

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 26, 2018

1:05 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Jonathan Kreiss-Tomkins, Vice-Chair
Representative Gabrielle LeDoux
Representative David Eastman
Representative Chuck Kopp
Representative Lora Reinbold
Representative Louise Stutes (alternate)

MEMBERS ABSENT

Representative Zach Fansler
Representative Charisse Millett (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 319

"An Act relating to criminal background checks for marijuana establishment registrations and renewals; and providing for an effective date."

- HEARD & HELD

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."

- MOVED CSHB 316(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 330

"An Act authorizing the commissioner of natural resources to disclose confidential information in an investigation or proceeding, including a lease royalty audit, appeal, or request for reconsideration and issue a protective order limiting the persons who have access to the confidential information."

- MOVED CSHB 330(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 319

SHORT TITLE: RENEW MARIJUANA LICENSE:BACKGROUND CHECKS

SPONSOR(s): REPRESENTATIVE(s) JOSEPHSON

01/31/18 (H) READ THE FIRST TIME - REFERRALS
01/31/18 (H) STA, JUD
02/13/18 (H) STA AT 3:15 PM GRUENBERG 120
02/13/18 (H) Heard & Held
02/13/18 (H) MINUTE(STA)
02/15/18 (H) STA AT 3:15 PM GRUENBERG 120
02/15/18 (H) Moved CSHB 319(STA) Out of Committee
02/15/18 (H) MINUTE(STA)
02/16/18 (H) STA RPT CS(STA) 5DP 2NR
02/16/18 (H) DP: TUCK, KNOPP, WOOL, LEDOUX, KREISS-
TOMKINS
02/16/18 (H) NR: BIRCH, JOHNSON
02/26/18 (H) JUD AT 1:00 PM GRUENBERG 120

BILL: HB 316

SHORT TITLE: RESTRICT ACCESS MARIJUANA CRIME RECORDS

SPONSOR(s): REPRESENTATIVE(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
02/12/18 (H) Heard & Held
02/12/18 (H) MINUTE(JUD)
02/26/18 (H) JUD AT 1:00 PM GRUENBERG 120

BILL: HB 330

SHORT TITLE: DNR: DISCLOSURE OF CONFIDENTIAL INFO

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/05/18 (H) READ THE FIRST TIME - REFERRALS
02/05/18 (H) JUD, RES
02/16/18 (H) JUD AT 1:00 PM GRUENBERG 120
02/16/18 (H) Heard & Held
02/16/18 (H) MINUTE(JUD)
02/21/18 (H) JUD AT 1:00 PM GRUENBERG 120
02/21/18 (H) Heard & Held
02/21/18 (H) MINUTE(JUD)
02/23/18 (H) JUD AT 1:30 PM GRUENBERG 120
02/23/18 (H) Heard & Held
02/23/18 (H) MINUTE(JUD)

WITNESS REGISTER

MEGAN HOLLAND, Staff
Representative Andy Josephson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing of CSHB 319, presented the legislation on behalf of Representative Josephson.

ERIKA MCCONNELL, Director
Alcohol & Marijuana Control Office
Department of Commerce, Community & Economic Development
Anchorage, Alaska

POSITION STATEMENT: During the hearing of CSHB 319, answered questions.

BRANDON EMMETT, Vice-Chair
Marijuana Control Board
Department of Commerce, Community & Economic Development
Anchorage, Alaska

POSITION STATEMENT: During the hearing of CSHB 319, answered questions.

GARY LEE, Criminal Justice Planner
Division of Statewide Services
Department of Public Safety
Anchorage, Alaska

POSITION STATEMENT: During the hearing of CSHB 319, answered questions.

PAUL DISDIER, General Manager
Fireweed Factory LLC
Juneau, Alaska

POSITION STATEMENT: During the hearing of CSHB 319, testified.

JANA WELTZIN, Attorney
Counsel to Hoban Law Group
Anchorage, Alaska

POSITION STATEMENT: During the hearing of CSHB 319, testified, answered questions, and offered support for the legislation.

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

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

GREG SMITH, Staff
Representative Gabrielle LeDoux
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 330, presented Amendment 2.

ED KING, Legislative Liaison
Commissioner's Office
Department of Natural Resources (DNR)
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 330, answered questions regarding Amendment 2.

ACTION NARRATIVE

[1:05:11 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:05 p.m. Representatives Claman, Kreiss-Tomkins, Eastman, and Reinbold were present at the call to order. Representatives Kopp, LeDoux, and Stutes (alternate for Representative Fansler) arrived as the meeting was in progress.

HB 319-RENEW MARIJUANA LICENSE:BACKGROUND CHECKS

[1:05:43 PM](#)

CHAIR CLAMAN announced that the first order of business would be HOUSE BILL NO. 319, "An Act relating to criminal background checks for marijuana establishment registrations and renewals; and providing for an effective date."

[1:06:18 PM](#)

MEGAN HOLLAND, Staff, Representative Andy Josephson, Alaska State Legislature, advised that CSHB 319 changes the fingerprinting requirements for marijuana registration renewal. Under current statute, marijuana registration holders are required to submit a new set of fingerprints on an annual basis, and this legislation changes that requirement from every year to every six years. She explained that the annual requirement is not standard for other industries, although, massage therapy

requires that new fingerprints are submitted after the initial registration, and there is active legislation addressing the massage therapy issue. The interest in these proposed changes originated in the Department of Commerce, Community & Economic Development (DCCED) due to its Alaska Public Safety Information System (ASPIN) that provides notice of any changes in the criminal activity of a license or registration holder who had previously provided their fingerprints. Due to the fact that the requirement to turn in a "fresh set" of fingerprint is currently in place and given the fact that a person's fingerprints do not change, and their fingerprints were initially logged into this data base, it is the sponsor's belief that this requirement is unnecessary, she explained.

[1:07:58 PM](#)

MS. HOLLAND advised that the previous version of this bill, as heard in the House State Affairs Standing Committee, set this requirement to once every three years, which was an idea proposed by the Alcohol and Marijuana Control Board. The House State Affairs Standing Committee decided to amend the three-years to every six-years and it passed with unanimous support. She noted that her research into how this issue is handled in other adult-use legal states found that some states do require that new fingerprints are turned in; however, most states include language that the state may require new fingerprints if there is a demonstrated investigative need. This legislation removes an unnecessary burden to both industry and the state without compromising the public's safety, she offered.

[1:09:43 PM](#)

REPRESENTATIVE KREISS-TOMKINS asked Director Erika McConnell, Alcohol and Marijuana Control Office, what the fingerprinting policy would look like in order for marijuana license holders to be treated the same as alcohol beverage license holders.

[1:10:18 PM](#)

ERIKA MCCONNELL, Director, Alcohol & Marijuana Control Office, Department of Commerce, Community & Economic Development (DCCED), advised that AS 04.11.295 is the statute on the alcohol side, and she paraphrased as follows:

An applicant for applicant for issuance of a license shall submit fingerprints ... the board may require an applicant for renewal of a license or a conditional

contractor's permit under this title to submit fingerprints and pay fees as required by this subsection."

[1:10:55 PM](#)

REPRESENTATIVE KREISS-TOMKINS asked why the law should not read the same for those in the marijuana industry.

MS. MCCONNELL noted that while both substances are regulated substances, marijuana is illegal at the federal level and alcohol is not illegal. She then deferred to Brandon Emmett, Vice Chair, Marijuana Control Board.

[1:11:40 PM](#)

BRANDON EMMETT, Vice-Chair, Marijuana Control Board, advised that the Marijuana Control Board contemplated this issue during a previous meeting which was centered around the fact that many of the people in the marijuana industry and those who voted to legalize marijuana wanted it regulated like alcohol. Except, he pointed out, there are still issues surrounding the legality of marijuana on the federal level and some of the board members raised concerns. The ideas were that the language reflect what is in alcohol, and that the registration be every five years. The Marijuana Control Board settled on a compromise of every three years which reflected the two sides of the board's opinion.

[1:13:39 PM](#)

REPRESENTATIVE KREISS-TOMKINS surmised that the process within the alcohol beverage industry is that a person is fingerprinted upon transfer of an alcohol beverage license and the Alcohol Beverage Control Board may ask for new fingerprints, for whatever reason and whatever time, but there is no recurring fingerprinting requirement.

MS. MCCONNELL replied that Representative Kreiss-Tomkins was correct.

[1:14:30 PM](#)

REPRESENTATIVE KREISS-TOMKINS related that he was trying to understand how it would be a compromise when part of the Marijuana Control Board preferred every five years and the other members preferred using the language used for the Alcohol

Beverage Control Board, which appears to be an even less restrictive measure. He acknowledged that the legislature had since changed that, and he asked how three years is a compromise and what were the arguments against "doing as is done in alcohol."

MR. EMMETT answered that there definitely was not consensus by the board members as to whether the language should stay with the every-year requirement or be essentially open-ended, such as in alcohol, and after some discussion, three years was the compromise. He explained that the body of the Marijuana Control Board is often split on many decisions with robust debate, and it then comes to some sort of a compromise on most of the divisive issues.

[1:16:28 PM](#)

REPRESENTATIVE KREISS-TOMKINS asked that the department and the board flag this issue, and he remarked that marijuana is now decriminalized and legal. He commented that he would like to hear a compelling reason as to why there should be a recurring fingerprinting requirement as opposed to what happens within the alcohol industry. He asked what the problem a recurring fingerprinting requirement is solving, besides being a lot of hassle for a lot of people.

MS. HOLLAND answered that the benefit of a recurring requirement for submitting new fingerprints is that in requesting those fingerprints, it triggers a national background check. Although, she acknowledged, the department has software to track changes in the criminal activity of registration holders on a state level, it does not do so on a national level. In the event a registration holder was involved in criminal activity outside of Alaska, the department would be unaware of that activity, she explained.

[1:18:05 PM](#)

REPRESENTATIVE KREISS-TOMKINS asked why it is in Alaska's interest to be aware of any potential criminal activity that a marijuana license holder might be complicit in outside of Alaska, and why there is a greater concern on a marijuana license holder than on an alcohol beverage license holder.

MS. HOLLAND pointed out that marijuana is still illegal on the federal level, thereby, causing an incentive to be more restrictive on this industry as compared to alcohol.

1:19:04 PM

REPRESENTATIVE KREISS-TOMKINS asked, "What gives if someone is complicit in federal illegal activity if they hold a marijuana license nationally." While he realizes that is "sort of bad in general," he asked whether that endangers the legal or decriminalized status of marijuana in Alaska if something does appear on the background check.

MS. MCCONNELL referred to the marijuana statute, AS 17.38.010(b), which read as follows:

(b) In the interest of the health and public safety of our citizenry, the people of the state of Alaska further find and declare that the production and sale of marijuana should be regulated so that

(1) individuals will have to show proof of age before purchasing marijuana;

(2) legitimate, taxpaying business people, and not criminal actors, will conduct sales of marijuana; and

(3) marijuana sold by regulated businesses will be labeled and subject to additional regulations to ensure that consumers are informed and protected.

MS. MCCONNELL explained that later on in the statute, it clearly states that certain criminal acts, certain felonies, and certain misdemeanors are disqualifying situations for people to hold a marijuana license. On the alcohol side, she explained, the board has the discretion to evaluate a criminal act on the part of an applicant or licensee and make a determination whether to allow that person to become a licensee. She reiterated that on the alcohol side it is at the discretion of the board, on the marijuana side there is statutory language directing that certain types of criminal actors are not to be licensees.

1:20:56 PM

REPRESENTATIVE EASTMAN asked that someone walk the committee through the process by which the fingerprinting and background checks take place.

MS. MCCONNELL responded that part of the application process includes a number of different forms, a set of fingerprints, and a set of fees. Once all of those things are submitted to the Alcohol and Marijuana Control Office, it begins the process.

The actual fingerprints are transferred to the Department of Public Safety (DPS) to perform the national criminal background check and it then provides DCCED with a report of the results of that check.

[1:21:55 PM](#)

REPRESENTATIVE EASTMAN surmised that someone provides the Marijuana Control Board with a copy of fingerprints "they may have obtained somewhere else," submits all of the forms, her office processes them and sends [the fingerprints] to the authorities to perform the national check.

CHAIR CLAMAN asked whether Representative Eastman was suggesting that a person could sit in their home and fingerprint themselves, or was he saying that DCCED chooses the third-party vendor.

REPRESENTATIVE EASTMAN asked whether DCCED performs the act of fingerprinting at its office, or whether it accepts the fingerprints from another source.

MS. MCCONNELL answered that the fingerprinting is performed on the appropriate form by third-party businesses and the list of those third-parties are located on the department's website.

[1:23:16 PM](#)

CHAIR CLAMAN noted that when a person becomes a member of the Alaska Bar Association (ABA) their fingerprints are taken one time and never again. He commented that the only reason to request the fingerprints here is to trigger the national background check.

MS. HOLLAND replied that Chair Claman was correct, the purpose in obtaining the new fingerprints is to trigger the national background check.

[1:24:05 PM](#)

REPRESENTATIVE EASTMAN asked how the fee relates to the background check, and whether it is simply of the cost for the state to perform that background check.

MS. MCCONNELL answered that a \$47 fee was set by DPS, and DCCED collects that fee and transfers it to DPS through a Reimbursable

Services Agreement (RSA). She then deferred to someone from DPS to explain that particular fee.

[1:25:17 PM](#)

GARY LEE, Criminal Justice Planner, Division of Statewide Services, Department of Public Safety, answered that the \$37 fee is a direct charge to the Federal Bureau of Investigations (FBI) and \$10 is a processing fee to digitize the prints and prepare them to send to the FBI.

[1:25:48 PM](#)

REPRESENTATIVE EASTMAN surmised that a person's Alaska crime would appear [in ASPIN] without performing this additional fingerprinting or background check. In the event someone ran afoul of federal laws with regard to marijuana, would that information be transmitted to the state, or with this additional background check and fingerprinting, "is that what would help us to figure that out?"

MR. LEE explained that the Alaska Public Safety Information System (ASPIN) only records state charges, and if it was a federal charge, Alaska would have no visibility of it unless an additional national fingerprint database check was conducted.

[1:26:53 PM](#)

REPRESENTATIVE KREISS-TOMKINS asked whether the fingerprinting requirements in the State of Alaska require one full-time person or more. He further asked the anticipated administrative burden associated with the marijuana industry and fingerprinting, and whether it has required bringing on additional capacity with this new industry coming online. He requested that Mr. Lee disregard the recurring fingerprints question, he simply would like a sense of the requirements of the operations.

MR. LEE answered that the fingerprinting division employs four people and they process all of the cards, and there are more people in the records section that handle the cards as they come in. It is "very broad based," and massage therapists, attorneys, and any number of people go through the process. The number of new or changed applicants through the marijuana industry is insignificant and it has not caused any additional personnel staffing.

[1:28:32 PM](#)

CHAIR CLAMAN opened public testimony on CSHB 319.

1:28:55 PM

PAUL DISDIER, General Manager, Fireweed Factory LLC, offered that Fireweed Factory, LLC is a state licensed cultivating facility and it has a retail store in Juneau. He advised that nine LLC members encompass the Fireweed Factory and it is a burden every year to make sure all of the members have their fingerprints taken, get the paperwork back to him, and then send everything to the state to have its license renewed. The requirement is usually during the summer and last year was the first time "we went through this" with one of its LLC members being in Europe and another member on vacation with their children. This year, he said, he has already notified all of the LLC members to begin the process. In the event this requirement was to be extended to ten years, six years, three years, or whatever, it would certainly be less of a burden than every year. It was his estimation, he offered, that the Fireweed Factory LLC probably had more LLC members than other marijuana entities in this state. Funding for marijuana businesses usually takes place under a group of investors with the same type of problems his company experiences every year. He related, that he would appreciate it if the committee would consider changing it from "three to something."

1:31:00 PM

REPRESENTATIVE EASTMAN referred to the applications Mr. Disdier submitted on behalf of himself and others and asked whether any of those applicants had been denied due to something on the background check.

MR. DISDIER answered that everyone in his LLC had no previous legal problems and the fingerprinting passed through "just fine." The investors in Fireweed Factory include an attorney and the husband of a doctor, and he opined that the committee will see that those types of people are the types of people investing in this industry. He pointed out that [this process] makes one feel like they are still outlaws in a way, "where you don't trust us, we want to make sure every year that you're not doing any kind of illegal activity." While, he said, he understands the reason for that requirement and he does not want to see any illegal activity coming into this industry, but the committee can trust a lot of the people who have invested in this business.

1:32:44 PM

REPRESENTATIVE EASTMAN asked whether he was aware of any other competitors in this industry in Alaska who applied and was turned down due to the background check.

MR. DISDIER replied that he has not heard of a single person.

1:33:20 PM

JANA WELTZIN, Attorney, Counsel to Hoban Law Group, advised that she represents a good amount of the marijuana industry and "we've done" probably 70 plus applications and nothing has been rejected for purposes of someone not having the correct criminal history. She related that she has companies with up to 20 investors and wrangling up a two-week timeframe in order to obtain fingerprints and perform its renewal applications in the middle of summer is "kinda tough." She offered hope that the House Judiciary Standing Committee passes this piece of legislation because it would help the industry to move more fluidly. In echoing the previous speaker, she concurred with not treating these legitimate businesses so much like criminals wherein they must be checked every 12-months to see if anyone had gotten into any trouble.

1:34:21 PM

REPRESENTATIVE KREISS-TOMKINS asked whether she would have an objection if the industry were treated the same as the alcohol industry for the purposes of checking criminality and fingerprint checks. In that regard, the Marijuana Control Board could require checks whenever it preferred, and all transfers would require checks, but no assumed recurring fingerprint requirement.

MS. WELTZIN said she would not object other than as to the point of optics because the goal is to not encourage any federal intervention activity in the State of Alaska. In the event the fingerprint requirement was completely deleted, which is not exactly what Representative Kreiss-Tomkins asked, but making it discretionary could give a bit more leverage to the federal government to step in and advised that "you guys" are not being proactive in making sure these licensees do not have felonies. In the event a couple of examples of that actually took place, it would be "really negative on our ability" to keep this

industry independent and completely state regulated, she explained.

[1:35:41 PM](#)

REPRESENTATIVE KREISS-TOMKINS noted that she had made a good point which, in turn, brought into focus previous testimony. He asked her thoughts about making the requirement every ten years.

MS. WELTZIN said that every ten years would be fine, and six years is fine, although, a lot could happen every ten years but she guessed she did not have too much of an opinion between six years and ten years. She opined that at the point a person enters into the market, they should have their fingerprints and background checks for the transfer, and that possibly every ten years is a good marker to reevaluate someone's criminal history and remain compliant. Possibly, she suggested, every year the person could attest through a written affidavit that they [had not been involved in criminal activity], and that might be a good way to keep the federal government from interfering with Alaska's market, she mused.

[1:36:39 PM](#)

REPRESENTATIVE EASTMAN asked whether she would want those involved in the marijuana industry to be more frequently background checked than attorneys, or the same.

MS. WELTZIN responded that attorneys "have way more lee-way," sometimes more than they should. They have a fiduciary duty to their clients, they are officers of the court, and attorneys should undergo a background check more often than currently. Attorneys certainly get into more trouble than the marijuana businesses, over all, she opined.

CHAIR CLAMAN mused that some of the attorneys get into trouble by joining the legislature.

[1:37:34 PM](#)

REPRESENTATIVE KOPP asked that, as a legal representative of licensees, are there any disqualifying misdemeanors that can prevent a licensee from being renewed or cause them to lose their license.

[MS. WELTZIN asked for a few minutes to research the question.]

[1:38:53 PM](#)

REPRESENTATIVE KOPP advised that the National Crime Information Center (NCIC) background checks locate felonies and not misdemeanors. Only felonies are uploaded into NCIC unless "we're doing something brand new." In the event there are disqualifying misdemeanors, there is a state-by-state check, but that is "very exhaustive and time intensive" and he asked whether the DPS person could respond. If, in fact, one of the purposes for the background check and finger printing was to identify all disqualifying offenses, he said that he did not think the standard NCIC background check "is doing it."

MS. WELTZIN clarified that she thought the question was whether there are any disqualifying misdemeanors in the statute and answered that there are (audio difficulties) subsection (c), misdemeanor crimes involved in a controlled substance, violence against a person, (audio difficulties) or dishonesty (audio difficulties) within five years or (3) has (audio difficulties) two years before sending the application if convicted of a class A misdemeanor. Therefore, she commented, it appears that if the federal background checks do not pick up on these misdemeanors, it would be tracked by the state-by-state checks the previous witness had mentioned.

CHAIR CLAMAN asked whether Mr. Lee could confirm that nothing has changed since Representative Kopp was involved in law enforcement.

MR. LEE answered that Representative Kopp was basically correct, the national records do indicate if there is a record, that it can point to the state it originated. In order to do a full background check, a person would have to inquire of each state that the federal database reported it has a record of an individual.

CHAIR CLAMAN surmised that the federal record would show another state's felony and if there was a misdemeanor in that state, it would not list what the misdemeanor was, it would just reflect the misdemeanor charge and then Alaska would have to follow up with that other state.

MR. LEE advised that Chair Claman was correct, but it is through the National Communications System, there is a message transmission to pull up the digitize data records, and a person does not have to actually call that state.

[1:41:31 PM](#)

REPRESENTATIVE EASTMAN asked whether that follow-up takes place automatically, or whether something else must take place in order to trigger that follow up. Under the state's current process for these licenses, if a person applies for a license in Alaska and 20-years ago they had a misdemeanor on their record in some other state, he asked whether the board would have access to what that misdemeanor was so it could rule that the misdemeanor was not disqualifying.

MR. LEE answered that the full background check would inquire of the state the misdemeanor originated in to determine the charge and its disposition.

[1:42:33 PM](#)

CHAIR CLAMAN, after ascertaining no one wished to testify, closed public testimony on CSHB 319.

[HB 319 was held over.]

HB 316-RESTRICT ACCESS MARIJUANA CRIME RECORDS

[1:43:05 PM](#)

CHAIR CLAMAN announced that the next 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."

[1:43:34 PM](#)

PATRICK FITZGERALD, Staff, Representative Harriet Drummond, Alaska State Legislature, in response to Representative Kress-Tomkins's question asked in the previous hearing, with regard to whether any sort of expungement or dealings took place for the people punished or imprisoned due to prohibition, answered that it was more of a federal law. He explained that there was an amendment in the Constitution of the United States, and once prohibition ended, the federal government left it up to the states to decide how to address the remainder of the sentences imposed during prohibition. In contrast, he pointed out, currently the states have been ending prohibition on cannabis and marijuana rather than the federal government.

[1:45:04 PM](#)

MR. FITZGERALD, in response to a question asked by Representative Eastman in a previous hearing with regard to job applications and how someone would answer the [felony] question if they fit the criteria in the bill, he advised that essentially, the person would write on the job application, "Yes, I have been convicted; however, as an employer you may not have access to it because it is a crime that was addressed and is now legal."

[1:45:48 PM](#)

CHAIR CLAMAN advised that Legislative Legal and Research Services has permission to make any technical and conforming amendments to the bill.

[1:46:01 PM](#)

CHAIR CLAMAN moved to adopt Amendment 1, Version 30-LS1017\0.1, Radford/Martin, 2/21/18, which read as follows:

Page 1, line 10:
Delete "and"

Page 1, following line 10:
Insert a new paragraph to read:
"(2) was 21 years of age or older at the time of commission of the offense; and"

Re-number the following paragraph accordingly.

Page 2, line 4:
Delete "and"

Page 2, following line 4:
Insert a new paragraph to read:
"(2) was 21 years of age or older at the time of commission of the offense; and"

Re-number the following paragraph accordingly.

Page 4, line 17, following "was":
Insert "21 years of age or older at the time of commission of the offense and was"

REPRESENTATIVE EASTMAN objected for purposes of discussion.

[1:46:15 PM](#)

MR. FITZGERALD explained that Amendment 1 clarifies that for this to apply, the individual would have had to be 21-years of age or older during the issuing of the citation, and he advised that this amendment was worked out with the Department of Law (DOL) and the Alaska Court System (ACS). He remarked that when the bill was originally drafted, it was believed that because the citation to be given would have included a "minor in possession of" or a "minor using whatever it may be" that it would not override it. However, he advised, this amendment clarifies that the individual would have had to have been 21-years of age at the time, which is what is currently legal.

[1:47:11 PM](#)

REPRESENTATIVE EASTMAN asked whether there are any potential convictions out there for something that occurred when someone was 18-20 years of age.

MR. FITZGERALD advised that the sponsor's office had been notified of some convictions; however, if the person was below the age of 21 when the citation was given, this would not pertain to those individuals.

[1:47:48 PM](#)

REPRESENTATIVE EASTMAN commented that that creates an interesting situation where, it was confidential if the person was 21-years of age and did something, but if they were younger, it was not confidential.

MR. FITZGERALD explained that the idea behind the bill is that if a person would have been legally possessing marijuana at the time, before the state legalized marijuana, the person's record will be made confidential. In the event the person was under-age, then "even if you had it now, and you were under-age, then it would still be minor in possession."

[1:48:40 PM](#)

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

[1:49:02 PM](#)

REPRESENTATIVE EASTMAN noted that an issue discussed during the previous hearing related to charges, and he asked whether this confidentiality should deal with the single charge, or whether the charges are broader.

MR. FITZGERALD answered that this bill applies to the "stand alone charges," and this is solely the conviction of possession.

[1:49:56 PM](#)

REPRESENTATIVE EASTMAN asked which of the following two options the sponsor prefers, narrowly tailoring it to the sole conviction of possession, or broadly relating to one of many different charges.

CHAIR CLAMAN said, "You mean, what does the bill do?"

REPRESENTATIVE EASTMAN commented that between those two options, he would like to know where the sponsor stands because it was the topic of conversation during the last hearing.

[1:50:47 PM](#)

REPRESENTATIVE KOPP declared a point of order. He commented that it does not really matter what the sponsor wants to do, the question is "what does the bill do."

CHAIR CLAMAN remarked that if this is the bill sponsor's bill, isn't the sponsor's position reflected by the bill they submitted.

REPRESENTATIVE EASTMAN said he is asking the sponsor's representative to confirm that ...

CHAIR CLAMAN advised Mr. Fitzgerald that he could confirm that the bill represents the sponsor's intent.

MR. FITZGERALD stated that the bill does reflect the sponsor's intent.

[1:51:35 PM](#)

REPRESENTATIVE KREISS-TOMKINS moved to report HB 316, Version 30-LS1017\O, Martin, 2/8/18, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

There being no objection, CSHB 316(JUD) moved from the House Judiciary Standing Committee.

[1:52:14 PM](#)

The committee took an at-ease from 1:52 p.m. to 1:52 p.m.

HB 330-DNR: DISCLOSURE OF CONFIDENTIAL INFO

[1:59:31 PM](#)

CHAIR CLAMAN announced that the final order of business would be HOUSE BILL NO. 330, "An Act authorizing the commissioner of natural resources to disclose confidential information in an investigation or proceeding, including a lease royalty audit, appeal, or request for reconsideration and issue a protective order limiting the persons who have access to the confidential information."

CHAIR CLAMAN advised that Legislative Legal and Research Services has permission to make any technical amendments and conforming changes to the bill.

[2:00:12 PM](#)

The committee took an at-ease from 2:00 p.m. to 2:01 p.m.

[2:01:53 PM](#)

REPRESENTATIVE LEDOUX moved to adopt Amendment 2, Version 30-GH2820\A.2, Radford, 2/23/18, which read as follows:

Page 1, lines 2 - 3:

Delete "in an investigation or proceeding, including a lease royalty audit, appeal, or request for reconsideration"

Insert "during a royalty or net profit share audit or appeal"

Page 3, lines 25 - 26:

Delete "in an investigation or proceeding of the department, including a lease audit, appeal, or request for reconsideration"

Insert "during a royalty or net profit share audit or appeal"

Page 3, line 28:

Delete "lease"

Insert "royalty or net profit share audit or appeal"

Page 4, line 1:

Delete "investigation or proceeding"

Insert "royalty or net profit share audit or appeal"

Page 6, line 20:

Delete "lease"

Following "royalty"

Insert "or net profit share"

[2:02:08 PM](#)

GREG SMITH, Staff, Representative Gabrielle LeDoux, Alaska State Legislature, advised that the intent of Amendment 2 is to restrict the disclosures of confidential information made by the commissioner of the Department of Nature Resources (DNR) to "royalty or net profit share audits for appeals." This amendment "kind of tightens in" the authority the department was seeking because it strikes a balance between the concerns expressed by the industry and the needs of DNR to efficiently process these cases. This language will still allow DNR to process the vast majority of its cases in which it needs to disclose confidential information and create protective orders, he said.

REPRESENTATIVE KREISS-TOMKINS objected to the adoption of Amendment 2.

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ED KING, Legislative Liaison, Commissioner's Office, Department of Natural Resources (DNR), advised that Amendment 2 would further narrow the scope of the commissioner's authority rather than being a general power to adjudicate and resolve issues and resolve audits or appeals related to information that is held confidential. This amendment would restrict that authority solely to royalty issues and net profit share issues. Mr. King advised that the vast majority of the issues requiring these types of protective orders are, in fact, in the royalty audit and net profit share. However, he pointed out, there are issues outside of royalties and net profit share that DNR would prefer to also adjudicate under the protective orders. The preference

of DNR is that Amendment 2 does not pass; however, if it is the will of the committee, DNR appreciates the efforts being made.

2:04:40 PM

REPRESENTATIVE KOPP asked whether it was Mr. King's understanding that this would also protect the confidentiality of geological data or sensitive data as to what a field might contain.

MR. KING responded that with Amendment 2, DNR would no longer have that authority to issue protective orders to resolve those types of issues. He explained that without Amendment 2, it is DNR's reading of the bill that it would have the ability to resolve those issues through the commissioner's office without going to the court system and obtaining a protective order.

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REPRESENTATIVE KREISS-TOMKINS noted Mr. King's statement regarding the strong majority of instances in which a protective order would be issued that would relate to royalties and net profit share. He requested examples of those other issues that could take advantage of this tool were it available to the commissioner.

MR. KING answered that a specific example that DNR had to deal with is related to private property owners with a mineral interest surrounding a geologic structure. For example, a resource specifically in oil and gas, is when DNR makes a decision related to the extent of the resource and to what extent it provides revenue to the resource owner, DNR's decision could impact how much money that individual would earn from the production of those resources. The department did have a fairly rare issue in Cook Inlet approximately 10-years ago, and the issue could not be resolved internally because DNR did not have the ability to disclose that confidential data to the property owner because the data was collected by the operator. In that circumstance, that audit sat in the commissioner's office until the appellant finally went to court and the court issued a protective order, at that point, DNR was able to resolve the case, he explained.

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REPRESENTATIVE KREISS-TOMKIN asked whether there are any other examples.

MR. KING reiterated that one is currently being litigated, and he is not aware of any other circumstances.

[2:07:10 PM](#)

CHAIR CLAMAN asked whether the audit is being litigated or the protective order.

MR. KING answered that that is a different and separate issue related to the same (audio difficulties) but it is currently in the superior court and the protective order in that case has not yet been issued.

CHAIR CLAMAN asked whether that is the main issue being litigated or was it being litigated over the audit as well.

MR. KING responded that the case is not related to an audit.

[2:07:44 PM](#)

REPRESENTATIVE REINBOLD noted that the regional native corporations own the minerals below the surface, and if Amendment 2 does not pass, she asked whether that would allow the state to also obtain information on the regional native corporations.

MR. KING reiterated testimony from a previous hearing advising that the department, under this bill, does not have the ability to obtain any new information, the information is given to DNR by the producer. The question is how can DNR use that information to adjudicate when there is an appeal, and under Representative Reinbold's circumstance, the mental health trust or the native corporation would have a lease with the producer, and they would have to administer and adjudicate their own appeals around that issue. In the specific case being discussed here, where DNR has this private landowner adjacent to a resource, there may or may not be a lease issued that needs to be resolved there. In those circumstances, the appellant is bringing the appeal and has standing due to its financial interest as an adjacent landowner. In those situations, DNR cannot share the producer's information with this private third-party without some protections over that confidential data, he explained.

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REPRESENTATIVE EASTMAN requested another example of how the sponsor envisions Amendment 2 having a positive impact on a particular situation.

REPRESENTATIVE LEDOUX responded that she believes the one example being litigated today and another example from ten years ago, does not provide a compelling circumstance. She related that she is uncomfortable with the ability of DNR to release what otherwise would be confidential information to someone outside of the department. While she realizes the need for this legislation, she would feel far more comfortable with the bill if it was limited to the circumstances where it was actually most needed, she said.

[2:10:41 PM](#)

REPRESENTATIVE REINBOLD commented that she is supportive of this amendment because the legislature does not need to chase investment out of this state, she believes in private property rights and understands there is a point where some information is needed. She pointed out that Amendment 2 narrows the focus, and during the previous hearing the department did not object to the change. She said she would be a yes vote on the amendment.

CHAIR CLAMAN clarified for Representative Reinbold that DNR was not in possession Amendment 2 until today.

REPRESENTATIVE REINBOLD responded that when people had testified previously, "they said" the primary responsibility was being even with this issue, and at the time there was no objection to it, which is why she will be supporting the amendment.

REPRESENTATIVE KREISS-TOMKINS maintained his objection.

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

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REPRESENTATIVE KREISS-TOMKINS moved to report HB 330, Version 30-GH2820\A, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being

no objections, CSHB 330 moved out of the House Judiciary Standing Committee.

[2:13:53 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:13 p.m.