1975-76

SENATE JUDICIARY COMMITTEE

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1975

MINUTES

1/23/1975 - 5/21/1975

SENATE JUDICIARY

January 23, 1975

Present: All members of the committee

This meeting was for organizational purposes only. Senator Ziegler computed that among the members, there was 30 years of experience of serving on Judiciary committees.

Meetings will be held Tuesdays and Thursdays at 1:30, with some meetings to be held Sunday afternoons at 1:30.

If any member of the committee has a bill in committee in which he or she is particularly interested, the bill will be brought up. Conversely, if no member expresses interest in a bill, it will not be brought up. Bills will come out of committee if one member signs Do Pass.

Senator Ziegler will be responsible for carrying the bills on the floor the majority of the time.

Since Senator Poland is a member of Finance and the chairman of Resources, she will not be able to attend all meetings and will be excused therefrom.

Good faith motions made by committee members on the floor to request a Judiciary referral for a bill will not meet with disapproval.

The next meeting will held Sunday, January 26th,at 1:30.

Paula Ziegler
Staff Assistant

SENATE JUDICIARY COMMITTEE

January 26, 1975

Present: All members of the committee

SB 28 - consent to marriage

This bill was introduced to correct a legislative oversight made last session when the Revisor's Bill was combined with a bill based on the Equal Rights Amendment to eliminate all sex discrimination in the statues were combined. It resulted that instead of bringing the age of consent for men down to that of women, the age for women was raised to that for men. The court was left with no discretion to give approval to granting a marriage license to anyone under 18, even if they had parental consent. Several hardship cases have been reported where couples had to leave the state to be married.

Senator Ziegler suggested a committee substitute which would put the age of consent at 19 years for everyone, plus providing that with parental consent persons of any age below 19 could be married. The courts are desirous of being granted the discretion to allow a marriage of those under 19 even though the parents do not give their consent. Senator Tillion warned that this provision might be very unpalatable on the basis that objection would be raised to a court telling parents what is good for their children. The committee agreed to eliminate this from the bill. A committee substitute will be drafted providing for the age of consent to be 19 years and for anyone younger than 19, a marriage license would be issued if parental consent is obtained in writing. Provisions in the original bill requiring premarital counseling will be eliminated also.

SB 53 - plaintiff posting bond

In the Small Claims Tort Act it provides that a plaintiff suing the state must post a bond or undertaking in the amount of $250. The purpose of this was to deter frivolous actions. However, it has not had that effect and is really only a waste of time and money and puts the state in a preferred position vis-a-vis other litigants. The court system does not like the bond requirement, and the Attorney General's office has no objections to its being repealed. By repealing the requirement, the state and the person suing the state are put on the same basis as any other litigants. The bill was reported out of committee "Do Pass".

The next meeting will be held on Tuesday, January 28, at 1:30.

Paula Ziegler
Staff Assistant

SENATE JUDICIARY

January 28, 1975

Present: Ziegler, Meland, Miller, Poland
Excused: Tillion

SB 11 - rights of children/artificial insemination

Dr. Donald Freedman of the Dept. of Health and Social Services testified that the department favors the bill. There are cases where genes carried by a male parent are passed on to children he conceives. To avoid this happening, the parents may wish to use artificial insemination where the chances of genetic accident are much less. By stating in the law that the child will be considered a natural child of the parents, however, will eliminate the possibility that a doctor who performs the artificial insemination will not be liable for damages if the child born as a result is defective in any way. In Alaska, the donors are completely anonymous. There are no sperm banks in the state; individual donors are contacted. The safeguards in the bill are that the woman must be married, the doctor must be licensed, and the written consent of both parents must be obtained. "For all purposes" would also include rights of inheritance. It is the opinion of the dept. that the bill should pass. The Director of Vital Statistics indicated that he would have no trouble with the bill since the fact of artificial insemination is not mentioned on a birth certificate. The committee reported the bill Do Pass

Senate Bill 89 - conflicts of interest

This bill only extends the filing deadline for Initiative #2 from February 9th to April 1, 1975. This will give everyone more time, including the Judiciary committee to work on SB 62 which contains several other changes for the Initiative. DO Pass

Senate Bill 44 - negligent use of smoking materials

Senator Ray based this bill on the Juneau city ordinance relating to the same subject matter. It makes a person criminally liable if he starts a fire resulting in harm to others by his negligent use of cigarettes, lighters, etc. In addition, it might help a plaintiff who is injured in such a fire in a civil suit if the defendant has been convicted of this misdemeanor. The bill was reported out Do Pass.

Paula Ziegler
Staff Assistant

SENATE JUDICIARY COMMITTEE
January 30, 1975

Present: Senators Ziegler, Poland, Miller, Meland
Avrum Gross, Art Peterson and Jim Hanley from AG's office
David Walker from Legislative Affairs
Bob Hicks, Exec. Director of the Judicial Council
Marjorie Gorsuch and Janice Gates from League of Women Voters
Rose Palmquist from Common Cause
Excused: Senator Tillion

SB 62 - relating to conflicts of interest of public officials

Senator Ziegler explained that, with the passage of SB 89, time is no longer of the essence in working on this bill and the committee intends to give it careful work and consideration. Attorney General Gross anticipated no problems in SB 89's becoming law.

Art Peterson explained the changes that the bill makes in the initiative. The bill does not deal with every possible question that may arise but tries to cover those that have been most troublesome so far.

Section 1--1. includes specific reference to the list of boards which are to be covered

2. "30 days before" is changed to "10 days after". A public official can become such in a number of ways and will not always know 30 days in advance. The time begins to run when he actually takes office.

3. Members of boards exempted from filing if the bill becomes law will remain exempted even if they held office as of the effective date of the initiative (12-11-74). Those who were on boards still covered on the effective date but who have since resigned or who resign before the new deadline (if SB 89 becomes law) will not have to report.

4. Candidates for Lt. Gov. and Gov. will all file with the Legislative Council whether incumbents or not.

The original initiative does not include deputy commissioners, division heads, director of the Legislative Affairs Agency or the court system director.

Section 2--deletes reference to "members of the household" and changes to specific family members, i.e., "spouse or children living with him." This area caused much discussion. The League feels it should be changed to "dependent children" to cover those cases where the child is not living in the home or is a child by a prior marriage but has assets which should be listed. The Attorney General did not feel that this language would always work but explained that in the 1st six categories of sources of income which had to be listed, there was a limitation to "children living with him." However, for mineral holdings or direct contracts with the state, all children are included, living at home or not.

He explained the theory behind this delineation is based on the two ways in which a public official could encounter a conflict regarding his children. He might either be using his children to profit himself or his emotional relationship with them is such that he puts that above the public good.

Senator Ziegler asked why lawyers were not among those listed as exempt on page two of the bill. Medical doctors, nurses, psychiatrists and psychologists are the only ones listed. Mr. Gross said that at one time they had considered listing all the healing arts but then limited the list only to those where confidentiality was thought to be truly crucial. Attorneys are too much in the political realm to be exempted.

As to the matter of whether law partners who have contracted with the state must be listed under the contracts provision as well as the source of income provisions, Mr. Gross finally concluded that the contract must be listed separately, even though it is not the public official who is directly involved.

The $100 amount has been raised in the bill to $500 as the minimum amount which must be reported.

Section 4--For blind trusts, since there is no way for the public official to know what is in the trust except at the time it is formed, he need only report that information.

Section 5--inserts criminal intent to make it clear that this is a criminal statute.

Section6--the reference to commissions and boards means those in the definition section.

Senator Ziegler indicated that he might propose reducing the fines now in the bill.

Section 7--changes the prohibition section to make it clear that public officials who merely obtain some incidental benefit not contrary to the public interest will be allowed to do so. New language is added basing this on its primary purpose.

Section 8--the word "regulatory" is deleted as being unnecessary and also because there is no precise definition of the word. New language is added so that persons (e.g. CPA's) whose presence on a board is required by statute may represent clients for a fee before other boards. They may not, however, appear before a board of which they are a member.

At this time, Mr. Hicks interjected a problem that the attorney members of the Judicial Council are having with a section of the initiative not covered in the bill relating to a prohibition

against members of boards, etc. or any public official giving "legislative advice", a term which is undefined in the act. This might mean that any attorney member of the Council or any other board cannot give advice to a client on a matter totally unrelated to the board in question but of a legislative nature. He submitted some suggested language restricting this prohibition to registered lobbyists. In addition, those whose presence on boards is required by statute would be exempted.

Senator Ziegler also posed the problem of a board member who is a registered lobbyist but who receives a salary for what he does as opposed to a fee. This matter should be clarified.

Senator Miller inquired as to why the exemptions as to practicing before boards should be limited to those professional people whose presence on the board is required by statute. In other words, why not all board members? The Attorney General explained by giving an example of an attorney member of the Board of Regents who practices before the Workmen's Compensation Board and who could conceivably make a deal with a member of that board who has a child desirous of entering the University of Alaska. In the case of the professional boards, it is not that the danger of trading favors is less, but the public interest is greater in having people to serve on such boards. If it is impossible for members to practice before other boards, thereby depriving them of a substantial portion of their livlihood, there will be no boards. There are still some restrictions. E.g. a CPA serving on the Accountancy board may practice before other boards; a CPA serving on the Board of Regents, where his being a CPA is incidental, may not. The League of Women Voters feels that the bribery section of the initiative takes care of any favor trading and that any board member may practice before any board as long as it is not the one on which he serves.

Section 9--defines public official.

Section 10--adds "public official-elect" as also being required to file. However, those not in office as of the first reporting date need not file.

Senator Ziegler raised a point about the April 15th filing requirement. The Attorney General explained that that is for years following the first report only. Senator Ziegler also suggested that the filing dates be based on the calendar year, making it much more convenient for everyone involved. Mr. Gross agreed that this would not frustrate the purpose of the act.

Section 11--deletes the puzzling reference to certain specific commissions and boards and applies to all commissions and boards.

Section 12--adds several definitions, among them, "child" and "mother or father". "Instrumentality of the state" is any state agency, department, branch, etc. "Source of income" shall include any partnership, professional corporation or corporation of fewer than 10 shareholders.

Senator Miller inquired as to the fairness of this last provision. There will obviously be cases where the reason for forming a small, family corporation are quite valid and not simply to avoid the provisions of the initiative. The Attorney General answered that being able to form a small corporation and listing it alone under "source of income" is an unfair dodge. This way, a small grocery store, for example, will have to list whether incorporated or not. It is thought that raising the limit to $500 will solve the problem of cumbersomeness in having to report all transactions. Senator Miller suggested that a loophole is created by limiting the shareholders to 10 or fewer, but the thinking of the Attorney General's office is that the smaller the corporation, the more direct the contact with the public.

The next meeting on the bill will be February 4th at 1:30.

SB 28 -- consent to marriage

The committee substitute as per the last meeting on this bill was reported out Do Pass.

Criminal Code

A resolution directing the Department of Law to contact experts an d form a blue ribbon panel to study and rewrite the Criminal Code, reporting back to the next session of the 9th Legislature, will be introduced by the committee.

Paula Ziegler
Staff Assistant

SENATE JUDICIARY COMMITTEE

February 4, 1975

Present: Senators Ziegler, Tillion, Miller
Art Peterson, Jim Hanley from the AG's office
David Walker from Legislative Affairs
Rose Palmquist from Common Cause
Janice Gates from League of Women Voters
Allen Compton from Alaska Bar Assoc.

SB 62--conflict of interest

The Attorney General's office had prepared a memo summarizing the suggested amendments from the last meeting and incorporating most of them:

1. Deputy commissioner, division directors, and special assistants to the Governor will be included;

2. "Dependent children" will be added to take care of those not living at home;

3. Reports will be based on the calendar year;

4. Contracts with the state and mineral lease holdings of those in a partnership or of a corporation covered under sources of income must be listed even though the public official is not the direct contractor or leaseholder;

5. "Sole or" is deleted before "primary" referring to purpose of financial gain;

6. Part time board or commission members are not prohibited from giving legislative advice to clients for a fee where the subject matter is not directly related to the board or commission. This will also include practicing before a state board or commission of which he is not a member. This exemption does not extend to full time members.

7. The filing date is moved to April 1, in keeping with Senate Bill 89;

8. The reference to corporations with ten or fewer shareholders is deleted. Senator Ziegler suggested that there should, however, be a definition of "controlling or majority interest."

9. The King Crab Marketing and Control Board is deleted from boards and commissions which must comply.

Mr. Peterson brought up one other area which might be changed, that of accepting a bribe. As a matter of drafting, section 140 of the initiative should be deleted and Title 11 of the statutes, in that

section pertaining to bribery, should be amended to include"public official" as well as a definition of public official based on the initiative. It was not felt that deleting the section would be considered emasculating the initiative because really what is being done is substituting, not deleting.

Senator Ziegler commented that he felt the entire bribery section should be rewritten to make it less broad. There are no definitions of "gratuity", "thing", "valuable consideration", etc.

He also reminded those in attendance that there is a special committee of three members from each body whose purpose it is to work on the conflict of interest initiative also. He suggested coming up with Senate Judiciary's final work product in rough draft form and then turning it over to that committee for more input. This suggestion met with committee approval.

Mt. Compton inquired as to why attorneys were not listed under the special exemption by occupation section, when doctors and nurses were.Mr. Peterson answered that it was not thought to be in the public interest to know who goes to a doctor, but often people who do don't want it known. An attorney's work is of such a nature that the public interest is much more involved.

Senator Miller commented that he could see no reason why doctors should be exempted since it will not be listed as to what disease the person had unless the physician is in a narrowly specialized field.

Senator Tillion stated that he knows from experience that people such as jet pilots must be very wary of having it known they have been to a doctor. On the other hand, he thought that a doctor's non-medical income should be listed and perhaps just list medical income in a lump amount without mentioning names.

Mrs. Palmquist stated that Common Cause supports the League position.

Legislative Affairs will work out a rough draft version of the bill by the end of the week.

<u>SB 80--jury trial/state a party</u>

This bill would provide that there may be a trial by jury in actions to which the state is a party. Currently there is a prohibition against a jury trial in such cases, the trial being by judge only. The Attorney General's office favors the bill, and it was reported our Do Pass.

Paula Ziegler
Staff Assistant

SENATE JUDICIARY COMMITTEE

February 6, 1975

Present: All Members of the Committee
Senator Huber, Senator Croft, Senator Ray
Allen Compton

SB 16--tax deduction

Senator Huber explained the purpose of his bill and the sponsor substitute therefor. Basically, they are the same bill, but the substitute now before the committee leaves the amount of money contributed to a campaign the same as it is now, i.e. $50.00. The substitute was introduced to prevent any misunderstanding, although the sponsor felt that his original bill, which provided for a 100 dollar deduction. Currently, if someone donates to a campaign in an amount of at least $50, he receives a tax credit not to exceed $50. In essence, this becomes a $50 payment on his income tax. However, if this were to be a deduction instead, it would simply be subtracted from that amount of his income on which he is to pay income tax. Senator Huber favors the latter approach, as he does not feel the state treasury should be used to finance political campaigns.

A letter on the bill has been received from the Department of Revenue. It is quite complex, and Senator Tillion will look into the entire matter before the committee takes any action.

SCR 5--study of criminal code

Allen Compton stated that the Board of Governors of the Alaska Bar has gon on record as favoring the concept of having a blue ribbon panel make a complete study of and revision of the criminal code. It is such a complicated subject that every time it has come before the legislature for work, there has simply not been the time available. Everyone seems to agree that it should be revised and also that it will take a special group with no other project than that and sufficient time to accomplish the rewrite. He pointed out that this was the approach taken in Colorado; it worked well there. He personally felt that the resolution was properly written. The committee reported the resolution out "Do Pass".

SB 99--public records

Senator Croft, the bill's sponsor, explained that it had come to his attention that there had been some abuses concerning public officials not releasing what are supposed to be public records. Alaska statutes on the subject are comprehensive in scope but contain no penalty provisions. This bill would provide either injunctive relief or criminal penalties. Although legislators probably have no trouble seeing records, plans, etc. members of the general public might have. He cited an example in Anchorage where the Highway Department was apparently very uncooperative concerning some of their plans. Senators Ziegler and Miller voiced their concern about the inclusion of "conspiracy" in the bill. Senator Croft had no objection to removing this. A committee substitute will be prepared.

Paula Ziegler
Staff Assistant

SENATE JUDICIARY COMMITTEE

February 11, 1975

Present: Senators Ziegler, Poland, Meland, Tillion
David Walker, Jim Hanley, Janice Gates, Allen Compton
Excused: Senator Miller

SB 62--conflicts of interest

Mr. Walker had prepared a memo and work draft of the bill, incorporating the suggestions made to date. There were several instances where more than one suggestion had been made for one section. Since all could not be used, he listed the alternatives separately in his memo. He went through the bill section by section. Points not brought out in prior meetings included:

A query as to whether or not "special assistant to the Governor" needed further definition. It was concluded that it did not, since all staff personnel who would be covered have that title in their job description.

The possibility that the House might suggest having the campaign contributions commission handle the filing of disclosure reports.

Whether income should be reported by category of amount, e.g., "$501 to $1000". Senator Ziegler indicated he did not favor this approach.

The question of a child who lives at home for part of the calendar year and then leaves for the remainder of the time. It was thought that the report would only have to include that portion of the time the child was living at home. In every instance, reference is made to "dependent child or non-dependent child living with him".

The need to decide whether to exempt doctors, psychiatrists, nurses and psychologists.

The need for clarification of the blind trust section. As written, it appears that the trustee would be making reports other than the initial one. This defeats the purpose of the blind trust. This provision will be deleted, and it will also be made clear that the public official himself shall file the first report listing the assets placed in the trust.

Amending the provision allowing any voter to bring a civil suit to include the provision that if the public official prevails, fees and costs will be paid by the person bringing the suit.

Changing the section giving the supreme court original jurisdiction by changing "supreme court" to "state courts".

Deletion of the bribery section and amendment of the bribery statute in the criminal code. Although the language dealing with gratuities, etc. is still somewhat vague, the statute is clear that there must be criminal intent. There is to be a Governor's bill adding district attorneys

and police officers to the bribery statute. Perhaps this could be done in this bill to save time, although Mr. Hanley felt that only police officers need be specified, since district attorneys fell under the category of executive officers, in his opinion.

Whether referring to "hired or appointed" division directors would include any directors who are classified state employees. There is only one person in this category at the present time. The consensus seemed to be that this would not present a problem.

How to treat the boards and commissions which must report, i.e., whether to list them or whether to try to come up with some kind of general definition as to the kind of authority they have, the kind of job they do, if they promulgate regulations, etc. Mr. Hanley favored the former approach, as some boards not covered by the definition should still be required to report.

Senator Ziegler will meet with Mr. Walker at the end of the week to go over the bill once more and put it in committee substitute form. Thereafter, the committee will send it to the two special committees on the subject for their input. It is hoped that by the time the bill reaches the floor, much of the potential problem area will have been eliminated.

The next meeting will be Thursday, February 13th.

Paula Ziegler
Staff Assistant

SENATE JUDICIARY COMMITTEE

Present: All members of the committee, Senators Croft and Ray

Senator Ziegler gave a brief progress report on SB 62. A proposed CS will be available late next week.

SCR 9--extension of deadline for gov. appointments.

Extending the deadline is customarily done as a courtesy to the administration. Senator Tillion added that this year it is especially necessary to go beyond the conflict of interest reporting date. By so doing, it is easier to find people willing to serve on boards, etc. Do Pass.

SB 99--public records

A committee substitute has been drafted removing any reference to conspiracy and using the phrase "aids and abets" instead. The penal provisions were also altered, eliminating any imprisonment until the second conviction at the recommendation of Professor Stanley Anderson. Senator Croft indicated that he was satisfied with the bill as rewritten. DO Pass.

SB 59--publication of names of juvenile offenders

A public hearing will be held on this bill on Tuesday, February 25, at 1:30, in the conference room in the new State Office Building.

SB 16--tax deductions

No member responded to Senator Ziegler's query as to who on the committee wanted to see the bill come out.

SB 140--Commission on Administration of Justice

This bill would increase the commission membership by two to comply with a federal juvenile act of 1974. The two new members would be especially conversant with juvenile matters. A written opinion on the bill will be obtained from the Attorney General before the committee acts.

SB 153--sound recordings

This bill would add to that passed last year relating to the "bootlegging" of tapes. Penalties would now apply to the copying of "any" tape, etc. Legislative Affairs and the Attorney General will be asked for the background information on this legislation.

SB 166--illegal use of telephones

By removing the word, "anonymously", this bill includes under its provisions anyone who makes an obscene or harrassing phone call. Presently, if the caller identifies himself, he is immune from prosecution. Do Pass.

SB 168--monetary values in larcenies

Increasing the monetary dividing line between misdemeanors and felonies from $100 to $250 is thought to be in keeping with the general inflationary trend and more realistic for our times. Do Pass.

SENATE JUDICIARY COMMITTEE

February 25, 1975

Present: All members of the committee
Senator Bill Ray
Mrs. Helen Finney, State League of Women Voters
Susan Gordon and Melissa Middleton, Alaska Youth Advocates
Mrs. Dove Kull, AAUW
David Mayer and Wade Biery, representing themselves
Mrs. Dian Nelson, representing herself
Daniel Hickey, District Attorney

SB 59--publication of the names of juveniles

Senator Ray, the bill's sponsor, was the first to testify. THe intent of the bill is to make public the identity of those persons under the age of 18 who have been, for the second time, convicted of an act which would have been a felony had it been committed by an adult. He submitted certain documents for the record:

1. A letter from Chief Justice Rabinowitz who stated that he was writing as an individual and not for the court system. He did not object to the purpose of the bill and pointed out that secrecy might very well hinder rehabilitation because juveniles might underestimate the seriousness of their delinquency. He did caution that publication might not be appropriate in cases where a juvenile, never having been in any previous trouble, has committed two separate felonies at one time.

2. A letter from Attorney General Avrum Gross who stated he had mixed feelings about the bill. On the one hand, it might cause harm to the individual juvenile by making it difficult for him to break out of the delinquency mold. On the other hand, it might benefit the public, especially those dealing with the juvenile. The bill does limit publication to those who have committed a felony for the second time. He did not take a firm stand, but, on balance, did not object to the bill's passage.

3. The criminal activities report for 1974 for the state of Alaska. There were 4300 convictions, one-third of which involved persons 16 to 18 years of age. There was a marked down-turn in offenses in the 18-year group as opposed to the 16-year olds. 18 is the age where publication of names is now permitted.

4. A list of juvenile offenders representative of the Juneau area. Offenses included arson, robbery, bomb threats, assault with a deadly weapon, drugs, drunkenness, car stealing. One individual has been chared with over 70 offenses during the last five to six years.

Susan Gordon of Alaska Youth Advocates testified in opposition to the bill. She explained that her organization is a private, non-profit one that assits young people. It has operated in Anchorage for two years. She believes that the motivation behind the bill is mostly due to frustration at the lack of effectiveness of the present methods of handling juvenile offenders.

The philosophy of the juvenile court system is that it is confidential. In return for special handling, the offender gives up some rights in court. It is supposed to be a unique court, rehabilitative in nature.

In the four states of which she is aware that have a publication law (Arizona, Montana, Georgia and Florida), both adult and juvenile crime have increased. The National Council on Crime and Delinquency has disproved the success of the "Lobell law" in Montana. Juvenile crime there increased 58%, instead of going down 49% as claimed.

Publishing names is an oversimplified attempt at solving the real problem, which is, why doesn't the system work? She suggested that perhaps the age of majority should be lower than 18, so young people would be responsible for their behavior at an earlier age without destroying the juvenile justice system. Courts now have the power to release names and also to transfer juveniles to adult court. She warned against trying to solve the problem piece-meal.

Melissa Middleton, also of Youth Advocates, looked at the matter from the parents' viewpoint. One theory behind the bill would be to embarrass parents so they would take more responsibility. However, there are very few places where parents can go for help. Besides their friends and their church, there are no other agencies. School counsellors cannot go into the home. Court in-take officers, probation people and social workers already have extremely heavy case loads. Their is also the possibility of increasing child abuse from frustrated parents. There are also parents to whom it would make no difference.

The "negative labelling" effect on the offender is important. It results in isolation, lower tolerance by school officials, difficulty in getting a job, insurance, bonding, or into the armed forces. The juveniles who get in trouble are especially suseptible to strains which they can't handle. Publishing their names would just add to the strains without doing anything to help them cope, so the situation gets worse in a cyclical way.

60 students at East High School in Anchorage had written letters regarding this bill. 35 were against, 12 favored the bill, and the rest were in between. Miss Middleton read excerpts from several of the letters.

Mrs. Kull stated that AAUW did not have a formal position on the bill. However, as a result of their discussions, it was felt that publishing names would not do a great deal for either the parent or the child. Perhaps enforcing the restitution laws would be more effective, making the offender pay for or work out the amount of damage he has caused. Mrs. Kull was a child welfare supervisor in Alaska for 12 years.

The sponsor stated he was convinced that the attempts to protect and rehabilitate juveniles have failed. After a person is given a second chance and still commits a felonious act, his name should be made available to the public for the public's protection.

Mrs. Helen Finney, a director of the State League of Women Voters, testified in opposition to the bill. The League has been studying juvenile needs for the last five years. Mrs. Finney has also been a mother for 22 years. As a general principle, it seems to be true that you get from children what you expect of them. The League agrees there is a problem, but does not feel this bill will do anything to solve it.

1. Concerning the offender, publication will bolster his bad behavior which is engaged in primarily to gain attention in the first place. If he can't gain security and respect legitimately, he will seek them illegitimately and try to rise in the estimation of a bad peer group by being even worse. Publication would reaffirm everyone's negative opinion of the person, including his own of himself.

2. It would also give the offender a reputation that will proceed him everywhere and cut him off from opportunities to improve.

3. Some offenders are motivated by the chance to hurt their parents, and the bill would enable him so to do.

4. Concerning his parents, they obviously already have a problem. Some don't care, and some care, but ineffectually. In addition, all the offender's relatives would be embarrassed This only increases the problem in scope.

6. The bill would take discretion away from the judges. Under present law, the identity of juveniles can be released if it is felt that it would be a good idea, based on the judge's unique knowledge of the facts of the case. This would also change the character of juvenile court into an adult court atmosphere.

7. Most juvenile felonies are against property, not persons. The victim doesn't profit from publication of a name.

8. There is an unequal aspect about the bill, in that publication of a name in Anchorage would not have anywhere near the effect of publication in a smaller town.

9. Publication would give the press access to more sensational-type information.

League would support legislation which would help put the offender back into society. Courts should be held accountable for the way the present system is working, or isn't working. Follow-up should be done to make sure the juvenile is getting the help he needs. This bill would strengthen an already bad situation and would help no one.

David Mayer felt that if a juvenile has committed a felony, his name should be published, but not the names of his parents, since they are not the criminals. Also, they would be more seriously embarrassed, and, therefore, harmed, than their child would. Because of this aspect, he did not favor the bill.

Wade Biery thought that perhaps those in the 16-18 year old bracket should have their names published, but for those below that age, it is a different matter. A younger person, more easily persuaded by his older companions to engage in something wrong, would be affected by the bill in the same way as they are. THis seems out of proportion.

Dian Nelson stated that, as a student of the criminology class at the community college, she had been studying the bill. One aspect of the present system of confidentiality bothered her, in that if she were to hire a young person to work for her, there is no way of finding out if he has a record of criminal activity. The public has to bear the brunt of the offenders' actions. The court knows their identity, and their peers know, but the public is prohibited from knowing. This does not seem fair. The chronic offenders are already on the road to increased criminal activity, and the bill would not cause them to do anything they wouldn't do anyway.

Dan Hickey stated that he was not testifying on behalf of the Department of Law, but he thought his experience in the juvenile area might be of help to the committee. He had two technical comments about the bill.

> 1. Section 2's language did not seem to him to be sufficient to carry out the intent of the title (to amend Rule 26). "If this act is passed" would lead to statuatory construction problems. "Enacted" would be a better word, as would the phrase, "This act has the effect of requiring that. . ."
>
> 2. He also felt that publishing names without mentioning the offense involved would not really accomplish the intent of the bill.

As to the substance of the bill, he felt that it would have a negative impact on the offender by reinforcing his image of himself. It would also be a means of getting attention and would have no deterrent effect.

Parents of juvenile offenders fall into three categories. The vast majority of them wouldn't care if their names were published or not. In most cases, the delinquent's problems stem from his home life with parents who are never there, alcoholics, and who have no control over their children. A second group of parents seem to sincerely try to do the best they can for their children. Publishing their names would cause them much anguish and make it even more difficult for them to deal with the child. It would polarize the situation even further. For the third group, who don't make any significant effort to deal with their children but who would be embarrassed, the bill might have some effect.

Mr. Hickey did not think the bill would provide the public with the information it is seeking. A "one-shot" item in the paper will be read by a few people and probably forgotten six months later. It might serve to educate parents as to the activities of their children's friends. As a side effect of this, it will further alienate the problem child by removing him from whatever good peer group pressure he may have been subjected to.

The bill, in a large sense, goes to the heart of the juvenile justice system in Alaska which assumes that children, unless the state shows to the court that the child is unamenable to treatment as a child, are not entirely responsible for their actions in the way that adults are. This may or may not be a valid assumption, but it is the assumption under which we operate. This bill flies in the face of that assumption. It is a small step from this to handling the juvenile completely as if he were an adult, with finger-printing, developing a rap sheet, etc.

Mr. Hickey pointed out that presently names will be released to the victims of juvenile crimes as the court sees fit. He knows of no instance where the court failed to release the name to an injured property owner.

In response to a question from Senator Tillion, Mr. Hickey said that, depending on the type of job involved and its environment, employers could obtain information about potential employees from the court, if the court deemed that the information should be released.

Mr. Hickey agreed that there are serious problems with the juvenile justice system in the state. Too many delinquents are institutionalized, out of all proportion. For example, there are over 200 inmates at McLaughlin Youth Institute. For all of New York state, there are only 850 institutionalized juveniles. In order to admit a juvenile, McLaughlin has to let another one out, perhaps before he is ready.

Anchorage and Fairbanks have court in-take officers who make the decision as to whether to charge a juvenile or not. Mr. Hickey did not feel it is at all appropriate to have the court be both the prosecutor and the adjudicator. Also, many of the in-take officers also work with the youth after sentencing. This doubling up of functions is largely a result of insufficient resources and heavy case loads. The juvenile case load in Juneau is equal to the adult case load.

Another problem is that the juvenile system has very little flexibility.

Mr. Hickey stated that the above and foregoing are the problems which ought to be addressed and that the bill before the committee would only be a "cop-out", sort of a token legislative gesture which would do no good at all.

Senator Ziegler read into the record the names of those people who have communicated with the committee and whether they were for or against the bill:

Walter Carpeneti Asst. Public Defender		Against
Judge Harold Butcher		Against
H. Richard Carlson(Auke Bay)		For
Harold M. Brown, atty. Former DA		Against
John Silko Alaska Legal Services		Against
Office of Child Advocacy		Against
Division of Corrections		Against
Judge Roger DuBrock		Against
Mrs. Nell Parker Mrs. Bernice Parker Mr. Glen Rarker Mr. and Mrs. Lee Lewis Mr. and Mrs. Jerry Curtis	All from Juneau	All for
Mr. Wm. Walkotten (Juneau)		For
Tom Cunningham (Auke Bay)		For
Auke Bay Fire Dept.		For
Judge Thomas Shulz		Against

He commented that most of the sentiment for the bill seems to exist in the Juneau area. If other areas of the state have an interest, they have not communicated with the committee.

Senator Ray also furnished the committee with a telegram in support of the bill from Superior Court Judges Moody, Buckalew, Burke, Kalamarides and Occhipinti.

A petition containing 826 signatures of Juneau residents was also received by the committee.in support of the bill.

No action on the bill was taken.

Paula Ziegler
Staff Assistant

SENATE JUDICIARY COMMITTEE

February 27, 1975

Present: All members of the committee
Attorney General, Avrum Gross
Commissioner of Public Safety, Richard Burton

Confirmation

Inquiries put to nominees Gross, after he had outlined his legal background and his qualifications, were answered to the satisfaction of the members.

He was followed by Mr. Burton.

Both gentlemen were found to be thoroughly qualified and there were no votes to the opposition of the appointment of either.

Paula Ziegler
Staff Assistant

SENATE JUDICIARY COMMITTEE

March 2, 1975

Present: Senators Ziegler, Poland, Tillion, Miller
Excused: Senator Meland

SCR's 15, 17 and 19--relating to rape and sexual offenses

All three resolutions were reported out "Do Pass." SCR's 17 and 19 had the added recommendation that they be referred to Finance because they call for the establishment of special units and an additional training program respectively which would involve funding.

SB 59--publication of the names of juveniles

Senator Ray has suggested an amendment which would call for the mandatory publication of names unless the court, for good cause shown, determines that the names are to be withheld. This is a reversal in procedure of the present method, but the end result would be the same. Discretion is still left to the judge.

Some technical changes must also be made: changing the title to conform to what the effect of the bill would be, i.e., "changing" the court rule rather than "amending" it; clearly spelling out that the juvenile must actually be convicted of the offense; changing the language "if this bill is passed" to wording referring to enactment.

A committee substitute will be prepared.

SB 140--Commission on Administration of Justice

This bill enlarges the membership of the commission to include people related to the juvenile justice system. The Attorney General favors the bill because it would remove any doubt about whether or not LEAA funding would be jeopardized by failure to have these new members. An amendment was suggested by his office, however. Because the population base in Alaska is not broad, it was felt that restricting the new members to those "directly related" to juvenile matters.* This was eliminated and changed to simply "related." The committee adoped the amendment.

Senator Tillion suggested that the commissioner of Health and Social Services be replaced with the director of the Division of Corrections. He will check on this with the Attorney General and perhaps offer an amendment in his name when the bill comes to the floor.

"Do Pass" with amendment.

SB 148--smoking in public places

Senator Miller, sponsor of the bill, had prepared a committee substitute. As he explained, he combined the features of his original bill and the House bill over which there seemed to be no disagreement. Waiting rooms were confined to those of practitioners of purely the healing arts, where smoking might aggravate the conditions of already physically ill people.

*was not practical

Psychologists, psychiatrists, etc. were eliminated. Also deleted was any reference to public meetings, public buildings, places of entertainment, bowling alleys, state office buildings. Under this new bill, the limitations concern only those places where smoking really could be a bother. In any of the restricted places, however, if a separate smoking section can be provided, smoking will be legal if confined to that section. The penal provisions were standardized so that failure to post a no smoking sign is treated the same as smoking in an illegal area. The department of Health and Social Services was taken out of the bill.

Senator Miller had also drafted a letter of intent to be signed by himself, as the author of the original bill, and Senator Ziegler, as committee chairman explaining that if municipalities wish to further limit smoking, they are free so to do.

Senator Poland objected to the penalty section and suggested that it should be handled in the same manner as traffic tickets, i.e., the bail bond route where the offender simply mails his fine to the court. She did not want to see all the police officers busy with enforcing a smoking law when they had more important work to do. The committee adopted this approach. Also, on page 2, line 11, the words "upon conviction" will be inserted. With these changes, the committee substitute was reported out "Do Pass".

Confirmation

After listening to written resumes from each nominee, the committee approved the following appointees for confirmation:

Dorothy Larsen	Human Rights Commission
Robert Moss	Judicial Council
Steven Hotch	Parole Board
William Sheffield	Parole Board
Thomas Carey	Parole Board

SB 182--driving while under the influence

Due to a recent Supreme Court decision, the offense of "drunk along a highway" no longer exists. Police officers can only arrest for drunk driving someone who has been seen by the officer to have been driving, and not someone, obviously intoxicated, who is staggering along the road after an accident involving his vehicle. This bill would allow an arrest in such a situation if the officer has probable cause to believe that the subject was driving while intoxicated. The Attorney General has suggested adding a provision allowing for arrest without a warrant under the same circumstances and including borough and city ordinances concerning DWI also. The committee approved a committee substitute with these changes.

SB 210--relating to elections

It is Senator Tillion's intent to provide another alternative for the voters whereby they can, in effect, vote "No" for either candidate for state elective office. He did feel that the bill needs more work, especially in the special election section and agreed with Senator Miller that a rejection vote of at least 51% would be necessary before such election would be held. Districts would need to be numbered, as the bill would not work in a multi-member district. Candidates on the first ballot would be precluded from running in the run-off.

Senator Miller stated he thought the bill was a novel approach, but cautioned that run-off elections traditionally seem to mean a much lower voter turn-out. Such has been the case under the municipal code.

Not pertaining to this bill, but on the same general subject of elections, Senator Ziegler wondered if the system could be changed so that a candidate running as an independent could be prevented from getting a "free ride" through the primary into the general. It was not felt that this would be possible, even though the present system is unfair to the candidate running with a party affiliation.

Senator Ziegler also wanted the committee to know that the ACLU in Alaska is on record as opposing SB 166 (illegal use of telephones) as being an infringement on freedom of speech. This bill was reported out of committee several days ago.

Paula Ziegler
Staff Assistant

SENATE JUDICIARY COMMITTEE
March 9, 1975

Present: All members of the committee

CSSB 59--publication of juvenile's names

This bill has been changed to provide that names will be released unless the court, for good cause shown, in certain cases, determines that the name should not be released. The sponsor is satisfied with this compromise. All references to the media have been deleted; just the word "publication" is used. Senators Meland and Tillion signed "Do Pass". All others signed without recommendation.

SB 199--reporting of gun and knife wounds

A letter supporting this bill from the Alaska Peace Officers Association was read. Senator Miller and Senator Ziegler pointed our that there might be invasion of privacy and doctor-patient relationship questions involved. Also, what about cases where knife wounds are accidentally self-inflicted? This should not necessarily appear in a police report. No committee member urged the reporting out of this bill. No action was taken.

SB 167--false reports to peace officers

The Alaska Peace officers Association had also written in support of this bill. Their main point is that a great amount of man hours are wasted investigating reports which are fabricated intentionally. Senator Tillion pointed out that bearing false witness against a person could be extremely harmful to that person. Senator Miller suggested preparing a committee substitute eliminating section (b) of the bill dealing with wrongfully charging an innocent person. This would limit the bill to making false reports of alleged criminal offenses to peace officers.

SB 165--criminal trespass

This bill adds imprisonment as a penalty for criminal trespass. The Supreme Court has struck down provisions for commitment for default. The bill simply provides for possible commitment before, or instead of, a default situation. "Do Pass".

SB 221--public administrators

This bill was requested by the court system and simply provides that the public administrator shall be appointed by the superior court judge rather than the district court judge. "Do Pass"

HCR 5am--driving license classifications

Public Safety has promulgated regulations, and the legislature must ratify them by law. "Do Pass"

HB 157--unauthorized entry or occupancy

This is an administration bill which would add "motor vehicle" to those kinds of property already on the books. It is to aid law enforcement in cases where neither the car nor any property from it has been stolen yet, but a person is in the prior stages of doing either. The joyriding statute and the larceny statute cannot be used, because those crimes have not yet been committed. This would be a misdemeanor only. "Do Pass."

SB 232--relating to judges

It was thought by the committee that this bill is really based upon a possible judicial redistricting, which legislation has also been introduced. No action was taken at this time.

SB 62--conflict of interest

Senator Miller asked for a status report on this bill, the committee substitute for which has been circulated among the members of the special committees in the Senate and House on this subject. Senator Ziegler has asked that their opinions be received no later than March 15th. Judiciary will report the bill out on the 17th.

Paula Ziegler
Staff Assistant

SENATE JUDICIARY COMMITTEE

Present: Senators Ziegler, Tillion, Meland, Miller; Stu Hall
Excused: Poland

SB 23--Violent Crimes Compensation Board

A committee substitue has been proposed by the Board for Senator Huber's original bill. Stu Hall explained the changes made.

1. The bill includes an attorney member of the three man board. Currently a physician is also required.

2. The present law indicates that attorneys'fees may not be more than 15% of the award and have to be paid out of the award. The new bill changes this in that fees are to be paid in addition to the award but they may not exceed $2500.

3. Concerning recovery from collateral sources, the bill grants the Board discretion as to whether the balance between costs and whatever benefits are received from insurance companies should be picked up by the state. It is feared that people with insurance may receive windfalls, but it is also not fair to penalize a person because he was prudent to have insurance.

4. The $500 maximum amount for emergency compensation was felt to be inadequate and was raised to $1500.

5. Also, the $10,000 limit for regular compensation was felt to be too low and has been raised to $25,000. There will also be $15,000 made available for the victim's dependents, to be pro-rated according to need. Again, the Board is given more discretion.

6. Hospitals will be required to post notices in prominent places indicating that this service is available for those wishing to appear before the Board and avail themselves of it. Law enforcement agencies will have application forms; physicians, hospitals, etc. will make information as to how to obtain the forms available.

Senator Tillion objected to the automatic presence of an attorney on the Board and may attempt to amend the bill individually.

Senator Miller suggested that the reference on page 4, line 26 referring to standards to be set by the Board for the Department of Public Safety would be better off deleted, making the bill more salable on the floor. This will be done.

Senator tillion signed without recommendation; all others, "Do Pass".

Paula Ziegler
Staff Assistant

SENATE JUDICIARY COMMITTEE

March 13, 1975

Present: Ziegler, Meland, Tillion, Miller
Excused: Poland

HB 90--adultery and fornication

This bill would repeal the criminal sanctions for adultery and fornication. "Do Pass".

SB 249 and 256--re-examination of drivers

SB 249 raises the age of complete driver retesting from 70 to 80. SB 256 maintins the age at 70 but eliminates the written test, keeping eye and road tests. Senator Tillion pointed out that the percentage of accidents caused by elderly drivers was very small compared to that caused by young drivers. He felt that it was discriminatory to require more testing simply on the basis of age. Changing the age to 80 would only postpone the discrimination; changing the nature of the test would be the solution. By virtue of already having a license, it is assumed the driver knows how to read highway signs and the rules of the road. He did admit that there might be a loophole as far as senility is concerned. "Do Pass". Senator Tillion will carry the bill.

SJR 24--exemption of spouses from federal Hatch Act.

Senator Tillion signed "Do Not Pass"; all others "Do Pass". Senator Bradley will be responsible for carrying his bill.

SB 258--acting district court judges

The Supreme Court requested this bill. It would add to the qualifications of an acting district court judge that he be a state resident for one year and be licensed to practice law. Senator Meland stated that the district court judge in Sitka had been gone for three months and that his replacement was not a lawyer, a situation which many objected to, including himself. Senator Miller pointed out, however, that these restrictions might eliminate some good people from serving, e.g. Nora Guinn in Bethel. The committee will request more information in writing from the Court as to why the bill is needed.

Paula Ziegler
Staff Assistant

SENATE JUDICIARY COMMITTEE

Present: Senators Ziegler, Meland, Miller; David Walker
Excused: Senators Poland and Tillion

SB 62--conflicts of interest

Mr. Walker of Legislative Affairs presented the committee with the final draft of the committee substitute and explained any new changes:

1. Elected municipal officials have been brought under the provisions of the act.

2. Assistants to the Governor are included, and a definition of that position is defined.

3. The definition of "public official" is expanded to include all positions added by the committee, e.g. division directors.

4. The original bill provided that medical practitioners had to disclose the total amount their practice earned for the year, but no names of patients unless they were corporate entities. THis has been changed, at the suggestion of the AG's office, to allowing the public official to state only that he practices medicine and has rendered medical services during the year. Senator Miller opposes this section.

5. The amount of the fines have been reduced from $1000 to $500.

6. Costs and fees will be awarded to a successful defendant.

7. Definition of "source of income" was expanded to cover cases such as that of an insurance agent so that both his client and the company who pays him a commission are listed.

8. At the request of the AG's office, "police officer" has been changed to "peace officer" in the bribery section.

The penalty for a local official failing to comply is that his election will not be certified.

Two sections are repealed: that in the initiative dealing with bribery (the bribery section in the criminal statutes has been substituted) and the redundant and confusing section dealing with reporting blind trusts. The blind trust section remains in the bill, but in a clarified form.

Senator Ziegler explained that, although both special committees on disclosure had been copied with the new bill and asked for an opinion, they did not respond within the allocated time. Representative Parker did indicate that he has a substitute bill and that the remaining work will be done in free conference.

"Do Pass".

Paula Ziegler

SENATE JUDICIARY COMMITTEE

March 20, 1975

Present: Senators Ziegler, Meland,Tillion; Charles Smith, Dennis Robertson
Excused: Senators Poland and Miller

SB 266--transferring motor vehicle division from Revenue to Public Safety

Mr. Smith, director of traffic safety within the Dept. of Public Safety, stated that the purpose of the bill was consolidation. Many motor vehicle related functions are already performed by his department. His department and the Dept. of Revenue both favor the bill, but he pointed out that it will be necessary to have a staff to perform the added functions. The bill has a further referral to Finance, and he submitted a fiscal note to accompany the bill. It is the department's plan to borrow experts from other states to set up an efficient administrative system for licensing, etc. rather than hiring a consultant. He forsaw a considerable savings in cost, space allocation and time. The bill is an outgrowth of the task force on transportation appointed by the Governor.

Mr. Robertson, legal advisor to the department, stated that a new Title 28 is being drafted, and one central licensing agency is part of that revision. This would be more convenient for the public. Originally, the bill under discussion placed all motor vehicle licensing functions in the Dept. of Revenue, but the commissioner of that department felt that Public Safety was better suited. Revenue has no regulatory enforcement personnel, while Public Safety does.

Senator Ziegler indicated that the bill would undoubtedly receive favorable action from the committee. No action was taken at this time.

SB 256--driver's re-examination

This bill of Senator Tillion's has already been discussed by the committee. Mr. Robertson stated that the department did not wish to discriminate against older drivers, but that federal standards require the periodic re-examination of drivers. He did not feel, however, that 256 would violate any of the federal regulations. The department does not object to the bill.

The bill was reported out "Do Pass".

Paula Ziegler

SENATE JUDICIARY COMMITTEE
March 21, 1975

Present: Senators Ziegler, Meland, Miller, Tillion, Kerttula, Croft; Mr. David Steuber; Mrs. Ann Carpeneti; Mr. Fred Boness
Excused: Senator Poland

CSSSSB 5 - anti-trust

Senator Ziegler introduced Mr. Steuber who is from the San Francisco law firm of Pillsbury, Madison and Sutro. He is a Yale Law School graduate and spent two and one-half years with the anti-trust division of the United States Justice Dept. in Washington working with grand juries.

He began by recommending to the committee that some kind of anti-trust legislation be adopted in Alaska. Such a law would be useful because there are certain areas of state and local economic activity which are beyond the reach of federal laws. The real question is what kind of anti-trust law?

Mr. Steuber felt that the proper scope of state regulation is reflected in the Uniform Anti-Trust Act and gave a brief history of the act. It had its genesis in the 1960's with a special American Bar Association committee. Their report and proposed act was approved by the ABA and sent to the Uniform Commissioners who have drafted an act closely related to the ABA proposal. It is based on Sections 1 and 2 of the Sherman Act, dealing with combinations in restraint of trade and monopolies. (Sections .010 and .020 of SB 5). Mr. Steuber felt that these two sections provide the proper basis for state legislation and suggested that state courts would rely heavily on federal precedent in these areas dating back to 1890 when the Sherman Act was enacted. He did recommend one change in Section .020 of the Senate Bill under consideration, dealing with monopolies. The Uniform Act provides that there must be predatory intent before the defendant can be prosecuted. Merely holding a monopoly is not unlawful if there is no predatory intent. Mr. Steuber pointed out that, especially at the local level, it is not uncommon to find "accidental" monopolies. Holders of such monopolies should not be subject to prosecution, as this would be an unjust burden on small businesses in the state.

He recommended that Sections .030, .040 and .050 of the Senate Bill should be dropped from the bill. They are taken from the Clayton Act, and Mr. Steuber went on to explain the difference between the Sherman and Clayton Acts. The former deals with present actions; the latter deals with probable results of actions and requires prediction in the future, involving much more complex issues of analysis. He did not feel it was appropriate to bring this complexity into the picture when dealing with small markets such as exist in Alaska. It is not the same thing as when dealing with the national steel or automobile industry. He did not feel expanding the scope of the law to this extent would be a wise use of limited state resources. In addition, the major impact of a state anti-trust law will be at the local level. Any larger businesses engaged in interstate commerce are already regulated by the Clayton Act at the federal level. The Sherman Act deals with per se or "hard core" violations, e.g. price fixing, market division

agreements, restrictions on output. Only the violation must be proved, and there is no need to establish the probability of future impact. The Clayton provisions, however, are for smaller restraints, e.g., mergers, and in Mr. Steuber's opinion, this was too tenuous an area for a state anti-trust law. He felt it would tend to create uncertainty in economic relationships at the local level and would also burden state courts with unnecessary cases. The Sherman Act was passed in 1890, with the Clayton Act following in 1914. The state should follow the same pattern, adopting the Sherman provisions first, then waiting to see if more is needed. These more subtle provisions can always be added at a later time. He did not personally feel that they would be needed, but it would always be an option the legislature would have.

After these general comments, Mr. Steuber referred specifically to the provisions of CSSSSB 5:

1. Treble damages are mandatorily awarded in a private action. He felt this was unduly harsh for state legislation because we are dealing with small firms which could be severely damaged and perhaps put completely out of business. He pointed out that there might be a reverse effect in minor cases because a jury, reluctant to fine a defendant so heavily, would fail to find a violation. Treble damages are appropriate at the federal level dealing with price fixing or group boycotts, but not at the state level;

2. The state, under the committee substitute, is also entitled to treble damages in a successful action. This provision is not in the federal law, where only single damages are awarded. The purpose of the treble damage provision for private actions is to stimulate private enforcement of the acts. Mr. Steuber did not feel this was relevant at the state level and referred the committee to Section 8 of the Uniform Act;

3. A person injured because he has refused to go along with some activity which would have constituted a violation under the act may bring an action. This provision is vague. The intent is probably to get at coercion, but it might lead to cases where damages would be very hypothetical and theoretical. Coercion is already covered under federal law;

4. Contracts containing provisions which constitute violations are voidable. Federal law is still developing on this point, but a general rule is that the court will <u>not</u> view the contract as voidable just because part of it is in restraint. They will not enforce the part in violation, but, in many situations, the contract is still enforceable. Mr. Steuber felt that state law should follow federal law in this respect and develop the law as the cases emerge. There is no need for a catch-all such as this. In addition, the injured party should be awarded only damages. Under this provision, he would conceivably be able to keep the goods, for example, without having to pay for them. This has no relationship to his damages under the act and should be dropped from the bill;

5. In a successful action brought by the state, the court can order restored any goods or property lost by a private party as a result of the violation. Mr. Stueber felt this would be very difficult to apply. Under current law, even when a violation is proved, damages must be proved separately. In addition, a judgment in favor of the state can be used by a private party in his own action. There is no need to complicate things by issuing additional orders in cases brought by the Attorney General; and

6. Mr. Stueber recommended inserting language to provide a standard upon which the Attorney General could begin an investigation and demand documentary evidence. This would be protection for the general public. Most Attorneys General do not act until they believe there has been a violation but, as a precaution, it would be wise to spell this out in the bill. (Section 6 of the Uniform Act.)

Senator Miller asked if the Senate Bill, since it does not mention predatory intent, makes all monopolies illegal per se. Mr. Steuber stated that if federal precedent is followed, he did not think that state courts would interpret the bill that strictly. However he still felt that this should be spelled out in the bill (the intent). IBM and the local barbershop are not on the same scale. Having a monopoly and monopolizing are two different things.

Mrs. Carpeneti asked if the Uniform Act, by not providing mandatory treble damages, was based on the assumption that the deterrent effect of such damages had been determined to be ineffective. Mr. Steuber put the matter in terms of conflicting concerns. The deterrent effect is unquestionably greater, but so is the impact on the small businessman.

Mrs. Carpeneti thought that perhaps the jury would not be aware that treble damages were mandatory and so would not consider this when determining if there had been a conviction. Also, if the state would not be entitled to treble damages, would there be a forum shopping problem, since one would be desirous of taking the case to federal court instead, where treble damages are available, at least for private litigants? If interstate commerce is involved, federal courts would be available. Mr. Steuber was not sure this would be a problem, since one can go to federal court now in interstate cases There is a great benefit in having flexibility in local situations where forum shopping is not available.

Mr. Boness, of the Attorney General's office, asked about the situation where one business is interstate and the other only intrastate. Could there not be disparate treatment, because of the forums and damages available, even between two equally small businesses? Mr. Steuber agreed that this could happen, but did not think this possibility outweighed the desirability of having flexibility. Businesses of the same size would tend to be comparable in the scope of their activity, i.e. if one were involved in interstate commerce, the other probably would be also. The situation mentioned above would be rare.

Mr. Boness also pointed out that the state can bring an action under federal law, where treble damages might be awarded, and hence might choose that route over its own law. Mr. Steuber agreed that this could happen.

Mr. Steuber categorized violations as being of two types: 1.) per se, and 2.) where the rule of reason should be applied to determine if harm results. Damages should be awarded accordingly.

Senator Ziegler asked if the language exempting native land claims corporations were adequate to provide an exemption. Mr. Stueber replied that felt the language was adequate but pointed out that it was very narrowly drafted and refers only to activities "expressly required" by the Secretary of the Interior. He wondered about those activites which are permitted but not required. Mrs. Carpeneti explained that the Commerce committee had wanted the language to be narrow. Mr. Steuber indicated he felt that if the Secretary of the Interior had permitted a merger, for example, the merger should be excluded from the act. There might be a federal supremacy question in this regard.

Senator Ziegler referred to banks and bank holding companies which are already heavily regulated by the federal government and the state Department of Commerce. Language has been inserted in the bill to exempt them, and he wondered if this language effectively did that. Mr. Steuber pointed out that the provision in question exempted activities required or permitted by the regulatory agency, if the agency had given due consideration to the anti-competitive aspects of a given activity. He felt this might cause confusion as it left open for question at a later time whether or not "due consideration" had been given.

Senator Ziegler asked if regulated and certificated utilities had been exempted effectively from the bill. Mr. Stueber suggested it might be preferable to specifically list what is to be exempted if more certainty is desired. The Uniform Act assumes that a state would tailor the act to suit its own needs.

Returning to treble damages, Senator Ziegler summarized that under the Senate Bill, treble damages are automatic. Under the Uniform Act, treble damages are possible, but not automatic unless the violation is determined to be "flagrant."

He asked for a definition of "relevant market", a term used in the Uniform Act. Mr. Stueber explained that this term is a creation of the courts. It is not mentioned in the federal law. It is the area of effective competition. He felt that state courts, following federal precedent, would automatically use it as their measuring stick. The phrase itself did not need to be in the bill.

In response to the question from Senator Ziegler, Mr. Steuber stated that Arizona is the only state to date which has enacted the Uniform Act. It is under consideration in Oregon and several other states. Many states have already enacted the provisions of the act without referring to the Uniform Act which had not been prepared at the time their laws were passed. The language of the act is not new.

Senator Miller compared mandatory treble damages to mandatory sentencing which the Alaska legislature has traditionally taken great pains to avoid.

SENATE JUDICIARY COMMITTEE

March 23, 1975

Present: Senators Ziegler, Meland, Tillion
Excused: Senators Miller and Poland

DB 167--false reports to a peace officer

Public Safety feels this is a necessary bill. A committee substitute was adopted which provides penalties and makes it a misdemeanor to knowingly and wilfully make a false report to a peace officer. Restitution can also be required to be made to the department. "Do Pass"

SB 300--buying, receiving, concealing stolen property

This bill modifies present law by saying that if the property in question is over $250, the crime defined will be a felony. If under $250, it will be a misdemeanor. "So Pass"; Senator Tillion signed without recommendation.

SB 301--drawing a check with insufficient funds

Senator Tillion suggested that the fine involved should be increased, and a committee amendment was adopted raising the fine to "not less than $50 nor more than $500". "Do Pass"

SB 302--possession of a weapon by a convict

This bill exempts from the restriction the misdemeanor of assault and battery, eg. family tiffs. "Do Pass"

SB 262--jury instructions in rape cases

Under this bill, the complaining witness's prior sexual conduct would not be allowed to be considered by the jury. The committee members present felt this was perhaps going too far and took no action on the bill.

SB 261--evidence in rape cases

After an in camera hearing, if the judge determines that the prior sexual conduct of the complaining witness has no bearing on the case, this information may not be used as evidence. After adopting a spelling correction amendment, the committee reported the bill out "Do Pass"

HB 129am--smoking in public places

Traditionally, since our smoking bill reached the House before theirs reached the Senate, it is up to them to act first. SB 148 will be substituted for this House bill.

Paula Ziegler

SENATE JUDICIARY COMMITTEE
March 25, 1975

Present: Senators Ziegler, Meland, Miller, Tillion; Carpeneti; Boness
Excused: Senator Poland

CSSSSB 5--anti-trust

Senator Ziegler stated that the intent of the Judiciary committee to somewhat soften the Commerce committee substitute and ameliorate it to some degree. The intent is not to emasculate the bill. There are three alternatives: amend the committee substitute, amend the Uniform Act, or combine the two into a new committee substitute. The latter approach was adopted.

The Clayton Act provisions (sections 30-50) were eliminated. Treble damages are available for a knowing and wilful violation, but are not mandatory.

The provision allowing a person injured by refusing to go along with an act which would be a violation to bring an action was eliminated.

Voidability of contracts was left in the bill.

The ability of the court to award to private parties when the state obtains an injuction was left it.

Predatory intent was not inserted in the bill, but Senator Miller's suggestion to accompany the bill with a letter of intent stating that federal precedent is to be followed was adopted.

Banks, bank holding companies and regulated or certificated municipal utilities are to be specifically excluded from the act.

No reference will be made to "relevant market".

Added will be a provision stating that the Attorney General must have reasonable or probable cause to begin an investigatory proceeding. Since criminal sanctions are involved, the committee felt that the burden of proof should be on the state.

It is felt that this bill, plus the consumer protection legislation enacted last session, should adequately protect the public.

A draft will be available for the committee's consideration by March 27th.

Paula Ziegler

SENATE JUDICIARY COMMITTEE

March 31, 1975

Present: Senators Ziegler, Poland, Meland, Tillion
Excused: Senator Miller

Reported out of the committee were:

House Bill 248, CSHB 154, Senate Bill 266, Senate Bill 273, Senate Bill 268, Senate Bill 258.

SB 296--integrated bar act

Testimony on this bill was taken from Allen Compton, representing the Alaska Bar Association, at whose request the bill was introduced. Donald Clocksin from Alaska Legal Services was concerned that the bill might adversely affect paralegal personnel. Arthur Snowden, administrative director of courts, indicated that the court system has no objections to the bill. The committee took no action on the legislation this date.

Paula Ziegler
Staff Assistant

SENATE JUDICIARY COMMITTEE

April 6, 1975

Present: Senators Ziegler, Miller, Tillion, Poland
Excused: Meland

SB 340 and SB 348 -- limited entry

These bills have a further referral to Resources, and it was the feeling of the committee that the judicial implications of the bills were not such that they should be in the Judiciary committee. Senator Tillion volunteered to take the bills, study them and report back to the committee as to their judicial implications.

HCR 39am--criminal code revision

SCR 5, currently in Senate Finance, was substituted for this House resolutio It, too, has a further referral to Finance. "Do Pass"

SB 307--registration of outboard motors

This bill was introduced to help solve the stolen outboard motor problem. Senator Tillion suggested a better approach would be to address a resolution to the manufacturers of these motors asking them to place identification numbers on their product. Senator Tillion will have such a resolution drafted.

SB 257--liability of firemen

This bill was introduced at the request of the Juneau Volunteer Fire Dept. It spells out that firefighters will be immune from liability for actions in the course of their firefighting duties. It is patterned after a Delaware statute. Senator Miller commented that he did not favor any limitations on liability, save for something like a good Samaritan statute; he and Senator Poland signed without recommendation. Others "Do Pass"

CSHB 129am--smoking in public places

Senator Miller explained that although our smoking bill had reached the HOuse first, there seemed to be some problem, and it was his suggestion that we substitute our bill for the House bill and send it on to Rules. This was done. "Do Pass"

SCR 36--confirmation of Andrew Warwick

Senator Miller explained that he had met with the Governor, who wants to see Warwick confirmed but not the constitutional question involved jeopardiz The Governor, the Attorney General, Mr. Warwick, and John Elliott have agreed on the wording used. The idea is to confirm him and then go to court for a declaratory judgment to settle the question. Otherwise, you will have legislators voting against pay raises in case they are ever appointed to the executive. An amendment deleting the language about precedents was adopted (lines 21 and 22). Senator Poland signed without recommendation. Others "Do Pass"

SB 113--immunity for hospital review boards

This bill is highly endorsed by every hospital association in the state, the Alska State Medical Association and medical associations also involved. It is to protect hospital review boards from being sued, thereby enabling them to meet and speak frankly about their colleagues. The bill has a further referral to HESS. "Do Pass"

SB 153--sound recordings

A bill was passed last year prohibiting the pirating of tapes and other recordings; this bill addresses itself to one who sells such tapes. The committee has a letter from counsel in Washington, DC explaining why the bill is needed. Word should be forthcoming as to whether the bill would in any way affect our copyright laws. "Do Pass"

Paula Ziegler

SENATE JUDICIARY COMMITTEE
April 8, 1975
Present: Senators Ziegler, Miller, Meland, Tillion; Bradley; Michael Stark
Excused: Senator Poland

CSHB 237--mediation in divorce

This bill was generally discussed by the committee, but no action was taken. Senator Ziegler commented that most experienced attorneys try to mediate in divorce proceedings now in an attempt to help the parties resolve their problems other than by divorce. It was also pointed out that the bill has fiscal implications.

SB202--penalties for certain offenses

Senator Bradley has prepared a committee substitute for this bill, consolidating the original bill, relating to malicious mischief and destruction of property. The main purpose of the bill is to do something about vandalism. The current law does not seem to be an adequate deterrent. $250, rather than $100, would be the cutoff between felonies and misdemeanors. It also probides that the court may order restitution.

Mr. Stark of the Attorney General's office pointed out that present law requires a six month to three year sentence. Courts have interpreted this to mean that a felony complaint is required to bring suit. When damage is under $100, it is difficult to obtain a felony complaint and it is, therefore difficult to prosecute. This bill would eliminate that problem.

The committee substitute would repeal existing statutes dealing with injury to animals, boats, transportation or communications facilities, water and river systems, buildings, historical momunents, trees, and destruction of property by a tenant, bringing all these offenses under one category.

Senator Ziegler requested letters from the Department of Law and the Department of Public Safety stating they approve of the bill and would like to see it enacted into law before the committee will move the bill.

Paula Ziegler

SENATE JUDICIARY COMMITTEE
April 11, 1975
Present: Senators Miller, Ziegler, Tillion, Meland; Art Peterson
Excused: Senator Poland

SB 56--buying liquor on credit

The proposed committee substitute for this bill would repeal the entire section .085 dealing with retail liquor sales on credit. The section was amended last year to exempt hotels, boardinghouses and inns in order that their lodgers could charge; however, many people charge at package stores and at restaurants. The effect of this bill would be to eliminate the prohibition against credit sales. "Do Pass"

SB 350--possession of certain drugs

Senator Miller explained that he has met with the Attorney General and the Commissioner of Public Safety, and both of them have spoken to the Governor about the bill. Commissioner Burton wanted a bill that would be enforceable and one with which he could live. Two changes have been made from the original bill:

1. It applies only to those over 18. Possession by a juvenile will remain a juvenile offense;

2. The amount in possession is limited to one ounce or less.

What results is that there is a four-tiered situation:

1. Possession for sale is a felony;

2. Possession for personal use in excess of one ounce is a misdemeanor;

3. Possession for personal use of one ounce or less is a civil penalty offense for those over 18;

4. Possession for use by juveniles remains a juvenile offense.

The Department of Public Safety still does not agree with the philosophy behind the bill, but feel that they can live with and enforce it if it becomes law.

Senator Ziegler pointed out that by adopting what is now known as the Oregon approach, we are freeing law enforcement officials to take care of more important crimes.

Senator Tillion did not feel that no criminal record of possession should kept. There is a record kept of such things as traffic offenses, and he did not agree with the language on the last lines of the bill.

Senators Ziegler and Miller signed "Do Pass"; Senator Meland signed without recommendation, and SenatorTillion signed "Do Not Pass unless amended".

Paula Ziegler

SENATE JUDICIARY

April 14, 1975

Present: Senators Ziegler, Meland, Miller, Poland
Excused: Senator Tillion

CSHB 390--conflicts of interest

In the original Senate Bill which corrected ommissions, etc. in Initiative #2, board members were allowed to practice before other boards other than their own for a fee. However, when municipal officials were included in the initiative as far as reporting is concerned, they were unintentially not included in the aforementioned provision for board members. The House Bill under consideration is designed to correct this oversight and allow those affected to practice before state boards for a fee.

All members signed " Do Pass".

Paula Ziegler

SENATE JUDICIARY COMMITTEE
April 15, 1975

Present: Senators Ziegler, Meland, Poland; Allen Compton
Excused: Senators Tillion and Miller

SB 296--Integrated Bar Act

This bill tries to resolve areas of dispute between the Supreme Court Rules and the Alaska Bar rules. An amendment was adopted exempting Legislative Affairs Agency attorneys from the provisions of the act. Mr. Compton felt that the subject of paralegals was better dealt with by Supreme Court Rules. There are no rules concerning them at this time. To the extent they are not practicing law, there is no problem; however, there are some gray areas, and the court should decide. "Do Pass"

SB 202--penalties for certain offenses

The committee substitute discussed at the last meeting, consolidating various property destruction statutes was adopted. A letter approving this legislation was read from the Attorney General. He commented that passage of the bill would greatly facilitate charging procedures and proof problems. "Do Pass"

Paula Ziegler

SENATE JUDICIARY COMMITTEE
April 20, 1975

Present: Senators Ziegler, Poland, Tillion, Miller
Excused: Senator Meland

HB 209am--state income tax

The first section of this bill makes it illegal to falsely claim more exemptions than a person legitimately has. This is being done by non-resident workers. The second section makes it a crime for an employer to fail to withhold. Both of these abuses are apparently rife among pipeline workers, and the bill seeks to put an end to them. "Do Pass"

HB 164am and HJR 11--vetoed bills

The primary purpose of these pieces of legislation is to allow a special session of the legislature to reconsider vetoed bills, as long as it is the same legislature which passed the bills originally. Committee substitutes will be prepared to clarify the language of the legislation, and the committee will take them up again.

SB 340--repeal of limited entry

The basic recommendation of the committee was that the bill go to Resources, to which it already has a further referral. Senators Ziegler and Meland signed "Do Pass"; Senators Tillion and Poland signed "Do Not Pass"; Senator Miller signed without recommendation.

SB 348--modification of limited entry

Senator Tillion explained that the passage of this bill would double the number of people eligible for permits. This would set back the conservation purposes of the act. He did not feel there was any justification to expand those eligible to include people who have been deckhands but who have never bought a gear license. The bill was referred to Resources; members signed as above.

Paula Ziegler

SENATE JUDICIARY COMMITTEE

Present: Senators Ziegler, Meland, Miller, Tillion; Don Clocksin
Excused: Senator Poland

CSHJR 11--vetoed bills

The draft committee substitute was reviewed by the committee. "If one is called" was added to the language referring to special sessions, and the resolution was reported out "Do Pass".

CSHB 164--vetoed bills

The same correction as above was added to the draft committee substitute for this bill. " Do Pass".

CSHB 177am--security deposits

Don Clocksin explained that during the last year, operating on the new landlord-tenant act, the most complaints and difficulties stemmed from the matter of security deposits and prepaid rent. This bill would try to correct the situation. The problems revolved around failure to return the deposit and how to calculate the prepaid rent and deposit. The bill would add the term "aggregate" to make it clear that the rent and the deposit are added together to arrive at the maximum amount that can be charged. For example, if the rent is $200, the first and last month's rent ($400) plus a $200 deposit may be charged. Secondly, the bill requires that a written inventory be made by the landlord and tenant before the tenant moves in. This should eliminate disputes and litigation when the tenant moves out.

Senator Miller wondered if the inventory should apply to prepaid rent. Mr. Clocksin explained that throughout the act, the attempt is made to not distinguish between prepaid rent and security deposits. For example, either may be applied to rent or damages. It would be inconsistent to delineate between them in this bill.

Furniture would be included under "facilities".

A representative of landlords in Anchorage testified against the bill in the House in principle, but stated that most of the people he represented already made it a practice to take inventory. "Do Pass"

HB 265 and 266--Community Legal Assistance grants

Mr. Clocksin testified that these bills are a result of last year's bush justice conference. Many small bush communities are in a stage of development which is exceeding their capabilities. Many times they have legal problems which they cannot solve themselves. Community and Regional Affairs offers help in the form of non-lawyer advisers only. The Dept. of Law furnishes attorneys to the Dept. of CRA, but not to the villages. A solution would be to provide a fund for gtants to invidual villages when legal assistance is needed. This would be in the form of a contract between the village and an individual attorney or firm. Payment would come from

the village via this grant. It would be limited to situations where no other means of legal assistance is available, either due to lack of funds or the unavailability of counsel. Alaska Legal Services often finds itself in a conflict situation or else the matter exceeds their expertise. This is not to be a continuing legal assistance program and is limited to a one-shot proposition. Also, no regional or village corporation formed under the Native Claims Settlement may apply. An individual grant is limited to $20,000.

The bills have a further referral to Finance. "Do Pass"

SB 371--protection of children

This bill would expand the definition of child abuse by removing the limitation to "physical" abuse. It also provides for the appointment of a guardian ad litem in certain cases. Becasue this latter provision has financial implications, the bill was recommended to be referred to Finance. In addition, the committee adopted amendments putting back the limitation to physical abuse. It was felt that "mental injury" was too nebulous a term.

Paula Ziegler

SENATE JUDICIARY COMMITTEE
April 29, 1975
Present: Senators Ziegler, Miller, Meland, Tillion; Art Snowden; Pat Hunt
Excused: Senator Poland

SB 404--compensation for judicial officers, etc.

Mr. Snowden, of the court system, explained that this would base salaries on Range 28, Step E, rather than stating a dollar amount. It would eliminate the bi- or tri-yearly necessity to raise salaries through specific legislation. The Governor and Lieutenant Governor were included, because they should be the highest paid officials in the state. Commissioners were included because, in some cases, supervisors are paid more than they are. The legislature was included to make it more palatable and also because they have not received an increase in four years. It is also less controversial to put themselves on a percentage basis; they, too, as a result, would receive automatic increases instead of having to raise their own salaries every few years.

Mr. Hunt, Director of Personnel, explained further that the bill would eliminate confusion each time there is a salary adjustment and would give a better picture of the entire state salary situation. Range 28, Step E is to be removed from the collective bargaining act. A personnel board would make all increase decisions, based on the cost of living. Mr. Hunt said he was generally inclined to favor the bill. It would be up to the legislature to determine if the percentages are proper. He had prepared a table of what the increases would be based on present salaries and also on what salaries would be if HB 450 passes (the nine per cent increase for cost of living). It is thought fairly likely that this bill (450) will pass. Mr. Hunt was requested to give the committee a fiscal note with both sets of figures included. No action was taken at this time.

HB 385--judicial vacancies

This bill would enable the Judicial Council to begin its work, and the Governor to make an appointment, before the bench is actually vacant but when it has been announced that it will be vacant. This would cut down on delay in filling the vacancy. Senator Miller felt that the language was not entirely clear. If the vacancy is due to death, there would be no way of knowing in advance. The bill states that the filling of the vacancy would be considered retroactive from the time it)the vacancy) occurred. Would this apply to salary? The bill will be redrafted.

HB 318--forcible sexual acts other than rape

This bill is the result of a case in Kodiak. The Attorney General will be asked if the bill is needed and why, and how many instances of these cases have been reported.

HB 384am--evaluation of judges made public

The Judicial Council currently cannot make public the results of polls on judges who are up for retention. This bill would allow the information to be printed in the election pamphlet. In addition, a rejected judge may not be appointed to the bench again for four years. "Do Pass"

(over)

HB 237--mediation in divorce proceedings

Senator Ziegler explained that the bill was in poor shape, although the idea behind it had merit. He will take it to Legislative Affairs for redrafting and bring it back before the committee, if not this session, then the next.

Paula Ziegler

SENATE JUDICIARY COMMITTEE
May 6, 1975
Present: Senators Ziegler, Tillion Meland; Allen Compton
Excused: Senators Miller and Poland

SB 402--homes on school lands

Senator Tillion explained that this was, in a way, a special interest bill to allow people who have leased land that was dedicated as school land in territorial days and who have built homes on the land to be allowed to buy the land. The Division of Lands favors the bill. It has a further referral to Resources. "Do Pass"

CSHB 81--supplemental appropriation to Dept. of Law

This bill is for the expenses and legal fees and costs incurred in the Cook Inlet and Lower Cook Inlet price cases. It is fully documented and has a further referral to Finance. "Do Pass"

SB 407--Motor Vehicle Safety Responsibility Act.

Allen Compton stated that the bill would raise the minimum insurance rates under the current Safety Responsiblity Act. This involves people who have already been involved in an accident. They must prove they have insurance or post a bond. This also applies when they wish their license reinstated after having had it suspended. The Alaska Bar favors the legislation. Currently they find that people are not adequately protected when they have only the minimum insurance required. Injured parties are also not fully compensated by the limits of the policy. According to information from the Division of Insurance, $5000 is the average claim in the state today. The rate has not been raised since 1966. The premium increase would be ten per cent for the regular driver and thirteen per cent for those in the assigned risk pool. Most other states are also increasing their rates. Mr. Compton has heard no objections from the bill. The Division of Insurance favors it, and will write a letter to that effect. The premium increase for uninsured motorist insurance would be $1.00. "Do Pass" (Tillion signed without recommendation.)

SCSHB 385--judicial vacancies

The committee substitute clarifies the bill by applying it to all vacancies other than those created by death. District court judges are not included because the reasons for vacancies on that bench are not established by statute. "Do Pass"

Paula Ziegler

SENATE JUDICIARY COMMITTEE
Present: Senators Ziegler, Meland, Miller, Tillion
Excused: Senator Poland

~~SB-399--false~~ labeling of ivory, gold, jade, etc.

The purpose of this bill is to increase the punishment for violating this statute. A committee substitute will be prepared with a fine not to exceed $1000 or imprisonment not to exceed 30 days, or both.

CSHB 237--mediation in divorce proceedings

A Senate committee substitute has been drafted which does not change the bill except to put it ina more correct form legally. The committee recommended it be referred to Finance because of the financial implications regarding payment of the mediator and the guardian ad litem. Senator Meland signed "Do Pass"; all others without recommendation.

CSHB 318--sexual offenses other than rape

The Attorney General indicated in a letter that he favored the bill as it filled an existing gap in the criminal law. Senator Miller inquired as to its effect on consenting adults; they are not covered by the bill. "Do Pass"

SB 422--primary elections

Senator Tillion, the sponsor, explained that the purpose of the bill is to discourage people from crossing over in the open primary to vote for the weakest of the other party's candidate. If a candidate receives 50.1% of the total vote for that office in the primary, he is automatically elected to the office and does not need to run in the general. Senator Miller pointed out that there are two arguments against such legislation:

1. It cuts out independents and write-ins in the general; and

2. More people vote in the general than in the primary so the result in the general could conceivably be different.

Senator Tillion had looked into the statistics and found that no candidate in the state who had received 50.1% or more of the primary vote had ever lost in the general. State-wide candidates usually do not receive that much in the primary, so they would still go on to the general. He also thought that the legislation would increase the voter turn-out in the primary if the voters realized that it could be the final election for some candidates. He would not object to an amendment to handle the write-in situation which occasionally, especially in the bush, is the means by which a person is elected. He signed "Do Pass"; all others without recommendation.

HB 417-- law enforcement information

There is no "Do Pass" for this bill from any member of the committee.

Paula Ziegler

SENATE JUDICIARY COMMITTEE
May 13, 1975

Present: Senators Ziegler, Miller, Tillion
Excused: Senators Poland and Meland

SB 432--game violations

As the bill is written, a license is revoked for not less than a year; however, most licenses expire at a time certain anyway. What it should say is that application for a license may not be made until one year has gone by. A committee substitute to this effect will be drafted.

HB 416am--access to confidential records

A State Affairs amendment applying this law to anyone who works for a public agency and has access to confidential information regarding citizens of the state was adopted by Judiciary. The official is prohibited from using this information for his personal gain. "Do Pass"

SB 423--initiatives

This bill proposes that before an initiative can appear on the ballot it must be either prepared or approved as to form by the Legislative Affairs Agency. Senator Miller pointed out a possible constitutional question. In the constitution, the Lt. Governor is assigned this task. Senator Tillion mentioned also that putting it into an agency of the legislature might be subverting the purpose of the initiative process. No action was taken on the bill.

HB 178--third-party beneficiaries

This is a House priority bill. It extends express and implied warranties to corporations and anyone who could reasonably be expected to use the product. A letter will be written the Attorney General, asking his opinion.

CSHB 238--representation of children in custody proceedings

Senator Ziegler said that the bill needs more work and also a referral to Finance. No action was taken.

Paula Ziegler

SENATE JUDICIARY COMMITTEE
May 21, 1975
Present: Senators Ziegler, Miller, Meland, Tillion; David Walker
Excused: Senator Poland

SB 447--superior court judges

This would increase from 16 to 17 the number of superior court judges, thereby guaranteeing that one will be permanently stationed in Kodiak. It has a further referral to Finance. "Do Pass"

HCR 53am--study of judicial redistricting

There are several bills pending relating to this subject, some from the Judicial Council, some from the Supreme Court, etc. This resolution directs Legislative Council to study the situation during the interim and make recommendations as to what should be done. "Do Pass"

SB 210--negative election vote

Senators Tillion and Miller will prepare a committee substitute for the bill so that it can be moved at least as far as Senate Rules this session.

CSHB 488--election campaignn disclosure

This bill was requested by the Election Campaign Commission and makes several changes in existing law:

1. Exempts out cities of less than 1000 population;

2. Allows a special municipal election for the purpose of deciding whether city officials are to be covered by the act;

3. Changes the commission name to Alaska Public Offices Commission;

4. Adds one more member;

5. Allows commission members to contribute to a US Presidential cand.;

6. Compensates members $100 per day for meetings and "authorized commission business." The committee deleted this provision and substitute that members would serve with no compensation, receiving the same per diem and travel that other commission members receive;

7. Establishes offices in each Senate district;

8. Provides that forms are to be readily available;

9. Gives the commission investigative and subpoena powers;

10. Includes groups opposing a candidate as well as those supporting one;

11. Provides that if a group spends over 60% for one candidate, his name must appear in their name;

12. Makes candidate responsible for all acts of his treasurer;

13. Limits a group's or individual's contributions to $1000 per year per candidate. Political parties and their subdivisions are exempted;

14. Changes the spending limit to $1.00 times the population in the House or Senate district divided by the number of seats therein, rather than listing a set dollar amount;

15. Charges spending before the candidate has officially filed against his limit, except for travel and opinion polls;

16. Makes the Attorney General the commission's counsel;

17. Exempts ordinary hospitality and CPA services in preparing the reports from having to be reported.

Senator Miller stated that he intends to offer two amendments. One would eliminate the ~~xx~~ contributor's having to report. This is not required under federal law. The other would eliminate the media having to make an itemized report and provide instead that the candidate would sign an affadavit stating that his expenditures with the particular newspaper, etc. involved were not over his limit. These will be prepared as committee amendments.

Senators Ziegler and Meland signed "Do Not Pass"; Miller and Tillion "W/O Rec."

CSHB 238--representation of children in divorce proceedings

The bill provides that the costs for indigent persons shall be borne by the state; thus, the committee reported the bill out and recommended it go to Finance.

CSHB 422--false reports/public assistance programs

THe bill was requested by the department of Health and Social Services. Its purpose is to penalize people who knowingly falsify information so that they may receive welfare, food stamps, etc. "Do Pass"

HB 31am--abandoned vessels "Do Pass"

Rape bills

Senator Ziegler will explain to Senator Chance that time is running out for the committee to do a thorough job on these bills. Since the criminal code revision is in the offing, he will suggest that the changes be made via that route rather than with specific legislation. The committee agreed to this approach.

SB 354--limited liability

This subject is also too complex to deal with this late in the session. Senator Colletta will be advised that it will be one of the first matters the committee takes up next session.

SB 440--security interests

David Walker of Legislative Affairs explained that in the mobile home business dealers go to a bank to obtain financing to buy their inventory. Banks want a security interest in the property. In Alaska, mobile homes come under the

title statutes, like automobiles. However, they are not titled until they have been sold. Therefore, the banks cannot get a lien against the title while they are still in the inventory stage. He recommended the adoption of a committee substitute he had prepared which allows a security interest to be held on inventory held by a dealer for sale before it has been titled. This would not apply to inventory held for resale, i.e., for a used trailer. By so doing, the bank will be protected from the dealer's other creditors. The consumer is not involved in this transaction in any way. When the mobile home is purchased, it is no longer considerd inventory, and the lien is extinguished with the sale. The bank cannot go against the purchaser to recover against the dealer. "Do Pass"

Paula Ziegler

1976

MINUTES

1/12/1976 - 5/26/1976

SENATE JUDICIARY COMMITTEE

January 12, 1976

Present: All members
Mr. Al Anderson--Alaska Wood Products
Mr. Jim Clark--Alaska Lumber and Pulp

SJR 41--amend Organic Act

Senator Ziegler stated he had spoken to representatives of Ketchikan Pulp, and they had no objections to the resolution.

Mr. Clark testified that because the decision of Judge VonderHeydt will be applied industry and state wide, it is very important to act quickly. It is industry's plan to appeal, but in the meantime, they are requesting a return to the status quo to allow Congress time to amend the Organic Act.

It was his request that the committee act on this resolution now and they review the suggested federal legislation at a later time and perhaps submit another resolution directed specifically to the proposed legislation.

The committee adopted several amendments:

1. Adding "silviculturally" and "physically" to the phrase "economically impossible"

2. Deleting the clause pertaining to diseased and pest infested trees. The decision does not include trees in this condition.

He added that the industry appreciates the speed with which the legislature is acting.

Senator Poland signed without recommendation; all others signed Do Pass.

Paula Ziegler

SENATE JUDICIARY
January 14, 1976

Present: All members

SB 472--age of majority

this bill would lower the age of majority from 19 to 18 years. No action will be taken unles and until there is some public reaction favoring the bill. A few years ago, the same bill was before the committee and very little public sentiment was forthcoming.

SB 477--service credit for certain employees

This bill would bring policemen and firefighters who served in territorial days under the state retirement system, or rather their years of service during that time would now be counted. Senator Poland suggested giving credit for military service. Senator Tillion pointed out that some limit should be placed on the kind of service other than state that would be allowed to be counted. These two committee members will serve as a subcommittee to research the matter with Legislative Affairs and report back as to what amendments, if any, should be adopted. Commissioner Burton of Public Safety is preparing the fiscal information.

SB 508--substitution of generic drugs

This bill would allow a pharmacist to substitute the same generic drug for a brand name drug in a given prescription, thereby saving the consumer money. Some 10 states have passed similar legislation, and this bill is patterned after the California statute. Senator Meland will obtain more background information.

Paula Ziegler
Staff Assistant

SENATE JUDICIARY COMMITTEE

January 20, 1976

Present: All members of the committee
Mr. Charles Adams, Director, Division of Corrections
Mr. Larry Talbert, Deputy Commissioner of Public Safety

SB 520--transporting of prisoners

Mr. Adams stated that Corrections favors the bill. It would provide flexibility in making a determination as to when a prisoner poses a security threat and should be escorted. It would also provide for a situation where, for example, a man is about to be released and needs to go register for employment but does not need to be escorted by a trooper. Presently, under an order from the Governor, all felons must be accompanied by a state trooper. Misdemeanants may go on their own, depending on their security classification. This bill clarifies the statute, especially for those prisoners going to appointments, programs, hospitals, etc.

Mr. Talbert testified that the bill is also favored by Public Safety. One problem now is that they have no control over when a prisoner is to be transported or what for. This could cause a budgetary problem, since they cannot budget accurately, having no control over the variables. The department would prefer putting this on a reimbursable basis (so much money for transporting so many prisoners). He felt the department could probably train sufficient corrections officers to take care of any special circumstances when a trooper is not available. The bulk of the transporting so far has been on a scheduled basis. He added that Public Safety is short handed; ten men are assigned to the judicial services division, but in 1974, 17 man years were spent in that area. However, he felt that the bill would enable the system to work better in the future than it has in the past.

Senator Miller asked if these changes could not be made administratively. This will be researched before the committee acts on the bill.

SB 515--referendums

This bill would extend the number of days from 7 to 14 within which the lieutenant governor shall prepare the petition for a referendum. "Do Pass"

SB 509--notaries public

Under this bill, a notary public would no longer have to be a U.S. citizen, just a state resident. "Do Pass"

Paula Ziegler

SENATE JUDICIARY COMMITTEE
January 27, 1976

Present: All members of the committee

SB 477--prior service credit

A CS had been prepared which added personnel from the road commission and the BPR. Senator Tillion stated that this involved under 100 people. The CS was adopted.

SCR 59--repealing certain Public Safety regulations

This bill was requested by a group of people in Fairbanks who feel that the requirement of protective headgear while riding a motorcycle is an infringement of their rights and also an obstruction of clear vision while being worn. The bill is opposed by Public Safety. It was reported out with Senator Miller signing "Do Pass"; Senators Ziegler and Meland signing without recommendation, and Senators Poland and Tillion signed "Do Not Pass."

SB 572--children's court proceedings

Members were requested by the chairman to take this bill with them and read it by the next meeting.

CSHB 402--removal of disabilities of a minor

This would enable someone as young as 16, when a determination is made by the court, to be emancipated, with the exception of being able to drink or vote. Marriage is not mentioned in the bill. The argument is that courts are emancipating minors anyway, on a case by case basis, so the procedure should be outlined in law. There are presently no "Do Passes" on the committee; the sponsor will be so informed.

SB 575--injunctive relief

Under present law, because the words "plaintiff" and defendant" are used specifically, the plaintiff is the only one who can move for injunctive relief. This bill would substitute the words "party to the action" and "other party" which would then allow a defendant to also move for injunctive relief. The bill was reported out "Do Pass", but Legislative Affairs is looking into the possibility that this problem has already been cured via the court rules.

SB 577--interest rates/lease of personal property

Senator Miller is in the process of obtaining background material. The specific problem involves the leasing of fleets of cars; they are considered personal property, and the rate, under present law, is 6%. This today is not at all competitive, so what is sought is an exemption to charge a higher interest rate.

SB 479--escape from confinement

Senator Orsini is working on a possible CS which would eliminate escape from custody of an arresting officer as part of this crime. The mandatory sentence could also be lowered from 3 to 1 year. A letter from the Tanana Valley Bar indicates they unanimously oppose the bill.

No action was taken.

SENATE JUDICIARY COMMITTEE
February 3, 1976

Present: All members of the committee; Senator Colletta
Mr. Bernard Dougherty, Mr. Miles Schlossberg, Mr. Fred Eastaugh

SB 354--limited liability

Senator Colletta, sponsor of the bill, stated that it would be an asset to the state to have this type of business entity available for those wishing to do business in the state. Since the original bill was introduced last year, there have been some changes proposed by the administration, and a committee substitute has been prepared. The administration supported the original measure but felt that these changes would make it a better bill. The bill allows a few individuals to form a company that has the advantages of both a corporation and a partnership. Most businesses not large enough to form a full fledged corporation now must use limited partnerships.

Mr. Daugherty, member of the Anchorage law firm of Cole, Hartig, Rhodes, Norman, Mahoney & Goltz, explained the changes the proposed CS would make:

1. It changes the original term "certificate of organization" to "articles of organization" (when the company first files) and "certificate of existence" (when the limited liability company is established and registered in the state);

2. It provides for election of a manager or a board of managers by a majority vote of the members. The original bill had the members running the company themselves; now they have an option;

3. It provides for service of process on a registered agent or the Commissioner of Commerce if there is no agent;

4. It provides for a dissolution process; and

5. It adds some administrative procedures.

Currently in the state a business may form a partnership, a limited partnership or a corporation. A corporation has limited liability, and a partnership has tax advantages. Under the IRS code, a separate tax is imposed on a corporation as well as on its shareholders when they receive dividends. A partnership, on the other hand, is not a separate taxable entity. All income is taxed through the individual partners only. Forming a limited liabilit company would eliminate the corporate tax level but retain the corporate limit on liability.

Pennsylvania, New Jersey, Michigan and Ohio had or have this type law. It was repealed in Pennsylvania and is dormant in the others because it was very limited in its use. Its original purpose there was to supplement antiquated corporation laws which have since been modernized.

The Internal Revenue Service looks at four characteristics of a business to determine if it should be taxed as a corporation or as a partnership:
1. Does the organization have limited liability?
2. Does it have centralization of management?
3. Does it have free transferability of ownership?
4. Does it have continuity of life?

If the answer to all those questions is "yes", then the organization is a corporation. If it is 2 to 2 or 1 "yes" to 3 "no" it is a partnership.

A limited liability company under this bill:

1. Would have limited liability. A creditor, for example, could only attach the assets of the company, not the individual members;

2. Would not necessarily have centralized management. In a corporation, the board of directors are the people who govern and direct corporate business. With limited liability companies, the members have the right to direct the company themselves. Each member would have direct input, just like a partnership. If they choose a board of managers, however, this characteristic becomes corporate;

3. Would not have free transferability of ownership interest. If a member transfers his interest, the only rights that the transferree obtains are rights to profits but not a share in the management say so unless the remaining members agree. This is not free transferability. A corporate board of directors, on the other hand, has no control over what an individual shareholder does with his stock. He is free to sell it, bequeath it, etc. A partnership, however, is automatically dissolved if a partner sells his interest; and

4. Would not have continuity of life. A corporation has perpetual life unless it is dissolved, merged, etc. Under this bill, a limited liability is automatically dissolved on the death, withdrawal, retirement, etc. of any member.

Therefore, having at least three of the four characteristics tests in the negative, a limited liability company, for IRS purposes, would be taxed as a partnership. IRS has written an "information letter" regarding this bill. They will not issue a revenue ruling because the bill is in proposed form only. The letter states that they will use the same four tests when looking at such companies, indicating that there will then be tax benefits in forming one

Mr. Dougherty saw the state's major benefit if this bill passes in the filing fees which would be generated. Fees would be on a sliding scale, depending on company assets, the maximum fee being $1000. Because of the favorable tax ramifications, investors from out of state could register limited liability companies in Alaska for the purposes of doing business out of state, as well as in. This would be similar to corporations' ~~fixxix~~ registering in Delaware. The income tax ramifications would not be any different than they are now because individuals who would be forming these companies are now using limited partnerships, where the tax is against the individual. This would not change. Because of its attractiveness, Mr. Dougherty felt that considerable revenue would be generated from the filing fee and from annual franchise taxes of $100 per year per company.

Mr. Schlosberg, Director of Banking, Securities and Corporations within the Department of Commerce commented that the bill does not really mean very much without a firm IRS decision. The bill does seem workable, however, and Alaska will become the "Delaware of limited liability companies" if it passes and the IRS agrees. Oil and gas and real estate syndicators will be

the prime beneficiaries. He thought that at first local attorneys would probably be designated as agents but that later volume would mean the use of CT companies.

Alaska will benefit in terms of revenue. In the long run, the bill would be a good money maker.

He did see one possible detrimental effect of the bill. Presently, many oil and gas deals are put together, forming limited partnerships. Each of the limted partners has a personal liability to the extent of what he has invested. However, there must also be a general partner who is responsible to the extent of anything of his that can be reached. If a corporation is the general partner, it is liable for everything the entire corporation has in assets. This bill would eliminate the risk the general partner now takes. Those who organize drilling or real estate ventures will be more willing to do so. By regulation, however, the state could make sure that the organizing partner puts up a fair amount of money so he cannot escape so easily if the venture fails, is sued, etc. The regulations could only apply when the offering is public, in which case a sizable security deposit could be required. There is a Governor's bill pending which would make miscellaneous changes in the securities laws. If this passes, the ability to so regulate should be no problem.

On balance, Mr. Schlosberg favored the committee substitute.

In response to other questions, Mr. Dougherty stated that the term "limited liability company" must appear on all letterheads, documents, etc. that the company uses or negotiates.

The alien ownership act passed last session is not covered in the bill and should be added to the committee substitute. (Disclosure of alien ownership).

The committee substitute was reported out with one "Do Pass" (Ziegler) and all others signed without recommendation. It will be given to Mr. Schlosberg for comment before being turned in to theSenate Secretary.

Paula Ziegler
Staff Assistant

SENATE JUDICIARY
February 5, 1976
Present: Senators Ziegler, Meland, Poland, Tillion; Joel Bennett
Excused: Senator Miller

SSSB 306--sexual assault

The original bill sought to take sexual offenses and split them into two general categories, petty (touching or fondling) and aggravated (intercourse). Many other states are doing this in their criminal code revisions. This bill does the same. Rape is in the aggravated category; sodomy is added to the category. The bill also amends other statutes substituting "Aggravated sexual assault" where"rape" formerly appeared. Court rules are changed relating to kinds of admissible evidence; in certain circumstances, after a court determination, evidence relating to prior sexual conduct of the complainant may be introduced. Another rule applying to jury instructions is also changed, barring any inference to be drawn from prior sexual conduct. The bill also provides for mandatory sentencing. The main reason for the bill is to calarify and modernize the statutes relating to sexual offenses. This subject has not been dealt with yet by the criminal code revision committee. Senator Ziegler suggested that we wait for them to cover the subject instead of adding things on piece meal. In the meantime, the oral rape case (Kodiak) can be taken care of by a committee substitute to House Bill 318 from last year. Mr. Bennett will draft the legislation.

SB 597--bingo, raffles, etc.

Other than in Anchorage, there isn't a problem with local clubs running bingo games, etc. However, to cover the abuses in the larger city, the Dept. of Revenue has proposed some stringent regulations. Because they will work a hardship on the smaller, honest games, the department has been persuaded to soften them. To help them accomplish this, this bill delays the reporting period for the commissioner to report on gaming activities in the state. "Do Pass"

SB 596--petty larceny

In accord with action taken last year, this bill raises the dollar amount from $100 to $250 for the value of property taken which, in turn, determines if the larceny is petty or grand. Anything under $250 would now be petty. "Do Pass"

SB 592--theft of telecommunications

This bill would amend the statutes relating to telecommunications by providing that it is unlawful to tamper with or hook into telecommunications equipment. This is to protect cable television companies who are currently being bothered by people receiving their signal for free by means of hooking onto the cable in some way. "Do Pass"

Paula Ziegler
Staff Assistant

SENATE JUDICIARY COMMITTEE
Present: Senators Ziegler, Meland, Miller, Tillion
Representative Helen Beirne; Susan Gordon
Excused: Senator Poland

CSHB 402 - emancipation of a minor

Representative Beirne, sponsor of the bill, stated that present statutes relating to emancipation need clarification. There is a need to define the gray area for those people living completely on their own but under the age of 18. She introduced the bill at the request of Alaska Youth Advocates.

Miss Gordon, co-director of AYA in Anchorage, testified that emancipations have been and are being granted now by the courts, but there are no guidelines in the law for this procedure. Teenagers living on their own are not unusual, especially in Anchorage and Fairbanks. These are not all run-aways; some have been kicked out by their parents, and some had their parents' consent to leave. They are in a legal limbo as to their status. They are too old for adoption and too sophisticated for state care. Child abuse only applies to those under 16. Foster and group homes are in short supply. We need a good set of criteria to judge which petitions for emancipation should be granted. The bill would remove such obstacles as the ability to rent an apartment but would also protect parents from financial responsibility. CSHB 402 sets forth guidelines which insure that the emancipation will be equitable and in the best interests of the child.

Presently, the court uses Articles I and VII of the state constitution and AS 22.10.020 as their authority to emancipate. In general, it is very unusual for emancipation to be granted without parental consent. Miss Gordon did not personally know of any being granted over parental objection. The "unreasonably withholding consent" phrase in the bill was taken from the adoption code. She felt that the phrase could be left out of the bill without harming thebill, but preferred that the wording be left in. She stressed that the bill is actually a restriction on and not a liberalization of the emancipation procedure. Nine other states have similar statutes.

An emancipated minor who commits a felony would probably be waived into adult court if his emancipation had been complete under the law. (A judge may limit the terms of any emancipation, e.g., for inheritance purposes). An emancipated minor could marry before age 18 without consent.

Miss Gordon felt that the minor would, in most cases, be required to hire his own attorney. If an attorney had to be appointed, or a guardian ad litem, it would be an indication that the minor was not capable of supporting himself. In the past, attorneys from Alaska Legal Services and private firms both have handled these cases.

The bill does not provide for any follow-up to see if the minor's behavior after emancipation continues to warrant his being emancipated . The bill does not address itself to whether or not an emancipation could be revoked.

The committee took no action on the bill.

Paula Ziegler
Staff Assistant

SENATE JUDICIARY COMMITTEE
February 22, 1976
Present: Senators Ziegler, Miller, Poland
Excused: Senators Meland and Tillion

SB 668--deputy magistrates ' retirement

The purpose of this bill is to allow a judge or justice who has had service as a deputy magistrate to have those years of service counted in the computation of his judicial retirement. "Do Pass"

SB 650--tort liability of state employees

This bill is to protect state employees who use their automobiles in the performance of state duties. If there is an accident as a result of that use, the state, not the employee, would bear the liability. "Do Pass". Mr. George of the Dept. of Administration has some technical drafting amendments to present to the committee at a later date.

SB 633--pyramid sales

No action was taken on this bill.

SB 572--children's court

A hearing on this bill has been scheduled for Thursday, March 18th.

SB 577--interest rates/leases'

Because leases of cars and heavy equipment are considered to be loans and thus subject to the usury statute, small leasing businesses are losing money because the interest rate they can charge is limited. "Do Pass" Senator Miller will carry this bill which would remove such operations from the usury statute.

SB 611--adoption by step-parents

This bill would eliminate the requirement of notice when a step-parent is adopting the legal child of his spouse. "Do Pass"

SB 627--larceny by trick

This bill was considered, but no action was taken.

SB 628--implied consent

This bill would insure that a person arrested for impaired driving (DWI) would be informed of the nature of the test to be administered, the fact that he may have other tests administered and that he will lose his license for 90 days if he refuses to submit to the breathalizer test. "Do Pass"

SB 494--civil liability for National Guardsmen

Under this bill, a national guardsman on active duty called by the Governor,

SENATE JUDICIARY COMMITTEE
February 19, 1976
Present: Senators Ziegler, Meland, Miller, Tillion
Excused: Senator Poland

SB 670--number of superior court judges

This bill would add one superior court judge to the current amount (17). The additional judge would be stationed permanently in Sitka; the current district court vacancy in that city would not be filled, and the new judge would handle both case loads. "Do Pass"

SB 671--appointment of acting magistrates

This bill eliminates the six month residency requirement for acting magistrates, thereby enabling the appointment of law clerks who have come from out of state law schools. " Do Pass"

SB 672--small claims court

This bill raises the small claims court limit from $1000 to $2000 and also raises the civil jurisdiction of magistrates by the same amount. "Do Pass"

SB 673--judicial appointments

This bill would make the procedure for appointing district court vacancies the same as for supreme and superior court. The Governor would have 45 days to make an appointment. An added provision allows the vacancy to remain unfilled. "Do Pass"

A note will be sent to the Rules Chairman requesting that 670 and 673 appear together on the calendar, since they are related.

could not have a default judgment taken against him without the opposing party's having to follow a special procedure to insure that the absent defendant's rights are adequately protected. It is based on the Soldiers' and Sailor's Civil Liability Act of 1940. " Do Pass"

SB 516--meetings of the AFHC

The concern of the State Affairs committee, from whom the bill was referred to Judiciary, was that allowing meetings to be held over the telephone might result in abuses and would become a habit. Senator Miller will prepare an amendment or CS to provide that the telephone method could be used only when a regular meeting had been called, with public notice, and a quorum could not be obtained. The phone call would have to be placed from the place of the meeting and would be recorded. AFHC has a problem in selling bonds in a timely fashion. A meeting is required, and when time is of the essence, they must be able to act quickly.

SB 540--assault and/or battery on a peace officer

This bill was considered, but no action was taken.

SB 550--limit on plaintiff's awards in malpractice cases

THis approach is generally not favored by the doctors. It is also probably unconstitutional. No action was taken.

SB 549--limit on attorney's fees in malpractice cases

The contingent fee system guarantees a plaintiff representation which he might otherwise not be able to afford. It also provides an incentive for attorneys to take cases. A possible amendment would allow the court to award additional fees in exceptional circumstances. The approach of the committee will be to wait until the main malpractice bill, 522, comes over from Commerce and then act on all of the bills at once.

Paula Ziegler

SENATE JUDICIARY COMMITTEE
March 2, 1976
Present: All members of the committee; Senator Orsini; Commissioner Richard Burton; Mr. JohnGeorge

SSSB 479--mandatory penalty for escape

Senator Orsini, the bill's sponsor, stated that letters had been received from the Anchorage police dept. endorsing the bill. The problem is that the existing threat of additional sentencing is less than a threat to those who want to escape. Corrections has made a study showing that 2/3 of the escapees are felons, and 1/3 of that group commit new offenses, all of which were felonies. If there is a mandatory sentence, and a prisoner knows that he will have to serve at least one additional year, consecutively, not concurrently, this should act as a deterrent. The bill applies only to those convicted of felonies, not misdemeanors. Additional sentencing is left to the judge's discretion. The original bill had a three year mandatory sentence; the substitute has only one year. Also, the original bill applied to all escapees, and this one applies only to felons. A section of the bill provides for less than the prescribed penalty under exceptional circumstances which must be set forth by the sentencing judge.

Commissioner Burton also testified in favor of the bill. During the summer, he was a member of a special task force established to lookinto the Corrections system in the state. In talking to prisoners, he found that, to a man, they felt that an additional sentence for escape would be a real deterrent, especially for first offenders. It would definitely help to remove the temptation. The bill would also apply to those under arrest for a felony. The commissioner stated that he is not an advocate of new laws; we should be able to use existing law. However, that approach does not seem to be too successful. The state has an obligation to keep prisoners in prison. Escape from institutions in the state is on the increase, and it really is a serious problem. In response to a question from Senator Ziegler, he agreed that half a loaf (mandatory sentencing of at least one year for a felon who escapes from incarceration, deleting the section about escape from an arresting officer) would be better than none.

Senator Orsini will arrange to have a CS drafted accordingly.

SB 650--tort claims against state employees

John George, risk manager in the department of Administration, stated that he handles the state's insurance programs. Most employee contracts already address themselves to the problem which the bill endeavors to solve. It has been the state's practice for many years to defend employees who are sued for an act done while in the course of their employment. The bill essentially does not change anything. He suggests two technical changes:

1. Change "Director of Insurance" to "Department of Law". The former is in charge of regulating insurance companies in the state and has nothing to do with the state's own insurance; and

2. Change the notice to within ten days after service of suit or as soon as practical after notice of claim or loss.

He also would like to add a section prohibiting the employee from jeopardizing the state's claim, e.g. by admitting his liability. This is standard language on any insurance warranty. The bill can only be considered necessary in that it "casts in bronze" what is already in practice. It would be an added protection for an employee.

Concerning suits arising out of the use by the employee of his own car during the course of state business, it has been the practice and is the state's position that the employee's insurance should be primary. If he is uninsured, the state will step in. Additionally, the state will pick up the balance that his insurance does not pay.

The coverage the state provides now is broader than that provided in the bill's definition of state employee. He favors the expanded definition.

Senator Miller will arrange to have a CS drafted.

SB 601--recording

This bill would take the recording duties out of the court system and place them in the Dept. of Administration. The court system strongly favors the bill. Under the proposal, the same people would do the job, but they would now work for Administration instead of the court. Senator Tillion stated that this might not work too well in small towns which only have one court employee who does all jobs. Would the bill mean hiring a separate Administration employee to just do the recording? A letter will be written to the Administrative Director of Courts to obtain the answer to his question.

Paula Ziegler

SENATE JUDICIARY COMMITTEE
March 9, 1976
Present: Senators Ziegler, Miller, Meland, Tillion; Senator Colletta and Senator Ray; Tom Turnbull
Excused: Senator Poland

CSSSHB 531am--freedom of information

Mr. Turnbull of the Attorney General's office stated that the purpose of the bill is to provide an over-all provision that govenmental files are public information unless they are specifically designated confidential. He was of the view that existing law, 09.25.110 and 120, already takes care of this matter. Exceptions are to be listed, and there is a general provision for specific designations of confidentiality. He felt that perhaps the various agencies and departments had been remiss, however, in asking for confidentiality sections in their respective statutes. HE STATED that perhaps a better approach would be to amend existing law rather than repealing and re-enacting it. An effort should be made, however, to get the individual confidentiality sections for each department, etc. into the statutes.

A technical problem with the bill is found on page 4, lines 17-22, pertaining to victims of sexual assault. It is a repetition of the language directly preceeding it.

Comments were solicited from various departments and agencies as to their opinion of the bill. Some of their responses were:

1. Dept. of Environmental Conservation: they would like their files on environmental offenses to remain confidential until the matter is disposed of by bringing suit, etc. This is both to protect their case and the individual involved. They would not classify as law enforcement officials for this purpose, according to the bill.

2. Workmen's Compensation Board: they do not want the exception pertaining to medical records to apply to them.Their records and proceedings are all public, and they want the reports to be public iformation also.

3. Dept. of Highways: when their engineers go out to get estimates on construction projects, they would like these estimates to be confidential especially during the bidding period.

Mr. Turnbull will prepare amendments to take care of the various objections received. The individual departments have been remiss in providing confidentiality exceptions, but it is still his thought that the better way would be to amend existing law. Senator Miller suggested taking the enforcement provisions from the new bill and making it part of existing statutes.

The next meeting on this bill will be March 23rd.

SB 662--liquor licenses'

Senator Ray testified that adding "unified municipality" to the statutes dealing with the population limit (1500) for liquor licenses might result in a doubling of the amount of licenses in any unified borough. If you treat the incorporated city and the unified municipality as two separate entities, the area outside the city could be counted separately. A solution

would be to include "unified municipality" in the definition of "incorporated city." Senator Colletta will be advised of the problem.

HB 417--law enforcement information

This bill will be considered along with HB 531 on March 23rd. The sponsor will be notified.

SB 665--code review commission

The bill was considered, but no "Do Passes" were forthcoming.

SB 627--larceny by trick

The bill was reported out of committee with individual recommendations; Senator Bradley will be advised of his responsibility to carry the bill.

SB 490--changes in corporation laws

This bill is somewhat in the nature of a revisor's bill. In addition, it raises the corporate filing fees. 23 other states currently have fees higher than Alaska's. "Do Pass". A technical correction was also made to the bill.

Paula Ziegler

SENATE JUDICIARY COMMITTEE
March 4, 1976
Present: Senators Ziegler, Meland, Tillion; Representatives Gardiner, Bradley; Mrs. Mary Helen Burnison

SB 508/CSHB 584--substitution of generic drugs

Mrs. Burnison, representing Hoffman-LaRoche pharmaceutical company, spoke to the informally assembled group.

Bioavailability, a term referring to whether or not drugs that are chemically equivalent are also therapeutically equivalent, is a fairly new concept in pharmaceutics. It is the basic factor in the subject of the above mentioned bills.

A manufacturer with a new drug application must submit the drug to the FDA for extensive testing. The 17-year patent period begins to run as soon as the drug is submitted, but the tests may take five or six years to complete. After the patent has run, another company may apply to FDA for an abbreviated drug application. Much less testing or research are required. The company has only to prove that this product has the same amount of the therapeutic agent in an equal dosage form as the original drug. The FDA uses the National Formulary, a list of drugs which are chemically equivalent, to assure, or attempt to assure, that the drugs are chemically and therapeutically equivalent. However, primarily due to lack of money to work with, that agency is not able to adequately inspect all sites of manufacture to make sure that the drugs are equivalent. (Chemical equivalency does not necessary equal therapeutic equivalency.)

In short, at the present time,there is simply no way to make sure that chemically equivalent drugs are therapeutically the same in their effect. That is the problem with legislation like that under consideration. Their are 12 steps in the manufacturing of any given drug, any of which could vary from the way the original drug was made. An example is particle size. Even though the ingredients may be the same, if the particle sizes are, for instance, larger than in the original drug, the absorption into the bloodstream will be slower.

Mrs. Burnison is opposed to the whole concept of substitution without adequate assurance that the drugs are therapeutically equivalent. "In the opinion of the pharmacist" is not enough. Even the FDA admits it cannot currently make a sure evaluation. Within the next several years, procedures will probably be worked out to solve this problem, but there is no good method now. The National Formulary only indicates the amount of the chemical is the same, but not how it acts in the bloodstream. There is also a problem with the toxicity level of some drugs which is dangerously close to their therapeutic dosage levels.

Mrs. Burnison also suggested spelling out in more detail that the benefit to the consumer is to be the full cost savings, not just a cost savings if generic drugs are substituted.

She will direct written comments to the Senate Judiciary committee summarizing her thoughts and including her suggested changes to the bill to be considered when the House bill appears before the committee.

Paula Ziegler

SENATE JUDICIARY COMMITTEE
March 16, 1976
Present: Ziegler, Miller, Meland; Representative Gardiner; Don Clocksin
Excused: poland, Tillion

HB 417--law enforcement information

This bill sets out the procedure for the use of information gathered for the CJIS. Representative Gardiner agreed to the following amendments:

1. Define law enforcement agency by adding the adjectives "state or local";

2. Delete "complete" before "Defense", referring to good faith reliance on the part of the law enforcement officer;

The bill was reported out "Do Pass".

HB 723--homestead exemptions

Mr. Clocksin, from Alaska Legal Services, explained that under present law, a person in debt to someone is protected from having his home where he lives taken away from him to pay the debt. The exemption is set at a dollar amount ($12,000 for residences and $8000 for mobile homes). These amounts today are inadequate, and the bill increases the residence amount to $25,000. A person can be forced to sell his home if it exceeds that amount, but the first $25,000 would be subject only to prior liens and could not be used to settle the debt in question. The idea behind the exemption is to avoid the forcing of a sale.

Senator Miller raised the question of any unsecured creditors beyond the holder of the first mortgage. Would an exemption of this amount mean that the debtor would end up with a sizeable cash holding that could not be touched.

Mr. Clocksin will look into this question and also present a compromise figure somewhoat lower than $25,000.

Paula Ziegler

SENATE JUDICIARY COMMITTEE
March 18, 1976
Present: Ziegler, Miller, Tillion; witnesses listed below
Excused: Poland, Meland

SSSB 572--children's court proceedings

Senator Ziegler explained that this meeting was to take testimony and not to act on the bill officially. A committee substitute will be drafted from the suggestions offered during this meeting.

Mr. John Garvin, representing the Legislative Council's task force which drafted the bill, explained that its primary goal was to protect and enhance the parent-child relationship and to protect children in need of the state's intervention in the family relationship. The bill has five points:

1. Defines the role and the authority of a guardian ad litem. There may be a difference between an attorney representing the child and a guardian ad litem representing the best interests of the child. There needs to be some clear definition of these roles, and the bill provides it in the first two sections;

2. Removes the category of "blame" for children and parents when the state's intervention is necessary. It establishes a new category called "children in need of aid" which replaces "children in need of supervision" and "dependent children";

3. Refers mentally ill children under the court's protection to the mental health code to remove all connotations of delinquency or inability of the parents to care for the child;

4. Removes the indeterminate commitment to Health and Social Services with a biannual and then annual review hearing through age 19; and

5. Insures the child's right to treatment by requiring an early treatment to be presented.

The task force had made no cost analysis of the new procedures outlined in the bill. Mr. Garvin felt that the cost would probably be the same as currently. There may be cases when both an attorney and guardian ad litem are needed, but there is no way to predict how often this will occur.

Susan Burke, representing the court system, stated that there are many portions of the bill on which the court has no position. There are some areas of concern, however:

1. It is not clear if/an attorney and a guardian ad litem are to be appointed in every case. If you have an attorney representing one aspect of the child's attitude and a guardian representing another, there is likely to be a conflict and neither one is going to be getting close to or helpful for the child. They may undermine each other's roles. The idea of clearly defining a guardian ad litem is excellent, but it should be spelled out that both an attorney and a guardian are to be used only in unusual cases;

2. Section 12 of the bill, providing for annual review of disposition orders is a major concern of the court. The bill requires a hearing in every case and deletes the requirement that the party who applies for an additional hearing (there is no limit on the number) must show good cause for the application. Mandatory hearings will result in quite a burden on the court system without really benefitting the parties. Based on the current case load in this area, it is estimated that passage of the bill in this form would mean 1200 hearings per year which amounts to 10 months of bench time. The Supreme Court is now working on Court Rule 28, the applicable rule in Section 12, and may very well change it to provide for more than a pro forma in camera review, but it will not be as extensive a change as that provided in the bill. The bill also does not provide any basis for the court to deny a hearing. The concern is with the obstreperous party who applies for hearings all the time.

3. Sections 23-26 are not substantive changes, but merely change the terms to be used. It is the court's opinion that these sections could be deleted; if the bill passes, the court will change the terms accordingly.

Betsy McGuire was the chairman of the task force and voiced her support of the bill.

Joy Jamison represented the LWV of Alaska. The League supports the bill. Not requiring the guardian to be an attorney is a good idea, as is the change to "children in need of aid". Limiting to 48 hours the length of time a child can be held for a mental examination is good. The League also likes the idea of a written treatment plan. One year extensions for petitions are realistic. The availability of services beyond age 19 is also favorable.

Mr. Sam Granato, director of Social Services, discussed the department's position paper on the bill with the committee. Suggested changes are:

1. One of the definitions in Section 4 includes "habitually truant from school." It is thought that this problem should be solved by the schools, not the department;

2. Section 5 refers to mental health problems. The entire mental health code is now being revised. It would be better to wait until the revision is completed, so the references will be correct. Also, the 48-hour requirement will be nearly impossible for the department to comply with. They simply do not have the staff, the facilities nor the funding. The idea is favored, but the legislature must realize that there will have to be additional money appropriated;

3. The department does not favor furnishing parents and children with the treatment plan. The plan should be presented to the court, and it should be left to the court's discretion how the plan is to be distributed; and

4. Sections 9 and 11 concern petitions. The department feels that two year extensions are adequate. One year periods will mean more staff time spent on paper and court work.

Mr. Granato also suggested prohibiting the court from placing children in need of aid on probation. This should be reserved only for delinquents.

Mr. Walt Jones, director of probation and parole, also had comments:

1. Section 8 should be changed to commit the child to the custody of the department. If a child is on probation in his own home, and that situation isn't working out, the department will want to try a foster home or perhaps a group home. Under the bill, they would have to go back to court and get the court to agree to a move. This removes their flexibility. There is also concern with the number of hearings this would involve. In 1975, probation officers attended over 2600 court hearings.

2. He favors the idea of placing children in need of aid under the jurisdiction of social services instead of probation.

Senator Ziegler advised that anyone with suggested amendments should submit them before March 25th, at which time the committee will again meet on the bill to prepare a committee substitute. It was also agreed that the bill will have to have a Finance referral.

Paula Ziegler

SENATE JUDICIARY COMMITTEE
March 24, 1976
Present: Senators Ziegler, Miller, Meland, Tillion; Representative Parr
Excused: Senator Poland

CSSSHB 531 am--freedom of information

Mr. Samuel Coxin, representing the Anchorage municipality, expressed concern about the limit on the access to public records in terms of invasion of personal privacy. This clause should be more clearly defined (40.25.020 12-c). They also have a problem with preliminary drafts and confidential memos. Are these included? What about documents or parts of programs that are still in very preliminary stages? If they are made public at that early stage, the possibility of distortion exists. He will submit written comment and suggestions to the committee.

Mr. Parr, sponsor of the bill, stated that the bill began as an expansion of existing law. He had received complaints from those who could not seem to get access to public records. Most of the bill is devoted to balancing freedom of information with the right to privacy. It takes the basic policy stance that no one should be allowed to make information confidential by regulation; the legislature must deal with each subject by statute.

He believed that draft Supreme Court decisions would be covered under "attorney work product", but felt that this could be specified.

He stated that, over all, there is not a great deal of difference between the bill and existing law. However, it exempts only those things defined as confidential by statute. Existing law could be construed as exempting anything defined by regulation.

Mr. Marty Farrell, representing the R. L. Polk Company, had a suggested amendment to the bill. This company is in the business of supplying, among others, the automotive industry with lists of registered motor vehicle owners in every state. This helps the industry in planning and helps the consumer get better service. In addition, a very important function of the company is notifying customers that their car must be recalled because of some defect. Since 1966, 18 million such notices have been sent out. Federal law requires that the notices are to be sent based on motor vehicle information provided by state records. However, the bill exempts such lists from being furnished if they are to be used for commercial purposes. Mr. Farrell suggested language providing that the lists could be made available for such purposes as those of the Polk Company.

Mr. Mike Thomas spoke, representing the CPA Review Course. This is a company in Florida which furnishes study courses for those taking the CPA exam. They are interested in obtaining lists of who is applying to take the test in order that they might contact them with information regarding the course. They do not seek anything other than names and addresses. Under the same section of the bill referred to by Mr. Farrell, these lists would not be available to the company. Furnishing the information would be a service to the CPA candidates as well as to the public who would get, as a result, more CPA's. He submitted a written amendment to the committee.

Tom Turnbull of the Dept. of Law has written a memo to the committee summarizing the various objections of specific departments to the bill. He believed that most could be handled with amendments. There is a concern with potential "nuisance" requests.

Mr. Miles Schlossberg, from Banking and Securities, stated that he had testified on the bill before House Judiciary and had inserted amendments at that time which took care of the investigative information obtained and used by the Veterams Affairs and Banking Divisions. He would like additional amendments to protect the Division of Insurance and the Division of Occupational Licensing. Certain information is obtained and used by these agencies in evaluating the credit worthiness and financial stability of the people or institutions they regulate. That information, if publicly available, could be very detrimental to those organizations. It is felt that investigatory information should be kept confidential until hearings are held. They deal, in preliminary stages, very often with allegations that are yet unproved. This should not be made public. Under existing law, this situation is handled through regulation.

It was decided that Senator Miller and Mr. Turnbull will work together on rewriting the bill.

Paula Ziegler

SENATE JUDICIARY COMMITTEE
March 26, 1976
Present: Senators Ziegler, Meland, Ray; members of the Commission on Judicial Qualifications

Mr. William Boggess, vice chairman of the commission, spoke for the group. They are recommending changes in the constitution of the commission and its powers and would like legislation introduced to that effect. Their suggestions are:

1. Change the name to Commission on Judicial Conduct. It is felt that "Judicial Qualifications" does not fully inform the public as to what the commission does;

2. Enlarge what the commission may recommend and what the court may do with relation to a judge. "Admonish and reprimand" allow more leeway than only being able to censure. The Supreme Court favors this, as it allows them to take care of the matter through a court order rather than having to issue an opinion; and

3. Expand what the commission can do. Now they can either do nothing, or they must file a formal complaint. There is no "in between". It would be desirable if they have the power to reprimand. The majority of the cases brought before them are not severe enough for a formal proceeding. A report would be filed, and the rightto appeal would be available.

In conclusion, Mr. Boggess stated that the main concern of the commission is to obtain the highest quality of justice in Alaska. These proposed amendments should help.

The amendments will be introduced as a Judiciary committee bill.

Paula Ziegler

SENATE JUDICIARY COMMITTEE
March 28, 1976
Present: Ziegler, Meland, Poland, Tillion
Excused: Miller

Senator Ziegler explained to the committee that Senator Miller is in charge of rewriting HB 531; SB 572 has been redrafted and will go in as a committee substitute in the near future; Senator Meland will work on a committee substitute for the generic drug bill.

SB 601--recording

Amendments have been prepared to provide that the department of administration can contract with the court system to have a court system employee take care of recording duties in towns where there is no administration employee. "Do Pass" with amendment.

CSSB 693--possession of weapons

This bill would allow the licensing of concealed weapons. However, language in the bill requiring a description of the weapon and prohibiting the carrying of any instrument which could cause injury into a bar were thought to be too broad. There were no "Do Passes" on the committee.

SB 697--entry onto land by engineers and surveyors

It was felt that this bill did not protect the rights of a private property owner. Mr. Silides will research the bill to find out who requested it and why. No action was taken.

CSHB 738--appropriation to Dept. of Law

This appropriation is to pay miscellaneous court awards for which the state is liable. "Do Pass"

HB 839--access to certain Fish and Game data

Senator Tillion stated his objections to the bill; no action was taken.

SB 717--probate code

This bill contains technical amendments to the probate code. Senator Ziegler will carry it on the floor. "Do Pass"

Paula Ziegler

SENATE JUDICIARY
April 8, 1976
Present: Senators Meland, Ziegler, Miller, Tillion
Excused; Senator Poland

CSHB 584am--substitution of generic drugs

Senator Meland chaired the meeting; he announced that the committee would take no action at this meeting. A second meeting will be held on April 20th.

Mrs. Ruby Jones, representing Catholic Community Services, spoke in support of the bill. She pointed out that almost everyone over the age of 60 is on some type of medication. Many in this age group have only Social Security as income. They will benefit from the passage of this bill. She gave several examples of the high cost of medicine. 11 other states have legislation of this kind. She felt the bill had adequate safeguards. Less expensive drugs are available from such organizations as the American Association of Retired Persons, but not everyone is aware of the opportunity to purchase through that organization.

Carol Larsen testified in favor of the bill, representing "The Public Not Be Damned" under the auspices of the Alaska Public Interest Research Group.* Older people, the chronically ill and young families with young children are those most in need of medication and those least able to afford it. Her group has made a study of prescription sales in Anchorage. 20% of the national drug industry's budget is spent on advertising and promotion. Doctors are subject to this "high pressure" advertising. Current Alaska law prohibits substitution without specific permission, but a HEW study has recommended substitution be allowed where it is consistent with good health care.

The crux of the matter is bioequivalency. Not all drug products are equivalent. However, Mrs. Larsen felt that, between physicians and pharmacists, the pharmacist is the one, by education and experience, best qualified to determine the quality and bioavailability of drug products. She also felt that pharmacists would be the least biased.

The Anchorage study revealed that prices vary a lot now from store to store. Price posting would be desirable.

Mrs. Larsen recommended amending the bill to delete the provision that the pharmacist must notify the physician that a substitution has been made. If the pharmacist has to notify a doctor each time he substitutes, it will become a burden and thus a deterrent to his substituting.

Senator Miller asked if the bill was not interfering with the doctor-patient relationship and wondered how it would affect a potential malpractice suit. Mrs. Larsen replied that a physician knows best which chemicals should be used, but the pharmacist knows more about equivalency.

In response to a question from Senator Ziegler, Mrs. Larsen said she was not asserting that the drug industry is reaping huge profits, just that they exert pressure on the doctor to use brand name drugs.

*APIRG is an independent, non-profit consumer advocacy group. Mrs. Larson is a full time student at the University of Alaska and receives a stipend from them for her consumer study work.

Ron Sedgewick, representing the Alaska Pharmaceutical Association, stated that the bill could be of help to consumers only if strong safeguards are inserted. The Association generally opposes the legislation, but if it is to be passed, tight control should be provided.

Concerning language in the bill referring to "the pharmacist's professional opinion", Mr. Sedgewick explained that a physician generally restricts himself to a set of drugs he is used to and knows the responses of. The doctors knows better which drug to use, and which brand thereof.

He did not favor deleting the requirement of notifying the physician of a substitution. The patient might respond differently to a generic drug; if the doctor does not know of the substitution, he might attribute the response to some other reason. In addition, the bill provides no other option for the physician than to write "Do Not Substitute" on the prescription. What if he forgets to write it? A better approach would be to make the doctor act positively by giving him three choices: "Substitution permitted", "DonNot Substitute" or "Dispense as Written".This would remove the potential of an error of omission.

Mr. Sedgewick did not feel that he was capable of judging bioavailability on the basis of the information he now receives. Neither is a physician. A pharmacist would have to accept the liability for making the choice. This will make his insurance costs go up, and drug prices as a result. He recommended adopting the minimum manufacturing standards of the FDA to be used by pharmacists in judging equivalency. This would at least provide some guidelines. The state is apparently incapable, at this time, of providing a formulary. Perhaps this could be provided by the industry.

The provision stating that the pharmacist should substitute only when it would provide a savings to the consumer is favored.

Mrs. Larson had used the example of Darvon in her presentation as an example of how much less expensive the generic substitute was. Mr. Sedgewick stated, however, that he did not feel there is any good generic substitute for Darvon.

Concerning price posting, he testified that this, in the long run, would result in higher costs to the consumer. It would take time to continually update the list and time to explain the list to the consumer, who is not educated enough on the subject to understand the list. During the federally mandated price list requirement of several years ago, no one ever asked to see the list in his pharmacy. The answer is to educate the consumer to ask the pharmacist for the price of a specific prescription and require the pharmacist to tell him the price and the reason for the price. A pharmacy owner cannot compete with mail order drug houses who do not have to cope with the price of doing business in Alaska. Other factors also enter into price, such as providing patient profiles, delivery service, 24-hour call.

Some provision should be made for enforcement. The Department of Commerce should have a pharmacist inspector. Alaska is the only state that does not have one.

The subject bill repeals, but does not reenact, a provision in current law providing that when the pharmacist does not have the drug available and he cannot locate the physician, he may substitute and then notify the doctor. This should be inserted in the legislation to take care of emergency situations.

Lines 4-7 on page 2 should be deleted. Price is the only criterion according to this language.

Senator Miller asked why there is a current prohibition against price advertising. Mr. Sedgewick answered on the basis of the Oregon experience. Stores there may advertise, and large chain stores do so, creating a low price image because of their prices on certain drugs, implying that all prices are low at these stores, which may not necessarily be the case. If mail order drug houses advertised in Alaskan towns where there is only one drug store, for example, they would soon have pushed the one pharmacist out of business and eliminate primary emergency care.

Senator Miller also asked if therapeutic equivalency could ever be easily ascertained. For some drugs, it is no problem, but there are enough others where determination cannot be definitely made. Among the pharmacist, the doctor and the FDA, Mr. Sedgewick felt that the doctor is the best qualified to make the determination. Eventually, a formulary should be available from the FDA, but it is not available now.

Work on a draft committee substitute will be done before the next meeting.

Paula Ziegler

SENATE JUDICIARY COMMITTEE
April 13, 1976
Present: Senators Ziegler, Tillion, Miller, Meland
Excused: Senator Poland

CSSSSB 572--children's court

The committee substitute is an attempt to incorporate all the suggested changes brought to the committee's attention at the hearing held on the bill. A letter of intent will accompany the committee report suggesting that another interim study be done, this time dealing with the substantive matters to which some members of the judiciary are now objecting. Although there were three judges on the last task force, their attendance record was allegedly not very good.

HB 723--homestead exemption

A memo was read from Don Clocksin answering the questions posed by the committee at the last meeting on this bill. The exemption figure applies to the total value of a home, and not to just the owner's equity in it. A figure reflecting the rise in the cost of living would raise the exemption to $19,000, not $25,000; however, Mr. Clocksin favors the higher figure as he did not think the cost of living was related to the cost of housing. No action was taken on the bill, as there were no "Do Passes" on the committee at this time.

HB 655--foreclosure

This bill changes the departmental reference from Revenue to Natural Resources. "Do Pass"

SB 722--commission on judicial qualifications

THis bill incorporates the suggested changes from the commission as presented to the committee several weeks ago. Senator Miller raised the question of changing the name from "judicial qualifications" to "judicial' conduct." In the state constitution, the commission is specifically designated as "judicial qualifications." Therefore, as provided in the bill, the commission will have to operate under two names. In checking with the drafter, it was determined that there is no legal problem with this, though it may be a little awkward. "Do Pass"

SB 733--eminent domain/University of Alaska

The purpose of this bill, arising out of a Juneau case, is to limit the University's eminent domain power by requiring that approval be obtained from the Governor and the Commission on Postsecondary Education. Senator Tillion suggested amending the bill to deny the University this power in any case. No action was taken on the bill.

SSSB 622--alcoholic beverages

By clearly defining "unified municipality", this bill takes care of the problem raised in the original bill. "Do Pass" (The purpose of the bill is to preclude the possibility of someones' obtaining extra licenses via the population factor when an area unifies.)

CSHJR 1--unicameral

The bill will be reported out "Do Not Pass" when it has been ascertained that it will fail to pass the Senate.

SENATE JUDICIARY COMMITTEE
April 20, 1976
Present: Senators Ziegler, Meland, Miller, Tillion
Excused; Senator Poland

A letter was circulated for signature indicating the committee's approval of those appointees to the Human Rights Commission and the Parole Board who had been assigned to the committee for investigation before confirmation.

SCS CSHB 584--generic drugs

Senator Meland reviewed the changes made in the bill. They include provision for a pharmacy inspector, elimination of price posting and provision for price information on demand, a list of good manufacturing standards which generic drugs must meet, spelling out that a physician must indicate "Substitution permitted" or "Dispense as written", and allowing for substitution in emergency situations where the drug prescribed and the doctor are unavailable.

In response to a question from Senator Miller, Mr. Sedgewick indicated that the purpose of the good standards list was not to hold generic drugs to a higher standard than brand names (which already meet these standards anyway) but to provide some guidelines, since there is no state formulary. The bill is only enabling legislation insofar as the inspector is concerned.

An amendment was adopted providing that if the doctor fails or neglects to "x" the appropriate box on the prescription, the drug will be dispensed as written. "Do Pass". Senator Meland will carry the bill.

CSHB 318--sexual assault

This bill was returned to committee from the floor last year, but is a good substitute for SSSB 306. "Do Pass"

CSHB 694--criminal code revision commission

Jack Doyle of the Legislative Affairs Agency had no objections to the overall purpose of the bill but did have several housekeeping changes. A CS will be drafted to incorporate them. They include providing that the commission will report to the Council, with draft legislation in final form, no later than December 1, 1977 and deleting the two public members to be replaced with three attorneys, experienced in the practice of criminal law, appointed by the Board of Governors of the Alaska Bar. "Do Pass".

CSHB 856--licensing of security guards

Provides for application and licensing procedures. "Do Pass"

HB 581--operation of watercraft

Present law providing penalties for carelessness, etc. apply only to fresh water. This bill would extend them to salt water. "Do Pass"

SENATE JUDICIARY COMMITTEE
April 23, 1976
Present: Ziegler, Tillion, Meland; Mr. Richard Block, Dir. of Insurance
Excused: Poland, Miller

CSHB 554--insurance holding companies

Mr. Block explained that this bill deals with those insurance companies domiciled in Alaska owned wholly or partially by another company, insurance or non-insurance. Before 1969, regulatory authority of the division of insurance dealt only with the inner workings of the company and did not go beyond the company itself to the owner of the company or its management, and, at that time, there was no need for further regulation. Then, investors recognized that insurance companies had a reserve of cash and assets that were attractive. Take-overs, mergers, etc. resulted. For example, American Express now owns Firemen's Fund. The fear was that when these non-insurance companies took over they would use the cash resources for non-insurance purposes:

1. Creates problem for consumer because solidarity of the insurance company is attacked;
2. Insurance companies saw themselves as vulnerable;
3. Some companies (particularly the mutuals which cannot be taken over because they do not issue stock) wanted to liberalize their investment authority to maximize their return.

These factors led to the drafting of a model holding company act drafted by the National Association of Insurance Commissioners. It has been enacted into law, in one form or another, in 44 states. It has three parts:

1. No insurance company domiciled in the state may be acquired unless, prior to the acquisition, those seeking to acquire it have submitted to the director a substantial amount of information and have gained his approval;

2. A report must be filed detailing all transactions the company enters into with the holding company or its affiliates. There are 8 companies domiciled in Alaska; six of these are wholly or partially owned by outside corporations, who provide investment services for them. This bill would regulate how these dealings are handled;

3. This bill also regulates what the company can invest in.

CSHB 554 is the model act except:

1. Alaska law already has investment regulation provisions;
2. A definition of "domiciled" is added to include commercially domiciled companies which are registered in another state but transact at least 33-1/3% of their business, and more than in their home state, in Alaska.

Mr. Block will furnish the committee with the Governor's transmittal letter and a sectional analysis of the bill. A draft of the bill was sent to every company involved. Most did not respond, but any objections raised by those that did have been accomodated in the bill. Companies who are similarly regulated in other states do not have to comply but may be required to furnish a copy of their reports filed in the other state.

No action was taken on the bill, pending the arrivial of the information from Mr. Block.

SENATE JUDICIARY COMMITTEE
April 27, 1976
Present: All members of the committee; Wes Coyner, Don Clocksin, Norm Gorsuch

CSHB 366--deeds of trust

Mr Coyner, representing the Alaska Bankers Association, testified that his organization is concerned because the bill adds 30 days to the existing 90 days before a foreclosure sale can be held. He did not feel that this additional time is necessary; 90 days is sufficient. In addition, a person could default two times under the bill before a bank could foreclose. The committee took no action on the bill.

HCR 109--attorney fee review

The purpose of the resolution is to inform the public that a fee review commission does exist and that they are entitled to appeal to it if they have a complaint about an attorney fee. "Do Pass"

CSHB 775--penalties for escape

No action was taken on this bill as the committee has already passed out a Senate bill on the same subject.

CSHB 873--dissolution of marriage

Mr. Clocksin, of Alaska Legal Services, spoke in favor of this bill and furnished the committee with a sectional analysis. A recent study of divorces in Anchorage tended to prove that a very small percentage of the divorces being granted currently are disputed. Most are uncontested.(ALS handles more divorces than any other firm in the state.) The current divorce procedures do not take into account that most divorces are uncontested and places the parties into an adversarial situation automatically. Even though Alaska has a "no-fault" divorce law insofar as grounds are concerned (incompatibility of temperament), the procedures imply fault. This bill adjusts the procedure to the realities of the no-fault provision. The basic difference is that two parties who want a divorce file a joint petition with the terms of their agreement set out. They must agree before they file as to all the relevant terms, e.g. child custody, support, visitation rights, payment of marital debts, etc. The petition must be filed jointly unless the other spouse has been out of the state and unheard from for a lengthy period of time. After a court hearing, the divorce may be granted. Traditionally, there has been opposition to this approach for couples with minor children, but this bill allows the procedure in such a case.

The bill does not repeal any of the existing procedures; in the case there is dispute, the adversarial procedure is still available. The bill also makes both parties go to court which would eliminate the possibility of coercion. Mr. Clocksin felt that coercion is not uncommon. The bill also does not preclude the hiring of an attorney to assist with complicated aspects. The"changed circumstances" rule for child custody would still apply.

Although another spokesman for the Alaska Bar Association will appear at the next meeting on this bill, Mr. Gorsuch spoke briefly. The Bar is currently in the process of preparing "do it yourself" divorce forms to be placed in bar association offices, court clerk offices, etc. The bar recognizes the need to simplify divorce procedures. These forms are based on existing statutes, with minimum or no need for an attorney. Existing law does not require an attorney to be involved. The bar does not feel the subject bill would be necessary.

Mr. Clocksin replied that since the forms are based on existing law, there would still be problems when minor children are involved. It would not help a person with an absent spouse. It does not provide for alimony or cash settlements. It does not eliminate the adversarial situation. The forms might also be too complicated for some people to understand.

No action was taken on the bill pending the testimony of the bar representative.

SENATE JUDICIARY COMMITTEE
May 4, 1976
Present: Senators Ziegler, Meland, Tillion
Excused: Miller and Poland

CSHB 604--uniform land sales act

Julius Brecht, director of banking and securities, had two suggested changes to make in the bill, bringing it back to the form in which it was originally presented to the House. They are:

1. Change the number of lots determining if the offering should be subject to this act from 25 to 50. These are intra-state offerings, and it is felt that 25 lots are a small enough offering to allow the buyer to make an on-site inspection if he desires. With an offering of 50 lots, this may be difficult to do, and a potential buyer might need the protection afforded by the bill.

2. Reinsert the exemptions for state offerings. The House had repealed this section, thereby making the state subject to the act.

34 states have the uniform act, but Alaska is the only one that does not apply its terms to intrastate offerings. As a result of the pipeline boom, there have been increases in speculative land ventures.

The amendments were inserted in the bill. "Do Pass"

CSHB 774--magistrates pay

This bill changes the basis on which magistrates' salaries are determined, and also includes the "Nora Guinn special" to allow her to use her time as a magistrate for her judicial retirement. "Do Pass"

CSHB 971--number of superior and district judges

This would add another judge to the Fairbanks area and also sets forth the existing number of district court judges. It has a further referral to Finance. "Do Pass"

SENATE JUDICIARY COMMITTEE
May 11, 1976
Present: Meland, Poland, Miller, Tillion; Mr. John Reese
Excused: Ziegler

CSHB 743--dissolution of marriage

Mr. Reese spoke on behalf of the Board of Governors of the Alaska Bar. Simple uncontested divorces without lawyers are not objectionable to the bar. The bar supports this idea and is working independently of this bill to make it easier for people to do their own divorces by providing them with the proper forms and instructions. The bar does not support this bill, however, because it complicates a do it yourself divorce, adds unnecessary burdens and addresses itself to a much broader type domestic situation than the bar thinks should be handled informally.

A simple uncontested divorce can occur when the parties agree they do not want to remain married and there is no substantial property involved. There are certain risks:

1. It might be an impulsive action. A lawyer would examine his client to see if counseling had been sought;

2. There is a difference between marital and separate property, and debts are considered to be property. This could be confusing to a layman; they may not even be aware of the property owned. Proper transfers must be made; and

3. The best interests of the children might not be served. A divorce is an emotional situation to begin with. Decisions are made by the parties alone might be questionable. There is need for help from someone other than the judge. The bill allows for the appointment of a guardian ad litem but does not require one. The parties might not understand all the options available. A common problem now is that the custodial parent agrees that the noncustodial parent need not pay child support. The child should receive support from both parents.

Mr. Reese refuted the "red herring" arguments against do it yourself divorce e.g., that it would make divorces too easy to obtain or that paying an attorney's fee is a deterrent to divorce. The problem is how much legal advice a person really does need. The bar's objection to this bill is that it complicates present procedures.

Sec. 231(a) implies that if the marriage doesn't fit into any or all of these listed categories, a party couldn't use the simplified procedure.

231(b) deals with default divorces. When one party has been absent for a long period of time, incompatibility could be implied, but it is not an agreed upon divorce. Also, the notification procedures are not simple. It takes the careful attention of an attorney to meet the due process requirements. Default divorce should not be included in this bill.

232 (e) lists seven items as the contents of the petition. It is not a complete list of the issues involved. The age of the spouses and their occupations are legally irrelevant. Income and assets also include such things as retirement funds. The list does not mention children who have been adopted.

233 (a) is misleading. the court does not automatically set the time and place of a hearing just because the petition has been filed.

233(b) requires the personal appearance by both spouses so the judge can question both of them; this assumes a much more active role taken by the judge than is the case. In an adversary system, the role of the judge is passive. They do not ask questions to bring out what the parties have forgotten to say. The burden for bringing out all the relevant facts is on the parties. In addition, having both parties present does not necessarily solve the intimidation problem, if there is one.

233(c) deals with the default situation. It sets forth the due process requirements but does not explain them. Civil Rules are not that easy to deal with for non-lawyers.

233(g) provides that the court may amend the agreement if the parties concur. This is illusory, because if the parties agree, the judge should play no role.

234 is not drafted correctly. It does not mention the division of property or the custody of children except for stating that the judge will "write into the decree." This is not the way it is done; the section should be in technical, precise terms. There is no reason to deviate from the present law here.

234(f) is redundant. It is already a matter of law as to how property rights are handled. Again, non-technical language is used. The section also seems to assume an adversarial relationship which contradicts the purpose of the bill.

The bill isswritten in part like a handbook; this is not proper for placing in the state statutes. It should be written in technical language, and be accompanied by a handbook or some kind of detailed instructions. The bill does not change any substantive rights, so there is no need to change the present language of the statutes. The bill is very broad in its coverage. Just calling a divorce a "dissolution" does not mean it will not be adversarial.

Mr. Reese pointed tout that since the bill is going to require a handbook, why not have a handbook based on present divorce procedures? The Alaska Bar is trying to finalize forms and instructional material to accomplish this. He favored this approach, rather than adding to the law in confusing ways that could actually impede a self-help divorce. The Bar material points out the risks involved, e.g. in property settlement complications.

Basically, in terms of general approach, there is no difference between the bill and the Bar's method. The Bar favors the idea of the bill if it were rewritten.

No action was taken on the bill. Mr. Reese and Mr. Clocksin will submit written comments.

SENATE JUDICIARY COMMITTEE
May 16, 1976
Present: Ziegler, Miller, Meland, Poland; Chance
Excused: Tillion

HB 178--third party beneficiaries/warranties

At the request of Representative Parr, the bill was brought up for consideration; there were no "Do Passes" on the committee. He will be notified.

SB 754--measures submitted to the voters

This is enabling legislation for SJR 55. It was decided to wait until the constitutional amendment has gone through the ballot process before working on the enabling legislation.

CSSSSB 306--sexual assault

There are three sections in this bill. The first deals with the Kodiak situation discussed with reference to HB 318. The second deals with assault consisting of touching with the intent to arouse or gratify the sexual desire of either party. The third section ties the second section into the evidence of prior sexual conduct provision passed by the legislature last year.

The Attorney General has stated that he is the most interested in the first section. Senator Chance explained that the reasons for the other section are to provide district attorneys with a lesser charge.

The bill was reported out "Do Pass" with amendments by Senator Ziegler to delete the second and third sections.

CSHB 366--deeds of trust

"Do Pass"

SENATE JUDICIARY COMMITTEE
May 21, 1976
Present: Senators Ziegler, Meland, Tillion
Excused: Poland, Miller

CSHB 600--presumptive sentencing

Dan Hickey, representing the Attorney General's office, spoke on the bill. From a philosophical point of view, the changes made in the House improve the bill. The bill is restricted to some very serious, very narrowly defined violent felonies. Some additions should be made, however:

1. The bill does not address itself to the question of post release services for offenders within the mandatory sentencing provisions of the bill. Now, they are released on parole and provided with certain conditions. The bill does not provide parole for second or third offenders.

2. The question of correctional rehabilitative services within the institution is also not covered. There is a need for some mechanism to insure that these programs are available.

There are also some technical changes which should be made, e.g. the aggravating and mitigating circumstance provision is such that a first offender could conceivable be sentenced to a longer period than a second or third offender. This should be clarified.

Senator Ziegler stated that the bill would not come out this year, due to the late date at which it was received and the work that needs to be done on it. He will prefile a sentencing bill at the beginning of next session. Letters have been received from several agencies indicating that this course of action would be desirable in order that sufficient time can be spent on the bill to make it workable and in the best possible form.

CSHB 554 and 558--insurance regulation

Testimony had been received on these bills at an earlier meeting. Having received the requested material from Mr. Block, the bills were reported out "Do Pass".

HB 775--penalties for escape

An amendment has been prepared by the sponsor incorporating the mitigating circumstances, three-judge panel concepts of the presumptive sentencing bill. The bill, with the amendment, was reported out "Do Pass".

HB 723--homestead exemption

Committee amendments reduce the $25,000 exemption to $19,000 to reflect the increase in inflation only. The bill was reported out without recommendation but with the amendment.

5/2/76

CSHB 558--insurance practices

This bill also began as a model act from the NAIC, and has been modified for Alaska. It deals with unfair trade practices, misrepresentation and false advertising. The authority is granted the director in Title 21, but this bill clarifies what he can do. During the last several months, several abuses have come to light. The legislation is needed to correct these.

In response to a question by Senator Ziegler, Mr. Block explained that the director has the power to impose fines and issue stop orders. If the stop order is ignored or violated, the superior court may levy a fine. Appeal is to the superior court.

Mr. Block will furnish a sectional analysis of this bill and copies of the model act. Because the division already has a consumer protection division, there will be no fiscal implications. The bill only gives existing officials more power.

No action was taken at this time.

SB 752--games of chance and skill

This bill would remove such games from state regulation and make the matter strictly one of local option. "Do Pass"

SENATE JUDICIARY COMMITTEE
May 26, 1976
Present: Ziegler, Miller, Meland, Tillion
Excused: Poland

SCSCSHB 873--dissolution of marriage

Senator Ziegler stated that the Alaska Bar Association, through Mr. John Reese, has had ample opportunity to review the proposed committee substitute; his (Mr. Reese) suggested changes have all been incorporated in the bill. Don Clocksin reviewed the changes:

1. the phrase "and tax consequences to the parties, if any" has been added wherever applicable;

2. regarding a default situation, the phrase " after reasonable efforts have been made to locate the absent spouse"

3. the bill now allows an absent spouse to execute an Appearance and Waiver so only one party has to appear in court. There are provisions to prevent, insofar as it is possible, coercion. Changes allowing for the presence of only one spouse are made throughout the bill where applicable.

4. the ages of the spouses are no longer listed in the petition.

5. "Liabilities" have been added to the contents of the petition relating to property settlement.

6. "adopted children" have been added.

7. either spouse may have counsel present at the hearing.

The bill was reported out "Do Pass"

SCSCSHB 531--access to public information

Senator Miller explained that the original bill, "freedom of information", was really a problem because it actually locked up more information than it released. It tried to balance the right to know with the right to privacy, but was not well researched. Many complaints were received from various state departments and agencies as to how they would fit under the bill. He had drafted a committee substitute which simply beefs up the existing law and provides clearer access to the courts and more relief. The title has also been changed.

Mr. Clocksin stated that Alaska Legal Services was interested in an amendment providing that copies shall be made available at cost of whatever document is requested. He will draft an amendment and make it available. Senator Miller signed "Do Pass": all others without recommendation.