

**ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE**

March 8, 2017

3:18 p.m.

MEMBERS PRESENT

Representative Sam Kito, Chair
Representative Adam Wool, Vice Chair
Representative Andy Josephson
Representative Louise Stutes
Representative Chris Birch
Representative Gary Knopp
Representative Colleen Sullivan-Leonard

MEMBERS ABSENT

Representative Mike Chenault (alternate)
Representative Bryce Edgmon (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 108

"An Act adopting and relating to the Revised Uniform Fiduciary Access to Digital Assets Act."

- HEARD & HELD

HOUSE BILL NO. 79

"An Act relating to workers' compensation; repealing the second injury fund upon satisfaction of claims; relating to service fees and civil penalties for the workers' safety programs and the workers' compensation program; relating to the liability of specified officers and members of specified business entities for payment of workers' compensation benefits and civil penalties; relating to civil penalties for underinsuring or failing to insure or provide security for workers' compensation liability; relating to preauthorization and timely payment for medical treatment and services provided to injured employees; relating to incorporation of reference materials in workers' compensation regulations; relating to proceedings before the Workers' Compensation Board; providing for methods of payment for workers' compensation benefits; relating to the workers' compensation benefits guaranty fund authority to claim a lien; excluding independent contractors from workers' compensation coverage; establishing the circumstances under which certain nonemployee executive corporate officers and members of limited

liability companies may obtain workers' compensation coverage; relating to the duties of injured employees to report income or work; relating to misclassification of employees and deceptive leasing; defining 'employee'; relating to the Workers' Compensation Board's approval of attorney fees in a settlement agreement; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 108

SHORT TITLE: FIDUCIARY ACCESS TO DIGITAL ASSETS

SPONSOR(S): REPRESENTATIVE(S) CLAMAN

| | | |
|----------|-----|---------------------------------|
| 02/08/17 | (H) | READ THE FIRST TIME - REFERRALS |
| 02/08/17 | (H) | L&C, JUD |
| 03/08/17 | (H) | L&C AT 3:15 PM BARNES 124 |

WITNESS REGISTER

REPRESENTATIVE MATT CLAMAN

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 108, presented the legislation as prime sponsor.

DEBORAH E. BEHR, Commissioner

National Conference of Commissioners on Uniform State Laws
(NCCUSL)

Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 108, explained the legislation.

KEN HELANDER, Advocacy Director

American Association of Retired Persons (AARP)

Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 108, offered support for the legislation.

ACTION NARRATIVE

[3:18:11 PM](#)

CHAIR SAM KITO called the House Labor and Commerce Standing Committee meeting to order at 3:18 p.m. Representatives Kito, Josephson, Birch, Knopp, and Stutes were present at the call to

order. Representatives Wool and Sullivan-Leonard arrived as the meeting was in progress.

HB 108-FIDUCIARY ACCESS TO DIGITAL ASSETS

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CHAIR KITO announced that the only order of business would be HOUSE BILL NO. 108, "An Act adopting and relating to the Revised Uniform Fiduciary Access to Digital Assets Act."

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REPRESENTATIVE MATT CLAMAN, Alaska State Legislature, advised that in 2015, 74,000 Alaskans, approximately 9.9 percent of Alaska's population, were over the age of 65. Due to the increasingly computer savvy senior population, fiduciary access to digital assets is more important than ever. He explained that this legislation provides fiduciaries the legal authority to manage assets, such as computer files, digital photographs, and electronic communications. He noted that HB 108 is based upon the Uniform Law Commission's recommendations to states in terms of how to address the issue of access to digital assets.

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DEBORAH E. BEHR, Commissioner, National Conference of Commissioners on Uniform State Laws (NCCUSL), advised she is a Uniform Law Delegation Member from the State of Alaska. Alaska has been a member of the Uniform Law Commission since approximately 1914, and advised she considers it to be a state right's organization because all states meet annually in a public meeting setting to come up with solutions for interstate pressing problems that work for all states. The Uniform Law Commission supports HB 108, and she pointed out there are letters of support from various entities. The Act itself was the result of senior advocate groups coming to the Uniform Law Commission due to difficulties with fiduciaries, wills, powers of attorney, trusts, guardianship, and conservatorship. She explained that when a person dies, the executor for the estate is the fiduciary who gathers all assets and disperses them according to the wishes expressed in the deceased person's will. Currently, the nation-wide problem is, "what do you do with digital assets" because digital assets are encrypted, downloaded, password protected, and this bill addresses that issue. Google, Facebook, or whatever provider, are the custodians with a private service agreement with the user for

their service and, generally, a term of the agreement is that the provider will keep it confidential. Her husband, she related, has a third-party contract with "a server person" to store their pictures, and the picture will be kept confidential. In the event her husband passes, and she attempts to obtain his pictures from Google, she will be told the agreement was not with her, she could not have the pictures, and she will need to obtain a court order, she said. This bill is not unique, she described, it is the law in 23 states, and is presently pending before 17 states.

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COMMISSION BEHR explained that a concept of the bill is an opt-in system. For example, if her husband chose to do nothing, this bill would not change his relationship with the assets and she would still have to go to court to receive the assets. The compromise the Uniform Law Commission worked out with the industry, the senior groups and the public generally, was that the online providers, such as Google and Facebook, would adopt an "online tool." Wherein, she explained, when opening a new account with Google, for example, it will have a page "And if I pass away or I get incapacitated this is what I want done with these assets." Importantly, she offered, "you may say no, and if you say no, that means no one gets it," no one would receive the family photos, email communications, and such, and noted that each service provider has its own model of the form, she said.

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COMMISSIONER BEHR pointed out that commerce is moving to paperless, and the difficulties arise when no one has access to the deceased person's passwords and business documents. This bill sets up three priorities, as follows: the online tool; your legally enforceable directions in your will, power of attorney, or trust; and, when a person does not have an online tool for whatever reason and the will simply read, "All my assets to my wife," except that direction is not enough under federal digital law to release the digital assets. In the event the deceased had not provided any direction, the "Terms of Service Agreement" between the deceased and the provider control, meaning she probably will not easily receive the family photograph album and will have to go to court. She pointed out that there are special rules in HB 108 requiring a person to give "express consent or court order" for email content. In the event the deceased did not provide express consent, and no court order,

the best the fiduciary receives in this bill is called the "Catalog of Electronic Communications." She explained that the catalog contains the "To, From, Date" lines, but not the subject line or the contents of the email. Fiduciaries have found that limited amount of information useful because it may offer a road to follow, she said.

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COMMISSIONER BEHR advised that this bill would resolve a problem for mentally handicapped or disabled individuals who become incapacitated, cannot monitor their financial account, and the guardian wishes to close that account. This legislation provides a court hearing process for the individual to tell the judge whether they are, or are not, capable of handling their account. She explained that as the fiduciary of her husband's estate, and moving through the process of providing documentation and such for Google, Google will receive immunity if it disperses the digital assets according to the bill, in good faith compliance, within 60 days. Commissioner Behr then related two "war stories."

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REPRESENTATIVE BIRCH asked whether sharing information with a person's spouse, such as user name, password, and name on account, in detail, is sufficient for legal access.

COMMISSIONER BEHR answered yes, and she said this bill is necessary due to a federal law in the area of hacking and wiretapping. This bill allows her access to all of the documents, to change passwords, but in general, the bill is necessary because even though the spouse may have the passwords, the company is under no obligation to deal with the spouse, she explained.

REPRESENTATIVE BIRCH related that the bill appears to be reasonable and make sense, and he was curious about the legality of having access to the deceased's information and accounts.

CHAIR KITO commented that another aspect is that the spouse may have access but not the authority, and this bill provides the authority.

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REPRESENTATIVE KNOPP offered a scenario of an executor overseeing his will in the event he and his wife are deceased at the same time, and asked whether the court determines whether the person is actually the fiduciary at that point.

COMMISSIONER BEHR responded that her husband appointed her executor and in order for anyone to legally deal with her as the executor, she has to go to court and receive a Letter of Appointment. The online tool information is completed before the person is deceased. For example, if her husband did not sign the online tool before passing, she could not go in and make changes. She opined that the American Association of Retired Persons (AARP) intends to offer educational programs in this area, and she said she imagines the Alaska Bar Association will provide CLE education. She expressed that this is an area where people must be "more savvy" when moving into the digital age, and she suggested keeping a digit roadmap of assets, keeping important things on a flash drive, signing the online tool, and preparing estate planning.

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REPRESENTATIVE KNOPP asked whether this opens the door for "a lot of corruption, fraud, embezzlement."

COMMISSIONER BEHR replied that new security devices are being developed to resist hacking, but it is probably not impossible to hack the information. The key is that the online tool has a trigger, and her husband's death certificate and other documents must first be provided.

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REPRESENTATIVE WOOL offered a scenario of someone leaving all of their assets to their spouse and permitting access to the deceased person's email and Facebook account, and surmised that Commissioner Behr was saying, for example, Google will not break the contract. Except, in other circumstances the contract would be broken through a will, such that if someone wills a spouse a house or piece of property and unbeknownst to the spouse, the deceased had a vacation house somewhere. In that scenario, he said, even though the spouse had no part in the contract for the vacation house, the spouse still takes ownership of the property. He asked whether this is different.

COMMISSIONER BEHR noted that this is different, and because society is in the electronic age it will take time for the law

to develop and resolve issues. The phrase "all my property real and tangible" includes houses, pieces of property, various investments, and it is the job of the fiduciary to find those assets and pull them together. She pointed to the frustrations of trust companies that have a duty to locate assets, and one of those assets might be important business records in order to locate stocks, for example, yet the trust company cannot get access and does not even know the stocks exist. She described that this bill is not an overlay statute, it does not go in and change how a person bequests property or stocks and bonds, that is all under other law.

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REPRESENTATIVE STUTES commented that her mother is 93, and she requested and received a laptop computer. Her mother is private, she described, and no one knows her passwords, so this bill would be instrumental if her mother passed immediately.

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CHAIR KITO recalled a previous comment that the post office gets less business due to the popularity of email, and opined that the post office stays in business via the internet due to commerce. He requested clarification as to the difference between a fiduciary and beneficiary with regard to this legislation.

COMMISSIONER BEHR answered that a fiduciary, an executor in a will, for example, has a business and family duty to find and protect all assets, invest the assets, and fulfill the intent of the deceased. A beneficiary is the person who actually receives those assets, such as leaving assets to the grandchildren, whereby the grandchildren are the beneficiaries and receive whatever the deceased intended.

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CHAIR KITO commented that this legislation is timely in his case because, as a single parent and transitioning into the electronic age, he is considering what would happen if he passed, and how would his daughter have the ability to gain access to those financial resources, especially if his access had all been online. His question is whether he should write down all of the passwords and make sure his executor has the ability to get the passwords, while understanding the executor does not have the legal authority. Possibly, he opined, there

is a window in time where there is "almost like a little no one is looking grace period" to go in and take care of the assets. He surmised that a person would have to obtain the electronic opt-in in advance of identifying the fiduciary's responsibility in a will. He then referred to Commissioner Behr's testimony that many companies have been around for 10 years, and asked that once this bill passes in Alaska whether these companies will be required to allow that opt-in for Alaskans, or whether many companies currently allow for the electronic opt-in.

COMMISSIONER BEHR responded that the big providers in this area, Facebook and Google, currently have tools online wherein a person can designate, and it is expected that other corporations will come online as this is motivation for them as good corporate citizens. She pointed to a provision in the bill, "if it's not there for you to use then they -- we will look to the will."

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CHAIR KITO opened public testimony on HB 108

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KEN HELANDER, Advocacy Director, American Association of Retired Persons (AARP), offered support for the legislation on behalf of the American Association of Retired Persons (AARP) with 85,000 members in Alaska. Enacting this law is timely and a consequence of society's digital age, similar to advanced planning with powers of attorney for finances and health care decisions. This legislation allows that citizens approaching their later years in life, or the possibility of sudden incapacity, to have a sense of self-determination rather than leaving it to chance or letting the burden fall on other family members who may have to step in on the deceased's behalf. He noted that the AARP Public Policy Institute and AARP's national office in Washington D.C., produced a publication and survey of adults in the United States, the survey included how adults use the internet, what they know about a digital legacy, and how many adults have addressed this issue with members of their family, or thought about it for themselves. Surprisingly, he related, a majority of people said they were not interested in it, but at the same time they all valued that the [assets] be protected. Education must be provided because it is new and will take time for adults and service providers to come of age with this technology, how it is being used, and how we want it to benefit us in the future, he offered.

[HB 108 was held over.]

3:53:08 PM

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 3:53 p.m.