

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

April 15, 2011

1:31 p.m.

**MEMBERS PRESENT**

Senator Hollis French, Chair  
Senator Bill Wielechowski, Vice Chair  
Senator Joe Paskvan  
Senator John Coghill

**MEMBERS ABSENT**

Senator Lesil McGuire

**COMMITTEE CALENDAR**

SENATE BILL NO. 89

"An Act clarifying that a legislator or legislative employee is allowed to accept certain charity events; amending disclosure deadlines under the Legislative Ethics Act; relating compassionate gifts; allowing legislators and legislative employees to use legislative to requests to refrain from disclosure under the Legislative Ethics Act; and establishing mailing lists for campaign purposes and nonlegislative purposes; allowing legislators a seat for an alternate public member on the Select Committee on Legislative Ethics and and legislative employees who are representing persons in an administrative hearing to clarifying the requirements related to participation by alternate members in the contact hearing officers and attempt to influence the outcome of the hearing if they are proceedings of the committee."

- HEARD & HELD

SENATE BILL NO. 98

"An Act relating to biometric information."

- MOVED CSSB 98(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

**PREVIOUS COMMITTEE ACTION**

BILL: SB 89

SHORT TITLE: LEGISLATIVE ETHICS ACT

SPONSOR(s): SENATOR(s) COGHILL

02/16/11 (S) READ THE FIRST TIME - REFERRALS  
02/16/11 (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)  
03/31/11 (S) STA AT 9:00 AM BUTROVICH 205  
03/31/11 (S) Moved CSSB 89(STA) Out of Committee  
03/31/11 (S) MINUTE(STA)  
04/01/11 (S) STA RPT CS 1DP 4NR NEW TITLE  
04/01/11 (S) DP: MEYER  
04/01/11 (S) NR: WIELECHOWSKI, KOOKESH, PASKVAN,  
GIESSEL  
04/11/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
04/11/11 (S) Scheduled But Not Heard  
04/13/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
04/13/11 (S) Scheduled But Not Heard  
04/15/11 (S) JUD AT 1:30 PM BUTROVICH 205

BILL: SB 98

SHORT TITLE: BIOMETRIC INFORMATION FOR ID

SPONSOR(s): SENATOR(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)  
04/06/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
04/06/11 (S) Heard & Held  
04/06/11 (S) MINUTE(JUD)  
04/15/11 (S) JUD AT 1:30 PM BUTROVICH 205

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)  
04/06/11 (S) Heard & Held  
04/06/11 (S) MINUTE(JUD)  
04/15/11 (S) JUD AT 1:30 PM BUTROVICH 205

**WITNESS REGISTER**

RYNNIEVA MOSS, Chief of Staff  
Senator John Coghill  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Delivered a sectional analysis of SB 89.

MICHAEL CAUFIELD, Staff  
Senator Bill Wielechowski  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Described the changes in version T of SB 98.

ANDY MODEROW, Staff  
Senator Hollis French  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Described the changes in version D of SB 104.

PAT GREEN, State Government Relations Director  
Wells Fargo Bank  
Anchorage, AK

**POSITION STATEMENT:** Answered questions related to SB 104.

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

**POSITION STATEMENT:** Answered questions related to SB 104.

#### **ACTION NARRATIVE**

[1:31:21 PM](#)

**CHAIR HOLLIS FRENCH** called the Senate Judiciary Standing Committee meeting to order at 1:31 p.m. Present at the call to order were Senators Paskvan, Coghill, Wielechowski, and French.

#### **SB 89-LEGISLATIVE ETHICS ACT**

[1:31:54 PM](#)

CHAIR HOLLIS FRENCH announced the consideration of SB 89. [CSSB 89(STA), 27-LS0452\T was before the committee.]

SENATOR JOHN COGHILL, Sponsor of SB 89, stated that this ethics bill is a work in progress that wound up in his hands. His chief of staff, Ms. Moss, would provide a sectional analysis after which he would offer an amendment. He noted that the current version T removed some of the more contentious issues.

[1:33:22 PM](#)

RYNNIEVA MOSS, Chief of Staff to Senator Coghill, sponsor of SB 89, said the only changes in Section 1 appear on page 2. For consistency with AS 24.60.080, the phrase "lawful gratuity" was changed to "gift" and reference to the compassionate gift statute, AS 24.60.075, was inserted.

Section 2 attempts to draw a bright line for legislators and staff in dealing with constituents. It says that unless the legislator is an attorney, the legislative office will stop giving assistance to a constituent once the issue goes before an administrative hearing officer. Inadvertent ex parte contact is allowed.

CHAIR FRENCH asked, if he were to write a letter on behalf of a constituent asking for a fair hearing on a permanent fund dividend denial, if the letter would go to an administrative hearing officer on the first level or to the department.

MS. MOSS replied the first level is called an informal denial and at that stage he could communicate with the department. Once there's a formal denial and a request for an administrative hearing, the legislator's office would need to step away.

CHAIR FRENCH asked for an example of the point at which it is no longer acceptable for a legislator to act in regard to child placement actions under the Office of Children's Services (OCS).

MS. MOSS replied OCS has worked with legislative offices all during the process even though it's actually a court case. They also have a legislative liaison that legislative offices can contact directly. An example where contact would be limited beyond a certain point would be workers compensation. Once the issue reaches the point of having administrative hearings, the legislative office would have to back away. With regard to child support, once the matter reaches the point of requesting an administrative hearing, the legislative office can no longer be involved.

[1:36:43 PM](#)

SENATOR COGHILL explained that the ethics laws were written before there were administrative law judges so this was an attempt to clarify the point at which a legislative office must step away from a constituent issue they'd been working on. He noted that at one point the Ethics Committee suggested a 10-hour limit, but he believes this is a better way. It's okay for a legislative office to help a constituent up to the point of the administrative decision, but it's not okay to put pressure on the decision-maker.

CHAIR FRENCH asked if legislators could safely send complaints to a legislative liaison office about the way their constituents were being treated.

MS. MOSS replied she didn't know the answer, but she didn't believe there was a protection under the law. She added that the biggest problem is when a constituent doesn't inform the legislator or staff where they are in the process.

[1:38:56 PM](#)

CHAIR FRENCH asked if the ten-hour provision was an ethics opinion or in statute at one time.

SENATOR COGHILL replied it was an ethics opinion.

CHAIR FRENCH asked if this would supersede that opinion.

SENATOR COGHILL answered yes.

SENATOR WIELECHOWSKI referred to the workers' compensation example and said he reads the bill to say that a legislator could call a department director to ask about the status of a particular case.

MS. MOSS agreed.

SENATOR WIELECHOWSKI asked for confirmation that the legislator couldn't contact the chief of adjudications.

MS. MOSS replied they could contact the person that is handling the workers' compensation case, but not the hearing officer, the attorney for the insurance company or the attorney for the constituent.

SENATOR COGHILL added that the idea was to keep legislators from becoming free legal advisors unless the legislator is a practicing attorney.

[1:40:26 PM](#)

MS. MOSS clarified that a non-attorney can handle a workers' compensation case, but once the matter gets to an administrative hearing it's between the constituent, their attorney, and the division under challenge.

SENATOR WIELECHOWSKI asked where it says the legislator couldn't contact the attorney who represents the injured worker.

MS. MOSS replied it doesn't say that specifically, but once the dispute goes to a hearing officer the legislative office isn't supposed to contact those parties. Contacting a constituent's attorney would be considered ex parte contact.

SENATOR WIELECHOWSKI asked where it says that in the bill.

MS. MOSS replied "ex parte" is contacting a party in a case without going through the court.

SENATOR WIELECHOWSKI said his understanding is different.

CHAIR FRENCH said he believes that "ex parte" is between a party and the judge without the other party being present.

SENATOR WIELECHOWSKI agreed.

SENATOR PASKVAN agreed, and said the purpose of that definition of "ex parte" is to encourage contact between the parties directly, but while they're trying to work things out neither party can contact the judge without the other being present.

MS. MOSS added that the bill also requires legislators to disclose any contact that is considered inappropriate.

[1:42:51 PM](#)

CHAIR FRENCH summarized that in this case "ex parte" would be between a legislator and a hearing officer, not a legislator and an attorney representing the constituent.

MS. MOSS responded that when she always asks constituents that contact Senator Coghill's office for help if they engaged an attorney.

SENATOR WIELECHOWSKI said he didn't believe that under current law or if this were to pass that it would be illegal or unethical for a legislator to contact a constituent's attorney to express concern about the timeliness of a hearing.

MS. MOSS said she appreciates having that on the record.

SENATOR COGHILL recalled that the administrative law judge who spoke to his office about two years ago had the same opinion.

CHAIR FRENCH noted that Joyce Anderson was online to answer questions about ethics laws.

[1:45:36 PM](#)

MS. MOSS said Section 3 releases the Ethics Committee from having to compile disclosure form statements, but it would still have to maintain a record of the forms that are available to the public.

Section 4 adds "or public member of the committee" to AS 24.60.060(a), which is the statute that prohibits disclosure of confidential information.

Sections 5 and 7 have been reworded to make it clear that legislators, their employees, or a public member of the committee may not accept from a lobbyist a ticket to a charitable event that is valued at more than \$249.99.

SENATOR COGHILL added that it also allows accepting a charitable gift beyond that amount from somebody other than a lobbyist, but it must be reported and the event must be a sanctioned event.

MS. MOSS said Section 7 changes the reporting requirements from 30 days to 60 days for charitable gifts and gifts of travel for purposes of gaining legislative information.

[1:47:22 PM](#)

SENATOR PASKVAN asked if this changes what a lobbyist may offer to a legislator.

SENATOR COGHILL answered no. It changes charitable events that are specifically mentioned in statute. The rewording attempts to allow a charitable gift donation from people who are not lobbyists.

[1:48:44 PM](#)

CHAIR FRENCH observed that it was a little confusing to talk about tickets to a charitable event in conjunction with gifts, and asked if this was separate from the general gift prohibition.

MS. MOSS responded it addresses circumstances like receiving a ticket to a sanctioned charitable event and winning the door prize.

SENATOR COGHILL added that a question came up about winning a cruise at the "Thanksgiving in March" event. In another instance a legislator was given a gift from a non-lobbyist to sit at a head table, which was valued at more than \$400. An ethics complaint was lodged but there was not an ethical problem. He noted that it might be a problem if it wasn't a sanctioned event.

MS. MOSS explained that Section 8 allows certain persons to request a waiver from disclosing clients or making any disclosures that would violate state or federal law or the state or federal constitution. The State Affairs Committee added the language "or a rule adopted formally by a trade or profession, that state or federal law requires the person to follow." Thus,

certain occupations don't have to disclose their sources of income from clients.

CHAIR FRENCH asked if it is an ethics disclosure, an Alaska Public Offices Commission (APOC) disclosure, or both.

MS. MOSS replied it's an ethics disclosure.

SENATOR COGHILL added that under HIPPA there are some restrictions on confidentiality, and there was some concern about reporting if a legislative office was working on a healthcare issue for a constituent.

MS. MOSS said Sections 9 and 13 were added in the State Affairs Committee, and state that if someone is a volunteer or educational trainee for 30 days they would be expected to take an ethics class.

Sections 10 and 11 make reference to the new statute in Section 12.

Section 12 is a new section of law that deals with alternate members. It adds an alternate for a public member and allows them to participate in the full proceeding once they've been selected.

SENATOR COGHILL said it became apparent that it would be easier to make a quorum for the public members if there was an alternate. A decision was made that once the alternate was engaged in a particular ethical question they should remain until the conclusion. That is true for the public and legislative alternates.

[1:53:42 PM](#)

MS. MOSS said Section 14 changes the definition of "legislative employee." It clarifies that hourly employees are not included and are not required to take ethics training.

[1:54:28 PM](#)

SENATOR COGHILL observed that the bill was a benign housekeeping matter without his amendment, which addresses how to reasonably and properly allow legislators to participate in partisan political activities while on state travel. Generally speaking, most of the meetings that legislators hold outside of Juneau are held in Anchorage or Fairbanks. Legislators from those urban areas may attend partisan events after conducting state business, but those from out of town cannot. He said he was

trying to find a reasonable solution without allowing legislators to use state money to campaign. That's the one-way valve. "We want them to do one thing nobly, and we don't want them to use it improperly."

[1:56:37 PM](#)

SENATOR COGHILL moved Amendment 1, labeled 27-LS0452\T.1.

#### AMENDMENT 1

OFFERED IN THE SENATE  
TO: CSSB 89(STA)

BY SENATOR COGHILL

Page 1, line 7, following "**instances**":

Insert "**allowing legislators and legislative employees, in certain circumstances, to participate in partisan political activity while on state travel**;"

Page 5, following line 26:

Insert new bill sections to read:

"\* **Sec. 3.** AS 24.60.030 is amended by adding a new subsection to read:

(j) Notwithstanding the limitations under (a)(2), (a)(4), and (c) of this section and subject to other state or federal laws, a legislator or legislative employee who is on state travel may participate in partisan political activity, including campaign activity, if

(1) the participation is incidental to the purpose of the travel;

(2) the legislator or the legislative employee does not use or authorize the use of state resources to pay for the activity; and

(3) the legislator or legislative employee does not participate in the activity

(A) during a normal workday between 8:00 a.m. and 5:00 p.m., excluding meal breaks;

(B) on a state or municipal election day;

(C) during the 30 days immediately preceding an election in which the participating legislator or the legislator for whom the participating

employee works is a candidate for elective office; or

(D) by fund raising for a political party or campaign.

\* **Sec. 4.** AS 24.60.031 is amended by adding a new subsection to read:

(d) Notwithstanding the limitations under (a) and (b) of this section and subject to other state or federal laws, a legislator or legislative employee who is on state travel may participate in partisan political activity, including campaign activity, if

(1) the participation is incidental to the purpose of the travel;

(2) the legislator or the legislative employee does not use or authorize the use of state resources to pay for the activity; and

(3) the legislator or legislative employee does not participate in the activity

(A) during a normal workday between 8:00 a.m. and 5:00 p.m., excluding meal breaks;

(B) on a state or municipal election day;

(C) during the 30 days immediately preceding an election in which the participating legislator or the legislator for whom the participating employee works is a candidate for elective office; or

(D) by fund raising for a political party or campaign."

Renumber the following bill sections accordingly.

Page 13, following line 24:

Insert a new bill section to read:

"\* **Sec. 17.** AS 24.60.990(a) is amended by adding a new paragraph to read:

(17) "state travel" means travel with transportation or overnight lodging that is provided or paid for with state resources."

Renumber the following bill section accordingly.

CHAIR FRENCH objected and opened discussion on the amendment.

SENATOR COGHILL said he would understand if the Chair decided to set the bill aside for more in depth consideration next session. He explained that the amendment addresses AS 24.60.030, which talks about ethical management, and AS 24.60.031, which talks about the management of fundraising. He read the amendment into the record and the following legal definition of "incidental:" "Subordinate to something of greater importance; having a minor role." He was trying to say that there are reasons to prohibit the activity, but there should be an accommodation for participation in partisan political activity that is clearly incidental. Whereas fund raising for any political party or campaign while on the state dime is absolutely prohibited. This sets the bar and clarifies that the activity has to be very small in comparison to the activity for which the legislator is using state travel.

SENATOR COGHILL said if he goes to Anchorage on state travel and is called by a radio program and gives his opinion, he could be charged with participating in partisan activity when he's really just articulating his beliefs. The question needs to be answered and the forgoing are the criteria he set.

[2:03:25 PM](#)

CHAIR FRENCH said he appreciates the thought that went into the amendment and shares some of the concerns. Leveling a complaint that a legislator has violated the ethics rules is a powerful complaint. It will be discussed further over the summer and next year. Some of the questions that arise relate to the size differences in the legislative districts and the sort of things a legislator should be able to do when he/she is paid to travel inside his/her own district. Some things could conceivably be an ethics violation under the current rules and he's not sure they should be. Is it a violation if you're traveling to Anchorage on state business and you update your Facebook page relating to your campaign when you're in your hotel room at night? Could you call into a Fairbanks radio show from Anchorage promoting your campaign while on state travel? He reiterated that he'd spend time on the question between now and next year.

[2:05:54 PM](#)

SENATOR WIELECHOWSKI stated agreement. If a legislator is traveling to Anchorage and gets a call from a radio station asking about partisan activities, does it matter if that legislator is in Anchorage or Fairbanks? The problem has been how to define where that line is. The State Affairs Committee

couldn't figure it out, but with further dialog there may be a solution.

SENATOR COGHILL said he assumes that some legislators and some people that watch legislators will be bad actors, but others are genuinely concerned about ethical behavior. It's a balance and he's trying to figure out the clearest rule possible. Trying to define motives is not the answer, but defining action items helps establish bright lines so that legislators know what is expected of them as partisan people. It also helps those who genuinely want to keep legislators ethically accountable for the use of state resources.

He said his district includes the Richardson Highway, the Glenn Highway, the Denali Highway, and the coast from Valdez to Whittier so he can be anywhere in those communities and be totally forbidden from going to a Republican event even though he had traveled 800 miles to visit three other communities in the district. It's painful to be unable to participate.

Under the current statutes, there is an exact prohibition on partisan activity anytime a legislator is on the state dime. This leaves legislators vulnerable to people who have bad intentions. The Ethics Committee has discussed this extensively over the years and legislators have repeatedly asked for relief. He asked the committee to carefully consider the amendment; it's his best effort to define what is and is not ethical.

SENATOR COGHILL asked the Chair how he wanted to proceed with the amendment and the bill itself.

[2:11:19 PM](#)

SENATOR PASKVAN commented that he looks forward to further healthy debate on the matter and believes that this committee is best suited for this substantive discussion. It's a complex subject that requires careful consideration from both sides. Legislators should always act ethically, but he doesn't want to give unfair advantage to someone who can use private wealth to scam the system, knowing that the person they're attacking can't fight back because they were traveling at state expense.

SENATOR COGHILL said he's passionate that this is not about fairness; it's about what is ethical. Right now you can't be a partisan politician while on the state dime. That's not reasonable and doesn't address the ethical question.

CHAIR FRENCH stated that he'd leave matters as they are; both the bill and the amendment are in front of the committee and he was maintaining his objection.

[2:14:10 PM](#)

SENATOR COGHILL said his office was prepared to work with the committee and was open to suggestions.

CHAIR FRENCH announced he would hold SB 89 in committee.

**SB 98-BIOMETRIC INFORMATION FOR ID**

[2:14:40 PM](#)

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

SENATOR WIELECHOWSKI moved to adopt CS for SB 98, labeled 27-LS0661\T, as the working document.

CHAIR FRENCH objected for discussion purposes.

SENATOR WIELECHOWSKI asked his staff to describe the changes.

[2:15:35 PM](#)

MICHAEL CAUFIELD, Staff to Senator Wielechowski, sponsor of SB 98, described the following changes:

Page 2, lines 17-19, contains new language that clarifies that occupational exams are also educational exams, and that the exam administrator may determine what constitutes an acceptable alternative ID. He noted that some questions may still arise with this section.

Page 3, line 18, the phrase "agents of the state," was removed to ensure that the state is exempt from liability, but not an organization that contracts with the state.

Page 3, lines 29-30, creates an exemption for voice data collected for quality assurance purposes, and the exemption for "facial images in a biometric system" was removed.

Page 3, lines 1-2, "facial images" was changed to "facial mapping" in the redefinition of "biometric data" on page 4, lines 1-2.

Page 4, lines 25-26, "facial mapping" was defined as "the use of digital technology to measure the features of an individual's

face." This was done to ensure that pictures cannot be defined as biometric information.

MR. CAUFIELD said he understands there might be additional issues with the alternate identification.

[2:18:46 PM](#)

CHAIR FRENCH referenced the alternate identification provision on page 2, lines 12-19, and asked what would happen if someone administering the LSAT would settle for nothing other than a fingerprint for identification.

MR. CAUFIELD replied the current draft requires the administrator to accept another acceptable form of identification. He acknowledged that it could present a problem if the administrator said no other form of identification was acceptable. Proposed amendment 27-LS0661\T.1 addresses the issue.

[2:20:25 PM](#)

SENATOR WIELECHOWSKI clarified that version T says the company that administers the exam cannot require someone to provide biometric information for identification if they provide alternate identification that is acceptable to the person administering the occupational exam. The intent of the provision is that something like a library card would not be acceptable, but a passport or driver's license clearly would be acceptable alternate identification.

CHAIR FRENCH asked what would happen if the LSAT administrator would only accept a fingerprint as acceptable identification. A passport was not acceptable.

SENATOR WIELECHOWSKI replied that would be a violation of the law.

SENATOR PASKVAN said he worries that a national licensing entity will say it won't allow the exam to be administered in Alaska. It would be unfortunate to make it so restrictive that national testers see that the only alternative is to leave the state. He noted that the amendment he drafted tries to accommodate that.

CHAIR FRENCH asked if the amendment pertains to this section.

SENATOR COGHILL asked if it would be too broad to reword the provision to say "generally accepted identification."

CHAIR FRENCH suggested he hold the thought until the amendment was considered.

[2:26:51 PM](#)

SENATOR PASKVAN moved to bring Amendment 1, 27-LS0661\T.1, before the committee for discussion purposes.

**AMENDMENT 1**

OFFERED IN THE SENATE

BY SENATOR PASKVAN

TO: CSSB 98( ), Draft Version "T"

Page 2, line 12:

Delete "If"

Insert "(a) Except as provided in (b) of this section, if"

Page 2, line 17, following "examination.":

Insert new material to read:

"(b) If the collection of the biometric information of an individual taking an occupational examination is legitimately necessary to establish the security of the occupational examination, the person who administers the occupational examination may collect the biometric information, but the person shall comply with the collection and other requirements of this chapter with regard to the biometric information, and the person shall require the person's contractor, if any, to agree to comply with the collection and other requirements of this chapter with regard to the biometric information.

(c)"

SENATOR PASKVAN said the purpose of the amendment is to address the problems that administrators of the CPA exam have had with individuals on the East coast transferring test questions to individuals on the West coast hours before the test is administered. The amendment says that if collection of biometric information is deemed legitimately necessary to secure an occupational examination, the exam administrator may collect the biometric information in compliance with the other requirements

of the bill. This is a compromise and a better solution than a blanket prohibition, he said.

2:30:10 PM

SENATOR WIELECHOWSKI said he appreciates the intent, but he objects to the amendment. There are other ways to ensure that the person taking the test is the singular person credited with taking the test. Proctors are hired to watch individuals who are taking an examination, including following them to the bathroom. As written this is a good bill that provides a lot of protections for Alaskans, he stated.

2:32:01 PM

SENATOR COGHILL said he can understand both sides of the question, but it seems as though the test taker is being asked to surrender a lot in order to secure the integrity of the test. He wondered if the test administrators shouldn't be more responsible for ensuring that integrity, and observed that the amendment appeared to double the reasons for the test administrators to collect that information.

SENATOR PASKVAN moved to adopt Amendment 1, labeled 27-LS0661\T.1.

SENATOR WIELECHOWSKI objected.

2:34:27 PM

A roll call was taken. Amendment 1, 27-LS0661\T.1, failed 2:2 with Senator Paskvan and Senator French voting yea and Senator Coghill and Senator Wielechowski voting nay.

CHAIR FRENCH referred to page 3, lines 11-16, Sec. 18.14.080, right of action, and asked if the idea is to penalize people who lose biometric information.

MR. CAUFIELD replied it addresses people who lose or distribute biometric information.

CHAIR FRENCH asked for a discussion about the policy rationale for subsection (b), which immunizes the state against a claim for damages for lost biometric information.

SENATOR WIELECHOWSKI told the committee that the state was initially concerned that if the information was distributed the state could potentially be liable for millions of dollars in damages. He said he isn't a fan of immunizing the state so it was a tough call, but if that provision hadn't been included

it's likely a fiscal note would have been attached making the bill more difficult to pass. It would still be illegal for the state to disclose the information, but an individual couldn't sue for damages if that did happen. He reiterated that, as a whole, it's a good bill that moves Alaska forward on protecting peoples' private information.

[2:37:28 PM](#)

CHAIR FRENCH observed that in a number of places the record clearly reflects the sponsor's reluctance to offer the state immunity provisions. He expressed similar concern, and suggested that this is one step forward and perhaps there will be opportunity to revisit that provision in the future.

SENATOR PASKVAN expressed concerned that the state is being provided absolute immunity regardless of how egregious its conduct might or might not be. It's problematic.

[2:39:07 PM](#)

CHAIR FRENCH referenced page 2, line 3, Sec. 18.14.020, and asked if the penalties for disclosing, transferring, or distributing collected biometric information are contained in Sec. 18.14.080. It's a civil violation for which there is a financial penalty.

MR. CAUFIELD answered yes.

CHAIR FRENCH asked if a "bad apple" state employee would be immunized if he were to intentionally sell another person's biometric information.

MR. CAUFIELD replied they would be immunized if they were acting as an agent of the state.

SENATOR WIELECHOWSKI clarified that if they were acting within their duties as a state employee they would be immunized, but if they were acting outside their state duties they would be liable.

CHAIR FRENCH commented that they could be on the hook for \$100,000.

[2:40:32 PM](#)

SENATOR PASKVAN pointed out that Sec. 18.14.080(b), on page 3, line 17, gives an employee of the state immunity for damages, a penalty, or both for violations under this chapter.

SENATOR WIELECHOWSKI responded he suspects there are creative lawyers that could figure out violations outside this chapter for a state employee who did something like that.

SENATOR PASKVAN said his perception is that the immunity is broad.

SENATOR WIELECHOWSKI said it's not the intent to ban some other common law claim, tort claim, or claim under another statute.

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CHAIR FRENCH suggested that the general concern is probably aimed at private enterprise collecting the material, not state collection.

SENATOR WIELECHOWSKI suggested amending the bill to address the issue that Senator Coghill spoke to about acceptable alternate identification. On page 2, line 16, following the word "information" delete the remainder of the sentence and insert "if the individual provides generally accepted alternate identification to the person administering the occupational examination." It's not a substantive change.

At ease from 2:44 p.m. to 2:45 p.m. to write down the suggested amendment.

[2:45:02 PM](#)

CHAIR FRENCH reconvened the meeting and announced that the amendment would be put aside. He asked the will of the committee.

SENATOR WIELECHOWSKI moved to report CSSB 98( ), version T, from committee with individual recommendations and attached fiscal note

CHAIR FRENCH announced that without objection, CSSB 98(JUD) moved from the Senate Judiciary Standing Committee.

At ease from 2:46 p.m. to 2:47 p.m.

**SB 104-MANUFACTURED HOMES AS REAL PROPERTY**

[2:47:20 PM](#)

CHAIR FRENCH announced the consideration of SB 104 and asked for a motion to adopt the proposed committee substitute (CS), version D.

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SENATOR WIELECHOWSKI moved to adopt CS for SB 104, labeled 27-LS0467\D, as the working document.

CHAIR FRENCH objected for discussion purposes.

ANDY MODEROW, Staff to Senator French, described the changes as follows:

Sec. 40.17.125(a) was modified so that the recorder's office won't have to determine whether an affixation or severance affidavit meets requirements under Sec. 34.85, which relates to how a manufactured home is affixed to real property. Under AS 40.17.035, the recorder's office cannot be tasked with determining whether the contents of a document are legally sufficient to achieve the purposes of the document; instead, as clarified under the regulation, the person submitting documents for recording must ensure that the prerequisites for recording as established by regulation and statute are met.

CHAIR FRENCH noted that Whitney Brewster with the Division of Motor Vehicles, Vicky Backus with the State Recorder's Office, Jeff Harris with Wells Fargo, and Pat Green with Wells Fargo were available online to answer questions.

MR. MODEROW continued as follows:

Sec. 40.17.125(b) received two minor changes in the CS. The first modifies the action taken by the recorder on the recording affidavit, changing "write" to "place" on page 20, line 30, of the legislation. This change reflects that the recording office no longer writes on recorded affidavits - instead, they affix bar codes that contain relevant information. In addition, the original draft required an affidavit to be recorded in land records; in the CS, Sec. 40.17.125(b) changes "in land records" to "the public record," to match where the recorder files land records today.

Sec. 40.17.125(c) in the original draft (version I) was removed in the CS. This language required the recorder's office to automatically send a certified copy of the recorded affidavit to a person designated on an affidavit. This doesn't match current recording

office procedures, which require an individual to request and pay for certified copies of affidavits.

In regards to this last change, conforming amendments were made to Sec. 34.85.060(12) and Sec. 34.85.120(7) in Section 26 of the CS to remove references to the automatic mailing of a certified affidavit. In addition, Sec. 28.10.266(7) and Sec. 28.10.266(8) of the CS, found in Section 16 on page 10 of the legislation, were modified to ensure that an affidavit complies with affixation requirements under Sec. 34.85 of the legislation.

Page 6, Section 16, of the original draft required DMV to notify a primary lienholder of completed conversion procedures when the conversion involved cancelling a manufacturer's certificate of origin or title. But under Sec. 28.10.267, a conversion cannot take place until a manufactured home is free and clear of all liens and encumbrances. Because a primary lienholder would never exist through a conversion procedure, the lienholder notification provisions were replaced in the CS with language that allows the applicant to indicate one person, in addition to the owner, that receives written acknowledgement of completed conversions under Sec. 28.10.262-265. This change is reflected in Sec. 28.10.262(c), 28.10.263(c), 28.10.264(d), 28.10.265(c), 28.10.266(12), of version D.

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SENATOR PASKVAN referenced page 15, lines 14-20, and asked what the lessor of the real property consents to, and what interest in the real property the lessor of the park gives up or has subject to the real estate loss.

MR. MODEROW deferred to the Wells Fargo representative.

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PAT GREEN, State Government Relations Director, Wells Fargo Bank, said this legislation is primarily intended for those manufactured home owners that also own the land under the home.

CHAIR FRENCH asked Mr. Harris if he could tell the committee what the lessor of the real property is consenting to under Sec. 34.85.040(2).

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JEFF HARRIS, Loan Administration Manager, Wells Fargo Home Mortgage, Anchorage, AK, explained that an individual that has a home in a mobile home park would need to move the manufactured home onto a piece of land they own in order to affix it, get a fee simple transaction, and get a mortgage on the home. The homeowner must own the land and home together get a mortgage.

CHAIR FRENCH asked if he agrees that a mobile home owner in a park could get a mortgage if he had a 20-year lease and the park owner consents.

MR. HARRIS replied there's less risk with a long-term lease, so that option was put into the legislation.

SENATOR PASKVAN asked if deficiency judgments would be prohibited, assuming that any foreclosure would be non-judicial.

MR. GREEN answered yes. His understanding is that, in the event of default, all the normal real property foreclosure procedures would be followed.

MR. HARRIS agreed; the foreclosure proceedings would be the same as for a "stick-built" home

CHAIR FRENCH announced he would hold SB 104 in committee.

[2:58:05 PM](#)

Chair French thanked the committee for the work it did this year and adjourned the Senate Judiciary Standing Committee meeting at 2:58 p.m.