ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE
April 19, 2004
8:07 a.m.

TAPE(S) 04-44,45

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

HOUSE BILL NO. 503
"An Act relating to the tobacco product Master Settlement Agreement; and providing for an effective date."
MOVED HB 503 OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 514(FIN) am
"An Act relating to child support modification and enforcement, to the establishment of paternity by the child support enforcement agency, and to the crimes of criminal nonsupport and aiding the nonpayment of child support; amending Rule 90.3, Alaska Rules of Civil Procedure; and providing for an effective date."
HEARD AND HELD

CS FOR HOUSE BILL NO. 414(JUD)
"An Act relating to filling a vacancy in the office of United States senator, and to the definition of 'political party.'"
MOVED SCS CSHB 414(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 285(JUD)
"An Act adopting the Uniform Electronic Transactions Act; repealing certain statutes relating to electronic records and electronic signatures; amending Rule 402, Alaska Rules of Evidence; and providing for an effective date."
MOVED CSHB 285(JUD) OUT OF COMMITTEE

SENATE BILL NO. 318
"An Act relating to the individual right of Alaska residents in the consumptive use of fish and game."
SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 503
SHORT TITLE: TOBACCO MASTER SETTLEMENT AGREEMENT
SPONSOR(s): FINANCE

02/16/04	(H)	READ THE FIRST TIME - REFERRALS
02/16/04	(H)	FIN
02/25/04	(H)	FIN AT 1:30 PM HOUSE FINANCE 519
02/25/04	(H)	Moved Out of Committee
02/25/04	(H)	MINUTE(FIN)
02/26/04	(H)	FIN RPT 5DP 1NR
02/26/04	(H)	DP: HAWKER, FATE, FOSTER, HARRIS,
02/26/04	(H)	WILLIAMS; NR: STOLTZE
04/01/04	(H)	TRANSMITTED TO (S)
04/01/04	(H)	VERSION: HB 503
04/02/04	(S)	READ THE FIRST TIME - REFERRALS
04/02/04	(S)	JUD, FIN
04/16/04	(S)	JUD AT 8:00 AM BUTROVICH 205
04/16/04	(S)	Scheduled But Not Heard
04/19/04	(S)	JUD AT 8:00 AM BUTROVICH 205

BILL: HB 514
SHORT TITLE: CHILD SUPPORT ENFORCEMENT/ CRIMES
SPONSOR(s): REPRESENTATIVE(s) KOTT

02/16/04	(H)	READ THE FIRST TIME - REFERRALS
02/16/04	(H)	JUD
02/23/04	(H)	JUD AT 1:00 PM CAPITOL 120
02/23/04	(H)	Heard & Held
02/23/04	(H)	MINUTE(JUD)
02/27/04	(H)	JUD AT 1:00 PM CAPITOL 120
02/27/04	(H)	Moved CSHB 514(JUD) Out of Committee
02/27/04	(H)	MINUTE(JUD)
03/03/04	(H)	JUD RPT CS(JUD) 5DP
03/03/04	(H)	DP: GARA, SAMUELS, GRUENBERG, OGG,
03/03/04	(H)	MCGUIRE
03/03/04	(H)	FIN REFERRAL ADDED AFTER JUD
03/08/04	(H)	FIN AT 1:30 PM HOUSE FINANCE 519
03/08/04	(H)	Heard & Held
03/08/04	(H)	MINUTE(FIN)
03/23/04	(H)	FIN AT 1:30 PM HOUSE FINANCE 519

03/23/04	(H)	Moved CSHB 514(FIN) Out of Committee
03/23/04	(H)	MINUTE(FIN)
03/24/04	(H)	FIN RPT CS(FIN) 4DP 3NR 2AM
03/24/04	(H)	DP: HAWKER, FOSTER, FATE, WILLIAMS;
03/24/04	(H)	NR: JOULE, CHENAULT, HARRIS;
03/24/04	(H)	AM: STOLTZE, CROFT
03/31/04	(H)	TRANSMITTED TO (S)
03/31/04	(H)	VERSION: CSHB 514(FIN) AM
04/01/04	(S)	READ THE FIRST TIME - REFERRALS
04/01/04	(S)	JUD, FIN
04/16/04	(S)	JUD AT 8:00 AM BUTROVICH 205
04/16/04	(S)	Scheduled But Not Heard
04/19/04	(S)	JUD AT 8:00 AM BUTROVICH 205

BILL: HB 414
SHORT TITLE: U.S.SENATE VACANCY/DEF OF POLITICAL PARTY
SPONSOR(s): JUDICIARY

01/28/04	(H)	READ THE FIRST TIME - REFERRALS
01/28/04	(H)	STA, JUD
02/03/04	(H)	STA AT 8:00 AM CAPITOL 102
02/03/04	(H)	Heard & Held
02/03/04	(H)	MINUTE(STA)
02/04/04	(H)	JUD AT 1:00 PM CAPITOL 120
02/04/04	(H)	-- Meeting Canceled --
02/05/04	(H)	STA AT 8:00 AM CAPITOL 102
02/05/04	(H)	Moved CSHB 414(STA) Out of Committee
02/05/04	(H)	MINUTE(STA)
02/09/04	(H)	JUD AT 1:00 PM CAPITOL 120
02/09/04	(H)	<Bill Hearing Postponed to 2/16/04>
02/12/04	(H)	STA RPT CS(STA) 3DP 1DNP 3NR
02/12/04	(H)	DP: SEATON, COGHILL, WEYHRAUCH;
02/12/04	(H)	DNP: BERKOWITZ; NR: GRUENBERG, HOLM,
02/12/04	(H)	LYNN
02/16/04	(H)	JUD AT 1:00 PM CAPITOL 120
02/16/04	(H)	Moved CSHB 414(JUD) Out of Committee
02/16/04	(H)	MINUTE(JUD)
02/18/04	(H)	JUD RPT CS(JUD) NT 5DP 2NR
02/18/04	(H)	DP: SAMUELS, ANDERSON, OGG, HOLM,
02/18/04	(H)	MCGUIRE; NR: GRUENBERG, GARA
03/04/04	(H)	TRANSMITTED TO (S)
03/04/04	(H)	VERSION: CSHB 414(JUD)
03/05/04	(S)	READ THE FIRST TIME - REFERRALS
03/05/04	(S)	STA, JUD
03/18/04	(S)	STA AT 3:30 PM BELTZ 211
03/18/04	(S)	Moved SCS CSHB 414(STA) Out of Committee

03/18/04	(S)	MINUTE (STA)
03/22/04	(S)	STA RPT SCS 3DP 1DNP SAME TITLE
03/22/04	(S)	DP: STEVENS G, COWDERY, STEDMAN;
03/22/04	(S)	DNP: GUESS
03/24/04	(S)	JUD AT 8:00 AM BUTROVICH 205
03/24/04	(S)	Heard & Held
03/24/04	(S)	MINUTE (JUD)
04/19/04	(S)	JUD AT 8:00 AM BUTROVICH 205

BILL: HB 285
SHORT TITLE: ELECTRONIC TRANSACTIONS & SIGNATURES
SPONSOR(s): REPRESENTATIVE(s) MCGUIRE

04/25/03	(H)	READ THE FIRST TIME - REFERRALS
04/25/03	(H)	L&C, JUD
05/07/03	(H)	L&C AT 3:15 PM CAPITOL 17
05/07/03	(H)	Scheduled But Not Heard
05/09/03	(H)	L&C AT 3:15 PM CAPITOL 17
05/09/03	(H)	Scheduled But Not Heard
05/12/03	(H)	L&C AT 3:15 PM CAPITOL 17
05/12/03	(H)	Moved Out of Committee
05/12/03	(H)	MINUTE (L&C)
05/13/03	(H)	L&C RPT 2DP 4NR
05/13/03	(H)	DP: LYNN, ANDERSON; NR: GATTO,
05/13/03	(H)	CRAWFORD, GUTTENBERG, DAHLSTROM
01/21/04	(H)	JUD AT 1:00 PM CAPITOL 120
01/21/04	(H)	Moved CSHB 285(JUD) Out of Committee
01/21/04	(H)	MINUTE (JUD)
01/23/04	(H)	JUD RPT CS (JUD) 7DP
01/23/04	(H)	DP: SAMUELS, HOLM, GARA, OGG,
01/23/04	(H)	GRUENBERG, ANDERSON, MCGUIRE
02/19/04	(H)	TRANSMITTED TO (S)
02/19/04	(H)	VERSION: CSHB 285(JUD)
02/20/04	(S)	READ THE FIRST TIME - REFERRALS
02/20/04	(S)	L&C, JUD
03/25/04	(S)	L&C AT 1:30 PM BELTZ 211
03/25/04	(S)	Moved CSHB 285(JUD) Out of Committee
03/25/04	(S)	MINUTE (L&C)
03/26/04	(S)	L&C RPT 2DP 2NR
03/26/04	(S)	DP: BUNDE, DAVIS; NR: FRENCH,
03/26/04	(S)	STEVENS G
04/19/04	(S)	JUD AT 8:00 AM BUTROVICH 205

WITNESS REGISTER

Mr. Mike Barnhill
Assistant Attorney General

Department of Law
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Answered questions about HB 503

Mr. John Main
Staff to Representative Kott
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Presented HB 514 for the sponsor

Ms. Landa Baily
Special Assistant
Department of Revenue
PO Box 110400
Juneau, AK 99811-0400
POSITION STATEMENT: Answered questions about HB 514

Mr. Heath Hilyard
Staff to Representative McGuire
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Presented HB 414 for the sponsor

Ms. Vanessa Tondini
Staff to the House Judiciary Committee
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Presented HB 285

Ms. Sara Felix
Assistant Attorney General
Department of Law
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Answered questions about HB 414

ACTION NARRATIVE

TAPE 04-44, SIDE A

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at 8:07 a.m. All members were present. The committee took up HB 503.

HB 503-TOBACCO MASTER SETTLEMENT AGREEMENT

MR. MIKE BARNHILL, Assistant Attorney General, Department of Law (DOL), told members that HB 503 seeks to close a loophole in a statute that was enacted pursuant to the tobacco Master Settlement Agreement. He gave the following background of that agreement.

In 1997 or 1998, Alaska, in conjunction with 46 other states, sued the major tobacco companies, settled the case, and entered into an agreement called the Master Settlement Agreement (MSA). Under that agreement, the state relinquished its claims against the tobacco companies for money lost related to Medicaid payments. In exchange, the tobacco companies agreed to an indefinite payment of money to the states. As part of that settlement, the states enacted a non-participating manufacturer (NPM) statute. Alaska enacted its NPM statute in 1999, with the intent of leveling the playing field between those tobacco manufacturers that participated in the MSA and those that did not. Without a way to level the playing field between the two groups, the NPMs could potentially keep their prices of cigarettes low, grab market share from the participating companies, and undermine the entire MSA. Alaska's NPM statute requires all non-participating manufacturers to deposit into an escrow account a certain amount of money, per cigarette, to mimic the amount the participating manufacturers are paying the states. This year that amount is about 2 cents per cigarette.

Under Alaska's NPM statute, the money in the escrow account can be used for three reasons. First, if the state or someone in the state sues a NPM, the money can be released to pay for a judgment against the NPM or for a settlement. Second, the excess of the money in the escrow account over the amount the NPMs would have paid the state had they participated in the agreement can be withdrawn. Third, the money can be taken out after 25 years. The loophole in the law is in the second provision.

MR. BARNHILL referred to a spreadsheet in members' packets to explain the loophole and gave the following scenario.

If a hypothetical company named Cheap Smokes sold 100 million cigarettes per year and participated in the MSA, it would pay $2 million to the state. Under the MSA, that payment would be disbursed among all 46 states and of that amount Alaska would receive about $6,800; Washington about $41,000; California about $255,000; and Oregon about $23,000. Because Cheap Smokes is a NPM, it would be depositing 2 cents per cigarette into an escrow account. If that company sold 1 million cigarettes in Alaska, 20 million in Washington, 75 million in California, and 4 million

in Oregon, it would be required under Alaska law to deposit $20,000 in Alaska; $400,000 in Washington; $750,000 in California; and $80,000 in Oregon.

Under the second part of the MSA escrow release provisions, Cheap Smokes could get reimbursed for the amount it paid in excess of the MSA. Under the MSA, Alaska would only receive $6,800 so Cheap Smokes would be reimbursed $13,800. Cheap Smokes would receive substantial reimbursements from each state.

He explained the loophole is that assuming that Alaska, Washington, California and Oregon are the only states that Cheap Smokes sells in, the total amount it can be reimbursed is $1.6 million, because had Cheap Smokes been a participant in the MSA, it would have paid a total of $2 million. Because it is not a participant and concentrates its market in four states, it gets reimbursed $1.6 million so is only depositing $400,000, which amounts to less that one cent per cigarette. This enables Cheap Smokes to sell cigarettes cheaper than participating manufacturers and will create problems for the MSA.

Alaska has not experienced this problem yet and has only had one request for an escrow release since 1999. However, other states with larger markets have had significant problems. NPMs are concentrating their markets in those states. They ask for their money back and are able to expand their market share by under pricing MSA participants.

HB 503 will solve that problem by assuring that NPMs put 2 cents per cigarette in an escrow account and not allow them to get reimbursed for more than that, irrespective of whether they had participated in the MSA. He explained that HB 503 contains a number of contingent provisions in Section 2 in case this fix is found to be unconstitutional. Section 2 says an NPM cannot be reimbursed except to pay for a judgment or if the money has been held in an escrow account for 25 years. If that provision is found to be unconstitutional, the bill reverts to the status quo.

MR. BARNHILL informed members that HB 503 was drafted by a working committee of the national committee of attorneys general in conjunction with the participating manufacturers. It was unanimously endorsed last December by all of the attorneys general at the National Association of Attorneys General meeting. To date, it has been enacted by 29 states.

SENATOR FRENCH asked Mr. Barnhill to describe how that anomaly crept into the MSA.

MR. BARNHILL said he believes the assumption, when drafting the NPM statute for states to enact in 1998, was that all manufacturers would sell to all states. The rationale behind maximizing the amount deposited into escrow to reflect the states' interest in the MSA was that manufacturers' sales in each state would be the same. He does not believe anyone contemplated the possibility that smaller companies would concentrate their markets in a few states.

With no further interest, CHAIR SEEKINS closed public testimony.

SENATOR THERRIAULT moved HB 503 from committee with individual recommendations and its accompanying fiscal note.

CHAIR SEEKINS announced that without objection, the motion carried.

HB 514-CHILD SUPPORT ENFORCEMENT/ CRIMES

MR. JOHN MAIN, staff to Representative Pete Kott, sponsor of HB 514, told members that HB 514 touches on six major areas of the child support statutes. First, it raises criminal non-support from a misdemeanor to a felony. Currently 33 states and the federal government classify criminal non-support as a felony. Raising that crime to a felony will give the Child Support Enforcement Division (CSED) a tool to negotiate for payment of child support. Individuals sometimes do not pay child support knowing the penalty is a misdemeanor.

MR. MAIN stated that since 2000, the court has convicted 24 people of non-payment of child support. The difference between a misdemeanant and a felon is the conduct. CSED is forced to treat both the individual who owes $5,000 and the individual who owes $60,000 the same and believes that is unfair. The statute of limitations for a misdemeanor is five years and 10 years for a felony. Sentencing is also a major factor: a misdemeanor can carry up to 10 years of informal probation and one year suspended sentence; a felony carries up to ten years of formal probation and a five-year suspended sentence. CSED monitors people on informal probation, while the Department of Corrections monitors people on formal probation.

MR. MAIN said the felony charge would apply to parents who owe at least $10,000 and are in arrears for two years. In

comparison, an individual who steals or conceals $500 worth of merchandise would also be charged with a class C felony, as would an individual who defrauds a creditor for $500 or more.

MR. MAIN said HB 514 also makes aiding and abetting in the non-payment of child support a class C felony. That would apply to individuals who help a person conceal assets or an employer who knows an employee owes child support.

The third area of the statute that would be affected applies to judicial jurisdiction. The change would give the court the authority to require obligors to pay on an approved payment plan, to seek work, and to submit permanent fund dividend applications if they qualify. The bill will allow obligors, who have struggled for years to pay a large debt, to resume paying that obligation and reduce the debt through a forgiveness provision. CSED has been unable to collect about $250 million in arrears. At the same time, many obligors have been unable to pay because of the amount of debt that has been imposed upon them. In some cases, a man might learn that he is a father and that he owes $30,000 at the same time. That puts a tremendous burden on that individual and his family. CSED is asking that it be able to provide those individuals some relief from a large state debt.

MR. MAIN said the next change in the bill will allow CSED to establish paternity of the children of victims of rape and incest for the purpose of collecting child support. CSED believes that omission was an oversight when the law was enacted. In those situations, CSED would only establish paternity if requested by the victims.

The last change pertains to modifications to amounts paid. Right now, CSED reviews child support obligations every three years and if the obligor's income has changed 15 percent, the monthly payment is adjusted. However, the federal government has determined that CSED must modify the monthly payment amount no matter how much the obligor's income has changed. As a result, CSED will not be in compliance with the federal law if this provision is not adopted and could face the loss of $14 to $17 million in federal funds, which would affect both CSED and the Temporary Assistance for Needy Families' (TANF) program.

8:30 p.m.

SENATOR OGAN asked Mr. Main how he reconciles creating a crime for non-payment of debt with the provisions in art. 17 of the

Alaska Constitution, which says there shall be no imprisonment for debt.

MR. MAIN said that criminal non-support was created in 1971 to address the fact that children need to be supported. He lamented the need for child support enforcement and that both parents are not always involved with their children. He said non-support is a travesty on society and he sees it as something that should not be tolerated. He does not believe that imposing penalties will resolve the problem but it will awaken people to the fact that if they don't pay, they will not be free. He noted that this law places a tremendous burden on some people to pay child support but, at the same time, he hopes those parents who pay are involved with their children on a regular basis. This bill will stiffen penalties for those people who are able to support their children but do not do so and will help those who are unable to pay due to lack of funds.

SENATOR OGAN said a civil process exists for all other debts. He then asked if all child support cases are automatically referred to CSED or whether parents can make arrangements on their own upon divorce.

MR. MAIN said parties can be exempted from using CSED if a specific process is used. The parties must petition the court at the time of divorce to handle the payments between themselves. In those cases, the payments are routed through CSED for recordkeeping purposes but CSED takes no enforcement action unless requested by one of the parties.

CHAIR SEEKINS asked if CSED requires that a minimal amount be paid for child support by the non-custodial parent.

MR. MAIN said the minimum is $50.

CHAIR SEEKINS asked if a divorcing couple decides to deal with that payment independent of CSED, and the non-custodial parent makes no payment for 24 months, that person could be charged with a felony.

MR. MAIN said the 24-month provision was included in the bill because some people have the ability to pay but do not even pay the minimum amount.

CHAIR SEEKINS asked if the 24-months must be consecutive.

MR. MAIN said yes. He noted that when these cases are referred to the investigative section at CSED, the investigators make sure that all of the criteria that applies to the civil process have been met; then the case is referred to the attorney general. He clarified that the c felony applies to a person who owes at least $10,000 or is in arrears for 24 months or more.

CHAIR SEEKINS asked if the aggrieved parent would go to CSED or the attorney general to charge the obligor with a felony.

MR. MAIN said the aggrieved parent would go to CSED, and an investigation would ensue to determine whether or not to pursue the case.

CHAIR SEEKINS asked if CSED would give the obligor an opportunity to pay.

MR. MAIN said the obligor would have been given several opportunities to pay the funds but when CSED has found a lack of cooperation and ability to pay, it will turn the case over to the Department of Law.

CHAIR SEEKINS noted that Mr. Main likened this crime to thievery and asked if he believes that support payments in arrears have been stolen from the child.

MR. MAIN said that is the irony because in actuality, it is like taking money from a child's piggy bank. He said when parents bring children into the world, those children should expect to be emotionally and financially supported. A parent who does not do that places a burden on the state or someone else to do that job and is taking away something from that child.

CHAIR SEEKINS asked if a non-custodial parent made one payment after 30 months, a second 24-month cycle would begin.

MR. MAIN was unsure how CSED would deal with that but thought it might lower the penalty if it chose to charge that individual for the 30 months of non-payment. He noted that CSED will have to choose the most egregious cases to deal with.

CHAIR SEEKINS noted the crime is a misdemeanor at 23 months but a felony at 24 months. He asked if at 24 months the statute of limitations is expanded to bring a claim against a person.

MR. MAIN said that is correct.

SENATOR OGAN asked about the current sanctions for non-payment of child support.

MR. MAIN responded that depending on the amount owed, the person is reported to the credit bureau, can lose a permanent fund dividend, can lose a driver's license, can have an occupational license revoked or suspended, and could lose a passport. All of those things might occur yet an individual may still choose not to comply.

SENATOR OGAN expressed concern that an obligor would need an occupational license and driver's license to make a living to pay the debt and that HB 514 will add another level of difficulty by making non-payment a felony. He felt that approach is counterproductive.

SENATOR ELLIS asked for further explanation of the forgiveness provisions.

MR. MAIN deferred to Ms. Baily.

MS. LANDA BAILY, special assistant to the Department of Revenue, said that CSHB 514(FIN)am contains some minimum qualifications for participation in the forgiveness program. Those qualifications will ensure that only those people who should qualify do, without compromising collectible state debt. She noted a proposed amendment had been distributed.

SENATOR ELLIS asked Ms. Baily for a comparison [of the contents in the proposed amendment] to the approach contained in CSHB 514(FIN)am.

MS. BAILY said CSHB 514(FIN)am says the agency "may", by regulation, establish procedures..., while the amendment changes that language to read the agency "shall", by regulation, establish procedures and standards for forgiveness and arrearage programs. The second change authorizes withholding payments from a self-employed person. The third change says for each year a person participates in the forgiveness program, up to 20 percent of his or her indebtedness could be forgiven. She said the key will be to make sure the program does not imperil the federal incentive funding that requires Alaska to keep a competitive profile. CSED is largely funded with federal funds and the state relies on those funds to benefit the children of Alaska. She added that the amendment also requires CSED to adopt regulations within nine months of the effective date of the bill.

MS. BAILY maintained that CSED and the commissioner are committed to a program that addresses non-collectible debt. DOR needs to know why that debt is uncollectible in order to come up with tight regulations that will create an effective process. The amendment will allow CSED to tailor the regulations to get the right people into the program by looking at employment opportunities in Alaska and using effective tools already available in the state.

MR. MAIN explained how the forgiveness program would work. First, CSED and the obligor must agree to a payment plan after the obligor has met the criteria. If the obligor complies with the payment plan, CSED could forgive up to 20 percent [per year] of the state debt as long as the obligor continues in the program. As an example of an obligor who might qualify, he described a man who was not informed he had fathered a child. The mother had moved to Alaska and applied for public assistance when the child was born. The father was not named right away but was eventually found living in Mississippi. He had worked on an oilrig for three years making about $75,000 per year but was laid off from that job and took other employment at the minimum wage. CSED determined the father owed roughly $30,000, primarily due to the public assistance payments collected by the mother. The father is unable to pay that amount because he is supporting another family and is barely making ends meet. Under the arrearage compromise program, CSED would be able to work with him and set up a program where he would pay a monthly obligation and simultaneously have his debt reduced.

TAPE 04-44, SIDE B

SENATOR THERRIAULT asked for clarification of the provision that allows the court to require the non-custodial parent to work. He said he sees that as more of a problem for a non-custodial mother who might remarry. He questioned whether the court could require the woman to work so that the children could receive a higher payment.

MR. MAIN said the court could do that. He explained that two jurisdictions within the state have made different determinations regarding whether the courts can require individuals to seek work: one believes it can, the other does not. That is why that provision is in the bill. He said the obligor would have to prepare applications, go to interviews and report that activity to the court.

SENATOR THERRIAULT asked if any penalty exists for a person who refuses to take any job or quits a series of jobs.

MR. MAIN said the court could impose sanctions against that individual, such as contempt of court.

CHAIR SEEKINS said in the case of a father who does not know he has a child, the forgiveness would be limited to the debt owed to the state for public assistance payments made on behalf of the child and not for other child support that the state was not involved in.

MS. BAILY clarified that the forgiveness section addresses state-owed arrearages only. Those arrearages occur when a child is in foster care or on public assistance. She then noted that Diane Wendlandt and John Mallonee were available to answer questions via teleconference.

MS. DIANE WENDLANDT, Assistant Attorney General, Department of Law (DOL), said the forgiveness provision in the bill is limited to state debt because the state would not have the ability to settle private debts at this time because private debt is owed to the parent and not to the state.

CHAIR SEEKINS asked if the statute of limitations differs for private versus state debt.

MS. WENDLANDT said there are some differences but not in terms of the collection. Once a child support order has been issued, the custodial parent may continue to collect until that debt is paid, regardless of whether the debt is state or private.

9:00 a.m.

CHAIR SEEKINS asked how far back the state can go to collect arrearages if a child is 17 years old when paternity is determined.

MS. WENDLANDT said under the current statute of limitations, DOL can go back six years to establish state debt. For private debt, however, the custodial parent can go back to the date of birth.

SENATOR OGAN asked for a description of the federal compliance sections of the bill that must pass for the state to receive federal funds.

MR. MAIN said Section 15 must pass.

CHAIR SEEKINS entertained a motion to consider the proposed amendment [Amendment 1], which reads as follows.

A M E N D M E N T 1

OFFERED IN THE SENATE JUDICIARY COMMITTEE
TO: CSHB 514(FIN)am

Page 5, Section 12, beginning on line 20, and ending on page 6, line 18:

Delete all material and insert:

AS 25.27.020(d) is amended by adding new subsections to read:

(f) The agency shall, by regulation, establish procedures and standards for the forgiveness of an arrearage owed to the state under AS 25.27.120. The agency may forgive arrears under this section, with the approval of the commissioner and without the approval of the Department of Law, if

(1) the obligor

(A) has or obtains employment for which income withholding is initiated under AS 25.27.250 within 60 days of the date the obligor is approved for the forgiveness program;
(B) enrolls in and successfully completes an employment training program approved by the agency and obtains employment for which income withholding is initiated under AS 25.27.150 within 30 days after completion of the employment training program; or
(C) enters into an agreement with the agency for alternative payment procedures, if the agency determines that there are unusual circumstances justifying a waiver of income withholding; and

(2) is in compliance with additional requirements and limitations imposed by the agency by regulation to assure that a forgiveness is in the best interest of the child and of the state; and

(3) the obligor makes monthly payments pursuant to a payment agreement approved by the agency; if the obligor misses more than two monthly payments in a calendar year, or more than

two consecutive payments without approval of the agency for good cause, the obligor will not be eligible to continue in the arrears forgiveness program under this section.

(g) During each year in which an obligor complies with the requirements for the forgiveness of an arrearage under (f) of this section and any regulations adopted by the agency under that subsection, the agency may forgive up to 20 percent of the total arrearage owed to the state under AS 25.27.120, including any interest owed on that debt. For purposes of determining the amount of the forgiveness, the arrears will be calculated as of the date the obligor is approved for participation in the forgiveness program.

(h) The forgiveness program authorized under (f) and (g) of this section may not be implemented until the agency has adopted regulations setting standards and procedures. Regulations under this section must be adopted within nine months after the effective date of this section. The agency may establish by regulation requirements and limitations on eligibility in addition to those stated in (f) and (g) of this section.

SENATOR THERRIAULT moved to adopt Amendment 1.

SENATOR ELLIS objected and asked if the House contemplated Amendment 1 and rejected it.

MR. MAIN said the House did not consider this particular language but when DOR told Representative Kott the amendment would improve CSED's ability to compromise arrearages, he felt it would be fine. He noted it was not imposed upon Speaker Kott. The amendment will make the language cleaner, the program more effective and allow obligors who are burdened by debt to be part of society again.

SENATOR ELLIS asked if the distinction between the private and state portion of the debt is that the state debt is only that portion paid through temporary assistance to needy families so this will not apply to the amount owed directly to the custodial parent.

MR. MAIN said that is correct.

SENATOR ELLIS asked why the forgiveness amount is "up to 20 percent." He said that amount will not repair a person's credit or finances in any way.

MR. MAIN said any number could be used but the goal is to get the obligor to begin paying ongoing child support. The federal and state governments believe that as more obligors pay their ongoing payments, the better those people will feel and will have relationships with their children. Also, custodial parents need assurance that they will receive some amount of support on an ongoing basis. This bill seeks to get those people who are struggling to make ongoing payments to pay some amount. He said some people feel they will never get out from under that debt so this provision will give people the possibility of eventually being debt free after five years.

SENATOR ELLIS asked for more information on who has a statutory duty to disclose [regarding the aiding and abetting provision].

MR. MAIN said that would be an employer or individuals who have knowledge that the person owes child support, such as a current wife or a bookkeeper. Anyone who receives a withholding order would be statutorily responsible.

SENATOR FRENCH asked for the citation.

MS. WENDLANDT said the statutes are AS 25.27.060, AS 25.27.085 and AS 25.27.062.

SENATOR ELLIS asked why Amendment 1 includes the words “and without the approval of the Department of Law,”. He asked if the obligor meets the other requirements, the commissioner would have the sole authority to grant up to 20 percent forgiveness of the state debt.

MR. MAIN said the belief is that CSED has a great many qualified individuals that should be able to approve the forgiveness without DOL’s approval.

SENATOR ELLIS asked if CSED staff will make recommendations to the commissioner of revenue, who will sign off on them. He said he does not have a problem with not requiring the approval of DOL, but he has heard many people argue over the years that CSED is an agency that needs outside review.

CHAIR SEEKINS said those arguments probably did not relate to state debt forgiveness.

MS. BAILY added that DOL will help promulgate CSED’s regulations to avoid any problems associated with the public purpose

doctrine or equal protection, regarding who gets to participate, and to protect the best interests of the children and the state.

SENATOR THERRIAULT asked what incentive this will provide to prevent people from going into default so that they qualify for the forgiveness provision.

MS. BAILY said that is why DOR feels it is necessary to make sure that the best interest of the child and the state is the statutory direction. She said it is her understanding that no one wants to create an incentive for an obligor to rack up child support to qualify for forgiveness but no one wants to punish those who have lived up to their obligations. DOR believes CSED can design regulations to really look at who owes, why they owe, and whether they intentionally did not pay to qualify for forgiveness of their arrearages. She noted the federal office of child support enforcement has consistently warned states to not create that sort of incentive.

SENATOR THERRIAULT asked if the regulations will have some kind of an income limit so that if a person had a lot of assets, they would be calculated into the equation.

MS. BAILY said she believes CSED will evaluate model legislation from other states to see what will work in Alaska. Alaska differs from other states in terms of employment and transportation. CSED will also look at a person's health, whether the person is incarcerated, and whether the person has drug, alcohol or mental health issues. If so, CSED hopes to tie into the therapeutic court system and require parenting classes in some cases.

SENATOR ELLIS withdrew his objection to the adoption of Amendment 1.

SENATOR FRENCH commented that it appears that the crime of aiding and abetting must be intentional. A House committee considered adding the words "intentionally" and "unreasonably," but those words do not appear in the CS. He asked for an explanation.

MR. MAIN said DOL testified [before a House committee] that adding the word "unreasonably" would create an obstacle to bringing a case to court.

SENATOR FRENCH said he objects to the drafting style of the CS because the word "intentionally" appears on line 20 and that

word modifies three subsections. However, the subsections, particularly the third one, are worded so that a "knowingly" state of mind could apply. He suggested removing the word "intentionally" on line 20 and specifying the state of mind in each subsection.

MR. MAIN said the Criminal Division of DOL reviewed the language in the CS and felt it was adequate.

MS. WENDLANDT recalled that "unreasonably" was included in a prior version but prosecutors felt the inclusion of that word would make prosecuting that crime very difficult.

MS. BAILY added the House Judiciary Committee discussed this issue, where Anne Carpeneti looked at that closely. She noted that "unreasonably" would include a lot of people who might not want to take money away from their existing family, such as a new spouse, and that would not be unreasonable.

CHAIR SEEKINS commented that Senator French's concern is the structure of that section. He agreed that language is awkward and felt Senator French's suggested language is favorable. He noted his intention to hold the bill and have that section redrafted.

SENATOR OGAN noted his desire to work with the bill sponsor on the question of the constitutionality of debtor's prison.

SENATOR FRENCH asked if these cases will be prosecuted by one prosecutor who works two-thirds of her time on these cases.

MR. MAIN said that is correct.

SENATOR FRENCH pointed to the indeterminate fiscal note and asked if CSED intends to expand that prosecutor's hours or give her additional resources. He noted that a felony charge will require a grand jury hearing, which will drive the cost of prosecution up. He opined that if she is paid for two-thirds time, it is unfair to give her a full time caseload. He then asked for the list of recreational licenses that will be revoked if a person does not follow this law.

MR. MAIN said recreational licenses are sport fishing and sport hunting licenses.

SENATOR OGAN repeated his concern that this bill will not let a person own a business, drive, or feed himself with fish and game.

CHAIR SEEKINS replied, "With that, I think this is a very interesting bill. I think the intent is not to allow people to live large by stealing from their kids and I agree with that." He then set the bill aside and announced a five-minute recess.

Upon reconvening, the committee took up HB 414.

9:35 p.m.

HB 414-U.S.SENATE VACANCY/DEF OF POLITICAL PARTY

MR. HEATH HILYARD, staff to Representative Lesil McGuire, informed members that version W was before the committee. He explained that the definition of "political party" was reinserted in version W, which was present in the original version of the bill.

CHAIR SEEKINS asked Mr. Hilyard if he wanted to add any information to his last presentation on the bill.

MR. HILYARD said the question of why the language regarding political parties was included has been discussed, particularly by the House State Affairs Committee. He stated, "Our main concern was to address some of the concerns brought up, and the court order and the litigation from last fall. I believe that does that, and that's exactly why we included the language originally."

SENATOR FRENCH noted one CS contained intent language regarding the legislature's desire to not tamper with this law for the next two years and asked what happened to that language.

MR. HILYARD said he cannot say why that language was removed from version W.

SENATOR FRENCH said his concern goes back to the minimum wage issue a few years ago. The voters adopted a ballot proposition for a minimum wage increase with inflation proofing. Then, the legislature passed a law with the same provisions and, before inflation proofing ever took effect, the legislature voted to strip out the inflation proofing provision, thereby negating the will of the people. He again asked what happened to that intent

language that would have expressed the legislature's intent to not tamper with the statute for the next few years.

SENATOR OGAN commented that the will of the people was expressed when they approved the Constitution, which allows the legislature to amend an initiative at any time. He said that constitutional provision recognizes the fact that initiative promoters might have certain agendas and that they do not have the ability to have their wordsmithing scrutinized by legislative drafters, resulting in unintended consequences.

SENATOR THERRIAULT pointed out the minimum wage initiative had two sections: raising the minimum wage and inflation proofing. Although the people approved that initiative, he sides with Senator Ogan in that the legislature has the constitutional authority to make adjustments. He then asked Mr. Hilyard why the definition of "political party" was originally included in the bill.

MR. HILYARD repeated that the concern was to address some of the points brought up in the court order last fall.

SENATOR THERRIAULT asked if the court made a finding based on the merits of the case and issued a temporary order granting the injunction.

MR. HILYARD said that is his understanding.

MS. VANESSA TONDINI, staff to Representative McGuire, told members the second part of the bill addresses litigation brought by the Green Party against the Division of Elections. That litigation grew out of the Green Party's dissatisfaction with the interplay between the results of the 2002 gubernatorial election and the definition of "political party" in the Alaska Elections Act. That definition currently requires a party to nominate a candidate for governor who manages at least three percent of the popular vote in a gubernatorial election. Alternatively, a party can register voters under its banner if the number equals three percent of the total number of votes cast for governor in the immediately preceding general election.

MS. TONDINI explained that Diane Benson, the Green Party candidate in 2002, garnered less than the three percent needed to maintain Green Party status. In the lawsuit, the Green Party asked the court to enjoin enforcement of the law for the period through the 2004 election so it could continue to participate in politics for the benefit of being a full political party. Judge

Reese seceded to the Green Party's request and granted a preliminary injunction on November 3, 2003. Judge Reese noted in his court order that the Green Party had been successful in winning over six percent of the votes in races for federal elections, namely for U.S senator and U.S. representative. He determined that the Green Party would face irreparable harm if denied party status. Therefore, HB 414 directly responds to the court order by expanding the types of statewide races that the Division of Elections can review to ascertain whether a party enjoys enough popular support to merit official status. The House Judiciary Committee felt it was its place to fix the definition to undo the gridlock caused by the injunction.

SENATOR THERRIAULT pointed out the injunction has three parts: it was granted until the general election in 2004 and it says the legislature can correct the problem statutorily or it can be corrected by further order of the court. There is some uncertainty because the court could come back and modify the injunction. Therefore Representative McGuire chose the option of fixing the problem with a statutory change.

MS. TONDINI said that is correct and that Representative McGuire felt fixing the problem was within the legislature's purview and was the better choice.

SENATOR THERRIAULT asked which races received six percent of the Green Party vote.

MS. TONDINI did not have the names of the individuals in the U.S. senate and representative races at that time.

SENATOR ELLIS asked if the sponsor asked that the intent language be omitted.

CHAIR SEEKINS said it is his personal philosophy that the legislature should do nothing to restrict a future legislature from considering any question it wants to. In addition, he reminded members that intent language is not binding.

SENATOR ELLIS asked if it was Chair Seekins' decision to omit the intent language in the CS.

CHAIR SEEKINS said it was his intent that the committee reconsider the original version of the bill. He said he would be glad to address a motion to include that language.

MS. TONDINI indicated the intent language was added to clarify the sponsor's intent to not circumvent the binding effect that the initiative process would have. Although one legislature cannot bind the next, Representative McGuire wanted to make it clear that she did not intend to make any changes to this law shortly after it passed.

CHAIR SEEKINS said he appreciates her intent but he did not want to say that someone else could not do that.

TAPE 04-45, SIDE A

SENATOR THERRIAULT asked if the sponsor intends that the definition of political party apply retroactively to the current case.

MS. TONDINI said it would apply prospectively.

MS. SARA FELIX, Assistant Attorney General, Department of Law (DOL), offered to answer questions.

SENATOR THERRIAULT commented that the judge has granted an injunction until the November election unless the legislature changes the statute or the court takes further action. He asked Ms. Felix if the court will consider a new statute enacted by the legislature.

MS. FELIX said it is her understanding, from the terms of the court order, that the court would consider it. She would certainly submit the bill in the litigation, which is ongoing.

SENATOR THERRIAULT asked if the legislature wants Section 7 to only apply after the November election, it could do so by using a delayed effective date.

MS. FELIX said that could also be accomplished using transitional language. She said the general rule is that a law that is enacted subsequent to an event applies prospectively, not retroactively.

SENATOR THERRIAULT asked Ms. Felix if there was any discussion [during the litigation] about whether the races that garnered six percent of the Green Party vote were contested races.

MS. FELIX told members the candidates in the November 2002 election for U.S. Senate were Jim Dore for the Alaska Independence Party, Frank Vandersaar for the Democratic Party,

Ted Stevens for the Republican Party, Jim Sykes for the Green Party, and Leonard Karpinski for the Libertarian Party. In that race, Mr. Sykes received 7.24 percent of the vote. The candidates for U.S. Representative in that election were Don Young for the Republican Party, Russell DeForest (ph) for the Green Party, Rob Cliff for the Green Party, and Clifford Green for the Democratic Party. In the briefing on the motion for preliminary injunction, the issue of whether or not those two races were contested was not discussed. The focus of the briefing was the reasonableness of the statute, which ties the modicum of the political support requirement to the gubernatorial race rather than the other races that the Green Party was advocating for. The state argued that the legislature's choice of the gubernatorial race was reasonable.

SENATOR THERRIAULT asked when that litigation will be completed.

MS. FELIX said the trial is set to begin November 22, 2004. By court rule, judges have six months in which to issue an order. She noted that Judge Reese has retired so a new judge will be assigned to the case.

SENATOR OGAN asked how the court determines which judge gets assigned to a case.

SENATOR FRENCH said the presiding judge makes the decision.

CHAIR SEEKINS questioned the Green Party's purpose in filing the lawsuit.

MS. FELIX explained that at the 2002 general election, the Green Party candidate did not receive the required three percent of the gubernatorial vote so it lost political party status. The party wanted to retain that status, which allows participation in the primary election and offers certain fundraising advantages under the APOC statutes. Therefore, the Green Party sued the state contesting the lost party status determination.

CHAIR SEEKINS said in effect, the Green Party is saying that this one race should not affect its ability to be a recognized political party.

MS. FELIX thought the Green Party's position is that it has been a legitimate, recognized political party for the last 12 years and had one bad gubernatorial race so it should not be denied political party status. Treating the Green Party differently

from other similarly situated parties would be a denial of equal protection of the law.

CHAIR SEEKINS asked if the judge is saying that is a legitimate question that needs to be answered and it would be helpful for the legislature to clarify its position.

MS. FELIX felt that is a very fair characterization.

CHAIR SEEKINS asked if this legislation, if enacted, will help to clarify the issue as to whether the Green Party should be a recognized political party for the next election and in elections thereafter.

MS. FELIX said that is correct.

SENATOR THERRIAULT asked Ms. Felix to describe how Section 7 would work.

MS. FELIX said it appears that Section 7(A) would require nominating a candidate for governor who received three percent of the vote. Section 7(B) says if the office of governor is not on the ballot, the office of U.S. senator would be used to determine whether that nomination received three percent of the vote at the last election. Section 7(C) says if neither the office of governor nor the office of U.S. senator is on the ballot, the office of U.S. representative would be used.

SENATOR THERRIAULT asked if the legislation would essentially create a specific chain of which election should be looked to.

MS. FELIX agreed it would create a hierarchy of which race to use.

SENATOR FRENCH did not believe this legislation would fix the problem that occurred in 2002 since the gubernatorial race is the first one that would be considered. He noted the Green Party could have won the U.S. senate seat that year but still not be a recognized political party.

MS. FELIX said it leaves the office of governor as the primary touchstone. She said it does not appear to fully address the concerns set out in the order for injunctive relief.

SENATOR FRENCH asked if the party candidate gets two percent in the governor's race and wins the U.S. senate race, the party

will not be recognized as a political party if both of those occur on the same ballot under the definition in the bill.

MS. FELIX said that is how she sees it.

SENATOR THERRIAULT suggested that a person who won a statewide race would have more than three percent of the vote.

CHAIR SEEKINS asked if the judge did not make a decision based on the merits at this time; he only granted a preliminary injunction, which grants the Green Party continued recognition until the earlier of the general election in 2004, a statutory change, or the court takes further action.

MS. FELIX said that is a correct summation. She said the merits of the case remain to be litigated and it is possible that the current statute could be upheld.

CHAIR SEEKINS asked if the intent is that HB 414 be prospective so that the new rules apply to the general election this fall so that the legislature does not foul up the Green Party status in 2004.

MS. FELIX said if Chair Seekins' concern is that litigation will not be resolved until after the general election and this bill might affect the general election and he does not want it to affect the Green Party's current status as a recognized political party, the committee could put transitional language in the bill. She expressed concern about relying on the assumption that passage of this bill would not impact the litigation. She said if that legislative intent is put on the record, she would not go to court and say the legislature has enacted this bill and it applies to the lawsuit.

SENATOR THERRIAULT felt the legislature should speak to that directly. He then moved a conceptual amendment [Amendment 2] that would place a delayed effective date on Section 7 until after the November 2004 general election.

CHAIR SEEKINS announced that without objection, Amendment 2 was adopted.

SENATOR THERRIAULT asked if the court looked at the competitive nature of the races.

MS. FELIX said the court did not.

SENATOR THERRIAULT recalled the dynamics of the races that Ms. Felix spoke to earlier were that the candidates fielded in those races by the Democratic Party did not garner any kind of excitement. He questioned whether those races can be viewed as a sudden groundswell of support for the Green Party and what it stands for, rather than a mere lack of options. He said the intent is to measure recognition of political parties via the depth of support by the general voters. He repeated that he does not know that two races, just due to lack of competition, are a true indication of support.

CHAIR SEEKINS said the U.S. senate race in 2004 will certainly be a competitive race, as will Senator Ted Stevens' seat when he retires. He said the contested races determine where the real support for the parties is and he believes this next race will show that.

CHAIR SEEKINS then noted with no further testimony or discussion, public testimony was closed.

SENATOR THERRIAULT moved SCS CSHB 414(JUD) from committee with individual recommendations and its attached zero fiscal notes.

SENATOR ELLIS objected.

SCS CSHB 414(JUD) moved from committee with Senators Ogan, Therriault and Seekins in favor, and Senators Ellis and French opposed.

HB 285-ELECTRONIC TRANSACTIONS & SIGNATURES

MS. VANESSA TONDINI, staff to Representative Lesil McGuire, sponsor of HB 285, informed members that HB 285 would adopt the Uniform Electronic Transactions Act (UETA), a uniform law promulgated by the Uniform Law Commissioners in 1999 in an effort to prepare state law for the electronic commerce era. The objective of UETA is to establish the legal equivalent of electronic records and signatures with paper writings and manual signatures to remove barriers to electronic commerce and give an electronic signature the same legal effect as a manual signature. UETA is not an attempt to create a new system of legal rules for the electronic marketplace and it does not change any current substantive rules of law, such as contract law, fraud or agency law. It is simply a framework that allows for regulation and acceptance if both parties choose to use electronic communication. If this framework is not set up on the state level, the federal e-sign law will apply. UETA is much

more comprehensive than the federal law. To date, 45 states have adopted UETA so it is time that Alaska join the rest of the nation in adopting UETA.

SENATOR FRENCH stated support for CSHB 285(JUD), as it is a straightforward bill.

SENATOR OGAN said although he is uncomfortable with electronic signatures, he believes this bill may provide more protections for the consumer.

SENATOR THERRIAULT moved CSHB 285(JUD) from committee with individual recommendations and its attached zero fiscal notes.

CHAIR SEEKINS announced that with no objection, the motion carried. He then adjourned the meeting at 10:13 a.m.