

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

February 1, 2010

1:33 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Bill Wielechowski, Vice Chair
Senator Dennis Egan
Senator Lesil McGuire
Senator John Coghill

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 98(FIN) AM

"An Act relating to minor consuming and repeat minor consuming; relating to penalties for violations of limitations on possessing, sending, shipping, transporting, or bringing alcoholic beverages to, soliciting or receiving orders for delivery of alcoholic beverages to, and the manufacture, sale, offer for sale, barter, traffic, or possession of alcoholic beverages in, a local option area; and providing for an effective date."

MOVED CSHB 98(FIN) AM OUT OF COMMITTEE

SENATE BILL NO. 60

"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."

HEARD AND HELD

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 186(FIN) AM

"An Act declaring that certain firearms and accessories are exempt from federal regulation."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 98

SHORT TITLE: ALCOHOL: MINOR CONSUMING/LOCAL OPTION

SPONSOR(s) : REPRESENTATIVE(s) RAMRAS

01/28/09 (H) READ THE FIRST TIME - REFERRALS
01/28/09 (H) JUD, FIN
02/02/09 (H) JUD AT 1:00 PM CAPITOL 120
02/02/09 (H) Moved Out of Committee
02/02/09 (H) MINUTE(JUD)
02/04/09 (H) JUD RPT 6DP
02/04/09 (H) DP: LYNN, GRUENBERG, COGHILL, HOLMES,
GATTO, RAMRAS
02/17/09 (H) FIN AT 1:30 PM HOUSE FINANCE 519
02/17/09 (H) Heard & Held
02/17/09 (H) MINUTE(FIN)
03/26/09 (H) FIN AT 1:30 PM HOUSE FINANCE 519
03/26/09 (H) <Bill Hearing Postponed>
04/02/09 (H) FIN AT 1:30 PM HOUSE FINANCE 519
04/02/09 (H) Moved CSHB 98(FIN) Out of Committee
04/02/09 (H) MINUTE(FIN)
04/03/09 (H) FIN RPT CS(FIN) NT 3DP 3NR 1AM
04/03/09 (H) DP: KELLY, FOSTER, HAWKER
04/03/09 (H) NR: CRAWFORD, SALMON, THOMAS
04/03/09 (H) AM: GARA
04/13/09 (H) TRANSMITTED TO (S)
04/13/09 (H) VERSION: CSHB 98(FIN) AM
04/14/09 (S) READ THE FIRST TIME - REFERRALS
04/14/09 (S) CRA, JUD
04/16/09 (S) CRA AT 3:30 PM BELTZ 211
04/16/09 (S) Moved CSHB 98(FIN) AM Out of Committee
04/16/09 (S) MINUTE(CRA)
04/17/09 (S) CRA RPT 1DP 2NR
04/17/09 (S) DP: MENARD
04/17/09 (S) NR: OLSON, FRENCH
04/17/09 (S) FIN REFERRAL ADDED
01/25/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
01/25/10 (S) Heard & Held
01/25/10 (S) MINUTE(JUD)
02/01/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

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)

BILL: HB 186

SHORT TITLE: AK FIREARMS EXEMPT FROM FED. REGULATION
SPONSOR(s): REPRESENTATIVE(s) KELLY

03/12/09 (H) READ THE FIRST TIME - REFERRALS
03/12/09 (H) JUD, FIN
04/06/09 (H) JUD AT 8:00 AM CAPITOL 120
04/06/09 (H) Moved CSHB 186(JUD) Out of Committee
04/06/09 (H) MINUTE(JUD)
04/07/09 (H) JUD RPT CS(JUD) 4DP 2NR
04/07/09 (H) DP: LYNN, COGHILL, GATTO, RAMRAS
04/07/09 (H) NR: GRUENBERG, HOLMES
04/11/09 (H) FIN AT 9:00 AM HOUSE FINANCE 519
04/11/09 (H) Moved CSHB 186(FIN) Out of Committee
04/11/09 (H) MINUTE(FIN)
04/13/09 (H) FIN RPT CS(FIN) 5DP 5NR
04/13/09 (H) DP: KELLY, AUSTERMAN, FAIRCLOUGH,
HAWKER, STOLTZE
04/13/09 (H) NR: THOMAS, GARA, CRAWFORD, SALMON,
JOULE
04/16/09 (H) TRANSMITTED TO (S)
04/16/09 (H) VERSION: CSHB 186(FIN) AM
04/17/09 (S) READ THE FIRST TIME - REFERRALS
04/17/09 (S) JUD, FIN
02/01/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

ESTHER CHA, Staff
to Senator McGuire
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Introduced SB 60 on behalf of the sponsor.

DOUGLAS BLATTMACHR, President

Alaska Trust Company

POSITION STATEMENT: Testified in support of SB 60.

DAVE SHAFTEL, Estate Planning Attorney

POSITION STATEMENT: Provided an explanation of the statutory changes proposed in SB 60

JONATHAN BLATTMACHR, Attorney

POSITION STATEMENT: Testified in support of SB 60.

DANA L. OLSON, representing herself

Knik, AK

POSITION STATEMENT: Expressed concern with the breadth of SB 60.

REPRESENTATIVE MIKE KELLY

Alaska State Legislature

Juneau, AK

POSITION STATEMENT: Sponsor of HB 186.

DEREK MILLER, Staff

to Representative Mike Kelly

Alaska State Legislature

Juneau, AK

POSITION STATEMENT: Introduced HB 186 on behalf of the sponsor.

FRANK W. TURNEY, representing himself

Fairbanks, AK

POSITION STATEMENT: Testified in support of HB 186

MIKE PRAX, representing himself

Fairbanks, AK

POSITION STATEMENT: Testified in support of HB 186

SCOTT HAMANN, representing himself

Kenai, AK

POSITION STATEMENT: Testified in support of HB 186

ACTION NARRATIVE

[1:33:58 PM](#)

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at 1:33 p.m. Senators Coghill, Egan, and French were present at the call to order. Senators McGuire and Wielechowski arrived soon thereafter.

HB 98-ALCOHOL: MINOR CONSUMING/LOCAL OPTION

1:34:40 PM

CHAIR FRENCH announced the consideration of HB 98. [CSHB 98(FIN) AM was before the committee.] He noted that the bill was heard previously and public testimony was taken. Finding no questions, he asked the will of the committee.

SENATOR COGHILL moved to report HB 98 from committee with individual recommendations and attached fiscal notes.

1:35:42 PM

CHAIR FRENCH stated for the record that additional fiscal information is forthcoming and will accompany the bill to the Finance Committee. There being no objection, CSHB 98(FIN) AM moved from the Senate Judiciary Standing Committee.

SB 60-UNIFORM PROBATE CODE; TRUSTS, WILLS

1:36:34 PM

CHAIR FRENCH announced the consideration of SB 60. [CSSB 60 (L&C) was before the committee.]

ESTHER CHA, Staff to Senator McGuire, introduced SB 60 and read the following into the record. Original punctuation provided.

The climate for trust and estate planning is highly competitive, and the trust business is a multi-billion dollar sector that often crosses state lines in order to take advantage of more attractive state trust laws. Without changes in legislation, Alaska would not be able to maintain its position at the forefront. Given this competition, SB 60 seeks to amend the Uniform Probate Code.

Probate is the legal process in which a will is reviewed to determine whether it is valid and authentic. Probate can also refer to the general administering of a deceased person's will or the estate of a deceased person without a will.

A trust is similar to a will with one very important distinction. With a trust, your property won't go through probate when you die. Whereas a will during probate much of the estate is taken by taxes, mostly at the federal level, and sometimes attorneys. So when you create a trust you transfer your properties and assets to it while you are still alive and it continues on through your

death and thus does not need to go through the same costly legal proceedings that a will does.

SB 60 therefore clarifies, updates and adds to existing Alaskan probate laws with the aim of (1) improving the ease of administration of wills, estates, and trusts for Alaskan residents and (2) making Alaska a more attractive place to do trust business.

Most of these changes involve either clarifying language or omitting unnecessary verbiage. Other changes include:

- 1) Clarifying issues relating to representation of an incapacitated person
- 2) Clarifying property transfers involving a deceased spouse
- 3) Creating a procedure for the establishment of will and trust validity before death
- 4) And addressing the venue proceeding if a decedent lives outside of Alaska, but held significant assets within the state

The changes in SB 60 were brought to our office's attention by experts in the probate and trust field, and to my knowledge, our office has not received any negative feedback on them.

SB 60 is part of an ongoing effort to modernize our trust laws and by doing so (1) to create jobs and revenue, (2) to diversify our economy, and (3) to make Alaska as attractive to trust business and investment as Delaware is to credit card and banking business.

[1:40:28 PM](#)

DOUGLAS BLATTMACHR, President, Alaska Trust Company, said his company has worked with trust attorneys to enhance Alaska trust laws. They support SB 60.

DAVE SHAFTEL, Attorney, said he's part of an informal group that has been working since 1997 to improve Alaska estate and trust laws. Currently Alaska is seen as having the best laws in this field, which has attracted significant business from people outside the state.

MR. SHAFTEL reviewed four subject areas in SB 60. Section 1 adds a procedure for making changes in documents where it's necessary to give notice and have all interested parties participate. The law has always recognized that someone with capacity and a

similar interest can represent and incapacitated person. Subparagraph (G) on page 3, line 10, adds language to facilitate this type of representation. It allows the person whose will or trust it is to designate a representative.

Section 2 makes an adjustment to the "widow's election" in an estate. If the surviving spouse doesn't like what the deceased spouse left him or her in the will, he or she can elect against what was left and instead take one-third of the mutually combined assets. This is a common provision in separate property states.

Section 3 amends AS 13.12.205(2)(A). Alaska has a self-settled discretionary spendthrift trust whereby a person can create a trust for him or herself and members of their family. The trust assets will be protected from creditors and won't be taxed under the federal estate tax when the person dies.

CHAIR FRENCH asked if the only change in Section 3 is the deleted language on page 6.

[1:46:58 PM](#)

MR. SHAFTEL replied Section 4 is related; it adds a new subsection (b) to the same statute. It's a fair limitation that basically says that if you and your spouse agree that your spouse cannot elect to give the lifetime trust that you set up for the family, or if you set this trust up 30 days before you are married, then the assets in this trust won't be included in pool of assets that your spouse could elect to give at your death if your spouse didn't like what you left him or her in your will. This brings Alaska law into conformity to what other states have done.

[1:47:58 PM](#)

SENATOR WIELECHOWSKI joined the committee.

CHAIR FRENCH asked for an example of how the widow's election works.

MR. SHAFTEL posed a hypothetical example that in your estate planning you decide that when you die you want to leave 90 percent of your assets to your children and 10 percent to your wife. Then you die and your wife decides she is unhappy with your will. The law allows her to elect against your will and instead get one-third of the assets in the augmented estate. That is a technical term for the assets the husband and wife have accumulated over their lifetime. Thus, your wife will end

up with one-third of the family's assets instead of 10 percent. SB 60 says that if during the marriage both spouses agree to create a special trust, the surviving spouse cannot elect against that particular asset.

CHAIR FRENCH observed that, that can only come into being given her consent while she was alive.

MR. SHAFTEL agreed.

[1:50:59 PM](#)

SENATOR COGHILL asked why it is necessary to delete from Section 3 the language that references an irrevocable transfer in trust with a transfer restriction under AS 34.40.110(a).

MR. SHAFTEL explained that when this trust law was initially drafted it included this particular kind of trust in the augmented estate. Other states have said that if the spouse consented to the trust or if it occurred before the marriage, then it doesn't make sense to include that trust as part of the augmented estate. This is a continuing and growing area and this change takes advantage of that new learning and thinking, he said.

CHAIR FRENCH asked if the widow's election pertains in non-community states only or if it pertains in all states.

MR. SHAFTEL replied it's only in non-community property states; in community property states both spouses own half of all the assets.

CHAIR FRENCH said Alaska is a non-community property state.

MR. SHAFTEL said that is the default classification, but since 1998 Alaskans can elect into a community property system, which is helpful from a tax standpoint. SB 62 makes improvements in that area.

[1:54:07 PM](#)

SENATOR MCGUIRE joined the committee.

MR. SHAFTEL said Section 8 adds a new Article 5A dealing with establishing the validity of a will or trust before death. It addresses the problem of a person who dies after executing a will or trust only to have their family say that the decedent had been incapacitated or unduly influenced or under duress when the will or trust was executed. This establishes a procedure to

petition the court to determine that your will is valid before you death.

[1:57:29 PM](#)

SENATOR WIELECHOWSKI asked what other states have adopted this kind of provision and how much litigation has derived from it.

MR. SHAFTEL replied three other states have this kind of law or will allow this type of litigation. In these situations there will be litigation one way or the other, but it's more accurate if it's done up front when the testator or settlor of the trust is available to be a witness. This type of law will allow for resolution of a controversy that will occur one time or another anyway.

[2:00:26 PM](#)

SENATOR EGAN asked how power of attorney is related.

MR. SHAFTEL replied a durable power of attorney doesn't really deal with what happens to a person's property after they die. This provision establishes a procedure for determining whether a person had the capacity to understand what he or she was doing when he or she signed their will or trust and that it wasn't signed under undue influence or duress.

[2:02:28 PM](#)

CHAIR FRENCH asked when the other three states passed this provision into law.

MR. SHAFTEL replied Ohio has had proceedings like this for 10-15 years, but no state has a statute that lays out the step-by-step procedure for doing this. He and others have been working on this provision for 3-4 years.

CHAIR FRENCH asked if there have been arguments advanced against this and, if so, what form the take.

[2:04:30 PM](#)

MR. SHAFTEL replied there could be a concern that more hearings would result.

CHAIR FRENCH asked if he agrees that the person that brings the suit bears the cost. The testator would bear the cost of asking the court to validate their will or trust before their demise.

MR. SHAFTEL agreed; the burden of proof is on the person that brings the challenge.

SENATOR COGHILL pointed out that the testator has the right to change their will or trust after having received court approval. He asked if people who are subject to the trust could use this to intimidate the testator.

MR. SHAFTEL answered the settlor has to give their consent for someone other than the personal representative, the testator, or the settlor to bring an action.

[2:07:18 PM](#)

CHAIR FRENCH referenced page 9, line 9, and clarified that the testator is the person whose will it is. It is only the testator or the person they nominated to serve as their personal representative who can seek one of these court declarations.

MR. SHAFTEL agreed.

CHAIR FRENCH asked if it works the same way for trusts.

MR. SHAFTEL said in the case of trusts either the trustee or the settlor can bring an action. Responding to a request, he explained that the settlor is the person whose trust it is.

[2:08:15 PM](#)

SENATOR MCGUIRE said that however messy it may be, she'd prefer to let a challenge play out so people don't feel that their rights are abridged.

MR. SHAFTEL said the last change, on page 13, adds a venue provision for probate proceedings in Alaska. If the decedent wasn't domiciled in the state at the time of their death, the probate proceeding can be brought in the district where the fiduciary resides or has a principal place of business.

SENATOR COGHILL asked if the venue provision could be used as a way to leverage the estate.

MR. SHAFTEL replied this provision simply fills a gap in Alaska law.

CHAIR FRENCH thanked Mr. Shaftel for his testimony.

[2:13:10 PM](#)

JONATHAN BLATTMACHR, Member, Alaska Bar Association, reported that his intent in proposing the provision to validate a will or trust before death was to reduce litigation. He expressed the

view that this is the best bill of its kind in the country; Arkansas and Ohio have adopted a similar provision, but their procedures are unclear. Responding to Senator Coghill's question, he said he doesn't believe that this would be used to leverage anybody because a judge will make the determination about validity. However, he said, a codicil to the will would knock that proceeding out of the way. This is a great bill that keeps Alaska in the forefront of estate and trust law, he stated.

[2:15:41 PM](#)

SENATOR MCGUIRE commented that circumstances change through the years and it would give peace of mind to know that your frame of mind and your wishes are a matter of record.

SENATOR WIELECHOWSKI asked if this might bring people to Alaska to validate their wills from other states.

MR. J. BLATTMACHR replied it is possible. Alaska, New York and a few other states have specific statutes that allow nonresidents to have their wills admitted to original probate in the state in which they are not a resident. He anticipates this will bring some business to Alaska in that regard.

[2:18:08 PM](#)

SENATOR WIELECHOWSKI said he hopes everyone understands the ramifications. This could be good for Alaska business, but some of the complex cases could consume considerable court time.

DANA L. OLSON, representing herself, expressed concern with the breadth of SB 60; it covers too many topics. Also, the bill violates individual privacy and presents constitutional issues related to Article 8, Section 17. She understands the desire to address this business model, but security isn't consistent in this state and the bill doesn't address that. She said she would send her written comments.

[2:24:02 PM](#)

CHAIR FRENCH asked her to send her comments to his office and he would make sure that all committee members receive a copy. He closed public testimony and held SB 60 for a future hearing.

At ease 2:24 p.m. to 2:25 p.m.

HB 186-AK FIREARMS EXEMPT FROM FED. REGULATION

[2:25:03 PM](#)

CHAIR FRENCH announced the consideration of HB 186. [CSHB 186(FIN) AM was before the committee.]

REPRESENTATIVE MIKE KELLY, Alaska State Legislature, sponsor of HB 186, said this bill addresses both the Second Amendment and commerce. It states that firearms and accessories manufactured and sold in this state should be regulated by the State of Alaska and should not be the concern of the federal government. The bill further states that the Attorney General of Alaska may enforce this. He reported that it's become difficult if not impossible to buy ammunition in this state because people are buying it so quickly.

[2:27:29 PM](#)

CHAIR FRENCH noted that during the Interim he was invited to speak on this bill to the Second Amendment Task Force; he found that many people are deeply interested in this idea. With that in mind, public testimony will be taken today and the legal questions will be addressed at a future hearing.

DEREK MILLER, Staff to Representative Kelly, introduced HB 186 reading from the sponsor statement.

The United States Constitution gives Congress the authority to regulate Interstate Commerce between the states and 18 USC 922 makes it unlawful for any person not licensed as a manufacturer or dealer in firearms to engage in the business of manufacturing or dealing in firearms. Collectively, the Interstate Commerce Clause and 18 USC 922 are used by the federal government as a means to regulate firearms.

The Alaska Firearms Freedom Act addresses this by exempting firearms, firearm accessories, and ammunition manufactured and retained in the state from all federal firearm control laws including registration, as firearms that meet these criteria shouldn't be regulated by the federal government because they have not traveled in interstate commerce. Firearms exempt from this Act must have the words "Made in Alaska" clearly stamped on a central metallic part such as the receiver or frame. CSHB 186(FIN) also allows the Attorney General of Alaska to defend a citizen of this state who is prosecuted by the federal government under their authority to regulate interstate commerce for violating federal law regarding the manufacture, sale, transfer, or

possession of a firearm, firearm accessory, or ammunition manufactured and retained in this state.

This bill frees certain firearms from federal regulation as long as certain conditions are met. It frees the state of Alaska from restrictive federal firearm regulation and allows the state to take responsible firearm regulation into her own hands.

[2:30:20 PM](#)

SENATOR WIELECHOWSKI asked how many firearms and how much ammunition is manufactured in Alaska.

MR. MILLER replied there isn't much if any; a similar bill passed in Montana to hopefully induce that type business.

SENATOR WIELECHOWSKI asked if there's been any legal analysis about the constitutionality of this under the Interstate Commerce Clause.

MR. MILLER directed attention to the detailed legal analysis by Jerry Luckhaupt.

CHAIR FRENCH restated that legal issues will be addressed in a future hearing. The Interstate Commerce Clause is one of the more complex areas of law; it's a vague but overarching term that has meant different things in different eras of court history.

[2:32:10 PM](#)

SENATOR WIELECHOWSKI asked if the Montana law has been challenged.

MR. MILLER replied not that he isn't aware of any challenge.

CHAIR FRENCH pointed out that the Montana Shooting Sports Association went to court asking for declaratory judgment upholding the Montana law, which is the reverse of what you might normally see. It was filed in September 2009, but he doesn't know the status.

[2:33:16 PM](#)

FRANK W. TURNEY, representing himself, Fairbanks, stated support for HB 186. God bless the states that recognize that the Tenth Amendment is still valid, he said. This is a bill that demonstrates the sovereignty of the State of Alaska. The issue is not only about manufacturing firearms in Alaska, it's also

about state's rights. Under the Ninth and Tenth Amendments, states have responsibility for regulating intrastate commerce and the federal government has no role whatsoever. If HB 186 passes and is signed into law, it's likely that the federal government will file a lawsuit so he's pleased that the Attorney General will defend state rights in this regard. I hope to one day purchase a gun that is stamped "Made in Alaska," he said.

[2:35:55 PM](#)

MIKE PRAX, representing himself, Fairbanks, encouraged the committee to pass HB 186. It's primarily a matter of state's rights under the Tenth Amendment; Alaska should be free from federal regulation of intrastate commerce. This bill increases citizen liberty and the Legislature shouldn't steer clear of the issue just because the court may turn it down. We don't know what the court might do until the case is before it; if the court decides to get involve we'll cross that bridge when we get there, he said.

[2:38:46 PM](#)

SCOTT HAMANN, representing himself, Kenai, stated strong support for HB 186. He agrees with the previous speaker with respect to not worrying about legal challenges. The best thing to do is to get the bill signed into law. Let the court fight it out because that's what will happen, he said.

CHAIR FRENCH closed public testimony and held HB 186 in committee.

[2:41:18 PM](#)

There being no further business to come before the committee, Chair French adjourned the meeting at 2:41 p.m.