

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 6, 2011

1:36 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Bill Wielechowski, Vice Chair
Senator Joe Paskvan
Senator Lesil McGuire

MEMBERS ABSENT

Senator John Coghill

COMMITTEE CALENDAR

SENATE BILL NO. 30

"An Act providing for the release of certain property in the custody of a law enforcement agency to the owner under certain conditions."

- MOVED CSSB 30(2d JUD) OUT OF COMMITTEE

SENATE BILL NO. 104

"An Act relating to manufactured homes, including manufactured homes permanently affixed to land, to the conversion of manufactured homes to real property, to the severance of manufactured homes from real property, to the titling, conveyance, and encumbrance of manufactured homes, and to manufacturers' certificates of origin for vehicles; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 98

"An Act relating to biometric information."

- HEARD & HELD

SENATE BILL NO. 86

"An Act relating to the protection of property of persons under disability and minors; relating to the crime of violating a protective order concerning certain vulnerable persons; relating to aggravating factors at sentencing for offenses concerning a victim 65 years or older; relating to the protection of

vulnerable adults; amending Rule 12(h), Alaska Rules of Criminal Procedure; amending Rule 45(a), Alaska Rules of Criminal Procedure; amending Rule 65, Alaska Rules of Civil Procedure; amending Rule 17, Alaska Rules of Probate Procedure; amending Rule 9, Alaska Rules of Administration; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 30

SHORT TITLE: RETURN OF SEIZED PROPERTY

SPONSOR(s): SENATOR(s) DYSON

01/19/11	(S)	PREFILE RELEASED 1/7/11
01/19/11	(S)	READ THE FIRST TIME - REFERRALS
01/19/11	(S)	STA, JUD
02/03/11	(S)	STA AT 9:00 AM BUTROVICH 205
02/03/11	(S)	Heard & Held
02/03/11	(S)	MINUTE(STA)
02/17/11	(S)	STA AT 9:00 AM BUTROVICH 205
02/17/11	(S)	Moved CSSB 30(STA) Out of Committee
02/17/11	(S)	MINUTE(STA)
02/21/11	(S)	STA RPT CS 4DP 1NR NEW TITLE
02/21/11	(S)	DP: KOOKESH, PASKVAN, MEYER, GIESSEL
02/21/11	(S)	NR: WIELECHOWSKI
02/28/11	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/28/11	(S)	Heard & Held
02/28/11	(S)	MINUTE(JUD)
03/18/11	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/18/11	(S)	Heard & Held
03/18/11	(S)	MINUTE(JUD)
03/21/11	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/21/11	(S)	Moved CSSB 30(JUD) Out of Committee
03/21/11	(S)	MINUTE(JUD)
03/22/11	(S)	JUD RPT CS 2DP 2NR NEW TITLE
03/22/11	(S)	DP: FRENCH, COGHILL
03/22/11	(S)	NR: WIELECHOWSKI, PASKVAN
03/22/11	(S)	FIN REFERRAL ADDED AFTER JUD
03/25/11	(S)	RETURNED TO JUD COMMITTEE
04/04/11	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
04/04/11	(S)	Heard & Held
04/04/11	(S)	MINUTE(JUD)
04/06/11	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 104

SHORT TITLE: MANUFACTURED HOMES AS REAL PROPERTY
SPONSOR(s): SENATOR(s) FRENCH

03/16/11 (S) READ THE FIRST TIME - REFERRALS
03/16/11 (S) STA, JUD
03/29/11 (S) STA AT 9:00 AM BUTROVICH 205
03/29/11 (S) Heard & Held
03/29/11 (S) MINUTE(STA)
03/31/11 (S) STA AT 9:00 AM BUTROVICH 205
03/31/11 (S) Moved SB 104 Out of Committee
03/31/11 (S) MINUTE(STA)
04/01/11 (S) STA RPT 2DP 3NR
04/01/11 (S) DP: KOOKESH, MEYER
04/01/11 (S) NR: WIELECHOWSKI, PASKVAN, GIESSEL
04/06/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 86

SHORT TITLE: PROTECTION OF VULNERABLE ADULTS/MINORS
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/09/11 (S) READ THE FIRST TIME - REFERRALS
02/09/11 (S) JUD, FIN
02/21/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/21/11 (S) Heard & Held
02/21/11 (S) MINUTE(JUD)
03/18/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/18/11 (S) Heard & Held
03/18/11 (S) MINUTE(JUD)
03/30/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/30/11 (S) Scheduled But Not Heard
04/06/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 98

SHORT TITLE: BIOMETRIC INFORMATION FOR ID
SPONSOR(s): WIELECHOWSKI

03/11/11 (S) READ THE FIRST TIME - REFERRALS
03/11/11 (S) STA, JUD
03/15/11 (S) STA AT 9:00 AM BUTROVICH 205
03/15/11 (S) Heard & Held
03/15/11 (S) MINUTE(STA)
03/17/11 (S) STA AT 9:00 AM BUTROVICH 205
03/17/11 (S) Moved CSSB 98(STA) Out of Committee
03/17/11 (S) MINUTE(STA)
03/18/11 (S) STA RPT CS 4DP SAME TITLE
03/18/11 (S) DP: WIELECHOWSKI, GIESSEL, MEYER,
PASKVAN

03/21/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/21/11 (S) Heard & Held
03/21/11 (S) MINUTE(JUD)
03/28/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/28/11 (S) Heard & Held
03/28/11 (S) MINUTE(JUD)

WITNESS REGISTER

CHARLES KOPP, Staff to Senator Fred Dyson
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Explained the proposed amendment to CSSB 30 (JUD).

GEORGE GINSBERG, Outside Counsel
Wells Fargo
Anchorage, AK

POSITION STATEMENT: Testified in support of SB 104.

JEFF HARRIS, Loan Administration Manager
Wells Fargo Home Mortgage
Anchorage, AK

POSITION STATEMENT: Responded to bank loan questions as they related to SB 104.

MICHAEL CAULFIELD, Staff to Senator Bill Wielechowski
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Explained the changes in CSSB 98.

SUSAN COX, Assistant Attorney General
Civil Division
Department of Law (DOL)
Juneau, AK

POSITION STATEMENT: Commented on the potential for the immunity provision in CSSB 98 to eliminate the DOL indeterminate fiscal note.

KELLY HENRIKSEN, Assistant Attorney General
Civil Division
Department of Law (DOL)
Juneau, AK

POSITION STATEMENT: Provided information on SB 86, version B.

CINDY SMITH, Staff to Senator Hollis French
Alaska State Legislature

Juneau, AK

POSITION STATEMENT: Explained the changes to SB 86, version B

MARIE DARLIN, AARP-Alaska

Juneau, AK

POSITION STATEMENT: Testified in support of SB 86.

ACTION NARRATIVE

[1:36:29 PM](#)

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at 1:36 p.m. Senators Paskvan, McGuire, Wielechowski, and French were present at the call to order.

SB 30-RETURN OF SEIZED PROPERTY

[1:36:53 PM](#)

CHAIR FRENCH announced the consideration of SB 30 and withdrew his objection to the adoption of the proposed committee substitute (CS). He noted that his objection had been for the purpose of an explanation which was heard. Therefore, version E was before the committee. He asked for a motion to adopt the proposed Amendment 1.

SENATOR WIELECHOWSKI moved to adopt Amendment 1, labeled 27-LS0344\E.1.

CHAIR FRENCH objected for discussion purposes.

SENATOR FRED DYSON, sponsor of SB 30, said he believes the bill has been improved.

CHARLES KOPP, staff to Senator Dyson, explained that the amendment requires the party that objects to the return of the property to prove by a preponderance of the evidence that the law enforcement agency must retain it for evidentiary purposes. Both he and the sponsor support the amendment.

CHAIR FRENCH said he understands that the Department of Law (DOL) and the Public Defender also support the amendment. He removed his objection and announced that Amendment 1 was adopted.

[1:38:52 PM](#)

SENATOR WIELECHOWSKI moved to report CS for SB 30, version E as amended, from committee with individual recommendations and

attached fiscal note(s). There being no objection, CSSB 30(2dJUD) moved from the Senate Judiciary Standing Committee.

At ease from 1:39 p.m. to 1:40 p.m.

SB 104-MANUFACTURED HOMES AS REAL PROPERTY

1:40:13 PM

CHAIR HOLLIS FRENCH announced the consideration of SB 104 and noted that he was the sponsor. He read the following sponsor statement into the record:

Senate Bill 104 establishes procedures to convert manufactured homes to real property, through a defined process within the Division of Motor Vehicles. This change will give the owners of manufactured homes better access to traditional mortgage financing, which often features lower interest rates.

Currently, when a manufactured home is affixed to a permanent foundation on land owned by an individual, the vaguely defined title surrender procedure used by the Division of Motor Vehicles lacks a record notice. Without a record notice, homeowners are often left with unmarketable titles, and lenders hold unperfected security interests in the property, placing all parties in a real estate transaction - the buyer, the lender, and the seller - at risk.

Conversion will help increase home values for consumers, give security to lenders and provide fixed procedures for the DMV to follow. Nothing requires the conversion of a manufactured home in the legislation, leaving that choice to consumers.

Many Alaskans live in manufactured homes. This legislation treats residents that permanently affix a manufactured home to land they own the same as if their home was built on the property.

CHAIR FRENCH noted the two letters of support from First American Title and the Alaska Land Title Association. He said that since the bill was reported from the last committee, the Department of Natural Resources (DNR) Recorder's Office proposed simple language changes that will better conform to the actual duties and procedures of that office. He added that a detailed

sectional analysis will be provided once that language is incorporated into a committee substitute (CS).

The legislation centers on bill sections 16 and 26. Section 16 establishes clear procedures within DMV to allow manufactured homeowners to convert their personal property to real property, if desired, and to convert it back to personal property by following certain severance procedures.

Section 26 relates to the conditions that must be met before a manufactured home can be characterized as real property; it must be permanently affixed to the land, an affixation affidavit must be recorded, and the owner of the manufactured home must either own the land or have a 20 year or longer lease on the property.

CHAIR FRENCH noted that George Ginsberg was online to testify and Jeff Harris with Wells Fargo, Vicky Backus with the State Recorder's Office, Colleen Moore with the Department of Law, and Stacy Oates with DMV were available to answer questions.

[1:44:16 PM](#)

GEORGE GINSBERG, outside counsel to Wells Fargo, said SB 104 will help consumers. He explained that Fannie Mae and Freddie Mac don't treat a loan on a manufactured home as a real estate loan unless state statutes make it clear that a manufactured home affixed to land is in fact real estate. To the extent that financing is available for a manufactured home as personal property, it is at a higher rate than a real estate loan. Mr. Ginsberg noted that he was involved in the drafting of this bill as well as similar legislation in other states.

CHAIR FRENCH asked how many states have passed and how many are considering similar legislation.

MR. GINSBERG said he didn't have the exact number but most states have a statutory procedure for converting a home to real property when it is permanently affixed to land. Alaska is one of the few exceptions. North Carolina, Missouri, and other states have passed similar legislation and a similar bill is pending in Illinois.

[1:47:23 PM](#)

SENATOR PASKVAN said he supports the intent of the bill, but he wants to know what the banking industry intends. He asked if these loans will be sold individually or bundled as an investment tool and if they're bundled if they will be clearly

identified as a different type of real estate than has previously been marketed out of Alaska.

MR. GINSBERG said he knows that no substantive change is intended in changing the terminology from "mobile home" to "manufactured home." Manufactured home is the term that's used in federal statutes and regulations as well as the Alaska Uniform Code. He deferred comment as to how these loans would be sold.

[1:49:41 PM](#)

JEFF HARRIS, Loan Administration Manager, Wells Fargo Home Mortgage, said that Wells Fargo has been holding loans internally, but that decision is dependent on interest rates. When Wells Fargo does sell its loans to Fanny Mae and Freddy Mac, it abides by Fanny and Freddy rules to identify manufactured homes as such. The conversion documentation is also provided.

SENATOR PASKVAN expressed interest in knowing if investors in a collateralized mortgage obligation would be aware if the financial instrument included manufactured mobile homes as opposed to Lindal Cedar homes, for example. There's quite a distinction to an investor as to the underlying value, he said.

MR. HARRIS agreed that the investor would want to know if there were manufactured homes. He said the conversion document is an important piece of the collateral to ensure that the procedure in a particular state has been completed. At that point the home is considered similar to a "stick built" home.

SENATOR PASKVAN asked if it would be possible to bundle packages of these loans.

MR. HARRIS replied there could be a mix of manufactured homes and "stick" housing in a pool, but the lender would need to identify which of the loans were for manufactured housing. Right now, he said, there isn't sufficient volume to bundle loans of just manufactured homes.

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CHAIR FRENCH announced he would hold SB 104 in committee.

SB 98-BIOMETRIC INFORMATION FOR ID

[1:53:56 PM](#)

CHAIR FRENCH announced the consideration of SB 98 and asked for a motion to adopt the proposed committee substitute (CS).

SENATOR WIELECHOWSKI, sponsor of SB 98, moved to adopt the work draft CS for SB 98, labeled 27-LS0661\E, as the working document.

CHAIR FRENCH objected for discussion purposes.

1:55:00 PM

MICHAEL CAULFIELD, staff to Senator Wielechowski, said the current CS makes two changes. Page 2, lines 12-16, prevents requiring biometric information as a form of ID in order to take an occupational exam. Page 3, lines 14-17, provides the state immunity from rights of action in the event of some breach of the law. He noted that Ms. Cox was available for further explanation of this provision.

SENATOR WIELECHOWSKI said he doesn't want the state to be exposed to a huge penalty because of some inaction, but he believes that it's very important for the state to take action to protect Alaskans' privacy rights. He mentioned the recent instance when the state lost private data for thousands of Alaskans and said he was open to suggestions.

1:57:24 PM

SUSAN COX, Assistant Attorney General, Civil Division, Department of Law (DOL), said she was asked if inserting an immunity provision in the bill would potentially eliminate the DOL indeterminate fiscal note. She noted that Legislative Legal Services drafted the current immunity provision, which specifies that an action for damages or for a penalty could not be brought against the state. However, she pointed out, if someone felt that the state wasn't following the law, injunctive relief or a declaratory judgment action would still be an available remedy. Version E does address the damages liability aspect, she stated.

SENATOR PASKVAN asked if there is a current cause of action by an individual.

MS. COX replied the state is subject to liability for negligence under the state's waiver of sovereign immunity so it's difficult to anticipate the potential scenarios this bill would seek to address, and if without this legislation a person could have a potential cause of action against the state. It would depend on whether the state breached a duty and if an immunity that is already on the books would apply. She noted that the state is

implicated in the Price Waterhouse release of state employee data, but the state met its responsibility under Title 45 by notifying the persons whose information it collected that there had been a breach. SB 98 wouldn't affect that type of breach because it deals with a different type of information that isn't included in existing law in Title 45.

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CHAIR FRENCH asked if Alaskans had a private right of action to pursue damage claims against the state due to the loss of their private data in the Price Waterhouse incident.

MS. COX replied there is nothing in statute to provide that and there has been no litigation to that effect.

CHAIR FRENCH asked if a person would need to bring a typical negligence suit.

MS. COX replied nothing in the bill that passed in 2008 says that a private cause of action is authorized against the state in those circumstances, although the state may be the recipient of the penalties when a collector of information violates provisions of that Act. It may be that a person would have to allege the breach of a common law duty.

[2:03:16 PM](#)

CHAIR FRENCH said his concern is whether the bill overly restricts a right that exists in another setting.

SENATOR PASKVAN opined that the cause of action itself would have to be analyzed under the existing AS 09.50.250.

MS. COX agreed that the discretionary immunity would be analyzed through the court's traditional test, but the existence of a tort would depend on the court analysis of whether the state owes a duty to the individual. That would depend on the circumstances.

SENATOR PASKVAN added that if there's the duty, the question is whether the planning versus operational standard under AS 09.50.250 would apply.

[2:04:32 PM](#)

MS. COX said she doesn't want to suggest that there is a cause of action. The difficulty is that when a statute establishes mandatory duties and specifically creates a private right of

action, it changes the common law. That opens a door that wasn't opened before, she stated.

SENATOR PASKVAN responded it changes the common law in the sense that it creates a duty. Assuming that the duty is changed, you want to be immune, he said.

MS. COX agreed, at least for the damages liability.

[2:05:39 PM](#)

CHAIR FRENCH asked how much biometric information the state holds.

MS. COX said she didn't have that information.

CHAIR FRENCH referenced the section on alternate identification and asked if there had been any feedback from test administrators.

MR. CAULFIELD said Prometric Services has commented extensively on better test security and keeping test takers from defrauding the system, but it does have the capability to use other forms of ID when the use of biometric information is prohibited by law.

CHAIR FRENCH asked if Prometric Services supports or opposes the provision.

MR. CAULFIELD replied it opposes the provision, but could manage it if necessary.

[2:08:20 PM](#)

SENATOR WIELECHOWSKI pointed out that a number of places, like Canada, have a similar provision.

MR. CAULFIELD confirmed that Canadian students don't have to provide biometric information when taking the LSAT.

SENATOR WIELECHOWSKI noted that a staff member in the building is going to Canada to take the LSAT because he doesn't want to give his biometric information in order to take the test.

MR. CAULFIELD said there are two potential amendments to the current CS. One would broaden the applicability of the alternate identification section. The second removes the word "agent" from Sec 14.14.080(b), so that organizations that the state subcontracts to would still be liable.

[2:10:28 PM](#)

SENATOR WIELECHOWSKI said he appreciates that the administration has been cooperative with respect to the fiscal note.

CHAIR FRENCH warned that he's always leery of immunity grants and he wants to think it over.

SENATOR PASKVAN said part of the issue goes to the duty and the potential for a cause for action now. If lots of data is held by the state, the question is whether there is a duty to a particular person. He said it would be helpful to have a more complete understanding of the duty analysis and the status of the law right now.

CHAIR FRENCH suggested he submit the question in writing to make it easier for both the Department of Law (DOL) and Legislative Legal Services to provide an opinion.

CHAIR FRENCH announced he would hold SB 98 in committee for further work.

SB 86-PROTECTION OF VULNERABLE ADULTS/MINORS

[2:13:05 PM](#)

CHAIR FRENCH announced the consideration of SB 86 relating to the protection of vulnerable adults and minors. He noted that this would be the third hearing. The proposed committee substitute (CS) is designed to match the changes that have been made to the companion House bill and incorporate the changes this committee has made. He asked for a motion to adopt the proposed CS.

SENATOR WIELECHOWSKI moved to adopt the work draft CS for SB 86, labeled 27-GS1722\B, as the working document.

CHAIR FRENCH objected for discussion purposes.

[2:14:29 PM](#)

KELLY HENRIKSEN, Assistant Attorney General, Civil Division, Department of Law (DOL), said she represents the Department of Health and Social Services (DHSS).

CHAIR FRENCH pointed out the following people who were online to answer questions: Scott Sterling, Beth Russo, and Rachel Levitt from the Office of Public Advocacy (OPA); David Schade from the Department of Public Safety (DPS); Douglas Moody from the Public

Defender Agency (PDA); Brenda Mahlatini from Adult Protective Services; and Joanne Gibbens from the Division of Senior and Disabilities Services (DSDS).

CINDY SMITH, staff to Senator French, explained that version B incorporates the following changes that the House Judiciary Committee adopted in the companion bill:

Page 1, line 13, and page 2, line 6: Inserted the words "a vulnerable" and deleted the words "an elderly person or disabled" as proposed in the original revisor's bill.

Page 4, line 21; AS 13.26.207(a): Inserted the phrase "and other persons as ordered by the court" following the word "attorney"

Page 5, lines 4-8; AS 13.26.209(a): Inserted the language "A petition filed on behalf of a protected person by another person must be accompanied by proof of service of the petition on the protected person or the person's attorney unless service would cause an immediate threat of harm to the best interests of the protected person and the petition includes a written explanation of the harm." following the word "person."

Page 5, lines 14-16; AS 13.26.209(a): Replaced "The court shall cause a copy of the protective order to be served on the respondent." with "The court shall cause a copy of the protective order, any related orders, and a scheduling order, if any, to be served on the respondent and the protected person."

Page 6, lines 1-2; AS 13.26.209(d): Inserted the phrase "the protected person and" following the phrase "the court shall provide to"

Page 6, lines 17-18; AS 13.26.209(g): Replaced the language "A third party shall comply with a protective order issued under this section." with "A third party that has received actual or legal notice of a protective order issued under this section shall comply with the order."

Page 6, line 22; AS 13.26.209(g): Replaced the word "person" with the word "party"

Page 6, lines 24-26; AS 13.26.209(g): Inserted the language "As used in this section, "actual or legal notice" means delivery by mail or facsimile at the most recently known place of residence or business of the third party." following the word "order"

[2:19:12 PM](#)

Page 7, line 9: Replaced AS 13.26.325 with AS 13.26.324 to address inadvertent duplicate numbering.

Page 7, line 12; AS 13.26.324(2): Replaced the phrase "theft and related offenses" with the phrase "offenses against property"

Page 7, line 24; AS 18.65.530(a)(2): Replaced the word "and" with the word "or"

Page 8, lines 10-21; AS 44.21.415(g): This is a new section with conforming changes to definitions in earlier provisions.

Page 10, line 24; AS 47.24.010(e): Inserted the phrase "at the earliest opportunity" following the word "shall"

CHAIR FRENCH said he would circle that provision for further consideration.

[2:21:04 PM](#)

Page 13, lines 16-19; AS 47.24.015(h): The original subsection (h) was redrafted.

MS. HENRIKSEN explained that this gives subpoena authority to the DHSS as opposed to the previous provision that required anybody who had documents for custody of a vulnerable adult to make them available to the DHSS.

Page 13, lines 23; AS 47.24.015(j): Subsection (j) of the original bill was deleted and the subsequent subsections were re-lettered accordingly.

MS. HENRIKSEN explained that the original subsection (j) wasn't needed after the original subsection (h) was redrafted.

Page 14, line 7; AS 47.24.015(m): Replaced the phrase "the following:" and paragraphs (1)-(4) with the phrase "any person"

Page 14, line 12; AS 47.24.016(a): Inserted the word "conservator," following the word "guardian,"

Page 14, lines 21-22, AS 47.24.016(a)(1)(B): Replaced the language "divorce or dissolution" with the language "divorce, [OR] dissolution, or legal separation"

Page 15, line 19; AS 47.24.017(a): Replaced the language "guardian or" with "guardian, conservator, [OR]"

Page 16, lines 2-3; AS 47.24.019(c): Replaced the language "a family member, caregiver, guardian, conservator, attorney-in-fact, trustee, or surrogate decision maker" with the phrase "any person"

Page 16, lines 4-6; AS 47.24.019(c): Replaced the language "a family member, caregiver, guardian, conservator, attorney-in-fact, trustee, or surrogate decision maker" with the word "person"

Page 16, lines 21 and 24; AS 47.24.050(b): Inserted the word "conservator," following the word "guardian,"

Page 17, line 15; AS 47.24.900(2)(A): Inserted the word "knowing," following the word "intentional,"

Page 18, line 1; AS 47.24.900(4): Replaced the word "means" with the word "includes" to make it clear that the list is not intended to be exhaustive.

Page 18, line 11; AS 47.24.900(7)(B): Inserted the word "fraud," following the word "deception,"

Page 18, lines 12-13; AS 47.24.900(7)(B): Inserted the language "in this paragraph, "fraud" has the meaning given in AS 13.26.324(1) and (2);" following the word "duty;"

Page 18, line 15; AS 47.24.900(9): Inserted the word "knowing," following the word "intentional,"

Page 18, line 21; AS 47.24.900(9): Replaced the word "means" with the word "includes" to make it clear that the list is not intended to be exhaustive.

Page 18 line 22, through page 19, line 6; AS 47.24.900(11): Legislative Legal Services reformatted this section, but made no substantive change.

Page 18, line 30; AS 47.24.900(11)(D): Replaced an earlier sub-subparagraph "(iv) freezing an account at a financial institution;" with a new subparagraph "(D) staying financial transactions;"

CHAIR FRENCH asked if DHSS agrees with the change.

MS. HENRIKSEN answered yes.

MS. SMITH continued.

Page 19, line 17; AS 47.24.900(15)(D): Inserted the phrase ", waste, or dissipation" following the word "loss"

Page 19, lines 30-31 and page 20, line 1; AS 47.24.900(18): The language describing "fiduciary duty" in paragraph (18) was redrafted.

[2:25:47 PM](#)

Page 20, lines 27-31; AS 47.24.900(21): Replaced the language " "undue influence" means a person of trust or confidence uses the person's role, relationship or authority to exploit" with " "undue influence" means the use by a person who stands in a position of trust or confidence of the person's role, relationship, or authority to wrongfully exploit"

Page 20, line 29; AS 47.24.900(21): Replaced the word "deceptively" with the word "wrongfully"

Page 21, lines 6-9; Direct Court Rule Amendment. Rule 12(h): The new language in Rule 12(h) was redrafted to say, "In deciding whether to grant the motion, the court shall consider the victim's circumstances and the effect that delay would have on the victim, particularly a victim of advanced age or extreme youth. The court shall place its findings on the record."

CHAIR FRENCH asked if these are motions for continuances in any matter.

MS. HENRICKSEN said yes.

MS. SMITH continued.

Page 21, lines 19-20; Direct Court Rule Amendment. Rule 45(a): Deleted all new bolded language in Rule 45(a) and inserted the language "The court shall consider the circumstances of the victim, particularly a victim of advanced age or extreme youth, in setting the trial date." following the word "cases."

Page 21 and 22, Secs. 48 and 49: These are conforming amendments to adjust for earlier deletions and amendments.

Page 22, line 29; Sec. 53: The effective date language "This Act takes effect immediately under AS 01.10.070(c)." was replaced with "Except as provided in Sec. 52 of this Act, this Act takes effect July 1, 2011."

2:28:17 PM

MS. SMITH continued to explain that version B incorporates the following changes that the Senate Judiciary Committee made:

Page 4 lines 6-8: added a new subsection (c) to AS 13.26.185 to clarify that notice provisions do not apply to the ex parte orders created under this bill

Page 6, lines 7-14: added language to allow the person to be protected or the respondent to seek modification or termination of any ex-parte protective order on three days' notice. This was brought to the committee by the Disability Law Center.

Page 4, lines 21-23: added language that requires that if a respondent is unrepresented, the court shall appoint an attorney to represent the person at the hearing. This was brought to the committee by the Disability Law Center.

Page 22, line 28: added a delayed effective date for the new reporting provisions in AS 47.24.010(a) and (e) to go into effect September 1, 2011. This is to provide time to train people who will be required to report.

Page 6, Sec. 13.26.209(g): Deleted the reference to "registering with the Department of Public Safety" as a method of serving notice as that database is not publicly available. This was added by the House Judiciary Committee and the Department of Health and Social Services requested it be removed in the House Finance Committee.

CHAIR FRENCH asked if this was the one change that the House Judiciary Committee made that this committee declined to accept.

MS. SMITH said that's correct.

CHAIR FRENCH opened public testimony.

2:30:41 PM

MARIE DARLIN, AARP-Alaska, said the AARP letter of support for SB 86 highlights that the aging of the Alaska population presents unique challenges for the criminal justice system. The bill addresses detecting and preventing elder abuse and increasing awareness of the issue. SB 86 tries to create vehicles for new emergency procedures to allow courts to immediately take action when someone is being financially abused. The bill also addresses other issues of elder abuse and

provides procedures to help protect elders from these situations.

CHAIR FRENCH removed his objection to the adoption of the CS and noted there was an amendment from the Department of Law.

[2:32:56 PM](#)

SENATOR WIELECHOWSKI moved to adopt proposed Amendment 1, labeled 27G-1.

CHAIR FRENCH objected for discussion purposes and asked Ms. Henriksen for an explanation.

27G-1

AMENDMENT 1

Page 5, line 1:

Delete "**Ex parte protective**"

Insert "**Protective**"

Page 5, line 26, following "issued," through line 27:

Delete all material.

Insert "unless dissolved earlier by the court or on the"

Page 6, line 6:

Delete "ex parte"

MS. HENRIKSEN explained that the first and third change effectively removes the reference to "ex parte" because what's included in the provision beyond ex parte is the six month extension and that's not an ex parte procedure.

CHAIR FRENCH asked for an explanation of the change on page 5, lines 26-27.

MS. HENRIKSEN said this removes all the particular circumstances when an order might end and instead say it would occur whenever the court directs that the ex parte order needs to expire. This is broader to cover some circumstance that might come up that isn't included in the prior list.

[2:36:07 PM](#)

CHAIR FRENCH maintained his objection to Amendment 1 and called an at-ease from 2:36 p.m. to 2:43 p.m.

[2:43:02 PM](#)

CHAIR FRENCH reconvened the meeting and stated that there's been agreement on a conceptual amendment to Amendment 1.

CHAIR FRENCH moved a conceptual amendment to Amendment 1. Subsection (c) on page 5 would read as follows:

(c) An ex parte protective order expires 20 days after it is issued, at the end of a six-month extension if granted by the court under (d) of this section, on the appointment of a temporary or permanent conservator or dismissal of the petition for the ex parte order unless dissolved earlier by the court.

CHAIR FRENCH announced that without objection the conceptual amendment to Amendment 1 is adopted. He removed his objection to the adoption of Amendment 1 and announced that without objection Amendment 1, as amended, is adopted.

CHAIR FRENCH announced he would hold SB 86 in committee.

[2:44:36 PM](#)

MS. HENRIKSEN questioned the explanation for the delayed effective date change in Section 52 on page 22. She pointed out that Sections 16-28 covers a great deal more than Sec. 47.24.010(a) and (e).

CHAIR FRENCH agreed.

MS. HENRIKSEN said she isn't sure if it's a coincidence but Ms. Gibbons pointed out that Sections 16-28 include all instances of adding the phrase "undue influence."

CHAIR FRENCH said his understanding is that it came from the drafter but that will be clarified before the bill is moved from committee.

SB 86 was held in committee.

[2:46:06 PM](#)

There being no further business to come before the committee, Chair French adjourned the meeting at 2:46 p.m.