

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

March 31, 2009

1:08 p.m.

MEMBERS PRESENT

Senator Joe Paskvan, Chair
Senator Joe Thomas, Vice Chair
Senator Bettye Davis
Senator Kevin Meyer
Senator Con Bunde

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

Confirmation of Governor's Appointments
CONFIRMATIONS ADVANCED

SENATE BILL NO. 170

"An Act modifying the Alaska unemployment insurance statutes to comply with the requirements of the federal economic stimulus bill by redefining the base period for determining eligibility for unemployment benefits; and providing for an effective date."

MOVED SB 170 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

SENATE BILL NO. 149

"An Act relating to the regulation of residential real property mortgage lending, including the licensing of mortgage lenders, mortgage brokers, and mortgage loan originators and compliance with certain federal laws relating to residential mortgage lending; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 170

SHORT TITLE: UNEMPLOYMENT AMENDMENTS: FED STIMULUS

SPONSOR(s): SENATOR(s) ELLIS

03/27/09 (S) READ THE FIRST TIME - REFERRALS
03/27/09 (S) L&C, FIN
03/31/09 (S) L&C AT 1:00 PM BUTROVICH 205

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

BILL: SB 149

SHORT TITLE: MORTGAGE LENDING

SPONSOR(s): SENATOR(s) PASKVAN

03/13/09 (S) READ THE FIRST TIME - REFERRALS
03/13/09 (S) L&C, FIN
03/19/09 (S) L&C AT 1:30 PM BELTZ 211
03/19/09 (S) Heard & Held
03/19/09 (S) MINUTE(L&C)
03/31/09 (S) L&C AT 1:00 PM BUTROVICH 205

WITNESS REGISTER

SENATOR JOHNNY ELLIS
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Sponsor of SB 170.

MAX HENSLEY
Staff to Senator Ellis
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Commented on SB 170 for the sponsor.

PAULA SCAVARA, Special Assistant/Legislative Liaison
Department of Transportation and Public Facilities (DOTPF)

POSITION STATEMENT: Commented on SB 170.

JAMES WILSON, Economist, Research and Analysis Section,
Department of Labor and Workforce Development (DOLWD)
POSITION STATEMENT: Available to answer questions on SB 170.

TOM NELSON, Director
Division of Employment Security
Department of Labor and Workforce Development (DOLWD)
POSITION STATEMENT: Available to answer questions on SB 170.

DENNY DEWITT
National Federation of Independent Businesses (NFIB)
POSITION STATEMENT: Supported SB 170.

TREVOR FULTON
Staff to Senator McGuire
Alaska State Legislature
Juneau, AK
POSITION STATEMENT: Commented on SB 60 for the sponsor.

DAVID SHAFTEL, Estate Planning Attorney
POSITION STATEMENT: Supported SB 60.

DOUGLAS BLACKMACHER
Alaska Trust Company
POSITION STATEMENT: Supported SB 60.

TYSON FICK, Legislative Liaison
Department of Commerce, Community & Economic Development (DCCED)
POSITION STATEMENT: Supported SB 149.

LORIE HOVANEC, Director
Division of Banking and Securities
Department of Commerce, Community & Economic Development (DCCED)
POSITION STATEMENT: Supported CSSB 149, version E.

PATRICE WALSH, Consumer Finance Chief
Division of Banking and Securities
Department of Commerce, Community & Economic Development (DCCED)
POSITION STATEMENT: Available to answer questions on SB 149.

JOHN MARTIN, President
Alaska Association of Mortgage Brokers
POSITION STATEMENT: Answered questions about SB 149.

LOUANNE WEYHRAUCH, Assistant Attorney General
Department of Law (DOL)
POSITION STATEMENT: Available to take questions on SB 149.

JULIA COSTER

Consumer Protection Unit

Department of Law (DOL)

POSITION STATEMENT: Answered questions on SB 149.

ACTION NARRATIVE

[1:08:00 PM](#)

CHAIR JOE PASKVAN called the Senate Labor and Commerce Standing Committee meeting to order at 1:08 p.m. Present at the call to order were Senators Meyer, Thomas, Bunde and Paskvan.

Governor's Appointments

CHAIR PASKVAN announced consideration of the Governor's appointments. He opened up public testimony. There was no one on teleconference, no one in the audience to testify and there were no questions from members. He closed the public hearing.

[1:10:29 PM](#)

SENATOR THOMAS moved to forward the names of the Governor's appointments. There were no objections and it was so ordered.

At ease from 1:11 p.m. to 1:13 p.m.

SB 170-UNEMPLOYMENT AMENDMENTS: FED STIMULUS

[1:13:09 PM](#)

CHAIR PASKVAN announced the consideration of SB 170.

SENATOR DAVIS joined the committee.

SENATOR ELLIS, sponsor of SB 170, thanked the Alaska State Chamber of Commerce and the National Federation of Independent Business (NFIB) for their work on making this bill as beneficial as possible.

He explained that the bill represents a small change in the UI eligibility standards in the State of Alaska even though the state has modernized its UI system already. This is one minor change that would bring great benefits to some unemployed people and has no strings attached.

He explained that current eligibility is based on meeting minimum earnings in the first four of the five previously completed quarters. SB 170 gives workers who do not meet that qualification the option of recalculating using their earnings from the last four completed quarters. This would benefit about 1,300 people who would otherwise become eligible for UI payments three months later by eliminating the three-month lag time. If this policy had been in place in 2008 it would have provided \$8 million in benefits. The really good news, too, is that the federal stimulus dollars fully fund this minor change bringing in \$17 million for job training as well as enhancing the UI trust fund. If some money is deposited in the UI trust fund, there would be no impact to business taxes. That is why the NFIB and the State Chamber think this is a good opportunity.

The Department of Labor and Workforce Development (DOLWD) and Representative Hawker's office are taking the lead on the exact amount. The department has not taken a position on the bill, but has been very helpful and professional in representing the Palin administration.

Representative Hawker thinks between \$3 million and \$5 million needs to go into the UI trust fund that currently is more than solvent with a \$350 million balance.

[1:17:28 PM](#)

He said that these are one-time dollars and that Alaska is already experiencing the highest unemployment in a generation; it may feel the effects of the national and world-wide recession even more later this year. Alaska is also preparing for the largest infrastructure project in U.S. history with the gasline. There is a perfect confluence of events that gives Alaska a perfect opportunity to use federal dollars allocated to Alaska for a targeted and timely expansion of job training. This is a reasonable act to take and has a net gain on two or three levels.

He said this bill comes out of the intent of the legislative leaders of both bodies and both parties to closely examine all available stimulus dollars and accept only those that make sense for Alaska in the long term.

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MAX HENSLEY, staff to Senator Ellis, said the bill is one section; it gives unemployed workers the option if they do not qualify for unemployment insurance based on their earnings to recalculate them using the most recent four completed calendar

quarters rather than the first four quarters of their last five. It takes effect on January 1, 2010. He informed them that the DOLWD generally calculates unemployment insurance benefits on a calendar year rather than a fiscal year basis.

He said a number of states are concerned that the unemployment insurance modernization, which actually totals about \$7 billion in incentive money from the federal stimulus package, would require significant expansions to eligibility requirements, but the federal stimulus makes the pot of money that is allocated to each state dependent on two sets of criteria. The first third of the money is available to states that offer the alternative base period, which Alaska currently does not and SB 170 will provide. The second two-thirds of the stimulus money is based on a state offering UI benefits to unemployed workers who are members of at least two of the following four categories: part time workers, workers who are enrolled in training programs, workers who leave their jobs for compelling family reasons and additional benefits for workers with dependents.

[1:21:15 PM](#)

Alaska already meets the final two categories; if we make the change to become eligible for the initial one-third of the money, we will get the full pot of money without any further changes. The reason this is a big issue in other states is that they would have to make all the changes at once and those could be substantial for some.

[1:21:50 PM](#)

MR. HENSLEY said another concern is that usually an expansion of benefits expands employer/employee contributions to the trust fund, but Alaska's UI trust fund is one of the healthiest in the nation with a balance of about \$350 million in 2008. The additional monies in the stimulus package are more than enough to cover this small addition in liability.

[1:22:24 PM](#)

A third major question that people have asked is whether this change would expose the state to a permanent and ongoing liability. It has been found that nothing in the stimulus provides that states can't change their laws back at some point in the future, but it can't be explicitly temporary or sunsetted. A letter from the federal Department of Labor certified that there are "no claw back provisions."

[1:23:04 PM](#)

The additional money beyond what is needed to shore up the UI trust fund could be used for increased administration and job training, although the department feels it doesn't need to increase administration.

He noted also that this is a one-time grant, and after the money goes into the UI trust fund it can be appropriated by the state without an end date, unlike many other stimulus funds which must be spent over the next year or two. The state could choose to space this money out more widely, and no state match is required.

MR. HENSLEY said the funds have already been appropriated by the federal government and funds we do not accept will be sent to another state to either benefit their job training or their unemployed workers.

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SENATOR THOMAS asked him to review the criteria again on what would be new.

MR. HENSLEY said there are two pots of money within Alaska's portion of the UI modernization incentive. The first third is contingent on the acceptance of the alternative base period, which it outlined in this bill. The second two-thirds is contingent on the state offering UI benefits to at least two of the four categories: part time workers, extended benefits to workers who are enrolled in training programs, workers who leave their jobs for compelling personal reasons, and the expanded benefits for workers who have dependents. Alaska meets the final two criteria and would not need to change its statutes to receive the second two-thirds of the money. However we cannot receive the second two-thirds unless we receive the first third.

SENATOR THOMAS asked if the department would testify or be available for questions.

[1:27:45 PM](#)

PAULA SCAVARA, Special Assistant/Legislative Liaison to the Department of Transportation and Public Facilities (DOTPF), said she brought a couple of department people to answer questions, Tom Nelson and James Wilson.

JAMES WILSON, Economist, Research and Analysis Section, Department of Labor and Workforce Development (DOLWD), introduced himself and said he was available to answer questions.

[1:29:53 PM](#)

SENATOR BUNDE asked why the department hadn't done this already if it's such a good idea, and "before we were bribed by this money." He was concerned that if we make this change the extra \$2 million would likely be an ongoing cost, and after the stimulus money goes away, that would be a continuing impact on the program.

TOM NELSON, Director, Division of Employment Security, Department of Labor and Workforce Development (DOLWD), answered that they calculated an actual number of 1,293 individuals that otherwise would have been eligible for benefits in 2008. Of the \$1.9 million impact to the trust fund, 26 percent is borne by the actual worker. If approximately \$3 million would be left in the trust fund, the trust fund solvency factor would cover at least the first year of the costs in the years outgoing.

[1:31:37 PM](#)

SENATOR BUNDE asked about putting a sunset on this.

MR. NELSON replied that 18 states already have this program before the stimulus package came out, and some of them had a sunset provision. The federal guidance is that they understand the ability of state legislatures to change laws after this is over with and they only require a certification that the states are acting on good faith.

SENATOR BUNDE commented that the feds might not understand the politics behind trying to change unemployment benefits.

[1:32:42 PM](#)

SENATOR BUNDE remarked that one of the bones of contention in changing UI in Alaska has always been that workers who are fired for cause can claim UI insurance, and this doesn't change that.

MR. NELSON replied that is correct, but he added that they go through a six-week waiting period.

[1:33:24 PM](#)

SENATOR THOMAS asked the department's position.

MS. SCAVARA replied the department and the administration is neutral.

SENATOR THOMAS asked in that case if the attached zero fiscal note goes out to only 2015 or to a point beyond that when the federal money is gone.

[1:34:15 PM](#)

MR. NELSON explained that the fiscal note is zero because regardless of how many claims they process throughout a year, the workload actually dictates what the federal government reimburses back to the state. He couldn't speculate on why the fiscal note only goes out to 2015.

MS. SCAVARA added that the form goes to 2015, so they just put zeros across.

SENATOR THOMAS asked if the department agreed with the explanation from Senator Ellis' staff.

[1:35:03 PM](#)

MR. NELSON replied yes.

[1:35:33 PM](#)

SENATOR BUNDE said he is stuck on the idea that calculating eligibility for more than 1,300 people seems like a fairly minor technicality, but he was curious about why the department did not choose to do that in the first place. Would there be an economic impact?

MS. SCAVARA responded that UI eligibility would require a statutory change, and she has worked at the department for six years and has not heard of it being brought up.

[1:36:39 PM](#)

DENNY DEWITT, National Federation of Independent Businesses (NFIB), supported SB 170. They worked hard with the department, legislators, staff and consultants on this issue in the federal arena to unwind all the requirements particularly whether or not the expanded benefits changed the character of the program and what the impact on premiums would be. And they are satisfied that the deposits via the Finance committees will offset the costs quite a ways into the future.

In terms of change in the base period and how ongoing benefits are paid, they have been assured that the character of the program will remain intact. He thanked Senator Ellis and his staff for their work and help.

[1:39:44 PM](#)

CHAIR PASKVAN closed public testimony. He observed that this is the type of bill that deserves the support of this committee and added that the business community supports it.

[1:40:15 PM](#)

SENATOR THOMAS moved to report SB 170, version E, from committee with individual recommendations and attached fiscal note(s). There were no objections and it was so ordered.

At ease from 1:40 p.m. to 1:43 p.m.

SB 60-UNIFORM PROBATE CODE; TRUSTS, WILLS

[1:43:05 PM](#)

CHAIR PASKVAN announced the consideration of SB 60.

TREVOR FULTON, staff to Senator McGuire, sponsor of SB 60, explained that probate is the legal process in which a will is reviewed to determine whether it is valid and authentic. Probate also refers to the general administering of the 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. With a will during probate, much of the estate is taken by taxes (mostly federal) and sometimes attorneys. 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 deals specifically with trusts and the Uniform Probate Code by clarifying, updating, and adding to existing Alaskan probate laws with the aim of improving the ease of administration of wills, estates and trusts for Alaskan residents, and secondly with the aim of making Alaska a more attractive place to do trust business.

Most of these changes involved either clarifying language or omitting unnecessary verbiage. Other changes include clarifying issues relating to representation of an incapacitated person, clarifying property transfers involving a deceased spouse, creating a procedure for the establishment of will and trust validity before death and addressing the venue proceeding if a decedent lives outside of Alaska, but held significant assets within the state.

These changes in SB 60 were brought to him by experts in the probate and trust field, and they had not received any negative feedback on them. The trust business is a highly competitive, multi-billion dollar sector that often crosses state lines in order to take advantage of more attractive state trust laws. SB 60 makes Alaska a more attractive place to do trust business and by doing so, creates jobs and revenue that would otherwise go Outside.

The State of Alaska has directly received millions of dollars in tax revenue and many Alaskan jobs have been created in trust banking, insurance and legal professions due to its competitive and contemporary trust laws. It diversifies the state's economy and makes it an attractive place to invest.

[1:47:38 PM](#)

DAVID SHAFTEL, Estate Planning Attorney, said he is a member of an informal group that has worked with the Alaska Legislature since 1997 to improve the state's trust statutes. He is familiar with all the provisions of SB 60.

Section 1 allows a person who creates a trust to designate a representative who can represent incapacitated persons - for example - minor children, unborn children or an incapacitated adult. This provision was first drafted into Florida law a few years ago.

Section 2 corrects a typo in existing law.

Sections 3 and 4 fix updates Alaska law that conforms with language Delaware and New Hampshire have dealing with an irrevocable trust that is created by a "seflor," someone who could be a discretionary beneficiary of the trust. The seflor's creditors couldn't reach the assets of the trust, but it would be done well before the seflor has any claims against him. If you do this with your spouse's consent or before you marry, then your spouse has no claim against the assets in that trust.

Sections 5, 6 and 7 are technical provisions.

[1:52:29 PM](#)

Section 8 allows a person who has drafted a will or trust to have it validated in court before he dies so that it can't be challenged, by a family member, for instance. Several other states have provisions like this, but not as well written.

[1:54:17 PM](#)

Section 9 updates the venue statute for probate of a will of a person who is not a resident of Alaska when he dies. Examples include people who move out of Alaska to a warmer place.

Sections 10 and 11 allow a fiduciary, personal representative or trustee to consider discretionary distributions as coming from capital gains. This is a provision that will result in better tax planning for beneficiaries of estates and trusts, because of the lower overall tax consequences of a distribution.

He noted that there were three other bills in this legislature on the same subjects.

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SENATOR BUNDE asked if he said the changes created a typo in section 2.

MR. SHAFTEL clarified that it corrected an existing typo in the statute.

CHAIR PASKVAN asked if the irrevocable trust and the discretionary beneficiary provision lessened the need for prenuptial agreements.

MR. SHAFTEL answered yes; that is one of the functions this type of trust can serve. If you want to make sure certain assets would not be subject to divorce down the line, you could create this type of a trust 30 days prior to marriage. It could be done after marriage if the spouse consented to it.

CHAIR PASKVAN asked if this is intended to attract other people to Alaska to use this type of irrevocable trust or is this for Alaskans' needs.

MR. SHAFTEL responded that most of his clients from medium and large estates almost take advantage of this kind of trust, which is called a self-settled discretionary spend thrift trust. Many Alaskans are using it, but it also has been an attraction for non-residents. When Alaska created this law in 1997, it was the first state to have a usable statute allowing for this kind of trust; now there are 12 states. His office uses it primarily for residents of Alaska.

CHAIR PASKVAN asked for a definition of medium and large asset value clients.

MR. SHAFTEL replied his office defines "medium estates" as starting with estates that are larger than the applicable credit amount. That amount has increased from \$1 million since 2001 to \$3.5 million in 2009; it was \$2 million last year. The talk on the street is that it would stay at \$3.5 million and be indexed in the future. He said that they are watching to see if Congress does anything more with this definition. A "large estate" is anything over that - about twice that amount. Typically a married couple could protect twice that credit amount or \$7 million.

[2:01:45 PM](#)

SENATOR THOMAS asked if the venue section refers to wills only, but to trusts as well.

MR. SHAFTEL answered that this section of the work draft only deals with wills. Another venue provision deals with pre-mortem proceedings that he described before dealing with validating a will or trust.

SENATOR THOMAS said he was looking at section 8. The real question is if it says the original court proceedings would take place in a particular state that may not be the person's residence; and if that is the case, what happens if the State of California, for instance, had similar laws that required that all people residing in their state, regardless of such a term in a will or trust, would be settled in that state.

MR. SHAFTEL replied that his first question deals with "pre-mortem proceedings" in section 8, which covers venue for both wills and trusts. Regarding his second question, he was not aware of any state saying a person's estate must be probated in that state. He remembered when a number of states fought over the right to tax Howard Hughes property. It was very complicated and the states eventually agreed to divide up the state taxing power for that instance.

[2:05:28 PM](#)

CHAIR PASKVAN asked if a non-domiciled person could in the document, itself, establish Alaska as the venue for resolution of these trust and will issues.

MR. SHAFTEL answered yes. The new provision (section 8) allowing for establishment of the validity of a will or trust before death anticipates that the person who created that document if they weren't a resident of Alaska, would come to Alaska to file the proceeding.

CHAIR PASKVAN said his concern was focused on the cost to the court system.

[2:07:21 PM](#)

MR. SHAFTEL said he could only give his opinion, but four other states have this or similar processes, so it's not as if Alaska would have a monopoly. This particular statute is written particularly well, and he thought it would be copied by a number of other states. This provision will serve Alaskan residents and some people who decide to choose to have this proceeding in Alaska. He reminded them that a lot of people view Alaska as being "a tremendous distance away," and he thought that most people would probably go to other states that are closer. He thought that the costs of people who come up here and use the state's professional services would at least match and probably be significantly greater than the cost to the court system.

[2:08:51 PM](#)

SENATOR BUNDE noted that there is a zero fiscal cost to the state, but he thought maybe the Department of Revenue should give them a ballpark figure for what the state is making off of the trust arena.

[2:10:14 PM](#)

MR. SHAFTEL commented that he didn't want to leave them with the wrong impression. The estate statutes they have been working on for 12 years primarily benefit Alaskans. It has only been made available to other non-residents.

[2:11:52 PM](#)

SENATOR THOMAS asked if the venue aspect is available to people who have no assets in Alaska, but simply want their will probated or the procedures for the trust to happen here.

MR. SHAFTEL answered yes. "The statement of trust, for example, makes it clear that a person can choose what state's trust law they want to have apply to their trust." So, there is a lot of crossing of state lines by persons using estate and trust laws.

[2:13:17 PM](#)

DOUGLAS BLACKMACHER, Alaska Trust Company, supported SB 60. They know the state has received a number of millions of dollars over the last 10 years because of these changes to its estate statutes. He hasn't noticed a significant increase in use of the Alaska court system, however.

[2:14:59 PM](#)

CHAIR PASKVAN closed public testimony.

MR. FULTON noted CS SB 60(), labeled 26-LS0320\E.

[2:16:59 PM](#)

SENATOR MEYER moved to bring version E before the committee. There were no objections and it was so ordered.

SENATOR BUNDE wanted to hear about the substantial differences between the original SB 60 and the CS.

MR. FULTON explained that changes came from continued conversations between Mr. Shaftel and Terry Bannister, LAA attorney.

[2:18:47 PM](#)

He explained section 1 changed "represent or bind" to "represent and bind" when you are the designated representative. In section 2 the "decedent" replaces "self"; there were no changes in section 3.

[2:22:02 PM](#)

The only substantive change is the venue change that was already discussed in section 9.

[2:23:24 PM](#)

CHAIR PASKVAN closed public testimony on the CS.

[2:23:57 PM](#)

SENATOR MEYER asked if this would require a 2/3 vote - referring to section 12, page 14, lines 23-26.

[2:25:18 PM](#)

MR. SHAFTEL said his understanding is because this is a venue provision that affects the rules of the court it requires a 2/3 vote.

SENATOR MEYER asked for the effective date.

MR. FULTON answered they didn't request an effective date.

CHAIR PASKVAN held CSSB 60, version E, for further thought.

SB 149-MORTGAGE LENDING

[2:27:07 PM](#)

CHAIR PASKVAN announced the consideration of SB 149.

[2:27:29 PM](#)

TYSON FICK, Legislative Liaison, Department of Commerce, Community & Economic Development (DCCED) said all the parties involved - interest groups, Department of Law, Division of Banking and Securities, especially Director Lorie Hovanec - agreed they want to get to federal compliance especially with the national data base. SB 149 would take large portions of the Alaska's current mortgage licensing statute and put it into regulation that would, then, be in compliance with the federal Secure Fair enforcement for Mortgage Licensing Act (SAFE) that was enacted and signed about a month after Alaska's mortgage licensing bill went into effect.

[2:29:20 PM](#)

SENATOR THOMAS moved to adopt CSSB 149 version\E for discussion purposes. There were no objections and it was so ordered.

[2:30:41 PM](#)

LORIE HOVANEC, Director, Division of Banking and Securities, Department of Commerce, Community & Economic Development, said she was very happy with the language in the CS to SB 149.

[2:32:56 PM](#)

Rather than having the general authority to create regulate mortgage lending, which is in AS 06.01.050 starting on page 1, at the Legislature's direction they added a lot of federal "nuts and bolts" requirements. The CS adds various sections with background checks, investigation, education requirements, testing requirements, issuance of a license - duration and renewal standards, surrender of license, licensee obligations, records that mortgage licensees are required to keep, and disciplinary actions that the division has available. Page 7 outlines the investigation and examination authority in detail. The section on duties and restrictions and prohibited activities are mostly taken from current law, but items 3-15 were added from the SAFE Act. More specifics on criminal penalties were added along with civil penalties addressing unfair trade practices.

[2:35:46 PM](#)

CHAIR PASKVAN asked if there are time requirements for the committee to consider.

MS. HOVANEC replied that the federal statutes require enactment by July 30, 2009. The department also needs authority from the

Legislature to join the National Mortgage Licensing System and Registry (NMLSR) so that the division can start licensing mortgage loan originators through it. They are scheduled to join that system on August 1, 2009. Section 13 on the last page has an effective date language of July 30 for certain portions. They also have to pay a \$50,000-one time fee to participate.

[2:37:07 PM](#)

SENATOR BUNDE said earlier this year the licensing division's workload was backed up under just the state's law, and asked if she thought there was enough lead time for people to get licensed in a timely fashion now that they have to be licensed on the federal level as well.

MS. HOVANIK replied yes. She explained that current licensees have even more time than a brand new applicant who will be seeking a license. "I think the way the statute is written is very fair."

[2:38:22 PM](#)

PATRICE WALSH, Consumer Finance Chief, Division of Banking and Securities, Department of Commerce, Community & Economic Development, said she was available to answer questions on SB 149.

SENATOR THOMAS asked if anything corrects issues like the one from Countrywide that was licensing people as insurance agents, but they were doing other things like mortgage lending as well.

MS. WALSH said she wasn't familiar with that issue.

[2:39:52 PM](#)

JOHN MARTIN, President, Alaska Association of Mortgage Brokers, said he is a mortgage Licensee and originator Licensee under AS 06.60 mortgage licensing law. He explained that some entities under current law were exempt from being licensed under Alaska law, and Countrywide ended up becoming a bank. So under federal regulations, they were exempt from the state's current AS 06.60. They would have to apply for an exemption for that and he didn't know that they had - or some of the other banks either.

He said that the Alaska Association of Mortgage Brokers along with the Alaska Mortgage Bankers Association were instrumental and heavily involved in the creation of Alaska's existing statute. It took two years of concentrated work and working closely with the Division of Banking to update the statutes. He explained that Congress enacted the SAFE Act as part of the

Housing and Recovery Act of 2008, which is why the current bill is before them. Generally states are free to regard the requirements of the SAFE Act as a floor, not a ceiling, which they may build on in enacting their own licensing and registration laws. The SAFE Act encourages states to establish a National Mortgage Licensing System and Registry to be developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. Alaska signed a letter of intent to join the organization on August 1, 2009.

It's intended to streamline the licensing process and reduce the regulatory burden. While the states must meet the federal requirements of SAFE, overall responsibility for interpretation, implementation and compliance with it rests with HUD. Title 5 of the Act for mortgage licensing affirms that any residential mortgage loan originator must be either state licensed or registered by August 1, 2009.

MR. MARTIN explained that under section 15.08, HUD must determine if the state has met the requirements of Section 15.05, 15.06, 15.08(d) or that it does not participate in the National Mortgage Licensing System and Registry.

[2:45:43 PM](#)

CHAIR PASKVAN called an at ease because of teleconference technical difficulties.

[2:48:35 PM](#)

CHAIR PASKVAN called the meeting back to order at 2:48, and continued by asking how all 50 states could comply by August 1.

MR. MARTIN explained the SAFE Act provided a waiver for up to 24 months for states that show a good faith effort for compliance by August 1, 2009. He said that compliance was mandated by the SAFE Act, but no funds were provided for it. With the state's existing law and joining NMLSR, it will be able to get a waiver. Forty other states are working on legislation; just nine have enacted legislation so far. AS 06.60 substantially conforms with the SAFE Act; in fact it references Alaska's statutes frequently.

[2:50:36 PM](#)

He asked them to hold the bill, so if any changes are needed to the new CS, they can do them in a couple of days and get the bill passed this year.

[2:53:56 PM](#)

LOUANNE WEYHRAUCH, Assistant Attorney General, Department of Law (DOL) representing the Division of Banking and Securities, said she would take questions today and reserve her comments. She said that Julia Coster, Assistant Attorney General, who works in the Consumer Protection Division of DOL was also available to answer questions.

[2:54:47 PM](#)

SENATOR BUNDE asked if they supported the changes in version E of SB 149.

[2:55:19 PM](#)

JULIA COSTER, Consumer Protection Unit, Department of Law (DOL), said she had a small provision in section 9 (page 35, line 10) is a repeal of AS 45.50.471(b)(52) referring to the Consumer Protection Act. This provision makes a violation of the Mortgage Lending Act a violation of the Consumer Protection Act as well. The DOL doesn't necessarily object to the repeal of this section, but they wanted the committee to consider adopting a letter of intent relating to it.

MS. COSTER said if they are going to hold the bill anyway, it might be good to wait until the committee has the language of the letter of intent before it first; then she could discuss why she thought it was necessary.

CHAIR PASKVAN agreed with her and held SB 149 for further work.

[2:58:44 PM](#)

There being no further business to come before the committee, Chair Paskvan adjourned the meeting at 2:58 p.m.