

**ALASKA STATE LEGISLATURE**  
**HOUSE JUDICIARY STANDING COMMITTEE**

April 21, 2004

1:15 p.m.

**MEMBERS PRESENT**

Representative Lesil McGuire, Chair  
Representative Tom Anderson, Vice Chair  
Representative Jim Holm  
Representative Dan Ogg  
Representative Ralph Samuels  
Representative Les Gara  
Representative Max Gruenberg

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 427

"An Act relating to guardianships and conservatorships, to the public guardian and the office of public advocacy, to private professional guardians and private professional conservators, to court visitors, court-appointed attorneys, guardians ad litem, and fiduciaries, and to the protection of the person or property of certain individuals, including minors; amending Rules 16(f) and 17(e), Alaska Rules of Probate Procedure; and providing for an effective date."

- RESCINDED ACTION OF 4/14/04; MOVED NEW CSHB 427(JUD)  
OUT OF COMMITTEE

CS FOR SENATE BILL NO. 276(FIN)

"An Act relating to the Alaska Insurance Guaranty Association; relating to the powers of the Alaska Industrial Development and Export Authority concerning the association; and providing for an effective date."

- MOVED HCS CSSB 276(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 421

"An Act relating to reconveyances of deeds of trust."

- MOVED CSHB 421(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 309

"An Act prohibiting the release of nonindigenous predatory fish into public water."

- MOVED CSHB 309(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 539

"An Act exempting a person who allows a student of the University of Alaska to gain practical work experience with the person while participating in a practicum from vicarious liability as an employer, and exempting the student participating in a practicum from the Alaska Wage and Hour Act and workers' compensation coverage."

- MOVED CSHB 539(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 527

"An Act relating to the Alaska Securities Act, including reports, proxies, consents, authorizations, proxy statements, and other materials, civil penalties, refunds of proceeds from violations, restitution, and investment adviser representatives; and providing for an effective date."

- BILL HEARING POSTPONED TO 4/26/04

HOUSE BILL NO. 545

"An Act relating to the extension under the State Procurement Code of terms for leases for real estate and certain terms for certain state contracts for goods and services; and providing for an effective date."

- BILL HEARING POSTPONED TO 4/23/04

**PREVIOUS COMMITTEE ACTION**

BILL: HB 427

SHORT TITLE: PROTECTION OF PERSONS AND PROPERTY

SPONSOR(S): REPRESENTATIVE(S) ANDERSON

02/04/04	(H)	READ THE FIRST TIME - REFERRALS
02/04/04	(H)	HES, JUD
04/01/04	(H)	HES AT 3:00 PM CAPITOL 106
04/01/04	(H)	Heard & Held
04/01/04	(H)	MINUTE(HES)
04/06/04	(H)	HES AT 3:00 PM CAPITOL 106
04/06/04	(H)	Moved CSHB 427(HES) Out of Committee
04/06/04	(H)	MINUTE(HES)

04/08/04 (H) HES RPT CS(HES) 1DP 5AM  
04/08/04 (H) DP: CISSNA; AM: SEATON, COGHILL, WOLF,  
04/08/04 (H) GATTO, WILSON  
04/13/04 (H) FIN REFERRAL ADDED AFTER JUD  
04/14/04 (H) JUD AT 1:00 PM CAPITOL 120  
04/14/04 (H) Moved CSHB 427(JUD) Out of Committee  
04/14/04 (H) MINUTE(JUD)  
04/21/04 (H) JUD AT 1:00 PM CAPITOL 120

BILL: SB 276

SHORT TITLE: ALASKA INSURANCE GUARANTY ASSOCIATION  
SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/23/04 (S) READ THE FIRST TIME - REFERRALS  
01/23/04 (S) L&C, FIN  
02/03/04 (S) L&C AT 1:30 PM BELTZ 211  
02/03/04 (S) Heard & Held  
02/03/04 (S) MINUTE(L&C)  
02/10/04 (S) L&C AT 1:30 PM BELTZ 211  
02/10/04 (S) Heard & Held  
02/10/04 (S) MINUTE(L&C)  
02/17/04 (S) L&C AT 1:30 PM BELTZ 211  
02/17/04 (S) Moved CSSB 276(L&C) Out of Committee  
02/17/04 (S) MINUTE(L&C)  
02/18/04 (S) L&C RPT CS 3DP 1DNP NEW TITLE  
02/18/04 (S) LETTER OF INTENT WITH L&C REPORT  
02/18/04 (S) DP: BUNDE, SEEKINS, STEVENS G;  
02/18/04 (S) DNP: FRENCH  
02/27/04 (S) FIN AT 9:00 AM SENATE FINANCE 532  
02/27/04 (S) Heard & Held  
02/27/04 (S) MINUTE(FIN)  
03/22/04 (S) FIN AT 9:00 AM SENATE FINANCE 532  
03/22/04 (S) Moved CSSB 276(FIN) Out of Committee  
03/22/04 (S) MINUTE(FIN)  
03/22/04 (S) FIN RPT CS 3DP 4NR NEW TITLE  
03/22/04 (S) DP: GREEN, WILKEN, STEVENS B;  
03/22/04 (S) NR: DYSON, HOFFMAN, BUNDE, OLSON  
04/02/04 (S) TRANSMITTED TO (H)  
04/02/04 (S) VERSION: CSSB 276(FIN)  
04/05/04 (H) READ THE FIRST TIME - REFERRALS  
04/05/04 (H) L&C, JUD, FIN  
04/07/04 (H) L&C REFERRAL WAIVED  
04/16/04 (H) JUD AT 1:00 PM CAPITOL 120  
04/16/04 (H) Heard & Held  
04/16/04 (H) MINUTE(JUD)  
04/19/04 (H) JUD AT 1:00 PM CAPITOL 120  
04/19/04 (H) -- Meeting Canceled --

04/19/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
04/19/04 (H) <Bill Hearing Postponed>  
04/21/04 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 421

SHORT TITLE: DEED OF TRUST RECONVEYANCE

SPONSOR(S): REPRESENTATIVE(S) ANDERSON

02/02/04 (H) READ THE FIRST TIME - REFERRALS  
02/02/04 (H) L&C, JUD  
03/19/04 (H) L&C AT 3:15 PM CAPITOL 17  
03/19/04 (H) Scheduled But Not Heard  
03/24/04 (H) L&C AT 3:15 PM CAPITOL 17  
03/24/04 (H) Moved CSHB 421(L&C) Out of Committee  
03/24/04 (H) MINUTE(L&C)  
03/25/04 (H) L&C RPT CS(L&C) 7DP  
03/25/04 (H) DP: CRAWFORD, LYNN, GATTO, ROKEBERG,  
03/25/04 (H) DAHLSTROM, GUTTENBERG, ANDERSON  
04/21/04 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 309

SHORT TITLE: PROHIBIT RELEASE OF PREDATORY FISH

SPONSOR(S): REPRESENTATIVE(S) WOLF

05/08/03 (H) READ THE FIRST TIME - REFERRALS  
05/08/03 (H) FSH, RES  
05/16/03 (H) FSH AT 7:30 AM CAPITOL 124  
05/16/03 (H) Heard & Held  
05/16/03 (H) MINUTE(FSH)  
03/22/04 (H) FSH AT 9:00 AM CAPITOL 124  
03/22/04 (H) Moved CSHB 309(FSH) Out of Committee  
03/22/04 (H) MINUTE(FSH)  
03/24/04 (H) FSH RPT CS(FSH) NT 3DP 2NR  
03/24/04 (H) DP: GARA, WILSON, SEATON; NR: OGG,  
03/24/04 (H) GUTTENBERG  
03/31/04 (H) RES AT 1:00 PM CAPITOL 124  
03/31/04 (H) Heard & Held  
03/31/04 (H) MINUTE(RES)  
04/01/04 (H) JUD REFERRAL ADDED AFTER RES  
04/05/04 (H) RES AT 1:00 PM CAPITOL 124  
04/05/04 (H) Heard & Held  
04/05/04 (H) MINUTE(RES)  
04/07/04 (H) RES AT 1:00 PM CAPITOL 124  
04/07/04 (H) Moved CSHB 309(RES) Out of Committee  
04/07/04 (H) MINUTE(RES)  
04/08/04 (H) RES RPT CS(RES) NT 1DP 3NR 5AM  
04/08/04 (H) DP: WOLF; NR: LYNN, GUTTENBERG,

04/08/04 (H) DAHLSTROM; AM: HEINZE, STEPOVICH,  
04/08/04 (H) GATTO, KERTTULA, MASEK  
04/16/04 (H) JUD AT 1:00 PM CAPITOL 120  
04/16/04 (H) Heard & Held Assigned to Subcmte  
04/16/04 (H) MINUTE(JUD)  
04/21/04 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 539

SHORT TITLE: UNIV. STUDENT PRACTICUM LIABILITY/WAGES

SPONSOR(S): JUDICIARY

03/18/04 (H) READ THE FIRST TIME - REFERRALS  
03/18/04 (H) L&C, JUD  
04/16/04 (H) L&C AT 3:15 PM CAPITOL 17  
04/16/04 (H) Moved CSHB 539(L&C) Out of Committee  
04/16/04 (H) MINUTE(L&C)  
04/19/04 (H) L&C RPT CS(L&C) NT 7AM  
04/19/04 (H) AM: CRAWFORD, LYNN, GATTO, ROKEBERG,  
04/19/04 (H) DAHLSTROM, GUTTENBERG, ANDERSON  
04/19/04 (H) JUD AT 1:00 PM CAPITOL 120  
04/19/04 (H) -- Meeting Canceled --  
04/21/04 (H) JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

VANESSA TONDINI, Staff  
to Representative Lesil McGuire  
House Judiciary Standing Committee  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Explained the changes encompassed in the new proposed CS for HB 427, Version S; assisted in explaining the changes encompassed in the proposed HCS for SB 276, Version S.

LINDA HALL, Director  
Division of Insurance  
Department of Community & Economic Development (DCED)  
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of the proposed HCS for SB 276, Version S.

BRYAN MERRELL, Member  
Alaska Land Title Association  
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 421 and responded to questions.

TERRY E. BRYAN, President  
First American Title of Alaska  
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 421 and responded to a question.

MICHAEL PRICE, Owner  
Mat-Su Title Insurance Agency, Inc.  
and Fidelity Title Agency of Alaska, LLC  
Wasilla, Alaska

POSITION STATEMENT: Testified in support of HB 421 and the proposed amendments.

REPRESENTATIVE KELLY WOLF  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 309.

HEATH HILYARD, Staff  
to Representative Lesil McGuire  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Presented HB 539 on behalf of Representative McGuire, Chair of the House Judiciary Standing Committee, sponsor of HB 539.

PETE KELLY, Director  
Government Relations  
University of Alaska  
Fairbanks, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 539.

GREY MITCHELL, Director  
Central Office  
Division of Labor Standards & Safety  
Department of Labor & Workforce Development (DLWD)  
Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 539.

JAMES PARRISH, General Counsel  
University of Alaska  
Fairbanks, Alaska

POSITION STATEMENT: Provided a comment during discussion of HB 539.

**ACTION NARRATIVE**

**TAPE 04-69, SIDE A**

Number 0001

**CHAIR LESIL MCGUIRE** called the House Judiciary Standing Committee meeting to order at 1:15 p.m. Representatives McGuire, Holm, Ogg, Samuels, and Gruenberg were present at the call to order. Representatives Anderson and Gara arrived as the meeting was in progress.

HB 427 - PROTECTION OF PERSONS AND PROPERTY

Number 0037

CHAIR MCGUIRE announced that the first order of business would be HOUSE BILL NO. 427, "An Act relating to guardianships and conservatorships, to the public guardian and the office of public advocacy, to private professional guardians and private professional conservators, to court visitors, court-appointed attorneys, guardians ad litem, and fiduciaries, and to the protection of the person or property of certain individuals, including minors; amending Rules 16(f) and 17(e), Alaska Rules of Probate Procedure; and providing for an effective date." [In committee packets was a new proposed committee substitute (CS) for HB 427, Version 23-LS1627\S, Bannister, 4/21/04.]

Number 0095

REPRESENTATIVE GRUENBERG made a motion to rescind the committee's action on 4/14/04 in reporting CSHB 427(JUD) [Version 23-LS1627\I, Bannister, 4/14/04] from committee. There being no objection, Version I was back before the committee.

Number 0105

VANESSA TONDINI, Staff to Representative Lesil McGuire, House Judiciary Standing Committee, Alaska State Legislature, explained that in drafting CSHB 427(JUD) [following the hearing on 4/14/04] some technical changes were suggested by the drafter, and that these changes have been outlined in a memo from the drafter. One change pertains to including a provision for changing Rule 17(c) of the Alaska Rules of Civil Procedure. Additionally included are conforming changes to proposed AS 08.26.050 regarding references to "a nationally recognized organization in the field of guardianships"; a grammatical tense

change [to proposed AS 13.26.145(d)(1) and AS 13.26.210(d)(1)]; and Section 37 now reflects that Section 34 has its own effective date.

Number 0232

REPRESENTATIVE GRUENBERG moved to adopt the new proposed CS for HB 427, Version 23-LS1627\S, Bannister, 4/21/04, as the working document. There being no objection, Version S was before the committee.

CHAIR McGUIRE noted that although HB 427 will be heard in the House Finance Committee next, she decided that the aforementioned changes would be more properly made in the House Judiciary Standing Committee.

REPRESENTATIVE GARA indicated that the title appeared to be tight enough.

Number 0289

REPRESENTATIVE GRUENBERG moved to report the new proposed CS for HB 427, Version 23-LS1627\S, Bannister, 4/21/04, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, new CSHB 427(JUD) was reported from the House Judiciary Standing Committee.

SB 276 - ALASKA INSURANCE GUARANTY ASSOCIATION

Number 0308

CHAIR McGUIRE announced that the next order of business would be CS FOR SENATE BILL NO. 276(FIN), "An Act relating to the Alaska Insurance Guaranty Association; relating to the powers of the Alaska Industrial Development and Export Authority concerning the association; and providing for an effective date."

Number 0359

REPRESENTATIVE SAMUELS moved to adopt the proposed House committee substitute (HCS) for SB 276, Version 23-GS2105\S, Bullock, 4/20/04, as the work draft.

Number 0362

REPRESENTATIVE HOLM objected [for the purpose of discussion].

CHAIR McGUIRE indicated that Version S will enable the legislature to revisit this issue in six years.

Number 0488

VANESSA TONDINI, Staff to Representative Lesil McGuire, House Judiciary Standing Committee, Alaska State Legislature, explained that Section 1 of Version S will grant the Alaska Insurance Guaranty Association the authority to raise the percentage of assessments as requested by the administration, and that Section 2 will repeal that authority in 2010 and have the assessment level revert back to what it currently is.

CHAIR McGUIRE opined that six years will be sufficient to determine the effect of the proposed increases and whether they should be maintained.

REPRESENTATIVE GARA said he did not want the language in Version S to be seen as authorization for keeping the proposed assessment increases at their maximum level until 2010.

Number 0634

LINDA HALL, Director, Division of Insurance, Department of Community & Economic Development (DCED), relayed that the assessments are analyzed each year by the actuary for the Alaska Insurance Guaranty Association, who assesses the anticipated cash needs for the upcoming year. She assured Representative Gara that per statute, the actuary will not assess beyond what is needed. In response to a question from Representative Holm about why there is a specific percentage referenced in statute, she noted that current statute has a 2 percent cap that cannot be exceeded without additional statutory authority, and that the current statutory language comes from "the model guaranty language" that has been adopted in most other states.

CHAIR McGUIRE asked Representative Holm if he would be offering an amendment to eliminate all statutory reference to specific percentages.

REPRESENTATIVE HOLM remarked that he was merely raising the issue.

REPRESENTATIVE SAMUELS posited that the repealer is a moot point as long as nothing untoward occurs in the governing of the Alaska Insurance Guaranty Association.

MS. HALL concurred, adding, "They do not accumulate cash; it's on a post-loss assessment basis, so the way it works at this time ... [is that] they can only assess money when there is a need for the money ...."

CHAIR McGUIRE opined that the statutory caps were put in place for good reasons, and suggested that for those same reasons, the proposed increase should have a repealer. In this manner, should the current crisis continue or new crises arise in other lines of insurance, the legislature will be made aware of such and can then take an active role in developing solutions. She posited that some business are becoming frustrated with the current system, particularly when they go five or six years without a single claim but are faced with increased assessments. Her goal with Version S, she relayed, is to say to those businesses: "We don't intend for these high percentages to persist, and ... [here is] assurance that some future legislature will take a look at it."

REPRESENTATIVE HOLM predicted that the business community will make legislators very aware should the assessments become too high.

Number 0993

REPRESENTATIVE SAMUELS again moved to adopt the proposed HCS for SB 276, Version 23-GS2105\S, Bullock, 4/20/04, as the work draft. There being no objection, Version S was before the committee.

Number 1000

REPRESENTATIVE ANDERSON moved to report the proposed HCS for SB 276, Version 23-GS2105\S, Bullock, 4/20/04, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCS CSSB 276(JUD) was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 1:30 p.m. to 2:10 p.m.

HB 421 - DEED OF TRUST RECONVEYANCE

Number 1033

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 421, "An Act relating to reconveyances of deeds of trust." [Before the committee was CSHB 421(L&C).]

REPRESENTATIVE ANDERSON, speaking as the sponsor, relayed that HB 421 is legislation proposed and requested by the Alaska Land Title Association (ALTA), and opined that it will help clear land records of paid off mortgage liens. After a mortgage or a deed of trust has been paid off, a title insurance company could, through the procedures established via HB 421, record the reconveyance. A title insurance company acting as trustee under a deed of trust could release, by deed of reconveyance, a lien after notice to the lender if the title company paid off the deed of trust through a closing. The lender would then be given 60 days to object to the proposed release of the lien.

REPRESENTATIVE ANDERSON said it is common in Alaska for the company servicing the mortgage on a home to be located out of state, and so HB 421, which is based on Idaho law, would be helpful in cleaning up many old liens that have been unreleased by lenders who may be out of state or who have [gone out of business]. The net result, he predicted, will be quicker closing and fewer hassles for sellers, lenders, and agents. For example, any previous liens on the deed could be cleared away before they become burdensome on any future transactions or sales of the property.

REPRESENTATIVE ANDERSON indicated that the intent of HB 421 is to provide a clear and clean process, allowing liens to be cleared from deeds after satisfactory evidence of payment has been presented to the title company. This bill does not establish any additional risks or opportunities for fraud, and it is not intended to create any unnecessary burdens upon Alaskan mortgage lenders.

REPRESENTATIVE GARA said he wanted assurance that HB 421 won't jeopardize someone's property rights.

REPRESENTATIVE ANDERSON said he did not think HB 421 would cause such to happen, but suggested that industry representatives could respond to that concern as well.

Number 1244

BRYAN MERRELL relayed that he is the immediate past president of the Alaska Land Title Association (ALTA), and is a member of the ALTA's legislative committee. He went on to say:

The Alaska Land Title Association is a trade organization representing title insurance agents and

underwriters who do business in ... Alaska. ... Over the past few years we've been very active in attempting to clear title records as best we can, to assist the consumer and our customers, and this bill would essentially help us to do that, as Representative Anderson has described. To respond to Representative Gara's [concern]: ... I think that this bill is protective of the property rights of owners of real property in that in a situation where a mortgage lender, for whatever reason, does not release a paid off deed of trust or mortgage that is attached to a piece of property, this would allow the title company to assist that consumer in [releasing] that mortgage debt with notice to the mortgage lender, who has been paid, when we have sufficient evidence that payoff has occurred. And so in that sense it is protective of the property rights of individuals.

Number 1353

TERRY E. BRYAN, President, First American Title of Alaska, relayed that his company operates in 10 separate communities in Alaska and perceives HB 421 as being consumer-oriented legislation based on statutes similar to those in Idaho and Oregon. He went on to say:

I am currently working with an elderly lady in Anchorage on a 1983 deed of trust for a small amount of money that we know is paid off - we have evidence that it's paid off - but ... the mortgage lender is out [of state], and if they do not reconvey the property, she cannot take advantage of refinance because this old lien ... is there. This bill will allow a title company, only, ... to - upon acknowledgement and having verification of substantial evidence that it has been paid off by the ... canceled check and so forth - in effect, reconvey the property as trustee for the individual. Then she can subsequently sell, refinance, or remove the cloud from the title. ...

This happens on a daily basis. ... The Alaska Land Title Association has received ... written support from ... the Alaska Home Builders Association, the Alaska Mortgage Bankers Association, [and] Wells Fargo Bank. Initially there [were] concerns [relayed] ... by the Alaska Bankers Association and, after

discussions with them last week and this week, they removed their opposition and concerns regarding the legislation. And it's primarily (indisc.) the need to assist consumers for outside lenders, ... which we see is going to be an increasing role in the Alaska economy due to mailing programs, due to the Internet ... marketing for mortgages for consumers.

Number 1466

MR. BRYAN continued:

I just did a quick check in our office in Anchorage, ... [and found that] I have 1,485 non-reconveyed deeds of trust in the (indisc.) recording district that have been paid off [but] the people cannot easily refinance or sell until we go through the gyrations of trying to get the lender to do what they should have done [a long time ago]. And we have an obligation to the consumer ... to assist them in the flow of commerce, assist them in closing the transaction.

And we are a controlled industry and feel that restricting this ability [to] the title insurance industry is a safeguard for the consumer and for the state of Alaska, and that's one of the reasons we're incorporating the actual forms utilized into the statute. So it would be an established standard and an established process; ... reconveyances could not be done frivolously by non-insurance companies. ...

REPRESENTATIVE GARA said he wants to ensure that HB 421 isn't written such that resolving one problem will create another. He directed attention to subsection (f) on page 4, lines 10-12, and asked whether the language therein might extinguish someone else's valid interest in a piece of land.

MR. MERRELL replied:

Because of the safeguards that have been put into the bill in terms of notice to the lender, and because of the requirement that we have sufficient evidence that the loan has indeed been paid off, I don't think that parties are going to be at risk of losing a valid debt, because we're going to have proof of payment. And that proof is going to [have to] take the form of a ... written statement from the lender [detailing]

how much is owed [and] a canceled check showing that that lender got the money sufficient to pay it off, before we would even be willing to do it. ...

And in any event, ... we would be liable for a wrongful reconveyance to that lender ..., so I don't think that we're solving this problem on the backs of lenders at all. They've got plenty of ability to protect themselves through the payoff process and through objection to the notice that they would receive in order to protect themselves. And again, ... we've received support from lenders as well, so it isn't like they think that that's going to happen.

Number 1669

REPRESENTATIVE GARA clarified that his concern is for persons who have a valid claim to an interest in a property, rather than for lenders.

MR. MERRELL opined that HB 421 only speaks to the issue of reconveyances of deeds of trust - releases of the mortgage instrument - which is the preferred mortgage instrument in Alaska. Under the deed of trust form, the trustee has the ability to release the deed of trust when instructed by the beneficiary who is the mortgage lender; as a matter of common law, that's when a mortgage lien typically gets released. Again, HB 421 only addresses the issue of releasing mortgage loans; it has nothing to do with release of other interests in property, whether it be ownership interest, easement interest, or any other kind of interest.

REPRESENTATIVE GARA asked whether "trust deed" is defined in statute.

MR. MERRELL indicated that "trust deed" is described in the bill and defined elsewhere in Title 34.

REPRESENTATIVE ANDERSON noted that members should be in possession of two proposed amendments.

MR. MERRELL indicated that he would be willing to speak to those amendments at the appropriate time.

Number 1806

MICHAEL PRICE, Owner, Mat-Su Title Insurance Agency, Inc., and Fidelity Title Agency of Alaska, LLC, relayed that before he owned these companies he'd practiced real estate law for 27 years. He said he would speak in favor of both HB 421 and the proposed amendments. He indicated a desire to assure the committee that the bill would not be a problem with what are considered local lenders, those who are domiciled in Alaska. He said that such lenders often send his companies requests for reconveyances and the mortgages are then released. The current problem is a result of both failed lending institutions and Internet banking, and a lot of loans come from companies in other states that are not as responsive about providing the appropriate paperwork to the consumer when they are paid off as are local lenders. For example, for Anchorage property, a Mississippi company will send the release to Ketchikan and record it there. Additionally, in the '80s and early '90s, in the Matanuska-Susitna valley, there were many individual loans made, but when they were paid off, the individuals didn't realize that the deed of trust needed to be released, and such is creating an impediment to commerce.

Number 1897

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

DESCRIPTION

Currently the bill requires the title insurance company to notify the beneficiary or the servicer of the deed before a reconveyance can be recorded. This amendment will change the "or" to "and" so that notification must be sent to both parties.

On page 1, line 13  
Delete "or a"  
Insert "and the"

On page 1, line 14  
Delete "or"  
Insert "and"

On page 1, line 15  
Delete "or"  
Insert "and"

On page 2, line 1  
Delete "or"

Insert "and"

On page 2, line 3

Delete "or"

Insert "and"

On page 2, line 29

Delete "or" twice

Insert "and" twice

DESCRIPTION

Amendment [sic] the number of days that must elapse after mailing a notification from 60 days up to 90 days. The change from 60 to 90 days should occur in the following places:

Page 2, line 24

Page 3, line 4

Page 4, line 1

Number 1920

REPRESENTATIVE GRUENBERG objected for the purpose of discussion. He suggested that Amendment 1 be divided into Amendments 1a and 1b, with the "description" verbiage delineating the two. Should his suggestion be adopted, he surmised, Amendment 1a would encompass changing "or" to "and" in several places to indicate that notification should be sent to both the beneficiary and the servicer of the deed, and Amendment 1b would change the number of days that must elapse after mailing notification. [Although no formal motion was made, Representative Gruenberg's suggestion to divide Amendment 1 into Amendments 1a and 1b was treated as adopted.] Amendment 1a then read [original punctuation provided]:

DESCRIPTION

Currently the bill requires the title insurance company to notify the beneficiary or the servicer of the deed before a reconveyance can be recorded. This amendment will change the "or" to "and" so that notification must be sent to both parties.

On page 1, line 13

Delete "or a"

Insert "and the"

On page 1, line 14

Delete "or"  
Insert "and"

On page 1, line 15  
Delete "or"  
Insert "and"

On page 2, line 1  
Delete "or"  
Insert "and"

On page 2, line 3  
Delete "or"  
Insert "and"

On page 2, line 29  
Delete "or" twice  
Insert "and" twice

REPRESENTATIVE GRUENBERG, referring to Amendment 1a, remarked that if Amendment 1a is adopted, the drafter should also correct the corresponding syntax regarding "notice" and "address" where appropriate.

MR. MERRELL concurred with Representative Gruenberg regarding the purpose of Amendment 1a, and relayed that it came at the request of members of the banking industry who wanted to ensure that those who have an interest in the loan receive notice as well.

Number 2039

REPRESENTATIVE GRUENBERG asked that Amendment 1a be adopted. There being no objection, Amendment 1a was adopted.

REPRESENTATIVE GRUENBERG directed attention to page 1, lines 9-11, which read: (b) Not less than 30 days after payment in full of the obligation secured by a trust deed and receipt of satisfactory evidence of payment in full, a title insurance company shall". He asked why the title insurance industry would want to wait 30 days, since that could result in slowing down the procedure.

MR. MERRELL replied:

It was something that came through from the Idaho statute, and we never really considered changing that.

... And, perhaps more importantly, I think that that is, in a sense, sort of a cooling off period ...; if there are any questions relating to whether or not a payoff was sufficient, they're going to come up within the 30 days after a transaction is closed. ... [With the 30-day stipulation] you have the opportunity to resolve those things in advance of attempting to reconvey. Plus ... it does give the lender the opportunity to do the right thing and take care of it themselves.

MR. MERRELL, in response to a further question, said that in situations wherein there is an "ancient deed," the 30-day time frame would have long since passed, and so should not result in any problems. Furthermore, if a lender is ready to proceed with the reconveyance, the lender would have initiated the process rather than the title company having to take care of it on behalf of the consumer.

REPRESENTATIVE GRUENBERG directed attention to Amendment 1b, and surmised that it would provide the beneficiary and servicer 90 days within which to object. Amendment 1b read [original punctuation provided]:

DESCRIPTION

Amendment [sic] the number of days that must elapse after mailing a notification from 60 days up to 90 days. The change from 60 to 90 days should occur in the following places:

Page 2, line 24

Page 3, line 4

Page 4, line 1

REPRESENTATIVE GRUENBERG asked why 60 days is not sufficient.

Number 2186

MR. BRYAN replied:

Two issues. One is, this was a change made [by request] of several representatives within the Alaska [Bankers] Association, and their thought was ... that some of the organizations are quite large and, [in] receiving notification, they wanted to ensure that they could do the right thing and respond and do the reconveyance, and they did not want the documentation

provided from the title company to be internally lost. And [it] just gave them more time to respond. And as a matter of compromise with the [Alaska Bankers Association] we ... accepted their recommendation, [and are now requesting] that change.

... This action is not to replace the obligation of the lender or the individual beneficiary being paid off; they still have the obligation to reconvey. This only is appropriate when they have not ... reconveyed the property - which, traditionally, is never within the first 30 days - or the lender cannot be found or [is] not cooperative. So it would be 30 days after the ... original payoff before it would even be of concern (indisc.) the title company ...; the 30 day window is an extremely narrow window. ...

The committee took an at-ease from 2:40 p.m. to 2:41 p.m.

Number 2291

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1b.

REPRESENTATIVE GARA objected for the purpose of discussion. He asked whether, if a former owner is owed compensation but says nothing within 60 days of receiving notice, he/she loses the right to compensation.

MR. MERRELL said no. He reiterated that the title company cannot use this procedure unless it has satisfactory evidence that that person has been paid. Additionally, he remarked, one of the forthcoming amendments will stipulate that satisfactory evidence must include a payoff statement in writing from the person who has been paid off and a canceled check showing that he/she received the money. Without satisfactory evidence, title companies would be liable for any damages plus an additional penalty.

REPRESENTATIVE GARA indicated that he was satisfied.

**TAPE 04-69, SIDE B**

Number 2369

CHAIR MCGUIRE asked whether there were any further objections to Amendment 1b. There being none, Amendment 1b was adopted.

REPRESENTATIVE HOLM asked what the distinction is between a deed of trust, a title, and a mortgage lien.

MR. MERRELL explained that a deed of trust is a consensual lien instrument that's signed by the borrower, and that deed of trust and trust deed are interchangeable terms. Essentially signing this consensual lien instrument says that the borrower is giving a lien to the bank to secure the debt.

CHAIR MCGUIRE noted that Representative Gruenberg's wife and some students were present to watch the proceeding, and invited them to introduce themselves, which they did.

Number 2281

REPRESENTATIVE ANDERSON made a motion to adopt Amendment 2, which read [original punctuation provided]:

On page 1, line 8  
Delete "the"

Insert "any"

On page 2, line 2, after the word "section", insert the following:

" , and to the address for a beneficiary and servicer personally known to the title insurance company"

On page 2, line 16, following the word "information"  
Insert "for a trust deed"

On page 2, following line 20  
Insert " Recording information for current assignment of trust deed:  
Serial number:.....  
or  
Book number:.....  
Page number:....."

On page 3, following line 3  
Insert "(Phone number)"

On page 4, following line 27, insert a two new definition as follows:

" 'beneficiary' means both the record owner of the beneficiary's interest under a trust deed, including successors in interest."

" 'satisfactory evidence' of the full payment of an obligation secured by a trust deed means a payoff letter, the original cancelled check or a copy, including a voucher copy, of a check, payable to the beneficiary or a servicer, and reasonable documentary evidence that the check was intended to effect full payment under the trust deed or an encumbrance upon the property covered by the trust deed."

Re-number the new and existing definitions accordingly.

On page 5, following line 1, insert a new section as follows:

(j) If a title insurance company reconveys a trust deed without having satisfactory evidence of payment required under (b) or without providing the prior notice to the beneficiary and servicer as required under this section, the title insurance company is liable to the beneficiary, the heirs, successor interest, representatives and assigns of the beneficiary, for all damages occasioned by such neglect or willful act. A title insurance company shall pay a penalty of \$300 to the department."

Number 2274

REPRESENTATIVE GRUENBERG suggested dividing Amendment 2 into Amendments 2a-2g as follows:

Amendment 2a:

On page 1, line 8  
Delete "the"

Insert "any"

Amendment 2b:

On page 2, line 2, after the word "section", insert the following:

", and to the address for a beneficiary and servicer personally known to the title insurance company"

Amendment 2c:

On page 2, line 16, following the word "information"  
Insert "for a trust deed"

Amendment 2d:

On page 2, following line 20  
Insert " Recording information for current assignment of trust deed:  
Serial number:.....  
or  
Book number:.....  
Page number:..... "

Amendment 2e:

On page 3, following line 3  
Insert "(Phone number)"

Amendment 2f:

On page 4, following line 27, insert a two new definition as follows:

" 'beneficiary' means both the record owner of the beneficiary's interest under a trust deed, including successors in interest."

" 'satisfactory evidence' of the full payment of an obligation secured by a trust deed means a payoff letter, the original cancelled check or a copy, including a voucher copy, of a check, payable to the beneficiary or a servicer, and reasonable documentary evidence that the check was intended to effect full payment under the trust deed or an encumbrance upon the property covered by the trust deed."

Re-number the new and existing definitions accordingly.

Amendment 2g:

On page 5, following line 1, insert a new section as follows:

(j) If a title insurance company reconveys a trust deed without having satisfactory evidence of payment required under (b) or without providing the prior notice to the beneficiary and servicer as required under this section, the title insurance company is liable to the beneficiary, the heirs, successor interest, representatives and assigns of the beneficiary, for all damages occasioned by such neglect or willful act. A title insurance company shall pay a penalty of \$300 to the department."

CHAIR MCGUIRE, as no objection was heard, indicated that dividing Amendment 2 into Amendments 2a-2g was acceptable; [Amendments 2a-2e were subsequently treated as moved for adoption].

REPRESENTATIVE GRUENBERG directed attention to Amendment 2a [text provided previously], and said he has an objection to such a change because he thinks that only the trust deed at issue should be reconveyed, rather than just any trust deed.

MR. MERRELL offered his belief that the language on page 1, [lines 4-6], precludes it from being just any trust deed.

Number 2203

REPRESENTATIVE ANDERSON withdrew Amendment 2a.

Number 2196

REPRESENTATIVE GRUENBERG directed attention to Amendment 2b [text provided previously], and made a motion to amend Amendment 2b such that "to the address" is changed to "to any address". There being no objection, Amendment 2b was amended.

Number 2178

CHAIR MCGUIRE asked whether there were any objections to Amendment 2b, as amended. There being none, Amendment 2b, as amended, was adopted.

Number 2163

REPRESENTATIVE GRUENBERG directed attention to Amendment 2c [text provided previously], and made a motion to amend Amendment 2c such that "for a trust deed" be changed to "for the trust deed". There being no objection, Amendment 2c was amended.

Number 2157

CHAIR MCGUIRE asked whether there were any objections to Amendment 2c, as amended. There being none, Amendment 2c, as amended, was adopted.

Number 2141

CHAIR MCGUIRE asked whether there were any objections to Amendment 2d [text provided previously]. There being none, Amendment 2d was adopted.

Number 2133

CHAIR MCGUIRE asked whether there were any objections to Amendment 2e [text provided previously]. There being none, Amendment 2e was adopted.

Number 2121

REPRESENTATIVE ANDERSON made a motion to adopt Amendment 2f [text provided previously].

REPRESENTATIVE GRUENBERG opined that Amendment 2f doesn't make sense as currently written. He suggested that in the first portion of Amendment 2f, the word "both" should be deleted, since only one aspect is listed. Additionally, both portions should be numbered: (1) and (2) respectively.

MR. MERRELL remarked that Representative Gruenberg might be correct with regard to the word "both", but suggested that perhaps what was meant was "and successors in interest", rather than "including successors in interest".

Number 2089

REPRESENTATIVE GRUENBERG made a motion to amend Amendment 2f such that "including" be changed to "and". There being no objection, Amendment 2f was amended.

Number 2079

CHAIR McGUIRE asked whether there were any objections to Amendment 2f, as amended. There being none, Amendment 2f, as amended, was adopted.

Number 2071

REPRESENTATIVE ANDERSON made a motion to adopt Amendment 2g [text provided previously].

REPRESENTATIVE GRUENBERG made a motion to amend Amendment 2g such that "In addition" would be inserted at the beginning of the second sentence; such a change would clarify that the penalty is in addition to being liable for damages. There being no objection, Amendment 2g was amended.

Number 2033

CHAIR McGUIRE asked whether there were any objections to Amendment 2g, as amended. There being none, Amendment 2g, as amended, was adopted.

REPRESENTATIVE GARA remarked that he has asked Legislative Legal and Research Services to research the issue of whether HB 421 would accidentally extinguish anyone's property rights, and that he expects to hear back from Legislative Legal and Research Services by [4/23/04]. He asked what happens if an inaccurate document is relied upon by a title company and the payment really hasn't been satisfied.

MR. MERRELL pointed out that such a document would come from the person who is owed the money and if it is in error, once notice is given, the person can bring the mistake to light; he suggested that the situation Representative Gara is concerned with is unlikely to happen very often if at all. He added: "The title companies are ... only going to want to use this in a situation where [they've] ... exhausted all other ability to have the thing released by the lenders themselves."

CHAIR McGUIRE surmised that should any concerns arise after Legislative Legal and Research Services responds to Representative Gara's request, he would inform the committee.

Number 1909

REPRESENTATIVE ANDERSON moved to report CSHB 421(L&C), as amended, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection,

CSHB 421(JUD) was reported from the House Judiciary Standing Committee.

HB 309 - PROHIBIT RELEASE OF PREDATORY FISH

Number 1887

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 309, "An Act prohibiting the release of nonindigenous predatory fish into public water." [Before the committee was CSHB 309(RES), which had been amended via Amendment 2 on 4/16/04 and then been assigned to a subcommittee.]

REPRESENTATIVE HOLM, speaking as chair of the subcommittee on HB 309, indicated that members should have in their possession proposed amendments, and that the subcommittee didn't come to an agreement regarding the body of water.

REPRESENTATIVE HOLM directed attention to [Amendment 3], which read [original punctuation provided]:

Section 1

Page 1

Line 6 Delete **[the person holds a permit issued by the commissioner or the commissioner's designee to transport, possess, import, export, or release the fish or live fish eggs.]** after unless

Line 6 add **permitted by AS 16.05-16.40 or by regulation adopted under AS 16.05 - 16.40**

Line 12 Delete ALL of line [12] and renumber

Page 2

Line 1 delete **[, the water of the state or release fish wastes or waster [sic] water from ornamental fish tanks or other containment systems directly into the]**

Line 3 delete **[ C felony]** after class

Line 3 add **A misdemeanor** after class

Line 4 delete **[\$1,500]** after than

Line 4 add **\$5,000** after than

Number 1589

REPRESENTATIVE SAMUELS made a motion to adopt Amendment 3. There being no objection, Amendment 3 was adopted.

Number 1574

REPRESENTATIVE HOLM directed attention to Amendment 4, which read [original punctuation provided]:

Line 15 Delete [means any water of the state forming a river, stream, lake, pond, creek, bay, sound, estuary, inlet, strait, passage, canal, sea, or ocean or any other body of water or waterway within the territorial limits of the state] after state"

Line 15 add as define [sic] in AS 5.25.100 after state"

REPRESENTATIVE HOLM offered his belief that Amendment 4 would provide consistency within fish and game statutes.

REPRESENTATIVE GARA, though there was no motion to adopt Amendment 4, objected.

REPRESENTATIVE SAMUELS opined that the term "navigable waters" should be avoided, and that the current language in the bill "gets us to where we need to go."

REPRESENTATIVE HOLM withdrew Amendment 4.

Number 1520

REPRESENTATIVE HOLM directed attention to Amendment 5, which, along with an explanation section and a handwritten estimation regarding size, read [original punctuation provided and some formatting changed]:

Page 1, Line 13, Sec.1 insert: (3) an ornamental fish pond.

Page 2 after Line 18 insert: (5) "Ornamental fish pond" means a pond located on private property, not connected to a water of the state, with a surface area of less than 10,000 square feet and that was cultivated or constructed to be stocked with fish.

Renumber accordingly

Explanation:

We do not intend to make a back yard pond which is filled with goldfish into a criminal matter. Existing ponds of every size and content are not covered to this point in time and will not be affected by the passage of this law. But, all newly constructed or stocked ponds will now have a threshold for permitting. Any pond that meets the requirements and is under 10,000 sq. ft. can be stocked at will. A person is free to construct a bigger pond from 10,000 ft to 1000 acres or more, but will only need a permit to stock it.

THE COURTYARD BORDERING THE JUDICIARY COMMITTEE RM. IS APPROXIMATELY 4,650 SQ. FT.

THE POND SIZE SUGGESTED IN THIS AMENDMENT WOULD BE ABOUT TWO TIMES BIGGER.

REPRESENTATIVE HOLM offered his belief that Amendment 5 would address the issue of "Koi" ponds constructed for landscaping purposes.

Number 1450

REPRESENTATIVE GARA, though there was no motion to adopt Amendment 5, objected. He said:

My worry is this: the way it's defined, it could be a natural pond on a piece of private property. And I think back to the original purpose of the bill and the [following] example ...: behind the Chelatna Lake lodge, which is the headwaters for Lake Creek in the [Matanuska-Susitna] valley, the owners of the lodge stocked pike. At high water, Chelatna Lake rose, and the pike from the Chelatna Lake pond migrated into Chelatna Lake. It wasn't connected to a water body at the time, so it would be allowed. That's the kind of behavior that we're trying to avoid, and so we would have to write an amendment that got to what Representative Holm wanted but didn't jeopardize [prosecution of] the kind of conduct that occurred in this circumstance, which fortunately hasn't destroyed the Lake Creek system but ... certainly had the potential to.

REPRESENTATIVE HOLM offered his belief that the bill is attempting to address purposeful acts, rather than accidental situations such as occurred at the Chelatna Lake.

REPRESENTATIVE SAMUELS said he would support Amendment 5, but remarked that he would also support additional language that would provide some sidebars.

REPRESENTATIVE HOLM, in response to comments, suggested that perhaps Amendment 5 could be conceptual in order to ensure that it refers to a manmade pond that was constructed by artificial means.

CHAIR MCGUIRE pointed out, however, that people may want to turn a naturally occurring pond into an ornamental fish pond; therefore, referring to manmade ponds may not be sufficient.

REPRESENTATIVE HOLM concurred.

Number 1236

REPRESENTATIVE KELLY WOLF, Alaska State Legislature, sponsor, noted that currently, if one wants to transport fish within the state, one needs a permit, regardless of whether the fish are being transported to a manmade pond or a naturally occurring pond.

REPRESENTATIVE HOLM relayed that Amendment 5 proposes to deal with the issue of ornamental fish ponds.

REPRESENTATIVE GARA concurred with Representative Wolf, and suggested not adopting Amendment 5 and allowing Legislative Legal and Research Services to draft appropriate language for a House floor amendment. He opined that "limiting it to artificial ponds for which a permit is not needed would cover the issue that Representative Holm wants [addressed]."

REPRESENTATIVE HOLM withdrew Amendment 5.

Number 1108

REPRESENTATIVE GARA directed attention to page 1, line 5, and said he questions whether they want to make it a crime to transport, import, export, or possess if the fish are not released into water. He suggested that "transport, possess, import, export, or" be deleted from page 1, line 5. These

actions are already illegal, he remarked, and offered his belief that what they want to do is make it a crime to "knowingly release".

CHAIR McGUIRE referred to the foregoing suggestion as Amendment 6.

REPRESENTATIVE WOLF suggested amending Amendment 6 such that line 5 would read in part: "transport and release".

REPRESENTATIVE GRUENBERG remarked, however, that there could be situations in which one person does the transporting but not the releasing while another does the releasing but not the transporting. Therefore, if such a change is made to Amendment 6, then "and" should be "or" so as to catch both those who release and those who transport.

REPRESENTATIVE GARA said he did not think the committee would want to make transporting fish without releasing them a crime.

Number 0982

REPRESENTATIVE GARA made a motion to adopt Amendment 6, to delete from page 1, line 5, the words, "transport, possess, import, export, or".

Number 0978

REPRESENTATIVE GRUENBERG objected for the purpose of discussion. He opined that similar to drug transactions, there should also be a penalty for the person doing the transporting.

REPRESENTATIVE SAMUELS agreed, adding that it could be difficult to convict only those releasing fish because the evidence would swim away.

REPRESENTATIVE WOLF concurred.

REPRESENTATIVE GARA indicated that he did not want to criminalize someone who catches a pike and then transports it live because he/she wants to arrive home with a fresh fish.

REPRESENTATIVE GRUENBERG said he wants to prosecute the person who transports for release, and suggested having a conceptual amendment say something along the lines of "releasing or transporting for release".

REPRESENTATIVE GARA suggested that the committee adopt an unamended Amendment 6 and then address further changes to line 5 via an Amendment 7.

REPRESENTATIVE SAMUELS objected to [that suggestion], indicating that he would prefer to know the totality of the changes proposed to line 5.

Number 0841

REPRESENTATIVE GARA made a motion to amend Amendment 6 such that the words "or transport for the purpose of releasing" would be added after "release".

Number 0823

REPRESENTATIVE SAMUELS suggested amending the amendment to Amendment 6 such that it would say, "or possess or transport for the purpose of releasing".

REPRESENTATIVE GARA said, "Sure."

CHAIR McGUIRE suggested making Amendment 6, as amended, conceptual so as to allow the drafter the ability to make it grammatically correct.

REPRESENTATIVE GRUENBERG asked about importing fish for the purpose of release.

REPRESENTATIVE GARA opined that such behavior would already be covered because of use of the words "possess" and "transport".

REPRESENTATIVE GRUENBERG argued that such might not necessarily be the case, and relayed that he knows of people in the export business who never actually possess or transport the commodity themselves.

CHAIR McGUIRE remarked that that is an interesting point. She suggested leaving the language on line 5 as is with the exception of changing "or" to "for". Line 5 would then read in part: "transport, possess, import, export for release into the water ...".

REPRESENTATIVE GRUENBERG remarked that the term export seems to imply that one is taking fish out of the waters of the state rather than releasing them into the waters of the state.

REPRESENTATIVE WOLF pointed out, however, that other states have had to deal with fish being imported and released into their waters, and someone first had to export those fish from somewhere else.

Number 0531

REPRESENTATIVE GARA withdrew Amendment 6.

Number 0528

REPRESENTATIVE GARA and CHAIR McGUIRE made a motion to adopt Amendment 7, to delete "or" on page 1, line 5, and replace it with "for". There being no objection, Amendment 7 was adopted.

REPRESENTATIVE GARA suggested that in order to make the releasing of fish a crime under HB 309, they should alter the language on line 5 to say "release, or transport, possess, import, export for release into the water ...".

CHAIR McGUIRE indicated that the language as amended by Amendment 7 is sufficient to make releasing fish a crime under this bill.

REPRESENTATIVE GRUENBERG opined that it is not possible to release a fish without possessing it.

Number 0463

CHAIR McGUIRE suggested making Amendment 7 conceptual for the purpose of allowing the drafter to make it clear that the behaviors of transporting, possessing, importing, and exporting are modified by the words "for release". No objection was heard; therefore, Amendment 7 was treated as Conceptual Amendment 7.

REPRESENTATIVE OGG mentioned that someone in another state could be guilty of exporting fish from that state for the purpose of releasing the fish into the waters of Alaska.

REPRESENTATIVE GRUENBERG concurred.

Number 0337

REPRESENTATIVE SAMUELS moved to report CSHB 309(RES), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB

309(JUD) was reported from the House Judiciary Standing Committee.

HB 539 - UNIV. STUDENT PRACTICUM LIABILITY/WAGES

Number 0308

CHAIR McGUIRE announced that the final order of business would be HOUSE BILL NO. 539, "An Act exempting a person who allows a student of the University of Alaska to gain practical work experience with the person while participating in a practicum from vicarious liability as an employer, and exempting the student participating in a practicum from the Alaska Wage and Hour Act and workers' compensation coverage." [Before the committee was CSHB 539(L&C).]

Number 0295

HEATH HILYARD, Staff to Representative Lesil McGuire, Alaska State Legislature, Chair of the House Judiciary Standing Committee, sponsor, explained that HB 539 addresses two key points with regard to student practicums, which are different from student internships. Interns receive some form of compensation, usually in the form of a stipend, but students who participate in a practicum receive no compensation other than knowledge and experience. House Bill 539 addresses the issue of vicarious liability of students that are participating in a university practicum, in that it limits that liability for the university; the bill also exempts students participating in a university practicum from the [Alaska Wage and Hour Act].

MR. HILYARD noted that the current version of the bill no longer contains reference to workers' compensation and that Section 1 now contains two paragraphs specifying who may qualify for student practicum immunity; those specifications are:

(1) has agreed to allow the student to gain practical work experience with the person in a practicum that is part of the student's curriculum; and

(2) pays no compensation to the student.

Number 0037

PETE KELLY, Director, Government Relations, University of Alaska, remarked that there has been a problem at the university

in that it is having difficulty arranging practicums for some of its programs because of liability issues.

**TAPE 04-70, SIDE A**

Number 0001

MR. KELLY relayed that some of the growing programs that require practicums pertain to dentistry, nursing, and construction.

REPRESENTATIVE GARA asked whether a large number of employers are currently raising the liability issue.

MR. KELLY relayed that because of liability issues, the university was only able to make arrangements with a bare minimum of providers; if programs continue to grow, this will become a problem in the future.

CHAIR MCGUIRE noted that Title 23 already contains exemptions from the Alaska Wage and Hour Act; HB 539, in addition to addressing the issue of vicarious liability for providers, would add to the list of exemptions in Title 23 students who are participating in a University of Alaska practicum.

Number 0319

GREY MITCHELL, Director, Central Office, Division of Labor Standards & Safety, Department of Labor & Workforce Development (DLWD), remarked that in reviewing HB 539, the only concern he has relates to whether federal minimum wage requirements would affect the bill. He added that he suspects that it probably wouldn't become an issue, even though the federal requirements do not currently contain exemptions similar to those in Alaska law. Regardless, he surmised, it might be best if Legislative Legal and Research Services took a look at that issue. "I think that the bill probably does provide for a certain amount of incentive for employers to engage in these kinds of training opportunities for workers engaged in practicums that otherwise ... might have a sense of uncertainty ... due to liabilities about minimum wage or overtime under Alaska law," he concluded.

REPRESENTATIVE SAMUELS asked whether other universities [have practicums].

Number 0471

JAMES PARRISH, General Counsel, University of Alaska, relayed that other universities do have practicums as do other

educational programs in Alaska. Notwithstanding this, the reason HB 539 only pertains to the University of Alaska is because of the possibility that non-state entities might establish practicums that would take advantage of students; he opined that the public nature of the University of Alaska protects against such happening.

Number 0530

REPRESENTATIVE GRUENBERG moved to report CSHB 539(L&C) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 539(L&C) was reported from the House Judiciary Standing Committee.

**ADJOURNMENT**

Number 0537

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:40 p.m.