

**ALASKA STATE LEGISLATURE  
SENATE JUDICIARY STANDING COMMITTEE**

March 16, 2015

1:41 p.m.

**MEMBERS PRESENT**

Senator Lesil McGuire, Chair  
Senator John Coghill, Vice Chair  
Senator Mia Costello  
Senator Peter Micciche  
Senator Bill Wielechowski

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 5

"An Act relating to the persons who may be appointed conservators of a protected person."

- HEARD & HELD

SENATE BILL NO. 47

"An Act relating to exemptions for cash surrender values, accrued dividends, and loan values of life insurance and annuity contracts."

- HEARD & HELD

SENATE BILL NO. 43

"An Act relating to immunity for a fire department and employees or members of a fire department."

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 5

SHORT TITLE: CONSERVATOR OF PROTECTED PERSONS

SPONSOR(S): REPRESENTATIVE(S) HAWKER

01/21/15 (H) PREFILE RELEASED 1/9/15

01/21/15 (H) READ THE FIRST TIME - REFERRALS  
01/21/15 (H) JUD  
02/06/15 (H) JUD AT 1:00 PM CAPITOL 120  
02/06/15 (H) <Bill Hearing Canceled>  
02/11/15 (H) JUD AT 1:00 PM CAPITOL 120  
02/11/15 (H) Heard & Held  
02/11/15 (H) MINUTE(JUD)  
02/18/15 (H) JUD AT 1:00 PM CAPITOL 120  
02/18/15 (H) Moved HB 5 Out of Committee  
02/18/15 (H) MINUTE(JUD)  
02/20/15 (H) JUD RPT 3DP 1NR 1AM  
02/20/15 (H) DP: LYNN, KELLER, LEDOUX  
02/20/15 (H) NR: CLAMAN  
02/20/15 (H) AM: GRUENBERG  
02/25/15 (H) TRANSMITTED TO (S)  
02/25/15 (H) VERSION: HB 5  
02/27/15 (S) READ THE FIRST TIME - REFERRALS  
02/27/15 (S) JUD  
03/16/15 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 47

SHORT TITLE: LIFE INSURANCE/ANNUITY EXEMPTIONS  
SPONSOR(S): SENATOR(S) COGHILL

02/11/15 (S) READ THE FIRST TIME - REFERRALS  
02/11/15 (S) L&C, JUD  
02/26/15 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)  
02/26/15 (S) Heard & Held  
02/26/15 (S) MINUTE(L&C)  
03/03/15 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)  
03/03/15 (S) Moved SB 47 Out of Committee  
03/03/15 (S) MINUTE(L&C)  
03/04/15 (S) L&C RPT 3DP  
03/04/15 (S) DP: GIESSEL, MEYER, STEVENS  
03/16/15 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

REPRESENTATIVE MIKE HAWKER  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Sponsor of HB 5.

CECILE ELLIOTT, Staff  
Representative Mike Hawker  
Alaska State Legislature

Juneau, Alaska

**POSITION STATEMENT:** Provided information relevant to HB 5.

NANCY MEADE, General Counsel

Administrative Staff

Alaska Court System

Anchorage, Alaska

**POSITION STATEMENT:** Answered questions related to HB 5.

MARIE DARLIN

AARP of Alaska

Juneau, Alaska

**POSITION STATEMENT:** Testified in support of HB 5.

DARIN COLBRY, representing himself

Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 5.

GERMAN BAQUERO, Intern

Senator John Coghill

Alaska State Legislature

Juneau, Alaska

**POSITION STATEMENT:** Introduced SB 47 on behalf of the sponsor,

MATTHEW BLATTMACHR, Principle

Alaska Trust Company

Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 47.

LINDA HULBERT, Agent

New York Life Insurance

Fairbanks, Alaska

**POSITION STATEMENT:** Testified in support of SB 47.

LORI WING-HEIER, Director

Division of Insurance

Department of Commerce, Community and Economic Development

Juneau, Alaska

**POSITION STATEMENT:** Answered questions related to SB 47.

## **ACTION NARRATIVE**

[1:41:29 PM](#)

**CHAIR LESIL MCGUIRE** called the Senate Judiciary Standing Committee meeting to order at 1:41 p.m. Present at the call to order were Senators Costello, Coghill, Wielechowski, and Chair

McGuire. Senator Micciche arrived during the course of the meeting.

**HB 5-CONSERVATOR OF PROTECTED PERSONS**

[1:41:58 PM](#)

CHAIR MCGUIRE announced the consideration of HB 5. "An Act relating to the persons who may be appointed conservators of a protected person."

[1:42:22 PM](#)

REPRESENTATIVE MIKE HAWKER, Alaska State Legislature, sponsor of HB 5, introduced the bill speaking to the following sponsor statement:

Current statute outlines criteria for who may be a conservator and under what circumstances they may serve as such. This responsibility is limited to certain relatives, thereby excluding other relatives. House Bill 5 helps families act in their own best interest by allowing an adult related by blood, marriage or adoption to serve as conservator. Expanding the pool of persons who could serve as a conservator will allow greater flexibility and choice for individuals and families needing this service.

House Bill 5 does not change the judicial process for appointing a conservator or weaken the court's authority to act in the "best interest" of the protected person.

REPRESENTATIVE HAWKER asked the committee to consider this as a small step in making it easier to secure conservatorships. It tries to help the narrow window of people who want to have an in-law or an adult related by marriage or adoption to be able to be a conservator.

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CHAIR MCGUIRE stated support for the bill and explained why she is leaning toward expanding the bill further. Primarily it is to meet the situations where a potential conservator is divorced, a close friend or business partner. She provided two scenarios. First, if her father and step mother were to divorce, her step brother would be excluded from being appointed her conservator because he would no longer be related to her by marriage. This would be the case even if the court determined that a potential conflict of interest was not substantial and the appointment

would be in her best interest as the protected person. The second scenario assumes she has no biological siblings who are female, but she has two life-long girlfriends who also have a common business interest. That presents an inherent potential financial conflict of interest.

She said that it is ultimately about the person who needs a conservator and she believes the common law standard does that with the caveat that the court can determine that a potential conflict of interest is not substantial. She advised that she is leaning in that direction for a committee substitute (CS).

SENATOR COSTELLO suggested the committee look at the matter from the perspective of a person who has been adopted and needs a conservator. The biological family is related by blood and would qualify as a potential conservator even if the adoptee was purposefully removed from that family unit. She asked if he'd thought of that.

REPRESENTATIVE HAWKER replied the adoption statutes and the bill address that through the layered list of qualifiers.

SENATOR COGHILL observed that the two factors are that it isn't a large conflict and that it's in the best interest of the person needing a conservator.

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SENATOR COSTELLO pointed out that the exception to the exception comes from the current law which focuses on the traditional family unit of a married couple and adult children. Changing the statute to an adult related by blood expands the exception to include people who are related by blood to a person who has been adopted. She also questioned the use of the phrase "or adoption" because people don't talk about their legal children and their adopted children; they refer to their family as a unit.

REPRESENTATIVE HAWKER reviewed the prioritized list and pointed out there is nothing that mandates that someone related by blood can demand the conservatorship and disregard what the protected person may want.

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SENATOR MCGUIRE questioned the wisdom of creating a separate standard for anybody.

SENATOR COSTELLO asked if there is a difference between a conservator and a power of attorney.

REPRESENTATIVE HAWKER deferred the question to a competent attorney. He noted that Ms. Elliott had something to add.

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CECILE ELLIOTT, Staff, Representative Mike Hawker, provided some background information. In 2004 the licensure of guardian and conservator statutes were amended to encourage more people to serve in this capacity, but the conflict of interest was not fully addressed. Nor was it in the Uniform Probate Code.

SENATOR WIELECHOWSKI observed that the statute is awkwardly written. He surmised that the issue for the in-laws is that the court sees a potential conflict in that relationship, perhaps with inheritance. He asked if that or something else is at issue.

REPRESENTATIVE HAWKER agreed that the statute is cumbersome and confirmed that the point at issue is that there is no explicit provision to allow an in-law to be appointed a conservator. He advised that he had the exception drafted to minimize the changes.

SENATOR WIELECHOWSKI questioned the potentially broad ramifications of making this change.

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CHAIR MCGUIRE stated her intent to hold the bill so members could think about potential conservators that fall outside the model. For example, someone who was her step brother for 23 years before her parents divorced wouldn't qualify because he would no longer be related to her by marriage.

REPRESENTATIVE HAWKER suggested the chair asked the court how it would view the various scenarios.

SENATOR COSTELLO expressed interest in knowing what other states have done and stated support for flexibility in the law to facilitate the selection of the right conservator.

CHAIR MCGUIRE commented on the changing definition of family over time.

[2:13:40 PM](#)

SENATOR MICCICHE joined the committee.

CHAIR MCGUIRE thanked the sponsor for bringing the issue forward. She asked Ms. Meade to comment on two scenarios: a step brother no longer related by marriage and her best friend since age 17 as potential conservators. The assumption in both scenarios is that there is a conflict because she is living in their home.

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NANCY MEADE, General Counsel, Administrative Staff, Alaska Court System, said her understanding of the statute is that there would be a conflict of interest under AS 13.26.210(b). Subsection (c) provides an exception to that conflict but the list of potential conservators does not include a step brother no longer related by marriage or a best friend.

SENATOR WIELECHOWSKI asked how many times per year the court appoints a conservator.

MS. MEADE replied it's not insubstantial and the numbers are growing as the population ages. She offered to follow up with the exact number and highlighted that conservators, guardianships, and probate as a whole is the fastest growing case type.

SENATOR COSTELLO asked how often a conservator is appointed according to law, but is someone different than the protected person requested or had in mind.

MS. MEADE said she didn't believe it happens very often, but that is not a reason to maintain the statute.

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SENATOR WIELECHOWSKI expressed interest in getting the numbers on how many cases come up, how many times the conservator is rejected, and the grounds for the rejection to get a sense of the magnitude of the problem.

MS. MEADE agreed to get the information.

[2:17:50 PM](#)

MARIE DARLIN, representing AARP of Alaska, advised that the packets contain letters of support for HB 5 from AARP and the Alaska Commission on Aging.

CHAIR MCGUIRE asked if AARP would support a committee substitute to entirely eliminate the qualifiers. It would simply say that

if there was a conflict, the court would consider the protected person's preference to be their conservator.

MS. DARLIN said she believes so and she would provide a letter.

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DARIN COLBRY, representing himself, Anchorage, Alaska, testified in support of HB 5. He advised that he is Representative Hawker's constituent who brought the issue forward. His dad is his conservator and his wife wanted her father-in-law to be her conservator as well, but the court said it was a conflict of interest based on the living situation. He elaborated on the difficulties that decision has caused.

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CHAIR MCGUIRE found no further testifiers and closed public testimony. She held HB 5 in committee awaiting a committee substitute (CS).

**SB 47-LIFE INSURANCE/ANNUITY EXEMPTIONS**

[2:23:17 PM](#)

CHAIR MCGUIRE announced the consideration of SB 47. "An Act relating to exemptions for cash surrender values, accrued dividends, and loan values of life insurance and annuity contracts." She noted that this was the first hearing.

SENATOR COGHILL, sponsor of HB 47, explained that the bill amends Title 9 relating to exemptions on life insurance annuities and accrued dividends. He deferred further introduction to his intern.

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GERMAN BAQUERO, Intern, Senator John Coghill, introduced SB 47 speaking to the following sponsor statement: [Original punctuation provided.]

Under the Alaska Exemptions Act under Chapter 38 of Title 9 in the Code of Civil Protections there are currently six exemptions that exist from attachment, garnishment, or execution by a creditor in civil actions. One of these exemptions under AS 09.38.025(a) is an exemption of up to \$500,000 on un-matured life insurance. SB 47 goes in and repeals the \$500,000 limit in AS 09.38.025(a).

In effect SB 47 brings AS 09.38.025(a) in line with other exemptions found in the Alaska Exemption Act, such as: burial plots, longevity bonuses, tuition credits, the permanent fund dividend, medical benefits, liquor licenses, payments found under the Senior Benefits Payment Program, compensation of benefits exempt under federal law, and retirement plan interests and payments.

While the law currently provides protection of non-estate assets up to \$500,000, having a limit in the first place clearly does not assist in the protection of assets or pre-bankruptcy planning. While states like South Carolina, Wisconsin, and New York expressly define cash surrender values from life insurance as exempt, still many states ultimately rely on judicial interpretation of a debtor's intent. This bill will provide people with a better security and planning for their families after they have passed on.

This bill encourages personal responsibility and protects the future of Alaskan families.

MR. BAQUERO highlighted the zero fiscal note and then addressed the concern about the potential to use these policies to defraud a creditor. He advised that these policies can be attached if they're assigned as collateral, and Alaska's estate planning laws do not protect individuals who engage in estate and financial planning to willfully defraud a creditor. Also, the four-year state look-back and the ten-year federal look-back to review bankruptcy proceedings are ample to discourage fraudulent activity. He suggested that Matt Blattmacher with the Alaska Trust Company could expand on the explanation. Finally, AS 09.38.065 lists the gamut of opportunities for a creditor to receive just restitution against exempt property.

He reiterated that this bill only says that unmatured life insurance policies are secure and remain a safe financial tool for families or an individual to provide for their beneficiaries in the future.

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SENATOR WIELECHOWSKI asked how accessible an unmatured life insurance policy is in an annuity contract. He explained he doesn't want to establish a process for people to avoid their personal debts or to shield their money from a lawsuit.

MR. BAQUERO deferred to Mr. Blattmachr.

MATTHEW BLATTMACHR, Alaska Trust Company, Anchorage, Alaska, explained that the only value to an unmaturred policy is the cash value and only permanent types of insurance contracts have a cash value, not term insurance. Also, Alaska law has a four-year statute of limitations for bankruptcy look back. If someone were to contribute a large amount of money to a life insurance policy and then claim bankruptcy or have a creditor proceeding, the state would have four years to look back at any transfer or conveyance that individual made and determine whether or not it intentionally had the malicious nature of being fraudulent. In addition, the federal bankruptcy statutes provide a 10-year window to look back.

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SENATOR WIELECHOWSKI asked if an unmaturred multimillion dollar life insurance policy would be protected if the insured was found responsible for a car accident that resulted in the death of another person.

MR. BLATTMACHR answered he didn't know if a court has the ability to enforce it, but he sees no reason that the policy couldn't be assigned to pay off a judgement once the insured passes. He suggested that Linda Holbert might be able to describe other options.

SENATOR MICCICHE asked what proportion of unmaturred life insurance policies and annuity contracts are worth over \$0.5 million.

MR. BLATTMACHR surmised it's a fairly high percentage. Life insurance is a growing form of estate and retirement planning and \$0.5 million would be quickly reached if someone were to calculate the cost a premature death would have on their family, even if they didn't have a high annual income.

SENATOR WIELECHOWSKI asked if a lot of people with large unmaturred life insurance policies and annuity contracts are declaring bankruptcy and if it makes sense to raise the cap to \$2 million.

MR. BLATTMACHR reiterated that more of these policies are being purchased and they're for larger face values. A lot of times it's done for business planning purposes, because it could make the difference between success and failure for a company if a key person were to suffer an untimely death. He noted that some

local banks voiced concern that this legislation would prohibit using the policies as collateral, but that's not accurate. The bill just provides some protection in the event the policy is not assigned.

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LINDA HULBERT, Agent, New York Life Insurance, Fairbanks, Alaska, stated that she has worked with families in the insurance industry for the last 25 years helping them pass along their assets to their children and family. She offered to answer questions.

SENATOR WIELECHOWSKI asked what problem this legislation seeks to fix.

MS. HULBERT explained that this change will help Alaska stay on par with the other states that offer this type of protection. The financial world is changing and a pension through an employer or Social Security isn't necessarily secure today. This is one way to help individuals and small businesses plan for the future for their families and retirement. Addressing the question about increasing the cap, she pointed out that 10 or 15 years ago \$0.5 million sounded like a lot, but in an annuity at five percent that might only yield \$50,000 per year. She described the legislation as a good tool of public policy that does not change Alaska's strong fraudulent transfer rules. The assets of anyone who has committed a crime would be reachable, just as they are today. This is a planning tool for individuals to plan for a secure future for their family and a secure future for themselves in retirement.

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SENATOR COGHILL asked if there are limitations on state or federal annuities or pensions.

MS. HULBERT explained that each state governs insurance and annuities so the federal government doesn't enter in. About 10 states offer this type of planning tool that allows people to place their money in these instruments so it will be available for their family in the event of their death or they'll have the cash value of the policy to help for retirement.

SENATOR COGHILL asked if state SBS annuities are affected by this legislation.

MS. HULBERT said she didn't know for certain, but the Division of Insurance supports the bill as good public policy. She added

that she believes this will raise revenue for the state because 2.7 percent of every life insurance policy or annuity contract goes into the state coffer.

SENATOR WIELECHOWSKI asked if there's is a provision that allows someone to pierce the exemption when there has been illegal activity such as driving drunk and killing someone or rape or murder.

MS. HULBERT offered her understanding that a person's assets would be reachable if they committed a crime.

SENATOR WIELECHOWSKI asked what sort of claims are involved to get the assets.

MS. HULBERT said she didn't know, but many other states and the Division of Insurance feel this is a legitimate planning tool. She wasn't aware of any way that people could be wronged by it.

SENATOR COGHILL suggested he and Senator Wielechowski could look into the fraud protections and bring the information to the committee. He asked if insurance contracts are written to include fraud protections or if it's in state law.

MS. HULBERT advised that fraudulent transfer provisions and insurance are governed by state law.

[2:53:08 PM](#)

LORI WING-HEIER, Director, Division of Insurance, Department of Commerce, Community and Economic Development (DCCED), clarified that the bill is written for Title 9, not Title 21. She explained that life insurance is a simple tool for retirement planning that some people find easier to understand than working with a financial planner on annuities and a mixed plan. Often the life insurance product is their sole retirement plan, which is probably why the sponsor is trying to remove the \$0.5 million cap. Addressing Senator Wielechowski's question, she said her understanding is that this is for civil matters.

SENATOR WIELECHOWSKI said it would ease his concerns if she would point to the specific provision in the law.

MS. WING-HEIER agreed to follow up with the information.

SENATOR COGHILL clarified that the intent is to give people a legitimate reason to invest in estate planning.

SENATOR WIELECHOWSKI asked if an insurance contract would be shielded in a drunk driving incident when the family files a civil lawsuit.

MS. WING-HEIER offered to seek clarification from the Department of Law (DOL) and follow up at the next hearing.

SENATOR MICCICHE interpreted AS 09.38.030 to mean that payments on a criminal offense are not shielded.

SENATOR WIELECHOWSKI said his reading is that restitution ordered by the court could possibly pierce this exemption, but he didn't know how that applies to civil lawsuits.

CHAIR MCGUIRE asked Ms. Wing-Heier if she could provide clarification from Department of Law in short order.

MS. WING-HEIER replied she'd try to get it this week.

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SENATOR WIELECHOWSKI asked if the legislation was necessary as opposed to raising the cap to \$1 million or \$2 million.

MS. WING-HEIER replied the Division of Insurance has not had the cap brought forward as an issue. She didn't know what Title 9 issues had been brought before the Department of Law.

SENATOR COGHILL related that this legislation is an effort to respond to the changing world of investment and provide legitimate protections for people.

MR. BAQUERO highlighted that the state collects 2.7 percent on life insurance policies that are below \$100,000. He also mentioned other legislation he is carrying for the sponsor.

SENATOR COGHILL stated that it's a legitimate point that the exemption can be penetrated for the right reasons.

[3:02:15 PM](#)

CHAIR MCGUIRE announced she would hold SB 47 in committee for further consideration.

[3:02:38 PM](#)

There being no further business to come before the committee, Chair McGuire adjourned the Senate Judiciary Standing Committee meeting at 3:02 p.m.

