ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
February 10, 2006
1:17 p.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson
Representative John Coghill
Representative Pete Kott
Representative Peggy Wilson
Representative Les Gara
Representative Max Gruenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 343
"An Act relating to harassment."

- MOVED CSHB 343(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 226
"An Act relating to breaches of security involving personal information; and relating to credit report security freezes."

- MOVED CSHB 226(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 190
"An Act relating to the purchase of alcoholic beverages and to requiring identification to buy alcoholic beverages; requiring driver's licenses and identification cards to be marked if a person is restricted from consuming alcoholic beverages as a result of a conviction or condition of probation or parole."

- MOVED CSHB 190(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 93
"An Act relating to dentists and dental hygienists and the Board of Dental Examiners; establishing certain committees for the discipline and peer review of dentists; excluding the adjudicatory proceedings of the Board of Dental Examiners and its committees from the Administrative Procedure Act and from

the jurisdiction of the office of administrative hearings; and providing for an effective date."

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: HB 343
SHORT TITLE: HARASSMENT
SPONSOR(S): REPRESENTATIVE(S) LYNN

01/09/06	(H)	PREFILE RELEASED 1/6/06
01/09/06	(H)	READ THE FIRST TIME - REFERRALS
01/09/06	(H)	JUD, FIN
01/27/06	(H)	JUD AT 1:00 PM CAPITOL 120
01/27/06	(H)	Heard & Held
01/27/06	(H)	MINUTE(JUD)
02/10/06	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 226
SHORT TITLE: PERSONAL INFORMATION BREACH
SPONSOR(S): REPRESENTATIVE(S) GARA

03/21/05	(H)	READ THE FIRST TIME - REFERRALS
03/21/05	(H)	L&C, JUD
04/06/05	(H)	L&C AT 3:15 PM CAPITOL 17
04/06/05	(H)	<Bill Hearing Postponed>
04/13/05	(H)	L&C AT 3:15 PM CAPITOL 17
04/13/05	(H)	Heard & Held
04/13/05	(H)	MINUTE(L&C)
04/15/05	(H)	L&C AT 3:15 PM CAPITOL 17
04/15/05	(H)	Moved CSHB 226(L&C) Out of Committee
04/15/05	(H)	MINUTE(L&C)
04/18/05	(H)	FIN REFERRAL ADDED AFTER JUD
04/22/05	(H)	L&C RPT CS(L&C) 4DP 1NR
04/22/05	(H)	DP: LYNN, LEDOUX, GUTTENBERG, KOTT;
04/22/05	(H)	NR: ROKEBERG
02/10/06	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 190
SHORT TITLE: REQUIRED ID FOR PURCHASING ALCOHOL
SPONSOR(S): REPRESENTATIVE(S) CRAWFORD

03/01/05	(H)	READ THE FIRST TIME - REFERRALS
03/01/05	(H)	L&C, JUD
03/22/05	(H)	L&C AT 1:00 PM CAPITOL 17
03/22/05	(H)	Heard & Held

03/22/05	(H)	MINUTE(L&C)
04/20/05	(H)	L&C AT 3:15 PM CAPITOL 17
04/20/05	(H)	Moved CSHB 190(L&C) Out of Committee
04/20/05	(H)	MINUTE(L&C)
04/22/05	(H)	L&C RPT CS(L&C) NT 3DP 2NR
04/22/05	(H)	DP: CRAWFORD, LYNN, KOTT;
04/22/05	(H)	NR: LEDOUX, GUTTENBERG
04/22/05	(H)	FIN REFERRAL ADDED AFTER JUD
02/10/06	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

ANNE CARPENETI, Assistant Attorney General
Legal Services Section-Juneau
Criminal Division
Department of Law (DOL)
Juneau, Alaska
POSITION STATEMENT: Responded to questions during discussion of HB 343; responded to questions during discussion of HB 190.

REPRESENTATIVE BOB LYNN
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of HB 343.

JOHN L. GEORGE, Lobbyist
for American Council of Life Insurers (ACLI)
Juneau, Alaska
POSITION STATEMENT: During discussion of HB 226, provided comments and suggested a couple of changes.

LISA J. CORRIGAN, Executive Vice President & Chief Operating Officer
Alaska Pacific Bank;
President
Alaska Bankers Association
Juneau, Alaska
POSITION STATEMENT: During discussion of HB 226, provided comments and expressed support of a proposed amendment and hope that the legislation passes.

REPRESENTATIVE HARRY CRAWFORD
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of HB 190.

DUANE BANNOCK, Director

Division of Motor Vehicles (DMV)
Department of Administration (DOA)
Anchorage, Alaska
POSITION STATEMENT: Provided comments and responded to questions during discussion of HB 190.

DOUG WOOLIVER, Administrative Attorney
Administrative Staff
Office of the Administrative Director
Alaska Court System (ACS)
Anchorage, Alaska
POSITION STATEMENT: Responded to questions during discussion of HB 190.

BRYAN TALBOTT-CLARK, President
Board of Directors
Anchorage Chapter
Mothers Against Drunk Driving (MADD)
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 190.

KERRY HENNINGS, Driver Licensing
Director's Office
Division of Motor Vehicles (DMV)
Department of Administration (DOA)
Anchorage, Alaska
POSITION STATEMENT: Responded to a question during discussion of HB 190.

ACTION NARRATIVE

CHAIR LESIL McGUIRE called the House Judiciary Standing Committee meeting to order at 1:17:07 PM. Representatives McGuire, Coghill, Wilson, Kott, and Gruenberg were present at the call to order. Representatives Anderson and Gara arrived as the meeting was in progress.

HB 343 - HARASSMENT

1:18:11 PM

CHAIR McGUIRE announced that the first order of business would be HOUSE BILL NO. 343, "An Act relating to harassment."

1:18:43 PM

REPRESENTATIVE WILSON referred to Amendment 1, labeled 24-LS1002\G.5, Luckhaupt, 2/8/06, which read:

Page 3, line 4, following "responder":
Insert "**or medical professional**"

Page 3, following line 8:
Insert a new bill section to read:
"*** Sec. 5.** AS 12.55.135(j) is amended by adding a new paragraph to read:
(3) "medical professional" means a person who is an anesthesiologist, dentist, dental hygienist, health aide, nurse, nurse aid [sic], nurse practitioner, mental health counselor, physician, physician assistant, psychiatrist, osteopath, psychologist, psychological associate, radiologist, surgeon, or x-ray technician, or who holds a substantially similar position."

REPRESENTATIVE WILSON explained that Amendment 1 would add "medical professional" to the list of those people for whom a violation against would engender a minimum mandatory sentence of 60 days, and would add a definition of "medical professional". Thus the protection afforded by HB 343 would not stop at the hospital door. She indicated that the proposed definition was gleaned, in part, from [the definition of "health care worker" in] AS 11.41.470, and now also includes dental hygienist and nurse aide.

REPRESENTATIVE WILSON made a motion to adopt Amendment 1.

REPRESENTATIVE WILSON, in response to questions, indicated that the definition of "health care worker" in AS 11.41.470 was too broad for use in HB 343 because it included hypnotists, religious healing practitioners, and chiropractors; and that dental hygienists and nurse aides could be in situations where someone spits on them.

REPRESENTATIVE GRUENBERG said he is concerned that chiropractors are not included in the proposed definition.

REPRESENTATIVE WILSON remarked that as a rule, chiropractors are not in hospitals or in emergency situations.

REPRESENTATIVE GRUENBERG made a motion to amend Amendment 1, to add chiropractors to the proposed definition of "medical professional".

REPRESENTATIVE COGHILL asked how that would fit in with the crime of harassment. He then acknowledged that chiropractors do work very closely with people, and indicated that he would not object to the amendment to Amendment 1.

1:21:54 PM

CHAIR McGUIRE, indicating that she'd heard no further objection, announced that the amendment to Amendment 1 was adopted.

REPRESENTATIVE GRUENBERG said he is removing his objection.

CHAIR McGUIRE asked whether there were any further objections to Amendment 1, as amended. There being none, Amendment 1, as amended, was adopted.

1:22:16 PM

REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment 2, to limit the bill, with regard to saliva, to just those listed in proposed AS 12.55.135(d), so that it won't apply in cases where two kids in a schoolyard fight spit on each other.

REPRESENTATIVE GRUENBERG noted that the crimes outlined in the bill apply to everyone, and that the bill then provides for a mandatory minimum sentence for those found guilty of the new crime of harassment in the first degree if the victim is someone listed in proposed AS 12.55.135(d).

REPRESENTATIVE GARA said that for spitting, he wants to leave the existing law in place except when it involves the people listed in proposed AS 12.55.135(d).

1:25:06 PM

ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), relayed that currently, spitting would be prosecuted under the crime of harassment, which is a class B misdemeanor. In response to a question, she said that the crime of fourth degree assault is a class A misdemeanor.

REPRESENTATIVE GRUENBERG offered his understanding that [spitting] could be prosecuted as an assault.

MS. CARPENETI said it would depend on the facts.

1:26:09 PM

REPRESENTATIVE BOB LYNN, Alaska State Legislature, sponsor of HB 343, said he would prefer to leave the bill as is with regard to saliva.

REPRESENTATIVE GRUENBERG, remarking that he may have a potential conflict of interest, relayed that his son is in a situation wherein he is sometimes subjected to being spit upon. He noted that spit can carry disease.

MS. CARPENETI mentioned that it is unlikely that the DOL would be able to prosecute spitting as an assault in the fourth degree unless the circumstances were extreme.

REPRESENTATIVE GRUENBERG surmised, then, that the prosecution would have to show that the victim was injured from having been spit upon. He remarked, therefore, that he likes the bill the way it is [with regard to saliva].

MS. CARPENETI, in response to a comment, indicated that under the bill, spitting at someone would fall under the proposed crime of harassment in the first degree, a class A misdemeanor. In response to a question, she offered her belief that it might be possible to, in certain situations, have the behavior of spitting be subject to a class A misdemeanor without having the proposed mandatory minimum sentence apply.

CHAIR McGUIRE offered her understanding that Conceptual Amendment 2 proposes to make the crime of harassment in the first degree when it involves saliva, and the proposed mandatory minimum sentence, only apply when it involves a victim listed in proposed AS 12.55.135(d).

REPRESENTATIVE GARA, in response to a question, said that he wants other instances involving saliva to be a class B misdemeanor.

MS. CARPENETI sought clarification.

REPRESENTATIVE GARA said, "remain a class B misdemeanor just for spitting when it doesn't involve the ... professions that are addressed in this bill."

MS. CARPENETI said that would involve further altering existing statute.

REPRESENTATIVE COGHILL said he wants to know why they should exclude other people from the protection [of a class A misdemeanor]. He said he would speak against Conceptual Amendment 2, particularly given that everybody might at one point in their life find themselves being spit upon. He sought further clarification regarding Conceptual Amendment 2.

REPRESENTATIVE GARA said that under Conceptual Amendment 2, those not listed in proposed AS 12.55.135(d) would still have the remedy of charging someone who spit on them with the crime of harassment. And if the person doing the spitting had an infectious disease, he surmised, then a victim not listed in proposed AS 12.55.135(d) could charge the person with a more serious crime on the basis that the spitting occurred with the intent to cause serious physical injury.

MS. CARPENETI said, "Or through reckless endangerment."

REPRESENTATIVE GARA said he simply wants to exempt schoolyard-fight situations.

MS. CARPENETI acknowledged that when giving certain groups of people more protection than others, it is a policy call as to who to include.

REPRESENTATIVE COGHILL suggested that the question is, should they exclude schoolyard fights, and acknowledged that maybe sometimes a situation involving a such a fight would warrant prosecution.

1:34:10 PM

A roll call vote was taken. Representatives McGuire, Kott, and Gara voted in favor of Conceptual Amendment 2. Representatives Coghill, Wilson, Anderson, and Gruenberg voted against it. Therefore, Conceptual Amendment 2 failed by a vote of 3-4.

1:34:38 PM

REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment 3, to alter the bill such that it would allow the behavior that involves saliva to be a heightened crime unless the victim is the initial aggressor. He noted that the self-defense provisions of current law contain a similar caveat, so

that although one generally has the right to self defense, one loses that right when one is the initial aggressor - the person starting the fight or altercation.

REPRESENTATIVE WILSON objected, and noted that there is a tendency to think that spitting is "no big deal." However, spitting is a big deal because it could lead to the spread of very serious diseases, even fatal diseases.

REPRESENTATIVE GRUENBERG noted that in gang-related altercations, the police are tasked with trying to find out who started an altercation. Therefore, he is concerned about the practical implications of Conceptual Amendment 3.

MS. CARPENETI said the DOL would prefer that such a caveat not be put in substantive statute, and would prefer instead that the committee rely on the current justification statutes. In response to a question, she said that she is referring to AS 11.81.330(a)(1) [and (3)], and offered her belief that [those statutes are] not limited to serious crimes against a person.

REPRESENTATIVE GARA said that if Ms. Carpeneti is convinced that someone who is provoked into spitting on another person would be protected from prosecution, then he would be willing to withdraw Conceptual Amendment 3.

MS. CARPENETI said she would give the issue more thought.

REPRESENTATIVE GRUENBERG suggested that perhaps a letter of intent might be in order.

1:39:41 PM

MS. CARPENETI, in response to a question, reiterated that she would prefer that a justification not be put into substantive statute, and that she would research this issue further.

CHAIR McGUIRE, in response to comments, suggested that perhaps an amendment addressing Representative Gara's concern could be crafted before the bill is heard on the House floor.

CHAIR McGUIRE announced that Conceptual Amendment 3 has been withdrawn.

REPRESENTATIVE GRUENBERG referred to the Alaska Court of Appeals case, McKillop v. State, thanked [Ms. Carpeneti] for discussing it with him, and mentioned that he would be willing to pursue

the issues raised in that case further at another time should the DOL wish.

1:42:31 PM

REPRESENTATIVE KOTT moved to report HB 343, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 343(JUD) was reported from the House Judiciary Standing Committee.

HB 226 - PERSONAL INFORMATION BREACH

[Contains brief mention that language of proposed amendments to HB 226 was derived from SB 222.]

1:43:04 PM

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 226, "An Act relating to breaches of security involving personal information; and relating to credit report security freezes." [Before the committee was CSHB 226(L&C).]

REPRESENTATIVE GARA, speaking as the sponsor, relayed that HB 226 is intended to address situations involving security breaches at financial companies that trade, hold, and supply individuals' personal and financial information. At the time the bill was started, only 3 or 4 states were responding to this issue, but more have responded since then. The bill is in response to a situation that occurred over a year ago, when a company called ChoicePoint, Inc. ("ChoicePoint"), experienced a security breach that affected about 145,000 clients. Because California law mandated that clients be notified of such security breaches, ChoicePoint notified its clients located in California, but didn't notify any of its clients located elsewhere.

REPRESENTATIVE GARA explained that HB 226 is modeled in part on two provisions of that California law: one, when a company releases a person's financial information accidentally because of theft, that company must notify the person of that security breach; two, when a person has an indication that his/her information is no longer secure, the person will have the right to call the three consumer financial information clearinghouses and have them put a freeze on releasing his/her credit information to a third party.

1:47:40 PM

JOHN L. GEORGE, Lobbyist for American Council of Life Insurers (ACLI), relayed that the ACLI has been working with the sponsor on this bill and the sponsor has been very accommodating, and characterized CSHB 226(L&C) as a better version than the original bill. He indicated that he has two issues to discuss and both pertain to language in proposed AS 45.48.390 located on pages 11-12. Proposed subparagraph (A) indicates that "personal information" consists of a combination of an individual's first name or first initial, the individual's last name, and one or more of the following: the individual's social security number; the number of the individual's driver's license or state identification card; the individual's account number, or credit card or debit card account number; or account passwords, personal identification numbers, or other access codes. However, he pointed out, proposed subparagraph (B) states that "personal information" could consist of one of the aforementioned elements if it would be sufficient to engage in or attempt to engage in the theft of the individual's identity.

MR. GEORGE opined that as written, this definition is ambiguous; "personal information" should consist of one or the other, either what's specified in subparagraph (A) or what's specified in subparagraph (B). For example, under subparagraph (B), a social security number would be sufficient, whereas under subparagraph (A), both the individual's name and social security number would be required. He suggested that the removal of subparagraph (B) would improve the bill substantially. He then referred to the language on page 11, line 23 - which says in part, "the information elements are not encrypted" - and said he is unable to find a definition of encryption. He suggested, therefore, that the words, "or secured by another means rendering the information unreadable" be added; such a change would cover both current and future technology without harming the intent of the bill.

MR. GEORGE, in response to a question, clarified that his suggested change would be to replace - on page 11, lines 23-24 - the words, "or redacted" with the words: ", redacted, or secured by another means rendering the information unreadable".

REPRESENTATIVE GARA offered his belief that neither suggested change is needed. The term "encrypted" is used in California, he relayed, and opined that a definition of that term is unneeded. He indicated that simply saying something is unreadable is vague, whereas if an encrypted item is released it won't constitute a security breach. He elaborated:

> We want to say that it's a security breach when certain personal information is released - part of it has to be the person's name; we don't really want to regulate it if the person's name is not associated with the security breach - that's just not really a big security concern. ... That's why, ... [in subparagraph (A)], it's two pieces of information that have been released - your name and then some identifying information [such as] your bank account [number or] your social security number - that's a big concern. The catchall in [subparagraph] (B) says, however, [that] there might be some circumstances where even just the release of one piece of this information is a danger.
>
> And you can imagine where just releasing somebody's credit card number or bank account number by itself could be a danger to the consumer. So that's why ... California put this ... [language in its law] as well. So I don't know why you would not want to protect a consumer if a piece of information, standing by itself, would be sufficient to allow somebody to engage in or attempt to engage in the theft of the individual's identity; if it's a piece of information that endangers the consumer, I think that, standing alone, is a breach. And, really, again, all [the company has] ... to do is tell the consumer.

REPRESENTATIVE GARA, in response to a question, opined that it won't be burdensome for a company to determine whether there has been a breach. A company should notify an individual if his/her account number, credit card number, access code, or password has been released. He pointed out that the bill only applies if the company knows the information has been breached, and then the only requirement is that the company notify the consumer. He added: "I don't think any company's going to have to sort of sit there and pull there hair out and go, 'Shoot, we released somebody's social security number, should we tell them?' I think the answer is yes - it's a courtesy."

1:55:36 PM

LISA J. CORRIGAN, Executive Vice President & Chief Operating Officer, Alaska Pacific Bank; President, Alaska Bankers Association, relayed that Alaskan bankers share the concerns of the sponsor and other members of the committee, and are

dedicated to protecting the privacy and security of sensitive customer information. In fact, she added, the reputation and the safety and soundness of the banking industry depends on a foundation of security and integrity, and the banking industry knows it has a fiduciary responsibility to its customers, not only to protect their money, but to also protect their sensitive personal information. She assured the committee that the banking industry takes security breaches and all other related issues very seriously.

MS. CORRIGAN relayed that her comments will pertain to two provisions located on pages 1 and 2, adding that [her organizations] think that the remainder of the bill is great. She offered her belief that the concerns [she is about to express] will be adequately addressed via a forthcoming proposed amendment.

1:57:22 PM

MS. CORRIGAN remarked that [subsection (a) of proposed 45.48.010] appears to appropriately require disclosure of a breach of security if sensitive, personal information is reasonably believed to have been acquired by an unauthorized person. However, that language doesn't go further to stipulate that the information has been accessed for unauthorized purposes. This [lack] is a bit of a difference from the banking "guidance" that banks already operate under. Since banks are already operating under a complicated web of federal and state regulations, whenever possible [banks] would like to see legislation that's consistent with [the rules] they must already comply with.

MS. CORRIGAN referred to the Gramm-Leach-Bliley Act (GLBA), which required banking regulators to issue guidance, and to continue issuing guidance, to banks. That guidance requires banks to create information security systems; complete a comprehensive risk assessment relating directly to the subject of HB 226 - the likelihood of, and vulnerability to, unauthorized access to sensitive customer information; and to subsequently develop and implement a response program - basically disaster response in an electronic format - that would be used any time the bank felt there was reason to believe that there could be harm to a customer or a customer base.

MS. CORRIGAN explained that the aforementioned response program requires banks to begin an immediate investigation if they believe that a security breach may have occurred, and then they

are required to determine the likelihood that the sensitive information has or will be misused. A concern, she relayed is that it is possible that an unauthorized individual could inadvertently come into contact with or come into possession of sensitive information without meaning any harm, and [her organizations believe] that it is not the sponsor's intent to have the bill apply in such situations and so want to ensure that language in the bill recognizes that, because if a bank believes that it is reasonably possible that misuse will occur, then the bank is already required to go through the aforementioned notification process and notify customers, banking regulators, federal authorities, et cetera.

MS. CORRIGAN said that the Alaska Banking Association supports a forthcoming proposed amendment because it believes that the amendment will clarify that the information would have to have been accessed for a purpose not authorized by the state resident; this adds the piece that the Alaska Banking Association felt was missing - that it is an unauthorized person who has unauthorized access to sensitive information and is using it for unauthorized purposes or there is reason to believe that he/she could.

2:00:51 PM

MS. CORRIGAN then drew members' attention to page 2, lines 7-10 - proposed AS 45.48.020 - which provides that a business may delay disclosing a security breach to customers if the Department of Law (DOL) has an ongoing investigation that could be compromised by that disclosure. The Alaska Banking Association is asking that that exception be broadened to include all appropriate law enforcement agencies; banks are already required to have a lot of contact with federal authorities in situations involving suspected or ongoing criminal activity. She offered her understanding that the forthcoming proposed amendment will address this concern as well. She concluded by saying that with the inclusion of her aforementioned proposed changes, [her organizations] think that HB 226 is good legislation and hope it passes.

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on HB 226.

REPRESENTATIVE GRUENBERG referred to the language on page 12, lines 3-5, and relayed that his staff is researching whether that language is identical to the language in California law. He said he supports the bill, but added that that language

currently seems to read that the crime is a crime if it's a crime; in other words, it's an identifier if it's sufficient to cause a crime, which is a circular argument.

2:02:59 PM

REPRESENTATIVE GARA made a motion to adopt Amendment 1, which read [original punctuation provided]:

Page 5, line 2 following "A"
Delete "consumer"
Insert "credit"

Page 11, line 16
Delete "or conflicts with"

REPRESENTATIVE COGHILL objected for the purpose of discussion.

REPRESENTATIVE GARA explained that the first part of Amendment 1 corrects a typographical error and the second part provides a cleaner way of dealing with a federal preemption.

REPRESENTATIVE COGHILL removed his objection.

REPRESENTATIVE GRUENBERG said he supports Amendment 1. He remarked, though, that proposed AS 45.48.300 - which is being altered by the second portion of Amendment 1 - is not even necessary because it is always the law that federal law preempts state law.

REPRESENTATIVE GARA said he would be receptive to taking [proposed AS 45.48.300] out of the bill on the House floor if Representative Gruenberg can show that there is already a general preemption provision.

REPRESENTATIVE GRUENBERG said there isn't one now, and is pondering whether the committee would consider adding a general preemption provision to Title 1.

REPRESENTATIVE COGHILL said he'd prefer to consider that question separately from their debate on HB 226.

2:06:37 PM

CHAIR McGUIRE noted that the issue of severability has been debated, and that sometimes a specific clause pertaining to severability is put in legislation and sometimes severability is

viewed as a given. She concurred that the general rule is that if there is a federal law on a particular subject, it would preempt state law, but pointed out that this issue can be more complicated when it pertains to certain areas of the law.

REPRESENTATIVE COGHILL said he would not want to concede anything [to the federal government] that he did not have to.

CHAIR McGUIRE said she thinks it's appropriate to keep [proposed AS 45.48.300] in the bill.

CHAIR McGUIRE asked whether there were any further objections to Amendment 1. There being none, Amendment 1 was adopted.

2:07:51 PM

REPRESENTATIVE GARA made a motion to adopt [Conceptual] Amendment 2, which read [original punctuation provided]:

> Page 1, line 12 following "person,"
> Insert "for a purpose not authorized by the state resident"
> Delete "due to the breach"
>
> Page 2 lines 7 following "Enforcement."
> Delete all material through page 2, line 10.
> Insert "Notice of the breach may be delayed if an appropriate law enforcement agency determines that notification will interfere with a criminal investigation and provides the business or governmental entity with a written request for the delay. However, the business or governmental entity shall notify the state resident as soon as notification will no longer interfere with the investigation."

REPRESENTATIVE COGHILL objected for the purpose of discussion.

REPRESENTATIVE GARA indicated that the first part of [Conceptual] Amendment 2 addresses Ms. Corrigan's first stated concern, and the second part of [Conceptual] Amendment 2 addresses her second stated concern. With the adoption of [Conceptual] Amendment 2, if there is a breach but it's a harmless breach, then the bill won't apply, and a delay in notifying the customer of a security breach will temporarily be allowed if the company is told, in writing, by any appropriate law enforcement agency that such notification will interfere

with a criminal investigation, though once law enforcement is no longer concerned about notification, then the customer must be notified.

2:09:59 PM

CHAIR McGUIRE said she would not want the first part of [Conceptual] Amendment 2 to be used as an excuse [to not provide notification]. She offered her recollection that in the ChoicePoint case, the company offered the defense that although it knew about the security breach, it didn't think that it was going to cause any harm. She said she wants it to be very clear that companies have a duty to investigate the reasonableness of whether the breach would cause harm, and that it isn't an automatic defense for the company to simply say it didn't think it would.

REPRESENTATIVE GRUENBERG referred to the last sentence of [Conceptual] Amendment 2 and suggested that it be changed to say that the law enforcement agency must notify the company [or governmental entity] in writing that the customer notification process will no longer interfere with the criminal investigation and thus may begin. In response to a comment, he clarified that he would like the law enforcement agency to also have a duty to notify.

REPRESENTATIVE GRUENBERG made a motion to conceptually amend [Conceptual] Amendment 2, to rewrite the final sentence such that the investigating law enforcement agency shall notify the business or governmental entity as soon as the investigation is sufficiently complete that the business can notify the consumer. At that point, he added, the [business] must notify the consumer.

CHAIR McGUIRE noted however that investigations can take decades. Therefore she would prefer the phrase, "will no longer interfere with the investigation".

REPRESENTATIVE GRUENBERG indicated that he is amenable to such a change to the conceptual amendment to [Conceptual] Amendment 2, to have it say, "the investigating law enforcement agency shall notify the business or governmental entity as soon as notification will no longer interfere with the investigation and at that point the business or governmental [entity] must notify the consumer". There being no objection, [Conceptual] Amendment 2 was amended.

CHAIR McGUIRE asked whether there were any further objections to [Conceptual] Amendment 2, as amended. There being none, [Conceptual] Amendment 2, as amended, was adopted.

2:16:08 PM

REPRESENTATIVE GARA made a motion to adopt [Conceptual] Amendment 3, which read [original punctuation provided]:

Page 6, line 15 following "than"
Insert a new subsection to read:
" (1) $3 for the first time that the consumer places a security freeze in a five year period under AS 45.48.100"

Page 6, line 16 following "each"
Insert "subsequent"

Page 6, line 16
Delete (1)
Insert (2)

Page 6, line 19
Delete (2)
Insert (3)

Page 12 following line 5
Insert a new bill section to read:
"CONTINGENT EFFECT OF AS 45.48.160(a)(1) . If a court of competent jurisdiction whose decisions are binding in this state enters a final judgment that the charges rendered in AS 45.48.160(a)(1) are unconstitutional, then the charges shall be as stated in AS 45.48.160(a)(2), (a)(3) and AS 45.48.160(b)."

REPRESENTATIVE COGHILL objected for the purpose of discussion.

REPRESENTATIVE GARA said that he took care to mirror California's comprehensive approach. However, California allows a credit-reporting agency to charge $10 and $12 to either place or remove a freeze. That amount seems significant, he remarked, and so Conceptual Amendment 3 provides for a $3 charge for a first time request within a five year period, and includes conditional language which says that if a court finds that it is unconstitutional to impose the lower charge then it will default to the $10 and $12 charges. He pointed out that under language currently in the bill, a person may place or remove a security

freeze without charge if he/she provides a credit reporting agency with proof that he/she, in good faith, filed a police report stating that his/her [personal information has been breached].

REPRESENTATIVE COGHILL removed his objection.

CHAIR McGUIRE asked whether there were any further objections to Conceptual Amendment 3. There being none, Conceptual Amendment 3 was adopted.

2:19:06 PM

REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment 4, which, along with a note, read [original punctuation provided]:

> Page 6, line 14
> Insert a new bill section to read:
> "**Sec. 45.48.150. Prohibition.** When dealing with a third party, a credit reporting agency may not suggest, state, or imply that a consumer's security freeze reflects a negative credit score, history, report, or rating"
>
> Page 7, line 12
> Insert a new bill section to read:
> "**Sec. 45.48.190. Notification after violation.** If a credit reporting agency violates a security freeze by releasing a consumer's credit report or information derived from the credit report, the credit reporting agency shall notify the consumer within five business days after the release, and the information in the notice must include an identification of the information released and of the third party who received the information."
>
> Renumber following bill sections accordingly.
>
> [Note: Taken from SB222]

CHAIR McGUIRE objected for the purpose of discussion.

REPRESENTATIVE GARA relayed that SB 222 addresses many more subjects than HB 226, and Conceptual Amendment 4, which contains language from SB 222, says in the first part that if a third party contacts a credit reporting agency, the agency may not

suggest, state, or imply that a freeze on a consumer's information reflects a negative credit score, history, report, or rating.

CHAIR McGUIRE removed her objection, and asked whether there were any further objections. There being none, Conceptual Amendment 4 was adopted.

REPRESENTATIVE GARA, in response to a question regarding Conceptual Amendment 3, relayed that he doesn't believe that the lower charge of $3 proposed via Conceptual Amendment 3 will violate the [federal] commerce clause but he is including the contingent effect clause just in case the proposed lower charge raises that issue.

2:22:11 PM

REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment 5, which, along with a note, read [original punctuation provided]:

Page 11, line 14
Insert a new article in the bill to read:
"**Article 3. Right to File Police Report Regarding Identity Theft."**
Sec. 45.48.300. Right to file police report regarding identity theft. (a) Even if the local law enforcement agency does not have jurisdiction over the theft of an individual's identity, if an individual who has learned or reasonably suspects the individual has been the victim of identity theft contacts, for the purpose of filing a complaint, a local law enforcement agency that has jurisdiction over the individual's actual place of residence, the local law enforcement agency shall make a report of the matter and provide the individual with a copy of the report. The local law enforcement agency may refer the matter to a law enforcement agency in a different jurisdiction.
(b) This section is not intended to interfere with the discretion of a local law enforcement agency to allocate its resources to the investigation of crime. A local law enforcement agency is not required to count a complaint filed under (a) of this section as an open case for purposes that include compiling statistics on its open cases.

Sec. 45.48.390. Definitions. In AS 45.48.300 - 45.48.390

(1) "crime" has the meaning given in AS 11.81.900

(2) "identity theft" means the theft of the identity of an individual;

(3) "victim" means an individual who is the victim of identity theft.

Renumber following bill sections accordingly.

[Language taken from SB222]

REPRESENTATIVE GARA mentioned that he'd gotten this language from SB 222 as well, and that it addresses a person's ability to file a police report regarding identity theft.

REPRESENTATIVE ANDERSON objected, and asked whether this language will engender a fiscal note.

REPRESENTATIVE GARA acknowledged that this language might have a minor fiscal impact, and explained that Conceptual Amendment 5 specifies that law enforcement shall allow a person to file a report and thereby obtain a free security freeze; he noted that [under Conceptual Amendment 5] a law enforcement agency will not be required to investigate a situation outlined in the report.

REPRESENTATIVE ANDERSON said he will be maintaining his objection because he thinks the proposed requirement to allow people to file the aforementioned reports will be too burdensome on law enforcement agencies.

REPRESENTATIVE GARA reiterated that Conceptual Amendment 5 stipulates that law enforcement will not have to take any action on such reports.

REPRESENTATIVE ANDERSON argued that law enforcement agencies will still have to fill out the reports.

2:24:56 PM

A roll call vote was taken. Representatives McGuire, Coghill, Wilson, Gruenberg, and Gara voted in favor of Conceptual Amendment 5. Representatives Anderson and Kott voted against it. Therefore, Conceptual Amendment 5 was adopted by a vote of 5-2.

CHAIR McGUIRE encouraged Representative Gara to have someone from law enforcement available to address this issue when the bill is heard in the House Finance Committee.

REPRESENTATIVE GARA agreed to do so, and asked Representative Anderson to contact law enforcement.

REPRESENTATIVE ANDERSON indicated that he would.

2:26:05 PM

REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment 6, which read [original punctuation provided]:

Page 2, line 16 following "(3)"
Insert "by substitute notice"

Page 2, line 17 following "$250,000,"
Insert "or"

Page 3, line 5-7
Delete "if the employee or agent does not use the personal information for a purpose unrelated to the activities of the business or governmental entity and does not make further unauthorized disclosure of the personal information."
Insert "provided that the personal information is not used or subject to further unauthorized disclosure."

Page 3, line 12 following "recover the"
Insert "actual"

CHAIR McGUIRE objected for the purpose of discussion.

REPRESENTATIVE GARA referred to the portion of Conceptual Amendment 6 that proposes a change to page 2, line 16.

CHAIR McGUIRE said she doesn't know what the term, "substitute notice" means.

REPRESENTATIVE COGHILL pointed out that [paragraphs (1)-(3)] direct how a business or government shall make the disclosure.

REPRESENTATIVE GRUENBERG asked whether the term, "substitute notices" is defined [in statute], or, if not, who would decide what it means, or is it defined on lines 20-25 of page 2. If

the latter is the case, he remarked, then he would suggest dividing Conceptual Amendment 6 into parts and amending it such that it would add to page 2, line 19, the word, "substitute" between the words, "provide notice".

REPRESENTATIVE GARA made a motion to amend Conceptual Amendment 6, to delete the change proposed to page 2, line 16. There being no objection, Conceptual Amendment 6 was amended.

REPRESENTATIVE GARA referred to the portion of Conceptual Amendment 6, as amended, that proposes a change to page 2, line 17, and characterized this as a technical change.

2:29:29 PM

REPRESENTATIVE GARA referred to the portion of Conceptual Amendment 6, as amended, that proposes a change to page 3, lines 5-7, and explained that the new proposed language would track California statute; although both the current language of the bill and the new proposed language seem to say the same thing, as a matter of caution he would prefer to use the language in California law.

REPRESENTATIVE GRUENBERG asked that Conceptual Amendment 6, as amended, be divided.

CHAIR McGUIRE suggested instead that Representative Gruenberg simply state his concerns.

REPRESENTATIVE GRUENBERG, referring to the portion of Conceptual Amendment 6, as amended, that proposes a change to page 3, line 12, offered his belief that "actual damages" might be read to mean special damages only as opposed to general damages, and since an unauthorized disclosure could ruin a person, they should not limit the damage award to actual damages.

REPRESENTATIVE GARA said his [initial thought] is that both "damages" and "actual damages" mean "compensatory damages", but he is willing to [delete that proposed change from Conceptual Amendment 6, as amended].

REPRESENTATIVE GRUENBERG said he would be more comfortable if the term, "actual" was not included.

REPRESENTATIVE GRUENBERG made a motion to again amend Conceptual Amendment 6, as amended, by deleting the portion that proposes a

change to page 3, line 12. There being no objection, the second amendment to Conceptual Amendment 6, as amended, was adopted.

CHAIR McGUIRE asked whether there were any further objections to Conceptual Amendment 6, as amended twice. There being none, Conceptual Amendment 6, as amended twice, was adopted.

REPRESENTATIVE ANDERSON offered his belief that Mr. George's concern regarding encryption warrants further attention as the bill moves through the process.

REPRESENTATIVE GARA agreed.

REPRESENTATIVE GRUENBERG, referring to proposed AS 45.48.390, said it seems to him that anything in subparagraph (A) would necessarily be in subparagraph (B). Referring to the actual language in California's law pertaining to this issue, he characterized that language as quite clear and well drafted. He asked Representative Gara whether he would be amenable to replacing the language currently in proposed AS 45.48.390 with the language in California law, which read:

> For purposes of this section, "personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:
>
> (1) Social security number.
>
> (2) Driver's license number or California Identification Card number.
>
> (3) Account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

REPRESENTATIVE GARA said he thinks that Representative Gruenberg is correct on this issue and that [Mr. George] has a valid concern.

2:35:58 PM

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 7, to replace the language currently in proposed AS 45.48.390 with the language in California law except that Alaska terms be used in place of California terms. There being no objection, Conceptual Amendment 7 was adopted.

2:37:01 PM

REPRESENTATIVE WILSON, after noting that she'd had her personal information stolen in the past, moved to report CSHB 226(L&C), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 226(JUD) was reported from the House Judiciary Standing Committee.

HB 190 - REQUIRED ID FOR PURCHASING ALCOHOL

2:38:05 PM

CHAIR McGUIRE announced that the final order of business would be HOUSE BILL NO. 190, "An Act relating to the purchase of alcoholic beverages and to requiring identification to buy alcoholic beverages; requiring driver's licenses and identification cards to be marked if a person is restricted from consuming alcoholic beverages as a result of a conviction or condition of probation or parole." [Before the committee was CSHB 190(L&C).]

2:38:29 PM

REPRESENTATIVE HARRY CRAWFORD, Alaska State Legislature, sponsor of HB 190, relayed that during the interim he'd had the opportunity to consider the question of what can be done to prevent the sort of situation in which he found himself last year when his wife was struck by a drunk driver. House Bill 190 is intended to stop people from getting alcohol, from getting drunk, from getting to the point where they kill and maim people. Currently, judges will order people who are convicted of felony driving under the influence (DUI) to not buy or consume alcohol or enter premises where alcohol is sold; however, those orders aren't enforced because there is not yet a way to identify such people.

REPRESENTATIVE CRAWFORD said that HB 190 would require that driver's licenses or state identification (ID) cards be marked so that everyone could identify those who've been convicted of DUI. A prior version of the bill required establishment owners to be responsible for checking IDs for such marking, but that concept didn't have statewide support, and so the current version of HB 190 - CSHB 190(L&C) - makes the checking of IDs by establishment owners voluntarily. If an establishment owner does choose to check someone's ID and finds the marking that indicates the person has been ordered by the court to not buy or

consume alcohol or enter premises where alcohol is sold, the establishment owner could collect a civil damages award of $1,000. He noted that he'd borrowed the civil fine concept from legislation pertaining to minor consuming.

REPRESENTATIVE CRAWFORD relayed that Brown Jug, Inc. ("Brown Jug"), had expressed a willingness to incorporate the checking of IDs for court order designations into its current practices.

REPRESENTATIVE ANDERSON asked Representative Crawford whether he's consulted with the Cabaret Hotel Restaurant & Retailer's Association (CHARR) regarding this bill.

REPRESENTATIVE CRAWFORD indicated that he had but doesn't yet have anything in writing. His understanding is that as long as the proposal is voluntary, CHARR would have no objection to checking IDs for evidence of court orders.

2:45:31 PM

REPRESENTATIVE CRAWFORD, in response to a question, explained that the first portion of Section 1 specifies that the person who has been ordered by the court to not buy or consume alcohol or enter premises where alcohol is sold may not do so; CSHB 190(L&C) does not require an establishment owner to check IDs for such court orders.

REPRESENTATIVE ANDERSON expressed favor with the concept embodied in CSHB 190(L&C), and concern that IDs will soon start containing more and more information about a person.

REPRESENTATIVE CRAWFORD noted that the strip on the back of driver's licenses already provides certain information [as described in AS 28.15.111(a)].

REPRESENTATIVE GRUENBERG said he supports the bill, but he is questioning whether a stigma will be placed on a person with an ID marked in the manner being proposed; a stigma, for example, that could influence a job interview.

CHAIR McGUIRE said she agrees with the goals of the bill, but questions whether marking one's ID in the fashion proposed would be considered "cruel and unusual" punishment in that it would constitute continued punishment - further punishment meted out after one serves his/her time and pays his/her fines and penalties.

REPRESENTATIVE CRAWFORD acknowledged that having one's ID marked in the proposed manner could be somewhat of a stigma, but opined that people should know that one is not to have alcohol or enter onto premises that serve alcohol. He offered his understanding that such a mark can be removed once the court order has been satisfied/removed.

CHAIR McGUIRE noted that some states mark the license plates of those who've been convicted of DUI, and asked whether anyone has looked into the constitutional aspects of marking IDs in the manner proposed.

2:51:20 PM

ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), indicated that she's not yet researched that issue, but added that she would be surprised if there are any constitutional ramifications given that an ID would only be marked for a limited period of time.

CHAIR McGUIRE asked what such a mark would look like.

REPRESENTATIVE CRAWFORD said that the Division of Motor Vehicles (DMV) would resolve that issue.

2:52:12 PM

DUANE BANNOCK, Director, Division of Motor Vehicles (DMV), Department of Administration (DOA), relayed that he is not familiar with any state that uses such a mark and so he cannot answer that particular question. He said that CSHB 190(L&C) still causes the DMV concern because currently there is not a direct link of communication between the DMV and the Alaska Court System, and thus there is no way for the DMV to determine who has been court ordered to not buy or consume alcohol or enter premises where alcohol is sold. And even though Section 2 of the bill states in part, "the person has been ordered to refrain from consuming alcoholic beverages as part of a sentence for conviction of a crime under AS 28.35.030 or as a condition of probation or parole", the DMV doesn't have any idea what would be expected in terms of how many "customers" it could be dealing with and what would be expected if the court simply faxes over court orders. For example, would the DMV be expected to revoke the driver's privilege until the driver came to the DMV to get another driver's license, and is there a time frame involved? So although the DMV understands Section 4 of the

bill, the DMV is concerned about how it will get the information in a timely manner so as to be able to act accordingly.

REPRESENTATIVE ANDERSON asked whether the establishment owner would be held accountable by the Alcoholic Beverage Control Board ("ABC Board") if he/she failed to identify someone as having been ordered by the court to not buy or consume alcohol or enter premises where alcohol is sold, what the fiscal impact will be on the DMV, and whether an individual would be held liable for providing alcohol to someone who has been ordered by the court to not buy or consume alcohol or enter premises where alcohol is sold.

2:55:42 PM

REPRESENTATIVE CRAWFORD answered that the establishment owner would not be liable for failing to identify such individuals, and that the DMV would be able charge those who must get a marked ID with the cost associated issuing those IDs.

MR. BANNOCK, in response to a question, said it will be difficult to determine the bill's fiscal impact on the DMV. He noted that currently, every dollar the DMV collects is "defined" by either statutory or regulatory authority, and so he is presuming that the sponsor and the committee recognize that in order for the DMV to comply with the bill, there will be a cost to the DMV. And although the intent might be for the people who have to get a marked ID to be the ones paying that cost, this will require a statutory change because currently the cost of licensure is the same for everyone and the DMV does not get to raise the rate.

REPRESENTATIVE CRAWFORD, in response to Representative Anderson's third question, offered his understanding that it is already against the law for an individual to provide alcohol to someone who has been ordered by the court to not buy or consume alcohol or enter premises where alcohol is sold, though that individual is not responsible for checking someone else's ID; the bill will not change current law in that regard.

CHAIR McGUIRE asked Representative Crawford whether he's had a chance to work out the details of cost and expectation with the DMV.

REPRESENTATIVE CRAWFORD said he'd thought that that issue had been resolved and so he will take further steps [to ensure that it is], adding that he would be amenable to an amendment on that

issue. There are people being killed and maimed everyday, he remarked, adding HB 190 differs from past attempts in that it establishes a voluntary program that will provide establishment owners with the financial incentive to check IDs for court orders; something must be done to stop alcohol from getting into the hands of those that are causing the most trouble, those that continue to drink and drive. He explained that the person who struck his wife had a blood alcohol concentration (BAC) of .38, and offered his belief that one cannot get to that point of intoxication without having had a lot of practice; the person was a "multiple, repeat offender," and this is the type of person he is targeting.

3:01:02 PM

REPRESENTATIVE GARA suggested that they consider a conceptual amendment that would provide the DMV with the authority to charge an enhanced fee for those that must get a marked ID.

CHAIR McGUIRE indicated that another issue for the DMV to address would be how it will go about putting an appropriate program in place. She asked Mr. Bannock whether he would like the legislation to speak to that issue or whether he would prefer that the details get worked out as the DMV sees fit.

MR. BANNOCK, contrary to an earlier comment, said that the DMV does have a communication link with the ACS, but pointed out that probation and parole situations are handled by the Department of Corrections (DOC), which is not linked at all to the DMV. One question that will need to be addressed is what happens to the person referred to in Section 2. For example, will he/she be required to surrender his/her unmarked ID? He pointed out that people frequently come into the DMV and sign an affidavit saying they've lost their ID; therefore, if someone has to get a marked ID but claims that he/she lost his/her unmarked ID, he/she will have both IDs and will be able to use the one that suits him/her.

MR. BANNOCK said that the DMV concurs with the sponsor that something needs to be done about Alaska's drunk driver problem, but from the DMV's perspective, the cost/benefit ratio must be considered. Also, if this bill passes, who, then, won't be buying alcohol, and what will happen if a person refuses to obtain a marked ID. Although vendors will have the option of checking someone's ID for court orders, the bill doesn't speak to whether a person under a court order will be required to get a marked ID. The DMV will do as directed, he assured the

committee, but the question remains of how to implement the proposed program: "exactly how are we going to get the information, what do we do with it, and is it just as much of a voluntary program for the person as it is for the vendor."

REPRESENTATIVE CRAWFORD requested that the DMV provide suggestions for change. He posited that if a person refuses to get a marked ID, then he/she may be refused service in establishments that are voluntarily checking IDs for court orders. He reiterated that the intent of the bill is to cut down on the number of people who buy alcohol when they have been ordered not to, and suggested that the $1,000 [civil] fine will be a good incentive for establishment owners to assist in stopping problem drinkers. He indicated that he is amenable to working with the DMV to resolve its concerns, and opined that it won't be that hard for the DMV to implement the proposed program.

REPRESENTATIVE GARA asked whether a having a DUI conviction mandates that one turn in one's license.

REPRESENTATIVE CRAWFORD offered his understanding that a first-time DUI conviction wouldn't mandate such.

3:10:10 PM

DOUG WOOLIVER, Administrative Attorney, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), in response to questions, relayed that when an officer stops someone for DUI, the officer seizes the license [at the time of arrest], and the person can then get a temporary license issued by the DMV.

REPRESENTATIVE WILSON surmised, then, that those arrested for DUI won't have a license; thus such a person won't be able to have two licenses as suggested by Mr. Bannock.

MR. WOOLIVER concurred that that would be the case at least initially, but remarked that the situation could become more complicated if a person is given back his/her license while litigating the DUI charge. In such a situation, the person could simply claim that his/her unmarked license was lost, with the result being as Mr. Bannock predicted: the person would then have both a marked license and an unmarked license.

REPRESENTATIVE GARA suggested that a solution would be to require a person to swear under oath before the court that

he/she [has lost the unmarked license]; then, if a person lies under oath, he/she could be found guilty of perjury. He opined that a person should be required to have a marked license even while a case is being litigated; in other words, while a case is pending, if the person seeks to have his/her license returned, it should be a license that is marked in the manner proposed by the bill.

MR. WOOLIVER acknowledged that such a requirement might fill a [loophole].

REPRESENTATIVE KOTT, referring to Section 2, offered a hypothetical example in which a judge, as part a person's probation, tells him/her that he/she can't have alcohol for a period of time, and noted that Section 1 of the bill specifies that a person who is not privileged to purchase alcohol cannot enter or remain in the premises of an establishment that sells alcohol. He asked whether this language would preclude a judge from restricting a person's ability to consume or purchase alcohol in situations where the person is employed by a licensed premises.

MR. WOOLIVER offered his understanding that judges have, and would retain, the discretion to set conditions of probation. For example, a judge could say to the person that he/she can't enter a licensed premise of any kind with the exception of the one at which the person works.

REPRESENTATIVE CRAWFORD concurred, adding that the bill is simply changing the enforcement aspect.

MR. WOOLIVER concurred.

3:14:43 PM

BRYAN TALBOTT-CLARK, President, Board of Directors, Anchorage Chapter, Mothers Against Drunk Driving (MADD), said MADD supports [HB 190], though he acknowledged that it will not solve the problems of drunk drivers, domestic violence, child abuse, sexual assault, or any of the many social ills that are fueled by alcohol. He relayed his personal experience involving a dear friend, Jessie Withrow, who was killed by a drunk driver who'd been convicted of DUI six times previously and who had been ordered by the court to not drive and to not buy or consume alcohol or enter premises where alcohol is sold. He went on to say:

This is an issue about choices. In this case we're talking about a choice made by people who are under orders not to drink, whether they're going to violate that order. And this is about a way of helping them to make the right choice, making it easier for them to make the right choice. Like any choice, you can kind of imagine a bell curve, where, on one end of it, you've got people who are going to get around it anyway they can - whether it's through a fake license, getting somebody else to the buy the booze, whatever it's going to be; on the other end, you've got people who are afraid of any consequences and they're going to follow it no matter what; [and] most people are going to be in the middle, where, if they're presented with temptation, it kind of depends on how much temptation is it, what are the consequences, [and] how hard it is to get around it.

And when we can set up an obstacle like this, we know that we're going to move a few people from barely making the wrong choice to barely making the right choice. And so maybe we only save a few lives, but the question I have to ask is, do we waste an opportunity to save even a few lives with just a little effort? This bill gives us that opportunity, and I urge you not to waste it. On behalf of Mothers Against Drunk Driving, and of myself, and for Jessie, I urge you to support this bill. And thank you very much for your attention.

3:18:33 PM

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on HB 190.

REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment 1, which, with handwritten corrections, read:

1) While a prosecution for a DWI, other than a first DWI, is pending, and until restrictions on the right to consume alcohol remain in effect, the State shall only issue a license or State ID with markings as provided by this statute.

2) The State has the authority to charge an enhanced fee for a license or ID under this statute.

CHAIR McGUIRE objected for the purpose of discussion.

REPRESENTATIVE GARA posited that Conceptual Amendment 1 will address the two concerns raised, the one pertaining to having possession of an unmarked ID while a DUI case is pending, and the one pertaining to fees. He asked whether it is a common condition of probation in a DUI case that one not consume alcohol, or whether is it a common condition that one not consume alcohol while driving.

MS. CARPENETI said it depends, and while either of those conditions is common, it is a more common condition that one not consume alcohol or enter establishments that serve alcohol.

REPRESENTATIVE GARA surmised that they would only want the marked-license provision to apply when the condition is to not consume alcohol.

3:21:07 PM

REPRESENTATIVE GRUENBERG made a motion to amend Conceptual Amendment 1 such that "shall" will become "may". There being no objection, Amendment 1 was amended.

CHAIR McGUIRE removed her objection to Conceptual Amendment 1, as amended. She asked whether there were any further objections to Conceptual Amendment 1, as amended. There being none, Conceptual Amendment 1, as amended, was adopted.

REPRESENTATIVE GRUENBERG noted that the bill currently doesn't contain a mechanism requiring the ACS to notify the DMV when such conditions are set by the court, and pondered whether the bill should include such a mechanism.

REPRESENTATIVE CRAWFORD indicated that he would amenable to a conceptual amendment to that effect, and surmised that such a change will engender a fiscal note.

MR. WOOLIVER explained that right now the ACS transmits to the DMV any judgment that affects a driver's license.

REPRESENTATIVE GRUENBERG asked whether this transmittal is required by statute.

MR. WOOLIVER said he is not sure. Currently the judgments are in paper form and there is a time delay, although the ACS hopes to soon have everything done electronically.

MR. BANNOCK concurred that that is the case with regard to court orders, but noted that Section 2 of the bill references both court orders and conditions of probation and parole, and, again, that the DMV has zero communication with the DOC.

REPRESENTATIVE GRUENBERG asked how long it takes for the DMV to receive notification [of the aforementioned judgments].

KERRY HENNINGS, Driver Licensing, Director's Office, Division of Motor Vehicles (DMV), Department of Administration (DOA), said that although such judgments are received in about 10 days, it can take up to two more weeks to manually enter the information into the DMV's system.

MR. WOOLIVER, in response to a question, reiterated that the ACS hopes to eventually be able to transfer everything electronically.

3:25:25 PM

REPRESENTATIVE GRUENBERG asked the sponsor whether he would be amenable to an amendment "that would be consistent with current practice" but that didn't engender a fiscal note.

REPRESENTATIVE CRAWFORD indicated that he would be amenable to such a change.

REPRESENTATIVE WILSON asked whether one can be ordered to not drink and yet still be allowed to drive.

REPRESENTATIVE GRUENBERG offered his understanding that limited licensure provides for such circumstances.

REPRESENTATIVE WILSON asked whether a limited license would specify that the person could not drink.

REPRESENTATIVE GRUENBERG offered his understanding that it would.

MR. WOOLIVER clarified that a lot judges impose drinking restrictions on people who've committed crimes, crimes unrelated to driving, while under the influence of alcohol.

REPRESENTATIVE WILSON asked how the DMV would know to change a person's ID to reflect that although the person cannot drink, he/she can still drive.

MR. WOOLIVER said that currently, under such an order for a crime unrelated to driving, a person's driver's license isn't affected and therefore it isn't changed; under HB 190, however, the ACS would have to begin sending such information to the DMV so that a person's ID could be marked.

CHAIR McGUIRE offered her understanding that this would require additional processing [of information] by the DMV, and surmised that it would be up to the DMV to decide how court-ordered limitations will be designated on the licenses.

3:29:11 PM

REPRESENTATIVE GARA remarked that he might have created a constitutional problem via Conceptual Amendment 1, as amended. He elaborated: "My belief is that ... if you've already had a [DUI] and you're on to your second [DUI], even when the case is pending we should be able to mark a license, but I don't know that constitutionally we can mark somebody's license if they haven't been convicted just because the case is pending." He suggested that the sponsor simply seek a way, before the bill is heard in its next committee of referral, to close the loophole wherein someone might be able to have possession of both a marked license and an unmarked license.

REPRESENTATIVE GARA asked that the committee rescind it action in adopting Conceptual Amendment 1, as amended. There being no objection, the committee rescinded it action.

REPRESENTATIVE GARA, in response to a question, made a motion to adopt Amendment 2, "which would say that the state has the authority to charge a higher fee for a state ID or license that contains the markings required by this bill". There being no objection, Amendment 2 was adopted.

REPRESENTATIVE GRUENBERG, referring to Conceptual Amendment 1, as amended, remarked, "I'm sure that the judge could do that as a condition of bail."

CHAIR McGUIRE suggested that Representative Gruenberg pursue that issue further with the sponsor.

REPRESENTATIVE KOTT reiterated his concern that the language in Sections 1 and 2 will preclude a judge from placing a drinking restriction on someone who works in licensed premise because then that person wouldn't be able to go to work.

MR. WOOLIVER acknowledged that his earlier response to that concern might have been in error. While it is true that a judge can tailor conditions of probation, once a license that has an alcohol restriction is issued, Section 1 of the bill will preclude a person from entering or remaining in a licensed premise regardless of what the conditions of probation say. What one can do if one has a marked license is spelled out in Section 1 of the bill, not in the conditions of probation. Therefore, Representative Kott is correct in his concern.

3:33:20 PM

REPRESENTATIVE CRAWFORD offered his belief, though, that the judge still has the discretion to specify that a person may not drink but may enter his place of employment.

CHAIR McGUIRE surmised that Representative Kott's concern is that the bill states that if a judge says one can't drink, then one can't enter or remain in a licensed premise. She suggested that the sponsor didn't intend for this to be the case, and therefore perhaps [Section 1 of] the bill could be changed such that one may not knowingly enter or remain in licensed premises for the purposes of consuming alcohol.

REPRESENTATIVE CRAWFORD maintained his argument that the judge can specify whether a person who has been ordered to not drink may enter into a licensed premise for a purpose other than consuming alcohol, adding his belief that the license could be marked to reflect this distinction.

CHAIR McGUIRE opined that it would be better to clarify that point in the bill. For example, currently under the bill, if a restaurant had an alcohol license, then someone who'd been ordered by a judge to not consume alcohol could not go to that restaurant for a meal without violating Section 1.

REPRESENTATIVE CRAWFORD offered his belief that the only possible penalty for such a violation would be the aforementioned civil penalty should the establishment choose to pursue it.

CHAIR McGUIRE surmised, then, that the bill would allow a restaurant to seek a $1,000 civil fine from someone who had no intention of drinking while in the restaurant.

REPRESENTATIVE CRAWFORD concurred.

CHAIR McGUIRE said she completely rejects that [concept].

REPRESENTATIVE CRAWFORD argued that currently, that person would be violating the law anyway because he/she is violating his/her court order if that order says that he/she may not enter or remain in a licensed premise. What a judge may order of a person is not being changed by HB 190; instead the bill merely proposes to institute an enforcement mechanism for such orders.

CHAIR McGUIRE questioned whether there are really judges in this state that are issuing orders precluding someone from even entering premises that are licensed to serve alcohol. She said she agrees that there are people who should not be drinking, and that she is compelled by the arguments in favor of instituting marked IDs, but she pointed out that it is tremendous leap to then say that establishments with alcohol licenses would be off limits to those people even if they are just there to eat, or to gather for a social function, or to secure employment.

MR. WOOLIVER said it is not uncommon for a court to issue a condition of probation that the person not consume alcohol or enter a premise that serves alcohol; this is typically done in more serious cases, though not all judges do so.

3:39:21 PM

REPRESENTATIVE GARA suggested amending page 1, line 10, to say, "enter or remain on a premise that's licensed in this title to obtain alcohol for personal consumption". Such a change would allow a person to still eat or work in such a premise.

REPRESENTATIVE KOTT indicated that such a change would address his concern.

REPRESENTATIVE WILSON remarked that a judge may make a determination that a person shouldn't even enter an establishment that is licensed to serve alcohol, and pointed out that there are plenty of places for that person to eat or work. Therefore she is not that concerned that a person may not be able to enter certain establishments.

CHAIR McGUIRE pointed out that in small communities, the few restaurants there are may well all be licensed to serve alcohol, and so such an order would in effect preclude someone from going out to eat.

REPRESENTATIVE GARA suggested that in such a situation the license could simply be marked to indicate that a person may not be in such an establishment for the purpose of obtaining alcohol for personal consumption, though for some people the judge might even go so far as to say a person can't go into such an establishment for any purpose - the judge's discretion in that regard would not be altered via the bill.

REPRESENTATIVE WILSON said she'd forgotten that some communities may not have many restaurants.

REPRESENTATIVE KOTT offered the City of Kake as an example.

REPRESENTATIVE CRAWFORD, in response to questions, offered his understanding that the bill provides that either a driver's license or a state identification card could be marked, and said that he didn't want someone's ID to be marked until he/she has been convicted, and then only if that conviction is for a DUI crime.

REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment 3, to insert after the word, "title", on page 1, line 10, the words, "to obtain alcohol for personal consumption". There being no objection, Conceptual Amendment 3 was adopted.

3:44:45 PM

REPRESENTATIVE GARA moved to report CSHB 190(L&C), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 190(JUD) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

3:45:04 PM

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:45 p.m.