

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 15, 2019

1:02 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Gabrielle LeDoux, Vice Chair
Representative Chuck Kopp
Representative Louise Stutes
Representative Adam Wool
Representative Laddie Shaw
Representative David Eastman

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Representative John Lincoln

COMMITTEE CALENDAR

CONFIRMATION HEARING: COMMISSION ON JUDICIAL CONDUCT

- HEARD

CONFIRMATION HEARING: STATE COMMISSION FOR HUMAN RIGHTS

- HEARD

HOUSE BILL NO. 124

"An Act relating to the recording of documents; relating to notaries and notarization; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 14

"An Act relating to assault in the first degree; relating to sex offenses; relating to the definition of 'dangerous instrument'; and providing for an aggravating factor at sentencing for strangulation that results in unconsciousness."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 124

SHORT TITLE: ELECTRONIC DOCUMENTS AND NOTARIZATION

SPONSOR(S): REPRESENTATIVE(S) CLAMAN

04/05/19	(H)	READ THE FIRST TIME - REFERRALS
04/05/19	(H)	JUD, FIN
04/08/19	(H)	JUD WAIVED PUBLIC HEARING NOTICE, RULE 23
04/12/19	(H)	JUD AT 1:00 PM GRUENBERG 120
04/12/19	(H)	Scheduled but Not Heard
04/15/19	(H)	JUD AT 1:00 PM GRUENBERG 120

BILL: HB 14

SHORT TITLE: ASSAULT; SEX OFFENSES; SENT. AGGRAVATOR

SPONSOR(S): REPRESENTATIVE(S) LINCOLN

02/20/19	(H)	PREFILE RELEASED 1/7/19
02/20/19	(H)	READ THE FIRST TIME - REFERRALS
02/20/19	(H)	STA, JUD
02/28/19	(H)	STA AT 3:00 PM GRUENBERG 120
02/28/19	(H)	Heard & Held
02/28/19	(H)	MINUTE(STA)
03/07/19	(H)	STA AT 3:00 PM GRUENBERG 120
03/07/19	(H)	Moved CSHB 14(STA) Out of Committee
03/07/19	(H)	MINUTE(STA)
03/08/19	(H)	STA RPT CS(STA) 7DP
03/08/19	(H)	DP: VANCE, LEDOUX, WOOL, SHAW, STORY, KREISS-TOMKINS, FIELDS
03/20/19	(H)	JUD AT 1:30 PM GRUENBERG 120
03/20/19	(H)	Heard & Held
03/20/19	(H)	MINUTE(JUD)
04/15/19	(H)	JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

ALICE "DEBBIE" FULLENWIDER

Anchorage, Alaska

POSITION STATEMENT: Testified as appointee to the State Commission for Human Rights.

CYNTHIA ERICKSON

Tanana, Alaska

POSITION STATEMENT: Testified as appointee to the State Commission for Human Rights.

CERI GODINEZ, Staff
Representative Matt Claman
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Conducted a sectional analysis of HB 124 on behalf of Representative Claman, the prime sponsor, and answered questions during the bill hearing.

TERRY BRYAN, President
Yukon Title Company
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 124, and answered questions.

CRYSTAL HAMAN, Vice President/Title Manager
Yukon Title Company
Fairbanks, Alaska

POSITION STATEMENT: Testified during the hearing on HB 124.

KIM MATTLE, President
Alaska Land Title Association (ALTA);
General Manager
Alaska Escrow & Title Insurance Agency, Inc.
Ketchikan, Alaska

POSITION STATEMENT: Testified in support of HB 124.

HOWARD HANCOCK
Chief Title Officer
Fidelity Title Agency of Alaska
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 124.

MICHAEL O'NEAL, Vice President of Corporate Underwriting
First American Title Insurance Company
Washington, D.C.

POSITION STATEMENT: Testified in support of HB 124 and answered questions.

TERRY BANNISTER
Legislative Legal Services
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 124.

CHRISSI THURMAN, State Recorder
State Recorder's Office
Department of Natural Resources

Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 124.

LIZZIE KUBITZ, Staff
Representative Matt Claman
Alaska State Legislation
Juneau, Alaska

POSITION STATEMENT: Introduced Amendment 1 to HB 14 on behalf of Chair Claman.

ACTION NARRATIVE

[1:02:30 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:02 p.m. Representatives Wool, LeDoux, Kopp, Stutes, Shaw, and Claman were present at the call to order. Representative Eastman arrived as the meeting was in progress.

CONFIRMATION HEARING: Commission on Judicial Conduct

[1:03:09 PM](#)

CHAIR CLAMAN announced that the first order of business would be a confirmation hearing for Jane Mores, the governor's appointment to the Commission on Judicial Conduct. He noted that during the previous meeting, the committee heard remarks from the appointee, asked questions, and closed public testimony. He asked for final comments from committee members. No member offered final comments.

[1:03:46 PM](#)

REPRESENTATIVE LEDOUX stated that the House Judiciary Standing Committee has reviewed the qualifications of the governor's appointee and recommends that the following name be forwarded to a joint session of the House and Senate for consideration: Jane Mores to the Commission on Judicial Conduct. She explained that this does not reflect intent by any of the members to vote for or against this individual during any further sessions for the purposes of confirmation.

CHAIR CLAMAN said Ms. Mores's name would be forwarded.

CONFIRMATION HEARING: State Commission for Human Rights

1:04:25 PM

CHAIR CLAMAN announced that the next order of business would be a confirmation hearing for two appointees to the State Commission for Human Rights. He opened public testimony on the governor's appointments.

1:05:07 PM

ALICE "DEBBIE" FULLENWIDER shared biographical details including information about her family, education, and life in Alaska. She described her professional experience and the jobs she worked that helped her develop professional skills and customer service acumen. She added that she has attended numerous seminars on subjects such as management and sexual harassment. She said her life experience has involved dealing with people at all levels of society. She discussed challenges she faced and lessons she learned as Director of Cook Inlet Region, Incorporated (CIRI) and Director of Eklutna, Incorporated. She said that, as Director of Cook Inlet Tribal Council, she addressed economic, cultural, and social issues relating to native and non-native people within the community. She listed various programs she oversaw relating to education, jobs, drug/alcohol rehabilitation, and housing. She shared that she has served on a number of committees, boards, and commissions and that she is excited to have been appointed by Governor Michael J. Dunleavy to the State Commission for Human Rights. She said she believes her experience speaks for itself as to her qualification for the appointment. She thanked the committee for its time and consideration.

1:09:39 PM

CYNTHIA ERICKSON offered some brief biographical information and detailed her upbringing in the town of Ruby. She said she is part-Cup'ik and part-Athabascan and that said she has lived and been in business in Tanana for 33 years. She shared that she has served on the local corporation board, the Alaska Workforce Investment Board, and the State Suicide Prevention Council. She added that she has worked as a tribal judge and served on local boards including the one at her church. She detailed her work with Alaska Native youth and children all over Alaska. She mentioned that she started her own nonprofit, My Grandma's House "Setsoo Yeh."

1:12:02 PM

CHAIR CLAMAN, after ascertaining that no one wished to testify, closed public testimony on the appointments.

REPRESENTATIVE STUTES thanked the nominees and recognized their qualifications.

[1:12:33 PM](#)

REPRESENTATIVE LEDOUX stated that the House Judiciary Standing Committee has reviewed the qualifications of the governor's appointee and recommends that the following names be forwarded to a joint session of the House and Senate for consideration: Alice "Debbie" Fullenwider and Cynthia Erickson to the State Commission for Human Rights. She explained that this does not reflect intent by any of the members to vote for or against [these individuals] during any further sessions for the purposes of confirmation.

CHAIR CLAMAN said the names would be forwarded.

HB 124-ELECTRONIC DOCUMENTS AND NOTARIZATION

[1:13:06 PM](#)

CHAIR CLAMAN announced that the next order of business would be HOUSE BILL NO. 124, "An Act relating to the recording of documents; relating to notaries and notarization; and providing for an effective date."

CHAIR CLAMAN passed the gavel to Vice Chair LeDoux.

[1:13:35 PM](#)

The committee took an at-ease from 1:13 p.m. to 1:14 p.m.

[1:14:16 PM](#)

CHAIR CLAMAN introduced HB 124 as prime sponsor. He read from a prepared statement, which read as follows [original punctuation provided]:

Good afternoon. For the record my name is Matt Claman, State Representative for House District 21. I would like to thank you all for hearing House Bill 124 today.

HB 124 establishes a secure process for remote online notarization to facilitate commercial transactions in the state.

Notaries are responsible for supervising the signing of documents and attesting to both the authenticity of a document as well as the identity of the parties involved. Setting up a system to allow for remote online notarization is particularly useful in Alaska given our state's immense size and the fact that many of our communities are not connected by road. At present, commercial transactions within the state often necessitate delays as the parties ship documents back and forth for the purpose of notarization. HB 124 would allow individuals to have documents notarized without these delays, from the comfort of their own homes.

Given the sensitive nature of notarized documents, it is critical that any updates to notarial law maintain the integrity and security of the process. HB 124 adopts language directly from two Uniform Law Commission Acts to ensure that updates to Alaska notarial law include adequate provisions to keep the notarial process secure and that Alaska notarial law is consistent with notarial law in the growing number of states that have adopted Uniform Law Commission standards for remote online notarization.

The use of electronic records in commercial, governmental, and personal transactions has become increasingly prevalent in Alaska and around the world in recent years. HB 124 allows Alaskans to keep up with these trends and perform notarizations with greater ease. By creating a process for remote online notarization, improving the efficiency and convenience of transactions in the state, HB 124 will open new opportunities for commerce in Alaska and help strengthen our state's economy.

With that, I will turn it over to my staff Ceri Godinez to explain the bill in greater detail.

[1:16:08 PM](#)

CERI GODINEZ, Staff, Representative Matt Claman, Alaska State Legislature, conducted a sectional analysis of HB 124 with a

prepared statement, which read as follows [original punctuation provided]:

To the Chair and the Committee, thank you for the opportunity to testify. For the record my name is Ceri Godinez, and I'm staff to Representative Claman.

House Bill 124 updates Alaska's notarial law for the digital age by allowing notaries to perform online notarizations for remotely located individuals and including provisions to ensure these online notarizations are secure.

Section 1 establishes an electronic document of a conveyance as an acceptable equivalent for an original conveyance or certified copy of the conveyance.

Section 2 establishes the equivalence of electronic notarized documents with those produced on a tangible medium and allows recorders to accept tangible copies of electronic records.

Section 3 adds conforming language to reflect changes made in Section 2.

Section 4 requires that recorders comply with standards set by the Department of Natural Resources and allows the recorder to receive, index, store, archive, and transmit electronic documents.

Section 5 adds three new sections to AS 40.17, which relates to the recording of documents: Section 40.17.800, which requires that the Department of Natural Resources adopt standards to implement provisions relating to electronic recording; Section 40.17.810, which requires that consideration be given to promoting uniformity among states with these provisions; and Section 40.17.820, which establishes the relationship between this chapter and the Electronic Signatures and National Commerce Act.

Section 6 changes the definition of "document" to the definition found in Uniform Law Commission language.

Section 7 adds definitions for "electronic," "electronic document," and "electronic signature."

Section 8 establishes "Uniform Real Property Electronic Recording Act" as the title for sections added in Sections 2, 4, and 5 of the bill.

Section 9 adds certifying that a tangible copy of an electronic record is an accurate copy of the electronic record to the duties a notary public may perform.

Section 10 adds conforming language to reflect changes made in Section 13 of this bill.

Section 11 requires that the lieutenant governor adopt regulations to carry out the purposes of this chapter.

Section 12 requires that the lieutenant governor provide standards for communication technology and identity proofing. The lieutenant governor may adopt regulations including provisions prescribing the process for performing notarial acts, ensuring the integrity of the process, and preventing against fraud.

Section 13 allows an individual to use communication technology as a substitute for appearing in front of a notary, establishes a set of procedures a notary must follow in order to verify the identity of a remotely located individual and perform a remote online notarization, and requires that the notary follow any standards set by the lieutenant governor.

Section 14 requires that the notary maintain a single journal chronicling all notarial acts they perform, specifies the information each journal entry must contain, and specifies storage procedure for the journal.

Section 15 allows the notary to select the technology they use to perform a notarial act and requires that they notify the lieutenant governor of the technology they will be using.

Section 16 establishes that failure to meet the requirements outlined in this bill does not invalidate a notarial act and that the validity of a notarial act does not prevent an individual from seeking to invalidate the record nor from seeking other remedies based on law.

Section 17 establishes the relationship between this chapter and the Electronic Signatures and National Commerce Act.

Section 18 adds to the definition of "notarial act" to reflect that an act may be performed with respect to a tangible or electronic record.

Section 19 adds definitions for "acknowledgement," "communication technology," "electronic," "electronic signature," "identity proofing," "in a representative capacity," "notarial officer," "record," "remotely located individual," "sign," and "signature."

Section 20 establishes that Sections 1-8 of this Act apply to electronic signatures and documents received by a recorder on or after the effective date of Sections 1-8. And that Sections 9-19 apply to notarial acts performed on or after the effective date of Sections 9-19.

Section 21 allows the Department of Natural Resources to adopt regulations to implement changes made by Sections 1-8 and allows the lieutenant governor to implement changes made by sections 9-19.

Section 22 clarifies that this Act does not affect the validity of documents recorded before the effective date of Sections 1-8 or the validity of notarial acts performed before the effective date of Sections 9-19.

Section 23 provides an immediate effective date for Section 21.

Section 24 provides an effective date of January 1, 2020 for all other sections.

Thank you for considering House Bill 124 today. With that, we're happy to answer any questions the Committee may have.

[1:21:28 PM](#)

REPRESENTATIVE KOPP said it appears that HB 124 would modernize existing statutes to allow for current technology. He compared electronic notarization to telemedicine technology and commented

that it would allow for the internet to be used as a vehicle for commerce. He asked if that is primarily the intent of HB 124.

CHAIR CLAMAN answered "yes." He said HB 124 would also bring Alaska in line with what other jurisdictions are doing, so that electronic notarization is not hindered by different laws in different states.

REPRESENTATIVE KOPP discussed the process through which he purchased his house and recalled signing documents electronically. He asked what in HB 124 is different from what was previously allowable regarding real estate title transactions.

CHAIR CLAMAN said the contracts Representative Kopp signed electronically were likely not required to be notarized. He suggested that a notary was probably involved when Representative Kopp signed the actual documents related to the title transfer.

[1:24:06 PM](#)

REPRESENTATIVE WOOL asked if HB 124 would only apply for those in remote locations, or whether someone who lives near a title agency could instead elect to utilize electronic notarization.

MS. GODINEZ said any individual would be able to utilize the service regardless of where he/she lives.

[1:24:42 PM](#)

REPRESENTATIVE EASTMAN asked for clarification of language found in line 6 on page 13 [section 18], which he explained would change the definition of "notarial act" by including electronic records. He noted that AS 44.50.060 does not include language directing a notary to do anything, citing the word "may." He asked, "If I am a notary public ... am I going to be required to accept this electronic record? Or is it optional?" He asked what the legal significance of "directed" is in AS 44.50.200(2).

CHAIR CLAMAN said his office did not research the existing language that is not being changed. He noted that if the statute does not require anything of a notary public and the language is "may," then the status quo would remain in place. With regard to the electronic record, he mentioned that some states have required all notaries to become electronic notaries while others have allowed it to be a choice. He said if the

State of Alaska (SOA) were to give notaries the choice between being "a paper notary versus an electronic notary," then the electronic requirements would only apply to the electronic notaries.

[1:27:26 PM](#)

REPRESENTATIVE EASTMAN asked if it is the prime sponsor's intent "to infer a right or an ability of someone to claim to be able to accomplish a notarial act electronically." He asked whether a person who is not able to accomplish that electronic notarial act could claim that his/her rights were not honored.

CHAIR CLAMAN said being a notary public is not a right, rather it is a licensed privilege administered by the Office of the Lieutenant Governor. He explained the process through which an individual may become a notary public.

REPRESENTATIVE EASTMAN clarified that he was referring to the rights of the person seeking an electronic notary, not the notary themselves.

CHAIR CLAMAN said that is not a question he has investigated. He said he thinks it would be unlikely that an individual would be unable to find and utilize an electronic notary. He listed myriad locations where one could find a notary.

[1:29:38 PM](#)

REPRESENTATIVE WOOL asked about the identity verification process when utilizing an electronic notary.

MS. GODINEZ said the most common way a person's identity can be verified is by running a series of forensic tests on a high-resolution image of his/her identification document (ID). She noted that HB 124 allows for a situation in which a notary can confirm a person's identity when that person is known to the notary or when a credible witness who can confirm the person's identity is present with the notary.

[1:30:46 PM](#)

VICE CHAIR LEDOUX asked for more information about the forensic tests.

MS. GODINEZ said she is not totally certain about how the tests work, but that they can involve running the bar code on the ID

and examining the image for microdots. She remarked that the tests are in-depth and are "more than just giving it a once-over with your eyes." She deferred answering the question further to an expert testifier who would join the meeting shortly.

[1:31:45 PM](#)

REPRESENTATIVE WOOL described the relative casualness of in-person identification verification at his local bank. He observed that the electronic verification process would be more stringent than in-person.

MS. GODINEZ said that is correct. She noted that some people have remarked that remote online notarization has the potential to be more rigorous in terms of identity-proofing.

REPRESENTATIVE WOOL mused on his earlier question about having the option to utilize an electronic notary even though he lives near a bank. He observed that it may be easier for him to just go into the bank. He suggested that many people would elect to maintain use of traditional notaries.

[1:32:45 PM](#)

VICE CHAIR LEDOUX asked who would among those available for questions would best be able to answer her earlier question about the forensic tests.

MS. GODINEZ said Terry Bryan from the Yukon Title Company might be able to field the question.

[1:33:35 PM](#)

TERRY BRYAN, President, Yukon Title Company, noted that the detail of any forensic testing would be determined through the development of regulations through the Lieutenant Governor's office. He said Michael O'Neal of First American Title in Washington, D.C. would likely be able to discuss how other states have handled the issue. He noted that Mr. O'Neal would be calling into the meeting shortly.

VICE CHAIR LEDOUX asked whether the kinds of forensic tests would have to be determined through regulations.

MR. BRYAN said a requirement for testing would be a matter of regulatory enforcement. He said his interpretation is that the regulatory process would mandate something between the current

norm - presentation of a government-issued ID in front of a notary - and a thorough test.

CHAIR CLAMAN said Mr. O'Neal would be available at 2 p.m. to address the question.

[1:35:17 PM](#)

REPRESENTATIVE EASTMAN asked about forensic tests required in other states.

CHAIR CLAMAN deferred to Mr. O'Neal.

REPRESENTATIVE EASTMAN acknowledged that an electronic notary could verify through various means that an ID is genuine, but questioned how the notary would be able to verify the identity of the person who has sent the image of the ID.

MS. GODINEZ said the online notarial act would be conducted face-to-face through video chat and would be recorded.

[1:37:06 PM](#)

The committee took a brief at-ease from at 1:37 p.m.

[1:37:37 PM](#)

VICE CHAIR LEDOUX returned the gavel to Chair Claman.

CHAIR CLAMAN opened public testimony on HB 124.

[1:38:19 PM](#)

MR. BRYAN said he has been involved in the title insurance and real estate industry for over 20 years. He mentioned that he is daily aware of dozens of notarial acts, including by employees of his company. He opined that HB 124 would improve the flow of commercial transactions which require or request a notarial function. He said HB 124 is consumer-focused legislation that would save money and time for consumers. He stated that HB 124 would benefit Alaskans who do not live near a notary as well as members of the state's mobile population. He opined that HB 124 would enact a "safer process" because he has more confidence in notarial functions within Alaska than from other non-Alaska jurisdictions. He shared that his company often questions the integrity of a notarial act from a different jurisdiction. He shared similar apprehensions about the integrity and validity of

international notary functions. He discussed the potential ease and efficiency that would result if all these notarial acts could be controlled through the State of Alaska (SOA). He noted that 20 percent of his company's transactions require a mail-out or shipment of documents for an individual to sign with a notary outside the company's jurisdiction. He said these transactions are slowed because the buyer/lender/seller must wait for documents to be delivered by a courier service. He suggested changes to HB 124 provisions relating to maintaining a single notary journal and the responsibility placed on the Lieutenant Governor's office regarding service of process for transactions regarding notary functions. He said he and Yukon Title Company support HB 124.

[1:42:25 PM](#)

CRYSTAL HAMAN, Vice President/Title Manager, Yukon Title Company, said her office provides title and escrow services for the whole northern portion of Alaska. She shared that she has worked for Yukon Title for approximately 26 years and described the numerous occasions in which she reviewed foreign and overseas notaries, in particular documents that were not properly notarized. She said she has seen many documents that she has questioned in terms of their validity. She noted that she was initially skeptical about electronic notaries but said her skepticism has since been assuaged. She echoed earlier discussion about electronic notarial acts being more secure. She described the process through which her office attempts to verify foreign notaries. She said military members who reside in Alaska would benefit from HB 124, as they are often overseas and would be able to access an electronic notary in Alaska.

[1:44:57 PM](#)

KIM MATTLE, President, Alaska Land Title Association (ALTA); General Manager, Alaska Escrow & Title Insurance Agency, Inc., said she has worked in the title and escrow industry for 17 years and in banking "on the lending side" for 13 years. She said ALTA supports HB 124 and the option to utilize an electronic notary, which she described as consumer-friendly and secure. She said HB 124 would bring Alaska up to date with technology available to consumers, making the completion of transactions easier, more efficient, and more secure no matter where the transacting party is physically located.

[1:46:26 PM](#)

HOWARD HANCOCK, Chief Title Officer, Fidelity Title Agency of Alaska, said his company fully supports HB 124. He relayed the process through which his company currently handles paperwork with parties involved in a transaction when those parties are in a foreign country. In most cases, he said, his company recommends those people go to the United States Embassy or Consulate Office for a notary. He noted that this is not always possible due to logistical reasons or the considerable time required to schedule an appointment. Alternatively, he said, if the party is in a country that abides by [The Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents], the party can use a foreign notary public, though the document must be accompanied by an apostille certificate signed by a foreign government official verifying the validity of the foreign notary public that signed it. He noted that the process of obtaining an apostille can lead to further delays. Additionally, he said, if the notarization is done in a foreign language, a written translation must be attached to the document to be accepted by the State Recorder's Office. He noted that obtaining a translation can also lead to further delays. He stated that his company anticipates that the option of remote online notarization would streamline operations and eliminate the cumbersome mail-out process. He urged support in passage of HB 124.

[1:48:35 PM](#)

REPRESENTATIVE EASTMAN asked if passage of HB 124 would change the way notaries are recruited.

MR. HANCOCK said he does not believe it would have any impact at all. He said the goal is to give notaries the option to either be a "paper notary" or an "electronic notary."

[1:49:28 PM](#)

REPRESENTATIVE LEDOUX asked how notaries deal with identical twins.

MR. HANCOCK said they would presumably have different names.

REPRESENTATIVE LEDOUX said she understands they would have different names, but if they are identical, how would a notary know if he/she is looking at one twin's ID and not the other's.

MR. HANCOCK said it is a good question. He suggested that Mr. O'Neal might be able to provide an answer.

[1:51:24 PM](#)

REPRESENTATIVE STUTES asked, assuming HB 124 were to become law, whether an electronic notarization in Alaska would be considered legitimate in a jurisdiction in which electronic notarization is not recognized in statute.

MR. HANCOCK said he does not believe an electronic notarization would be accepted in a state that has not yet adopted a similar law. He commented that this is the way things are currently in Alaska. He said there are approximately nine states that currently recognize electronic notarization.

[1:53:12 PM](#)

The committee took an at-ease from 1:52 p.m. to 1:53 p.m.

[1:54:05 PM](#)

The committee took an at-ease from 1:54 p.m. to 1:58 p.m.

[1:58:44 PM](#)

MICHAEL O'NEAL, Vice President of Corporate Underwriting, First American Title Insurance Company, said he has worked on remote notarization legislation in approximately 40 states. He mentioned that for HB 124, he worked very closely with the Uniform Law Commission (ULC) as it crafted the legislation. He said he is grateful for the opportunity to support HB 124.

Mr. O'Neal explained that the remote notarization concept has existed for several years. He said that in 2012 Virginia became the first state to experiment with remote electronic notarizations via webcam interactions. He called the Virginia law "novel" and noted that it raised unanswered questions about the steps required to securely identify a document signer over the internet. He described how various public and private stakeholders worked together to determine how to achieve secure remote notarization. He said this process resulted in two pieces of model legislation, one produced by the title and mortgage industries and the other crafted by the ULC. He noted that HB 124 uses "the ULC approach." He said he served as the liaison between the two processes and stated that the two uniform laws are in substantive alignment, which he explained is "very intentional." He said 17 states have passed remote notary laws and 15 others have bills pending.

MR. O'NEAL addressed the topic of safeguards and explained that there are three requirements: identification procedures, the creation of an audit trail, and the use of secure technologies to prevent after-the-fact records alteration. He said HB 124 calls for multifactor authentication and would require the application of two types of identity-proofing. He explained that the bill would allow the Lieutenant Governor, through regulation, to establish a process to identify signers and stop fraud. He described the two-step process that is currently standard. The first step, he explained, involves checking a scanned image of an ID for security features, such as microprints, microdots, holographic features, and barcodes. He drew a contrast between this thorough process and the process by which a traditional notary verifies a document. The second form of identity-proofing, he said, is a requirement that the signer takes an identification quiz. He noted that this is the same quiz that many people take online when applying for a loan or doing a credit check. He detailed how the personal questions are designed so that they could not be answered by someone who has stolen a wallet. He said these questions are difficult to solve for identity thieves.

[2:05:22 PM](#)

REPRESENTATIVE EASTMAN asked how the identity quizzes are generated and who generates them.

MR. O'NEAL said there are various vendors who produce identity quizzes. He said it is widespread commercial application in the banking industry and credit reporting industry. He identified LexisNexis as one major vendor. He explained that these vendors plumb data from public data records about individuals, which allows them to create the quizzes. He said HB 124 would allow notaries to leverage the same tools used by financial institutions to verify customers' identities.

[2:06:31 PM](#)

REPRESENTATIVE EASTMAN asked how many of the 17 states to have authorized remote notarization currently require notaries to use vendor-produced identity quizzes.

MR. O'NEAL clarified that 17 states have enacted laws, but remote notarization is only "up and running" in approximately 5 states. He said each of those states requires the use of identity-proofing quizzes. He said it is fully expected that

every state to implement regulations will adopt the concept of an identity-proofing quiz. He noted that the National Association of Secretaries of State (NASS), which has worked to produce national standards to help guide the implementation of remote notarization laws, adopted identity-proofing quizzes as a core standard.

[2:08:29 PM](#)

REPRESENTATIVE LEDOUX asked for examples of the questions on an identity-proofing quiz.

MR. O'NEAL gave a few examples including, "Which of the following addresses have you lived at over the last 20 years?" and, "Which of these people are you related to?" He highlighted that these questions draw from the user's personal history and restated that the answers could not be found in one's wallet.

REPRESENTATIVE LEDOUX asked why these questions would only be asked online and not during an in-person notarial act.

MR. O'NEAL said that is an excellent question. He said it points to the heightened robustness of identification-verification for remote notarization. He noted that it combines two features - physical possession of an ID and knowledge of personal history - to create a state-of-the-art, multi-factor authentication process. He remarked that advocates of remote notarization point to it as an extremely secure process. He said many people believe that "paper notaries" can and should adopt those same tools.

CHAIR CLAMAN said Representative LeDoux's question presents an interesting topic and noted that he cannot remember the last time he heard of anyone misusing the notary process, though it must happen on occasion.

[2:12:09 PM](#)

REPRESENTATIVE LEDOUX said she is reminded of the questions generated when she attempts to sign into her bank account on a computer terminal not recognized by the bank. She noted that these questions are sometimes not relevant and thus there is an option to generate a new question. She asked whether such an option would be available in an identity-proofing quiz.

MR. O'NEAL answered yes. He explained that an industry standard for the administration of the quizzes has been established by

the federal government through the National Institute of Standards of Technology (NIST). He said the way it works today is that each quiz contains five questions, four of which must be answered within a time limit. There is an opportunity to retake the quiz should the user fail, and at least two of the questions from the original quiz must be replaced the second time around. He said getting four out of five questions correct would be nearly impossible for someone fraudulently claiming another person's identity. This, he explained, is why the quizzes are flexible in allowing one wrong answer that does not kick the user entirely out of the process.

[2:15:46 PM](#)

REPRESENTATIVE WOOL inquired about the prevalence of fraud related to electronic notaries. He noted that he does not want to see the cessation of traditional notaries under the rationale that remote notarization is more secure.

MR. O'NEAL said HB 124 would make remote notarization purely optional for those Alaskans who wish to use it. He said the ULC sought to create an equivalence of notarial acts. He said, "A notary is a notary is a notary." He mused on the impossibility of capturing a signature through electronic means and said it is the impetus for imposing heightened security requirements for remote notarization.

CHAIR CLAMAN added that the Office of the Lieutenant Governor is confident that "many people" would prefer not to get involved in the electronic notary business.

[2:19:24 PM](#)

MR. O'NEAL said HB 124 would require a notary to keep a journal that logs the bare facts about the notarization which could be used as evidence as to who actually signed the document involved in a notarial act. He commented that the bill would also require the creation and retention of an audio/video recording of the performance of the notarial act itself. He explained that the act would be recorded on a webcam and retained by the notary for a period either set in statute or regulated by the Lieutenant Governor. Most states, he said, require a 5-, 7-, or 10-year retention period. He explained that the purpose of the video is to contribute to the audit trail. He added that it is also a significant fraud deterrent because criminals are much less likely to fraudulently sign in front of a public official and on camera. He also spoke to the importance of retaining the

video for identity-verification purposes in the absence of handwriting.

MR. O'NEAL spoke to the importance of tamper-proofing notarized online documents. He described the kinds of technologies currently available today that are tamper-evident and generate error messages on electronic documents that have been altered post-notarization. He summarized that these three features - identity-verification, an audit trail, and tamper-evident documents - have the potential to make remote notarization as secure or even more secure than the traditional notarial process.

[2:23:10 PM](#)

REPRESENTATIVE EASTMAN said that SOA has historically required its notaries to be bonded. He asked what effect electronic options have had on bonding requirements elsewhere.

MR. O'NEAL answered that most states are not changing their bond requirements as a result of enacting a remote notarization law. He said the question of bonds varies greatly among the states. He stated that only about half of states require a bond and, in some cases, the bond was set at a figure like \$500 almost a century ago and has hardly changed.

CHAIR CLAMAN said Alaska is "settled" at \$1,000.

MR. O'NEAL said the only state that has changed its bonding requirement is Florida. He said he thinks Florida will be "at the top of the heap" by requiring a \$25,000 bond, an additional cost borne by notaries in that state. He said attempts to maintain equivalent safeguards between traditional and remote notarization have resulted in most states finding it not necessary to change bonding requirements.

[2:25:01 PM](#)

REPRESENTATIVE EASTMAN asked about forensic and microdot technologies and whether they are used in states that have enacted similar legislation.

MR. O'NEAL answered yes. He described how Virginia law does not actually require those types of technology, though he believes most vendors operating in Virginia voluntarily allow their notaries to use that step. He stated that the forensic analysis

of identification credentials has been part of all remote notarization laws enacted since Virginia's.

2:26:22 PM

REPRESENTATIVE EASTMAN asked if Mr. O'Neal has encountered or has any solutions for "the sticky issue" of religious garb and identifying someone wearing religious garb.

MR. O'NEAL said he has never been asked that question before. He noted that a traditional notary must see a person's face to verify identity. He commented that the question raises some fundamental First Amendment issues relating to notarization. The bottom line, he stated, is that remote notarization requires the presentation to the notary of an ID and a similar visual identity verification to the traditional notarial process.

2:28:28 PM

CHAIR CLAMAN returned to Representative Stutes's earlier question about whether an electronic notarization in Alaska would be considered legitimate in a jurisdiction that has not enacted a remote notarization law.

TERRY BANNISTER, Legislative Legal Services, said it depends on the law of the other state. She said this is why more states are being encouraged to adopt uniform electronic notarization provisions.

CHAIR CLAMAN asked, "Isn't there a full faith and credit issue if North Carolina doesn't recognize a notarized signature that is considered valid in Alaska?"

MS. BANNISTER said if the notarized material has been accepted in Alaska, then it would probably be accepted in a different state. But, she said, if there is any reason that it has to be acknowledged electronically in the other state, "it may not fly."

2:30:08 PM

REPRESENTATIVE KOPP addressed AS 09.80, the Uniform Electronic Transactions Act. He explained that it was enacted in 2004 with the intent to align practices relating to electronic records and electronic signatures. He asked whether the intent of HB 124 is already covered in AS 09.80.

MS. BANNISTER said she would have to do additional research and get back to the committee with more details. She remarked that her initial assessment is that the current statute is not sufficient for what for what HB 124 is attempting to accomplish. She commented that AS 09.80 acknowledges that signatures can be done electronically, but HB 124 relates to a specific application for notarization.

CHAIR CLAMAN said there will be plenty of time to conduct more research. He asked Ms. Bannister to submit a written response to Representative Kopp's question.

[2:33:42 PM](#)

REPRESENTATIVE EASTMAN mentioned that there has been recent debate in the legislature about whether to close or consolidate district offices. He asked if there is anything related to the State Recorder's Office that does not lend itself to remote notarization. He asked why physical office locations are necessary.

CHRISSI THURMAN, State Recorder, State Recorder's Office, Department of Natural Resources, said the offices that are slated to be closed due to budget cuts have no effect on the electronic recording applications presented in HB 124.

REPRESENTATIVE EASTMAN said he understands that. He said he wanted to know if there is a reason that the offices could not be categorically replaced by electronic processes.

CHAIR CLAMAN said he does not think there is a proposal to close recorder's offices. He ruled that the question is not relevant to discussion of HB 124.

[2:36:11 PM](#)

CHAIR CLAMAN closed public testimony. He said HB 124 would be held for further review.

[2:36:45 PM](#)

The committee took a brief at-ease at 2:37 p.m.

HB 14-ASSAULT; SEX OFFENSES; SENT. AGGRAVATOR

[2:37:39 PM](#)

CHAIR CLAMAN announced that the final order of business would be HOUSE BILL NO. 14, "An Act relating to assault in the first degree; relating to sex offenses; relating to the definition of 'dangerous instrument'; and providing for an aggravating factor at sentencing for strangulation that results in unconsciousness." [Before the committee was CSHB 14(STA), version 31-LS0182\G.] Chair Claman recognized the presence of Representative Lincoln, the bill's prime sponsor.

[2:38:37 PM](#)

CHAIR CLAMAN passed the gavel to Vice Chair LeDoux.

CHAIR CLAMAN moved to adopt Amendment 1, labeled 31-LS0182\G.5, Radford, 4/10/19, which read as follows:

Page 2, lines 22 - 23:

Delete "**causing the victim to come into contact with ejaculate**"

Insert "**ejaculating on the victim**"

Representative Stutes objected for purposes of discussion.

[2:39:02 PM](#)

LIZZIE KUBITZ, Staff, Representative Matt Claman, Alaska State Legislation, said Amendment 1 was the result of conversations with the prime sponsor's office, the Office of the Public Defender, and others. She said the current version of the bill adds "knowingly causing the victim to come into contact with ejaculate" to the definitions of sexual contact. However, she explained, it was determined that this language could result in unintended consequences. For example, she said, if a juvenile were to throw a towel on someone and that towel had ejaculate on it, the juvenile could potentially be charged with sexual assault. She stated that Amendment 1 seeks to avoid those unintended consequences by amending the language to read "knowingly ejaculating on the victim." She opined that this language better fits the goals of the bill.

[2:40:43 PM](#)

VICE CHAIR LEDOUX established a hypothetical scenario in which the defendant, instead of ejaculating on the victim, ejaculated in the vicinity of the victim and then forced the victim to come into contact with the ejaculate. She queried, "That wouldn't be covered here, would it?"

MS. KUBITZ said the intention of Amendment 1 is to focus on the action as opposed to "coming in contact with the ejaculate," in order to avoid criminalizing behavior that the prime sponsor and/or the committee may not want to criminalize.

VICE CHAIR LEDOUX returned to the example of the juvenile and the towel. She suggested that there could be another way to address the issue that would distinguish between a juvenile offender and an adult offender. She expressed doubts that this particular change is the solution.

CHAIR CLAMAN noted that Amendment 1 does not change the crime of harassment, which he suggested would apply in the circumstances described by Representative LeDoux. He said the question is, "Where are we going to draw the line between felony conduct and misdemeanor conduct?" He noted that Representative LeDoux's question reflects the reality that decisions must be made regarding where that line gets drawn.

REPRESENTATIVE EASTMAN said HB 14 was in part inspired by public outcry relating to sexual acts not currently categorized as sex crimes. He said the public wants legislators to make the laws match its expectations. He said he does not know if this language accomplishes that.

[2:44:06 PM](#)

REPRESENTATIVE STUTES withdrew her objection.

VICE CHAIR LEDOUX added her own objection.

[2:44:27 PM](#)

REPRESENTATIVE WOOL asked a question relating to the crime of harassment. He said other bodily fluids have been thrown at people for the purposes of harassment. He asked, "How do you differentiate that from a sex crime, if you don't want to pass this amendment?"

VICE CHAIR LEDOUX said she cannot answer that. She stated she does not support Amendment 1 in its current form.

CHAIR CLAMAN said the genesis of HB 14 was the public concerns that arose from the Justin Schneider case relating to strangulation, which is not a sex crime on its own, and to ejaculation onto a strangulation victim, which is not currently

a sex crime due to a loophole. He stated that the resulting effort of HB 14 was to change the Schneider loophole so that the conduct in that case could be the basis for a sex crime. He said the challenge becomes ensuring that the legislative language drafted does not become so broad that it brings in conduct that sounds more like harassment and less like a sex crime. He said the language in Amendment 1 was recommended by the former Public Defender to effectively close the Schneider loophole while avoiding overbreadth problems.

[2:47:50 PM](#)

REPRESENTATIVE EASTMAN proposed Conceptual Amendment 1 to Amendment 1. He proposed a two-part test in which the individual intentionally ejaculates in the presence of someone and afterward knowingly causes that person to come into contact with the ejaculate. He said the reason for this proposal is that the public outcry refers to any situation in which both parts of that test are met. He said this would allow certain acts to be considered as sex crimes while avoiding the inclusion of the conduct of "teenage boys in bathrooms horsing around."

CHAIR CLAMAN said he does not support Conceptual Amendment 1 to Amendment 1. He noted that Amendment 1 is supported by the Alaska Network on Domestic Violence & Sexual Assault (ANDVSA). He said ANDVSA believes Amendment 1 adequately addresses those concerns. He stated that the public is concerned about the loophole. He said HB 14 would close the loophole "whether or not it precisely addresses every question of every public member." He added that the legislators need to make effective legislation that does not create more confusion and more ambiguity. He suggested that Representative Eastman's proposal would make things more confusing and more difficult to apply.

VICE CHAIR LEDOUX said the proposed amendment might close the loophole for the exact circumstances of the Schneider case "until another loophole identifies itself."

[2:50:20 PM](#)

REPRESENTATIVE KOPP noted that harassment in the first degree is in play when the circumstances of harassment in the second degree include substances such as blood, mucus, or semen. He said what elevates harassment in the first degree to the felony level is when it occurs in conjunction with felony assault or felony sexual assault. He noted that if the conduct were not happening concurrently with a felony assault or a felony sexual

assault, then the committee would not be looking at making it a registerable felony sex offense. He remarked that there has to be a way to write the law so that it says, "if the act of [harassment in the first degree] occurs in concurrence with [felony assault or felony sexual assault], it is considered a felony," because the harassment is in relation to the assault or sexual assault.

VICE CHAIR LEDOUX inquired, "So you're saying, if there is no kidnapping and no assault and someone is just on a date with the wrong person and he ejaculates on her, that that's not a sex crime?"

CHAIR CLAMAN said that conduct is covered by Amendment 1.

VICE CHAIR LEDOUX said she thought Representative Kopp was saying there is no sex crime unless it is in conjunction with some other assault or some other felony.

CHAIR CLAMAN said part of the challenge is that all these scenarios become very fact-driven. He noted that a scenario involving an individual who ejaculates on the ground and then pushes someone into it would probably be covered by a physical assault crime for the act of pushing the person down. He said a situation in which someone ejaculates onto another person fits the definition of a sex crime. He said a situation in which someone is not ejaculating on a person sounds more like harassment.

[2:54:16 PM](#)

REPRESENTATIVE KOPP agreed with Chair Claman's assertion. He said the goal is to encompass all these situations. He said the current language of the bill would address a number of situations by making certain acts sex crimes. He added that misdemeanor-level harassment, when it occurs in conjunction with felony sexual assault or felony assault, should be charged as a felony.

VICE CHAIR LEDOUX said her interpretation of the language in Amendment 1 is that the perpetrator needs to ejaculate on the victim as opposed to rubbing the victim's hand in it, or something like that.

REPRESENTATIVE KOPP said the Department of Law (DOL) has some discretion. He referenced the totality of circumstances and noted that all sex offenses require a mental state. He opined

that trying to capture every possible instance of "horsing around," could end up "stopping language that could do a lot of good." He said he does not want to "see us get too tight" and assume that DOL is not going to exercise its discretion.

REPRESENTATIVE LEDOUX said that argument would speak against Amendment 1.

REPRESENTATIVE EASTMAN agreed with Representative LeDoux.

CHAIR CLAMAN commented that the line-drawing of the legislature is a serious process. He argued that a scenario in which an individual ejaculates on another person is more egregious than a scenario in which an individual ejaculates in the presence of another person. He opined that the job of the legislature is not to try to address "every single thing on the list," but to address "the situation before us."

[2:58:21 PM](#)

VICE CHAIR LEDOUX addressed Representative Eastman's conceptual amendment and objected to it.

REPRESENTATIVE KOPP requested that Representative Eastman repeat Conceptual Amendment 1 to Amendment 1.

REPRESENTATIVE EASTMAN said his conceptual amendment captures the language in line 3 ["ejaculating on the victim"] and captures the language in line 2 ["causing the victim to come into contact with ejaculate"], but the language in line 2 is only captured when the ejaculation has taken place in the presence of the victim. He reiterated, "When, having ejaculated in the presence of the victim, the perpetrator causes the victim to come into contact with the ejaculate."

REPRESENTATIVE KOPP said the conceptual amendment does not work. He stated that sex offenses are about domination and control. He established a scenario in which a person ejaculates alone in a bed, then runs out of the room to grab the victim and bring the victim into the room to force the victim to have contact with the ejaculate.

REPRESENTATIVE EASTMAN conceded that the conceptual amendment does not capture everything. He withdrew Conceptual Amendment 1 to Amendment 1.

[3:00:11 PM](#)

REPRESENTATIVE LEDOUX maintained her objection to Amendment 1.

A roll call vote was taken. Representatives Shaw, Wool, Stutes, Kopp, and Claman voted in favor of Amendment 1. Representatives Eastman and LeDoux voted against it. Therefore, Amendment 1 was adopted by a vote of 5-2.

[3:00:56 PM](#)

VICE CHAIR LEDOUX returned the gavel to Chair Claman.

CHAIR CLAMAN announced that HB 14 will be held for further review.

[3:02:04 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:02 p.m.