

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 27, 2013

1:33 p.m.

MEMBERS PRESENT

Representative Wes Keller, Chair
Representative Bob Lynn, Vice Chair
Representative Neal Foster
Representative Gabrielle LeDoux
Representative Charisse Millett
Representative Lance Pruitt
Representative Max Gruenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 73

"An Act relating to the commencement of actions for felony sex trafficking and felony human trafficking; relating to the crime of sexual assault; relating to the crime of unlawful contact; relating to forfeiture for certain crimes involving prostitution; relating to the time in which to commence certain prosecutions; relating to release for violation of a condition of release in connection with a crime involving domestic violence; relating to interception of private communications for certain sex trafficking or human trafficking offenses; relating to use of evidence of sexual conduct concerning victims of certain crimes; relating to procedures for granting immunity to a witness in a criminal proceeding; relating to consideration at sentencing of the effect of a crime on the victim; relating to the time to make an application for credit for time served in detention in a treatment program or while in other custody; relating to suspending imposition of sentence for sex trafficking; relating to consecutive sentences for convictions of certain crimes involving child pornography or indecent materials to minors; relating to the referral of sexual felonies to a three-judge panel; relating to the definition of 'sexual felony' for sentencing and probation for conviction of certain crimes; relating to the definition of "sex offense" regarding sex offender registration; relating to protective orders for stalking and sexual assault and for a crime involving domestic violence; relating to the definition of 'victim counseling

centers' for disclosure of certain communications concerning sexual assault or domestic violence; relating to violent crimes compensation; relating to certain information in retention election of judges concerning sentencing of persons convicted of felonies; relating to remission of sentences for certain sexual felony offenders; relating to the subpoena power of the attorney general in cases involving the use of an Internet service account; relating to reasonable efforts in child-in-need-of-aid cases involving sexual abuse or sex offender registration; relating to mandatory reporting by athletic coaches of child abuse or neglect; making conforming amendments; amending Rules 16, 32.1(b)(1), and 32.2(a), Alaska Rules of Criminal Procedure, Rule 404(b), Alaska Rules of Evidence, and Rule 216, Alaska Rules of Appellate Procedure; and providing for an effective date."

- MOVED CSHB 73(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 102

"An Act relating to property exemptions for retirement plans, individual retirement accounts, and Roth IRAs; relating to transfers of individual retirement plans; relating to the rights of judgment creditors of members of limited liability companies and partners of limited liability partnerships; relating to the Uniform Probate Code, including pleadings, orders, liability, and notices under the Uniform Probate Code and the Alaska Principal and Income Act, the appointment of trust property, the Alaska Uniform Prudent Investor Act, co-trustees, trust protectors, and trust advisors; relating to the Alaska Principal and Income Act; relating to the Alaska Uniform Transfers to Minors Act; relating to the disposition of human remains; relating to the tax on insurers for life insurance policies; relating to insurable interests for certain insurance policies; relating to restrictions on transfers of trust interests; relating to discretionary interests in irrevocable trusts; relating to the community property of married persons; and amending Rule 64, Alaska Rules of Civil Procedure, and Rule 301(a), Alaska Rules of Evidence."

- MOVED CSHB 102(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 1

"An Act relating to issuance of drivers' licenses."

- MOVED CSHB 1(STA) OUT OF COMMITTEE

SENATE BILL NO. 22

"An Act relating to the commencement of actions for felony sex trafficking and felony human trafficking; relating to the crime of sexual assault; relating to the crime of unlawful contact; relating to forfeiture for certain crimes involving prostitution; relating to the time in which to commence certain prosecutions; relating to release for violation of a condition of release in connection with a crime involving domestic violence; relating to interception of private communications for certain sex trafficking or human trafficking offenses; relating to use of evidence of sexual conduct concerning victims of certain crimes; relating to procedures for granting immunity to a witness in a criminal proceeding; relating to consideration at sentencing of the effect of a crime on the victim; relating to the time to make an application for credit for time served in detention in a treatment program or while in other custody; relating to suspending imposition of sentence for sex trafficking; relating to consecutive sentences for convictions of certain crimes involving child pornography or indecent materials to minors; relating to the referral of sexual felonies to a three-judge panel; relating to the definition of 'sexual felony' for sentencing and probation for conviction of certain crimes; relating to the definition of "sex offense" regarding sex offender registration; relating to protective orders for stalking and sexual assault and for a crime involving domestic violence; relating to the definition of 'victim counseling centers' for disclosure of certain communications concerning sexual assault or domestic violence; relating to violent crimes compensation; relating to certain information in retention election of judges concerning sentencing of persons convicted of felonies; relating to remission of sentences for certain sexual felony offenders; relating to the subpoena power of the attorney general in cases involving the use of an Internet service account; relating to reasonable efforts in child-in-need-of-aid cases involving sexual abuse or sex offender registration; relating to mandatory reporting by athletic coaches of child abuse or neglect; making conforming amendments; amending Rules 16, 32.1(b)(1), and 32.2(a), Alaska Rules of Criminal Procedure, Rule 404(b), Alaska Rules of Evidence, and Rule 216, Alaska Rules of Appellate Procedure; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 140

"An Act relating to the information that must be included with certain notices provided for the proposed adoption, amendment, or repeal of a regulation."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 73

SHORT TITLE: CRIMES; VICTIMS; CHILD ABUSE AND NEGLECT

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/16/13	(H)	READ THE FIRST TIME - REFERRALS
01/16/13	(H)	JUD, FIN
02/01/13	(H)	JUD AT 1:00 PM CAPITOL 120
02/01/13	(H)	Heard & Held
02/01/13	(H)	MINUTE(JUD)
02/11/13	(H)	JUD AT 1:00 PM CAPITOL 120
02/11/13	(H)	Heard & Held
02/11/13	(H)	MINUTE(JUD)
02/18/13	(H)	JUD AT 1:00 PM CAPITOL 120
02/18/13	(H)	Heard & Held
02/18/13	(H)	MINUTE(JUD)
02/25/13	(H)	JUD AT 1:00 PM CAPITOL 120
02/25/13	(H)	Scheduled But Not Heard
03/22/13	(H)	JUD AT 1:00 PM CAPITOL 120
03/22/13	(H)	Heard & Held
03/22/13	(H)	MINUTE(JUD)
03/25/13	(H)	JUD AT 1:00 PM CAPITOL 120
03/25/13	(H)	Heard & Held
03/25/13	(H)	MINUTE(JUD)
03/27/13	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 102

SHORT TITLE: RETIREMENT PLANS; ROTH IRAS; PROBATE

SPONSOR(S): KELLER

02/01/13	(H)	READ THE FIRST TIME - REFERRALS
02/01/13	(H)	L&C, JUD
02/25/13	(H)	L&C AT 3:15 PM BARNES 124
02/25/13	(H)	Heard & Held
02/25/13	(H)	MINUTE(L&C)
03/20/13	(H)	L&C AT 3:45 PM BARNES 124
03/20/13	(H)	Heard & Held
03/20/13	(H)	MINUTE(L&C)
03/22/13	(H)	JUD AT 1:00 PM CAPITOL 120
03/22/13	(H)	<Bill Hearing Canceled>
03/25/13	(H)	L&C AT 3:15 PM BARNES 124
03/25/13	(H)	Moved CSHB 102(L&C) Out of Committee
03/25/13	(H)	MINUTE(L&C)

03/27/13 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 1

SHORT TITLE: REQUIREMENTS FOR DRIVER'S LICENSE

SPONSOR(S): LYNN, HAWKER, CHENAULT, JOHNSON

01/16/13 (H) PREFILE RELEASED 1/7/13
01/16/13 (H) READ THE FIRST TIME - REFERRALS
01/16/13 (H) STA, JUD
01/29/13 (H) STA AT 8:00 AM CAPITOL 106
01/29/13 (H) Moved CSHB 1(STA) Out of Committee
01/29/13 (H) MINUTE(STA)
01/30/13 (H) STA RPT CS(STA) 7DP
01/30/13 (H) DP: HUGHES, MILLETT, ISAACSON, KELLER,
GATTIS, KREISS-TOMKINS, LYNN
02/18/13 (H) JUD AT 1:00 PM CAPITOL 120
02/18/13 (H) Heard & Held
02/18/13 (H) MINUTE(JUD)
03/27/13 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

KATHLEEN STRASBAUGH, Attorney
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency (LAA)
Juneau, Alaska

POSITION STATEMENT: Responded to questions during discussion of proposed amendments to HB 73, Version U.

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

POSITION STATEMENT: Responded to questions during discussion of proposed amendments to HB 73, Version U.

RON TAYLOR, Deputy Commissioner
Office of the Commissioner - Anchorage
Department of Corrections (DOC)
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of HB 73.

DAVID G. SHAFTEL, Attorney at Law
Anchorage, Alaska

POSITION STATEMENT: Presented HB 102 on behalf of the sponsor, Representative Keller, and responded to questions.

DOUGLAS J. BLATTMACHR, President and CEO
Alaska Trust Company
Anchorage, Alaska

POSITION STATEMENT: Expressed his hope that the committee would support HB 102.

BETHANN B. CHAPMAN, Attorney at Law
Faulkner Banfield, PC
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 102.

ERNEST PRAX, Staff
Representative Wes Keller
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 102, responded to questions on behalf of the sponsor, Representative Keller.

FORREST WOLFE, Staff
Representative Bob Lynn
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 1, responded to a question on behalf of Representative Lynn, one of the bill's joint prime sponsors.

DEAN WAUSON
Eagle River, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 1.

JEFFREY A. MITTMAN, Executive Director
American Civil Liberties Union of Alaska (ACLU of Alaska)
Anchorage, Alaska

POSITION STATEMENT: Expressed concerns with HB 1, urged the committee not to pass the bill, and responded to questions.

ERLING JOHANSEN, Assistant Attorney General
Labor and State Affairs Section
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 1.

ACTION NARRATIVE

1:33:54 PM

CHAIR WES KELLER called the House Judiciary Standing Committee meeting to order at [1:33] p.m. Representatives Keller, Millett, Gruenberg, LeDoux, and Lynn were present at the call to order. Representatives Pruitt and Foster arrived as the meeting was in progress.

HB 73 - CRIMES; VICTIMS; CHILD ABUSE AND NEGLECT

1:34:26 PM

CHAIR KELLER [announced that the first order of business would be] HOUSE BILL NO. 73, "An Act relating to the commencement of actions for felony sex trafficking and felony human trafficking; relating to the crime of sexual assault; relating to the crime of unlawful contact; relating to forfeiture for certain crimes involving prostitution; relating to the time in which to commence certain prosecutions; relating to release for violation of a condition of release in connection with a crime involving domestic violence; relating to interception of private communications for certain sex trafficking or human trafficking offenses; relating to use of evidence of sexual conduct concerning victims of certain crimes; relating to procedures for granting immunity to a witness in a criminal proceeding; relating to consideration at sentencing of the effect of a crime on the victim; relating to the time to make an application for credit for time served in detention in a treatment program or while in other custody; relating to suspending imposition of sentence for sex trafficking; relating to consecutive sentences for convictions of certain crimes involving child pornography or indecent materials to minors; relating to the referral of sexual felonies to a three-judge panel; relating to the definition of 'sexual felony' for sentencing and probation for conviction of certain crimes; relating to the definition of "sex offense" regarding sex offender registration; relating to protective orders for stalking and sexual assault and for a crime involving domestic violence; relating to the definition of 'victim counseling centers' for disclosure of certain communications concerning sexual assault or domestic violence; relating to violent crimes compensation; relating to certain information in retention election of judges concerning sentencing of persons convicted of felonies; relating to remission of sentences for certain sexual felony offenders; relating to the subpoena power

of the attorney general in cases involving the use of an Internet service account; relating to reasonable efforts in child-in-need-of-aid cases involving sexual abuse or sex offender registration; relating to mandatory reporting by athletic coaches of child abuse or neglect; making conforming amendments; amending Rules 16, 32.1(b)(1), and 32.2(a), Alaska Rules of Criminal Procedure, Rule 404(b), Alaska Rules of Evidence, and Rule 216, Alaska Rules of Appellate Procedure; and providing for an effective date."

[Before the committee was the proposed committee substitute (CS) for HB 73, Version 28-GH1587\U, Strasbaugh, 3/20/13, which was adopted as the working document on 3/22/13, and amended on 3/25/13.]

[1:35:29 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 4, labeled 28-GH1587\U.7, Strasbaugh, 3/26/13, which read:

Page 2, line 7, following "**felonies;**":

Insert "**relating to the rights of certain victims of sexual assault, sexual abuse of a minor, or incest to obtain legal and equitable remedies for injuries arising from the conduct of a perpetrator;**"

Page 15, following line 27:

Insert a new bill section to read:

"* **Sec. 30.** AS 25.23.180(i) is amended to read:

(i) Proceedings for the termination of parental rights on the grounds set out in (c)(3) of this section do not affect the rights of a victim of **sexual assault**, sexual abuse of a minor, or incest to obtain legal and equitable civil remedies for all injuries and damages arising out of the perpetrator's conduct."

Re-number the following bill sections accordingly.

Page 22, line 18:

Delete "30"

Insert "31"

Page 22, line 29:

Delete "sec. 43"

Insert "sec. 44"

REPRESENTATIVE PRUITT objected.

REPRESENTATIVE GRUENBERG - referring to memorandums from Legislative Legal and Research Services dated March 22, 2013, and March 26, 2013, and to information included therein - explained that currently, under the statutes addressing adoption, one could have one's parental rights terminated on the grounds that one perpetrated a crime of sexual assault or a crime of sexual abuse of a minor on the other parent of the child conceived by that illegal act. However, existing AS 25.23.180(i), the statute stipulating that proceedings for such termination of parental rights do not affect the rights of the victim to obtain legal and equitable civil remedies from the perpetrator - sometimes referred to as a "savings" [statute], he remarked - does not yet apply to victims of the crimes of sexual assault. Instead, that savings statute currently only applies to victims of sexual abuse of a minor crimes and to victims of incest crimes. Amendment 4 would address that gap by adding to that savings statute a reference to the crimes of sexual assault, so that it would then also apply to the victims of those crimes. He noted that Section 2 of HB 73 is already proposing other changes to Alaska's civil statutes, and asked that Amendment 4 be adopted.

REPRESENTATIVE LEDOUX referred to Amendment 4 as appropriate and a good idea, and expressed concern that a court could mistakenly view the current gap in existing AS 25.23.180(i) as intentional.

CHAIR KELLER - mentioning that a Department of Law (DOL) representative has called Amendment 4's proposed change a good catch, and noting that it [includes] a title change - said he supports Amendment 4.

[1:40:29 PM](#)

KATHLEEN STRASBAUGH, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), in response to comments and questions, offered her belief that there is no fatal legal flaw with Amendment 4, particularly given the court's tendency to be lenient when interpreting Alaska's single-subject requirement for legislation. She, too, noted that HB 73 is already proposing other changes to [Alaska's civil statutes].

REPRESENTATIVE PRUITT removed his objection.

CHAIR KELLER ascertained that there were no further objections, and announced that Amendment 4 was adopted.

[1:41:52 PM](#)

REPRESENTATIVE GRUENBERG [made a motion to adopt] Amendment 5, labeled 28-GH1587\U.9, Strasbaugh, 3/26/13, which read:

Page 2, line 7, following "**felonies;**":

Insert "**relating to the definition of sexual assault for the purpose of adoption and the termination of parental rights in certain proceedings;**"

Page 15, following line 27:

Insert a new bill section to read:

"* **Sec. 30.** AS 25.23.240(10) is amended to read:

(10) "sexual assault" means a sexual offense defined in AS 11.41.410 - 11.41.427 [AS 11.41.410 OR 11.41.420];"

Renumber the following bill sections accordingly.

Page 22, line 18:

Delete "30"

Insert "31"

Page 22, line 29:

Delete "sec. 43"

Insert "sec. 44"

REPRESENTATIVE GRUENBERG explained that Amendment 5 would address a gap in the provision defining what constitutes the crime of sexual assault for purposes of AS 25.23 - Alaska's adoption statutes. Currently, only the crimes of sexual assault in the first degree and sexual assault in second degree are included in that definition, whereas Amendment 5 would add to it the crimes of sexual assault in the third degree and sexual assault in the fourth degree, neither of which was in existence when [the definition of the term, "sexual assault" was added to AS 25.23].

REPRESENTATIVE PRUITT objected.

REPRESENTATIVE GRUENBERG - after paraphrasing AS 11.41.425 and AS 11.41.427, outlining the crime of sexual assault in the third degree and the crime of sexual assault in the fourth degree, respectively - opined that all of the manifestations of the crime of sexual assault in the third degree are serious offenses

and should therefore be grounds for the termination of one's parental rights under AS 25.23.180 regarding a child thereby conceived, and proffered that adding the crime of sexual assault in the fourth degree, in addition to addressing instances wherein pregnancy occurs through sexual contact, would also address instances wherein the perpetrator has pled down to that lesser degree of sexual assault crime, which involves serious illegal conduct nonetheless.

MS. STRASBAUGH added that Amendment 5 includes a title change, and that it would inform all of the provisions of AS 25.23 regarding what constitutes a sexual assault.

[1:50:42 PM](#)

ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), indicated that the DOL favors Amendment 5's proposal to rectify the aforementioned omission.

REPRESENTATIVE PRUITT removed his objection.

CHAIR KELLER ascertained that there were no further objections, and announced that Amendment 5 was adopted.

REPRESENTATIVE GRUENBERG, referring to the discussion that occurred during HB 73's last hearing regarding Alaska's jurisdiction over matters related to the crime of human trafficking in the first degree, expressed interest in researching the issue of criminal jurisdiction as a whole during the interim.

REPRESENTATIVES PRUITT and LEDOUX also expressed interest.

REPRESENTATIVE LYNN called HB 73 a good bill.

REPRESENTATIVE PRUITT - referring to HB 73's proposal, via Version U's Sections 12 and 13, to provide the court with the discretionary authority to order a person charged with a stalking crime or charged with or convicted of a domestic violence crime to participate in a monitoring program with a global positioning device or similar technological means that meet the guidelines for a monitoring program adopted by the Department of Corrections (DOC) in consultation with the Department of Public Safety (DPS) - asked what guidelines were currently in place and which vendors currently meet those guidelines.

[1:56:22 PM](#)

RON TAYLOR, Deputy Commissioner, Office of the Commissioner - Anchorage, Department of Corrections (DOC), explained that the DOC has not yet developed those guidelines but would be working with the DPS to do so [when those provisions of HB 73 become law], and mentioned the name of the company that currently provides monitoring services for the DOC. In response to other questions, he offered his understanding that other companies could also provide such services to the DOC; explained that the current provider went through the state's request for proposals (RFP) process; and surmised that those provisions of the bill won't apply to ignition interlock devices.

CHAIR KELLER said he is not yet comfortable with all of the provisions of HB 73.

REPRESENTATIVE LYNN said he thinks HB 73 is a very good bill overall.

MS. CARPENETTI, in response to a question, indicated that [the DOL] is comfortable with the changes made thus far to HB 73.

[2:02:20 PM](#)

REPRESENTATIVE LYNN moved to report the proposed committee substitute (CS) for HB 73, Version 28-GH1587\U, Strasbaugh, 3/20/13, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 73(JUD) was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 2:03 p.m. to 2:06 p.m.

HB 102 - RETIREMENT PLANS; ROTH IRAS; PROBATE

[2:06:54 PM](#)

CHAIR KELLER announced that the next order of business would be HOUSE BILL NO. 102, "An Act relating to property exemptions for retirement plans, individual retirement accounts, and Roth IRAs; relating to transfers of individual retirement plans; relating to the rights of judgment creditors of members of limited liability companies and partners of limited liability partnerships; relating to the Uniform Probate Code, including pleadings, orders, liability, and notices under the Uniform

Probate Code and the Alaska Principal and Income Act, the appointment of trust property, the Alaska Uniform Prudent Investor Act, co-trustees, trust protectors, and trust advisors; relating to the Alaska Principal and Income Act; relating to the Alaska Uniform Transfers to Minors Act; relating to the disposition of human remains; relating to the tax on insurers for life insurance policies; relating to insurable interests for certain insurance policies; relating to restrictions on transfers of trust interests; relating to discretionary interests in irrevocable trusts; relating to the community property of married persons; and amending Rule 64, Alaska Rules of Civil Procedure, and Rule 301(a), Alaska Rules of Evidence."

[Before the committee was CSHB 102(L&C).]

CHAIR KELLER, as the sponsor of HB 102, indicated that the committee has considered a past iteration of the bill, and that he is comfortable with the changes incorporated into CSHB 102(L&C).

[2:08:35 PM](#)

DAVID G. SHAFTEL, Attorney at Law - presenting HB 102 on behalf of the sponsor, Representative Keller - noted that he is part of a group of attorneys and trust officers that periodically recommends improvements to Alaska's trust and estate statutes, and characterized HB 102 as an excellent bill that would provide updates to Alaska's trust and estate laws, including some of the uniform Acts adopted by Alaska. He explained that HB 102 would update the Alaska Principal and Income Act with regard to allocating principal and income, in order to address regulatory changes made by the Internal Revenue Service (IRS); would amend the [Alaska Uniform Transfers to Minors Act] to allow for the extension [of a custodian's term] for the benefit of the minor; would provide statutory changes related to retirement accounts so that the interests of beneficiaries are protected; would allow for the transfer of individual retirement accounts (IRAs) to trusts for tax-planning purposes; would clarify that life insurance [policies] can be held in a life insurance trust, which can be used to protect the proceeds and exempt them from federal estate taxes; would establish statutory provisions pertaining to the disposition of human remains, in order to address situations wherein arguments arise regarding such disposition; would update the [Alaska Community Property Act]; and - following what New York has already done - would improve the statutes pertaining to modifying a trust so that problems with a trust can be cured. He ventured that it was probably

merely a lack of time that resulted in the past iteration of the bill not being enacted during the previous legislature.

MR. SHAFTEL, in response to questions, explained that current law already prohibits a person from taking out a life insurance policy on someone whom he/she doesn't have an insurable interest in, and that HB 102 would not change that. He noted that a national organization representing insurance companies has already reviewed and approved the bill.

[2:18:26 PM](#)

DOUGLAS J. BLATTMACHR, President and CEO, Alaska Trust Company, said his company supports HB 102, and thinks it would be good for both Alaska and Alaskans, and would bring more jobs and revenue to the state. In conclusion, he shared his company's hope that the committee would support the bill.

[2:18:59 PM](#)

BETHANN B. CHAPMAN, Attorney at Law, Faulkner Banfield, PC, said simply that she supports HB 102.

CHAIR KELLER, in response to questions, noted that the previous committee of referral had inserted a "sunset" clause, and offered his understanding that all the interested parties were satisfied with the changes made by that previous committee.

[2:21:43 PM](#)

ERNEST PRAX, Staff, Representative Wes Keller, Alaska State Legislature, on behalf of the sponsor of HB 102, Representative Keller, added that that sunset clause of five years pertains to Section 37's proposed change to AS 21.09.210(m) - which, under CSHB 102(L&C), clarifies the tax treatment of life insurance policies [being issued for delivery to life insurance trusts] formed under or governed by Alaska law - and addresses concerns that as changed by Section 37, proposed AS 21.09.210(m) might result in a reduction in state tax revenue.

[2:24:25 PM](#)

REPRESENTATIVE LYNN moved to report CSHB 102(L&C) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 102(L&C) was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 2:25 p.m. to 2:27 p.m.

HB 1 - REQUIREMENTS FOR DRIVER'S LICENSE

[2:27:57 PM](#)

CHAIR KELLER announced that the final order of business would be HOUSE BILL NO. 1, "An Act relating to issuance of drivers' licenses." [Before the committee was CSHB 1(STA).]

REPRESENTATIVE LYNN, as one of the joint prime sponsors of HB 1, explained that HB 1 would allow the Division of Motor Vehicles (DMV) to issue a foreign person a driver's license for a period of less than five years if he/she is authorized to stay in the United States for less than five years or indefinitely, and provides that the foreign person, for a period of up to five years after such a driver's license is first issued, would be able to renew it without fee, though if the length of authorized stay is indefinite, the license shall have to be renewed yearly. When the period of authorized stay is not indefinite, the license shall be valid only for the period of authorized stay.

REPRESENTATIVE LYNN offered his understanding that a visa is what is used to determine the length of a person's authorized stay in the U.S., and that similar legislation has been adopted in 36 other states and the District of Columbia.

[2:30:17 PM](#)

FORREST WOLFE, Staff, Representative Bob Lynn, Alaska State Legislature, on behalf of Representative Lynn, one of the joint prime sponsors of HB 1, in response to a question, confirmed that the previous committee of referral removed language that would have allowed a license with a duration of less than five years to be renewed by mail. He explained that this change was made at the request of the DMV.

[2:31:30 PM](#)

DEAN WAUSON - mentioning that he enforces federal immigration law, and referring to an e-mail included in members' packets - offered his belief that HB 1 would neither change the process currently undertaken by the DMV when issuing driver's licenses, nor increase costs, and opined that foreign persons whose authorized stay in Alaska is less than 90 days don't have any reason to get an Alaska driver's license. He acknowledged, however, that in instances where a foreign person's

documentation doesn't reflect how long he/she is authorized to be in the U.S., DMV personnel would have to contact the federal government for that information. In conclusion, he opined that HB 1 would discourage foreign persons from coming to Alaska to obtain driver's licenses.

[2:43:15 PM](#)

JEFFREY A. MITTMAN, Executive Director, American Civil Liberties Union of Alaska (ACLU of Alaska), after mentioning that the ACLU of Alaska's written testimony regarding HB 1 is included in members' packets, pointed out that immigration is a complex issue that is reserved solely to the federal government, and warned that significant preemption issues could therefore arise should HB 1 become law, particularly given that the DMV doesn't have the necessary training, expertise, or authority to address immigration issues. The purpose of the DMV is to assess whether individuals are qualified to drive on Alaska's roads and to issue driver's licenses to those who are, not to research myriad complicated immigration statuses. Furthermore, passage of HB 1 could also result in litigation based on a lack of equal protection, because under federal law, immigrants are a suspect class with specific protections, and HB 1 would burden immigrants in Alaska with different licensing requirements that do nothing to make the roads safer - in other words, there is no nexus between being qualified to drive in Alaska, and being authorized to stay in the country. In conclusion, he characterized HB 1 as unnecessary, noted that it is not closely tailored to any legitimate state interest, and urged the committee not to pass it.

MR. MITTMAN, in response to a question - relaying that he would conduct further research of case law pertaining to similar legislation and provide it to the committee in addition to the case-law information already included in the ACLU of Alaska's written testimony - offered his understanding that the trend in other states has been to allow for even greater leniency towards ensuring that anyone who is on a state's roads is a safe driver; in other words, other states recognize that the general course and better practice is for their motor vehicle division to focus on ensuring the safety of individuals who would be driving, not getting involved in immigration issues it has no expertise in or jurisdiction over.

[2:49:49 PM](#)

ERLING JOHANSEN, Assistant Attorney General, Labor and State Affairs Section, Civil Division (Anchorage), Department of Law (DOL), noting that in a letter he'd provided the committee dated January 28, 2013, he'd relayed that he didn't see any basis for a constitutional challenge of HB 1, opined that the bill isn't proposing a preemption of federal authority. Foreign persons coming to the DMV for a driver's license would have already obtained from the federal government any necessary documents regarding their authorized stay, and DMV personnel already consider a variety of documents on a regular basis. He said he doesn't envision HB 1 raising either equal protection issues or due process issues, and ventured that because it's the federal government that decides who is authorized to stay in the country and for how long, not DMV personnel, HB 1 is neutral with regard to treating people equally, though under it the period of a particular license's validity would vary. His research, he relayed, indicates that other states have laws similar to that proposed by HB 1.

MR. JOHANSEN noted that on a different point - that of being issued a license, rather than that of being issued a license of lesser duration - the Iowa Supreme Court, in Sanchez v. State 692 N.W.2d 812 (Iowa 2005), held that the state's driver's licensing requirement that either a social security number or federal documents authorizing a foreign national's presence in the country be provided, was rationally related to the legitimate state interest of not allowing the state's governmental machinery to facilitate the concealment of illegal aliens, and did not therefore violate Iowa's constitution or federal equal-protection rights. In conclusion, he reiterated his view that HB 1 wouldn't raise any equal protection issues. In response to a question, Mr. Johansen indicated that he'd not found any recent court cases addressing legislation similar to HB 1.

MR. MITTMAN, in response to questions and comments, said that the court cases he'd cited in the ACLU of Alaska's written testimony generally address federal consideration of state laws that impact "on immigration areas." Regardless that the courts have held that it is permissible for a state to have laws restricting the issuance of driver's licenses to just those who are present in the country legally, HB 1 is proposing something significantly different, something that would impact the rights of foreign persons who are in the country legally. In Torao Takahashi v. Fish & Game Commission 334 U.S. 410, 420 (1948), for example, the U.S. Supreme Court ruled that a state cannot adopt a classification that prevents lawfully-admitted aliens

from earning a living in the same way that other state inhabitants earn their living. It is clear from such case law, he opined, that it is impermissible - by setting up a different standard that imposes a special condition - to differentially burden someone who is lawfully present in the country.

MR. MITTMAN, in response to further questions and comments, asserted that what must be considered is the jurisprudence that assesses the rights of those who are legally present in the country - the suspect classification of legally-present immigrants - because the courts are aware that there can be discriminatory laws passed against immigrants; in other words, there is already a significant body of case law that looks at differential burdens on such persons' rights. In Hines v. Davidowitz, 312 U.S. 52, 59-60 (1941), for example, the U.S. Supreme Court invalidated a Pennsylvania requirement that legally-present immigrants must obtain an identification (ID) card every year [that then had to be shown in order to obtain a driver's license or register a vehicle]. With cases such as Takahashi and Hines, though they do not specifically address laws such as that being proposed by HB 1, what must be considered is, what [was the court's] constitutional analysis with regard to state laws that impact immigrants.

REPRESENTATIVE LYNN, in response to a question, reiterated his belief that similar legislation has been adopted in 36 other states and the District of Columbia, and offered his understanding that none of those laws have been challenged.

REPRESENTATIVE GRUENBERG, in response to comments, offered his belief that not enough research regarding the legislation in those [other jurisdictions] has been conducted yet, particularly with regard to any constitutional issues they raise.

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REPRESENTATIVE PRUITT moved to report CSHB 1(STA) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 1(STA) was reported from the House Judiciary Standing Committee.

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ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:07 p.m.