

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 7, 2006

1:19 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative John Coghill

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 54(FIN)

"An Act amending protective order statutes for crimes involving stalking to include crimes involving sexual assault and sexual abuse, to provide for other relief ordered by a court, to add the protective orders to a centralized registry, to prevent denial solely for a lapse of time, and to require notification of the court of known civil or criminal actions involving the petitioner or respondent; relating to notifications to victims of sexual assault and to mandatory arrest for crimes involving violation of protective orders and violation of conditions of release; and amending Rule 65, Alaska Rules of Civil Procedure."

- MOVED CSSB 54(FIN) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 298(JUD)

"An Act relating to loans from trust property; relating to a trustee's power to appoint the principal of a trust to another trust; relating to challenges to, claims against, and liabilities of trustees, beneficiaries, and creditors of trusts and of trusts and estates; relating to individual retirement accounts and plans; relating to certain trusts in divorce and dissolutions of marriage situations; and providing for an effective date."

- MOVED HCS CSSB 298(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 413

"An Act relating to the burning capability of cigarettes being sold, offered for sale, or possessed for sale; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 347

"An Act relating to mandatory motor vehicle insurance, license suspensions, and notices relating to motor vehicles and driver's licenses."

- MOVED CSHB 347 (JUD) OUT OF COMMITTEE

HOUSE BILL NO. 276

"An Act relating to business license endorsements for tobacco products, to holders of business license endorsements for tobacco products, and to the employees and agents of holders of business license endorsements for tobacco products."

- MOVED CSHB 276 (JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 54

SHORT TITLE: PROTECTIVE ORDERS FOR SEXUAL ASSAULT

SPONSOR(S): SENATOR(S) DYSON

01/14/05	(S)	READ THE FIRST TIME - REFERRALS
01/14/05	(S)	STA, JUD
02/17/05	(S)	STA AT 3:30 PM BELTZ 211
02/17/05	(S)	Heard & Held
02/17/05	(S)	MINUTE(STA)
03/15/05	(S)	STA AT 3:30 PM BELTZ 211
03/15/05	(S)	Moved CSSB 54(STA) Out of Committee
03/15/05	(S)	MINUTE(STA)
03/16/05	(S)	STA RPT CS 1NR 4AM NEW TITLE
03/16/05	(S)	NR: THERRIAULT
03/16/05	(S)	AM: DAVIS, ELTON, WAGONER, HUGGINS
03/16/05	(S)	FIN REFERRAL ADDED AFTER JUD
03/31/05	(S)	JUD AT 8:30 AM BUTROVICH 205
03/31/05	(S)	Moved CSSB 54(JUD) Out of Committee
03/31/05	(S)	MINUTE(JUD)
03/31/05	(S)	JUD RPT CS FORTHCOMING 5DP
03/31/05	(S)	DP: SEEKINS, FRENCH, GUESS, THERRIAULT, HUGGINS
04/01/05	(S)	JUD CS RECEIVED NEW TITLE
05/07/05	(S)	FIN AT 10:00 AM SENATE FINANCE 532

05/07/05 (S) Heard & Held
 05/07/05 (S) MINUTE(FIN)
 01/19/06 (S) FIN AT 9:00 AM SENATE FINANCE 532
 01/19/06 (S) Heard & Held
 01/19/06 (S) MINUTE(FIN)
 01/24/06 (S) FIN AT 9:00 AM SENATE FINANCE 532
 01/24/06 (S) Moved CSSB 54(FIN) Out of Committee
 01/24/06 (S) MINUTE(FIN)
 01/25/06 (S) FIN RPT CS 7DP NEW TITLE
 01/25/06 (S) DP: WILKEN, GREEN, HOFFMAN, OLSON,
 DYSON, STEDMAN, BUNDE
 02/09/06 (S) TRANSMITTED TO (H)
 02/09/06 (S) VERSION: CSSB 54(FIN)
 02/10/06 (H) READ THE FIRST TIME - REFERRALS
 02/10/06 (H) JUD, FIN
 04/07/06 (H) JUD AT 1:00 PM CAPITOL 120

BILL: SB 298

SHORT TITLE: TRUSTS: CHALLENGES; CLAIMS; LIABILITIES

SPONSOR(S): SENATOR(S) SEEKINS

02/14/06 (S) READ THE FIRST TIME - REFERRALS
 02/14/06 (S) L&C, JUD
 02/23/06 (S) L&C AT 1:30 PM BELTZ 211
 02/23/06 (S) Moved SB 298 Out of Committee
 02/23/06 (S) MINUTE(L&C)
 02/27/06 (S) L&C RPT 3DP
 02/27/06 (S) DP: BUNDE, SEEKINS, STEVENS B
 03/02/06 (S) JUD AT 8:30 AM BUTROVICH 205
 03/02/06 (S) Moved CSSB 298(JUD) Out of Committee
 03/02/06 (S) MINUTE(JUD)
 03/03/06 (S) JUD RPT CS 4DP 1NR SAME TITLE
 03/03/06 (S) DP: SEEKINS, FRENCH, THERRIAULT,
 HUGGINS
 03/03/06 (S) NR: GUESS
 03/22/06 (S) TRANSMITTED TO (H)
 03/22/06 (S) VERSION: CSSB 298(JUD)
 03/24/06 (H) READ THE FIRST TIME - REFERRALS
 03/24/06 (H) JUD, FIN
 03/27/06 (H) L&C AT 3:15 PM CAPITOL 17
 03/27/06 (H) Scheduled But Not Heard
 03/28/06 (H) FIN REFERRAL REMOVED
 03/28/06 (H) L&C REFERRAL ADDED BEFORE JUD
 04/03/06 (H) L&C AT 3:15 PM CAPITOL 17
 04/03/06 (H) Moved HCS CSSB 298(L&C) Out of
 Committee
 04/03/06 (H) MINUTE(L&C)

04/05/06 (H) L&C RPT HCS(L&C) 5DP 2NR
 04/05/06 (H) DP: LYNN, KOTT, LEDOUX, ROKEBERG,
 ANDERSON;
 04/05/06 (H) NR: CRAWFORD, GUTTENBERG
 04/07/06 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 413

SHORT TITLE: BURNING CAPABILITY OF CIGARETTES

SPONSOR(S): REPRESENTATIVE(S) JOULE

02/01/06 (H) READ THE FIRST TIME - REFERRALS
 02/01/06 (H) STA, JUD, FIN
 02/09/06 (H) STA AT 8:00 AM CAPITOL 106
 02/09/06 (H) Moved CSHB 413(STA) Out of Committee
 02/09/06 (H) MINUTE(STA)
 02/13/06 (H) STA RPT CS(STA) 6DP
 02/13/06 (H) DP: GARDNER, LYNN, ELKINS, RAMRAS,
 GRUENBERG, GATTO
 03/31/06 (H) JUD AT 1:00 PM CAPITOL 120
 03/31/06 (H) Heard & Held
 03/31/06 (H) MINUTE(JUD)
 04/07/06 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 347

SHORT TITLE: MOTOR VEHICLE INSURANCE & NOTICE

SPONSOR(S): REPRESENTATIVE(S) GARA, LYNN

01/09/06 (H) PREFILE RELEASED 1/6/06
 01/09/06 (H) READ THE FIRST TIME - REFERRALS
 01/09/06 (H) STA, JUD
 01/31/06 (H) STA AT 8:00 AM CAPITOL 106
 01/31/06 (H) Heard & Held
 01/31/06 (H) MINUTE(STA)
 02/14/06 (H) STA AT 8:00 AM CAPITOL 106
 02/14/06 (H) Heard & Held
 02/14/06 (H) MINUTE(STA)
 02/16/06 (H) STA AT 8:00 AM CAPITOL 106
 02/16/06 (H) Moved CSHB 347(STA) Out of Committee
 02/16/06 (H) MINUTE(STA)
 02/17/06 (H) STA RPT CS(STA) NT 3DP 3NR
 02/17/06 (H) DP: GARDNER, GATTO, SEATON;
 02/17/06 (H) NR: GRUENBERG, ELKINS, RAMRAS
 03/31/06 (H) JUD AT 1:00 PM CAPITOL 120
 03/31/06 (H) Heard & Held
 03/31/06 (H) MINUTE(JUD)
 04/07/06 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 276

SHORT TITLE: BUSINESS LICENSE TOBACCO ENDORSEMENT

SPONSOR(S): REPRESENTATIVE(S) KOTT

04/19/05	(H)	READ THE FIRST TIME - REFERRALS
04/19/05	(H)	JUD, FIN
04/26/05	(H)	JUD AT 1:00 PM CAPITOL 120
04/26/05	(H)	Scheduled But Not Heard
04/27/05	(H)	JUD AT 1:00 PM CAPITOL 120
04/27/05	(H)	Heard & Held
04/27/05	(H)	MINUTE(JUD)
02/15/06	(H)	JUD AT 1:00 PM CAPITOL 120
02/15/06	(H)	<Bill Hearing Canceled>
03/24/06	(H)	JUD AT 1:00 PM CAPITOL 120
03/24/06	(H)	Heard & Held
03/24/06	(H)	MINUTE(JUD)
04/07/06	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

SENATOR FRED DYSON

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Sponsor of SB 54.

CHRISTINE McLEOD PATE, Mentoring Attorney

Alaska Network on Domestic Violence & Sexual Assault (ANDVSA)

Sitka, Alaska

POSITION STATEMENT: Testified in support of SB 54.

BRIAN HOVE, Staff

to Senator Ralph Seekins

Senate Judiciary Standing Committee

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Spoke on behalf of the sponsor of SB 298,
Senator Seekins.

STEPHEN E. GREER, Attorney at Law

Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 298.

DAVID G. SHAFTEL, Attorney at Law

Law Offices of David G. Shaftel, PC

Anchorage, Alaska

POSITION STATEMENT: Testified on SB 298.

MITCHELL GANS, Professor
Hofstra University School of Law
Hempstead, New York
POSITION STATEMENT: Testified that SB 298 [Version X, addresses his concerns].

BETHANN B. CHAPMAN, Attorney at Law
Faulkner Banfield, PC
Juneau, Alaska
POSITION STATEMENT: During hearing of SB 298, answered questions.

JONATHAN BLATTMACHR, Attorney at Law
Milbank, Tweed, Hadley & McCloy, LLP
New York, New York
POSITION STATEMENT: During hearing of SB 298, opined that the legislation will continue to cause most of his clients to choose Alaska [to establish a trust].

RICHARD W. HOMPESCH, II, Attorney at Law
Hompesch & Evans, PC
Fairbanks, Alaska
POSITION STATEMENT: Testified in support of SB 298.

PATRICK LUBY, Advocacy Director
AARP Alaska
Anchorage, Alaska
POSITION STATEMENT: During discussion of SB 298, encouraged the committee to continue to improve the bill and forward it from committee; during discussion of HB 276, provided comments and recommended that the current enforcement system be left as is.

DOUGLAS BLATTMACHR, President
Chief Executive Officer
Alaska Trust Company
Anchorage, Alaska
POSITION STATEMENT: Testified in support of SB 298.

RICHARD S. THWAITES, JR, Attorney at Law
Thwaites, JR. LLC;
Chairman
Alaska Trust Company Board
Alaska Trust Company
Anchorage, Alaska
POSITION STATEMENT: Testified in support of SB 298.

MIKAYLA SAITO, Intern

to Representative Reggie Joule
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided comments on behalf of the sponsor
of HB 413, Representative Joule.

DAVID HULL, Chief
North Tongass Volunteer Fire Department (NTVFD)
Ketchikan, Alaska

POSITION STATEMENT: During discussion of HB 413, testified on
behalf of the NTVFD and on behalf of Scott Davis, Chief of the
South Tongass Volunteer Fire Department (STVFD).

STEVEN "RUSTY" BELANGER, Assistant State Fire Marshal
Central Office
Division of Fire Prevention
Department of Public Safety (DPS)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 413.

JOHANNA BALES, Excise Audit Manager
Tax Division
Department of Revenue (DOR)
Anchorage, Alaska

POSITION STATEMENT: Provided a comment regarding recommended
changes during the discussion of HB 413, Version F.

DUANE BANNOCK, Director
Division of Motor Vehicles (DMV)
Department of Administration (DOA)
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of
HB 347.

ROGER HAMES, President
Hames Corporation
Sitka, Alaska

POSITION STATEMENT: During discussion of HB 276, provided a
comment.

MICHAEL ELERDING, President
Northern Sales Company of Alaska, Inc.
Ketchikan, Alaska

POSITION STATEMENT: Urged passage of HB 276.

CYNTHIA DRINKWATER, Assistant Attorney General
Commercial/Fair Business Section

Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Expressed concerns regarding HB 276,
Version S.

MICHAEL FORD

Alaska Native Health Board (ANHB)
Anchorage, Alaska

POSITION STATEMENT: Suggested a change to HB 276, Version S.

MICHELLE TOOHEY, Director
Public Relations & Advocacy
American Lung Association of Alaska
Anchorage, Alaska

POSITION STATEMENT: Relayed that the American Lung Association
of Alaska does not support HB 276, Version S.

RICHARD MANDSAGER, M.D., Director
Central Office
Division of Public Health
Department of Health and Social Services (DHSS)
Anchorage, Alaska

POSITION STATEMENT: During discussion of HB 276, provided
comments and urged the committee to retain some length of
mandatory suspension for a first offense.

ACTION NARRATIVE

CHAIR LESIL MCGUIRE called the House Judiciary Standing
Committee meeting to order at [1:19:17 PM](#). Representatives
McGuire, Gara, Wilson, and Kott were present at the call to
order. Representatives Anderson and Gruenberg arrived as the
meeting was in progress.

SB 54 - PROTECTIVE ORDERS FOR SEXUAL ASSAULT

[1:19:55 PM](#)

CHAIR MCGUIRE announced that the first order of business would
be CS FOR SENATE BILL NO. 54(FIN), "An Act amending protective
order statutes for crimes involving stalking to include crimes
involving sexual assault and sexual abuse, to provide for other
relief ordered by a court, to add the protective orders to a
centralized registry, to prevent denial solely for a lapse of
time, and to require notification of the court of known civil or
criminal actions involving the petitioner or respondent;

relating to notifications to victims of sexual assault and to mandatory arrest for crimes involving violation of protective orders and violation of conditions of release; and amending Rule 65, Alaska Rules of Civil Procedure."

REPRESENTATIVE GARA noted that he doesn't have any questions regarding SB 54.

[1:21:31 PM](#)

SENATOR FRED DYSON, Alaska State Legislature, sponsor of SB 54, relayed that some judges are not allowing rape and [sexual] assault victims to obtain a restraining order because Alaska law is not specific enough. Therefore, SB 54 primarily adds sexual assault to the categories of stalking and domestic violence, [which have access to protective orders]. The legislation also requires the alleged victim to inform the judge if there are other pending actions between the victim and the perpetrator. Senator Dyson acknowledged that some restraining orders have been requested based on spite or maneuver during divorce hearings. However, he opined that the aforementioned almost never occurs in sexual assault cases.

[1:23:48 PM](#)

CHRISTINE McLEOD PATE, Mentoring Attorney, Alaska Network on Domestic Violence & Sexual Assault (ANDVSA), began by noting her support of SB 54. She informed the committee that she has worked in the field of domestic violence and sexual assault for over 13 years. She then reminded the committee that the state ranks number one for sexual assault and the state's forcible rape rate is 2.5 times the national average. This legislation, she explained, would create a much-needed remedy for sexual assault victims who are not intimate partners with the person who sexually assaulted them by allowing them to obtain a protection order. She noted that Standing Together Against Rape (STAR) has repeatedly brought forward this request. Ms. Pate concluded by urging the committee pass SB 54 out of committee.

CHAIR McGUIRE shared her view that SB 54 is further clean up of statute with regard to protective orders.

REPRESENTATIVE GARA offered his understanding that if someone is arrested or sentenced for sexual assault, it's a standard condition of bail or sentencing that there be no contact by the alleged perpetrator with the victim. Therefore, he assumed that

there must be some circumstance in which there is no arrest and the bail and sentencing conditions don't apply.

MS. PATE said that is correct, adding that there is under-prosecution in this area and thus some of the cases don't result in criminal prosecutions. Ms. Pate then highlighted that SB 54 provides more specific remedies than a criminal no-contact order, and, in that sense, is probably more enforceable if there's a violation.

CHAIR MCGUIRE, upon determining no one else wished to testify, closed public testimony on SB 54.

[1:27:47 PM](#)

REPRESENTATIVE KOTT moved to report CSSB 54(FIN) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSSB 54(FIN) was reported from the House Judiciary Standing Committee.

SB 298 - TRUSTS: CHALLENGES; CLAIMS; LIABILITIES

[1:28:10 PM](#)

CHAIR MCGUIRE announced that the next order of business would be CS FOR SENATE BILL NO. 298(JUD), "An Act relating to loans from trust property; relating to a trustee's power to appoint the principal of a trust to another trust; relating to challenges to, claims against, and liabilities of trustees, beneficiaries, and creditors of trusts and of trusts and estates; relating to individual retirement accounts and plans; relating to certain trusts in divorce and dissolutions of marriage situations; and providing for an effective date." [Before the committee was HCS CSSB 298(L&C).]

[1:28:26 PM](#)

BRIAN HOVE, Staff to Senator Ralph Seekins, Senate Judiciary Standing Committee, Alaska State Legislature, speaking on behalf of the sponsor, Senator Seekins, relayed that SB 298 is another in a sequence of bills intended to keep Alaska competitive in the trust industry. This legislation, he opined, allows trust business and assets "to flow this way" and provides "clean industry" to the legal, accounting, and banking businesses [of Alaska].

[1:31:19 PM](#)

STEPHEN E. GREER, Attorney at Law, said he is supportive of the bill but would defer to its three drafters: David Shaftel, Beth Chapman, and Jonathan Blattmachr. He relayed that he has not heard objections from any quarter, and said, "Most of this is a cleanup matter."

[1:32:27 PM](#)

DAVID G. SHAFTEL, Attorney at Law, Law Offices of David G. Shaftel, PC, relayed that he has been a member of a group of attorneys and trust officers who have participated in drafting proposed legislation [for Alaska] since 1997, and explained that SB 298 provides some procedural changes, some new provisions - all of which he characterized as being "very sound." He said the bill would be beneficial in the planning and administering of trusts and estates for those clients with Alaska residency, as well as make Alaska a more competitive market for nonresidents desiring to do trust business in this state. He highlighted that Alaska is foremost of eight states with similar laws and that the legislature - via the adoption of specific legislation - has enabled Alaska to remain in this lead position.

REPRESENTATIVE GRUENBERG offered his belief that if one has a spendthrift trust, it's not generally considered property that's going to be divisible in a divorce, but noted that the last sentence of Section 14 says:

Unless otherwise agreed to in writing by the parties to the marriage, this subsection does not apply to a settlor's interest in a self-settled trust with respect to assets transferred to the trust after the settlor's marriage.

REPRESENTATIVE GRUENBERG opined that "it would be imminently fair" for the court to divide the trust assets in a divorce situation; he suggested, therefore, that a phrase be added to the end of Section 14 to read, "or immediately before the marriage in contemplation of marriage."

CHAIR MCGUIRE asked what effect [such a change] would have on prenuptial agreements.

REPRESENTATIVE GRUENBERG suggested that a prenuptial agreement means "otherwise agreed to in writing." He explained that the reason for including the [exception for self-settled trusts in

Section 14] is so that a trust is not established during a marriage for the purpose of ensuring that the trustee's property is not divided upon a divorce of that marriage. He said that he sees no difference between those trusts established during marriage and those established when "in contemplation of marriage."

[1:38:42 PM](#)

MR. SHAFTEL informed the committee that prior to a marriage, a prospective spouse can transfer property into a "self-settled, discretionary, spend-thrift trust" prior to marriage and that trust would then not be subject to division in a subsequent divorce. He explained that the aforementioned sentence is being added to ensure that a person could not, after a marriage, put [a spouse's] assets into a self-settled, discretionary, spend-thrift trust so as to have those assets protected against a property division in a subsequent divorce. He said he does not interpret this additional language as anything to be concerned about, and suggested that should a person's fiancé not be agreeable to a prenuptial agreement, a possible remedy would be to not proceed with the marriage.

REPRESENTATIVE ANDERSON surmised that this section prohibits a married party from transferring assets into a trust after the marriage occurred in order to protect his/her assets.

REPRESENTATIVE GRUENBERG disagreed, and pointed out that AS 25.24.160(a)(4) currently says in part:

(a) In a judgment in an action for divorce or action declaring a marriage void or at any time after judgment, the court may provide ...

(4) for the division between the parties of their property, including retirement benefits, whether joint or separate, acquired only during marriage, in a just manner and without regard to which of the parties is in fault; however, the court, in making the division, may invade the property, including retirement benefits, of either spouse acquired before marriage when the balancing of the equities between the parties requires it; ...

REPRESENTATIVE GRUENBERG specified that normally one can't [invade the property] unless there are special circumstances that require the court to do so. He then informed the committee

that property acquired during the marriage by inheritance or gift is considered separate property as opposed to joint property.

REPRESENTATIVE GRUENBERG surmised that Section 14 would ensure that in the event of a divorce or dissolution, the beneficiary's interest is not considered property subject to division under AS 25.24.160, and therefore the court couldn't invade [the property] even under special circumstances that require a balancing of the equity.

[1:45:29 PM](#)

MR. SHAFTEL said a primary concern is that if there is a divorce, trust assets would be divided between both spouses and their children rather than remaining protected in the trust. The statutory laws of New York and California, he relayed, expressly provide that assets in trust cannot be divided in a subsequent divorce; however, there have been some recent cases in Colorado and other states that have moved in a variety of different directions and created some concern in this area, and this has led the informal group of which he is a member to propose the language of Section 14 so as to provide clarity on this matter. This is an extremely important policy provision, he opined.

REPRESENTATIVE GRUENBERG indicated that he is concerned that a trust established just prior to a marriage could be improperly used by one spouse to keep what would normally be considered joint assets from being considered as such by the court in a subsequent divorce proceeding.

CHAIR MCGUIRE opined that Representative Gruenberg's suggested additional language won't clarify that [issue] because the language refers to "trust assets set aside in contemplation of a marriage". She pointed out that there could be a situation in which an individual sets up a trust and sets aside assets for possible [future] children, marries, and then places those assets in the trust. Without clarifying it in state law, a judge could decide to invade the corpus of that trust thus defeating the purpose for which the trust was established.

REPRESENTATIVE GRUENBERG conceded that the language he proposed is too broad, and explained that he is attempting to address situations in which an individual establish a trust immediately before a marriage, in contemplation of it, with the individual as the beneficiary. He offered his understanding that a self-

settled trust is a trust that one establishes for himself/herself and specifies himself/herself as the beneficiary.

MR. SHAFTEL concurred. He asked Representative Gruenberg whether he could specify the period of time he would consider to be "immediately before."

REPRESENTATIVE GRUENBERG suggested one month. He specified that he is referring to a time period in which the individual is absolutely getting married and is merely attempting to defeat the spouse's interest under AS 25.24.160.

[Chair McGuire turned the gavel over to Representative Anderson.]

REPRESENTATIVE ANDERSON asked whether a spouse in such a situation could simply argue that the trust was established in advance just for that purpose, and, if so, would there really be a need to change the statute.

MR. SHAFTEL said it doesn't matter when the trust is established, rather the key point is when the assets get transferred to the trust. For example, if substantial assets were transferred to a self-settled trust five years after the marriage, those assets wouldn't be protected from being considered and divided in a subsequent divorce action. The aforementioned is why [Section 14] was included. With regard to Representative Gruenberg's concern, Mr. Shaftel said that if assets are transferred prior to a marriage, those assets belong to the individual who is not yet married. Unless there has been some representation made to the fiancé, an argument can be made that a transfer prior to the marriage should be completely protected. The committee could decide to maintain that policy and leave the provision as it is.

[1:58:58 PM](#)

MR. SHAFTEL suggested, however, that if the committee desired to amend the legislation, the committee could simply add a provision that specifies that if a transfer is made to a trust within the 30-day period prior to marriage, the transferring party would need to notify the other party that such a transfer is being made. The aforementioned would allow the fiancé to be aware of what is happening; then, if it was of concern, the fiancé would have the choice of not entering into the marriage.

MR. SHAFTEL, in response to a question, suggested that language such as, "unless written notice of a transfer is given within 30 days prior to marriage" could be inserted. In response to another question, he explained that any assets that were transferred after the marriage and the growth of those assets would not be protected and could be divided if there was a subsequent divorce.

REPRESENTATIVE GRUENBERG characterized Mr. Shaftel's suggestion as a good amendment. H remarked that if the funds put in the self-settled trust were acquired from a relative as a gift or bequest, then it would be considered separate property that could only be invaded under the divorce law if the special equity provision required it, though any "marital funds" [could be invaded].

MR. SHAFTEL agreed.

REPRESENTATIVE GRUENBERG suggested that Mr. Shaftel's concept could be the genesis of an acceptable amendment.

MR. SHAFTEL reiterated that the concept would be that if someone transfers assets into a self-settled trust 30 days prior to a marriage, that party must give the fiancé notice of that transfer in order to obtain the protection provided by [Section 14].

[2:05:44 PM](#)

REPRESENTATIVE GRUENBERG [made a motion] to adopt Conceptual Amendment 1 such that if assets are transferred by one party to the marriage to a self-settled trust within 30 days before the marriage, the transferor must give written notice to the other party of the transfer.

There being no objection, Conceptual Amendment 1 was adopted.

[2:06:45 PM](#)

MITCHELL GANS, Professor, Hofstra University School of Law, noted that Alaska's statute of limitations on an informal accounting is 24 months, and characterized this as problematic from the perspective of both equity and efficiency because, for a formal accounting, one can go to court and trigger a statute of limitations period of 60 days or 90 days, and this would seem to be unfair and inequitable.

MR. GANS said that with regard to efficiency, it would seem that if the trustee wanted to qualify for the shorter period, the trustee simply has to go through the formal procedure and petition the court. However, to avoid the cost of a formal accounting or petition, the [trustee] would have to wait two years, and the consequence of that is that it imposes costs on the trust, which would be borne by the beneficiary. In terms of protecting the rights of the beneficiary, it would seem that if the period were shortened and there were to be a focused timeframe within which there must be a decision, it would be more likely for the beneficiary to focus on and protect his/her rights rather than to allow them to expire or lapse inadvertently.

REPRESENTATIVE ANDERSON asked if Mr. Gans had spoken with the sponsor of the legislation or its supporters.

MR. GANS replied no.

[2:10:17 PM](#)

BETHANN B. CHAPMAN, Attorney at Law, Faulkner Banfield, PC, offered her belief that Mr. Gans's concerns have been addressed such that the inconsistencies between an interim report and a final report have been resolved.

MR. GANS agreed that the current version of the bill alleviates his concerns.

[2:11:43 PM](#)

JONATHAN BLATTMACHR, Attorney at Law, Milbank, Tweed, Hadley & McCloy, LLP, informed the committee that he has been involved with Alaska trust legislation since its inception. He estimated that probably nine out of ten of his clients choose Alaska [in which to establish a trust]. The proposal before the committee, he opined, will certainly result in most of his clients continuing to choose Alaska.

[2:12:52 PM](#)

RICHARD W. HOMPESCH, II, Attorney at Law, Hompesch & Evans, PC, relayed his support for SB 298.

[2:13:22 PM](#)

PATRICK LUBY, Advocacy Director, AARP Alaska, encouraged the committee to continue to improve SB 298 and forward it from committee.

[2:13:55 PM](#)

DOUGLAS BLATTMACHR, President, Chief Executive Officer, Alaska Trust Company, relayed his support for SB 298, adding his belief that it will continue to improve what Alaska has to offer, and thus continue to attract business to the state.

[2:14:11 PM](#)

RICHARD S. THWAITES, JR, Attorney at Law, Thwaites, JR. LLC; Chairman, Alaska Trust Company Board, Alaska Trust Company, relayed his support for SB 298.

REPRESENTATIVE ANDERSON, upon determining that no one else wished to testify, closed public testimony on SB 298.

REPRESENTATIVE GARA said that he is concerned that [the bill] might limit the rights beneficiaries in relation to trustees; for example, two changes proposed will reduce the period of time in which a beneficiary can make a claim: Section 6 changes notice of a court proceeding from 90 days to 60 days, and changes the timeframe in which a beneficiary can file a claim from 60 days to 45 days. He asked if the aforementioned is really necessary, and offered his recollection of there being a battle over this a few years ago that resulted in the changes not being included in the legislation [that was adopted then].

MR. DOUGLAS BLATTMACHR offered his understanding that these changes are meant to provide consistency with the probate code.

MS. CHAPMAN said the proposed change is intended to address an inconsistency within the statute that currently specifies that 90 days' notice of the court proceeding is required, and that the beneficiary then has 60 days after receiving the report [to file a claim with the court]. Because currently the time that the report is provided to the beneficiary and the time the petition is filed can be two different times, the desire was to tie everything to the same date, and this will make the trust laws consistent with the probate code so that there isn't a lot of distinction between whether one is a beneficiary of a trust or of an estate. Furthermore, even at the reduced time frames of 60 days and 45 days, it's substantially longer than what's currently provided under the probate code.

MS. CHAPMAN explained if she were to be the personal representative of an estate and she intended to issue her final accounting and file it with the court for approval of the accounting so as to terminate her authority, under the probate code, she would only be required to provide 14 days notice of the hearing. This means that the hearings occur within 14 days and the beneficiaries aren't given any additional length of time in which to respond. The probate code also includes a provision that allows [the personal representative] to give notice of the distribution of the estate to a beneficiary with only 30 days' notice; if the beneficiary doesn't object within 30 days, the beneficiary's rights are terminated. "While we are trying ... to align trusts and estates similarly, we didn't feel it was appropriate to go so far as the probate code [does] when we're working with an estate," she explained. Therefore, what was deemed to be a reasonable timeframe was proposed in the current version of SB 298.

[2:19:14 PM](#)

REPRESENTATIVE GARA, in noting that Section 6 allows [45] days to file a claim and Section 7, unless changed, allows two years to do so, asked what the difference is between the claims referred to in each section.

MS. CHAPMAN explained that for those claims wherein the court is used to formally approve the accounting, then the 60-day notice applies. Under the current law, she continued, when relying on just the general statute of limitations and it's an interim report, then a two-year statute of limitations applies. The proposal is to reduce this to a six-month period so there won't be a distinction between an interim report and a final report.

REPRESENTATIVE said he is uncomfortable reducing the amount of time that a beneficiary has to file a claim against a trustee. He opined that the two-year period addressed in Section 7 is very consistent with most statute of limitations and thus whittling the period down to six months is of concern, adding that he doesn't want to diminish the rights of beneficiaries solely to maintain a competitive edge with other states.

MS. CHAPMAN explained that in comparing trusts and estate claims to personal injury claims, which have a two-year statute of limitations, the former are "generally not subject to any of those limitation periods because they are equitable in nature." She said that it is important to look at the history of the

statute. Prior to the 2003 Act, there were two limitation periods: a six-month period if a final account was provided to the beneficiary, and a three-year period if there had been a lack of full disclosure. In the legislation of 2003, the intent was to eliminate the distinction between an interim report and a final report. She explained that the reason it's referred to as a "report" instead of an "accounting" is because the latter has specific legal definitions of what an actual accounting is.

MS. CHAPMAN relayed that given that the beneficiary is provided information about the trust, the intent was to ensure that there was a limitation period that was the same regardless of whether it was "while the trust was still going on or while it was a final report terminating the relationship." The legislation that was passed out in 2003, however, did include a distinction between interim reports and final reports which, she opined, causes significant confusion. In returning to a six-month period, she said, "We are looking to protect beneficiaries ... to ensure that when we transfer assets out of trusts, we do so with some certainty to the beneficiaries." She relayed that the return to a six-month period now includes additional requirements for the trustee to follow, and provides "very clear language to the beneficiary of what their rights are" as well as notifying them of the length of the limitation period.

[Representative Anderson returned the gavel to Chair McGuire.]

MS. CHAPMAN noted that should a trustee fail to do either of "these," then he/she would no longer have the benefit of the shortened statute of limitations - it would revert to the three-year period. She again expressed her belief that having two separate statute of limitations for an interim report and a final report causes confusion.

[2:25:54 PM](#)

REPRESENTATIVE GARA recalled past efforts to [shorten] the statute of limitations and said that he is still "uncomfortable reducing the amount of time somebody has to claim that a trustee has charged too much money [and] mishandled the trust" especially in what he characterized as delicate and trying circumstances.

MS. CHAPMAN reiterated that having two different time periods causes confusion to beneficiaries. She suggested, therefore, that a six-month statute of limitations be required for any

report and that beneficiaries be notified of the length of this time period.

REPRESENTATIVE GARA surmised that most beneficiaries have never had a prior trust and that notice is given each time beneficiaries receive an interim report as to what any filing deadlines are.

MS. CHAPMAN again reiterated that having two statute of limitations is confusing and could cause individuals to wonder what the actual statute of limitations is, particularly when receiving more than one report. One of the things that [attorneys] try to do with estates and trusts is to provide certainty to beneficiaries to ensure that further claims will not be made on those assets once distributed. Furthermore, she informed the committee, should a trustee be later accused of mishandling the estate and the court determines that the trustee is not at fault, that trustee is entitled reimbursement of legal fees from that trust. In response to a question, she relayed that no part of the bill is retroactive.

[2:31:32 PM](#)

REPRESENTATIVE GARA made a motion to adopt Amendment 2, labeled 24-LS1113\X.1, Bannister, 4/7/06, which read:

Page 4, lines 2 - 4:

Delete "within [24 MONTHS AFTER RECEIPT OF THE REPORT IF IT IS AN INTERIM REPORT OR WITHIN] six months after receipt of the report [IF IT IS A FINAL REPORT],"

Insert ", if the claim is related to a monetary benefit for the trustee, within 24 months after receipt of the report if it is an interim report or [WITHIN] six months after receipt of the report if it is a final report, or, for other claims, within six months after receipt of the report,"

Page 4, line 14, following "BEGUN":

Insert ", IF THE CLAIM IS RELATED TO A MONETARY BENEFIT FOR THE TRUSTEE, WITHIN 24 MONTHS AFTER YOU RECEIVE THIS REPORT IF THIS REPORT IS AN INTERIM REPORT OR SIX MONTHS AFTER YOU RECEIVE THIS REPORT IF THIS REPORT IS A FINAL REPORT, OR, FOR OTHER CLAIMS,"

Page 7, line 28:

Delete all material.

Renumber the following bill sections accordingly.

REPRESENTATIVE ANDERSON objected.

REPRESENTATIVE GARA explained that Amendment 2 would change the statute of limitations to a two-year period - one, he opined, that a beneficiary faced with challenges should have. He said the two-year period should be retained "when it involves a claim against the trustee for monetary benefits the trustee should or shouldn't have received."

REPRESENTATIVE GRUENBERG opined that this discussion involves three different issues: what the statute of limitations should be, whether there should be two different statutes of limitations, and the effects of possible claims made by trustees for reimbursement by the beneficiaries. He said he interpreted Ms. Chapman's main argument to be that it's very confusing to have two different statutes of limitations. Representative Gruenberg suggested that Representative Gara might consider one single statute of limitation and that Ms. Chapman could provide input as to what that limitation might be. As for the third issue, Representative Gruenberg suggested that language be added to the bill to prevent any possible harm to the beneficiary, perhaps even requiring something like that a bond be maintained for the period of the statute of limitations. This bond, he said, would only be paid to the amount of the trustee's legal fees and costs and "basically make it easier ... for the beneficiaries to pay those costs in that unlikely event - either that or retaining a portion of the trust for that [purpose]."

[2:35:23 PM](#)

MS. CHAPMAN, addressing Representative Gruenberg's suggestion of maintaining a bond, informed the committee that many of the [beneficiaries] in these situations either don't have the wherewithal to post a bond or the commercial bonds are too difficult and costly to obtain.

REPRESENTATIVE GRUENBERG mentioned that there is a court rule that specifically says that a person can file with the court the amount of his or her worth and then the court must approve a bond for that amount.

MS. CHAPMAN expressed her belief that in the context of a trust and a distribution, it makes sense to ask beneficiaries to post bonds. She said she understands concerns about trustee fees;

however, when terminating a trust, and given the fiduciary relationship between the trustee and the beneficiary, it is hard to have a law requiring that a beneficiary post a bond in order to receive his or her distribution.

CHAIR McGUIRE, referring to Representative Gruenberg's suggestions on revising the statute of limitations, asked Ms. Chapman if she would support a different period of time other than the six-month period she recommended.

MS. CHAPMAN maintained her belief that the six-month period is appropriate.

[2:38:37 PM](#)

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

REPRESENTATIVE GRUENBERG, referring to Section 6, lines 22 and 26, asked Ms. Chapman whether the changes to the number of days "makes [the bill] conform to the probate code."

MS. CHAPMAN said that it actually allows more time than does the probate code, which allows 14 days for any hearing.

[2:39:52 PM](#)

REPRESENTATIVE ANDERSON moved to report HCS CSSB 298(L&C), as amended, out of committee with individual recommendations and zero fiscal notes. There being no objection, HCS CSSB 298(JUD) was reported from the House Judiciary Standing Committee.

HB 413 - BURNING CAPABILITY OF CIGARETTES

[2:40:26 PM](#)

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 413, "An Act relating to the burning capability of cigarettes being sold, offered for sale, or possessed for sale; and providing for an effective date." [Before the committee was CSHB 413(STA); in members' packets was a proposed committee substitute (CS) for HB 413, Version 24-LS1495\F, Bannister, 4/5/06.]

[2:40:37 PM](#)

MIKAYLA SAITO, Intern to Representative Reggie Joule, Alaska State Legislature, relayed on behalf of the sponsor, Representative Joule, that HB 413 establishes a standard of safety by [requiring a reduction in the ignition propensity of cigarettes sold in Alaska], and that similar legislation has been introduced in the states of New York and California.

[2:41:48 PM](#)

DAVID HULL, Chief, North Tongass Volunteer Fire Department (NTVFD), after relaying that he is also speaking on behalf of Scott Davis - Chief of the South Tongass Volunteer Fire Department (STVFD) - pointed out that a cigarette has been involved in every one of the several fire deaths he has had to deal with in his over 30 years' of experience in firefighting and emergency medical service (EMS). He opined that HB 413 raises a lifesaving issue, and thus the tobacco industry should not be a primary participant in the discussion; rather the people should be the primary participants.

MR. HULL referred to the findings and intent section of HB 413 and noted that one of the findings states that cigarettes are the leading cause of fire-related deaths in the U.S. each year, claiming a 1,000 lives and causing nearly 2,000 injuries and nearly \$400,000 in direct property damage; furthermore, he remarked, Alaska leads in every one of those categories. The simple technology to significantly reduce such deaths and carnage is already available, other states have already enacted legislation similar to HB 413, and Alaska should join those other states. One really need look no further than Cable News Network (CNN) reports regarding how this type of legislation would benefit not only those who smoke [and their families] but the EMS personnel who must respond to fires that result from cigarettes.

MR. HULL pointed out that the severe fire aboard a Princess cruise ship in the Caribbean was caused by a discarded, unattended cigarette. Furthermore, on the cruise ship docks in Ketchikan, people discard their lit cigarettes on the dock on dry days and those cigarettes get in between the pieces of lumber that make up the docks and smolder, and the fire departments are called in a few hours later to fight a dock fire, and although most such fires are small, at least once a year a major fire erupts. If not for the quick and expert response by the Ketchikan Fire Department, he relayed, these fires would have easily spread underneath the buildings and

simply burnt away the foundations of millions of dollars in real estate, not to mention the potential loss of jobs, taxes, and human lives that were put in danger by a cigarette that didn't self-extinguish. Furthermore there is also the danger that firefighters face in responding to such fires.

MR. HULL, in conclusion, asked members to choose lives over the needs of tobacco industry stockholders by supporting HB 413.

[2:46:27 PM](#)

STEVEN "RUSTY" BELANGER, Assistant State Fire Marshal, Central Office, Division of Fire Prevention, Department of Public Safety (DPS), relayed that the DPS supports the passage of HB 413. Alaska has one of the highest per capita fire fatality rates in the nation, he remarked, adding that over the last 10 years, one-fourth of Alaska's fire fatalities have been caused by cigarettes. Often, those dying are not the smokers themselves, but rather their family members and friends. Via advances in technology and the tobacco market, there now exists the means by which to address a significant portion of this horrific fire record; by requiring cigarettes [being sold in Alaska] to comply with already existing burning standards in major U.S. markets and in all of Canada, Alaska can begin to enjoy a reduction in fire fatalities and property loss.

MR. BELANGER remarked that it will be easier to address the ignition propensity of cigarettes than it would be to regulate all the home furnishings that are often typically ignited by unattended cigarettes. He remarked that this is not an anti-smoking issue but is instead a life- and property-conservation issue; all manufacturers can and do produce these types of cigarettes already, and so [passage of HB 413] will not affect revenues or retailers. "This bill makes good sense for Alaska, and I ask you to help us as we do what we can to reduce our fire-loss record," he concluded.

[2:48:33 PM](#)

JOHANNA BALES, Excise Audit Manager, Tax Division, Department of Revenue (DOR), noted that although the DOR had recommended some changes to the sponsor, not all of them were incorporated into the CS.

REPRESENTATIVE GRUENBERG moved to adopt the proposed committee substitute (CS) for HB 413, Version 24-LS1495\F, Bannister,

4/5/06, as the work draft. There being no objection, Version F was before the committee.

MS. SAITO acknowledged that although the changes recommended by the DOR were submitted to Legislative Legal and Research Services, not all of them were included in Version F. She suggested that perhaps some of the recommendations were simply overlooked by the drafter.

CHAIR McGUIRE set HB 413, Version F, aside for the purpose of allowing the sponsor time to work further with the DOR regarding its recommendations.

[Later in the meeting Representative Gruenberg mentioned that he'd be helping the sponsor and his staff work on HB 413.]

HB 347 - MOTOR VEHICLE INSURANCE & NOTICE

[2:50:19 PM](#)

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 347, "An Act relating to mandatory motor vehicle insurance, license suspensions, and notices relating to motor vehicles and driver's licenses." [Before the committee was CSHB 347(STA).]

REPRESENTATIVE GARA, speaking as the sponsor, noted that Tom McGrath had expressed a valid concern at the bill's last hearing, and so he is willing to add language to address that concern. Currently there is no mandatory fine for the crime of driving without insurance, and the fine for a class B misdemeanor doesn't necessarily apply, and so it is actually cheaper to drive without insurance because any fines levied will be less than the cost of insurance.

REPRESENTATIVE GARA said he has a proposed amendment that would make driving without insurance a class B misdemeanor and would establish a mandatory minimum fine of \$500; that proposed amendment was labeled 24-LS1372\F.2, Luckhaupt, 4/6/06, and read:

Page 1, following line 12:

Insert a new bill section to read:

"* **Sec. 3.** AS 28.22.019 is amended by adding a new subsection to read:

(d) A person convicted under this section is guilty of a class B misdemeanor and may be punished as

provided in AS 12.55, except that a fine of at least \$500 must be imposed."

Renumber the following bill sections accordingly.

CHAIR MCGUIRE referred to that proposed amendment as Amendment 1.

[2:53:18 PM](#)

DUANE BANNOCK, Director, Division of Motor Vehicles (DMV), Department of Administration (DOA), after relaying that he would not be able to speak to Amendment 1 because it falls outside the purview of the DMV, stated that the DMV is "in love with" [what is currently Section 3 of CSHB 347(STA) - proposed AS 28.22.041(f)] - and is grateful to the sponsor [for including that provision].

REPRESENTATIVE GARA made a motion to adopt Amendment 1. There being no objection, Amendment 1 was adopted.

[2:54:13 PM](#)

REPRESENTATIVE GRUENBERG moved to report CSHB 347(STA), as amended, out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, CSHB 347(JUD) was reported from the House Judiciary Standing Committee.

HB 276 - BUSINESS LICENSE TOBACCO ENDORSEMENT

[2:54:33 PM](#)

CHAIR MCGUIRE announced that the final order of business would be HOUSE BILL NO. 276, "An Act relating to business license endorsements for tobacco products, to holders of business license endorsements for tobacco products, and to the employees and agents of holders of business license endorsements for tobacco products." [Left pending from 3/24/06 was a motion to adopt the proposed committee substitute (CS) for HB 276, Version 24-LS0855\L, Bannister, 3/23/06, as the work draft; in members' packets was another proposed committee substitute (CS) for HB 276, Version 24-LS0855\S, Bannister, 3/31/06.]

REPRESENTATIVE KOTT, speaking as the sponsor, relayed that in the proposed CS, Version S, Section 1 still increases the penalty to \$750 for a first offense but now allows an

endorsement holder to come before a hearing officer, and Section 3 now contains the language pertaining to that hearing.

[2:56:11 PM](#)

REPRESENTATIVE ANDERSON moved to adopt the proposed committee substitute (CS) for HB 276, Version 24-LS0855\S, Bannister, 3/31/06, as the work draft. There being no objection, Version S was before the committee.

[2:57:20 PM](#)

ROGER HAMES, President, Hames Corporation, said simply that he supports Version S as being something he can live with though doing so will be difficult.

[2:57:59 PM](#)

MICHAEL ELERDING, President, Northern Sales Company of Alaska, Inc., simply urged passage of HB 276.

[2:58:26 PM](#)

CYNTHIA DRINKWATER, Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Anchorage), Department of Law (DOL), relayed that she represents the Department of Commerce, Community, & Economic Development (DCCED) in administrative hearings held under AS 43.70.075, and that she would be speaking to three issues. First, the language in Version S is potentially confusing. For example, proposed AS 43.70.075(d)(1) says in part, "after a hearing under (t) of this section", and the following paragraphs (2) through (4) don't contain similar language, but proposed AS 43.70.075(t) says in part, "this subsection governs the imposition ... of the business license endorsement suspension and civil penalty under (d) of this section". Thus there is some confusion regarding when subsection (t) will apply because it appears to pertain to all of proposed AS 43.70.075(d).

REPRESENTATIVE KOTT, in response to questions, clarified that the hearing referred to in AS 43.70.075(d)(1) should only apply for a first offense.

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1, to change "(d)" on page 2, line 27, to "(d)(1)". There being no objection, Amendment 1 was adopted.

MS. DRINKWATER then referred to the language in Section 3 that says the notice must inform the person of, among other things, the date and time of the hearing. She said this requirement will prove difficult because the initial notice goes out from the DCCED, but the hearing information falls under the purview of the Office of Administrative Hearings.

3:05:08 PM

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 2, to delete from page 3, line 1, the words ", and the date and time of the hearing", and place a period after the word "imposed". There being no objection, Amendment 2 was adopted.

REPRESENTATIVE WILSON suggested adding language specifying that the hearing office shall set the date and time of the hearing.

CHAIR MCGUIRE characterized that as a conforming amendment.

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 3, to add to page 3, line 2, after the word "determine", the words "the date and time of the hearing,".

CHAIR MCGUIRE pointed out, however, that notice must still be given with regard to the date and time of the hearing.

REPRESENTATIVE GRUENBERG restated Amendment 3 and called it conceptual: "that the [Office of Administrative Hearings] ... would set the date and time of the hearing and notify the parties". There being no objection, Conceptual Amendment 3 was adopted.

MS. DRINKWATER then remarked that it appears that the proposed change in the statutory framework will mean that there will be an increase in the number of hearings, because retailers will have every incentive to request a hearing since there is discretion regarding the amount of the civil penalty and whether a suspension shall be imposed. This will result in an increase in attorney and hearing officer time; furthermore, with the lengthier hearing process and greater number of items that must be considered by the hearing officer, proceedings will become more like they were prior to 2002. Such hearings were lengthy, multi-day hearings with numerous witnesses and documentary evidence. She surmised, therefore, that costs will increase because of these proposed changes.

3:08:55 PM

MICHAEL FORD, Alaska Native Health Board (ANHB), relayed that in the ANHB's view, the current law is effective and does what it is intended to do. The ANHB recommends that instead of allowing for an optional suspension, have a mandatory suspension but reduce the number of days for a first offense - for example, provide for a mandatory 3-day suspension. In this way, the law would still have teeth, it would still act as a deterrent, and yet retailers would be given some relief. In conclusion, he said he did share some of the concerns regarding Section 3, but hopes that those have now been addressed via the aforementioned amendments.

[3:11:03 PM](#)

MICHELLE TOOHEY, Director, Public Relations & Advocacy, American Lung Association of Alaska, referring to Version S, said that although education efforts do play a constructive role, their value must not be overestimated. She elaborated:

We know that businesses with education programs have been cited for making illegal sales. These illegal sales are plain evidence that an education program is not enough. The critical factor is active and diligent management, and that means there needs to be meaningful consequences in the case of a violation, including the first violation. The compliance data shows that once predictable, readily enforceable and meaningful penalties were put in place under current law, illegal sales dropped dramatically. The various proposals that have been advanced [thus] far - as HB 276 and subsequent drafts - would eliminate the certainty of a meaningful penalty for illegal sales in the case of a first violation.

Under the most current CS, Version S, it would be possible for a violation to occur and there be no penalty whatsoever. In conclusion, in order to preserve the effectiveness of the enforcement program, we feel strongly that some meaningful level of suspension is essential to maintain in the case of a first violation. Businesses that elect to engage in the sale of tobacco products [have a very] serious responsibility to ensure that they do not make illegal sales to children. Therefore, the American Lung Association of Alaska does not support ... Version S as written because it does not include a guarantee of

at least a minimum suspension on first offense. Thank you.

3:13:23 PM

PATRICK LUBY, Advocacy Director, AARP Alaska, said that AARP members come from a generation that smoked freely, and they know the terrible health and financial consequences of all those cigarettes, adding, "We don't want to see anyone's grandchildren start to smoke." The AARP feels the State is doing a good job in its enforcement efforts, he relayed, noting that the State is using 15- and 16-year-olds in its compliance checks; therefore, if a retailer is selling cigarettes to 15- and 16-year-olds, then he/she should face the consequences. The AARP recommends that the current system be left as is in order to help Alaska continue to reduce youth smoking.

3:14:09 PM

RICHARD MANDSAGER, M.D., Director, Central Office, Division of Public Health, Department of Health and Social Services (DHSS), relayed that David Kessler, former commissioner of the Food and Drug Administration (FDA), has said, "Nicotine addiction begins when most tobacco users are teenagers, so let's call this what it really is - a pediatric disease." Dr. Mandsager said that from the DHSS's point of view, he would echo comments made by Ms. Toohey and Mr. Luby: current law is working and there needs to be some minimum mandatory suspension for a first offense. Enforcement actions only visit a small percentage of retailers in any given year, and so chances are small that there will be a second visit within 24 months; therefore, if there isn't a mandatory suspension of some length for a first offense, it is unlikely that a license holder will ever get a suspension. In conclusion, he urged the committee to maintain some suspension [period] for a first offense.

DR. MANDSAGER, in response to a question, said that a mandatory suspension period should be at least three days.

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on HB 276.

3:16:19 PM

REPRESENTATIVE ANDERSON made a motion to adopt Conceptual Amendment 4, to have the 20-day suspension apply on a second offense.

The committee took an at-ease from 3:17 p.m. to 3:18 p.m.

REPRESENTATIVE ANDERSON, in response to questions, clarified that Conceptual Amendment 4 would result in deleting the language pertaining to a suspension for a first offense but would keep the language pertaining to the hearing in order to address the question of whether to impose a civil penalty for a first offense. He also indicated that Conceptual Amendment 4 would have the 45-day suspension period apply on a third offense, the 90-day suspension period apply on a fourth offense. He said he doesn't believe that there should be any restriction of sales on a first violation, and that he doesn't believe that removing the mandatory suspension for a first offense will have any impact on compliance statistics.

CHAIR McGUIRE objected to Conceptual Amendment 4.

REPRESENTATIVE GARA mentioned that the House Finance Committee might do more work on the bill, and that members could still attempt to change the bill on the House floor.

REPRESENTATIVE ANDERSON withdrew Conceptual Amendment 4.

[3:20:37 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 5, which read [original punctuation provided]:

page 2 line 27 after "shall" insert
", upon request of either party,"

REPRESENTATIVE GRUENBERG noted that to save costs and time, it may be that neither party would request a hearing, and Amendment 5 would provide for this. In other words, if neither party requests a hearing, then a hearing need not be held.

REPRESENTATIVE KOTT agreed that there might be a situation in which the owner of the business decides he/she doesn't want to go through the hearing process.

REPRESENTATIVE GRUENBERG remarked, "They could submit it on documentation and pleadings."

CHAIR McGUIRE asked whether there were any objections to Amendment 5. There being none, Amendment 5 was adopted.

[3:22:07 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 6, to alter Section 1 such that there would be a mandatory minimum 3-day suspension period [for a first offense].

REPRESENTATIVE ANDERSON objected.

REPRESENTATIVE GRUENBERG in response to a question, clarified that Conceptual Amendment 6 would alter the language on page 1, lines 10-12 so that it read in part, "may, after a hearing under (t) of this section, suspend the endorsement for a period of 3 to 20 days".

The committee took an at-ease from 3:23 p.m. to 3:24 p.m.

REPRESENTATIVE ANDERSON maintained his objection to Conceptual Amendment 6.

REPRESENTATIVE GRUENBERG remarked that a CS incorporating the adopted amendments will be forthcoming.

REPRESENTATIVE KOTT objected to Conceptual Amendment 6. He posited that by stating a minimum suspension period of 3 days, a hearing officer will be inclined to always impose at least a 3-day suspension period unless there are also aggravating factors in a give case.

REPRESENTATIVE GARA expressed a preference for dealing with this issue on the House floor, after the bill has been heard and perhaps changed in the House Finance Committee.

REPRESENTATIVE GRUENBERG withdrew Amendment 6.

[3:27:44 PM](#)

REPRESENTATIVE GRUENBERG moved to report the proposed committee substitute (CS) for HB 276, Version 24-LS0855\S, Bannister, 3/31/06, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 276(JUD) was reported from the House Judiciary Standing Committee.

CHAIR McGUIRE concluded by saying, "I cannot stress enough that the movement of this bill today in no way endorses anybody's personal opinion on the bill."

ADJOURNMENT

3:28:00 PM

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:28 p.m.