

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

January 27, 2006

3:24 p.m.

**MEMBERS PRESENT**

Representative Tom Anderson, Chair  
Representative Gabrielle LeDoux  
Representative Bob Lynn  
Representative Norman Rokeberg  
Representative Harry Crawford  
Representative David Guttenberg

**MEMBERS ABSENT**

Representative Pete Kott

**COMMITTEE CALENDAR**

HOUSE BILL NO. 338

"An Act relating to applications, qualifications, and criminal history and background checks for a certificate of fitness for explosives handlers; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 295

"An Act adopting the Uniform Fraudulent Transfer Act and relating to fraudulent transfers of property."

- MOVED CSHB 295(L&C) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HB 338

SHORT TITLE: CERTIF. OF FITNESS FOR EXPLOSIVE HANDLERS

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

01/09/06	(H)	PREFILE RELEASED 12/30/05
01/09/06	(H)	READ THE FIRST TIME - REFERRALS
01/09/06	(H)	L&C, FIN
01/18/06	(H)	L&C AT 3:15 PM CAPITOL 17
01/18/06	(H)	Heard & Held
01/18/06	(H)	MINUTE(L&C)
01/27/06	(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 295

SHORT TITLE: UNIFORM FRAUDULENT TRANSFER ACT

SPONSOR(S): REPRESENTATIVE(S) ANDERSON

05/02/05	(H)	READ THE FIRST TIME - REFERRALS
05/02/05	(H)	L&C, JUD
05/04/05	(H)	L&C AT 2:00 PM CAPITOL 17
05/04/05	(H)	Scheduled But Not Heard
01/18/06	(H)	L&C AT 3:15 PM CAPITOL 17
01/18/06	(H)	Scheduled But Not Heard
01/27/06	(H)	L&C AT 3:15 PM CAPITOL 17

**WITNESS REGISTER**

GREG O'CLARAY, COMMISSIONER

Department of Labor and Workforce Development

Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 338.

LYNN LEVENGOOD, Attorney

Fairbanks, Alaska

POSITION STATEMENT: Offered to provide information on HB 295.

MICHELLE BOUTIN, Attorney

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 295.

HEATH HILYARD, Staff

to Representative Tom Anderson

Alaska State Legislature

POSITION STATEMENT: Presented HB 295 on behalf of Representative Anderson, sponsor.

**ACTION NARRATIVE**

**CHAIR TOM ANDERSON** called the House Labor and Commerce Standing Committee meeting to order at [3:24:14 PM](#). Representatives Anderson, Crawford, Guttenberg and Rokeberg were present at the call to order. Representatives LeDoux and Lynn arrived as the meeting was in progress.

HB 338-CERTIF. OF FITNESS FOR EXPLOSIVE HANDLERS

CHAIR ANDERSON announced that the first order of business would be HOUSE BILL NO. 338, "An Act relating to applications, qualifications, and criminal history and background checks for a

certificate of fitness for explosives handlers; and providing for an effective date."

CHAIR ANDERSON said he is intending to hold HB 338 because of problems. Members of labor organizations have asked it to be held, saying they would like to work with Commissioner O'Claray.

GREG O'CLARAY, COMMISSIONER, Department of Labor and Workforce Development, said he is willing to work with those who have concerns. He said sometimes providence sends messages, and heeding them is the right course. He noted a recent incident under investigation: on January 9, 2006 an explosive handler detonated a blast that sent rock and debris into the playground and building of the North Star Elementary School in Kodiak. He said that five-pound boulders flew up to 400 feet and damaged the roof of the school. Rocks landed over the entire playground where children had been playing just 30 minutes before, he added. Every circumstance can't be monitored, but he speculated that proper safety precautions were not taken.

COMMISSIONER O'CLARAY said fingerprints are required for school bus drivers, attorneys, insurance agents, and "the list goes on." He said the state has no authority in statute to check backgrounds on individuals who use explosives. He said it is not the desire to restrict someone from seeking gainful employment, but "we have a public safety concern about this particular certification." He asked that the bill move, but the department is willing to work with those who have difficulty it.

[3:28:41 PM](#)

CHAIR ANDERSON said the committee does not want unsafe mishandling of explosives, and this bill is important to address it. He said the bill will be held until next week.

[3:29:20 PM](#)

HB 295-UNIFORM FRAUDULENT TRANSFER ACT

CHAIR ANDERSON announced that the final order of business would be HOUSE BILL NO. 295, "An Act adopting the Uniform Fraudulent Transfer Act and relating to fraudulent transfers of property."

[3:30:13 PM](#)

LYNN LEVENGOOD, Attorney, Fairbanks, said he is a member of the National Conference of Commissioners on Uniform State Law, which

is an expert body to help create uniform state laws. He said the most notable law is the Uniform Commercial Code, and he added that there are many other uniform acts that states have adopted. He noted that HB 295 was originally drafted by the National Conference by a subcommittee of experts. He said he is not an expert in the field but offered to contact the original drafters to answer questions for the committee.

[3:32:29 PM](#)

CHAIR ANDERSON said Michelle Boutin was the person who originally contacted him to sponsor HB 295.

MICHELLE BOUTIN, Attorney, Anchorage, said she specializes in commercial law and bankruptcy, and she has worked first hand on fraudulent conveyance matters. She stated she fully supports the adoption of HB 295, and 42 other states have done so. Current Alaska statute contains only one sentence on the issue, and attorneys need more guidance as to what a fraudulent conveyance is, she said. She opined that it is like driving down the road without a roadmap. She said she recently represented a bankruptcy trustee, and the debtor in bankruptcy was a corporation which was owned by one person. That individual "saw what was coming down the road", transferred all the corporate assets to herself, and filed for bankruptcy for the company.

MS. BOUTIN brought a fraudulent conveyance action against the owner, seeking to recover the property that was fraudulently conveyed and put it back into the bankruptcy estate so it could be liquidated for the benefit of the creditor. The case went to trial, and under "some existing Alaska case law" the judge found authority for "the shareholder, even though the debtor was insolvent, to prefer herself, and transfer the assets to herself because she claimed to have made some loans to the corporation. So she too was a creditor of the corporation, so it was okay for her to orchestrate this so that she received all the assets and the other creditors did not." She said the judge wrote that had Alaska had the Uniform Fraudulent Transfer Act (UFTA) in place, he would have found it fraudulent. "He sort of was begging us to see that Alaska does something and passes the Uniform Fraudulent Transfer Act." She noted that the outcome of her case would have been far more equitable, and she has made it a personal mission to get the act passed. She said the law would fit in with the current climate of promoting individual responsibility, as seen in the sweeping changes to the bankruptcy code last fall.

[3:37:58 PM](#)

CHAIR ANDERSON said the bill will go to judiciary, which will assess its legal aspects. This bill will remedy the ability of someone to escape a debt, he noted.

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REPRESENTATIVE GUTTENBERG, referring to a letter to the committee from Ms. Boutin, said he will have questions about business practices and the reason why fraudulent activity wasn't found in her case. He also referred to the third paragraph of the sponsor statement, which states that the UFTA "creates a right of action for any creditor against any debtor and any other person who receives property from the debtor in a fraudulent manner." He asked if there is any place in statute where there is a similar action for a debtor against a creditor.

[3:40:34 PM](#)

MS. BOUTIN said she is not aware that there is a cause of action arising out of the UFTA that a debtor can bring against a creditor.

CHAIR ANDERSON said the question is why isn't there an ability for a debtor to go against a creditor, "but what was the original purpose of the UFTA?"

[3:41:09 PM](#)

MS. BOUTIN said the original purpose of the UFTA "is concerning transfers fraudulent as to present and future creditors." She said, just like Alaska's current statute, it is a remedy for creditors to recover assets that debtors have fraudulently transferred away. She said if debtors are harmed with regard to assets being taken away, there may be another type of remedy.

[3:42:19 PM](#)

CHAIR ANDERSON said there are probably other mechanisms, but "this isn't the one in this state or any other state."

MS. BOUTIN said that is correct, and she noted that there is also a look-back provision for future creditors.

[3:43:07 PM](#)

REPRESENTATIVE ROKEBERG asked if Ms. Boutin reviewed HB 295 in the context of Alaska statute, and if she is comfortable with the way the bill is drafted.

[3:43:41 PM](#)

MS. BOUTIN said she fully supports the bill, and thinks it was taken directly from what has been proposed by the committee for uniform laws. She said a section had been inadvertently left out of one version, and didn't know if it had been fixed.

HEATH HILYARD, Staff to Representative Tom Anderson, sponsor of HB 295, said he has a blank committee substitute that includes that section that was left out of the original version.

MS. BOUTIN said she "100 percent supports" the current version.

REPRESENTATIVE ROKEBERG said the current Alaska law was adopted in 1949. He noted that he has seen this bill several times in the past, and it "unfortunately hasn't made it through." He asked if the bill conforms to the newest bankruptcy act.

MS. BOUTIN said it is not the same at all, but it doesn't have to be, because once a party is in bankruptcy then the federal laws control what happens in the bankruptcy case. "In fitting with the political climate, right now, of making people more responsible, they expanded under the federal law the fraudulent transfer remedies that the bankruptcy trustee or creditor would have once an entity does file for bankruptcy." She said the laws are not the same; the bankruptcy look-back period is only two years and does not track the UFTA. She said that is okay because there is a separate remedy that the bankruptcy trustee has once a party files. The trustee can bring a fraudulent conveyance action either under the bankruptcy code or bring any actions under state law. "So the trustee has both, and if Alaska passes the UFTA, the trustee can either use the bankruptcy federal fraudulent conveyance statute or he can use the Alaska UFTA statute."

[3:47:12 PM](#)

CHAIR ANDERSON moved to adopt Version G. Seeing no objection, Version G was before the committee.

MR. HILYARD said the inserted section is on page 7, beginning at line 27. It had been accidentally omitted, and that is the only change, he said.

[3:47:56 PM](#)

REPRESENTATIVE ROKEBERG said Ms. Boutin suggested there is an ability to choose to use federal or Alaska law.

MS. BOUTIN said if there is a bankruptcy, that is true, but if there is not one, then the creditor can only use Alaska law.

REPRESENTATIVE ROKEBERG spoke of the bankruptcy that Ms. Boutin described with the judge deferring to state statute. So it is necessary to have Alaska law to assist you to accomplish your objectives, is that correct? he asked.

MS. BOUTIN said, "Yes."

[3:49:16 PM](#)

MR. LEVENGOOD said the new bankruptcy code is very new, and he will call Chicago and get back to Chair Anderson.

[3:50:01 PM](#)

CHAIR ANDERSON said the bill is technical, and it is difficult to find problems until you "sink your teeth into it."

MR. HILYARD said that in looking through "both the Uniform Law Commission's information provided and the National Conference of State Legislatures (NCSL), this is the most recent act that I have been able to find."

CHAIR ANDERSON said the bill emulated the NCSL version.

MR. HILYARD said he believes the model act provided on the NCSL website was taken from the Uniform Law Commission, and he said he doesn't believe there was a second version.

[3:51:48 PM](#)

CHAIR ANDERSON suggested moving the bill to the House Judiciary Standing Committee to work on.

REPRESENTATIVE ROKEBERG said the former uniform law commissioner, Art Peterson, is in Juneau.

[3:52:46 PM](#)

MS. BOUTIN said that when this bill was introduced before, Alaska was in the process of implementing new trust statutes and there was concern regarding how the two would mesh. She said trust law attorneys have lived with that statute for a while, so she assumes that many of those concerns are gone.

[3:53:22 PM](#)

CHAIR ANDERSON said he will contact Art Peterson.

REPRESENTATIVE ROKEBERG moved to report CSHB 295, Version 24-LS0843\G, Bannister, 1/20/06, out of committee with individual recommendations and the accompanying fiscal notes. Hearing no objection, CSHB 295 (L&C) was reported out of the House Labor and Commerce Standing Committee.

#### **ADJOURNMENT**

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at [3:54:01 PM](#).