

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

April 19, 2018

9:07 a.m.

MEMBERS PRESENT

Senator John Coghill, Chair
Senator Pete Kelly
Senator Bill Wielechowski
Senator Mike Shower

MEMBERS ABSENT

Senator Mia Costello

COMMITTEE CALENDAR

SENATE BILL NO. 81

"An Act relating to criminal and civil history requirements and a registry regarding certain licenses, certifications, appeals, and authorizations by the Department of Health and Social Services; and providing for an effective date."

- MOVED CSSB 81(HSS) OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 355(JUD)

"An Act relating to the crime of criminally negligent burning; relating to protection of and fire management on forested land; relating to prohibited acts and penalties for prohibited acts on forested land; requiring the Alaska Supreme Court to establish a bail schedule; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 208

"An Act relating to trusts and powers of appointment; and providing for an effective date."

- HEARD & HELD

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 123(HSS)

"An Act relating to disclosure of health care services and price information; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 81

SHORT TITLE: DHSS CENT. REGISTRY; LICENSE; BACKGROUND CHK

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

03/08/17 (S) READ THE FIRST TIME - REFERRALS
03/08/17 (S) HSS, JUD
02/02/18 (S) HSS AT 1:30 PM BUTROVICH 205
02/02/18 (S) Heard & Held
02/02/18 (S) MINUTE(HSS)
02/05/18 (S) HSS AT 1:30 PM BUTROVICH 205
02/05/18 (S) -- MEETING CANCELED --
03/14/18 (S) HSS AT 1:30 PM BUTROVICH 205
03/14/18 (S) Heard & Held
03/14/18 (S) MINUTE(HSS)
03/16/18 (S) HSS AT 1:30 PM BUTROVICH 205
03/16/18 (S) Moved CSSB 81(HSS) Out of Committee
03/16/18 (S) MINUTE(HSS)
03/19/18 (S) HSS RPT CS 2DP 2NR NEW TITLE
03/19/18 (S) NR: WILSON, MICCICHE
03/19/18 (S) DP: BEGICH, VON IMHOF
04/16/18 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
04/16/18 (S) <Above Item Removed from Agenda>
04/16/18 (S) MINUTE(JUD)
04/18/18 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
04/18/18 (S) Heard & Held
04/18/18 (S) MINUTE(JUD)
04/19/18 (S) JUD AT 9:00 AM BELTZ 105 (TSBldg)

BILL: HB 355

SHORT TITLE: FIRE; FOREST LAND; CRIMES; FIRE PREVENTION

SPONSOR(S): REPRESENTATIVE(S) GUTTENBERG

02/16/18 (H) READ THE FIRST TIME - REFERRALS
02/16/18 (H) RES, JUD
02/28/18 (H) RES AT 1:00 PM BARNES 124
02/28/18 (H) Heard & Held
02/28/18 (H) MINUTE(RES)
02/28/18 (H) RES AT 6:00 PM BARNES 124
02/28/18 (H) Heard & Held
02/28/18 (H) MINUTE(RES)
03/05/18 (H) RES AT 1:00 PM BARNES 124
03/05/18 (H) Heard & Held
03/05/18 (H) MINUTE(RES)

03/09/18 (H) RES AT 1:00 PM BARNES 124
 03/09/18 (H) Moved CSHB 355(RES) Out of Committee
 03/09/18 (H) MINUTE(RES)
 03/12/18 (H) RES RPT CS(RES) NT 4DP 3NR 1AM
 03/12/18 (H) DP: LINCOLN, DRUMMOND, JOSEPHSON, TARR
 03/12/18 (H) NR: BIRCH, PARISH, TALERICO
 03/12/18 (H) AM: RAUSCHER
 03/14/18 (H) JUD AT 1:00 PM GRUENBERG 120
 03/14/18 (H) Heard & Held
 03/14/18 (H) MINUTE(JUD)
 03/19/18 (H) JUD AT 1:00 PM GRUENBERG 120
 03/19/18 (H) Heard & Held
 03/19/18 (H) MINUTE(JUD)
 03/26/18 (H) JUD AT 1:00 PM GRUENBERG 120
 03/26/18 (H) Scheduled but Not Heard
 03/30/18 (H) JUD AT 1:00 PM GRUENBERG 120
 03/30/18 (H) <Bill Hearing Canceled>
 04/02/18 (H) JUD AT 1:00 PM GRUENBERG 120
 04/02/18 (H) Heard & Held
 04/02/18 (H) MINUTE(JUD)
 04/02/18 (H) JUD AT 7:00 PM GRUENBERG 120
 04/02/18 (H) Moved CSHB 355(RES) Out of Committee
 04/02/18 (H) MINUTE(JUD)
 04/04/18 (H) JUD RPT CS(JUD) NT 3DP 1NR 2AM
 04/04/18 (H) DP: KREISS-TOMKINS, STUTES, CLAMAN
 04/04/18 (H) NR: LEDOUX
 04/04/18 (H) AM: EASTMAN, KOPP
 04/09/18 (H) TRANSMITTED TO (S)
 04/09/18 (H) VERSION: CSHB 355(JUD)
 04/10/18 (S) READ THE FIRST TIME - REFERRALS
 04/10/18 (S) JUD
 04/17/18 (S) JUD AT 9:00 AM BELTZ 105 (TSBldg)
 04/17/18 (S) Heard & Held
 04/17/18 (S) MINUTE(JUD)
 04/18/18 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 04/18/18 (S) Heard & Held
 04/18/18 (S) MINUTE(JUD)
 04/19/18 (S) JUD AT 9:00 AM BELTZ 105 (TSBldg)

BILL: HB 208

SHORT TITLE: TRUSTS; COMM PROP TRUSTS; POWERS OF APPT
 SPONSOR(s): JOHNSON

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

04/12/17 (H) JUD AT 1:00 PM GRUENBERG 120
 04/12/17 (H) Heard & Held
 04/12/17 (H) MINUTE(JUD)
 04/14/17 (H) JUD AT 1:00 PM GRUENBERG 120
 04/14/17 (H) Moved HB 208 Out of Committee
 04/14/17 (H) MINUTE(JUD)
 04/15/17 (H) JUD RPT 2DP 5NR
 04/15/17 (H) DP: KOPP, CLAMAN
 04/15/17 (H) NR: EASTMAN, FANSLER, KREISS-TOMKINS,
 LEDOUX, REINBOLD
 05/10/17 (H) TRANSMITTED TO (S)
 05/10/17 (H) VERSION: HB 208
 05/11/17 (S) READ THE FIRST TIME - REFERRALS
 05/11/17 (S) L&C, JUD
 01/30/18 (S) L&C AT 1:00 PM BELTZ 105 (TSBldg)
 01/30/18 (S) Moved HB 208 Out of Committee
 01/30/18 (S) MINUTE(L&C)
 01/31/18 (S) L&C RPT 2DP 2NR
 01/31/18 (S) DP: COSTELLO, MEYER
 01/31/18 (S) NR: MICCICHE, GARDNER
 02/19/18 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 02/19/18 (S) Heard & Held
 02/19/18 (S) MINUTE(JUD)
 02/21/18 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 02/21/18 (S) Heard & Held
 02/21/18 (S) MINUTE(JUD)
 02/26/18 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 02/26/18 (S) Scheduled but Not Heard
 03/14/18 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 03/14/18 (S) Heard & Held
 03/14/18 (S) MINUTE(JUD)
 03/16/18 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 03/16/18 (S) Scheduled but Not Heard
 04/11/18 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 04/11/18 (S) <Bill Hearing Canceled>
 04/13/18 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 04/13/18 (S) <Bill Hearing Canceled>
 04/16/18 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 04/16/18 (S) <Above Item Removed from Agenda>
 04/16/18 (S) MINUTE(JUD)
 04/18/18 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 04/18/18 (S) Scheduled but Not Heard
 04/19/18 (S) JUD AT 9:00 AM BELTZ 105 (TSBldg)

BILL: HB 123

SHORT TITLE: DISCLOSURE OF HEALTH CARE COSTS

SPONSOR(s): SPOHNHOLZ

02/13/17 (H) READ THE FIRST TIME - REFERRALS
 02/13/17 (H) HSS, JUD
 03/02/17 (H) HSS AT 3:00 PM CAPITOL 106
 03/02/17 (H) Heard & Held
 03/02/17 (H) MINUTE(HSS)
 03/09/17 (H) HSS AT 3:00 PM CAPITOL 106
 03/09/17 (H) Moved CSHB 123(HSS) Out of Committee
 03/09/17 (H) MINUTE(HSS)
 03/10/17 (H) HSS RPT CS(HSS) 5DP 2NR
 03/10/17 (H) DP: JOHNSTON, TARR, EDGMON, SULLIVAN-
 LEONARD, SPOHNHOLZ
 03/10/17 (H) NR: KITO, EASTMAN
 03/24/17 (H) JUD AT 1:00 PM GRUENBERG 120
 03/24/17 (H) Heard & Held
 03/24/17 (H) MINUTE(JUD)
 03/27/17 (H) JUD AT 1:00 PM GRUENBERG 120
 03/27/17 (H) Heard & Held
 03/27/17 (H) MINUTE(JUD)
 03/29/17 (H) JUD AT 1:00 PM GRUENBERG 120
 03/29/17 (H) Moved CSHB 123(HSS) Out of Committee
 03/29/17 (H) MINUTE(JUD)
 03/31/17 (H) JUD RPT CS(HSS) 1DP 1NR 4AM
 03/31/17 (H) DP: CLAMAN
 03/31/17 (H) NR: EASTMAN
 03/31/17 (H) AM: KOPP, KREISS-TOMKINS, FANSLER,
 REINBOLD
 04/07/17 (H) TRANSMITTED TO (S)
 04/07/17 (H) VERSION: CSHB 123(HSS)
 04/10/17 (S) READ THE FIRST TIME - REFERRALS
 04/10/17 (S) HSS, JUD
 03/16/18 (S) HSS AT 1:30 PM BUTROVICH 205
 03/16/18 (S) Heard & Held
 03/16/18 (S) MINUTE(HSS)
 04/04/18 (S) HSS AT 1:30 PM BUTROVICH 205
 04/04/18 (S) Moved SCS CSHB 123(HSS) Out of
 Committee
 04/04/18 (S) MINUTE(HSS)
 04/06/18 (S) HSS RPT SCS 4DP NEW TITLE
 04/06/18 (S) DP: WILSON, BEGICH, VON IMHOF, GIESSEL
 04/16/18 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 04/16/18 (S) <Above Item Removed from Agenda>
 04/16/18 (S) MINUTE(JUD)
 04/19/18 (S) JUD AT 9:00 AM BELTZ 105 (TSBldg)

WITNESS REGISTER

CHRIS MAISCH, State Forester and Director
Division of Forestry
Department of Natural Resources (DNR)
Fairbanks, Alaska

POSITION STATEMENT: Supplemented his earlier comments on HB 355.

REPRESENTATIVE DELENA JOHNSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 208.

DAVE G. SCHAFFTEL, representing self
Shaftel Law Offices PC
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 208.

RICHARD HOMPESCH, representing self
Hompesch Evans & Averett Attorneys at Law
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 208.

MATT BLATTMACHR, Vice President
Peak Trust Company
Anchorage, Alaska

POSITION STATEMENT: Testified in support of the original draft of HB 208.

BHREE ROUMAGOUX, Attorney
Shaftel Law Offices
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 208.

SUSAN BEHIKE FOLEY, President
University of Alaska Foundation and
Chief Development Officer
UA System

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 208.

BETH CHAPMAN, Attorney
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 208.

JAMIE DELMAN, Attorney
Shaftel Law Offices
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 208.

ANNE HELZER, representing self
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 208.

ALEX SLIVKA, Chair
University of Alaska Foundation
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 208.

VANCE SANDERS, representing self
Juneau, Alaska

POSITION STATEMENT: Testified in support of the original draft of HB 208.

ABIGAIL O'CONNOR, representing self
Anchorage Alaska

POSITION STATEMENT: Testified in support of the original draft of HB 208.

PAUL KARLKAUFMAN Attorney
Shaftel Law Offices
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 208.

MICHAEL CAVLALIERE, representing self
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of the original draft of HB 208.

REPRESENTATIVE IVY SPOHNHOLZ
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 123.

BERNICE NISBETT, Staff
Representative Spohnholz
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided a sectional analysis of HB 123, version: B.

ACTION NARRATIVE

[9:07:40 AM](#)

CHAIR JOHN COGHILL called the Senate Judiciary Standing Committee meeting to order at 9:07 a.m. Present at the call to order were Senators Shower, Kelly, Wielechowski, and Chair Coghill.

SB 81-DHSS CENT. REGISTRY; LICENSE; BCKGROUND CHK

[9:08:51 AM](#)

CHAIR COGHILL announced the consideration of SB 81. [CSSB 81(HSS) was before the committee.] He found no questions or discussion and solicited a motion.

[9:09:03 AM](#)

SENATOR KELLY moved to report SB 81, [version D], from committee with individual recommendations and attached fiscal note(s).

[9:09:09 AM](#)

CHAIR COGHILL announced that there being no objection, CSSB 81(HSS) moved from the Senate Judiciary Standing Committee.

[9:09:18 AM](#)

At ease

HB 355-FIRE; FOREST LAND; CRIMES; FIRE PREVENTION

[9:12:05 AM](#)

CHAIR COGHILL called the committee back to order and announced the consideration of HB 355. [The Senate committee substitute, version U as amended, was before the committee.] He advised that Chris Maisch would like to supplement his comments on Amendment 3 that the committee adopted yesterday.

[9:12:55 AM](#)

CHRIS MAISCH, State Forester and Director, Division of Forestry, Department of Natural Resources (DNR), Fairbanks, Alaska, thanked the committee for the opportunity to readdress Amendment 3 and apologized for not providing a more complete answer at the time.

He said you need to read subsection (b) in Section 7 in context with Sections 5, 6, and 7. They all use language similar to that being removed. These sections work together to address the "other lands" piece that was removed.

He read the last sentence in Section 5 and explained that it talks about how the division would identify the other types of land uses that would require a permit. That would

be a regulation process which would include public comment and discussion of those types of uses. The type of uses the division envisions is primarily commercial uses such as timber harvesting, land clearing for residential development or agricultural activities. He noted that the latter is a common source of escaped fire. The regulation process would identify the other types of activities. Very few activities would be restricted; lawn mowing would be allowed.

Section 7 allows the division to enforce those regulations and removing the part about other activities would prevent the division from enforcing things that are already in regulation, such as jag burning.

Those sections work with Section 15 that enumerates the penalties. This would likely fall under the bail schedule they hope to develop under this statute. This is where not having a permit might fall. More serious things like an escaped fire that developed into a project fire might fall under a misdemeanor charge.

He reiterated the importance of looking at these sections in context to clearly understand the impact of Amendment 3.

CHAIR COGHILL asked Mr. Maisch to work with the sponsor of the amendment to see if he was willing to change it. If it stands, it appears that the division will struggle with enforcing other activities. He opined that the division should have the authority it needs but it's important to recognize the potential for overreach.

[9:16:58 AM](#)

SENATOR KELLY said he supported the amendment because it wasn't clear that the regulation process for the fire permit would include public participation, and because the discussion indicated that a burning permit would be required throughout the summer. He asked Mr. Maisch to comment on those two issues.

MR. MAISCH said existing statute has the qualifier that the regulations the commissioner sets regarding fire permits are only for extreme fire danger situations.

CHAIR COGHILL asked Senator Shower to present Amendment 4.

[9:18:35 AM](#)

SENATOR SHOWER moved Amendment 4, 30LS-1382\0.19, noting that he withdrew it from consideration yesterday.

30-LS1382\0.19
Radford
4/17/18

AMENDMENT 4

OFFERED IN THE SENATE BY SENATOR SHOWER
TO: CSHB 355 (JUD)

Page 6, following line 16:

Insert a new bill section to read:

"* **Sec. 21.** AS 41.15.950 is amended by adding a new subsection to read:

(c) A person is not required under this section to disclose a deadly weapon under AS 11.61.220(a)(1)(A) to a peace officer described under (a)(1) of this section."

Renumber the following bill sections accordingly.

Page 7, line 2:

Delete "sec. 21"

Insert "sec. 22"

Page 7, line 3:

Delete "sec. 21" in both places

Insert "sec. 22" in both places

Page 7, line 4:

Delete "Sections 23 and 24"

Insert "Sections 24 and 25"

Page 7, line 5:

Delete "sec. 25"

Insert "sec. 26"

[9:18:40 AM](#)

CHAIR COGHILL objected.

SENATOR SHOWER said he learned last night that House members support the current draft of Amendment 4. It is a much simpler version than was presented during the process in that body.

CHAIR COGHILL summarized that the amendment talks about the requirement to disclose a deadly weapon under AS 11.61.220(a)(1)(A). He asked if that relies on the definition of a peace officer in AS 11.81.900.

SENATOR SHOWER said that's correct. The discussion yesterday was about AS 41.15.950 and that the state essentially declares that for the purpose of enforcing this chapter, an employee of the department or anybody authorized by the commissioner is identified as a peace officer. The bill allows investigation authority so they can show up on a property in an authoritative role and write tickets. What the amendment tries to do is prevent a confrontation by clarifying that people do not have to disclose a firearm to these government representatives who are identified as peace officers but are not trained by law enforcement.

[9:20:52 AM](#)

CHAIR COGHILL commented that the amendment would probably be more beneficial to the individual who was carrying a firearm than a peace officer who is a fire prevention officer. He asked Mr. Maisch the department's view of the amendment.

MR. MAISCH agreed that fire prevention officers (FPO) are defined as peace officers in the context of enforcing Title 41. He said his perspective is that disclosure of weapons is important to FPOs for general safety reasons. These officers often work alone in remote locations and they would have a better overall sense of the situation if they knew someone was carrying a firearm. He clarified that they would not enforce that statute because they are not trained for that.

[9:22:33 AM](#)

SENATOR WIELECHOWSKI that his concern is that it's very broad. He didn't believe that most people would perceive that a peace officer/FPO is somebody to whom they need to affirmatively reveal, but it would be a crime if they didn't.

[9:23:18 AM](#)

CHAIR COGHILL removed his objection. Finding no further objection, Amendment 4 was adopted.

[9:23:30 AM](#)

SENATOR SHOWER moved Amendment 5, 30-LS1382\O.24.

30-LS1382\O.24
Martin/Radford
4/17/18

AMENDMENT 5

OFFERED IN THE SENATE
TO: CSHB 355 (JUD)

BY SENATOR SHOWER

Page 4, line 1:

Delete "knows of a fire or"

Insert "[KNOWS OF A FIRE OR]"

[9:23:50 AM](#)

CHAIR COGHILL objected for an explanation.

SENATOR SHOWER said this amendment, too, tries to keep the enforcement authority from being overly broad. His concern is that anyone who knows of a fire potentially makes too many people culpable.

CHAIR COGHILL asked Mr. Maisch to comment on the amendment.

[9:24:53 AM](#)

MR. MAISCH said we would oppose this amendment because it removes the duty to report a fire. It's important for anybody who has knowledge of a fire to disclose that so the response is quicker and control potentially more efficient. Public cooperation is important.

CHAIR COGHILL commented that it is basically the duty to report.

MR. MAISCH answered yes.

CHAIR COGHILL asked what the penalty is for failure to report.

MR. MAISCH replied a person could potentially be cited but it's unlikely that would happen. Quick response and suppression of a fire is a matter of public safety.

CHAIR COGHILL clarified that this removes the language from existing statute.

MR. MAISCH agreed.

SENATOR WIELECHOWSKI said he didn't like placing an affirmative duty on innocent bystanders and is always wary of granting prosecutorial discretion on such things, but a fire could devastate a community. Thus, he's leaning in favor of granting that discretion and opposing the amendment.

[9:26:57 AM](#)

CHAIR COGHILL maintained his objection. He commented on emergency situations in his area caused by fires that went unreported.

SENATOR KELLY said it seems that the duty to report is due care so he's okay with the amendment.

[9:28:12 AM](#)

CHAIR COGHILL said he was maintaining his objection because removing the phrase leaves the due care to prevent or control to the person who set the fire.

SENATOR KELLY indicated that he was switching his position on the amendment.

CHAIR COGHILL asked for a roll call.

[9:29:14 AM](#)

A roll call vote was taken. Senator Shower voted in favor of amendment 5 and Senators Coghill, Kelly, Wielechowski voted against it. Therefore, amendment 5, O.24, failed by a 1:3 vote.

[9:29:20 AM](#)

CHAIR COGHILL held HB 355 in committee.

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

[9:29:41 AM](#)

CHAIR COGHILL announced the consideration of HB 208 and stated that the purpose today was to take public testimony. He asked the sponsor if she wanted to provide opening comments.

[9:30:31 AM](#)

REPRESENTATIVE DELENA JOHNSON, Alaska State Legislature, Juneau, Alaska, sponsor of HB 208, thanked the committee for hearing the

bill. She said the more questions she answers, the more convinced she becomes that this is a good bill. It brings a significant amount of money into the state without costs. She directed attention to the handout that has good explanations of decanting and fiduciary responsibility.

[9:32:28 AM](#)

CHAIR COGHILL opened public testimony on HB 208.

[9:33:00 AM](#)

DAVE G. SHAFTEL, representing self, Shaftel Law Offices PC, Anchorage, Alaska, said he has been practicing in the area of trusts and estate law since the late 1970s. He advised that since the bill was heard last, members of the Estate Planning Section of the Alaska Bar Association have said either they oppose the proposed decanting provisions of HB 208 or they would like the Estate Planning Section to thoroughly review them before any changes are made. Another major concern articulated in the responses is that the bill grants the trustee very broad powers to change the dispositive intent after the person who made the trust dies or becomes incapacitated. He provided examples to demonstrate that this could lead to abuse.

MR. SHAFTEL said HB 208 also raises some very basic procedural fairness concerns. For example, a trustee who decides to modify where the property is going only has to give notice to one beneficiary. Furthermore, the bill says that the trustee only has a fiduciary duty to one beneficiary. That is totally inappropriate because trustees should have a fiduciary duty to all beneficiaries.

[9:40:14 AM](#)

RICHARD HOMPESCH, attorney representing self, Fairbanks, Alaska, stated that he strongly disagrees with Mr. Shaftel's testimony. He pointed out that all beneficiaries of a trust are entitled to an accounting under AS 13.36.080 and any decanting should be included in that accounting. Since 2013, the law has required notice of decanting to the settlor if living, the persons who have the power to remove the trustee who is exercising the decanting power, and a qualified beneficiary. HB 208 does not substantively change that rule. It does change the phrase "a qualified beneficiary" to "at least one qualified beneficiary."

MR. HOMPESCH said he believes that a trustee who wants to abuse the settlor's intent has ample opportunity to do so by making outright distributions, perhaps contrary to the settlor's intent, instead of using decanting. Notice is not required for

an outright distribution and if other beneficiaries review the accounting and think it was outside the standard, those resources are gone and there may not be much recourse other than to sue the trustee. By contrast, if a beneficiary later objects to a decanting, the money is still available; they can go to court and ask that the monies be returned to the original trust. Thus, the objections to HB 208 are unfounded, he said.

[9:45:33 AM](#)

MATT BLATTMACHR, Vice President, Peak Trust Company, Anchorage, Alaska, stated that Peak Trust Company supports HB 208 but not the proposed amendments. They may have unintended and negative consequences. The bill has been four years in the making due to its complexity and the desire to get the statute just right. Peak Trust Company believes that the concerns of those who oppose HB 208 have been considered and properly addressed under other Alaska statutes or federal law, even if not expressly stated in the bill. Further, Alaska statutes require a trustee to discover and make effective the dispositive intent of a grantor whether under a will or trust. That cannot be changed. Additionally, a trustee has a duty to all beneficiaries. This is an unchangeable right and the language in HB 208 cannot be interpreted to say otherwise. He urged the committee to pass HB 208.

[9:48:07 AM](#)

BHREE ROUMAGOUX, Attorney, Shaftel Law Offices, Anchorage, Alaska, said she has worked in estate planning, is a trustee, and a beneficiary. She said the decanting statute needs to be updated and it would not be difficult to get to something that protects all parties and gives trustees the flexibility that's required due to changes in tax laws and changes in life situations. The statute should also allow people to do it in ways that are not as costly as going to court for modification of an irrevocable trust. She also opined that the fiduciary standard in the proposed AS 13.36.158(e) should be modified so it applies to all beneficiaries. The current language in that subsection should not be passed.

[9:51:07 AM](#)

SUSAN BEHIKE FOLEY, President, University of Alaska Foundation, and Chief Development Officer, UA System, Anchorage, Alaska, related that before she moved to the university, she spent much of her professional career as a trust and estate planning attorney in Alaska. She stated that the University of Alaska is concerned about the effect HB 208 could have on donations Alaskans make to the university upon their deaths. Their donors

are primarily average Alaskans who prepare documents for their estates believing that their wishes will be honored. Ensuring that will happen is the university's concern. Because planned gifts to the university are a vital source of revenue for the university, they have been actively working to improve HB 208. They have honed their recommendations to three suggested changes:

- Clarify the trustee's fiduciary duties.
- Protect gifts to charities like the UA Foundation, that are not claimed as deductions for tax purposes.
- Require notice of decanting to charities to ensure organizations like the UA Foundation are not left out of the loop.

Without these changes, the University of Alaska Foundation cannot support HB 208, she said.

[9:54:04 AM](#)

BETH CHAPMAN, Attorney, Juneau, Alaska, stated that she has been a trust and estates attorney for 30 years and was intimately involved in drafting HB 208 and she supports the original version. It fulfills the settlor's intent and continues to provide the protections to beneficiaries in existing law. It will give trustees more flexibility to make changes to trusts instead of outright distributions. This ultimately protects beneficiaries.

She opined that the proposed amendments, including those from the university, would not improve the bill. She pointed out that any charitable gift for which a charitable deduction has been taken cannot be changed going forward.

[9:55:34 AM](#)

JAMIE DELMAN, Attorney, Shaftel Law Offices PC, Anchorage, Alaska, stated that he was strongly opposed to HB 208 and wanted to comment on some of the supporting testimony. Mr. Blattmachr and Ms. Chapman noted that intent is not jeopardized by this bill but Section 14 deletes the language that prevents a decanting if there is substantial evidence of a contrary intent of the settlor. Ms. Chapman also noted that charitable gifts for which a deduction has been claimed would be protected but many Alaskans make charitable gifts as remainder beneficiaries in their trust documents or they don't need a charitable deduction because they don't have over \$11 million in assets. Mr. Hompesch also argued that beneficiaries can request an accounting. This

is true if the beneficiary knows they are a beneficiary but that is not always the case. It is difficult to imagine how they could request an accounting from a trust they don't know anything about, he said. The argument that the assets are protected in a distribution in further trust is unfounded in the sense that a beneficiary could be completely cut out under HB 208 and know nothing about it until years later when much of the money may already have been spent.

He reiterated that he strongly opposes HB 208.

[9:58:57 AM](#)

ANNE HELZER, Attorney, Anchorage, Alaska, stated that she opposes HB 208 as currently drafted. She advised that over the last eight years she has assisted hundreds of Alaskans in the area of estate and trust planning and she finds it concerning that she only learned of this bill a month ago. She pointed out that abuse by fiduciaries is neither an unforeseeable event nor is it uncommon, especially among the elderly. She opined that the decanting of a trust should only happen in limited circumstances and for very good reasons. Flexibility may be a good thing but checks and balances are needed. Earlier testimony that disputes could be pursued in court underestimates the cost involved to a beneficiary to bring an action in court. It's a David and Goliath situation, she said and reiterated her opposition to HB 208 as currently drafted.

[10:04:24 AM](#)

ALEX SLIVKA, Chair, University of Alaska Foundation, Anchorage, Alaska, said he wanted to echo the comments of Mr. Shaftel and Susan Foley. He advised that the University of Alaska benefits from a large number of planned gifts amounting to millions of dollars that benefit UA programs, students, and campuses across the state. In these times of tight state funding, this is a top priority for the Foundation, the Board of Regents, and the university leadership, he said.

He expressed concern that the current draft of HB 208 may have unintended consequences. He urged the committee to adopt the changes Ms. Foley described to help safeguard the University of Alaska Foundation and a crucial source of funding.

[10:05:48 AM](#)

VANCE SANDERS, Attorney, Juneau, Alaska, said he has practiced in Alaska since 1984 and a significant portion of his practice is representing disabled people. He noted that the statute Mr. Hompesch referenced that allows decanting has been very helpful

in meeting the changing requirements for SSI benefits that many of his clients rely on. He stated strong support for HB 208 as written.

10:07:19 AM

ABIGAIL O'CONNOR, representing self, Anchorage Alaska, said she supports HB 208 without any of the proposed amendments. However, that does not mean she and other supporters wouldn't be willing to work with their colleagues on further amendments. It's that the amendments proposed so far have issues She opined that the notice requirement is not a change. The language in existing statute says notice is to be given to "a qualified beneficiary" and the bill clarifies that to say, "at least one qualified beneficiary." She opined that beneficiaries are entitled to notice and that it's reasonable for a beneficiary to specifically request notice if a trust is ever decanted.

She pointed out that decanting is in current statute and there are existing concerns over abuse. These concerns should not stand in the way of enhancing the decanting statutes. The flexibility this bill proposes will be very helpful. If a trustee wants to frustrate the settlor's intent, they can do so by distributing all the assets outright to one beneficiary, by improperly managing the money, or by improperly investing. There are already remedies for these potential abuses of trust and there would be a remedy for this one two. She reiterated her strong support for HB 208.

10:10:17 AM

PAUL KARLKAUFMAN Attorney, Shaftel Law Offices, Anchorage, Alaska, said he practices estate planning and charitable giving and he represents nonprofit organizations. He is also a member of the Anchorage Library Foundation Board and wanted to focus on the charitable implications of HB 208. He advised that the Alaska Chapter of Fundraising Professionals has asked for more time to consider the effect of HB 208 because they only learned about it last month. If there was a serious intention to ask for the input of stakeholders, they should have an opportunity to speak.

MR. KARLKAUFMAN stated opposition to HB 208 and outlined its impact on Alaska charities.

- Section 4 gives a trustee authority to change the charitable beneficiary despite contrary donor intent.

- Section 14 deletes the provision in existing law that prohibits decanting where there is substantial evidence of the contrary intent of the donor.
- A donor's intent is protected under Section 16 only if a charitable deduction applies. It does not protect an identified charity. Only the ultra-wealthy would be protected. Even if a charitable deduction is claimed, Section 16 does not prevent a trustee from changing the charitable beneficiary.
- The lack of notice to all beneficiaries in Section 20 means an Alaska charity will almost certainly not receive notice if it has been removed as a beneficiary. Charities are often not aware they are a beneficiary until the trustee notifies them.

MR. KARLKAUFMAN concluded that lack of notice, change in the fiduciary standard, removal of the requirement to honor the donor's intent, minimal protection of charitable deductions, and the retroactive application of HB 208 all place Alaska charities at risk.

[10:13:59 AM](#)

MICHAEL CAVLALIERE, Attorney, Fairbanks, Alaska, said he supports the original draft of HB 208. The changes made to the decanting statute will allow flexibility and give trustees the ability to respond to changing circumstances in a beneficiary's life or changes in the tax laws. The decanting provision allows these changes to be made in a cost-effective manner. He said he understands the concerns voiced about abuse, but trustees have the duty to always act in the best interest of the beneficiaries and that is not being changed or eliminated. Also, there is already ample opportunity for abuse under current laws such as outright distributions to one beneficiary to the exclusion of the others. No notice is required in that circumstance He reiterated his support for HB 208.

[10:15:53 AM](#)

CHAIR COGHILL closed public testimony on HB 208 and held the bill in committee. He noted that he would be looking for a pathway forward.

HB 123-DISCLOSURE OF HEALTH CARE COSTS

[10:16:45 AM](#)

CHAIR COGHILL announced the consideration of HB 123. [SCS CSHB 123(HSS) was before the committee.]

[10:17:11 AM](#)

REPRESENTATIVE IVY SPOHNHOLZ, Alaska State Legislature, Juneau, Alaska, sponsor of HB 123, said this bill is a first step in the marathon to address health care costs in Alaska. The first health insurance in the U.S. was created in 1930 and Medicare and Medicaid were added in 1965. She said no one measure will resolve the complex problem of paying for health care, but HB 123 is a first bite at the apple that gives more power to consumers. She continued to introduce HB 123 speaking to the following sponsor statement:

HB 123 empowers consumers to make informed decisions about their health care options by ensuring accessible information on medical pricing. The bill will require health care providers to publish health care price information in public spaces and on their websites and to submit that price information to the Department of Health and Social Services. Individual providers must disclose the total undiscounted costs of their 25 most commonly provided health care services and procedures. Larger medical facilities would provide the same price information for their 50 most common health care services and procedures.

Alaska has the second most expensive health care costs per person in the nation as a result of a small insurance market with limited provider competition. Health care spending in Alaska increases faster than the rate of inflation despite the fact that Alaska's use of health care services is lower than the nationwide average.) Because of the murkiness around health care prices, consumers have little power to influence the cost of desperately needed medical services.

Medical price transparency across the nation could save the U.S. \$36 billion in health care spending.² More than 30 states are pursuing legislation to increase price transparency across the nation; however, Alaska currently has no price transparency law in place. Price transparency can allow consumers to take financial control of their health care and exercise more choice in their providers. Transparency can also begin the public dialogue between stakeholders in the health care industry regarding the variation of health care costs within Alaska.

HB 123 provides a simple approach to comprehensive, consumer-friendly health care price information for

consumers. It may also help reduce the price of health care spending and increase the accessibility to quality health care, while being unburdensome to health care providers and facilities. Empowering consumers with price information allows patients to compare providers and "shop" for high-value, cost-effective care. While health care prices are negotiable, health care is not. Alaskans deserve to know what health care services and procedures will cost before they step into the doctor's office.

REPRESENTATIVE SPOHNHOLZ advised that during the Interim they made some changes to the bill that passed the House. Originally the bill required only undiscounted prices (rack rate) to be posted. Doctors pointed out that most consumers do not pay that rate and the Senate Health and Social Services amended the bill to list Medicaid rates so a range of prices are described. The bill now also allows a disclaimer that says the actual rate may be different than the listed rates. The billing office or insurance company would have the complete information. She noted that health care providers have broad discretion in what the disclaimer says.

Another new provision is for a good faith estimate that is similar to the Municipality of Anchorage ordinance. This would be given to consumers on request. One difference is that inpatient and emergency departments are not required to immediately provide an estimate. The good faith estimate may also be provided verbally if it meets the patient's needs. Efforts were made to come up with something that is practical and easy to implement. The list of most frequently offered services will only need to be run once a year and posted by January 30.

REPRESENTATIVE SPOHNHOLZ said HB 123 is not a silver bullet. It will not bend the cost curve in health care this year, but it is a good place to start.

[10:24:35 AM](#)

CHAIR COGHILL said he was flagging the use of Medicaid to describe the range of prices for discussion at the next hearing.

[10:25:21 AM](#)

SENATOR WIELECHOWSKI said he believes the bill is a good step forward but wonders about the next step.

[10:25:44 AM](#)

REPRESENTATIVE SPOHNHOLZ explained that the bill is designed to put information into the community about health care costs to hopefully incentivize further price transparency and the way care is paid for. Health care in the U.S. isn't really an option. Rather, it's sick care. Health care providers are paid to give care when consumers are sick. Helping people to get and stay healthy isn't incentivized. She noted that she and other legislators are looking at ways to explore value-based compensation so health care providers are incentivized to help people get healthier.

CHAIR COGHILL said his first response to the bill was more negative than positive because he questioned the value to the consumer. He acknowledged that he was coming around. He asked for sectional review.

REPRESENTATIVE SPOHNHOLZ said she appreciates the time he has taken to learn about the bill. Health care is a very complex subject.

[10:29:13 AM](#)

BERNICE NISBETT, Staff, Representative Ivy Spohnholz, Alaska State Legislature, Juneau, Alaska, reviewed the following sectional analysis for HB 123, version 30-LS0380\B:

Section 1

AS 18.15.360.

Subsection (a) (p. 1, line 14, p. 2, line 1): has been amended to authorize the Department of Health and Social Services (DHSS) to collect, analyze, and maintain databases of information related to health care services and price information collected under AS 18.23.400.

Section 2

AS 18.23.400.

(p. 2, line 4): this is a new section that mandates the disclosure and reporting of health care services and price information.

Subsection (a) (p. 2, lines 7-16): providers will compile a list of the 25 most commonly performed health care services from the previous year and for each of the services state the procedure code, the

undiscounted price, facility fees, and the payment rates for Medicaid.

Subsection (b) (p. 2, lines 17-25): facilities will compile a list of the 50 most commonly performed health care services from the previous year and for each of the services state the procedure code, the undiscounted price, facility fees, and the payment rates for Medicaid.

Subsection (c) (p. 2, line 26-31): if a provider or facility has fewer than 25 or 50 health care services performed, respectively, the provider or facility will compile a list of all health care services performed with the procedure code, undiscounted price, facility fees, and the payment rates for Medicaid.

Subsection (d) (p. 3, lines 1-7): a provider in a group practice is not required to compile and publish a price information list if the group practice compiles and publishes a list, and the prices and fees that the provider charges are reflected in the list published by the group practice.

[10:30:59 AM](#)

CHAIR COGHILL said he looks for some modification of that provision.

[10:31:06 AM](#)

MS. NISBETT continued.

Subsection (e) (p. 3, lines 8-30): providers and facilities will publish their list each year by January 31st and submit the list to DHSS along with their name and location. The lists will be posted in font size no smaller than 20, in a public area with the DHSS website address listed, and a statement explaining that the price posted may be higher or lower than the amount paid by the patient. The list will also include a statement that says the patient will be provided an estimate upon request, and the provider or facilities' in-network preferred provider. Lastly, the lists will be posted on the website of the facility or provider if they have one.

[10:31:49 AM](#)

CHAIR COGHILL asked if it will also list an in-network.

MS. NISBETT answered yes; it will list the in-network preferred provider for the facility or provider. Responding to a further question she agreed that in a hospital the posting could list multiple providers.

MS. NISBETT continued.

Subsection (f) (p. 3, line 31, p. 4, lines 1-4): once a year, DHSS will gather the compiled lists from the health care providers and facilities and post the information on their website. The lists will also be entered into the DHSS database under AS 18.15.360(a).

Subsection (g) (p. 4, lines 5-25): when a patient requests a good faith estimate (GFE) of nonemergency health care services, the provider, facility, or insurer will have 10 days to provide the GFE verbally, in writing, or by electronic means. If the GFE is received verbally, the provider, facility, or insurer will keep a record of that GFE. The provider, facility, or insurer is not required to disclose the total charges for the anticipated course of treatment but should provide a portion of the total charges of the course of treatment, or a range of the charges for the anticipated service if the provider or facility cannot reasonably assess what the services should be.

Subsection (h) (p. 4, lines 26-31, p. 5, lines 1-17): a GFE must include a brief description in plain language of the health care services, products, procedures, and supplies, the in-network preferred providers, the procedure code, facility fees, and the suspected identity of others that may charges for a service, product, procedure or supply in connection with the nonemergent health care service, along with an explanation of whether the charges are included are in the GFE.

Subsection (i) (p. 5, lines 18-21): a provider, facility, or insurer that provides an GFE will not be liable for damages if the GFE is different from the amount charged to the patient.

Subsection (j) (p. 5, lines 22-25): a facility that is an emergency department will not be required to provide a GRE or post that they will provide GFE upon request.

Subsection (k) (p. 5, lines 26-31, p. 6 lines 1-2): Civil penalties for providers and facilities that do not comply with posting the price information in subsections (a) through (e) will be \$100 a day after March 31st. This amount will not exceed \$10,000. Civil penalties for providers, facilities, or insurers who do not provide a GFE upon request in subsections (g) and (h) after 10 business days will be \$100 a day but will not exceed \$10,000.

Subsection (l) (p.6, lines 3-5): providers and facilities that are penalized are entitled to a hearing conducted by the office of administrative hearings.

Subsection (m) (p. 6, lines 6-8): municipalities may not enforce an ordinance that imposes health care price disclosure requirements inconsistent with the regulations in Section 2.

CHAIR COGHILL offered his understanding that this is fairly close to the Municipality of Anchorage ordinance.

REPRESENTATIVE SPOHNHOLZ confirmed that this was modeled on that ordinance.

MS. NISBETT continued.

Subsection (n) (p. 6, lines 9-31, p. 7, lines 1-21): health care facility excludes the Alaska Pioneers' Home, the Alaska Veterans' Home, an assisted living home, a long-term care nursing facility licensed by the department, a hospital operated by the United States Department of Veterans Affairs, the United States Department of Defense, or any other federal institution are described. Department, facility fee, health care facility, health care insurer, health care provider, health care service, nonemergency health care service, patient, third party, and undiscounted price are also defined.

Section 3

(p. 7, lines 22-26): An individual who has health insurance can request a GFE of nonemergency health care services and receive the same information listed in subsection (g) and (h).

Section 4

(p. 7, lines 27-31, p. 8 line 1): The DHSS can adopt regulations to implement the changes in this Act.

Section 5

(p. 8, line 2): Section 4 of this Act will take effect immediately.

Section 6

(p. 8, line 3): Except for Section 5 of this Act, the effective date is January 1, 2019.

[10:38:00 AM](#)

CHAIR COGHILL outlined the path for the next hearing and held HB 123 in committee.

[10:38:09 AM](#)

There being no further business to come before the committee, Chair Coghill adjourned the Senate Judiciary Committee at 10:38 a.m.