

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 6, 2022

1:18 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Liz Snyder, Vice Chair
Representative Harriet Drummond
Representative Jonathan Kreiss-Tomkins

MEMBERS ABSENT

Representative David Eastman
Representative Christopher Kurka
Representative Sarah Vance

COMMITTEE CALENDAR

HOUSE BILL NO. 399

"An Act relating to misconduct involving confidential information; relating to artifacts of the state; and relating to penalties regarding artifacts or historic, prehistoric, or archeological resources of the state."

- HEARD & HELD

PRESENTATION: UNIFORM LAW COMMISSION

- HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 399

SHORT TITLE: STATE HISTORICAL ARTIFACTS; CRIMES

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

03/14/22	(H)	READ THE FIRST TIME - REFERRALS
03/14/22	(H)	JUD, RES
04/01/22	(H)	JUD AT 1:00 PM GRUENBERG 120
04/01/22	(H)	-- MEETING CANCELED --
04/04/22	(H)	JUD AT 1:00 PM GRUENBERG 120
04/04/22	(H)	-- MEETING CANCELED --
04/06/22	(H)	JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

JUDY BITTNER, Chief/State Historical Preservation Officer
Office of History and Archaeology
Division of Parks and Outdoor Recreation
Department of Natural Resources
Anchorage, Alaska

POSITION STATEMENT: Presented HB 399, Version I, on behalf of the sponsor, House Rules by request of the governor.

KACI SCHROEDER, Assistant Attorney General
Criminal Division
Department of Law
Juneau, Alaska

POSITION STATEMENT: Answered questions on HB 399, Version I.

REBECCA POLIZZOTTO, Chair
Alaska Delegation
Uniform Law Commission
Juneau, Alaska

POSITION STATEMENT: Introduced the Alaska Delegation members of the Uniform Law Commission.

ANDY HEMENWAY, Member
Alaska Delegation
Uniform Law Commission
Juneau, Alaska

POSITION STATEMENT: Presented a PowerPoint, titled "An Introduction to the Uniform Law Commission" and answered questions.

DEBORAH BEHR, Member
Alaska Delegation
Uniform Law Commission
Juneau, Alaska

POSITION STATEMENT: Provided information on the Uniform Law Commission and answered questions.

ACTION NARRATIVE

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CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:18 p.m. Representatives Claman, Snyder, and Kreiss-Tomkins were present at the call to order. Representative Drummond arrived as the meeting was in progress.

HB 399-STATE HISTORICAL ARTIFACTS; CRIMES

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CHAIR CLAMAN announced that the first order of business would be HOUSE BILL NO. 399, "An Act relating to misconduct involving confidential information; relating to artifacts of the state; and relating to penalties regarding artifacts or historic, prehistoric, or archeological resources of the state."

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JUDY BITTNER, Chief/State Historical Preservation Officer, Office of History and Archaeology (OHA), Division of Parks and Outdoor Recreation, Department of Natural Resources (DNR), stated that OHA provides statewide historic preservation programs to identify, document, study, evaluate, protect, restore, and exhibit prehistoric, archaeological, and historic sites and buildings. The office works under the state authority of the Alaska Historic Preservation Act and the federal authority of the National Historic Preservation Act. She continued that OHA also serves as the State Historic Preservation Office, which administers federal historic preservation programs, represents the state's interest in protecting heritage resources, and ensures federal agencies are complying with laws and regulations.

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CHAIR CLAMAN requested a motion.

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VICE CHAIR SNYDER moved to adopt the proposed committee substitute (CS) for HB 399, Version 32-GH2541\I, Bullard, 4/4/22, as a working document. There being no objection, Version I was before the committee.

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MS. BITTNER, continuing the introduction, said that under the National Historic Preservation Act, OHA reviews projects, maintains a historic inventory of resources in Alaska, and administers grants and programs. She said that under the Alaska State Preservation Act, OHA staffs the Alaska Historical Commission, issues permits for state lands, maintains an inventory, assists designating sites and monuments, and serves as the Geographic Names Board.

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MS. BITTNER explained that HB 399, [Version I], would enhance protection of artifacts and archaeological sites by increasing criminal penalties for violations of the Alaska Historic Preservation Act.

CHAIR CLAMAN questioned whether adding [the stipulation of] a mental state would create a new crime.

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MS. BITTNER stated that there are criminal penalties today, and the proposed legislation would clarify the penalties by adding a felony. She said the Department of Law (DOL) suggested that adding a mental state would help with prosecution and implementation of penalties concerning intentional acts, such as stealing or vandalizing artifacts.

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CHAIR CLAMAN expressed the understanding that the crimes already exist in statute under Title 41. He said that the proposed legislation would add a mental state to the crimes. He questioned Kaci Schroeder what the mental state would be without the proposed legislation.

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KACI SCHROEDER, Assistant Attorney General, Criminal Division, Department of Law, stated that DOL would default to mental states addressed in Title 11, which are "knowing" as to conduct and "reckless" as to the circumstance. She stated that the inclusion of a mental state in the proposed legislation would clarify and assist practitioners. She expressed hope that the clarification would reduce arguments, "because occasionally we can argue about that stuff when it is outside of Title 11." She stated this would be an attempt to make it clearer.

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CHAIR CLAMAN questioned whether there should be [a clarification of] a mental state, as the standard already exists in the U.S. Supreme Court and Alaska Supreme Court. He considered that even if [the legislation] does not list a mental state, there would have to be a mental state. He questioned whether the common law

argument about the mental state in the existing statute would apply.

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MS. SCHROEDER, in response, expressed the opinion that DOL would likely argue there was some sort of negligence, but DOL would like to avoid arguments which could result in bad case law.

CHAIR CLAMAN suggested that DOL would argue the mental state is negligence for the criminal conduct, and the defense would argue there is a higher mental state. He expressed the understanding between criminal negligence and ordinary negligence. He questioned whether DOL would be arguing the lower mental state, while the defense would be arguing something else.

MS. SCHROEDER responded that there is a possibility that a prosecutor could argue a lower mental state. She said, "I will tell you though, the way these ... crimes are drafted, it is very hard to imagine something that is not intentional or knowing. I think that would be a tough argument for us to win." She explained that this is the reasoning for the inclusion [of a mental state] in [Version I], to attempt to reduce this level of argument, so DOL could focus on the prosecution.

MS. SCHROEDER, in response to a series of follow-up questions, stated that these crimes are not prosecuted frequently. She related that the record shows two referrals. In response to a second question, she stated that in 2015 one case had been referred, and the prosecution of this case is complete, while the other referral has been more recent, and it is unclear if there will be a prosecution. In response to a third question, she specified the cases had been referred to DOL for prosecution, not the federal government.

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CHAIR CLAMAN questioned whether fish and wildlife violations and artifact cases would more often be in federal court than in state court.

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MS. SCHROEDER responded that DOL frequently prosecutes fish and game [violations], but she expressed uncertainty concerning the number of cases which have been referred to the federal government. She stated that DOL retains a prosecutor who

focuses on these crimes, so they are prosecuted with some frequency [in state court].

CHAIR CLAMAN questioned whether most fish and game violations concern how the hunting took place and the manner [the animal] was taken, as opposed to Lacey Act violations on the federal level, which points to the species taken.

MS. SCHROEDER responded in the affirmative.

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CHAIR CLAMAN questioned the distinguishing feature in the proposed legislation which would "bump" the level up from a misdemeanor to a felony.

MS. SCHROEDER responded that [Version I] is currently drafted so Section 1 would be a misdemeanor and Section 2 would be a felony. In response to a follow-up question, she laid out that the distinguishing conduct in Section 1 would be excavating, removing, or destroying the artifact, and in Section 2 it would be transporting, buying, selling, or possessing the artifact.

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REPRESENTATIVE DRUMMOND, per the Alaska Historic Preservation Act, questioned Ms. Bittner whether artifacts in their natural settings and artifacts in museums are both included in the preservation of resources.

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MS. BITTNER responded that both would be correct. She said artifacts are preserved in place at sites, and a permit would be issued to excavate the site. When artifacts are removed with a permit, they are repositied in the Alaska State Museum in Juneau or in the Museum of the North in Fairbanks. She provided that other museums may borrow the artifacts for displays.

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REPRESENTATIVE DRUMMOND, with a follow-up question, expressed the understanding that when an industry would like to use a potentially historic or prehistoric piece of land, the industry would obtain a permit to remove any artifacts from "harm's way." She questioned whether [Version I] would be referring to this type of permit.

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MS. BITTNER responded that she is very familiar with the process, as OHA is involved in thousands of projects, and, in her position, she would be consulted with all federally funded and state public construction projects. She said when there is an adverse effect on a site, there would be a consultation to negotiate a mitigation for the adverse effect. If it is a state site, there would be a programmatic agreement or memorandum agreement to spell out the mitigation and excavation process. If the site cannot be avoided, the data will be recovered, and if it is on state land, the artifacts will either go to the Museum of the North or the Alaska State Museum. If it is found to be on private land and part of the state's heritage, there would be mitigation. She explained the process of determining what would happen to the artifacts, as the type of mitigation can vary.

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REPRESENTATIVE DRUMMOND, with a follow-up question, asked whether this would apply, for example, when land is cleared for electric transmission lines. She questioned whether the same kind of care to investigate the potential for archaeological resources would be taken.

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MS. BITTNER responded in the affirmative.

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VICE CHAIR SNYDER requested a written progression of the legislation from the initial draft to [Version I], including who participated and why the legislation had been instigated. She questioned whether Alaska Native organizations had been consulted.

MS. SCHROEDER responded that the current version of the bill has taken "a while to get to," and DNR would need to be consulted on the progression of the bill.

CHAIR CLAMAN deferred the question to the next hearing on the legislation.

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CHAIR CLAMAN announced that HB 399 was held over.

PRESENTATION: Uniform Law Commission

[1:38:11 PM](#)

CHAIR CLAMAN announced that the final order of business would be a presentation by the Uniform Law Commission.

[1:38:42 PM](#)

REBECCA POLIZZOTTO, Chair, Alaska Delegation, Uniform Law Commission (ULC), thanked the committee for extending the invitation for the presentation. She listed the voting members of the Alaska Delegation of ULC, as follows: Attorney General Treg Taylor, Chief Justice Daniel Winfree, Andy Hemenway, and herself. She listed Megan Wallace as a non-voting ex-officio member, and she listed the three non-voting life members, as follows: Art Peterson, Grant Callow, and Deborah Behr.

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ANDY HEMENWAY, Member, Alaska Delegation, Uniform Law Commission, presented a PowerPoint presentation, titled "An Introduction to the Uniform Law Commission" [hard copy included in the committee packet]. He stated that ULC is a national organization composed of members, who are also called commissioners. The members represent all 50 states, the District of Columbia, and some territories. The mission of ULC is to draft proposed uniform legislation on topics for consideration by the state legislatures. Established for 130 years, he stated that ULC is headquartered in Chicago, Illinois, and funded by the states, private grants, and foundations. He pointed out [on slide 4] that the 350 commissioners are all attorneys. Of these, 40 percent are in private practice. The remaining commissioners are mostly government attorneys, state legislators, or judges. He said there is a "robust group of commissioners with direct legislative experience" within ULC.

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MR. HEMENWAY, moving to [slide 5], indicated that each state determines the manner of appointment of its commissioners. In Alaska, the governor appoints all but one of the voting members. The remaining member is appointed by the Alaska Supreme Court. Moving to [slide 7], he indicated that commissioners serve

without compensation, attend ULC's annual meeting, and meet as a delegation three to four times per year to review the legislative agenda. He continued that individual commissioners serve as members of study and drafting committees, and those who are not state employees work with legislators to help get the uniform acts into legislation.

MR. HEMENWAY demonstrated a flowchart [on slide 8] showing the process of how drafted acts come into being. Ideas for proposed uniform acts would come from individual commissioners, who get their ideas from a variety of sources. An individual commissioner would send a proposal for a uniform act to the ULC Scope and Program Committee, whose job it is to determine whether the proposal fits within ULC guidelines. He explained that this committee would address two concerns: whether the proposal should be uniform among the states, and whether the proposal would be enacted by a substantial number of states. If approved by the ULC Scope and Program Committee, the ULC president appoints a drafting committee. The drafting committee would include a broad range of commissioners, including some with no expertise in the subject matter and others with direct experience. He continued that the committee would also include a liaison from the American Bar Association.

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MR. HEMENWAY said once a draft has been finalized, it is presented to the full commission along with a report which outlines the issues and why the decision was made. The drafted uniform act must be approved by a majority of the states, with each state receiving one vote. If the draft is approved by the full commission, the ULC Style Committee will review the text. Afterward the ULC Legislative Committee will prioritize proposed acts. State delegations will develop their own individual state plans for legislation with ULC providing support. He specified that ULC's unique role is to provide a mechanism for states to take control in the legislative process in areas where federal legislation could be enacted, and, at the same time, help maintain consistency in law at the state level [as seen on slides 9-10]. He stated that before an act is introduced to state legislatures, it should be relatively noncontroversial and nonpartisan, fully thought out, and well drafted. He informed the committee that ULC can provide support from experts and interested parties as legislators consider a uniform act.

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MR. HEMENWAY reviewed the benefits of uniform state laws [as listed on slide 12]. Referencing the current interconnected environment, he said uniform state legislation, with similar rules made in multiple states, can be a benefit to the economy and to the social fabric. Having uniform legislation helps in the planning and the dispute resolution processes. It can help avoid conflicts in applicable law, as well as jurisdictional conflicts. He added that uniform acts can modernize antiquated laws and legal doctrines, bringing "expert solutions" to emerging needs.

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MR. HEMENWAY reviewed subject matters suitable for uniform acts, [on slide 13]. He stated that the Uniform Commercial Code (UCC), which was proposed for legislatures by ULC, is the basic law covering commercial transactions and banks across the country. He pointed out that the formation and organization of businesses is covered by the ULC's Uniform Partnership Act. In reference to family and domestic relations law, he said ULC promulgated the Uniform Child Custody Enforcement and Jurisdiction Act. He said this act covers families who are spread across multiple states and is a "classic example" of the importance of uniform law. He pointed out the Uniform Probate Code is a statewide ULC act which helps coordinate estates and trusts between states.

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MR. HEMENWAY continued that real estate transactions can involve multiple states and would be a subject matter for ULC. He said when there is a lawsuit in one state with a judgement to be enforced in a different state, the Interstate Enforcement of Judgments would apply. He said there are various uniform acts which help with this process. He mentioned that the Mediation and Arbitration Act has been universally adopted and governs administrative procedure.

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MR. HEMENWAY [moving to slide 14] indicated the ULC process is open to the public and involves experts from various interested parties. He said, "There's no backroom deals being cut, there's no partisanship." He continued that the process is to come up with the best solution to very common problems across jurisdictions. He expressed ULC's desire not to disrupt its successful reputation of 130 years. He credited this success to

quality volunteer expertise. He referenced the large amount of information on ULC's website and recommended that, with any interest they may have, committee members should reference the acts listed. He expressed the opinion that ULC can provide a great deal of help crafting legislation which would meet the needs of society today.

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CHAIR CLAMAN expressed the understanding that ULC does not do criminal law.

MR. HEMENWAY responded in the affirmative.

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DEBORAH BEHR, Member, Alaska Delegation, Uniform Law Commission, stated that ULC currently has a study committee on cybercrime. The request was made by the National Sheriffs' Association, as sheriffs had expressed difficulty in keeping up with changes in technology. She explained that the association is interested in civil remedies available, as individuals under suspicion may not be assessable through the criminal system. Each state has tried to set its own penalties for cybercrime, but ULC has been asked for help. She said the study is open to the public and available to interested committee members. Responding to Chair Claman, she confirmed that [ULC's involvement with state legislation in this way] would be an exception to the rule.

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VICE CHAIR SNYDER questioned whether ULC would address consent in sexual assault cases.

MS. BEHR responded that the issue would not likely pass uniformly between all the 50 states, and ULC would probably not take this on.

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MS. BEHR overviewed a handout dated March 12, 2022, [included in the committee packet]. She stated that all states have enacted a form of UCC, which is ULC's gold standard act. She explained that UCC facilitates the selling of products across state lines, and it addresses issues such as faulty products or delinquent payments. She stated ULC created a drafting committee to address new, emerging technologies, such as bitcoin,

cryptocurrency, and nonfungible tokens. She said that currently there is uncertainty as to the legal criteria governing controllable electronic records, and this uncertainty creates commercial risk. Because UCC does not address electronic records, there is a vacuum and people are reluctant to deal with this type of commerce. She said the drafting committee consists of nationwide experts in all areas. She estimated that it will take two years to complete the task.

MS. BEHR stated that during the COVID-19 pandemic the legislature in Alaska passed an amendment to allow the witnesses for wills to participate via videoconferencing, but it has since expired. She suggested that the committee look at the Uniform Electronic Wills Act, as it would allow wills to be done electronically, as opposed to using paper. She said people do not use paper any longer. Everything is electronic, such as the Permanent Fund Dividend application. She argued, as the world makes this change, there could be a major issue with the courts, and it is important for interstate recognition of electronic wills, especially with a travelling public that commonly uses electronics for important legal transactions. Witnesses for wills could be anywhere in the world, and signatures could be made electronically. She said this bill would address the issue, and it is final and ready for review.

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MS. BEHR, touching again on the cybercrime bill, said that the process is just beginning, and the National Sheriffs' Association is interested in seeing a uniform solution in all 50 states.

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CHAIR CLAMAN questioned the status of a potential data privacy bill.

MS. BEHR responded that there is a ULC bill on the subject, and it is available for review on the website.

CHAIR CLAMAN questioned whether the bill has been through the review process and formed to be adopted by legislatures.

MS. BEHR expressed the understanding this would be correct, and, if not, it is in the very final stages.

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CHAIR CLAMAN expressed appreciation for the reminder about electronic wills. He stated that the legislature adopted provisions allowing electronic remote notaries, but it was not a ULC law.

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REPRESENTATIVE DRUMMOND questioned whether a committee bill could correct the ability of a will to be signed by videoconferencing. She speculated that it may be too late in the legislative session and inquired whether people would expect to be able to do this.

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CHAIR CLAMAN explained that this had been added to the electronic notary bill with a time expiration, so it is not permanent. He suggested it could be investigated as the subject of a committee bill. He suggested contacting [the Estate Planning & Probate Law - Alaska Bar] to determine if there is time.

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ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:01 p.m.