

HOUSE FINANCE COMMITTEE
March 7, 2006
9:15 A.M.

CALL TO ORDER

Co-Chair Meyer called the House Finance Committee meeting to order at [9:15:57 AM](#)

MEMBERS PRESENT

Representative Mike Chenault, Co-Chair
Representative Kevin Meyer, Co-Chair
Representative Bill Stoltze, Vice-Chair
Representative Richard Foster
Representative Mike Hawker
Representative Jim Holm
Representative Reggie Joule
Representative Mike Kelly
Representative Beth Kerttula
Representative Bruce Weyhrauch

MEMBERS ABSENT

Representative Carl Moses

ALSO PRESENT

Representative Gabrielle LeDoux; Representative John Coghill; Sue Wright, Staff, Representative Mike Chenault; Lalanya Snyder, Staff, Representative Mike Chenault; Josh Fink, Director, Office of Public Advocacy, Department of Administration; Suzanne Cunningham, Staff, Representative Kevin Meyer; Dean Guanelli, Chief Assistant Attorney, Department of Law

PRESENT VIA TELECONFERENCE

Dan McDowell, Self, Mat-Su; Ed Sniffen, Jr., Assistant Attorney General, Department of Law, Anchorage; Brian Judy, National Rifle Association (NRA) Representative for Alaska, Anchorage

SUMMARY

HB 324 An Act banning the importation, transfer, and cultivation of orange hawkweed and purple loosestrife.

CS HB 324 (RES) was reported out of Committee with a "no recommendation" and with zero note #1 by the Department of Natural Resources.

HB 399 An Act establishing the office of elder fraud and assistance; and relating to fraud involving older Alaskans.

HB 399 was HEARD & HELD in Committee for further consideration.

HB 400 An Act relating to disasters and confiscation of firearms.

CS HB 400 (FIN) was reported out of Committee with a "do pass" recommendation and with zero note #1 by the Department of Military & Veterans Affairs.

#HB324

HOUSE BILL NO. 324

An Act banning the importation, transfer, and cultivation of orange hawkweed and purple loosestrife.

9:16:02 AM

Vice Chair Stoltze MOVED to REPORT HB 324 out of Committee with individual recommendations and with the accompanying fiscal note. Representative Holm OBJECTED.

He stated he had done research on invasive species from other states. In the State of Oregon, a green state, there is a list of over 100 species & aurantiacum is not listed. Some states have an Invasion Species Council, with authorization to identify and quarantine various species; enforcement is generally the weakest link in the process. Oregon relies heavily on voluntary compliance. They do not make it a jailed situation or impose fines. He argued that HB 324 will be bad policy for the State of Alaska.

Representative Holm WITHDREW his OBJECTION.

Representative Kelly OBJECTED. He asked if regulation versus law had been discussed. Co-Chair Meyer said it could be addressed either way and left it up to the sponsor. Representative LeDoux preferred it move through as legislation.

Representative Kelly WITHDREW his OBJECTION.

Representative Hawker OBJECTED. He questioned if the State should impose by statute, a decision upon a department. He said the legislation could take the State in a "bad direction" of public policy, imposing political decisions.

Representative Hawker WITHDREW his OBJECTION. There being NO further OBJECTION, it was so ordered.

CS HB 324 (RES) was reported out of Committee with a "no recommendation" and with zero note #1 by the Department of Natural Resources.

AT EASE: [9:16:30 AM](#)

RECONVENE: [9:16:41 AM](#)

#HB399

HOUSE BILL NO. 399

An Act establishing the office of elder fraud and assistance; and relating to fraud involving older Alaskans.

Co-Chair Chenault MOVED to ADOPT work draft #24-LS1517\F, Mischel, 3/06/06, as the version of the bill before the Committee. There being NO OBJECTION, it was adopted.

[9:22:57 AM](#)

SUE WRIGHT, STAFF, REPRESENTATIVE MIKE CHENAULT, spoke to a desperate situation currently existing in Kenai for the McDowell family. The situation contains an egregious act of fraud to the elderly from a distant family relative. She urged that member's give attention to testimony from Don McDowell.

Ms. Wright informed members that the Office of Public Advocacy director, Josh Fink, rose to the occasion and offered assistance to the family.

[9:25:32 AM](#)

LALANYA SNYDER, STAFF, REPRESENTATIVE MIKE CHENAULT, addressed an article included in the member's packets, which sheds light on the growing crisis of elder financial fraud.

Ms. Snyder explained that financial abuse takes many forms, including credit card fraud, real estate scams, identity theft and burglary. Reports of elder financial exploitation are on the rise. Forty percent of all reported elder abuse cases involve financial exploitation, yet only a small number are reported. A study conducted by The National Center on Elder Abuse (NCEA) found that for every reported case of elder abuse, another five cases went unchecked.

Ms. Snyder stated that effective State responses to financial exploitation require collaboration by a range of State and local agencies, including law enforcement, adult protective services, victim service agencies and private partners. Coordination remains a major challenge. Lack of interagency coordination means that victims remain hidden. HB 399 helps to ensure the necessary coordination between

agencies to address the problem. Establishing an Office of Elder Fraud and Assistance would provide elderly Alaskans the appropriate protection they deserve.

[9:25:45 AM](#)

JOSH FINK, DIRECTOR, OFFICE OF PUBLIC ADVOCACY (OPA), DEPARTMENT OF ADMINISTRATION, applauded the sponsor for addressing the situation endangering elder Alaskans. There is currently no agency authorized to actively pursue civil remedies on behalf of the exploited person. The lead agency processing and investigating the reports of those crimes is Adult Protective Services; they do not have the statutory authority to sue on behalf of any individual. They can stop the exploitation by filing a petition with the court. They have no ability to recoup losses.

According to the director of Adult Protective Services, in fiscal year 2005, there were 500 cases of financial abuse. Each year, there is a significant increase in the number of cases; of those cases, approximately 90% have been verified.

When Adult Protection Services gets a case, they attempt to "shop" it around to the other agencies such as Alaska Legal Services or anyone who will take it. The legislation would empower the Office of Public Advocacy to provide that service for anyone over 60 years old. It would provide pursuit for those not otherwise able to bring a complaint without assistance and the legislation would be defined in regulation. The legislation will require OPA to work with local, state, national law enforcement and social service agencies to determine cooperative agreements.

Mr. Fink stated that the legislation provides recouping of costs if it does not create a financial hardship for those represented. He did not think they would collect fees. These cases are complex and are becoming a growing problem within Alaska.

Mr. Fink pointed out the conservative fiscal note. He had attempted to determine the national standard, but came to find none. It appears one attorney could handle about 65 cases a year; the note requests three.

Co-Chair Meyer voiced concern with the note. He requested that Co-Chair Chenault, Representative Hawker and Mr. Fink work to address associated costs.

[9:34:32 AM](#)

Representative Holm asked if there could be unintended consequences resulting from collecting fees from the perpetrator that extorted the client.

Representative Holm pointed out no note from the Public Defender's Agency; he asked if it would be forthcoming.

[9:36:04 AM](#)

Mr. Fink did not anticipate a note from that Office. Most cases are generally not prosecuted, as it does not create a new crime. It is not intended to ask fees from anyone experiencing financial hardship. He imagined that generally no fees would be paid.

[9:36:21 AM](#)

Representative Kelly echoed concern with the fiscal note. He worried about adding a category, which indicates anyone over 60 as vulnerable and unable to think for themselves. He disagreed with that assessment. He voiced concern with the switch from civil to criminal penalties and that passage of the bill would cause unintended consequences.

[9:41:02 AM](#)

Mr. Fink shared those concerns. He did not want to set up an office and find it overwhelmed. Adult Protective Services currently has 5 investigators. There are sidebars in place, which require that a person be over 60 years old. He hoped to reach an agreement making Adult Protective Services the "gatekeeper" for referrals.

Representative Kelly reiterated his concerns, warning that passage of the bill could become a "nightmare".

[9:43:02 AM](#)

Representative Hawker commented on further defining the data point of the "60 years of age or older". He asked how that number was determined. That language could carve out a new social service agency.

Mr. Fink acknowledged it was a public policy question regarding where to cut off. Adult Protective Services recommended using language rather than 60, a "vulnerable adult", as defined in statute.

[9:45:27 AM](#)

Ms. Snyder interjected that many other statutes use "60 years" in regulation. "Vulnerable adult" as discussed, could begin at 18 years. She offered to double check that information and come back with age specific numbers. Mr. Fink pointed out that Adult Protective Services had 500 reports of exploitation and of those 65% were over 60 years old.

Representative Hawker asked what made a person excluded less vulnerable. Mr. Fink responded it was an added sidebar to limit the scope of services.

[9:46:57 AM](#)

DAN MCDOWELL, (TESTIFIED VIA TELECONFERENCE), MAT-SU, thanked Co-Chair Chenault's office for all their work on the bill, noting he is a lifetime Alaskan.

Mr. McDowell explained that his father has had Alzheimer's for seven years. A distant relative from Colorado came to Alaska to assist the family. That caregiver had his mother sign quick claim deeds to the family trust and over a period of several months, he assumed all the family's property and money. The relative handed his parents an eviction notice and tied up all their money. He has now leased their property and taken all the money the senior couple had saved.

He stated that HB 399 addresses concerns for all seniors in Alaska. Mr. McDowell urged that the bill pass to help protect each of us. The Federal Bureau of Investigation (FBI) assumed that his parent's case was a civil case. Mr. McDowell agreed that it is, but he thought it should be tried as a criminal case of fraud. He stressed the number of the many vulnerable Alaskans and pleaded that the legislation pass from Committee.

[9:53:27 AM](#)

Representative Hawker asked about creating of an Office of Elder Fraud. He asked if the intent was to go after someone that legally committed a criminal activity. Mr. Fink replied that was an intended subset and that the fraud is criminal. He agreed one should have to prove elements beyond a reasonable doubt.

[9:55:27 AM](#)

Representative Hawker noted it could be both civil and criminal. He asked if the criminal level had been contemplated in the fiscal note. He wondered if there were existing resources to pursue the issue. Mr. Fink hoped that if an office was established, there would be an agreement with the Department of Law for making referrals for prosecution. The problem is that it is not presently being pursued by the law enforcement agencies.

Representative Hawker referenced Section 2, Page 3, asking about cost recovery. Mr. Fink pointed out the amendment, indicating three court rules, providing for recovery of

Court fees. The Legislature should not tinker with those court rules to craft something to recoup actual costs.

Representative Holm asked if the McDowell case rose to a criminal level. Mr. Fink thought it should be classified criminal fraud.

Representative Holm voiced concern. He advised that "individuals" remedy civil cases. If it were a case affecting all society, it would be criminal. He did not think the State should make policy decisions regarding individual's dealings with one another. He maintained that having State government involved was bad policy.

[10:00:47 AM](#)

Mr. Fink assumed that Adult Protective Services would make that determination. He referenced the McDowell case, in which the wife had never been involved in the family's finances and then was signing all their financial documents. He believed it was different than "buyer's remorse". Representative Holm countered that it would raise criminal fraud.

Mr. Fink stated that fraud is difficult to prove criminally; these are rare analogies. If there were an analogy with a different set of evidence and proof, it would not mean it could not be pursued civilly.

Representative Kelly asked how many states have the proposed law. Mr. Fink responded that he had not contacted all the states; however, in Cook County, Illinois, there are 100 attorneys in their fraud unit. There was no state exactly the same as proposed in the legislation; it mostly resembles mixtures and/or combinations of the proposed.

[10:03:37 AM](#)

Representative Kelly thought it would be better legislation if the judgment took a one third of the recovery. Mr. Fink agreed that could be a legitimate way to go.

ED SNIFFEN, JR., (TESTIFIED VIA TELECONFERENCE), ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW, ANCHORAGE, spoke to some possible unintended consequences. The Department of Law does have the jurisdiction to pursue cases of fraud against the elderly and do so often. Those resources are limited and it is impossible to act as everyone's individual lawyer. The Department focuses their efforts on fraud that impacts the greater public interest.

The statutes contain a provision, which prevents exercising jurisdiction over cases that are regulated by another agency. Mr. Sniffen clarified that if the legislation moves

forward, there would need to be a provision in the bill that does not exempt their office from prosecuting fraud. He recommended there be a provision that provides that the Office of OPA proceed with the investigation.

Mr. Sniffen addressed the line drawn at 60 years of age and mentioned equal protection concerns with that language. Age discrimination is forbidden by the constitution. He recommended using "vulnerable" adults and offered to answer questions of the Committee.

Co-Chair Chenault asked what would stop the Department of Law from making charges in the McDowell case. Mr. Sniffen responded that resources are a major consideration to the Department in pursuing that case. He understood that it involved exploitation to an individual with Alzheimers. If it something unique and particular to an individual, the Department would most likely not be too interested. The Office consists of three attorneys and is in charge of all consumer protection in the State of Alaska. The office is restricted to focusing efforts on broader scope issues.

Co-Chair Chenault voiced concern that the Department does not look at all cases. He acknowledged funding concerns. He noted that the McDowell case affects their entire life. He realized that it is the job of a private attorney; however, most attorneys would not be willing to take the case without proof of finances.

[10:11:37 AM](#)

Mr. Sniffen agreed; he wished that their Division had the resources necessary to pursue more cases on behalf of individual consumers. He reiterated that it is a funding issue. He acknowledged that should not detract from the seriousness of the issue.

[10:12:58 AM](#)

Co-Chair Meyer noted that Representative Kelly would join the group of Representative Hawker, Co-Chair Chenault and Mr. Fink to discuss the legislation.

Co-Chair Meyer MOVED to ADOPT Conceptual Amendment #1. (Copy on File). Vice Chair Stoltze OBJECTED.

SUZANNE CUNNINGHAM, STAFF, REPRESENTATIVE KEVIN MEYER, spoke to the amendment. She corrected wording of the amendment indicating that it had been written to the \F version, so the line indications would change to Lines 5-6 from 4-5.

Co-Chair Meyer MOVED the proposed change. There being NO OBJECTION to that change, it was adopted and Amendment #1 was amended.

Ms. Cunningham discussed the amendment, Subsection (B) regarding theft and related offenses. In reviewing statute, it was noted that the reference was too broad. Speaking with Alaska Legal Services, it was determined to be limited to those crimes that specifically address potential for fraud or deceit.

[10:15:48 AM](#)

Representative Kerttula understood the need to bring "it down"; she asked what offenses had been dropped. Ms. Cunningham stated that criminal simulation and defrauding creditors had not been listed and should have been.

Co-Chair Meyer recommended holding the amendments and have the sponsor consider them when discussing the fiscal costs.

Co-Chair Meyer WITHDRW his MOTION to MOVE amended Amendment #1. There being NO OBJECTION, the amendment was WITHDRAWN.

Representative Kelly inquired if providing half the requested fiscal cost, could some cases be addressed. He mentioned states using a "criminal arm" and asked if the bill could address that.

[10:19:37 AM](#)

Representative Weyhrauch observed on Page 4, Line 8, "significant" should be deleted.

Co-Chair Meyer stated that HB 399 would be HELD in Committee for further consideration.

[10:20:47 AM](#)

#HB400

HOUSE BILL NO. 400

An Act relating to disasters and confiscation of firearms.

Vice Chair Stoltze MOVED to ADOPT work draft #24-LS1543\L, Luckhaupt, 3/01/06, as the version of the bill before the Committee. There being NO OBJECTION, it was adopted.

[10:21:27 AM](#)

REPRESENTATIVE JOHN COGHILL, SPONSOR, spoke to the bill. He commented that HB 400 addresses the right of people to keep and bear arms to insure the security of a free state. He noted the chaos following Hurricane Katrina, where various government agencies made systematic attempts to sweep New

Orleans clean of guns, even if it meant entering the homes of law abiding gun owners.

Representative Coghill stated that National Guard, federal, state, or local law enforcement personnel should not be allowed to confiscate lawfully owned and lawfully carried firearms. HB 400 would make it a Class A felony for any person to knowingly confiscate, attempt to confiscate, or order the confiscation of a firearm during a disaster emergency. The bill would insure that the government not do this during a time when those citizens may need their firearms the most.

[10:25:51 AM](#)

Co-Chair Meyer pointed out the zero note accompanying the bill.

Co-Chair Chenault asked about inclusion of the language: "A person would forfeits any office of governmental position", and asked if that was legal. Representative Coghill replied that was the intent, however, at this point, it would be a civil action. He understood there was an amendment, making it a criminal action.

Representative Coghill advised that he concurred with both the attached amendments.

[10:28:18 AM](#)

BRIAN JUDY, (TESTIFIED VIA TELECONFERENCE), NATIONAL RIFLE ASSOCIATION (NRA) REPRESENTATIVE FOR ALASKA, ANCHORAGE, testified in support of HB 400. He echoed concerns voiced by Representative Coghill regarding what had happened in New Orleans.

The bill would clarify that during a state of disaster, lawfully owned firearms could not be seized from law-abiding citizens. Additionally, it would make accountable, any person knowingly confiscating firearms. He urged support for the bill.

Representative Hawker MOVED to ADOPT Conceptual Amendment #1. (Copy on File). Co-Chair Meyer OBJECTED.

Representative Hawker spoke to the grammatical change made by the amendment. Co-Chair Meyer WITHDREW his OBJECTION. There being NO further OBJECTION, Amendment #1 was adopted.

[10:31:27 AM](#)

Representative Hawker MOVED to ADOPT Conceptual Amendment #2. (Copy on File). Co-Chair Meyer OBJECTED.

Representative Hawker explained the proposed change. Page 1, Line 7-10, the amendment deletes all material and would insert Section 26.23.205, regarding confiscation of firearms. That section provides for due process to be exercised if the person was convicted, their office would be forfeited. The amendment would raise the bar from simple presumption and would require the burden of proof of a criminal standard.

[10:35:51 AM](#)

Vice Chair Stoltze acknowledged the tough standard of conviction. Representative Hawker referenced the original version, which forfeited anything without regard to the contractual contract. He did not know how it could presently interface. He speculated that there is a provision, if convicted, there would be consequences. The amendment provides the form to properly address the consequence. He spoke to automatic forfeiture.

[10:37:36 AM](#)

Representative Hawker mentioned his uncomfortableness with the motion.

Representative Holm asked about language in Amendment #2, Line 7, "the color of law" and that affect.

DEAN GUANELLI, CHIEF ASSISTANT ATTORNEY, CRIMINAL DIVISION, DEPARTMENT OF LAW, pointed out that was a "term of art" and exists in the federal civil rights law and a couple other places in Alaska Statute. It reflects that the person doing the act was under the cover of some lawful authority.

Representative Holm asked if it meant under the umbrella of their position. Mr. Guanelli replied that it means that they profess to have lawful authority.

Representative Kerttula mentioned the example of the National Guard; they would be protected because they are under orders. Mr. Guanelli responded that the question would be if that person believed that it truly was a lawful order. It would be no different than if a superior officer orders someone to assault a person. The people must decide for themselves whether to obey.

Representative Kerttula asked when it would be lawful to confiscate guns. Mr. Guanelli said if a crime is being committed, then it is lawful. Each circumstance must be weighed separately.

[10:44:56 AM](#)

Representative Kelly wondered if the language "disaster emergency" should be "disaster" or "emergency". Mr. Guanelli opined that was correct. He further clarified that the governor declares a disaster-emergency.

Representative Hawker emphasized that this is a very sensitive issue. The amendment is intended to address a disaster emergency situation resulting in looting. An officer may need to secure firearms to protect citizens and would not have to forfeit his/her job until having gone through a court procedure. It would be a way to protect officers acting in good faith.

Co-Chair Meyer asked Mr. Guanelli for an opinion on the amendment. Mr. Guanelli replied that he was comfortable with it.

[10:49:32 AM](#)

Representative Coghill commented that his intent was to guarantee a law-abiding citizen their right to bear arms.

Co-Chair Meyer WITHDREW his OBJECTION. There being NO further OBJECTION, Amendment #2 was adopted.

[10:50:11 AM](#)

Representative Hawker pointed out that the Department of Law does not anticipate increased prosecutions due to the passage of HB 400.

Representative Hawker MOVED to REPORT CS HB 400 (FIN) out of Committee with individual recommendations and with the accompanying zero note. There being NO OBJECTION, it was so ordered.

CS HB 400 (FIN) was reported out of Committee with a "do pass" recommendation and with zero note #1 by the Department of Military & Veterans Affairs.

#

ADJOURNMENT

The meeting was adjourned at [10:51:53 AM](#).