

**ALASKA STATE LEGISLATURE**  
**SENATE LABOR AND COMMERCE STANDING COMMITTEE**

March 11, 2004

1:32 p.m.

**TAPE(S) 04-22, 23**

**MEMBERS PRESENT**

Senator Con Bunde, Chair  
Senator Ralph Seekins, Vice Chair  
Senator Gary Stevens  
Senator Bettye Davis  
Senator Hollis French

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

CS FOR HOUSE BILL NO. 409(FSH)

"An Act relating to the maximum length of salmon seine vessels; and providing for an effective date."

BILL POSTPONED

SENATE BILL NO. 319

"An Act relating to claims for personal injury or wrongful death against health care providers; and providing for an effective date."

MOVED SB 319 OUT OF COMMITTEE

SENATE BILL NO. 337

"An Act relating to the powers of the Alaska Energy Authority to make grants and loans and enter into contracts; relating to the bulk fuel revolving loan fund; relating to the Alaska Energy Authority's liability for the provision of technical assistance to rural utilities; relating to the Alaska Energy Authority's investment of the power development fund; repealing the electrical service extension fund; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 344

"An Act relating to the Uniform Probate Code and trusts, including pleadings, orders, nonprobate assets, estates of decedents, minors, protected persons, incapacitated persons, guardians, conservators, trustees, foreign trusts, principal and income, and transfer restrictions; relating to corporate voting trusts; and providing for an effective date."

MOVED SB 344 OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: SB 319

SHORT TITLE: CLAIMS AGAINST HEALTH CARE PROVIDERS

SPONSOR(s): SENATOR(s) SEEKINS

02/11/04	(S)	READ THE FIRST TIME - REFERRALS
02/11/04	(S)	L&C, JUD
03/02/04	(S)	L&C AT 1:30 PM BELTZ 211
03/02/04	(S)	Heard & Held
03/02/04	(S)	MINUTE(L&C)
03/11/04	(S)	L&C AT 1:30 PM BELTZ 211

BILL: SB 337

SHORT TITLE: ENERGY PROGRAMS & FUNDS

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/16/04	(S)	READ THE FIRST TIME - REFERRALS
02/16/04	(S)	L&C, FIN
03/11/04	(S)	L&C AT 1:30 PM BELTZ 211

BILL: SB 344

SHORT TITLE: TRUSTS/ESTATES/PROPERTY TRANSFERS

SPONSOR(s): SENATOR(s) SEEKINS

02/16/04	(S)	READ THE FIRST TIME - REFERRALS
02/16/04	(S)	L&C, JUD
03/11/04	(S)	L&C AT 1:30 PM BELTZ 211

**WITNESS REGISTER**

Mr. Don Roberts, Jr.

Kodiak AK

**POSITION STATEMENT:** Opposes SB 319.

Ms. Meg Simonian

Anchorage AK

**POSITION STATEMENT:** Opposes SB 319.

Mr. Mike Hogan, Executive Director  
Alaska Physicians and Surgeons  
Anchorage AK  
**POSITION STATEMENT:** Supports SB 319.

Ms. Cindy Lentine  
Anchorage AK  
**POSITION STATEMENT:** Opposes SB 319.

Ms. Brenda Arney  
Wasilla AK  
**POSITION STATEMENT:** Opposes SB 319.

Ms. Denise Morris, President and CEO  
Alaska Native Justice Center  
Anchorage AK  
**POSITION STATEMENT:** Opposes SB 319.

Mr. William Cook, Atty.  
Eagle River AK  
**POSITION STATEMENT:** Opposes SB 319.

Mr. Les Syren, Vice Chair  
Republican Party, District 31  
Anchorage AK  
**POSITION STATEMENT:** Opposes SB 319.

Mr. Paul Dillon  
Dillon and Findley  
350 N. Franklin  
Juneau AK 99801  
**POSITION STATEMENT:** Opposes SB 319.

Ms. Becky Gay, Project Manager  
Alaska Energy Authority (AEA)  
Alaska Industrial Development and Export Authority (AIDEA)  
Department of Community & Economic Development  
PO Box 110800  
Juneau, AK 99811-0800  
**POSITION STATEMENT:** Supported SB 337.

Mr. Jim McMillan, Deputy Director  
Credit and Business Development  
Alaska Industrial Development and Export Authority  
Department of Community & Economic Development  
PO Box 110800

Juneau, AK 99811-0800

**POSITION STATEMENT:** Supported SB 337.

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

**POSITION STATEMENT:** Commented on SB 344 for the sponsor.

Ms. Beth Chapman, Atty.  
Faulkner Banfield  
One Sealaska Plaza, Suite 202  
Juneau AK 99801

**POSITION STATEMENT:** Supports SB 344.

Mr. Steve Greer, Atty.  
No address provided

**POSITION STATEMENT:** Supports SB 344.

Mr. Doug Blattmachr, President  
Alaska Trust Company

**POSITION STATEMENT:** Supports SB 344.

#### **ACTION NARRATIVE**

**TAPE 04-22, SIDE A**

^#SB319

#### **SB 319-CLAIMS AGAINST HEALTH CARE PROVIDERS**

**CHAIR CON BUNDE** called the Senate Labor and Commerce Standing Committee meeting to order at 1:32 p.m. Present were Senators Gary Stevens, Bettye Davis, Ralph Seekins, Hollis French and Chair Con Bunde. The first order of business to come before the committee was SB 319.

**MR. DON ROBERTS**, Kodiak resident, said that SB 319 should not have seen the light of day. He proclaimed that the Alaska state constitution says all government originates with the people and is founded upon their will, only, and is instituted solely for the good of the people as a whole. "I assure you that neither the Providence Health Systems nor the State Medical Association speak for me or the people as a whole." He was concerned that SB 319 deprived people of due process.

**MS. MEG SIMONIAN**, Anchorage attorney, said she wanted to discuss section 4 of SB 319 that amends AS 09.55.556. Subsection (c)

overrules two Supreme Court cases that set out reasonable patient standards, which say basically that a doctor has to explain everything to a patient that will allow them to make an informed decision regarding treatment and procedures. This bill would restrict that information to what the medical experts who testified in the cases decided a reasonable patient should know. The American Medical Association's code of ethics, section 808 adopts the reasonable person standard, not the standard that is included in this bill.

You would be removing Alaska from a majority of states that have set standards that the American Medical Association says are appropriate in these cases and putting it back many years....

MR. MIKE HOGAN, Executive Director, Alaska Physicians and Surgeons, supported SB 319.

Three out of four doctors actually admit that this liability crisis has changed the way they practice medicine. HHS estimates it adds between 5 to 9 percent to the overall healthcare costs in this country.

The question, do non-economic damage caps really help with patient access to physicians, is addressed in the legislation. An HHS study found that states with non-economic damage caps had a 12 percent increase in the number of physicians per capita versus states without the caps. Premiums in states with caps are found to be 17 percent lower than in states without caps. California adopted non-economic damage caps and from 1975 to 2001 its premium rates increased by 182 percent. Nationally, in that same time period, rates went up 569 percent. The few remaining insurance companies have been told that during that same time period rates for physicians have gone up 1,593 percent. Testimony has indicated that Alaska's supply of physicians is already at risk and any increase in premium costs could be devastating to medical care in Alaska.

MS. CINDY LENTINE, Anchorage resident, said she used to be a beautiful vibrant woman, but now she has no hair, no breasts, her face is round from steroids and her body is tattooed from radiation treatments. She will probably not live long enough to see her grandchildren.

It is all because of negligence on the part of my physician. Let me tell you why this bill is so dangerous. By catering to the insurance companies and

the doctors, you're going to only encourage a substandard level of professional [indisc.] Alaska.

Convincing evidence from other states shows that lowering non-economic caps did not lower the insurance premiums for doctors. Legitimate malpractice cases would not be brought forward because winning will leave the patient clients worse off than losing.

It renders medical malpractice cases almost impossible to economically pursue. This is a scary piece of legislation, because it allows insurance companies to dictate jury awards. Yes, something has to be done about medical malpractice insurance high rates for doctors, but something also has to be in place for the victims. This bill is not a vehicle to address these issues....

MS. BRENDA ARNEY, Wasilla resident, related how in the summer of 2003 her husband, Bob, was diagnosed with a tumor on his lung. He had surgery in Anchorage and his chances for recovery were quite good. Pathologist reports showed there was no threat of cancer and his doctor told him he could start exercising the next day on a stationery bicycle. One night staff turned down his monitors and left for a coffee break and during that time Bob, while on heavy pain medication, disconnected his tubes and catheter and walked out of the hospital making it to a trailer two blocks away before he needed help. Three days later he died.

His death was caused by negligence of the hospital and healthcare providers. The hospital said they were sorry and that they would make changes in some policies and they said they would erase some of the hospital bills, but they did not bring Bob back. I would like a jury to know these facts and judge my loss, not the Legislature, not the hospital and his doctors and not an insurance company.

Because Bob was retired, his economic damage loss in a medical malpractice lawsuit would be quite small. My pain and suffering since my loss of Bob really cannot be valued by anyone but myself. Bob's agony before his death was horrendous. I trust the judgment of a jury of my and Bob's peers more than the Legislature, the insurance companies and doctors valuing his life at \$250,000. Bob was my best friend, my soul mate and he was priceless to me....

MS. DENISE MORRIS, President and CEO, Alaska Native Justice Center, said she is concerned that SB 319 would apply in federal tort claims act cases as well as state medical malpractice cases. It will apply in cases involving federal healthcare providers. The IHS facility medical providers do not have medical malpractice insurance per se and are covered under the federal tort claims act. This means that a private attorney representing a plaintiff is rendering a defense against U.S. attorneys.

If this passes, healthcare providers in the United States will essentially be immune from cases where malpractice seriously harmed the retired or elderly Alaskans living in a rural or subsistence lifestyle, mothers who do not work outside the home and children who do not have any earned income. If someone from one of these groups is seriously injured by malpractice, their damages will primarily be non-economic. If non-economic damages are capped at \$250,000, no one will be able to afford to bring these cases and, therefore, they will not be heard and no remedy will be available to these individuals that are injured.

Many citizens do not realize how difficult and expensive it is currently to bring a malpractice claim against a healthcare provider for negligence or recklessness that causes harm. Many citizens do not realize that we in Alaska already have non-economic damages, which were capped by the Legislature in 1997. In order for an Alaskan to bring a malpractice claim against a healthcare professional, he or she must find a medical expert working the same field as the healthcare provider to prove that the standard of care was breached. Sometimes cases require several experts. It is practically impossible to find healthcare providers in Alaska who are willing to do medical malpractice cases. Therefore, experts are almost always hired from outside the State of Alaska and are extremely expensive. As you can imagine, it costs tens of thousands of dollars in costs, alone, to investigate and pursue a case of malpractice. It can take in excess of \$200,000 to actually go to the final [indisc.].

Secondly, these cases rarely settle before there is a tremendous amount of time, effort, work and expense

that is incurred. I am really concerned that if SB 319 is passed, it will have a tremendously adverse effect on Alaska Natives who live a rural subsistence lifestyle, for fishermen in the Bristol Bay region... in the type of industry where a lot of accidents do occur.

MR. WILLIAM COOK said he is an attorney in Eagle River who has had several professional malpractice cases, but has not had a great deal of medical negligence experience. He related how young people in his congregation volunteer their time teaching children and they are totally innocent of what is going on. It would also adversely affect retirees, young stay-at-home mothers, home-schoolers and Natives.

MR. LES SYREN, Vice Chair, District 31, Republican Party, said he has a lot of healthcare providers in his family. He is also a plaintiff's attorney, but as a Republican, he has several problems with this bill.

First, it seems like we're institutionalizing prejudgment of a case.... The other thing that offends me as a Republican is this idea of personal responsibility.... If we're giving special treatment to this one group of people, not for any reason other than they won't be able to get insurance supposedly or their assets might be at risk, something like that, that's not right. That just offends my sense of personal responsibility....

He related several cases involving malpractice - one in which a sponge was left in a woman's stomach and another in which a woman had a fibroid removed from her uterus that unbeknownst to her or her doctor had a viable fetus in it. "Let's not put the burden on the innocent victims."

MR. PAUL DILLON, Dillon & Findley, had three areas of concern regarding the effects of this bill on individuals across the state.

I'm not going to discuss that. It's obvious that this has profound effects on Alaskans in a very real sense.... I'm going to cover whether or not the removal of Continental and Northwest create a market crisis for doctors, which has been alleged here. I'm going to talk and address briefly a question of premium crisis in the context of is there a premium

crisis and, thirdly... I'm going to address whether or not there's any fixes out there that this committee or this Legislature should consider as alternatives to the saddling of Alaskans with the effect of a cap on damages.

CHAIR BUNDE asked him to limit his testimony to five minutes.

MR. DILLON replied:

Whatever you want, sir.... I have handed out... a list of all of the various malpractice that has occurred in this state from 1990 forward as defined by the Alaska Medical Board. This is a reporting that is required for purposes of settlement or judgment.... In a nutshell it defines medical malpractice to a large degree in this state. We, therefore, know who the victims of medical malpractice are and who the practitioners are in the context of what is going on in the real life situation of hospital medical care.

The one party that is not present is the insurance companies, themselves. I have also provided you with certain pages and excerpts from the 65<sup>th</sup> annual report... I'd like to go over those with you briefly....

He showed the committee that Norcal has 33.43 percent of the market and Medical Insurance Exchange of California (MIEC) has 34.92 percent and the relative size of the companies. Between the two of them, they control 70 percent of the market. Northwest decided to pull out of the Alaska market after asking for a 100 percent increase in their premiums, which was declined by the Division of Insurance. He didn't know how many doctors were affected by this, but he knows they then tried to get insurance through MIEC or Norcal. If they didn't get insurance through them, they had the option of going to a surplus line, which is typically used by individuals who are unable to get insurance through the normal market. A third way doctors can seek insurance is the direct approach. They can call an insurance company directly whether the company is in the state or not, but this doesn't happen often.

As of 2002, 70 percent of the market was controlled by the providers that are still here. He didn't know what percentage of physicians and surgeons were affected by the removal of Northwest and Norcal. He submitted to the committee that there

is not a crisis for doctors to get malpractice insurance. In 1978, the State of Alaska created an insurance company of its own. Through the next 10 years it was tremendously successful and kept premiums down for physicians and, because of its well-run and effective liability section, it held claims and payouts down. "So, we already have in the context of experience, a successful way to resolve our problems."

MR. DILLON said that a number of his family members are doctors. The last time doctors faced a premium problem where they felt they were paying too much, they came to the Legislature, who adopted a process that protected them, but also protected the rest of Alaska. [END OF TAPE]

**TAPE 04-22, SIDE B**

2:20 p.m.

MR. DILLON said the purpose of insurance is to cover ourselves in the event of a mistake. There has never been an attempt to shift the burden of a mistake from doctors to victims.

That's what this cap is doing, especially in light of the fact that you already have a cap. Why are we doing this? We have a cap that exists in the context of what we are dealing with every day in the courts as it stands right now.

CHAIR BUNDE asked him to summarize.

MR. DILLON responded that would be hard, but rather than summarize he went to the question of the review process for premium rates. The Division of Insurance reviews the premiums that are charged to physicians and judges them on three standards - that the rate is not excessive, that it is not inadequate (too low) and that it doesn't unfairly discriminate. This means that the premium rates for all companies are going to be between a range. The more effective and efficient companies are going to be on the lower end and be able to lower premiums somewhat. The less efficient are going to have to charge higher premiums, but generally, all companies are within a marketable range.

So, you have watchdogs in place. Just as Northwest came in and sought a massive increase in their premium base, which was denied, I submit to you that present-day premiums, while high, and for all I know sitting

here - and I don't know - let me be very clear about that - whether that constitutes such a percentage of the doctors' cost as to make it an overwhelming burden such that it's going to drive them from the state. I submit, I don't think so, personally.... That cost factor is certainly less than 5 percent on a national average, but I don't think that premium cost is going to drive doctors from the state, especially when we're not HMOs. These guys can make as much money as they're willing to go for in the context of what they do.

SENATOR HOLLIS FRENCH said a report about physicians practicing in Alaska showed a trend over the past 17 years with respect to our population. The number has gone up pretty steadily over that time. He thought the appropriate year to look at would be 1997 when tort reform went into effect. Up until that time the number was increasing, but after that time the number increased, as well.

Another plaintiff's attorney pointed out to him that this bill would put victims of car crashes in far better standing in the eyes of the law than victims of negligence on a doctor's table. The point made was:

Why would you handle those two people differently? Why would you allow a person in a car crash to press all their claims in court and cap the rights of person damaged on an operating table. I think it is hard to draw a principle distinction between those two.

SENATOR SEEKINS said he was sure the Labor and Commerce Committee had looked as far into the matter as it could within the purposes of the committee. He moved to pass SB 319 from committee with individual recommendations and attached fiscal note.

SENATORS HOLLIS FRENCH AND BETTYE DAVIS objected.

CHAIR BUNDE asked for a roll call vote. Senators Gary Stevens, Ralph Seekins and Chair Con Bunde voted yea; Senators Bettye Davis and Hollis French voted nay; and SB 319 moved out of committee.

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^#SB337

**SB 337-ENERGY PROGRAMS & FUNDS**

CHAIR CON BUNDE announced SB 337 to be up for consideration.

MS. BECKY GAY, Project Manager, Alaska Industrial Development and Export Authority (AIDEA) and Alaska Energy Authority (AEA), said Jim McMillan, Deputy Director of Credit and Business Development, Mike Harper, Deputy Director of Rural Energy, and Sarah Fisher-Grove, Financial Analyst, would help her answer questions.

MS. GAY said that SB 337 amends the AEA program.

The first program affected is the Power Project Fund loan program (PPF). The PPF program provides loans to local utilities, local governments and independent power producers for the development or upgrade of power projects. SB 337 proposes to amend this program by expanding the definition of power project to include energy efficiency projects. Under the current statutory definition of eligible project, AEA has actually denied loan applications for worthwhile projects such as lighting retrofits. In addition, SB 337 proposes to repeal the loan committee that approves loans from this fund. AEA will instead utilize the same credit approval process that AIDEA has successfully utilized for its credit program, which includes an appeals process to the board of directors.

The next program affected is the Bulk Fuel Revolving Loan Fund program. This program provides short-term loans to assist small rural communities in purchasing annual bulk fuel supplies. SB 337 authorizes loans from this fund to other entities such as corporations, cooperatives and joint ventures. The Department of Law recently interpreted the current statutorily eligible borrowers to be only communities and natural persons - that is private individuals. This change will not expand the definition of eligible borrower beyond the long-standing interpretation and practice that already includes other entities such as corporations.

SB 337 also provides that AEA may invest the Power Development Fund and with the concurrence of the Department of Revenue, the Power Development Fund has been invested by AEA since 1993. This bill proposes to affirm this long-standing arrangement by providing AEA the statutory authority to invest the fund. Then AEA

would continue to remit all earnings of this fund to the general fund.

The general [indisc.] of AEA are proposed to be amended by clarifying that AEA has the authority to manage various programs and projects by issuing grants and interim contracts. By acting as an agent for rural communities, AEA manages power projects, bulk fuel projects and alternative energy projects. The Legislature has authorized AEA to manage these projects through the appropriate process by providing AEA authority to receive and expend federal funds from entities such as the Denali Commission and the U.S. Department of Energy.

In addition, SB 337 specifies that AEA's statutory mandate to provide technical assistance may not be used on an independent basis for tort liability against AEA. AEA will continue to be liable for negligence if it fails to use reasonable care in providing the technical assistance, however.

And last, this bill proposes to repeal the inactive Electrical Service Extension Fund. That concludes my comments.... I urge your favorable support and action on this bill.

CHAIR BUNDE asked if there is an actual size designation for small rural communities in the bulk fuel program.

MS. GAY replied that small rural communities have a population of 2,000 or less.

CHAIR BUNDE asked if she knew of any small rural communities that are excluded.

MR. JIM MCMILLAN, Deputy Director, Credit and Business Development, AIDEA, said he didn't have that information at his fingertips, but he would get it for the committee.

CHAIR BUNDE said that Bethel comes to mind.

MR. MCMILLAN agreed with Bethel, but didn't want to venture a guess on others.

SENATOR HOLLIS FRENCH asked for clarification of the provision that repeals the committee that approves loans from the fund.

MR. MCMILLAN explained:

When we assumed the rural energy programs from the Department of Community and Regional Affairs, Division of Energy, in 1999, the loan committee was part of the statutory process at that time - that the Division of Energy used for approval of power project fund loans. We [AEA] elected at that time not to change the process and go with the established statutory loan committee. We have been doing that since 1999, but it was always our intent to try and meld the rural energy programs and the process for approval into the long-standing process that we have used on the other side with Alaska Industrial Development and Export Authority.

In the internal loan committee, we have the expertise on staff and an appeal process to the board of directors. So, what this is doing is repealing the statutory loan committee, which is comprised of the director of OMB, the executive director of AEA and three public members from various judicial districts appointed by the governor - in moving it to the internal process similar to AIDEA.

CHAIR BUNDE asked if the loan committee's duties are being moved to another already-existing credit committee, why is there no change in the fiscal note. He thought savings would be seen at least with per diem.

MR. MCMILLAN replied that is correct, but for the past year or two, all of the meetings have been conducted telephonically. There have been no requests for payment of per diem by the committee members. The meetings last about an hour or less.

CHAIR BUNDE said he was glad he gave Mr. McMillan an opportunity to brag about the committee's efficiency and said that SB 337 would be held for a later meeting.

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^#SB344

**SB 344-TRUSTS/ESTATES/PROPERTY TRANSFERS**

CHAIR CON BUNDE announced SB 344 to be up for consideration.

MR. BRIAN HOVE, staff to Senator Ralph Seekins, sponsor, explained the bill as follows:

A vital characteristic of any highly developed economy is the ease with which financial resources flow from one market to another. The magnet-like attraction between money and the market that offers the most advantageous terms at a particular moment in time is, perhaps, best demonstrated within the financial services industry itself.

Over the years, the Alaskan banking industry has attracted funds to our state as a result of a particular niche we have successfully developed in an obscure corner of the industry known as trust and estate services. Much of this success can be attributed to the foresight demonstrated by the Alaska State Legislature.

Since 1997, the Legislature has passed numerous bills effectively making Alaska a premier jurisdiction for this financial specialty. Just last year, SB 87 adopted a more recent version of the Uniform Principal and Income Act. HB 212 updated other portions of Alaska's trust laws. Both were signed into law last summer.

While SB 344 may not be as far reaching, it accomplishes much the same purpose. It does this by making a host of small technical revisions to current statutes. It updates the provisions relating to virtual representation, it clarifies when a trustee can be relieved of liability and it adds provisions, which other jurisdictions have already adopted.

Keeping our trust statutes current has had a direct positive impact on our state's economy. Over the years, these periodic revisions have helped to bring hundreds of millions of dollars of trust assets into the state and added tens of millions of dollars to local bank deposits. Furthermore, it has increased business activity for attorneys, accountants, life insurance agents and brokerage firms. This, in turn, creates jobs.

Necessity, ingenuity and routine advances in technology collaborate on a daily basis to reinvent

the world of financial products and services. To date, Alaska has successfully staked out a place in this world through our contemporary set of trust and estate laws. SB 344 seeks to preserve our position in what amounts to a highly fluid marketplace unrestricted by geographic boundaries. It seems reasonable to keep the money flowing in this direction.

CHAIR BUNDE said he understands that current trust laws in Alaska generate some income for the state and asked if he could speculate how fine-tuning the trust would advance the earnings for the state.

MR. HOVE replied that would be difficult, but if we don't keep up with the Joneses in this instance, we will be going backwards and the money the state has attracted so far will start to go in the other direction.

MS. BETH CHAPMAN, Attorney, Faulkner & Banfield, said she has practiced in the estate and trust area for the last 16 years. She supported SB 344.

I believe SB 344 is necessary to ensure that Alaska remains the standard bearer for trust and estate law. Since 1997, when the Legislature passed the first trust act, several other states have tried to take the business from Alaska and keep that business, in particular, Delaware. Many of these changes are designed to ensure that Alaska is the state where folks will want to put their trust assets, both residents and non-residents.

Several of the ways that the law is improved is SB 344 makes technical amendments to the recently enacted Uniform Principal and Income Act. It also expands the scope of a doctrine called virtual representation. What this really does is ensures that we are able to give notice to classes of beneficiaries in an efficient manner, access the courts in an efficient and cost effective manner, to ensure that the trust laws are fulfilled in that the testator's trust is, in fact, upheld in the courts.

Also and, probably what I consider to be one of the most important aspects of the bill, is section 4 dealing with the limitation on proceedings against trustees. Under current law, we do not have a statute

of limitations for causes of actions against a trustee until a final account is rendered on the trust. A final account would normally not be rendered until the trust relationship has been terminated. Alaska now has trusts that can last in perpetuity. Therefore, we could have a very long time before any proceeding could be brought. An example would be where we have a trust that's been in existence for 15 years. Yearly reports have been given to the beneficiaries, but 14 years later, a beneficiary decides that something that occurred in year one is now a problem. They can now seek and bring a cause of action in the court and go back that many years. They are only barred after a final account. This would change that law so that a beneficiary is required to bring a cause of action within a period of time after they have received notice that would give them enough information to recognize that there was a cause of action and, also, that the trustee is required to notify the beneficiary of that time limit. So, it's very protective of the beneficiaries, as well. It's not just a bar, but it's also notification provision.

CHAIR BUNDE asked if it would be an oversimplification to say that under the current system the statute of limitations would run until the trust is cashed out and in some cases that might not be in any foreseeable future.

MS. CHAPMAN replied that would not be an oversimplification and could happen if the trustee isn't changed prior to the time the trust is terminated.

We believe that can lead to costly and complex litigation that should be avoided if we had a statute of limitations that notified beneficiaries of their rights.

The other part of the bill that's important is that it expands the spendthrift protection for other types of trust that are commonly used. Last year, the Legislature adopted a trust bill that did expand the spendthrift protection to certain types of charitable trusts. This would expand it to include other types of trusts that are recognized under federal income tax law, most notably a qualified personal residence trust and what is known as a grantor retained annuity trust.

CHAIR BUNDE asked her to define a spendthrift provision.

MS. CHAPMAN explained:

A spendthrift provision is a provision in a trust that limits the creditor's ability to access the trust assets until they are distributed to the beneficiary or to the grantor. Alaska has a spendthrift provision that allows an individual to set up a trust with his or her own assets and retain certain discretionary rights to those funds, but until the funds are actually distributed by an independent trustee, those funds cannot be attached by a creditor. A qualified personal residence trust is generally used to transfer a home from an older generation to a younger generation and right now, by placing it into a trust, it would have no spendthrift protection until we amend the law that would allow the individuals to continue to live there and until the trust is terminated and those assets are distributed out, which does happen generally after a short period of time, those assets would be protected from creditors.

In essence, I believe the Alaska Legislature has shown foresight in adopting the laws, has helped the Alaska economy by bringing trust funds to the state and that SB 344 is another bill that will continue the trend in keeping Alaska at the forefront of states with trust laws.

CHAIR BUNDE asked if she knew what revenue the current trust law has brought to the state.

MS. CHAPMAN replied that she didn't know.

SENATOR HOLLIS FRENCH asked:

Regarding section (2) pleadings and the parties who are bound by orders and notice regarding proceedings involving trusts - as I look at this section, it strikes me that you're broadening the scope of proceedings that might bind others - that is they no longer have to be formal proceedings. They don't have to even be judicially supervised settlements; they could be non-judicial proceedings and settlements and is that, at first blush, what is happening in this section?

MS. CHAPMAN replied, "Yes, it is."

SENATOR FRENCH asked her to flesh out the folks who could be affected by a non-judicial settlement of a trust and start with section (c) and go on through.

MS. CHAPMAN explained:

The individual starting at section (c) that would be bound - and it's important to note that all the individuals who we've bound can only be bound to the extent that there is no conflict of interest - and we are required by the prior section of the code to inform the court - and in a non-judicial if we were going to enforce a non-judicial settlement of the individuals we are attempting to bind. So, in section (c), a minor for example, can be bound by another person so long as there is substantially identical interest. Similarly, an incapacitated person or a person whose identity or location is unknown or not ascertainable.

SENATOR FRENCH asked what substantially identical interest boils down to.

MS. CHAPMAN answered:

Somebody would have substantially identical interests, so that whatever they would receive from the trust would not be affected by what would happen to the other person's interest. For example, somebody who has an interest in the income, but not in the principal, they would not necessarily have the substantially identical interests. If we affect the principal, make a distribution, we would be reducing how much is available to pay the income. So, they are interests that would not be affected by a ruling. So, the effect would be the same to the interests. It doesn't necessarily mean the same amount, but the same nature of the interest. Probably the best example is moving on to section (d) where we talk about class. It says many times we will have a gift that will indicate it will be to my spouse for his or her life and then to my children after the death of the spouse and you may have children who at the time the trust was

established are alive, you may have children who are not yet born.

Number (d) indicates that if we serve obviously, the people who are alive, that that does bind those after born children. So, we don't have to go back in and relitigate the issue. Similarly in (e), if we have an interest that passes to the surviving spouse and to persons who are heirs of the living person, that would receive it in the future for the future interests, that so long as we serve the living people, that will bind those who are not yet in existence.

[Section](f) is where we're talking about a happening of a future event. That's sort of the key to all of these new additions - the (d) through (f). We're talking about binding a class of individuals who will receive it in the future. So, we may not even know who all the members of our class are going to be whether some people may have died, some people may have been added to the class. So, in (e) what we're discussing is if we have a class of individuals who are going to receive it in the future, and then we have another class after that, we have perpetual trusts, that will say to my children, after the death of the last child, to my grandchildren, after the death of the last grandchild on and on and on in perpetuity. Once we bind the first class, then it's going to bind all the other classes along the way so that each time we have a new class coming into existence we do not have to go back to court or a non-judicial settlement to resolve the issue.

Most of the issues where we're going to see this statute used is issues involving interpretation. The courts have the authority to require us to serve anybody that the court feels should be served. So, at any time, when we disclose to the court who we intend to give notice to and what provision we're using of this law to give substitute notice, the court could say no, that's not acceptable; you need to go out and serve. The court has the ultimate jurisdiction.

CHAIR BUNDE asked if you can put things in an Alaskan trust and still have limited access to them.

MS. CHAPMAN replied that is correct.

CHAIR BUNDE asked if that had passed the muster of courts.

MS. CHAPMAN replied that the statute that was passed in 1997 has not been looked at by a court, yet.

MR. STEVE GREER, Atty., said he has been involved in the group that has worked on this legislation for years. "It is a very good piece of legislation." He urged its passage.

MR. BLATTMACHR, President, Alaska Trust, supported SB 344. "It will be beneficial for Alaska residents and for businesses and for the State of Alaska."

**TAPE 04-23, SIDE A**

2:58

SENATOR BETTYE DAVIS moved to pass SB 344 from committee with individual recommendations.

CHAIR BUNDE asked for a roll call vote. Senators Hollis French, Ralph Seekins, Bettye Davis and Chair Con Bunde voted yea; and SB 344 moved from committee. There being no further business to come before the committee, he adjourned the meeting at 3:00 p.m.  
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