

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

January 24, 2007

1:33 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Charlie Huggins
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Gene Therriault

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 5

"An Act relating to reporting of certain crimes."

HEARD AND HELD

SENATE BILL NO. 19

"An Act relating to a public officer's taking official action regarding a matter in which the public officer has a financial interest; and defining 'official action' under the Alaska Executive Branch Ethics Act and related law."

MOVED CSSB 19(JUD) OUT OF COMMITTEE

SENATE BILL NO. 20

"An Act relating to disclosure to the Alaska Public Offices Commission of information about certain income received as compensation for personal services by legislators, public members of the Select Committee on Legislative Ethics, and legislative directors subject to the Legislative Ethics Act; and providing for an effective date."

MOVED CSSB 20(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 5

SHORT TITLE: FAILURE TO REPORT CRIMES

SPONSOR(s): SENATOR(s) MCGUIRE

01/16/07 (S) PREFILE RELEASED 1/5/07

01/16/07 (S) READ THE FIRST TIME - REFERRALS

01/16/07 (S) JUD, FIN
01/24/07 (S) JUD AT 1:30 PM BUTROVICH 205

BILL: SB 19

SHORT TITLE: EXEC. BRANCH ETHICS:INTERESTS & ACTIONS

SPONSOR(s): SENATOR(s) FRENCH, ELTON, MCGUIRE, WIELECHOWSKI,
THOMAS, HUGGINS

01/16/07 (S) PREFILE RELEASED 1/5/07
01/16/07 (S) READ THE FIRST TIME - REFERRALS
01/16/07 (S) JUD, STA, FIN
01/22/07 (S) JUD AT 1:30 PM BELTZ 211
01/22/07 (S) Heard & Held
01/22/07 (S) MINUTE(JUD)

BILL: SB 20

SHORT TITLE: LEGISLATIVE DISCLOSURES

SPONSOR(s): SENATOR(s) FRENCH, ELTON, MCGUIRE, WIELECHOWSKI,
THOMAS, HUGGINS

01/16/07 (S) PREFILE RELEASED 1/5/07
01/16/07 (S) READ THE FIRST TIME - REFERRALS
01/16/07 (S) JUD, STA, FIN
01/22/07 (S) JUD AT 1:30 PM BELTZ 211
01/22/07 (S) Heard & Held
01/22/07 (S) MINUTE(JUD)

WITNESS REGISTER

Anne Carpeneti, Assistant Attorney General
Criminal Division
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Answered questions regarding SB 5

Rick Svobodny, Chief Assistant Attorney General
Criminal Division
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Answered questions regarding SB 5

Lisa Sommer
Violent Crime Victim's Mother
No address provided

POSITION STATEMENT: Supported SB 5

Kathy Hansen
Alaska Office of Victims Rights
1007 West 3rd Avenue, Suite 205
Anchorage, AK 99501
POSITION STATEMENT: Supported SB 5

Gerad Godfrey
Office of Violent Rights Compensation Board
P.O. Box 111200
Juneau, AK 99811
POSITION STATEMENT: Supported SB 5

Daniel Wayne
Legal and Research Services Division
Legislative Affairs Agency
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Answered questions regarding SB 20

ACTION NARRATIVE

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at [1:33:58 PM](#). Present at the call to order were Senators Gene Therriault, Charlie Huggins, Lesil McGuire, Bill Wielechowski, and Chair Hollis French.

SB 5-FAILURE TO REPORT CRIMES

[1:34:22 PM](#)

CHAIR HOLLIS FRENCH announced the consideration of SB 5.

SENATOR LESIL MCGUIRE, Sponsor of SB 5, thanked Chair French for the work he had done on the bill, which included discussions with Kiva's mother. Providing background information, she explained that in 1999 former Senator Drue Pearce introduced a bill to require mandatory reporting of violent crimes against children. Due to controversy at the time, reporting violent crimes against adults was not included.

In 2005 Senator McGuire requested a summary of what other states do, and she learned that about 10 states have mandatory reporting requirements for violent crimes. The descriptions vary from state to state, but they all stem from heinous crimes that caused community members to say that they wanted citizens to have the additional duty to report when they witness violent crimes.

SB 5 would amend AS 11.56.765 to include adults and children in every case. It would be a crime for someone to witness and fail to report: 1) murder or attempted murder, 2) kidnapping or attempted kidnapping, 3) sexual penetration or attempted sexual penetration: a) without the consent of the person, b) if the person is mentally incapable, c) if the person is incapacitated or, d) if the person is unaware that a sexual act is being committed.

The current language referencing age is removed, but the language about reporting in a timely manner is unchanged. Senator McGuire explained that Section 3 of CSSB 5, Version M would make it a class C felony for failure to report a violent crime. [Version M committee substitute was distributed but not formally adopted.]

SENATOR MCGUIRE said she and Chair French discussed an amendment to make it a felony for an unclassified crime and a misdemeanor in the other cases. Stating agreement with Kiva's mother she said that failure to report heinous crimes ought to carry a penalty that has teeth. It could be argued that if it's not an unclassified felony, then the serious felony penalty shouldn't apply. That discussion can come later, she said.

SENATOR MCGUIRE mentioned a recent conversation she had with the Department of Law regarding a citizen's obligation. She noted that someone made the observation that in 500 years of English law, there has never been the requirement for citizen bystanders to report crimes. The consequence of that is that citizens don't believe it's their job to respond. We accept the privileges of being a citizen of the United States and a citizen of Alaska and some obligations come with those privileges, she said. One of those obligations is to look around and respond if you witness something as heinous as what happened to Kiva Friedman and if you don't, that is an affront to our community. Responding to others when they are in need is the spirit of this bill.

1:40:17 PM

SENATOR GENE THERRIAULT recalled that during the debate on Senator Pearce's bill there was discussion about a person's right to not self-incriminate. He asked if she had had discussions with DOL regarding situations in which a person is a party to the crime so his or her call to authorities could be self-incriminating.

SENATOR McGUIRE said the right to not self-incriminate is the most difficult issue, but DOL also raised the question about whether reporting a crime opens an argument for immunity. It will be complex and DOL is looking at ways to improve the bill, she said.

Other states have said that there might be a defense that says that if reporting would bring immediate physical harm to you or your family, then you don't have the obligation to report. That's a good argument and the only defense she would be amenable to, she stated.

CHAIR FRENCH noted that a couple of affirmative defenses can already be found in AS 11.56.765. One defense is that the person reasonably believed that reporting would risk exposure to physical injury. For instance, a child might not report one parent committing domestic violence against the other parent. Another affirmative defense is if a person acts to stop the crime then there is no duty to report that he or she witnessed something. SB 5 would not affect those affirmative defenses.

SENATOR THERRIAULT asked if either touches on the issue of self-incrimination.

CHAIR FRENCH said his view is that it is a catch 22 that has not been resolved. It's an issue that would be good to get on the record because there are classic cases, such as Kiva's, where the law does apply, but there are some cases where that tool would not be used.

SENATOR THERRIAULT asked if a person who is a partner to a crime would have immunity if he or she were to report the incident.

CHAIR FRENCH said ultimately the person who commits the crime will never be the target of this particular charge.

SENATOR THERRIAULT clarified he was talking about an accomplice.

CHAIR FRENCH responded the same argument would apply. If a murder is committed in the course of a bank robbery, an accomplice would be charged with bank robbery, but not failure to report.

[1:45:29 PM](#)

SENATOR WIELECHOWSKI added that a piece of legislation can not trump the constitution. A person would not lose their Fifth Amendment rights if this bill were to pass.

SENATOR McGUIRE said it's simply a tool for prosecutors and sometimes the decision may be against bringing a case.

CHAIR FRENCH agreed.

SENATOR HUGGINS expressed the concern that the bill won't necessarily make good citizens.

[1:47:21 PM](#)

SENATOR McGUIRE said it will send a message and serve as a method of punishing those who choose to turn a blind eye in cases that could save a life. The crimes that are included are narrow and easy to identify. The notion is that if someone is in a serious physical situation then a witness or bystander should pick up the phone.

SENATOR WIELECHOWSKI referenced page 2, subparagraph (D) relating to the assault of a person. He questioned how that section might apply to a bystander witness who does not stop and report a drunk driver who has crashed into someone else.

SENATOR McGUIRE replied that isn't the target, but if a reasonable person sees that a drunk driver caused serious injury to another person she would hope that person would call for help.

CHAIR FRENCH added that to be prosecuted the person would need to know that there had been a car accident and that someone had sustained serious physical injury. Depending on the circumstances there could be a righteous prosecution, but the ultimate check is the discretion of the prosecution and the jury.

[1:50:55 PM](#)

SENATOR THERRIAULT asked if the existing statutory language regarding reporting in a "timely manner" is a term of art and what it might allow. He asked if waiting three or four days before making a report would be timely.

[1:52:03 PM](#)

SENATOR McGUIRE said she didn't see that mentioned during the debate surrounding Senator Pearce's bill and she isn't sure that phrase was chosen, but waiting three or four days to report rape and sodomy would certainly not be timely. The word "immediate" does raise the question of a person's duty. Language that would improve the bill is welcome, she said.

SENATOR THERRIAULT asked DOL to interpret the phrase.

CHAIR FRENCH asked Ms. Carpeneti to interpret the meaning of "timely manner" in the context of the statute.

1:53:53 PM

ANNE CARPENETI, Assistant District Attorney, Criminal Division, Department of Law, (DOL) said it is unusual to see those words in criminal statute. She did not recall whether or not they were discussed when the law was originally enacted. The terms aren't as clear as you would hope if you were prosecuting a criminal case, she stated.

SENATOR THERRIAULT suggested the committee consider changing the terms if they are unclear or poorly defined.

MS. CARPENETI said she would like to review the bill history because she would expect to see the terms in a civil statute rather than a criminal statute.

SENATOR WIELECHOWSKI asked if there is a more applicable term from a criminal perspective.

MS. CARPENETI said she would like some time to review the issue before giving a suggestion.

SENATOR McGUIRE read the following Senate Judiciary minutes from February 24, 1999:

Senator Ellis asked how the new requirement for "timely" reporting in the bill would compare with the previous requirement for immediate reporting. Senator Donley observed that the requirement for timely reporting allows for a more flexible application. Ms. Carpeneti agreed.

SENATOR THERRIAULT suggested that Ms. Carpeneti find out if that terminology has posed any problem.

MS. CARPENETI responded the term "immediate" is probably even more problematic. The idea is for a person to call the police as soon as is safely possible.

SENATOR McGUIRE said the idea is to find a word that reasonably falls between "immediate" and so much later that the call is not relevant.

MS. CARPENETI said the terms "timely manner" are current language and to her knowledge they have not been interpreted in a court case.

CHAIR FRENCH added that ultimately it would be a prosecutor and a jury decision as to what would constitute "timely."

MS. CARPENETI mentioned the constitutional responsibility to not make something vague.

CHAIR FRENCH asked Mr. Svobodny whether the current statute has been used to prosecute someone for not reporting a crime against a child.

[1:58:28 PM](#)

RICK SVOBODNY, Chief Assistant Attorney General, Criminal Division, Department of Law, advised that the statute has never been used.

CHAIR FRENCH hypothetically queried whether charges would have been brought against the three men in Kiva's case had this bill been in statute.

MR. SVBODNEY said he was not in a position to answer, but the prosecutor commented that the three men were cooperative. Bringing charges under this statute could have resulted in tactical problems at trial because the men may have claimed Fifth Amendment privilege and demanded immunity.

MR. SVBODNEY referenced the issue of timeliness and suggested the committee look at language under the requirement to report an auto accident. It has language about reporting immediately and in a manner that is safe for the person who is reporting.

SENATOR THERRIAULT noted that states with similar laws use the terms "immediately", "reasonably practical", and "reasonably possible".

CHAIR FRENCH opened public testimony.

[2:01:56 PM](#)

LISA SOMMER, victim's mother, told the committee she was representing her daughter, Kiva Friedman, who was brutally murdered on April 26, 2003 by Jerry McClain. She related that three other people, all of whom knew Kiva, could have helped her or could have reported the crime, but they did nothing.

According to Alaska law they did not commit a crime, but this is wrong, she asserted. When a person has knowledge that a felony is being committed he or she should be obliged to report it. She emphasized that that should be in the bill somehow.

MR. SOMMER read page 2 of the Victim's Impact Statement that told about her daughter's decision to move to Alaska. Her career was moving forward, she bought her first house, she made new friends, and her artistic endeavors were expanding. Tragically, her daughter's life was cut short by a man who had none of her qualities.

MS. SOMMER said Jerry McClain murdered her daughter directly, but the three men who arrived at the crime scene and did nothing murdered her indirectly. She emphasized that someone who has knowledge of a felony having to do with torture, abuse, rape or assault should have the duty to report. The fact that the men had no such responsibility is criminal in its own right and that should be changed. Jerry McClain's brother, Jesse, knew Kiva so this was more than a Good Samaritan civic duty violation; this was more like the federal misprision of a felony type violation, she said. She urged the committee to pass the bill to help protect women and children in particular and to consider using the words "knowledge of a felony" and "deliberate omission to report." The fact that the victim is known is important, she said.

In conclusion she read her poem, Mother's Pledge. A copy may be found in the bill file.

CHAIR FRENCH thanked Ms. Sommer for her testimony.

2:15:04 PM

KATHY HANSEN, Staff Attorney and Interim Director, Alaska Office of Victims' Rights, reported that she worked with Ms. Sommer during the criminal prosecution of Jerry McClain. She explained that the bill the Alaska Legislature passed in 1999 arose from a Nevada murder case where a friend of the perpetrator witnessed the crime and did nothing to report. Kiva Friedman's case is similar and there is some probability she would still be alive had any of the witnesses called the police, she said. Furthermore, her death might not have occurred if this law had passed in 1999.

MS. HANSEN said it's important that laws reflect a society's morals and there is no question that what the bystanders did in Kiva's case was morally wrong. SB 5 would serve an educational

function that could prevent further deaths and help solve crimes.

Passing SB 5 would provide an effective tool for prosecutors even if it's used infrequently. It would give prosecutors the discretion to prosecute offenders like Jerry McClain's friends; it would provide a fallback for prosecutors when the evidence is insufficient to prosecute; and it would help prosecutors in general because witnesses would know that coming forward is required.

MS. HANSEN said *United States vs. Weekly* gives insight into the Fifth Amendment problems. The court held that if the person lies when giving information, then there is no Fifth Amendment protection and any information that is given would not be protected as privileged. She emphasized that it must be clear that a defendant does not have an obligation to report if doing so would violate the privilege against self-incrimination. If that exception is included then there would be no forced immunity.

Referencing the obligation to report a car accident, she said that if the purpose of the law is to educate the public then attaching a misdemeanor or small fine to not reporting is okay.

MS. HANSEN suggested establishing an exception if the witness reasonably believes the crime has already been reported or if they are unable to report due to a duty to another, such as a small child.

With regard to timeliness she suggested the language include, "a timely manner concerning the circumstances of the crime." Also, she suggested including a definition for objectivity to make it clear that what the prosecutor is proving and what the court or jury is looking at is that the person knew or should have known about the timely manner for reporting. Finally, there should be an objective standard that the defendant knew or should have known that a violent crime was occurring and that it should be reported. That would eliminate the question about what the person subjectively believed.

[2:23:04 PM](#)

SENATOR WIELECHOWSKI asked if she had recommended a provision about excluding self incrimination.

MS. HANSEN said yes, but Patricia Young's 1/17/07 legal opinion came out subsequent to the pre-filed bill. She suggested the

committee allow the Department of Law time to review the opinion and consider whether or not a better model might apply.

SENATOR WIELECHOWSKI asked if she had an opinion about whether prosecutions would be more difficult if the duty to assist was in statute.

MS. HANSEN replied she believes the model in the packet is appropriate and she is convinced it's not unusual to have a duty to assist in appropriate situations. She read from the model:

My interest in testifying is to protect crime victims, but as a citizen I think there are situations where it may not be clear that there is a crime but it would be clear that someone is in need of help.

MS. HANSEN asked the committee to consider changing the statute to reflect the model language to apply to emergency situations where an objective and reasonable person would consider that a victim is in need of assistance to prevent imminent or perceived imminent danger of physical harm.

SENATOR WIELECHOWSKI commented he could envision situations in remote locations in particular, where calling might not be feasible but assisting would be possible.

MS. HANSEN mentioned the example of a disabled car in below zero temperatures where no one will stop to offer help. She emphasized that if you see someone in that kind of situation and you don't have a cell phone to call for help, then you ought to pull over. Furthermore, there should be a penalty for not stopping because the consequence of not doing so can be very serious.

[2:26:56 PM](#)

SENATOR HUGGINS mentioned an abusive video clip that was posted on MySpace and commented that we have a youthful culture that views that sort of activity as recreational. He questioned the affect this law would have in that kind of situation.

CHAIR FRENCH said when a scuffle or shoving incident segues into something more serious, it's appropriate to place a duty to report on bystanders.

SENATOR HUGGINS mentioned the confrontation at an Anchorage football field where there was shooting. He didn't know how many witnesses there were or how many people called the police.

CHAIR FRENCH said he supports an exception to the duty to report if you reasonably believe the crime has already been reported.

2:30:00 PM

GERAD GODFREY, Chairman, Alaska Violent Crimes Compensation Board, read a response letter to the editor he wrote several years ago about the duty to report a violent crime and specifically the Kiva Friedman murder. He highlighted that although the crime itself was despicable, the fact that three other men were aware of the crime and did nothing to help the suffering woman was comparably depraved. Technically the three men weren't accomplices, but it's deplorable when citizens could act and they choose not to. When one enjoys the benefits of living in a civilized society there is a civic duty to comport with a minimum standard of decency. Furthermore, this civic duty ought to be largely non-negotiable. In a free society obligatory legislation offers a fine line to tread, but for the welfare of society it warrants treading, he said.

MR. GODFREY related his extensive experience with victims of violent crime. More often than you'd expect someone was privy to the violence that was perpetrated yet elected not to intervene by simply notifying the police. He expressed the opinion that in civilized society there is no excuse for that. He applauded Ms. Sommer for sharing her story and perusing this legislation so there won't be other cases such as Kiva's.

2:33:08 PM

MR. GODFREY referenced the movie "Schindler's List" that chronicles Oscar Schindler's efforts to save about 1,200 Jewish people from concentration camps and said what he did was exceptional. This legislation doesn't ask citizens to do anything exceptional at all. It would simply require what is akin to common civic decency.

MR. GODFREY said the bill treads a fine constitutional line in that it would impart a duty to act when there is no previous duty. Comparing failure to report a violent crime with the criminal act of failing to file an income tax form, he said it's easier to call the authorities than to file a tax return. However, the morality of the two issues is chasms apart. Omission to act with regard to filing a tax return doesn't result in suffering and death, but omission to act in instances like Kiva Friedman's makes a difference in whether or not a life is saved.

Kiva died of injuries that could have been treated had the three men called for assistance when they became privy to what was happening. However, it's not just Kiva's survival to consider it's also the reverberating impact to the secondary victims - husbands, wives, and children - whose lives are destroyed. He encouraged the committee and the Legislature as a whole to maintain focus on those victims as well.

[2:37:09 PM](#)

CHAIR FRENCH found no questions or further testimony and closed public testimony on SB 5 He recapped three areas that need further attention: the timeliness issue, the exception for the reasonable belief that the crime has already been reported, and severity - unclassified versus other felony level crimes.

CHAIR FRENCH held SB 5 in committee.

At ease from [2:38:03 PM](#) to [2:45:11 PM](#)

SB 19-EXEC. BRANCH ETHICS:INTERESTS & ACTIONS

CHAIR HOLLIS FRENCH announced the consideration of SB 19 and reminded members that CSSB 19, Version M, was before the committee. He numbered the proposed amendments 1-6.

[2:45:19 PM](#)

SENATOR CHARLIE HUGGINS motioned to adopt Amendment 1, labeled 25-LS0160\M.1, as follows:

A M E N D M E N T 1

Page 1, line 1, following "**regarding**":
Insert "**, or influencing,**"

Page 1, line 6, following "officer's":
Insert "action or influence with respect to the officer's"

CHAIR FRENCH explained that the amendment makes two changes the first of which is a slight change to the title. The second is a grammatical clarification indicating that it's the action or influence that is the violation.

Amendment 1 was adopted without objection.

SENATOR HUGGINS motioned to adopt Amendment 2, labeled 25-LS0160\M.2, as follows:

A M E N D M E N T 2

Page 1, line 7:

Delete "the outcome of"

Page 1, line 10:

Delete "matter's outcome"

Insert "matter"

CHAIR FRENCH restated the changes and noted that Senator Therriault looked quizzical.

SENATOR GENE THERRIAULT questioned removing the word "outcome."

CHAIR FRENCH responded it didn't strike him as a substantive change.

Amendment 2 was adopted without objection

[2:49:25 PM](#)

SENATOR HUGGINS motioned to adopt Amendment 3, labeled 25-LS0160\M.3, as follows:

A M E N D M E N T 3

Page 2, line 1:

Delete "and"

Insert "or"

CHAIR FRENCH explained that the drafters opined that the word "and" is confusing in this context.

SENATOR THERRIAULT asked if subparagraph (C) didn't sweep in subparagraph (B) and make it unnecessary.

CHAIR FRENCH advised that (B) relates to a personal interest and (C) relates to a financial interest.

SENATOR THERRIAULT asked about a separate definition for "personal interest."

CHAIR FRENCH said the definition was read into the record during the last hearing.

SENATOR THERRIAULT agreed.

Amendment 3 was adopted without objection.

SENATOR HUGGINS motioned to adopt Amendment 4, labeled 25-LS0160\M.7, as follows:

A M E N D M E N T 4

Page 2, line 5, following "business":

Insert "and the controlling interest has a fair market value of \$5,000 or more"

CHAIR FRENCH explained that this addresses the issue of the worth of a business that someone has an interest in. He mentioned the lemonade stand example and said it doesn't matter if someone has a controlling interest in the business if it is of relatively little value. The \$5,000 standard was selected because it is used elsewhere in the bill.

CHAIR FRENCH restated (C)(i) and questioned whether the amendment shouldn't read "\$5,000 or less" instead of "\$5,000 or more." Several committee members voiced agreement and the Chair proposed to change "or more" to "or less" on line 2. There was no objection.

Amendment 4, as amended, was adopted without objection.

[2:54:01 PM](#)

SENATOR HUGGINS motioned to adopt Amendment 5, labeled 25-LS0160\M.5, as follows:

A M E N D M E N T 5

Page 2, line 8, following "total":

Insert "fair market"

Page 2, line 10, following the second occurrence of "the":

Insert "fair market"

Page 2, line 11, following "total":

Insert "fair market"

CHAIR FRENCH explained that this captures the concern Senator Therriault expressed at the previous hearing regarding valuing business interests.

Amendment 5 was adopted without objection.

SENATOR HUGGINS motioned to adopt Amendment 6, labeled 25-LS0160\M.6, as follows:

A M E N D M E N T 6

Page 2, line 14:
Delete "elected"

CHAIR FRENCH explained that an officer in a business is precluded from taking official action on behalf of that business while he or she is employed as an executive branch employee. It doesn't matter whether the officer is elected or not.

Amendment 6 was adopted without objection

SENATOR WIELECHOWSKI asked the committee to reconsider the amendment to Amendment 4 because the term really should be "more."

CHAIR FRENCH called a brief at-ease and reconvened the meeting at [2:57:04 PM](#).

CHAIR FRENCH brought Amendment 4 back before the committee and restated the original version as follows:

Page 2, line 5, following "business":
Insert "and the controlling interest has a fair market value of \$5,000 or more"

Amendment 4 was adopted without objection

Finding no further questions or amendments Chair French asked for the will of the committee.

SENATOR LESIL McGUIRE motioned to report CSSB 19, as amended, from committee with individual recommendations and attached zero fiscal note(s). There being no objection, CSSB 19(JUD) moved from the Senate Judiciary Committee.

CHAIR FRENCH called a brief recess.

SB 20-LEGISLATIVE DISCLOSURES

[3:00:41 PM](#)

CHAIR HOLLIS FRENCH announced the consideration of SB 20.

SENATOR CHARLIE HUGGINS motioned to adopt Amendment 1, labeled 25-LS0161\E.1, as follows:

Amendment 1

Page 2, line 3:

Delete "a dividend"

Insert "dividend income in excess of \$1,000"

CHAIR FRENCH said the amendment clarifies that the dividend received also has to be in excess of \$1,000 in order for there to be a reporting requirement. "If you get a \$50 dividend, \$500 dividend, you don't have to report it, just like your income. But if the dividend is over \$1,000, then, just like your income, you have to report the name and address of the source of the income."

Amendment 1 was adopted without objection.

3:01:46 PM

CHAIR FRENCH questioned the reporting requirements in SB 20. He asked if lines 2-5 would require a doctor to report patient names.

DANIEL WAYNE, Counsel, Legislative Legal, said there is a superseding law to protect patient confidentiality. He said he thinks that it is called HIPAA [Health Insurance Portability and Accountability Act of 1996].

CHAIR FRENCH surmised that a doctor will not be required to report patient names.

MR. WAYNE said he doesn't think it is necessary to describe every exception like that one. Under HIPAA, a federal law, a doctor is prohibited from disclosing patient names. "I think that courts interpret laws in a way that's reasonable to avoid those kinds of ridiculous outcomes."

3:04:02 PM

SENATOR LESIL MCGUIRE said there are some ridiculous outcomes, but there is a tremendous amount of misunderstanding in this area of the law. The law will also apply to spouses and children, she noted. She said she would like to see guidelines making the provision very clear. Not everyone will know about the exceptions that supersede the law. Certain attorneys have talked about the reporting provision hindering their ability to

practice law, and she gave examples of divorce and custody cases. Perhaps the drafter could provide an addendum listing the exclusions, she said.

MR. WAYNE suggested including: "except as prohibited by other laws." It would be difficult to find all exceptions. The Select Committee on Legislative Ethics has dealt with some of the exceptions, including coming out with the opinion that attorneys must reveal the names of their clients. He said he could provide a partial list.

CHAIR FRENCH suggested that Senator McGuire may be dealing with the wording in her committee.

[3:06:54 PM](#)

SENATOR GENE THERRIAULT said the duty is to make a good faith effort to get the information from spouses, "but if they refuse to give it to you, you've done what you can." He said he controls his own actions and not the actions of his wife or the partners in her law firm.

CHAIR FRENCH said "amen."

SENATOR THERRIAULT said sometimes he has been able to get that information and sometimes not. "I have a duty, though, to make a good faith effort to get it."

SENATOR BILL WIELECHOWSKI asked for an elaboration on the opinion regarding attorney reporting requirements. There has been a requirement, but the bill expands it to include hours and income received, and whether there is attorney/client privilege involved.

MR. WAYNE said he didn't have the details but he could provide them. He recalled that lawyers working as legislators had to disclose their client list. He noted that one legislator disclosed a lot of clients and a brief description of the type of work involved.

[3:09:42 PM](#)

CHAIR FRENCH said his understanding is that SB 20 does not require a lengthy description of the work an attorney is doing, because it is under a professional license.

MR. WAYNE read: "a sufficient description to make clear to a person of ordinary understanding."

CHAIR FRENCH said that is followed by an "unless" clause.

MR. WAYNE said yes. It is followed with: "unless those services require the issuance of a state or federal professional license." He added that an attorney could argue he or she didn't need to give a description because a state license is required.

CHAIR FRENCH said he didn't think there was any intent to lessen reporting requirements. "The idea is to heighten them with respect to folks that don't have those licenses." He added that the "unless" clause only pertains to "with sufficient description to make clear to a person of ordinary understanding." It does not modify the nature of the services performed.

MR. WAYNE said that for a lawyer disclosing the name of a client, a person of ordinary understanding could probably deduce that legal services are being provided. Another person who provides a service that doesn't require the issuance of a state or federal professional license will need more description of what services are being performed.

3:12:08 PM

SENATOR MCGUIRE said she will offer an amendment to strike "unless those services require the issuance of a state or federal license" for the reason that the law ought to apply to all. "I don't think that we can make the kind of leaps that we used to that if you are a lawyer, by definition, you are doing legal services, or if you are a real estate agent, by definition, you are doing that." The license doesn't mean that that is the service being supplied. "Go ahead and take on that obligation--we all will--to describe what it is you're doing."

MR. WAYNE said he wasn't arguing one way or another, but was relaying the rationale for the language in the bill.

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SENATOR THERRIAULT said he was stuck on the same thing and agreed with Senator McGuire that it may be a loophole. He said the language could be construed as getting out of the disclosure requirement for anyone with a license.

SENATOR HUGGINS questioned why there should be an exception for a concert promoter. He asked if a legislator who is a family practice lawyer who goes before state agencies is on a higher playing field.

CHAIR FRENCH said it is a thorny issue.

SENATOR WIELECHOWSKI said his concern, as an attorney, is that sometimes people don't want the nature of their business disclosed, putting the lawyer in a "very precarious position." He expressed concern regarding striking the aforementioned language.

SENATOR HUGGINS said an attorney might need a disclaimer telling clients that a legislator needs to make the disclosure.

CHAIR FRENCH said it may restrict the practices of some legislators.

SENATOR MCGUIRE offered Amendment 2 as follows:

Page 2, line 8-9, delete **"unless those services require the issuance of a state or federal business license"**.

Page 2, lines 24-25, delete.

SENATOR THERRIAULT offered a friendly amendment to Amendment 2 to also delete line 23 on page 2.

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SENATOR WIELECHOWSKI objected. He said that he didn't think the type of law he practices will be impacted by the bill, but private attorneys, accountants, and physicians could make their clients unhappy.

SENATOR MCGUIRE said she doesn't disagree, but the ethics opinion will already require that. The amendment is intended to keep from muddying the water. "As Senator French said, he only wants it to apply to the description of services performed, so it's not really a wholesale exception anyway, but I think there's confusion about whether it is or isn't. We know it isn't. The law is already just what you said, and I think it does require some discussion at some point about what kind of privileges we'll allow. But this Amendment simply requires a description the way you do. And that way it's clear. That way nobody has to wonder, 'am I licensed or not?'" She said it applies to everybody equally.

A roll call vote was taken on Amendment 2. Senators McGuire, French, Therriault, and Huggins voted in favor of the amendment and Senator Wielechowski voted against it. Therefore, Amendment 2, as amended, was adopted.

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CHAIR FRENCH noted the amount of income on line 12 of SB 20. He said this is a new requirement. He said he is a landlord with 24 tenants, and he has had to supply a list of those names, but now he will have to disclose the amount of money as well. It could become onerous, he said, and asked if it is meant to be a "to-the-penny calculation," or only within \$100.

MR. WAYNE said it would be interpreted through a filter of what is reasonable. If a landlord knew the exact amount, it should be reported. If it involves numerous adjustments, calculations and judgment, then it would need to be reasonable.

SENATOR McGUIRE said she agreed, but there is room for mischief. She gave a hypothetical situation of a legislator giving a deep discount to renters in his or her district.

SENATOR McGUIRE moved SB 20, as amended, with attached fiscal notes from committee with individual recommendations. There being no objection, CSSB 20(JUD) moved from the Senate Judiciary Committee.

There being no further business to come before the committee, Chair French adjourned the meeting at [3:23:45 PM](#).