ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
April 24, 2002
1:12 p.m.

MEMBERS PRESENT

Representative Norman Rokeberg, Chair
Representative Jeannette James
Representative John Coghill
Representative Kevin Meyer
Representative Ethan Berkowitz
Representative Albert Kookesh

MEMBERS ABSENT

Representative Scott Ogan, Vice Chair

OTHER LEGISLATORS PRESENT

Representative Andrew Halcro

COMMITTEE CALENDAR

HOUSE BILL NO. 180
"An Act requiring child services providers to obtain criminal background checks for child services workers."

- RESCINDED ACTION OF 4/22/02; MOVED NEW CSHB 180(JUD) OUT OF COMMITTEE

CONFIRMATION HEARINGS

Board of Governors of the Alaska Bar

Sheila A. Selkregg, Ph.D. - Anchorage

- CONFIRMATION ADVANCED

CS FOR SENATE BILL NO. 263(RLS)
"An Act relating to the subsequent acquisition of title to, or an interest in, real property by a person to whom the property has purportedly been granted in fee or fee simple; and providing for an effective date."

- MOVED CSSB 263(RLS) OUT OF COMMITTEE

HOUSE BILL NO. 271
"An Act relating to recovery of punitive damages resulting from an aviation accident; and providing for an effective date."

- MOVED CSHB 271(JUD) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 37(FIN)
"An Act relating to collective negotiation by competing physicians with health benefit plans, to health benefit plan contracts, to the application of antitrust laws to agreements involving providers and groups of providers affected by collective negotiations, and to the effect of the collective negotiation provisions on health care providers."

- MOVED HCS CSSB 37(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 140
"An Act relating to gamma-Hydroxybutyrate."

- HEARD AND HELD

CS FOR SENATE BILL NO. 222(FIN)
"An Act relating to certain motor vehicles that are required to yield to following traffic."

- MOVED HCS CSSB 222(JUD) OUT OF COMMITTEE

PREVIOUS ACTION

BILL: HB 180
SHORT TITLE:BACKGROUND CHECK OF YOUTH WORKER
SPONSOR(S): REPRESENTATIVE(S)MCGUIRE

Jrn-Date	Jrn-Page		Action
03/13/01	0560	(H)	READ THE FIRST TIME - REFERRALS
03/13/01	0560	(H)	HES, JUD
03/16/01	0636	(H)	COSPONSOR(S): DYSON
04/10/01		(H)	HES AT 3:00 PM CAPITOL 106
04/10/01		(H)	<Bill Postponed to 4/19>
04/19/01		(H)	HES AT 3:00 PM CAPITOL 106
04/19/01		(H)	Heard & Held
04/19/01		(H)	MINUTE(HES)
02/04/02	2152	(H)	COSPONSOR(S): CROFT
04/18/02		(H)	HES AT 3:00 PM CAPITOL 106
04/18/02		(H)	Moved CSHB 180(HES) Out of Committee

			MINUTE(HES)
04/19/02	3048	(H)	COSPONSOR(S): STEVENS
04/22/02	3059	(H)	HES RPT CS(HES) NT 4DP 3NR
04/22/02	3059	(H)	DP: WILSON, CISSNA, STEVENS, DYSON;
04/22/02	3059	(H)	NR: COGHILL, KOHRING, JOULE
04/22/02	3059	(H)	FN1: ZERO(HSS)
04/22/02		(H)	JUD AT 1:30 PM CAPITOL 120
04/22/02		(H)	Moved CSHB 180(JUD) Out of Committee -- Time Change -- MINUTE(JUD)
04/24/02		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: SB 263
SHORT TITLE:AFTER ACQUIRED TITLE IN REAL PROPERTY
SPONSOR(S): SENATOR(S) LEMAN

Jrn-Date	Jrn-Page		Action
01/30/02	2067	(S)	READ THE FIRST TIME - REFERRALS
01/30/02	2068	(S)	L&C, JUD
02/06/02	2125	(S)	COSPONSOR(S): HOFFMAN
02/12/02		(S)	L&C AT 1:30 PM BELTZ 211
02/12/02		(S)	Moved CS(L&C) Out of Committee
02/12/02		(S)	MINUTE(L&C)
02/13/02	2174	(S)	L&C RPT CS 5DP SAME TITLE
02/13/02	2174	(S)	DP: STEVENS, AUSTERMAN, DAVIS, LEMAN,
02/13/02	2175	(S)	TORGERSON
02/13/02	2175	(S)	FN1: ZERO(S.L&C)
02/25/02		(S)	JUD AT 1:30 PM BELTZ 211
02/25/02		(S)	-- Meeting Canceled --
03/04/02		(S)	JUD AT 1:30 PM BELTZ 211
03/04/02		(S)	Heard & Held
03/04/02		(S)	MINUTE(JUD)
03/27/02		(S)	JUD AT 1:30 PM BELTZ 211
03/27/02		(S)	Moved CS(JUD) Out of Committee
03/27/02		(S)	MINUTE(JUD)
03/28/02	2554	(S)	JUD RPT CS FORTHCOMING 3DP
03/28/02	2554	(S)	DP: TAYLOR, ELLIS, COWDERY
03/28/02	2554	(S)	FN1: ZERO(S.L&C)
04/03/02	2606	(S)	JUD CS RECEIVED SAME TITLE
04/10/02		(S)	RLS AT 10:30 AM FAHRENKAMP 203
04/10/02		(S)	MINUTE(RLS)

04/11/02	2731	(S)	RULES TO CALENDAR W/CS 4/11 SAME TITLE
04/11/02	2731	(S)	FN1: ZERO(S.L&C)
04/11/02	2732	(S)	READ THE SECOND TIME
04/11/02	2732	(S)	RLS CS ADOPTED UNAN CONSENT
04/11/02	2732	(S)	ADVANCED TO THIRD READING UNAN CONSENT
04/11/02	2732	(S)	READ THE THIRD TIME CSSB 263(RLS)
04/11/02	2733	(S)	PASSED Y20 N-
04/11/02	2733	(S)	EFFECTIVE DATE(S) SAME AS PASSAGE
04/11/02	2733	(S)	HOFFMAN NOTICE OF RECONSIDERATION
04/12/02	2754	(S)	RECONSIDERATION NOT TAKEN UP
04/12/02	2754	(S)	TRANSMITTED TO (H)
04/12/02	2754	(S)	VERSION: CSSB 263(RLS)
04/15/02	2922	(H)	READ THE FIRST TIME - REFERRALS
04/15/02	2922	(H)	JUD
04/24/02		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 271
SHORT TITLE:CAP ON AVIATION ACCIDENT PUNITIVE DAMAGES
SPONSOR(S): LABOR & COMMERCE

Jrn-Date	Jrn-Page		Action
05/04/01	1532	(H)	READ THE FIRST TIME - REFERRALS
05/04/01	1532	(H)	L&C, JUD
05/06/01	1617	(H)	PRIME SPONSOR CHANGED
04/10/02		(H)	L&C AT 3:15 PM CAPITOL 17
04/10/02		(H)	Moved CSHB 271(L&C) Out of Committee MINUTE(L&C)
04/11/02	2881	(H)	L&C RPT CS(L&C) 2DP 2NR 3AM
04/11/02	2881	(H)	DP: HAYES, HALCRO; NR: CRAWFORD,
04/11/02	2881	(H)	MURKOWSKI; AM: ROKEBERG, MEYER, KOTT
04/11/02	2881	(H)	FN1: ZERO(ADM)
04/11/02	2881	(H)	FN2: ZERO(CED)
04/19/02		(H)	JUD AT 1:30 PM CAPITOL 120
04/19/02		(H)	Heard & Held - Time Change - MINUTE(JUD)
04/24/02		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: SB 37
SHORT TITLE:PHYSICIAN NEGOTIATIONS WITH HEALTH INSURE
SPONSOR(S): SENATOR(S) KELLY

Jrn-Date	Jrn-Page		Action
01/12/01	0073	(S)	READ THE FIRST TIME - REFERRALS
01/12/01	0073	(S)	JUD, FIN
01/22/01	0137	(S)	L&C REFERRAL ADDED AFTER JUD
01/22/01		(S)	JUD AT 1:30 PM BELTZ 211
01/22/01		(S)	Heard & Held
01/22/01		(S)	MINUTE(JUD)
02/21/01		(S)	JUD AT 1:30 PM BELTZ 211
02/21/01		(S)	Moved CS(JUD) Out of Committee
02/21/01		(S)	MINUTE(JUD)
02/22/01	0467	(S)	JUD RPT CS 2DNP 3NR NEW TITLE
02/22/01	0467	(S)	NR: TAYLOR, COWDERY, THERRIAULT;
02/22/01	0467	(S)	DNP: ELLIS, DONLEY
02/22/01	0467	(S)	FN1: (LAW)
02/22/01	0467	(S)	FN2: (CED)
02/22/01	0467	(S)	FN3: INDETERMINATE(ADM)
02/22/01	0467	(S)	FN4: ZERO(HSS)
03/01/01		(S)	L&C AT 1:30 PM BELTZ 211
03/01/01		(S)	Heard & Held
03/01/01		(S)	MINUTE(L&C)
03/08/01		(S)	L&C AT 1:30 PM BELTZ 211
03/08/01		(S)	Heard & Held
03/08/01		(S)	MINUTE(L&C)
03/13/01		(S)	L&C AT 1:30 PM BELTZ 211
03/13/01		(S)	Moved CS(L&C) Out of Committee
03/13/01		(S)	MINUTE(L&C)
03/14/01	0653	(S)	L&C RPT CS 2DP 3NR NEW TITLE
03/14/01	0653	(S)	NR: PHILLIPS, DAVIS, TORGERSON;
03/14/01	0653	(S)	DP: AUSTERMAN, LEMAN
03/14/01	0653	(S)	FN1: (LAW)
03/14/01	0653	(S)	FN2: (CED)
03/14/01	0653	(S)	FN3: INDETERMINATE(ADM)
03/14/01	0653	(S)	FN4: ZERO(HSS)
03/28/01		(S)	FIN AT 9:00 AM SENATE FINANCE 532
03/28/01		(S)	Heard & Held
03/28/01		(S)	MINUTE(FIN)
03/28/01		(S)	FIN AT 6:00 PM SENATE FINANCE

			532
03/28/01		(S)	Moved CS(FIN) Out of Committee
03/28/01		(S)	MINUTE(FIN)
03/29/01	0853	(S)	FIN RPT CS 3DP 1DNP 4NR NEW TITLE
03/29/01	0853	(S)	DP: KELLY, WILKEN, LEMAN;
03/29/01	0853	(S)	NR: DONLEY, AUSTERMAN, OLSON, GREEN;
03/29/01	0853	(S)	DNP: HOFFMAN
03/29/01	0853	(S)	FN1: (LAW)
03/29/01	0854	(S)	FN2: (CED)
03/29/01	0854	(S)	FN4: ZERO(HSS)
03/29/01	0854	(S)	FN5: ZERO(S.FIN/ADM)
04/04/01		(S)	RLS AT 10:45 AM FAHRENKAMP 203
04/04/01		(S)	MINUTE(RLS)
04/04/01	0932	(S)	RULES TO CALENDAR 1OR 4/4/01
04/04/01	0933	(S)	READ THE SECOND TIME
04/04/01	0933	(S)	FIN CS ADOPTED UNAN CONSENT
04/04/01	0933	(S)	ADVANCED TO THIRD READING UNAN CONSENT
04/04/01	0933	(S)	READ THE THIRD TIME CSSB 37(FIN)
04/04/01	0933	(S)	PASSED Y13 N6 E1
04/04/01	0934	(S)	ELLIS NOTICE OF RECONSIDERATION
04/05/01	0961	(S)	RECONSIDERATION NOT TAKEN UP
04/05/01	0962	(S)	TRANSMITTED TO (H)
04/05/01	0962	(S)	VERSION: CSSB 37(FIN)
04/06/01	0875	(H)	READ THE FIRST TIME - REFERRALS
04/06/01	0875	(H)	L&C, JUD, FIN
04/23/01		(H)	L&C AT 3:15 PM CAPITOL 17
04/23/01		(H)	Heard & Held
04/23/01		(H)	MINUTE(L&C)
03/22/02		(H)	L&C AT 3:15 PM CAPITOL 17
03/22/02		(H)	Moved HCS CSSB 37(L&C) Out of Committee
			MINUTE(L&C)
03/26/02	2682	(H)	L&C RPT HCS(L&C) 1DNP 5NR
03/26/02	2682	(H)	DNP: CRAWFORD; NR: ROKEBERG, MEYER,
03/26/02	2682	(H)	HAYES, HALCRO, MURKOWSKI
03/26/02	2683	(H)	FN6: ZERO(ADM)
03/26/02	2683	(H)	FN7: (CED)
03/26/02	2683	(H)	FN8: (LAW)

04/10/02		(H)	JUD AT 1:00 PM CAPITOL 120
04/10/02		(H)	Heard & Held MINUTE(JUD)
04/24/02		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 140
SHORT TITLE:PLACE GHB IN SCHEDULE IA
SPONSOR(S): REPRESENTATIVE(S)CHENAULT

Jrn-Date	Jrn-Page		Action
02/23/01	0413	(H)	READ THE FIRST TIME - REFERRALS
02/23/01	0413	(H)	JUD, FIN
02/23/01	0413	(H)	REFERRED TO JUDICIARY
03/19/01	0656	(H)	COSPONSOR(S): LANCASTER
04/24/02		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: SB 222
SHORT TITLE:REQUIRE SLOW DRIVERS TO PULL OVER
SPONSOR(S): SENATOR(S) DONLEY

Jrn-Date	Jrn-Page		Action
05/03/01	1465	(S)	READ THE FIRST TIME - REFERRALS
05/03/01	1465	(S)	TRA, FIN
02/12/02		(S)	TRA AT 1:30 PM BUTROVICH 205
02/12/02		(S)	Moved CS(TRA) Out of Committee
02/12/02		(S)	MINUTE(TRA)
02/19/02	2220	(S)	TRA RPT CS 4DP 1NR SAME TITLE
02/19/02	2221	(S)	DP: COWDERY, WILKEN, TAYLOR, WARD;
02/19/02	2221	(S)	NR: ELTON
02/19/02	2221	(S)	FN1: (DOT)
03/01/02		(S)	FIN AT 9:00 AM SENATE FINANCE 532
03/01/02		(S)	Moved CS(FIN) Out of Committee
03/01/02		(S)	MINUTE(FIN)
03/01/02	2337	(S)	DP: DONLEY, KELLY, GREEN, AUSTERMAN,
03/01/02	2337	(S)	WARD; NR: HOFFMAN, OLSON
03/01/02	2337	(S)	FN2: ZERO(DPS)
03/01/02	2337	(S)	FIN RPT CS 5DP 2NR SAME TITLE
03/13/02		(S)	RLS AT 11:00 AM FAHRENKAMP 203
03/13/02		(S)	MINUTE(RLS)

03/18/02	2449	(S)	RULES TO CALENDAR 3/18/02
03/18/02	2451	(S)	READ THE SECOND TIME
03/18/02	2451	(S)	FIN CS ADOPTED UNAN CONSENT
03/18/02	2451	(S)	ADVANCED TO THIRD READING UNAN CONSENT
03/18/02	2451	(S)	READ THE THIRD TIME CSSB 222(FIN)
03/18/02	2452	(S)	PASSED Y17 N1 E 2
03/18/02	2452	(S)	LINCOLN NOTICE OF RECONSIDERATION
03/20/02	2476	(S)	RECONSIDERATION NOT TAKEN UP
03/20/02	2477	(S)	TRANSMITTED TO (H)
03/20/02	2477	(S)	VERSION: CSSB 222(FIN)
03/22/02	2490	(S)	FN1: (DOT)
03/22/02	2635	(H)	READ THE FIRST TIME - REFERRALS
03/22/02	2635	(H)	JUD, FIN
04/22/02		(H)	JUD AT 1:30 PM CAPITOL 120
04/22/02		(H)	<Bill Postponed to 4/24/02> - Time Change -
04/24/02		(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

HEATHER M. NOBREGA, Staff
to Representative Norman Rokeberg
House Judiciary Standing Committee
Alaska State Legislature
Capitol Building, Room 118
Juneau, Alaska 99801
POSITION STATEMENT: During discussion of HB 180, explained the new proposed committee substitute (CS) and responded to questions. During discussion of SB 37, explained the changes made in the proposed committee substitute (CS) and pointed out the need for a technical amendment. During discussion of SB 222 clarified aspects of the bill.

SENATOR LOREN LEMAN
Alaska State Legislature
Capitol Building, Room 115
Juneau, Alaska 99801
POSITION STATEMENT: Sponsor of SB 263.

RUSSELL DICK, Natural Resource Manager
Sealaska Corporation
One Sealaska Plaza, Suite 400
Juneau, Alaska 99801-1276

POSITION STATEMENT: Assisted with the presentation of SB 263.

JON TILLINGHAST, General Counsel
Sealaska Corporation
One Sealaska Plaza, Suite 400
Juneau, Alaska 99801-1276
POSITION STATEMENT: Responded to questions during the discussion of SB 263.

CHRISTOPHER KNIGHT, Staff
to Representative Andrew Halcro
Alaska State Legislature
Capitol Building, Room 414
Juneau, Alaska 99801
POSITION STATEMENT: During discussion of HB 271, which was sponsored by the House Labor and Commerce Standing Committee, responded to questions on behalf of Representative Halcro, chair of the subcommittee on aviation insurance.

SENATOR PETE KELLY
Alaska State Legislature
Capitol Building, Room 518
Juneau, Alaska 99801
POSITION STATEMENT: Sponsor of SB 37.

SENATOR DONNY OLSON
Alaska State Legislature
Capitol Building, Room 510
Juneau, Alaska 99801
POSITION STATEMENT: Provided comments during discussion of SB 37.

SHARALYN "SUE" WRIGHT, Staff
to Representative Mike Chenault
Alaska State Legislature
Capitol Building, Room 432
Juneau, Alaska 99801
POSITION STATEMENT: Presented HB 140 on behalf of the sponsor, Representative Chenault.

DEB BLIZZARD, R.N.
PO Box 868
Soldotna, Alaska 99669
POSITION STATEMENT: Provided comments during discussion of HB 140.

JULIA P. GRIMES, Lieutenant

Division of Alaska State Troopers
Department of Public Safety (DPS)
5700 East Tudor Road
Anchorage, Alaska 99507
POSITION STATEMENT: Provided comments during discussion of HB 140 and responded to questions.

LINDA WILSON, Deputy Director
Public Defender Agency (PDA)
Department of Administration
900 West 5th Avenue, Suite 200
Anchorage, Alaska 99501-2090
POSITION STATEMENT: Testified in opposition to HB 140.

SARA WRIGHT, Staff
to Senator Dave Donley
Alaska State Legislature
Capitol Building, Room 506
Juneau, Alaska 99801
POSITION STATEMENT: Presented SB 222 on behalf of the sponsor, Senator Donley.

ACTION NARRATIVE

TAPE 02-54, SIDE A
Number 0001

CHAIR NORMAN ROKEBERG called the House Judiciary Standing Committee meeting to order at 1:12 p.m. Representatives Rokeberg, Coghill, Meyer, and Berkowitz were present at the call to order. Representatives James and Kookesh arrived as the meeting was in progress.

HB 180 - BACKGROUND CHECK OF YOUTH WORKER

Number 0030

CHAIR ROKEBERG announced that the first order of business would be HOUSE BILL NO. 180, "An Act requiring child services providers to obtain criminal background checks for child services workers." [In committee packets was a new proposed committee substitute (CS) for HB 180, version 22-LS0642\U, Lauterbach, 4/24/02.]

Number 0163

REPRESENTATIVE MEYER made a motion to rescind the committee's action on 4/22/02 in reporting CSHB 180(JUD) [CSHB 180(HES), as amended on 4/22/02] from committee.

Number 0169

REPRESENTATIVE BERKOWITZ objected for the purpose of discussion.

Number 0209

HEATHER M. NOBREGA, Staff to Representative Norman Rokeberg, House Judiciary Standing Committee, Alaska State Legislature, explained that in drafting CSHB 180(JUD) [following the hearing on 4/22/02], some problems were discovered, and that these problems have been outlined in a memo provided by the drafter. The first problem revolves around the addition in Section 5 of language relating to indictment, which raises equal-protection issues because there are other types of situations in criminal law that are similar to indictment but are not specifically labeled as such. In the new proposed CS, the language relating to indictment has been removed, although the drafter has provided alternative wording in a memo: after "license" on page 4, line 25, insert "is charged by information of complaint with, is under indictment or presentment for, or".

MS. NOBREGA said that the second problem revolves around the date by which the report from the task force is due; with the change made on 4/22/02, the report would be due one month after the task force is terminated. In the new proposed CS, the date by which the report is due coincides with the date the task force is terminated, that being the first day of the first regular session of the 23rd legislative session. Ms. Nobrega noted that a third change to the new proposed CS was requested by the sponsor; this change on page 9 [line 12] stipulates that the public members of the task force are not entitled to per diem or travel expenses, and should ensure that the fiscal note remains zero.

Number 0410

CHAIR ROKEBERG noted that Representative Berkowitz has removed his objection and that there were no further objections to the motion to rescind the committee's action in reporting CSHB 180(JUD) out of committee. Therefore, CSHB 180(HES), as amended, was back before the committee.

Number 0452

REPRESENTATIVE MEYER moved to adopt the new proposed CS for HB 180, version 22-LS0642\U, Lauterbach, 4/24/02, as a work draft. There being no objection, Version U was before the committee.

MS. NOBREGA, in response to a question, confirmed that Version U contains the three changes she spoke of. She remarked that according to the drafter, any changes to Version U regarding indictment should also include language pertaining to "presentment" and "charged by information of complaint".

REPRESENTATIVE BERKOWITZ, on the point of that suggested language, said that he is not familiar with the term "'presentment' as it's used up here," that "information of complaint" is sometimes "done" by the district attorney or the arresting officer, and that the term "indictment" seemed to him to offer an additional level of protection. "If this presents problems - I don't anticipates it would - but I have no objection to these changes," he added, mentioning, however, that "it is conceptually different, in my mind."

MS. NOBREGA pointed out that language similar to that suggested by the drafter for page 4, line 25, can be found on page 3, lines 24 and 25: "charged by information or complaint with, or under indictment or presentment for a crime listed". She reiterated that according to the drafter, this type of language would be preferable to just the word "indicted", should the committee choose to go that route with the provision on page 4.

REPRESENTATIVE BERKOWITZ noted that the language she refers to on page 3 begins with: "is under investigation or arrest for".

MS. NOBREGA clarified that she was simply pointing out the similarities in the language regarding "charged by information or complaint with", rather than suggesting that the entirety of the sentence on page 3 should also be used on page 4.

Number 0562

REPRESENTATIVE BERKOWITZ asked for an explanation of when someone would be "under investigation".

MS. NOBREGA replied:

> Actually, ... "under investigation" is different than what we were talking about. I was just talking about "indictment", "presentment", or "charged with". The

"under investigation" is completely separate [from] what we had been discussing on [4/22/02].

REPRESENTATIVE BERKOWITZ indicated that the "under investigation" language on page 3 has now caught his attention; "I have no complaints about the other part of the sentence as it's been amended, but now seeing this other part - 'is under investigation' ..."

CHAIR ROKEBERG pointed out that it was a provision on page 4 that was amended on 4/22/02, whereas the provision on page 3, which has language similar to what is being suggested by the drafter for page 4, has yet to be discussed.

REPRESENTATIVE BERKOWITZ said, "A mistake was made and now that I see something that's problematic, I want to fix it." What does "under investigation" mean? Does that mean someone has called in a complaint? Does it mean an investigation is [pending]?

CHAIR ROKEBERG suggested that the committee first address the issue of whether to amend page 4, line 25, to include the language suggested by the drafter, since the original amendment regarding indictment was not incorporated into Version U.

Number 0686

REPRESENTATIVE BERKOWITZ made a motion to adopt Amendment 1.

CHAIR ROKEBERG explained that Amendment 1 would insert the following after "license" on page 4, line 25: "is charged by information of complaint with, is under indictment or presentment for, or".

Number 0710

REPRESENTATIVE COGHILL objected for the purpose of discussion. He said that "certainly we're talking about placement here," but it's only after the conditions [from page 3] are applied, "and I'm wondering if it isn't already covered and if it's necessary to even put in this section [on page 4]." The provision on page 3 involves a licensing issue, and the provision on page 4 involves a placement issue; Amendment 1 would apply to the provision regarding placement, he noted, but "it also refers back to this licensing" provision, and "they've" already been scrutinized under this very same language on page 3.

CHAIR ROKEBERG called an at-ease from 1:25 p.m. to 1:26 p.m.

CHAIR ROKEBERG indicated that he approved of [Amendment 1]

REPRESENTATIVE BERKOWITZ asked: Does the department have authority to remove [a license] if it has some level of cause to be concerned, short of a conviction?

CHAIR ROKEBERG suggested that in making the amendment on 4/22/02, Representative Berkowitz was merely attempting to use the term "indicted" as a catchall in case there had been some charges brought. He relayed that he did not have any problem with [adopting] Amendment 1.

REPRESENTATIVE COGHILL said that he struggles with [the term] "charge". He elaborated:

> I think that sometimes in these family situations, there are all kinds of real high-tension issues, and just the fact that somebody might level a charge, [it] may not be necessary to stop a placement. And in answer to Representative Berkowitz's question, I believe they do have discretionary powers ... for placement. This is just ... a bar ... if there is a conviction.

Number 0881

REPRESENTATIVE BERKOWITZ withdrew Amendment 1, adding that he understands Representative Coghill's concerns. He then turned to the language on page 3, line 24. He said:

> The department can't issue an initial license if the applicant "is under investigation". That's a pretty amorphous term - "is under investigation"; there's no certainty that an applicant would know that they were under an investigation. Investigations sometimes lead to people being more frequently (indisc. - coughing) being cleared, and I just don't know what the standard is there.

CHAIR ROKEBERG said he agreed. He then mentioned that he was familiar with a situation involving a foster parent who was vindicated.

Number 0972

REPRESENTATIVE BERKOWITZ made a motion to adopt [Conceptual] Amendment 2: on page 3, line 24, delete "is under investigation or arrest for".

CHAIR ROKEBERG asked why "under arrest for" should be deleted.

REPRESENTATIVE BERKOWITZ said that if the arrest is not followed up with "an information or complaint," that means someone's been released because there weren't grounds to hold him/her.

CHAIR ROKEBERG surmised, then, that Representative Berkowitz wants the situation to at least reach the formal level of "information or complaint".

REPRESENTATIVE BERKOWITZ confirmed this, and clarified that [Conceptual] Amendment 2 ought to delete only "under investigation or arrest for", leaving line 24 to begin with "is charged by". He added that apparently "this language is somewhere else in the bill."

CHAIR ROKEBERG stated, "Well, if it is, let's have it removed also." In response to a question, he said that Conceptual Amendment 2 would remove "under investigation or arrest for" from page 3, line 24, as well as from anyplace else in the bill that contains that same language.

Number 1063

CHAIR ROKEBERG noted that there were no objections to Conceptual Amendment 2. Therefore, Conceptual Amendment 2 was adopted.

Number 1065

REPRESENTATIVE JAMES moved to report version 22-LS0642\U, Lauterbach, 4/24/02, as amended, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, new CSHB 180(JUD) was reported from the House Judiciary Standing Committee.

CONFIRMATION HEARINGS

Board of Governors of the Alaska Bar

Number 1097

CHAIR ROKEBERG announced that the committee would consider Sheila A. Selkregg, Ph.D., as appointee to the Board of

Governors of the Alaska Bar. He noted that Dr. Selkregg was not available for questions at this time.

REPRESENTATIVE BERKOWITZ mentioned that he knew Dr. Selkregg personally, declared a possible conflict of interest, and said that he would recommend Dr. Selkregg as appointee to the Board of Governors of the Alaska Bar as well as "for pretty much anything she ever wanted to do.

REPRESENTATIVE MEYER indicated that he has had occasion to work with Dr. Selkregg, and surmised that she would do a good job.

CHAIR ROKEBERG reminded members that signing the reports regarding appointments to boards and commissions in no way reflects individual members' approval or disapproval of the appointees, and that the nominations are merely forwarded to the full legislature for confirmation or rejection.

Number 1172

CHAIR ROKEBERG made a motion to advance from committee the nomination of Sheila A. Selkregg, Ph.D., as appointee to the Board of Governors of the Alaska Bar. There being no objection, the confirmation was advanced.

SB 263 - AFTER ACQUIRED TITLE IN REAL PROPERTY

Number 1206

CHAIR ROKEBERG announced that the next order of business would be CS FOR SENATE BILL NO. 263(RLS), "An Act relating to the subsequent acquisition of title to, or an interest in, real property by a person to whom the property has purportedly been granted in fee or fee simple; and providing for an effective date."

Number 1220

SENATOR LOREN LEMAN, Alaska State Legislature, sponsor, explained that representatives of the Sealaska Corporation ("Sealaska") brought forth the concept of SB 263 in order to solve a dilemma that Sealaska is experiencing regarding the transfer of property and the ability of homeowners to use property that comes to them via transfers of land from village corporations; this dilemma occurs when the village corporation has the surface rights but its regional corporation has the subsurface rights. He noted that village corporations sometimes

transfer land to shareholders via what is called a quitclaim deed, which provides that any title or rights are given up. But when quitclaim deeds are used, because [village] corporations do not have subsurface rights, the shareholders do not gain the right to use or disturb the subsurface. He said that SB 263 will amend the conveyance statutes to allow for what is called "after-acquired title" for shareholders, that it will only apply to Alaska Native Claims Settlement Act (ANCSA) lands, that he knows of no opposition to the current version, and that the administration is comfortable with the bill.

REPRESENTATIVE KOOKESH declared a [potential] conflict.

REPRESENTATIVE JAMES said she supports the concept of SB 263. She asked whether, in the future, some other method of transferring property could be used that wouldn't create the problems currently being experienced with the use quitclaim deeds.

SENATOR LEMAN said that the other method of transferring property is via a warranty deed, "where you 'warrant' that you have ... a certain right and then transfer that." But because quitclaim deeds were used instead, he remarked, "it creates a real challenge."

REPRESENTATIVE JAMES asked whether village corporations could change their practice of using quitclaim deeds and instead use warranty deeds. She suggested that that would be a better long-term solution solution.

SENATOR LEMAN offered that others present could better respond to questions regarding property transfer law.

Number 1408

REPRESENTATIVE KOOKESH posited that had Sealaska Corporation and other corporations received warranty titles in the first place, that method could have been used to transfer property to shareholders. "But we didn't receive title under a warranty deed," he noted, "and we're still continuing to get title in pieces and increments."

CHAIR ROKEBERG asked: "What's the method of conveyance? Just a patent from the federal government?"

REPRESENTATIVE KOOKESH replied, "we never got warranty title; ... I suppose we did get a quitclaim deed ourselves, but ... we

didn't get it all, for example, in one quick sweep, we got it in increments because we were required to select certain pieces of parcels as we went along."

CHAIR ROKEBERG remarked that SB 263 "Establishes, by definition, ... ANCSA real property, so this is only a portion of what may be; like native allotment lands would not be included under this."

REPRESENTATIVE KOOKESH said it doesn't refer to native allotments; [the bill] only refers to lands received by regional and village corporations under ANCSA, and it has nothing to do with the "allotment Act," which is an entirely different Act of Congress. In response to a question, he said:

> It becomes trust property when it is received under [the] "allotment Act," and it can be held in trust by the BIA [Bureau of Indian Affairs], unless you decide to take it out of trust. And the person who receives [the] allotment has the ability, by law, to take it out of trust and turn it into a "fee simple," and they could sell it.

Number 1499

CHAIR ROKEBERG surmised that SB 263 would not affect that situation. He asked whether any other lands have been conveyed - for example, "some reservation lands under Metlakatla" - that weren't conveyed by ANCSA.

REPRESENTATIVE KOOKESH said that Metlakatla is a reservation, and the entire island is held in trust. There is no other land that this [bill] would [apply to] except for Alaska Native Claims Settlement Act lands, he added, "and we have a specific amount of land that that [bill] does cover." He continued:

> And the only thing we're talking about, just to clarify for all of you, is that Sealaska Corporation hasn't done this, but the village corporations have given home sites to all their individual shareholders. For example, the village corporation I belong to - Kootznoowoo Incorporated ["Kootznoowoo"] - gave us all three-quarters [of an acre] to an acre each. And what we received from the village corporations is just what they own, which was the surface; Sealaska Corporation, on the other hand, owns all the subsurface under those

village corporation land entitlements that they gave to shareholders.

I have, for example, a piece of land that's three-quarters of an acre, I have the ... [surface] from Kootznoowoo, but Sealaska still owns the subsurface. So, if I decide I want to put a post in the ground to hold up a house that I want to build on it, then I'm trespassing - technically - on Sealaska's land. So what we're trying to do here is ... give after-acquired title, so that if I want to dig a post in the ground, then I'm not trespassing on Sealaska's land.

Number 1600

RUSSELL DICK, Natural Resource Manager, Sealaska Corporation, explained that Sealaska is the regional corporation for Southeast Alaska and, as such, owns the subsurface estate underlying all village [corporation] and urban corporation lands within the Southeast Alaska region. Referring to a situation involving Sealaska and Kootznoowoo, he said:

In 1995, we entered into discussions with Kootznoowoo, which is the village corporation for Angoon, regarding the granting of a subsurface easement to Kootznoowoo for its shareholder home-site program in which Kootznoowoo was going to subdivide its ANCSA land for allocation to shareholders. Usually when confronted with these types of programs, we will issue a subsurface agreement to that village corporation that would automatically inure to the successor of interest in the property, regardless of whether or not it's the shareholder now, and then that shareholder sells that property later to a non-shareholder. And like Representative Kookesh said, that subsurface easement agreement would allow them to put in a post, or ... a sewer system, or a water system, or foundations, or what have you.

Now, unfortunately, Kootznoowoo went ahead and conveyed over 600 individual lots to the shareholders without the subsurface easement agreement, and the conveyance was done through a surface estate quitclaim deed. Now, because the doctrine of after-acquired title doesn't apply to quitclaim deeds, we're faced with either having to provide individual subsurface easements to each individual lot owner or allowing the

> cloud of title to remain on our property, which also brings to bear the issue of adverse possession. We have no intention nor do we have the desire to hold any home-site owner liable for trespass on our property, but we would like to avoid having this problem continue to fester and to address the problem in a manner that's least imposing to everybody and all - financially ... for ourselves and ... for the home-site owners as well.

Number 1695

MR. DICK concluded:

> So ... that's ... our reason for this piece of legislation. And I think we can address Representative James's question with regard to this piece of legislation fixing a current problem, but ... we'd like to see it go forward as a mechanism for solving future issues as well. See, village corporations ... transfer the surface estate, and they don't have to approach Sealaska to get the permission to do so. So there's nothing that requires them to let us know that they're going to be transferring surface estate. ... And if we use this bill to only address this issue at hand, ... then we potentially could be coming back to you ... in a year, or a year and a half, or two years....

REPRESENTATIVE JAMES said, "That does bother me just a little bit, but of course it's none of my business, I think; it's your land, you can do whatever you want to with it, but we have to help you make these things work." She asked Representative Kookesh, "Do you have all of that land tendered to you now, or do you having pending cases like the state does [wherein] we don't have the patents yet?" She also asked whether the land was gotten by patent or "real good perfection that it's always going to be yours and you're never going to be challenged," noting that "sometimes when the federal government does things, they kind of leave ... loopholes." She asked whether the same rules that apply to regular property owners also apply to owners of the type of property being discussed.

Number 1773

JON TILLINGHAST, General Counsel, Sealaska Corporation, explained that in a couple of respects, Alaska Native Claim

Settlement Act property is different both from other Native property and from the type of property that he has at his house, for example, or that Representative James has at her house. He elaborated:

> One, I think most responsive to your question, is that it did come to the native corporations in sort of dribbles and drabs, and it was very clearly subject to whatever preexisting rights were out there. So, it is a little cloudier than most native corporations would like; it's the best the federal government would give. That's what makes it hard for the village corporations to in turn give a warranty deed to individual shareholders if they're going to parcel out some of their property, because it's hard for them to warrant title that came to them sort of soiled - unwarranted....

MR. TILLINGHAST mentioned that SB 263 has received some criticism for being another "ANCSA-only bill," but offered that the issue ought to be addressed via legislation because of the [transfer] methods used by the federal government. He went on to say:

> [Alaska Native Claims Settlement Act] property is unique in that the subsurface estate is owned by a private party rather than the government, and the courts have said that it extends virtually to the surface, so it includes sand and gravel. So you create an inevitable conflict whenever anybody wants to stick in a foundation or stick in a sewer pipe, which you don't [have] in my house with the federal government because their subsurface estate is oil and gas and coal - it's the stuff that's way down there. Because there is an inevitable conflict between the subsurface owner and the surface owner, it's doubly important to keep a clear line of communication available between the subsurface owner and the person that owns the surface now so [that] they can sort that out.
>
> So on the one hand you've got an especially important reason and need for after-acquired rights to ... be passed though, and, yet, you've got village corporations [that] find it very difficult to use warranty deeds, which are the only existing way of creating that pipeline, because they don't want to

warrant something ... [that is] unwarranted. So that's why the bill's confined to ANCSA property ....

Number 1889

REPRESENTATIVE JAMES said her concern is that "you have all the rights that you're entitled to." She surmised that SB 263 will solve the immediate problem, but it still doesn't offer the same benefits that other landholders have.

REPRESENTATIVE KOOKESH pointed out that although Sealaska representatives were present to testify, SB 263 is not a "Sealaska bill." It's a bill that would cover all the regional and village corporations in Alaska, he noted, adding that they are all in the same boat. Congress gave the authority to village and regional corporations to give out home sites to individuals, but there are limitations to how big the parcels could be. For example, in Angoon, he noted, there are 729 shareholders, so there are 729 lots that were given out. This land transfer, he remarked, is an attempt to enrich some of the people in the villages by giving them their own land so they could build something. But there is a cloud in the current situation, and SB 263 is intended to remove that cloud, not just for Sealaska, but for all the regional and village corporations in Alaska.

CHAIR ROKEBERG asked if the problem stems from the lack of a warranty deed from the federal government, or because of the penetration of the subsurface estates, or both.

REPRESENTATIVE KOOKESH said that it is both. "We're not going to be able to get away from the cloud that ... Congress put on it," he warned, but if there wasn't a "split estate" - with the village corporations owning the surface estates and the regional corporations owning the subsurface estates - "we wouldn't have to be here." He offered that "we're just trying to make sure that, one, our shareholders don't break the law and, two, that we do everything we can to keep them from becoming law breakers."

REPRESENTATIVE JAMES asked whether, in receiving the land from the federal government, the regional corporations were not allowed to sell or give away the subsurface rights. Are they stuck with it like the state is?

Number 1991

REPRESENTATIVE KOOKESH said, "No, we can sell it; we're considered a private property owner in terms of that, and we're allowed to sell it, except our regional corporation has gone on record saying that we will never sell ANCSA land." In response to a question, he confirmed that the resources, such as coal or gravel, could be used. He noted that the courts have already had to resolve a "sand and gravel issue."

CHAIR ROKEBERG noted that "all fee simple lands in Alaska do not maintain subsurface rights." He asked whether there is a statutory easement for general subsurface use of the first few feet of "all other non-ANCSA land."

MR. TILLINGHAST replied, "Well, for non-ANCSA land, the stuff that's down in the first few feet - the sand and the gravel - is not part of the subsurface estate.

CHAIR ROKEBERG asked: "What about a ten-foot foundation?... Is that because of case law, or is there a statutory requirement?"

MR. TILLINGHAST said: "If you look at your patent, what the federal government has reserved is not the subsurface estate but all leasable and locatable minerals, and that is pretty well defined as ... coal, and oil and gas, and that sort of thing."

CHAIR ROKEBERG observed that he had always thought that when ANCSA was implemented, that was one of the distinctions, since the state didn't grant subsurface estates and there are few other lands that were granted subsurface estates before statehood. "But it's just the minerals thereunder that are reserved for the state, not the total subsurface rights, is that correct?" he asked.

MR. TILLINGHAST confirmed that, adding that such is at least statutory, perhaps even constitutional.

CHAIR ROKEBERG surmised, then, that ANCSA land is more valuable because it has total right to the subsurface estate.

MR. TILLINGHAST remarked that the subsurface estate is more valuable in the ANCSA context because it includes more.

CHAIR ROKEBERG said, "So, there's not a problem as far as the easements for some incidental use of the subsurface rights, then, because it's not mining of or utilization of resources."

Number 2117

MR. TILLINGHAST said, "Well, that's what we're trying to do here, is to grant the individual lot [owners] ... an easement to stick their foundations down without trespassing." In response to a question regarding quitclaim deeds, he said:

> We're going to grant an easement to the village corporation, and then by virtue of this bill - if we're fortunate enough to have it pass - that easement that we've granted to the village corporation will pass, by operation of this bill, automatically to all of the people who have bought lots from the village corporation.

CHAIR ROKEBERG remarked, "That's because there is no ... statewide platting authority."

MR. TILLINGHAST said that is correct. In response to a question, he said that as the subsurface owner, Sealaska cannot plat.

CHAIR ROKEBERG mentioned that typically, only in urban areas, which have "planning power," can easements be granted via platting.

REPRESENTATIVE JAMES said that she is assuming that the easements being discussed are private easements to the property owner, and are not public right-of-way.

MR. TILLINGHAST said that is correct. In response to a question, he confirmed that the easements would attach to the title and then forever transfer with the land.

CHAIR ROKEBERG remarked that it is conceivable that someone granted a title in this fashion could grant a warranty deed to another person, but then the [seller] would be responsible for the warranty.

Number 2198

REPRESENTATIVE KOOKESH added, "This title, once it's acquired, passes to whoever buys it; for instance, if I sold my property in Angoon to you, then you would be subject to that, and I'm not estopped, by the way, from selling it to a non-Native or a non-shareholder.

CHAIR ROKEBERG remarked, "If you've been granted fee simple title, you're not estopped, under ANCSA."

REPRESENTATIVE KOOKESH clarified, "Even now, even with what I got from the village corporation, I can sell it."

REPRESENTATIVE JAMES remarked, "You could quitclaim it."

REPRESENTATIVE KOOKESH concurred, adding that while this is an "Alaska Native Claims Settlement Act specific title," it doesn't prevent him from selling the property to whomever he wished.

CHAIR ROKEBERG pointed out that "you could grant a warranty deed, if you so desired to defend it and buy the title insurance to back it up."

REPRESENTATIVE KOOKESH agreed.

CHAIR ROKEBERG offered, however, that "We want to marry the easements with the existing quitclaim deeds that you already [have] so they're perfected."

REPRESENTATIVE JAMES asked: "Can you lien the property, then, if you build a house or whatever? Can you do a lien to the bank, and would they take a quitclaim deed as security?"

CHAIR ROKEBERG said, "Sure."

REPRESENTATIVE KOOKESH said that he is sure it is possible, especially if the house is worth anything.

CHAIR ROKEBERG noted, "The question here is whether we have the easement to use ... a modicum of subsurface right." He reiterated that one could always grant a warranty deed if he/she is willing to back it up.

Number 2268

REPRESENTATIVE BERKOWITZ moved to report CSSB 263(RLS) out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSSB 263(RLS) was reported from the House Judiciary Standing Committee.

HB 271 - CAP ON AVIATION ACCIDENT PUNITIVE DAMAGES

Number 2279

CHAIR ROKEBERG announced that the next order of business would be HOUSE BILL NO. 271, "An Act relating to recovery of punitive damages resulting from an aviation accident; and providing for an effective date." [Before the committee was the proposed committee substitute (CS) for HB 271, version 22-LS0741\L, Ford, 4/19/02, which was adopted as a work draft on 4/19/02.]

CHAIR ROKEBERG noted that although he had considered making alterations to Version L, he had instead come to the conclusion that it would be better to create a separate bill encompassing his ideas.

Number 2321

REPRESENTATIVE JAMES moved to report the proposed committee substitute (CS) for HB 271, version 22-LS0741\L, Ford, 4/19/02, out of committee with individual recommendations and the accompanying fiscal notes.

Number 2331

REPRESENTATIVE BERKOWITZ objected. He said:

> It just seems to me that we're tightening some the nuts, when there are some bigger problems and we could be fixing some of the bigger problems. I have not had the chance to study this in the same detail you have or ... [Representative Halcro has], but I do have a letter from the Division of Insurance to Representative Halcro dated February 2, 2001, which ... made me aware of a number of options that we're not using here.... We're trying to drive down the cost of insurance for air carriers solely through one mechanism, and there's other mechanisms available, and I am really frustrated by the lack of responsiveness from the insurance ... [industry] when it comes time (indisc.) you're asking for a quantifiable effect of what we're doing here....
>
> It seems to me that an actuary could take the variables we're changing and come up with the impact on rates, and I didn't receive those responses. Now, I'm not averse to doing something with punitive damage awards; I don't think what we're doing here is much more than placating people who aren't really threatened by these punitive damages, but I look at options currently available but not used in Alaska -

> things like risk purchase groups, state-based joint underwriting, reciprocal insurers, risk retention groups - things that might require some ...

CHAIR ROKEBERG interjected, noting that those alternatives would cost money.

REPRESENTATIVE BERKOWITZ remarked that although that might be true, one should think of the cost to the people of Alaska if the state winds up without any air carriers.

TAPE 02-54, SIDE B
Number 2389

REPRESENTATIVE BERKOWITZ warned that the cost would be huge; the costs of goods and services and the cost of traveling around the state would all be driven up. He continued:

> The government ... ought to be helping people do what they can't do individually, and this is one of the instances where we can step in and help out. There's no market assistance plan, [no] ... joint insurance arrangement; we didn't have any of this kind of response. And ... I keep coming back to, nobody told me how what we're doing is measurably going to affect the problem.

Number 2355

CHRISTOPHER KNIGHT, Staff to Representative Andrew Halcro, Alaska State Legislature, spoke on behalf of Representative Halcro, chair of the subcommittee on aviation insurance and vice chair of the House Labor and Commerce Standing Committee, which sponsored HB 271. He said that the subcommittee had looked at many different options. He stated:

> Many of those options require some appropriations of [$10 million to $20 million to $35 million] just to get started - seed money as we say - and in some cases, larger airliners were against those options, almost as if we were going to subsidize the smaller air carriers. This is only one option. I think what you're bringing up are some of the other options concerning "safety-related." ... This is one option that we'd like to push forward. There's a number of options....

A couple of other areas are the [Five Star] Medallion Program, implementing that somehow under the statutes, ... trying to figure out ... how to get ... death-, [accident-], and safety-related issues into the statutes somehow, to drive insurance rates down.... Another option would be to somehow get a fix on what your actual coverage is as far as liabilities - seat coverage. And I think we just worked up ... potentially another bill that may have to come forward next year, but would kind of try to clarify, within statute, what those seat limits would be.

MR. KNIGHT continued:

So, there's a number of different options we've been working on. I wish I could say I was here with this huge omnibus piece of legislation that addressed safety, addressed policy limits, addressed tort reform, but I don't have that piece of legislation here today. I've just got a small portion of it.... And to answer your other question about empirical ... evidence ..., Bob Lohr [Director, Division of Insurance] testified specifically ... that this legislation will attract more insurance companies into the state of Alaska.

And it's going to have a direct benefit to the state of Alaska air carriers; it's going to allow people to stay in business. And I think that's pretty strong evidence, when you have the division director basically supporting a piece of legislation that deals with torts, saying that this is going to help the process. I wish I had the numbers, the actuarial numbers, [that] say this is going to lower it by 10 percent or it's going to maintain it at such and such - 5 percent - but I don't have those numbers.

Number 2277

REPRESENTATIVE BERKOWITZ responded:

It just frankly is not credible to me that an actuary can't tell you the difference in rates based on this change in variables.... What this is, is a change in the level of risk that the ... carriers have, and I don't know if there's any actuaries out in the audience - I think there's one that I know of who's

got training - ... [but] it would seem to me that this is a variable you plug into a formula and you get an answer. And ... the reluctance to provide the answer suggests to me that ... it doesn't have a very big effect for the air carriers but might somehow lead to a windfall profit for the insurance companies.

And ... that's my suspicion - I don't have any evidence for it - but that'd be my guess.... And I'd like to hear why I'm wrong; I don't want to cast aspersions unnecessarily, but I'm being told to just swallow whole hog the fact that just trimming down the amount of punitive damages is going to lead to this great savings in the state of Alaska, and nobody's shown me any numbers. I mean, I don't even know how we arrived at these numbers that are here as opposed to the numbers that were already there as opposed to another set of numbers; it's just numbers randomly chosen, or magically going to impact the ability of air carriers to exist in the state. So prove it to me - I got ... Missouri people in my background - just show me.

MR. KNIGHT replied that he would take Representative Berkowitz's request for actuarial documentation to some of the major insurance companies, and provide any forthcoming responses to Representative Berkowitz. He noted that he has posed [similar] questions to a couple of insurance companies already, one of them being American International Group, Inc. (AIG), and he was hoping to get a response soon. He mentioned that although HB 271 was introduced last year, work on this legislation only started up again a couple of weeks ago and, thus, he doesn't yet have as much information for the committee as he would like. He added: "I think you've heard overwhelming testimony from every air carrier - almost - in the state that says, 'Hey, look it, this is going to help.'"

Number 2179

REPRESENTATIVE BERKOWITZ responded:

What I hear from those air carriers is a note of desperation, like, "Hey, do something now, and this is the only thing that's in front of us, and [so] do this." And, like I said, I'm not ... averse to doing this, but it just seems to me that we're not doing everything we can do, we're not addressing this thing

comprehensively, and I'm getting a lot of stall from the insurance companies instead of some real help for the air carriers.

REPRESENTATIVE KOOKESH commented that although he'd appreciate the additional information that Representative Berkowitz is seeking, he views HB 271 as just one of the small steps that can be taken at this time. He remarked that he is comfortable taking this small step, but acknowledged that there is more to be done, perhaps along the lines of Representative Berkowitz's suggestions.

MR. KNIGHT indicated that Representative Halcro would be working on this issue further, and mentioned the [Five Star] Medallion Program as being a good program that will reduce the number of accidents. He noted that further revisions to the insurance statutes would also help the situation.

CHAIR ROKEBERG mentioned he would like to have some mechanism in place that will further the efforts of the [Five Star] Medallion Program. He remarked, however, that, "We're having difficulty marrying the program for maintenance, safety training, and so forth into an actuarially acceptable type of insurance underwriting situation; it's very difficult to mandate to the underwriters exactly what ... [is needed]." Chair Rokeberg noted that Representative Andrew Halcro was present.

Number 2018

REPRESENTATIVE JAMES restated her motion to report the proposed committee substitute (CS) for HB 271, version 22-LS0741\L, Ford, 4/19/02, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 271(JUD) was reported from the House Judiciary Standing Committee.

CHAIR ROKEBERG called an at-ease from 2:13 p.m. to 2:14 p.m.

SB 37 - PHYSICIAN NEGOTIATIONS WITH HEALTH INSURE

Number 2000

CHAIR ROKEBERG announced that the next order of business would be CS FOR SENATE BILL NO. 37(FIN), "An Act relating to collective negotiation by competing physicians with health benefit plans, to health benefit plan contracts, to the application of antitrust laws to agreements involving providers

and groups of providers affected by collective negotiations, and to the effect of the collective negotiation provisions on health care providers." [Before the committee was HCS CSSB 37(L&C), as amended on 4/10/02.]

Number 1970

REPRESENTATIVE COGHILL moved to adopt the proposed House committee substitute (HCS) for SB 37, version 22-LS0323\U, Bannister, 4/18/02, as a work draft.

Number 1968

REPRESENTATIVE BERKOWITZ objected for the purpose of discussion.

Number 1956

HEATHER M. NOBREGA, Staff to Representative Norman Rokeberg, House Judiciary Standing Committee, Alaska State Legislature, explained that Version U incorporates the two amendments made at the previous hearing on SB 37. One amendment deleted multiple employer welfare arrangements (MEWAs), and the other amendment, which was suggested by the [Alaska] Nurses Association (AaNA), pertained to providers that are not physicians. She noted that in incorporating the second amendment, an error was made and thus language which now reads "not physicians" should be changed to read "non-physicians.

REPRESENTATIVE BERKOWITZ noted that the language which needs to be changed is located on page 2, lines 13 and 15. He then indicated that he no longer objected to the adoption of Version U as a work draft.

Number 1911

CHAIR ROKEBERG, after noting that there were no further objections, announced that Version U was before the committee.

Number 1890

REPRESENTATIVE BERKOWITZ made a motion to adopt Amendment 1, on page 2, lines 13 and 15, delete "not physicians" and insert "non-physicians". There being no objection, Amendment 1 was adopted. He then indicated that he had more amendments to offer.

CHAIR ROKEBERG called an at-ease from 2:17 p.m. to 2:18 p.m.

Number 1853

REPRESENTATIVE BERKOWITZ made a motion to adopt [Amendment 2], which read [original punctuation provided]:

> ADD NEW SECTION TO READ:
>
> "Sec.3. AS 23.50.010, 23.50.020, 23.50.030, 23.50.040, 23.50.099; and AS 45.50.572(k) are repealed July 1, 2006.

Number 1847

REPRESENTATIVE JAMES objected.

REPRESENTATIVE BERKOWITZ explained that [Amendment 2] would sunset the entire legislation, under the theory that after it is seen how well the provisions of SB 37 work, the legislature can revisit the issue to determine whether to extend the sunset. He added that this concept falls under the "less legislation, the better" theory.

Number 1802

SENATOR PETE KELLY, Alaska State Legislature, sponsor, said that he did not like Amendment 2. He elaborated:

> Because of the voluntary nature of this, and the timeframe it would take to promulgate regulations, I don't think ... we'll ever get to where Representative Berkowitz wished to get with this: finding out to see ... if it works or not. The fact is, ... when you have [that] the attorney general can kill these negotiations at any time, the insurance companies can kill the negotiations at any time, or the doctors themselves can do it at any time, [then] anyone who wants to can just hold out for a few years, the bill sunsets, and then we never get to it. And because of the voluntary nature, I don't think it represents any kind of threat to begin with.

Number 1753

A roll call vote was taken. Representative Berkowitz voted for Amendment 2. Representatives James, Coghill, Meyer, and

Rokeberg voted against it. Therefore, Amendment 2 failed by a vote of 1-4.

Number 1743

REPRESENTATIVE BERKOWITZ made a motion to adopt Amendment 3, which read [original punctuation provided]:

> PAGE 5, LINE 9
>
> "and completing the period for comment and review for interested parties required by this subsection. The review of the contract by the attorney general must allow adequate time for comment and review by interested parties and must include a review whether the contract would harm consumers or providers who are not physicians"

Number 1740

REPRESENTATIVE JAMES objected.

REPRESENTATIVE BERKOWITZ explained that Amendment 3 would ensure better public process by providing for a comment [and review] period for interested parties.

SENATOR KELLY said he objects to Amendment 3. He elaborated:

> It's private negotiation between private companies. There are things that we do even at the state level where all the information is not laid out for public access.

CHAIR ROKEBERG asked for clarification.

REPRESENTATIVE BERKOWITZ, in defense of Amendment 3, said that it would ensure that the attorney general doesn't take action before the comment period has elapsed.

CHAIR ROKEBERG remarked that Amendment 3 is vague, specifically the words, "allow an adequate time for comment".

SENATOR KELLY noted that the amount of time needed for negotiations between companies is quite different than what would be needed for the promulgation of regulations.

CHAIR ROKEBERG said he tended to favor Amendment 3, but remarked that it is poorly drafted.

REPRESENTATIVE BERKOWITZ said he would accept a clarifying amendment to Amendment 3.

CHAIR ROKEBERG declined to offer such.

Number 1679

A roll call vote was taken. Representatives Berkowitz and Rokeberg voted for Amendment 3. Representatives James, Coghill, and Meyer voted against it. Therefore, Amendment 3 failed by a vote of 2-3.

Number 1660

REPRESENTATIVE BERKOWITZ made a motion to adopt Amendment 4, which read [original punctuation provided]:

> Page 6, Line 20 add new subsection:
>
> "individual physician members covered in the collective negotiations shall accept without qualification Medicare patients."

Number 1605

REPRESENTATIVE JAMES objected.

REPRESENTATIVE BERKOWITZ recalled from previous testimony that physicians wanted to ensure that patients were protected and that everyone receive adequate health care. He stated that Amendment 4 "would just enshrine, in legislation, that sentiment," adding that [Amendment 4] would also have a favorable impact on the state's fiscal situation.

SENATOR KELLY said, "This seems quite a bit out of the scope of the bill; I don't think this is the time or the place to begin requiring physicians to take on patients here."

CHAIR ROKEBERG queried, "But aren't we granting them additional rights to bargain?" He remarked, "I guess this amendment's requesting them to give something back."

REPRESENTATIVE JAMES said she objects to Amendment 4 because she does not wish to restrict physicians' choices regarding whether

or not to serve Medicare patients. She remarked, nonetheless, that Medicare is the worst possible insurance people could have.

CHAIR ROKEBERG mentioned that the "phantom insurance tax" just perpetuates "that." "What we need to do is destroy Medicare and rebuild it from its ashes," he added.

REPRESENTATIVE BERKOWITZ said that the danger of not [adopting Amendment 4] is that "these groups" would be allowed to "cherry-pick" patients, which would leave the other physicians in a given community in a worse position. He remarked that such a situation would be unfair from a bargaining perspective and from an economic perspective, and would lead to degraded health care. "People want to come to the legislature for a benefit, then they've got to do something to help the state out of the bind that we're in," he added.

REPRESENTATIVE JAMES opined that something should be done to ensure that Medicare is not always the first payor.

CHAIR ROKEBERG said, "I certainly agree that we need to reform Medicare."

Number 1493

SENATOR DONNY OLSON, Alaska State Legislature, said he agrees that "there are battles we can get into and battles we should not get into, but reforming Medicare is not one of the battles that we have the resources to go and do at this point."

Number 1450

A roll call vote was taken. Representatives Berkowitz and Kookesh voted for Amendment 4. Representatives James, Coghill, Meyer, and Rokeberg voted against it. Therefore, Amendment 4 failed by a vote of 2-4.

SENATOR OLSON remarked that he has taken an interest in SB 37 because it could affect him and the private practice that he is involved with in Nome.

CHAIR ROKEBERG closed public testimony on SB 37.

Number 1398

REPRESENTATIVE JAMES moved to report the proposed House committee substitute (HCS) for SB 37, version 22-LS0323\U,

Bannister, 4/18/02, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

Number 1383

REPRESENTATIVE BERKOWITZ objected.

Number 1367

A roll call vote was taken. Representatives Coghill, Meyer, James, and Rokeberg voted to report HCS for SB 37, version 22-LS0323\U, Bannister, 4/18/02, as amended, from committee. Representatives Berkowitz and Kookesh voted against it. Therefore, HCS CSSB 37(JUD) was reported out of the House Judiciary Standing Committee by a vote of 4-2.

CHAIR ROKEBERG called an at-ease from 2:31 p.m. to 2:32 p.m.

HB 140 - PLACE GHB IN SCHEDULE IA

[Contains reference to HB 297.]

Number 1355

CHAIR ROKEBERG announced that the next order of business would be HOUSE BILL NO. 140, "An Act relating to gamma-Hydroxybutyrate."

Number 1335

SHARALYN "SUE" WRIGHT, Staff to Representative Mike Chenault, Alaska State Legislature, offered on behalf of Representative Chenault, sponsor, that HB 140 would move gamma-Hydroxybutyrate (GHB) from schedule IVA to schedule IA in AS 11.71; such a change would increase the penalties for possessing GHB. [Reclassifying] GHB, commonly know as the date rape drug, will conform to the federal schedules for this drug. She explained that statewide, hospitals and schools have seen an upsurge in the use of GHB, which is used to incapacitate a person during a sexual encounter such that he/she cannot remember the event. She noted that GHB has only one legitimate use, that being for the treatment of narcolepsy. She mentioned that there is "an orphan medical company" in Duluth, Minnesota that is seeking approval from the Food and Drug Administration (FDA) for such use of GHB, although none of the doctors from the Kenai area with whom she spoke use GHB for any purpose.

REPRESENTATIVE MEYER mentioned that he has legislation pending - HB 297 - that would make the use of drugs such as GHB an aggravating factor in sentencing. In comparison, he remarked, HB 140 would make mere possession of GHB a crime.

MS. WRIGHT reiterated that HB 140 simply moves GHB from schedule IVA to schedule IA, and that this change would increase the penalties and bring Alaska's schedules in line with federal schedules.

REPRESENTATIVE MEYER asked why HB 140 only addresses GHB, when other "date rape drugs" are also being used.

MS. WRIGHT indicated that because a physician and a nurse in the sponsor's district "were seeing [GHB] being used" and because currently there is no [quick] test that can confirm the presence of GHB in a person's bloodstream, GHB became the focus of HB 140. She relayed that according to the federal drug schedule, possession of GHB is treated much more seriously than other similarly used drugs; HB 140 is an attempt to conform state schedules to federal schedules. She acknowledged, however, that there are a lot of other drugs - the "codeines" and the "morphines" - that are being used for the same purpose as GHB.

REPRESENTATIVE MEYER mentioned that he would like to see the use of other drugs such as rohypnol included in HB 140.

Number 1084

MS. WRIGHT noted that Legislative Legal and Research Services has already cautioned her against adding another drug to HB 140; one drug at a time, one issue at a time, was the advice given.

REPRESENTATIVE MEYER reiterated that he would like see HB 140 address more than just GHB.

REPRESENTATIVE BERKOWITZ mentioned that issues regarding various "date rape" drugs and conforming state drug schedules to federal drug schedules have already been discussed by the House Judiciary Standing Committee in previous years.

CHAIR ROKEBERG confirmed that the committee is very familiar with these issues.

MS. WRIGHT recounted that last fall at "Ninilchik" high school, the ingredients for GHB were stolen, but unfortunately, when the kids that stole the ingredients were caught, nothing could be

done because the kids had not yet combined them to create the drug itself.

REPRESENTATIVE MEYER pondered whether the legislation pertaining to aggravating factors would have the same effect as HB 140, and, thus, could be used instead.

MS. WRIGHT acknowledged Representative Meyer's point. She explained that when HB 140 was originally drafted, that issue had not been considered; at that time, the sponsor had been made aware of the problem with GHB at the hospital and at "Nikiski High", and HB 140 in its present form was the result. She offered that if HB 140 could be adopted this year, something further could be done next year to address [other drugs].

REPRESENTATIVE MEYER again noted that HB 140 addresses possession of GHB, not just the use of it.

CHAIR ROKEBERG referred to the analysis accompanying the fiscal note, which said HB 140 "would move the penalty up from either a Class B felony or Class C felony to a Class A felony or an unclassified felony." He remarked that this could result in putting "somebody away for life" for using GHB. He asked what the rationale is for such [a penalty]. He also asked about the lengths of sentences under current penalties versus under the proposed penalty.

Number 0839

MS. WRIGHT said that she did not know "what the current years are," nor what the "discretion of a judge would be." She offered instead:

> There is no other use for this drug except to incapacitate a person for one reason or another, and usually those reasons are [of] no good avail to the victim, and the victim oftentimes does not recall what has happened to him or her during the time she's been under the influence of that drug.

REPRESENTATIVE BERKOWITZ said that he understood the severity of the problem. He noted, however, that according to [Issue No. 243] of the National Institute of Justice Journal [published by the National Institute of Justice], "school-based surveys seem to suggest that rohypnol and GHB are consumed voluntarily, perhaps increasingly so." There is a difference between

voluntary consumption of a drug and using it to victimize somebody, he remarked.

MS. WRIGHT agreed, but remarked, "putting a Coca Cola down at a party and having somebody put that drug in your drink, how do you ... determine whether someone takes that drug voluntarily or ... it was given to them in a malicious manner." The sad aspect of GHB, she said, is that no one remembers, afterward, what actually happened: "You don't remember when you've taken it, you don't remember how you've gotten it." This is not a drug that is generally used voluntarily. When this drug surfaces, 98.9 percent of the time it is involved in rape cases, sometimes of girls as young as 7 or 8 years old.

REPRESENTATIVE JAMES asked, "If it's taken voluntarily, that makes it okay?"

Number 0623

CHAIR ROKEBERG said no, it doesn't, not if "we put it on the schedule." In response to a question, Chair Rokeberg posited that if both HB 140 and HB 297, which pertains to aggravating factors, pass, a person who uses GHB to facilitate a rape would be subject to the penalties pertaining to rape, to use of GHB, and to possession of GHB.

REPRESENTATIVE BERKOWITZ concurred that under HB 140, even taking GHB voluntarily could subject someone to a long prison sentence.

REPRESENTATIVE COGHILL surmised that the class of felony a person was subject to would depend on the "type of use."

MS. WRIGHT agreed, indicating that it would depend on a combination of "type of use" and "a judgment call by the prosecutor." She reiterated that one of the most important aspects of HB 140 is that state drug schedules would come in line with the federal drug schedules, which say that consumption of GHB in any form, without a doctor's prescription, is illegal. She remarked that it doesn't make sense for anyone to take GHB voluntarily and then turn himself/herself in for prosecution.

REPRESENTATIVE COGHILL acknowledged that "it's very difficult to prove after the fact."

MS. WRIGHT reiterated that currently, no test exists that could immediately show the presence of GHB; serum has to be drawn and

sent outside [the state] to determine if GHB is present. She added that GHB is metabolized very fast and therefore tests must be conducted within five or six hours of ingestion; usually by the time a person who has been drugged wakes up, that time frame has elapsed.

Number 0357

DEB BLIZZARD, R.N., testified via teleconference, noting that she is a certified emergency nurse and sexual-assault nurse-examiner. She said that in the 22 years she has been a nurse, she has never seen a drug that scares her as much as GHB. She mentioned that GHB is very easily made, with some of the ingredients being found in Drano, floor strippers, and acetone. The compounds, when mixed together, have "a ph of 8 to 9," which gets kids high, just as if they'd had five or six shots of alcohol, she explained. One of the problems, however, is that GHB affects everyone differently; when used in sexual assault, it incapacitates a person and leaves him/her with no memory of what has happened.

MS. BLIZZARD noted that in "doing classes" for ENCARE emergency nurses (Emergency Nurses Cancelling Alcohol Related Emergencies), the EMS symposium, and the critical nurses symposium, she has come to realize that the use of GHB is a statewide problem. She relayed that in her area, at least one or two people a week come in with GHB overdoses." She explained that in February of 2000, President Clinton passed legislation making GHB a schedule [IA] drug and named [the legislation] after two girls who died after having GHB poured into their drinks.

REPRESENTATIVE MEYER asked how [GHB] differs from other "date rape" drugs.

MS. BLIZZARD explained that GHB occurs naturally in the human body, and this makes it very difficult to detect. In addition, GHB can be expelled through the respiratory and urinary tracts within three to four hours, whereas with rohypnol, it takes about 72 hours to expel. She noted that in order to test for GHB, specimens must be sent outside of Alaska and the results are not available for three to four days. In response to a question, she said that some kids use GHB "just to get high"; again, because GHB affects people differently, although one shot might simply get one person high, another person might become incapacitated, and yet another person could die due to respiratory depression.

Number 0057

JULIA P. GRIMES, Lieutenant, Division of Alaska State Troopers, Department of Public Safety (DPS), testified via teleconference and said that in addition to the date rape problem, the DPS recognizes that GHB is extremely dangerous and is being used voluntarily by many teenagers and even some younger children.

TAPE 02-55, SIDE A
Number 0001

LIEUTENANT GRIMES relayed that club parties, rave parties, and non-alcoholic dance clubs have appeared in Anchorage and other parts of the state; these places/events are the perfect place for this type of drug: it is colorless, it can be easily carried in an innocent-looking container, and it is actually sold in these environments. It is sold by the capsule or by the dose, and, as indicated by Ms. Blizzard, it is a very dangerous drug. Gamma-Hydroxybutyrate is a central nervous system depressant, and has a synergistic affect when mixed with alcohol, marijuana, or any other type of depressant; GHB has caused many deaths nationwide, and the number of these deaths is increasing each year. Thus there are two sides to GHB use: one, it is being used to facilitate sexual assault, and, two, it is a dangerous substance to begin with. She concluded by saying that the DPS does not have a problem with moving GHB from schedule IVA to schedule IA.

CHAIR ROKEBERG asked whether, when charging an individual, the DPS makes a distinction between schedule IVA drugs and schedule IA drugs. "Does it have to be under misconduct involving a controlled substance," he also asked.

LIEUTENANT GRIMES said that under the misconduct involving controlled substance statutes, each schedule of drug is broken up statutorily, with the more dangerous drug being categorized in certain statutes with the higher penalty. The schedule IA drugs, which are considered the most dangerous, are the opiates, heroin, morphine, Dilaudud, and natural and synthetic opiates, to name a few. The schedules then go up in number - schedule IIA, IIIA, IVA, VA, and VIA - but down in dangerousness. Depending on the substance that a person is found to be in possession of or delivering or manufacturing, the DPS charges according to wherever that substance lies in statute. She confirmed that the DPS uses misconduct involving a controlled

substance as the basis for the charge, in whatever degree is appropriate for the substance [and amount] in question.

Number 0327

LIEUTENANT GRIMES noted, however, that the DPS does not often charge people with possession based on that possession's "being in their blood"; possession charges usually stem from a person being caught with a substance in his/her pocket, for example. The former is rare; it has happened, and it can be prosecuted, but it is rarely done, since law enforcement has only the blood test as evidence. In response to a question, she indicated that the degree of the charge depends upon several factors, including the amount of the substance, the age of those involved, the location involved, and what activity is actually occurring, whether it is possession, delivering, manufacturing, or possession with the intent to manufacture or deliver. Currently, for example if a person is simply found to be in possession of a small amount of a schedule IVA drug, he/she is generally charged with misconduct involving a controlled substance in the fifth degree, which is a class A misdemeanor. She also indicated that misconduct involving a schedule IVA drug could be charged as fourth and third degree crimes, depending upon the aforementioned factors.

CHAIR ROKEBERG asked whether GHB is usually measured in grams, and whether it is usually in liquid form.

LIEUTENANT GRIMES surmised that GHB could probably be measured in either grams or ounces. She also surmised that with passage of HB 140, possession of any amount of GHB would become a felony.

CHAIR ROKEBERG noted that depending upon the circumstances, misconduct involving a schedule IVA drug could be charged as an unclassified felony. He asked what the minimum sentence is for an unclassified felony.

LIEUTENANT GRIMES said she believes the minimum sentence is ten years, but acknowledged that she may be incorrect.

CHAIR ROKEBERG asked whether the Alaska State Troopers have prosecuted any "GHB cases."

LIEUTENANT GRIMES said they have not had any cases in which people were in possession of GHB, although there might be some sexual assault cases in which GHB was used or suspected of being

used. She remarked that GHB is an elusive type of drug in that by the time "we ... find out about it, it's possible that it's either out of the person's system or we don't have a legal way to obtain a sample."

Number 0660

LINDA WILSON, Deputy Director, Public Defender Agency (PDA), Department of Administration, testified via teleconference. She said first that the PDA opposes HB 140. She remarked that GHB has been a schedule IVA substance since 1997, and that Alaska is ahead of many other states that have not yet scheduled GHB. She went on to say:

> When this drug became a schedule [IVA], it joined two other drugs that were added to that schedule around the same time, and those have also been mentioned. One is a 'ruffie' drug [flunitrazapam or rohypnol], and then the other one that came in last year is ketamine hydrochloride. Those three are often grouped together. The penalties for these, for possession and delivery for this particular drug, as it is now, [fit] in with the other drugs currently in schedule IVA. It should remain there. The penalties for simple possession of a small amount of this drug would be [a class] A misdemeanor under the current scheme; it would be misconduct involving a controlled substance in the fifth degree, as mentioned. Depending on the [delivery] - ... whom the delivery is made to, possession with intent to deliver a larger amount, whether it's near a school - it can go up to a [class] B felony currently, as ... with those other two drugs I've mentioned that are grouped together....
>
> There are sort of three primary abuses of this drug, and Ms. Wright ... said she can't imagine that there was any other use for this drug other than to facilitate a sexual assault; I think ... there certainly has been testimony to the contrary to that. This drug is used recreationally; the three primary uses, or abuses, of this drug are by young adults recreationally - at parties, at clubs, in various amounts - to get a high. It's also what's used by bodybuilders; in the past they used and abused this [drug], and it has also been used as a sleep aid and for the treatment of narcolepsy. And the third one, which I think is really the most concerning to the

sponsor and to this committee, obviously, is that it can be used to facilitate a sexual assault.

Number 0837

MS. WILSON continued:

But my concerns with the bill are: ratcheting this up from a schedule [IVA] to a schedule [IA] certainly also [ratchets] up all of the consequences that come with this particular drug and its simple possession, even at its least offensive - and they're all offensive, all of the abuses of this drug are, not to minimize even the small recreational use of it. But yet when you elevate it to a schedule IA, then that ... makes it [be] treated as a felony for any amount that is possessed, so it becomes a [class] C felony - all the way up to an unclassified felony. And the sentence for an unclassified felony is 5 [years] minimum up to 99 years. So we certainly are increasing the penalties significantly.

I've heard mention, in the testimony, about [how] this brings us in line with the federal schedule, and that this became a schedule [IA] controlled substance in 2000. That is correct. However, our state doesn't follow the federal schedule, and we haven't followed it for over 20 years, and I think its recognized in the statute that we don't follow, strictly, the federal schedule. An example of that is marijuana; [it] is a schedule [IA] under the federal schedules. Many, many drugs are schedule [IA] under the federal code. We have classified drugs a little differently in Alaska. The other drugs that are in schedule IVA are more similar to this drug, and it should stay where it is.

To address the concern, though, of its abuse and its use to facilitate a sexual assault, ... there's ... Representative Meyer's bill that's pending - ... the aggravator for using a controlled substance to facilitate a sexual assault. Certainly that is a good way to address the concerns in regard to the abuse of this drug for that purpose. So, in conclusion, we are opposed to this bill because it's not proportionate in relation to the other drugs that are similar to it that are in schedule [IVA]; ... the penalties become

too severe for the ... least offensive of the abuses of it. It may be appropriate to want to increase the penalty for the delivery to somebody at a young age; that's understandable. But do we also want to then make [it] a felony for a young person who has some in their pocket [and] they wanted to try it out - now they're going to have a felony?

Number 0979

MS. WILSON said:

... From the testimony from Lieutenant Grimes, there haven't been any prosecutions. So I'm not sure that even though on the [Kenai] Peninsula they're seeing people come into the emergency room with overdoses, I'm not sure we're at a point where this needs to be jumped up to a schedule [IA]. And there are other ways ... [of] dealing with the concerns for using it as a sexual assault facilitator, ... [such as] that aggravator, which I think is very likely to pass; I believe the bill is currently in Senate Rules.

So with that, I'm certainly available to answer any questions. I did pull some information off of the computer, and I did find out that there was information from 2000 that showed that 60 percent of the users of GHB were 25 years or older, and that well over half of them were using it for recreational use. So, I think you have to consider that this is not just being used to facilitate sexual assault. It's certainly being used inappropriately by everybody, but it may be used in small doses - where there is not a complete loss of memory, but inappropriately used nonetheless - recreationally.

CHAIR ROKEBERG closed public testimony on HB 140.

REPRESENTATIVE MEYER said that in the instances where GHB is used in sexual assault, he thinks it would be covered under [HB 297]. He offered that if GHB is being used as a recreational drug, it should be looked at in the same light as other recreational drugs.

REPRESENTATIVE COGHILL opined that at this time, lacking further information, it would be "overshooting" to make [possession of GHB] a felony in the same fashion as for heroin.

REPRESENTATIVE JAMES referred to and read portions of the aforementioned article in the National Institute of Justice Journal. She commented on the seeming lack of actual cases/prosecutions, and said that she supports the use of an aggravator, surmising that perhaps through that legislation, more statistics pertaining to GHB-facilitated sexual assault will come to light. She posited that there is a problem, but said she didn't know whether [adoption of HB 140] is the way to fix it.

Number 1287

MS. WRIGHT said:

> There have, in fact, been prosecutions in the state of Alaska. What winds up happening is, they get wrapped up and dealt down. So, as far as maybe Lieutenant Grimes being aware that someone's been arrested and prosecuted for it, that might not be something that she is aware of. There have, in fact, been deaths. And that's one of the things that we're concerned with. A kid carrying this drug in their pocket for the first time may not know that it's similar to cocaine: it only takes once - it only takes once - and it can kill you - it can stop your breathing.... Respiratory arrest has not occurred in Alaska, but it has occurred nationwide. It doesn't take twice.

CHAIR ROKEBERG suggested that the committee see whether [HB 297] becomes law, before acting on HB 140. He said that although [GHB abuse] is a very serious issue, it may not warrant a "threefold jump" from schedule IVA to schedule IA. He announced that HB 140 would be held over.

SB 222 - REQUIRE SLOW DRIVERS TO PULL OVER

[Contains brief mention of SB 339.]

Number 1383

CHAIR ROKEBERG announced that the last order of business would be CS FOR SENATE BILL NO. 222(FIN), "An Act relating to certain motor vehicles that are required to yield to following traffic."

Number 1392

SARA WRIGHT, Staff to Senator Dave Donley, Alaska State Legislature, said on behalf of Senator Donley, sponsor, that SB 222, with the cooperation of the Department of Transportation & Public Facilities (DOT&PF), increases the amount of signage along some of Alaska's highways, informing motorists of the already existing regulation prohibiting a vehicle from delaying five or more vehicles. Senate Bill 222 also increases the fine from $30 to $200, and adds an assessment of two points on the violator's driver's license. She noted that there is a proposed House committee substitute.

Number 1451

REPRESENTATIVE MEYER moved to adopt the proposed House committee substitute (HCS) for SB 222, version 22-LS0611\O, Ford, 4/22/02, as a work draft. There being no objection, Version O was before the committee.

MS. WRIGHT pointed out that Version O no longer contains language stipulating that a driver who pulls over must have 100 feet of unobstructed roadway. The language which has been deleted is, "there is at least 100 feet of visible and in from of that motor vehicle and". She explained that this change was made after a constituent expressed the concern that that language would encourage people to follow too closely. She noted that the existing regulations simply stipulate that the driver pull over at the first available safe area.

CHAIR ROKEBERG asked Ms. Wright whether she has seen the correspondence from Mr. Dillard.

MS. WRIGHT said she had not.

CHAIR ROKEBERG, focusing on one of Mr. Dillard's points, said that under SB 222, if a driver is driving 62 miles per hour and the speed limit is 65 miles per hour, he/she would have to pull over.

MS. WRIGHT confirmed that that would be the case if the driver has five or more vehicles directly behind him/her. She remarked that when drivers find themselves behind slower vehicles, "that's when they get stupid; they start to pass on corners, pass in areas that they shouldn't." The goal of SB 222 is to keep people safe.

CHAIR ROKEBERG opined, however, that if a person is driving only three miles per hour under the speed limit, he/she shouldn't have to [pull over].

Number 1584

MS. WRIGHT pointed out that according to existing regulation - 13 AAC 02.050 - the driver in that situation is required to pull over. That regulation reads:

> (b) Upon all roadways outside an urban district, a vehicle other than an emergency vehicle proceeding at less than the maximum authorized speed of traffic must be driven in the right-hand lane or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into an alley, private road, or driveway. However, on a two-lane highway outside an urban district where passing is unsafe because of oncoming traffic or other conditions, the driver of a motor vehicle proceeding at less than the maximum authorized speed of traffic and behind whom five or more vehicles are formed in a line shall turn off the roadway at the nearest place designated as a turnout or wherever sufficient area for a safe turnout exists in order to permit following vehicles to pass.

CHAIR ROKEBERG, after remarking that the regulations already address this issue, asked, "Why are we making it a statute?"

MS. WRIGHT reiterated that SB 222 increases the signage pertaining to that regulation; the DOT&PF has committed to placing 20 signs on some of Alaska's highways and at the borders, informing people that this regulation exists.

REPRESENTATIVE JAMES remarked that [the bill] doesn't say that.

Number 1645

HEATHER M. NOBREGA, Staff to Representative Norman Rokeberg, House Judiciary Standing Committee, Alaska State Legislature, noted that SB 222 also increases the fine [to $200] and takes [two] points off of a person's driver's license.

CHAIR ROKEBERG opined that a driver going only 3 miles per hour under the speed limit shouldn't have to pull over even if there are ten vehicles behind him/her.

REPRESENTATIVE JAMES indicated that regardless of how fast she is going, if there were that many vehicles behind her, she would pull over. She mentioned, however, that she has concerns about putting such language in statute.

REPRESENTATIVE KOOKESH said that he did not see the need for this legislation; additionally, he said he did not think that [neglecting to pull over] rises to the level of losing [driver's license] points. He remarked that unless that provision is changed, he would not be able to support the bill.

CHAIR ROKEBERG asked how many points have to be assessed before a person has his/her driver's license revoked.

MS. WRIGHT said that a person can have his/her driver's license revoked if assessed 12 points in a 12-month period, or 18 points in a 24-month period.

REPRESENTATIVE KOOKESH reiterated that [neglecting to pull over] shouldn't rise to the level of losing points.

REPRESENTATIVE JAMES agreed.

REPRESENTATIVE KOOKESH noted that people lose points for drunken driving or causing accidents. He said that he did not have a problem with the regulation or the fine, but he does not support the assessment of points.

REPRESENTATIVE MEYER suggested deleting the assessment of points.

CHAIR ROKEBERG suggested changing the assessment to one point.

Number 1746

REPRESENTATIVE JAMES asked if the regulation assesses driver's license points.

MS. WRIGHT said there is a $30 fine for violating the regulation, but no deduction of points.

REPRESENTATIVE JAMES asked, "How does this compare with other fines for violations?"

MS. WRIGHT said that there is a $30 fine for obstructing traffic, and a $50 fine for emerging from an alley or driveway without stopping. In response to a question, she confirmed that Senator Donley has other legislation pending - SB 339 - that will increase criminal fines.

REPRESENTATIVE JAMES reiterated that she agrees with Representative Kookesh on the issue of point assessment. Additionally, she remarked that the bill should stipulate how many miles per hour below the speed limit one must be going before having to pull over. She opined that "this is really a courtesy issue more than it is a violation of driving," and suggested that a $200 fine is a little steep.

Number 1859

REPRESENTATIVE MEYER said that he wanted to discuss some possible amendments. He suggested amending line 5 to read, "A person operating a motor vehicle five miles below the posted speed limit".

Number 1872

CHAIR ROKEBERG called Representative Meyer's suggestion Conceptual Amendment 1.

Number 1879

REPRESENTATIVE MEYER then suggested amending Version O further by deleting the provision regarding point assessment. He indicated, however, that he is in favor of the $200 fine.

CHAIR ROKEBERG remarked that the committee should first address Conceptual Amendment 1 before moving on to Representative Meyer's other suggestions. He clarified that Conceptual Amendment 1 would insert "five miles per hour" on line [5] after "vehicle".

MS. WRIGHT suggested instead that Conceptual Amendment 1 insert "five miles or more".

Number 1903

CHAIR ROKEBERG accepted that language, and [although it had not been formally moved] asked whether there were any objections to Conceptual Amendment 1.

Number 1917

REPRESENTATIVE KOOKESH objected for the purpose of discussion. He said: "I know in Alaska and many other states, we talk about the maximum speed limit. This is the first time I think I've ever heard us talk about a minimum speed limit. So, you might have to look at that to see whether we can really do it."

REPRESENTATIVE COGHILL noted that if the provisions of SB 222 apply to the U.S. Army when it moves vehicles to and from different areas of the state, it could become problematic.

CHAIR ROKEBERG asked how much the fine is for going five miles per hour over the speed limit.

MS. WRIGHT indicated that she is not sure how much that fine is.

REPRESENTATIVE MEYER posited that the fine for going five miles per hour under the speed limit should be consistent with the fine for going five miles per hour over the speed limit.

CHAIR ROKEBERG opined that under the provisions of SB 222, a person would be fined more money for going under the speed limit than he/she would be for speeding.

REPRESENTATIVE KOOKESH withdrew his objection to Conceptual Amendment 1

Number 2018

CHAIR ROKEBERG [treating Conceptual Amendment 1 as adopted] suggested that the committee next take up the issue of point assessment.

Number 2035

REPRESENTATIVE MEYER said that he would like the fine in SB 222 to be the same as for going five miles per hour over the speed limit, and suggested such as Conceptual Amendment [2].

REPRESENTATIVE JAMES questioned making the fine the same. She said that going five miles per hour under the speed limit is a lot safer than going five miles per hour over.

CHAIR ROKEBERG suggested, instead, changing the fine to $100.

REPRESENTATIVE MEYER agreed.

Number 2061

CHAIR ROKEBERG announced Conceptual Amendment 2 to be amended such that it would change the fine to $100 and would delete the provision pertaining to the assessment of points against a person's driver's license.

Number 2069

CHAIR ROKEBERG asked whether there were any objections to Conceptual Amendment 2, as amended. There being no objection, Conceptual Amendment 2, as amended, was adopted.

Number 2074

REPRESENTATIVE MEYER moved to report HCS for SB 222, version 22-LS0611\O, Ford, 4/22/02, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCS CSSB 222(JUD) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

Number 2079

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:31 p.m.