

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 28, 2008
1:10 p.m.

MEMBERS PRESENT

Representative Jay Ramras, Chair
Representative Nancy Dahlstrom, Vice Chair
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 164(JUD)

"An Act relating to disclosures required for the sale of a used motor vehicle, including a trailer, by a motor vehicle dealer."

- MOVED CSSB 164(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 323

"An Act relating to the crimes of assault in the fourth degree and of resisting or interfering with arrest; relating to the determination of time of a conviction; relating to offenses concerning controlled substances; relating to issuance of search warrants; relating to persons found incompetent to stand trial concerning criminal conduct; relating to probation and to restitution for fish and game violations; relating to aggravating factors at sentencing; relating to criminal extradition authority of the governor; removing the statutory bar to prosecution of certain crimes; amending Rule 37(b), Alaska Rules of Criminal Procedure, relating to execution of warrants; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 327

"An Act relating to shipping, sending, transporting, or bringing alcohol to a local option area and providing alcohol to others in the local option area, including penalties for violations;

relating to furnishing alcohol to a minor and to civil penalties for licensees whose agents or employees furnish alcohol to a minor; relating to manslaughter as a direct result of ingestion of alcoholic beverages brought in violation of a local option prohibition; relating to reports of the court concerning certain alcohol violations by minors; making conforming amendments; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 415

"An Act relating to disclosures required for the sale of a used motor vehicle, including a trailer, by a motor vehicle dealer."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 164

SHORT TITLE: USED MOTOR VEHICLE SALES

SPONSOR(S): SENATOR(S) MCGUIRE

04/27/07	(S)	READ THE FIRST TIME - REFERRALS
04/27/07	(S)	TRA, JUD
02/12/08	(H)	TRA AT 1:00 PM CAPITOL 17
02/12/08	(S)	Moved SB 164 Out of Committee
02/12/08	(S)	MINUTE(TRA)
02/15/08	(S)	TRA RPT 3DP 1NR
02/15/08	(S)	DP: KOOKESH, WILKEN, OLSON
02/15/08	(S)	NR: WIELECHOWSKI
02/29/08	(S)	JUD AT 1:30 PM BELTZ 211
02/29/08	(S)	Heard & Held
02/29/08	(S)	MINUTE(JUD)
03/12/08	(S)	JUD AT 1:30 PM BELTZ 211
03/12/08	(S)	Moved CSSB 164(JUD) Out of Committee
03/12/08	(S)	MINUTE(JUD)
03/14/08	(S)	JUD RPT CS 2DP 2NR SAME TITLE
03/14/08	(S)	DP: THERRIAULT, MCGUIRE
03/14/08	(S)	NR: FRENCH, WIELECHOWSKI
03/19/08	(S)	TRANSMITTED TO (H)
03/19/08	(S)	VERSION: CSSB 164(JUD)
03/20/08	(H)	READ THE FIRST TIME - REFERRALS
03/20/08	(H)	JUD
03/28/08	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 323

SHORT TITLE: CRIMINAL LAW/PROCEDURE: OMNIBUS BILL

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/17/08	(H)	READ THE FIRST TIME - REFERRALS
01/17/08	(H)	JUD, FIN
01/30/08	(H)	JUD AT 1:00 PM CAPITOL 120
01/30/08	(H)	Heard & Held
01/30/08	(H)	MINUTE(JUD)
03/28/08	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

TREVOR FULTON, Staff
to Senator Lesil McGuire
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented SB 164 on behalf of the sponsor,
Senator McGuire.

JON COOK, Legislative Director
Alaska Auto Dealers Association (AADA)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 164 and
responded to questions.

CLYDE (ED) SNIFFEN, JR., Senior Assistant Attorney General
Commercial/Fair Business Section
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Provided comments and responded to
questions during discussion of SB 164.

REPRESENTATIVE LES GARA
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During discussion of SB 164, testified in
favor of Amendment 1.

REPRESENTATIVE CARL GATTO
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of
SB 164.

ANNE CARPENETI, Assistant Attorney General
Legal Services Section
Criminal Division

Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 323, presented the proposed CS, Version E, on behalf of the administration, and addressed suggested amendments.

CRAIG GOODRICH, Fire Chief
Anchorage Fire Department (AFD)
Municipality of Anchorage (MOA)
Anchorage, Alaska

POSITION STATEMENT: During discussion of HB 323, spoke in support of Amendment 1 to Version E.

RODNEY DIAL, Lieutenant, Deputy Commander
A Detachment
Division of Alaska State Troopers
Department of Public Safety (DPS)
Ketchikan, Alaska

POSITION STATEMENT: Testified in support of HB 323.

ACTION NARRATIVE

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at [1:10:07 PM](#). Representatives Coghill, Samuels, Holmes, Gruenberg, Dahlstrom, and Ramras were present at the call to order. Representative Lynn arrived as the meeting was in progress.

SB 164 - USED MOTOR VEHICLE SALES

[1:10:53 PM](#)

CHAIR RAMRAS announced that the first order of business would be CS FOR SENATE BILL NO. 164(JUD), "An Act relating to disclosures required for the sale of a used motor vehicle, including a trailer, by a motor vehicle dealer."

[1:11:33 PM](#)

TREVOR FULTON, Staff to Senator Lesil McGuire, Alaska State Legislature, relayed on behalf of Senator McGuire, sponsor, that SB 164 deletes obsolete language from statute and addresses some unintended consequences of what he termed the "auto dealers Act," and that the sponsor's intent is to do the aforementioned without, in any way, reducing consumer protections. He offered his understanding that the provision of statute SB 164 is proposing to repeal - AS 45.25.465(c) - is now no longer of any

benefit to dealers, consumers, or the state. Currently, AS 45.25.465(c) requires that a dealer post, on the window of all his/her used vehicles for sale, three disclosures: one, that the vehicle is not subject to [the warranty provisions of AS 45.45.300 - 45.45.360, which he termed] "Alaska's lemon law"; two, that the vehicle is not covered under a manufacturer's warranty; and three, if applicable, that the vehicle was originally manufactured for sale in a foreign country.

MR. FULTON offered his understanding that these disclosures were originally mandated in response to an influx in Alaska's market of used Canadian vehicles that were being sold as new. The market has since corrected itself, and the practice that AS 45.25.465(c) was intended to address is no longer an issue. Furthermore, much of the information that this subsection (c) mandates be posted is already made available to consumers as they go through the process of purchasing a used vehicle. This mandatory posting, he opined, is not only an inconvenience to those in the business of selling used vehicles, but it may also be leaving such dealers exposed to what he termed "dubious lawsuits." Not posting the information outlined in subsection (c) would currently result in the commission of an unfair trade practice which could in turn allow for lawsuits that demand treble damages and reimbursement of full legal costs regardless that consumers haven't suffered any actual harm or damages.

MR. FULTON relayed that the sponsor feels that this issue should be revisited because the aforementioned provision is unnecessarily burdening Alaska businesses. Subsection (c) no longer provides the consumer protections it once did, and now merely places unnecessary requirements on auto dealers. In conclusion, he urged the committee to support SB 164.

REPRESENTATIVE GRUENBERG relayed that he was the author of AS 45.25.465(c), and that it was not meant to address only the used Canadian car issue; instead, it's purpose was to provide consumer protection via full disclosure of information on the windows of the used cars being sold. At the time that this provision was adopted, members were aware that another provision, AS 45.25.470, already required motor vehicle dealers to disclose in writing, at the time of purchase, whether a motor vehicle was originally manufactured for sale in a foreign country. The three disclosures required by AS 45.25.465 were meant to be displayed - via a small form, a sample of which is included in members' packets - on the windows of all used cars being sold, as opposed to being provided to prospective buyers

only at the time of actual purchase. He acknowledged that the aforementioned "lemon law" only applies to new vehicles.

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JON COOK, Legislative Director, Alaska Auto Dealers Association (AADA), after relaying that he supports SB 164, said he's experienced the repercussions of having to post the disclosures required by AS 45.25.465(c), and characterized them as confusing to both dealers and customers and as redundant. He too noted that the warranty provisions of the "lemon law" only apply to new vehicles and not used vehicles, and that motor vehicle dealers must already disclose to the customer in writing if a motor vehicle was originally manufactured for sale in a foreign country. With regard to the latter disclosure, he opined that it doesn't matter that such disclosure is made only at the time of purchase, as opposed to having it posted on the window of the vehicle, because the disclosure is still present. He pointed out that dealers are required by the Federal Trade Commission (FTC) to post a large, what he called an "As Is" sticker [titled "BUYERS GUIDE"] on a used car which discloses that the car either does have a warranty or doesn't have a warranty, and that this sticker must be signed and retained by the customer at the time of purchase.

MR. COOK again characterized the disclosures required by subsection (c) as redundant, and said he is not sure why dealers should be required to post a disclosure on a used car that it isn't covered under the "lemon law" when that law doesn't apply to any used cars and never did. He offered his belief that litigation won't be barred just because the customer hasn't suffered any actual harm. He relayed that currently there is ongoing litigation over not displaying the aforementioned disclosures, and offered his understanding that this litigation won't be affected by the bill. The fact that a business can be sued for not displaying such disclosures is of no benefit to anybody, though it does put businesses at risk of going out of business. Referring to the aforementioned litigation, he offered his belief that because the entity that's being sued is a publicly traded company, it can afford to go through the litigation process and remain solvent. However, most members of the AADA are small, locally-owned, family businesses, and if any of them were to be similarly sued, he remarked, they would either be put out of business or would never be able to get insured again.

MR. COOK, in conclusion, said "This sticker ... puts Alaska businesses at risk ... for something that provides no benefits to dealers, the consumers, or the state of Alaska."

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REPRESENTATIVE GRUENBERG pointed out that the purpose of subsection (c) was not to provide a vehicle for suing dealers - the aforementioned litigation was simply a result of "making it an unfair trade practice"; again, the purpose in offering that provision of law was to provide notice to consumers. He surmised that Mr. Cook doesn't object to providing such notice.

MR. COOK concurred, adding that he believes that dealers do provide sufficient disclosures, though such disclosures may not be posted on the vehicle. At issue, he surmised, is how often the same thing should be disclosed. "I am for, and our association is for, full disclosure," he said, adding that he knows that it was not the intent of subsection (c) to engender litigation, but that is what has occurred.

REPRESENTATIVE GRUENBERG observed that the "lemon law" provides very important protections for consumers, and so the fact that it doesn't apply to a used vehicle might be extremely important to a particular consumer. If SB 164 becomes law, then consumers will no longer be informed that the "lemon law" doesn't apply. Why, he asked, would [dealers] not want people to know that fact.

MR. COOK opined that since the "lemon law" only applies to new vehicles and only addresses the relationship between the consumer and the manufacturer, there is no reason to disclose that fact on a used vehicle. To him, he added, the most important thing to disclose is whether the car comes with a warranty, and that is disclosed via the aforementioned sticker.

REPRESENTATIVE GRUENBERG questioned how many customers actually know that the "lemon law" only applies to new vehicles.

[1:28:16 PM](#)

MR. COOK said he's never had a customer attempt to make the "lemon law" apply to a used vehicle.

REPRESENTATIVE GRUENBERG pointed out that that doesn't mean it hasn't been brought up by someone at some point. On the issue of whether a car is manufactured for sale in Canada, he said

that the purpose of having disclosure of such a fact in the window of the car is so that the customer could have that information before he/she chooses a car. Why should a customer be denied that disclosure until he/she is in the middle of purchasing a particular vehicle?

MR. COOK said that there are a variety of required disclosures that aren't provided until the time of purchase, and that he is not sure that having information, before the actual purchase, that a car was manufactured for sale in another country will impact the customer's decision when choosing a car. Furthermore, there is nothing stopping dealers from making that same disclosure as required by AS 45.25.470 via posting something on the window of the car as opposed to making it in writing at the time of purchase.

REPRESENTATIVE GRUENBERG, on the issue of disclosing whether a vehicle has a warranty, said that obviously Congress felt that such disclosure - on every vehicle and in big letters - was important, because it enacted federal law to that effect. He added:

I know you want to deny any additional [disclosure] ... on that under state law. I am ... very surprised to hear you take the position you have knowing that [the] public now wants to be fully informed when they buy major purchases, wants full disclosure, and is always vary wary when they buy used [cars]. And I would think that having this sticker on the car would be to the dealers' protection because then the customer could not say later, if they ever sued the dealer, that they weren't informed. The dealer would say, "Sure you were informed - this sticker was on the car." That would provide you with a great legal defense, possibly summary judgment in your favor, and now you want to take the sticker off and you're going to potentially get the dealer into lawsuits, and they won't have the printed proof that would give you a really good defense. Have you fully considered that this is really as much for the dealer's protection, if they're sued, as it is for the customer?

MR. COOK said he has considered that point, but feels that the litigation risk is increased "by having this second sticker," and he again noted that there is class action litigation occurring now as a result of the current disclosure law.

REPRESENTATIVE SAMUELS asked what percentage of used cars are sold through dealerships as opposed to being sold directly by the current owner, and whether there are any consumer protections in place for someone who buys a used car directly from the current owner.

MR. COOK declined to answer.

REPRESENTATIVE SAMUELS noted that the aforementioned "As Is" sticker specifically states whether there is a warranty.

MR. FULTON concurred, and reiterated that that sticker is required to be posted on all used vehicles being sold at a dealership.

MR. COOK said dealers post that sticker on one of the car's windows. In response to a question, he acknowledged that occasionally that particular window can get rolled down and the sticker peeled off.

CHAIR RAMRAS recapped Mr. Cook's concerns/comments.

[1:38:43 PM](#)

CLYDE (ED) SNIFFEN, JR., Senior Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Anchorage), Department of Law (DOL), relayed that when AS 45.25.465(c) was enacted, the DOL had had the understanding that it was aimed at the current-model used-vehicle market because those used vehicles look remarkably like new vehicles and - under Title 8 at that time - could only be sold by a dealer that also sold new vehicles, so there was a potential for deception regarding that specific type of used vehicle. He acknowledged Representative Gruenberg's point that instead that provision was actually intended to apply to all used vehicles, and apologized for the DOL's misunderstanding as expressed in his letter to the sponsor dated 2/19/08. He said he does not disagree with Representative Gruenberg's comments in that regard.

MR. SNIFFEN explained that in 2006, Title 8 was amended to remove all reference to current model [used] vehicles, and so now a used car at a dealership is considered to be a used car regardless of whether it is a current model and only has a very few miles on it. One option that the DOL considered was to develop a definition of "current model vehicle," but doing so proved complicated and cumbersome. In looking at the statutes more closely, it seemed that all the protections provided by

posting the aforementioned information as required by AS 45.25.465(c) were already being provided under other statutes. He said he agrees that without having information posted that the "lemon law" didn't apply to used vehicles, consumers wouldn't know that, but added that that is not generally a source of consumer complaints for his office. He said that no other state, that he is aware of, requires dealers to inform customers of the application of the "lemon law," which is tied to the manufacture's warranty. The box in the buyers guide which states that the consumer is buying the car as is without a warranty somewhat gives the consumer notice that there is no warranty and thus no "lemon law" protection.

MR. SNIFFEN, on the issue of vehicles manufactured for sale in Canada, offered his understanding that almost all American manufacturers will now honor the warranties on such vehicles, so the problem that was being experienced five or six years ago is no longer an issue. He said he understands Representative Gruenberg's argument that consumers might want to know right up front - via a notice posted on the window - whether a particular vehicle they are looking at has been manufactured for sale outside of the U.S.; however, the view at the DOL is that having that information in writing somewhere in the documents provided at the time of purchase is sufficient. He said that he is all for providing as much consumer protection as possible, but the disclosures required by AS 45.25.465(c) do seem to be more duplicative and redundant than useful.

MR. SNIFFEN, in conclusion, relayed that the DOL thinks that SB 164 will eliminate that provision's unintended consequence of engendering class action lawsuits.

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REPRESENTATIVE GRUENBERG observed that the penalty section of the Alaska Unfair Trade Practices and Consumer Protection Act covers 40-50 different unfair trade practices, but the penalty provisions aren't uniform and in some cases are what he characterized as quite draconian. When debating the inclusion of AS 45.25.465(c) into law, there was discussion, he recalled, that it would make the failure to post notice on a used vehicle subject to the Alaska Unfair Trade Practices and Consumer Protection Act, but there wasn't much discussion regarding what would constitute a separate offense. If indeed, under that Act, the failure to put a sticker on each vehicle would be considered a separate offense and lead to a \$500 penalty being assessed for each car and result in a very large total fine - particularly in

situations involving large dealerships - that was not his intention, he relayed, and thus he would strongly support changing the Alaska Unfair Trade Practices and Consumer Protection Act. However the industry didn't seem interested in pursuing that remedy.

REPRESENTATIVE GRUENBERG said he'd thought that it was the policy of the Alaska Unfair Trade Practices and Consumer Protection Act and the State of Alaska to provide full disclosure and consumer protection, and so he doesn't see "any good public policy" in repealing "this" warning to the consumers. Representative Gruenberg asked Mr. Sniffen, as the protector of the Alaskan consumer, to explain why it would be good public policy to strip away the public's right to know via "this tiny sticker."

MR. SNIFFEN said that he doesn't view the use of such a sticker as a bad thing, and that it is the position of [the DOL] to provide consumers as much protection as possible, but he doesn't know that "this particular sticker" provides so much extra consumer protection that its lack would be detrimental, particularly given all the other disclosures that are already being required by a law, though he doesn't have a problem with continuing to require the posting of such a sticker on used vehicles. Again, it just seemed as though the sticker required by AS 45.25.465(c) provided redundant and duplicative information.

[1:48:45 PM](#)

REPRESENTATIVE GRUENBERG characterized the removal of that provision as just one possible solution to the perceived problem, and acknowledged that the dealers do have a problem because of the draconian penalty. But why not find some other solution that doesn't "throw the baby out with the bath water," he asked. Why not turn this into a win-win scenario, keep the consumer protection, and deal with the penalty provision? Wouldn't that be fairer and more just?

MR. SNIFFEN said that that would certainly be another approach to addressing the problem, and that the DOL would certainly review such legislation.

CHAIR RAMRAS, after ascertaining that one else wished to testify, closed public testimony on SB 164.

[1:49:47 PM](#)

REPRESENTATIVE HOLMES made a motion to adopt Amendment 1, labeled 25-LS0867\M.1, Bannister, 3/28/08, which read:

Page 1, line 1, following "Act":

Insert "**limiting motor vehicle dealer charges for fees and costs; and**"

Page 1, following line 3:

Insert a new bill section to read:

"* **Section 1.** AS 45.25.440 is amended to read:

Sec. 45.25.440. Additional fees and costs [ADVERTISED PRICE]. (a) When selling a motor vehicle, a motor vehicle dealer may not charge any dealer fees or costs in addition to the advertised or negotiated price, except for

(1) fees actually paid to a state agency for licensing, registration, or title transfers;

(2) charges for optional equipment, for substantial additions to the motor vehicle, for warranties, for services, and for style, design, or color features [, UNLESS THE FEES OR COSTS ARE INCLUDED IN THE ADVERTISED PRICE].

(b) In this section, "dealer fees or costs" includes dealer preparation fees, document preparation fees, surcharges, charges, and other dealer-imposed fees and costs."

Page 1, line 4:

Delete "**Section 1**"

Insert "**Sec. 2**"

Renumber the following bill sections accordingly.

Page 1, line 8:

Delete "sec. 1"

Insert "sec. 2"

Page 1, line 14:

Delete "sec. 1"

Insert "sec. 2"

CHAIR RAMRAS objected.

REPRESENTATIVE HOLMES explained that Amendment 1 pertains to document fees, and would require dealers, should they choose to charge document fees, to include those fees as part of either

the advertized price of a vehicle or the negotiated price of a vehicle. Amendment 1 won't preclude dealers from charging document fees; instead, dealers will simply have to notify the consumer that a portion of the advertized or negotiated price includes document fees, as opposed to making such fees additional to the advertized or negotiated price.

[1:52:54 PM](#)

REPRESENTATIVE LES GARA, Alaska State Legislature, after relaying that the text of Amendment 1 is included in other pending legislation, offered his understanding that Mr. Sniffen would be able to address the merits of Amendment 1 and that Representative Gatto has been "victimized by the [document] fee process in the past." Representative Gara said that the problem is that there are car dealers in the industry who seek to gain an advantage over consumers by adding document fees to the advertised or negotiated price. He said he doesn't have a problem with dealers charging whatever they deem necessary, but is opposed to the practice of adding extra fees after the price has been agreed upon, because then the consumer is forced to pay that extra amount even though it was not something he/she was taking into consideration when negotiating the price.

CHAIR RAMRAS argued that the consumer could instead simply take his/her business elsewhere; that's simply an aspect of doing business in the private sector.

REPRESENTATIVE GARA argued that that's not possible when every dealer engages in the same practice.

The committee took an at-ease from 1:58 p.m. to 2:01 p.m.

[2:01:08 PM](#)

REPRESENTATIVE GARA said that [Amendment 1] is intended to "level the playing field so that dealers don't engage [in] what I consider to be an untoward negotiating strategy towards a consumer." He went on to say:

By adding the [document] fee after they negotiate a price, and by every dealer in the city doing that - and I think virtually every dealer does that though I have heard that some dealers are now advertizing 'No [document] fees' - ... when most of the dealers you go to do the same thing, it really doesn't help to be able to walk [away from] ... one car dealer and go to

another lot and have to deal with the same thing. So I consider the [document] fee strategy a deceptive one. The attorney general's office has fought it in the past, and ... this legislature passed a law back in the 1990s to ban the practice, but it was written in a way where this is what's left as a loophole: you're not allowed, under the interpretation of that [law] ... to charge a [document] fee in addition to the advertized price but you can charge it once you move off the advertized price and it becomes the negotiated price.

REPRESENTATIVE GARA relayed that he will be asking that Amendment 1 be withdrawn after the committee has had the chance to debate it, and indicated that he would be offering this same amendment when SB 164 is heard on the House floor.

REPRESENTATIVE SAMUELS offered his belief that various types of private-sector retail businesses seek to get customers to pay as much as possible, and opined that in the case of buying a car, it is the responsibility of the consumer to refuse to pay more than he/she negotiates with the car dealer.

[2:07:16 PM](#)

REPRESENTATIVE CARL GATTO, Alaska State Legislature, relayed that in one instance, he'd gone to a car dealer to buy a brand new Subaru advertized for \$19,995.95, but when he got ready to make the purchase, the taxes, licensing fees, and document fees were all lumped together as an additional charge. After telling the dealer that he didn't want to pay the document fees because he wasn't buying the car on credit, the dealer told him that he was required to charge the document fees. Representative Gatto said he paid the document fees at the time, but then later learned that what the dealer had said was not true and that document fees were simply an addition to the bill.

REPRESENTATIVE GATTO relayed that in another instance he'd gone to a different car dealer to buy a used car and the same thing occurred: even though the car dealer was not required to charge document fees, he claimed that he was. Representative Gatto said that in each case, he was told that he was required to pay document fees. He characterized this practice as deceiving the customer. Representative Gatto noted that during another committee hearing, the comment was made that document fees are simply part of the car dealer's additional profit.

CHAIR RAMRAS again said that the consumer could simply refuse to purchase the product, adding his belief that that's just the way the free market operates - consumers have the choice to not participate in a particular transaction.

REPRESENTATIVE LYNN opined, however, that purposeful deception is not acceptable.

CHAIR RAMRAS argued that that's not what is occurring when car dealers charge document fees.

REPRESENTATIVE GATTO pointed out, though, that when a car dealer says charging document fees is required when in fact it is not, that is deceptive, and that he is unable to simply pick another Subaru dealer to do business with because there aren't any others within a 500 mile radius. He opined that car dealers ought to have some obligation to be completely up-front and say, if asked, that document fees are what they charge everybody so as to make an additional profit.

CHAIR RAMRAS opined that Representative Gatto should simply pick a different make of car next time.

[Following was a brief discussion regarding other legislation.]

REPRESENTATIVE HOLMES withdrew Amendment 1.

[2:20:05 PM](#)

REPRESENTATIVE GRUENBERG, mentioning that he'd attempted to get an amendment crafted but was unable to do so, said he opposes moving SB 164 from committee and will be [signing "Do Not Pass" on the bill report].

REPRESENTATIVE DAHLSTROM moved to report CSSB 164(JUD) out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE GRUENBERG objected.

A roll call vote was taken. Representatives Samuels, Lynn, Holmes, Dahlstrom, Coghill, and Ramras voted in favor of reporting CSSB 164(JUD) from committee. Representative Gruenberg voted against it. Therefore, CSSB 164(JUD) was reported from the House Judiciary Standing Committee by a vote of 6-1.

[2:21:13 PM](#)

CHAIR RAMRAS announced that the final order of business would be HOUSE BILL NO. 323, "An Act relating to the crimes of assault in the fourth degree and of resisting or interfering with arrest; relating to the determination of time of a conviction; relating to offenses concerning controlled substances; relating to issuance of search warrants; relating to persons found incompetent to stand trial concerning criminal conduct; relating to probation and to restitution for fish and game violations; relating to aggravating factors at sentencing; relating to criminal extradition authority of the governor; removing the statutory bar to prosecution of certain crimes; amending Rule 37(b), Alaska Rules of Criminal Procedure, relating to execution of warrants; and providing for an effective date."

The committee took an at-ease from 2:21 p.m. to 2:28 p.m.

[Following was a brief discussion regarding how the committee would be proceeding.]

[2:29:34 PM](#)

REPRESENTATIVE DAHLSTROM moved [to adopt] the proposed committee substitute (CS) for HB 323, Version 25-GH2038\E, Luckhaupt, 3/25/08, [as the work draft]. There being no objection, Version E was before the committee.

[2:29:47 PM](#)

ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), explained that Sections 1 and 2 of Version E go hand-in-hand and require pawn brokers - or people who lend money on secondhand items - in municipalities with over 5,000 residents to maintain their transaction records in an electronic format. She added that the DOL is considering asking that these provisions be amended such that those electronic records shall be shared with the Department of Public Safety (DPS) should the DPS request them. The purpose of these provisions is to help victims of property crimes find their stolen property.

MS. CARPENETI explained that Section 3 of Version E provides that a third [or subsequent] misdemeanor injury assault within a 10-year period would be a class C felony instead of just a class

A misdemeanor. The drafter, who'd suggested this change, drafted it as part of the statute pertaining to assault in the third degree; this makes a lot of sense, she opined, "because then you don't need to go back to [the statute pertaining to] assault in the fourth degree and include all the conforming amendments."

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REPRESENTATIVE SAMUELS asked whether Sections 3 and 4 are similar to provisions included in another piece of legislation pertaining to domestic violence (DV).

MS. CARPENETI said these provisions do something similar but in a different way, and indicated that the DOL prefers the language of HB 323 [Version E] because the DOL is concerned that under the other legislation, different judges will treat similarly-situated people differently. In response to a question, she relayed that the sponsor of that other legislation is aware of the DOL's concern and is willing to work cooperatively to alleviate it.

REPRESENTATIVE SAMUELS suggested that the provisions in that other piece of legislation be changed to resemble Sections 3 and 4 of HB 323 [Version E] so that the underlying policy is adopted regardless of which bill passes.

REPRESENTATIVE GRUENBERG, referring to Sections 1 and 2 of Version E, said he wants to make sure that they don't violate the single subject rule, since they don't appear to pertain to criminal statutes.

MS. CARPENETI posited that Sections 1 and 2 would probably pass such a challenge because both relate to the investigation of stolen property.

REPRESENTATIVE GRUENBERG asked Ms. Carpeneti to provide a legal opinion to that effect.

MS. CARPENETI agreed to do so.

REPRESENTATIVE GRUENBERG posited that such an opinion may help the courts see that that issue was considered by the legislature.

[2:36:44 PM](#)

MS. CARPENETI, turning attention back to Section 3, said that the predicate crimes would include homicide, assault, felony assault, physical injury assault - not including fear assault - assault on an unborn child, stalking, and first and second degree sexual assault and sexual abuse [of a minor]. Section 4 is a conforming amendment that directs the courts with regard to what the legislature means in terms of what constitutes a conviction.

MS. CARPENETI explained that Version E's Section 5, which was suggested by Representative Ramras - addresses the problem of people stealing property from a commercial establishment without the property having been concealed; it will allow a person to be detained and investigated even if the property he/she is attempting to walk away with is not concealed. She indicated that [Section 6 of Version E mirrors Section 3] of the original bill; that Section 7 [of Version E mirrors Section 5 of the original bill] but also adds the drug zopiclone - commonly called "Lunesta" - to the list of schedule IVA controlled substances; and that Sections 8 and 9 of Version E mirror [Sections 6 and 7] of the original bill.

REPRESENTATIVE GRUENBERG [referring to Section 8] asked whether there is any constitutional problem with a court issuing a search warrant for property located outside [the court's] jurisdiction.

MS. CARPENETI said she doesn't believe there is, though problems might arise in the other jurisdiction with regard to enforcing such a search warrant. [The problem Section 8 is meant to address] is that some judges don't feel comfortable issuing a search warrant for property located outside their court's jurisdiction, and Section 8 would specifically outline in statute that it is acceptable to do so. In response to a question, she agreed to furnish the committee with examples of such cases, again adding her belief that any problems [resulting from the adoption of Section 8] would stem from an enforcement issue and not a constitutional issue. In response to another question, she explained that even under Section 8, one would still have to comply with the requirements currently pertaining to the issuing of search warrants, such as establishing probable cause. In response to comments and a question, she elaborated:

If the place where you were going to be [searching] refused to cooperate, then you would have to go to a court in the other jurisdiction and ask them to give full faith and credit and issue their own ... order.

But this arises mainly in [child] pornography cases ... [wherein Internet providers] are perfectly willing to give us their records [but] they need a piece of paper, and that's why [the DOL is proposing Section 8]. If they want to see a search warrant or a subpoena, we can't get a subpoena 'til there's a court case going on, so we need the ability to ask for a search warrant.

REPRESENTATIVE GRUENBERG said he just wants to ensure that no one will move to quash "on that basis."

MS. CARPENETI pointed out that that can't be prevented - people can say whatever they want and file any motion they want.

REPRESENTATIVE GRUENBERG clarified that he doesn't want a court to issue an order quashing a case.

[2:42:54 PM](#)

MS. CARPENETI went on to explain that Sections 10, 11, 12, [21, and 22] of Version E are similar to [Sections 8, 9, 10, 19, and 20 of] the original bill, but the DOL has worked with the Office of Public Advocacy (OPA) and the Public Defender Agency (PDA) to address their concerns. These sections deal with situations involving persons who are charged with a serious crime but are incompetent to be tried, and the goal is to ensure that they are treated in as fair a manner as possible while also protecting the public. The language of the original bill provided for mandatory evaluation and treatment for all people who are found incompetent, whereas the language of Version E provides for mandatory evaluation and treatment for only those charged with felonies.

MS. CARPENETI explained that Section 13 of Version E has been ratcheted down a bit from what it was [as Section 11 of the original bill] by saying that the court can order probation for an offense under Title 11 or Title 16 but not necessarily for a violation under other titles. Sections 14 and 15 of Version E are similar to language included in the original bill. Section 16 of Version E is a bit different than [Section 17 of the original bill] in that now the governor may only appoint either the lieutenant governor or the head of a principal department to act on the governor's behalf in performing extradition duties.

REPRESENTATIVE GRUENBERG questioned whether the U.S. Constitution contains a provision regarding extradition, whether

extradition under such a provision must be performed by the chief executive, and, if so, whether such a provision would allow the Alaska state legislature to provide the governor with the ability to delegate that duty.

MS. CARPENETI said her research supports the delegation of that duty, and offered to provide the committee with substantiating case citations.

REPRESENTATIVE GRUENBERG suggested that she simply include them in the legal opinion she'll be providing.

MS. CARPENETI agreed to do so. She then noted that the DOL has suggested a change in a Senate bill's version of this provision that specifies that the delegation and subsequent action is on the governor's behalf and at his/her direction so that he/she remains principally responsible. That language is based on Oregon law and has been upheld in Oregon. The DOL reviews every extradition in which Alaska is involved, and isn't aware of any other state wherein the governor actually signs the extradition documents himself/herself.

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MS. CARPENETI explained that Sections 17 and 18 are new provisions that amend the statute of limitations for post-conviction relief applications from two years to one year; this proposed change will make the statutes pertaining to post-conviction relief uniform with regard to their statute of limitations. She added that the DOL has worked with the PDA and the OPA on these provisions. She indicated that these provisions require the inclusion of [an indirect court rule amendment] found later in the bill.

REPRESENTATIVE GRUENBERG, referring to Section 17, asked whether there will be exceptions to the proposed one-year statute of limitations.

MS. CARPENETI said that there are several exceptions such as one pertaining to newly discovered evidence, but if an exception doesn't apply, then the statute of limitations will be one year.

REPRESENTATIVE GRUENBERG mentioned the standard set out in Salinas v. State, 373 P.2d 512 (Alaska 1962), which he called the main first case addressing motions for a new trial.

MS. CARPENETI then relayed that Section 25 of Version E has been changed from [Section 22 of] the original version in that now the warrant shall be executed and returned within 30 days as opposed to just within a reasonable time.

[2:49:08 PM](#)

REPRESENTATIVE GRUENBERG asked what provisions of law are being repealed by Sections 23 and 24 of Version E.

MS. CARPENETI relayed that those sections repeal provisions that were being repealed [via Section 21 of] the original bill. Under Version E, Section 23 repeals a provision of statute in order to conform to the change being made [via Section 9 of Version E], the bill's "telephonic" search warrant provisions, and Section 24 repeals the existing bar against the state going forward with a criminal prosecution of a criminal act when that act has already been prosecuted by the federal government. She offered that even though such prosecutions by the state wouldn't come up very often - and the state would still have to comply with certain timeline requirements/restrictions - it's important, for the sovereignty of the state of Alaska, to pursue crimes against its own laws and not be usurped by the federal government. In response to a question, she said that the issue of double jeopardy only arises in instances of two prosecutions by the same sovereignty. In response to another question, she offered her belief that a conviction in federal court could not be used as evidence in a state prosecution.

REPRESENTATIVE GRUENBERG questioned whether, under the bill, an "ex post facto" issue would arise should the state choose to pursue those [legislators] who've recently been convicted by the federal government of bribery.

MS. CARPENETI opined that such an issue would arise because of the effective date of the bill. In response to a question, she indicated that in order for similar cases in the future to be prosecuted by both the federal government and the state, the acts would also have to be illegal under state law.

REPRESENTATIVE GRUENBERG questioned whether the state should enact laws prohibiting acts such as money laundering.

MS. CARPENETI said that might not be a bad idea, but she would prefer to give that concept further consideration.

[2:56:41 PM](#)

REPRESENTATIVE GRUENBERG referred to Amendment 1 to Version E, labeled 25-GH2038\E.2, Luckhaupt, 3/27/08, which read:

Page 1, line 2, following "**felons;**":

Insert "**relating to arson and criminally negligent burning;**"

Page 4, following line 10:

Insert new bill sections to read:

"* **Sec. 7.** AS 11.46.410(a) is amended to read:

(a) A person commits the crime of arson in the second degree if the person **knowingly** [INTENTIONALLY] damages a building by starting a fire or causing an explosion.

* **Sec. 8.** AS 11.46 is amended by adding a new section to read:

Sec. 11.46.427. Criminally negligent burning in the first degree. (a) A person commits the crime of criminally negligent burning in the first degree if the person

(1) violates AS 11.46.430; and

(2) has been previously convicted of violating AS 11.46.400 - 11.46.430 or AS 41.15.150 or a law or ordinance of this or another jurisdiction with elements similar to those offenses.

(b) Criminally negligent burning in the first degree is a class C felony.

* **Sec. 9.** AS 11.46.430 is amended to read:

Sec. 11.46.430. Criminally negligent burning in the second degree. (a) A person commits the crime of criminally negligent burning **in the second degree** if with criminal negligence the person damages property of another by fire or explosion.

(b) Criminally negligent burning **in the second degree** is a class A misdemeanor."

Renumber the following bill sections accordingly.

Page 6, following line 19:

Insert a new bill section to read:

"* **Sec. 17.** AS 12.55.127(c) is amended to read:

(c) If the defendant is being sentenced for

(1) escape, the term of imprisonment shall be consecutive to the term for the underlying crime;

(2) two or more crimes under AS 11.41, a consecutive term of imprisonment shall be imposed for at least

(A) the mandatory minimum term under AS 12.55.125(a) for each additional crime that is murder in the first degree;

(B) the mandatory minimum term for each additional crime that is an unclassified felony governed by AS 12.55.125(b);

(C) the presumptive term specified in AS 12.55.125(c) or the active term of imprisonment, whichever is less, for each additional crime that is

(i) manslaughter; or

(ii) kidnapping that is a class A felony;

(D) two years or the active term of imprisonment, whichever is less, for each additional crime that is criminally negligent homicide;

(E) one-fourth of the presumptive term under AS 12.55.125(c) or (i) for each additional crime that is sexual assault in the first degree under AS 11.41.410 or sexual abuse of a minor in the first degree under AS 11.41.434, or an attempt, solicitation, or conspiracy to commit those offenses; and

(F) some additional term of imprisonment for each additional crime, or each additional attempt or solicitation to commit the offense, under AS 11.41.200 - 11.41.250, 11.41.420 - 11.41.432, 11.41.436 - 11.41.458, [OR] 11.41.500 - 11.41.520, or AS 11.46.400 - 11.46.430."

Renumber the following bill sections accordingly.

Page 11, line 21:

Delete "secs. 17 and 18"

Insert "secs. 21 and 22"

Page 11, line 22:

Delete "sec. 19"

Insert "sec. 23"

Page 11, line 28:

Delete "Sections 3, 4, 7, 13 - 15, 20, and 24"

Insert "Sections 3, 4, 7 - 10, 16 - 18, 24, and 28"

Page 12, line 3:

Delete "Sections 8, 9, 23, and 25"
Insert "Sections 11, 12, 27, and 29"

Page 12, line 6:

Delete "Sections 10 - 12, 21, and 22"
Insert " Sections 13 - 15, 25, and 26"

Page 12, line 9:

Delete "Section 16"
Insert "Section 19"

Page 12, line 14:

Delete "Sections 17 - 19 and 26"
Insert "Sections 21 - 23 and 30"

REPRESENTATIVE GRUENBERG indicated that Amendment 1 is meant to address the series of arsons that have been occurring in his district and in Mountain View. Amendment 1 will tighten and strengthens the current arson and negligent burning laws in three ways: it alters AS 11.46.410 - pertaining to the crime of arson in the second degree - by changing the mental state from "intentionally" to "knowingly"; it adds a new section 427 to AS 11.46, thus establishing the crime of criminally negligent burning in the first degree - a class C felony that will be applicable to repeat violators of AS 11.46.400 - 11.46.430 and AS 41.15.150; it alters AS 11.46.430 such that it now pertains to the crime of criminally negligent burning in the second degree; [and it adds violations of AS 11.46.400 - 11.46.430 to the sentencing provisions of AS 12.55.127(c), which addresses consecutive and concurrent terms of imprisonment].

CHAIR RAMRAS questioned whether [proposed AS 11.46.427] would address those who set fires to cars in recreational-use areas.

REPRESENTATIVE GRUENBERG, remarking that it is his intention that it do so, said he would research that issue further.

CHAIR RAMRAS said, "We would want it to be at least as bad to commit a negligent burning in an urban area as it is to burn a car in the Knik recreation area."

REPRESENTATIVE GRUENBERG concurred. He noted that he and the DOL would be researching whether there should be a look-back period associated with [proposed AS 11.46.427].

[3:00:53 PM](#)

CRAIG GOODRICH, Fire Chief, Anchorage Fire Department (AFD), Municipality of Anchorage (MOA), said the AFD supports Amendment 1 [to Version E]. He went on to explain that arson is a very prevalent activity, and that it is rare for someone [who has served or is serving time] in the criminal justice system to not have a background in setting fires. For example, it was relayed to him by staff at the McLaughlin Youth Center that they don't track which of their inmates have committed arson; instead they simply assume that all their inmates have committed arson at some point in their criminal careers because almost all of them have. The AFD has two full time arson investigators and is considering adding a third, and this, in and of itself, he observed, speaks to the fact that there is plenty of arson investigation work to be had. There are some sections of the municipality that are more prone to instances of arson than other sections. As a practical matter, the fires that are started often spread out of control and do a great deal of harm to both life and property. In conclusion, he said that what he likes about [Amendment 1] is that it ensures that repeat arson offenders will be treated differently, adding "We're pretty excited about ... all of this and the potential for it moving forward."

CHAIR RAMRAS expressed appreciation for Amendment 1, and indicated that it would be included in a forthcoming proposed CS.

REPRESENTATIVE GRUENBERG noted that Representative Gatto has also been very involved with this issue.

[3:04:54 PM](#)

RODNEY DIAL, Lieutenant, Deputy Commander, A Detachment, Division of Alaska State Troopers, Department of Public Safety (DPS), relayed he would be speaking to the provisions pertaining to search warrants - Sections 8 and 9 [of Version E] - and that the DPS supports HB 323. With regard to Section 8, which would allow the court to issue a search warrant for locations outside the state, he remarked that this proposed change is important when investigating crimes involving Internet technology or in situations involving interactions with the Royal Canadian Mounted Police (RCMP).

LIEUTENANT DIAL offered an example of the latter type of situation involving law enforcement officers in Ketchikan investigating a person in Hyder who had had a serious accident while driving under the influence (DUI) and had seriously

injured [himself and] a number of people. The driver was transported to Stewart, Canada, for treatment, and, in this particular case, the officers were able to find a local [Alaska] judge who issued a search warrant for the medical records of the perpetrator in order to illustrate his blood alcohol concentration (BAC), and this warrant was honored by the Canadian government. However, the judge could have refused, since there is no requirement in state law that a judge issue a search warrant for property located in another jurisdiction. He added that the DPS definitely supports Section 8.

LIEUTENANT DIAL posited that Section 9 - which pertains to search warrants issued via telephone - will increase the productivity of law enforcement officers across the state. Working in remote areas of Alaska, there are many instances where the need for a search warrant has been identified, but currently law enforcement officers have to travel to a community with a magistrate or judge in order to present evidence and get a search warrant. The ability to do that telephonically will be an enormous time saver, but will in no way lower the current high standard that must be met in order to get a search warrant issued; in fact, it might even be more difficult to obtain a search warrant telephonically because the evidence wouldn't be presented in person at the time of the request. Regardless of this potential increased difficulty, Section 9 will provide a way for law enforcement officers to increase their productivity and make better use of their time.

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REPRESENTATIVE GRUENBERG, referring to Section 8, questioned whether an interstate compact or federal legislation could be of assistance, and whether the federal government should be looking at international treaties or agreements with regard to this issue.

LIEUTENANT DIAL said he would have to research those points.

REPRESENTATIVE GRUENBERG observed that the legislature could assist in getting things moving in that direction if such would be of any help. He said he doesn't want the state to get into a situation where there are conflicts; it would be worth it to work out potential problems beforehand.

CHAIR RAMRAS indicated that [Amendments 2 and 3 to Version E] would also be included in a forthcoming proposed CS.

3:10:30 PM

MS. CARPENETI referred to Amendment 2, which read [original punctuation provided]:

Page 9, lines 13 - 21: Delete all material and insert the following:

"(d) The court may not consider a substantive claim in an application brought under AS 12.72.010 or the Alaska Rules of Criminal Procedure until the court has first determined that

(1) the application is timely; and

(2) except for an application described in AS 12.72.025 or allowed under (c) of this section, no previous application has been filed.

MS. CARPENETI explained that Amendment 2 would address a concern the OPA has with regard to Section 19 of Version E. The intention [with Section 19 and Amendment 2] is to provide the courts with direction regarding post-conviction relief applications, such that the courts should first determine whether an application is timely and whether it is illegally successive to another application, and then - if the application is timely and not illegally successive - go on to consider the merits/substance of the application. Because a post-conviction relief application can sometimes be very complicated, the DOL believes that it will save the court time if it is directed to bifurcate its consideration of a post-conviction relief application in order to first determine whether it should even be considered at all. She said that Amendment 2 accomplishes this in a manner that both the OPA and the DOL are comfortable with.

REPRESENTATIVE GRUENBERG indicated that he would later be researching the exceptions outlined in Amendment 2's proposed AS 12.72.020(d)(2).

MS. CARPENETI noted that they are located in AS 12.72 - which pertains to post-conviction relief procedures for persons convicted of criminal offenses.

3:12:55 PM

MS. CARPENETI referred to Amendment 3, [which was drafted to fit the original version of the bill and] which read [original punctuation provided]:

Page 8, following line 9:

Insert a new bill section to read:

***Sec. 22.** The uncodified laws of the State of Alaska as enacted in Chapter 24, Section 36(c), SLA 2007 is amended to read:

(c) AS 12.72.025, enacted by sec. 25 of this Act, applies to offenses committed before, on, or after the effective date of sec. 25 of this Act. A person whose application for post-conviction relief was denied before the effective date of sec. 25 of this act has until July 1, 2008, to file a claim described in AS 12.72.025. **This subsection does not authorize filing a claim under AS 12.72 or the Alaska Rules of Criminal Procedure that is not otherwise available under AS 12.72, the Alaska Rules of Criminal Procedure, or other provisions of law.**

Renumber the following bill sections accordingly.

Page 9, following line 7:

Insert a new bill section to read:

***Sec. 23.** Section 22 of this Act is retroactive to July 1, 2007.

Renumber the following bill sections accordingly.

MS. CARPENETI, characterizing Amendment 3 as probably the cleanest way to go about addressing the issue, explained that Amendment 3 is an amendment to an applicability section that was adopted last year via HB 90, which provided a one-year statute of limitations for what she termed, "Grinols PCRs"; a PCR is a post-conviction relief application and Grinols v. State of Alaska is a case wherein the court decided that due process fairness requires a person to get a lawyer to litigate whether the lawyer assisting the person with his/her first post-conviction relief application was effective. The one-year statute of limitations adopted by HB 90 for bringing a Grinols PCR is one year from when the court denied the first post-conviction relief application. She indicated that that aforementioned applicability section has been interpreted by some people to mean that a person gets "one free application for a PCR without complying with the other statutory provisions and court common-law provisions of PCRs." Because of [this interpretation] there is now someone who is claiming, for a murder conviction in 1980, that this gives him/her "another free PCR."

MS. CARPENETI said that the DOL wanted to clarify that instead all the other provision of law - common law, statutory law, and court rules, such as the requirement that one must exercise due diligence in bringing a post-conviction relief application - apply to Grinols PCRs too. Clarity is needed on this issue because there is some concern that there will be "a rash of PCRs based on 1980s and 1990s murder convictions" since those people are still in jail. Again, the goal is to clarify that Grinols requires due diligence when bringing a post-conviction relief application based on ineffective counsel for one's first post-conviction relief application, that the same standards that apply to other post-conviction relief applications apply to Grinols PCRs as well.

MS. CARPENETI explained that the letter of intent included in members' packets for consideration would clarify that Amendment 3's proposed change to the aforementioned applicability section is simply saying that all laws that apply to post-conviction relief applications also apply to "these that are brought up 'til July 1, 2008." In conclusion, she said that the DOL has worked cooperatively with the PDA on Amendments 2 and 3 [to Version E], but has not yet gotten a response back from the PDA regarding the letter of intent.

[HB 323, Version E, was held over.]

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:16 p.m.