ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
April 12, 2017
2:16 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

HOUSE BILL NO. 208
"An Act relating to trusts and powers of appointment; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 175
"An Act ratifying an interstate compact to elect the President and Vice-President of the United States by national popular vote; and making related changes to statutes applicable to the selection by voters of electors for candidates for President and Vice- President of the United States and to the duties of those electors."

- HEARD & HELD

HOUSE BILL NO. 170
"An Act relating to securities, registration, exempt securities, exempt transactions, broker-dealers, agents, investment advice, investment advisers, investment adviser representatives, federal covered securities, federal covered investment advisers, viatical settlement interests, small intrastate security offerings, Canadian broker-dealers, and Canadian agents; relating to administrative, civil, and criminal enforcement provisions, including restitution and civil penalties for

violations; relating to an investor training fund; establishing increased civil penalties for harming older persons and vulnerable adults; relating to corporations organized under the Alaska Native Claims Settlement Act; amending Rules 4, 5, 54, 65, and 90, Alaska Rules of Civil Procedure, and Rule 602, Alaska Rules of Appellate Procedure; and providing for an effective date."

- MOVED CSHB 170(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 200
"An Act establishing a top two nonpartisan open primary election system for elective state executive and state and national legislative offices; repealing the special runoff election for the office of United States senator or United States representative; changing appointment procedures relating to precinct watchers and members of precinct election boards, election district absentee and questioned ballot counting boards, and the Alaska Public Offices Commission; requiring certain written notices to appear in election pamphlets and polling places; relating to declarations of candidacy and letters of intent; and amending the definition of 'political party.'"

- HEARING CANCELED

HOUSE BILL NO. 223
"An Act relating to municipal penalties for violation of a municipal ordinance when there is a comparable state crime; and providing for an effective date."

- HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: HB 208
SHORT TITLE: TRUSTS; COMM PROP TRUSTS; POWERS OF APPT
SPONSOR(s): REPRESENTATIVE(s) JOHNSON

03/31/17	(H)	READ THE FIRST TIME - REFERRALS
03/31/17	(H)	JUD
04/10/17	(H)	JUD AT 1:00 PM GRUENBERG 120
04/10/17	(H)	Scheduled but Not Heard
04/12/17	(H)	JUD AT 1:00 PM GRUENBERG 120

BILL: HB 175
SHORT TITLE: US PRESIDENT ELECT. COMPACT: POPULAR VOTE

SPONSOR(s): REPRESENTATIVE(s) FANSLER

03/13/17	(H)	READ THE FIRST TIME - REFERRALS
03/13/17	(H)	STA, JUD
03/16/17	(H)	STA AT 3:00 PM GRUENBERG 120
03/16/17	(H)	Heard & Held
03/16/17	(H)	MINUTE(STA)
03/23/17	(H)	STA AT 3:00 PM GRUENBERG 120
03/23/17	(H)	Heard & Held
03/23/17	(H)	MINUTE(STA)
03/28/17	(H)	STA AT 3:00 PM GRUENBERG 120
03/28/17	(H)	Moved HB 175 Out of Committee
03/28/17	(H)	MINUTE(STA)
03/29/17	(H)	STA RPT 2DP 3DNP 2NR
03/29/17	(H)	DP: TUCK, KREISS-TOMKINS
03/29/17	(H)	DNP: JOHNSON, KNOPP, BIRCH
03/29/17	(H)	NR: WOOL, LEDOUX
04/12/17	(H)	JUD AT 1:00 PM GRUENBERG 120

BILL: HB 170
SHORT TITLE: AK SECURITIES ACT; PENALTIES; CRT. RULES
SPONSOR(s): LABOR & COMMERCE

03/10/17	(H)	READ THE FIRST TIME - REFERRALS
03/10/17	(H)	L&C, JUD
03/24/17	(H)	L&C AT 3:15 PM BARNES 124
03/24/17	(H)	Heard & Held
03/24/17	(H)	MINUTE(L&C)
03/27/17	(H)	L&C AT 3:15 PM BARNES 124
03/27/17	(H)	Moved HB 170 Out of Committee
03/27/17	(H)	MINUTE(L&C)
03/29/17	(H)	L&C RPT 6DP 1NR
03/29/17	(H)	DP: SULLIVAN-LEONARD, STUTES, WOOL, JOSEPHSON, BIRCH, KITO
03/29/17	(H)	NR: KNOPP
04/07/17	(H)	JUD AT 1:00 PM GRUENBERG 120
04/07/17	(H)	Heard & Held
04/07/17	(H)	MINUTE(JUD)
04/11/17	(H)	JUD AT 5:30 PM GRUENBERG 120
04/11/17	(H)	Heard & Held
04/11/17	(H)	MINUTE(JUD)
04/12/17	(H)	JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

REPRESENTATIVE DELENA GOODWIN JOHNSON
Alaska State Legislature

Juneau, Alaska
POSITION STATEMENT: Presented HB 208 as prime sponsor.

SHAE SIEGART, Staff
Representative DeLena Goodwin Johnson
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: During the hearing of HB 208, offered a PowerPoint Presentation, and answered questions.

MATHEW BLATTMACHR
Peak Trust Company
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HB 208, offered testimony and answered questions.

RICHARD HOMPESCH, Attorney
Hompesch Evans & Averett
Fairbanks, Alaska
POSITION STATEMENT: During the hearing of HB 208, answered questions.

BETH CHAPMAN, Attorney
Faulkner Banfield
Juneau, Alaska
POSITION STATEMENT: During the hearing of HB 208, offered support for the legislation, and answered questions.

JONATHAN BATTMACHR, Attorney
Garden City, New York
POSITION STATEMENT: During the hearing of HB 208, testified in support of the legislation.

BARRY FADEM, President
National Popular Vote
Lafayette, California
POSITION STATEMENT: During the hearing of HB 175, testified in support of the legislation.

KEVIN ANSELM, Director
Division of Banking and Securities
Department of Commerce, Community & Economic Development
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HB 170, answered questions.

RENEE WARDLAW, Assistant Attorney General

Commercial and Fair Business Section
Department of Law
Juneau, Alaska
POSITION STATEMENT: During the hearing of HB 170, answered questions.

ACTION NARRATIVE

2:16:42 PM

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 2:16 p.m. Representatives Claman, Fansler, and Kopp were present at the call to order. Chair Claman advised that, currently, the committee did not have a quorum. Representatives Eastman, Reinbold, LeDoux, and Kreiss-Tomkins arrived as the meeting was in progress.

HB 208-TRUSTS; COMM PROP TRUSTS; POWERS OF APPT

2:17:22 PM

CHAIR CLAMAN announced that the first order of business would be HOUSE BILL NO. 208, "An Act relating to trusts and powers of appointment; and providing for an effective date."

2:18:32 PM

REPRESENTATIVE DELENA GOODWIN JOHNSON, Alaska State Legislature, paraphrased her sponsor statement, as follows [original punctuation provided]:

> Alaska has set a precedence as being a leader in the Nation's estate and tax planning Industry. Banks, trust companies, Alaskans, and Americans from all over seek out Alaska to be the home of their financial assets due to our environment which promotes economic security, strength, and growth. House Bill 208, seeks to continue the prosperity of this environment through further fostering a conducive place where people can invest their assets and know that our statutes will insure their integrity, and ability to benefit their intended audience.
>
> We can look at House Bill 208 as a "flexibility" bill which provides for those looking to perform the best estate planning, whether they are residents or non-residents, assurance that their irrevocable document

won't hinder its beneficiaries through unintended results including; providing financial resource to a dangerous habit, not providing ability to pay for treatment of an unforeseeable disability, or by providing financial resource to someone who would rather put it towards a suitable charity. Decanting may also provide the ability to keep documents viable in response to changes in State or Federal tax laws.

Since 1997, Alaska has been a leader in adopting laws to improve estate and tax planning options for both Alaskans and non-Alaskans. House Bill 208 is a continuation of this leadership as it provides expansion and clarification to our existing statutes. House Bill 208 focusses on expanding and clarifying four key areas of our State Statutes surrounding irrevocable trusts.

The four areas are Decanting of Trusts, Powers of Appointment, traceability of Trust Assets for Tax Efficiency, and Clarification of Trustees' Specific Powers. These four areas have since, and in some cases prior to, 1997 been forced to be decided by a Judge. Providing the ability for these four areas to be clearly outlined by the original settlor, and by providing beneficiaries the ability to adapt to unforeseen events, we continue to provide an environment where irrevocable trusts, like our State and National Constitution, may be amended to provide, or not provide, in clearly outlined, yet commonly unforeseen, circumstances.

Keeping all of these things in mind, I humbly ask for your support in keeping Alaska a leader in innovation in the trust industry as the financial industry continues it's perpetually changing mentality by passing House Bill 208.

2:21:23 PM

SHAE SEGART, Staff, Representative DeLena Goodwin Johnson, Alaska State Legislature, paraphrased the PowerPoint presentation, titled "House Bill 208," as follows [original punctuation provided]:

Why is House Bill 208 being introduced? What problem is being solved?

House bill 208 seeks to expand, and clarify current State Statutes surrounding one of our most successful industries. The piece of legislation in front of you is seeking to continue the process started in 1997 by giving the State of Alaska a competitive advantage to once again be the best jurisdiction for Alaskans, and non-alaskans, to keep their trusts and estates in.

Trust and Estate planning is one of these things that commonly gets overlooked in the search for industries that really strengthen our economy. We saw a value to this industry in 1997 when the Alaska State Legislature passed the Alaska Trust Act which quickly propelled our State to the top of the nation's ranking in Estate and Tax Planning Industry. It holds vast benefits to Alaskans as well as financial institutions in Alaska.

I would like to point you all to a few documents in your bill packet, the first one, as we go forward to the four main areas of this bill is a matrix what you decant, what happens when you decant, and some kind of hypotheticals in moving forward. The other one is a trust and estate glossary, it has some helpful terms. As we move through this law that has a vernacular all to itself, and it is a very nuanced part of our state statute books. The next one would be our ranking comparatively to other states in the trust and estate planning industry. We are currently number 7, we used to be farther up on this list when we passed the Alaska Trust Act in 1997, and have since sunk in the rankings.

2:23:30 PM

Online I have Matthew Blattmachr of Peak Trust Company, who will be able to answer any really professional questions that get really technical into the trust profession and industry. Going forth, there are four areas where this bill really seeks to add expansion, as well as clarify in our existing statutes.

Since 1997, Alaska has been a leader in adopting laws to improve estate and tax planning options for both Alaskan and non-Alaskans. House Bill 208 is a

continuation of this leadership as it adds expansion and clarification to our existing statutes.

Decanting. Decanting, of course, is the act of pouring liquid from one container to another as often occurs with wine. When one trust pays (or pours) its assets to another trust, this too is referred to as decanting. Decanting is used to correct drafting errors, reduce costs of trust administration, enhance tax effects and many other reasons. While Alaska has had decanting statutes for nearly 20 years, House Bill 208 would provide additional flexibility and clarification to this great statutory provision. Decanting is commonly used by Alaskans who are looking to update their trust documents. Additionally, non-residents bring their business to Alaska because of this progressive statute.

2:25:02 PM

Powers of Appointment. One of the most powerful estate planning tools is to grant someone, such as a beneficiary, a "power of appointment," which allows that person the right to specify where property will pass at certain times, such as when the beneficiary dies.

The proposal would clarify certain aspects of Alaska law relating to these powers so they can be used more efficiently for tax and other reasons.

Tracing of Trust's Assets for Tax Efficiency. Trusts are often created by more than one settlor. Under Internal Revenue Code Section 671, a settlor is treated as the owner of the portion of the trust to which the settlor contributed, if the settlor reserves certain powers over the trust property.

Under AS 13.36.169, a trustee may divide a trust into one or more separate trusts if certain tax elections are made. However, the statute does not contemplate dividing a trust into separate portions when there are multiple settlors and treating each separate portion as being contributed to solely by one settlor. Although a trust instrument might grant this power, Alaska law does not.

The proposal would allow a trustee who has traced contributions to a trust, as well as earnings and reinvestments on such contributions, to divide the trust into one more separate trusts of which each settlor would be treated as the sole settlor of the trust as to the portion to which he or she contributed. This power would provide more clarity as to the tax treatment of trusts with more than one settlor. No other state appears to have a similar law in effect at this time. This bill would help Alaska remain at the forefront of trust legislation.

2:27:04 PM

Clarification of Certain Trustee Powers. Alaska law grants trustees certain powers. Among these are the right to acquire insurance to protect the trust from claims from third parties; however, certain aspects of the powers are not clear.

The proposal would clarify Alaska law to say that a trustee can acquire insurance to protect the trust assets from claims of third parties and the trustee from third party and beneficiary claims and to charge the premiums to the trust.

These and many other Alaska laws the Legislature has enacted have benefitted Alaskans, has resulted in millions of dollars being deposited in financial institutions in the state which, in turn, have provided funding for Alaska businesses, and provided significant work for many Alaskans. We hope to see this success continue for years to come.

2:28:58 PM

MATHEW BLATTMACHR, Peak Trust Company, offered that in 1997, the legislature passed the Alaska Trust Act, which put Alaska not only as the first state, but made Alaska the premier jurisdiction for trust and estate planning. These laws were powerful and created a desire from other states to copy Alaska's laws in that this would be a good industry to have in their state, it's a clean industry, it doesn't require any outlay from the state in order to bring it to a state, or requires maintain the industry. Therefore, he said, it created a competitive environment with options for clients and their advisors, and in the event Alaska wants to maintain its standing, it must

frequently consider additional bills that not only clarify but add to existing statutes.

[MR. SIEGERT read each slide on the PowerPoint word for word, please review each slide for his testimony.]

2:30:41 PM

MR. SIEGERT turned to slide 2, "4 Areas of Concern" and paraphrased as follows:

> 4 Areas of Concern, Decanting of Trusts, Powers of Appointment, Traceability of Trust Assets for Tax Efficiency, and Clarification of Trustees' Specific Powers

MR. SIEGERT turned to slide 3, "Helpful Definitions" and advised these definitions are not located in the glossary.

MR. SIEGERT turned to slide 4, "Decanting a Trust," questions posed to Mr. Blattmachr, and paraphrased as follows [original punctuation provided]:

> Decanting a Trust. Why would someone want to decant a trust? We already have decanting statute, isn't that enough?! What instances are most common that call for a trust to be decanted?

2:32:04 PM

MR. BLATTMACHR answered there are a variety of reasons someone would want to decant, and advised that the matrix provided within the materials assists in setting up some examples as to how decanting can help. Decanting, he explained, may include a potential scrivener's error in the original document, and because the issue was dealing with irrevocable trusts and there was no way to revoke them, the technical way would be to decant. An additional reason for decanting may be changes in tax law, and pointed to the shift in the national presidential regime which may bring about tax law changes, thereby, rendering some planning documents as inefficient or ineffective. The current decanting statute is almost 20 years old, he described, and due to advancements in decanting and estate planning law, this bill would add some flexibility for Alaskan practitioners to match what other states currently allow. He explained that most of these instances are brought up due to a certain need to amend the document in some manner, and is done so for the best

interests of the beneficiaries, whether it was updating provisions in the document or changing dispositive provisions, he explained.

2:34:01 PM

MR. SIEGERT turned to slide 5, "Sec. 29, 30" having to do with decanting, and paraphrased as follows [original punctuation provided]:

> Section 29 – Adds a new section 13.36.380 (Distribution of principal)
>
> > (a) Authorizes a court to authorize a trustee to invade the principal of a trust if the court makes certain findings
> >
> > (b) Limits the application of this section to an irrevocable trust for which the trust instrument provides for certain distributions
>
> Section 30
>
> > (a) indicates that a second power, as defined in the subsection, created by a first power may be validly exercised to postpone the vesting of property without regard to the creation of the first power
> >
> > (b) states that if a first power is exercised to create a second power as defined in the subsection, the second power is not valid unless all property interests vest not later than 1000 years after the creation of the first power.
> >
> > (c) defines "first power" for the section.

MR. SIEGERT turned to slide 6, "Powers of Appointment," questions for Mr. Blattmachr, and paraphrased as follows [original punctuation provided]:

> Powers of Appointment. Do Powers of Appointment have to do with more than just the distribution of assets? Who holds the Power of Appointment in a trust? Does this bill change that to more people? Is the Power of Appointment a Fiduciary or Non-fiduciary power? Why do they matter?

MR. BLATTMACHR responded that powers of appointment can do more than the distribution of assets because that provision broadly gives the beneficiary the ability to appoint assets for a variety of reasons, such as winning the lottery and appointing the assets to a charity, putting assets into a trust for a child with substance abuse problems. The powers of appointment can be used for tax planning reasons, for example, to pull the assets out of someone's estate and into their estate. Typically, he advised, the powers of appointment is given to the beneficiary of the document, although sometimes they can be further assigned, and the bill does not change who is appointed or the number of people. He offered that powers of appointment can be held in a fiduciary or non-fiduciary power depending upon the document and the power itself, and they matter as they increase flexibility within trust documents.

2:37:04 PM

CHAIR CLAMAN referred to slide 5, Section 30, subsection (b), which read as follows:

> (b) states that if a first power is exercised to create a second power as defined in the subsection, the second power is not valid unless all property interests vest not later than 1000 years after the creation of the first power.

CHAIR CLAMAN noted there is a rule of perpetuity making it 1,000 years after the creation of the first power, and asked the justification for 1,000 years.

MR. SIEGERT answered that under current statute [AS 34.27.051] there is a statutorily protected section of 1,000 years of perpetuity, and this does not change the common 21 year rule of perpetuity. He advised there are many states with expanded rules against perpetuities and Alaska is one state that contains 1,000 years.

CHAIR CLAMAN commented that that is existing statute and surmised that nothing was being changed today with respect to trusts.

MR. SIEGERT agreed.

2:39:15 PM

MR. SIEGERT turned to slides 7-12, "Sections 1, 5-7, 10-22 (Powers of Appointment), and read each slide word-for-word. [Please see PowerPoint "House Bill 208."]

2:45:15 PM

MR. SIEGERT turned to slide 13, "Traceability of Assets," questions for Mr. Blattmachr to answer, and paraphrased as follows [original punctuation provided]:

> Traceability of Assets. Isn't this just a way of avoiding taxes? Why don't we already have a statute protecting this already; if it is such a big deal?

MR. BLATTMACHR responded that traceability of assets has nothing to do with avoiding taxes, in that it provides practitioners a provision with which to rely when unwinding a trust and separating assets. For example, practitioners can rely upon this provision when "planning the event" and they have multiple grantors of a single trust, for whatever reason, and would like to separate the assets of the trust. This provision is not a big deal, but it adds clarity to Alaska law, he commented.

2:46:35 PM

REPRESENTATIVE KOPP surmised that this is technical area of law and some of these terms should be discussed for clarity, such as the definitions of fiduciary versus non-fiduciary.

MR. BLATTMACHR responded that fiduciary versus non-fiduciary comes down to who holds that power. In the event a person is already acting in a fiduciary capacity, such as a trustee, they typically hold a fiduciary power. In the event they hold that power as a beneficiary and are not in a fiduciary capacity to begin with, typically it is a non-fiduciary power. Generally, he explained, the entity or person that holds the power dictates whether it is fiduciary or non-fiduciary.

2:48:21 PM

REPRESENTATIVE KOPP referred to non-fiduciary, and asked that when a person is the holder of a non-fiduciary power, that means the person is not a beneficiary, the person is holding it in trust for another person.

MR. BLATTMACHR said, "No, not necessarily." For example, in the event Peak Trust Company held a fiduciary power of appointment

over trust assets, it would hold that in a fiduciary capacity, most likely. Wherein, he said, the Peak Trust Company would be held to the same standard with that power as with any other action or inaction. He related that for a beneficiary holding that power, they typically do not have to hold it in a fiduciary capacity. There may be standards to who they can appoint it to, such as a defined class of beneficiaries, and there may not be, that goes into different types of powers. He advised that they do not have a fiduciary duty when exercising that power, but again, if they are a beneficiary, they would be appointing the assets for their benefit.

2:49:46 PM

REPRESENTATIVE KOPP noted that he would research the issue a bit on his own, and asked that "invasion of trust" be explained.

MR. BLATTMACHR explained that invasion is typically a term that defines the appointment of assets from one trust to another trust as far as decanting. Typically, he said, it is not separated between whether that was income or principle, it is that the current trust was being invaded, pulling assets out and putting them into a new trust.

2:50:53 PM

REPRESENTATIVE KOPP surmised that it has nothing to do with getting into earnings of a trust versus getting into an appropriation or a withdrawal of the principle of the trust, it doesn't break it down in that manner. He further surmised that an invasion means taking anything out of a trust.

MR. BLATTMACHR responded in the sense of decanting, yes. Typically, the entirety of the original trust is put into a new trust. Although, he commented, that might change when decanting one trust and separating it out into three trusts, one trust for the benefit of three different beneficiaries and take a pro rata share. He agreed that it is typically, not necessarily the definition of principle versus income.

2:51:58 PM

REPRESENTATIVE FANSLER asked that the tax structure, currently in place in Alaska, be explained, whether they are all taxed equally, and whether there are different structures.

MR. SIEGERT deferred to attorney Richard Hompesch.

2:53:43 PM

REPRESENTATIVE FANSLER noted that different types of trusts are available, and requested that tax liability structures be explained within the different trusts set up in the State of Alaska.

2:53:54 PM

RICHARD HOMPESCH, Attorney, Hompesch Evans & Averett, advised that Alaska does not tax the income of trusts or estates under current law, trusts and estates are subject to federal income and transfer taxes. He advised that he was testifying today on his own behalf, and not on behalf of any party.

2:54:31 PM

REPRESENTATIVE FANSLER specifically asked whether all trusts tax in the exact same manner, whether it be a federal or state tax structure.

MR. HOMPESCH replied that the taxation of trust income varies from state-to-state, and the federal taxation income and transfer tax of trusts is generally the same. There are exceptions, some trusts are exempt from federal income taxation, known as Charitable Trusts, but most of the trusts being discussed today may be decanted into another trust and are subject to federal income taxes.

REPRESENTATIVE FANSLER referred to allowing decanting due to innovations in trusts or changes in the tax code, for example, and asked whether it would be possible for a person to decant their current trust into a new trust that would suddenly occur into a tax liability.

MR. HOMPESCH answered "Not to my knowledge, no."

2:56:23 PM

MR. SIEGERT turned to slide 14, "23 - Dividing trust into separate portions for income tax purposes," and paraphrased as follows [original punctuation provided]:

> This section adds a new subsection to read:

> Unless a governing instrument specifically refers to this section and provides otherwise, if a trust is created by more than one settlor, and if a trustee keeps records tracing contributions, a trustee may divide the trust into one or more separate trusts for which a specific settlor shall be treated as the sole settlor of the separate portion of the trust to which the settlor contributed. A trustee may exercise this power at any time, whether before, or, or after a settlor's death. A trustee may exercise this power whether or not the trust was initially governed by the law of this state or the situs of a trust was moved to this state.

2:57:36 PM

MR. SIEGART turned to slide 15, "Clarification of Specific Powers of a Trustee," having to do with clarification of specific powers of a trustee, and paraphrased as follows [original punctuation provided]:

> What are Specific Powers of a Trustee? Can't specific powers be given by the trust?

MR. BLATTMACHR advised that under Alaska law, the specific powers of a trustee are quite broad and include anything that might be reasonably expected for a trustee to perform to administer a trust. He further advised there are some specific definitions under Alaska law that can be further clarified under the trust documents. In addition, he explained, Alaska law allows for different trustees to hold different powers, and for certain powers to be taken away from trustees. Specific powers can be given by the trust and give more flexibility to the trustee than what Alaska law allows, or it can also restrict abilities of trustees in the document, he explained.

2:58:57 PM

MR. SIEGERT turned to slide 16, "Section 2," and paraphrased as follows [original punctuation provided]:

> Specific Powers of Trustees. Except as otherwise provided by this chapter, in addition to the powers conferred by the terms of the trust, a trustee may perform all actions necessary to accomplish the proper management, investment, and distribution of the trust property, including the power…

This is followed by the 29 powers that are statutorily protected.

(17) to insure the property of the trust against damage or loss and to insure the trustee against liability with respect to third persons **or beneficiaries of the trust**;

2:59:29 PM

MR. SIEGERT turned to slide 17, "Section 3," having to do with the clarification of specific powers of trustees, and paraphrased as follows [original punctuation provided]:

(b) A trustee may pay as a charge against trust property the cost incurred to perform an action authorized under (a) of this section

2:59:50 PM

MR. SIEGERT turned to slide 18, "Sections 25-28 (Definitions)," changes in definition to accommodate new sections, and paraphrased as follows [original punctuation provided]:

Sec. 25 - Changes definition to accommodate new subsections of Definition

Sec. 26 - (b)(2) updates to include new legal term "power" instead of authority. Deletes clarification of "trustee" to agree with powers given in the proposal.

Sec. 27 - includes a revocable trust in definition of "invaded trust"

Sec. 28 - Adds definition of beneficiary

3:00:43 PM

REPRESENTATIVE KOPP offered appreciation for the technical bill and acknowledged the capacity of Alaska to be a vanguard for setting up trusts in estates because it is a significant industry in and of itself. He offered his understanding that clean-up keeps the state in a leadership role, and asked when the committee would hear from the Department of Law.

CHAIR CLAMAN advised the bill would not move today, and asked that the Department of Law be available during the next bill hearing.

CHAIR CLAMAN opened public testimony on HB 208.

3:02:36 PM

BETH CHAPMAN, Attorney, Faulkner Banfield, advised she has practiced in estate planning and the special needs planning area for the past 29 years, and supports HB 208. She pointed out that not only will the legislation continue to improve Alaska's laws in bringing trust business to the state, but it will also help Alaskans. The decanting provisions, in particular, are used quite frequently to help Alaskan families' correct trusts and protect beneficiaries. These amendments continue to provide flexibility and more opportunities to help their, mostly, Alaskan clients, and respond to changed circumstances in a cost efficient manner so that the court system was not involved, she said. Oftentimes, these trusts are written when children are young and may terminate at a certain age, and that child may later develop disabilities or sometimes substance abuse problems. These laws allow the correction of those trusts, to make sure the funds stay in trust for the individual, provide a safety net, and give their clients certainty that their families will be cared for in the future.

3:04:07 PM

REPRESENTATIVE KREISS-TOMKINS asked Ms. Chapman to speak to the nature of the trust industry in Alaska, the industries attracted to the state with the most appealing statutory environment, the attractiveness of Alaska to the industry, and the scope of the industry relative to other states.

MS. CHAPMAN responded that the industry has been comprised of various components since 1997, the financial industry, the trust companies, and the financial institutions that receive the trust funds required to be deposited in Alaska for non-residents to use the trust laws. Since 1997, Alaska had been the premiere jurisdiction and it was the first jurisdiction to start modernizing trust laws, other states started to compete and the states copied whatever was done in Alaska, in particular, Delaware, South Dakota, and Nevada. Over the years, she said, "we have tried to limit" how many times they go before the legislature to seek modernization of these laws, and [due to those efforts] other states leaped over [Alaska]. Several

rankings are provided, one was included in the materials regarding decanting, and Alaska previously was at the top, but it is no longer at the top. She said, "We are trying to strike a balance" that will continue to attract those trusts to Alaska, and also continue to ensure that Alaskans want to keep their funds in Alaska because, she explained, similar to anyone, Alaskans will look for the best laws for their particular financial needs.

3:06:21 PM

REPRESENTATIVE KREISS-TOMKINS described that the notion of modernizing laws was interesting and it suggested that the laws are neutral and merely reacting to the changing financial industry or evolving technologies. In the event his description was correct, he asked whether the trust industry had considered trying to get around the legislative process if the revisions were merely technical, and whether it considered regulations with a board. He then asked, if that was not the case, what the points of pushback were, and why had not all 50 states adopted laws appropriately modern.

MS. CHAPMAN reminded Representative Kreiss-Tomkins that she is an attorney in private practice, and while she drafts trusts, she is not part of the trust industry and was appearing today as a private practitioner. The trust industry, whether it be the Peak Trust Company or other trust companies in Alaska, are regulated by regulation and one state department. She related that when she first started practicing, the state did not have a trust code and when she had a question she had to look to other states to find the answer. She said, "What we are trying to do" is create a statutory framework offering practitioners, clients, and anyone using those laws, some certainty as to what they are, with some standards. Other states are starting to also move forward with new changes, she opined, as 22 states adopted the decanting statutes, and Alaska was the second state in 1997. Also, more and more states are moving toward the repeal of the rule against perpetuity and states are looking to make it more assessable for people to use trusts as part of their estate plan, she explained.

3:09:44 PM

JONATHAN BATTMACHR, Attorney, advised he is a member of the New York, California, and Alaska bar associations, and is currently retired. He described HB 208 as "excellent" in that it will

help Alaska maintain its position as one of the premiere trust jurisdictions in the country.

CHAIR CLAMAN, after ascertaining no one wished to testify, closed public testimony on HB 208.

[HB 208 was held over.]

HB 175-US PRESIDENT ELECT. COMPACT: POPULAR VOTE

3:11:24 PM

CHAIR CLAMAN announced that the next order of business would be HOUSE BILL NO. 175, "An Act ratifying an interstate compact to elect the President and Vice-President of the United States by national popular vote; and making related changes to statutes applicable to the selection by voters of electors for candidates for President and Vice-President of the United States and to the duties of those electors."

3:12:22 PM

REPRESENTATIVE FANSLER introduced himself as prime sponsor of HB 175, the U.S. Presidential Election Compact, commonly referred to as the "National Popular Vote."

3:12:44 PM

REPRESENTATIVE FANSLER advised that the purpose of the bill is to get to the core value of "What does a vote mean?" He described voting as a sacred right that many women and men struggled to gain and fought hard and gave their lives to defend this right, of which is held in the highest regard in this country. With that highest regard, he said, most important is that every vote is equal. Although, he noted, that right has not always been held in that regard, but the nation is moving more and more to the point where it wants that to be the case. He reminded the committee that laws had been modified to allow minorities and women the right to vote and, he described this as just another step on that journey to make certain every person's vote counts exactly the same.

REPRESENTATIVE FANSLER pointed out that the current electoral college system favors swing states that are, essentially, 12 states that determine who is elected as the President of the United States. Within that system, he commented, predominant attention for the race for president is given to those 12

states, involving not only money, but attention to each state's desires and issues. This bill, he pointed out, is "very, very, much" meant to start a discussion as to that system, and related that it is the belief of the compact organizers that every vote should count equally toward determining who would be the President of the United States, whether in Ohio or Alaska. This bill ratifies a compact intended to grant the presidency to the candidate who receives the most popular votes, rather than counting vote's state-by-state. It is important to note, he said, that currently it takes 270 electoral votes to win the presidency, and this [compact takes effect when enough states pass this compact with their electoral votes totaling 270.] He explained that the states that sign on at that time will then, rather than voting necessarily for how just the people in their state vote, will vote how the national popular vote goes. Currently, 10 states and the District of Columbia have ratified this compact representing a total of 165 electoral votes, 15 states have passed the compact through one legislative body and, he stressed that it is time for Alaska to start thinking about this compact, which is why it was brought forward.

3:16:38 PM

REPRESENTATIVE FANSLER offered that a key issue important to this vote is that Alaska, currently, holds a large seat at the table when it comes to the nation. By far, he described, Alaska is the greatest resource development state in the nation, it is the reason the United States is considered an Arctic Nation, it has 36 percent of all federal lands, and 40 percent of all federally recognized tribes. Yet, rarely are those facts brought up in a presidential election because to win the presidency, the candidates need to cater to the 12 swing states. By ratifying the National Popular Vote, Alaska can get on the record with Alaskan values as part of that national picture. He advised he believes in this compact because it increases Alaska's count around the nation and, hopefully during the next presidential election, candidates will speak to Alaska's issues, such as, resource development, drilling in the Arctic National Wildlife Refuge (ANWR), climate change affecting its villages, and stressing the importance of Alaska's federally recognized tribes moving forward. This compact stresses the importance to each candidate to speak to Alaskan issues in order to win every vote cast in this state, he pointed out.

3:18:55 PM

REPRESENTATIVE LEDOUX stated that she is not thrilled with the electoral college system, but she has real problems with this bill. She surmised that a significant portion of Alaska's population could vote for one candidate, and because the states of California and New York vote for another candidate, the votes of Alaska would be for the candidate of New York and California who received the most votes. She ask Representative Fansler, why he doesn't change the system according to what the framers anticipated and offer an amendment to the Constitution of the United States to abolish the current system.

3:20:02 PM

REPRESENTATIVE FANSLER, in response to Representative LeDoux's point regarding Alaska voting one way and the electoral votes another way, countered that Alaska has statewide elections for governor and federal senators and representatives. Alaska law reads that every vote in Alaska counts and it does not partition off votes district-by-district wherein a gubernatorial candidate must win 21 out of the 40 house districts in order to be elected governor. The office the country elects as a nation is the Office of the President of the United States, and this bill is saying to take the same idea Alaska uses to elect its governor and spread that out to the entire nation, he explained.

REPRESENTATIVE FANSLER responded to Representative LeDoux's point regarding an amendment to the Constitution of the United States, and countered that to change and amend the constitution is an "extremely monumental task." Quite honestly, he stated, the nation has not had an amendment for quite some time, let alone an attempt to amend the constitution since the 1970s. This bill, he pointed out, allows a mechanism in which to obtain the desired goal of a national popular vote, and at the same time offers security because Alaska could "pull out if we wanted to," he related. Representative Fansler offered a hypothetical situation in which Alaska decided to enact this compact and move forward, Alaska could then drop out before, or after, the compact was ever initiated if the people of Alaska decided this was not what they wanted, "or if we put in together a place where we say the electoral college is something that, in the old form, was much more beneficial to us." This compact provides an additional safety net in which to make decisions, he expressed. Furthermore, in the event the Constitution of the United States was amended and abolished the electoral college system, it would be just as difficult to turn around and re-amend it to add the system back in, such as prohibition, he explained.

3:23:17 PM

REPRESENTATIVE LEDOUX noted that Representative Fansler was an eloquent speaker, but she still wasn't convinced. As to prohibition, she remarked, at one point people were fed up enough with what they perceived as alcohol abuse to abolish the use of liquor in this country and passed the amendment. Except, she offered, prohibition turned out to not exactly work in the manner people desired, so the amendment was repealed. She noted her belief that the constitution is a document that should not be easy to amend, and asked whether there had been a real movement to amend the constitution to abolish the current system.

3:24:47 PM

REPRESENTATIVE FANSLER commented that the electoral college had been in dispute and debated since its inception, and its history was brought up regarding the powers of large states versus small states, and with regard to the Founding Fathers possibly not trusting the wellbeing of the general populous to directly elect, and the electoral college came about as a means of compromise between the states as they were coming together. Since that time, there have been constant debates as to whether it should or should not be there, with movements to change the constitution, and the prevailing thought appears to be whether to maintain the status quo, or to try the National Popular Vote and the flexibility of this compact, he offered.

CHAIR CLAMAN noted that the bill would not move today.

3:26:24 PM

REPRESENTATIVE KOPP referred to the statement that the 12 battleground states often determine the outcome of the election with all of the focus on those states, and commented that by going to a popular vote, the battlegrounds would be reduced to 11 states to get to the 270 electoral votes. The population centers would then become the real focus and Alaska would be even further left out. He offered that Representative Fansler made a good argument against National Popular Vote when he pointed out some of the unique features of Alaska that only the people living here can appreciate with its diversity of interests and, he commented, which is probably why direct peer democracy up to the governor level is ideal. He stated that Alaskans would never trust someone outside of Alaska to see things in the same manner as Alaskans, and noted there are

issues many democrats, republicans, and independents in Alaska agree on simply by virtue of living here and overreaching policies are rarely fought. He commented that in getting away from the current representative republic to a direct peer democracy, this state would lose because, while it never comes down to the state's two electoral votes, it probably would never come down to the last Alaskan vote. He expressed fear that the population centers, being 11 states, would become the focus of all of the money garnered in Alaska's campaign funding, and Alaska would be further irrelevant and more left out.

3:28:58 PM

REPRESENTATIVE FANSLER briefly answered that to be quite honest, no one knows how this would change elections, but elections would change because suddenly, every vote was in play, and which ever candidate cobbled together 50.00001 percent of the votes would win the presidency. Possibly, he said, a candidate would go straight to these major cities, but possibly they would actually start to speak directly to the issues of the states, realizing that in order to win the 700,000 votes in Alaska, they must speak to Alaska's issues and set up campaign headquarters throughout the state, not just in Anchorage. Alaska typically trends red, and California typically trends blue, and by typically, he offered, he meant massively. Therefore, a red voter in California may think it doesn't matter whether they vote because the democrat will win, whereas under the National Popular Vote, suddenly the typical color of a state doesn't matter because every vote is important. Hopefully, he commented, one of the nice byproducts of this [compact] is that it will also drive up voter turnout, which everyone wants.

3:31:19 PM

BARRY FADEM, President, National Popular Vote, advised that he has been the president of National Popular Vote since its inception in 2005. He said he would quickly run through the five benefits that accrue to Alaska if the National Popular Vote passes. Under the National Popular Vote, the most dramatic change for Alaskans is that every vote cast in Alaska counts just as much as a vote cast around the country. An Alaskan voter will know on election night when the news shows are running the totals, their vote was including in the totals. There will be a presidential campaign in all 50 states and under the National Popular Vote, every vote in every state is equal. He related that the organization could not guarantee that presidential candidates or their surrogates would come to

Alaska, but there would be specific television and radio ads on issues important to that state. In 2016, 94 percent of the campaign visits were in 12 states. For the first time in Alaska's history, he stressed, the state would actually be participating in the presidential election and discussing issues important to Alaska.

3:33:25 PM

MR. FADEM remarked that currently both national parties pump millions of dollars into the 12 battleground states for grassroots activities. Under the National Popular Vote in a 50 state campaign, it is expected that the national parties will spread that money out and build a grassroots structure in all 50 states because every four years all 50 states would be battleground states under the National Popular Vote. In 2012, $2.1 million was raised by both parties in the State of Alaska, and every cent of that money exported out to the 12 battleground states. Under the National Popular Vote the money raised in Alaska by both parties could actually stay in Alaska. As to an emotional benefit, he said he guaranteed that no voter in Alaska would ever go to the voting booth with the presidential election already being decided. During the last 20 years, most of the elections have been called by the media long before the polls closed in California or Alaska, and under the National Popular Vote, no winner would be declared until all of the votes in all 50 states had been counted. Thereby, allowing Alaskans to go to the voting booth and the President of the United States had not yet been determined.

3:34:52 PM

MR. FADEM noted that last year, two books were published and documented that battleground states do better [during the term of the president] than non-battleground states because [they receive] 7 percent more in presidential controlled grants, and twice as much in disaster relief. He pointed out that it is difficult to attract the attention of the White House when standing in line behind the 12 battleground states that will receive the primary attention of the president, for the next four years. The only reason for this bill today is that the Founding Fathers gave citizens the exclusive right to make this decision, and referred to the Constitution of the United States, Article II, Section 1, and he paraphrased that it gave citizens the exclusive right to make that decision. He reminded the committee that the decision to make is, what system of awarding Alaska's electoral votes is in the best interests of Alaska.

Now, he commented, contrast the current system wherein Alaska has zero influence in the presidential election versus the attributes he had described under the National Popular Vote.

3:36:12 PM

MR. FADUM, in response to Representative Kopp's previous question, answered that Representative Kopp's point about the 11 states was interesting because that point would be true currently, as opposed to the National Popular Vote. When looking at the 11 largest states in the country, if everyone in those 11 states voted for the same candidate, the big states would control today, just as Representative Kopp argued regarding the National Popular Vote, except, he pointed out, that's not the real world. For instance, with regard to the 12 biggest states, he related that in 2004, six were red and six were blue; and in 2016, seven were red and six were blue. Therefore, the 12 biggest states do not guarantee a significant margin for either political party. In 2004, when looking at the 12 largest states, the difference turned out to be 244,657 between Mr. Kerry and President Bush in the 12 biggest states, although, a corollary to that was the big cities. He pointed out that big cities, such as New York, Chicago, Los Angeles, don't control elections today and they would not control it under the National Popular Vote. The total population of the 50 largest cities in the country is 15 percent of the population of America, and the 50th largest city is Arlington, Texas with a population of 365,000. He suggested looking at the money in terms of campaigning, the average cost per vote was as follows: New York-$5.02; Los Angeles-$5.06; but the 25th largest median market being Indianapolis-$0.04; and the 101th market being Fort Smith, Arkansas-$0.03. Television ads and radio ads cost less in rural areas of the country and in Alaska, and when presidential campaigns calculate the fact that every vote counts in all 50 states, candidates will campaign everywhere.

3:39:40 PM

REPRESENTATIVE KOPP asked whether he understood correctly that the interstate compact that the National Popular Vote requires, would be that each state would pledge its electoral votes to the overall winner regardless of who its citizens voted. Therefore, he related, the candidate running in Alaska is always subservient to whoever wins nationally because the bottom line is that if a state signs on to this, that state's vote is subservient to the national will, and that where the electors are going.

MR. FADUM offered that this is an issue of state identity and he would not quite characterize it in the same manner as Representative Kopp. He said, in a national election voters care whether their candidate became the president, and state identity, whether a state voted for their person as President of the United States, is a footnote because voters care whether their person won the presidency.

3:41:27 PM

REPRESENTATIVE KOPP commented that Mr. Fadum hit on the 20 mile philosophical divide between them because the role of a state is not a footnote. He argued that the states are the entities in the constitution that elect the president, it is not a peer democracy and "we do care" who we vote for as a state. He remarked that possibly in California it is a footnote, but not in Alaska.

3:42:02 PM

REPRESENTATIVE EASTMAN commented that in speaking for the residents of his district, he did not know whether the promise to bring more political ads to television was a winning point, and possibly should not be considered one of the top five points.

3:42:34 PM

REPRESENTATIVE KREISS-TOMKINS, in response to Representative Kopp's comments, noted that there are two predominantly rural states that already do exactly what "you are" describing. In 2016, he pointed out, Bruce Poliquin's Maine Congressional District has a system of allocating electoral votes by congressional district and the overall popular vote winner of that state receives the two "electoral votes that are represented by the senators cast its vote for Donald Trump, whereas the other three electoral votes went for Hillary Clinton." He explained that if someone voted for Hillary Clinton in Maine, that voter saw one of their electors go the other way, allegedly contrary to the will of that state. In 2008, the exact inverse occurred in Lee Terry's Nebraska Congressional District regarding President Obama and Senator McCain, so this system is already happening, he pointed out. There is a logical jump that has to be made, and while he appreciates how it appears, the overall point is that people want a system that will vest and franchise the state in a

national political conversation. He remarked that it appears blindingly clear that currently a political conversation is directed to a dozen elite states, which is not in any state's best interests, red or blue.

[HB 175 was held over.]

HB 170-AK SECURITIES ACT; PENALTIES; CRT. RULES

3:44:55 PM

CHAIR CLAMAN announced that the final order of business would be HOUSE BILL NO. 170, "An Act relating to securities, registration, exempt securities, exempt transactions, broker-dealers, agents, investment advice, investment advisers, investment adviser representatives, federal covered securities, federal covered investment advisers, viatical settlement interests, small intrastate security offerings, Canadian broker-dealers, and Canadian agents; relating to administrative, civil, and criminal enforcement provisions, including restitution and civil penalties for violations; relating to an investor training fund; establishing increased civil penalties for harming older persons and vulnerable adults; relating to corporations organized under the Alaska Native Claims Settlement Act; amending Rules 4, 5, 54, 65, and 90, Alaska Rules of Civil Procedure, and Rule 602, Alaska Rules of Appellate Procedure; and providing for an effective date."

3:45:20 PM

REPRESENTATIVE LEDOUX moved to adopt Amendment 1, Version 30-LS0333\J.2, Bannister, 4/10/17, which read as follows:

Page 34, lines 18 - 19:
Delete "by a governmental authority"

REPRESENTATIVE FANSLER objected for purposes of discussion.

3:45:28 PM

REPRESENTATIVE LEDOUX explained that the amendment deletes the phrase "by a governmental authority" because, she opined, there should be a description of any pending litigation action or proceeding that materially affects the issuer's business or assets, whether or not it was contemplated by a governmental entity, or anyone.

REPRESENTATIVE FANSLER withdrew his objection.

3:46:11 PM

REPRESENTATIVE EASTMAN objected for purposes of discussion, and noted that he was not sure he understood exactly how expansive it would be when removing that language. He offered a scenario of making a motion to change a bylaw for his political party, and asked how he draws that barrier to make sure it's not too expansive.

REPRESENTATIVE LEDOUX responded that if someone sent Representative Eastman a letter that read, "Dear David, We're going to sue you, and we're going to sue you for $1 million." In that scenario, if Representative Eastman was a billion dollar entity being sued for $1 million, possibly it would be no big deal, but if $1 million was other than chump change to Representative Eastman, it would materially affect his business or assets.

3:47:13 PM

REPRESENTATIVE EASTMAN asked whether there was some other part of this chapter that had the word "legal" before the word "action" so that an action must be a legal action.

REPRESENTATIVE LEDOUX referred to the first portion of Sec. 45.56.310(b)(12). Securities registration by qualification, which read as follows:

> (12) a description of any pending litigation, action, or proceeding ...

REPRESENTATIVE LEDOUX advised that this is boiler plate language.

3:47:46 PM

REPRESENTATIVE EASTMAN withdrew his objection. There being no further objection, Amendment 1 was adopted.

[CHAIR CLAMAN passed gavel to Vice Chair Fansler.]

3:48:06 PM

CHAIR CLAMAN moved to adopt Amendment 2, Version 30-LS0333\J.1, Bannister, 4/11/17, which read as follows:

Page 1, line 5, following "**agents;**":
Insert "**relating to protecting older and vulnerable adults from financial exploitation;**"

Page 62, line 12, following "a":
Insert "broker-dealer, investment adviser, or"

Page 62, line 14:
Following "the":
Insert "broker-dealer, investment adviser, or"
Delete "promptly"

Page 62, line 15, following "administrator":
Insert "not later than five days after the broker-dealer, investment adviser, or qualified individual develops the reasonable belief that the financial exploitation or attempted financial exploitation has or may have occurred, or is being attempted, except that the broker-dealer, investment adviser, or qualified individual shall notify adult protective services and the administrator immediately upon confirmation of the financial exploitation or attempted financial exploitation of the covered adult"

Page 62, lines 16 - 19:
Delete all material and insert:
"(b) The requirements of (a) of this section may not be construed to require more than one notification for each occurrence of exploitation or attempted exploitation."

Page 62, line 20, following the first occurrence of "a":
Insert "broker-dealer, investment adviser, or"

Page 62, line 21, following "a":
Insert "broker-dealer, investment adviser, or"

Page 62, line 22, following "adult":
Insert "previously"

Page 62, line 23:
Following "adult,":
Insert "as well as any other person allowed under state or federal law or regulation, or the rules of a self-regulatory organization,"

Following the second occurrence of "the":
Insert "broker-dealer, investment adviser, or"

Page 62, lines 26 - 28:
Delete all material.

Reletter the following subsections accordingly.

Page 63, line 9:
Delete the second occurrence of "person"
Insert "individual"

Page 63, line 16:
Delete "results"
Insert "status"

Page 63, line 17, following "administrator":
Insert ", and provides additional status updates to the administrator and adult protective services upon request"

Page 63, line 18:
Delete "(e)"
Insert "(d)"

Page 63, line 31:
Delete "(e), (f), or (g)"
Insert "(d) or (e)"

Page 64, line 2:
Delete "person"
Insert "adult"

Page 64, lines 4 - 7:
Delete all material.

Reletter the following subsections accordingly.

Page 64, following line 18:
Insert a new subsection to read:
"(h) A broker-dealer, investment adviser, or qualified individual acting in good faith and exercising reasonable care under (a) - (g) of this section is immune from administrative or civil liability for a notification, disclosure, disbursement delay, or record sharing under (a) - (g) of this section."

Reletter the following subsections accordingly.

Page 65, line 12:
Delete "investment adviser,"

REPRESENTATIVE KOPP objected for purposes of discussion.

3:48:25 PM

KEVIN ANSELM, Director, Division of Banking and Securities, Department of Commerce, Community & Economic Development, explained that the Division of Banking and Securities worked with the industry to create this amendment so the bill would work better for its business practices, and was clearer for the community. This amendment, in and of itself, protects elder and vulnerable Alaskans by requiring the financial industry to report when it believed that financial exploitation was about to take place, or had taken place. It allows the financial industry to hold onto a disbursement regarding a securities trade, for instance, until it was determined there was, or was not, exploitation, she explained. She noted that the two reporting pieces include the Administrator of Securities, Division of Banking and Securities, Department of Commerce, Community & Economic Development (DCCED), and also the Adult Protective Services (APS), Division of Senior and Disabilities Services, Department of Health and Social Services. She offered that in the event those reports are made, the industry, the stockbroker, investment advisor, the advisor's firm, are granted administrative and civil immunity from violation of the act. Immunity is a large piece for industry, she described, and the industry works together with the division to resolve the issue.

REPRESENTATIVE KOPP withdrew his objection. There being no objection, Amendment 2 was adopted.

3:50:03 PM

CHAIR CLAMAN moved to adopt Amendment 3, Version 30-LS0333\J.4, Bannister, 4/12/17, which read as follows:

Page 92, lines 13 - 15:
Delete ", a regulation adopted under this chapter, or an order issued under this chapter, except AS 45.56.550 or the notice filing requirements of AS 45.56.330 or 45.56.445,"

Page 92, lines 16 - 18:
Delete "A person convicted of violating a regulation or order issued under this chapter may be fined, but may not be imprisoned, if the person did not know of the regulation or order."

REPRESENTATIVE EASTMAN objected for purposes of discussion.

3:51:08 PM

CHAIR CLAMAN explained that Amendment [3] was in response to the in-depth and extended discussion during the last bill hearing with regard to criminal violations and issues. He reminded the committee that the concerns expressed involved having a charge that did not include a mental state, and questions about whether it did, or did not, actually create a misdemeanor. During the course of the discussions, the Department of Law offered a potential amendment to delete [Sec. 45.56.670(a), page 92, lines 13-15] to read as follows:

(a) ... , a regulation adopted under this chapter, or an order issued under this chapter, except AS 45.56.550 or the notice filing requirements of AS 45.56.330 or 45.56.445.

CHAIR CLAMAN explained that deleting the language regarding regulations and orders would not only be satisfactory with the Department of Law, but it would make the last sentence of Sec. 45.56.670(a), lines 16-18 superfluous because it related to regulations and orders. In adopting Amendment 3, he further explained, the language would be more consistent with traditional criminal provisions, and there would not be the issue of regulations that might create a crime that the legislature had not created.

3:52:38 PM

MS. ANSELM advised that the Department of Commerce, Community & Economic Development has no objection to Amendment 3.

3:52:53 PM

REPRESENTATIVE EASTMAN asked the exact effect this amendment would have on violations of notice filing requirements, and whether that would increase the penalties for someone merely making a notice filing requirement violation.

CHAIR CLAMAN opined that this narrows it, as opposed to the range of regulations that could be issued that one would have to show knowledge. Under this amendment, the only issue that could be a basis for a criminal charge would be violations of the statutes. He explained that when "they reference violates this chapter" means Alaska Statutes within Chapter 45, and they would have to show "knowing violation" of those statutes, rather than violations of regulations or orders. It actually narrows the scope of conduct that could be subject to criminal charges, he said.

3:54:13 PM

REPRESENTATIVE EASTMAN noted that currently AS 45.56.330 and 45.56.445 include notice filing requirements, and they are currently exempted because there is [page 92, line 14] "except ... or." In the event that exemption was removed, and those are included within this chapter, he paraphrased, "A person who intentionally violates this chapter, including these notice filing requirements is guilty of a class C felony" [page 92, lines 12-15]. He asked whether the intent of the committee is that a simple notice filing requirement violation would now be a felony under Amendment 3.

CHAIR CLAMAN related that he did not follow Representative Eastman's question.

3:55:05 PM

REPRESENTATIVE KOPP asked, in explaining Representative Eastman's question, the committee to turn to Sec. 46.56.550, and he pointed out that it currently exempts this as being a felony, and paraphrased, "filing of sales and advertising literature." Under Amendment 3, he explained, it takes out this section dealing with advertising to clients and the proper manner in which to advertise. It also removes the filing requirements under AS 45.56.330 and 45.56.445, as those are specifically exempted from being felonies. Representative Eastman had asked whether the intent of the committee was to now make those felonies because the amendment pulls out the exceptions and by default would fall into felony territory.

3:56:46 PM

RENEE WARDLAW, Assistant Attorney General, Commercial and Fair Business Section, Department of Law, [audio difficulties] responded that excluding the following language in the

amendment, and paraphrased, "except AS 45.56.550, or the notice filing requirements of AS 45.56.330 or 45.56.445" means that a violation of those statutes could result in a class C felony.

3:57:50 PM

REPRESENTATIVE LEDOUX commented that she agrees with Representative Eastman and possibly with Ms. Wardlaw, although she was unsure [due to audio difficulties]. Representative LeDoux advised that she had to leave the meeting but would like to see an amendment to Amendment 3.

REPRESENTATIVE FANSLER commented that there was no suggestion from Ms. Wardlaw, other than her confirmation that Representative Eastman's point was correct.

3:58:57 PM

REPRESENTATIVE KOPP moved to adopt Conceptual Amendment 1 to Amendment 3, for the purpose of not "felonizing" conduct that would become a felony, which is not currently a felony. In order to be consistent moving forward, he suggested that this amendment would keep everything as currently excepted from a felony prosecution, the same as it is currently. In reference to amending Amendment 3, to simply delete [page 1] line 3, "except AS 45.56.550 or the notice filing requirements of AS 45.56.330 or 45.56.445."

REPRESENTATIVE FANSLER surmised that Conceptual Amendment 1 to Amendment 3 deletes line 3, "except AS 45.56.550 or the notice filing requirements of AS 45.56.330 or 45.56.445."

CHAIR CLAMAN noted he would like input from Ms. Anselm and Ms. Wardlaw as to Conceptual Amendment 1.

MS. ANSELM commented that the Department of Commerce, Community & Economic Development is fine with Conceptual Amendment 1, and asked that Ms. Wardlaw speak to the conceptual amendment.

MS. WARDLAW advised that the Department of Law has no objection to Conceptual Amendment 1.

CHAIR CLAMAN, as maker of the amendment, advised he has no objection to Conceptual Amendment 1. He commented that, interestingly, by deleting "the last sentence of the amendment," the committee was keeping that language in the bill.

Consequently, there was a bit of a mirror effect, but he had no objection, he said.

REPRESENTATIVE FANSLER noted there being no objection, Conceptual Amendment 1 to Amendment 3 was adopted.

4:02:03 PM

REPRESENTATIVE EASTMAN withdrew his objection to Amendment 3. There being no objection, Amendment 3, as amended, was adopted.

[VICE CHAIR FANSLER returned the gavel to Chair Claman.]

4:02:36 PM

REPRESENTATIVE EASTMAN referred to Amendment 1, noting that the committee removed the parameter that "contemplated as yet unexecuted litigation actions or proceedings by a governmental authority." He asked Ms. Wardlaw, whether it was clear, with this amendment now going forward in the bill, exactly what types of proceedings would be wrapped up in this which were not previously included.

MS. WARDLAW responded that the amendment actually expands legal proceedings beyond governmental agencies to include other parties, and at this time the Department of Law has no objection to Representative LeDoux's amendment.

REPRESENTATIVE EASTMAN clarified that his question was, what it now includes because the word "contemplated" remains, which means it has not yet happened. He asked what sorts of contemplated things haven't happened yet, actions, proceedings, and such, which now fall under the scope of this statute.

MS. WARDLAW answered that "contemplated" would be inclusive of any proceedings that had not yet occurred, such as something under consideration by "this agency," and was not yet at the point of filing a complaint.

CHAIR CLAMAN referred to "governmental authority" and explained that it was fairly common, especially in securities settings, for an entity "regulated by these" to receive a letter from the government advising the person they made some errors. The government's "demand letter," or a private entity's demand letter, serves as putting the person on notice that within 30, 60 days, or whatever time period, if the person had not fixed the errors, the government may file civil or criminal action

with regard to the violation, or the private entity may file a civil lawsuit. He explained that an entity must take affirmative action in the form of the demand letter giving a party notice that a lawsuit may be filed, in private as well as public actions.

MS. WARDLAW advised that Chair Claman was correct.

4:07:23 PM

REPRESENTATIVE EASTMAN referred to [Sec. 45.56.670(a), page 92], lines 16-17, and commented that it was simply saying that it is any proceeding to which the issuer is a party. He said that the issuer could be on either side of the action because it did not appear to be limited in any manner. He then referred to line 18, and paraphrased, "any contemplated proceeding," and asked whether the language here limits this so that it only applies when the party is on the receiving end of a litigation action or a proceeding was being contemplated. He further asked whether it would not apply in a case not yet filed wherein someone was going the other direction where proprietary information might be involved, i.e., the fact that they are about to file the lawsuit, and obviously if the lawsuit had not yet been filed there was probably a reason.

MS. ANSELM responded "No, it does not affect that," and explained that this is for a registration by qualification which is used in many states. The intent, she explained, is that it does not matter whether a party was on the receiving side or the promulgation side of situation, it needs to be disclosed because if a party is being sued or is suing another party, "it can affect what the value of the securities are, and it should be disclosed."

4:09:57 PM

REPRESENTATIVE EASTMAN asked, to whom this information would go to and whether there was adequate protection that no proprietary information would be disclosed to the detriment of the party.

MS. ANSELM answered that when registrations come in, until they are final, are considered proprietary, and the issuers are allowed to point out to the division which pieces are proprietary. She offered that it would be kept confidential until it couldn't be kept confidential any longer, and depending upon the situation, it may not be approved for sale in the State of Alaska due to problems with a registration.

REPRESENTATIVE EASTMAN questioned that if the information would become public at some point, at what point does it become public, and further questioned whether the fact that someone was contemplating a lawsuit whether that would meet her understanding of proprietary.

MS. ANSELM responded that "it would depend on what it was," typically, if there was a problem for the insurer in a securities transaction, the issuer would withdraw the potential offer of securities until the problem was resolved because that is not something they want hanging out there. She pointed out that investors, and the marketplace, do not like uncertainty; therefore, the insurer would probably pull it back, get it resolved, and then move forward. In the event it was a sensitive matter, the insurer would ask the division to keep it cloaked, and under the privacy pieces of the Securities Act, the division can keep the information cloaked, or it can open an investigation and cloak it in that manner.

REPRESENTATIVE EASTMAN asked whether it would be cloaked indefinitely.

MS. ANSELM answered that it would be cloaked indefinitely for an investigation because those investigatory records are not disclosable.

4:12:16 PM

REPRESENTATIVE FANSLER moved to report HB 170, Version 30-LS0333\J, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 170(JUD) moved from the House Judiciary Standing Committee.

4:13:36 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 4:13 p.m.