

ALASKA STATE LEGISLATURE  
SENATE JUDICIARY STANDING COMMITTEE

April 8, 2015

1:40 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**

CONFIRMATION HEARINGS

Alaska Public Offices Commission

Mark Fish

- CONFIRMATION ADVANCED

Commission on Judicial Conduct

George R. Boatright

POSTPONED to 4/13/15

HOUSE BILL NO. 5

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

- MOVED SCS HB 5(JUD) OUT OF COMMITTEE

SENATE BILL NO. 76

"An Act relating to private actions and remedies against real estate licensees for licensee relationships, disclosures, and activity before January 1, 2005; and providing for an effective date."

- MOVED SB 76 OUT OF COMMITTEE

SENATE JOINT RESOLUTION NO. 15

Making application to the United States Congress to call a convention of the states to propose a countermand amendment to the Constitution of the United States as provided under art. V, Constitution of the United States; and urging the legislatures of the other 49 states to make the same application.

- HEARD & HELD

SENATE CONCURRENT RESOLUTION NO. 4

Relating to the duties of delegates selected by the legislature to attend a convention of the states called under art. V, Constitution of the United States, to consider a countermand amendment to the Constitution of the United States; establishing as a joint committee of the legislature the Delegate Credential Committee and relating to the duties of the committee; providing for an oath for delegates and alternates to a countermand amendment convention; providing for a chair and assistant chair of the state's countermand amendment delegation; providing for the duties of the chair and assistant chair; providing instructions for the selection of a convention president; and providing specific language for the countermand amendment on which the state's convention delegates are authorized by the legislature to vote to approve.

- HEARD & HELD

**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)  
03/16/15 (S) Heard & Held  
03/16/15 (S) MINUTE(JUD)  
03/20/15 (S) JUD AT 1:30 PM BUTROVICH 205  
03/20/15 (S) Heard & Held  
03/20/15 (S) MINUTE(JUD)  
04/08/15 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SCR 4

SHORT TITLE: US COUNTERMAND CONVENTION DELEGATES

SPONSOR(s): SENATOR(s) STOLTZE

02/13/15 (S) READ THE FIRST TIME - REFERRALS  
02/13/15 (S) STA, JUD, FIN  
03/17/15 (S) STA AT 9:00 AM BUTROVICH 205  
03/17/15 (S) Heard & Held  
03/17/15 (S) MINUTE(STA)  
03/19/15 (S) STA AT 9:00 AM BUTROVICH 205  
03/19/15 (S) Heard & Held  
03/19/15 (S) MINUTE(STA)  
03/26/15 (S) STA AT 9:00 AM BUTROVICH 205  
03/26/15 (S) Moved SCR 4 Out of Committee  
03/26/15 (S) MINUTE(STA)  
03/27/15 (S) STA RPT 4DP 1DNP  
03/27/15 (S) DP: STOLTZE, COGHILL, HUGGINS, MCGUIRE  
03/27/15 (S) DNP: WIELECHOWSKI  
04/08/15 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SJR 15

SHORT TITLE: CALL FOR US COUNTERMAND CONVENTION

SPONSOR(s): SENATOR(s) STOLTZE

02/13/15 (S) READ THE FIRST TIME - REFERRALS  
02/13/15 (S) STA, JUD  
03/17/15 (S) STA AT 9:00 AM BUTROVICH 205  
03/17/15 (S) Heard & Held  
03/17/15 (S) MINUTE(STA)  
03/19/15 (S) STA AT 9:00 AM BUTROVICH 205  
03/19/15 (S) Heard & Held  
03/19/15 (S) MINUTE(STA)  
03/26/15 (S) STA AT 9:00 AM BUTROVICH 205  
03/26/15 (S) Moved SJR 15 Out of Committee

03/26/15 (S) MINUTE(STA)  
03/27/15 (S) STA RPT 4DP 1DNP  
03/27/15 (S) DP: STOLTZE, COGHILL, MCGUIRE, HUGGINS  
03/27/15 (S) DNP: WIELECHOWSKI  
04/08/15 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 76

SHORT TITLE: REAL ESTATE BROKERS; LIABILITY  
SPONSOR(s): JUDICIARY

03/18/15 (S) READ THE FIRST TIME - REFERRALS  
03/18/15 (S) L&C, JUD  
03/31/15 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)  
03/31/15 (S) Heard & Held  
03/31/15 (S) MINUTE(L&C)  
04/07/15 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)  
04/07/15 (S) Moved SB 76 Out of Committee  
04/07/15 (S) MINUTE(L&C)  
04/08/15 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

MARK FISH, Nominee  
Alaska Public Offices Commission  
Big Lake, Alaska

**POSITION STATEMENT:** Testified as nominee to the Alaska Public Offices Commission.

ALEX HILDEBRANDT, Assistant District Attorney  
Civil Division  
Human Services Section  
Department of Law (DOL)  
Anchorage, Alaska

**POSITION STATEMENT:** Provided information and answered questions related to HB 5.

DEB ETHERIDGE, Deputy Director  
Division of Senior and Disabilities Services  
Department of Health and Social Services (DHSS)

**POSITION STATEMENT:** Provided information and answered questions related to HB 5.

DARIN COLBRY, representing himself  
Anchorage, Alaska

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

NANCY MEADE, General Counsel

Administrative Staff  
Alaska Court System  
Anchorage, Alaska

**POSITION STATEMENT:** Provided information and answered questions related to HB 5.

GENEVIEVE WOJTUSIK, Staff  
Senator McGuire  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Introduced SB 76 on behalf of the sponsor.

HOWARD TRICKEY, Attorney representing  
Jack White Vista Real Estate  
Anchorage, Alaska

**POSITION STATEMENT:** Offered supporting testimony for SB 76.

ORIN BROWN, Intern  
Senator Bill Stoltze  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Introduced SJR 15 and SCR 4 on behalf of the sponsor.

MIKE COONS, National Director  
Citizens Initiatives  
Palmer, Alaska

**POSITION STATEMENT:** Testified in support of SJR 15 and SCR 4.

#### **ACTION NARRATIVE**

[1:40:35 PM](#)

**CHAIR LESIL MCGUIRE** called the Senate Judiciary Standing Committee meeting to order at 1:40 p.m. Present at the call to order were Senators Coghill, Costello, Micciche and Chair McGuire. Senator Wielechowski joined the committee soon thereafter.

#### **CONFIRMATION HEARING** **Alaska Public Offices Commission**

[1:42:01 PM](#)

**CHAIR MCGUIRE** announced the first order of business would be a confirmation hearing for Mark Fish to the Alaska Public Offices Commission. She asked Mr. Fish to tell the committee about his interest in serving on this commission.

[1:42:30 PM](#)

MARK FISH, Nominee, Alaska Public Offices Commission, Big Lake, Alaska, said he considers it a privilege to serve Alaskans in this capacity and has come to appreciate the confirmation process. He related that he has served on a semi-judicial body before and believes the committee will find him qualified. Since the last hearing he filed his financial disclosure statement electronically and is eager to start working to solve some of the problems with that system.

[1:43:16 PM](#)

SENATOR WIELECHOWSKI joined the committee.

CHAIR MCGUIRE asked if he feels it's appropriate for APOC staff and commissioners to bring complaints against lawmakers and others who are required to file APOC reports.

MR. FISH replied it's the public's responsibility to pursue those cases and adequate tools should be available to do so in a fair and transparent manner.

[1:46:07 PM](#)

SENATOR MICCICHE asked him to comment on the privacy issue of requiring elected officials and board members to list the names of their renters in their APOC report.

MR. FISH opined that the primary role of government is to protect individual rights. The public has the right to know what influences their elected officials, but he questions the propriety of providing detailed information on the financial disclosure report about people, such as renters, who are ancillary to the process.

SENATOR COGHILL thanked Mr. Fish for serving his country and the work he'll do on the commission.

[1:49:27 PM](#)

CHAIR MCGUIRE motioned to forward the name Mark Fish to the full body with individual recommendations. She reminded members that signing the reports regarding appointments to boards and commissions in no way reflects individual members' approval or disapproval of the appointees, and that the nominations are merely forwarded to the full legislature for confirmation or rejection. Finding no objection, the name Mark Fish was forwarded to the full body for consideration.

**HB 5-CONSERVATOR OF PROTECTED PERSONS**

[1:50:33 PM](#)

CHAIR MCGUIRE announced the consideration of HB 5. "An Act relating to the persons who may be appointed conservators of a protected person." She asked for a motion to adopt the proposed committee substitute (CS).

[1:50:47 PM](#)

SENATOR COGHILL motioned to adopt the proposed committee substitute for HB 5, labeled 29-LS0032\N, as the working document.

CHAIR MCGUIRE found no objection and announced that version N was before the committee.

[1:51:16 PM](#)

MS. SALTZMAN reviewed the changes in the CS.

Section 1 broadens the scope of who could be appointed a conservator and a guardian in cases of a conflict of interest. Page 1, lines 6-8, deletes the language "the person is the spouse, adult child, parent, or sibling of the incapacitated person and".

Section 2 adds a new subsection [g] to AS 13.26.145 on page 2, lines 1-4, that provides an extra level of due diligence by the court relating to the nature and scope of the conflict of interest.

Section 3 on page 2, lines 7-8, deletes the language "the person is the spouse, adult child, parent, or sibling of the incapacitated person and".

Section 4 adds a new subsection [h] to AS 12.26.210 on page 2, lines 11-15, that provides an extra level of due diligence by the court relating to the nature and scope of the conflict of interest.

She noted that the guardianship and conservator statutes mirror one another so both had to be amended with the same language. This work was done working closely with the sponsor and the Department of Law.

CHAIR MCGUIRE thanked Ms. Saltzman for her work.

[1:55:18 PM](#)

ALEX HILDEBRANDT, Assistant District Attorney, Civil Division, Human Services Section, Department of Law (DOL), introduced himself.

SENATOR WIELECHOWSKI expressed the concern that removing the language in Sections 1 and 3 could potentially create a cottage industry for professionals and businesses to act as conservators and charge exorbitant amounts.

MR. HILDEBRANDT pointed out that the option to have a professional conservator or guardian already exists. Banks and trusts generally serve in this capacity, but in Anchorage there are also private parties that have taken on the responsibility. He opined that the court oversight will prevent exploitation of the vulnerable adults.

SENATOR WIELECHOWSKI asked if this would allow someone with a potential conflict of interest to act as a conservator, and if he is comfortable that the courts will be able to adequately protect the vulnerable people.

MR. HILDEBRANDT acknowledged that the Department of Health and Social Services (DHSS) has that concern about changing the language. The hope is that the new subsections in the guardianship and conservatorship statutes will require the court to think about and provide written findings about whether or not a conflict exists and whether it is or is not substantial. The situation of an unrelated paid care provider serving as a conservator would likely rise to the level of a substantial conflict.

Based on his experience doing these hearings, he believes the court would be reluctant to appoint a direct service provider. This language intentionally mirrors the Uniform Probate Code, which prevents direct service providers and things like a long-term care home from being a guardian or conservator for finances and other aspects of a person's life.

[2:00:01 PM](#)

SENATOR WIELECHOWSKI asked to hear from Department of Health and Social Services (DHSS).

SENATOR MICCICHE asked if a spouse or step child from a former marriage would be recognized as a relative or friend of an incapacitated person.

MR. HILDEBRANDT responded that AS 13.26.145(d) lists the people qualified for appointment as guardian and it includes a spouse.

SENATOR COGHILL offered his understanding that the courts are already familiar with determining potential conflict, substantial interest, and best interest.

MR. HILDEBRANDT agreed that those findings are already in statute as things the court should consider. He pointed out that this will require the court to also make a written finding.

SENATOR COGHILL asked how the court will vet the appointments.

MR. HILDEBRANDT responded that, based on his experience, the group of people who could be appointed as a guardian or conservator is not expanding. What is expanding is the group of people who could be appointed with a conflict.

SENATOR COGHILL said he's trying to understand how it will play out in court, but he generally likes the idea.

[2:06:55 PM](#)

DEB ETHERIDGE, Deputy Director, Division of Senior and Disabilities Services, Department of Health and Social Services (DHSS), introduced herself.

SENATOR WIELECHOWSKI asked if she had concerns with the bill.

MS. ETHERIDGE said the bill deviates from the [Uniform Probate Code] and other standards, but DHSS is more comfortable with the current committee substitute because it provides additional protection by requiring the court to make the determination.

SENATOR WIELECHOWSKI asked the rationale for not allowing people that are not the spouse, adult child, parent, or sibling to be appointed as guardian or conservator of an incapacitated person.

MS. ETHERIDGE explained that it's considered a significant conflict when a person can pay him or herself with money they're controlling for somebody who is incapacitated or vulnerable.

SENATOR WIELECHOWSKI expressed concern with the way the statute is written because it doesn't clarify what constitutes a substantial conflict.

MS. ETHERIDGE said she couldn't alleviate the concern, but it appears that the court could identify it as a substantial conflict of interest if a person would be paying him or herself.

SENATOR WIELECHOWSKI asked what percentage of the people who have applied to be a conservator in the last couple of years are spouses, adult children, parents, or siblings.

MS. ETHERIDGE said she didn't have access to that information but about 52 percent of the guardianship and conservatorship reports for adult protective services are related to a family member. She clarified that a report to adult protection is mandatory if there is a suspicion that exploitation may be occurring, but it doesn't necessarily mean that maltreatment or financial exploitation has occurred.

SENATOR WIELECHOWSKI asked what oversight the court has after it allows someone who has a conflict to watch over a vulnerable or incapacitated person.

MS. ETHERIDGE replied there are annual reports and anyone can file a request for a review of a guardian or conservator.

[2:12:10 PM](#)

SENATOR MICCICHE asked how many of the 52 percent she referenced are compensated.

MS. ETHERIDGE said she doesn't have that information. Responding to a further question, she explained that adult protective services receives allegations about the use of the vulnerable adult's funds that are not related to their needs. Those allegations are investigated.

SENATOR MICCICHE asked if the conflict is that they're being compensated for the service and they're paying themselves.

MS. ETHERIDGE replied DHSS gets allegations about using funds for other than the needs of the vulnerable adult.

CHAIR MCGUIRE commented on the protections that are embedded in other areas of the law.

[2:14:04 PM](#)

SENATOR WIELECHOWSKI asked how many claims DHSS receives in a year about people who are taking advantage of a vulnerable adult.

MS. ETHERIDGE reported that in FY2014 DHSS received 1,069 reports of self-neglect, 682 reports of neglect, 492 reports of financial exploitation, 79 reports of exploitation of a person, 194 reports of mental abuse, 208 reports of physical abuse, 51 reports of sexual abuse, and 64 reports of abandonment. In FY2014 DHSS received 535 allegations of financial exploitation, investigated 492, and substantiated 20 percent of the allegations.

SENATOR WIELECHOWSKI asked for a copy of the list.

MS. ETHERIDGE agreed.

[2:16:12 PM](#)

SENATOR MICCICHE asked if the department reviews cases as opposed to investigating complaint-driven reports.

MR. HILDEBRANDT explained that adult protective services doesn't automatically conduct reviews, but anyone can file asking for one. The division is required to provide a financial report every year and a court-appointed third party is appointed every three years to review and assess the guardianship or conservatorship.

[2:17:45 PM](#)

DARIN COLBRY, representing himself, Anchorage, Alaska, testified in support of HB 5. He advised that he contacted the sponsor about introducing the bill. He and his wife both have conservators. His father is his conservator and his wife would like her father-in-law to be her conservator too, but that's prohibited because it's a substantial conflict of interest.

CHAIR MCGUIRE stated that the legislature and this committee expect the courts to look closely and analyze the situation carefully before appointing someone who has a substantial conflict of interest as a guardian or conservator. The intent is to allow people who need a conservator to have as many options as possible.

[2:22:02 PM](#)

NANCY MEADE, General Counsel, Administrative Staff, Alaska Court System, said she would relay that to the court but with the understanding that judges and other judicial officers already take very seriously the appointments of conservators and guardians. She explained the process to become a conservator for financial decisions or a guardian for medical decisions. Addressing Senator Micciche's question, she advised that the

order says that someone who is not a professional company that provides conservatorship or guardianship services on a regular basis is considered a relative or friend and therefore must take the training program. Those classes are offered by both the court and executive branch.

MS. MEADE pointed out that in about 40 percent of the cases that are filed for a guardianship or conservatorship, the court determines that the person is not incapacitated so they do not need protection. She said the court doesn't collect data about how often an applicant has one of the conflicts of interest identified in AS 13.26.210(b), but judges she polled did not think it was extremely common. Family members usually don't have a conflict of interest, although they often take payment from the funds of the protected person.

Addressing a question from the previous hearing, she explained that the power of attorney is a private contract that has to be entered when a person has the legal capacity to enter a contract. It can be limited in time and scope and doesn't necessarily preclude the person from acting for him or herself during the life of the contract. A conservatorship is a court document that says a person is permitted to make financial decisions for someone who is not able to make decisions for him or herself. She noted that adult children often pay bills for their parents and only get a conservatorship if they're challenged by a bank or other financial entity.

[2:27:33 PM](#)

SENATOR WIELECHOWSKI asked if the requirement in Section 4 for the court to make written findings will potentially impose a fiscal burden on the court.

MS. MEADE said she didn't anticipate a fiscal impact, although both Section 2 and Section 4 will add to the court's workload. She explained how it potentially would work to comply with the statute and ensure that if an appointment is made under subsection (c) that everyone has thought about it and made those best-interest findings.

SENATOR COGHILL asked if in Section 4 the conflict of interest on page 2, line 15, should be described as a perceived conflict.

MS. MEADE replied her reading is that the wording is adequate and appropriate. A conflict of interest necessarily exists for subsection (h) to apply.

[2:30:02 PM](#)

CHAIR MCGUIRE closed public testimony and solicited a motion.

[2:30:20 PM](#)

SENATOR COGHILL motioned to report the Senate CS for HB 5 from committee with individual recommendations and attached zero fiscal note.

[2:30:51 PM](#)

SENATOR WIELECHOWSKI said he wouldn't object to moving the bill but wanted his concerns on the record, because this is patching a law that is very outdated when it needs a comprehensive overhaul. He suggested that the sponsor may want to look at that for next year.

[2:32:16 PM](#)

CHAIR MCGUIRE announced that without objection SCS HB 5(JUD) is reported from the Senate Judiciary Standing Committee.

**SB 76-REAL ESTATE BROKERS; LIABILITY**

[2:32:57 PM](#)

CHAIR MCGUIRE announced the consideration of SB 76. "An Act relating to private actions and remedies against real estate licensees for licensee relationships, disclosures, and activity before January 1, 2005; and providing for an effective date."

GENEVIEVE WOJTUSIK, Staff, Senator McGuire introduced SB 76 speaking to the following sponsor statement: [Original punctuation provided.]

Under AS 08.88.396, a real estate licensee acting before January 1, 2005 was authorized to act as both a buyer's and a seller's representative, but only after the licensee informed both the buyer and the seller of his or her dual agency and obtained written consent from both. The statute, as originally enacted, did not specify remedies if a real estate licensee (or agent) violated its provisions.

In 2003, the Alaska Legislature acted to correct the remedies-omission. The Legislature was concerned that without specifying its intent with respect to appropriate remedies in the case of a violation, a court might feel compelled to impose the potentially business-ending remedy of forfeiture of real-estate sales commissions. The Legislature was particularly

concerned that this could occur in cases even where the plaintiffs had suffered no actual damages.

In order to address this concern, the Legislature enacted House Bill 257, legislation that fixed this ambiguity by retroactively limiting the remedy for violations of AS 08.88.396 to actual damages. [House Bill] 257 passed the Legislature, was signed into law and has been found constitutional by the Alaska Supreme Court.

Despite the enactment of House Bill 257, and despite the Alaska Supreme Court's determination that the law is constitutional, questions have arisen regarding the Legislature's intent in amending AS 08.88.396. Senate Bill 76 is intended to make clear the Legislature's intent when it amended AS 08.88.396 in 2003 by specifying and clarifying that the "actual damages" limitation of the 2003 amendment applies to all claims that are based upon or arise out of allegations of violations of AS 08.88.396.

The clarification is necessarily retroactive because the Legislature enacted House Bill 29 in 2004 which, among other things, specified that AS 08.88.396 ceased to apply to real estate transactions as of January 1, 2005; and the Legislature desires to ensure that any claims pre-dating the 2005 effective date of House Bill 29 are appropriately subject to the intent of its 2003 enactment of House Bill 257.

The retroactivity of the bill is constitutional, as provided in both U.S. Supreme Court and Alaska Supreme Court decisions.<sup>1</sup> This bill preserves the right of purchasers of real estate to seek redress for actual damages under AS 08.88.396 while ensuring that the Legislature's intent that only actual damages be awarded is recognized by courts hearing cases arising within the relevant time periods.

[2:35:00 PM](#)

JEFFRY PICKETT, Staff Counsel to the Senate Judiciary Committee, Anchorage, Alaska, proved the following sectional analysis:

Section 1 amends the wording of AS 08.88.396(e) which, for real estate transactions that occurred before January 1, 2005, limits civil litigation and other

remedies for the failure of a real estate licensee to comply with certain requirements concerning relationships with and disclosures to buyers and sellers.

Section 2 provides that the bill applies to a real estate transaction that occurred on or before the bill's effective date, and to a court action related to such a transaction pending on the effective date of bill.

Section 3 makes sec. 1 of the bill retroactive to January 1, 1991.

Section 4 makes the bill effective immediately.

MR. PICKETT deferred to Howard Trickey to provide the historical context so the committee could understand the need for the bill.

[2:36:52 PM](#)

HOWARD TRICKEY, Attorney, Anchorage, Alaska, stated that he is representing Jack White Vista Real Estate and has for a number of years with regard to the issues that SB 76 seeks to clarify. He explained that when [AS 08.88.396] passed initially, it did not specify a remedy if a real estate licensee or agent violated the dual agency provisions of the statute. In 2003 the legislature addressed the remedies omission in House Bill 257, limiting the remedy for a technical violation to actual damages. The policy finding and decision was that the lack of a statutory remedy exposed the real estate industry to potentially ruinous class action claims. One case pending then, and still today, sought recovery in excess of \$30 million for forfeiture of commissions for the entire period of the class. The real estate industry supported the bill then and SB 76 today because of the potential economic risk to the industry.

MR. TRICKEY said that SB 76 would be retroactive. Two courts have ruled that forfeiture of commissions is not a remedy that is provided by contract and there is no vested right to forfeiture until judgment is entered. Therefore, it is a matter for the legislature to appropriately address as a matter of public policy. SB 76 seeks to clarify that the legislature intended in 2003 that actual damages would be the sole remedy for any claims arising out of alleged violation of the disclosure statute.

He added that the disclosure forms and written consents were written by the multiple listing service. In all transactions the disclosures were made as required by statute. The problem was a matter of timing but the disclosures were made in time for people to withdraw from the transaction if they thought the disclosure affected the fairness of the transaction in any way.

[2:42:12 PM](#)

SENATOR MICCICHE asked if it's common to pass legislation that is retroactive 24 years.

CHAIR MCGUIRE replied it's not common but it has been done before, typically when it involves cases with liability. She said she was comfortable because the bill reaffirms the policy the legislature put in place initially using a common law principle.

SENATOR MICCICHE asked about instances of gross negligence and if the exception allows for costs above actual damages that may be more ancillary.

[2:45:39 PM](#)

MR. TRICKEY explained that this legislation does not affect a claim someone might bring for gross negligence and the damages that might be recovered from that cause of action. SB 76 simply limits the remedies for the statutory violations.

SENATOR COGHILL questioned why the statutory provision has to be clarified because of the common law principle.

MR. TRICKEY explained that the court recognized that the legislature intended damages for statutory violations to be limited to actual damages, and later circumvented the legislative intent saying that statutory violations could be presented as evidence of a breach of the common law duty of loyalty and disclosure. The legal case involves a windfall for the plaintiffs and their lawyers because nobody suffered any damages or actual harm.

CHAIR MCGUIRE closed public testimony and solicited a motion.

[2:48:48 PM](#)

SENATOR COGHILL motioned to report SB 76 from committee with individual recommendations and attached zero fiscal note.

CHAIR MCGUIRE announced that without objection, SB 76 is reported from the Senate Judiciary Standing Committee.

**SJR 15-CALL FOR US COUNTERMAND CONVENTION**  
**SCR 4-US COUNTERMAND CONVENTION DELEGATES**

[2:49:28 PM](#)

CHAIR MCGUIRE announced the consideration of SJR 15 and SCR 4.

[2:49:40 PM](#)

ORIN BROWN, Intern, Senator Bill Stoltze introduced SJR 15 and SCR 4 on behalf of the sponsor, speaking to the following sponsor statement: [Original punctuation provided.]

Recent actions taken by the Federal Government constitute an unprecedented level of overreach in Alaska.

SJR 15 and SCR 4 seek to restore the balance of power between the states and federal government. The pair of resolutions would strengthen state sovereignty by providing states with veto (countermand) power over federal decisions deemed not in their best interest by establishing an amendment to the U.S. Constitution. These two resolutions in tandem are intended to start the process of amending the US Constitution via the powers granted in Article V.

SJR 15 (The Application) provides Alaska's call to Congress for a clearly defined, single-issue Countermand Amendment Convention. The Countermand Amendment to the United States Constitution, when ratified, will allow states to propose Countermand Initiatives, which upon approval by three-fifths of the state legislatures, will repeal any federal statute, executive order, judicial decision, or regulatory decision listed in the Initiative.

SCR 4 (The Delegate Resolution) enables the state legislature to institute parameters for the convention, ensuring that a "runaway convention" is not possible, and provides for a productive, safe and timely process. The Delegate Resolution establishes a Credential Committee for selection of delegates to the convention, and outlines the duties of the delegates. SCR 4 also includes the language of the proposed Countermand Amendment to the U.S. Constitution.

These two resolutions do not pertain to a conservative versus liberal agenda; this is a state versus federal issue. Passage of these resolutions is an actionable step the Legislature can take toward restoration of the proper balance of state and federal powers.

[2:52:46 PM](#)

MIKE COONS, National Director, Citizens Initiatives, Palmer, Alaska, testified in support of SJR 15 and SCR 4. He described SJR 15 as the vehicle to get the ball rolling and SCR 4 as the key. SJR 15 defines the convention rules, the function of the delegates, the language of the amendment, and that state legislators are in control of the delegates and the ultimate outcome of the convention. SCR 4 defines the convention.

He discussed the credentials committee explaining that legislators will appoint the delegates, establish the rules, and provide guidance during the convention. He said that some states may want to make amendments to the Countermand Amendment language and those would be brought to the legislature for approval or denial. Once 26 states vote to approve the language, the convention would end and the language would be forwarded to Congress for the ratification process. He clarified that 34 states are needed to make an application for the convention and 26 or more states are needed for a quorum to pass the amendment. He stressed that this convention follows art. V, Constitution of the United States. Each state has one vote so Alaska has the same authority as New York.

MR. COONS reported that following ratification the vision is to assemble a national strategy steering committee to research the federal rules, regulations, laws, executive orders, and judicial decisions that are of most concern to the freedoms, liberties, and direction of the states. The committee then would pass resolutions to repeal the problems and submit the proposed resolution to the state legislatures for committee hearings and final passage. This process has citizen involvement at the grassroots level.

[2:59:17 PM](#)

SENATOR COGHILL expressed hope that Mr. Coons would return for a subsequent hearing because time was short today to debate the issue.

CHAIR MCGUIRE solicited a motion to adopt the proposed judiciary versions of the resolutions.

[3:00:00 PM](#)

SENATOR COGHILL motioned to adopt the work draft committee substitute (CS) for SJR 15, labeled 29-LS0425\H, as the working document.

CHAIR MCGUIRE announced that without objection, version H was before the committee.

[3:00:37 PM](#)

SENATOR COGHILL motioned to adopt the work draft committee substitute (CS) for SCR 4, labeled 29-LS0548\W, as the working document.

CHAIR MCGUIRE announced that without objection, version W was before the committee.

SENATOR COGHILL offered his understanding that the committee substitutes contain conforming language that the House is also considering.

[SJR 15 and SCR 4 were held in committee for further consideration.]

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[3:00:56 PM](#)

There being no further business to come before the committee, Chair McGuire adjourned the Senate Judiciary Standing Committee meeting at 3:00 p.m.