vice Chair
Senator Drue Pearce
Senator Bettye Davis

MEMBERS ABSENT

Senator Rick Halford

COMMITTEE CALENDAR

CS FOR HOUSE CONCURRENT RESOLUTION NO. 6(HES) am
Requesting the Governor to declare March 18 - 24, 2001, to be
Inhalants and Poisons Awareness Week and August 26 - September 1,
2001, to be Inhalant Awareness Week.

MOVED SCSCS HCR 6 (STA) OUT OF COMMITTEE

HOUSE BILL NO. 109

"An Act relating to failure by an election official to execute the
voter's certificate on an absentee ballot or by a person authorized
by law to execute the voter's certificate on a questioned ballot."

MOVED HB 109 OUT OF COMMITTEE

SENATE BILL NO. 126

"An Act establishing a right of action for a legal separation; and
amending Rule 42(a), Alaska Rules of Civil Procedure."

HEARD AND HELD

#SB 90

SENATE BILL NO. 90

"An Act establishing the Office of Citizenship Assistance; and
providing for an effective date."

SCHEDULED BUT NOT HEARD

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PREVIOUS COMMITTEE ACTION

HCR 6 - See State Affairs minutes dated 3/13/01.

HB 109 - No previous action recorded.

SB 126 - No previous action recorded.

WITNESS REGISTER

Rynniewa Moss
Legislative aide for Representative Coghill
Alaska Capitol Building Room 102
Juneau, AK 99801-1182
POSITION STATEMENT: Introduced HB 109.

Gail Fenumiai
Election Program Specialist
Division of Elections
P.O. Box 110017
Juneau, AK 99811-0017
POSITION STATEMENT: Testified on HB 109.

Kara Moriarty
Staff for Senator Wilken
Alaska Capitol Building Room 54
Juneau, AK 99801-1182
POSITION STATEMENT: Testified on SB 126.

Sharon Fischer
No address provided
POSITION STATEMENT: Supports SB 126.

Al Zangri
Chief of the Bureau of Vital Statistics
Department of Health and Social Services
P.O. Box 110675
Juneau, AK 99811-0675
POSITION STATEMENT: Testified on SB 126.

Doug Wooliver
Administrative Attorney
Alaska Court System
820 W 4th Ave
Anchorage, AK 99501-2005
POSITION STATEMENT: Answered questions on SB 126.

ACTION NARRATIVE

TAPE 01-13, SIDE A
Number 001

CHAIRMAN GENE THERRIAULT called the Senate State Affairs Committee meeting to order at 1:35 p.m. Present were Senators Phillips, Davis and Chairman Therriault.

#HCR 6

HCR 6-INHALANTS AND POISONS AWARENESS WEEKS

REPRESENTATIVE MARY KAPSNER, bill sponsor, said that this is a simple resolution asking the Governor to declare the third week in March and the last week in August Inhalant Abuse Awareness Weeks. The third week in March coincides with the National Inhalant Abuse Awareness Week and the August date is when the Bethel Inhalant Abuse Treatment Center is expected to open.

Inhalant abuse is a local, state, national and international problem. Young people are primary inhalant abusers due to availability. There is evidence that this is a gateway drug because most individuals in treatment centers for drug use began with inhalant use. A 1999 survey indicated that 19.5 percent of all 8th graders have tried inhalants so this resolution is aimed at informing and educating parents and teachers of the problem.

CHAIRMAN THERRIAULT asked why the wording on page 1, line 13 singled out marijuana and crack cocaine use as a next step after inhalants.

REPRESENTATIVE KAPSNER said she didn't know.

CHAIRMAN THERRIAULT asked if she would be averse to leaving out the words "marijuana and crack cocaine" so the line would read, "inhalants often lead to the use of other illegal drugs; that".

REPRESENTATIVE KAPSNER had no objection.

CHAIRMAN THERRIAULT offered the change as amendment #1.

SENATOR DAVIS asked to make a comment before the amendment was moved. Although not specified, she believes that marijuana and crack cocaine are the easiest drugs to obtain due to cost and availability. The wording is acceptable to her either way but that would be a reason for including those two drugs specifically.

CHAIRMAN THERRIAULT moved amendment #1. There were no objections so amendment #1 was adopted.

Next, he asked whether "these toxic substances" on page 2, line 15 referred to alcohol and drug abuse.

REPRESENTATIVE KAPSNER said the reference is correct.

CHAIRMAN THERRIAULT asked whether it wouldn't be clearer to say "inhalants".

REPRESENTATIVE KAPSNER agreed.

CHAIRMAN THERRIAULT moved conceptual amendment #2 to drop "these toxic substances" and add "inhalants." The amendment is conceptual to facilitate work between the sponsor, the drafter and himself. There was no objection so amendment #2 was adopted.

There were no other amendments. There was a zero fiscal note with the resolution.

SENATOR DAVIS moved SCSCS HCR6 (STA) and zero fiscal note from committee with individual recommendations. There were no objections.

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#HB 109

HB 109-ABSENTEE & QUESTIONED BALLOT CERTIFICATES

RYNNIEVA MOSS, legislative aide for Representative Coghill, introduced HB 109 as the result of an incident that occurred during municipal elections in Fairbanks. A resident from outside the City of North Pole went to the city hall to vote a question ballot. Several weeks later, he received a letter informing him that his ballot hadn't been counted because the election official had neglected to sign the certification on the question ballot.

HB 109 is a secure measure that does nothing more than protect an individual's right to vote. It addresses both absentee and question ballots that are voted at a polling station and it says that errors made by election officials at the polling station won't invalidate the ballot.

CHAIRMAN THERRIAULT said initially, he wondered whether this would remove the witnessing requirement on absentee ballots but, upon closer inspection, he realized it would not.

SENATOR PHILLIPS asked for clarification on the issue that precipitated the legislation.

MS. MOSS said that this legislation amends AS 15.20.207(b) to read: "A questioned ballot may not be counted if the voter has failed to properly execute the certificate." It removes the portion stating

that a ballot may not be counted if an official or the witnesses fails to sign the ballot. This is what happened in Fairbanks when an election worker failed to sign the question ballot. No one can say for certain why the ballot wasn't validated. Last year there were just two absentee, in person ballots and one question ballot that were discarded due to election official error so this isn't a common occurrence. However, Representative Coghill feels those three individual's votes should have been counted.

SENATOR PHILLIPS asked whether the voter knew immediately that his vote didn't count.

MS. MOSS said he was notified in writing two weeks after the election and started calling legislative offices immediately.

CHAIRMAN THERRIAULT said the individual had contacted his office.

He asked Gail Fenumiai to give the Division of Election's opinion and give her assurance that there isn't an opportunity for voter fraud with the passage of this legislation.

GAIL FENUMIAI, Election Program Specialist with the Division of Elections, said the division supports the bill because they don't want to have to reject a vote simply because the election official made a mistake. Although there were only three votes affected this last year, elections have been won or lost with just one vote margins here in Alaska so one vote does make a difference.

There is significant ballot accountability at all polls; a record is kept of the number of ballots received at each poll and the number used throughout the day. A ballot accountability report is filled out before the polls close to account for each ballot that was used.

None of the other requirements such as having to show identification before voting or having the voter sign the envelope have changed, so there are still enough checks and balances in place that this legislation won't, in any way, promote fraud.

CHAIRMAN THERRIAULT said there is a zero fiscal note for the bill. He asked whether there were any questions or others wanting to testify. There were none.

There was no CS and no amendments.

SENATOR PHILLIPS moved HB 109 and zero fiscal note from committee with individual recommendations. There were no objections.

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Number 988

#SB 126

SB 126-RIGHT OF ACTION FOR LEGAL SEPARATION

SENATOR WILKEN, prime sponsor, said that during a 1998 constituent meeting in Ester, a woman approached him with the issue of her failing marriage. SB 126, which deals with legal separation, is the outcome of that encounter. In existing law, options for a troubled marriage are: live with it, get an annulment or get a divorce. SB 126 introduces legal separation with certain legal prerogatives and protections as another option.

SENATOR WILKEN read the following for the record.

Senate Bill 126 establishes a right of action for legal separation. Currently, Alaskan couples that develop incompatibility issues that they cannot resolve have only the option of either a divorce or an annulment. A legal separation would provide a third avenue for Alaskans. A legal separation is similar to a divorce in that it would provide provisions for child custody and support, spousal support, and property division. However, a legal separation allows couples to retain their legal status as married for financial, social or religious reasons.

Seventeen other states and the District of Columbia have some type of legal separation law. This bill gives the State of Alaska the authority to issue legal separations and defines the parameters. Although a small number of legal separations are currently being issued in the State of Alaska, there is no statute that specifically gives the court the authorization to do so. The only references to legal separations are found in statutes dealing with child custody and support.

While the need to make legal separations an option for couples originated from a constituent, there are other instances in the state for which clarification of legal separations is needed. On December 1, 2000, the Alaska Supreme Court issued a decision on the cases of Glasen vs. Glasen [Supreme Court No. S-8943; Opinion No. 5337]. This was a case in which the couple did receive a legal separation in 1991, reconciled and then divorced in 1997. The issue was over the continued viability of the terms of the legal separation granted in 1991. The appellant

wanted those terms to be incorporated into his 1997 decree.

The decision issued by the Supreme Court agreed with the superior court saying that the court did not have to include the provisions set in the 1991 legal separation into the later divorce decree, as there is not a statute directly authorizing any court to issue separation degrees. The court did not attempt to define legal separations, nor did it decide whether courts could issue legal separations.

Senate Bill 26 responds to the recognition by the Supreme Court for clarification in Alaska law regarding the legal separations. The process defined in Senate Bill 126 for legal separation parallels the process for a divorce and clarifies that the provisions for child custody and visitation, child support, and spousal support entered in a legal separation constitute a final order, as if entered into a divorce. On a case-by-case basis, the court will decide whether the division of property and debts in a legal separation is a final or interim order. The bill also amends Alaska Rules of Civil Procedure by adding legal separation to the actions over which the state has jurisdiction.

The bill would only apply to legal separations filed on or after its effective date. Legal separations issued prior would not be voided, nor would they be subject to the provisions of this bill.

Senate Bill 126 clearly defines legal separation as a valid action in Alaska in State Law. This option will assist the courts, attorneys and, most importantly, Alaskans who need to formally handle the consequences of a separation with their spouse, yet retain the legal status as a married couple. I respectfully request your consideration and support of SB 126.

Over the last year, Senator Wilken and his staff, Ms. Moriarty, have worked with Fairbanks divorce attorney, Dan Callahan, and the Alaska Family Law attorney, Vanessa White, to make this an effective piece of legislation.

CHAIRMAN THERRIAULT referred to page 2, lines 5-7 and asked whether the mentioned statutes discuss division of assets and retirement fund separation.

KARA MORIARTY, staff for Senator Wilken, said yes, Mr. Callahan listed divorce provisions that needed to be included and those on page 2, lines 5-7 are among them.

CHAIRMAN THERRIAULT wanted to know whether a couple would be able to change the provisions of a separation decree if they decide to go on and divorce.

SENATOR WILKEN thought "the simple checkbook is the best example." If a couple's marriage is "on the rocks" and just one of them has control of the checkbook, a judge would step in and make a formal decree outlining what was expected of each spouse. If wanted, the couple is free to return to the judge to have the legal separation absolved. On the other hand, they may go from the legal separation into regular divorce proceedings.

MS. MORIARTY said that page 2, lines 10-19 specifically states that, "If the decree of legal separation includes provisions for division of property and debts of the marriage, the decree must state whether the division is an interim or final order." She went on to say, "That doesn't mean that the visitation and child support couldn't be revised during the divorce proceedings as well."

SENATOR PHILLIPS can't understand the need for the bill.

SENATOR WILKEN said he had the same concern three years ago but after some investigation, he saw this as a problem area. At that point, he approached Mr. Callahan and asked him whether this type of legislation would be helpful. The answer was in the affirmative.

New Hampshire has about 6,000 divorces and about 40 legal separations each year. Alaska has about 4,000 divorces a year and would probably have between 30 and 40 legal separations per year if this legislation is passed. This is simply another tool for the judge to use to try to help the couple reconcile their differences before they proceed with divorce.

Ms. Fischer's testimony will make clear how easy it is for one spouse to gain advantage over the other when the marriage isn't going well and how important it is to help those in this situation.

SENATOR PHILLIPS said this isn't a problem in his district but that he'll "hear the testimony and make a judgment call."

SENATOR DAVIS said she believes there might be a need, but since legal separations are already being granted in the State of Alaska, why do we need the legislation?

SENATOR WILKEN said it has been done, but in Klassen vs. Klassen the Supreme Court said that there was a legal separation but there is no authorization or statute under which you should have done that so it doesn't apply in the divorce proceedings.

SHARON FISCHER, a constituent of Senator Wilken, testified that she approached him with concern that legal separation didn't exist in Alaska statute. She feels such legislation could have saved her marriage.

She lived in a verbally and emotionally abusive marriage for 15 years. Although she asked her husband to leave several times, he refused to do so. Since she didn't want a divorce, she was told that her only option to get her husband out of the house was to file a domestic violence restraining order. Because he wasn't then physically violent, she chose not to file the restraining order and stayed in the abusive situation.

The situation didn't get better and finally, her husband threatened her physically. She immediately filed for an ex parte domestic violence order to have him removed from their home and he responded by filing for divorce.

With an ex parte domestic violence restraining order, the abused spouse must return to court within 20 days and face the abuser in front of a magistrate. Even a permanent order must be renewed every six months. "A study of court records shows that each time couples return to court under domestic violence restraining orders, each time the abuser tends to be granted more and more freedom, and the victim tends to lose more protection."

She feels that a legal separation early on might have provided her husband a wake up call before his anger escalated to a point where effective counseling and reconciliation was impossible.

SENATOR PHILLIPS asked whether she could have gotten a restraining order if he was just verbally abusive.

MS. FISCHER said she was advised that unless he was physically violent there was a possibility that the restraining order wouldn't be granted. Verbal and emotional abuse usually isn't enough.

CHAIRMAN THERRIAULT asked whether a spouse would be precluded from living in the home if legal separation was filed but not a restraining order.

MS. FISCHER said it was similar to divorce proceedings and the spouse wouldn't be free to live in the family home.

One of her husband's abusive behaviors was to remove her from all joint bank accounts and she had no recourse. If she had been able to file a legal separation, he wouldn't have been able to continue to do that.

SENATOR PHILLIPS asked whether the roles couldn't be reversed and a wife ask the husband to leave the house when she's the abuser.

MS. FISCHER said of course. In her instance, if she and her husband had been able to agree to terms under which he would leave then they could have agreed to a legal separation. However, in domestic violence situations agreement is difficult to impossible. There is no motivation on the part of the abuser to relinquish power. As personal evidence, she said her husband filed for divorce as soon as she took steps to create boundaries.

SENATOR PHILLIPS said he was playing Devil's advocate in asking if she couldn't have taken advantage of the situation if this legislation was passed.

MS. FISCHER wasn't sure clear on how this legislation could be abused.

SENATOR PHILLIPS said a wife could ask a husband to leave if they're not getting along.

MS. FISCHER responded that she could file for divorce for the same reason. This couldn't be abused any more than filing for divorce but it would allow a spouse the opportunity to receive financial protection and establish custody issues and property division before difficulties escalate to a point of no return.

SENATOR PHILLIPS said this is a "double edged sword" and it must be balanced.

Number 2025

Ms. FISCHER said that in her experience in talking with counselors, pastors and spouses in crisis, the only individuals that objected to this legislation are abusive spouses. Her judgment is that the objection stems from a loss of control over the other person.

CHAIRMAN THERRIAULT said that if an individual wanted to save the marriage then this would be a useful tool that would provide some measure of protection. An equitable separation of assets isn't guaranteed with a simple separation. One spouse could take advantage of the other. Also, this would provide guidelines for

asset division for couples that are separated but won't divorce for religious or other reasons.

He asked Ms. Moriarty to discuss paternity issues.

MS. MORIARTY, staff to Senator Wilken, said that Bureau of Vital Statistics (BVS) called their office with concerns about the legislation. One such concern is that when a married woman has a child, the husband's name is supposed to automatically go on the birth certificate. In the case of a legal separation, there is probability that the father of a child is not the husband. There are provisions in statute for the husband, the mother and the father of the child to sign an affidavit stating that the husband is not the father thus allowing the biological father's name to be put on the birth certificate. Legislative Legal interprets that to mean that statute wouldn't be altered in creating legal separation because the couple would still be legally married.

CHAIRMAN THERRIAULT agreed that maintaining that current mechanism is the way to go. If the true father doesn't step forward then the husband may have a paternity test done.

MS. MORIARTY added that a husband may sign an affidavit saying that although he isn't the biological father, he accepts responsibility for the child.

CHAIRMAN THERRIAULT asked Senator Wilken to outline the two other issues that needed mentioning for the record.

SENATOR WILKEN said the first deals with the BVS compiling the information and Mr. Zangri is present to testify.

AL ZANGRI, Chief of the Bureau of Vital Statistics, Department of Health and Social Services, explained that whenever a divorce action takes place in the State, the court files a report and divorce certificate with BVS. This way BVS can match divorces against marriages and provide a track for what's going. This is a central place where individuals may go to get a copy of the divorce if needed. Currently there is no provision to file a certificate of legal separation so BVS won't be able to supply information on that type of action like they do on marriages and divorces.

Six or seven states have replied to his request asking how they process legal separations. Three states have a central repository and can tell how many divorces and legal separations they have. Four states don't track that information. The net effect on the individual is that they will have to remember which court granted the separation if they want a certified copy of the decree because

BVS won't have that information in their central repository. This may be problematic 10 years after the fact when individuals don't remember which court granted their separation.

It's a trade off between how much it would cost and how important it is that the information is easily accessed. BVS currently has a new automated system being built but it isn't designed to track legal separations. To include them, there would need to be a contract modification agreement and that would be expensive considering that just 30 cases per year would probably be filed. If there were 3,000 cases per year to deal with it would be worthwhile changing the contract.

CHAIRMAN THERRIAULT asked why it would be so expensive to add this data field.

MR. ZANGRI said it's because they're dealing with a private contractor who sees it as an additional form to be added into the system. A new set of logic would have to be built to deal with legal separations as well as the ability to print and track the new data?

CHAIRMAN THERRIAULT asked about the consequences of waiting until there are enough legal separations filed every year to warrant keeping track. Would the data be collected from that date forward or would BVS go back and capture old data.

MR. ZANGRI said they would track from that point forward but they could put a provision in regulation to allow individuals to bring in copies of their old separations to be entered into the system if they so desired.

DOUG WOOLIVER, Administrative Attorney with the Alaska Court System, said that procedurally, legal separations are the same as a divorce. He contacted the court's technical staff to inquire about the difficulty in tracking the numbers of legal separations to determine whether it would be beneficial to have BVS include this information in their central repository. To his surprise, he was told it would be a simple matter to add a three-digit case type code for legal separation so that they could determine whether the number of cases warranted a centralized system in BVS.

CHAIRMAN THERRIAULT noted that there was no court system fiscal note.

SENATOR WILKEN said the three \$1.5 million capital appropriations for the Alaska Court computer system probably allows them to do this.

CHAIRMAN THERRIAULT asked whether it would be helpful to include direction that the tracking system be implemented as recommended by Legislative Legal.

MS. MORIARTY said the legal department told her that if the court voluntarily tracked the date and it was accessible, then the direction to track language wouldn't be necessary. If the committee wants the data on legal separation sent to BVS then there would need to be language to do that. However, if the court simply monitors the data there is no directive language needed at this time.

CHAIRMAN THERRIAULT thought it should be tracked and reported. He asked whether the legal department suggested adding a section.

MS. MORIARTY said the suggestion was to add a new section at the end of the bill.

CHAIRMAN THERRIAULT asked Senator Wilken if he had an opinion.

SENATOR WILKEN said that if adding the new section made the bill better he had no objection.

CHAIRMAN THERRIAULT moved a conceptual amendment to work with the drafter and sponsor to add direction in state statute that the court system track the cases with a three digit code and report them to BVS.

MS. MORIARTY asked whether there was a preference for how long the court would monitor the data before reporting to BVS.

CHAIRMAN THERRIAULT asked whether there was justification for not making the reporting ongoing.

MS. MORIARTY said there was no reason that reporting couldn't be ongoing.

MR. ZANGRI suggested that the reporting be just once a year to keep the number of reports to a minimum.

SENATOR PHILLIPS asked whether the amendment would generate a fiscal note from the BVS.

CHAIRMAN THERRIAULT said no because they just receive the information.

He announced final action on SB 126 would be taken at the next

meeting.

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The meeting was adjourned at 4:45 p.m.