

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 3, 2017

1:03 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Zach Fansler, Vice Chair
Representative Jonathan Kreiss-Tomkins
Representative Gabrielle LeDoux
Representative David Eastman
Representative Chuck Kopp
Representative Lora Reinbold

MEMBERS ABSENT

Representative Charisse Millett (alternate)
Representative Louise Stutes (alternate)

COMMITTEE CALENDAR

CONFIRMATION HEARING(S)

Alaska Public Offices Commission

Adam Schwemley - Eagle River

Robert Clift - Anchorage

- CONFIRMATION(S) ADVANCED

HOUSE BILL NO. 20

"An Act relating to marriage solemnization; and authorizing elected public officials in the state to solemnize marriages."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 20

SHORT TITLE: SOLEMNIZE MARRIAGE: ELECTED OFFICIALS

SPONSOR(S): REPRESENTATIVE(S) CLAMAN

01/18/17	(H)	PREFILE RELEASED 1/9/17
01/18/17	(H)	READ THE FIRST TIME - REFERRALS
01/18/17	(H)	STA, JUD

02/16/17	(H)	STA AT 3:00 PM GRUENBERG 120
02/16/17	(H)	Heard & Held
02/16/17	(H)	MINUTE (STA)
02/18/17	(H)	STA AT 11:00 AM GRUENBERG 120
02/18/17	(H)	Moved CSHB 20(STA) Out of Committee
02/18/17	(H)	MINUTE (STA)
02/22/17	(H)	STA RPT CS (STA) 4DP 2DNP
02/22/17	(H)	DP: TUCK, KNOPP, JOSEPHSON, KREISS- TOMKINS
02/22/17	(H)	DNP: JOHNSON, BIRCH
03/03/17	(H)	JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

ADAM SCHWEMLY, Appointee
Eagle River, Alaska

POSITION STATEMENT: As appointee to the Alaska Public Offices Commission, discussed his qualifications and answered questions.

ROBERT CLIFT, Appointee
Anchorage, Alaska

POSITION STATEMENT: As appointee to the Alaska Public Offices Commission, discussed his qualifications and answered questions.

SARAH PERMAN, Staff
Representative Matt Claman
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 20, presented a sectional analysis.

NANCY MEADE, General Counsel
Administrative Staff
Office of the Administrative Director
Alaska Court System
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 20, answered questions.

TRISTAN WALSH
Alaskans for Equality
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 20, offered support for the legislation.

NANCY MEADE, General Counsel
Administrative Staff

Office of the Administrative Director
Alaska Court System
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 20, offered testimony and answered questions.

LINDA BRUCE, Attorney
Legislative Legal and Research Services
Legislative Affairs Agency
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 20, answered questions.

ACTION NARRATIVE

[1:03:26 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:03 p.m. Representatives Claman, Fansler, Eastman, Kopp, and LeDoux were present at the call to order. Representatives Kreiss-Tomkins and Reinbold arrived as the meeting was in progress.

CONFIRMATION HEARING(S): **Alaska Public Offices Commission**

[1:04:09 PM](#)

CHAIR CLAMAN announced that the first order of business is a confirmation hearing for the Alaska Public Offices Commission, Adam Schwemley and Robert Clift.

CHAIR CLAMAN opened invited testimony.

[1:04:28 PM](#)

ADAM SCHWEMLY, Appointee, said he is a lifelong Alaskan, has a background in fire and emergency services, and is currently working as a medical assistant in Anchorage. He offered that he has always been interested in the political process and decided it was time to get more involved by taking a hands on approach and getting some experience under his belt.

[1:05:37 PM](#)

ROBERT CLIFT, Appointee, said he is retired, has lived in Alaska since 1979, and much of that time was spent in Bush Alaska as a school administrator. He stated that the Alaska Public Offices Commission is an area that lends itself to being a watchdog by ensuring that the public sees the election process as legitimate, and that the candidates, lobbyists, and others are transparent.

CHAIR CLAMAN closed invited testimony.

1:07:08 PM

REPRESENTATIVE KOPP asked Mr. Clift what he sees as his individual responsibility as a member of the commission, and whether there was anything he would like to accomplish by being on the commission.

MR. CLIFT responded that his interest is ensuring that the process is transparent because the public has a right to know the financial interests of lobbyists, people seeking election, and elected public officials. While most people won't bother themselves to "check that out," some will. He related that it is important for the process to be transparent, that the statutes followed, and in the event there are ambiguities in the statutes, the commission would make recommendations to the legislature for correction. Secondly, he explained, the commission adjudicates requests for rehearing of fines, or whatever. His personal goal is to try to bring common sense to the process, and at the same time be fair to the people who have fallen afoul, he said.

REPRESENTATIVE KOPP asked Mr. Schwemley what his role as a commission member would be, and whether he has a special reason for wanting to serve on the commission.

MR. CLIFT explained that his responsibility is to speak to, and encourage, the public's confidence in the process, especially when it comes to financial transparency. He related that his personal interest is mostly with regard to lobbyists and showing where the money comes from and how it is spent. The public does not have much confidence when it comes to lobbyists, which includes the public's perception about the influence of lobbyists over the legislature. He said he would like get the financial information out to the public to encourage the belief that the whole process is not corrupt with backroom deals.

1:11:34 PM

REPRESENTATIVE EASTMAN asked Mr. Clift, as a commission member, whether he would be able to look out for the little guy, and distinguish between complaints that have a negative impact on the public versus spurious complaints that attempt to "hem people up for technical violations of rules?"

MR. CLIFT answered in the affirmative, and commented that his concern is more with the individuals than the (indisc.) special interests groups. He related that he attended a commission meeting and noted that one case could be considered "the little guy." The entire commission came to the conclusion that most of the allegations were spurious and arrived at "a happy outcome." He said he can be impartial.

[1:13:54 PM](#)

REPRESENTATIVE EASTMAN asked Mr. Schwemley the same question.

MR. SCHWEMLY replied that he could be impartial and that he doesn't really care about political affiliation because he tends to look at the individual, the actual issue of the complaint, and take it at face value.

REPRESENTATIVE EASTMAN commented to anyone serving on this commission to recognize there are a whole host of technical rules, and in his opinion do not appear to have been designed with a first-time candidate with limited to zero staff resources in mind. Also, he said, with the decisions the commission makes and the precedents it sets, the commission can either make it easier to run for office in this state as a new candidate or make it virtually impossible.

REPRESENTATIVE FANSLER thanked both Mr. Clift and Mr. Schwemley for putting themselves out there to serve in a public manner.

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REPRESENTATIVE FANSLER advised that the House Judiciary Standing Committee reviewed the qualifications of the governor's appointees and recommends that the following names be forwarded to a joint session of the Senate and House of Representatives for consideration: Adam Schwemley and Robert Clift to the Alaska Public Offices Commission. This does not reflect intent by any of the members to vote for or against these individuals during any further sessions for the purposes of confirmation.

HB 20-SOLEMNIZE MARRIAGE: ELECTED OFFICIALS

[1:16:42 PM](#)

CHAIR CLAMAN announced that the final order of business would be HOUSE BILL NO. 20, "An Act relating to marriage solemnization; and authorizing elected public officials in the state to solemnize marriages."

Chair Claman advised he is the sponsor of HB 20, and passed the gavel to Vice-Chair Fansler.

[1:17:19 PM](#)

CHAIR CLAMAN moved to adopt committee substitute to HB 20, Version 30-LS0242\J as the working document.

REPRESENTATIVE EASTMAN objected for discussion.

[1:18:11 PM](#)

CHAIR CLAMAN explained that the House State Affairs Standing Committee adopted an amendment clarifying the ability for a public official to decline to solemnize a marriage, and the adopted committee substitute offers a slight modification of that language.

REPRESENTATIVE EASTMAN noted that the committee had been reviewing the original draft from the House State Affairs Standing Committee [Version D], and that amendments were prepared based upon Version D. He suggested keeping Version D in front of the committee based upon the previously drafted amendments. He noted that the language in Version J, [page 2, line 3] states that "a public official may refuse to solemnize a marriage for any reason," with additional reasons listed after that and it was confusing to him. For clarity, he opined it should simply be left at "for any reason period."

[1:20:04 PM](#)

REPRESENTATIVE KOPP agreed, and said there should be a period inserted after "for any reason." He said he could see a public official refusing because the public official may have personal history with one or other, or be aware of other incompatibility issues, and such. In the event the provision spells out specific reasons, as this bill progresses he could see more people adding more reasons spelled out.

CHAIR CLAMAN pointed out that the committee is not debating what the bill should look like, this discussion is to whether Version J should be adopted. He reminded the committee that Version J had been circulated several days ago to the entire committee, with the thought that folks seeking an amendment would use Version J as their requested amendment.

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VICE CHAIR FANSLER advised that any amendments drawn up on Version D would be run by Legislative Legal and Research Services and it has the ability to conform those amendments into Version D.

REPRESENTATIVE EASTMAN withdrew his objection to Version J.

VICE CHAIR FANSLER noted that there being no objection, Version J was before the committee.

[1:22:22 PM](#)

CHAIR CLAMAN offered an opening statement as follows [original punctuation provided]:

Good afternoon. For the record my name is Matt Claman, Alaska State Representative for House District 21 in West Anchorage. I would like to thank you all for hearing House Bill 20 today.

First, in financially challenging times like we face today, I'm reminded that part of our role as elected government officials is to reduce red tape and make government accessible to the public. In introducing this bill I'd like to make marriage more easily accessible. This bill will allow couples to have their marriages solemnized directly by elected officials. It allows us to be the friendly face of government while providing a user-friendly service to the public. Finally, being able to perform a marriage would be a privilege and we would be fortunate to have the opportunity.

With that, I will turn it over to my staff member, Sara Perman, to explain the bill to you further.

[1:23:07 PM](#)

SARAH PERMAN, Staff, Representative Matt Claman, Alaska State Legislature, offered a sectional analysis as follows [original punctuation provided]:

For the record, my name is Sara Perman, aide to Representative Claman. Thank you to the committee for hearing House Bill 20 today.

As a great 80s classic quotes: "Marriage. Marriage is what brings us together today..." House Bill 20 amends the Alaska Marriage Code to add language that allows for marriages to be solemnized by elective officials of the state of Alaska.

Section 1 amends Alaska Statute 25.05.261(a) relating to who may solemnize a marriage. Currently the statute only allows for marriage solemnization by

- a minister, priest, rabbi, or commissioned officer of the Salvation Army, or by the principal officer or elder of recognized churches or congregations,
- a marriage commissioner or judicial officer,
- or before or in any religious organization or congregation House Bill 20 adds language to include "an individual holding an elective public office in the state; an individual holding an elective public office in the state may refuse to solemnize a marriage for any reason, including for reasons of religious scruple or conscience".

Section 2 (AS 25.05.281) is amended to include language that reads that marriages solemnized by elective officials are considered valid.

The purpose of the bill is to make marriage accessible to all Alaskan's. We recognize that marriage opens doors for people. There are over 1,100 places in federal laws and programs where being married makes a difference, such as providing access to health care for one's spouse or having eligibility for family medical leave. Frankly, we believe that this bill is a

family-first bill that allows people to receive greater benefits that are good for all Alaskans.

Additionally

- HB 20 also allows elected officials to be good stewards of government. It allows elective officials to interact on a one-on-one basis with constituents providing a service that has a lasting impact on constituents' lives.

- Whereas couples can currently have anyone solemnize a marriage through a Marriage Commissioner Appointment, there is a \$25 fee and the process can be time consuming. Having an elected official available provides a simplified cost-free outlet.

- This amendment may also apply to couples who may not be affiliated with a particular religious organization. They would be able to have an elected official perform their wedding without having to go through the process of arranging for a marriage commissioner appointment.

- In smaller towns or rural areas with limited resources- this change provides one more outlet for marriage solemnization. For example, if a couple in a remote Alaskan village are set to be married and the minister becomes ill, the mayor could step in on short notice.

With that, I'll note that the Department of Health and Social Services has assigned a zero fiscal note to this bill. This bill also may remove a financial cost to citizens who would otherwise pay \$25 for a Marriage Commissioner Appointment.

With that Mr. Chair, I would be happy to answer any questions the committee may have.

[1:26:17 PM](#)

REPRESENTATIVE EASTMAN said there does not appear to be a compelling reason to require Alaskans to pay a \$25 charge to be married by an elected official, and asked whether there would be a \$25 charge under other circumstances. He related that he cannot see why public officials would "be on a pedestal" or treated any better or differently than anyone else, and be exempt from the \$25 fee other people are required to pay.

CHAIR CLAMAN responded that the people getting married pay the \$25 fee, and this is an effort to make it easier for those who prefer to get married in that fashion. There is a long tradition of having certain individuals authorized to perform marriages in light of religious figures, and under maritime law, captains on ships have the authority at sea to perform marriages. The country has always recognized that everyone is not authorized to solemnize marriage, and people have made choices about having some limits. This, he explained, is an effort to have folks, recognized as public officials, perform the ceremony.

REPRESENTATIVE EASTMAN commented that the bill is about making marriage easier to accomplish, and in current statute and this bill, it doesn't change the fact that any Alaskan can go to a courthouse and become a marriage commissioner. He related that he still doesn't see the reason for requiring someone to go through the extra overhead and expense of becoming a marriage commissioner if that statute says that anyone can perform the marriage anyway. He commented that the committee should just recognize that anyone can perform the marriage and they don't need the government giving them a piece of paper saying they are a marriage commissioner because the state is not vetting, filtering, or requiring training. He said he is not convinced the state should charge anyone any money.

VICE CHAIR FANSLER asked that he save his comments for the discussion.

[1:30:23 PM](#)

REPRESENTATIVE KOPP said he appreciates the spirit of the amendment in the House State Affairs Standing Committee about giving permissive language, and certainly it does honor the conscience of being an elected official. He asked whether the sponsor would be willing to extend that permissive language to leaders of recognized churches and their congregations.

CHAIR CLAMAN opined that [AS 25.05.261(a)] paragraphs (1) and (3) in statute are both areas he would be willing to add Representative Kopp's suggestion into the group, even though the constitution already provides those protections.

REPRESENTATIVE LEDOUX asked that she be allowed to dialogue with Representative Eastman in the spirit of this being the Gruenberg Room, and stated that Representative Eastman made good points

but, she explained, "you can't do everything in one bill" and this bill is about allowing elected officials to solemnize a marriage. She pointed out that Representative Eastman is welcome to draft another bill wherein his suggestions would be solved and offered the expression that a legislator can't "Christmas Tree" everything onto one bill or it would be a big and long bill.

REPRESENTATIVE REINBOLD commented that the cost of drafting a bill is approximately \$1,000-\$2,000 and this is about streamlining the process. She said it is germane for Representative Eastman to discuss this in this bill.

[1:33:45- PM](#)

REPRESENTATIVE KREISS-TOMKINS asked the process when the average Alaskan obtains the marriage commissioner certificate besides the \$25 fee.

CHAIR CLAMAN replied the person fills out a form at the courthouse, pays the fee, and receives a paper certificate valid for 24-hours, for a particular day to perform a ceremony. He said he was unsure whether the process could be done online.

[1:35:20 PM](#)

NANCY MEADE, General Counsel, Administrative Staff, Office of the Administrative Director, Alaska Court System, said she was available for questions.

REPRESENTATIVE KREISS-TOMKINS asked whether an application to become a marriage commissioner could be done online, and the logic behind having a marriage commissioner, and having a limited class of people allowed to solemnize marriages.

[1:36:06 PM](#)

MS. MEADE advised that she was unfamiliar with the history as to why individual Alaskans can become marriage commissioners. Although, she said she has the sense, from personal history, that individuals cannot simply go to the court and be commissioned to be an officiant in someone else's marriage. To her knowledge that ability is not in every state. As to the application process, people must go to the courthouse because the court system does not have the ability to accept online requests. She continued that people go to the courthouse, complete the application, pay the \$25 filing fee which goes to

the general fund, and the person's commission is limited in time.

1:37:17 PM

REPRESENTATIVE KREISS-TOMKINS asked the sponsor to explain the original rationale behind limiting solemnizing solely to religious and spiritual officials.

CHAIR CLAMAN opined that it was the same as the prior answer, this country's tradition hasn't gotten to the point where it wants to say that everyone can solemnize a marriage. Probably, he opined, in the early days of this country the only people solemnizing marriages were religious officials, and then someone probably said they didn't belong to that particular organization, and in small communities that may have led to justices of the peace. There has been some interest in having some limits on the group of people that can solemnize a marriage. Consistent with Representative LeDoux's comment, he remarked that this effort was simply to try to make it a little easier for people to ask a public official they like to solemnize the marriage, thereby taking one step out of the process.

1:40:01 PM

REPRESENTATIVE LEDOUX surmised that Alaska does not let just anyone solemnize a marriage, although, through the marriage commissioners isn't the state really letting just anyone solemnize a marriage. She asked whether there are any limitations on who can be a marriage commissioner.

CHAIR CLAMAN replied that he doesn't believe so, if anything it is probably there to keep a record of those performing that function, in the same sense, the state only allows courts to perform divorces and the rationale is to know who is actually doing it.

REPRESENTATIVE LEDOUX noted that while she understands that one needs to keep a record of the marriage, what is the rationale for the requirement that individual's must get the government's permission in order to get married.

1:42:01 PM

CHAIR CLAMAN said the best answer he can offer is that the process of undoing a marriage is one in which the state does

give that authority to courts. The notion that the state would go to a non-government monitored process of ending marriages would suggest that the government should at least have some minor role in being able to certify that the marriage meets all of the requirements. He recalled that Representative LeDoux and he were once involved in a case in which one of the questions was [the date] in which the individuals were actually married. Since the court is involved in ending that union, at least at the minimum level, the government needs to be involved in certifying when the day occurred. He related there is a different question about how broad to open it up for people to sign certificates stating that the couple is now married. That is not the intent of this bill, it is to just slightly expand the group, he explained.

[1:44:06 PM](#)

REPRESENTATIVE KOPP said there has always been concern about who can solemnize a marriage in the law, and the state hold marriage in high regard because it attaches a host of benefits to married couples. He explained that the form a marriage commissioner fills out is there for the courts to track who it is vesting authority in, on behalf of the State of Alaska, to solemnize marriage because the state does see it as profoundly important.

[1:46:08 PM](#)

REPRESENTATIVE REINBOLD explained that thousands of years ago a lot of the laws around marriage were established, and many laws based on biblical principles. She said that the Bible defines marriage as between one man and one woman of which the Constitution of the State of Alaska still states, and public officials swear to uphold that constitution. She expressed that she refuses to redefine marriage based on some misguided reinterpretations of American society and she will not yield to the opinion of a handful of judges. This bill expands the conversation, and she appreciates the exemption, but if she receives an exemption, every public official should have that exemption. She stated that this opens up an important discussion.

[1:47:50 PM](#)

VICE CHAIR FANSLER pointed out that members have taken an indulgence to have a little cross talk, and asked that the members focus on questions specifically for the bill sponsor.

REPRESENTATIVE FANSLER opened public testimony on HB 20.

[1:48:38 PM](#)

TRISTAN WALSH, Alaskans for Equality, voiced his support for HB 20, because it give many people in Alaska the chance to ask someone they know [to solemnize a marriage], such as a public official in rural Alaska. He commented that it is another way they can celebrate the bond of marriage and not worry about going through a lot of hoops to have someone perform their marriage.

VICE CHAIR FANSLER, after ascertaining no one wished to testify, closed public testimony on HB 20.

REPRESENTATIVE FANSLER moved the committee to amendments, and pointed out that most of the amendments are based on Version D rather than Version J, the committee's working document. He noted that Legislative Legal and Research Services has been given authority to conform the amendments to the appropriate version of the bill should any amendments be adopted.

[1:50:58 PM](#)

REPRESENTATIVE KOPP moved to adopt Amendment 1, Version 30-LS0242\J.1 which read as follows:

Page 2, lines 1 - 4:

Delete all material and insert:

"(4) by an individual holding an elective public office in the state.

* **Sec. 2.** AS 25.05.261 is amended by adding a new subsection to read:

(c) Nothing in this section creates or implies a duty on a person authorized to solemnize a marriage under (a)(1), (3), or (4) of this section to solemnize a marriage."

Renumber the following bill section accordingly.

CHAIR CLAMAN objected for purposes of discussion.

[1:51:18 PM](#)

REPRESENTATIVE KOPP explained that in the same spirit as the amendment adopted in the House State Affairs Standing Committee, this amendment incorporates that amendment and extends the

permissive language. He referred to [AS 25.05.261(a) Version D, page 1, lines 5-9,] as follows:

(a) Marriages may be solemnized

(1) by a minister, priest, or rabbi of any church or congregation in the state, or by a commissioned officer of the Salvation Army, or by the principal officer or elder of recognized churches or congregations that traditionally do not have regular ministers, priests, or rabbis, anywhere within the state;

REPRESENTATIVE KOPP referred to [AS 25.05.261(a)(3), page 1, lines 12-14, which read as follows:

(3) before or in any religious organization or congregation according to the establish ritual or form commonly practiced in the organization or congregation; or

REPRESENTATIVE KOPP said "and then elected officials." He referred to "all three of those" and explained that the authorization in the law to solemnize a marriage would not imply a duty on those persons to solemnize a marriage. He further explained that it includes elected officials and it includes the same "protection of conscience" to the spiritual leaders of the various faith communities and its congregations.

CHAIR CLAMAN withdrew his objection.

[1:53:06 PM](#)

REPRESENTATIVE EASTMAN objected for purposes of discussion. He suggested it would be effective to take one amendment at a time and treat each on its merits.

VICE CHAIR FANSLER advised that the intention of the committee is to act on one amendment at a time.

REPRESENTATIVE EASTMAN maintained his objection and invited other members to "chime in first."

[1:53:57 PM](#)

REPRESENTATIVE REINBOLD noted that judges were left off of Amendment 1, and offered a friendly amendment to include judges because all public officials should be allowed an exemption.

REPRESENTATIVE KOPP advised that he was not open to that friendly amendment because after meeting with several judges at each level of the judiciary, the counsel he received was that Alaska's judges almost never perform marriages and it is really not an issue. Although, he offered, if it becomes a problem where they feel their professional conscience was being trampled on, they could let the legislature know that they would like an exemption. He acknowledged that it is a friendly amendment, but his fear was that the bill ultimately would not pass because of the fight over the judiciary, thereby, not extending the intended protection to the faith communities and faith leaders. At this time, he related, his main concern is that Alaska's churches and religious leaders cannot be compelled to solemnize marriage outside of their faith tradition.

1:56:18 PM

NANCY MEADE, General Counsel, Administrative Staff, Office of the Administrative Director, Alaska Court System, noted that as Representative Kopp mentioned, adding the language that "judicial officers could be excused for certain marriages" could be problematic. The reason being, she explained, their interpretation of the judicial canon is that judges must take anything that comes before them in the course of their duties. Judges would not, by their ethical guidelines, be able to not perform marriages for certain people unless the judge opts to not perform any marriages. Therefore, by including in the statute that a judicial officer would not be required, would present a conflict of what has been determined to be the case for judicial officers, she offered.

1:57:25 PM

VICE CHAIR FANSLER noted that Representative Reinbold offered a friendly amendment and asked whether she would like to make it a formal [Conceptual] Amendment 1 to Amendment 1.

REPRESENTATIVE REINBOLD moved to adopt [Conceptual] Amendment 1 to Amendment 1, [page 1, line 6 of Amendment 1] to include the Alaska Court System with the religious exemption, which would include (a)(1) through (4), line 6 of Amendment 1. She explained that the Alaska Court System is an entire branch of government and it is sticky matter when a complete branch of government is excluded. She voiced that the legislature and the executive branch receive that exemption and the judiciary branch needs the right to refuse and the right of protection of

conscience as well. She stated there has been mischief at the court in redefining marriage and not even going through the people, she remarked, and the courts need to be protected as well.

CHAIR CLAMAN objected to [Conceptual] Amendment 1 to Amendment 1.

[1:59:06 PM](#)

VICE CHAIR FANSLER stated that his understanding of Representative Reinbold's amendment was that [AS 25.05.61(c), page 1, lines 5-6 of Amendment 1], [Conceptual] Amendment 1 to Amendment 1 would read as follows:

(c) Nothing in this section creates or implies a duty on a person authorized to solemnize a marriage under (a)(1), (2), (3), or (4) of this section to solemnize a marriage.

REPRESENTATIVE REINBOLD said "That is correct."

[1:59:44 PM](#)

REPRESENTATIVE EASTMAN stated that in dealing with this amendment the committee is not taking each amendment on its merits as previously agreed, and explained that he prepared a separate amendment that does exactly what Representative Reinbold is attempting to do. In recognizing there are various degrees by which this issue can be addressed in different amendments, he requested that Representative Reinbold withdraw [Conceptual] Amendment 1 to Amendment 1 solely because he prepared a specific amendment regarding this exact issue.

[2:00:49 PM](#)

The committee took an at-ease from 2:00 p.m. to 2:02 p.m.

[2:02:50 PM](#)

REPRESENTATIVE EASTMAN identified that he was previously referring to Amendment 3, and that it is an outgrowth of his conversation with Representative Kopp in dealing with whether or not to specifically exclude judicial officers and marriage commissioners from this protection. Amendment 3 would treat the judiciary the same as everyone else in subsection (c), he said.

VICE CHAIR FANSLER noted there was a request that Representative Reinbold withdraw [Conceptual] Amendment 1 to Amendment 1 and asked whether she wishes to continue with [Conceptual] Amendment 1.

REPRESENTATIVE REINBOLD stated that this is important and that it is much easier and clearer to do it right here because all it does is add paragraph (2). She then agreed to withdraw [Conceptual] Amendment 1 to Amendment 1, but stressed that she wants to ensure that paragraph (2)'s specific language is included in Amendment 3.

[2:04:10 PM](#)

VICE CHAIR FANSLER said that [Conceptual] Amendment 1 to Amendment 1 has been withdrawn. He asked for further discussion on Amendment 1, which refers to solely to paragraphs (a)(1), (3), and (4).

REPRESENTATIVE LEDOUX offered that Amendment 1 basically changes the language in Version J, [page 2, lines 1-4] which read as follows:

(4) by an individual holding an elective public office in the state; an individual holding an elective public office in the state may refuse to solemnize a marriage for any reason, including for reasons of religious scruple or conscience.

REPRESENTATIVE LEDOUX pointed out that Amendment 1 scrubbed that language out, but the language "religious scruple" should be included to avoid any suggestion that religious scruple wouldn't be an appropriate reason for deciding not to solemnize a marriage.

[2:06:11 PM](#)

REPRESENTATIVE KOPP offered that Amendment 1 appears to be clear on its face that when talking about religious leaders and their congregations, that would be a reason that they would refuse. He said "it's like double speak." He explained that this amendment simply says they are authorized to solemnize, but those institutions have no duty to solemnize. Therefore, if you want to extend for reasons of religious scruple or conscience, the amendment is clear on its face that that is the reason they are doing it. As far as elected officials, when it says they have no duty, they cannot do it for any reason because it is

"any and all reasons." Also, he commented, those specific words will invite a lot of vigorous and robust discussion as this bill works its way through the process, and those words are fundamentally implied in Amendment 1. He opined that that language will actually harm the bill.

REPRESENTATIVE KOPP continued that he believes that Nancy Meade, Alaska Court System, said that a judge can just decide not to perform marriages and it is not considered an ethical violation. He stated that he was unsure whether he was restating Ms. Meade correctly.

VICE CHAIR FANSLER said his office would contact Ms. Meade to call in.

[2:08:41 PM](#)

REPRESENTATIVE LEDOUX advised that she does not want her suggestion to be an unfriendly [conceptual] amendment, but her thoughts are that "what this implies is, I think, that you can refuse to authorize a marriage for any legal reason." Certainly, she pointed out, this wouldn't give anyone the right to refuse to [solemnize] a marriage for a reason that was not legal, and she said she wants to be sure that refusing to solemnize a marriage based upon religious scruple is considered a legal reason for refusing to solemnize a marriage.

REPRESENTATIVE KOPP opined that when it is clearly put in the law that there is no duty, which means "you don't have any duty, nobody can tell you you [sic] have to do this for any reason." He clarified that that's what it says on its face and maybe another counsel should weigh in.

VICE CHAIR FANSLER advised that Nancy Meade was online, and asked Representative Kopp to restate his question.

REPRESENTATIVE KOPP asked whether he heard correctly that Ms. Meade had advised that if a judge has a policy or just makes a decision not to solemnize marriages, there are no ethical repercussions as it is strictly up to the judge, personally, to decide whether to solemnize marriages or not.

[2:11:43 PM](#)

MS. MEADE explained that judges and magistrates are bound by the canons of judicial conduct and they do have an ethical duty to resolve any matter brought before them as a judge, and to

perform other duties brought before them as a judge. In Anchorage, law clerks are delegated a duty through a presiding judge order to perform marriages. Law clerks are not bound by the canons of judicial conduct and they could refuse to solemnize any marriages during their clerkship. Although, if they say they are going to perform marriages, they need to perform all marriages without making judgment calls about the couple coming before them for any reason.

[2:13:25 PM](#)

REPRESENTATIVE KOPP referred Linda Bruce, Legislative Legal and Research Services, to a matter regarding wordsmithing [page 2, lines 3-4], in Version J, and he paraphrased as follows:

A public -- an elective public office in the state may refuse to solemnize a marriage for any reason, and then we -- we add the reason, including for reasons of religious scruple or conscience.

REPRESENTATIVE KOPP said that the question is whether Amendment 1 [page 1, lines 5-6] fully incorporate that legally into the law, and he paraphrased as follows:

Nothing in this section creates or implies a duty on a person authorized to solemnize a marriage under (a)(1), which is religious leaders, (3) congregations, and (4) elected officials, of this section to solemnize a marriage.

REPRESENTATIVE KOPP further asked that if it says that those authorized persons do not have a duty to solemnize, whether that is the equivalent to what is in Version J, page 2, lines 2-4.

[2:14:49 PM](#)

LINDA BRUCE, Attorney, Legislative Legal and Research Services, Legislative Affairs Agency, Alaska State Legislature, responded that in her opinion, the language of "no duty" would imply that an individual under one of those subsections may refuse to solemnize a marriage for any reason because they do not have a duty to solemnize that marriage.

VICE CHAIR FANSLER noted that Representative Eastman believes Amendment 2 speaks to this issue.

[2:15:41 PM](#)

REPRESENTATIVE LEDOUX offered that, clearly, the laws of the State of Alaska do not allow discrimination based upon race. Under Amendment 1, if someone refused to solemnize the marriage of an interracial couple, would that person be open for civil or criminal liability, she asked.

MS. BRUCE answered that under the state's antidiscrimination provision, it is likely that a person refusing to solemnize a marriage for an interracial couple due to a matter of religious conscience may be violating the antidiscrimination provision under state statute.

REPRESENTATIVE LEDOUX said that under Amendment 1, as it now stands, if someone said they would not solemnize a same sex marriage, would that open them up to liability. She continued, that in the event Ms. Bruce's answer was in the affirmative, she asked whether the language used in Version J would close that matter.

MS. BRUCE responded that other states have similar provisions in their state codes with several cases pending on this specific issue, and it is unclear how the courts will decide the issue given the competing interest. However, it is likely a court's decision will depend upon the facts of the case, for example, she explained, under Alaska State Statute "we currently only permit these individuals to solemnize marriages, we don't require them to."

[2:18:17 PM](#)

REPRESENTATIVE LEDOUX offered that in the event a person felt uncomfortable solemnizing a same sex marriage, would the person feel better with a statute as it reads in Version J, specifically including "no duty for reasons of religious scruple or conscience," or whether they should feel perfectly comfortable with Amendment 1.

[2:18:54 PM](#)

MS. BRUCE replied that she was unsure which would make a person more comfortable because she does think that Amendment 1, by requiring no duty, still encompasses those persons who may object for religious reasons.

REPRESENTATIVE LEDOUX questioned why wouldn't the horrendous example of refusing to solemnize an interracial marriage be covered.

[2:20:13 PM](#)

MS. BRUCE answered that in looking at the state's anti-discrimination statute, it provides that discrimination may not occur against an inhabitant of the state because of, and one reason is race. She advised that she did not see sexual orientation listed. She then referred to AS 18.80.210, Civil Rights, which read as follows:

AS 18.80.210. Civil Rights.

The opportunity to obtain employment, credit and financing, public accommodations, housing accommodations, and other property without discrimination because of sex, physical or mental disability, marital status, changes in marital status, pregnancy, parenthood, race, religion, color, or national origin is a civil right.

MS. BRUCE said she does not know whether the solemnization of marriages would actually even fall under the antidiscrimination provision. She commented that if it was challenged, it may not be on anti-discrimination grounds through state law, and instead challenged as these laws are being challenged in other states, under the Due Process and Equal Protection Clauses of the Fourteenth Amendment, and the Establishment Clause of the First Amendment.

[2:21:54 PM](#)

REPRESENTATIVE EASTMAN offered that what he sees with Amendment 1 is an effort in state statute to create the opportunity for someone who legally has the option of solemnizing a marriage, not to do so under a number of circumstances. Fundamentally, he opined, under cases in other states and recent court decisions that it will be difficult. He referred to a lawsuit that was directly referenced in a letter to this committee wherein a judge was sued for discrimination simply for a comment on a hypothetical situation involving someone who never actually asked the judge to solemnize her marriage. He offered that he drafted an amendment because Amendment 1 doesn't deal with judges, and in creating a separate option where elected officials do not have to go the route of participating in the

marriage solemnizing process, judges would be protected from charges of discrimination if they simply refused to do all marriages. Although, if a legislator decided to solemnize even one marriage they now come open to the charge of discrimination. Amendment 1 doesn't distinguish between the ability to participate in marriage at all versus the ability to participate in each individual particular marriage decision, he said. He said this amendment could be construed that a person has the right not to participate, but they chose to participate and now that person has to live with whatever implications and consequences there are further down the line. The United States Supreme Court decided that discrimination doesn't have to necessarily be proved to be intentional, it can simply be (indisc.). Fundamentally, he opined, the tension is the idea that the legislature is creating this special privilege or right for elected officials to participate in marriage, and if he is able to "take part in this kinda cool thing" and someone else can't participate in this cool thing then there's a question of discrimination. He related that there needs to be a serious discussion about just getting rid of the idea that "we want to create this special cool thing for people to participate in" because it has implications.

[2:29:07 PM](#)

REPRESENTATIVE REINBOLD said that she cannot support the amendment because she supports protection for all and not just two branches of government. Representative Reinbold offered that the language added in Version J is valuable language and she then paraphrased the definition of scruple as follows:

It is a feeling or doubt or hesitation with regard to the morality or propriety of the action.

REPRESENTATIVE REINBOLD commented that it is important for even non-religious people to have the ability, based on their belief system, to be able to refuse. She remarked that she was confused that in Sec. [2], it read "implies or a duty," and that possibly someone may interpret it as a responsibility, that word can be played with. She will be a no vote on Amendment 1, and she related that she appreciates Version J's language on page 2, line 1-[4].

[2:30:46 PM](#)

REPRESENTATIVE KOPP reminded the committee that Ms. Bruce had advised that the amendment covers the language that it replaces

in its entirety. He pointed out that Ms. Bruce also advised that "discrimination claims would not be brought under this section of the law at all." He remarked that the committee would never write into the law acts of discrimination and "if we have religious scruples, that would be very offensive to someone who maybe just hates people and it has nothing to do with a religious conviction, they just don't like people for whatever reason, but they are atheists and they have -- have no -- no and we would -- they would also want to have their -- their reasons." He described Amendment 1 as elegantly written in that it covers all of the committee's concerns, help's expedite the bill's passage, and it incorporates the bill sponsor's intent. He stated that "marriage is not a "cool thing," it's a wonderful blessing for whoever is seeking it, and this amendment helps make that happen.

[2:32:21 PM](#)

REPRESENTATIVE LEDOUX moved to adopt Conceptual Amendment 2 to Amendment 1.

[2:32:47 PM](#)

The committee took an at-ease from 2:21 p.m. to 2:43 p.m.

[2:43:19 PM](#)

REPRESENTATIVE LEDOUX withdrew Conceptual Amendment 2 to Amendment 1.

[2:43:42 PM](#)

REPRESENTATIVE EASTMAN said he appreciates the language that Representative LeDoux proposed in Conceptual Amendment 2 to Amendment 1, that it be adopted as a committee substitute, and related that he is greatly considering Conceptual Amendment 2 to Amendment 1 as Amendment Zero. He opined that the committee needs to go through the amendments and whichever amendment is adopted, have a reconciliation at the end. Otherwise, he commented, doing it each step along the way puts the cart before the horse.

[2:44:35 PM](#)

CHAIR CLAMAN called a point of order. He stated that the committee is dealing with these amendments one amendment at a time and each time Representative Eastman refers to these other

amendments he is doing exactly what he says he does not want to do. He then called for the question on Amendment 1.

REPRESENTATIVE FANSLER recapped that the committee is working off of Version J, Amendment 1, and there was a call for the question adopting Amendment 1.

REPRESENTATIVE EASTMAN interjected that he did not think his question was really answered there.

REPRESENTATIVE REINBOLD interjected that she did not get to comment after Representative LeDoux withdrew her [conceptual] amendment.

[2:45:30 PM](#)

VICE CHAIR FANSLER said he did not hear a question ...

REPRESENTATIVE EASTMAN interjected that his question was whether the committee was working on amendments one at a time, because if the committee is now replacing the committee substitute with Amendment 1, that's an entirely different process and he does not want to do that.

VICE CHAIR FANSLER advised that Version J would be amended if Amendment 1 passes.

REPRESENTATIVE EASTMAN argued that if the committee does that, the committee does need to have the whole conversation all at once and figure out the language. He pointed out that it's one thing to have the discussions in stair-steps and come back and figure it out at the end, but if the committee is incorporating everything as amendments pass, now the committee is replacing the language that was proposed before the committee substitute.

[2:46:30 PM](#)

VICE CHAIR FANSLER said that he absolutely understands what Representative Eastman is getting at, and that it is fortunate this is a short two-page bill and each member will be able to maintain what the differences are between them and continue to build off of that.

[2:47:14 PM](#)

VICE CHAIR FANSLER advised there was an undebatable call for the question, and requested a roll call.

REPRESENTATIVE EASTMAN objected because Representative Reinbold was still in the queue.

REPRESENTATIVE REINBOLD objected.

VICE CHAIR FANSLER requested a roll call vote on the call for the question on the adoption of Amendment 1.

[2:47:56 PM](#)

The committee took an at-ease from 2:47 p.m. to 2:48 p.m.

[2:48:18 PM](#)

CHAIR CLAMAN withdrew his call for the question because he was confident that with all of the discussion that had taken place, Representative Reinbold could complete her comments quickly.

REPRESENTATIVE REINBOLD said the public needs to understand that the committee is voting on Amendment 1. She referred to page [1], lines 1-3, of the amendment and paraphrased as follows:

Delete all material, and the material says: by an individual holding an elective public office in the state -- an individual holding an elective public office in the state may refuse to solemnize a marriage for any reason including reasons based on religious scruple or conscience.

REPRESENTATIVE REINBOLD described it as good language and she that she does not support deleting that language. Amendment 1 also excludes an entire branch of government, and it does not protect all three branches of government. Therefore, she said she cannot support Amendment 1.

[2:49:39 PM](#)

REPRESENTATIVE EASTMAN moved to lay Amendment 1 on the table, and explained that the committee could come back to it because he doesn't want Version J and Amendment 1 to replace each other until after the full discussion.

CHAIR CLAMAN objected.

[2:50:14 PM](#)

The committee took a brief at ease.

2:50:46 PM

VICE CHAIR FANSLER asked for a roll call vote to lay Amendment 1 on the table.

A roll call vote was taken. Representatives Eastman and Reinbold voted in favor of laying Amendment 1 on the table. Representatives Kopp, Kreiss-Tomkins, LeDoux, Fansler, and Claman voted against it. Therefore, the motion failed to pass by a vote of 5-2.

VICE CHAIR FANSLER requested a roll call vote on the adoption of Amendment 1.

2:52:08 PM

A roll call vote was taken. Representatives Claman, Kopp, Fansler, LeDoux, and Kreiss-Tomkins voted in favor of adopting Amendment 1. Representatives Eastman and Reinbold voted against it. Therefore, Amendment 1 was adopted by a vote of 5-2.

REPRESENTATIVE REINBOLD commented that she did not appreciate the fact that several committee members left this room during committee hours and made decisions behind closed doors.

2:53:09 PM

REPRESENTATIVE EASTMAN moved to adopt Amendment 2, Version 30-LS0242\D.12, which read as follows:

Page 1, line 1:

Delete "**elected public officials**"

Insert "**any person**"

Page 1, line 4, through page 2, line 11:

Delete all material and insert:

"* **Section 1.** AS 25.05.261(a) is amended to read:

(a) Marriages may be solemnized by any person in the state

[(1) BY A MINISTER, PRIEST, OR RABBI OF ANY CHURCH OR CONGREGATION IN THE STATE, OR BY A COMMISSIONED OFFICER OF THE SALVATION ARMY, OR BY THE PRINCIPAL OFFICER OR ELDER OF RECOGNIZED CHURCHES OR CONGREGATIONS THAT TRADITIONALLY DO NOT HAVE REGULAR

MINISTERS, PRIESTS, OR RABBIS, ANYWHERE WITHIN THE STATE;

(2) BY A MARRIAGE COMMISSIONER OR JUDICIAL OFFICER OF THE STATE ANYWHERE WITHIN THE JURISDICTION OF THE COMMISSIONER OR OFFICER; OR

(3) BEFORE OR IN ANY RELIGIOUS ORGANIZATION OR CONGREGATION ACCORDING TO THE ESTABLISHED RITUAL OR FORM COMMONLY PRACTICED IN THE ORGANIZATION OR CONGREGATION].

* **Sec. 2.** AS 22.15.100(3); AS 25.05.081, 25.05.281, and 25.05.371 are repealed."

CHAIR CLAMAN objected.

[2:53:26 PM](#)

REPRESENTATIVE EASTMAN advised that Amendment 2 makes clear that "no longer would you or I" need to go to the courthouse, waste time and money, and receive a piece of paper that is valid for 24-hours, to do what is already allowed in statute and perform a marriage. He stated that he is sympathetic to the inspiration behind HB 20 regarding removing that requirement from legislators when performing a marriage ceremony, thereby, removing the inconvenience, heartache, waste of time and money, to legislators. He said that when he married, they had to take that trip, pay the fees, and nothing was gained by it other than the government collecting money and giving them a piece of paper they could have done without. The added benefit is simply recognizing that anyone in Alaska can already perform a marriage, but for this bureaucratic impediment. This will take the committee in great strides toward resolving other conflicts that are coming up because once there is "that special cool exemption," there are special requirements that go along with that. He then opined that there are arguments to be made for discrimination and so forth. What is cool here, is not marriage itself, but who "gets to do it," he clarified. It is important for the committee to recognize that Alaska no longer requires a person solemnizing a marriage to have a theology degree, and there is nothing against marriage to say that that fee and that bureaucracy is not needed. A marriage license is required with a place to sign and there is a process to decide whether the marriage license is valid. The courts do not add anything to that marriage license process by requiring a legislator to go to the courthouse, pay a fee, and receive a piece of paper which is only valid for a day, he said.

[2:57:50 PM](#)

REPRESENTATIVE KOPP pointed out that with the court issuing a marriage commissioner license, it can verify the person is over the age of 18 years, and it also has a full record of who the state has invested authority in to consecrate a marriage. He stressed that it cannot be overstated how important a commitment that is, which is why the law doesn't throw open the door to any persons, and it is descriptive in who may solemnize a marriage. While he understands Representative Eastman's desire to possibly be more inclusive, he opined that the careful thought analysis would more come along the lines of classes of persons. He stated that allowing just any person diminishes how important the marriage commitment is, and the fact that a person must pay a small fee to get a marriage commissioner license indicates the pause the state wants everyone to have before entering into a commitment, or being the one to solemnize that commitment. He remarked that the faith community has the same view, it wants people to have pause because the gravity of the decision is significant.

[2:59:31 PM](#)

CHAIR CLAMAN maintained his objection to Amendment 2, because it is inconsistent with the limited purpose of the bill itself, and he completely agrees with the reasons articulated by Representative Kopp.

[2:59:56 PM](#)

REPRESENTATIVE KREISS-TOMKINS said that upon contemplation he agrees there is a certain level of deliberateness or intentionality that should be associated with the act in solemn ritual. He added that in a certain sense, possibly for some people the speed bump makes sense in that, almost for the sake of the ritual, it adds to the deliberateness of the ceremony by actually getting a certificate and becoming a marriage commissioner. He said he would be a no vote.

[3:01:26 PM](#)

REPRESENTATIVE EASTMAN related that each of these concerns could easily be resolved through Amendment 2. He remarked that there is nothing about paying a fee on top of the required fee for the marriage license that creates a solemnity experience for marriage because the paying of the fee is actually invisible to the folks getting married. The marriage license is a contract and people can attach any number of solemn expressions of

sincerity in keeping with it in whatever manner the couple wishes to solemnize their marriage. This discussion is outside of that experience and, he argued that marriage is not made special because there are multiple bureaucratic fees attached to it.

3:03:26 PM

REPRESENTATIVE REINBOLD said Amendment 2 gives her pause because she does not know what Representative Eastman meant by "any person." Although, she said she does understand Representative Eastman sentiments as to why should there be a ruling class that is allowed to perform marriages and excludes other people.

REPRESENTATIVE EASTMAN advised there is no statutory requirement that the person be 18 years old, and this doesn't change the way that that would necessarily attach. It is saying that it is no longer on the special person, whether a legislator or anyone else, this is simply on those people signing the marriage contract. He explained that they are the special people in this situation, not the fact that someone is an elected official or anyone else.

3:04:40 PM

REPRESENTATIVE KOPP noted that the Alaska Court System website reads that the marriage commissioner shall be 18 years of age, or older, and he was unaware whether that was a state policy. He opined that the intent of the state is to have adults as marriage commissioners.

3:05:15 PM

REPRESENTATIVE EASTMAN wrapped up by saying that within any of the other amendments, the committee will not be able to avoid the sticking point of discrimination on the one side, it's having the opportunity to marry versus having a duty or responsibility. He said he cannot see any way to close the door to attaching the potential for discrimination lawsuits against any legislators without taking a step in this direction. As long as the legislators create themselves as another special class able to solemnize marriages, there will be issues where people are concerned that someone in the future will be accused of being somehow prejudicial against who they marry or don't marry.

In the past, when it was simply marriage, there was no expectation that a person could tell a pastor, rabbi, elected official, judge, or another person, they had to perform the marriage ceremony. In the event they had a reason not to perform the marriage ceremony, they just didn't marry the couple. He doesn't want to create a situation wherein someone has an expectation that someone will marry them even if that person doesn't believe it is the right thing to do because the couple is too young or not thinking straight, and thereby be subject to a lawsuit. He then related a situation as a military officer. By opening this up to everyone, it ensures that no matter who wants to get married, they have someone to go to and perform the marriage ceremony, he said.

[3:10:11 PM](#)

REPRESENTATIVE REINBOLD moved to lay Amendment 2 on the table.

CHAIR CLAMAN objected.

VICE CHAIR FANSLER asked for a roll call vote to lay Amendment 2 on the table.

[3:10:37 PM](#)

A roll call vote was taken. Representatives Eastman and Reinbold voted in favor of laying Amendment 2 on the table. Representatives Claman, Kopp, Kreiss-Tomkins, Ledoux, and Fansler voted against it. Therefore, the motion failed to pass by a vote of 5-2.

VICE CHAIR FANSLER requested a roll call vote on the adoption of Amendment 2.

[3:11:25 PM](#)

A roll call vote was taken. Representative Eastman voted in favor of Amendment 2. Representatives Claman, Kreiss-Tomkins, LeDoux, Fansler, Reinbold, and Kopp voted against it. Therefore, Amendment 2 failed to pass by a vote of 6-1.

[3:12:24 PM](#)

The committee took an at-ease from 3:12 p.m. to 3:13 p.m.

[3:13:13 PM](#)

VICE CHAIR FANSLER advised that the meeting was adjourned.

[HB 20 was held over.]

3:13:31 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:13 p.m.