

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 2, 2003

1:32 p.m.

TAPE(S) 03-15

MEMBERS PRESENT

Senator Ralph Seekins, Chair
Senator Scott Ogan, Vice Chair
Senator Gene Therriault
Senator Johnny Ellis
Senator Hollis French

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 58

"An Act relating to permanent fund dividend program notice requirements and to the ineligibility for permanent fund dividends of certain persons sentenced for crimes involving mandatory motor vehicle liability insurance."

MOVED CSSB 58(JUD) OUT OF COMMITTEE

SENATE BILL NO. 59

"An Act relating to permanent fund dividend program notice requirements and to the ineligibility for permanent fund dividends of certain persons sentenced for driving while under the influence of an alcoholic beverage, inhalant, or controlled substance, or for refusal to submit to a chemical test."

HEARD AND HELD

SENATE BILL NO. 53

"An Act relating to disposition of a traffic offense involving the death of a person; 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."

SCHEDULED BUT NOT HEARD

SENATE BILL NO. 2

"An Act relating to recovery of civil damages from the parents or legal guardian of a minor; and providing for an effective date."

SCHEDULED BUT NOT HEARD

PREVIOUS ACTION

SB 58 - See Judiciary minutes dated 2/19/03

SB 59 - See Judiciary minutes dated 2/19/03

WITNESS REGISTER

Senator John Cowdery
Alaska State Capitol, Room 101
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor SB 58 and SB 59

Crystal Moore
Staff to Senator John Cowdery
Alaska State Capitol, Room 101
Juneau, AK 99801-1182

POSITION STATEMENT: Introduced SB 58 and SB 59

Tamara Cook
Legislative Affairs Agency
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Answered questions on SB 59

Larry Persily
Deputy Director
Department of Revenue
PO Box 110400
Juneau, AK 99811-0400

POSITION STATEMENT: Testified on SB 59

Linda Wilson
Public Defender Agency
Department of Administration
PO Box 110200
Juneau, AK 99811-0200

POSITION STATEMENT: Testified on SB 59

ACTION NARRATIVE

TAPE 03-15, SIDE A

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at 1:32 p.m. Present were Senators Therriault, French and Chair Seekins. Senators Ellis and Ogan arrived shortly thereafter.

He announced the committee would hear SB 155 and SB 89 on Friday, April 4, 2003.

SB 58-PFD INELIGIBILITY/MOTOR VEHICLE INSURANCE

CHAIR RALPH SEEKINS asked for a motion to adopt the committee substitute (CS) as the working document.

SENATOR GENE THERRIAULT made a motion to adopt CS \H Cook.2 4/2/03 as the working document. There being no objection, it was so ordered.

SENATOR COWDERY asked his staff to explain the changes and the reasons for those changes.

CRYSTAL MOORE, staff to Senator John Cowdery, explained CS SB 58 [Version H] amends AS 43.23.005 (g) to add "and (i)" to (d)(1) of the section and "(i)(2)" to (d)(2)(B). The latter takes out all programs and departments to which the PFD is appropriated when a person loses his or her PFD and the money stays in the general fund

SENATOR SCOTT OGAN clarified the money stays in the corpus of the permanent fund, not the general fund.

MS. MOORE agreed.

CHAIR SEEKINS added it would actually stay in the realized earnings of the reserve account.

SENATOR COWDERY said yes.

SENATOR GENE THERRIAULT explained the Legislature makes an annual appropriation for dividends; the money goes into an account and dividends are paid from that account. An individual that is convicted of a DUI wouldn't get a dividend so that money would stay in the dividend fund to be distributed equally among other eligible recipients.

Frequently, when the PFD is garnished for a court settlement, the court considers that to be the fine or penalty. He understands that the prime sponsor doesn't want the dividend to

be available to pay the fine. He intends that the violator lose the dividend and also pay the court fine.

SENATOR COWDERY said that was his intent. A DUI conviction would make an individual ineligible to receive a PFD and the funds would not be disbursed to an agency to satisfy that or any other obligation.

SENATOR OGAN asked if it is correct that the money would stay in the earnings reserve.

SENATOR THERRIAULT said it would not and restated his explanation.

CHAIR SEEKINS said the earnings reserve brings the money over to the Legislature who then makes the appropriation to the dividend account. He asked Senator Ellis if that was correct.

SENATOR JOHNNY ELLIS said that was correct and Senator Therriault clearly understood the process.

1:22 pm

SENATOR HOLLIS FRENCH asked if he understood correctly that driving without insurance and DUI convictions would be treated differently than any other PFD forfeitures.

SENATOR COWDERY replied that is correct. The language in SB 58 and SB 59 is similar, but language in SB 59 also covers municipalities.

CHAIR SEEKINS verified that the bill applies just to convictions in Alaska and isn't retroactive.

MS. MOORE confirmed; the bill applies to convictions for driving without auto insurance in Alaska only and it is not retroactive.

SENATOR OGAN made a motion to move CSSB 58(JUD) from committee with individual recommendations and attached fiscal notes. There being no objection, it was so ordered.

SB 59-PERMANENT FUND INELIGIBILITY FOR DUI

SENATOR SCOTT OGAN made a motion to adopt committee substitute (CS) version \H SB 59 for discussion.

SENATOR JOHNNY ELLIS objected for the purpose of an explanation of the changes prior to adoption.

CRYSTAL MOORE said, "The changes are the same changes as the last one as far as removing the subsection (B) and putting it into (i) as well as including municipal..."

CHAIR SEEKINS asked for confirmation that a person convicted of a DUI in a municipality would become ineligible for the PFD.

MS. MOORE said that is correct.

SENATOR ELLIS removed his objection.

SENATOR GENE THERRIAULT referred to page 3, line 21 and asked whether the law would apply retroactively from the effective date.

SENATOR JOHN COWDERY, bill sponsor, replied it was his intent that prior convictions would not apply. He asked Tamara Cook to clarify.

TAMARA COOK, Legislative Legal and Research Services Director, explained that eventually a five-year period would apply. This would include the qualifying year, and four years prior to that. If there is a conviction during any of those five years then the person will be disqualified from receiving a PFD.

Under Section 4, a special applicability section says that convictions committed before January 1, 2004 cannot be considered for purposes of determining prior convictions for purposes of this section. That language is the last sentence on page 3, lines 28-30. There is no retroactivity as of the date the bill is adopted.

SENATOR THERRIAULT asked if a person convicted for one DUI will lose just one check.

MS. COOK replied,

You'll lose the check for that year if you have a conviction during any of the period that is expressed. As a matter of fact, if you have a violation in year four then there would be a number of years before it moves down past the four-year prior. So in fact you would lose up to five years of PFDs.

SENATOR THERRIAULT asked if that is for one conviction.

MS. COOK said it is.

1:49 pm

MS. COOK explained,

Those sections, which are in paragraph 3, deal with a single conviction, but in the case of individuals who have had a prior - if they were sentenced during the qualifying year or the four years immediately before the qualifying year as a result of a conviction in-state of the DUI. And then if you look on line 15 you will see, 'and if the individual has been convicted of a prior' so they have to have had one prior as well to fall under paragraph 3.

SENATOR COWDERY asked if a DUI from last year would have any affect on a person who was also convicted of a DUI the following year.

MS. COOK said that would count as a prior. The law looks at the year in which a conviction occurs and then it looks back to see if there are any priors within a five year period.

SENATOR COWDERY asked if the dividend would be lost for that year and another four years, which was his intent.

MS. COOK said yes; including the qualifying year would take the total to five years.

SENATOR THERRIAULT asked for verification that for a first conviction a person will lose one check while a second conviction within a four-year period will result in five lost checks.

MS. COOK agreed because a first offender falls under page 1, paragraph (d) and the new subsection (B). [Subsection (d) and subparagraph (B)] It says you don't qualify for a PFD if during the qualifying year you're convicted of this crime. If you are convicted of either DUI or refusal to submit to a chemical test [under AS 28.35.030] you cannot qualify for a PFD.

The new paragraph (3) means a person doesn't qualify for a PFD if during the qualifying year and the four years immediately

prior to the qualifying year they are sentenced as a result of conviction of DUI and they have a prior DUI conviction.

SENATOR FRENCH asked for further explanation with regard to whether the money would be diverted back to the dividend fund or used to pay crime victims. He wasn't clear where version \H gave direction to shift the money to one account or the other.

MS. COOK acknowledged the question is confusing because it's a technical fix and it's not readily apparent on the face of the bill.

Under existing law, people that have been convicted of felonies and misdemeanors with priors are not eligible for PFDs. Part of the public notice statute, AS 43.23.028, considers the amount that would have been paid to individuals who were ineligible under (d) to receive a PFD. To the extent that the Legislature appropriates that amount, it doesn't need to be included in the notice requirement.

SENATOR FRENCH asked which statute was the notice requirement.

MS. COOK explained it's AS 43.23.028.

It says that everything that is subtracted from the PFD must be listed, with the exception of money that would have belonged to other people. The reasoning is that money would never have gone into the PFD check anyway. To get out from under that notice requirement, the person must be ineligible under AS 43.20.005 (d). The original versions of the bills amended that section of statute to include the additional crimes and to the ineligibility provision. When it was decided that we did not want to treat money in that fashion, ... I took the provisions that were in (d) out of (d) and I put them in bill Section 2. ... Page 1 \H SB 59. I created a new subsection (i) so that these are no longer (d) ineligibilities; they are (i) ineligibilities. As a result, the cross reference that applies to the other types of people just doesn't apply to these folks anymore.

SENATOR FRENCH asked if removing AS 43.23.005 (i) would make this money available to crime victims as it has been in the past.

MS. COOK replied the solution for that would be to return to the original version of the bill.

SENATOR FRENCH verified that would be \A version.

MS. COOK agreed; it's the same as taking the material in (i) and placing it back in (d).

She pointed out there are additional changes to the original bill that you might not want to lose. For example, the CS addresses the ordinance and the original bill doesn't.

SENATOR FRENCH noted that would make an individual ineligible if they had a municipal DUI.

MS. COOK agreed.

SENATOR THERRIAULT asked the sponsor if it was his intent that the funds would not go into the victim's compensation fund so that the court couldn't count that money toward the violator's fine.

SENATOR COWDERY said,

The reason I wanted to make them ineligible, not keep them eligible and the money to go - there's probably a long list of people that want the money - and the people that are getting the money now won't be affected unless the person they're getting it from gets another DUI.

MS. COOK wasn't sure she understood the thrust of the Senator's statement, but currently, money available under subsection (d) is available to the Legislature to appropriate among four or five different purposes that have been set out in statute. It has nothing to do with an individual's own PFD and whether or not it is subject to attachment.

2:00 pm

CHAIR SEEKINS recapped. If a person is not eligible, it stays in the corpus of the money brought to the Legislature from the permanent fund and how it is appropriated is up to the Legislature.

MS. COOK said it essentially stays as part of the dividend fund, not the permanent fund, and is distributed according to the formula for all eligible people unless the Legislature elects to appropriate it for some other purpose.

CHAIR SEEKINS interjected, "We could add it to the hold harmless funds..."

MS. COOK said the Legislature could do that with any money in the dividend fund, but the appropriation would appear in the notice.

SENATOR OGAN asked if it was correct that anyone else with an attachment would be out of luck.

MS. COOK said yes; a person that doesn't have a permanent fund dividend doesn't have one to attach.

SENATOR FRENCH asked if this bill would make all DUI offenders' PFD checks that were forfeited under a previous provision of law unavailable for distribution to crime victim funds.

MS. COOK said,

They will not be available to be distributed in any fashion except as the Legislature chooses to appropriate them. If the Legislature chooses to appropriate the money, that fact will appear as part of the notice on the recipient's PFD check stub. That money is just like any other money in the dividend fund and the Legislature can appropriate the money for any public purpose. If it does so, there is an automatic notice that, by law, the permanent fund division provides to the dividend recipients.

SENATOR FRENCH asked if PFD funds that felons are ineligible to receive are appropriated separately to the domestic violence and sexual assault programs.

CHAIR SEEKINS said, "It's just automatically deposited over there."

SENATOR THERRIAULT clarified the money shows up as a fund source for those programs.

SENATOR FRENCH asked if this bill would change that.

MS. COOK replied SB 59 would change the fact that, if the Legislature elects to take money out of the dividend fund, there will be a notice that appears on individual's checks. In that sense, it will be a harder decision for the Legislature to make.

SENATOR FRENCH asked if the dividend checks didn't already show all the deductions.

MS. COOK said it does show that.

To the extent that the monies go to the authorized uses that are contained in this bill that can be made of the PFDs of certain criminals, there is no notice on your check stub of those. As long as the Legislature appropriates only the amount that would have been paid to certain criminals under (d) who are now ineligible, but no more than that, and uses it for only the designated uses that have been set out in the statute, of which there are five potential, the Legislature is free to distribute the money as it chooses. As long as the appropriation in the budget does not exceed this amount, and is only for these uses, that fact will not appear on your dividend check.

LARRY PERSILY, Deputy Commissioner with the Department of Revenue, testified via teleconference and noted for the record that he tried to testify on SB 58 as well, but the line was unavailable.

He voiced the same concerns he did the last time the bills were heard. By denying dividend eligibility to more people, the net impact to the Child Support Enforcement Division will be that more custodial parents will not receive money due to them. Oftentimes the dividend is the only money the department is able to collect on child support cases for the year.

SENATOR THERRIAULT asked for verification that each year he might get several cents more in his dividend check that came from what would have been a convicted felon's check.

MR. PERSILY replied that is correct.

LINDA WILSON from the Public Defender Agency echoed Mr. Persily's comments about the effect the law would have. Many of the individuals the agency represents are indigent and the PFD is their primary source of income. That income pays for child support among other things and a conviction for DUI would result in that money being unavailable for child support. Oftentimes the dividend is attached to pay for other financial obligations, which would go unpaid as well if the PFD could not be attached.

Conviction for a second offense will affect payments for five years. Both SB 58 and SB 59 will certainly reduce the ability to attach PFDs to pay for obligations that are currently covered by the PFD. Both bills will eliminate the ability for money to go to the victims; instead that money will go back into the PFD for the eligible applicants to receive. People that are convicted of felonies and lose their PFDs have their checks pass to earmarked funds. Under this legislation, this wouldn't be the case for the person convicted of a DUI.

SENATOR COWDERY said everyone that gets a DUI conviction doesn't pay child support. He thought many do keep up their child support payments.

MS. WILSON pointed out that last year the Legislature increased the penalties for DUI significantly and this would be in addition to those increased penalties. Although she had no objection to the increased penalties, she opined it might be better to wait and see what the effects of that legislation were on deterrents. Those people might have to forfeit their vehicle, have a longer term for license suspension and have more difficulty getting their license reinstated. With all those increases, the loss of the PFD to cover any of the expenses would be an additional penalty.

SENATOR COWDERY replied, "That's the intent."

MR. PERSILY reported that garnished dividends comprised about 15 percent of the Child Support Enforcement Division's entire collection last year and, in total, more than \$60 million was taken from dividend checks for child support, state student loans, state welfare fraud, unemployment fraud, and for private creditors.

CHAIR SEEKINS said Senator Cowdery probably doesn't believe all those people are going to get a DUI this year.

SENATOR COWDERY added, "Stiff penalties is true, but when we put more jail time, that costs society more by housing these people..."

SENATOR THERRIault asked how much of the \$60 million was for personal garnishments.

MR. PERSILY replied about \$10 million of the \$60 million went to private individuals or creditors as opposed to state or federal agencies.

There were no further questions or discussion.

SENATOR THERRIAULT made a motion to move CSSB 59(JUD) from committee with individual recommendations and accompanying fiscal notes.

SENATOR ELLIS objected. The impact on child support and crime victims gave him pause and he didn't want to move the bill forward at that time.

SENATOR THERRIAULT withdrew his motion.

CHAIR SEEKINS held SB 59 in committee.

2:15 pm

CHAIR SEEKINS called for an at-ease.

2:19 pm

CHAIR SEEKINS reconvened the hearing and announced Senator Ogan was unavailable to introduce SB 53 so the bill wouldn't be heard that day.

There being no further business to come before the committee, Chair Seekins adjourned the meeting at 2:20 p.m.