

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 17, 2009

1:35 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Bill Wielechowski, Vice Chair
Senator Lesil McGuire
Senator Gene Therriault

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 101(JUD)

"An Act exempting the full value of life insurance and annuity contracts from levy to satisfy a 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 AND HELD

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 129(RLS)

"An Act relating to the authority of the Real Estate Commission to revoke licenses of persons convicted of certain crimes."

MOVED CSHB 129(RLS) OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 201(JUD)

"An Act relating to the expiration date of a concealed handgun permit."

MOVED CSHB 201 (JUD) OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 102(JUD)

"An Act relating to the Uniform Commercial Code, to the general provisions of the Uniform Commercial Code, to documents of title under the Uniform Commercial Code, to the Uniform Electronic Transactions Act, to lease-purchases of personal property, to the contractual duty to act fairly and in good faith, and to carrier, warehouse, and animal care liens; amending Rules 403 and 902, Alaska Rules of Evidence; and providing for an effective date."

MOVED SCS CSHB 102(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 101

SHORT TITLE: EXEMPTIONS: LIFE INSURANCE; ANNUITIES

SPONSOR(s): REPRESENTATIVE(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
03/16/09 (H) Heard & Held
03/16/09 (H) MINUTE(JUD)
03/19/09 (H) JUD AT 1:00 PM CAPITOL 120
03/19/09 (H) Moved CSHB 101(JUD) Out of Committee
03/19/09 (H) MINUTE(JUD)
03/23/09 (H) JUD RPT CS(JUD) NT 6DP
03/23/09 (H) DP: LYNN, GRUENBERG, COGHILL,
DAHLSTROM, GATTO, RAMRAS
04/03/09 (H) TRANSMITTED TO (S)
04/03/09 (H) VERSION: CSHB 101(JUD)
04/06/09 (S) READ THE FIRST TIME - REFERRALS
04/06/09 (S) L&C, JUD
04/14/09 (S) L&C AT 1:00 PM BELTZ 211
04/14/09 (S) Moved CSHB 101(JUD) Out of Committee
04/14/09 (S) MINUTE(L&C)
04/15/09 (S) L&C RPT 4DP 1NR
04/15/09 (S) DP: PASKVAN, MEYER, THOMAS, DAVIS
04/15/09 (S) NR: BUNDE
04/17/09 (S) JUD AT 1:30 PM BELTZ 211

BILL: HB 129

SHORT TITLE: POWER TO REVOKE REAL ESTATE LICENSES

SPONSOR(s): RAMRAS

02/13/09 (H) READ THE FIRST TIME - REFERRALS
02/13/09 (H) L&C
03/02/09 (H) L&C AT 3:15 PM BARNES 124
03/02/09 (H) Moved Out of Committee
03/02/09 (H) MINUTE(L&C)

03/05/09 (H) L&C RPT 5DP
 03/05/09 (H) DP: LYNN, BUCH, COGHILL, HOLMES, NEUMAN
 03/24/09 (H) RLS AT 5:00 PM CAPITOL 120
 03/24/09 (H) Moved CSHB 129(RLS) Out of Committee
 03/24/09 (H) MINUTE(RLS)
 03/25/09 (H) RLS RPT CS(RLS) NT 4DP 2NR
 03/25/09 (H) DP: KERTTULA, GARDNER, OLSON, COGHILL
 03/25/09 (H) NR: MILLETT, HERRON
 03/25/09 (H) RETURNED TO RLS COMMITTEE
 03/27/09 (H) TRANSMITTED TO (S)
 03/27/09 (H) VERSION: CSHB 129(RLS)
 03/30/09 (S) READ THE FIRST TIME - REFERRALS
 03/30/09 (S) L&C, JUD
 04/09/09 (S) L&C AT 1:00 PM BELTZ 211
 04/09/09 (S) Moved CSHB 129(RLS) Out of Committee
 04/09/09 (S) MINUTE(L&C)
 04/10/09 (S) L&C RPT 5DP
 04/10/09 (S) DP: PASKVAN, MEYER, THOMAS, BUNDE,
 DAVIS
 04/17/09 (S) JUD AT 1:30 PM BELTZ 211

BILL: HB 201

SHORT TITLE: CONCEALED HANDGUN PERMITS

SPONSOR(s): JOHNSON

03/23/09 (H) READ THE FIRST TIME - REFERRALS
 03/23/09 (H) JUD
 04/01/09 (H) JUD AT 1:00 PM CAPITOL 120
 04/01/09 (H) Moved CSHB 201(JUD) Out of Committee
 04/01/09 (H) MINUTE(JUD)
 04/02/09 (H) JUD RPT CS(JUD) 6DP
 04/02/09 (H) DP: LYNN, GRUENBERG, COGHILL,
 DAHLSTROM, GATTO, RAMRAS
 04/13/09 (H) TRANSMITTED TO (S)
 04/13/09 (H) VERSION: CSHB 201(JUD)
 04/14/09 (S) READ THE FIRST TIME - REFERRALS
 04/14/09 (S) JUD
 04/17/09 (S) JUD AT 1:30 PM BELTZ 211

BILL: HB 102

SHORT TITLE: UNIFORM COMMERCIAL CODE

SPONSOR(s): LABOR & COMMERCE

01/30/09 (H) READ THE FIRST TIME - REFERRALS
 01/30/09 (H) L&C, JUD
 02/13/09 (H) L&C AT 3:15 PM BARNES 124
 02/13/09 (H) Moved Out of Committee

02/13/09 (H) MINUTE(L&C)
 02/16/09 (H) L&C RPT 5NR
 02/16/09 (H) NR: LYNN, BUCH, NEUMAN, CHENAULT, OLSON
 02/16/09 (H) L&C AT 3:15 PM BARNES 124
 02/16/09 (H) <Bill Hearing Canceled>
 03/16/09 (H) JUD AT 1:00 PM CAPITOL 120
 03/16/09 (H) Moved CSHB 102(JUD) Out of Committee
 03/16/09 (H) MINUTE(JUD)
 03/18/09 (H) JUD RPT CS(JUD) NT 3DP 4NR
 03/18/09 (H) DP: GRUENBERG, HOLMES, RAMRAS
 03/18/09 (H) NR: LYNN, COGHILL, GATTO, DAHLSTROM
 03/23/09 (H) TRANSMITTED TO (S)
 03/23/09 (H) VERSION: CSHB 102(JUD)
 03/25/09 (S) READ THE FIRST TIME - REFERRALS
 03/25/09 (S) L&C, JUD
 04/14/09 (S) L&C AT 1:00 PM BELTZ 211
 04/14/09 (S) Moved CSHB 102(JUD) Out of Committee
 04/14/09 (S) MINUTE(L&C)
 04/15/09 (S) L&C RPT 4DP 1NR
 04/15/09 (S) DP: PASKVAN, MEYER, THOMAS, DAVIS
 04/15/09 (S) NR: BUNDE
 04/17/09 (S) JUD AT 1:30 PM BELTZ 211

WITNESS REGISTER

AMANDA MORTENSEN, Intern
 to Representative John Coghill
 Alaska Capitol Building
 Juneau, AK

POSITION STATEMENT: Introduced HB 101 on behalf of the sponsor.

LINDA HULBERT, Associate
 New York Life Insurance Company
 Fairbanks, AK

POSITION STATEMENT: Testified in support of HB 101.

DENNIS BAILEY, Attorney
 Legislative Legal and Research Services
 Legislative Affairs Agency
 Juneau, AK

POSITION STATEMENT: Provided information related to HB 101.

REPRESENTATIVE JAY RAMRAS
 Alaska State Legislature
 Juneau, AK

POSITION STATEMENT: Sponsor of HB 129.

MARGARET DOWLING, staff
to Representative Jay Ramras
Alaska Capitol Building
Juneau, AK

POSITION STATEMENT: Introduced HB 129 on behalf of the sponsor.

GAYLE HORETSKI, Attorney
Civil Division
Commercial/Fair Business Section
Department of Law
Juneau, AK

POSITION STATEMENT: Provided explanation for HB 129.

SHARON WALSH, Executive Administrator
Alaska Real Estate Commission
Alaska Association of Realtors

POSITION STATEMENT: Testified in support of HB 129.

REPRESENTATIVE CRAIG JOHNSON
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Sponsor of HB 201.

KATHRYN MONFREDA, Chief
Criminal Records and Identification Bureau
Division of Statewide Services
Department of Public Safety,

POSITION STATEMENT: Provided clarification on HB 201.

REPRESENTATIVE MAX GRUENBERG
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Sponsor of HB 102.

TERRY THURBON, State Delegate
Uniform Law Commission
Juneau, AK

POSITION STATEMENT: Explained provisions in HB 102.

ACTION NARRATIVE

1:35:28 PM

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at 1:35 p.m. Present at the call to order were Senators Wielechowski, McGuire and French. Senator Therriault arrived soon thereafter.

HB 101-EXEMPTIONS: LIFE INSURANCE; ANNUITIES

[1:35:56 PM](#)

CHAIR FRENCH announced the consideration of HB 101. [Before the committee was CSHB 101(JUD).]

AMANDA MORTENSEN, Intern to Representative John Coghill, speaking on behalf of the sponsor, explained that HB 101 would exempt the full value of life insurance and annuity contracts from levy to satisfy unsecured debt. This bill would protect Alaskan families and their ability to plan for the future. For example, if "person A" were to hit "person B" with a car, "person B" could sue for the assets of "person A". This bill would protect "person A's" life insurance and annuity contract so that his/her family could survive in the event of "person A's" death. However, "person B" would not be prevented from pursuing "person A's" other assets to fulfill a settlement award. Additionally, HB 101 would protect the death benefits of the spouse or a dependent of the debtor in the event the debtor survives.

While retirement plans currently are creditor protected under federal laws, this bill will help in instances in which the employer does not provide the employee with a retirement plan. The employee could use an annuity as a retirement plan and provide financial security for themselves and their families. Given the uncertainty of the Social Security system, this bill is particularly important to help Alaska families to legitimately provide for their future. She related that HB 101 falls under AS 09.38.015 Property exempt without limitation.

[1:37:37 PM](#)

Senator Therriault joined the committee.

MS. MORTENSEN explained that Section 1 removes the \$10,000 exemption cap on life insurance and annuities. Section 2 removes the language "or payable" to clarify a potential ambiguity that would allow garnishment of death benefits prior to a person's death. Section 3 repeals AS 09.38.025(a) because the exemption of unmaturred life insurance and annuity contracts now falls under the category of "property exempt without limitation" in AS 09.38.015. Section 4 is an applicability section that states that this will apply only to a debt that is created on or after the effective date of this Act.

SENATOR WIELECHOWSKI asked if \$100,000 in unpaid child support could be removed from someone's \$1 million life insurance policy under this bill.

MS. MORTENSEN replied child support can be garnished from exempt property under AS 09.38.65(a)(1)(A).

SENATOR WIELECHOWSKI asked if there is a list of things that could be garnished that would not be covered by this bill.

[1:39:26 PM](#)

MS. MORTENSEN said the list includes: child support; unpaid earnings of up to one month's compensation or the fulltime equivalent for personal services of an employee; state or local taxes; a levy against exempt property to enforce a claim for the purchase price of the property or a loan made for the express purpose of enabling an individual to purchase the property and use it for that purpose; labor or materials furnished to make, repair, improve, preserve, store, or transport the property; and a special assessment imposed to defray costs of a public improvement benefitting the property.

CHAIR FRENCH asked if the answer is yes or no to Senator Wielechowski's question about whether or not the deceased's annuity contract could be garnished to pay unpaid child support.

MS. MORTENSEN replied she would defer to Linda Hulbert to speak to death benefits.

[1:40:59 PM](#)

CHAIR FRENCH asked if there has been opposition to the bill.

MS. MORTENSEN replied there hasn't been that much opposition; most people see it as a benefit to Alaska families.

CHAIR FRENCH said he likes the general idea. He reviewed the list of exempt property under Sec.09.38.015(a) and asked what is included under paragraph (11), benefits paid or payable under AS 47.45.301 - 47.45.309.

[1:42:20 PM](#)

MS. MORTENSEN deferred to Mr. Bailey.

CHAIR FRENCH suggested the committee might consider imposing an upper limit on the exemptions. He related that he typically falls on the side of protecting consumers, but he's mindful of

the creditor who may have loaned a person \$1 million based on the strength of a contract, and suddenly they can't collect.

SENATOR WIELECHOWSKI noted that Ms. Mortensen said there hasn't been much opposition to the bill and asked if there has been any opposition.

MS. MORTENSEN explained that the main concerns related to the potential for someone to use this fraudulently. But in other states it's been proven that the courts don't allow fraudulent transfers and hiding of money.

SENATOR WIELECHOWSKI asked if anyone has testified against the bill.

MS. MORTENSEN answered no.

SENATOR WIELECHOWSKI assumed that if someone took out a loan and used their life insurance policy as collateral, the heirs could collect the life insurance.

MS. MORTENSEN deferred to Ms. Hulbert.

[1:44:09 PM](#)

SENATOR MCGUIRE noted that timing typically arises as an issue in bankruptcy proceedings and suggested including language to exclude blatant attempts to hide assets.

MS. MORTENSEN said Linda Hulbert could talk about that and Dennis Bailey could say if other statutes address timing.

CHAIR FRENCH added that there may be a superseding section of law that prohibits fraud.

[1:45:22 PM](#)

SENATOR THERRIAULT offered that the fraudulent transfer provisions would speak to that.

LINDA HULBERT, Associate, New York Life Insurance Company, testified in support of HB 101. She stated that today employers are assuming less responsibility for employees so people need to assume more for themselves. Individuals need to plan for the wellbeing of their family and they need to plan for their own retirement. HB 101 offers the same protection of life insurance and annuities for planning as other states such as Florida and Texas. She related that there is a specific Fraudulent Transfers Act that is clearly defined by the court so anyone who enters

into this in any fraudulent manner would not find their assets protected.

[1:47:33 PM](#)

MS. HULBERT explained that anyone can collaterally assign a life insurance policy or annuity contract; in that event the creditor comes before anything is paid to the individual or beneficiary. She opined that this makes it clear that this bill does not create a problem with creditors. Creditors can ask for and receive collateral assignments so this doesn't mean that it cannot be used to pledge against a loan. It means that if a family enters into a legitimate planning process, they can rest assured that either for retirement purposes or purposes of taking care of loved ones that this is protected for them. This is a critical planning tool, she said. To her knowledge the bill hasn't received any negative testimony; there have been questions about fraudulent transfers and abuse. "I think this is very unlikely to be abused because of the careful protections that our state has structured," she said. This bill isn't designed for the very wealthy; this bill is for the majority of Alaska citizens who want to accept responsibility for planning and need protections for that.

[1:49:11 PM](#)

CHAIR FRENCH asked the difference between an unmatured life insurance contract and a matured life insurance contract.

MS. HULBERT explained that a matured contract is when someone has died and an unmatured contract is when someone hasn't died yet.

CHAIR FRENCH asked if other states that have a similar law have imposed an upper limit on the exemption.

MS. HULBERT said no. She added that the bill originally was to be drafted only for insurance, but Linda Hall, the director of the division of insurance, suggested it should be used for both insurance and annuities because both are sound planning techniques. Other states have included both and have not encountered difficulties.

[1:50:22 PM](#)

SENATOR WIELECHOWSKI said it would be helpful to have examples of the debts that are being exempted.

MS. HULBERT said the question is difficult to answer. She continued:

Perhaps if there was a car accident and you were sued and it went beyond the limits of your insurance you could take other people's assets. But you couldn't take their defined benefit plan - their retirement plan - because that's federally protected. But if you didn't have access to a federally defined retirement plan and you had an annuity, then you could take that person's potential annuity. Whereas this way if they'd set aside money for retirement it would be protected like their 401(k) or their defined benefit would be," she said.

SENATOR WIELECHOWSKI asked if debts other than lawsuits would be exempt.

MS. HULBERT said she would defer to an attorney, but she hasn't encountered that circumstance. I feel that people are more secure knowing that they can plan, she added.

[1:52:13 PM](#)

SENATOR THERRIAULT asked if she knows what AS 47.45.301 - 47.45.309 reference.

CHAIR FRENCH said he just looked that up and they reference the cash assistance payments to Alaska seniors.

SENATOR THERRIAULT recapped that a 401(k) and retirement plans are protected under federal law and there isn't an upper limit. None of the states with this type legislation have passed an upper limit because if people don't have access to those retirement plans they can use this as a component of retirement planning. He asked if that's correct.

MS. HULBERT replied that's right. She related that many small businesses no longer contribute to 401(k)s or offer retirement plans because federal requirements have made the management costs substantial. This bill is a needed mechanism that will allow people to begin to plan for themselves and their families.

[1:54:19 PM](#)

CHAIR FRENCH asked Mr. Bailey if a person would be without a remedy if they did not make an express statement regarding collateral assignment in the debt instrument.

DENNIS BAILEY, Attorney, Legislative Legal and Research Services, Legislative Affairs Agency, replied this is not a

question about whether or not they would have a remedy, but they would not be able to collect against annuity contracts.

CHAIR FRENCH thanked him for the clarification.

MR. BAILEY referenced the discussion about the list of exemptions under section .015 and that they're fairly nominal. He offered clarification that under the exemption statute there are other items that are exempt. Specifically, the Alaska statute provides exemption for retirement plans.

CHAIR FRENCH asked if that's in subsection (b) to AS 09.36.015.

MR. BAILEY replied they are separately listed. The exemption for retirement plans is under AS 09.38.017; there is an exemption for homestead; and there is an exemption for a home.

CHAIR FRENCH recapped that categories of exemptions currently exist in statute other than the nominal ones referenced earlier.

MR. BAILEY stated agreement.

[1:57:17 PM](#)

CHAIR FRENCH closed public testimony. He stated that he has continuing questions about how this will work and he will hold HB 101 in committee.

HB 129-POWER TO REVOKE REAL ESTATE LICENSES

[1:57:39 PM](#)

CHAIR FRENCH announced the consideration of HB 129. [Before the committee was CSHB 129(RLS).] He welcomed the sponsor, his counterpart in the House, and apologized that he didn't have a cookie to offer.

REPRESENTATIVE JAY RAMRAS, sponsor of HB 129, introduced Margaret Dowling who will explain the details of the bill.

CHAIR FRENCH asked for the record to reflect that Senator Therriault brought Representative Ramras a cookie.

MARGARET DOWLING, staff to Representative Jay Ramras, said HB 129 makes a simple, but needed, correction to existing law that says that the Alaska Real Estate Commission must revoke the license of a real estate broker or associate broker who has been convicted of forgery, theft, extortion, conspiracy to defraud creditors, or fraud. The commission can refuse to grant a

license or deny renewal of a license on the same grounds. The problem is that the law does not apply to Alaska's 1,460 licensed sales people; it applies only to the 411 associate brokers and 483 brokers in the state.

This issue was brought to the sponsor's attention by the Real Estate Commission. She opined that this is a field where customers place faith in an agent's trustworthiness; these people have unfettered access to clients' homes, and they often assist clients with sometimes complicated negotiations and financial transactions. HB 129 will empower the Real Estate Commission to appropriately regulate this profession, which will protect both the profession and the public.

[2:01:28 PM](#)

CHAIR FRENCH disclosed that his wife is a real estate licensee. He remarked that he thought that in the recent past real estate agents, brokers and sales persons were renamed as licensees, but he now sees that pertains to a different part of the real estate statutes. He asked for enlightenment.

MS. DOWLING responded she only knows is that under this section the individuals are referred to as sales persons, brokers, and associate brokers.

[2:03:13 PM](#)

SENATOR THERRIAULT pointed out that bills typically are prospectively applicable, but this bill is applicable both prospectively and retrospectively.

MS. DOWLING said that clarifies the intent, which is to protect the public. It enhances the regulatory scheme so that the Real Estate Commission can police the profession.

SENATOR THERRIAULT asked if this would affect a person who had a felony conviction 10 years ago.

MS. DOWLING explained that the existing statute states that a person who is convicted of a felony is barred from receiving a license for seven years from the date they complete their sentence.

[2:04:44 PM](#)

SENATOR MCGUIRE asked if she has looked into the constitutionality of that provision because she recalls that you can place terms on or after the effective date, but you can't reach back to prior criminal acts.

MS. DOWLING said she would defer questions about ex post facto laws to Gayle Horetski, but it's the sponsor's view that this does not increase punishment for a crime. This enhances an existing regulatory scheme so that the state's interest in protecting the public can be met. She reiterated that sales people have unfettered access to peoples' homes and they assist in sometimes complicated financial transactions. The public assumes that the person they are dealing with will be trustworthy.

2:06:12 PM

CHAIR FRENCH clarified that this does not increase any criminal punishment that has already been imposed.

GAYLE HORETSKI, Attorney, Civil Division, Commercial/Fair Business Section, Department of Law, said HB 129 makes a minor change to existing law. Currently brokers and associate brokers are under these provisions and the bill adds sales persons to the existing law. The existing law provides that if a person is convicted of certain offenses the Real Estate Commission shall revoke their license. "So you have a revoked license or this doesn't even apply," she said.

CHAIR FRENCH asked her to say that again.

MS. HORETSKI explained that this doesn't apply in and of itself to convictions. It applies to people whose licenses have been revoked because of their conviction. Page 3, paragraph (10) says the commission shall revoke the license of a broker or associate broker who has been convicted of a felony or other crime. You have the criminal conviction and then the commission has to take a separate step to file an accusation and revoke the license. Once the license is revoked based on the conviction, the person cannot get relicensed until seven years after they have served their sentence.

CHAIR FRENCH posed the circumstance of someone who was convicted five years ago of a DUI and asked if this bill would allow the commission to revoke that person's license if they are currently practicing real estate in the state of Alaska.

MS. HORETSKI directed attention to page 3, line 20, and said only if it is the commission's judgment that it affects the ability of that person to practice.

CHAIR FRENCH observed that there is something of an ex post facto issue because it's a conviction from the past for which someone is being repenalized. He added that it's his analysis that it's not a criminal penalty so it's not an issue.

[2:09:30 PM](#)

MS. HORETSKI said from a legal standpoint this is not a penalty issue at all. A person does not have a constitutional right to a license unless they meet the criteria. If a person gets a license then they would have a property interest.

CHAIR FRENCH said he agrees, but someone who is making a good living as a real estate agent might have a different view.

MS. HORETSKI added that the purpose of licensing a profession is to set a minimum standard below which the public can be confident that the person has not fallen. That doesn't mean he or she will be any good at what they do, but if the person does not meet the minimum criteria for initial licensure or renewal, he or she is not entitled to hold the license. She reiterated that this isn't an issue of punishment. This is a public regulatory measure.

[2:11:07 PM](#)

SENATOR MCGUIRE cautioned that this is ripe for litigation because revoking someone's license is certainly an economic penalty. When the legislature wanted to register all individuals in the state who were prior sex offenders, the court said absolutely not. It was an ex post facto problem to try to reach back. If the underlying statute has that language applying to brokers she said she would be curious to know if the commission has had to address that. If this were to pass it's likely that sales people in this state will have their real estate licenses revoked, she said. It's a risk the sponsor takes.

[2:12:54 PM](#)

MS. HORETSKI offered the view that that exact reason is the purpose for the language in the bill that makes it clear that it is intended to apply to offenses that occurred before the effective date of the bill. She continued:

As you know under our state law, the idea that something is retroactively or retrospectively applied does not make it unconstitutional. But there is a state statute that says that that intent in intended that it should be exclusively stated. So it's an attempt to minimize the legal issues on appeal or if it's challenged that that language clarifying the

legislation's intent was added. And we're really glad that that language is in there because it does clarify the scope...

MS. HORETSKI related that this has come up in other circumstances such as driver's licenses and situations where the licensure criteria for a particular profession has been upgraded or narrowed. There is an affect and people do drop out, but the courts have by-and-large said that the legislature can change the criteria if it's a rational requirement. If that weren't the case, standards wouldn't rise over the years.

[2:14:57 PM](#)

SENATOR MCGUIRE said that makes sense, but this isn't about raising professional requirements. This is about reaching back into someone's criminal record. Criminal and civil penalties and offenses are treated differently. The trigger here is if additional burden is placed on a person's criminal past.

CHAIR FRENCH said he agrees with Ms. Horetski but Senator McGuire's point is valid because economic pain is real. He suggested the committee imagine a somewhat analogous situation of a state that employs teachers that are only required to have a high school education and a college degree. Assume that system works for 20 years when it suddenly comes to light that 50 sex offenders are teaching in the schools. A decision is made to raise the bar and require a high school education, a degree from college, and a record free of being a sex offender. The effect of the bill would be to strip teaching certificates from all the sex offenders and legislators would readily sign off on that. The sex offenders might complain, but they'd be told that's tough luck. The bar has been raised.

SENATOR MCGUIRE warned that that may work, but they will sue.

[2:17:22 PM](#)

CHAIR FRENCH asked Ms. Walsh if the Real Estate Commission looks at criminal histories of individuals who come before the commission seeking sales person, associate broker, and broker licensure.

SHARON WALSH, Executive Administrator, Alaska Real Estate Commission, Alaska Association of Realtors, answered no and they don't do fingerprinting either. Applicants fill out a self-disclosure form.

CHAIR FRENCH asked if she has any reason to believe that this would apply to licensees currently working in the state who have disqualifying felony convictions.

MS. WALSH replied she knows of one case.

[2:18:23 PM](#)

REPRESENTATIVE RAMRAS related that he believes that case is the reason the commission contacted him asking for clarification. The intent of the bill is to give the commission the authority to police their own because this is a profession that thrives on trust.

CHAIR FRENCH closed public testimony. He said he is comfortable with the state of the bill and solicited a motion.

[2:19:41 PM](#)

SENATOR MCGUIRE moved to report HB 129 from committee with individual recommendations and attached fiscal note(s). There being no objection, CSHB 129(RLS) moved from the Senate Judiciary Standing Committee.

At ease 2:19 pm.

HB 201-CONCEALED HANDGUN PERMITS

[2:21:30 PM](#)

CHAIR FRENCH announced the consideration of HB 201. [Before the committee was CSHB 201(JUD).]

REPRESENTATIVE CRAIG JOHNSON, sponsor of HB 201, said the bill comes from a constituent who asked for notification from the Department of Public Safety (DPS) when his concealed handgun permit expires. He said he's of the belief that people who have a permit should have some responsibility so he had the bill drafted to have the concealed handgun permit expire on a person's birthday in the fifth year following issuance of the permit. There is a period of transition and the length of the initial permit may be adjusted to four years, but it will not be issued for a period of more than five years, he said. Although Alaska doesn't have a concealed handgun law, 34 states have reciprocity with Alaska and permit holders must be compliant.

SENATOR WIELECHOWSKI asked if there could be a situation where a person's permit would expire in less than five years.

REPRESENTATIVE JOHNSON responded it could expire in four years. The bill says it can't be more than five years. He said he believes people will jump on this because of the simplicity.

CHAIR FRENCH asked if it's a fielder's choice for the permit holder.

REPRESENTATIVE JOHNSON responded he believes they'd have that option, but he'd defer to someone from the department.

[2:24:06 PM](#)

CHAIR FRENCH asked the department representative if the statute says the permit must expire on the person's birthday or if it's optional.

KATHRYN MONFREDA, Chief, Criminal Records and Identification Bureau, Division of Statewide Services, Department of Public Safety, said her duties include oversight of the concealed handgun permit program and her reading of the statute is that the permit must expire on the person's birthday. "We wouldn't be giving permit holders a choice," she said.

CHAIR FRENCH commented that he thinks clarity is a good thing.

[2:25:33 PM](#)

CHAIR FRENCH expressed appreciation to Ms. Monfreda for her long-standing and important public service.

SENATOR WIELECHOWSKI asked what it costs to renew a permit.

MS. MONFREDA replied the cost is \$25.

SENATOR WIELECHOWSKI mentioned the potential for outcry from someone who had to renew sooner than five years.

MS. MONFREDA explained that permit holders will receive a permit for four years and however many months it is until their next birthday. That could be four years and one month or four years and eleven months depending on when the person applies.

CHAIR FRENCH observed that the variability is to get the term set to coincide with the person's birthday.

MS. MONFREDA added that the variability would only be on the first renewal or issue. Subsequent renewals would be set at five years.

CHAIR FRENCH closed public testimony and asked the will of the committee.

[2:27:01 PM](#)

SENATOR WIELECHOWSKI moved to report CS for HB 201 from committee with individual recommendations and attached fiscal note(s). There being no objection, CSHB 201(JUD) moved from the Senate Judiciary Standing Committee.

At ease 2:27 pm.

HB 102-UNIFORM COMMERCIAL CODE

[2:28:18 PM](#)

CHAIR FRENCH announced the consideration of HB 102. [Before the committee was CSHB 102(JUD).]

REPRESENTATIVE GRUENBERG, sponsor of HB 102, introduced Ms. Thurbon and explained she is appearing today as the commissioner on state laws and she will answer the questions. HB 102 is at the request of the members of the Alaska Commission on Uniform State Laws and it updates Articles 1 and 7 of the Uniform Commercial Code (UCC). Article 1 provides definitions and general provisions for the UCC. Article 7 pertains to warehouse receipts, bills of lading, and other documents of title. The bill makes a number of technical changes to these Articles to bring Alaska into alignment with over 30 states. He explained that the uniform laws are drafted and revised by the commissioners who are several hundred people from around the country and include law professors, top attorneys, judges, and members of the attorneys general staff. These commercial codes are updated every few years to make sure that they keep up with technology.

[2:31:25 PM](#)

REPRESENTATIVE GRUENBERG said there is a provision in Article 1 that requires in all UCC dealings there be a duty of good faith and fair dealing. There are a number of Alaska Supreme Court cases that require that in the execution and performance of contracts.

CHAIR FRENCH added that it applies to any commercial contract.

REPRESENTATIVE GRUENBERG said yes; that is codified in Section 1.

Title 34.35 Liens, has an old statute that deals with warehousing and talks about storing oats, grains, and cattle. That statute is being updated and cross referenced to UCC Article 7.

2:33:02 PM

SENATOR WIELECHOWSKI thanked Representative Gruenberg his work on the UCC. It's a lot of work and requires attention to detail. "I know that's something you certainly have a reputation for and I appreciate you doing this," he said.

REPRESENTATIVE GRUENBERG introduced his staff and said he isn't aware of any opposition to the bill. It's been vetted through the bar association business law section, specifically the folks who represent warehousemen.

CHAIR FRENCH said he's pleased to see the good faith provision in Section 1; it's good to make it explicit. He noted that the phrase "covenant of good faith and fair dealing" has been recast to say "have a duty to act fairly and in good faith" and asked if those are equivalent.

REPRESENTATIVE GRUENBERG responded, "Absolutely." He added that he and legislative attorney Theresa Bannister crafted that phrase.

2:35:21 PM

TERRY THURBON, State Delegate, Uniform Law Commission, said updating the UCC has been a legislative priority this year to get up to speed with what other states have done. For example, the warehouse provisions are amendments that have been available since 2003. The general provisions in Article 1 have been available since 2001. Respectively, Article 1 provisions have been adopted in 35 states and three states other than Alaska have introductions this year. 32 states have already adopted the warehousing provisions and three states other than Alaska have amendments to adopt this year. "We're getting toward truly having uniformity with these updates," she said. All 50 states have some version of various titles of the UCC.

MS. THURBON offered that the bill is quite long, but it's quite simple in the sense that the substantive changes are relatively few. Much of the 60 pages update terminology and make conforming changes to fit with the few substantive changes.

The UCC provisions start in Section 8 and she will only speak to those UCC provisions. Apart from the modernization of the

warehousing provisions in Article 7 that Representative Gruenberg described, there are a handful of changes in Article 1, which are the UCC general provisions.

[2:37:57 PM](#)

MS. THURBON said the committee that was charged with updating the general provisions found a handful of problems that weren't discovered until people tried to live with the general provisions. In part that's because the other Articles of the UCC that deal with secure transactions, leases, and sales have evolved over time while the general provisions have not been updated. When the committee looked at updating the general provisions it found five or six places that needed substantive changes. One was as simple as clarifying the scope of the applicability of these general provisions to make it clear that they only apply to UCC covered transactions. Previously there was a frauds provision in statute, which deals with when you have to have an agreement in writing in order for it to be enforceable. Previously the provision seemed to reach beyond the UCC covered transactions to be a general statute of frauds. That's been cleaned up. That's the kind of thing that this revision does. It also made a better selection on the choice of laws. Previously, the only choice of laws that folks could make for which law applies to govern their transactions was that the law had to have some connection to the parties. With a couple of protective exceptions to protect consumers and some other public policy oriented protections, these updates allow sophisticated folks who want to enter into a commercial transaction to designate any law as the governing law.

As Representative Gruenberg mentioned, the good faith provision in the UCC was updated to define good faith as honesty in fact and the observance of reasonable commercial standards of fair dealings. It tracks a bit better with what was done with the good faith concept and some of the other provisions of the UCC.

[2:40:38 PM](#)

The changes to the warehousing provisions allow for the use of electronic documents of title and evidence of ownership in the transfer of title. This is widely supported by the warehousing and transportation sectors that are already using electronic documents of title. The laws in some states simply haven't yet caught up with that.

CHAIR FRENCH noted that this is somewhat similar to the revisor's bill that the committee recently heard. The bill is enormous and full of technical language and at some level you

just have to trust the experts who have vetted it. That being said, he related that he likes to conduct an acid test. He explained that he turns to a random page in the bill and asks a pointed question or two. If that area stands up to scrutiny, he gets the feeling that a few segments of the bill have been closely examined. I trust you, Representative Gruenberg, and the experts who brought the bill but we do have our duties of due diligence, he said.

[2:42:04 PM](#)

CHAIR FRENCH directed attention to page 28, line 19, Section 33, pertaining to liability for nonreceipt or misdescription. He noted that "or" replaces "of" at the beginning of line 19 and asked if she agrees that that's the right substitution.

MS. THURBON said she sees his concern.

REPRESENTATIVE GRUENBERG remarked, "That's weird."

CHAIR FRENCH suggested that it's a series of marks or labels.

REPRESENTATIVE GRUENBERG offered that Ms. Bannister may have a technical answer.

MS. THURBON said she can make sense of the sentence with the substitution. Without looking at the drafting comments that the conference put together she can imagine that they were perhaps trying to characterize kind quantity or condition as something that would be a description in and of itself on the packaging, or on the document of title. It may be an intentional correction whereas "of" may have been viewed as having been a typographical error that was initially introduced.

[2:45:19 PM](#)

CHAIR FRENCH reviewed the descriptions and stated agreement.

CHAIR FRENCH directed attention to page 51, line 8, and said he objects to striking the word "the" before the phrase "ordinary course of business".

REPRESENTATIVE GRUENBERG said he agrees; the same change has been made several times on the page. He related that when he brought that up, he was told that the Uniform Act was drafted to eliminate the word "the".

SENATOR WIELECHOWSKI directed attention to page 2, and noted that the term "livestock" has been changed to "animals" and it's

quite a policy change to subject pets to lien. He asked if that was a conscious change.

REPRESENTATIVE GRUENBERG responded it was his thought is that it should apply to any animals. In urban areas in particular, people have pets rather than livestock.

[2:47:47 PM](#)

CHAIR FRENCH asked if a lien on a dog really is on the dog or the owner's checking account.

REPRESENTATIVE GRUENBERG responded that it would be a possessory lien.

CHAIR FRENCH observed that in that case, the most the kennel would get is possession of the dog.

REPRESENTATIVE GRUENBERG responded that the kennel could sell the animal. Page 3, line 11, is existing statute and it states that the owner of the property shall pay the value of the property plus 50 percent. Later in the UCC it talks about getting damages, which would be incidental and consequential. That is cross referenced in Section 7; Article 7 of the UCC makes it clear that these are cumulative. You're not limited to one or the other as in the past, he said. "I didn't want there to be any continuing question as to whether they both stood on equal footing," he added.

CHAIR FRENCH closed public testimony and said he's satisfied with the bill.

[2:49:36 PM](#)

SENATOR WIELECHOWSKI expressed concern with the change in Section 4 regarding animals. It bothers me that someone could take their dog to a kennel and then for whatever reason not being able to pay their bill and the kennel would keep the person's beloved dog, he said.

CHAIR FRENCH observed that the point is that the person could take their dog home and later have a dispute in court over the money issue.

SENATOR WIELECHOWSKI agreed. He related that his dogs are in a kennel right now and he'd be furious if the kennel kept his dogs if he couldn't pay what could be an exorbitant fee.

SENATOR WIELECHOWSKI moved a conceptual amendment to strike all reference to "animal" in Section 4 and reinsert the references to "livestock".

[2:52:08 PM](#)

CHAIR FRENCH asked the sponsor if he agrees that only Section 4 is affected.

REPRESENTATIVE GRUENBERG responded it appears to apply to Section 4, lines 16 and 17, lines 27 and 28, lines 29 and 30. He suggested that on lines 27 and 28 the reference could be limited to "livestock" so the statute would no longer reference "horses, cattle, hogs, sheep or other livestock." He added that he has no objection to that.

[2:53:31 PM](#)

CHAIR FRENCH asked Senator Wielechowski to restate the conceptual amendment.

SENATOR WIELECHOWSKI stated that the conceptual amendment is to reference "livestock" as opposed to "animal care" [in Section 4]. On line 16, delete the phrase "animal care" and insert "livestock; on line 27, delete the word "animals" and reinsert the phrase "horses, cattle, hogs, sheep, or other livestock"; on line 29, reinsert the word "upon" delete the word "animals" and reinsert the word "livestock"; and on line 30, delete the word "animals" and reinsert the word "livestock."

CHAIR FRENCH asked if there is objection.

REPRESENTATIVE GRUENBERG suggested on lines 28 and 29 to not revert to the word "upon" and keep the word "on" since that is more conventional use today. On lines 27 and 28, do not reinsert the phrase, "horses, cattle, hogs, sheep or other" and use the word "livestock" instead.

CHAIR FRENCH asked Senator Wielechowski if he agrees with the suggestion.

SENATOR WIELECHOWSKI said he agrees and would restate the amendment in the terms suggested by Representative Gruenberg.

CHAIR FRENCH found no objection and announced that Amendment 1 carries. Finding no further amendments or discussion, he solicited a motion.

[2:55:21 PM](#)

SENATOR WIELECHOWSKI moved to report CS for HB 102, as amended, from committee with individual recommendations and attached fiscal note(s). There being no objection, SCS CSHB 102(JUD) was reported from the Senate Judiciary Standing Committee.

2:55:42 PM

There being no further business to come before the committee, Chair French adjourned the meeting at 2:55 pm.