

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

February 12, 2018

1:31 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Jonathan Kreiss-Tomkins
Representative Gabrielle LeDoux
Representative David Eastman
Representative Chuck Kopp
Representative Charisse Millett (alternate)

MEMBERS ABSENT

Representative Zach Fansler, Vice Chair
Representative Lora Reinbold
Representative Louise Stutes (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 315

"An Act relating to the confidentiality of certain records on animals and crops; and providing for an effective date."

- MOVED HB 315 OUT OF COMMITTEE

HOUSE BILL NO. 316

"An Act relating to the sealing of certain court records; restricting the publication of certain records of convictions on a publicly available website; relating to public records; and amending Rule 37.6, Alaska Rules of Administration."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 315

SHORT TITLE: CONFIDENTIALITY OF ANIMAL & CROP RECORDS

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/26/18	(H)	READ THE FIRST TIME - REFERRALS
01/26/18	(H)	JUD, RES
02/09/18	(H)	JUD AT 1:00 PM GRUENBERG 120
02/09/18	(H)	Heard & Held
02/09/18	(H)	MINUTE(JUD)

02/12/18 (H) JUD AT 1:30 PM GRUENBERG 120

BILL: HB 316

SHORT TITLE: RESTRICT ACCESS MARIJUANA CRIME RECORDS

SPONSOR(S): DRUMMOND

01/31/18 (H) READ THE FIRST TIME - REFERRALS
01/31/18 (H) JUD, FIN
02/09/18 (H) JUD AT 1:00 PM GRUENBERG 120
02/09/18 (H) <Bill Hearing Canceled>
02/12/18 (H) JUD AT 1:30 PM GRUENBERG 120

WITNESS REGISTER

JOAN WILSON, Assistant Attorney General
Commercial and Fair Business Section
Civil Division
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 315, answered questions.

PATRICK FITZGERALD, Staff
Representative Harriet Drummond
Alaska State Legislature, Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 316, presented the legislation on behalf of Representative Drummond, and answered questions.

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

POSITION STATEMENT: During the hearing of CSHB 316, answered questions.

PETER MLYNARIK
Soldotna, Alaska

POSITION STATEMENT: During the hearing of CSHB 316, testified.

ACTION NARRATIVE

1:31:31 PM

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:31 p.m. Representatives Claman, Kreiss-Tomkins, Millett (alternative for Representative Reinbold), and

Kopp were present at the call to order. Representatives LeDoux and Eastman arrived as the meeting was in progress.

HB 315-CONFIDENTIALITY OF ANIMAL & CROP RECORDS

[1:32:02 PM](#)

CHAIR CLAMAN announced that the first order of business would be HOUSE BILL NO. 315, "An Act relating to the confidentiality of certain records on animals and crops; and providing for an effective date."

CHAIR CLAMAN advised that subsequent to the 2/9/18 hearing, the committee received a memorandum on the topic of the "Alaska Grown" program and how it relates to HB 315.

Chair Claman advised Joan Wilson, Department of Law of the questions regarding the intersection between HB 315 and the "Alaska Grown" program and asked how many times the DOL had been involved in civil enforcement actions regarding the "Alaska Grown" program.

[1:33:39 PM](#)

JOAN WILSON, Assistant Attorney General, Commercial and Fair Business Section, Civil Division, Department of Law (DOL), responded that the question of enforcement relates to the Division of Agriculture and the Department of Natural Resources (DNR) interest in the "Alaska Grown" trademark the state holds. She explained that when farmers or ranchers would like their products to carry that logo, they apply to the Division of Agriculture for a license and under that license agree to use the logo accurately. For example, when used for livestock, that livestock must be grown and raised in Alaska for six months. In the event someone should attempt to violate the program, the enforcement action is to withdraw their use of the trademark and withdraw their licensing rights to the trademark. She noted that she has not seen a civil enforcement action or any type of criminal action, and that it would be stretch to turn a misrepresentation claim into a criminal act, but good prosecutors can do many things. In essence, this will be "our efforts" to protect the trademark, and in the event people have concerns regarding abuse of the trademark they should contact the Division of Agriculture because it works directly with ranchers and/or the sellers of the product to make certain there has been no misuse of the trademark. In the event there are

concerns about (audio difficulties) the steps are withdrawing their participation in the program, she reiterated.

[1:35:39 PM](#)

REPRESENTATIVE EASTMAN referred to the limited resources in the Department of Natural Resources (DNR) and asked whether there had been discussions regarding allocating additional resources so some of those enforcement actions or prosecutions might take place in the future.

MS. WILSON answered that she could not say there have been discussions to date, and she has not heard that enforcement of this program caused concern that the division did not have the staff or the expertise. Again, she said, the main attempt is to make sure it is simply not an error on a person's part because the division is trying to develop a cooperative relationship with its farmers and ranchers to make sure that trademark is used appropriately.

[1:36:35 PM](#)

REPRESENTATIVE EASTMAN offered a scenario of a business owner selling meat that may or may not have come from Alaskan grown products, but they wanted to demonstrate their pride in being an Alaskan. In that regard, he said, the person has a label behind the counter that read, "Alaska Grown" even though he sold meats from one place and meats from Alaska. He asked whether the department would view that as a violation, a cause of concern, or simply interpreted it as the person is proud to be an Alaskan.

MS. WILSON quiered whether Representative Eastman's scenario was a situation where someone was selling "Alaska Grown" meats in a grocery store, for example.

REPRESENTATIVE EASTMAN clarified that he was thinking of a person selling meats, some of which are Alaska grown and some of which are not, but the store owner wanted to demonstrate his pride for "Alaska grown things" so he posted an "Alaska Grown" type of label somewhere in his store. He asked whether that would be considered a violation.

CHAIR CLAMAN asked whether his question was that if a person sold pork that fit within the "Alaska Grown" definition and some pork that did not fit, and there was an "Alaska Grown" sign in the shop, whether that person violated the trademark.

MS. WILSON noted that that actual circumstance had taken place previously wherein the division worked with the retailers to make certain they were properly advertising. Again, she said, the first approach is to assume a person made a mistake and work with them so they credibly and correctly use that trademark. In Representative Eastman's scenario, she said she would have to see if the (audio difficulties) held the trademark, and in most cases, it would be the farmer or the rancher. She offered concern regarding any licensing in that manner, and that when it has been used in a commercial enterprise, the entity must be licensed to even carry that sign to advertise the meat.

[1:39:32 PM](#)

REPRESENTATIVE EASTMAN surmised that DNR is focused on preventing future violations, and that possibly it is not as focused on holding people to task or pursuing sanctions for something brought to their attention, even if it might be a violation.

MS. WILSON clarified that the department takes the program and enforcement of the trademark seriously. Simply because the division's first attempt is education, that does not mean the division will not withdraw a license to use that trademark if someone was treating that trademark nefariously,

REPRESENTATIVE EASTMAN commented that having looked at the information to become confidential, he did not see how making the information as to whether an item had been imported into Alaska would be considered confidential.

[1:41:29 PM](#)

REPRESENTATIVE KOPP commented that this is a good piece of legislation because it will increase reporting of possible health hazards to the public, whether it deals with animals or crops, the whole goal is to increase reporting. Although, he pointed out, due to competitive practice there is a big disincentive to report. He opined that the whole confidentiality issue had been correctly crafted where if, in fact, a health hazard is found to exist, the information then becomes public, and there are ways to disclose that information. He described it as confidential information when a person deals with the Office of the State Veterinarian (OSV) regarding their crops and animal health data unless there is a hazard that pushes that information out into the public record.

[1:42:33 PM](#)

REPRESENTATIVE KREISS-TOMKINS moved to report HB 315, Version 30-GH2584\A out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE EASTMAN objected.

[1:42:41 PM](#)

A roll call vote was taken. Representatives Kreiss-Tomkins, LeDoux, Millett, Kopp and Claman voted in favor of passing HB 315 out of committee. Representative Eastman voted against it. Therefore, HB 315 was reported out of the House Judiciary Standing Committee by a vote of 5-1.

[1:45:56 PM](#)

The committee took an at-ease from 1:45 p.m. to 1:46 p.m.

HB 316-RESTRICT ACCESS MARIJUANA CRIME RECORDS

[1:46:18 PM](#)

CHAIR CLAMAN announced that the final order of business would be HOUSE BILL NO. 316, "An Act relating to the sealing of certain court records; restricting the publication of certain records of convictions on a publicly available website; relating to public records; and amending Rule 37.6, Alaska Rules of Administration."

[1:46:32 PM](#)

PATRICK FITZGERALD, Staff, Representative Harriet Drummond, advised that HB 316 is intended to clean up the records from the Alaska Court System and the permanent records of those Alaskans convicted of simple possession of marijuana prior to the legalization of marijuana. The burden of lifelong criminal records of a crime that is now legal has kept Alaskans from achieving their fullest potential, he said. This legislation, he related, is not designed to wipe out records or give a clean slate to serious offenders, but instead it will eliminate the obstacles that have kept Alaskans from gaining employment, advancing in their careers, or qualifying for certifications due to a simple possession [conviction] on their record. Mothers,

fathers, neighbors, and friends who made mistakes in the past or were simply in the wrong place at the wrong time, have dealt with barriers that potentially kept them from achieving a higher quality of life, and stressed that this is not a "pot bill, this is a jobs bill." The recreational use of marijuana was enacted on 11/7/16, and since that time Alaska has received millions of dollars in state revenue has been generated from cannabis businesses and small business owners who have started to prosper in the cannabis economy. Many Alaskans have benefited from the legalization of cannabis and now there is a chance to expand that group by eliminating the barriers that are holding Alaskans back and stunting their ability to become productive and contributing members of society, he advised.

[1:48:24 PM](#)

REPRESENTATIVE KREISS-TOMKINS moved to adopt CSHB 316, Version 30-LS1017\0, Martin, 2/8/18 as the working document. There being no objection, Version 0 was before the committee.

[1:48:58 PM](#)

REPRESENTATIVE KOPP referred to CSHB 316, [AS 12.62.160(f)] page 1, line 6, asked whether this is inclusive of the Alaska Court System and all other agencies that may release this information.

MR. FITZGERALD advised that the intent of the bill is to include multiple agencies and not simply restrict it to the Alaska Court System or the Department of Public Safety (DPS).

[1:49:33 PM](#)

REPRESENTATIVE EASTMAN asked Mr. Fitzgerald to list all of the items on the schedule VIA controlled substance list.

MR. FITZGERALD advised that it is defined within CSHB 316, Section 1, AS 12.62.160 of the sectional analysis located on BASIS, which read as follows:

Schedule VIA definition: AS 11.71.190 (a) a substance shall be placed in schedule VIA if it is found under AS 11.71.120 to have the lowest degree of danger or probable danger to the person or public.

(b) marijuana is a schedule VIA controlled substance.

[1:50:27 PM](#)

REPRESENTATIVE EASTMAN asked whether there is anything on that list aside from marijuana.

MR. FITZGERALD answered no.

[1:50:42 PM](#)

REPRESENTATIVE LEDOUX asked how many prosecutions have taken place since the Ravin v. State, 537 P.2d 494 (Alaska 1975) decision for the personal use of marijuana.

MR. FITZGERALD answered that the sponsor does not have any solid numbers because this bill would have to become a law in order for the court and different agencies to comb through and determine exactly where this applies. However, he said, the sponsor has seen statistics of roughly 700 individuals in the Alaska Court System that this would pertain to since 2007.

[1:51:38 PM](#)

REPRESENTATIVE LEDOUX asked whether the 700 people were originally charged solely with simple possession of marijuana. It was her understanding that, for quite some time, Alaska was not charging people with simple possession under the Ravin decision because it would be unconstitutional. Perhaps, she suggested, those people were charged with something else, such as sales and plea bargained it down to a simple possession.

MR. FITZGERALD responded that the intent of HB 316 is with regard to the standalone possession charge and if the person was convicted of dealing, this bill would not apply. He said he would get back to the committee after researching the question.

REPRESENTATIVE KOPP said, "There was a never-never land, so to speak" of marijuana as to when it was and was not enforced. Under Ravin, law enforcement did not cite if it found marijuana in a home under four ounces. As a matter of practice, he opined that there was not a law enforcement agency in Alaska that was actively enforcing the law after the Ravin decision if it was in a private residence. Although, if a person was contacted in the street, car, or public place, a number of citations/summons could be written for simple possession, the class B misdemeanor tickets that fell outside of the scope of personal use in a home. He explained that that was the reason for the disparity and, as Mr. Fitzgerald pointed out, hundreds of citations were

still issued after Ravin because other than in a home, the law was enforced. Although, he mused, the tooth fairy would have had to literally deliver it to the home.

[1:54:12 PM](#)

REPRESENTATIVE LEDOUX asked Representative Kopp if something else was involved in most of these instances where a person was prosecuted.

REPRESENTATIVE KOPP answered that this bill actually precludes any case where there was an associated charge the person would not be eligible for confidentiality.

Therefore, it would only pertain to the cases with no associated charge, which often happens when law enforcement comes upon a vehicle parked out of sight at 3:00 a.m., and it is a couple of people smoking marijuana. Oftentimes, he said, the only result of that contact is a class B misdemeanor summons for smoking marijuana, and that is all. The nature of the circumstances with no other associated charge was not uncommon, he pointed out.

[1:55:25 PM](#)

REPRESENTATIVE LEDOUX asked whether there are any statistics as to the job application issue, and how that has affected people in real life.

REPRESENTATIVE KOPP reminded the committee that one of the problems with the under 21-years of age possession is that even an alcohol offense could prevent acceptance into the military, attending military school, and federal aid for education loans due to a substance abuse related offense. Two years ago, the legislature decided to treat under 21-years of age possession as a violation for a first-time offender for that very reason. Similarly, he said, this legislation would have a significant employment impact because it would be considered a substance abuse offense/conviction of record.

[1:56:52 PM](#)

REPRESENTATIVE EASTMAN asked exactly where the language of the bill refers to the fact that if there was another charge, it would not come up under confidentiality. He referred to CSHB

316, [Sec. 2, AS 22.35.040(2)], page 2, line 5, which read as follows:

(2) was not convicted of any other charge in that case.

REPRESENTATIVE EASTMAN said he was trying to reconcile the sponsor's information and the bill language. In response to Representative LeDoux's question, he advised that the entire Arctic Valley side of Fort Richardson is not gated and frequently people were found "doing illegal things" in that part of the base. He said he could not remember a single time that the only illegal thing the people were doing was possessing marijuana, "that would be very rare."

CHAIR CLAMAN, in response to Representative Eastman's earlier query, the bill makes clear that the legislation is only for standalone convictions for marijuana is on page 4, lines 15-18, and pointed to lines 17-18, which read as follows:

(18) ... if the defendant was not convicted of any other charges in that case.

[1:58:27 PM](#)

REPRESENTATIVE LEDOUX said that she wanted to make it clear that a person could not be convicted of another charge, but if they were charged with a more serious crime, conceivably it might be reduced under a plea bargain to simple possession of marijuana. Possibly, she suggested, many of these 700 people may have committed another crime other than "simply smoked a joint."

MR. FITZGERALD deferred to Nancy Meade, Alaska Court System. He opined that the manner in which this bill is crafted, it would be a small number of people because the intent is standalone possession of marijuana.

REPRESENTATIVE LEDOUX argued that it may be the intent of the legislation, but the result of it is that it expunges a conviction that may have been entered into as a plea bargain when someone was charged with a more significant crime.

[2:00:28 PM](#)

NANCY MEADE, General Counsel, Administrative Staff, Office of the Administrative Director, Alaska Court System, advised that she had delivered statistics to the bill sponsor's office that

was limited to cases with convictions under the possession of marijuana provision. Representative LeDoux was correct, she advised, many of those cases that ended up with a conviction of a class B misdemeanor may well have included other charges. She explained that a great majority of cases are resolved via a person plea bargaining to something less than the original charge. She advised that she does not have the data as to the frequency of that taking place, but she suspects it happened in a good number of these cases.

[2:01:19 PM](#)

REPRESENTATIVE EASTMAN asked whether Ms. Meade was aware of any cases where a plea bargain resulted in a charge that was higher than the original charge.

MS. MEADE answered that she is not the expert on plea bargains as it is conducted by the Department of Law (DOL), but in her experience she would say that would not occur.

[2:01:56 PM](#)

CHAIR CLAMAN opened public testimony on CSHB 316.

[2:02:26 PM](#)

PETER MLYNARIK commented that he did not know whether the records would be sealed for those people age 18-21 years because it is illegal for them to possess marijuana. He said that he agrees with Representative LeDoux, "if convicted" because many of these people received other charges and pled down to this misdemeanor possession. Other laws have been changed from misdemeanors to violations, and he asked whether, in all fairness, those people should have their records sealed. Also, he said, there have been changes from felonies to misdemeanors wherein the person is a felon but now it was changed to a misdemeanor, like most of the drug possession laws for heroin, and asked whether that person's records should be sealed to prevent this felony conviction in order to look for a job. In the marijuana business, he offered, there are not any criminal convictions that prevent a person from obtaining a marijuana handler's permit. In that regard, the person could work in the marijuana industry without any problem, and even if they own a license there is only a two-year window. He offered concern with the legislation isolating out this one crime and sealing the records because only a small percentage of people have been convicted strictly for simple possession.

CHAIR CLAMAN advised the committee that Mr. Mlynarik testified on his own behalf and not in his capacity as the Soldotna Chief of Police.

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CHAIR CLAMAN, after ascertaining no one wished to testify, closed public testimony on CSHB 316.

[2:05:11 PM](#)

REPRESENTATIVE EASTMAN offered a scenario wherein a criminal law made an action illegal one year, and then legal the next year, and asked what opportunities are available to an individual who would fall under that scenario to sue for damages or otherwise try to exercise rights not available to them under the current law. He further asked what happens when an illegal [criminal] law becomes legal if someone was harmed by the fact that the law existed in the first place and can argue that they did not get a job and now they are poor and destitute. He asked whether that person has a claim.

REPRESENTATIVE LEDOUX commented that she has been a firm supporter that the initiative, voted for by the people, should not be changed in any manner, shape, or form. She advised that a person cannot pick and choose in a society of laws, by which law they choose to abide. The convicted persons knew they were doing something illegal and she does not believe that simply because the legislature changed the law that that person's record should be sealed.

[2:08:02 PM](#)

REPRESENTATIVE KOPP, in response to Representative Eastman's question, offered an example of a real problem in the law that has nothing to do with drugs or alcohol. He explained that approximately 20-years ago, the Municipality of Anchorage had a more restricted law regarding carrying concealed weapons and bumped up against the fact that statewide a person could carry a handgun in their car, shoot the gun at the gun range, and there would be no problem, except if they drove into Anchorage it was a misdemeanor charge. People arriving from out of town were shocked that a contact with law enforcement ended up with them receiving a misdemeanor summons, or worse. Finally, he advised, the Supreme Court struck it down and ruled that under AS 44, the state has supremacy with gun laws. Except, there were many

people with misconduct involving weapons, which is a lower degree misdemeanor offense, due to a disparity in the law. Representative Eastman's question was whether people would have recourse if they had a crime on their record which then became legal. Some people may feel there is a moral turpitude in having a gun in the car, but he is not in that camp, he said. Representative Eastman pointed to a problem in the current law where it is difficult to receive expungement or anything off of a person's record even if they have very sound reasons to remove it from their record.

[2:10:09 PM](#)

REPRESENTATIVE KREISS-TOMKINS said he wondered whether any sort of measures were taken after prohibition ended for bootleggers or people illegally consuming alcohol, and whether their records were expunged federally or otherwise. He said he offered his comment for fodder for the sponsor's office to perhaps research this issue.

[2:11:01 PM](#)

REPRESENTATIVE LEDOUX, in response to Representative Kopp's comments regarding the Municipality of Anchorage, she opined that there would be a different standard when a law was declared unconstitutional and there might be a way someone having their record expunged. She explained that there is a difference in the case of a violation of an unconstitutional law which never should have been on the books in the first place because it was unconstitutional, rather than simply a law that was changed due to a change of policy. She related that in her view they are separate issues.

[2:12:21 PM](#)

REPRESENTATIVE KOPP advised that under Ravin, the court ruled that it was unconstitutional due to a citizen's right to privacy, and the state would not have an interest in enforcing criminalizing marijuana in the home if it was under four ounces. He said that it is the same, in the weapon issue, the disparity, and the drug possession issue where the Supreme Court found issues under the constitution.

REPRESENTATIVE KOPP remarked that it is an under 21-years of age violation for a simple possession, without a plea agreement, and it would truly be a standalone charge by itself. He said he thought there were different ways to craft this legislation to

get at the intent wherein simple possession was the sole standalone issue.

[2:13:52 PM](#)

CHAIR CLAMAN referred to the question of post-conviction relief and noted, for example, the Municipality of Anchorage charges, wherein a person would probably be in good shape if they continued to appeal their conviction on constitutional grounds and the court subsequently ruled that it was unconstitutional, the person would win on their pending case. Except, it becomes more problematic if the person was convicted and did not appeal their conviction, and now there is this conviction on their record on a statute that later became unconstitutional. In the world of post-conviction relief, sometimes people can go back post-conviction and receive relief on those grounds if the statute was later declared unconstitutional. Under those circumstances it is rare that damages could be recovered from the state for having prosecuted a person for a crime it believed at the time was constitutional. Those, he offered, are just one of a myriad of challenges and it is interesting in this case in which the discussion is about a statute to create expungement. He added that the history of many Alaska governors going back in time is that the governors rarely use their clemency power to grant pardons. In the event a governor so desired, they could go back and grant pardons to everyone with old marijuana convictions, which could solve the legislature's problem.

[2:15:52 PM](#)

REPRESENTATIVE EASTMAN asked whether expungement was not an option available to the legislature because that would get into a separation of powers issue where the executive branch is given the opportunity to expunge or grant clemency. He asked whether that was the reason the sponsor went this way or was there another reason.

MR. FITZGERALD responded that when researching this bill, the sponsor was told not to use the word "expungement" and therefore the language stays away from that word in this bill. The idea behind the bill, he explained, is confidentiality with the court system and withholding the schedule VIA misdemeanor conviction from public access

[2:16:53 PM](#)

REPRESENTATIVE EASTMAN said that in going this route of confidentiality, there is a significant difference between making a conviction confidential and expunging the record. He pointed out that if someone applied for a job and must list any convictions, if their record was deemed confidential, would they be lying on the application if they said there had been no convictions.

MR. FITZGERALD answered that this issue was brought to the sponsor's attention. The intent of this bill is that any sort of court or state authority, state troopers, Anchorage Police Department, and so forth, would have access to the records, but the conviction for simple possession would be withheld from the private employer.

[2:18:42 PM](#)

REPRESENTATIVE EASTMAN said he understands the idea of trying to help someone with job applications by making the information confidential, except if the only way the person is being helped is simply by letting them lie on an application and making it harder for their lie to be found out. He said he was unsure that was actually helping the person.

MR. FITZGERALD advised he will perform research on that issue and get back to the committee.

[2:19:23 PM](#)

REPRESENTATIVE LEDOUX pointed out to Representative Kopp that the issue is not exactly the same with the unconstitutionality issue because under Ravin, the court decided it was unconstitutional in the home, it did not say it was unconstitutional outside of the home.

REPRESENTATIVE KOPP said that in both cases, the Supreme Court found constitutional violations and on those constitutional grounds the cases were dismissed.

[HB 316 was held over.]

[2:20:45 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:20 p.m.