

MINUTES
SENATE FINANCE COMMITTEE
March 20, 2006
9:03 a.m.

CALL TO ORDER

Co-Chair Lyda Green convened the meeting at approximately [9:03:25 AM](#).

PRESENT

Senator Lyda Green, Co-Chair
Senator Con Bunde, Vice Chair
Senator Bert Stedman
Senator Lyman Hoffman

Also Attending: DEAN GUANELI, Chief Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law; LINDA HALL, Director, Division of Insurance, Department of Commerce, Community, and Economic Development; JOHN CYR, Business Manager, Public Safety Employees Association;

Attending via Teleconference: There were no teleconference participants.

SUMMARY INFORMATION

SB 206-DETENTION OF MATERIAL WITNESSES

The Committee heard from the sponsor, the Department of Law, and a representative of a peace officer association. The bill was held in Committee.

SB 289-INSURANCE

The Committee heard from the sponsor and the Department of Commerce, Community, and Economic Development. The bill was held in Committee.

#SB 206
[9:04:02 AM](#)

CS FOR SENATE BILL NO. 206(JUD)

"An Act relating to contempt of court and to temporary detention and identification of persons."

This was the first hearing for this bill in the Senate Finance Committee.

9:04:08 AM

Senator Bunde, sponsor of the bill, testified that the genesis of this bill was based on recent situations in Anchorage, which he was concerned could occur in other areas of the state. These situations involved a gang-related shooting and attempts by police officers called to the scene to retain witnesses for the purpose of gathering information about the crime. Alaska Statute currently does not include a material witness provision and the potential witnesses disregarded officers' requests to remain at the scene and to cooperate in efforts to collect information.

Senator Bunde stated that this legislation would provide police the ability to detain witnesses in similar situations and possibly defuse the "immediate tension".

Senator Bunde assured that the legislation is also intended to not restrict the rights of the average citizen or abuse their constitutional rights. He cautioned against the potential negative impact on innocent parties when providing law enforcement additional authority in their efforts to solve crimes.

Senator Bunde indicated that this bill has undergone review and changes have been made to achieve the balance of providing assistance to law enforcement without infringing on the public. He acknowledged the Department of Law efforts to this end.

Senator Bunde then overviewed the Senate Majority press release pertaining to this bill, which reads as follows.

Summary:

- Increases the penalty for contempt of court for failure to honor a subpoena or refusal to answer as a witness in connection with a felony crime or appearance before the grand jury.

- Adds a section to AS 12.50 allowing a peace officer to temporarily detain a person under circumstances that give the officer reasonable suspicion that:
 - The person witnesses a crime or was in the vicinity of a crime such as a homicide or manslaughter;
 - The person may have information of material aid in the investigation of that crime, and;
 - The temporary detention is reasonably necessary to obtain or verify the identification of the person, to obtain an account of the crime, to protect a crime victim from imminent harm, or for other exigent circumstances.
- Allows a police officer who has detained a person under these circumstances to:
 - Photograph the person;
 - Serve a subpoena on the person to appear before the grand jury if the person fails to provide valid government-issued identification;
 - Take the person's fingerprints if the person is detained in connection with the investigation of a murder, attempted murder or misconduct involving weapons in the first degree under AS 11.61.190.
- Prohibits the peace officer from requiring the person to sign a subpoena issued under this section, and requires the peace officer to advise the person that failure to honor the subpoena is punishable as criminal contempt of court.
- Allows a person receiving a subpoena to request the district attorney to withdraw the subpoena if the person provides a valid government-issued photographic identification prior to the grand jury proceeding.
- Makes it a class B misdemeanor to refuse or resist the taking of photos or fingerprints under this section.

Benefits:

- Balances the need to protect individual freedom with the ability to prosecute crime and to provide defendants with witnesses on their behalf.

Background:

- A material witness is crucial to either the defense or prosecution. Unfortunately, material witnesses often refuse to cooperate with law enforcement officials, significantly impeding the ability to bring

indictments or prosecute crime. SB 206 protects material witnesses from unreasonable arrests or confinement and helps ensure the availability of crucial testimony.

[9:08:50 AM](#)

Senator Stedman asked the impact of this bill in domestic violence instances in which children are involved or present.

[9:09:13 AM](#)

Senator Bunde replied that this provision would apply to situations involving the most serious crimes, such as manslaughter and misconduct involving weapons.

[9:09:31 AM](#)

DEAN GUANELI, Chief Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law, testified that this bill would clarify law that is currently unclear relating to material witnesses. Peace officers would have direction as to their authority in situations involving witnesses at the scene of a crime. Possible witnesses can "drift into the background", making it difficult for law enforcement to gather information.

[9:10:42 AM](#)

Mr. Guaneli indicated several such instances have occurred in the past.

Mr. Guaneli explained the proposed Article 3. Temporary Detention and Identification of Persons., inserted to AS 12.50 in Section 2 of this bill. AS 12.50.201(a) would provide that a peace officer may temporarily detain a person in reasonable situations. The courts recognize this authority as a part of common law, but the exact authority is not defined. This legislation would not only inform police of what actions they could take, but what actions they could not take as well.

[9:12:12 AM](#)

Senator Bunde stated that the provisions of this legislation would apply in domestic violence situations involving a weapon.

[9:12:34 AM](#)

Mr. Guaneli continued that the proposed AS 12.50.201(b) specifies the actions a peace officer is allowed with regard to material witnesses of different crimes. In any crime committed against a person, this authority is limited to determining the identification of the possible witness and what may have been witnessed. Only in circumstances in which law enforcement is investigating a murder or an attempted murder, such as the result of a drive-by shooting, could police detain the potential witness.

[9:13:52 AM](#)

Mr. Guaneli told of one case involving domestic violence. Police witnessed a couple running, then getting into a car and driving away. Police thought the woman in this pair was the victim of a domestic violence assault and stopped the car to determine if this was the case. This action by law enforcement was deemed proper.

Mr. Guaneli informed that in the investigation of misdemeanor crimes, police could not take fingerprints of material witnesses.

[9:14:59 AM](#)

Senator Stedman expressed concern about felony domestic violence crimes. The victimized spouse may leave the home to avoid further confrontation because restraining orders do not offer sufficient protection. He asked if the victim would then be detained by authorities and if so, what would be the fate of any children involved.

[9:16:11 AM](#)

Mr. Guaneli agreed that domestic violence restraining orders are not always effective. This bill is not intended to prevent a domestic violence victim from seeking safety. Rather it would allow police to determine who was in the vicinity when the crime occurred and what they may have witnessed. In most instances, the domestic violence victim telephones the police. This bill is more applicable to those witnesses who do not wish to be identified or cooperative, such as gang members or friends and relatives of gang members.

[9:17:47 AM](#)

Senator Bunde emphasized this provision only allows detention of material witnesses long enough to gather verified identification and possibly a statement. It would not require a victim to remain near the perpetrator.

[9:18:17 AM](#)

Co-Chair Green understood that additional language is necessary to address the provision relating to fingerprinting of material witnesses.

[9:18:32 AM](#)

Mr. Guaneli told of discussions to limit this provision, in part to be less vulnerable to a court challenge. Law enforcement only requires fingerprints of witnesses to accurately identify these people. The use of those prints should be limited to that purpose and destroyed afterwards. Currently, the Department of Public Safety maintains two databases: "known" fingerprints and "unknown" fingerprints. The known database includes prints obtained from certain job applicants, members of the Alaskan Bar Association and other public protection professionals. The database of unknown prints contains those collected from crime scenes in which the identity of the person has not been determined.

Mr. Guaneli noted that for the purposes of this legislation, the fingerprints taken of a material witness could only be compared to the known database. If a match is found, the identity of the witness could be verified and the prints could be destroyed. If a fingerprint record were not found, the prints taken would also be destroyed.

[9:21:08 AM](#)

Co-Chair Green anticipated an amendment clarifying this matter would be submitted for future consideration.

[9:21:13 AM](#)

Senator Hoffman asked how the fingerprints taken from a material witness would be used to make a positive identification. He also

asked the number of other states that have similar statutes allowing for the fingerprinting of material witnesses.

[9:21:33 AM](#)

Mr. Guaneli replied that the witness would be identified by police officers at the scene of the crime if an officer had reason to believe the person could be of assistance in solving the crime. He did not know the number of other states with similar laws. A national trend is progressing to improve the ability of police to gather information at crime scenes.

[9:22:45 AM](#)

Senator Hoffman requested information regarding similar laws in other states.

[9:23:00 AM](#)

Mr. Guaneli indicated several days would be needed to undertake an exhaustive search.

[9:23:21 AM](#)

Senator Stedman commented that issues in Anchorage, Mat-Su and Fairbanks are different than those effecting Southeastern communities. He supported the concept allowing police to detain people to obtain a list of names and addresses for future questioning.

[9:24:09 AM](#)

Senator Bunde, referencing Senator Hoffman's question, informed that other states have a material witness provision and he had submitted a request for information on these statutes.

[9:24:32 AM](#)

Mr. Guaneli asserted that this provision is based on the obligations of citizens to provide testimony in court. It allows police to issue a subpoena to a citizen who fails to present valid identification. Unless testimony would be self-incriminating, people have a duty to testify when called upon to do so.

9:25:45 AM

Senator Hoffman contended that individuals have different abilities to recall a situation. He exemplified exercises in which a person passes through a room and the group in that room are asked to describe that person. These witnesses usually have significantly different recollections.

Senator Hoffman asked the point that police must accept a witness' inability to recall or accurately describe what they saw. This gave him concern.

9:26:40 AM

Mr. Guaneli replied that a balance must be achieved. A person walking a dog in the vicinity of a crime who claims to not have witnessed anything relevant to the crime could be deemed truthful by a peace officer immediately. However, another person running away from the scene of the crime would require further investigation. That person could be fleeing because they heard or saw shots fired and feared for their safety, or fleeing to avoid police capture.

Mr. Guaneli inferred the adage of attracting more flies with honey than with vinegar to explain how law enforcement could achieve more cooperation from citizens by being respectful. Because of this, police have an incentive to treat with respect those people who had no connection with the crime.

9:28:55 AM

Senator Bunde pointed out that a person at the scene of a crime who provided proper identification to law enforcement could be contacted at a later date for further questioning. That person could have observed something initially thought to be irrelevant, but later determined to be a "piece of the puzzle".

9:29:46 AM

JOHN CYR, Business Manager, Public Safety Employees Association, testified about the multiple law enforcement officials belonging to the organization. The Association supports this bill. It would allow for the identification of people present at a crime scene. Too often, potential witnesses refuse to cooperate and leave the scene, making the police officers' job difficult. This

legislation would provide clarity. The need is obvious. The impacts of gang-related, methamphetamine-related and organized crime related situations are beginning to become apparent in Alaska. "Bad people" want to remain unknown.

[9:32:24 AM](#)

Co-Chair Green indicated that amended language would be forthcoming.

[9:32:31 AM](#)

Senator Bunde remarked that while this bill was generated as a result of situations occurring in Anchorage, the Alaska State Troopers have indicated it could have statewide application.

[9:32:59 AM](#)

Co-Chair Green ordered the bill HELD in Committee.

#SB289

[9:33:02 AM](#)

CS FOR SENATE BILL NO. 289(L&C)

"An Act relating to the payment of insurer examination expenses, to the regulation of managed care insurance plans, to actuarial opinions and supporting documentation for an insurer, to insurance firms, managing general agents, and third-party administrators, to eligibility of surplus lines insurers, to suitability of life and health insurance policies and annuity contracts, to unfair discrimination under a health insurance policy, to prompt payment of health care insurance claims, to required notice by an insurer, to individual deferred annuities, to direct payment to providers under a health insurance policy, to mental health benefits under a health care insurance plan, to the definitions of 'title insurance limited producer' and of other terms used in the title regulating the practice of the business of insurance, and to small employer health insurance; repealing the Small Employer Health Reinsurance Association; making conforming amendments; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

Senator Bunde introduced bill, sponsored at request of the Department of Commerce, Community and Economic Development, Division of Insurance. The provisions of the bill are technical.

[9:33:49 AM](#)

LINDA HALL, Director, Division of Insurance, Department of Commerce, Community and Economic Development testified as follows.

SB 289 contains numerous changes to Title 21 that are designed to provide protection to consumers who purchase life annuity and health insurance, to ensure that State statutes are consistent with federal law and National Association of Insurance Commissioners' [NAIC] model acts and standards, to update Division procedures and transactions and to make Alaska licensing more consistent with national standards.

[Regarding life and health insurance:] Sections 3 through 23 ... deal with group health insurance. Today, under current law, only group health insurance plans are required to comply with the managed care protections in AS 21.07. These protections include requirements for both internal and external appeal processes for claim denials. The amendments to these sections would make the protections also applicable to individual health contracts.

There are some other, what I think are non-substantive changes, which are designed to make terminology consistent with federal and state law. We replace "health care" with "medical care", remove "group" to make these provisions also apply to individual contracts, and replace "enrollee" with "a covered person".

To get into what I think is a controversial section of this bill, Section 32, sets a minimum requirement for suitability standards. I'd like to save discussion on that to the end. ...

Section 33 [pertains to provider non-discrimination and extends the provision to individual policies rather than just group health insurance policies.]

Section 34 deals with prompt payment of health claim provisions.

Section 36 is the NAIC standard non-forfeiture for individual deferred annuities. What we've done here is to address in [Sections] 37 and 38 the annuity products with excessive surrender charges. In effect these changes limit surrender charges to about a ten-percent grading down to zero after ten years and will no longer allow unrealistic maturity ages such as 115. That's not a particularly realistic date that people who live longer are alive.

Section 41 adds the HIPA [Health Insurance Portability and Accountability Act] mental health parity provisions that are currently in federal law. They're renewed [as the] Alaska law sunsets so we need to add those back.

Section 42 to 44 ... we would repeal the Small Employer Health Reinsurance Association. Today there are only two lives are reinsured in that Small Employer Reinsurance Association. The administrative costs of running the association range from \$10,000 to \$12,000 a year. We have discussed this with industry and it appears that this particular association has outlived its usefulness. Industry is not at all opposed to us repealing this particular provision. Section 52, at the end of the bill, provides for a transition to wind up the affairs of the association and how we would deal with that.

Those are the basic concepts in the health and life changes. The balance of the bill makes changes in other provisions regarding the oversight of the entities we regulate and license.

Section 25 is an adoption of the NAIC model actuarial opinion guidelines. Today this is already done in the life and health industry. This particular section would adopt the guidelines for property casualty insurers. A domestic insurer would be additionally required to file with the Division of Insurance, an actuarial opinion summary, which includes their estimate, or range of reasonable estimates

of, reserves and explains any adverse development. This gives the Division an additional tool to more quickly identify an insurer that could be in a troubled financial condition. And again, we have worked with industry on this. We've had some questions that have been resolved and I have letters indicating that from those particular trade associations.

Section 29 requires some changes in our Managing General Agent laws to streamline and be more consistent with national standards.

Section 30 streamlines notification requirement for third-party administrators [indiscernible]. This was a request from an industry last year. We didn't get it in time to put in our bill to allow them to notify us of main contacts, not if they have a hundred people who might deal with Alaskan claims. They didn't want to have to change their list weekly if they had employee changes. So it modifies the requirement.

Section 31 allows the Division to publish a list of eligible surplus [indiscernible] on our website instead of by paper. It provides authority to reinstate a company under specific conditions, which would include payment of a late fee. Today we don't have that flexibility if a surplus line insurer does not make the appropriate filings with us by the deadline, they have to start all over again and that seems to have been a very cumbersome process. We would like to make that easier to work with so it isn't a particular burden.

[Section] 35: expand the authority for electronic communications.

Generally then the last five sections deal with various repealers and effective dates.

[Pertaining to Section 32:] As I mentioned at the beginning, as we go through a bill of this technical nature and discussions, there have been some pieces that have resulted in questions: the confidentiality of actuarial opinions, the annuity surrender charges. The one that I think remains are the suitability standards. I have had considerable discussion with industry over what's

appropriate, what's not appropriate. We have seen in industry some examples of behavior that is probably been detrimental to consumers. What I have proposed and will propose in this section is to modify the language that is currently in the suitability section to pertain only to long-term care products and to annuities.

NAIC has adopted regulations in both of those areas. It's my understanding that the long-term care regulations have been adopted in 31 states. I would like to, and I have committed to, using that same philosophy in adopting long-term care regulations.

The annuity regulations are also an NAIC model. We've seen examples of trade practices that are being violated in the selling of annuities to seniors. Earlier this month at the meeting of NAIC in Orlando, the model was changed to no longer only apply to those 65 and older. But we're moving that age requirement so the suitability for annuities would apply regardless of the age of the purchaser: the consumer.

I would propose, because those are the two areas that there really already are standards nationally that we limit suitability to those two areas.

We have in the Division had cases that we've had taken legal action and been upheld under current statutes. The suitability language gives us I think more consistency and will specifically authorize us to adopt regulations. And I would like very much to adopt the NAIC regulations.

[9:43:24 AM](#)

Senator Stedman, referencing Section 32 "targeting" long-term care insurance, asked if a differentiation between fixed and variable annuities is provided.

[9:43:55 AM](#)

Ms. Hall informed that the suitability standards for long-term care products include provisions relating to the "ability to pay". These products have increased in price. Guarantees of pricing were given "early on". A consumer must purchase the product and continue to pay premiums until the insurance is needed. As products became more expensive, consumers were

lapsing their coverage and in effect losing the money they had invested. The suitability addresses "need", evaluation of other assets, and the ability of a plan to allow consumers to pay over a long term so the coverage is available when the consumer is in need of long-term care.

Ms. Hall noted no differential between fixed and variable annuities. The Division currently regulates both. Some dual regulations apply to the securities aspect of annuities in which the Division coordinates with the Division of Banking and Securities. Some joint investigations have been undertaken on individuals selling products.

[9:45:21 AM](#)

Senator Stedman asked about the definition of "reasonable grounds" and how it would be addressed in regulation.

[9:45:37 AM](#)

Ms. Hall gave an example of a contract she recently reviewed, which included a form compliant with the model regulation. The company set its own suitability standards and utilized a "consumer form that asked particular questions". The Division would not promulgate regulations requiring companies sell a certain product to a certain consumer. Rather the regulations would provide a guideline to ensure that the product is appropriate for the financial needs and situation of the individual consumer.

[9:46:21 AM](#)

Senator Stedman knew of several recent incidences in the states of Florida and New York involving major insurance carriers "called to task" on excessive replacement on some annuities and other policy issues.

[9:46:44 AM](#)

Ms. Hall informed that the Division participated in a multi-state settlement with a company that replaced one annuity with another for the enhancement of that company. That settlement included assurance that consumers would not be detrimented from such actions.

9:47:43 AM

Senator Stedman then asked the background of the provision in this bill allowing for electronic receipts. He voiced concern that some documents are better received in paper format for recordkeeping purposes.

9:48:49 AM

Ms. Hall responded that the Division is attempting to update statute to allow for electronic communication. Companies that utilize an increasing amount of electronic communication have requested this change. The provision would require proof of receipt for these transactions.

Ms. Hall agreed that consumers sometimes need direct information about policies. However, some consumers prefer electronic communications and this provision to either request or grant permission to receive documentation through this technology. The consumer would make the choice.

9:50:20 AM

Senator Stedman understood the trend of the insurance industry to be more efficient. But in many instances, consumers receive information in the mail and do not understand it. Insurance is almost a foreign language to many people. He asked if companies would be required to follow electronic communications with a hard copy.

9:51:16 AM

Ms. Hall answered that the provision would not require back-up mailings, as this would be somewhat redundant. Insurance information is confusing, but would not necessarily be more or less confusing if received electronically.

Ms. Hall stated that many consumers purchase insurance policies online thinking they were spending less money. But the policies often differ and the comparison is "apples to oranges". The Division receives complaints about this, but could only advise consumers to seek the advice of an insurance agent to explain the various policies.

9:52:29 AM

Senator Stedman asked about situations in other states, as he assumed this is a national trend.

[9:52:41 AM](#)

Ms. Hall affirmed that the use of electronic communication is a national trend, not only in the insurance industry. In some ways this form of communication is more efficient.

[9:53:23 AM](#)

Senator Bunde surmised that if a consumer provides the company with an email address, communication in this manner would be suitable. It would be assumed that this consumer has the ability and knowledge to receive information in this format. If a consumer does not provide such an address, traditional hard copy mail would be appropriate. He did not deem an "opt in" provision necessary if an email address were provided.

[9:54:20 AM](#)

Co-Chair Green noted the Division provided a proposed amendment to address the suitability provision [copy not provided]. The language of this amendment had not been distributed as Co-Chair Green was unconvinced it should be offered.

Co-Chair Green announced that her husband is and insurance agent, although she was unsure if his business would be affected by the provisions of Section 32.

[9:54:54 AM](#)

Senator Stedman announced that he is licensed as an agent of life and health insurance and owns a minority interest in an independent agency.

Senator Stedman spoke to reference in the legislation requiring insurers produce an actuarial analysis to allow the Division to determine suitability and viability of the insurer. He asked if the intent is to judge the solvency of a company as well as to alert of predatory pricing in the event the carrier incurs financial losses in one area of the nation and attempts to increase prices elsewhere to offset that loss and increase cash flow. He reminded that this occurred in the workers'

compensation field several years prior. He asked if this legislation would implement a "check and balance" to the system.

[9:56:12 AM](#)

Ms. Hall replied that the actuarial opinion guideline adopted in this legislation addresses "reserving". Carriers are already required to provide in their financial statements, an actuarial opinion. An actuarial analysis of reserves is mandated currently. This legislation would provide the "back ground, the work papers" of the actuarial analysis to allow the Division "one additional tool." This information would identify potential financial impairment that could be a source of preditorial pricing. She told of one instance in which the prices of a major carrier were "massaged" and the company almost doubled the amount of its reserves.

[9:57:44 AM](#)

Senator Stedman deemed this a good requirement.

[9:57:53 AM](#)

Co-Chair Green expressed concern about the proposed amendment to Section 32. This practice occurs regularly for every product sold for a variety of reasons, including underwriting, assessment of risk and the consumer. Changes are unnecessary and should not be included in this bill. The proposed amendment should be amended.

Co-Chair Green announced the bill would be held in Committee to address this issue. She found the proposed language "troublesome".

[9:59:38 AM](#)

Senator Stedman agreed that the practice is usually acceptable in the context of most major and reputable carriers. Occasionally, suitability is "pushed aside" to achieve other corporate objectives. Significant documentation has been done over the last several years to justify recommendations for exchanges and replacements. If those were not documented in "the file", supervising officers would make notification.

Senator Stedman did not oppose amending the provision. He asked if Co-Chair Green intended to delete the language of Section 32, or amend it.

[10:01:13 AM](#)

Co-Chair Green was unsure of her intentions. She was concerned about the provision.

[10:01:27 AM](#)

Senator Bunde commented that the Senate Labor and Commerce Committee, which he serves as chair, sponsored this legislation at the request of the Division. It would provide consumer protection, make Alaska licensing more consistent with national standards and promote more efficient administrative procedures and industry oversight. His support of this legislation was not unconsidered.

[10:02:05 AM](#)

Co-Chair Green agreed the consolidation and consistency language were appropriate. The majority of the legislation provided conforming changes.

[10:02:20 AM](#)

Co-Chair Green ordered the bill HELD in Committee.

#

ADJOURNMENT

Co-Chair Lyda Green adjourned the meeting at [10:02:22 AM](#)