

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

April 7, 2014

1:09 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Charisse Millett

COMMITTEE CALENDAR

CONFIRMATION HEARING(S):

Legislative Ethics Committee

Janie Leask - Anchorage

Christena Williams - Ketchikan

-CONFIRMATION(S) ADVANCED

HOUSE BILL NO. 214

"An Act relating to mental health patient rights, notifications, and grievance procedures."

- MOVED CSHB 214(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 282

"An Act relating to the rights and obligations of residential landlords and tenants; and relating to the taking of a permanent fund dividend for rent and damages owed to a residential landlord."

- HEARD & HELD

HOUSE BILL NO. 375

"An Act relating to the crime of trespass."

- MOVED CSHB 375(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 60

"An Act adopting and relating to the Uniform Real Property Transfer on Death Act."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 214

SHORT TITLE: MENTAL HEALTH PATIENT RIGHTS & GRIEVANCES

SPONSOR(s): REPRESENTATIVE(s) HIGGINS, TARR, GATTIS

01/21/14	(H)	PREFILE RELEASED 1/10/14
01/21/14	(H)	READ THE FIRST TIME - REFERRALS
01/21/14	(H)	HSS, JUD, FIN
02/18/14	(H)	HSS AT 3:00 PM CAPITOL 106
02/18/14	(H)	Heard & Held
02/18/14	(H)	MINUTE(HSS)
02/25/14	(H)	HSS AT 3:00 PM CAPITOL 106
02/25/14	(H)	Heard & Held
02/25/14	(H)	MINUTE(HSS)
03/11/14	(H)	HSS AT 3:00 PM CAPITOL 106
03/11/14	(H)	Heard & Held
03/11/14	(H)	MINUTE(HSS)
03/14/14	(H)	HSS AT 8:00 AM CAPITOL 106
03/14/14	(H)	Moved CSHB 214(HSS) Out of Committee
03/14/14	(H)	MINUTE(HSS)
03/18/14	(H)	HSS RPT CS(HSS) NT 5DP 1NR
03/18/14	(H)	DP: SEATON, REINBOLD, NAGEAK, TARR, HIGGINS
03/18/14	(H)	NR: KELLER
04/07/14	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 282

SHORT TITLE: LANDLORD AND TENANT ACT

SPONSOR(s): REPRESENTATIVE(s) ISAACSON

01/29/14	(H)	READ THE FIRST TIME - REFERRALS
01/29/14	(H)	L&C, JUD
02/28/14	(H)	L&C AT 3:15 PM BARNES 124
02/28/14	(H)	Heard & Held
02/28/14	(H)	MINUTE(L&C)
03/14/14	(H)	L&C AT 3:15 PM BARNES 124
03/14/14	(H)	Heard & Held

03/14/14 (H) MINUTE(L&C)
 03/17/14 (H) L&C AT 3:15 PM BARNES 124
 03/17/14 (H) Moved CSHB 282(L&C) Out of Committee
 03/17/14 (H) MINUTE(L&C)
 03/19/14 (H) L&C RPT CS(L&C) 1DP 6NR
 03/19/14 (H) DP: JOSEPHSON
 03/19/14 (H) NR: MILLETT, CHENAULT, HERRON,
 REINBOLD, SADDLER, OLSON
 03/28/14 (H) JUD AT 1:00 PM CAPITOL 120
 03/28/14 (H) Heard & Held
 03/28/14 (H) MINUTE(JUD)
 04/04/14 (H) JUD AT 1:00 PM CAPITOL 120
 04/04/14 (H) Heard & Held
 04/04/14 (H) MINUTE(JUD)
 04/07/14 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 375

SHORT TITLE: CRIMINAL TRESPASS ON PRIVATE PROPERTY
 SPONSOR(S): FINANCE

03/13/14 (H) READ THE FIRST TIME - REFERRALS
 03/13/14 (H) JUD
 04/02/14 (H) JUD AT 1:00 PM CAPITOL 120
 04/02/14 (H) Heard & Held
 04/02/14 (H) MINUTE(JUD)
 04/07/14 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 60

SHORT TITLE: UNIFORM REAL PROPERTY TRANSFERS ON DEATH
 SPONSOR(S): GRUENBERG

01/16/13 (H) PREFILE RELEASED 1/11/13
 01/16/13 (H) READ THE FIRST TIME - REFERRALS
 01/16/13 (H) L&C, JUD
 03/21/14 (H) L&C AT 3:15 PM BARNES 124
 03/21/14 (H) -- MEETING CANCELED --
 03/24/14 (H) L&C AT 3:15 PM BARNES 124
 03/24/14 (H) Heard & Held
 03/24/14 (H) MINUTE(L&C)
 03/28/14 (H) L&C AT 3:15 PM BARNES 124
 03/28/14 (H) Moved CSHB 60(L&C) Out of Committee
 03/28/14 (H) MINUTE(L&C)
 03/31/14 (H) L&C RPT CS(L&C) NT 2DP 3NR
 03/31/14 (H) DP: JOSEPHSON, OLSON
 03/31/14 (H) NR: CHENAULT, HERRON, JOHNSON
 04/07/14 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

JANIE LEASK, Appointee
Legislative Ethics Committee
Anchorage, Alaska
POSITION STATEMENT: Spoke as appointee.

REPRESENTATIVE PETE HIGGINS
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HB 214 as sponsor.

TOM STUDLER, Staff
to Representative Pete Higgins
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HB 214 on behalf of Representative Higgins, sponsor.

FAITH MYERS, Psychiatric Patient Advocate Volunteer
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 214.

DORRANCE COLLINS, Psychiatric Patient Advocate Volunteer
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 214.

CHRISTENA WILLIAMS, Appointee
Legislative Ethics Committee
Ketchikan, Alaska
POSITION STATEMENT: Spoke as appointee.

J. FAITH BURKHART, Executive Director
Alaska Mental Health Board
Fairbanks, Alaska
POSITION STATEMENT: Began testimony on HB 214, but due to audio problems, she said she would submit written comments.

BRENDA HEWITT, Staff
to Senator Doug Isaacson
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HB 282 on behalf of Representative Isaacson, sponsor.

REPRESENTATIVE DOUG ISAACSON
Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented HB 282 as sponsor.

DARRELL BREESE, Staff
to Representative Bill Stoltze
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 375 on behalf of Representative Stoltze, sponsor.

BURKE WALDRON, Captain
Alaska Wildlife Troopers
Department of Public Safety
Palmer, Alaska

POSITION STATEMENT: Answered questions regarding HB 375.

AL BARRETTE
Fairbanks, Alaska

POSITION STATEMENT: Testified in opposition to HB 375.

ANNE CARPENETI, Attorney
Criminal Division
Alaska Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Answered questions regarding HB 375.

THOMAS GALLANIS, Professor
University of Iowa Law School
Iowa City, Iowa

POSITION STATEMENT: Presented information regarding HB 60.

BENJAMIN ORZESKE, Legislative Council
Uniform Acts on Real Property, Trusts, and Estates
Uniform Law Commission
Chicago, Illinois

POSITION STATEMENT: Presented information regarding HB 60.

BRANDON CINTULA
Alaska Trust Company
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 60.

MARIE DARLIN
Alaska Commission on Aging
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 60.

REPRESENTATIVE DOUG ISAACSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 282 as sponsor.

BRENDA HEWITT, Staff
to Senator Doug Isaacson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 282 on behalf of Representative Isaacson, sponsor.

ACTION NARRATIVE

[1:09:24 PM](#)

CHAIR WES KELLER called the House Judiciary Standing Committee meeting to order at 1:09 p.m. Representatives LeDoux, Lynn, Pruitt, Gruenberg and Keller were present at the call to order. Representative Foster arrived as the meeting was in progress.

[1:11:13 PM](#)

CHAIR KELLER began a discussion of HB 214 but said the committee needed to hold confirmation hearings because the joint session is coming up and the conferees are on line.

CONFIRMATION HEARING(S): **Legislative Ethics Committee**

[1:11:40 PM](#)

JANIE LEASK, Appointee, Legislative Ethics Committee, said she lives in Homer, Alaska, and was appointed as an alternate to the Legislative Ethics Committee last year. Tony Mallott resigned and so she can be considered as a member, she added. She said she has the highest regard for the individuals who volunteer to participate by running for office as citizen legislators. "I understand the intent of the Legislative Ethics Committee; it has been very interesting for me to serve," she stated. She added that she believes she has something to contribute and she had enjoyed being on the committee.

[1:13:15 PM](#)

CHAIR KELLER thanked Ms. Leask and said he is glad she finds it interesting.

[1:13:49 PM](#)

REPRESENTATIVE LYNN made a motion to advance the confirmation of Janie Leask, appointee to the Legislative Ethics Committee, to the joint session for consideration. There being no objection, the confirmation was advanced.

CHAIR KELLER attempted to confirm Christena Williams for the Legislative Ethics Committee; however, she was apparently not on line.

HB 214-MENTAL HEALTH PATIENT RIGHTS & GRIEVANCES

[1:15:07 PM](#)

CHAIR KELLER announced that the next order of business would be HOUSE BILL NO. 214, "An Act relating to mental health patient rights, notifications, and grievance procedures."

REPRESENTATIVE LYNN moved to adopt the proposed committee substitute (CS) for HB 214, labeled 28-LS0869\Y, Mischel, 4/4/14, as the working document. There being no objection, Version Y was before the committee.

[1:15:44 PM](#)

REPRESENTATIVE PETE HIGGINS, Alaska State Legislature, said HB 214 is a patients' rights bill for the mentally ill. "We want to give them the rights that everybody else basically should have when they go into a facility," he explained. "You're going hear words like [indecipherable] and grievances and procedures and that's what facilities have now already, and they do have that. And we're not asking them to create anything more or anything less beyond that point, but what we are asking them to do is to forward those grievances onto the administration so we can take a look at them and make sure they're doing the job." He said he has worked this bill through and it has been heard frequently in another committee, and "we've done a great job on basically trying to address everyone's needs and making sure we're not doing undue burden on other facilities that may not participate in overnight stays for patients." He said the bill basically breaks down the grievances into three categories.

[1:17:22 PM](#)

REPRESENTATIVE HIGGINS said the first category includes small grievances "that don't really affect the state." He gave the example of "my peas are too cold and my cocoa's too hot," and other such grievances that the facility can take care of fairly easily. But the grievances he wants to hear about deal with the patient's rights, he said, like being denied a patient advocate or telephone access. Such grievances will be forwarded to the administration, he said. The third category, he explained, includes criminal grievances, and they need to be forwarded to the administration. "We don't want any of that hidden," he added. This is a bill of transparency; this is letting the state know that the facilities are doing the right thing, he stated. He said the facilities are doing the right thing. Some facilities do not support HB 214, he noted, because they do not like oversight, and that is a red flag. He is in the health profession, and when he first started taking Medicaid, people told him that he would not like the audits. But he said he had no problem with audits since he was not doing anything wrong. He added that he is computerized, so audits are easy, and they help him know where he is doing something wrong so he can do better. This bill is about basic patient rights and there is pretty good support, he said.

[1:19:13 PM](#)

TOM STUDLER, Staff, to Representative Pete Higgins, Alaska State Legislature, directed the committee's attention to the sectional analysis of HB 214. Section 1 adds mental health grievance appeals to the jurisdiction of the Office of Administrative Hearings; Section 2 requires the Office of Administrative Hearings to maintain confidentiality of these records and their grievance appeals; Section 3 amends AS 47.30.660 by defining and limiting the powers and the duties of the department on what it can delegate; and Section 4 adds to the list of rights of a person undergoing mental health evaluation or treatment, including involuntary commitments.

[1:19:59 PM](#)

MR. STUDLER said the additional rights include the right to file a grievance; the right to have a designated representative of their choosing to act as their advocate and to assist in the filing of a grievance; the right to natural support systems, including family, friends, and help networks after being in a locked facility for over three days; and the right to maintain confidentiality of their records. He said Section 5 establishes a grievance procedure including a call center, departmental

review, and appeal. It also establishes three categories of grievances and defines grievance, grievant, and unit, he explained. Section 6 requires the Department of Health and Social Services (DHSS) to provide a standardized notice of patients' rights, assistance, and grievance procedures. He said Section 7 of HB 214 requires a transition period.

[1:20:57 PM](#)

MR. STUDLER said this bill has been much belabored to make changes for patients' rights and to meet the needs of DHSS. He expressed his belief that this bill represents a consensus. He explained how the CS changes the bill. Section 3 was changed after discussions with the Department of Law and DHSS so that DHSS can maintain what it needs to do and to delegate those powers necessary to facilitate a good mental health program in the state. Section 4 was just renumbered for the CS, he stated, and the definition of "unit" was added to Section 5. This was for the benefit of individuals in community health centers or in centers that do not perform evaluations or have people committed. "It takes the local community health centers out of the equation; they're no longer required to participate in this program," he explained.

[1:23:46 PM](#)

MR. STUDLER said Section 7 amends the uncodified law by adding that the DHSS shall implement these changes as soon as feasible. He then noted that he failed to explain a change with the 24-hour call center, which was removed in an earlier version of the bill and will reduce the fiscal note. Also, defining the term "unit" will further reduce the fiscal note, he said. He added that he is hoping to hear from DHSS soon regarding the note.

CHAIR KELLER called for public testimony.

The committee took an at-ease from 1:25 p.m. to 1:26 p.m.

[1:26:40 PM](#)

FAITH MYERS, Psychiatric Patient Advocate Volunteer, said she received psychiatric treatment in 2002 from the state-run Alaska Psychiatric Institute, the Providence psychiatric emergency room, and Anchorage Community Mental Health Services. She stated that she had reasons to file complaints that included denial of service, physical assault, getting a black eye by staff, and denial of basic rights. She explained that in all

cases she never received written copies of grievance and appeal procedures. She could not file an appeal and did not get a written answer in two cases.

[1:28:12 PM](#)

MS. MYERS said the mentally ill come in all shapes and sizes. As a group they are mistreated [indiscernible]. She urged the passage of HB 214 so that psychiatric patients get more equitable and fair patient rights.

CHAIR KELLER thanked her for her volunteer work and her testimony.

[1:29:21 PM](#)

DORRANCE COLLINS, Psychiatric Patient Advocate Volunteer, stated that he supports HB 214, giving psychiatric patients an absolute right to file a grievance and to appeal. It will force psychiatric institutions to improve patient care, he added. [Inaudible] As of now, psychiatric institutions hold too much power in a patient's grievance and appeal process. The DHSS [supports] the Alaska Psychiatric Institute where 97 percent of its patients arrive involuntarily, and DHSS claims that only 15 patients wanted to file a grievance last year and even less could file an appeal to resolution, he said. The hospital treats about 4,000 patients per year, and several thousand are involuntarily [committed]. Providence Hospital testified to the HESS Committee that only 10 patients wanted to file a grievance last year, he stated. [Inaudible]

[1:30:39 PM](#)

CHAIR KELLER said the committee is having difficulty hearing Mr. Collins, and he asked for written comments.

MR. COLLINS said the federal government and the Joint Commission for accreditation of hospitals have rules that help protect the patient and the grievance process, "but there is absolutely no protection for the psychiatric patients and the informal complaint process." He requested that patients get the right to file a grievance at the time of their choosing, and "following the initial evaluation, psychiatric patient rights 4, 5, 7, and 9 can only be temporarily removed if the professional in charge determines that granting those patients those rights will pose a threat to the safety and wellbeing of the patient or others." He said HB 214 should state that the patient advocate shall have

mental health advocacy training and that there will be an advocate available 24 hours a day, seven days a week.

[1:31:35 PM](#)

MR. COLLINS said patients are locked up on Sunday, not just during the week. They are locked up at midnight, and they need an advocate available all of the time, he explained. He said HB 214 should add an urgent grievance [process]. Patients are often in facilities for less than 14 days, and they could be denied their rights the entire time. He said there should be some kind of phone line where a patient can call a help center. He suggested adding clarity to when a patient grievance starts—"you tell when it ends, but when does the patient grievance start—when it's dropped in the box or when they call it in?" It should be in the bill, he opined. Closing the loopholes in HB 214 will determine if patients will actually be able to file a grievance in a fair way, he concluded.

[1:33:43 PM](#)

CHAIR KELLER briefly set aside HB 214 in order to hold a confirmation hearing.

CONFIRMATION HEARING(S):
Legislative Ethics Committee

[1:35:10 PM](#)

CHRISTENA WILLIAMS, Appointee, Legislative Ethics Committee, said she believes in public service. She is willing to serve. She added that she is capable and it is straight forward.

REPRESENTATIVE LYNN made a motion to advance the confirmation of Christena Williams, appointee to the Legislative Ethics Committee, to the joint session for consideration. There being no objection, the confirmation was advanced.

HB 214-MENTAL HEALTH PATIENT RIGHTS & GRIEVANCES

[1:36:44 PM](#)

CHAIR KELLER announced that the committee will return to public testimony for HB 214.

J. FAITH BURKHART, Executive Director, Alaska Mental Health Board, spoke of the changes made by the sponsor for HB 214,

particularly [the change] ensuring that behavioral health centers [inaudible].

The committee took an at-ease from 1:38 p.m. to 1:43 p.m.

[1:43:55 PM](#)

MS. BURKHART said she will submit her comments in writing.

The committee took an at-ease from 1:44 p.m. to 1:45 p.m.

[1:45:25 PM](#)

CHAIR KELLER ended public testimony [audio difficulties].

REPRESENTATIVE LYNN moved to report the CS (Committee Substitute) to HB 214, labeled 28-LS0869\Y, Mischel, 4/4/14, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 214(JUD) was reported out of the House Judiciary Standing Committee.

HB 282-LANDLORD AND TENANT ACT

[1:46:40 PM](#)

CHAIR KELLER announced that the next order of business would be HOUSE BILL NO. 282, "An Act relating to the rights and obligations of residential landlords and tenants; and relating to the taking of a permanent fund dividend for rent and damages owed to a residential landlord."

REPRESENTATIVE LYNN moved to adopt the latest version of HB 282. Hearing no objection, CSHB 282(L&C) was before the committee.

[1:48:00 PM](#)

REPRESENTATIVE DOUG ISAACSON, Alaska State Legislature, thanked the members who worked with him on HB 282. There are recent changes, he noted.

BRENDA HEWITT, Staff to Senator Doug Isaacson, Alaska State Legislature, said she has spoken with the members and believes that there will be a conceptual amendment to remove Section 14, which deals with domestic violence and an early departure [from a rental unit]. The issue will be addressed in the new Uniform Residential Landlord Tenant Act, "and so they'd be willing to

wait a couple years for that to be finished and then bring that back as a separate item," she said.

CHAIR KELLER said that sounds good; it was a sticking point so "that will make it a lot easier."

MS. HEWITT said if Section 14 is deleted, "it also means we may be able to delete [AS 34.03.330(b)(9)]," which is on page 12 and 13, because it will be unnecessary.

[1:49:37 PM](#)

REPRESENTATIVE GRUENBERG asked if both of those will be part of a single amendment and if there is anything else that would go into that amendment.

CHAIR KELLER asked if this was a written amendment that Representative Isaacson gave the committee or if it was new.

[1:50:24 PM](#)

REPRESENTATIVE ISAACSON answered that the only amendments [distributed to the committee] he is asking to retain are Amendments 3 and 5. He said he will offer two more amendments; one would delete Section 14 and [AS 34.03.330(b)(9)], as noted by Ms. Hewitt. Additionally, "it has been given to us that we should retain the word 'uniform' as long as possible, and so the very first part of this bill, page 1, line 6, through page 4, line 28, would actually be deleted." He said, "We would be deleting the deletion of 'uniform' in order to retain 'uniform' as there is value in the court process until the powers that govern the uniform tenant ... decree that we're no longer uniform."

[1:51:25 PM](#)

CHAIR KELLER said he will set the bill aside and try to get back to it later today. The committee needs a list of amendments and copies for each member, he stated.

CHAIR KELLER announced that HB 282 was set aside. [The bill was considered later in the same hearing.]

HB 375-CRIMINAL TRESPASS ON PRIVATE PROPERTY

[1:52:27 PM](#)

CHAIR KELLER announced that the next order of business would be HOUSE BILL NO. 375, "An Act relating to the crime of trespass."

[1:52:55 PM](#)

DARRELL BREESE, Staff, to Representative Bill Stoltze, Alaska State Legislature, said [HB 375] repeals two sections in the definition of criminal trespass in statute that require specific language and a specific manner in which individuals must post "no trespassing" signs on their property. He stated that there have been two recent conflicts in the Matanuska-Susitna Valley, and one involved trapping on private property and the other involved the shooting of a pet turkey. In both cases there were "no trespassing" signs posted, he noted, but the signs were not posted as described in statute. By repealing the definitions, the burden shifts from a big specific set of guidelines for posting signs to a narrow definition, making it simpler for property owners to declare no trespassing when they wish.

REPRESENTATIVE LEDOUX said she had a question for Anne Carpeneti [Alaska Department of Law] about the pet turkey situation.

CHAIR KELLER said Captain Burke Waldron [from the Alaska Wildlife Troopers] is here to answer questions.

REPRESENTATIVE LEDOUX asked if there was a violation of law [when the turkey was shot] that the troopers decided not to prosecute. "When you drive up on somebody's driveway and shoot something on their lawn," it would seem to violate something, she stated.

[1:55:25 PM](#)

BURKE WALDRON, Captain, Alaska Wildlife Troopers, Department of Public Safety, said his office provided a written response to the committee. There was no criminal trespass committed with the turkey incident because the turkey was shot on the person's driveway on the edge of the roadway, "and there were some significant issues in establishing whether the turkey was a feral game bird or a domestic pet," which may pertain to either a hunting violation or criminal mischief, he offered. The trooper [at the scene] exercised discretion, he said, and advised both parties of potential civil remedies.

[1:56:25 PM](#)

CHAIR KELLER said there will be public testimony.

REPRESENTATIVE GRUENBERG said he is slightly confused by the email from the troopers. He said that particular incident may not be a good example of anything because no law was broken. The question is about repealing subsections (b) and (c) in the criminal trespass law, and that will require anyone who goes for a walk in woods to do a title search of every place they go. That may be easy to do in New York City, he surmised, but it will be difficult in some areas of Alaska. He said that he imagines it will be hard to determine if someone is trespassing, "and I think the purpose of this law that is on the books is to put the average person on notice that they are on somebody else's land, and I don't see how the average person is going to know that unless there is at least something posted."

[1:59:10 PM](#)

MR. BREESE said Representative Gruenberg is partially correct. There is implied consent to use a trail crossing someone's property, just as there is implied consent for someone accessing a driving, roadway, or river that crosses a property. "So for that intent and purposes, I think, you're not looking at the opportunity to prosecute in those instances if you're just merely hiking across and walking across someone's property. I don't know that it elevates to the standards that are set forth in the descriptions of first degree and second degree criminal trespass," he said. He noted that the bill is just removing the requirement for a clear sign at every point of access.

[2:00:27 PM](#)

MR. BREESE stated that in both incidences there were [no] "no trespassing" signs posted, so according to current statute, there was no law broken. The law is flawed because there is no potential for trespassing if someone does not post a sign as specifically spelled out in statute, at every access point, that is 144 square inches and contains the name and address of the property owner and what is prohibited. The signs must be in exactly the manner specified in statute, and that is too much of a burden to place on landowners, he opined.

MR. BREESE said, "We're not saying you don't have to put a sign up, we're just saying that we're going to take out the specifics of the very specific language that describes how signs must be posted." What is required in statute is a bit of a burden to place on someone to have at every access point, he opined.

2:01:45 PM

REPRESENTATIVE GRUENBERG said, "I see where you're going." The [signage] language is really detailed, and somebody obviously wanted to be sure that the sign was readable, "but I can see that a person who owns a homestead or something out in the middle of nowhere wouldn't know what's in this obscure law and wouldn't do it." Maybe some new language can require "reasonable notice," he offered. It can give the landowner the ability to put "something up somewhere that would provide some notice," he said, and it could be a general statement to post a sign. That would make it easy for the landowner, while providing protection for the person who is crossing the property without becoming criminals, he stated.

2:03:18 PM

REPRESENTATIVE LEDOUX asked about language that would create a different standard for hikers than for trappers or hunters. If a person is hunting, or doing something substantive like that, the person should know whether or not it is private property. But for those just wondering in the woods, on a trail or not, it seems quite a burden to carry around maps.

2:04:33 PM

CHAIR KELLER noted that he was initially uneasy with the language in HB 375, but he was satisfied because it deals with Alaska, which is so unique because of the large land area and the difficulty knowing where there is private land. The answer is to get a very specific sign there that is so detailed and so crazy that it obviously does not do any good. Then he read what was not deleted from the law, and that is [subsection] (a), which talks about land that is not open to the public. "And I think that's sufficiently broad that it would allow for signs, so if I had a piece of property and I didn't want it open to the public and I posted it, I would like to think that the rational trooper that came along would take that as land that is not open to the public."

2:06:02 PM

MR. BREESE expressed his belief that the committee needs to look at the definitions for criminal trespass in the first and second degree, AS 11.46.320 and AS 11.46.330. Criminal trespass in the first degree requires the intent to commit a crime, and criminal trespass in the second degree requires a person to enter or

remain unlawfully. "I think when you get at the point of someone just walking across a property and you don't want them there and you say 'hey, it's my property, can you leave,' and the person then refuses to leave, I think that elevates it to the charge of second degree. I think until that point, we're automatically elevating things to the point where it's a second degree charge. I think—my opinion is—a judge would evaluate that and say, you know, if you asked the person to leave and the person didn't leave and remained on the property, then the person is then willfully breaking the law and is committing trespass at that point." He added that attorneys may be able to address this issue.

[2:07:18 PM](#)

CHAIR KELLER suggested taking testimony.

AL BARRETTE, said he opposed HB 375 and he is hearing people talk about what is rational and reasonable, which are arbitrary terms. Law is black and white, he stated. There is no cell phone coverage in the Interior from 10 miles north of Fairbanks, and GPS devices tell you where you are but not land status, he added. He said there are RS4277 right-of-ways that are not surveyed, so the location of the easements are unknown, and there are waterways with many recreational sites along different rivers. He stated that he is pro-property rights, and if he does not want someone on his property he will put up minimum posting so others will know. It is easy for those who live in a municipality or a borough to find out property boundaries, but it is difficult elsewhere. There are new Native lands on the books and that information will not yet be on any public maps, he added. He urged the committee to make a clear amendment without relying on the rationality of people. Reasonable signage would be appropriate, he stated.

[2:10:02 PM](#)

REPRESENTATIVE GRUENBERG said he appreciates what Mr. Barrette said. He noted that he does not hike or hunt much, but he likes to be out and many people do. He does not want to criminalize people for fishing, hiking, or camping, as long as they are not doing any harm.

REPRESENTATIVE LEDOUX asked about someone hiking on private property that is not posted, and if the Department of Law would view that as a prosecutable offense if HB 375 were passed.

ANNE CARPENETI, Attorney, Criminal Division, Alaska Department of Law (DOL), said that would technically be a violation, but "we would exercise our discretion under the circumstances."

[2:12:19 PM](#)

REPRESENTATIVE LEDOUX asked if the person would be violating the law of criminal trespass, and then "it would totally be up to you" on whether to prosecute.

MS. CARPENETI said yes.

REPRESENTATIVE GRUENBERG said there are those who want to be able to cross land and camp, fish, or hunt, for example. There is the private owner who wants to preserve land and not have everybody run around on it. He asked if Ms. Carpeneti had any suggestions. Subsection (c) looks very technical, and somebody could say he or she did not trespass because the sign was only 11 by 11 inches instead of the required 12 by 12 inches.

[2:13:39 PM](#)

MS. CARPENETI said the DOL does not have a position on this bill, but she noted that the other body amended a similar bill to repeal subsection (c) and leave subsection (b) in place. That would require an owner to either personally notify the hiker, for example, or to post notice in a reasonably conspicuous manner under the circumstances, she explained. That would leave it to be a question of fact whether the posting was reasonably conspicuous and not have the specific requirements at every entrance. She noted that that was the issue with the illegal trappers as one entrance was not posted.

CHAIR KELLER said he considered that idea, but as he looked at subsection (a), "it looked like it is mostly covered, and it looks like (b) becomes, at least somewhat, redundant. It just seemed like so many words, and so that's when I went over the edge and thought this isn't a bad bill after all."

[2:15:33 PM](#)

MS. CARPENETI said subsection (a)(1) is one of the three ways a person can enter or remain on property unlawfully, "and that is enter on premises which are not open to public, but it doesn't require any notice that it's open to the public or not." She said that is why (b) would not be redundant to (a)(1).

CHAIR KELLER said that the fact that there is a notice would imply that it is not open to the public. It leaves the option for the landowner to post a sign, and then it would not be open to the public, he added.

MS. CARPENETI said he is correct that a person could put up a sign, but (a)(1) defines "enter or remain unlawfully", which is talking about entering or remaining unlawfully on property that is not open to the public but not necessarily posted in any way.

[2:16:44 PM](#)

REPRESENTATIVE GRUENBERG added that he thinks (b) is very helpful, because notice could be personally communicated, and then a sign is unnecessary. Also, including (b) gives some direction and will make sure that, if possible, people do put up some kind of a little sign.

MR. BREESE said that (a)(1) was mentioned, but (a)(2) needs to be looked at as well if it is to remain in statute. He stated that (a) defines "enters or remains unlawfully", and it says: fails to leave the premises of a propelled vehicle or property that is open to the public after lawfully being directed to do so. Therefore, if a person can access property without a fence or something to stop the person, "it seems to be publically open," he stated. Unless someone is told to leave ... "I think it's covered in both (a)(1) and (a)(2).

[2:18:12 PM](#)

REPRESENTATIVE GRUENBERG said that (a)(1) gets at the question of whether someone is lawfully directed to leave, and if someone tells a person to leave, that is one thing. It also covers a situation where a person did not get any personal direction, but the property is not open to the public, and (b) describes what is meant by being open to the public. Even if it is not fenced, a person can be told in advance [not to enter the property], or if there is a sign, a person might not be directed to leave after being on the property, but it shows that it is not open to the public. He suggested leaving (b) in and just repealing (c).

[2:19:49 PM](#)

CHAIR KELLER closed public testimony.

REPRESENTATIVE GRUENBERG asked if the sponsor would accept an amendment to retain subsection (b).

MR. BREESE said, "If that's the will of the committee."

REPRESENTATIVE GRUENBERG moved to offer Conceptual Amendment 1 as follows: AS 11.46.350(c) is repealed.

[2:20:46 PM](#)

CHAIR KELLER objected and said, "I think that (a) covers it. It is very general and it's very broad. I understand that, but that's the nature of our land in Alaska. It is very difficult to know where you're at and what's going on. So I think it's sufficient."

REPRESENTATIVE LEDOUX said she is uncomfortable with it the way HB 375 reads now, because it makes a criminal out of someone who is just trying to take a hike. She realizes that Ms. Carpeneti said hopefully DOL would use its discretion and there would not be too many prosecutions, but she is still uncomfortable. She said she feels better with Representative Gruenberg's amendment.

CHAIR KELLER removed his objection [to Conceptual Amendment 1] and said he would let the sponsor fix it. There being no further objections, Conceptual Amendment 1 was adopted.

[2:22:55 PM](#)

CHAIR KELLER clarified the amendment.

REPRESENTATIVE GRUENBERG said that [subsection](c) is repealed.

[2:23:08 PM](#)

REPRESENTATIVE LYNN moved to report HB 375, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 375(JUD) passed out of the House Judiciary Standing Committee.

HB 60-UNIFORM REAL PROPERTY TRANSFERS ON DEATH

[2:23:39 PM](#)

CHAIR KELLER announced that the next order of business would be HOUSE BILL NO. 60. "An Act adopting and relating to the Uniform Real Property Transfer on Death Act."

REPRESENTATIVE GRUENBERG said he is one of the sponsors of HB 60, and he has a committee substitute.

REPRESENTATIVE GRUENBERG moved to adopt the proposed committee substitute (CS) for HB 60, labeled 28-LS0265\Y, Bannister, 4/6/14, as the working document.

[2:25:09 PM](#)

CHAIR KELLER objected.

REPRESENTATIVE GRUENBERG said there are two people from out of state on the phone line. One, Thomas Gallanis, is the reporter for the uniform act and is a law professor at the University of Iowa Law School. The reporter is the person who puts the [uniform] act together, he explained.

[2:26:17 PM](#)

THOMAS GALLANIS, Professor, University of Iowa Law School, said he was the reporter for the Uniform Property Transfer on Death Act. He said he does not have prepared remarks; however, he fully associates himself with the written testimony, which was submitted on March 21 to the Labor and Commerce Committee by Ben Orzeske of the Uniform Law Commission. He was told that the written testimony has been made available to the Judiciary Committee, and he would be happy to answer any questions.

[2:27:06 PM](#)

REPRESENTATIVE GRUENBERG said nobody on this committee sits on the Labor and Commerce Committee, and he asked if Mr. Gallanis could briefly describe the problem that the uniform act addresses and how it addresses it, then the committee will know what he has done and why HB 60 is important.

MR. GALLANIS said that over that last few decades there has been growth in the "non-probate revolution," which is the ability of people to easily and thriftily transfer their property to named beneficiaries outside of the probate process. The non-probate revolution has historically focused on personal property. For example, bank accounts now have a pay-on-death feature, and there are securities registered in transfer-on-death (TOD) form. Those are non-probate transfers, he stated. Citizens across the country routinely take advantage of this trend to pass money and personal property to a named beneficiary outside of probate. The Uniform Real Property Transfer on Death Act would allow

Alaska residents to similarly transfer real property to a named beneficiary at the time of the owner's death. This idea of a transfer-on-death deed has been around for some time, he said, and Missouri, in 1989, became the first state to allow such deeds.

[2:29:16 PM](#)

MR. GALLANIS said five states allowed it by 2002, and the Uniform Law Commission then began to study the issue. The Real Property Transfer on Death Act was completed by the commission in 2009, and 23 states now have the uniform act or similar legislation.

[2:30:03 PM](#)

REPRESENTATIVE GRUENBERG asked if the latest state to pass legislation is South Dakota, and that three other states, including Alaska, are considering the issue.

MR. GALLANIS said that the two states recently considering the legislation, Washington and West Virginia, have enacted it. In response to Representative Gruenberg, he explained the process in that a person owning property would execute a deed, and the deed would comply with all of the standard requirements for a legally reportable deed, but the deed would name a beneficiary who would not have any interest in the property until the owner died. The deed will operate analogously to a will or a pay-on-death bank account. The deed, in effect, lies dormant while the owner is alive, but it operates efficiently and outside of probate at the owner's death to transfer the property to the beneficiary.

[2:32:20 PM](#)

REPRESENTATIVE GRUENBERG noted that page 3 [of the bill] says that the deed must state that it occurs at the person's death, and it identifies the person specifically. He asked, "What do you do with the deed and how does it operate?"

MR. GALLANIS said the deed is recorded, but unlike a standard inter-vivos deed, which operates to transfer ownership during the owner's lifetime, this transfer operates at death.

[2:33:10 PM](#)

REPRESENTATIVE GRUENBERG asked if a person can revoke or renounce the deed.

MR. GALLANIS said absolutely. These transfer-on-death deeds, like pay-on-death designations for a bank account, have the two principle features of wills: they are both fully revocable during the owner's life and they are ambulatory. The uniform act lays out multiple ways in which the deed can be revoked, and one way is to record a subsequent deed, which will revoke the prior deed, and another way is to file an instrument of revocation. If the owner sells the property to another person, that revokes the transfer-on-death deed.

[2:35:05 PM](#)

REPRESENTATIVE GRUENBERG asked about a non-recorded will that will not be effective.

MR. GALLANIS said, "We very much want information about the property to be in the chain of title, and therefore simply executing a will that sends 123 Main Street to a different beneficiary does not operate to revoke the transfer-on-death deed."

[2:35:56 PM](#)

REPRESENTATIVE GRUENBERG said the key is that it must be recorded, so anyone can look quickly and see if the deed is still valid.

MR. GALLANIS agreed. He added that during the drafting of the uniform act, there was significant help from the estate planning and real property sections of the bar and from a title insurance and banking representative. "They really helped us think through all of the issues to make sure that there would not be [indecipherable] on title," he said.

CHAIR KELLER said that the committee is not going to move the bill today, and it will be set aside at 2:45.

MR. GALLANIS responded to a question and said that in the uniform act there is both a suggested form for the transfer-on-death deed and a suggested form for the instrument of revocation. He noted that he has not looked at the Alaska version of the bill to know what forms are included.

[2:37:50 PM](#)

CHAIR KELLER said both forms are in the latest version of the bill. He asked what happens when someone is acting on behalf of an owner and what complications are there when someone has the power of attorney.

[2:39:15 PM](#)

BENJAMIN ORZESKE, Legislative Council, Uniform Acts on Real Property, Trusts, and Estates, Uniform Law Commission, said the act requires the owners of the property to act personally, and they must have the capacity to act for themselves. If a person does not have the capacity to execute a will, that person cannot execute a transfer-on-death deed, he explained, and the deed must be recorded in public lands records before the owner's death, he added. Unless a power-of-attorney specifically says that it allows the agent to act on behalf of the principal to change beneficiary designations or to dispose of a specific parcel of real property, under most power-of-attorney statutes the agent would not be permitted to execute one of these deeds on behalf of the principal who granted that authority.

[2:41:36 PM](#)

REPRESENTATIVE GRUENBERG said the bill addresses that on page 4:

If a recorded power-of-attorney or the transfer-on-death deed expressly grants a designated agent of the transfer or the power to revoke a transfer-on-death deed, the designated agent may revoke the transfer-on-death deed as provided in this section.

[2:42:55 PM](#)

BRANDON CINTULA, Alaska Trust Company, said he supports HB 60 for all Alaskans.

[Testimony was cut off due to audio problems.]

[2:44:33 PM](#)

MARIE DARLIN, Alaska Commission on Aging, said the Alaska Commission on Aging has supported this legislation from the very beginning. She noted her written testimony that contains additional information. The bill takes care of a lot of problems, she stated, and the Alaska Commission on Aging fully supports the bill and has tried to work with those involved.

She added that AARP has been involved as well, and this is something that has been needed for a long time.

[2:47:06 PM](#)

CHAIR KELLER set HB 60 aside.

HB 282-LANDLORD AND TENANT ACT

[2:47:46 PM](#)

CHAIR KELLER announced that the next order of business would be HOUSE BILL NO. 282, "An Act relating to the rights and obligations of residential landlords and tenants; and relating to the taking of a permanent fund dividend for rent and damages owed to a residential landlord." [HB 282 was also heard earlier in this hearing.]

The committee took an at-ease from 2:47 p.m. to 2:50 p.m.

[2:50:18 PM](#)

CHAIR KELLER announced what the committee will cover on Wednesday.

[2:50:54 PM](#)

REPRESENTATIVE DOUG ISAACSON, Alaska State Legislature, said he has provided an amendment analysis for version P of HB 282. Of the eight amendments here, he stated, he is asking that the committee not move Amendment 1. He noted that Amendment 2 was previously deleted, and he would like Amendment 3 to be offered. He said he does not want the committee to adopt Amendment 4 or 5, and he would like Amendments 6 and 7 and Conceptual Amendment 8 to be offered. He spoke of what he called Amendment 3.

[2:52:04 PM](#)

CHAIR KELLER clarified that he was speaking of the amendment labeled P.3, which will be Amendment 1.

UNIDENTIFIED SPEAKER moved to adopt Amendment 1, [labeled 28-LS0930\P.3, Bullock, 3/25/14] as follows [original punctuation provided]:

Page 10, line 1:

Delete "or"

Insert ", by a"

Page 10, line 2, following "premises":

Insert ", or the rental agreement"

[2:52:30 PM](#)

CHAIR KELLER objected.

REPRESENTATIVE ISAACSON said in absence of a local law restricting the number of people in a dwelling, the language in Amendment 1 allows the landlord to set the number of occupants in the rental agreement.

REPRESENTATIVE LEDOUX asked if that was not allowed previously.

BRENDA HEWITT, Staff, to Senator Doug Isaacson, Alaska State Legislature, said it is her understanding that landlords are not able to make those restrictions.

[2:53:33 PM](#)

CHAIR KELLER removed his objection. There being no further objections, Amendment 1 was adopted.

REPRESENTATIVE PRUITT moved to adopt Amendment 2, [labeled 28-LS0930\P.6, Bullock, 4/7/14], as follows [original punctuation provided]:

Page 10, line 10, through page 11, line 5:

Delete all material.

Renumber the following bill sections accordingly.

Page 13, line 30:

Delete "Sections 4 - 16"

Insert "Sections 4 - 15"

[2:54:39 PM](#)

CHAIR KELLER objected.

REPRESENTATIVE ISAACSON said the Uniform Residential Landlord Tenant Act pending in Congress is "vetting a lot of this issue. It was suggested that we remove this section until those have been covered on the federal side just for the best clarity. This subject has a lot of tentacles to it and all the parties are willing to wait until it's finalized and bring it back as its own bill later."

[2:54:46 PM](#)

CHAIR KELLER clarified that Amendment 2 deletes Section 14, pages 10-11 from HB 282. He removed his objection. There being no further objections, Amendment 2 was adopted.

[2:54:54 PM](#)

REPRESENTATIVE PRUITT moved Amendment 3, labeled 28-LS0930\P.7, Bullock, 4/7/14, as follows [original punctuation provided]:

Page 12, lines 15 - 16:

Delete "in this paragraph, "transient occupancy" means the presence or stay of an individual for less than 30 consecutive days;"

Page 12, line 28, through page 13, line 1:

Delete ";

(9) occupancy by an individual who is a victim of trauma from a sexual assault or domestic violence and who is receiving housing assistance from a victim counseling center; in this paragraph, "victim counseling center" has the meaning given in AS 18.66.250"

CHAIR KELLER objected.

REPRESENTATIVE ISAACSON said there were issues with transient occupancy. It will be dealt with separately, he noted. With Amendment 5 "we're also noting that [paragraph] 9, as noted on the page, is also no longer necessary, so we're deleting that section."

[2:55:57 PM](#)

CHAIR KELLER clarified that Amendment 5 deletes page 12, lines 15 and 16.

REPRESENTATIVE ISAACSON noted that line 28 on page 12 will also be deleted.

REPRESENTATIVE GRUENBERG expressed his belief that the cleaner way of accomplishing that is to strike Section 16 from the bill, "because that is all that 16 does."

[2:56:42 PM](#)

REPRESENTATIVE PRUITT withdrew his [motion].

[2:57:06 PM](#)

REPRESENTATIVE GRUENBERG offered Conceptual Amendment 4 to strike Section 16 on pages 12-13.

[2:57:21 PM](#)

REPRESENTATIVE ISAACSON asked about the amendment.

REPRESENTATIVE GRUENBERG said it is crystal clear that the current law will remain: AS 34.03.330(b) is totally unchanged, the regular text remains, and none of the new language goes in.

[2:58:23 PM](#)

CHAIR KELLER clarified that Conceptual Amendment 4 deletes page 12, line 3, through page 13, line 1, which is the entirety of Section 16.

REPRESENTATIVE PRUITT said this approach is cleaner.

There being no objection, Conceptual Amendment 4 was adopted.

[2:59:15 PM](#)

REPRESENTATIVE ISAACSON said his next amendment retains the word "uniform" on page 1, line 6; page 4, line 28; and page 13, line 3, "so it basically deletes several sections that we were originally removing the word 'uniform', now it has been advised that we retain it for purposes of benefit to the residents of the state."

[2:59:55 PM](#)

REPRESENTATIVE GRUENBERG said he asked Representative Isaacson to leave the title unchanged in AS 34.03.330 because unless the commissioners on uniform state law say the state is no longer uniform, "we should be uniform; it's a great benefit." The decisions from other states have persuasive and precedential value, he said. Additionally, the commissioners will be able to look at the final product, because it is unknown what might be done on the floor and by the Senate, and it is premature to do that now, he explained.

CHAIR KELLER said Representative Gruenberg is talking about Conceptual Amendment 5. He asked him to make his motion.

[3:01:20 PM](#)

REPRESENTATIVE GRUENBERG moved to delete Section 17 of HB 282 and retain the term "Uniform Residential Landlord and Tenant Act," or anything like that where ever it appears. "So the law would remain unchanged, but we basically take out Section 17 and conform the rest of the bill so that we still refer to the uniform act."

[3:01:53 PM](#)

REPRESENTATIVE ISAACSON said he believes what is really being offered is removing "uniform" in Sections 1, 2, and 3. By just deleting Sections 1, 2, 3, and 17, that would be accomplished, he said.

REPRESENTATIVE GRUENBERG agreed and moved to delete Section 1, pages 1-3; Section 2, pages 3-4; Section 3, page 4; and Section 17, page 13 from HB 282.

CHAIR KELLER objected. That is Amendment 5, and it is to delete Sections 1-3 and Section 17 from the bill. He removed his objection and there being no further objections, Conceptual Amendment 5 was adopted.

[3:04:34 PM](#)

REPRESENTATIVE GRUENBERG said that somebody handed out some definitions [of terms contained in HB 282].

REPRESENTATIVE ISAACSON said the bill still has the pet deposit; the definition of normal wear and tear; the requirement that landlords maintain a separate accounting of security funds; the confirmation of premise condition; the allowance of dry cabins; the allowance of landlords to restrict the number of persons in a dwelling; the allowance for landlords to evict tenants for illegal activities; and the allowance for landlords to attach the Alaska Permanent Fund dividend for unpaid rent or damages. Therefore, he said, HB 282 still "does extensive work that will help both the tenant and the landlord have safe and affordable housing."

[3:05:58 PM](#)

CHAIR KELLER said he will get a CS to the committee as soon as it is available. He set HB 282 aside.

REPRESENTATIVE GRUENBERG said he thinks it is a good bill.

REPRESENTATIVE LYNN said he is ready to buy income property or to [become a renter] once this bill passes.

[3:06:58 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:06 P.M.