

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

April 30, 2007

3:06 p.m.

**MEMBERS PRESENT**

Representative Kurt Olson, Chair  
Representative Mark Neuman, Vice Chair  
Representative Carl Gatto  
Representative Gabrielle LeDoux  
Representative Jay Ramras  
Representative Robert L. "Bob" Buch  
Representative Berta Gardner

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 197

"An Act relating to the issuance of shares of professional corporations to a trust, to trusts, to trustees, to the removal of a trustee, to the compensation of a trustee and a person employed by a trustee, to a trustee's accepting or rejecting a trusteeship, to co-trustees, to a vacancy in a trusteeship, to the resignation of a trustee, to delivery of trust property by former trustees, to the reimbursement of trustee expenses, to the certification of a trust, to the suitability of a trustee, to the place of administration of a trust, to a trustee's power to appoint property to another trust, to a change of the percentage of trust property to be considered principal, to the determination of the value of a trust, and to a settlor's intent when transferring property in trust; amending Rules 54 and 82, Alaska Rules of Civil Procedure; and providing for an effective date."

- MOVED HB 197 OUT OF COMMITTEE

HOUSE CONCURRENT RESOLUTION NO. 8

Establishing a task force to make recommendations regarding job descriptions and salary changes for the commissioners and support staff of the Regulatory Commission of Alaska.

- MOVED CSHCR 8(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 200

"An Act relating to the presumption of coverage for a workers' compensation claim for disability as a result of certain diseases for certain occupations."

- MOVED HB 200 OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HB 197

SHORT TITLE: TRUSTS

SPONSOR(s): JUDICIARY

03/14/07	(H)	READ THE FIRST TIME - REFERRALS
03/14/07	(H)	JUD, FIN
04/04/07	(H)	JUD AT 1:00 PM CAPITOL 120
04/04/07	(H)	Moved Out of Committee
04/04/07	(H)	MINUTE(JUD)
04/05/07	(H)	JUD RPT 4DP 2NR
04/05/07	(H)	DP: GRUENBERG, LYNN, HOLMES, RAMRAS
04/05/07	(H)	NR: COGHILL, SAMUELS
04/05/07	(H)	FIN REFERRAL REMOVED
04/05/07	(H)	L&C REFERRAL ADDED AFTER JUD
04/20/07	(H)	L&C AT 3:00 PM CAPITOL 17
04/20/07	(H)	Scheduled But Not Heard
04/30/07	(H)	L&C AT 3:00 PM CAPITOL 17

BILL: HCR 8

SHORT TITLE: RCA TASK FORCE

SPONSOR(s): REPRESENTATIVE(s) OLSON

04/20/07	(H)	READ THE FIRST TIME - REFERRALS
04/20/07	(H)	L&C, FIN
04/30/07	(H)	L&C AT 3:00 PM CAPITOL 17

BILL: HB 200

SHORT TITLE: WORKERS' COMP: DISEASE PRESUMPTION

SPONSOR(s): REPRESENTATIVE(s) DAHLSTROM

03/14/07	(H)	READ THE FIRST TIME - REFERRALS
03/14/07	(H)	L&C, JUD
04/27/07	(H)	L&C AT 3:00 PM CAPITOL 17
04/27/07	(H)	Heard & Held
04/27/07	(H)	MINUTE(L&C)
04/30/07	(H)	L&C AT 3:00 PM CAPITOL 17

**WITNESS REGISTER**

JANE PIERSON, Staff  
to Representative Jay Ramras  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Introduced HB 197 on behalf of the House  
Judiciary Standing Committee, sponsor, which is chaired by  
Representative Ramras.

DAVID G. SHAFTEL, Attorney at Law  
Shaftel Law Offices  
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 197.

STEPHEN E. GREER  
Anchorage, Alaska

POSITION STATEMENT: Described HB 197 as good, default  
legislation and answered questions from the committee.

RICHARD THWAITES (ph)  
Alaska Trust Company  
Anchorage, Alaska

POSITION STATEMENT: Testified during the hearing on HB 197.

DOUGLAS J. BLATTMACHR, President and CEO  
Alaska Trust Company  
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 197.

BETH CHAPMAN, Attorney at Law  
(No address provided)

POSITION STATEMENT: Testified as one who worked on forming HB  
197, and answered questions from the committee.

CHRISTY CATLIN  
AT&T Alascom

POSITION STATEMENT: Testified in support of the formation of  
the task force, during the hearing on HCR 8.

KELLY HUBER, Staff  
to Representative Nancy Dahlstrom  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: On behalf of Representative Dahlstrom,  
prime sponsor, described the changes made in a proposed  
committee substitute labeled 25-LS0748\C, Bannister/Bailey,  
4/30/07.

## **ACTION NARRATIVE**

**CHAIR KURT OLSON** called the House Labor and Commerce Standing Committee meeting to order at [3:06:41 PM](#). Representatives Gatto, Ramras, Buch, Gardner, Neuman, and Olson were present at the call to order. Representative LeDoux arrived as the meeting was in progress.

### HB 197-TRUSTS

CHAIR OLSON announced that the first order of business would be HOUSE BILL NO. 197, "An Act relating to the issuance of shares of professional corporations to a trust, to trusts, to trustees, to the removal of a trustee, to the compensation of a trustee and a person employed by a trustee, to a trustee's accepting or rejecting a trusteeship, to co- trustees, to a vacancy in a trusteeship, to the resignation of a trustee, to delivery of trust property by former trustees, to the reimbursement of trustee expenses, to the certification of a trust, to the suitability of a trustee, to the place of administration of a trust, to a trustee's power to appoint property to another trust, to a change of the percentage of trust property to be considered principal, to the determination of the value of a trust, and to a settlor's intent when transferring property in trust; amending Rules 54 and 82, Alaska Rules of Civil Procedure; and providing for an effective date."

[3:06:54 PM](#)

JANE PIERSON, Staff to Representative Jay Ramras, Alaska State Legislature, introduced HB 197 on behalf of the House Judiciary Standing Committee, sponsor, which is chaired by Representative Ramras. She offered the definition of the term "trust" as follows:

A property interest held by one person as trustee at the request of another for the benefit of the third party.

MS. PIERSON said a trust involves three elements: a trustee who holds the trust property and is subject to equitable duties to deal with [the trust] for the benefit of another; a beneficiary to whom all trustees owe equitable duties to deal with the trust property for their benefit; and a trust property that is held in trust for the beneficiary.

MS. PIERSON stated that the goal of HB 197 is to ensure that Alaska is one of "the premier places for trusts in the [United] States." She emphasized the importance of Alaska's staying competitive with other states that do not have personal income tax. She said a trust industry is important to Alaska, because it provides employment for accountants, attorneys, insurance agents, bankers, and their support staff. She reported that there is between \$30-70 million on deposit with Alaskan banks through the Alaska Trust Company (ATC) alone. Alaska also receives over \$2 million in annual revenue in trusts. Furthermore, there are over 1,000 out-of-state clients who have sought to hold a trust in Alaska because of its unique trust laws. She relayed that Alaska has passed 15 pieces of legislation since 1997 to keep the industry vibrant and competitive.

MS. PIERSON paraphrased the sponsor statement [included in the committee packet], which read as follows [original punctuation provided]:

HB197 bill provides for the following:

1. That shares in a professional corporation may be held by the trustees of the professional's revocable trust.
2. Expands the coverage of AS 13.36.157, which allows the trustee of a trust to transfer trust assets to a similar trust. This expansion will only occur if the trust has an Alaskan trustee and the trust has its primary administration in Alaska.
3. Allows the Alaska trustee of a charitable trust to change the percentage of the value of the trust that will be considered income whenever the trustee determines that the new percentage is necessary and prudent.
4. Clarifies that a settlor's express intention to protect trust assets from beneficiary's potential future creditors is not evidence of an intent to defraud.
5. States needed provisions relating to trustees: compensation, accepting or declining trusteeship, co-trustees, vacancy, resignation, removal, delivery of

property by former trustee, reimbursement of expenses,  
and certification of trust.

MS. PIERSON noted that [the fourth point in the sponsor statement] is probably the biggest policy question in the bill.

[3:10:10 PM](#)

REPRESENTATIVE RAMRAS, as chair of the House Judiciary Standing Committee, sponsor of HB 197, noted that his friend, Bob Gillam, who has more money under management than all the other commercial banks in the state combined, talks about Alaska's unique geography in relation to the Pacific markets and other U.S. markets, and characterizes Alaska as an "under-optimized market place" due to its geography in relation to the global capital markets. Representative Ramras stated that Alaska is desperate for more capital, because capital creates jobs, improves the state's banking, and enhances the state's economy. He said only a fraction of the money in the Alaska permanent fund "resides" in Alaska. The proposed legislation, he said, will help aggregate capital to the banking system. He stated, "It's a good bill, because it keeps Alaska in a very elite class competitively [with] just several other states."

[3:12:36 PM](#)

REPRESENTATIVE GARDNER directed attention to the third point in the sponsor's statement [text provided previously] and asked, "Does that mean they have flexibility about what part of it remains in the trust and what part can be spent?"

MS. PIERSON deferred to experts waiting to testify.

[3:13:34 PM](#)

MS. PIERSON, in response to Representative Neuman, clarified that the fourth point in the sponsor statement [text provided previously] refers to future creditors, not current creditors.

[3:14:47 PM](#)

DAVID G. SHAFTEL, Attorney at Law, Shaftel Law Offices, testified in support of HB 197. He told the committee that he is one of a group of attorneys who, since 1996, has provided suggestions to the legislature for statutes that would improve state and trust administration. In that time, he noted, the legislature has passed 15 statutes that have greatly improved

"the situation here in Alaska." He stated, "It's really improved our position both for residents of Alaska and also for nonresidents who desire to use Alaska approaches in their estate planning."

MR. SHAFTEL stated that HB 197 is an excellent piece of legislation. The bill proposes a number of default provisions for trustees that have heretofore not existed in statute. He noted that the provisions are often covered in a well written trust document; however, the bill would ensure certain provisions are covered when not contained in trust documents. He offered to answer questions from the committee.

[3:18:06 PM](#)

REPRESENTATIVE LeDOUX referred to Section 14 of the bill [beginning on page 12, line 6, through page 13, line 19], and stated that she is trying to figure out what the law is today with respect to "fraudulent transfers [by way of] vis a vis trust agreements," and what changes will be made through HB 197.

MR. SHAFTEL explained that Section 14 does not deal with fraudulent transfers. He stated that if a transfer is fraudulent, through a trust or another vehicle, that transfer will be set aside. He said [Section 14] is designed to address "asset protection planning," which is not fraudulent, but is done well in advance of anyone's experiencing a creditor problem. Mr. Shaftel relayed that Alaska has taken a positive stance towards providing guidance in statutes which support asset protection planning. He continued:

The problem that this particular phrase is intended to address is where arguments have been made in several cases where they say, "Well, if we find any evidence at all in the attorneys' records or the clients' records that indicate that they wanted to do asset protection planning, then that planning should be considered inappropriate and not effective."

Now, that's never been the law, but ... that argument has been addressed in a couple of cases. We had one case where it was an unpublished opinion by the [9th Circuit Court of Appeals] that seemed to ... pick up and follow that kind of reasoning, even though the facts were horrible in that case and they justified finding that it was a fraudulent transfer and set aside (indisc. -- noise interference).

MR. SHAFTEL said when his clients seek him out to discuss estate planning, they almost always also talk to him about asset protection planning. He offered examples. He concluded, "All this particular provision does is to make it clear that the state of Alaska does not think that asset protection planning in itself ... is not inappropriate."

[3:22:19 PM](#)

Mr. Shaftel, in response to a request for further clarification, offered an example as follows:

You come into my office, and you say:

"Dave, I want you to set up some trusts for my kids, and here's why: I want to put some assets in there and I want to make sure that those assets get to my kids, and that if I have a bad situation in my law practice down the line, and I get sued for malpractice, that my creditors can't reach these assets that I've put in there now for my kids. I don't have any problems right now, Dave - there are no judgments against me, nobody has filed any claims against me, [and] as far as I know I've never done anything wrong that would result in that kind of a judgment - but I want to make sure that that's the case."

So, I write down in my file that Representative LeDoux has come in for estate planning and that we've talked about asset protection planning, we've talked about providing money in trust so that her children can go to college - and I have those notes in my file.

Now, ... 10 years from now you get sued - ... maybe it's out of your law practice [or] maybe it's because you were negligent in driving your car - and there's a big judgment against you. And that creditor says, "I want to get at those children's trust; I want the money in there." And there's discovery, and that creditor gets a hold of my notes, and it says, "Look, right there, ten years ago, Representative LeDoux said to Dave Shaftel that she wanted to do some asset protection planning. That I argue to you, judge, is an intent to defraud."

Now, stopping right there: that's not a law that I know of anywhere, except it has been argued, and as I say it did appear in one circuit court case. And so, Alaska being a state which has taken a positive and strong position towards allowing asset protection planning, this would help in our statutes to make it clear. It's not a fraudulent transfer situation, but the fact that the settlor - and that's Representative LeDoux in my example - had an expressed intention to protect trust assets from potential future creditors is not evidence of an intent to defraud.

[3:25:46 PM](#)

REPRESENTATIVE LeDOUX, regarding Mr. Shaftel's example, asked how it would be possible for a creditor to have access to that file.

MR. SHAFTEL answered, "If you were forced into bankruptcy, the bankruptcy steps into your shoes, and in those situations they make the argument that the privilege doesn't apply."

[3:26:16 PM](#)

REPRESENTATIVE GATTO said, "Suppose you have a traffic accident, which has nothing to do with your assets, after you've already given them away. ... That person who's suffered harm, according to this, would not be able to come back and attach the grandchildren's trust fund. Am I correct?"

MR. SHAFTEL noted that every state has what's called a "fraudulent transfer statute." He said there always exists the issue of who is a future creditor and how far down the line future creditors have some type of rights. He continued:

And if they're anticipatable, near-future creditors, then ... some case law allows them to have those types of rights. And in Alaska, there's a four-year limitations period that relates to future creditors.

... Normally, what we're talking about - and I want to make sure I'm addressing exactly your question ... - in a traffic accident, it's not anticipatable. And you're right, there should not be, in that situation, a successful argument on the part of a creditor that they could get at those assets. And if I included the traffic accident in my example, that is not as good an

example as the malpractice situation or a business situation where future creditors are somewhat anticipatable, and that's where the courts sometimes have moved.

REPRESENTATIVE LeDOUX described a hypothetical situation in which, at the time a transfer is made, a man did not realize that he had a child and subsequently he was required to pay child support.

MR. SHAFTEL replied that it would depend on the facts of the situation. He said the question to ask is whether or not a person has made an attempt to evade creditors. He stated that regardless of whether HB 197 passes or not, it may be that that child in the example "could not reach those assets."

[3:29:51 PM](#)

REPRESENTATIVE LeDOUX said she has a problem with that.

REPRESENTATIVE GARDNER shared her understanding that the provision [proposed in Section 14] addresses the determination that the setting up of a trust is not fraudulent; it doesn't address whether or not the trust can be overturned.

Mr. Shaftel responded that Ms. Gardner's statement is absolutely correct. He continued:

If there are facts that show that it was a fraudulent transfer, then under our fraudulent transfer statute, that transfer can be attacked - if there are other facts. All we're talking about here is the mere fact that asset protection was discussed at the time that the transfer occurred. That mere fact is not enough in itself to establish that it's a fraudulent transfer.

[3:31:22 PM](#)

STEVE GREER said he is one of the practitioners to whom Mr. Shaftel referred who has contributed suggestions toward the proposed legislature. He mentioned Beth Chapman, whom he said is "primarily responsible for this bill." He offered to answer questions from the committee. He remarked that "this" has undergone much discussion over the past 6-7 months by the aforementioned group. He described HB 197 as good, default

legislation that articulates and puts into statutory form the law as "most of us have understood it to be."

REPRESENTATIVE NEUMAN noted that Section 5 addresses the issue of compensation, and he asked Mr. Greer to expound on the subject.

MR. GREER replied that it has been his practice to state that a trustee is entitled to reasonable compensation and not to get into definite language as to what is reasonable. He related that trusts often are drafted 30 or more years before coming into fruition; therefore, it is difficult to specify what might be reasonable that far in the future under today's terms. He stated that a person who performs services is entitled to reasonable compensation, and the best way to discern what is reasonable is to ask what banks charge for similar services. He said the court system has a standard. He continued:

We know if we go down to the probate court, the probate court will say, "Does this trustee have any special expertise?" If so, there's a certain hourly rate that they allow. If they don't have any special expertise, then there's another hourly rate that they will allow.

[3:34:46 PM](#)

RICHARD THWAITES (ph), Alaska Trust Company, indicated that he was involved in the beginning stages of forming HB 197, and subsequently became involved in the Alaska Trust Company. He stated that during his early years in the trust business, he would see trusts people drafted themselves, which were fully legal documents, but which simply directed, for example, to "'leave everything in trust' - period." The proposed legislation, he said, "kind of goes to that issue." Regarding compensation, Mr. Thwaites stated:

What I had to do in one of the those cases early on in my career was go to court, because the superior court probate division retains jurisdiction over trusts. And we literally had to go through and create all of these sorts of things for that trust. Currently the court still ... retains that jurisdiction if a beneficiary chooses to challenge the reasonableness of the fees; even though the fees are set forth in the schedule, those fees can be challenged at the level

and the court will render a decision as to whether they were reasonable or not.

Sometimes, in one or two cases, the fees actually go up because of an extraordinarily aggressive and involved beneficiary increasing the costs of the administration of the trust. That's pretty rare, but it still could happen.

[3:36:19 PM](#)

DOUGLAS J. BLATTMACHR, President and CEO, Alaska Trust Company, testified in support of HB 197. He said the Alaska Trust Company has been working with the [Alaska] Bar Association for years in an effort to strengthen Alaska's laws regarding trusts. He offered to be available for questions from the committee.

[3:36:59 PM](#)

BETH CHAPMAN, Attorney at Law, confirmed that she has been working on HB 197 for the past year and a half. Regarding Representative Gardner's question related to the charitable trust, Section 12, she explained that a few years ago there was a change in the law as to how trusts and particular charitable trusts were invested. Under the prior law, she explained, a person would invest for "income only," which is what would be given to the charities; however, that limited the ability to "grow the fund." She said [Section 12] would allow charitable trustees to distribute a percentage of the trust every year, rather than just distributing income, which generates more revenue to the charities while preserving the fund for the long term.

REPRESENTATIVE GATTO remarked that it makes him nervous not to have heard any opposition to the bill, especially considering the dramatic language changes, for example, the proposed new language [underlined and bold] on page 12, [in Section 14, subsection (b), paragraph (1)], which read as follows:

**\*Sec. 14.** AS 34.40.110(b) is amended to read:

(b) If a trust contains a transfer restriction allowed under (a) of this section, the transfer restriction prevents a creditor existing when the trust is created or a person who subsequently becomes a creditor from satisfying a claim out of the beneficiary's interest in the trust, unless the creditor is a creditor of the settlor and

(1) the settlor's transfer of property in trust was made with the intent to defraud that creditor, and a cause of action or claim for relief with respect to the fraudulent transfer complies with the requirements of (d) of this section; however, a settlor's expressed intention to protect trust assets from a beneficiary's potential future creditors is not evidence of an intent to defraud;

MS. CHAPMAN explained that asset protection has been practiced for many years. She offered examples of various types of asset protection. She continued:

Last year the 9th Circuit Court of Appeals came out with a decision ... in which they ... indicated that if, in the attorney's file, there was an express intent that there would be asset protection, that that ... could in fact be an intent to defraud a creditor.

Under the laws that exist now, you can't intend to defraud a creditor if you don't know about the creditor. And when we do asset protection, it's not done to ... avoid current creditors. In fact, none of us would do that, and in most cases, affidavits have to be signed that, in fact, there [are] no current creditors and that people have enough assets to continue to pay their bills and liabilities.

The decision from the 9th Circuit [Court of Appeals] was really - as always - bad facts. Somebody had set up a trust, transferred all of their assets into it - corporations that were shells - knowing that they were, in fact, trying to avoid potential creditors. This language is designed to override that dictate in the 9th Circuit Court of Appeals' decision, and that is its primary purpose - not to change the law, which has always been the same, which is ... that if there is a fraudulent conveyance, it will be ... set aside.

REPRESENTATIVE GATTO offered a hypothetical example in which a person, having not yet been indicted, but knowing he will be, transfers his assets "to everybody and his uncle" to "avoid having them attached." He asked if the language in the proposed legislation would allow such action.

MS. CHAPMAN replied no. She continued:

If you had ... creditors you knew or [who] were likely to appear, under our state laws that would not allow you to avoid those creditors. There is a statute of limitation; there's a period of time in which, ... if somebody comes up after you've set up a trust and tries to undo it, they would still have that option, and the facts and circumstances would still be considered by the court.

REPRESENTATIVE LeDOUX asked, "So, how would this apply to the ... federal RICO [Racketeer Influenced and Corrupt Organizations Act] laws?"

MS. CHAPMAN replied that this [bill] would not have any effect on [federal laws]. She reiterated that asset protection, in and of itself, will not be considered an intent to defraud, but all other facts and circumstances would be considered by the court.

[3:43:07 PM](#)

MS. CHAPMAN, in response to a question from Representative Neuman, clarified that Section 12 addresses the amount of money that would be paid to charities, while Section 5 addresses the compensation schedule. She said, "In that provision, it's not what the trustee says is reasonable; it's what the person who established the trusts said." She continued:

For example, I have clients who ... - maybe their niece or nephew's going to be the trustee - and they want to pay \$1,000 a month. If the ... parent who set up the trust says \$1,000 a month is what they think is reasonable, then that's going to be deemed reasonable.

MS. CHAPMAN, in response to a follow-up question, further addressed Section 12. She said under current law, many trusts have been written to pay out only income such as dividends or interest earned on a bank account. Charities don't like that, she said, because they don't get very much money. Thus, trustees are trying to balance long-term preservation of a trust fund for the benefit of charities, and yet generate revenues to pay out to those charities every year. She stated:

This gives the trustees the flexibility to move from an income standard to a percentage standard, so that they could pay out, for example, an average amount of 5 percent of the value of the trust every year to the charities. Trustees will look at: Is that percentage

going to be enough to benefit the charities, but at the same time ensure that we're growing the fund for the future?

REPRESENTATIVE NEUMAN said that sounds like a good idea. He asked when the original language became law and who was responsible for the law.

MS. CHAPMAN offered her understanding that Section 12 is the result of the Uniform Principle and Income Act of 2003, and Mr. Shaftel was principally involved. She said:

This came to my attention when I was representing a charitable trust that needed to make a change, because the charities were asking for more funds and we realized we had this 10-year limitation. I researched all state laws, and we have no idea why it was there, and the legislative history doesn't tell us.

MS. CHAPMAN, in response to a follow-up question, related that the bulk of HB 197 is new. The purpose, she reviewed, is to put default provisions in law for those who have trusts written without those provisions.

[3:47:52 PM](#)

CHAIR OLSON, upon ascertaining that there was no one else to testify, closed public testimony.

REPRESENTATIVE NEUMAN opined that HB 197 is good legislation that allows everyone to play by the same rules.

REPRESENTATIVE GATTO restated his unease regarding there being no testimony from "some other person besides the people who essentially benefit from the bill."

REPRESENTATIVE RAMRAS, in response to Representative Gatto's concern, offered his understanding that the aforementioned group of attorneys came together to work on this legislation so that Alaska would be a better place in which to leave capital. He expressed the desire for the state to have a competitive environment rather than having Alaskans set up trusts under the laws of other states. He concluded, "I really think that this is a document that clarifies and makes kosher the relationship between the trustee and the beneficiary, and that in this case, ... this collection of trust attorneys are looking out for both

ends of the transaction and trying to keep a very clean relationship between both of those parties."

3:52:56 PM

REPRESENTATIVE LeDOUX echoed Representative Gatto's concern. She said she would like to hear from the "creditors' bankruptcy bar" as well as the attorneys involved in the aforementioned 9th Circuit Court of Appeals' case, although she stated her suspicion that "they probably aren't even aware that we're hearing this bill."

3:53:55 PM

CHAIR OLSON said HB 197 has been out since March 14, 2007, and he offered his understanding that there has been no opposition voiced to his office. He stated his supposition that the aforementioned bar would be following "any bill related to this type of activity."

REPRESENTATIVE LeDOUX opined that Chair Olson's makes a "big assumption." She pointed out that the 9th Circuit Court of Appeals attorneys in question may not even be in Alaska. Furthermore, anyone who does not have a lobbyist following his/her interests most likely is not tracking a bill, she stated.

MS. CHAPMAN responded to the committee members' concerns as follows:

First of all, I want to point out that my law firm is a full-service law firm, and we represent major corporations, as well as individuals. And I practice primarily in the trust and estates area.

On the asset protection area, I think the reason that there is not any objection to it is because we're not doing anything that's not already in existing law; it's just clarifying what it means to have an intent to defraud. If there is a fraudulent conveyance, that can be brought forward, and there is nothing in this bill that would prevent somebody from bringing the same [arguments] that they would have brought from before. Instead, it's addressing the ... term asset protection in and of itself, which is used by ... everybody: lawyers, ... professional corporations,

... limited liability companies - that's asset protection. So, it's really not changing that at all.

... The reason, again, I think there's no objection is because there's not anything in here that is saying that a creditor does not have the rights that they currently have under state law; it's just a clarification.

The 9th Circuit Court of Appeals decision is out of the state of Washington, not out of the state of Alaska.

MS. CHAPMAN said she represents beneficiaries and families; very rarely does she represent a corporate trustee. She said, "We have used these laws to save our clients [a] significant amount of attorneys' fees." Before the existence of laws that allowed default provisions or modified trusts, she said, significant amounts of money were spent going to court. She continued:

Now, we're able to use these laws to help families take care of their children. I work a lot in the area of disability trusts, and we have used these provisions to really help beneficiaries and help families, and ... in fact, in my practice, I would say I'm in court a lot less than I used to be, and I'm very thankful for that, because I think it benefits Alaskans and allows families to take care of their children and loved ones.

[3:57:38 PM](#)

REPRESENTATIVE NEUMAN moved to report HB 197 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 197 was reported from House Labor and Commerce Standing Committee.

The committee took an at-ease from 3:58 p.m. to 4:00 p.m.

HCR 8-RCA TASK FORCE

[4:00:12 PM](#)

CHAIR OLSON announced that the next order of business would be HOUSE CONCURRENT RESOLUTION NO. 8, Establishing a task force to make recommendations regarding job descriptions and salary

changes for the commissioners and support staff of the Regulatory Commission of Alaska.

4:00:25 PM

REPRESENTATIVE NEUMAN moved to adopt the committee substitute (CS) for HCR 8, Version 25-LS0859\M, Kane, 4/20/07, as the working document. There being no objection, Version M was before the committee.

CHAIR OLSON presented Version M as chair of the House Labor and Commerce Standing Committee, sponsor of HCR 8. He reported that on February 22, 2007, the Regulatory Commission of Alaska transmitted to the governor a number of proposed changes to its statutes. The proposal suggested that the governor seek legislative determination for the appropriate salaries of the commissioners. Version M, he noted, proposes that a legislative task force be set up to work during the interim to review the salaries of the commissioners, as well as recommending job descriptions for the commissioners and considering the need for additional staff support for the RCA. The task force would consist of nine members: two majority and one minority member from the Senate, two majority and one minority from the House, Governor Sarah Palin or her designee, Attorney General Talis J. Colberg or his designee, and Commissioner Emil Notti or his designee. The task force would report back to the legislature in the beginning of the next session. The resolution would sunset on May 30, 2008.

4:02:03 PM

CHRISTY CATLIN, AT&T Alascom, testified in support of the formation of the task force.

4:02:29 PM

CHAIR OLSON, after ascertaining that there was no one else to testify, closed public testimony.

4:02:56 PM

REPRESENTATIVE LeDOUX moved to report CSHCR 8, Version 25-LS0859\M, Kane, 4/20/07, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHCR 8(L&C) was reported out of the House Labor and Commerce Standing Committee.

The committee took an at-ease from 4:03 p.m. to 4:05 p.m.

HB 200-WORKERS' COMP: DISEASE PRESUMPTION

4:05:26 PM

CHAIR OLSON announced that the final order of business would be HOUSE BILL NO. 200, "An Act relating to the presumption of coverage for a workers' compensation claim for disability as a result of certain diseases for certain occupations."

4:05:39 PM

KELLY HUBER, Staff to Representative Nancy Dahlstrom, Alaska State Legislature, on behalf of Representative Dahlstrom, prime sponsor, described the changes made in the proposed committee substitute (CS), labeled 25-LS0748\C, Bannister/Bailey, 4/30/07, [although no motion had been made to bring Version C before the committee as a working document]. She noted that there had been some confusion as to whether or not HB 200 was a "mandatory bill." She explained that Legislative Legal and Research Services drafted the bill and did not believe that "the language in it made this mandatory." For purposes of clarification, language was added to Version C on page 3, [subsection (e)], which read as follows:

(e) The provisions of (c)(2) of this section may not be interpreted to require a municipality or other employer of fire fighters covered under AS 23.30.243, peace officers, or emergency medical and rescue personnel, including a municipality or other organization that uses volunteers, to provide a qualifying medical examination.

MS. HUBER, in response to a question from Representative Neuman, explained that if a municipality decides not to have, for example, everyone in its fire department take the "prequalifying" exam, then "nobody is going to be covered."

REPRESENTATIVE LeDOUX asked, "Doesn't that gut the whole bill?"

MS. HUBER said the original bill language shows that "the department already had to determine to give the qualifying exams."

REPRESENTATIVE LeDOUX offered her understanding that there is a letter from the Municipality of Anchorage opposing the bill.

She asked, "If we do this, I mean, it sounds nice, but what are we really doing?"

REPRESENTATIVE GARDNER asked if an incoming firefighter told that he/she must have an exam in order to get presumptive coverage could opt to get that exam independently.

MS. HUBER revealed that she, too, had had the same thought; however, the sponsor was told by Legislative Legal and Research Services that that would not be allowed under the language of the bill.

REPRESENTATIVE GARDNER responded that she concurs with Representative LeDoux regarding the futility of passing the bill [as it would be amended through Version C].

MS. HUBER replied, "... The sponsor wanted to bring it forward, but she likes the original bill, as well."

REPRESENTATIVE GATTO noted that the Anchorage Fire Department has a required annual exam. He asked if that would count.

MS. HUBER said the qualifying exam noted in the bill would be determined by regulations; therefore, it would be unknown until those regulations were written whether or not the Anchorage Fire Department's exam would qualify.

MS. HUBER, in response to Representative LeDoux, pointed to language on page 3, line 18, of Version C, also found in the original bill version [on the same page and line numbers], which read: "personnel who were given a qualifying medical examination". She stated, "The idea, then, is therefore somebody would have had to okay the exam. So, therefore, the municipality or the governing entity would have had to approve it. And so, that's how Legislative Legal [and Research Services] is reading this."

REPRESENTATIVE LeDOUX exclaimed, "Even in the old version nobody's going to be required to do anything."

MS. HUBER answered that's correct. She indicated that Version C simply clarifies the bottom line intent that the city or the governing entity or the fire department would determine whether or not it wants its personnel included under the presumptive clause.

REPRESENTATIVE LeDOUX asked Ms. Huber what the sponsor would think about "taking that out," either in the original bill or Version C.

MS. HUBER replied, "We'd have to make sure we're leaving in the exam part." She indicated that with a conceptual amendment, "we would let it be the committee's decision at that point."

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REPRESENTATIVE NEUMAN surmised that the sponsor is offering Version C as a means to achieve uniformity in the bill, so that all departments would be working under the same guidelines.

MS. HUBER reiterated that the reason for Version C is to clarify "whether or not this bill was going to be mandatory." In response to Representative Neuman, she confirmed there is no difference between the original bill and Version C, other than the added language in Version C, which clarifies what was already in the bill.

REPRESENTATIVE NEUMAN said he is getting mixed signals. He explained that he cannot understand Ms. Huber's previous statement that the sponsor prefers the original bill version to Version C if there is essentially no difference between the two.

MS. HUBER said the sponsor does not have a problem with Version C; "she did not want people to misunderstand what the bill is doing." She added, "But if Representative LeDoux's idea goes forward, ... I don't know that she would have a problem with it."

REPRESENTATIVE NEUMAN asked, "Don't all fire departments require an exam anyhow?"

REPRESENTATIVE GATTO recalled that when he first began work as a fire fighter, there was probably a requirement for "some evidence of an exam." He said later on there were annual medical examinations, which included tests of the heart and lungs. He shared his understanding that the bill does not clarify that it must be an approved exam. He stated that he has had repeated difficulties with the municipality, whether in regard to retirement and benefits or medical plans. He said, "And that's why I'm kind of looking at this language right here; I think we have met the requirements here by going to your doctor or the first time the department gives you an exam, or at least pays for the exam."

CHAIR OLSON stated his belief that it is the intent of the sponsor that Version C would garner more support as the bill moved forward.

MS. HUBER said she thinks the bill has a great deal of support already "for the presumption ... for these particular rescue workers." She reiterated that the sponsor did not want anyone to be misled. She directed attention to page 3, line 28, of Version C [line 24 of the original bill], which read: "(f) The department shall, by regulation, define". On ensuing lines, she noted, the language read, "the type and extent of the medical examination that is needed to eliminate evidence". She asked Representative Gatto, "Do you think that the ones that you're talking about will do that in the end?"

REPRESENTATIVE GATTO responded:

... It was very specific which exams were done and how they were done. And we followed it as we followed a menu. So, if that's not in regulation, I'd be surprised, because you had to do it or you couldn't work. So, it must have been in regulation, but I'm really trying to second guess that.

The committee took a brief at-ease.

REPRESENTATIVE LeDOUX stated, "Yes, he makes a very good argument that could be used in a court of law, that even if they don't give a specific test, ... you're still under the purview of this bill and ... the presumption applies." However, she suggested that the committee decide exactly how it wants the bill to read, rather than leaving any ambiguity. She asked, "When this bill passed last year, did this have a voluntary component to it?"

MS. HUBER offered her understanding that "the language was the way it was in the bill before you on Friday," other than some unrelated changes. She added, "But everything else, I believe, is the same as what passed the House last year."

REPRESENTATIVE GARDNER confessed to having become confused. She said she had understood the intent of the bill was to provide coverage for a list of presumptive illnesses. She added, "And if we make it optional, then we've done nothing at all, because the biggest fire fighter employer has already said the world will fall in if we do it."

REPRESENTATIVE NEUMAN cautioned the committee's making extensive changes after looking at the bill for a limited amount of time. He said he would prefer to support the wishes of the sponsor.

REPRESENTATIVE GATTO said it is important to remember that the proposed legislation really addresses workers' compensation. Statistically, he relayed, fire fighters die at an earlier age. He said, "The concept is: we think it's job related. And this bill says we don't think it anymore - we're just going to say it's job related. And that's that presumptive clause." He reiterated that he does not think municipalities are always helpful, and he stated that he thinks the fire fighters are asking for helping through HB 200. He said he agrees with the fire fighters.

[4:22:56 PM](#)

REPRESENTATIVE LeDOUX said she wants to give the help that is deserved to fire fighters, but she is afraid that either of the two versions of the bill "have a hole so big that you could drive a fire truck through it."

MS. HUBER asked Representative LeDoux if she would be amenable to the idea of allowing the original bill out of committee, with the promise of the sponsor working with the chair of the next committee of referral to address Representative LeDoux's concerns.

REPRESENTATIVE LeDOUX said, "Absolutely."

MS. HUBER said she would also be willing to address Representative Gatto's expressed concerns regarding the regulations and how that relates to the testing.

REPRESENTATIVE NEUMAN said he thinks the sponsor offered Version C in response to committee concerns, and he would like to honor her request by proposing Version C.

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CHAIR OLSON, after ascertaining that there was no one to testify, closed public testimony.

REPRESENTATIVE NEUMAN moved to adopt the committee substitute (CS) for HB 200, Version 25-LS0748\C, Bannister/Bailey, 4/30/07, as the working document.

REPRESENTATIVE GARDNER objected.

A roll call vote was taken. Representatives Ramras, Neuman, and Olson voted in favor of the motion to adopt the committee substitute (CS) for HB 200, Version 25-LS0748\C, Bannister/Bailey, 4/30/07, as the working document. Representatives Gatto, LeDoux, and Gardner voted against it. Therefore, the motion failed by a vote of 3-3.

REPRESENTATIVE GATTO shared his vivid memories of his early years with the fire department, when he visited retired fire fighters who were surviving with respirators, living in cheap trailers, trying to get by on their retirement income, and not getting much help. The desire was there to help these retired fire fighters, but it was not possible, because "we needed the approval of the department to give away money that we had in our retirement account." He said it is time to make up for those days, which is why he supports HB 200.

REPRESENTATIVE GARDNER said she also supports the bill, but she is troubled by its ambiguity regarding the issue of whether or not it would be mandatory. She expressed her wish that by the time the bill comes to the House floor, the intent is clear regarding the listed diseases, "the presumption that they're work related," and the intent to provide coverage for them.

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REPRESENTATIVE LeDOUX said she agrees with Representative Gardner, and she expressed her desire to see her work with the bill sponsor to tighten up the language of the bill so that a municipality could not get out of providing coverage simply because it decides not to give the examination.

REPRESENTATIVE GATTO suggested making the exam mandatory.

REPRESENTATIVE LeDOUX responded, "Make either the exam mandatory or, if they decide not to give the exam, then it's their tough luck - that they have the option of giving the exam."

REPRESENTATIVE GATTO said, "It counts as if they gave it."

MS. HUBER renewed her promise to work on these issues with the bill sponsor before the bill's hearing in the next committee of referral.

4:27:48 PM

REPRESENTATIVE GATTO moved to report HB 200 out of committee with individual recommendations and the accompanying fiscal notes.

CHAIR OLSON objected.

4:29:16 PM

A roll call vote was taken. Representatives Gardner, Gatto, Neuman, and LeDoux voted in favor of moving HB 200 out of committee with individual recommendations and the attached fiscal notes. Representatives Ramras, and Olson voted against it. Therefore, HB 200 was reported out of the House Labor and Commerce Standing Committee by a vote of 4-2.

REPRESENTATIVE NEUMAN explained that he voted yes because although he had supported Version M because of its clarification, he did not want to hold up the bill in committee.

#### **ADJOURNMENT**

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:32 p.m.