

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON MILITARY AND VETERANS' AFFAIRS

February 6, 2018

1:03 p.m.

MEMBERS PRESENT

Representative Chris Tuck, Chair
Representative Gabrielle LeDoux, Vice Chair
Representative Justin Parish
Representative Ivy Spohnholz
Representative George Rauscher
Representative Lora Reinbold
Representative Dan Saddler

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 262

"An Act relating to temporary courtesy licenses for certain nonresident professionals; and relating to the Department of Commerce, Community, and Economic Development."

- HEARD & HELD

HOUSE BILL NO. 307

"An Act requiring a person who commits certain offenses under the code of military justice to register as a sex offender or child kidnapper; relating to the Servicemembers Civil Relief Act; relating to contracts made by a member of the organized militia; relating to nonjudicial punishment of members of the organized militia; relating to offenses subject to court-martial proceedings; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 262

SHORT TITLE: MILITARY SPOUSE COURTESY LICENSE

SPONSOR(s): REPRESENTATIVE(s) KAWASAKI

01/16/18	(H)	PREFILE RELEASED 1/8/18
01/16/18	(H)	READ THE FIRST TIME - REFERRALS

01/16/18 (H) MLV, L&C
02/06/18 (H) MLV AT 1:00 PM GRUENBERG 120

BILL: HB 307

SHORT TITLE: MILITARY JUSTICE & MILITIA CIVIL RELIEF

SPONSOR(s): REPRESENTATIVE(s) TUCK

01/24/18 (H) READ THE FIRST TIME - REFERRALS
01/24/18 (H) MLV, JUD
01/30/18 (H) MLV AT 1:30 PM GRUENBERG 120
01/30/18 (H) Heard & Held
01/30/18 (H) MINUTE (MLV)
02/06/18 (H) MLV AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

REPRESENTATIVE SCOTT KAWASAKI

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 262, presented the legislation as prime sponsor.

WILLIAM JODWALIS, Staff

Representative Scott Kawasaki

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 262, testified and answered questions.

FRED PARADY, Deputy Commissioner

Department of Commerce, Community & Economic Development (DCCED)

Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 262, testified and answered questions.

ROBERT MR. DOEHL, Deputy Commissioner

Department of Military & Veterans' Affairs (DMVA)

Joint Base Elmendorf-Richardson (JBER), Alaska

POSITION STATEMENT: During the hearing of HB 262, testified and answered questions.

DALE VANDE HAY

Defense State Liaison Office

Military Community and Family Policy

Department of Defense

San Antonio, Texas

POSITION STATEMENT: During the hearing of HB 262, testified and answered questions.

DAVID NEES
Alaska Policy Forum
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 262, testified and answered questions.

LIEUTENANT COLONEL CHRISTOPHER WEAVER
Office of the Adjutant General
Alaska National Guard
Joint Base Elmendorf-Richardson (JBER), Alaska

POSITION STATEMENT: During the hearing of HB 262, discussed Amendment 1 and answered questions.

CAPTAIN BLAKE CIRCLE
Alaska National Guard
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 307, discussed Amendment 1 and answered questions.

DEPUTY COMMISSIONER ROBERT DOEHL
Office of the Commissioner/Adjutant General
Department of Military & Veterans' Affairs (DMLV)
Joint Base Elmendorf-Richardson (JBER), Alaska

POSITION STATEMENT: During the hearing of HB 307, discussed Amendment 1 and answered questions.

ACTION NARRATIVE

[1:03:00 PM](#)

CHAIR CHRIS TUCK called the House Special Committee on Military and Veterans' Affairs meeting to order at 1:03 p.m. Representatives Tuck, Spohnholz, Rauscher, Reinbold, and Parish were present at the call to order. Representative Saddler and LeDoux arrived as the meeting was in progress.

HB 262-MILITARY SPOUSE COURTESY LICENSE

[1:04:09 PM](#)

CHAIR TUCK announced that the first order of business would be HOUSE BILL NO. 262, "An Act relating to temporary courtesy licenses for certain nonresident professionals; and relating to

the Department of Commerce, Community, and Economic Development."

[1:04:36 PM](#)

REPRESENTATIVE SCOTT KAWASAKI, Alaska State Legislature, explained that HB 262 is a culmination of many discussions that took place over several years regarding expediting temporary courtesy licenses. In 2011, House Bill 28, [passed in the Twenty-Seventh Alaska State Legislature], allowed expedited temporary courtesy licenses for spouses of Armed Services members so they could practice their profession without experiencing extensive wait-times for licensure approval. Similar legislation has passed in other states; however, several states, such as the States of Washington and Connecticut, include a reporting mechanism to the legislature and Joint Armed Services Committees wherein the state can track the progress of the executive branches' implementation of those occupational boards. He noted that House Bill 28 did not include a reporting requirement when it was enacted. In the Fall of 2017, legislators voiced concern that the full implementation of House Bill 28 was not yet completed and that not all occupational boards were aware of the seven-year-old statute. While questions remain, HB 262 simply seeks to strengthen the ability of those military spouses in obtaining occupational licenses in an efficient and expedited manner as prescribed by law. This legislation seeks to amend Title 8 to include the Department of Commerce, Community & Economic Development (DCCED) such that it prepares an annual report of the courtesy licenses issued in the previous fiscal year. He commented that this simple reporting mechanism will help to facilitate communications between the legislative branch, the executive branch, and the occupational boards that oversee those licenses, he described. Thereby, he said, this legislation will help facilitate those military spouses in getting back into the workforce as quickly as possible. The passage of HB 262 will improve communications between those boards, the departments, and the legislature, and it will improve the efficiency and awareness as to what opportunities are available. He urged the support of this corrective bill and described that it is in the best interest of improving communications and accountability and helping those military families transition into their new life in this state.

[1:07:44 PM](#)

REPRESENTATIVE SADDLER referred to HB 262, Section 1, AS 08.01.063(f), page 2, lines 3-9, which read as follows:

(f) The department shall submit the report prepared under (e) of this section to the Joint Armed Services Committee on or before the first day of each regular session of the legislature. In addition, the department shall consolidate the two most recent reports and submit a biennial report to the legislature on or before the first day of the first regular session of each legislature. The department shall deliver a copy of the biennial report to the senate secretary and the chief clerk of the house of representatives and notify the legislature that the report is available.

REPRESENTATIVE SADDLER asked why Representative Kawasaki directed that the report go to the Joint Armed Services Committee because if the report is also going to the senate secretary and chief clerk, why does it need to go to the committee.

REPRESENTATIVE KAWASAKI responded that that is a technical question for his staff member, William Jodwalis. He opined that the purpose of the report going to the Joint Armed Services Committee is because it will get to more legislators more quickly. The report will also go to the senate secretary and the chief clerk because "sometimes we do get those reports, and other times we don't," he pointed out.

[1:08:51 PM](#)

WILLIAM JODWALIS, Staff, Representative Scott Kawasaki, Alaska State Legislature, responded to Representative Saddler's previous question and advised that the report would be presented to the Joint Armed Services Committee annually. He explained that it would be two reports during the first year, and the second year would be bi-annually presented to the legislature. The idea of the report being presented to the Joint Armed Services Committee is so that the information can get to the military community more efficiently. The information would be passed on to legislators who may have districts that would more directly be affected with the content of that report. As Representative Kawasaki advised, this legislation is modeled after the States of Washington and Connecticut, he reiterated.

[1:10:07 PM](#)

REPRESENTATIVE SADDLER asked whether the sponsor considered drafting the legislation such that the one-year report would be delivered to "everybody" one-year, and the two-year bi-annual report would go "everybody" the second year, if the goal is to provide the information to as many people as possible and in as broad a reach as possible.

MR. JODWALIS answered that the sponsor would consider Representative Saddler's suggestion.

[1:10:42 PM](#)

REPRESENTATIVE SADDLER asked the name of the sponsor of the 2011 House Bill 28 courtesy license bill.

MR. JODWALIS replied that he could get that information to the committee.

[1:11:02 PM](#)

REPRESENTATIVE SADDLER referred to the sponsor's statement that this bill would increase communications between different boards and commissions, and he asked how reporting to the legislature would improve communications between boards and commissions.

MR. JODWALIS responded that the requirements of the report direct that the department work with the boards in drafting the report. He explained that the department would compile the report after working with the various occupational boards, determine what is being done, what better efforts could be taken to fit the requirements of the report as outlined in the bill; submit the report to the Joint Armed Services Committee; and to the legislature bi-annually. The intent, he advised, is that it would facilitate communications. He opined that the Department of Defense suggested that those states experiencing difficulties with the implementation of their military spouse occupational licensure situation would review the examples of the States of Washington and Connecticut.

[1:12:48 PM](#)

REPRESENTATIVE SADDLER suggested that rather than sending the information solely to the boards authorized to issue a temporary license, that the legislature might encourage "a little bit of an initiative" by sending that notice to all of the boards with the thought that they might decide to follow the same procedure. He commented that he appreciates efforts to make the courtesy

license information more publicly available, and he noted that he may come forward with an amendment to broaden the scope of the distribution.

MR. JODWALIS thanked Representative Saddler for his suggestion.

CHAIR TUCK asked Representative Saddler to depict the boards and commissions he would include in the potential amendment.

REPRESENTATIVE SADDLER responded that it is with regard to all boards and commissions.

[1:13:35 PM](#)

REPRESENTATIVE RAUSCHER asked whether the sponsor anticipates a fiscal note.

MR. JODWALIS answered that the sponsor does not anticipate a fiscal note.

[1:14:12 PM](#)

REPRESENTATIVE SADDLER referred to the sponsor's opening statement that reporting would increase the activity of the executive branch and asked whether that statement was under the theory that if more people knew about it, they would take advantage of this opportunity.

MR. JODWALIS replied that concerns were brought to the sponsor's attention by the Department of Defense through the updated preliminary funding of the Eielson Air Force Base Regional Growth Plan. He noted that a focus group among military families had taken place in order to determine the potential challenges in moving to Eielson Air Force Base in light of the arrival of the F-35s. He advised that included within the bill packet is a comment regarding the challenges for anyone with a license from a different state who is required to obtain a new license or certification in Alaska. The point of House Bill 28 was to reduce the sort of challenges faced in 2011, and he opined that the sponsor identified some of the issues. Facilitating the department further and "getting their fingers in those regulations and checking with their boards, that will hopefully get us where we want to go," he offered.

[1:15:52 PM](#)

REPRESENTATIVE SADDLER referred to HB 262, Section 1, AS 08.01.063(g), page 2, lines 13-16, which read as follows:

(g) ... The department shall encourage the boards to designate a single employee to serve as the point of contact for public information and inquiries related to temporary courtesy licenses for military spouses.

REPRESENTATIVE SADDLER advised that he previously worked on the Alaska Boards and Commissions and each board does have such a person, and he suggested that it might be helpful to make certain they know the name of the contact person, and that the person knows it is part of their duties.

[1:16:17 PM](#)

REPRESENTATIVE LEDOUX noted that everything in this legislation is a good idea but commented that it is sad the bill regarding temporary licenses was passed in 2011, and the legislature had to pass another bill to make certain the boards and commissions actually understood "what we've done." It appears that something slipped through the cracks of the executive branch during a couple of administrations, and she asked whether the administration should be advising its boards and commissions as to what is available.

MR. JODWALIS commented that the sponsor asked himself those same questions and opined that it was a matter of letting the foundation settle a bit in order to see the cracks, and that some of the cracks were not anticipated. For instance, a licensed acupuncturist from another state would investigate Alaska "acupuncturist license" on the internet, and the expedited military spouse licensing information is listed off to the side under "military licensing." Due to the spouse not being military personnel, they may not think that the link off to the side directly applies. Although, he pointed out, it is necessary that the spouse follow that link in order to obtain the additional paperwork and receive that expedited licensure privilege. He offered that the report will reveal the cracks and hopefully after everyone has reviewed the report, they will be fixed.

[1:19:32 PM](#)

REPRESENTATIVE LEDOUX commented that sometimes entities and departments prepare reports on different issues and those

reports are not necessarily perused to the greatest extent possible. She suggested that a concerted effort might be made to work with the administration to try to determine how to redesign a website, if that is the problem.

[1:20:23 PM](#)

CHAIR TUCK advised that the 2011 House Bill 28 was co-sponsored by Representatives Bill Thomas, Bob Herron, and Eric Feige, all of which are no longer serving in office.

[1:20:37 PM](#)

REPRESENTATIVE SPOHNHOLZ referred to the previous testimony of Sarah Chambers, Deputy Director, Workforce Investment Board, who shared that 13,396 applications were submitted for certification or licensure last year, of which approximately 70 were veterans or military spouse-related. This, she offered, may be the case of the "needle and the hay-stack" wherein a light could be shown on the needle through HB 262, in order to elevate the issue and keep it on everyone's mind. She added that when there are over 13,000 applications, there could be the natural propensity to lean toward volume processing and less toward the exceptions. This discussion, she pointed out, is about unique exceptions in which to make note, and she commended the sponsor for bringing the bill forward.

[1:22:30 PM](#)

FRED PARADY, Deputy Commissioner, Department of Commerce, Community & Economic Development (DCCED), advised that he was available for questions.

REPRESENTATIVE LEDOUX opined that quite a few of these boards and commissions from which people would like to obtain courtesy licenses would be under the Department of Commerce, Community & Economic Development (DCCED).

MR. PARADY offered to first provide a background, and explained that the Division of Corporations, Business, and Professional Licensing handles roughly 225,000 renewals for licenses or new licenses each year, roughly 1/3 corporations, 1/3 businesses, and 1/3 professional. Within the professional licensing category, it has 43 professions that the legislature saw fit to regulate, and 21 of those professions have boards.

[1:23:30 PM](#)

REPRESENTATIVE LEDOUX surmised that House Bill 28 and the presentation of HB 262 sheds some light on the fact that military spouses are experiencing difficulties obtaining the courtesy licenses enacted into law in 2011. She asked whether Mr. Parady had suggestions to remedy the situation.

MR. PARADY advised that the department was certainly responsive to 2011 House Bill 28, it has the department's attention, and the department shares the eagerness to serve our military personnel. After the enactment of House Bill 28, three best practices were established by the Department of Defense, each of which the Department of Commerce, Community & Economic Development has enacted. He offered those best practice as follows: licensure by endorsement or credentials; if the credentials approximate the department's requirements; the application then moves to temporary licensure for 360 days while the person puts together the necessary paperwork; and those military applications are expedited. He commented that the department does have its focus on that "needle in the haystack" and that it serves its residents. He directed the committee to the department's webpage and acknowledged that "military licensure" is a sidebar on its quick links because the department puts everything that is "in common across those 43 professions in one link," and he would look to see whether that could be [more user friendly]. That link "takes you to this page, and it takes you to a one-page form that clarifies your military status." Regardless of whether the person fills out that form, during the time the department's examiners review an application and observe anything military on the application, the application goes to the top of the list. He noted that relative to the Eielson Regional Growth Plan, there is a "Tiger Team" that meets in Fairbanks regarding the upcoming growth with the stationing of the F-35s. He advised that he was on the telephone when the Eielson Regional Growth Plan was presented, noted this potential problem, and spoke to the fact that the department is supportive to the needs of military spouses, veterans, and members to licensure. The department is focused on the project, the problem, and it is happy to do better, he offered.

[1:26:29 PM](#)

REPRESENTATIVE LEDOUX asked whether this bill would help the department do better and remain focused.

MR. PARADY advised that the department is neutral on HB 262, the addition in statute of an annual reporting requirement is the will of the legislature, communication is always a good thing, and the department is a telephone call away and happy to report to the legislature.

[1:26:53 PM](#)

REPRESENTATIVE SADDLER referred to Mr. Parady's statement that there are 43 professions and 21 of those have boards, he asked how many boards or commissions currently offer military courtesy licenses.

MR. PARADY responded that according to the data in front of him, the list depicts 11 boards that do not offer military courtesy licenses and typically that is because they either do not have an exam requirement or they are unique licenses for Alaska. For example, registered or assisted guide outfitters who must demonstrate knowledge of Alaska's game law; game transporter who has a reporting requirement in the transportation of big game; marine pilots who step on board and take command of large ships that might be traveling into a harbor unfamiliar to that captain, or through the Wrangell Narrows, and so forth. The boards that do not offer military courtesy licenses are limited to specific reasons.

[1:28:00 PM](#)

REPRESENTATIVE SADDLER offered a scenario of a military spouse availing themselves to one of these professional licenses, and asked whether they pay a fee, and if so, is it credited to their eventual permanent professional license.

MR. PARADY related that he would have to confirm his answer, and he opined that they pay a fee just like any other applicant.

REPRESENTATIVE SADDLER noted that there are individuals with professional licenses who certainly support the military but are concerned about being asked to support the professional license of a possible competitor.

[1:28:37 PM](#)

REPRESENTATIVE RAUSCHER referred to the question of whether this bill would help the department "accomplish better" and asked whether the department can accomplish better without the bill.

MR. PARADY reiterated that the department is neutral as to the bill and it certainly has its attention focused here. Frankly, he stated, within the Department of Commerce, Community & Economic Development on the Commerce side, it is of keen interest that the Fairbanks military expansion with the F-35s growth plans come to fruition and bear fruit for Alaskans. He explained that what he is trying to say is that the department is paying attention.

[1:29:37 PM](#)

REPRESENTATIVE SADDLER requested clarification that the Division of Corporations, Business, and Professional Licensing currently does need a single person to serve as the point of public contact, or whether that is a position to be redirected.

MR. PARADY deferred to Sara Chambers, Deputy Division Director, because she is the lead. He related that across the 21 boards there are approximately 150 or so members, and they go through a new board member orientation and board training, and those materials include reference to military licensing and its specific requirements. He pointed out that the department tries to build it into the front loading of its new board members.

REPRESENTATIVE LEDOUX asked whether the committee would be able to question Commissioner Robert Doehl or Sara Chambers.

CHAIR TUCK advised that Sara Chambers was not currently available as she was testifying in other committees.

[1:31:45 PM](#)

ROBERT MR. DOEHL, Deputy Commissioner, Department of Military & Veterans' Affairs (DMVA), advised he was available to answer questions.

[1:31:54 PM](#)

REPRESENTATIVE LEDOUX asked that when families arrive on base, whether part of their orientation or procedure makes clear that special courtesy licenses are available.

MR. DOEHL responded that there is not a mandatory briefing for military spouses or children arriving on Alaskan bases as the service members are required to attend briefings. Although, he acknowledged that the service member may not advise their spouse about the licenses but that is completely controlled by the

Department of Defense, and currently spouses are not briefed in the United States locations.

[1:33:10 PM](#)

REPRESENTATIVE LEDOUX surmised that there is not a mandatory briefing or orientation for military spouses or children, and she asked whether there is some sort of voluntary briefing for those spouses who would like a briefing.

MR. DOEHL answered that they may, as an option, attend the end briefing that their service member attends, but there is not a briefing focused on the needs of the spouse in the new location.

[1:33:44 PM](#)

REPRESENTATIVE LEDOUX commented that without making it a federal case, so to speak, could there be a spouse briefing.

MR. DOEHL replied that the briefings or orientations given to service members and their families arriving on Alaska's military bases are controlled by the federal government, and the federal government has not yet given Alaska sovereignty over those briefings. At this point, the department could reach out to Citizens Action Group or other groups in which Representative Saddler regularly participates with JBER and ask the base to consider that option. However, he said, it would be a federal military decision as to what it offers.

REPRESENTATIVE SADDLER commented that there are an infinite number of programs available that exchange information and operate well that do not necessarily require a federal program.

[1:34:52 PM](#)

REPRESENTATIVE SADDLER asked whether the department offers any type of publications as to the benefits available to veterans in Alaska and the resources available for military spouses, while acknowledging that is not the department's primary responsibility.

MR. DOEHL answered that at this time the department does not have publications tailored to military spouses in Alaska.

[1:35:17 PM](#)

REPRESENTATIVE REINBOLD commented that this is an important issue because the service member may receive a whole host of information, but it is never distributed to the spouse. She opined that there should be some sort of information distribution system that offers awareness to the spouses because there could be a communication gap.

MR. DOEHL responded that Major General Hummel can reach out to the Alaska command (ALCOM) commander and the general officers in the state to explore what mechanisms they may have available to facilitate this issue.

REPRESENTATIVE REINBOLD asked Mr. Doehl to get back to the committee with that information.

MR. DOEHL advised that he would get back to the committee or Major General Hummel will be in Juneau and can discuss the issue.

[1:36:59 PM](#)

CHAIR TUCK opened public testimony on HB 262.

[1:39:01 PM](#)

DALE VANDE HAY, Defense State Liaison Office, Military Community and Family Policy, Department of Defense, advised that this is an issue the Department of Defense has been working on as one of its ten key issues throughout the years. He acknowledged that the issues were "birthed somewhat" during the 2011 timeframe and advised that the Defense State Liaison Office tries to help military members and their spouses who relocate, whether they are service members getting out of the service that wish to settle in Alaska or spouses who arrive with their military member to an installation in Alaska. He commented that he was a support group commander at Elmendorf Air Force Base in the late 1990s, and he does have a frame of reference on the challenges of moving to Alaska. This effort is probably the number one challenge, even today, for those military spouses joining their spouse as they move around the country. He advised that he is one of eight liaisons who cover the 50 states and he can attest to the fact that this problem has not gone away. This issue is back because the Department of Defense was still hearing that this was a problem even though all states had passed laws to work through the issues of licensure by endorsement, temporary license, and expedited processes, but it did not appear to be getting better. Therefore, the Department of Defense

commissioned the University of Minnesota to prepare a report examining military spouse licensure and the results across the board were that more efforts could be taken. Granted, he said, in the hearing two days ago on the whole issue of occupational licensure, there was a lot of discussion about the issue of academic credentials, and what the boards are or are not doing, and this legislation will reinforce the need to give further attention to this continuing dilemma. He advised that the base has a spouse employment manager who is typically at either the Army Community Services Center or the Army Family Readiness Site, and they do everything they can to help a spouse access their new location. Typically, when a person is a professional spouse with a certification or a license, they know that their license is controlled by the board in that state, and the person would go to the board to have their license renewed or certified in some manner. The onus is on the spouse to contact the board, and he related that it is reassuring to hear that the boards are doing everything they can to improve that process.

[1:44:46 PM](#)

REPRESENTATIVE SADDLER noted that his general experience is that top vocations for military spouses tend to be teachers, real estate agents, healthcare professionals, and businesses, and he asked Mr. Vande Hay to relay the most likely vocations for temporary licenses.

MR. VANDE HAY responded that the professions include the professions Representative Saddler mentioned, and teachers and nurses are in that category. There is an effort across the country to advocate for interstate compacts which are currently in the areas of physical therapy, emergency medical technicians, nurses, and psychology professionals. The point being, he offered, is that these interstate compacts, being populated in all 50 states by those particular associations, are opportunities for assistance for the military spouses. He added that a University of Minnesota report zeroed in on particular skills that are also needed and used by military spouses, such as cosmetology, dental hygiene, massage therapy, mental health counseling, occupational therapy, and real estate.

[1:46:31 PM](#)

REPRESENTATIVE SADDLER asked Mr. Vande Hay to repeat the occupations.

MR. VANDE HAY advised as follows: massage therapy, dental hygiene, cosmetology, physical therapy, emergency medical services, nurses, and psychologists.

[1:47:05 PM](#)

REPRESENTATIVE PARISH noted that in previous discussions the question has been raised as to what is being done to accommodate people with teaching credentials, which might not follow under the Department of Commerce, Community & Economic Development. He asked what the legislature can do to facilitate a military spouse's teaching credential and being able to teach in one of Alaska's schools. He noted that Mr. Parady was shaking his head no. Representative Parish then broadened his question to ask what the other states are doing more effectively that Alaska could model.

MR. VANDE HAY advised that this is another one of the Department of Defense's issues because teachers do not fall under the purview of these licensing compacts, and as to a temporary certificate, the States of Indiana and Oregon provide a three-year temporary certificate. He explained that when a teacher arrives in one of those states, their initial qualifications are required and sometimes they don't have all of the information, such as state history. Those teachers are given a temporary license for three years or eighteen months and then another eighteen months, which is pretty much in the purview of House Bill 28. Except, he noted, it does not cover teachers because teachers are not under that bill. In the event the Department of Education was rolled into this process and had that same requirement, the person could be given the temporary certificate, gather the paperwork or obtain the additional credentials, and the license could be renewed after a certain amount of time.

[1:50:58 PM](#)

REPRESENTATIVE RAUSCHER asked whether the list he had offered was a finite list or an example list.

MR. VANDE HAY answered that the list was an example of the most used populations of professional military spouses, but there are other occupations.

[1:51:36 PM](#)

REPRESENTATIVE RAUSCHER offered an example of being married to a plumber, a general contractor, or a profession of that nature, and "you are the person getting transferred to Alaska in the military" and those are the types of licenses your spouse would hold, "are those excluded also?"

MR. VANDE HAY asked whether the question is if plumbers and contractors are excluded.

REPRESENTATIVE RAUSCHER advised that he was interested in general contracting and all of those types of licenses and commented that he imagined they are excluded.

MR. VANDE HAY advised that it all depends on whether they are currently covered by the Department of Commerce, Community & Economic Development that handles most of those skills, but he did not have a listing of those skills. In the event the desire is to have those particular skills covered, then those professional boards could be included in this process.

REPRESENTATIVE RAUSCHER asked Chair Tuck if there was a way "we can get on a list from wherever it is supposed to come from?"

CHAIR TUCK opined that it would come from the Department of Commerce, Community & Economic Development. He advised that House Bill 28 is in front of him which is basically about licenses, and he was unsure how far it went into professional licenses. In the event someone had a contractor's license, he said, he was unsure it would be easily transferred as it mostly refers to professional licenses.

REPRESENTATIVE RAUSCHER said, dental hygienist.

CHAIR TUCK pointed out that that is a professional license. He said he would try to obtain a list from the Department of Commerce, Community & Economic Development.

[1:53:44 PM](#)

REPRESENTATIVE REINBOLD referred to female service members married to a general contractor who is following them around the country and asked whether there are a rising number of female service members.

CHAIR TUCK reminded the committee that it is currently under public testimony and all questions should be directed to the testifier and not to other witnesses.

[1:54:49 PM](#)

DAVID NEES, Alaska Policy Forum, offered appreciation for HB 262 because it offers the public a chance to review how the system is currently working, and it appears that there are major issues to consider. The Alaska Policy Forum noticed that a number of military spouses with teaching credentials are working at the private schools because "it requires too much money out of their pocket" to train to become Alaska certified. He said, "We" do have a temporary system for teachers, but it is only good for one year and he suggested allowing, for example, one year with one year out and then another one year out. In the event a spouse arrives from overseas, there may have been a gap in their teaching service because they were unable to teach in the local schools overseas, but they still hold a professional license in teaching. He reminded the committee that there is a shortage of teachers in Alaska so anything "you can do to include that into this process" would be helpful. The concentration of getting the information out regarding professional licenses should not be solely focused on the base; information should be given to parents when they register their children at the local schools, he suggested. He asked the committee to consider whether to include teaching in one of the temporary licensures in order to work in the State of Alaska. Currently, he said, most military spouses with a degree in education are not working in the public school system and are working in private school systems simply because there are too many hurdles to jump when they know full well that at some point, they will return home. This legislation looks at whether the Department of Commerce, Community & Economic Development is the best place to get information about licensure out to the military.

REPRESENTATIVE PARISH asked whether a three-year temporary license for those in the teaching profession would substantively respond to the needs he had pointed out.

MR. NEES answered that it would, or to simply have a one-year license.

[1:59:23 PM](#)

CHAIR TUCK, after ascertaining that no one wished to testify, closed public testimony on HB 262.

[HB 262 was held over.]

HB 307-MILITARY JUSTICE & MILITIA CIVIL RELIEF

[2:00:05 PM](#)

CHAIR TUCK announced that the final order of business would be HOUSE BILL NO. 307, "An Act requiring a person who commits certain offenses under the code of military justice to register as a sex offender or child kidnapper; relating to the Servicemembers Civil Relief Act; relating to contracts made by a member of the organized militia; relating to nonjudicial punishment of members of the organized militia; relating to offenses subject to court-martial proceedings; and providing for an effective date."

[2:00:56 PM](#)

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

[2:02:03 PM](#)

CHAIR TUCK listed the witnesses available for questions. He advised that two amendments were before the committee. One was related to discussion that took place during the last meeting, regarding the idea of including all service members, whether or not they are a member of the organized militia, so that the standard is the same for all military personnel. The second amendment follows the alcohol and drug policies throughout Title 26 statutes.

[2:03:14 PM](#)

REPRESENTATIVE LEDOUX moved to adopt Amendment 1, labeled 30-LS1099\A.1, Glover, 2/5/18, which read as follows:

Page 10, line 15, following "prisoner":

Insert "or unlawfully uses a drug with a prisoner"

Page 12, line 3, following "alcohol":

Insert "or a drug"

Page 12, line 9, following "drunk":

Insert "or under the influence of a controlled substance"

Page 12, line 9, following "direct.":

Insert "In this subsection, "controlled substance" has the meaning given in AS 26.05.870."

Page 12, line 13, following "alcohol":

Insert "or a drug"

[2:03:45 PM](#)

The committee took an at-ease from 2:03 p.m. to 2:05 p.m.

[2:05:12 PM](#)

REPRESENTATIVE REINBOLD objected to the adoption of Amendment 1 for purposes of discussion, and for a friendly amendment.

[2:05:25 PM](#)

CHAIR TUCK explained that Amendment 1 attempts to keep the language consistent with the language "we had earlier" that was pointed out on HB 307 because some areas dealt with drugs and other areas dealt with alcohol.

[2:05:53 PM](#)

LIEUTENANT COLONEL CHRISTOPHER WEAVER, Office of the Adjutant General, Alaska National Guard, advised that he was driving, and asked that Chair Tuck explain Amendment 1.

CHAIR TUCK advised that during the last hearing, the discussion began at Sec. 16, [AS 26.05.785(b), page 10, lines 14-15], which read as follows:

(b) A member of the militia who unlawfully drinks an alcoholic beverage with a prisoner may be punished by up to one year of confinement ...

CHAIR TUCK explained that the committee wanted the language to refer not to simply drinking but "unlawfully uses a drug with a prisoner."

[2:07:04 PM](#)

CHAIR TUCK referred to [Sec. 21. AS 26.05.860, page 12, line 3], and advised that the amendment brings in the drug component to all alcohol references.

CHAIR TUCK referred to [Sec. 21. AS 26.05.860, page 12, lines 1-7], which read as follows:

Drunkennes and other incapacitating offenses
[DRUNK ON DUTY]. A member of the militia, other than a sentinel or lookout, who **(1)** is found under the influence of alcohol while on duty, **or (2) as a result of indulgence in any alcoholic beverage or drug, is unable to properly perform the member's duty** may be punished up to one year of confinement ...

CHAIR TUCK explained that the amendment takes page 12, line 3 and adds the word "drug," thereby the language would read as follows:

... who **(1)** is found under the influence of alcohol **or a drug** while on duty, **or (2)**.

[2:08:02 PM](#)

CHAIR TUCK referred to [Sec. 22, AS 26.05.865(b)], page 12, lines 9-10, and explained that the language would read as follows:

(b) A member of the militia who, while a prisoner, is drunk **or under the influence of a controlled substance** shall be punished as a court-martial may direct.

CHAIR TUCK again referred to [Sec. 22, AS 26.05.865(b)], page 12, lines 9-10, and explained that the language would read as follows:

(b) A member of the militia who, while a prisoner, is drunk **or under the influence of a controlled substance** shall be punished as a court-martial may direct. **In this subsection, "controlled substance" has the meaning given in AS 26.05.870.**

[2:08:29 PM](#)

CHAIR TUCK referred to [Sec. 23. AS 26.05.865] page 12, lines 12-13, and explained that the language would read as follows:

A sentinel or lookout who is found under the influence of alcohol **or a drug** or sleeping on the sentinel's or lookout's post ...

CHAIR TUCK offered that intent of Amendment 1 is to list alcohol and any illegal drugs as well.

[2:08:42 PM](#)

REPRESENTATIVE SADDLER referred to [Sec. 22, AS 26.05.865(b)], page 12, line 10, and the addition of the following language [after the word "direct."] **In this subsection, "controlled substance" has the meaning given in AS 26.05.870.** He offered concern where the amendment adds in "illegally uses drugs" and "drugs," and requested clarity as to whether these terms are according to state or federal law, whether there is a definition for a drug, whether a drug necessarily is an illegal drug, and so forth.

LIEUTENANT COLONEL CHRISTOPHER WEAVER responded that in the performance of a service member's duties, it does not matter whether the drug is legal or illegal. He offered that in other portions of the Alaska Code of Military Justice (ACMJ), it is illegal just as a matter of being in the military, so it would have to be an illegal drug.

[2:09:21 PM](#)

REPRESENTATIVE SADDLER asked that he repeat his answer and asked whether it is necessary to define drugs as legal, illegal, or a controlled substance, and whether there is one way to list this consistently throughout the bill or whether it is necessary to have the distinct verbiage in each individual case.

REPRESENTATIVE SADDLER clarified that he would feel more comfortable if he saw consistent nomenclature for every reference to alcohol, drug, legal, illegal, and controlled substance because different words may have different technical definitions.

[2:11:46 PM](#)

CAPTAIN BLAKE CIRCLE, Alaska National Guard, explained that "on a number of these," the reason it does not matter whether the language is "legal drug" or "illegal drug," is because the issue is the resulting incapacitation. For example, Nyquil or some other drug can cause incapacitation to where the service member could not perform their duties. He said that is the problem some of these sections address, and the reason some of the language is "drug" and not "illegal drug," is because the goal

is to address instances where a soldier may take what is determined a legal drug, but it causes incapacitation such that they could not perform their duties, he reiterated.

[2:12:52 PM](#)

REPRESENTATIVE SADDLER commented that that information answered his question, except the underlying question still remains. He asked whether language could be used consistently throughout the bill, for example, "a drug or an illegal drug such that it results in incapacitation."

CAPTAIN CIRCLE apologized that Amendment 1 was not in front of him.

[2:13:34 PM](#)

REPRESENTATIVE REINBOLD noted that she had those same concerns and had "quite an in-depth conversation with Leg Legal." She suggested a friendly conceptual amendment wherein on lines 2, 5, 15, delete the words "a drug" and insert "an illicit substance or a controlled substance."

REPRESENTATIVE SPOHNHOLZ commented that that changes the meaning.

[2:14:19 PM](#)

REPRESENTATIVE LEDOUX noted that she was looking at Amendment 1 and HB 307 as written, and on page 12, line 3-4, the language read as follows:

or (2) as a result of indulgence in any alcoholic beverage or drug, ...

REPRESENTATIVE LEDOUX asked whether that would include a service member who had taken a prescription drug or a non-prescription drug with no criminal intent. She stressed that, if someone falls asleep on duty that is one thing, but if they had simply taken Sudafed or something similar, and were aware they could fall asleep, but they were not asleep, she does not want to see someone prosecuted for taking cold medication unless they were "over-taking it or something" just for fun. Her concern, she expressed, is how that reads in the statute as "we now have it, even before the amendment."

CHAIR TUCK asked Deputy Commissioner Robert Doehl to explain why "drug" is written in this provision, and whether it includes all drugs, legal and illegal, prescribed and non-prescribed drugs.

[2:16:24 PM](#)

DEPUTY COMMISSIONER ROBERT DOEHL, Office of the Commissioner/Adjutant General, Department of Military & Veterans' Affairs (DMVA), answered that the concern from the department is regarding any substance that renders an individual unable to safely operate an aircraft or machine gun or other lethal instrumentality. In the case of drugs such as Sudafed, he noted that a warning is placed on the box, and even for an over-the-counter drug, it may render a person incapacitated. There are avenues within the military for the service member to advise that they are sick and are taking a medication that instructs a person not to operate heavy machinery, he offered. In the event a service member is not fit for duty, the solution is not to ignore the warnings on the label, it is to report to their supervisor that they are medically unable to perform their duties at that time. He advised that it is called, "duties not involving flight" (DNIF) for pilots. Virtually anyone in the military who is required medication for a medical purpose can report to their supervisor that they are unable to perform their duty due to a medication and it is not actionable.

[2:17:53 PM](#)

REPRESENTATIVE LEDOUX argued that this [legislation] does not solely cover pilots and people using other heavy equipment. For example, this would mean that if someone took a Sudafed and was feeling a little sleepy, they could be prosecuted for a crime. She stated that that is not necessarily where "we or you" may want to go.

MR. DOEHL answered that if he drives when he is drowsy, and a warning label advised that "this may make you drowsy," he should be prosecuted in that case. As to the equipment they use in the operating parameters, there is a heightened standard of responsibility, which is why they are given that "free out" if they medically are unable to perform a duty, they report it, and "they don't have to."

REPRESENTATIVE LEDOUX commented, "If a person is driving, but if the person was simply attending a committee meeting ..."

[2:19:31 PM](#)

REPRESENTATIVE SPOHNHOLZ interjected and referred Representative LeDoux to page 12, lines 3-4, which read as follows:

or (2) as a result of indulgence in any alcoholic beverage or drug, is unable to properly perform the member's duty ...

REPRESENTATIVE SPOHNHOLZ explained that the service member would not be prosecuted for taking Sudafed and being a little drowsy, the person would be prosecuted for taking an inappropriate level of Sudafed thereby rendering the person incapable of performing their duties, and not taking advantage of the procedure of which allows the person to not work.

MR. DOEHL responded that "in our case," properly perform the duties would be the test, and whether an improper amount of substance was taken. In the event he was unable to properly testify at this committee hearing because he was asleep in the corner of the room and he was in the military, he would be improperly performing his duties. At that point, he explained, his actions would be actionable because the government had trusted him with the responsibility and he was derelict in his duties.

[2:20:47 PM](#)

REPRESENTATIVE LEDOUX commented that during her tenure with the legislature, she has seen numbers of people nod off during a committee meeting and while it is not a great idea to nod off in a committee meeting, on the floor, or in caucus, she is not sure that should rise to the level of being put in jail.

CHAIR TUCK interjected that the original language in AS 26.05.860, is just "drunk on duty." Amendment 1 adds any other type of incapacitating offenses, and the military is held to a higher standard when it comes to the safety, security, and protection required of the military members to protect our nation.

[2:22:06 PM](#)

REPRESENTATIVE PARISH referred to HB 307, [Sec. 21. AS 26.05.860], page 12, line 3-4, which read as follows:

or (2) as a result of indulgence in any alcoholic beverage or drug, is unable to properly perform the member's duty ...

REPRESENTATIVE PARISH referred to the word "indulgence" and asked how to interpret that word in this context.

MR. DOEHL deferred to Webster's Dictionary for defining indulgence and offered his belief that a person voluntarily partakes of a substance as an option to make them feel better.

[2:23:01 PM](#)

REPRESENTATIVE PARISH then referred to [HB 307, Sec. 21. AS 26.05.860, page 12, lines 1-7], and he paraphrased and commented as follows:

A member of the militia, other than a sentinel or lookout, who (1) is found under the influence of alcohol. And then the amendment adds language "or a drug" while on duty, or. And then it refers to the condition of being unable to adequately perform one's duty.

REPRESENTATIVE PARISH commented that under a strict reading of the above, the committee should be wary that were a person to take a Tylenol and people were aware the person had taken a Tylenol while on duty, he would be under its influence even if it did not result in any loss of capacity on the person's part. In order to get at the spirit of this legislation, it may be more useful to say, "under the influence of alcohol or a controlled substance." He advised that the language regarding indulgence in any alcoholic beverage or drug and the person being unable to perform their duty is the correct language because in the event someone takes "a whole bunch" of Nyquil, they may be unable to properly perform their duty.

[2:25:28 PM](#)

REPRESENTATIVE SPOHNHOLZ offered appreciation for Representative Parish's comment regarding [HB 307, Sec. 21. AS 26.05.860, page 12, line 3] where the phrase "or a drug" is being inserted, and to instead insert "a controlled substance" is an interesting possibility. She then referred to a possible drafting error located on Amendment 1, page 1, line 10, which read: "Page 12, line 9" and suggested it should read "line 10," and it should possibly be considered a friendly amendment.

2:27:01 PM

REPRESENTATIVE RAUSCHER commented that if a person were to take a drug because they have a cold and they wanted to be able to better perform their duties, Webster's Dictionary defines "indulgence" as satisfaction, gratification, and fulfillment. In the event a person takes the drug to actually fulfill his/her duty and "not for those reasons, say you get hit by a car while you are on this sentinel duty, and you didn't do anything wrong," but the person will go to the hospital for a blood test which will reveal "you have this in your system." A case could be made that the person "did not jump out of the way, or whatever, it really wasn't hampering you doing your duty unless they really wanted to push that." He offered that the suggestion from Representative Parish would be a better clarification, although a person could partake of too much Sudafed and be impaired.

2:28:58 PM

MR. DOEHL advised that the department's position remains "any substance that ... or mind-altering substance is troublesome for the duties service members are doing or may be called upon to do." The illicit or controlled language is of some concern to the extent that synthetic drugs are coming out faster than they can be regulated with the same deleterious effects and impairment. There is a voluntary decision of indulgence, wherein an individual decides to take the drug, it wasn't slipped into their drink, and they made the decision that even though drugs were in their system, they still attempted to perform their military duties. For the person crossing the street and was not jaywalking, they would still be performing their duties and it would not be actionable under this section. However, if they stumbled out into the street it would be a different scenario. He said the department supports the amendment and believes the emphasis should be on the mind-altering or "just a substance there with -- as proposed in the amendment." The department recognizes there may be some consistency issues in the amendment to work through, and it believes that "illicit" is an issue and also "even a lawfully prescribed drug, if an individual is impaired by it and there are warnings they could be impaired by it, they should not be doing those duties." The committee discussed Sudafed, but if he was prescribed Vicodin and was trying to perform "something" with all of the warning on that drug, it would be a very different scenario.

CHAIR TUCK added that if something were to happen where a soldier was unable to properly perform their duty as a result of "taking these things," is what this is all about. It is not about whether they took the drug, but rather that an accident happened as a result of them ingesting the substance.

[2:31:58 PM](#)

REPRESENTATIVE SPOHNHOLZ moved to adopt Conceptual Amendment 1 to Amendment 1 on page 1, line 10, to delete "9" after the word line, and insert "10." There being no objection, Conceptual Amendment 1 to Amendment 1 was adopted.

[2:32:24 PM](#)

REPRESENTATIVE SADDLER moved to adopt Conceptual Amendment 2 to Amendment 1, that any reference to "consumption of drugs or indulgence in drugs" to substitute language along the lines of "or as a result of consumption of any substance, a member is unable to properly perform the member's duty."

CHAIR TUCK objected. He pointed out that the reason "drug" was included in some of these situations is that the department does not want the person to be under any influence, no matter if they were able to perform their duties, or not perform their duties. He said that he does not want to make it that every time there is a drug reference, the committee is conditionalizing the reference. He commented that the committee needs to take these one by one because there is a reason there is one form of language versus the other form of language.

CHAIR TUCK referred to Sec. 16, [AS 26.05.785(b), page 10, lines 14-15], which read as follows:

(b) A member of the militia who unlawfully drinks an alcoholic beverage with a prisoner may be punished by up to one year of confinement ...

CHAIR TUCK explained that Amendment 1 would add "or unlawfully uses a drug with a prisoner" after the words "alcoholic beverage." He commented that the use of drug is specific, it is unlawfully, but there may be conditions where a service member can lawfully "use it."

[2:35:54 PM](#)

CAPTAIN CIRCLE responded that adding "or unlawfully uses a drug with a prisoner" is correct as there may be instances where a member of the militia may be able to lawfully use a drug in that situation. He explained that qualifier would address those instances.

CHAIR TUCK asked whether the committee had problems or suggestions for lines 1-2 of Amendment 1.

[2:37:07 PM](#)

REPRESENTATIVE PARISH referred to the language that a service member can be punished for up to one year for the unlawful use of a drug with a prisoner, and he asked whether that is in addition to other penalties which may be prescribed by law.

MR. DOEHL answered that due to double jeopardy issues, this would be either a criminal prosecution militarily or in civilian court, it is not that one or the other would prosecute in that case. This particular language arises here because when a prisoner is in a custodial relationship, all drugs they are taking must be approved through a certain medical process, not simply illicit drugs.

[2:38:21 PM](#)

REPRESENTATIVE PARISH asked at which entity's discretion it would be prosecuted: under a court martial or in civilian court.

MR. DOEHL noted that Representative LeDoux is the author of the original House Bill 126, Code of Military Justice Appeals [passed in the Twenty-Ninth Alaska State Legislature]. He advised that civilian courts have the first right of refusal.

[2:38:53 PM](#)

REPRESENTATIVE REINBOLD commented that she has a problem with the word "drug" as it too broad and she has a problem with "prisoner," and asked, "can't this be individually as well, or does it have to be with the prisoner?" She said, "I did do a friendly conceptual amendment on line 2, 5, and 15, to delete 'a drug' and put in an 'illicit or controlled substance' like 20 minutes ago." She said she is convinced her friendly amendments are important, because "'a drug' is too broad."

CHAIR TUCK advised Representative Reinbold said that he heard her bring up a suggestion, but he did not hear a formal movement.

MR. DOEHL advised Representative Reinbold that the department thanks her for drawing attention to this important issue a week ago in order to have this dialogue. In terms of the discussion of "uses with a prisoner," he explained that that is a separate type of offense rather than performing a duty impaired. This is with regard to any unlawful use of a drug with a prisoner regardless of whether a service member is impaired. At that point, it is actionable on its face because it is undermining good order and discipline. That sort of relationship between a prisoner and the person in charge of keeping the prisoner a prisoner is unacceptable, which is why it is a separate provision than those in terms of the duty issues. He related that he understands the concern about how to define drug or define the illicit or controlled substance, and the concern of the department is that there are substances that can be used for mild-altering purposes that may not be on a schedule as a banned or controlled substance.

[The motion to adopt Conceptual Amendment 2 to Amendment 1 was treated as withdrawn.]

REPRESENTATIVE REINBOLD commented that to her an illicit drug is an illicit drug and possibly the committee needs a technical definition, it is a mind-altering substance.

[2:41:20 PM](#)

REPRESENTATIVE REINBOLD moved to adopt Conceptual Amendment 3 to Amendment 1, and referred to Amendment 1, lines 2, 5, 15, "in the very left column," to delete the phrase "a drug" and insert "with an illicit or controlled substance."

REPRESENTATIVE SPOHNHOLZ objected.

CHAIR TUCK restated Representative Reinbold's Conceptual Amendment 3 to Amendment 1, and advised that on Amendment 1, page 1, lines 2, 5, 15, any reference to the word "drug" is replaced with the phrase "illicit substance or controlled substance."

[2:42:34 PM](#)

REPRESENTATIVE SPOHNHOLZ requested the specific legal definition of the term "illicit," and asked whether the committee could simply use the dictionary or ask Legislative Legal and Research Services.

MR. DOEHL responded that he googled the term "illicit" and noted that it means, "forbidden by law, rules, or regulation," and he related that he does not have the Alaska Statutes in front of him to determine whether "illicit" is more specifically defined.

CHAIR TUCK surmised that within Conceptual Amendment 3, there is "illicit substance or controlled substance" that pretty much covers all drugs.

MR. DOEHL responded that "controlled" would be those drugs that are controlled, such as the scheduled narcotics; and "illicit" is forbidden by law, rules, or regulation. Sudafed is not forbidden by law, rules, or regulation on its face, but use of it in "a duty-impairing way" would be.

CHAIR TUCK asked Representative Reinbold whether her intention is to exclude drugs such as Sudafed.

REPRESENTATIVE REINBOLD advised that her intention is to not make it so broad that it includes everything, and she needs to see the definition.

[2:44:42 PM](#)

The committee took an at-ease from 2:44 p.m. to 2:47 p.m.

[2:47:42 PM](#)

CHAIR TUCK advised that before the committee is Conceptual Amendment 3 to Amendment 1, and there may be other issues to fix.

[2:47:58 PM](#)

REPRESENTATIVE SPOHNHOLZ removed her objection to the motion to adopt Conceptual Amendment 3 to Amendment 1.

[2:48:10 PM](#)

REPRESENTATIVE REINBOLD withdrew her motion to adopt Conceptual Amendment 3 to Amendment 1 to address the concerns of the committee.

CHAIR TUCK announced his intent that the committee members review Amendment 1 [as amended], in order to speak to all of the problems they perceive, and any other additional language in going through Amendment 1 that may be in the original bill, with the intent to properly draft Amendment 1.

[2:48:37 PM](#)

REPRESENTATIVE LEDOUX referred to [Sec. 21. AS 26.05.860, page 12, lines 1-7], which read as follows:

Drunkennes and other incapacitating offenses
[DRUNK ON DUTY]. A member of the militia, other than a sentinel or lookout, who **(1)** is found under the influence of alcohol while on duty, **or (2) as a result of indulgence in any alcoholic beverage or drug, is unable to properly perform the member's duty** may be punished up to one year of confinement ...

REPRESENTATIVE LEDOUX commented that the whole problem is that under (1), it is kind of strict liability as to whether a person is under the influence of something; whereas, under (2) the person must be impaired. She said that she agrees with the department that if someone is impaired, even if it is Sudafed, they should not be on duty. Except, she pointed out, if it is strict liability, it makes sense to say, "alcohol, or probably not illicit, but I mean something that gets the idea that its an illegal substance that you want strict liability for if you are on duty." She added that another glitch to throw into this discussion is how the committee prefers to deal with marijuana, which is illegal under federal law and legal under state law and this is something the committee does need to consider.

MR. DOEHL referred to HB 307, page 12, Sec. 26.05.860, and pointed out that it connotes two different ways someone other than a sentinel could be in violation. One is for influence of alcohol, and he opined that a drug in that case would mirror the illicit or controlled substance as Representative Reinbold offered. For instance, if someone has a random urinalysis while on duty, there is a list of those controlled substances that are not allowed. The department's intent for the random urinalysis example is that there is a defined list of substances they cannot take, and that "or" is "or this other condition" which is where whatever substance had been taken, impaired the person's ability to perform their duties. Therefore, it would be apropos in that case if the committee does not want to use "drug" to

perhaps use "mind-altering substance or impairing substance" or something to that effect to capture something broader than simply the controlled drugs.

[2:51:38 PM](#)

CHAIR TUCK referred Representative Reinbold to HB 307, page 12, line 4, which read as follows:

... any alcoholic beverage or drug

CHAIR TUCK explained that that means "illegal or not," and asked whether she agrees with leaving "drug" in that line, or would she like to replace it with a different terminology.

REPRESENTATIVE REINBOLD answered that her recommendation is "illicit or controlled substance," because "drug" is broad and that is her concern.

CHAIR TUCK explained that he was not referring to Amendment 1, he was referring to page 12, line 4, of the bill. Amendment 1 was attempting to add "alcohol or drug" in line 3, and he opined that it does need to be spelled out because the discussion is not about illegal drugs, the discussion is about illicit or controlled substances. He advised that Representative Reinbold's Conceptual Amendment 3 to Amendment 1 made sense "right there." He clarified that when looking at line 4 whether after "beverage or drug" would encompass those drugs that are legally over the counter and can be taken but happens to impair a person's ability to perform their duties. He asked whether "that is good enough terminology to encompass all of that for you."

REPRESENTATIVE REINBOLD responded that she has to put a bit more thought into the question because that was part of her amendment.

[2:53:25 PM](#)

CHAIR TUCK asked Representative Saddler the same question because there were concerns about where "drug" was used in "some of this stuff."

REPRESENTATIVE SADDLER responded that the committee had not begun the process of going down each paired line of Amendment 1 to determine whether the application of the operative words to each individual circumstance is appropriate. He opined that the

committee had generally agreed to the first pair on lines 1-2, and then the committee was subsumed by the proposal for an omnibus amendment to change "drug". He commented that he does not feel comfortable doing this until speaking with the Legislative Legal and Research Services drafter, so he would recuse himself from the discussion.

CHAIR TUCK clarified that this is not part of the amendment, this is simply [page 12], line 4, "as we were looking at this, and clarifying what we meant with line 3, adding 'drug' in there but now, maybe changing that to 'illicit or controlled substance.'"

REPRESENTATIVE SADDLER commented that if drug is conditioned by "is unable to properly perform member's duty, you can call it anything you want to if that is the test and that is the standard." He said he would support "illicit" or "drug" because either word conditioned by "is unable to properly perform the member's duty" makes either acceptable.

CHAIR TUCK reiterated that it is the chair's wish for the committee to set Amendment 1 [as amended] aside, and each member will work on it to get it right, and currently the committee is going through everything generally.

[2:54:56 PM](#)

REPRESENTATIVE PARISH opined that the adjustments contemplated on page 12, line 3-4, are sensible. Although, he commented, the committee may want to look at page 12, lines 12-13, and he paraphrased as follows: "A sentinel or lookout who is found under the influence of alcohol or sleeping on the sentinel's or lookout's post" in the same light as Sec. 26.05.860 [page 12, lines 9-10] and capture the nuance of, "or a controlled substance or other drug which would tend to impair them in the performance of their duties." He suggested trying to tie together the two critical clauses brought to the committee's attention by Mr. Doehl, and pointed to the problem of people using illicit substances and also those using perfect legal substances which could tend to impair them in the performance of their duties without the knowledge of their medical officer, he said. Generally, he advised, a medical officer would give them a "not fit for duty" chit and let them tend to their health. Under extreme conditions, such as during a natural disaster, he opined that the courts would tend to take that into account if someone sprained an ankle and wanted to take an Advil and continue working.

[2:56:52 PM](#)

REPRESENTATIVE REINBOLD commented that someone could have a reaction to a drug that impaired their ability, and she was unsure whether that was included in the legislation which is why she is sensitive to the "illegal or illicit" part of this and "drug" is too broad. She referred to "Sec. 26.05.870, Wrongful use of possession," and said she was glad "that is down here lower on line 12, which is important."

[2:58:08 PM](#)

CHAIR TUCK advised that Amendment 1, as amended, and HB 307 would be held over. [The committee treated Representative Saddler's Conceptual Amendment 2 to Amendment 1 as held over.]

[2:58:24 PM](#)

REPRESENTATIVE RAUSCHER asked whether a section deals with someone giving a prisoner drugs.

CHAIR TUCK answered that it would be the section the committee previously discussed regarding someone guarding a prisoner ...

REPRESENTATIVE RAUSCHER interrupted and said that giving a prisoner drugs and not doing drugs with a prisoner is not addressed here.

MR. DOEHL explained that "doing drugs with the prisoner" and giving drugs to a prisoner is addressed in HB 307 in terms of standing orders.

REPRESENTATIVE RAUSCHER asked why there is a need for this paragraph if there is a paragraph covering a person while on duty "a couple of paragraphs later." He reiterated his question and asked why the need for this paragraph if a person cannot give the drug to a prisoner in another section, and then the earlier paragraph stating, "you can't do drugs while you are on duty."

MR. DOEHL answered that the short answer is that it is a different count of a higher count due to the negative effects on good order and discipline.

CHAIR TUCK added that it is a higher violation under that circumstance.

[HB 307 was held over.]

3:00:27 PM

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Military and Veterans' Affairs meeting was adjourned at 3:00 p.m.