

**ALASKA STATE LEGISLATURE**  
**SENATE STATE AFFAIRS STANDING COMMITTEE**

March 11, 2010

9:08 a.m.

**MEMBERS PRESENT**

Senator Linda Menard, Chair  
Senator Kevin Meyer, Vice Chair  
Senator Hollis French  
Senator Albert Kookesh  
Senator Joe Paskvan

**MEMBERS ABSENT**

All members present.

**COMMITTEE CALENDAR**

SENATE BILL NO. 63

"An Act relating to transfer restrictions on trust interests."

- MOVED CSSB 63(STA) OUT OF COMMITTEE

SENATE BILL NO. 278

"An Act allowing certain teachers, public employees, and private sector employees to take leave without pay when their spouses are on leave from deployment in a combat zone."

- MOVED CSSB 278(STA) OUT OF COMMITTEE

SENATE BILL NO. 190

"An Act relating to biometric information."

- MOVED CSSB 190(STA) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: SB 63

SHORT TITLE: TRANSFER RESTRICTIONS ON TRUSTS

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)	STA, JUD, FIN
02/04/10	(S)	STA AT 9:00 AM BELTZ 105 (TSBldg)
02/04/10	(S)	Heard & Held
02/04/10	(S)	MINUTE(STA)

BILL: SB 278

SHORT TITLE: LEAVE FOR MILITARY SPOUSES

SPONSOR(s): SENATOR(s) WIELECHOWSKI

02/12/10 (S) READ THE FIRST TIME - REFERRALS  
02/12/10 (S) STA, L&C  
02/25/10 (S) STA AT 9:00 AM BELTZ 105 (TSBldg)  
02/25/10 (S) Heard & Held  
02/25/10 (S) MINUTE(STA)

BILL: SB 190

SHORT TITLE: BIOMETRIC INFORMATION FOR ID

SPONSOR(s): SENATOR(s) WIELECHOWSKI

04/10/09 (S) READ THE FIRST TIME - REFERRALS  
04/10/09 (S) STA, JUD  
03/02/10 (S) STA AT 9:00 AM BELTZ 105 (TSBldg)  
03/02/10 (S) Heard & Held  
03/02/10 (S) MINUTE(STA)

**WITNESS REGISTER**

ESTHER CHA

Staff to Senator McGuire  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Presented SB 63 for the sponsor.

THERESA BANNISTER, Attorney  
Legislative Legal Services  
Legislative Affairs Agency  
Juneau, AK

**POSITION STATEMENT:** Provided information on SB 63 and SB 190.

DOUGLAS BLATTMACHR, President and CEO  
Alaska Trust Company  
Anchorage, AK

**POSITION STATEMENT:** Testified in support of SB 63.

DAVE SHAFTEL

Shaftel Law Offices  
Anchorage, AK

**POSITION STATEMENT:** Testified in support of SB 63.

JAN TEMPLE, Senior Trust Officer  
Alaska USA Trust Company

Anchorage, AK

**POSITION STATEMENT:** Testified in support of SB 63.

RICHARD HOMPESCH, Trust and Estates Attorney  
Fairbanks, AK

**POSITION STATEMENT:** Testified in support of SB 63.

JONATHAN BLATTMACHR, member  
New York, California and Alaska Bars

**POSITION STATEMENT:** Testified in support of SB 63.

SENATOR BILL WIELECHOWSKI  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Sponsor of SB 278 and SB 190.

GEORGE ASCOTT  
Staff to Senator Bill Wielechowski  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Provided information on SB 278 and SB 190.

DAN WAYNE, Attorney  
Legislative Legal Services  
Legislative Affairs Agency  
Juneau, AK

**POSITION STATEMENT:** Provided information on SB 278.

AL TAMAGNI, SR., representing himself  
Anchorage, AK

**POSITION STATEMENT:** Expressed concerns about SB 278.

#### **ACTION NARRATIVE**

[9:08:01 AM](#)

**CHAIR LINDA MENARD** called the Senate State Affairs Standing Committee meeting to order at 9:08 a.m. Present at the call to order were Senators Paskvan, French, Meyer, Kookesh and Menard.

#### **SB 63-TRANSFER RESTRICTIONS ON TRUSTS**

[9:09:18 AM](#)

CHAIR MENARD announced the first order of business to come before the committee would be SB 63.

ESTHER CHA, staff to Senator McGuire, sponsor of SB 63, presented the committee substitute (CS) for SB 63, labeled 26-LS0317\E. Section 1 of SB 63 now reflects that paragraph (3), subparagraph (G) has been deleted. On page 3 of Version A, in Section 1 [amending AS 34.40.110(b)], paragraph (3), subparagraph (F) has been deleted.

MS. CHA explained that on page 3 of Version E, subparagraph (F) was subparagraph (G) in Version A. Subparagraph (E) in Version E is now a combination of what was subparagraphs (E) and (F) in Version A. She explained that change was made because trust practitioners felt more broad language was better, referring to distributions "governed by a standard". Terry Bannister, lawyer, Legislative Services, was also consulted.

[9:12:21 AM](#)

SENATOR PASKVAN referred to Section 3, [amending AS 34.40.110(1)] pages 3-4 and asked why the assets in the trust are not considered a factor or economic circumstance at a time of divorce.

THERESA BANNISTER, Attorney, Legislative Legal Services, replied that she drafted the language to implement what the trust practitioners wanted to do. She suggested that with a transfer restriction on the trust, a person is prohibited from distributing a particular interest before realizing that interest. Prior to realizing that interest, it could not be considered in a divorce.

SENATOR PASKVAN questioned if provision could be used to avoid paying child support.

MS. BANNISTER said the language speaks only to a division of property and not to child support.

[9:15:56 AM](#)

SENATOR PASKVAN referred to page 1, paragraph (1), and asked why the standard was increased to "clear and convincing evidence".

MS. BANNISTER replied that she does not know.

DOUGLAS BLATTMACHR, President and CEO, Alaska Trust Company, said the language clarifies that "clear and convincing evidence" is the standard. Ten of the 12 states that have adopted similar legislation use that standard. He said he supports SB 63 as an improvement upon Alaska's trust laws.

CHAIR MENARD asked him to speak to the economic gain.

MR. DOUGLAS BLATTMACHR replied that over 10,000 Alaskans have taken advantage of legislation improving financial and estate planning. At least 10 jobs in the trust industry have been created and Alaska has received millions in increased life insurance premium tax. Alaska is considered one of the top four states for estate and financial planning. Attorneys, accountants, life insurance agents and stock brokers have had increased business.

[9:19:01 AM](#)

DAVE SHAFTEL, Shaftel Law Offices, said when dealing with proving fraud, the accepted standard is "clear and convincing evidence". Alaska's statute has previously left that out; SB 63 clarifies that as the appropriate standard. The additional provision in Version E, page 3, subparagraph (E), says spend thrift protections provided by existing law are intended to apply whether the trustee is governed by a standard or is given absolute discretion.

[9:22:24 AM](#)

SENATOR PASKVAN referred to Section 3 which amends AS 34.40.110(1). On page 3, line 31 reads "beneficiary's interest in the trust, whether or not vested, is not considered a factor or economic circumstance". He asked what the policy is behind this language.

MR. SHAFTEL said he has recommended that Section 3 be dropped from SB 63 to make it consistent with the house bill. He understands that will happen between this committee hearing and the next committee hearing.

SENATOR PASKVAN asked why Mr. Shaftel wants Section 3 dropped.

MR. SHAFTEL said the comparable house bill had an objection. In the interest of getting SB 63 through, dropping Section 3 seems better.

JAN TEMPLE, Senior Trust Officer, Alaska USA Trust Company, said Alaska USA Trust Company is in support of SB 63. She hears many comments from attorneys across the Lower 48 about Alaska being one of the top four states for trusts. That status brings in a good deal of business from the Lower 48.

RICHARD HOMPESCH, Trust and Estates Attorney, Fairbanks, expressed support for SB 63. SB 63 is a continuation and

improvement of Alaska's current trust law and will further establish Alaska as the premiere jurisdiction for trust and estate planning.

[9:26:02 AM](#)

JONATHAN BLATTMACHR, member, New York, California and Alaska Bars, said SB 63 is exceptionally important legislation to keep Alaska in the forefront for trusts. Bringing in business from the Lower 48 is important and 10,000 Alaskans have also taken advantage of them.

CHAIR MENARD asked if Mr. Jonathan Blattmachr understood that Section 3 will most likely be removed due to an objection in the House. She asked if he is in agreement.

MR. JONATHAN BLATTMACHR replied he was aware of that and is agreement with removing Section 3 from SB 63.

[9:27:31 AM](#)

CHAIR MENARD closed public testimony.

SENATOR FRENCH moved to adopt a conceptual amendment removing Section 3 (page 3, line 28 - page 4, line 8) from SB 63. There being no objection, the motion carried.

[9:28:36 AM](#)

SENATOR MEYER moved to report CS for SB 63, 26-LS0317\E as conceptually amended, from committee with individual recommendations and accompanying fiscal note(s). There being no objection, CSSB 63(STA) moved from the Senate State Affairs Standing Committee.

At ease from 9:29 a.m. to 9:30 a.m.

### **SB 278-LEAVE FOR MILITARY SPOUSES**

[9:30:43 AM](#)

CHAIR MENARD announced the next order of business to come before the committee would be SB 278.

SENATOR MEYER moved to adopt the proposed committee substitute (CS) for SB 278, labeled 26-LS1034\S, as the working document. There being no objection, version S was before the committee.

SENATOR BILL WIELECHOWSKI, sponsor of SB 278, said his staff has addressed the concerns raised by committee members in the previous hearing. He noted that version S did not address all

details as requested and therefore an amendment would also be presented.

GEORGE ASCOTT, Staff to Senator Wielechowski, explained the changes to SB 278. After consulting Superintendent Carol Comeau, and reviewing other states' laws, SB 278 now requires 14 days of advance notice from employees wanting to take unpaid leave during a military spouse's leave from a combat zone. This change is reflected on page 2, lines 11-14, page 4, lines 3-6, and page 6, lines 4-7.

[9:34:33 AM](#)

At the suggestion of Superintendent Comeau, page 3, lines 14-16, allows an employer, required to post a summary or abstract of AS 23.10.435, to do so by electronic means.

The concern about allowing employers to request documentation that the individual's spouse is actually on combat leave is now addressed in three places for the three different types of employees covered: page 2, lines 15-18, page 4, lines 7-10, and page 6, lines 8-11.

MR. ASCOTT said Version S has a drafting error on page 4, lines 1-2, which gives employers the right to extend the leave if they wish. This was not the sponsor's intention; rather it was to follow other states requirement that employers continue providing medical and other benefits during the employee's leave, at the expense of the employee. Amendment [26-LS1034\S.1] fixes this.

#### AMENDMENT 1

OFFERED IN THE SENATE

TO: CSSB 278( ), Draft Version "S"

Page 4, following line 6:

Insert a new subsection to read:

"(d) If the employee who requests leave is covered by medical insurance that is provided through the employer, the employer shall allow the employee to continue the coverage without interruption during the leave. The employee shall pay the expense of continuing medical insurance coverage during leave under this section unless the employer and the employee agree otherwise."

Reletter the following subsections accordingly.

Page 4, line 11:  
Delete "(b) - (d)"  
Insert "(b), (c), and (e)"

Page 4, line 17, following "leave":  
Insert "except as provided in (d) of this section"

Page 5, line 7:  
Delete "(g)"  
Insert "(h)"

[9:37:33 AM](#)

MR. ASCOTT said version S, page 5, line 3 and lines 7-10 makes the penalties for employers who do not allow this time off mirror the penalties for not allowing employees to go to jury duty. This is applied to the private sector.

On page 3, lines 21-23 apply SB 278 to employees who work 20 or more hours per week in the private sector. To protect seasonal businesses, these lines also change SB 278 to apply to employers with 20 or more employees for 20 or more calendar weeks of the year. To protect rural schools, SB 278 now would only apply to specific schools, rather than districts, with 20 or more employees. Mr. Ascott said he discussed this with John Lamont, superintendent of the Lower Yukon School District, and Bill Woodford, superintendent of the Yukon Flats School District. This change was not properly relayed in Version S but is fixed with Amendment [26-LS1034\S.2].

## AMENDMENT 2

OFFERED IN THE SENATE  
TO: CSSB 278( ), Draft Version "S"

Page 2, line 1:  
Delete "a teacher who is employed by an employer that employs"

Insert "a person who is employed as a teacher at a school where"

Page 2, line 2, following "employees":  
Insert "are employed"

[9:40:25 AM](#)

MR. ASCOTT said due to a recent Supreme Court decision, it was suggested SB 278 apply to domestic partners in the public sector. This change occurs on page 2, line 4, page 3, line 2, page 5, lines 27-28, and is defined on page 6, line 29.

Finally, page 2, lines 9-10 and page 6, lines 2-3 clarify that SB 278 applies in the middle of a deployment, not at the end of deployment.

SENATOR KOOKESH asked if a teacher in a small school, with only one or two teachers, is prohibited from taking this leave.

SENATOR WIELECHOWSKI replied that is not the intent.

SENATOR KOOKESH said he wanted to make sure the intent is on the record. Most of the schools in his district are one or two teachers and he does not want them to be penalized.

SENATOR WIELECHOWSKI said he is happy to change the language in the next committee. The intent is to provide some level of protection for rural schools after a concern was raised in the last hearing. Version S tries to protect a school that could not get a substitute teacher and would have to shut the school down. The intent is to say small, rural schools can exclude themselves but they are not prohibited from working out an arrangement with the teacher.

SENATOR KOOKESH said his reading of the bill language does not tell him that and would not tell a rural teacher that.

SENATOR WIELECHOWSKI said he is happy to tweak the language to address Senator Kookesh's concern.

MR. ASCOTT said a small school is not prohibited from granting the leave.

SENATOR KOOKESH said version S does not say that.

CHAIR MENARD asked Senator Wielechowski to consider changing that and making an amendment to adopt.

SENATOR KOOKESH said he has no problem moving SB 278 with the understanding that the sponsor will work on it. He would like to see the revised language.

[9:44:18 AM](#)

SENATOR KOOKESH continued saying he is thinking of simple language such as, "in the event that there is less 20 teachers, something should be worked out between the employer and the employee".

SENATOR WIELECHOWSKI committed to having his staff work with Senator Kookesh's staff, or to working directly together. He asked Mr. Dan Wayne, the drafter of SB 278, if he believes the language about rural teachers prohibits them from taking this leave.

DAN WAYNE, Attorney, Legislative Legal Services, said SB 278, and not amendment S.2, says a person who can take military spouse leave is a teacher employed by an employer that employs any combination of 20 or more full-time, part-time and temporary employees. This language could be interpreted as prohibiting others from doing so.

SENATOR WIELECHOWSKI said he would work with Mr. Wayne to fix this language.

SENATOR PASKVAN said page 3, lines 4-5 reflect a period of war declared by the U.S. Congress. Currently, Congress has deferred to the President exercising executive power but not under a declaration of war. He asked if SB 278 does not apply to any current ongoing conflict.

[9:48:00 AM](#)

SENATOR WIELECHOWSKI replied the intent of SB 278 is to cover periods of conflict and four active conflicts are currently ongoing. On page 3, lines 6-8 address that.

MR. WAYNE confirmed this.

SENATOR PASKVAN said he understands that page 3, lines 6-8 apply if a person is a member of the Army Reserve ordered to active duty. However, the applicability of SB 278 seems to be limited to a declaration of war by the U.S. Congress for a member of the regular Army or Air Force.

MR. WAYNE said Senator Paskvan's point needs to be looked at.

SENATOR WIELECHOWSKI reiterated that SB 278's intent is to include all military members.

SENATOR FRENCH said he believes SB 278 covers all military members as drafted. He referred to page 3, paragraph

(2)(A)and(B) and said these lines mean that a period of military conflict is a period of war in which a member of a reserve component is ordered to active duty. It does not say this only applies to those members but rather that if a member of a reserve component is ordered active duty, then you are in a period of war. The language could be made clearer.

AL TAMAGNI, SR., representing himself, Anchorage, said he is not sure that the drafting of SB 278 parallels the October 28, 2009 National Defense Authorization Act.

[9:52:18 AM](#)

MR. TAMAGNI referred to page 1, line 1, reading "private sector employees". He asked why this does not cover nonprofit organizations and unions.

SENATOR WIELECHOWSKI said SB 278 applies to teachers, government employees and for-profit employees. He said if the committee wishes to extend SB 278 to apply to other organizations, he would be happy to do that.

MR. ASCOTT said the intent is that no one be exempted from SB 278.

MR. WAYNE said "private sector employee" is a broad category that can include employees of nonprofits and employees who are members of unions in the private sector. The language about private employees begins on page 3, lines 18-20 and reads: "as an employer, other than the federal or state government or the government of a political subdivision of the state". This seems to pick up everybody.

MR. TAMAGNI pointed out that page 3, line 19, reads "every person" with no reflection of entity. He would like to add in the word "entity" and would like page 1, line 1 to encompass non-profits employees of unions.

MR. WAYNE said the Legislature uses a definition of "person" that includes corporations, unions and other entities other than natural persons.

MR. TAMAGNI said corporations are treated differently for political contributions; it is not a standard throughout. He said a lot of small employers in Alaska, such as himself, would like clarification for the common business person.

[9:57:49 AM](#)

SENATOR FRENCH said the use of the word "person" in state law applies to unions, corporations and many other entities.

SENATOR PASKVAN referred to the earlier mention of a recent law brought up by President Obama and asked if SB 278 is compatible with that recent law.

MR. ASCOTT said before the Family Medical Leave Act, Five Days Exigency Leave stipulated that when a member of the National Guard or reserves is back from a tour of duty or on leave, a person can take five days of leave to spend time with a family member. This law did not include members of the regular armed forces but it has been expanded to include members of the regular armed forces. SB 278 is not in conflict with federal law.

SENATOR PASKVAN asked if federal law allows five days leave and SB 278 allows ten.

MR. ASCOTT replied that is correct.

SENATOR PASKVAN asked why ten days was chosen.

MR. ASCOTT said SB 278 was based on New York's law allowing ten days.

SENATOR WIELECHOWSKI said some states have upwards of 30 days when employees number 50 or more. In trying to understand the business needs of the community, ten days seemed reasonable.

[10:01:45 AM](#)

SENATOR PASKVAN referred to page 5, line 24 and said employees of the Alaska Railroad Corporation seem to be excluded.

MR. ASCOTT reported that the drafter said Alaska Railroad employees are considered private employees and fall under the private employees category.

SENATOR PASKVAN said the Alaska Railroad Corporation is a specifically established entity under Alaska law.

MR. WAYNE said Alaska Railroad employees, under statute, are not considered to be government employees for most purposes, including these leave statutes.

SENATOR WIELECHOWSKI said Alaska Railroad is excluded under Section 5 of SB 278 but is included as a private employer under other sections of the bill.

[10:04:17 AM](#)

SENATOR FRENCH moved to adopt Amendment 1 [26-LS1034\S.1]. There being no objection, the motion carried.

SENATOR FRENCH moved to adopt Amendment 2 [26-LS1034\S.2]. There being no objection, the motion carried.

SENATOR FRENCH moved to report SB 278, 26-LS1034\S as amended, from committee with individual recommendations and accompanying zero fiscal note.

SENATOR KOOKESH objected to ask what the next committee of referral is.

CHAIR MENARD answered Labor and Commerce.

SENATOR KOOKESH removed his objection.

CHAIR MENARD announced that without further objection, CSSB 278(STA) moved from Senate State Affairs Standing Committee.

At ease from 10:06 a.m. to 10:08 a.m.

### **SB 190-BIOMETRIC INFORMATION FOR ID**

[10:08:46 AM](#)

CHAIR MENARD announced the next order of business to come before the committee would be SB 190.

SENATOR FRENCH moved to adopt the proposed committee substitute (CS) for SB 190, labeled 26-LS0332\C, as the working document of the committee. There being no objection, version C was before the committee.

SENATOR WIELECHOWSKI said his office has worked to address issues raised by committee members and industry.

MR. ASCOTT, aide to Senator Wielechowski, said the first change in the committee substitute addresses the concerns of the American Council of Life Insurance that the definition of "biometric information" was overly broad. The language "an individual's unique behavior or physiological characteristics including" was deleted. Page 3, lines 6-8, amends AS 18.13.100

and says specifically what biometrics are: "fingerprints, hand geometry, voice recognition, facial recognition, iris scan, retinal scan, or DNA".

Page 2, lines 11-12 amends AS 18.13.010(2)(b) by adding paragraph (6) reading: "for the collection of fingerprints when specifically provided for by state statute." This allows the state to continue fingerprinting in ways that already occur in state statute.

[10:11:47 AM](#)

MR. ASCOTT said page 1, line 9 clarifies that the consent given to turning over biometric information must be willing.

CHAIR MENARD asked if the other modifiers, "informed" and "written" imply the same consent as "willing".

MS. TERRY BANISTER, attorney, Legal Services, said willingness is suggested by "informed" and "written" but has a slightly different meaning. She did not see the addition of "willing" as being superfluous.

MR. ASCOTT said page 2, line 21 through page 3, line 4, of Version C, removed the Class A misdemeanor for the unwilling collection of biometric information and made it simply a private right of action. It is still a misdemeanor for DNA. The Attorney General's (AG's) office said this would make the fiscal note zero because no further prosecutions would be caused by SB 190.

[10:14:02 AM](#)

SENATOR PASKVAN asked if the AG's office has the authority to investigate, for example, if someone obtained broad categories of Alaskan's information. The ability to investigate should not be limited to a private right of action.

MR. ASCOTT said Anne Carpeneti, the liason for the AG's office, has said the AG's office has some interest in SB 190 that they would like to address in the judiciary committee.

SENATOR PASKVAN said he felt that the AG's powers should be exercised if a private company came into Alaska and started assembling information.

SENATOR WIELECHOWSKI said it is a great suggestion and SB 190 goes to judiciary next.

SENATOR FRENCH suggested something that gives the AG authority: not "shall" but "may."

10:16:29 AM

CHAIR MENARD closed public testimony.

SENATOR PASKVAN said he likes SB 190 and felt providing the AG's office with the ability to investigate would help to protect Alaskan's right to privacy.

10:17:28 AM

SENATOR PASKVAN moved to report CS for SB 190 [26-LS0332\C] from committee with individual recommendations and accompanying fiscal notes. There being no objection CSSB 190(STA) moved from the Senate State Affairs Standing Committee.

10:17:59 AM

CHAIR MENARD, seeing no further business to come before the committee, adjourned the meeting.