

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

March 4, 2020

1:33 p.m.

MEMBERS PRESENT

Senator John Coghill, Chair
Senator Peter Micciche, Vice Chair
Senator Shelley Hughes
Senator Lora Reinbold
Senator Jesse Kiehl

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 8

"An Act restricting the release of certain records of convictions; amending Rule 37.6, Alaska Rules of Administration; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 191

"An Act relating to trusts and trustees, including trust division, the powers of trustees, delayed gifts to trusts, and community property trusts; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 8

SHORT TITLE: ACCESS TO MARIJUANA CONVICTION RECORDS

SPONSOR(s): SENATOR(s) BEGICH

01/16/19	(S)	PREFILE RELEASED 1/7/19
01/16/19	(S)	READ THE FIRST TIME - REFERRALS
01/16/19	(S)	JUD
01/25/19	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
01/25/19	(S)	Heard & Held
01/25/19	(S)	MINUTE(JUD)
03/04/20	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 191

SHORT TITLE: TRUSTS, TRUSTEES, COMMUNITY PROPERTY

SPONSOR(S): SENATOR(S) COGHILL

02/14/20	(S)	READ THE FIRST TIME - REFERRALS
02/14/20	(S)	JUD
02/26/20	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/26/20	(S)	Heard & Held
02/26/20	(S)	MINUTE(JUD)
02/28/20	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/28/20	(S)	Heard & Held
02/28/20	(S)	MINUTE(JUD)
03/04/20	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

SENATOR TOM BEGICH
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as sponsor of SB 8.

ALEX JORGENSEN, Intern
Senator Tom Begich
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided a sectional analysis on SB 8, version S, on behalf of the sponsor.

AIMEE BUSHNELL, Staff
Senator John Coghill
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Explained amendments to SB 191 on behalf of the sponsor.

JONATHAN BLATTMACHR, Principal
ILS Management, LLC
Long Island, New York

POSITION STATEMENT: Answered questions during the hearing on SB 191.

DAVE SHAFTEL, Attorney
Shaftel Delman, LLC
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on SB 191.

JAMIE DELMAN, Attorney
Shaftel Delman LLC; member
Alaska Trust & Estate Professionals, LLC
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on SB 191.

ABIGAIL O'CONNOR, Attorney
O'Connor Law, LLC; Vice President
Alaska Trust & Estate Professionals
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on SB 191.

KEVIN WALSH, Certified Public Accountant; Co-Owner
Walsh, Kelliher & Sharp
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of SB 191.

ACTION NARRATIVE

[1:33:28 PM](#)

CHAIR JOHN COGHILL called the Senate Judiciary Standing Committee meeting to order at 1:33 p.m. Present at the call to order were Senators Kiehl, Hughes, Reinbold, Micciche and Chair Coghill.

SB 8-ACCESS TO MARIJUANA CONVICTION RECORDS

[1:33:59 PM](#)

CHAIR COGHILL announced that the first order of business would be SENATE BILL NO. 8, "An Act restricting the release of certain records of convictions; amending Rule 37.6, Alaska Rules of Administration; and providing for an effective date."

CHAIR COGHILL said the bill had a hearing last session and public testimony was heard and at that time, but he intended to reopen it to allow several people to testify. He asked the sponsor to present the bill.

[1:34:59 PM](#)

SENATOR TOM BEGICH, Alaska State Legislature, Juneau, Alaska, sponsor of SB 8, introduced himself and his staff.

SENATOR BEGICH read the sponsor statement for SB 8:

Senate Bill 8 would make confidential the records of individuals who have been convicted of minor marijuana crimes, and no other crime. The records would automatically be removed from CourtView. The records would also be removed from some background checks administered by the Department of Public Safety, if requested by the individual.

In 2014, Alaskans voted to legalize the cultivation, sale, and possession of marijuana for those 21 years old or older. Despite this change in the law, some Alaskans remain blocked from employment and housing by previous marijuana possession convictions that would no longer be a crime today.

According to a report prepared by Legislative Research, there were more than 700 Alaskans convicted of low level marijuana crimes between 2007 and 2017. Those convictions can make obtaining housing and gainful employment challenging. Now that voters have legalized marijuana, this legislation would allow those previously convicted to move on with their lives, while ensuring those in the criminal justice field still have access to needed background information.

SB 8 would make confidential. Records removed from CourtView and some records.

SENATOR BEGICH said the concept of SB 8 first emerged when he was in a meeting discussing crime. The director of the Mountain View Library pointed out that a number of people used the library computers to apply for jobs but were unable to submit applications because of the restrictions of the prior marijuana conviction, even if the person had no record and no other crime had been committed. A member of the Russian Jack Community Council also indicated that he experienced difficulty obtaining housing. Since last year's hearing, a number of states that have decriminalized or legalized marijuana have taken action to do something similar to SB 8 or have removed the conviction altogether. This bill just asks that the conviction be shielded from CourtView, he said.

[1:39:01 PM](#)

ALEX JORGENSEN, Intern, Senator Tom Begich, Alaska State Legislature, Juneau, Alaska, reviewed the sectional analysis for SB 8. He read:

Section 1 Describes the legislative intent to reduce barriers to re-entry for those convicted of low-level marijuana possession, which would no longer be considered crimes today

[1:39:56 PM](#)

Section 2: Prohibits the Department of Public Safety, and any designated reporting agency, from disclosing any criminal records associated with possession of less than one ounce of a schedule VIA controlled substance conviction, covering both State Statute and municipal ordinance, if requested. These cases will be protected from disclosure only if marijuana possession is the only crime for which the person was convicted in a particular criminal case. A schedule VIA controlled substance considered to have the lowest degree of danger to users. Marijuana is the only VIA drug.

Section 3: Limit access to Alaska Court System's records of criminal cases involving convictions for possession of less than one ounce of marijuana on Court View.

Section 4: Indirectly amends Alaska Court System Rules of Administration by limiting access to certain criminal records.

He added that this pertains specifically to Rule 37.6.

Section 5: Because Section 4 indirectly amends a court rule, this legislation will require a two-thirds vote as described by the Alaska Constitution.

Section 6: Provides 120 days for this legislation to take effect after bill signing, giving the Courts, as well as affected agencies, time to change their reporting protocols.

MR. JORGENSEN said this would allow the court time to implement these changes and come up with a procedure for individuals requesting those records be hidden.

[1:41:35 PM](#)

SENATOR BEGICH asked his staff to review the changes recommended by the Department of Public Safety and the Alaska Court System. He pointed out that the court system indicated that Sections 4 and 5 were unnecessary, so those sections will be removed in any proposed committee substitute or amendment.

[1:42:25 PM](#)

MR. JORGENSEN reviewed the explanation of changes for SB 8 from Version A to the proposed committee substitute for SB 8, version S [not yet before the committee]. The bill title was modified on page 1, lines 1-2:

- **Page 1, lines 1-2:** Removes reference to Rule 37.6 Alaska Rules of Administration in the title. This is to conform with the removal of section 4 in Version A, the Indirect Court Rule change.
- **Page 1, line 9:** Before “criminal history background”: delete the word “a” and insert “certain types of”

MR. JORGENSEN explained that the background checks will not be included for medical practices but will be required when the Department of Public Safety (DPS) determines that it is necessary that the records be accurately reflected.

MR. JORGENSEN continued to explain the changes:

- **Page 1, lines 9-10:** Delete “make it more likely” and insert “increase the likelihood”
- **Page 1, line 10:** Delete “only” and insert “those”
- **Page 1, line 11:** Amends AS 12.62.160(b)(8) (Release and use of criminal justice information). The new Section 2 of the bill is conforming language to include changes made to new background check policy changed by SB 8.
- **Page 1, line 12:** Delete “Notwithstanding (b)(8) of this section, an agency may not release records of a criminal case” and insert “An agency may not release criminal history record information”
- **Page 2, line 3:** Insert new subclause that reads “(2) was 21 years of age or older at the time of commission of the offence;” and renumber subclauses accordingly
- **Page 2, line 3:** Add the word “criminal” before the word “charges”

MR. JORGENSEN said this language will help to ensure that records will be released if no other criminal charges are involved.

[1:44:21 PM](#)

MR. JORGENSEN continued the sectional analysis:

- **Page 2, lines 6-12:** Delete all material and insert:
Sec. 22.35.040. Records concerning criminal cases for marijuana possession.
The Alaska Court System may not publish on a publicly available Internet website the court records of a criminal case in which the defendant
 - (1) was convicted under AS 11.71.060, or a municipal ordinance with similar elements, for possession of less than one ounce of a schedule VIA controlled substance;
 - (2) was 21 years of age or older at the time of commission of the offense; and
 - (3) was not convicted of any other criminal charges in that case.

MR. JORGENSEN explained that the inserted language was from House Bill 316 introduced during the 30th legislature.

[1:44:41 PM](#)

SENATOR BEGICH added that the Alaska Court System (ACS) recommended the language changes to Sec. 22.35.040. It conforms to a prior law considered by this legislature and the last legislature. The original bill contained language that had the same intent, but was not consistent with current law. He deferred to the ACS to provide more detail.

MR. JORGENSEN continued to read from the document of explanation of changes for SB 8, version A to Version S:

AS 22.35.040 Records concerning criminal cases for marijuana possession. The Alaska Court system may not publish on a publicly available website the court records of a defendant who

(1) was convicted under AS 11.71.060, or a municipal ordinance with similar elements, for possession of less than one ounce of a schedule VIA controlled substance.

(2) was 21 years of age or older at the time of the commission of the offense.

MR. JORGENSEN said this would ensure that the convictions for conduct that is now legal get expunged. However, the records for an individual who is 18 years of age would not be concealed because it is illegal for a minor to possess marijuana less than one ounce. He reiterated that this provision would conceal records for charges that are no longer considered criminal.

CHAIR COGHILL asked if there were any additional proposed changes.

SENATOR BEGICH referred to [page 2] line 12. The proposed change would add "criminal" before "charges" and renumber the paragraph to paragraph (3).

- **Page 2, line 13-23:** Delete all material

He added that Sections 4 and 5 [page 2, lines 13-23] would be deleted.

- **Page 2, line 24:** Change effective date to January 1, 2021

SENATOR BEGICH said Section 6, [page 2, line 24] would change the effective date. He read, "This Act takes effect on January 1, 2021.

[1:47:20 PM](#)

CHAIR COGHILL said his intention was to incorporate these changes into a committee substitute and hear from the Department of Law and the Department of Corrections (DOC) at that time.

[1:47:46 PM](#)

SENATOR HUGHES asked if removing Sections 4 and 5 and changing the effective date would result in a simple majority vote rather than a two-thirds vote.

SENATOR BEGICH answered that he thought that was correct.

[1:50:09 PM](#)

CHAIR COGHILL offered that under the bill the conviction for schedule VIA controlled substances would be on file, but would not appear in CourtView.

CHAIR COGHILL stated that he would hold SB 8 in committee.

SB 191-TRUSTS, TRUSTEES, COMMUNITY PROPERTY

[1:51:02 PM](#)

CHAIR COGHILL announced the consideration of SENATE BILL NO. 191, "An Act relating to trusts and trustees, including trust division, the powers of trustees, delayed gifts to trusts, and community property trusts; and providing for an effective date."

He noted that in response to discussion during the previous hearing, there were amendments for the committee to consider.

[1:53:09 PM](#)

CHAIR COGHILL moved to adopt Amendment 1, work order 31-LS1370\A.1:

31-LS1370\A.1
Bannister
3/2/20

A M E N D M E N T 1

OFFERED IN THE SENATE
TO: SB 191

BY SENATOR COGHILL

Page 6, line 22:
Delete "or a right accrued"

SENATOR MICCICHE objected for discussion purposes.

[1:53:36 PM](#)

AIMEE BUSHNELL, Staff, Senator John Coghill, Alaska State Legislature, Juneau, Alaska, sponsor of SB 191, explained that Amendment 1 will delete language from Section 7, the savings clause. The savings clause states, "Notwithstanding sec. 6(b) of this Act, this Act does not affect an action or proceeding begun before the effective date of sec. 5 of this Act." This is related to appreciation and income of community property. She explained that community property is a way for married couples to own property in certain states. Alaska is different from most states.

She said in Alaska, married couples can elect to have some, or all of their property treated as community property by stating so in a written contract or a trust agreement. This type of ownership in Alaska is not the default manner in which property is held by married couples as it is in most other community property states. If all of the couple's property is owned as community property, then all assets purchased or acquired by a couple during their marriage are owned equally by both spouses. Debts also fall under the umbrella of community property in certain circumstances. Because of the nature of community property, everything that comes from community property such as appreciation and income is usually treated as community property. There are significant income tax benefits associated with community property. She related a scenario to illustrate. Assume a married couple purchased a building for \$100,000 and designated it as community property. Over time, the building appreciated and is worth \$1 million at the time of the husband's death. Since the building is designated as community property,

the widow will receive full fair market value in the building for \$1 million. If she subsequently sells the building for \$1 million, for income tax purposes it would be treated as though she paid \$1 million for the building instead of the actual \$100,000 paid. As a result, the widow would not pay any capital gain taxes. Had the building been held 50/50 as non-community property, the husband's one-half interest basis after adjustment to fair market value would be \$500,000, and the widow's 50 percent would have a \$550,000 basis in the property instead of \$1 million. The widow would have capital gains on \$450,000 due to appreciation. Elimination of capital gains on appreciation at death is the income tax benefit of community property.

MS. BUSHNELL explained that without clarification provided by Amendment 1, in a divorce case a person's right to potentially more than half of the property's appreciation and income will have begun accruing when they set up the community property. The sponsor does not wish to have any confusion on how community property is treated.

[1:56:43 PM](#)

CHAIR COGHILL reiterated that Amendment 1 relates to an accrual on community property.

[1:57:13 PM](#)

SENATOR MICCICHE removed his objection.

There being no further objection, Amendment 1 was adopted.

[1:57:41 PM](#)

CHAIR COGHILL moved to adopt Amendment 2, work order 31-LS1370\A.2.

31-LS1370\A.2
Bannister
3/2/20

A M E N D M E N T 2

OFFERED IN THE SENATE
TO: SB 191

BY SENATOR COGHILL

Page 6, line 26:
Delete "Sections 5 and 8"
Insert "Sections 5, 7, and 8"

SENATOR MICCICHE objected for discussion purposes.

[1:57:55 PM](#)

MS. BUSHNELL explained that Amendment 2 would provide an immediate effective date to Section 7, the savings clause, making it take effect immediately with Section 5, related to community property, and Section 8, providing retroactivity. The goal is to prevent the savings clause from having an effect on any current court proceedings by providing the same effective date as the other sections related to Section 7.

[1:58:25 PM](#)

SENATOR MICCICHE removed his objection.

There being no further objection, Amendment 2 was adopted.

[1:58:44 PM](#)

SENATOR KIEHL moved to adopt Amendment 3, work order 31-LS1370\A.5.

31-LS1370\A.5
Bannister
3/2/20

A M E N D M E N T 3

OFFERED IN THE SENATE
TO: SB 191

BY SENATOR KIEHL

Page 6, following line 5:

Insert a new subsection to read:

"(d) A person that sells to a third party a promise that is treated as a note that becomes a negotiable instrument under (c) of this section shall provide written notice to the buyer that the note was derived from a promise made under this section, that consideration was not provided to the promisor, that the note is not backed by assets or collateral, and that the note is not guaranteed by the trustee or the seller. The notice must be in at least 14 point bold face type. A buyer may void the sale if notice is not provided under this subsection."

CHAIR COGHILL objected for discussion purposes.

SENATOR KIEHL explained that Amendment 3 relates to a concern raised at the last hearing related to the potential abuse related to the "promise of a gift" to a trust which becomes a promissory note in the bill. His initial suggestion was to limit who could purchase the promissory notes to accredited investors and regulated financial institutions, which would guarantee that highly sophisticated investors would buy these promissory notes. He worked with the sponsor's staff and advocates for the bill on this compromise language. Amendment 3 uses a disclosure approach. Someone used the term "caveat emptor" or "buyer beware" but this amendment will ensure that the person buying one of these notes is provided a disclosure about the nature of the promissory note to make an informed decision. Amendment 3 would not limit who could buy or sell promissory notes, but it will provide a "heads up" to potential buyers.

[2:01:03 PM](#)

JONATHAN BLATTMACHR, Principal, ILS Management, LLC, Long Island, New York, said he believes that Mr. Shaftel and Ms. O'Connor worked on the language in Amendment 3 and it is acceptable.

[2:01:49 PM](#)

DAVE SHAFTEL, Attorney, Shaftel Delman, LLC, Anchorage, Alaska, reviewed the language in Amendment 3 and described it as an improvement to the bill.

[2:02:41 PM](#)

SENATOR MICCICHE offered his view that Amendment 3 was not necessary and expressed concern about the language, "that the note is not backed by assets or collateral, and that the note is not guaranteed by the trustee or the seller." He asked what would happen if the promise was backed by assets or collateral.

MR. SHAFTEL acknowledged that was a good point. He suggested that there could be variable language in the disclosure statement and if a [promissory] note was secured, the disclosure could be modified.

CHAIR COGHILL related his understanding that these promissory notes were purposefully not backed.

MR. SHAFTEL deferred to Mr. Delman.

[2:04:28 PM](#)

JAMIE DELMAN, Attorney, Shaftel Delman LLC; member, Alaska Trust & Estate Professionals, LLC, Anchorage, Alaska, responded to

Senator Coghill's question on whether the promissory note is backed. He pointed out that there are two separate transactions. The first transaction is the initial promise to make a gift to the Alaska Gift Trust. The second transaction, which Senator Kiehl raised concerns about, is the potential of the unlikely sale of that negotiable instrument to a third party after the promise was made. Senator Micciche raised the concern that there would not be any restriction on a trustee deciding to back the promissory note with other assets of the trust, in the event of a sale. The second sales transaction is separate from the original gift transaction, he said.

CHAIR COGHILL summarized the explanation.

MR. DELMAN replied the second transaction would be related to the first transaction, but it is not the same transaction.

SENATOR MICCICHE said his point is that the promise of a gift might be secured by any number of methods. This language seems to say the same written notice is required whether or not the promise of a gift is guaranteed by the trustee or the seller. A person may have a reason to make a promise for something that has a set value, and that value may be different in the future due to earnings potential that has a set value that is guaranteed. This language seems to say that none of them will be guaranteed. He offered that all of this would have a low probability of happening, but if Amendment 3 makes someone feel better, there should be a separation between a guaranteed promise and one that is not guaranteed.

[2:07:33 PM](#)

MR. DELMAN agreed the committee could amend Amendment 3 to make it clear that it does not prohibit guaranteeing the [promissory note].

MR. DELMAN suggested the committee could amend Amendment 3, on lines 6-7, to read, "that the note is not backed by assets or collateral, and whether the note is guaranteed by the trustee or the seller." He explained the proposed change, on line 7 to delete "that" and insert "whether" and after "is" to delete "not" before "guaranteed."

[2:09:12 PM](#)

At-ease.

[2:10:15 PM](#)

CHAIR COGHILL reconvened the meeting.

[2:10:28 PM](#)

SENATOR REINBOLD asked for a simple description and the intention of Amendment 3.

SENATOR KIEHL explained that Amendment 3 would provide a notice to consumers who potentially might buy a promissory note [established by the Alaska Trust Gift]. He envisioned this would probably pertain to family members of the person who established the trust. However, the potential exists for someone to use the note or negotiable instrument in unethical ways. The disclosure would ensure that the potential buyer has a "heads up" to take a closer look at the transaction. This approach would not limit who can trade in these notes since doing so could present problems for the trusts.

[2:12:56 PM](#)

CHAIR COGHILL explained that the concept is to make an irrevocable gift to receive estate tax exemptions. The question is if the language in the bill allows a person to do something less than honorable by gifting without notifying potential beneficiaries of the trust. He suggested that was a reasonable concern.

SENATOR REINBOLD asked for the effect if a verbal commitment was made. She asked who the testifiers were and what organizations they represent.

[2:14:43 PM](#)

ABIGAIL O'CONNOR, Attorney, O'Connor Law, LLC; Vice President, Alaska Trust & Estate Professionals, Anchorage, Alaska, stated she has been involved in a group called Alaska Trust and Estate Professionals, a group whose sole interest is helping to improve Alaska's statutes regarding trusts and estates.

She advised that the promise to make a gift has to be in writing and the [negotiable instrument] being sold would be a written promise to a trust. These are safeguards in the bill. A person cannot make a verbal promise under this statute.

[2:16:42 PM](#)

CHAIR COGHILL directed attention to Section 4, which is the Alaska Gift Trust.

CHAIR COGHILL solicited a motion to withdraw Amendment 3 to allow time to craft the sponsor's intent.

[2:17:32 PM](#)

SENATOR KIEHL withdrew Amendment 3.

SENATOR MICCICHE acknowledged the concerns raised. He offered his view that making a buyer beware statement for every promissory note that becomes a negotiable instrument is not reasonable. He said he was willing to work with the sponsor on language, but it had limited value.

CHAIR COGHILL announced that Amendment 3 is withdrawn.

[2:18:40 PM](#)

CHAIR COGHILL moved to adopt Amendment 4, work order 31-LS1370\A.6.

31-LS1370\A.6
Bannister
3/3/20

A M E N D M E N T 4

OFFERED IN THE SENATE
TO: SB 191

BY SENATOR COGHILL

Page 6, following line 5:
Insert a new subsection to read:

"(d) A married person who intends to make a promise under this section shall give the person's spouse 30 days' written notice that the person intends to make the promise. The notice must adequately disclose the terms of the promise, the amount of money to be transferred, the name of the trust to which the money will be transferred, the name and address of the trustee of the trust, and the identity or a description of the beneficiaries of the trust. The person's spouse may waive the notice in writing."

SENATOR MICCICHE objected for discussion purposes.

[2:19:14 PM](#)

MS. BUSHNELL referred to page 6, line 5, and read Amendment 4, which was crafted to address a member's concern. The purpose is to add good practice without adding language that is too restrictive and devalues the note. The goal is to help married couples who intend to make gift trusts to have good recordkeeping, so at the time of the promisor's death, the debt

against the estate will not come as a surprise and negatively impact the surviving spouse or beneficiaries.

[2:20:17 PM](#)

SENATOR REINBOLD moved to adopt an amendment to Amendment 4, on line 8, to delete, "The person's spouse may waive the notice in writing."

CHAIR COGHILL objected for discussion purposes.

[2:21:02 PM](#)

SENATOR HUGHES said she would like to discuss the underlying amendment to better understand the proposed amendment to Amendment 4.

CHAIR COGHILL asked Mr. Delman if any technical legal or practical challenges would arise from Amendment 4.

[2:22:12 PM](#)

MR. DELMAN asked why the committee would not want a spouse to have the ability to waive the notice in writing. For example, if the wife would like to promise to make a gift to a trust and informs her husband and he agrees, the couple may not want to wait 30 days to finalize the gift. He advised members that most spousal rights allow for a written waiver in writing. He questioned why this should be different.

SENATOR REINBOLD expressed concern that a spouse may have access to his or her spouse's email. She asked if the written waiver should have a notary requirement to make sure that the spouse is involved.

[2:23:43 PM](#)

MR. DELMAN asked her to clarify the email example.

SENATOR REINBOLD expressed concern that the language does not say how the notice could be waived, which might create potential loopholes.

MR. DELMAN asked if she would be more comfortable if it was amended to say the person may waive the notice in an acknowledged writing.

SENATOR REINBOLD suggested that it should be notarized.

MR. DELMAN answered that adding notarized would be fine because a waiver would typically be notarized.

CHAIR COGHILL questioned how that would affect the whole amendment.

[2:25:55 PM](#)

SENATOR HUGHES asked whether the promise would be invalid if the notice was not issued.

MR. DELMAN suggested that the committee may wish to amend [Amendment 4] to provide that the promise of a gift is voidable if proper notice has not been provided.

SENATOR HUGHES related a scenario to illustrate similar concerns, such that in a second marriage a husband wants to gift \$10 million in community property to a trust for his children from a prior marriage. She asked if the second wife would need to acknowledge the gift by signing.

[2:28:05 PM](#)

MR. DELMAN asked if her scenario relates to community property being gifted or if it is a promise to make a gift that is not necessarily community property.

CHAIR COGHILL interjected that the amendment affects the promise to make a gift to a trust under the new section of law. If the scenario relates to trusts the committee may wish to clarify how Amendment 4 generally would relate to trusts.

SENATOR HUGHES acknowledged that estates and trusts can get sticky in second marriages, especially when one or both spouses have children from the first marriage. For example, suppose a written notice for the promise of a gift is issued, dated, and signed, but put in a desk. Within 30 days of the issuance, the bequeathing spouse passes away and the surviving spouse states he or she did not get notice. She wondered if requiring notarization would ensure that the surviving spouse is aware of the gift such that both spouses must sign. She expressed concern that the language in Amendment 4, "The person's spouse may waive the notice in writing," could be interpreted to mean the spouse could sign it after his or her spouse dies because she did not receive any written notice.

[2:31:06 PM](#)

CHAIR COGHILL suggested that her questions are related to trusts in general. Amendment 4 relates to a promise of a gift that must be in writing and be signed by the person making the trust. The language being deleted by the amendment to Amendment 4 is

intended to make sure that people affected by the trust will receive notice, especially the person's spouse.

[2:31:33 PM](#)

SENATOR MICCICHE asked if there is a standard legal requirement for the term "written notice."

[2:32:00 PM](#)

MR. DELMAN deferred the question to Ms. O'Connor.

[2:32:24 PM](#)

MS. O'CONNOR agreed that written notice is a formal term. She recalled that AS 13.36.100 covered it, but her colleagues could verify the statute. She reported that written notice for trust proceedings are provided via the U.S. Postal Service, FedEx, and United Parcel Service (UPS).

CHAIR COGHILL said the [amendment to Amendment 4] that is before the committee [would delete the language], "The person's spouse may waive the notice in writing." He asked if that could be gamed, such that a person could be given a written notice that wasn't sent to the proper address, or through duress or misunderstanding the person did not understand the implication of the notice.

MS. O'CONNOR answered that the notice could be gamed by a person committing fraud, just as with any other legal document. She explained that duress and undue influence apply to wills and trusts and are a legal basis to invalidate any estate planning document proven to be procured through fraud, duress, or undue influence. This circumstance would not be any different.

She said requiring the document to be notarized could prevent fraud but undue influence and duress in estate planning is complex and can be a long standing issue in families, so it cannot be prevented in statute. Instead, people must prove undue influence occurred and undo the document.

MS. O'CONNOR explained that the reason for the express language to waive the notice is because it could be burdensome for the family to wait 30 days. She suggested that the waiver could be removed if members are uncomfortable with it, or reduced to perhaps 20 days. She acknowledged that 30 days was an arbitrary number in the first place.

[2:37:39 PM](#)

CHAIR COGHILL suggested that members might need more information.

[2:37:52 PM](#)

SENATOR MICCICHE referred to AS 13.36.100, which is trust law and covers serving a report. He said how it is received is covered in AS 13.06.120, but it does not go beyond written notice to mention signing or anything more elaborate. Thus, the written notice in Amendment 4 seems consistent with other trust law.

[2:38:55 PM](#)

CHAIR COGHILL explained the intent of Amendment 4 is that when a person makes a promise to transfer to a trust under AS 13.36.305, the new Alaska Gift Trust, the spouse would be given written notice, in part, in case of estrangement or tension. However, if none exists, the spouse could waive the notice in writing. He asked the sponsor of the amendment to Amendment 4 if that satisfied her question.

[2:39:37 PM](#)

SENATOR REINBOLD said she didn't have an issue with Amendment 4. Her concern is to ensure that spouses are notified and consent [to the promise of a gift]. She suggested that the entire trust law should be tightened up and have more bookends.

CHAIR COGHILL said adding the language to allow the spouse to waive the notice in writing would provide a means to show the spouse was informed and in agreement. He suggested that taking out the language could create ambiguity.

SENATOR REINBOLD asked if "in writing" could be a text or an email and how one would identify the author. The person's spouse may have access to passwords to his or her accounts. She expressed concern that Amendment 4 might create some loopholes.

[2:42:23 PM](#)

SENATOR MICCICHE said he would be satisfied if the last sentence provided acknowledgement for notification or waiving the notice in writing. He suggested it could read, "The person's spouse must acknowledge notification or waive the notice in writing." That would provide notification either way.

CHAIR COGHILL interjected that there is language in Section 4 on page 5, lines 19-20, which reads, "(2) the promise is in writing, signed by the person, and delivered to the trustee of the trust; ..." He explained that the [grantor/settlor] of the

trust must qualify, promise to make the gift in writing, sign the document, and deliver it the trustee of the trust. He suggested language, "The person's spouse may waive the notice in writing, signed by the person, and delivered to ..." is to ensure that it is actually acknowledged and delivered. He offered to work on the language because he understood the concern that the notice might be glossed over in some way.

[2:44:30 PM](#)

SENATOR HUGHES referred to page 5, line 19, which goes back to the concern she raised earlier about the husband in a second marriage giving \$10 million to children from his first marriage. The husband would sign the promise, but the second spouse would not. She said she heard Senator Reinbold mention consent. She pointed out that receiving notice should not be confused with consent, unless acknowledgement is a term that could be construed as consent. The language in Amendment 4 does not ask the non-bequeathing spouse to consent, just to make the spouse aware that the promise of a gift has been issued.

CHAIR COGHILL suggested the committee review who can make a trust and the reason the person has the authority to do so and identify the beneficiaries of the trust. He directed his staff to work with committee members on language to provide a safeguard for the surviving spouse. He emphasized that a spouse has every right to make a trust under the bill, but it is important to make sure that those affected by it are [notified] because the trust is an irrevocable trust.

[2:46:21 PM](#)

CHAIR COGHILL solicited a motion to withdraw the amendment to Amendment 4. He suggested that the committee could review revised language for Amendment 3 and Amendment 4 at a later meeting.

[2:46:34 PM](#)

SENATOR REINBOLD answered yes.

[The committee treated her response as a motion to withdraw the amendment to Amendment 4.]

[2:46:38 PM](#)

CHAIR COGHILL withdrew Amendment 4.

CHAIR COGHILL remarked that it is important for members to understand the context in which the amendments are made and be sure that the notice requirements are clear.

[2:47:09 PM](#)

SENATOR MICCICHE asked members to consider that the spouse may not have any legal right to the asset if it is not community property. He remarked that it is nice to provide notice, but as the sponsor works on new language for Amendment 4, it is important to be careful not to create a right.

[2:47:41 PM](#)

SENATOR REINBOLD envisioned that a single person could be making a trust for their children, but some beneficiaries might be adversely affected. She suggested that requiring the notice to be notarized would provide an additional safeguard.

[2:49:22 PM](#)

KEVIN WALSH, Certified Public Accountant; Co-Owner, Walsh, Kelliher & Sharp, Fairbanks, Alaska, voiced support for SB 191. All of his clients have Alaskan roots. His firm routinely discusses community property options with their clients, and many hold a significant part of their assets as elected community property. His firm has seen firsthand the benefits that community property options provide to Alaskan families. In addition, the trusts routinely include unique Alaska trust features and if not, his firm recommends the trusts be fixed using Alaska's very modern trust laws. He offered his view that the legislature's prior work in allowing community property and unique Alaska trust provisions has benefited and will continue to benefit members' constituents and his firm's clients, who are Alaskans. SB 191 will improve the tools for Alaskans and others. He commented that he was impressed by the manner of the discussion today and the deference to the comments and concerns of others.

[2:51:45 PM](#)

CHAIR COGHILL stated that committee work allows for a broad latitude of discussion. He said it is important to ask how the [Alaska Gift Trust] works and what can be done to improve it.

[2:52:29 PM](#)

CHAIR COGHILL stated that he would hold SB 191 in committee.

[2:53:06 PM](#)

There being no further business to come before the committee, Chair Coghill adjourned the Senate Judiciary Standing Committee meeting at 2:53 p.m.