

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

March 15, 2006

8:33 a.m.

MEMBERS PRESENT

Senator Ralph Seekins, Chair
Senator Charlie Huggins, Vice Chair
Senator Gene Therriault
Senator Hollis French
Senator Gretchen Guess

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 222

"An Act relating to breaches of security involving personal information, consumer report security freezes, consumer credit monitoring, credit accuracy, protection of social security numbers, disposal of records, factual declarations of innocence after identity theft, filing police reports regarding identity theft, and furnishing consumer credit header information; and amending Rule 60, Alaska Rules of Civil Procedure."

MOVED CSSB 222(JUD) OUT OF COMMITTEE

SENATE BILL NO. 206

"An Act relating to material witnesses; and amending Rule 58.1, Alaska Rules of Civil Procedure, and Rule 204, Alaska Rules of Appellate Procedure."

MOVED CSSB 206(JUD) OUT OF COMMITTEE

SENATE BILL NO. 306

"An Act requiring an employing unit with a change in ownership, management, or control or similar change to notify the Department of Labor and Workforce Development of the change; relating to the unemployment contribution rate of an employing unit; defining 'business' for purposes of statutes setting unemployment contribution rates; establishing the crime of obtaining an unemployment rate by deception; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 222

SHORT TITLE: PROTECTION OF PERSONAL INFORMATION

SPONSOR(s): SENATOR(s) THERRIAULT, GUESS

01/09/06 (S) PREFILE RELEASED 12/30/05
01/09/06 (S) READ THE FIRST TIME - REFERRALS
01/09/06 (S) L&C, JUD
01/24/06 (S) L&C AT 1:30 PM BELTZ 211
01/24/06 (S) Heard & Held
01/24/06 (S) MINUTE(L&C)
02/14/06 (S) L&C AT 1:30 PM BELTZ 211
02/14/06 (S) Moved CSSB 222(L&C) Out of Committee
02/14/06 (S) MINUTE(L&C)
02/16/06 (S) L&C RPT CS 4DP 1AM NEW TITLE
02/16/06 (S) DP: BUNDE, DAVIS, ELLIS, SEEKINS
02/16/06 (S) AM: STEVENS B
02/22/06 (S) JUD AT 8:30 AM BUTROVICH 205
02/22/06 (S) Heard & Held
02/22/06 (S) MINUTE(JUD)
02/27/06 (S) JUD AT 8:30 AM BUTROVICH 205
02/27/06 (S) Heard & Held
02/27/06 (S) MINUTE(JUD)
02/28/06 (S) JUD AT 8:30 AM BUTROVICH 205
02/28/06 (S) Heard & Held
02/28/06 (S) MINUTE(JUD)
03/01/06 (S) JUD AT 8:30 AM BUTROVICH 205
03/01/06 (S) Heard & Held
03/01/06 (S) MINUTE(JUD)
03/08/06 (S) JUD AT 8:30 AM BUTROVICH 205
03/08/06 (S) <Bill Hearing Canceled>
03/14/06 (H) JUD AT 8:30 AM BUTROVICH 205
03/14/06 (S) Scheduled But Not Heard

BILL: SB 206

SHORT TITLE: DETENTION OF MATERIAL WITNESSES

SPONSOR(s): SENATOR(s) BUNDE

01/09/06 (S) PREFILE RELEASED 12/30/05
01/09/06 (S) READ THE FIRST TIME - REFERRALS
01/09/06 (S) JUD, FIN
02/16/06 (S) JUD AT 8:30 AM BUTROVICH 205
02/16/06 (S) Heard & Held
02/16/06 (S) MINUTE(JUD)
02/27/06 (S) JUD AT 8:30 AM BUTROVICH 205
02/27/06 (S) Scheduled But Not Heard
03/08/06 (S) JUD AT 8:30 AM BUTROVICH 205

03/08/06 (S) Heard & Held
03/08/06 (S) MINUTE(JUD)
03/15/06 (S) JUD AT 8:30 AM BUTROVICH 205

BILL: SB 306

SHORT TITLE: UNEMPLOYMENT INSURANCE FUND & TAXES

SPONSOR(S): LABOR & COMMERCE

02/23/06 (S) READ THE FIRST TIME - REFERRALS
02/23/06 (S) L&C JUD
03/02/06 (S) L&C AT 2:00 PM BELTZ 211
03/02/06 (S) -- Meeting Canceled --
03/07/06 (S) L&C AT 1:30 PM BELTZ 211
03/07/06 (S) Moved SB 306 Out of Committee
03/07/06 (S) MINUTE(L&C)
03/09/06 (S) L&C RPT 3DP
03/09/06 (S) DP: BUNDE, DAVIS, STEVENS B
03/15/06 (S) JUD AT 8:30 AM BUTROVICH 205

WITNESS REGISTER

Senator Gene Therriault
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of SB 222

Senator Gretchen Guess
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of SB 222

Steve Cleary, Director
Alaska Public Interest Research Group
Anchorage, AK

POSITION STATEMENT: Testified in support of SB 222

Ed Sniffen, Assistant Attorney General
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Commented on SB 222

Senator Con Bunde
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of SB 206 and SB 306

Dean Guaneli, Chief Assistant Attorney General
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Testified in support of SB 206

Walt Monegan, Chief of Police
Anchorage Police Department
632 W. 6th Ave
Anchorage, AK 99501

POSITION STATEMENT: Testified in support of SB 206

Jane Alberts, Legislative Aide
Staff to Senator Con Bunde
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Answered questions regarding SB 306

Paula Scavera, Special Assistant
Department of Labor & Workforce Development
PO Box 21149
Juneau, AK 99802-1149

POSITION STATEMENT: Testified in support of SB 306

Pat Shier, Acting Deputy Director
Department of Labor & Workforce Development
PO Box 21149
Juneau, AK 99802-1149

POSITION STATEMENT: Answered questions regarding SB 306

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at [8:33:44 AM](#). Present were Senators Hollis French, Gretchen Guess, Gene Therriault, Charlie Huggins, and Chair Ralph Seekins.

SB 222-PROTECTION OF PERSONAL INFORMATION

[8:34:13 AM](#)

CHAIR RALPH SEEKINS announced SB 222 to be up for consideration.

SENATOR GENE THERRIAULT moved version S as the working document before the committee.

CHAIR SEEKINS objected for the purpose of explanation.

SENATOR GRETCHEN GUESS explained the changes to the bill that were contained in version S:

Changes in CSSB 222, Version S

1. Page 2, line 2: Notification of breach only to impacted persons not entire databases
2. Page 2, lines 12-13: Requires written notification by law enforcement when they lift a delay on notification
3. Page 2, line 24: Deletes section 45.48.070 on Minimum Contacts
4. Page 3, line 27: Breach of security includes acquisition or reasonable belief of acquisition
5. Page 4, lines 7-21: Ensures clarity in the definition of "personal information" and include encrypted data when the encryption key has been accessed or acquired
6. Page 6, lines 10 and 13-23: Clarifies that insurance companies can hold an application as incomplete (or other listed actions) when a security freeze is in place
7. Page 8, line 19 and page 9, line 23: Clarifies the language in the "Notice of Rights" outlined in section 45.48.170 to ensure consistency with the bill's effect
8. Page 10, line 19: Deletes the section previously numbered 45.48.200 on Minimum Contacts
9. Page 12, line 8: Clarifies freeze exemptions to include credit score if to a consumer at their request
10. Page 12, lines 14-18: Improves clarity and conforms to California law in the "re-seller" exemption
11. Page 16, line 28-page 17, line 3: Clarifies that local law may authorize collection of Social Security numbers
12. Page 17, lines 1-3: Clarifies that state agencies may adopt regulations to authorize collections of Social Security numbers
13. Page 17, lines 4-8: Ensures state of local agencies can disclose SSN to another state, local, or federal governmental agency when required to carry out the agency's duties
14. Article 5, pages 17-20: Adds government agencies to the disposal of records section

[8:43:22 AM](#)

CHAIR SEEKINS removed his objection. Hearing no further objections, the committee adopted version S.

SENATOR THERRIAULT explained that the issue of state agencies being liable remained up for discussion and that there would be

a fiscal impact. However, he stated, the sponsors would rather the fiscal discussion happen in the Senate Finance Committee.

STEVE CLEARY, Director of Alaska Public Interest Research Group (AkPIRG), testified in support of SB 222. He stated that the bill was a great example of bipartisan work in the Legislature and that it would benefit consumers in Alaska.

[8:48:24 AM](#)

ED SNIFFEN, Assistant Attorney General, Department of Law (DOL), testified that version S resolves most of the concerns that have been heard by the different entities and the public. Concerning interagency disclosure, some agencies also disclose social security information to non-governmental third parties in certain circumstances, such as the Alaska Commission on Post Secondary Education. That agency is required to report any defaulted loans to credit agencies.

[8:51:25 AM](#)

SENATOR GUESS informed Mr. Sniffen that she and Senator Therriault were working on fixing that concern.

[8:54:24 AM](#)

SENATOR HOLLIS FRENCH moved CSSB 222(JUD) out of committee with individual recommendations and attached fiscal notes. Hearing no objections, the motion carried.

SB 206-DETENTION OF MATERIAL WITNESSES

[8:57:24 AM](#)

CHAIR RALPH SEEKINS announced SB 206 to be up for consideration.

SENATOR GENE THERRIAULT moved version I as the working document before the committee.

CHAIR SEEKINS objected for explanation.

SENATOR CON BUNDE, Bill Sponsor, informed the committee that the chief of police in his district is frustrated by the fact that officers are not able to temporarily detain crime scene witnesses, particularly in "gang violence" situations. He noted the importance of upholding the rights of ordinary citizens and so the bill is crafted with that in mind.

SENATOR THERRIAULT referred to page 2, lines 26-30, and asked Senator Bunde the reason for obtaining fingerprints from detainees.

SENATOR BUNDE replied that would only occur in the event of a murder or attempted murder. It would be for the purpose of diffusing future combat in the situation of gang retaliation.

DEAN GUANELI, Chief Assistant Attorney General, Department of Law (DOL), added that false identification cards are prevalent among gang members and so fingerprinting proves useful in serious cases.

[9:03:48 AM](#)

SENATOR THERRIAULT countered many other people could be swept up in a police detainment scenario and innocent people could be subject to having their fingerprints entered into a police database by force.

MR. GUANELI responded the police would have the right to obtain the fingerprints but it would not be mandatory and would be a judgment call.

[9:06:06 AM](#)

SENATOR BUNDE noted police make judgment calls every day. He spoke in support of the provision and said it was not special interest legislation for Anchorage only. Gang violence is a growing trend, he said.

MR. GUANELI noted the statute cited on Page 2, line 28 should have referenced AS 11.61.190 instead of AS 11.61.195.

SENATOR THERRIAULT referred to Page 2, line 26 "the person is detained in connection with the investigation" and asked Mr. Guaneli to explain what that means.

MR. GUANELI explained that the same section (Article 3 Sec. 12.50.201) draws out the standards that a police officer must meet in order to detain a person. The detainee might not be involved in the crime or even be a suspect but the police might believe that person has information about the crime and so they would be able to lawfully detain a person that they reasonably believe to have information.

SENATOR HOLLIS FRENCH asked Mr. Guaneli to read for the record the definition of misconduct involving a weapon in the first degree.

[9:11:20 AM](#)

MR. GUANELI did so.

Sec. 11.61.190. Misconduct involving weapons in the first degree.

(a) A person commits the crime of misconduct involving weapons in the first degree if the person

(1) uses or attempts to use a firearm during the commission of an offense under AS 11.71.010 - 11.71.040; or

(2) discharges a firearm from a propelled vehicle while the vehicle is being operated and under circumstances manifesting substantial and unjustifiable risk of physical injury to a person or damage to property.

(b) Misconduct involving weapons in the first degree is a class A felony.

SENATOR FRENCH referred to Page 2, line 9, and asked whether the police would be allowed to detain people who may be in a mall parking lot and not have witnessed anything. He expressed concern with the broad language of "in the vicinity."

MR. GUANELI explained subsection (a)(1)(B) would allow police to talk to people who they reasonably believe have material information. The critical part of the bill is subsection (a)(2) where it would require that the police must believe the person would have information on the crime.

[9:16:23 AM](#)

SENATOR FRENCH asked Mr. Guaneli the level of force police would be authorized to employ in order to gain cooperation of citizens who may not want to be photographed or fingerprinted.

MR. GUANELI said police currently have the ability to use reasonable force to enable the effect of whatever action they seek. It would depend on the circumstances and in this case police would be dealing with a citizen who may have information and so that level would involve the "laying on of hands" and "restricting movements."

[9:18:24 AM](#)

CHAIR SEEKINS said he also had concern over the words, "in the vicinity," but noted that the committee has discussed it extensively. He said the intent is there must be a level of reasonable immediacy.

MR. GUANELI agreed. In response to Senator French's concern over force, the provision on line 16 comes directly from a Court of Appeals case in Alaska where police pulled over a vehicle they

believe contained a crime victim. The Court of Appeals authorized police to detain even a crime victim, he said.

[9:21:22 AM](#)

CHAIR SEEKINS posed a hypothetical scenario where the police believed an eyewitness to a crime posed a threat to the officer and asked whether they would be allowed to detain the witness more securely.

MR. GUANELI reported there was a large body of case law that allows police to take reasonable actions to protect themselves.

CHAIR SEEKINS asked whether police would have legal authority to detain suspected gang members with more force than SB 206 would allow.

MR. GUANELI replied SB 206 does not directly address level of force. The intent is that reasonable force be applied dependent on circumstances on a case-by-case basis.

CHAIR SEEKINS asked Mr. Guaneli to describe an "exigent circumstance."

MR. GUANELI explained an exigent circumstance is a level that may not rise to an emergency but there is some reason to believe action must be taken immediately. One example might be in the collection of evidence. A witness may have evidence on their person and not even know it and police recognize that action must be taken in order to secure that evidence.

[9:25:53 AM](#)

CHAIR SEEKINS removed his objection. Hearing no further objections, Version I was adopted.

SENATOR CHARLIE HUGGINS moved Amendment 1. Page 2, line 28; delete AS 11.61.195 and insert AS 11.61.190. Hearing no objections, Amendment 1 was adopted.

MR. WALT MONEGAN, Anchorage Chief of Police, testified in support of SB 206. He spoke of a homicide case in Anchorage outside a VFW hall four years ago. Police later found out there were potentially 50 witnesses to the shooting and yet the homicide remains unsolved. He expressed frustration that police often are not privy to what the community knows about a crime.

[9:31:38 AM](#)

SENATOR FRENCH asked Chief Monegan the level of force that he would authorize for his officers to detain witnesses.

CHIEF MONEGAN explained that the beginning of a crime investigation is often chaotic and officers do not necessarily know the bad guys from the good. They separate individuals into individual cars, sometimes handcuffed, until things get sorted out. Officers are good at explaining to the public afterwards the reason for using force to gain control of a crowd. Normally everything happens fairly quietly but sometimes there are a few people who try to resist being detained and when that happens it activates the "prey drive," he stated. Police generally try to find out why someone is resisting and that would include using reasonable force.

[9:35:53 AM](#)

SENATOR HUGGINS stated concern for consistency of policy throughout the Alaska Chiefs of Police.

CHIEF MONEGAN responded matters are generally handled in the same manner. Officers must be respectful and professional while trying to revoke rapport in the community. Officers who take the bullying tact generally fail at the investigation scene.

CHAIR SEEKINS closed public testimony and asked for discussion among committee members. He said SB 206 appears to give additional powers of detainment in serious circumstances. He said he is satisfied that the bill was ready to move on to the next committee of referral.

SENATOR HUGGINS said he would be more supportive of the bill if he lived in Anchorage. He suggested putting a sunset on the bill for future review.

[9:39:53 AM](#)

SENATOR BUNDE noted that legislation could be changed during any legislative session and so he did not see a need for a sunset.

SENATOR FRENCH expressed concern that the bill would make it a crime for a person, who may be unaware that a crime has occurred, to hurry away from the scene without consenting to be photographed. He expressed support for the fingerprint portion of the bill.

SENATOR BUNDE opined people are photographed a great deal more than they realize.

CHAIR SEEKINS expressed support for the bill.

9:44:56 AM

SENATOR FRENCH countered his constituents support the part about taking fingerprints of people connected with the investigation of a murder or attempted murder and they support the officer using a certain amount of force to do so. People would support making it a crime for a person who does not comply with the officer in this type of situation but to slow down a law-abiding citizen and force them to have their photograph taken seemed overly done.

SENATOR FRENCH moved Amendment 2. Page 3, line 8, delete the words "photographs or".

9:47:42 AM

CHAIR SEEKINS said there would have to be a reasonable necessity for the police officer to detain a person before the photograph would be taken.

MR. GUANELI agreed. The reason the criminal provision is in the bill is because of reasonable force. The intent is that the officer would facilitate cooperation of the individual by explaining that it would be a quick and easy process and by advising them of the consequences if they resist.

CHAIR SEEKINS asked Mr. Guaneli to explain the reason the officer would be taking the photograph.

MR. GUANELI said the most common scenario would be that the person was not able to show proper identification.

CHAIR SEEKINS noted that person would already be under temporary detention.

MR. GUANELI said correct.

9:52:59 AM

SENATOR GUESS recognized that the bill does not specify that the photograph would be taken in the event that a person was unable to show identification. She expressed support for the amendment. Law-abiding citizens could be charged with a misdemeanor simply for rushing off to get their kids from daycare, she stated.

CHAIR SEEKINS said he had a harder time with the words "or resists" on line 8 than with the photograph taking.

SENATOR BUNDE referred to line 5 and said the officer has to have "reasonable suspicion" that a person has witnessed a crime.

MR. GUANELI said the notion of reasonable suspicion is found in all the case law. The length of detention would depend on the reason for detention.

[9:56:00 AM](#)

SENATOR FRENCH said there are no Miranda warnings for someone under temporary detention and so that person would not know their rights in the situation. He said if the committee believes that a person should be set free once they show the proper identification that should be written into the bill. He said it is sure as daylight that a lawful person will be charged with a crime because of the way the bill is currently written.

CHAIR SEEKINS referred to the proposed Amendment 2 and objected.

Roll call proved Amendment 2 failed with Senators Guess and French voting yea and Senators Huggins, Therriault, and Chair Seekins voting nay.

[9:58:01 AM](#)

SENATOR HUGGINS moved CSSB 206(JUD) from committee with individual recommendations and attached fiscal notes. Hearing no objections, the motion carried.

SB 306-UNEMPLOYMENT INSURANCE FUND & TAXES

[10:07:14 AM](#)

CHAIR RALPH SEEKINS announced SB 306 to be up for consideration.

SENATOR CON BUNDE explained SB 306 addresses unemployment insurance avoidance schemes by unscrupulous employers. Failure to pass the bill would result in the de-certification of the Alaska UI program and employers in this state would lose a federal offset credit of 5.4 percent, resulting in \$103 million dollars in additional taxes to the employer and the state would lose \$30.8 million in administrative and operation funding for UI programs.

SENATOR GRETCHEN GUESS asked what would happen when someone doesn't comply simply because they don't understand the procedure.

JANE ALBERTS, Staff to Senator Bunde, surmised that there would be notification sent to businesses that, in the event that they

purchase or acquire another business they would be required by law to notify the Department of Labor and Workforce Development.

CHAIR SEEKINS said it appears that a business owner would have to knowingly intend to deceive the Department and that they would have to be in violation of AS 42 U.S.C. 503(k) (SUTA Dumping Prevention Act of 2004).

[10:12:17 AM](#)

PAULA SCAVERA, Special Assistant, Department of Labor and Workforce Development (DOLWD), introduced Pat Shier to answer questions.

PAT SHIER, Acting Deputy Director, Department of Labor and Workforce Development (DOLWD) offered to answer questions. He explained the bill was intended to stop willful misrepresentation for the purpose of obtaining a lower rate. The bill complies with the federal intent that there be more meaningful penalties for the specific purpose of misleading the DOLWD in order to fraudulently obtain an artificially low unemployment tax rate.

SENATOR GUESS referred to her original question and asked what happens when the employing unit purchases another business and does not notify the DOLWD.

CHAIR SEEKINS asked the definition of "employing unit."

MR. SHIER explained an employing unit is defined as a person or an organization that has people working for it for a certain number of days.

CHAIR SEEKINS asked whether a self-employed person was an employing unit.

MR. SHIER said no.

[10:15:53 AM](#)

MR. SHIER responded to Senator Guess's earlier question and said the section of the bill in question has been in effect since prior to Alaska Statehood. When an employer fails to notify the DOLWD, they are not automatically penalized. The bill is designed to codify in law that there is that obligation. There is no penalty associated with a failure to report. As the Department becomes aware of the failures, they assist the business owner to comply with state and federal law.

10:18:36 AM

SENATOR GUESS referred to Section 23.20.297 (a) and asked Mr. Shier to explain paragraphs (1-2).

MR. SHIER said it was important to note lines 16-17, which is the purpose they are attempting to describe. If an employer transfers its trade or business to a smaller business, they have to take their higher rate with them. The rates are then recalculated based on existing regulations. Paragraph (2) describes the situation if the person is not an employer at the time they acquire another business and it governs how the rate would be applied.

SENATOR GUESS asked for clarification whether the business owner would have to be in a merge situation in order for the bill to apply.

MR. SHIER responded the "common ownership" portion of the bill is the language that the federal government required in order to allow states to identify the person at the root of the transfer. The intent of the bill is to identify the business owner that is attempting to purchase another business with a smaller tax rate and then to claim that smaller tax rate for the merged larger business.

SENATOR GUESS referred to paragraph (2) and questioned the reason for involving the commissioner.

MR. SHIER responded paragraph (2) deals with a person who is not an employer and has no rights or responsibilities under the Act. It is for someone who is trying to obtain a lower rate, such as a person who closes a business for a period of time and then purchases another business and then re-opens the closed business and claims the lower tax rate. Paragraph (2) allows the Department to examine the prior business and investigate whether or not the person closed the business for the sole purpose of obtaining a lower tax rate.

10:27:38 AM

MR. SHIER added he could not answer as to the reason for involving the commissioner in paragraph (2), but that it was based on federal guidelines.

SENATOR GUESS noted the bill was very confusing to read.

CHAIR SEEKINS said the fraudulent acts would occur under AS 23.20.295(d)(1) and (4).

SENATOR GUESS said regardless of what the purpose is, AS 23.20.297(1-2) should be part of the system regardless of whether they are fraudulent or not.

CHAIR SEEKINS said subsection (d)(2) and (3) are not fraudulent acts whereas 23.20.295(d)(1) and (4) would be if the commissioner found intent.

[10:30:41 AM](#)

MR. SHIER claimed "intent and knowing" are very high standards and difficult to prove. The reason for SB 306 is due to federal government compliance and state employers stand to lose millions of dollars in tax credits.

SENATOR GUESS reiterated her opinion that the bill was written in an extremely unclear manner. She said a business couldn't be charged with a crime and asked whom the person would be that would be charged with the felony.

MR. SHIER responded it would be the individual who has the duty to pay.

CHAIR SEEKINS held the bill in committee.

There being no further business to come before the committee, Chair Seekins adjourned the meeting at [10:34:23 AM](#).