

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 14, 2003

1:01 p.m.

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. 87

"An Act relating to principal and income in the administration of trusts and decedents' estates and the mental health trust fund; adopting a version of the Uniform Principal and Income Act; and providing for an effective date."

MOVED SB 87 OUT OF COMMITTEE

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 41

"An Act relating to medical care and crimes relating to medical care, including medical care and crimes relating to the medical assistance program."

MOVED CSSSB 41(JUD) OUT OF COMMITTEE

SENATE BILL NO. 163

"An Act relating to trusts, including trust protectors, trustee advisors, transfers of property in trust, and transfers of trust interests, and to creditors' claims against property subject to a power of appointment."

MOVED CSSB 163(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 64(JUD)

"An Act relating to court approval of the purchase of structured settlements."

MOVED CSHB 64(JUD) OUT OF COMMITTEE

SENATE BILL NO. 170

"An Act relating to the Code of Criminal Procedure; relating to defenses, affirmative defenses, and justifications to certain

criminal acts; relating to rights of prisoners after arrest; relating to discovery, immunity from prosecution, notice of defenses, admissibility of certain evidence, and right to representation in criminal proceedings; relating to sentencing, probation, and discretionary parole; amending Rule 16, Alaska Rules of Criminal Procedure, and Rules 404, 412, 609, and 803, Alaska Rules of Evidence; and providing for an effective date."

SCHEDULED BUT NOT HEARD

PREVIOUS ACTION

SB 87 - No previous action to be considered.

SB 41 - See HESS minutes dated 2/26/03 and 3/12/03.

SB 163 - No previous action to consider.

HB 64 - See Labor and Commerce minutes dated 3/27/03 and 4/3/03.

WITNESS REGISTER

Mr. Brian Hove
Staff to Senator Seekins
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Introduced SB 87 for the sponsor.

Mr. David Shaftel, Atty.
550 W 7th Ave.
Anchorage AK 99510

POSITION STATEMENT: Testified on SB 87.

Mr. Rich Hompesch, Atty.
119 N. Cushman, Suite 400
Fairbanks AK 99701

POSITION STATEMENT: Testified on SB 87 and SB 163.

Mr. Steve Greer, Atty.
Anchorage AK 99510

POSITION STATEMENT: Testified on SB 87 and SB 163.

Mr. Peter Brautigam, Atty.
Hoge and Lekisch
Anchorage AK 99510

POSITION STATEMENT: Testified on SB 87 and SB 163.

Mr. Jonathan Blattmachr, Atty.
No address provided

POSITION STATEMENT: Testified on SB 87 and SB 163.

Senator Lyda Green

Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of SB 41.

Ms. Traci Carpenter
Staff to Senator Green
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Provided explanation on SB 41

Mr. Don Kitchen, Assistant Attorney General
Director, Division of Medicaid Fraud
Department of Law
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Commented on SB 41.

Mr. Steve Branchflower, Director
Alaska Legislature
Office of Victims' Rights
1007 West 3rd Avenue, Suite 205
Anchorage, Alaska 99501-1936
POSITION STATEMENT: Commented on SB 41.

Mr. Jack Neilson, Assistant Attorney General
Department of Law
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Commented on SB 41.

Mr. Doug Blattmachr
Alaska Trust Company
POSITION STATEMENT: Testified on SB 163.

ACTION NARRATIVE

TAPE 03-21, SIDE A

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at 1:01 p.m. Present were Senators Ogan, French and Chair Seekins. Senator Therriault arrived shortly thereafter. The Chair announced SB 87 to be up for consideration.

SB 87-PRINCIPAL AND INCOME

MR. BRIAN HOVE, staff to Senator Seekins, explained that SB 87 updates the Principal and Income Act of 1984. It provides rules for the determination of whether trust or estate receipts should be considered income or principal.

CHAIR SEEKINS said this bill would bring Alaska to the very cutting edge of how trusts can be managed to give more flexibility to the trustee. He noted the summaries from legal services that would be useful for the committee to read.

MR. DAVID SHAFTEL said he is part of an informal group of attorneys and trust officers that have spent the last six years working to improve trust and estate statutes for Alaska residents primarily, but also for non-residents that want to use Alaska law in their estate planning. He pointed out that other states have actually copied Alaska statute. SB 87 is Alaska's version of the 1997 Uniform Principal and Income Act that was adopted in 1962. The 1997 version has been enacted by about 30 other states and five other states are pending. This version is modeled after the Pennsylvania version.

The new version adds a modern business entity tax investment concept to the 1962 act. One of the general problems in the principal and income area is that often trusts have been designed so that the income of the trust would be paid out to an income beneficiary(s) and the principal of the trust would go to other beneficiaries at a later point. However, there is a built-in conflict with that type of a structure. The trustee gets pressure from the income beneficiaries to invest in income producing assets and also gets pressure from the remainder persons to invest in equity assets that will grow the remainder and hold down what is distributed as income.

The new version enacts several remedies to this problem. The first is "the power to adjust," which allows the fiduciary to invest the assets of a trust to maximize the total return. If too little income is produced because of this process, the fiduciary has the power to adjust by taking some of the principal and allocating it as income.

The second remedy is to convert an income producing trust to a modern type of trust called a unitrust. A unitrust doesn't simply pay out the income earned because it defines income as a percentage of the total assets of the trust as it is valued each year. That percentage can be varied if the trustee goes to court and asks for approval for a different percentage; a beneficiary can do the same. Four percent is considered a neutral amount

that would allow growth of the principal and also provide a larger distribution to the income beneficiary.

SENATOR ELLIS arrived at 1:12 p.m.

SENATOR THERRIAULT asked if the unitrust uses a percentage market valuation methodology.

MR. SHAFTEL replied that is correct.

SENATOR THERRIAULT asked how moving principal to income would be overseen.

MR. SHAFTEL replied the concept is that if there is a strong equity market, the trustee could get a better overall return for both the income beneficiaries and the remaining persons by investing the entire estate in equities. The equities could grow in one year, but it would all be unrealized growth with no income. The trustee would set a fair percentage for distribution to the income beneficiaries as income. Certainly, the beneficiary has the discretion to review.

SENATOR THERRIAULT asked if the income beneficiary would have to sell the equity instrument to realize the income.

MR. SHAFTEL replied yes.

SENATOR OGAN said the new language on page 2, line 1, "Shall administrate a trust or estate in accordance with the governing instrument even if there is a different provision in this chapter." looks like a blank check.

MR. SHAFTEL explained many of the provisions are default provisions and allow the leeway for the person creating the trust to draft it with different rules. The default rules are designed by the Uniform Commissioners to answer questions that haven't been answered in the trust instrument; it's not that there would be abuse.

SENATOR OGAN said language on page 2, lines 6 - 8, is more troublesome. It reads: "An inference that the fiduciary has improperly exercised the discretionary power does not arise from the fact that the fiduciary has made an allocation contrary to the provision of this chapter."

That appears to mean that if someone accuses a fiduciary of improperly exercising the power that's contrary to this chapter, they are not guilty.

MR. SHAFTEL explained they are saying your trust allows for different rules and discretion is exercised under those different rules. The mere fact that there's a Uniform Act that provides the rules does not establish that your trustee following the rules in your trust has abused his or her discretion. It goes back to the default concept that we're going to provide reasonable rules if you don't have any.

This bill has one subject that deals with the tension between income and principal beneficiaries and the other provisions deal with a variety of different kinds of receipts and disbursements and provide default rules.

MR. RICH HOMPESCH, trust and estate attorney, expressed support for SB 87 and agreement with Mr. Shaftel's testimony.

MR. STEVE GREER, attorney stated support for SB 87. He said the current act governs wills and this legislation would establish rules governing revocable trusts. This is needed because the nationwide trend is to use revocable trusts in estate planning.

MR. PETER BRAUTIGAM a trust and estate attorney supported SB 87 saying this has been long overdue.

MR. JONATHAN BLATTMACHR said he is a member of the Alaska, California and New York Bars and practices primarily in New York, but does a fair amount of practice in Alaska as co-counsel. He supports SB 87 describing it as a much more flexible act that has been designed to coincide with the modern theory of portfolio management.

SENATOR THERRIAULT motioned to pass SB 87 from committee with individual recommendations. There was no objection and it was so ordered.

SSSB 41-MEDICAL CARE: CRIMES,COSTS,AUDITS

CHAIR SEEKINS announced SB 41 to be up for consideration.

SENATOR LYDA GREEN, sponsor of SB 41, said the cost of the Medicaid program has risen at an average rate of 11 percent per year since 1999. Alaska's Medicaid Program has averaged annual increases of 20 percent, which is more than \$100 million per

year and brings the total projected FY 04 program costs to just under \$1 billion in federal and state funds. Factors such as increased enrollments, increased use of health services and the increasing cost of pharmaceuticals and long term care are the greatest contributors to the rise in Medicaid Program costs. The state has limited ability to contain those costs, but they can help the program integrity by targeting waste and fraud. Nationally, the error rate of overpayments in the Medicare Program is seven percent. There is also the commonly held perception that fraud committed against the Medicaid Program nationwide amounts to ten percent. Whether those numbers are inclusive or not, it accounts for spending of \$70 to \$170 million. She asked for rigorous controls and frequent scrutiny.

She said that Alaska has no specific health care criminal theft statutes. Currently, in order to prosecute those who commit Medicaid fraud, prosecutors must use criminal statutes related to actions coincidental to the misconduct. You must prove the conduct was intentional, which is a very high standard to meet for a crime where there is no crime scene or physical evidence. Consequently, there have been few prosecutions.

SB 41 provides the legal tools for the fiduciaries of the Medicaid Program to establish program integrity and maintain maximum fiscal control. It establishes a crime of medical assistance fraud; defines the elements that constitute the fraud; and classifies the crime committed as either a felony or misdemeanor. It requires independent financial audits to identify errors, overpayments and criminal violations made to or by Medicaid providers and requires administrative action within 90 days of each audit. It completes the loop between the Department of Health and Social Services (DHSS) and the Department of Law (DOL) by requiring copies of all audits to be provided to the attorney general and directing him or her to notify DHESS of any charges of misconduct filed against a Medicaid provider. Such notice requires the department to undertake a complete review of any outstanding claims of that provider. Finally, SB 41 provides that financing of the audits may be made from the recovery due to the audits of misspent funds.

SENATOR GREEN said that recommendation 12 from the Division of Legislative Audit states, "The Legislature should consider adopting a specific criminal statute related to Medicaid fraud to enhance the Medicaid Fraud Control Unit's effectiveness."

Recommendation 7 of the same audit states, "DMA's director should provide for a full-time on-going service provider audit function."

It's vital that the State of Alaska administer its Medicaid Program in a manner that insures effective long-term cost containment while providing needed medical care to its intended recipients.

She said they must operate honestly, responsibly and in accordance with the law.

SENATOR OGAN asked why there "shall" be annual audits instead of "may".

SENATOR THERRIAULT motioned to adopt CSSSSB 41, version \S.

SENATOR ELLIS objected for an explanation of the CS.

MS. TRACI CARPENTER, staff to Senator Green, explained that version S has the same elements as version Q, but changes the title, defines medical purpose in section 1 to provide a prosecutor the tools to use in court and adds a definition of practitioner, which is already in statute.

SENATOR ELLIS asked why it's necessary to define medical purpose.

MR. DON KITCHEN, Assistant Attorney General and director of Medicaid Fraud in Alaska, answered that he did not write that section, but he understands that it was written during a court trial when the jury needed a definition. He thought Mr. Branchflower was the author.

MR. STEVE BRANCHFLOWER, Director, Office of Victims' Rights, explained that there is no definition of medical purpose in statute right now and when someone writes a prescription there is a requirement that it be based on the existence of medical necessity. Absent the medical necessity, the person that prescribes is subject to criminal prosecution. If it is found that the doctor lacks the requisite medical necessity, he or she can be prosecuted under our drug laws. The problem he had when he prosecuted doctors for violating drug laws is that the defense would always assert that there was a medical purpose and much of the trial would be spent on "a battle of the experts" trying to define it.

1:45 p.m.

SENATOR ELLIS said he is concerned with over-prescribing drugs in Alaska and asked if anything else in the CS helps with this problem.

MR. BRANCHFLOWER explained that the language on page 3 is probably the most important part of the statute dealing with prescription fraud from a theft standpoint. Previously he was commenting on cases where practitioners are prosecuted for violations of the drug laws of the state, but it's also possible to prosecute the same practitioners for a theft related offense. That would be two counts.

TAPE 03-21, SIDE B

MR. BRANCHFLOWER said the medical necessity definition is key as well as the medical assistance fraud section. Alaska is the only state that has no criminal statutes specific to the prosecution of health care practitioners.

SENATOR ELLIS asked if other states had done other things that could fit within this legislation in terms of prescription pads and tracking that could help with what he believes is a fairly significant ongoing criminal activity.

MR. BRANCHFLOWER said it is a problem and this bill is a very good start. There are employees within the Division of Medical Assistance who could assist prosecutors in identifying prescribing practitioners and it would be a matter of permitting the investigators to sit during Drug Utilization Review Subsystem (DURS) meetings, which he thought the audit suggested doing.

SENATOR ELLIS removed his objection and the CS was adopted.

SENATOR OGAN reiterated his question about using "shall" and not "may" for annually contracting independent audits.

SENATOR GREEN replied the audit function is incredibly important and has to be repeated although it is cumbersome. The "shall" language means it is required and they will continue and there will be follow up.

SENATOR OGAN asked why there is a fiscal note since the recovery is indicated to be more than the cost of the program. He also questioned whether it would go into the general fund.

SENATOR GREEN replied the language in the bill says that enough money could be appropriated to do the next year's audit. She thought it would be better than a wash.

SENATOR ELLIS asked if there was anything in the bill that went beyond the effort to contain medical fraud, because his reading of section 4 on page 7 gives him pause. He wanted to know what she wanted to accomplish with that section by using the word "seek" rather than "receive."

SENATOR GREEN replied the department couldn't be held to be responsible for an individual to receive a service they have not sought.

SENATOR ELLIS asked if that was a problem in the past.

MR. JACK NEILSON, Assistant Attorney General, said that language means that the recipient is supposed to seek only the medical care they need under the Medicaid Program. Some recipients might want a free trip to Seattle or something like that.

SENATOR ELLIS said he feels the intent language is pretty subjective. He asked what would happen to a person who was dying of cancer and was looking for other drugs or something beyond chemotherapy. Would they be more likely to be accused or convicted of Medicaid fraud if they were more aggressive in their concern about their personal care?

MR. NEILSON replied, "Most certainly not."

SENATOR OGAN asked if this language targeted people who used the emergency room to get Tylenol.

MR. NEILSON said this could be used in that instance.

SENATOR OGAN asked if this was aimed at providers mostly.

MR. NEILSON replied his understanding is that the Legislature felt recipients should be clear about what medical assistance they are seeking.

SENATOR ELLIS asked if the fiscal note anticipated any increase in Medicaid fraud investigators.

SENATOR GREEN replied they would contract with an outside attorney to do part of the legwork.

SENATOR ELLIS said he feels they will find a lot of new cases and if there aren't new investigators he questioned whether they wouldn't fall behind.

SENATOR GREEN said she didn't really know since the division was in the middle of reorganization. Many of the audits would be paper audits, which would require backup and substantiation of services, etc.

MR. BRANCHFLOWER added the Medicaid Fraud Control Unit currently has three investigator positions and two of those are filled. The third position is funded, but it is vacant. The unit has 75 percent federal funding and a 25 percent state match. So, the increased leads these audits are expected to find will result in the filling of the third position.

SENATOR THERRIAULT motioned to pass CSSSSB 41(JUD), version \S, from committee with individual recommendations. Senator Ellis objected to establish that the language in the purpose section is not intended and wouldn't lessen someone's ability if they meet the federal and state requirements to participate in the Medicaid plan and that they are just trying to establish that people should seek appropriate care.

SENATOR GREEN said that was correct.

SENATOR ELLIS asked if the medical groups in the state expressed support of the bill.

SENATOR GREEN said she received very little response.

SENATOR ELLIS said he was a little concerned about that as he would hate to see this effort undercut at some point, because they weren't aware of this.

SENATOR ELLIS removed his objection and CSSSSB 41(JUD) moved from committee.

2:18 - 2:23 p.m. - at ease

SB 163-POWERS OF APPOINTMENTS/TRUSTS/CREDITORS

CHAIR SEEKINS announced SB 163 to be up for consideration.

SENATOR THERRIAULT motioned to adopt CSSB 163(JUD), version \I. There was no objection and it was so ordered.

MR. BRAIN HOVE, staff to Senator Seekins, said this dovetails with SB 87.

In 1997, legislation was passed making Alaska one of the best trust jurisdictions nationwide. This legislation made two significant changes to existing law. First, it provided that an individual could set up a trust and have the trust as long as the family wanted. This is known as a perpetual trust. Secondly, it provides that an individual could set up a trust where he or she could be a beneficiary and have the trust's assets protected from future creditors. This is known as a self-settled spendthrift trust. Over the last six years, the states of Delaware, Rhode Island and Nevada have not only adopted similar legislation, but also incorporated improvements to certain provisions. Idaho and South Dakota have also added features to their general trust laws that now make them comparatively advantageous. SB 163 places Alaska trust legislation back on an equal footing with these states. Additionally, SB 163 codifies a number of matters that have been accepted by Alaska trust practitioners, as being the common law of the state for which there has been no statutory counterpart. Overall, these changes are designed to keep Alaska as the premier trust jurisdiction, thereby, not only retaining financial resources in state, but also continuing to attract non-resident trust assets to Alaska.

MR. JON BLATTMACHR said he is the one that originally suggested the legislation to allow the United States and Alaska in particular to capture business that was going to off-shore jurisdictions and to create trusts that last as long as the family wants. He emphasized how extraordinarily successful this legislation has been for the State of Alaska. SB 163 would help Alaska catch up and in certain cases, surpass similar legislation enacted in some other states.

MR. DOUG BLATTMACHR, Alaska Trust Company, supported the statements his brother made adding that this helps fine-tune what they have already done and brings Alaska to the forefront of being a premier jurisdiction. The legislation that has passed has brought significant business to Alaska. They typically have \$20 million to \$30 million on deposit with local banking institutions. In 2001, over \$700,000 additional life insurance

premium tax dollars came to the state and they estimate about \$500,000 came in this year from his institution alone.

MR. STEVE GREER said this bill has been two years in the making and articulates what they believe the common law to be. It clarifies some of the ambiguity that the original legislation has and incorporates some Delaware provisions.

MR. SHAFTEL said he also supports SB 163 and that this vehicle has been accepted and used widely by Alaska residents.

MR. PETER BRAUTIGAM said this legislation that they have all worked on since 1997 has been beneficial to all of their clients in Alaska that do estate planning.

MR. RICH HOMPESCH said he also supports SB 163 for all the reasons mentioned.

MR. JOHN MAINE, Director, Division of Child Support Enforcement, said he was concerned about how they could enforce child support with regard to trusts. They hope this language does not hinder their ability to collect child support.

SENATOR ELLIS asked if he didn't understand the bill well enough to know if it would hinder child support enforcement as it relates to trusts.

MR. MAINE explained that revocable trusts are something they have had to learn to live with and they have dealt with them in three or four cases. He said they removed the word "primary" on page 3, line 12, and the division could probably work with language about showing intent to defraud child support.

SENATOR THERRIAULT said that language attracted a lot of attention when the bill passed originally.

MR. GREER explained that page 3, line 12 [indisc].

TAPE 03-22, SIDE A

SENATOR ELLIS asked if the trust protection is new.

MR. GREER said the language didn't add anything. They just wanted to clarify that if there is intent to defraud a creditor, that transfer can be set aside.

SENATOR ELLIS asked for a comparison in layman's terms of what a trust protector, a trustee advisor, and a trustee would be. He asked whether trust protectors are something new that they are adding to the statute.

MR. DOUG BLATTMACHR replied yes, they are adding that to the statute, but it's something that is being used quite extensively. About 99 percent of their trusts use the trust protector concept. It's only there if the person setting up the trust wants to put in a trust protector and that is usually a trusted friend or advisor. They can remove the trustee if they don't think he is performing the job properly or for any number of other reasons without going to court.

SENATOR FRENCH asked if these are called asset protection trusts.

MR. BLATTMACHR replied that the first piece of legislation was done for two primary reasons.

To allow trusts to last more than the rule against perpetuities, which is about 80 years, because some people want to continue a trust for a longer period of time for tax and non-tax reasons.

The main reason we wanted to provide for these, what's called self settled spendthrift trusts, is where you can be a beneficiary and not have the asset attached by future creditors. We wanted to encourage people to make lifetime transfers...Right now, under the federal tax code, everybody has a million dollars that if their estate, if they die with less than a million dollars, doesn't pay any tax. Well, you can use that during your lifetime. So, many times people will have come to planners and say, 'You know, when we die, our children have to pay a fairly significant estate tax. What can we do?'

They may have \$4 million and indicate that they live well below their means and they don't need all this money and they can transfer that to their children today and get all the appreciation out of the estate. So, if they transfer a million dollars, in 20 years at historical rates you're going to have probably close to \$8 million additional in your estate to be taxed. If you kept it, your heir would pay about \$4 million in tax.

MR. BLATTMACHR said he wanted to encourage people to transfer money to their heirs, but they might transfer too much and actually need to have some money back. A beneficiary feels more comfortable making the transfer knowing that if he needs it, he can go back to the trustee. A lot of people who set up these trusts for legitimate reasons are coming back to the U.S. jurisdiction because they don't have to go off-shore to legitimately accomplish what they want to accomplish.

SENATOR FRENCH asked if Alaska had ever adopted the FTA, Uniform Fraudulent Transfer Act.

MR. GREER replied they have not adopted the act.

SENATOR THERRIAULT said the trust protector is new to statute, but not new to the state.

MR. DOUG BLATTMACHR said they have encouraged the use of a trust protector. "We think that if we can't keep the beneficiaries happy, we probably don't want the relationship anyway."

SENATOR FRENCH asked if this bill adds any protection for creditors.

MR. BLATTMACHR replied that it just clarifies some things - like what is an existing creditor and what isn't.

MR. GREER replied yes there was an addition on page 5 that could be very helpful [indisc]

SENATOR ELLIS asked how these services are marketed, especially to folks outside of Alaska.

MR. DOUG BLATTMACHR replied that in the beginning it was a very hot topic in the estate planning community and they got a lot of press. Then there were about 15 seminars across the country sponsored by New York Life, a company that markets their services at the largest estate planning conference that is held each year. As time goes on, more and more professionals started talking about it.

SENATOR THERRIAULT motioned to pass CSSB 163(JUD), version \I, from committee with individual recommendations. There was no objection and it was so ordered.

HB 64-PURCHASE OF STRUCTURED SETTLEMENTS

CHAIR SEEKINS announced HB 64 to be up for consideration.

MR. PAUL LABOLLE, staff to Representative Foster, said HB 64 sets up state oversight to the transfer of structured settlements.

There are three primary reasons to do this. One is consumer protection. In this state, we've had factoring companies acquiring structured settlements from payees at discounted rates as low as 20 cents on the dollar. Once that happens, on top of that, they now have to pay tax, whereas as a structured settlement in and of itself is a tax free settlement.

What this does is move you into the next reason, which is the good of the state. Structured settlements are primarily set up to keep a disabled person who can't work in a flow of income so that they do not become a burden on the state. If the transfer is made and they run out of money, that person now becomes a burden on the state and the second reason that this is good for the state is many of these structured settlements are written in a way that makes them non transferable and currently we have transfers happening that are technically legal, but there is no state oversight. So, nobody is watching what is happening.

The third reason is that it conforms to federal tax law, which came out last year and imposes a 40 percent prohibitive tax on structured settlement transfers unless they are approved by a qualified order, which is issued by a state.

SENATOR OGAN asked for an example of a structured settlement.

MR. LABOLLE replied that in most cases, they are a personal injury settlement, like from a car crash.

SENATOR OGAN asked if some operators are preying on people.

MR. LABOLLE replied they have a lot of anecdotal evidence of that, but that is not happening currently because of the federal tax law, which has effectively put a halt on any transfers because of the 40 percent tax on the discounted value.

SENATOR OGAN asked why there is no fiscal note.

MR. LABOLLE explained there is a zero fiscal note because the Alaska State Court does not anticipate there to be enough to justify a cost and the numbers would be absorbed into the normal workload.

CHAIR SEEKINS said he believes the legislation has merit.

SENATOR THERRIAULT asked if the federal law prohibiting any transfers was in place until the state stepped in.

MR. LABOLLE replied that is correct and referenced the Tax Law in Chapter 55 of Public Law 107-134, Section (a).

SENATOR THERRIAULT motioned to pass CSHB 64(JUD) from committee with attached fiscal notes. There was no objection and it was so ordered.

CHAIR SEEKINS recessed the meeting at 3:05 p.m. and announced he would reconvene the meeting at 5:00 p.m. the following day.