

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

March 16, 2009
8:03 a.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 2

"An Act relating to the issuance of a certificate of birth resulting in a stillbirth."

- MOVED CSHB 2(HSS) OUT OF COMMITTEE

HOUSE BILL NO. 152

"An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; providing for an effective date by repealing the effective date of sec. 33, ch. 122, SLA 1977; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 101

"An Act exempting the full value of life insurance and annuity contracts from levy to satisfy unsecured debt, and amending the description of earnings, income, cash, and other assets relating to garnishment of life insurance proceeds payable upon the death of an insured."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 2

SHORT TITLE: BIRTH CERTIFICATE FOR STILLBIRTH
SPONSOR(S): REPRESENTATIVE(S) GATTO

01/20/09 (H) PREFILE RELEASED 1/9/09
01/20/09 (H) READ THE FIRST TIME - REFERRALS
01/20/09 (H) HSS, JUD
02/26/09 (H) HSS AT 3:00 PM CAPITOL 106
02/26/09 (H) Heard & Held
02/26/09 (H) MINUTE(HSS)
03/12/09 (H) HSS AT 3:00 PM CAPITOL 106
03/12/09 (H) Moved CSHB 2(HSS) Out of Committee
03/12/09 (H) MINUTE(HSS)
03/13/09 (H) HSS RPT CS(HSS) 4DP 2NR
03/13/09 (H) DP: LYNN, SEATON, COGHILL, KELLER
03/13/09 (H) NR: CISSNA, HERRON
03/16/09 (H) JUD AT 8:00 AM CAPITOL 120

BILL: HB 152

SHORT TITLE: 2009 REVISOR'S BILL
SPONSOR(S): RULES BY REQUEST OF LEGISLATIVE COUNCIL

02/25/09 (H) READ THE FIRST TIME - REFERRALS
02/25/09 (H) JUD
03/16/09 (H) JUD AT 8:00 AM CAPITOL 120

BILL: HB 101

SHORT TITLE: EXEMPTIONS: LIFE INSURANCE; ANNUITIES
SPONSOR(S): COGHILL

01/30/09 (H) READ THE FIRST TIME - REFERRALS
01/30/09 (H) L&C, JUD
02/18/09 (H) L&C AT 3:15 PM BARNES 124
02/18/09 (H) Moved Out of Committee
02/18/09 (H) MINUTE(L&C)
02/20/09 (H) L&C RPT 3DP 3NR
02/20/09 (H) DP: LYNN, CHENAULT, COGHILL
02/20/09 (H) NR: BUCH, HOLMES, OLSON
03/02/09 (H) JUD AT 1:00 PM CAPITOL 120
03/02/09 (H) Heard & Held
03/02/09 (H) MINUTE(JUD)
03/16/09 (H) JUD AT 8:00 AM CAPITOL 120

WITNESS REGISTER

SANDRA WILSON, Staff
Representative Carl Gatto
Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented HB 2 on behalf of the sponsor, Representative Gatto.

MICHELLE HOYT

Wasilla, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 2, and asked the committee to support the bill.

KATHRYN KURTZ, Assistant Revisor
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency (LAA)
Juneau, Alaska

POSITION STATEMENT: Speaking as the assistant revisor, presented HB 152 on behalf of the Senate Rules Standing Committee, sponsor by request of Legislative Council.

AMANDA MORTENSEN, Intern
Representative John Coghill
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 101 on behalf of the sponsor, Representative Coghill.

DENNIS BAILEY, Attorney
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency (LAA)
Juneau, Alaska

POSITION STATEMENT: Spoke as the drafter during discussion of HB 101.

LINDA HULBERT, Agent
New York Life Insurance Company
Fairbanks, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 101.

ACTION NARRATIVE

[8:03:14 AM](#)

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at 8:03 a.m. Representatives Ramras, Lynn, Dahlstrom, Coghill, and Gatto were present at the call to order.

Representatives Gruenberg and Holmes arrived as the meeting was in progress.

HB 2 - BIRTH CERTIFICATE FOR STILLBIRTH

8:03:29 AM

CHAIR RAMRAS announced that the first order of business would be HOUSE BILL NO. 2, "An Act relating to the issuance of a certificate of birth resulting in a stillbirth." [Before the committee was CSHB 2(HSS).]

8:03:55 AM

SANDRA WILSON, Staff, Representative Carl Gatto, Alaska State Legislature, explained that HB 2 is intended to bring closure to parents grieving over the loss of a stillborn child by providing them with the option of obtaining a birth certificate for their stillborn child, thereby validating their loss. Currently, she relayed, 26 states offer such an option, and 7 other states are considering legislation similar to HB 2.

REPRESENTATIVE GATTO, speaking as the sponsor of HB 2, mentioned that back when the sponsor statement was written, only 25 states offered such an option.

CHAIR RAMRAS noted that during the Twenty-Fifth Alaska State Legislature, legislation similar to HB 2 passed out of the House Judiciary Standing Committee.

REPRESENTATIVE LYNN asked whether HB 2 differs from that past legislation.

MS. WILSON said that [CSHB 2(HSS)] no longer uses the term "stillborn"; only uses the term "stillbirth"; and uses definitions already in statute.

REPRESENTATIVE GATTO characterized the issuance of a certificate of birth resulting in stillbirth as a gift to grieving parents.

8:06:15 AM

MICHELLE HOYT relayed that she gave birth to her daughter, Haley Inez (ph), on March 30, 2004, and that although her daughter was born dead, she still had to go through the birthing process, and do so while also going through the grieving process; unfortunately, the State would only acknowledge that her

daughter died on that day, and not that she was also born on that day. "How can you have a death certificate without a birth certificate?" she asked, pointing out that she had to experience the birthing process, her milk drying up, pregnancy-related weight gain, depression, going home without a child, making funeral arraignments, and paying all the same hospital bills associated with having a child. She asked the committee to support HB 2 in order that it may help bring closure to many grieving parents by having the State acknowledge that their stillborn children were actually born, that they were human beings brought into the world just like all other children; regardless that such grieving will never truly end, at least parents will have what she characterized as a "positive" piece of paper about their lost children.

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on HB 2.

[8:07:41 AM](#)

REPRESENTATIVE DAHLSTROM moved to report [CSHB 2(HSS)] out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 2(HSS) was reported from committee.

HB 152 - 2009 REVISOR'S BILL

[8:08:02 AM](#)

CHAIR RAMRAS announced that the next order of business would be HOUSE BILL NO. 152, "An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; providing for an effective date by repealing the effective date of sec. 33, ch. 122, SLA 1977; and providing for an effective date."

The committee took an at-ease from 8:08 a.m. to 8:09 a.m.

[8:09:44 AM](#)

KATHRYN KURTZ, Assistant Revisor, Legislative Legal Counsel, Legislative Legal and Research Division, Legislative Affairs Agency (LAA), explained that the revisor's bill, HB 152, is designed to address conflicts, obsolete provisions, and deficiencies in current statute, and that none of its provisions are intended to effect substantive changes in statute. She noted that members' have a sectional analysis in their packets.

MS. KURTZ, in response to a question, indicated that the provisions that address statutory references to federal laws which have been altered are all intended to make the statutes more useful to the reader; for example, it is not helpful to the reader when he/she finds a statutory reference to a provision of federal law that no longer exists, and so the bill aims to point the reader to useful information as opposed to obsolete information.

REPRESENTATIVE COGHILL expressed concern that some of the changes in federal law were substantive.

MS. KURTZ, in response to questions regarding Section 1 and Section 53, assured the committee that the revisor's bill is not proposing to restructure the placement of the statutes pertaining to the division of agriculture. In response to a comment, she concurred that the revisor's bill is not intended to make policy changes or substantive changes to law.

REPRESENTATIVE GRUENBERG, noting that AS 01.05.006 references a publishing company that no longer publishes the statutes, questioned whether that statute ought to be updated.

MS. KURTZ explained that it's not necessary to do so because that statute is simply referencing the company that published the bulk formal revisions of the statutes at around the time of statehood. In response to a question, she said she would be hesitant to use the revisor's bill to clarify AS 01.05.006 because of the scope of change such a clarification would require; she suggested that such a clarification ought to instead come in the form of a substantive bill.

REPRESENTATIVE GRUENBERG opined that such a clarification is not worthy of a separate bill but should instead be undertaken via the revisor's bill. He asked Ms. Kurtz to reconsider the issue.

[8:22:35 AM](#)

MS. KURTZ, in response to a question regarding Section 25, explained that its proposed change would merely conform the language in AS 15.45.160 to that of AS 15.45.140, and is necessary in order for the statutes to conform to Article XI, Section 3, of the Alaska State Constitution. In response to a question regarding Section 50, she explained that the change proposed therein is intended to make the second sentence in AS 29.60.860(b) conform to its first sentence. In response to a

question regarding Section 75, she explained that its proposed change would conform the language in AS 47.10.396 to recently-changed language in AS 47.10.392, AS 47.10.398, and AS 47.10.399, all of which now refer to corporations in general rather than just nonprofit corporations. In response to a question regarding Section 76, she explained that its proposed change - along with the bill's proposal to delete AS 47.14.295(1) - would move the definition of the term "adult family member" to the correct location where it would actually be used; currently that definition is in the wrong location due to a drafting error in Chapter 64, SLA 2005.

MS. KURTZ, in response to a question regarding Section 86, explained that the only change it is proposing is the addition of the phrase, "in the second degree" to Section 14, Chapter 137, SLA 2002 - a delayed amendment to the statutes that will become effective December 30, 2013; all other seeming language changes are just a reflection of the delayed amendment that Section 14, Chapter 137, SLA 2002, will be making to AS 16.43.970(b). Adding the phrase, "in the second degree" is a conforming change that should have been included in an intervening amendment made via Section 16, Chapter 42, SLA 2006. Without the change proposed in the revisor's bill, the intervening amendment will unintentionally be nullified in 2013, when the delayed amendment takes effect.

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on HB 152.

[8:30:21 AM](#)

CHAIR RAMRAS made a motion to adopt Amendment 1, labeled 26-LS0158\E.1, Kurtz, 3/4/09, which read:

Page 6, lines 10 - 12:
Delete all material.

Renumber the following bill sections accordingly.

Page 48, line 22:
Delete "Section 89"
Insert "Section 88"

Page 48, line 27:
Delete "sec. 89"
Insert "sec. 88"

Page 48, line 28:
Delete "sec. 90"
Insert "sec. 89"

Page 48, line 29:
Delete "sec. 59"
Insert "sec. 58"

Page 48, line 30:
Delete "secs. 92 and 93"
Insert "secs. 91 and 92"

REPRESENTATIVE GRUENBERG objected for the purpose of discussion.

MS. KURTZ explained that the Department of Education and Early Development (EED) has indicated that it would prefer to have Section 17 of the bill deleted, because it would codify a piece of uncodified law - specifically Section 40(b), Chapter 83, SLA 1998 - and the EED would prefer to have that law repealed instead of codified. However, repeal of this law would be a substantive change and thus beyond the scope of the revisor's bill, whereas adoption of Amendment 1 would result in this law simply remaining part of uncodified law. In response to a question, she maintained that repealing this uncodified law would be beyond the scope of the revisor's authority under AS 01.05.036, which is meant to address deficiencies, conflicts, or obsolete provisions in statute; Section 40(b), Chapter 83, SLA 1998, is not obsolete, and there is nothing about it that won't work - it is simply directing the EED to define something via regulation - and so the question of whether it should remain part of uncodified law is a policy call for the legislature to make.

[8:32:55 AM](#)

REPRESENTATIVE GRUENBERG removed his objection.

CHAIR RAMRAS, after noting that there were no further objections, stated that Amendment 1 was adopted.

CHAIR RAMRAS relayed that HB 152, as amended, would be held over.

HB 101 - EXEMPTIONS: LIFE INSURANCE; ANNUITIES

[8:33:37 AM](#)

CHAIR RAMRAS announced that the final order of business would be HOUSE BILL NO. 101, "An Act exempting the full value of life insurance and annuity contracts from levy to satisfy unsecured debt, and amending the description of earnings, income, cash, and other assets relating to garnishment of life insurance proceeds payable upon the death of an insured." [Before the committee was the proposed committee substitute for HB 101, Version 26-LS1076\E, Bailey, 2/19/09, which was adopted as the work draft on 3/2/09.]

[8:34:17 AM](#)

AMANDA MORTENSEN, Intern, Representative John Coghill, Alaska State Legislature, explained that HB 101 would exempt the full value of life insurance and annuity [contracts] from attachment by creditors, thereby protecting Alaskan families and their ability to plan for their future. Retirement plans are currently protected under federal law, and HB 101 would offer similar protection to someone who, as an employee, uses an annuity contract in lieu of a retirement plan. Section 1 of the bill would remove the existing \$10,000 exemption cap on life insurance and annuity contracts, and Section 2 would remove the words "or payable" [from AS 09.38.030(e)(4)] in order to clarify a potential ambiguity regarding attempts to garnish the death benefits of an individual who has not yet passed away.

[Chair Ramras turned the gavel over to Vice Chair Dahlstrom.]

MS. MORTENSEN, in response to a question, explained that Version E no longer contains the word "unsecured" in the title; this will allow the bill to apply to debts other than just unsecured debts.

[Vice Chair Dahlstrom returned the gavel to Chair Ramras.]

MS. MORTENSEN, in response to another question, explained that HB 101 will not prevent creditors from garnishing a person's other assets in order to satisfy a debt; again, the bill will only protect the person's life insurance and annuity [contracts] from attachment by creditors, thereby also protecting the beneficiaries of such contracts. In response to a further question, she offered her understanding that state law currently protects other types of retirement plans.

[8:38:25 AM](#)

DENNIS BAILEY, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), concurred. In response to another question, he said that HB 101 removes the existing monetary limitation on the state's protection of life insurance and annuity [contracts]. In response to comments, he concurred that state law currently prohibits the fraudulent use of such contracts, such as entering into such a contract in order to avoid having to pay a debt.

REPRESENTATIVE HOLMES indicated that she is amenable to the bill's proposal to remove the existing monetary limitation on the state's protection of life insurance and annuity [contracts].

MR. BAILEY, in response to a question, explained that removing the word "unsecured" from the title clarifies that [the provisions of the bill] could be applied regardless of whether the debt is unsecured. In response to other questions, he assured the committee that banks are aware of state and federal exemptions to what they may levy to satisfy a debt, and acknowledged that the bill might affect a lending institution's willingness to grant a particular loan.

REPRESENTATIVE GRUENBERG expressed concern that passage of HB 101 could have a detrimental effect on a lending institution that had based its decision to grant a loan in part on the current exemptions.

MR. BAILEY suggested that an applicability provision could be added to the bill to address situations involving existing [loans/contracts].

REPRESENTATIVE GRUENBERG questioned whether applying the bill to [existing contracts] might raise a constitutional problem.

MR. BAILEY said he doesn't believe that the bill as currently written would apply retroactively to an existing contract; his interpretation is that the bill would only apply to contracts entered into after its effective date.

REPRESENTATIVE GRUENBERG said:

As I understand this bill, it will apply to all attempts at execution after the effective date, and what I'm concerned about is if there is an attempted execution after the effective date for a contract that was entered into ... prior to the effective date. I

think it would apply, because the execution was after the effective date, but it would impair the contract - [the] loan - that was entered into before the effective date. ... I think to be sure that there's no unconstitutional impairment of that contract, we would need - to be absolutely certain - an applicability section that would apply to contracts entered into after the effective date.

MR. BAILEY indicated that [including such a provision] would be advisable; it would clarify that the bill applies to the contract rather than to the execution. He also indicated that he could draft such a provision. In response to questions, he said that the concept of HB 101 applies broadly to life insurance policies and annuity contracts that are subject to collection; that who pays for an insurance policy won't have an effect on the bill's applicability; and that the exemption offered in the bill only applies to unmatured life insurance and annuity contracts.

REPRESENTATIVE GRUENBERG noted that the bill uses the term "individual" rather than the term "person", which includes organizations. He asked whether the bill, then, would only apply to individuals, not organizations.

MR. BAILEY said that would be the case.

[8:58:14 AM](#)

LINDA HULBERT, Agent, New York Life Insurance Company, in response to a question, offered her belief that HB 101 will help Alaskans better plan for their future, particularly now that many employers no longer offer or contribute to qualified retirement plans as part of their benefit package. For people who legitimately want to use life insurance or annuity contracts as a "planning vehicle," either to protect their families or for their retirement, HB 101 would provide them with an opportunity to do so in good faith. Currently, 10 other states have a similar provision in law, she relayed, and so she felt that it would be a valuable planning tool for Alaskans to have as well. She offered her belief that if someone were to use [a life insurance or annuity contract] in a fraudulent manner in order to avoid creditors, the courts would invade it anyway, and so the provisions of the bill couldn't be abused by such a person.

MS. HULBERT, on the issue of "collaterally assigning annuities and life insurance", pointed out that lending institutions are

very careful and thus will often require the collateral assignment of a customer's life insurance or annuity. This means that the lending institution "stands first" on the death benefit, and so if someone who's collaterally assigned their life insurance or annuity dies, no payout will be made [to the beneficiaries] until the lending institution properly documents how much is owed to it. Once that is done to the insurance company's satisfaction, it pays the lending institution, with the balance going to the beneficiaries. Furthermore, once any debt is paid on a loan involving a collaterally-assigned life insurance or annuity contract, paperwork can be completed that will remove the collateral assignment. She surmised, therefore, that passage of HB 101 wouldn't have a detrimental effect on lending institutions.

MS. HULBERT, in conclusion, relayed that it was she along with several other people who brought forth the concept of HB 101 to the sponsor. In response to questions, she, too, explained that qualified retirement plans are protected by federal law from creditor claims, and explained that a person cannot waive such protection or pledge pension money to a lending institution in order to procure a loan.

[9:07:00 AM](#)

MR. BAILEY, in response to comments and questions, reiterated that the bill only applies to unmaturred life insurance and annuity contracts, not to the proceeds of any such contract.

[Chair Ramras turned the gavel over to Vice Chair Dahlstrom.]

MR. BAILEY, in response to a question, reiterated that the legislature could and probably ought to clarify, via the use of an applicability provision, that the bill only applies to life insurance and annuity contracts created after the bill becomes law.

[Vice Chair Dahlstrom returned the gavel to Chair Ramras.]

MR. BAILEY, in response to a further question, reiterated that he could draft an applicability provision to ensure that the bill will only apply to life insurance and annuity contracts entered into after the bill is enacted. In response to other questions, he again reiterated that the exemption provided by the bill only applies to unmaturred life insurance and annuity contracts.

MS. HULBERT added that the cash value and death benefits of a life insurance policy could be levied by creditors if the policy holder collaterally assigns that cash value to a lending institution.

CHAIR RAMRAS surmised that there is nothing in the bill that would disturb the relationship between a borrower and a lender to consummate a commercial transaction, and characterized the change proposed by the bill as being very beneficial to consumers and their families.

MS. HULBERT, in response to a question, reiterated that federal law protects qualified retirement plans, and said that the bill won't affect a person's ability to collaterally assign a life insurance policy or an annuity to a lending institution.

REPRESENTATIVE GRUENBERG questioned whether a reference to proposed AS 09.38.025(a) ought to be added to page 2, line 5, after the language "AS 09.38.015 or 09.38.017".

MR. BAILEY indicated that he would research that issue further.

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on HB 101.

[9:23:21 AM](#)

REPRESENTATIVE GRUENBERG [made a motion to adopt] Conceptual Amendment 1 as stated by Mr. Bailey.

MR. BAILEY stated that the language would conceptually read something along the lines of: "The amendments to AS 09.38.025(a), as enacted in Section 1 of this bill, apply to life insurance and annuity contracts entered into after the effective date of this Act."

REPRESENTATIVE GRUENBERG indicated that his intention is for Conceptual Amendment 1 to apply to the entire bill.

REPRESENTATIVE HOLMES questioned whether Conceptual Amendment 1 would really accomplish what's intended or address the concerns of the committee.

REPRESENTATIVE GRUENBERG acknowledged that it might not, and suggested that the bill be held over to allow the drafter time to formulate the appropriate language.

REPRESENTATIVE GRUENBERG then withdrew Conceptual Amendment 1, and again asked the drafter to consider whether the language on page 2, line 5, ought to also include a reference to proposed AS 09.38.025(a).

CHAIR RAMRAS relayed that HB 101 [Version E] would be held over.

[9:28:53 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 9:29 a.m.