

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

April 1, 2011
1:06 p.m.

MEMBERS PRESENT

Representative Carl Gatto, Chair
Representative Steve Thompson, Vice Chair
Representative Wes Keller
Representative Bob Lynn
Representative Lance Pruitt
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

Representative Mike Chenault (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 179

"An Act relating to cruelty to animals and making failure to care for five or more animals in a single continuous episode a class C felony."

- MOVED HB 179 OUT OF COMMITTEE

HOUSE BILL NO. 88

"An Act prohibiting a court, arbitrator, mediator, administrative agency, or enforcement authority from applying a law, rule, or provision of an agreement that violates an individual's right under the Constitution of the State of Alaska or the United States Constitution."

- MOVED CSHB 88(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 1

"An Act stating a public policy that allows a person to choose or decline any mode of securing health care services."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 179

SHORT TITLE: ANIMAL CRUELTY

SPONSOR(S) : REPRESENTATIVE(S) LYNN

03/09/11 (H) READ THE FIRST TIME - REFERRALS
03/09/11 (H) JUD, FIN
04/01/11 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 88

SHORT TITLE: USE OF FOREIGN LAW

SPONSOR(S) : REPRESENTATIVE(S) GATTO

01/18/11 (H) PREFILE RELEASED 1/14/11
01/18/11 (H) READ THE FIRST TIME - REFERRALS
01/18/11 (H) STA, JUD
03/17/11 (H) STA AT 8:00 AM CAPITOL 106
03/17/11 (H) Heard & Held
03/17/11 (H) MINUTE(STA)
03/22/11 (H) STA AT 8:00 AM CAPITOL 106
03/22/11 (H) <Bill Hearing Rescheduled to 3/24/11>
03/24/11 (H) STA AT 8:00 AM CAPITOL 106
03/24/11 (H) Moved CSHB 88(STA) Out of Committee
03/24/11 (H) MINUTE(STA)
03/25/11 (H) STA RPT CS(STA) 3DP 2DNP 2NR
03/25/11 (H) DP: P.WILSON, KELLER, LYNN
03/25/11 (H) DNP: GRUENBERG, SEATON
03/25/11 (H) NR: JOHANSEN, PETERSEN
03/25/11 (H) FIN REFERRAL ADDED AFTER JUD
03/30/11 (H) JUD AT 1:00 PM CAPITOL 120
03/30/11 (H) Heard & Held
03/30/11 (H) MINUTE(JUD)
04/01/11 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 1

SHORT TITLE: POLICY FOR SECURING HEALTH CARE SERVICES

SPONSOR(S) : REPRESENTATIVE(S) GATTO, LYNN

01/18/11 (H) PREFILE RELEASED 1/7/11
01/18/11 (H) READ THE FIRST TIME - REFERRALS
01/18/11 (H) HSS, JUD
03/01/11 (H) HSS AT 3:00 PM CAPITOL 106
03/01/11 (H) Scheduled But Not Heard
03/08/11 (H) HSS AT 3:00 PM CAPITOL 106
03/08/11 (H) Heard & Held
03/08/11 (H) MINUTE(HSS)
03/15/11 (H) HSS AT 3:00 PM CAPITOL 106
03/15/11 (H) Moved CSHB 1(HSS) Out of Committee
03/15/11 (H) MINUTE(HSS)
03/16/11 (H) HSS RPT CS(HSS) 2DP 3NR

03/16/11 (H) DP: DICK, KELLER
03/16/11 (H) NR: SEATON, MILLER, HERRON
04/01/11 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

THOMAS REIKER, Staff
Representative Bob Lynn
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 179, responded to a question on behalf of the sponsor, Representative Lynn.

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

POSITION STATEMENT: Responded to questions during discussion of HB 179.

KAYLA EPSTEIN, Member
Animal Control Advisory Board (ACAB)
Animal Care & Control Center
Department of Health and Human Services (DHHS)
Municipality of Anchorage (MOA)
Anchorage, Alaska

POSITION STATEMENT: Urged passage of HB 179.

DEBORA GAIL GARDNER, Commissioner
Animal Control Commission
Fairbanks North Star Borough (FNSB);
Volunteer
Pet Pride Cat Rescue;
Volunteer
Spay Neuter Your Pet
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 179.

RONNIE ROSENBERG
President
Fairbanks Animal Shelter Fund;
Commissioner
Chair
Animal Control Commission
Fairbanks North Star Borough (FNSB)
Fairbanks, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 179.

DOUGLAS GARDNER, Director
Legal Services
Legislative Legal and Research Services
Legislative Affairs Agency (LAA)
Juneau, Alaska

POSITION STATEMENT: Responded to questions during discussion of HB 179.

MARY ELLEN BEARDSLEY, Assistant Attorney General
Commercial/Fair Business Section
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: During discussion of HB 88, expressed a concern regarding Conceptual Amendment 1.

PETER PUTZIER, Senior Assistant Attorney General
Opinions, Appeals, & Ethics
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Provided comments and responded to questions during discussion of HB 88.

KAREN SAWYER, Staff
Representative Carl Gatto
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 88, responded to questions on behalf of the sponsor, Representative Gatto.

KAREN SAWYER, Staff
Representative Carl Gatto
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 1 on behalf of Representative Gatto, one of the bill's joint prime sponsors.

STACIE KRALY, Chief Assistant Attorney General - Statewide
Section Supervisor
Human Services Section
Civil Division (Juneau)
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Provided comments and responded to questions during discussion of HB 1.

ACTION NARRATIVE

[1:06:46 PM](#)

CHAIR CARL GATTO called the House Judiciary Standing Committee meeting to order at 1:06 p.m. Representatives Gatto, Gruenberg, Lynn, Keller, and Thompson were present at the call to order. Representatives Holmes and Pruitt arrived as the meeting was in progress.

HB 179 - ANIMAL CRUELTY

[1:07:41 PM](#)

CHAIR GATTO announced that the first order of business would be HOUSE BILL NO. 179, "An Act relating to cruelty to animals and making failure to care for five or more animals in a single continuous episode a class C felony."

REPRESENTATIVE LYNN, as the sponsor of HB 179, explained that [earlier in the year], authorities had to seize [approximately] 150 severely neglected dogs from a home in Willow - several so neglected that they were already dead. Such incidents, unfortunately, are not isolated; animal control officers have had to rescue multiple neglected animals throughout Alaska since 2008, and these are only the cases that are known about. Cases of mass animal neglect are shocking, and quickly overwhelm local and state animal-rescue services. Under the changes proposed by HB 179, contemporaneous violations of AS 11.61.140 involving five or more animals would be a class C felony, whereas currently such behavior warrants only a class A misdemeanor for each animal neglected. Under HB 179, the gravity of the charges would reflect the gravity of the crime, thereby discouraging people from taking on multiple animals without the ability or intention to care for each and every animal. The bill doesn't limit the number of animals that a person may possess, he assured the committee, and instead only addresses those instances in which animals are not being cared for properly. In conclusion, he asked members to support HB 179 - joining him in taking a strong stand against serial animal cruelty.

CHAIR GATTO noted that proposed AS 11.61.140(a)(8) read:

(8) with criminal negligence, contemporaneously fails to care for five or more animals and, as a result, causes the death of five or more animals or causes severe physical pain or prolonged suffering to five or more animals.

REPRESENTATIVE LYNN, in response to questions, acknowledged that if the behavior outlined in proposed AS 11.61.140(a)(8) was directed at only four animals, it would still be a violation for each animal but each violation would remain a class A misdemeanor; assured the committee that the bill is only addressing contemporaneous behavior rather than cumulative behavior; and explained that when deciding what the threshold should be for contemporaneous neglect, five animals appeared to be the most appropriate and practical number.

CHAIR GATTO acknowledged that having to address such instances of mass animal neglect as occurred in Willow could overwhelm any animal-care facility and its community.

REPRESENTATIVE HOLMES noted that under existing AS 11.61.140(h), if within the prior 10 years a person has been convicted of violating AS 11.61.140(a)(2) - which addresses the neglect of one animal - then any current conviction would then be a class C felony; AS 11.61.140(a)(2) reads:

(2) with criminal negligence, fails to care for an animal and, as a result, causes the death of the animal or causes severe physical pain or prolonged suffering to the animal;

REPRESENTATIVE HOLMES, in response to comments, offered her understanding that in a domestic violence (DV) situation, if behavior as severe as that outlined in paragraph (2) were instead directed towards a person - thereby causing his/her death or severe physical pain or prolonged suffering - it would warrant a felony charge.

[1:15:51 PM](#)

THOMAS REIKER, Staff, Representative Bob Lynn, Alaska State Legislature, on behalf of the sponsor, Representative Lynn, in response to a question regarding the disposal of unwanted animals, noted that existing AS 11.61.140(a)(2) requires that the behavior be conducted with criminal negligence.

[1:17:02 PM](#)

ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), explained that in Alaska, animals are considered property and as such a person is not precluded under AS 11.61.140(a) from causing the death of his/her animal as long as it's done in a humane manner. For example, a person may not kill an animal by knowingly inflicting severe and prolonged physical pain or suffering, [by failing to provide care,] or via the use of a decompression chamber or poison. Shooting an unwanted animal would probably be fine, she ventured, but surmised that whether drowning an unwanted animal would be illegal would depend on the circumstances, though it probably wouldn't be considered as resulting in prolonged physical pain or suffering.

REPRESENTATIVE GRUENBERG disclosed that he [is married to] the next testifier.

[1:19:25 PM](#)

KAYLA EPSTEIN, Member, Animal Control Advisory Board (ACAB), Animal Care & Control Center, Department of Health and Human Services (DHHS), Municipality of Anchorage (MOA), after expressing appreciation for the progress made thus far with regard to [preventing animal cruelty], noted that instances of multiple-animal neglect place a large burden on local government. For example, one recent animal-neglect case her organization dealt with involved caring for 8 dogs, 23 cats, and 1 bird for over a year at an estimated cost of over \$77,000 - which was only even that low due to donations of food, shelter, and medical care - with the resulting conviction eventually allowing for the additional removal of approximately 50 more animals from another location. That case, she relayed, was a nightmare in terms of logistics, expenses, and the emotional pain experienced by both the staff and volunteers who had to care for those sick and dying animals. In conclusion, she urged passage of HB 179, characterizing it as a logical step towards fixing a true problem, though she mentioned that in addressing the issue of criminal neglect - not simply stupid neglect or ignorant neglect - her organization regrets that the bill's proposed threshold for a felony crime is five animals, and suggested that that proposed threshold should instead be three animals.

[1:22:44 PM](#)

DEBORA GAIL GARDNER, Commissioner, Animal Control Commission, Fairbanks North Star Borough (FNSB); Volunteer, Pet Pride Cat Rescue; Volunteer, Spay Neuter Your Pet, said she is in support of HB 179, and that she agrees with the comments of the representative from the ACAB that HB 179 is a good start. She remarked, though, that it would be nice to see any kind of criminal negligence [of animals] be a felony, adding that caring for such neglected animals is overwhelming, heartbreaking work. Particularly for cats, such criminal negligence amounts to a death sentence. In conclusion, she reiterated that she supports HB 179.

[1:23:59 PM](#)

RONNIE ROSENBERG, President, Fairbanks Animal Shelter Fund; Commissioner, Chair, Animal Control Commission, Fairbanks North Star Borough (FNSB), after mentioning that the Fairbanks Animal Shelter Fund provides support for the Fairbanks North Star Borough's animal shelter, and that she has been active in animal control issues in Alaska for over 15 years, relayed that over the years, there have been several cases involving breeders, hoarders, and other individuals who have been neglecting or abusing large numbers of animals. Because of the prevalence of such incidents, she opined, it's really important for HB 179 to pass. Having to intake these large numbers of abused and neglected animals puts a tremendous burden - including a large financial burden - on shelters, and causes disruption in the community. She offered her belief that providing for the enhanced sentencing associated with a felony charge makes sense, particularly for those who torture their animals, or who for days on end, for no apparent reason, don't feed or care for their animals in any reasonable fashion. She said she agrees with the DOL representative that shooting one's unwanted animal isn't a crime in Alaska, pointing out that in rural areas of the state, it can be the only way of managing an overpopulation situation. In conclusion, she urged passage of HB 179.

CHAIR GATTO mentioned that members' packets include a letter from the executive director of the Alaska Society for the Prevention of Cruelty to Animals (Alaska SPCA), and that that letter's last sentence read, "We are very grateful to all of you for your interest and hard work on behalf of animals, and hope that you will take HB 179 just one more notch to make it truly effective and meaningful for those creatures who depend entirely upon your decisions for their very lives."

CHAIR GATTO, after ascertaining that no one else wished to testify, closed public testimony on HB 179.

[1:27:55 PM](#)

DOUGLAS GARDNER, Director, Legal Services, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), in response to questions, offered his understanding that under the bill, prosecutors would have discretion with regard to whether to charge a person who'd criminally neglected five or more animals with a felony under proposed paragraph (8), or with a misdemeanor for each criminally-neglected animal under existing AS 11.61.140(b); that judges would retain discretion with regard to sentencing, including considering the effects associated with felony convictions compared to misdemeanor convictions, and whether to apply the rule of lenity; and that if a person acts intentionally, knowingly, or recklessly, the requirement under existing AS 11.61.140(a)(2) and proposed AS 11.61.140(a)(8) that the person act with criminal negligence would be met, since criminal negligence is the lowest mental state provided for under Alaska's criminal statutes. In response to other questions, he, too, agreed that humanely shooting one's own unwanted animals, regardless of how many, would not be a crime under Alaska law, and surmised that whether a situation involving a breeder would warrant a felony charge under proposed AS 11.61.140(a)(8) would depend on the circumstances, evidence of causation, expert testimony, and prosecutorial discretion.

CHAIR GATTO expressed strong disfavor with "puppy mills."

[1:44:03 PM](#)

REPRESENTATIVE THOMPSON moved to report HB 179 out of committee with individual recommendations and the accompanying [indeterminate] fiscal notes. There being no objection, HB 179 was reported from the House Judiciary Standing Committee.

HB 88 - USE OF FOREIGN LAW

[1:44:52 PM](#)

CHAIR GATTO announced that the next order of business would be HOUSE BILL NO. 88, "An Act prohibiting a court, arbitrator, mediator, administrative agency, or enforcement authority from applying a law, rule, or provision of an agreement that violates an individual's right under the Constitution of the State of Alaska or the United States Constitution." [Before the

committee was CSHB 88(STA); adopted as the working document on 3/30/11 was the proposed committee substitute (CS) for HB 88, Version 27-LS0333\D, Bailey, 3/30/11.]

The committee took an at-ease from 1:45 p.m. to 1:48 p.m.

[1:49:12 PM](#)

REPRESENTATIVE KELLER made a motion to adopt [a written] Conceptual Amendment 1, which [although incorrect with regard to placement and text] read [original punctuation provided]:

Page2, line 28

(g) In this section, "foreign law" means a law, rule, or legal code or system established and used or applied in a jurisdiction outside of the United States and the territories of the United States. "Foreign law" does not mean nor shall it include a law **currently established in Alaska statute, or Case Law.**

REPRESENTATIVE GRUENBERG objected for the purpose of discussion.

REPRESENTATIVE KELLER indicated his belief that Conceptual Amendment 1 would serve as a grandfather clause, thereby addressing concerns raised during the bill's last hearing that HB 88's prohibition of foreign law could mistakenly be applied in situations involving Catholic canon law, for example.

REPRESENTATIVE GRUENBERG, citing his nescience regarding all of Conceptual Amendment 1's possible implications, expressed concern that its adoption may have some significant ramifications.

The committee took an at-ease from 1:53 p.m. to 1:57 p.m.

CHAIR GATTO clarified that Conceptual Amendment 1 is proposing to add to page 3, line 1, of Version D - after the words, "territories of the United States." - the words:

"Foreign law" does not mean nor shall it include a law currently established in Alaska statute, or Case Law.

REPRESENTATIVE KELLER concurred, and offered his understanding that via either statute or case law, Catholic canon law is currently being applied by the courts.

[2:00:48 PM](#)

MARY ELLEN BEARDSLEY, Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Anchorage), Department of Law (DOL), in response to a question, relaying that she would prefer to have a little more time to research the issue, characterized Conceptual Amendment 1 as extremely broad, and expressed concern that its ending word, "Law" could encompass a lot of things.

[2:01:42 PM](#)

PETER PUTZIER, Senior Assistant Attorney General, Opinions, Appeals, & Ethics, Civil Division (Anchorage), Department of Law (DOL), on the issue of tribal law, explained that in suggesting the wording [currently in Version D's legislative intent section and proposed AS 11.61.140(g)] regarding HB 88's inapplicability to tribal law and its definition of the term, "foreign law", respectively, his assumptions were that tribal law was not the focus of the bill, and, even if it were the focus, that the legislature doesn't have any authority to restrict the inherent authority of tribes. Specifically, because the term "foreign law" is being defined in the bill as being a law outside the jurisdiction of the United States and its territories, then including language stating that foreign law does not mean nor include tribal law is unnecessary given that federally-recognized tribes - and certainly the tribes in the state of Alaska - are within the jurisdiction of the United States. And to clarify that point further, Version D now includes a legislative intent section that reads:

LEGISLATIVE INTENT. It is the intent of the legislature that AS 09.68.140, enacted by sec. 3 of this Act, does not address, directly or indirectly, any question of tribal law or the application of tribal law or otherwise address the intersection between state law and tribal law.

[2:05:05 PM](#)

KAREN SAWYER, Staff, Representative Carl Gatto, Alaska State Legislature, on behalf of the sponsor, Representative Gatto, in response to a question, concurred that Version D does incorporate Mr. Putzier's suggested wording.

MR. PUTZIER, in response to a question, offered his belief that including the aforementioned legislative intent section would be

sufficient, and that tribal law is not, in any event, implicated under the term, "foreign law" as defined in the bill. In response to another question, he said he tends to agree with Ms. Beardsley that Conceptual Amendment 1 is potentially complicated. He said he questions, for example, whether its proposed exclusion - [although perhaps intended to address] the application of Catholic canon law - also includes regulations or, given that it specifies only Alaska's statutes, laws from other states. He opined that Conceptual Amendment 1 ought to be scrutinized further to ensure that it hasn't any unintended consequences. In response to a further question, he said he'd have to do more research regarding the underlying concern about the application of Catholic canon law before being able to speak to whether Conceptual Amendment 1 would adequately address that concern.

REPRESENTATIVE HOLMES surmised that because Catholic canon law isn't - to the best of her knowledge - contained in Alaska's statutes or case law, that Conceptual Amendment 1 wouldn't really accomplish the stated goal.

REPRESENTATIVE KELLER, concurring with that point and acknowledging that Conceptual Amendment 1 is broader than he had in mind, withdrew Conceptual Amendment 1.

REPRESENTATIVE GRUENBERG offered an example of a horrendous spousal-rape-and-subsequent-divorce case he was involved with many years ago that was ultimately settled but in which had the courts allowed for the application of Jewish law, a terrific injustice could have resulted, and pointed out that conflict of laws constitutes a very complex body of law, one derived solely from judicial rulings, upon which a bill such as HB 88 would have a [huge] effect.

[2:17:54 PM](#)

MS. SAWYER indicated that Janet Levy - who spoke during HB 88's last hearing - relayed in an e-mail that her attorneys assert that the [U.S. Supreme Court] has made it clear that under the First Amendment, intra-church/mosque/synagogue disputes remain internal unless neutral principles of law can be applied.

CHAIR GATTO offered his belief that HB 88 is meant to address conflicts between religious law and secular law.

MS. SAWYER pointed out, however, that HB 88 only addresses civil law, not religious law, though she acknowledged that in some

foreign jurisdictions, civil law is associated/intertwined with religious law.

REPRESENTATIVE GRUENBERG indicated a belief that how the courts address [various potentially-conflicting laws] is too complex to be laid out in statute because all such cases are fact driven, and that to attempt to do so would be Procrustean in nature. The principles, whether they be equitable principles or choice-of-law principles or contractual principles, are all designed to make the legal system work in instances involving private disputes.

REPRESENTATIVE KELLER offered his belief that the bill merely states a legislative preference that the courts not use a law that isn't derived from the constitutions.

REPRESENTATIVE LYNN disclosed that he is a practicing Catholic, and relayed that he intends to vote "yes" on HB 88.

REPRESENTATIVE HOLMES, after mentioning that she agrees with many of Representative Gruenberg's comments, expressed concern that from the discussion she's heard thus far, the committee appears to be trying to protect certain types of religious law while outlawing other types of religious law - specifically, trying to protect Catholic canon law and Jewish law while outlawing Shari'a law. For her, she relayed, this raises legal questions - for example, how would one draw that line - as well as ethical and moral concerns. Furthermore, as previously mentioned, the bill is addressing a very complex area of law and will therefore have huge consequences for international business and for Alaska's reputation as a welcoming business venue, and will complicate contractual choice-of-law decisions for individuals. Extensive research illustrates that even when the issue of shari'a is raised in court, judges are already refusing to apply it, stating that in this country, this country's laws and constitution apply. Therefore, by attempting to protect against something that isn't actually happening in the courts, a whole host of problems regarding conflict of laws and international business will instead be created. For these reasons, she relayed, she would be voting against HB 88.

CHAIR GATTO, citing England as an example, argued that judges don't always make correct decisions, and offered his belief that even incorrect judicial rulings can create legal precedence.

[2:27:19 PM](#)

REPRESENTATIVE THOMPSON referred to the DOL's March 21, 2011, legal opinion included in members' packets - specifically to the portion that read, "HB 88 might affect a foreign entity's willingness to do business with individuals or businesses in Alaska if it knows that provisions of the contract may be void by law should HB 88 become law" - and expressed concern that the bill would hurt Alaskans economically when they attempt to conduct business with entities outside of Alaska. He indicated a desire, though, to ensure that foreign laws aren't being applied in Alaska.

CHAIR GATTO offered his belief that it's rare for an individual to enter into a contract with a foreign entity.

REPRESENTATIVE HOLMES explained that that's not the case; instead, contracts between individuals and foreign entities are used in a lot of situations, such as those pertaining to employment, travel, the purchase of goods and services, warranties, and many other, everyday-type situations that most people don't think of as involving a contract.

REPRESENTATIVE PRUITT observed that Article. VI. of the U.S. Constitution says in part:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary Notwithstanding.

REPRESENTATIVE PRUITT, referring to the aforementioned legal opinion, indicated concern that HB 88 would have unintended consequences, and suggested that the issues raised thus far be researched further to ensure that business and economic opportunities for Alaskans won't be endangered by the bill.

REPRESENTATIVE KELLER acknowledged that conflict of laws appears to be a very complicated area of the law, and observed that HB 88 doesn't ban consideration of foreign law, merely the application of foreign law.

MS. SAWYER, in response to Representative Thompson, explained that to address the concern expressed in the aforementioned legal opinion, language was added in the House State Affairs Standing Committee providing an exemption for corporations,

partnerships, and other forms of business association. In conclusion, she offered her understanding that there is a shari'a court operating in Texas.

[2:35:06 PM](#)

REPRESENTATIVE KELLER moved to report the proposed committee substitute (CS) for HB 88, Version 27-LS0333\D, Bailey, 3/30/11, out of committee with individual recommendations and the accompanying fiscal notes.

CHAIR GATTO said there was an objection to the motion.

A roll call vote was taken. Representatives Thompson, Gruenberg, Lynn, Keller, Pruitt, and Gatto voted in favor of reporting the bill from committee. Representative Holmes voted against it. Therefore, CSHB 88(JUD) was reported from the House Judiciary Standing Committee by a vote of 6-1.

The committee took an at-ease from 2:36 p.m. to 2:39 p.m.

HB 1 - POLICY FOR SECURING HEALTH CARE SERVICES

[2:39:24 PM](#)

CHAIR GATTO announced that the final order of business would be HOUSE BILL NO. 1, "An Act stating a public policy that allows a person to choose or decline any mode of securing health care services." [Before the committee was CSHB 1(HSS).]

REPRESENTATIVE LYNN mentioned that he is one of HB 1's joint prime sponsors.

[2:40:01 PM](#)

KAREN SAWYER, Staff, Representative Carl Gatto, Alaska State Legislature, on behalf of Representative Gatto, one of HB 1's joint prime sponsors, said HB 1 is about state's rights, and indicated that the joint prime sponsors are alleging that the federal Patient Protection and Affordable Care Act (PPACA) infringes upon the constitutional rights of U.S. citizens/residents by mandating that everyone either have qualifying healthcare coverage or pay a tax penalty, that this mandate exceeds the federal government's constitutional authority, and that Congress doesn't have the authority under the Commerce Clause to regulate inactivity. The PPACA is challenging Alaska's authority as a state, and thus it is up to

Alaska to defend itself from such federal "takeover," she added. House Bill 1 - by establishing in Alaska's uncodified law a state policy that a person has the right to choose or decline any mode of obtaining healthcare services without penalty or threat of penalty - would ensure that everyone in Alaska is and shall continue to be free from federal mandates regarding the selection of health insurance, and would preclude any State of Alaska employee from enforcing any penalty assessed in violation of this policy.

MS. SAWYER, referring to a handout in members' packets containing examples, noted that language in HB 1 - specifically in proposed AS 44.99.130(b) - stipulates that the proposed state policy shall not apply to healthcare services provided or required by the state, a political subdivision of the state, or a court of the state, and may not impair a contract right that provides healthcare services. Members' packets also include an explanation of the change incorporated into CSHB 1(HSS), that being the addition of language in proposed AS 44.99.130(c)(3) stipulating that as used in proposed AS 44.99.130, the term, "penalty" is not referring to one's liability for the cost of healthcare services. She offered her understanding that at least 40 states thus far have introduced legislation to limit, alter, or oppose specific federal actions [related to the PPACA] - including that of mandating the purchase of insurance - with the states of Virginia, Idaho, Utah, Georgia, Louisiana, Arizona, [Oklahoma,] Missouri, and North Carolina having already passed [such legislation].

MS. SAWYER, in response to questions, indicated that the aforementioned handout containing examples was derived from material pertaining to similar legislation in another state; and that the exemption provided for in proposed AS 44.99.130(b) would not apply to private employers/employees - in other words, the state policy outlined in proposed AS 44.99.130(a) would apply to private employers/employees.

CHAIR GATTO, speaking as one of HB 1's joint prime sponsors, concurred with the latter point.

[2:48:05 PM](#)

REPRESENTATIVE GRUENBERG indicated that he didn't want HB 1 to be misinterpreted as allowing someone to refuse medical treatment for his/her child, or as allowing someone to refuse to pay for medical treatment.

CHAIR GATTO offered his belief that the requirement of a parent to care for his/her child wouldn't be diminished by the bill, and indicated that he would be amenable to amending the bill in order to ensure that that is actually the case.

REPRESENTATIVE KELLER observed that proposed AS 44.99.130(a) says in part, "a person has the right to choose or decline any mode of obtaining health care services without penalty or threat of penalty", and that language in proposed AS 44.99.130(c)(2) defines the phrase, "mode of obtaining" to mean either directly purchasing healthcare services from a healthcare provider, or purchasing insurance to cover the cost of healthcare services. House Bill 1, therefore, addresses the purchasing of healthcare services [or the purchasing of insurance to cover healthcare services], not the obtaining of medical treatment.

CHAIR GATTO and MS. SAWYER concurred.

CHAIR GATTO, in response to a question, offered his belief that under the bill, a union member would have the right to decline any insurance coverage provided by the union, surmising that the other union members would have to absorb any extra cost associated with that member's declination.

REPRESENTATIVE HOLMES expressed concern that because the proposed state policy uses the phrase, "a person has the right to choose or decline any mode of obtaining health care services", the bill would allow an employee to dictate which insurance coverage his/her employer must provide him/her with.

CHAIR GATTO offered his understanding that the employee could only accept or decline the mode that was being offered.

REPRESENTATIVE HOLMES pointed out, though, that the bill doesn't say, "accept" - it instead says, "choose". Furthermore, the proposed state policy doesn't specify that the particular healthcare services being obtained must be legal in Alaska.

[2:59:52 PM](#)

STACIE KRALY, Chief Assistant Attorney General - Statewide Section Supervisor, Human Services Section, Civil Division (Juneau), Department of Law (DOL), concurred that the word, "choose" has a different connotation than the word, "accept", and indicated that that point ought to be clarified, particularly if the intent of the bill is to address only offered modes of obtaining healthcare services.

CHAIR GATTO suggested that they change the word, "choose" to the word, "accept", and add the word "offered".

MS. KRALY surmised that such changes would address the concern that under the bill as currently written, an employee could dictate which insurance coverage his/her employer must provide him/her with. On the issue of healthcare services that aren't legal in Alaska, she ventured that this probably isn't going to be a problem because of the definitions of the terms, "health care services" and "penalty" provided for via proposed AS 44.99.130(c)(1) and (3), and because the term, "penalty" as used in the bill pertains to the preclusion of any penalty that might be assessed a person simply because he/she exercised his/her right to choose or decline a mode of obtaining healthcare services. In conclusion, she reiterated her belief that the suggested change would provide clarity.

REPRESENTATIVE HOLMES ventured that perhaps they also ought to alter the definitions in proposed subsection (c). She then asked whether the bill would also apply to other federal laws, not just the PPACA.

MS. KRALY surmised that HB 1 potentially could apply to other federal laws that address the issue of obtaining healthcare services, since the bill isn't exclusively tagged to or tasked to the PPACA. In response to a question, she offered her belief that under HB 1 as currently written, a person would have the right to accept or decline any mode of obtaining healthcare services, regardless of who offers the mode.

REPRESENTATIVE HOLMES disagreed, pointing out that proposed AS 44.99.130(b)(1) stipulates that the proposed state policy shall not apply to healthcare services provided or required by the state, a political subdivision of the state, or a court of the state.

MS. KRALY concurred with that clarification.

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MS. SAWYER, on the issue of healthcare services that aren't legal in Alaska, questioned whether altering proposed AS 44.99.130(c)(1)'s definition of the term, "health care services" by inserting the word, "legal" on page 2, line 2, before the phrase, "service or treatment", would perhaps address members' concerns.

MS. KRALY, indicating that she would have to research that issue further, posited that perhaps it would be more important to clarify in the bill that it is intended to allow individuals to choose not to purchase/have healthcare insurance.

MS. SAWYER, in response to a question, clarified that the PPACA just mandates that everyone have insurance or be penalized, and that the joint prime sponsors' concern is that they don't want the federal government telling Alaskans that they have to do a particular thing or be penalized for inactivity. In further response, she offered her understanding of what the penalty amount would be under the PPACA, noting that the amount would increase after the first year.

REPRESENTATIVE THOMPSON - on the question of whether under the bill, union members would have the right to decline insurance coverage provided by the union - pointed out that [contrary to something mentioned earlier,] proposed AS 44.99.130(b)(2) stipulates that the proposed state policy may not impair a contract right that provides healthcare services.

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CHAIR GATTO made a motion to adopt Conceptual Amendment 1, to replace the word, "choose" with the word, "accept", on page 1, line 9; and to add the word, "offered" to page 1, line 10.

MS. SAWYER observed that the title of the bill should be similarly altered.

CHAIR GATTO - noting that the drafter would determine the best placement for the added word, "offered" - clarified that Conceptual Amendment 1 would also make a conforming change to the title on line 1 of page 1. After ascertaining that there were no objections, he announced that Conceptual Amendment 1 was adopted.

CHAIR GATTO then relayed that [CSHB 1(HSS), as amended,] would be held over.

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ADJOURNMENT

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