

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 25, 2010

1:22 p.m.

MEMBERS PRESENT

Representative Jay Ramras, Chair
Representative Nancy Dahlstrom, Vice Chair
Representative Carl Gatto
Representative Bob Herron
Representative Bob Lynn
Representative Lindsey Holmes

MEMBERS ABSENT

Representative Max Gruenberg

COMMITTEE CALENDAR

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 60(L&C)

"An Act relating to the Uniform Probate Code, including wills, trusts, nonprobate transfers, augmented estates, personal representatives, and trustees; and amending Rules 3 and 8, Alaska Rules of Civil Procedure, Rule 1, Alaska Rules of Probate Procedure, and Rule 37.5, Alaska Rules of Administration."

- MOVED CSSB 60(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 408

"An Act relating to misconduct involving weapons."

- MOVED CSHB 408(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 251

"An Act relating to liens on vehicles; and providing for an effective date."

- MOVED CSHB 251(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 60

SHORT TITLE: UNIFORM PROBATE CODE; TRUSTS, WILLS

SPONSOR(S): SENATOR(S) MCGUIRE

01/21/09 (S) PREFILE RELEASED 1/16/09

01/21/09 (S) READ THE FIRST TIME - REFERRALS
 01/21/09 (S) L&C, JUD
 03/24/09 (S) L&C AT 1:30 PM BELTZ 211
 03/24/09 (S) Scheduled But Not Heard
 03/31/09 (S) L&C AT 1:00 PM BUTROVICH 205
 03/31/09 (S) Heard & Held
 03/31/09 (S) MINUTE(L&C)
 04/16/09 (S) L&C AT 3:45 PM BELTZ 211
 04/16/09 (S) Moved CSSB 60(L&C) Out of Committee
 04/16/09 (S) MINUTE(L&C)
 04/17/09 (S) L&C RPT CS 1DP 2NR 2AM SAME TITLE
 04/17/09 (S) DP: THOMAS
 04/17/09 (S) NR: MEYER, DAVIS
 04/17/09 (S) AM: PASKVAN, BUNDE
 02/01/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 02/01/10 (S) Heard & Held
 02/01/10 (S) MINUTE(JUD)
 02/08/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 02/08/10 (S) Moved CSSB 60(L&C) Out of Committee
 02/08/10 (S) MINUTE(JUD)
 02/10/10 (S) JUD RPT CS(L&C) 4DP
 02/10/10 (S) DP: FRENCH, COGHILL, EGAN, MCGUIRE
 03/10/10 (S) TRANSMITTED TO (H)
 03/10/10 (S) VERSION: CSSB 60(L&C)
 03/17/10 (H) READ THE FIRST TIME - REFERRALS
 03/17/10 (H) JUD
 03/25/10 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 408

SHORT TITLE: MISCONDUCT INVOLVING WEAPONS

SPONSOR(S): JUDICIARY

02/26/10 (H) READ THE FIRST TIME - REFERRALS
 02/26/10 (H) JUD, FIN
 03/12/10 (H) JUD AT 1:00 PM CAPITOL 120
 03/12/10 (H) Heard & Held
 03/12/10 (H) MINUTE(JUD)
 03/24/10 (H) JUD AT 1:00 PM CAPITOL 120
 03/24/10 (H) <Bill Hearing Rescheduled to 03/25/10>
 03/25/10 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 251

SHORT TITLE: PRIORITY OF TOWING LIENS

SPONSOR(S): RAMRAS

01/08/10 (H) PREFILE RELEASED 1/8/10
 01/19/10 (H) READ THE FIRST TIME - REFERRALS

01/19/10 (H) STA, JUD
03/09/10 (H) STA AT 8:00 AM CAPITOL 106
03/09/10 (H) Heard & Held
03/09/10 (H) MINUTE(STA)
03/11/10 (H) STA AT 8:00 AM CAPITOL 106
03/11/10 (H) Moved Out of Committee
03/11/10 (H) MINUTE(STA)
03/11/10 (H) STA RPT 1DP 4NR
03/11/10 (H) DP: LYNN
03/11/10 (H) NR: JOHNSON, GATTO, GRUENBERG, PETERSEN
03/25/10 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

ESTHER CHA, Staff
Senator Lesil McGuire
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented SB 60 on behalf of Senator McGuire, sponsor.

RICHARD W. HOMPESCH II, Attorney at Law
Hompesch & Evans, PC
Fairbanks, Alaska

POSITION STATEMENT: Testified and answered questions during the hearing SB 60.

JONATHAN G. BLATTMACHR, Attorney at Law
Milbank, Tweed, Hadley & McCloy LLP
New York, New York

POSITION STATEMENT: Responded to questions during the hearing on SB 60.

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

POSITION STATEMENT: Presented HB 408 on behalf of the House Judiciary Standing Committee, which is chaired by Representative Ramras.

BRIAN JUDY, Lobbyist
National Rifle Association of America (NRA)
Sacramento, California

POSITION STATEMENT: Testified in support of HB 408.

WILLIAM R. SATTERBERG, JR., Attorney at Law

Satterberg Law Offices
Fairbanks, Alaska

POSITION STATEMENT: Testified on behalf of himself during the hearing on HB 408.

RON STERLING
Anchorage, Alaska

POSITION STATEMENT: Had his testimony read by Wayne Anthony Ross, Attorney at Law, during the hearing on HB 408.

WAYNE ANTHONY ROSS, Attorney at Law
Ross & Miner, Inc.
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 408.

ANNE CARPENETI, Assistant Attorney General
Legal Services Section
Criminal Division
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Testified and answered questions during the hearing on HB 408.

DON HABEGER, Staff
Representative Jay Ramras
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 251 on behalf of Representative Ramras, sponsor.

MARGARET RABY
Alaska Towing Association (ATA);
Badger Towing
Fairbanks, Alaska

POSITION STATEMENT: Testified during the hearing on HB 251.

SHAWN ROSS, President
Alaska Towing Association (ATA);
Owner
Badger Towing
Fairbanks, Alaska

POSITION STATEMENT: Testified during the hearing on HB 251.

MARK ANTHONY DAVIS, President
Interior Towing & Salvage, Inc.
Fairbanks, Alaska

POSITION STATEMENT: Testified during the hearing on HB 251.

ELISABETH GRISWOLD, Owner/Manager
Gabe's Towing
Fairbanks, Alaska

POSITION STATEMENT: Testified during the hearing on HB 251.

WILLIAM R. SATTERBERG, JR., Attorney at Law
Satterberg Law Offices
Fairbanks, Alaska

POSITION STATEMENT: Testified on behalf of himself during the hearing on HB 251.

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

POSITION STATEMENT: Provided information during the hearing on HB 251 on behalf of Representative Ramras, sponsor.

ACTION NARRATIVE

[1:22:19 PM](#)

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at 1:22 p.m. Representatives Ramras, Herron, Gatto, and Lynn were present at the call to order. Representatives Dahlstrom and Holmes arrived as the meeting was in progress.

SB 60 - UNIFORM PROBATE CODE; TRUSTS, WILLS

[1:23:40 PM](#)

[Contains brief mention that the committee had already heard and passed out HB 144, the companion bill to CSSB 60(L&C).]

CHAIR RAMRAS announced that the first order of business would be CS FOR SENATE BILL NO. 60(L&C), "An Act relating to the Uniform Probate Code, including wills, trusts, nonprobate transfers, augmented estates, personal representatives, and trustees; and amending Rules 3 and 8, Alaska Rules of Civil Procedure, Rule 1, Alaska Rules of Probate Procedure, and Rule 37.5, Alaska Rules of Administration."

CHAIR RAMRAS noted that the companion bill to CSSB 60(L&C), HB 144, had already passed from committee.

[1:24:25 PM](#)

ESTHER CHA, Staff, Senator Lesil McGuire, Alaska State Legislature, presented SB 60 on behalf of Senator McGuire, sponsor. She concurred that SB 60 is identical to HB 144. She explained that SB 60 would amend the Uniform Probate Code, with the aim of improving the ease of administration of wills, estates, and trusts for Alaska residents. She relayed that the Uniform Probate Code is a set of laws that govern the affairs of decedents and their estates. She said Alaska is one of 15 states to have adopted the code in its entirety; the remaining 34 states have adopted only parts of the code.

MS. CHA said the climate for trusts and estate planning is highly competitive, and the trust business is a multi-billion dollar sector, which often crosses state lines in order to take advantage of more attractive state trust laws. She stated that most of the amendments made through SB 60 either clarify language or eliminate unnecessary verbiage. Further changes would: create a procedure for the establishment of will and trust validity before death; add provisions that would allow a settlor of a trust to designate a representative who could represent or bind an incapacitated person in future proceedings relating to trust administration; clarify property transfers involving a deceased spouse; and address the venue proceeding if the decedent lived outside of Alaska but held significant assets within the state.

MS. CHA said SB 60 is part of an ongoing effort to modernize Alaska's trust laws, thereby creating more jobs and revenue, while diversifying the state's economy. She said Alaska has directly received millions of dollars through insurance premium taxes, and many jobs have been created in the trust, banking, insurance, and legal professions as a result of the state's competitive and contemporary trust laws.

[1:27:11 PM](#)

MS. CHA, in response to Representative Gatto, explained again that the basis of the bill is to establish a pre-mortem validity of a will. Further, the bill addresses those residents of Alaska who have moved out of the state or a non-resident of the state who has established a trust in Alaska; it would provide a venue of proceeding.

[1:29:29 PM](#)

REPRESENTATIVE GATTO recounted an incident wherein a mother died, and the inheritance was not divided equally between the surviving children. Those who received more argued that the mother's wishes were carried out, while the ones who received less claimed the mother had not known what she was doing. The result was that no one received money, except the lawyers. He said he thinks the case would have been resolved differently had the siblings been able to litigate prior to the mother's death, so that she could have seen their point and responded. He asked if SB 60 would provide for that to happen.

MS.CHA said she believes so.

[1:30:56 PM](#)

RICHARD W. HOMPESCH II, Attorney at Law, Hompesch & Evans PC, relayed that the proposed legislation clarifies who a trustee should notify in situations where the beneficiary is a minor or incapacitated. In Section 1, the bill would provide that the person setting up the trust can designate who should be served or notified with respect to a minor, child, or incapacitated person beneficiary. He explained the reason that is important is that without such a designation, typically the trustee would have to request that the court appoint a guardian ad litem for the minor, child, or incapacitated beneficiary, which would generally cost a lot more money than had the designation been done in the trust instrument.

MR. HOMPESCH concurred with everything Ms. Cha said regarding the lifetime probate provision that is in Section 8. He said the disadvantage that the proponent of the challenged will has is that the essential main witness, unfortunately, is always dead. Section 8 would allow the court to ask questions of that main witness - the person who wrote the will or trust - before he or she dies. He offered his understanding that this would be the first time this has ever been done, and he predicted it would minimize litigation.

[1:35:08 PM](#)

REPRESENTATIVE GATTO related that he and his wife have set up a will through which each child will receive equal assets, but none will receive any assets before the youngest child has graduated from college, if he/she desires to attend. He asked Mr. Hompesch if that is legal.

[1:35:47 PM](#)

MR. HOMPESCH replied that it is legal to hold assets in a trust until a child reaches a certain age.

1:36:21 PM

CHAIR RAMRAS said he's heard concern expressed regarding how such laws are benefiting the state, where employment rates have risen, which banks are becoming the depositories for these funds, when this all began, and what the future potential is.

MR. HOMPESCH proffered that the Revised Limited Liability Company and Limited Partnership Act of 1997 made limited liability and partnership laws the most attractive in the U.S. Prior to that Act, no one ever came to Alaska to form a limited liability company or limited partnership, or if they did the business was so inconsequential no one kept track of it. After the bill was passed, in conjunction with other trust legislation, Mr. Hompesch said he heard there were so many attorneys from out of state that wanted to form Alaska limited liability companies that an online filing process was started. The state received a \$250 filing fee for each limited liability company. There was substantial work for the Division of Corporations, Business, and Professional Licensing, and there were substantial fees to the state. He said there is a biennial tax of \$100 that is paid every two years by each limited liability company. He said that is one example, and he suggested the committee could get more accurate information from the Department of Commerce, Community, & Economic Development (DCCED).

MR. HOMPESCH offered another example, which was a bill of several years ago, which changed the excise tax that is charged on life insurance premiums. He explained that the State of Alaska charges an excise tax on every life insurance premium that is paid. However, before the aforementioned bill, the state was charging approximately 2 percent on premiums in excess of \$100,000, and there were so few of those the state was never getting any money from those large premiums. The bill reduced the excise tax down to one quarter of a percent of any premium over \$100,000. As a result, many individuals in the Lower 48 who would have bought their life insurance elsewhere, started buying premiums from Alaska, and the state started receiving hundreds of thousands of dollars of extra premium tax as a result of that change. Mr. Hompesch said a third example is that he is contacted each week by lawyers in the Lower 48 who have clients interested in creating trusts under Alaska law to

be administered by trust companies in Alaska, and that is something that did not happen prior to 1997.

[1:41:52 PM](#)

JONATHAN G. BLATTMACHR, Attorney at Law, Milbank, Tweed, Hadley & McCloy LLP, concurred with the comments of Mr. Hompesch. He said there has been an addition of 15-20 management level jobs in Alaska as a result of the legislation that began in 1997. He said those are relatively high-paying jobs that have "made Alaska look better." He said this is just another example of where Alaska is at the forefront of one part of the financial services industry. He said Delaware has got the corner on forming corporations, but now Alaska is doing well in relation to limited liability companies. Mr. Blattmachr said with the right backing of the legislature, he thinks this could be an enormous industry for the State of Alaska. He listed states that vie with Alaska, including Delaware, South Dakota, and Utah, and said "our group" gets together each year to try to come up with the most creative ideas to obtain additional business for the state.

MR. BLATTMACHR related that his brother is president of the Alaska Trust Company, and he knows that that company has tens of millions of dollars on deposit in various banks, which are available to loan to Alaska businesses to help them grow. He said there are about a dozen other states that are constantly imitating Alaska's law, which is a compliment. He encouraged the committee to support the proposed legislation.

[1:45:39 PM](#)

CHAIR RAMRAS asked what the trust community's goal is in coming back to the legislature year after year to update Alaska's statutes.

MR. BLATTMACHR replied that the other states are trying to make their laws better than Alaska's laws, and every once in awhile another state comes up with an idea that will be more attractive to individuals who may want to create a trust or buy insurance policies in a tax efficient manner. He said, "So, we keep on those, and we come back and ask that we be able to be as good as any other state in some areas. And we also come back to ask that we be better than any other state in other areas." He said the group puts in hundreds of hours each year to figure out how to make Alaska the best state in the country to do trust business. He noted that the aforementioned legislation Alaska

passed in 1997 was just adopted about a year ago by Nevada - over a decade later.

MR. BLATTMACHR indicated that the trust community, which considers these matters, spends time each year debating, drafting, speaking with legal scholars, and considering the impact of ideas on the state. He said the group thinks SB 60 will significantly reduce the burden on the court, because it will "stamp out any likely will contest that would arise." He indicated that people have a pretty good idea when there will be a contested will, and the proposed legislation would head that off and allow an arrangement to be made and the will admitted to probate. He said he anticipates that the trust business will continue to grow throughout the U.S., and he wants Alaska to be a major part of that business.

[1:48:47 PM](#)

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on CSSB 60(L&C).

[1:48:58 PM](#)

REPRESENTATIVE HERRON moved to report CSSB 60(L&C) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSSB 60(L&C) was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 1:49 p.m. to 1:50 p.m.

HB 408 - MISCONDUCT INVOLVING WEAPONS

[1:50:57 PM](#)

CHAIR RAMRAS announced that the next order of business would be HOUSE BILL NO. 408, "An Act relating to misconduct involving weapons."

[1:51:46 PM](#)

CHAIR RAMRAS [moved to adopt] the committee substitute (CS) for HB 408, Version 26-LS1459\K, Luckhaupt, 3/24/10, as a work draft. There being no objection, Version K was before the committee.

[1:52:10 PM](#)

JANE PIERSON, Staff, Representative Jay Ramras, Alaska State Legislature, presented HB 408 on behalf of the House Judiciary Standing Committee, which is chaired by Representative Ramras. She directed attention to the following changes: The phrase, "do not apply to a person if", has been added in Section 1, on page 1, line 6, and page 2, line 4; and in Section 2, AS 11.61.200(a)(12) was added to those statutes to be repealed. She said Version K would return full gun rights to those with pardons, set-asides, or to those who have gone 10 years since being let off from a felony.

CHAIR RAMRAS reviewed that the committee had discussed during a prior hearing that unless there is a perfect alignment between state and federal law, then the federal law preempts people from getting their full rights back. He asked Ms. Pierson if that is the gist of the alignment that the bill would reestablish.

MS. PIERSON answered that is correct.

[1:53:40 PM](#)

BRIAN JUDY, Lobbyist, National Rifle Association of America (NRA), urged support of HB 408. He attempted to assure the committee that HB 408 would not restore firearms to felons. He said it is already the policy of the State of Alaska to restore firearm rights to former offenders. The right to possess rifles and shotguns is restored upon their release from incarceration, while the right to possess handguns is restored if the person receives a pardon, set-aside, or "by operation of law after 10 years from their unconditional discharge." With a person's right to possess a handgun comes his/her right to carry it openly anywhere in the state. However, carrying a concealed handgun after a pardon, set-aside, or the 10-year period is limited to home property and lawful outdoor activity. He noted that 95 percent or more of a person's rights are restored by the state. Currently the only real restriction in current law is that a person who has had his/her rights restored cannot cover a handgun. He noted that a former offender, upon his/her unconditional discharge is also given back voting rights, jury rights, and the right to hold public office.

MR. JUDY said that because of a technical and complicated interaction between state and federal law and a U.S. Supreme Court decision, Caron v. United States, persons who have had all these rights restored by the State of Alaska are still not recognized as having any rights restored for the purpose of federal law, and they can be prosecuted under federal law. He

stated that the U.S. Supreme Court, in the Caron v. United States decision, held that an all or nothing test must be applied, and that any state's weapons limitation activates the Uniform Federal ban on possessing any firearms at all. In other words, unless Alaska restores 100 percent of a person's rights related to bearing arms, and treats that person like any other law abiding citizen who never lost rights, then under the federal law, the person has no rights. Because the State of Alaska imposes this slight restriction, under federal law, these individuals have no firearms rights whatsoever, he clarified. The intent of the bill is to facilitate the implementation of existing state policy and to allow persons whose rights have been restored by the state to exercise those rights and not have them extinguished by the federal government - to create an alignment between state and federal law.

[1:56:44 PM](#)

MR. JUDY said there are two existing limitations on persons who have otherwise had their rights to possess firearms restored that are not imposed on persons who have never lost their rights. The first relates to a person's right to carry concealed, which is in AS 11.61.200(g)(2) and would be repealed by HB 408. The second limitation is that a person whose right to bear firearms has been otherwise restored would be in a position of having to raise an affirmative defense to a charge of either possessing a concealable firearm or carrying a firearm concealed. Mr. Judy said the bill proposes to repeal the prohibition on carrying a concealed weapon, because in effect that is contained within the prohibition on possessing a concealable firearm. In other words, he clarified, a person cannot carry a concealed weapon without already possessing that weapon. Repealing AS 11.61.200(a)(12) and (f) and (g) would leave just the prohibition on possessing a firearm capable of being concealed. The bill would further propose to "change the affirmative defend for that crime to an exception." By alleviating those two limitations and treating persons whose rights have been restored in the same manner as persons who have never lost their rights, HB 408 would solve the problem created by the aforementioned U.S. Supreme Court decision.

MR. JUDY, in conclusion, offered the NRA's hope that legislators can move beyond the perceived stigma of "giving firearms to felons," which is not being done here, and realize the legitimacy of allowing persons who have long ago paid their debt to society to finally attain the restoration of their rights, which are already provided by the State of Alaska but

extinguished because of the interaction between state and federal law, and the U.S. Supreme Court decision.

CHAIR RAMRAS mentioned that something similar was accomplished in the realm of a "minor consuming" bill, only in that case, the state was out of alignment with the federal government.

MR. JUDY confirmed that HB 408 would create an alignment between the state and federal government.

[2:01:33 PM](#)

CHAIR RAMRAS noted that Representative Stoltze had brought up a concern regarding reciprocity with eight other states.

MR. JUDY opined that there should not be a concern because there are already differences between various states' statutes related to this issue, but many states already recognize all other states' permits. The only potential problem, he surmised, may be where a state has conditional recognition, in which that state will recognize another state whose laws are comparable to its own. He explained that those states may have a problem if their issuance rules do not permit a person who has been convicted of a felony [to get a gun permit]. He indicated that there are eight such states, including Arizona and Montana; however, he noted that Montana will issue permits to those people whose rights have been restored. The other seven states that fall into the two criteria - will not issue a permit for a felony and only recognize states with comparable laws - currently recognize Montana's permits. He concluded, "So, the other state ... that does what we're proposing to do here is recognized by virtually every state out there, including those states that have conditional recognition."

[2:04:17 PM](#)

REPRESENTATIVE HERRON asked whether, under HB 408, an Alaska State Trooper or Alaska certified local police officer would "follow state law ... under these circumstances." Further, he asked if, under 408, a federal law enforcement officer could approach someone in the state and arrest them for violating the federal law.

MR. JUDY said the point of the proposed legislation is to align Alaska's law with federal law. Under HB 408, Alaska would recognize 100 percent of a person's rights regarding arms, thus, the federal government would completely recognize those rights.

CHAIR RAMRAS disclosed that Bill Satterberg has done legal work for him and is a friend.

2:06:20 PM

WILLIAM R. SATTERBERG, JR., Attorney at Law, Satterberg Law Offices, Fairbanks, Alaska, testifying on behalf of himself, told the committee he has worked as an attorney going on 34 years, and he related that 33-40 percent of his work involves criminal defense, while the rest is civil defense. He said last spring a client plead no contest to a felony suspended imposition of sentence (SIS). Regarding the term SIS, he explained that if a person has committed a crime, there is a mechanism available in criminal statute that allows the person's conviction to be set aside if he/she complies with the court's conditions of probation. He explained this means that although the person was convicted, the sentence was never imposed; therefore, the person is not a convicted felon. He said that particular mechanism has been used for years, and it is beneficial in restoring rights to those who committed non-violent crimes.

MR. SATTERBERG said the aforementioned client, after successfully completing his probationary period, went to pick up his weapons, which had been held for safekeeping by the Alaska State Troopers, and he was told the Alaska State Troopers could not return the weapons to him because he was a convicted felon. Mr. Satterberg said the man lives in the Bush and relies heavily on his weapons for subsistence living and protection, but was told the state would be breaking federal law if it gave his weapons back to him.

MR. SATTERBERG said there are many people in Alaska who have committed drug offenses, for example, and have paid their debt to society, but cannot get their weapon rights back because of an interpretation that the Department of Law is putting on "the statute that began last April." He mentioned letters he had written to Attorney General Dan Sullivan and Deputy Attorney General Richard Svodony [included in the committee packet] explaining why the interpretation of the federal law was wrong; however, he said because of a bureaucratic roadblock nothing of note happened as a result of the letters. He stated that [Version K] solves the problem, and he said he wholeheartedly supports it. He expressed his hope that there will be reciprocity regarding concealed carry, and he revealed that he is a concealed carry permit holder. However, he said even if

there is no reciprocity with the 7 other states previously referenced, there are still far more citizens in Alaska that need to have their firearm rights returned to them.

2:10:56 PM

MR. SATTERBERG, in response to Representative Gatto, clarified that an SIS is "a legal fiction of sorts." He said the person is technically convicted for the period of time that the probationary period is outstanding, but since a sentence or judgment of conviction is never imposed, the person is never really convicted. In response to a follow-up question, he clarified that the SIS is not the judgment; the judgment is imposed at sentencing, but ceases to exist at the conclusion of the SIS period. He said there are some people who should never have their rights restored, but he indicated that SIS people are not among them.

2:13:08 PM

RON STERLING had his testimony read by Wayne Anthony Ross, Attorney at Law, as follows:

My name is Ron Sterling. A few years ago I applied to buy two firearms and was denied by the mixed background check. This denial stems from a legal problem I had when I was 18. My younger brother was found by an Alaska State Trooper in possession of illegal drugs and told the trooper that he got them from my room. My father allowed the Trooper to search my bedroom, where he found one ounce of marijuana and a few pills. The Trooper stated that I was selling drugs, but I told him that I was not selling drugs. My dad told me not to lie to the Trooper. This went on for a long period of time until I finally gave up that I would agree to whatever they wanted. I was arrested many months later and charged with possession with intent to sell. I retained an attorney who, even though I told him I wasn't guilty, at trial persuaded me to plead guilty. He told me I would get probation, and that at some point my record would be clean. This happened with the State of Alaska.

I've gone to the State Trooper headquarters on Tudor Road and gotten a background check to coach high school and American League in baseball at Service High School. My background and check from the State of

Alaska shows no criminal record. After being denied by the next people, I retained the law firm of Ross & Miner to contest my case. My attorney filed to have my record expunged. This was approved without being contested. After this court approval, I again applied and was again denied the right to purchase firearms. The NICS [National Instant Criminal Background Check System] stated that it is perfectly legal for me to own, possess, or use firearms for any legal purpose, but because the State of Alaska didn't state that it was okay for me to purchase firearms, they're going to continue to deny me the right to purchase any firearms. This is incredibly twisted logic, as it is legal for me to have a firearm, but illegal for me to purchase one.

I am 58 years old. I lived in Soldotna for 11 years; sold a home; bought and paid for a home in Anchorage where I currently live with my wife of 26 years. We have raised two sons and a daughter. I've worked the same job for 36 years, paid my taxes, and voted in every election. I work with the football staff at Soldotna High School for five years and was an assistant coach for Soldotna High School basketball team for three years. I also coached for Soldotna Little League for five years, (indisc.) Rabbits for five years, and Service High School and American League in baseball for two years. I served on the executive board of the Anchorage Independent Longshoremens Union for 12 years. By any measure I am a good citizen and to be in a position where the federal government can continue to penalize me 40 years after the fact, using twisted Alice In Wonderland logic, is a folly. I would certainly appreciate any and all help that you can give me in this manner.

Sincerely, Ron Sterling

[2:16:40 PM](#)

WAYNE ANTHONY ROSS, Attorney at Law, Ross & Miner, Inc., estimated that in his 42 years of practice, he has had six clients that have been affected by the federal inconsistency with Alaska law. He said Mr. Satterberg has had such clients, and he said he is sure there are hundreds of others similarly affected. He urged the committee to support HB 408.

MR. ROSS, in response to Representative Herron, said under present law, Alaska State Troopers and police officers can use federal law to arrest someone merely for possession of a rifle or a shotgun. He said HB 408 should correct that problem, because federal law recognizes people's rights to own firearms, provided they have gotten their full rights restored, and the proposed legislation would make that happen.

[2:20:06 PM](#)

ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), stated that DOL has a concern with the bill because it believes that by changing these provisions from an affirmative defense to making the law not apply to these people will make it extremely difficult to prosecute anybody for being a felon in possession of a firearm - even people who have not had 10 years pass by. Currently, the defendant has the burden of proving that those circumstances exist. For example, she said, if a person has a prior offense, for which he/she received a pardon, then that is information that is uniquely in the possession of that person. [Under HB 408], DOL would have to disprove beyond a reasonable doubt that the person did not have a pardon or an SIS that was set aside.

[2:22:59 PM](#)

MS. CARPENETI, in response to Chair Ramras, offered an example in which, under current law, a person charged with being a felon in possession would bring forth evidence of a pardon. In response to a follow-up question from Chair Ramras, she said drug offenders and others in that milieu get guns one way or another - not necessarily legally - and if they are found with a gun by a police officer, and the state wanted to prosecute them, the state would have to prove that they did not get a pardon for the underlying offense for which they were convicted.

REPRESENTATIVE GATTO asked, "Isn't it impossible to prove a negative?"

MS. CARPENETI responded that that is the department's concern, that the information that a person has a pardon is in that person's possession, and he/she should be able to come present that information to the court. The same applies to an SIS, she relayed. She said she thinks the department would have information about an SIS for a conviction in Alaska, but not

necessarily from other states. In response to a follow-up remark from Representative Gatto, Ms. Carpeneti said by saying that these provisions do not apply to a person in these circumstances, the person would have no duty to come forward and say, "I was pardoned."

CHAIR RAMRAS asked for suggestions on how to make it possible to "create this accommodation" without compromising the work of the department.

MS. CARPENETI indicated that finding such suggestions is difficult, because the state is dealing with federal law, which is supreme over state law. She said she does not have a suggestion at this point, but the department is certainly willing to work with the bill sponsor. She emphasized the difficulty of this area of law.

CHAIR RAMRAS concluded then, that this is a policy call whether to come up with a mechanism to restore rights for convicted felons who have paid their debts to society and then have to deal with the burden of proving pardons and SIS claims from those from other states.

MS. CARPENETI replied that under Version K, the department believes that it would have to "disprove that beyond a reasonable doubt."

[2:27:56 PM](#)

MR. ROSS offered his understanding that if a person is arrested and charged with being a felon in possession, then the defense would be: "I'm not a felon in possession; it's not against the law for me to do it." He said he does not understand the logic behind the argument of the department. He said if a person is charged, he/she comes up with a defense; it should not have to be an affirmative defense, because "the average person does not have to come up with an affirmative defense." He stated, "But certainly if anyone is charged, they're going to have to come up with a defense, they just don't have to prove their aspect of the defense." He indicated that it is the roll of the prosecutor to prove that the charges against someone are correct.

[2:29:18 PM](#)

MR. SATTERBERG concurred with Mr. Ross that anytime there is an affirmative defense, the burden of persuasion shifts to the

other side to have to come forward with evidence to prove the allegations. He said when the affirmative defense is made such that a person must provide proof of "the following," there is a failure to realize that that person is still being charged initially. The government, under constitutional law, has the burden of proof beyond reasonable doubt; however, if the government is going to charge somebody with being a felon in possession of a weapon, the government should be in possession of the evidence it needs to prove that case. He interpreted the testimony of Ms. Carpeneti to mean that the state is going to charge the person, then make that person come forward with evidence to disprove the state's charge. He said it is rare in our society's system that a person has to come forward with any proof; the person has constitutional rights to remain silent and the government has the requirement to prove the person guilty beyond a reasonable doubt. He said "our" position is that if the state does not have its facts in order, it should not bring forth charges in the first place. He concluded, "If we're talking about aligning things up with federal law again, the problem is if you don't do it this way, you're going to find a disjoint between the federal law and the state law, and we're right back to the problem that started this."

[2:31:01 PM](#)

MS. CARPENETI noted that under current law, the fact that person had a pardon is an affirmative defense, and under Alaska law, an affirmative defense is one that the defendant has the burden of proof of establishing. On the other hand, she said, a defense is a defense that the state has to disprove beyond a reasonable doubt. She offered self-defense as an example of defense. The bill would change Alaska law from affirmative defense to say that the prohibition against carrying concealed does not apply to a person with a pardon. She said that is an unusual way of drafting [law], and DOL's position is that that, in effect, makes it a defense that the state has to disprove. So, in bringing a charge of felony possession, the state would have to be prepared, as Mr. Satterberg said, to disprove that the person got a pardon, and that pardon might have come from any state in the Union.

CHAIR RAMRAS said this is a policy call. He indicated that he understands the concerns of the state, but does not empathize with the department's position, because of the compelling stories he has heard from Alaskans who have paid their debts to society and cannot get their gun rights back.

[2:34:14 PM](#)

MS. CARPENETI said she understands the confusion regarding this issue, but the concern of the department is, for example, that a drug dealer who has been convicted of an unclassified felony is still carrying a concealed weapon, even though that is against the law, and if he is charged with being a felon in possession, the state would have to prove that he was not pardoned in other states, which would be a difficult burden of truth.

REPRESENTATIVE GATTO indicated that he cannot envision a judge saying, "We have to do a lot of work on every one of you guys." He said the judge would simply make a ruling; however, the attorney may say the ruling is out of order. He asked Ms. Carpeneti if that is the scenario that is of concern.

MS. CARPENETI answered that a judge must follow the law adopted by the legislature. She said the department's concern is that "saying that it does not apply to people in these circumstances" would "make it part of the case in chief for us to have to disprove." She offered her understanding that Mr. Satterberg had just said as much.

[2:35:58 PM](#)

CHAIR RAMRAS, after ascertaining that no one else wished to testify, close public testimony on HB 408.

[2:36:13 PM](#)

REPRESENTATIVE HERRON moved to report the proposed committee substitute (CS) for HB 408, Version 26-LS1459\K, Luckhaupt, 3/24/10, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 408(JUD) was reported from the House Judiciary Standing Committee.

HB 251 - PRIORITY OF TOWING LIENS

[2:36:37 PM](#)

CHAIR RAMRAS announced that the final order of business would be HOUSE BILL NO. 251, "An Act relating to liens on vehicles; and providing for an effective date."

[2:36:44 PM](#)

CHAIR RAMRAS [moved to adopt the committee substitute (CS) for HB 251, Version 26-LS0786\E, Luckhaupt, 3/15/10, as a work draft.] There being no objection, Version E was before the committee.

[2:37:24 PM](#)

DON HABEGER, Staff, Representative Jay Ramras, Alaska State Legislature, presented HB 251 on behalf of Representative Ramras, sponsor. He explained that there have been cases wherein towing companies have towed vehicles, often under the authority of a public safety officer, but have not been paid for their service. Mr. Habeger stated that a court has determined that towing liens are not a priority over perfected liens, and banks using the vehicle as a security have priority. He relayed that there are an increasing number of cases in which banks are saying they will not pay the towing company because of the court decision.

MR. HABEGER directed attention to Section 1, in which new language is added to specify that possessory liens by towing companies have priority over other liens. He said this provision would be "directly connected to the vehicle." He then highlighted another feature of Version E, - a requirement for notification - that is found in language in Section 2, on page 2, lines 5-11, which read as follows:

Unless a vehicle has already been reclaimed by the owner, the person possessing the vehicle under this section shall notify the registered owner or primary lienholder, if any, of the towing, transporting, or storage of the vehicle, by certified letter, return receipt requested, mailed to the registered owner or primary lienholder, if any, within five working days after the initial towing, transporting, or storage of the vehicle.

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REPRESENTATIVE HERRON recounted that when he was a city manager, this problem was prevalent, and local towing companies were refusing orders from police officers because [they were not getting reimbursed]; therefore, he said he supports the bill, because he said he thinks it will benefit everyone. Notwithstanding that, he asked if, under HB 251, there may be a chance that towing companies would charge exorbitant rates for "this special service."

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MR. HABEGER offered his understanding that the likelihood of that happening is lessened because of competition. For example, he said there are a number of towing companies in Fairbanks, Alaska, which compete well with one another and charge market rates. He said the odd situation wherein rates went up because of non-notification is addressed in Section 2.

CHAIR RAMRAS said, "It's balanced."

2:43:28 PM

MARGARET RABY, Alaska Towing Association (ATA);, Badger Towing, testified that ATA has no issue with Version E and considers it to be an excellent idea to give possessory liens priority. However, she stated that ATA has concerns about Section 2. She said the association understands the need for consumer protection, but does not think HB 251 is the appropriate venue in which to address the issue, which she said is more complicated than just notifying within five days or not. She said the vehicle owner may have been arrested or may be in the hospital following a motor vehicle accident, and "all notification does is get their lien holder excited to take their vehicle back," when there is no need for that to happen. She said Badger Towing just had this situation occur a week ago. Furthermore, she relayed, notification would drive up the cost for towing companies; the time and labor involved could result in an actual mailing cost of over \$10 per vehicle. She noted that Section 2 limits a lien to towing and storage charges, and does not include compensation for the time and money invested in notification.

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MS. RABY stated that towers are part of a service industry, and banks are the only part of the process not in partnership with towers. Moreover, she said banks seem to be in direct opposition with towing companies. She said it makes good press to say a towing company held onto a vehicle for a long time to drive up storage charges; however, she explained, the reality is that if a vehicle's residual value is less than 30 days worth of towing storage, it is unlikely that there is a lien against that vehicle in the first place, unless the vehicle has been destroyed and the lien holder is looking to dump it.

MS. RABY said Alaska law has created a situation such that both private vehicle owners and lien holders have the ability to abandon vehicles - which is unlawful - and the towers "have no mechanism to take care of it." She continued as follows:

So, if there are towing companies that may be extending the storage charges on towing a storage lien, I can tell you just from my own experience, they're very likely trying to cover charges from multiple vehicles that have been dumped on them. This is just one more way of cost-shifting, unfortunately. It's a practicality of trying to make ends meet when you're a small mom and pop company. It doesn't make it right, but that is what happens.

MS. RABY concluded that there are a lot of changes that need to be made to Alaska towing laws; however, ATA believes suggesting that the entire bulk of monitoring and ensuring nothing goes wrong and nobody is harmed should be the responsibility of the towing companies is putting those companies in an untenable position.

[2:48:29 PM](#)

SHAWN ROSS, President, Alaska Towing Association (ATA); Owner, Badger Towing, concurred with Ms. Raby that there are a lot of other costs involved with notification. He questioned whether "**five working days**" refers to the towing companies' schedules, which are 24 hours a day, seven days a week, or the bank's schedule, which is usually Monday through Friday. He related a situation in which Badger Towing sent out letters within five days. He said Badger Towing understood that the vehicle owner was in good standing with the lienholder, but the lienholder repossessed the vehicle anyway. The towing company's bill was approximately \$300, but the lienholder ended up charging the vehicle owner almost \$1,100 to get his vehicle back.

CHAIR RAMRAS asked Mr. Ross if he supports the bill "in its present form."

MR. ROSS responded yes. In response to Chair Ramras, he related that there are currently approximately 30 members of ATA, and they range across the state and "part of the Northwest." He said Sitka, Soldotna, Nenana, and Anderson are included in the list of those communities with memberships in ATA.

[2:51:07 PM](#)

REPRESENTATIVE GATTO noted that Section 2 would require the aforementioned notification to be given to "the registered owner or primary lienholder", but sent to "the registered owner and primary lienholder". He said he finds the change from and to or confusing.

MR. ROSS concurred, and opined that the word "and" should be used in both cases.

[2:52:08 PM](#)

MR. HABEGER related that the bill drafter said the "or" and "and" need to be used as is. He reminded the committee that the notification language is part of the 60-day process. He explained that currently a towing company has the right to have a lien against the vehicle for 60 days. Under Version E, if the towing company wants to have that possessory title past 60 days, it has to notify the lienholder and owner in five working days.

REPRESENTATIVE GATTO expressed dissatisfaction with that rationale.

[2:53:37 PM](#)

MARK ANTHONY DAVIS, President, Interior Towing & Salvage, Inc., testified that he agrees with Section 1, but expressed concern with language in Section 2, page 2, line 5, which read: "(b) A lien under this section is limited to towing and storage charges." He indicated the language needs to specify associated charges at the end of that sentence, which would cover the cost of the letters and certification. Further, regarding language on page 2, line 10, he said he thinks the requirement to send notification "within five working days" should be changed to seven working days. He stated his belief that towing companies need the extra two days, because many vehicles are registered outside the state, and towing companies would require extra time to find out what application form is needed to request the information. Furthermore, the extra two days would help when the days include a weekend. Mr. Davis concluded, "But other than that I 100 percent believe that this bill needs to go forward."

[2:55:06 PM](#)

ELISABETH GRISWOLD, Owner/Manager, Gabe's Towing, said towing companies have been struggling with credit unions not paying the

charges when repossessing vehicles. Credit unions would hire lawyers that sent the towing companies letters stating that the credit union would pay "a reasonable tow fee" and storage for three to five days; however, the reasonable tow fees were way below market price. Ms. Griswold expressed appreciation for the language change in Section 1, but concurred with Mr. Davis regarding the suggested changes to Section 2.

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WILLIAM R. SATTERBERG, JR., Attorney at Law, Satterberg Law Offices, Fairbanks, Alaska, told the committee that although he has associations with and/or has served as lawyer to some of the individuals who have testified, he is testifying on his own behalf. He said he was involved in the case Ms. Griswold related, and he confirmed that [Gabe's Towing] had a storage lien trumped by a credit union, and it was a fight to get the company paid for the job it did. He said he supports HB 251; however he said he thinks the towing liens need to take priority. He concurred with Representative Gatto regarding the disjointed language in section 2. Finally, he recommended the requirement for notification be set within "seven days, excluding weekends and holidays."

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REPRESENTATIVE GATTO moved to adopt Conceptual Amendment 1, "to change the registered owner or primary leaseholder to registered owner and primary leaseholder in the two places where I see it and in any other places." There being no objection, Conceptual Amendment 1 was adopted.

CHAIR RAMRAS moved to adopt Conceptual Amendment 2, so that the sentence on page 2, line 5 would read, "A lien under this section is limited to towing, storage, and associated charges."

REPRESENTATIVE GATTO objected. He said he would understand if the associated charges were specified as mailing fees, but he expressed concern that without that limitation the language is too wide open.

CHAIR RAMRAS [treated Representative Gatto's remark as a motion to adopt a conceptual amendment to Conceptual Amendment 2], whereby the sentence on page 2, line 5 would read, "A lien under this section is limited to towing, storage, and associated mailing charges." He announced that there being no objection, the Conceptual Amendment to Conceptual Amendment 2 was adopted.

REPRESENTATIVE GATTO removed his objection to Conceptual Amendment 2, [as amended]. There being no further objection, Conceptual Amendment 2, [as amended], was adopted.

CHAIR RAMRAS moved to adopt Conceptual Amendment 3, on page 2, line 10, so that the language would read, "seven working days, excluding weekends and holidays".

REPRESENTATIVE GATTO objected. He asked if that would mean 7 working days.

CHAIR RAMRAS said he thinks "seven working days, excluding weekends and holidays" would be the same as seven working days, but could be as much as 10 days with a weekend.

MR. SATERBERG explained that his previous recommendation regarding this language is copied from Civil Rule 6. He explained that the court system will often exclude weekends and holidays if the time period is less than seven days. He said he foresees the use of the term "working days" as being problematic.

[3:01:00 PM](#)

REPRESENTATIVE GATTO asked if the act of sending a letter and asking for a return receipt satisfies all obligations, because the person to whom the letter is sent may never receive it.

MR. SATERBERG said that can be a problem. He said presumably a person who is being served will sign certified mail. He said he does not know how the problem Representative Gatto described would be handled.

REPRESENTATIVE GATTO expressed concern that the committee may be making legislation that would lead to difficulty.

[3:02:33 PM](#)

REPRESENTATIVE HOLMES said she has no problem with the part of Conceptual Amendment 3 that would change "five" to "seven"; however, she expressed concern about the rest of the phrasing. She said Civil Rule 6 defines the meaning of "days" under the court system rule. She offered her understanding that Alaska Statute has similar definitions regarding working days. She said she thinks it would be better to use the term "working

days" and leave off "except weekends and holidays", and then rely on Alaska Statute beyond that.

REPRESENTATIVE LYNN questioned what the exact meaning of "holiday" would be.

[3:03:32 PM](#)

CHAIR RAMRAS withdrew Conceptual Amendment 3.

CHAIR RAMRAS moved to adopt Conceptual Amendment 4, to change "**five**" to "seven". There being no objection, Conceptual Amendment 4 was adopted.

[3:03:53 PM](#)

REPRESENTATIVE GATTO said the committee has not yet addressed the issue of whether or not it is sufficient to send the notification or if proof of its receipt is necessary. He said he considers the latter sufficient.

[3:04:32 PM](#)

MR. SATTERBERG noted that the language in Section 2 would require the notification to be sent "**by certified letter, return receipt requested**". He offered his understanding that once a towing company has sent notification in that manner, it would have met the requirement of notification.

REPRESENTATIVE GATTO argued, though, that it is the obligation of the sender to ensure that the recipient receives the notification.

MR. SATTERBERG said traditionally the obligation in many of Alaska's notification statutes is to send [to] the last known address. He said the Division of Motor Vehicles has that requirement and sends notification of license withdrawal to the last known address. He stated, "It would seem to me that if it's been sent to the proper address ... by registered mail, the sender's met the obligation."

REPRESENTATIVE DAHLSTROM mentioned that she'd sent something to someone who had moved without her knowing, and she got the missive back in the mail. She suggested that the same thing would happen in this case.

[3:06:40 PM](#)

MR. SATTERBERG said it is possible; however, he stated that there is "an obligation on all of us to make sure we have proper addresses on record."

REPRESENTATIVE GATTO said typically notices from the phone company or the Internal Revenue Service (IRS) are 30-day notices. He indicated that seven days is too short a time for a recipient to respond. He said not everyone checks his/her mail daily. He expressed his hope that consideration would be made to hold the bill over to address this issue further.

[3:07:56 PM](#)

JANE PIERSON, Staff, Representative Jay Ramras, Alaska State Legislature, on behalf of Representative Ramras, sponsor, stated that current statute allows for 60 days [before storage charges "cease to be part of the lien"], and sometimes notice is not sent out until the 59th day. Under the proposed legislation [as amended], she said, that notice would have to be sent out within seven days, which provides added security to the person who owns the vehicle.

REPRESENTATIVE GATTO expressed dissatisfaction with the language, because he offered his understanding that the people who are supposed to get the notification will suffer if they don't check their mail.

MS. PIERSON told Representative Gatto that those people would actually suffer less, because of the proposed legislation, as amended.

REPRESENTATIVE GATTO argued, though, that "they're not notified if they didn't get notified."

MS. PIERSON stated her belief that it is not the obligation of the towing company to "chase these people down." She said she would rather receive notification within seven days and only have to pay seven days worth of storage charges, than have a \$2,000 bill - [resulting from a notice sent out much later] - which she may not be able to pay.

[3:10:14 PM](#)

REPRESENTATIVE DAHLSTROM moved to report the proposed committee substitute (CS) for HB 251, Version 26-LS0786\E, Luckhaupt,

3/15/10, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE GATTO objected.

A roll call vote was taken. Representatives Herron, Lynn, Holmes, Dahlstrom, and Ramras voted in favor of reporting the proposed committee substitute (CS) for HB 251, Version 26-LS0786\E, Luckhaupt, 3/15/10, as amended, out of committee with individual recommendations and the accompanying fiscal notes. Representative Gatto voted against it. Therefore, CSHB 251(JUD) was reported out of the House Judiciary Standing Committee by a vote of 5-1.

[3:11:01 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:11 p.m.