

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

April 17, 2002

3:25 p.m.

MEMBERS PRESENT

Representative Lisa Murkowski, Chair
Representative Andrew Halcro, Vice Chair
Representative Kevin Meyer
Representative Norman Rokeberg
Representative Harry Crawford
Representative Joe Hayes

MEMBERS ABSENT

Representative Pete Kott

COMMITTEE CALENDAR

HOUSE BILL NO. 505

"An Act defining the term 'mental health professional' for the purpose of statutes relating to the evaluation of prisoners who may need psychological or psychiatric treatment, for the purpose of statutes relating to the evaluation of children in need of aid and delinquent minors who may need to be confined in a secure residential psychiatric treatment center or who should be released from such a center, for the purpose of statutes requiring certain professionals to report the possibility that a vulnerable adult has been abused or neglected, and for the purpose of statutes relating to mental health civil commitments."

- MOVED CSHB 505(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 460

"An Act relating to actions for monopolies and restraint of trade, including proof of damages; amending Rule 82, Alaska Rules of Civil Procedure; and providing for an effective date."

- MOVED HB 460 OUT OF COMMITTEE

CS FOR SENATE BILL NO. 270(L&C)

"An Act extending the termination date of the Board of Dispensing Opticians; relating to the regulation of dispensing opticians; and providing for an effective date."

- BILL HEARING POSTPONED

PREVIOUS ACTION

BILL: HB 505

SHORT TITLE: MENTAL HEALTH PROFESSIONALS

SPONSOR(S): HEALTH, EDUCATION & SOCIAL SERVICES

Jrn-Date	Jrn-Page		Action
03/15/02	2548	(H)	READ THE FIRST TIME - REFERRALS
03/15/02	2548	(H)	L&C, HES
04/17/02		(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 460

SHORT TITLE: ANTITRUST CIVIL COURT ACTIONS

SPONSOR(S): REPRESENTATIVE(S) CROFT

Jrn-Date	Jrn-Page		Action
02/19/02	2312	(H)	READ THE FIRST TIME - REFERRALS
02/19/02	2312	(H)	L&C, JUD
04/17/02		(H)	L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

REPRESENTATIVE FRED DYSON

Alaska State Legislature
Capitol Building, Room 104
Juneau, Alaska 99801

POSITION STATEMENT: Testified on behalf of the sponsor of HB 505, the House Health, Education and Social Services Standing Committee.

WALTER MAJOROS, Director

Division of Mental Health & Developmental Disabilities
Department of Health & Social Services
PO Box 110620

Juneau, Alaska 99811-0620

POSITION STATEMENT: Testified that the State Psychiatric Association is in support of HB 505.

SHARON BULLOCK, Licensed Clinical Social Worker;

Clinical Director, Fairbanks Community Mental Health Center
(No address provided)
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of [CSHB 505, Version C].

WAYNE McCOLLUM, Licensed Clinical Social Worker
(No address provided)

POSITION STATEMENT: Testified in support of [CSHB 505, Version C].

CATHERINE REARDON, Director
Division of Occupational Licensing
Department of Community & Economic Development
PO Box 110806
Juneau, Alaska 99811-0806

POSITION STATEMENT: Answered questions with regard to [CSHB 505, Version C].

REPRESENTATIVE ERIC CROFT
Alaska State Legislature
Capitol Building, Room 400
Juneau, Alaska 99801

POSITION STATEMENT: Testified as the sponsor of HB 460.

ED SNIFFEN, Assistant Attorney General
Fair Business Practices Section
Civil Division (Anchorage)
Department of Law
1031 W 4th Avenue, Suite 200
Anchorage, Alaska 99501-1994

POSITION STATEMENT: Explained the need for HB 460.

STEVEN CONN, Executive Director
Alaska Public Interest Research Group
PO Box 10-1093
Anchorage, Alaska 99510

POSITION STATEMENT: Testified in support of HB 460.

ACTION NARRATIVE

TAPE 02-59, SIDE A
Number 0001

CHAIR LISA MURKOWSKI called the House Labor and Commerce Standing Committee meeting to order at 3:25 p.m. Representatives Murkowski, Meyer, Rokeberg, and Crawford were present at the call to order. Representatives Halcro and Hayes arrived as the meeting was in progress.

HB 505-MENTAL HEALTH PROFESSIONALS

CHAIR MURKOWSKI announced that the first order of business would be HOUSE BILL NO. 505, "An Act defining the term 'mental health professional' for the purpose of statutes relating to the evaluation of prisoners who may need psychological or psychiatric treatment, for the purpose of statutes relating to the evaluation of children in need of aid and delinquent minors who may need to be confined in a secure residential psychiatric treatment center or who should be released from such a center, for the purpose of statutes requiring certain professionals to report the possibility that a vulnerable adult has been abused or neglected, and for the purpose of statutes relating to mental health civil commitments."

Number 0084

REPRESENTATIVE MEYER moved to adopt CSHB 505, Version 22-LS1631\C, Lauterbach, 4/17/02, as the working document. There being no objection, Version C was before the committee.

Number 0100

REPRESENTATIVE FRED DYSON, Alaska State Legislature, testified on behalf of the sponsor of HB 505, the House Health, Education and Social Services Standing Committee. He noted that the Senate's companion bill, SB 302, passed out of the Senate today. He also noted that this legislation was [introduced] at the request of the administration. Representative Dyson explained that this legislation places current practice into law and expands the definition of a "mental health professional." When the original laws were enacted, several categories [of mental health professionals] weren't contemplated or active in Alaska. The definition of "mental health professional" in the legislation includes licensed marital and family therapists and licensed professional counselors, licensed clinical social workers, and an individual in the process of qualifying for [one of the listed professions]. This legislation increases the number of licensed master's level professionals who will be able to evaluate prisoners for psychological or psychiatric treatment and minors needing to be confined or released from residential treatment. This legislation also increases the folks required to report incidences of harm and authorizes [those listed under the mental health professional definition] to perform civil commitments. Representative Dyson remarked that this is particularly valuable in those areas outside urban centers.

CHAIR MURKOWSKI asked if the Alaska State Medical Board is supportive of this legislation.

REPRESENTATIVE DYSON said that is his understanding.

Number 0314

WALTER MAJOROS, Director, Division of Mental Health & Developmental Disabilities, Department of Health & Social Services, related his belief that the State Psychiatric Association is in support of HB 505. He said he would have to check with his staff in regard to whether the medical board has weighed in on this legislation. In response to Representative Rokeberg, Mr. Majoros clarified that an LPC is a licensed professional counselor. In further response to Representative Rokeberg, Mr. Majoros related that the psychologists and psychological associates are under a common board while the social workers, marriage and family therapists, and professional counselors are under separate boards. However, there is sunset legislation before the legislature for one of the boards and [that legislation] has a requirement or legislative intent that the boards review combining.

CHAIR MURKOWSKI reminded the committee that it had adopted a letter of intent [to the legislation dealing with the extension of the Board of Licensed Professional Counselor]. That letter of intent was based on the auditor's suggestion that the three aforementioned boards be combined. Although the legislation has passed the Senate, the Senate didn't adopt a similar letter of intent.

Number 0524

REPRESENTATIVE ROKEBERG directed attention to page 2 of Version C and inquired as to the intent behind including subparagraphs (A)-(D). He highlighted the language in subparagraph (C) and noted his assumption that the individual would have to have qualified for a particular specialty.

MR. MAJOROS answered that the intent of subparagraphs (A)-(D) is to expand the group of people that would be considered mental health professionals who could do things such as preliminary evaluations for civil commitments. There are multiple requirements in order to maintain fairly rigorous requirements.

REPRESENTATIVE ROKEBERG questioned why subparagraphs (A), (B), and (D) are necessary if subparagraph (C) requires the

individual to submit an application to become a licensed practitioner under one of the boards listed.

MR. MAJOROS responded that although those subparagraphs may overlap, all the subparagraphs together help keep any loopholes closed. With only subparagraph (C), there would be the possibility of allowing an unqualified individual.

REPRESENTATIVE ROKEBERG remarked that it seems that an individual who can qualify for a board would be able to meet the board's requirements.

MR. MAJOROS pointed out that when an individual submits an application and pays a fee that doesn't mean that the individual is qualified. Whether the individual is qualified is a separate determination that should be made by the board.

REPRESENTATIVE ROKEBERG related his understanding that this legislation attempts to expand the pool and, to a degree, lower the standards. He said he didn't understand why an individual would apply to a board when the individual couldn't qualify to be accepted by the board unless that's a step in becoming fully accredited.

Number 0871

CHAIR MURKOWSKI clarified that the pool [of mental health professionals] is being expanded. In addition to those on the boards, [a mental health professional] can be a person who holds a master's degree in mental health, with 12 months of post-masters work, and has submitted an application to the board and worked under the supervision of a licensed individual. She characterized it as an apprenticeship type of approach.

MR. MAJOROS noted his agreement.

CHAIR MURKOWSKI pointed out that once an individual has been a member of a board, then the individual wouldn't have to work under the supervision of another LPC.

REPRESENTATIVE ROKEBERG questioned why one would apply to a board if the individual didn't meet the requirements or hadn't passed the exam.

MR. MAJOROS informed the committee that the application [to the board] must include the school attended, whether the courses matched those required under the licensing law, and whether the

supervision arrangement is acceptable to the board. Therefore, the individual would apply before being fully qualified. In further response to Representative Rokeberg, Mr. Majoros said that this is a standard practice for boards.

Number 1086

REPRESENTATIVE DYSON said that he wouldn't refer to this as an apprenticeship situation because these people have done the training and have a year of working in the field, have submitted their paperwork, and are in the process of obtaining the license recognized in Alaska as well as working under a licensed supervisor. The department wants to expand the pool of folks who can do this work [especially] in areas [that lack these type of professionals].

MR. MAJOROS echoed Representative Dyson's earlier comment that this [lack of mental health professionals] isn't of particular concern in urban areas that typically have an abundance of fully licensed mental health professionals. However, it's very difficult to get [fully licensed mental health professionals] to work in rural community mental health centers. Therefore, without a provision such as this [suggested in HB 505] there won't be enough qualified mental health professionals to do preliminary evaluations in rural areas. This is an issue of basic safety.

Number 1225

CHAIR MURKOWSKI directed attention to subparagraph (D) and asked how "supervision" would be defined.

MR. MAJOROS related his understanding that "supervision" refers to supervision that's accepted by the licensing body. Therefore, when an individual submits an application form, the form would specify the supervisor and the supervisor consultation relationship. He noted his belief that there is precedent for having an off-site supervisor, particularly in rural areas.

CHAIR MURKOWSKI remarked that she wasn't sure that the language clearly imparts the aforementioned explanation.

REPRESENTATIVE CRAWFORD informed the committee that his wife is a licensed clinical social worker and during her supervisory period she had to report to her supervisor once a week although the supervisor wasn't on-site. Representative Crawford inquired

as to who requested that individuals who aren't [fully] qualified be allowed [to practice].

REPRESENTATIVE DYSON said the [Department of Health & Social Services] made the request. Representative Dyson mentioned that his wife is a licensed clinical psychologist who had to maintain detailed case notes that she reviewed with her supervisor during the supervisory period of practice. Representative Dyson related his sense that most of those practicing in [these fields] are quite professional and [take their responsibility to act or not act] very seriously. He pointed out that many areas in rural Alaska are doing "work arounds." For example, the police want the perpetrator to do something that crosses the line to an illegal activity so that the individual can be arrested and placed in a safe place in order to keep the individual from hurting himself or someone else. Without a licensed mental health professional available to [commit these individuals], these "work arounds" are done in order to get the individual into custody and transported to a town with a [mental health] professional. He predicted that this [legislation] would be abused very few times.

Number 1490

MR. MAJOROS continued to address Representative Crawford's concern with regard to the experience of these individuals. He informed the committee that the individual's performing these preliminary evaluations are employees of community mental health centers. Although these individuals have one year of experience, every day they are involved in crisis situations. In fact, over a year's time these individuals have built up quite a bit of experience with mental health and substance abuse crisis. These preliminary evaluations review fundamental areas such as whether the individual has a mental illness, is suicidal or homicidal or greatly disabled. Furthermore, every time a community mental health professional makes the preliminary determination, it is done in consultation with a practicing psychiatrist before going to a judge.

REPRESENTATIVE DYSON said that the qualifications aren't being lowered, these are the qualifications that people have been practicing for years and thus [this legislation] would merely place it in law.

Number 1545

REPRESENTATIVE ROKEBERG expressed concern that this legislation doesn't mesh with the other occupational licenses and boards. He reviewed the requirements for licensed social workers, which specifies that the individual must have either a master's or a doctorate within a 10-year period before application for licensure and under the supervision of a licensed clinical worker [and] either a minimum of two years of continuous full-time employment in a post-graduate clinical social worker or a minimum of 3,000 hours of less than full-time employment in a period not less than two years of post-graduate. He highlighted that the social worker requirements specify that the degree must be obtained before making an application for licensure, which is the case for licensed family and marital therapists. Representative Rokeberg announced his support of the legislation, although [this seems to be inconsistent].

CHAIR MURKOWSKI related her understanding that LPCs can't submit an application form until a certain number of hours towards a degree is completed. Chair Murkowski said she understood the [statute] to mean that so long as an individual is working under the supervision of someone who has met the requirements and the application is pending while the additional hours are being gained toward the LPC board certification [they would qualify as a mental health professional under this legislation]. Chair Murkowski asked if the Division of Occupational Licensing has reviewed this legislation to determine there isn't any conflict for the existing requirements for the boards.

MR. MAJOROS answered with his understanding that the department's staff person has coordinated extensively with the Division of Occupational Licensing and there hasn't been any word of impediments or inconsistencies.

Number 1912

SHARON BULLOCK, Licensed Clinical Social Worker; Clinical Director, Fairbanks Community Mental Health Center, testified via teleconference. Ms. Bullock announced her support of [CSHB 505, Version C], particularly the portion regarding individuals with a master's degree. She pointed out that generally a master's program includes an interim during which the individual is under the supervision of some agency. Once the master's degree is obtained, the individual can apply for positions. Ms. Bullock explained that she supports this legislation because the current statutes only allow three master's level professionals, the psychological associates, psychiatric nurses, and an individual with a master's of social work (MSW) to perform the

[evaluations] for Title 47. In community mental health centers, there are fewer MSWs applying for positions and thus there is difficulty in filling positions with MSWs. Passage of this legislation will allow other qualified individuals to [fill these positions] during the two years in which they are working towards the license. Furthermore, passage of this legislation will [help master's level people do this legally].

CHAIR MURKOWSKI returned to the issue of how the supervision actually works.

MS. BULLOCK explained that in her [community mental health center] each master's level individual is seen for individual supervision once a week for one hour. Furthermore, there are case conferences in which there are group meetings between the master's level individual and the licensed supervisor as well as the psychiatrist. There are numerous licensed professionals to which these master's level people can approach with questions. In further response to Chair Murkowski, Ms. Bullock said that these meetings have been done in the facility [and its staff] has helped cover the [professionals] Railbelt when they needed supervision. In that situation, people were sent to the area for face-to-face supervision.

Number 2093

WAYNE McCOLLUM, Licensed Clinical Social Worker, testified via teleconference. He informed the committee that he has worked in Alaska for the past 20 years. Mr. McCollum announced his support of [CSHB 505, Version C], which he viewed as critically important in rural areas where there is difficulty in recruiting and retaining qualified master's level individuals who can perform the necessary evaluation. He mentioned his experience in Tok with [the work around situations] in which the State Troopers and Village Public Safety Officers (VPSO) are utilized to arrest individuals needing these [preliminary evaluations]. Mr. McCollum related his understanding that the bill refers to individuals in the process of qualifying for licensure rather than applying for licensure. For instance, there could be a situation in which an individual has just moved to the state and that individual may not have experience in the field of mental health but may be qualified in other ways. While this individual obtains experience in the field of mental health and is supervised by a licensed supervisor [this individual could be working in the field].

Number 2284

CATHERINE REARDON, Director, Division of Occupational Licensing, Department of Community & Economic Development (DCED), addressed Representative Rokeberg's concern that subparagraph (C) allows for a premature application. Ms. Reardon explained that when someone submitting an application doesn't meet the qualifications, the division informs the individual of the items lacking for the license. The application is treated as an incomplete application. The application would be held open and if there has been no contact from the individual after a year, the division sends the individual a letter. If there is still no communication from the individual, the application is archived and eventually destroyed. As long as the individual communicates with the division with regard to their interest in having their application on file, the application is maintained. Ms. Reardon noted that the division often receives incomplete applications and applications from individuals who haven't yet met the qualifications. Therefore, Ms. Reardon said that the division could work with [Version C].

TAPE 02-59, SIDE B

REPRESENTATIVE ROKEBERG referred to AS 08.95.110 and pointed out that the language specifies that the individual would have the work experience before making the application.

MR. REARDON related her belief that the reason for subparagraph (C) in this legislation is because there was an interest in having individuals be serious about becoming licensed rather than allowing an individual to sit in this status without engaging in the road to licensure. Perhaps submitting an application and paying the fee would allow people to realize what it takes to become licensed.

Number 2283

CHAIR MURKOWSKI inquired as to how long the applications are kept current when an incomplete application is received. She asked if there could be a situation in which an individual has an application on file for 12 years and would it be a concern.

MS. REARDON answered that it wouldn't be a concern for the division as long as the individual communicates with the division each year. Ms. Reardon emphasized that the individual would have to meet the license qualifications in effect the day the individual [applies for a] license and thus that isn't of concern. She related her belief that this committee substitute

attempts to clarify the language "in the process of qualifying for licensure" which was in the original version of HB 505. Therefore, she characterized Version C as more concrete terminology than HB 505.

REPRESENTATIVE ROKEBERG inquired as to the status of the Senate vehicle.

MR. MAJOROS answered that Version C is identical to the Senate language, which was unanimously passed from the Senate today.

REPRESENTATIVE ROKEBERG related his understanding that Ms. Reardon isn't uncomfortable with the application form because it's not inconsistent [with that required for other licenses]. He inquired as to how the boards deal with assigning supervisors for training.

MS. REARDON explained that generally supervisors or supervisory plans have to be approved in order for the individual to satisfy this supervised experience requirement of licensure. She said she didn't believe there would be anyone who couldn't comply with subparagraph (C). Whether this makes sense or not is up to the legislature.

REPRESENTATIVE ROKEBERG inquired as to the fee schedule for pre-licensing.

MS. REARDON said that refers to the application fee that is generally \$50, although it could be more.

REPRESENTATIVE ROKEBERG asked how these individuals currently obtain their supervision and coordination with the professional boards.

MS. REARDON responded that in order for their supervisory experience to count, some of them will have to have their supervisor and supervisory plan approved in order for it to count. Therefore, an individual could have five years of supervised experience that didn't count until the supervisor was approved. She supposed the aforementioned situation might be a reason to have the individual's submit an application form in order that the individual would be made aware of the things necessary to obtain the license. With regard to applications in incomplete status, Ms. Reardon noted that applications are kept in incomplete status unless an individual disagrees with the division's interpretation of the law at which time the application would go to the board for review.

REPRESENTATIVE ROKEBERG opined that it makes work for the division in order to provide statutory credibility to the individual, which doesn't make sense.

MS. REARDON noted that she didn't have a fiscal note for this because she doesn't feel that it will cause the division excessive burden.

REPRESENTATIVE ROKEBERG inquired as to why these individuals would be applying.

MR. MAJOROS related his understanding that the application process would indicate the individual is taking the issue of licensing seriously. Mr. Majoros pointed out that this would be an early warning signal that the individual is doing something that would prohibit him/her from obtaining a license, such as an educational program that doesn't meet the basic qualifications.

REPRESENTATIVE ROKEBERG pointed out that there isn't any requirement for such in the existing statutory board authorizations. Therefore, this doesn't quite mesh with [existing statutory board requirements].

REPRESENTATIVE DYSON surmised that the [subparagraph (C)] could be deleted or the language could be changed such that it specifies that the individual "has met the education, experience, and supervisory requirement of the license" of the [applicant].

CHAIR MURKOWSKI asked whether the intent is to get more people licensed in the various mental health professions or to allow for a stopgap to allow individuals without full licensure to help out in say rural Alaska.

REPRESENTATIVE DYSON related his guess that the department intends to achieve both.

Number 1937

REPRESENTATIVE ROKEBERG said that this legislation isn't drafted properly. Furthermore, he said he didn't believe it to be appropriate to allow a prelicensee apprentice the same status as [a licensed mental health professional]. This actually makes a less qualified individual a qualified individual. Representative Rokeberg suggested that the intent can be accomplished without placing [a prelicensee apprentice] in the

definition [of mental health professional]. He expressed the need to clarify that these individuals would only be considered mental health professionals for the labor pool, not for reimbursement.

MS. REARDON related her belief that the [mental health professional] definition in AS 47.30[.915] only applies in the commitment situation and doesn't apply to the insurance nondiscrimination statute. She offered to confirm the aforementioned. With regard to Representative Dyson's options, Ms. Reardon said she would prefer to eliminate subparagraph (C) because there are other ways to communicate the application and license requirements.

MR. MAJOROS agreed that would work.

REPRESENTATIVE ROKEBERG pointed out that AS 47.30.915 is the definition section for the entire mental health chapter.

MR. MAJOROS specified that the mental health professional definitions applies to various mental health processes, but not insurance reimbursement.

REPRESENTATIVE ROKEBERG turned to the existing statute, which already allows the social worker with a master's degree and substantial experience [to make decisions regarding commitment]. This legislation expands it, allowing other disciplines in the mental health field to do [commitments] as well. He recommended deleting subparagraph (C).

Number 1576

REPRESENTATIVE ROKEBERG moved that the committee adopt Amendment 1, which reads as follows:

Page 2, lines 13-14

Delete "(C) who is in the process of qualifying for licensure by a board named in this paragraph;"
Reletter accordingly.

There being no objection, Amendment 1 was adopted.

Number 1549

REPRESENTATIVE ROKEBERG moved to report CSHB 505, Version 22-LS1631\C, Lauterbach, 4/17/02, as amended out of committee with individual recommendations and the accompanying zero fiscal

note. There being no objection, CSHB 505(L&C) was reported from the House Labor and Commerce Standing Committee.

HB 460-ANTITRUST CIVIL COURT ACTIONS

CHAIR MURKOWSKI announced that the final order of business today would be HOUSE BILL NO. 460, "An Act relating to actions for monopolies and restraint of trade, including proof of damages; amending Rule 82, Alaska Rules of Civil Procedure; and providing for an effective date."

Number 1468

REPRESENTATIVE ERIC CROFT, Alaska State Legislature, testified as the sponsor of HB 460. He began by informing the committee that HB 460 is an Illinois Brick repealer. He explained that in the late 1970s the U.S. Supreme Court issued an opinion saying that under the federal antitrust laws one could only sue for direct purchases. Therefore, the attorney general can't sue for indirect purchases without a statute allowing such, which is what HB 460 would accomplish. This legislation would allow suit to be brought for indirect purchases of consumer fraud and allows the attorney general to stand in parens patriae. Thirty other states have done this. Had this been in place during the recent vitamin litigation in which there was a [federal] suit against vitamin manufacturers on the basis of too high charges, the attorney general's office believes [Alaska] would've received more money.

CHAIR MURKOWSKI asked if this was before the legislature in the past couple of years.

REPRESENTATIVE CROFT said he didn't recall such legislation, but deferred to the attorney general's office. In further response to Chair Murkowski, Representative Croft related his belief that the language in HB 460 is modeled after Alaska's current consumer fraud statute, including the language related to indirect suits and [parens patriae].

REPRESENTATIVE ROKEBERG inquired as to why the language "and the trier of the fact finds that the defendant's conduct was wilful" is being deleted in Section 1(1).

REPRESENTATIVE CROFT answered that it models what "we've already done." In further response to Representative Rokeberg, Representative Croft couldn't recall whether this only affects antitrusts.

Number 1230

CLYDE (ED) SNIFFEN, JR., Assistant Attorney General, Fair Business Practices Section, Civil Division (Anchorage), Department of Law, testified via teleconference. Due to the lack of this statute, the [department] believes the state lost out on \$700,000-\$1 million in recovery. Mr. Sniffen said that he didn't believe this statute has been before the legislature before. Mr. Sniffen informed the committee that he is responsible for several multi-state cases involving antitrust claims against drug manufacturers. In each of those cases, the ability of Alaska to make claims for indirect purchases has been limited due to the lack of this type of legislation, although he argues that Alaska has the ability to recover for indirect purchasers. States with the statutes proposed in HB 460 usually get a larger recovery, he related.

MR. SNIFFEN informed the committee that the language [was developed] after review of the Illinois Brick repealer statutes and Idaho statutes. He noted that Idaho's language was developed after reviewing the language of other states and incorporates what was viewed as the good language from other states. Alaska has done the same.

Number 1119

CHAIR MURKOWSKI recalled Mr. Sniffen's statement that although Alaska doesn't have this Illinois Brick repealer language, he attempts to argue that Alaska should be able to bring actions on behalf of direct and indirect purchasers. She asked if Mr. Sniffen had ever prevailed.

MR. SNIFFEN said that there hasn't been a decision from a court saying that Alaska has this authority. The cases with which he was familiar have been settled before the court makes a decision regarding whether the state has the authority to bring suit for indirect purchasers. He noted that he argues that antitrust violations are also consumer protection violations and the Consumer Protection Act has language suggesting that the state may have this authority. Having the language in HB 460 would clarify the situation, he said.

CHAIR MURKOWSKI turned to page 3, subsection (j), which refers to recovery of aggregate damages using statistical sampling. She inquired as to what that refers.

MR. SNIFFEN explained that there are times in which it's difficult to determine the exact amount of damages an individual indirect purchaser may have suffered. The language in subsection (j) allows the court to consider statistical sampling and other methods in order to determine a damage amount that approximates what the actual individual consumer damages might have been. In further response to Chair Murkowski, Mr. Sniffen said that a consumer could make arguments to the attorney general's office that he/she should receive a larger share. However, under these type of actions there are many people with small individual damages that amount to a large sum in the aggregate. To the extent a consumer believes their damages to be significantly greater than the whole, the consumer would have the ability to opt out of the lawsuit and bring their own case. The statute requires the attorney general to provide notice of the action and provide consumers with the opportunity to bring their own case.

CHAIR MURKOWSKI characterized this as a class action [suit].

MR. SNIFFEN said that it's a modified class action [suit] that can be brought only by the attorney general.

Number 0942

REPRESENTATIVE HAYES asked if the tobacco settlement would be an example of the type of lawsuit at which HB 460 is aimed.

MR. SNIFFEN related his belief that in the tobacco settlement there were many direct damages suffered by consumers. However, he said he believes there is probably room for the tobacco companies to argue that the settlements should've been different for those states lacking the authority to collect or bring claims on behalf of the indirect purchasers.

REPRESENTATIVE ROKEBERG returned to his question regarding the reason behind the deletion of the language in Section 1(1) of HB 460.

MR. SNIFFEN answered that the language was deleted to bring this statute in line with other federal antitrust statutes that don't require a showing of wilfulness before recovering treble damages. The Clayton Act allows the U.S. government to recover treble damages for a violation of federal antitrust law without a showing that the conduct was wilful. Mr. Sniffen related his belief that it's a policy decision [whether] this kind of conduct is egregious enough to warrant that penalty.

REPRESENTATIVE ROKEBERG maintained concern with the deletion of the wilful conduct language. He asked if chapter 45 addresses only antitrust suits.

MR. SNIFFEN replied yes.

REPRESENTATIVE ROKEBERG turned to Section 4, AS 45.50.586, and asked why that is included.

MR. SNIFFEN pointed out that the language in Section 4 is amended to clarify the statute and make the new section consistent by specifying nonstate governmental entities. Generally, [Section 4] merely codifies common law and allows final judgments rendered in civil actions to be used as evidence by those defendants in other actions for the same conduct.

REPRESENTATIVE ROKEBERG asked if provisions such as this aid the attorney general's office in making settlements rather than going to final judgment because a myriad of lawsuits could ensue.

MR. SNIFFEN related that he didn't know whether this section has been a help or a hindrance in settlement action. Even without this statute there is common law that suggests that the final judgments can be used against the defendants in other cases under certain collateral (indisc.) contexts. Mr. Sniffen said that he didn't have a firm answer.

REPRESENTATIVE ROKEBERG noted that there is case law about criminal adjudicated crimes being prima facie evidence for civil judgments in some jurisdictions.

MR. SNIFFEN said he believes the reverse to be true if one can obtain a final judgment in civil actions. With regard to the antitrust context, judgments rendered in antitrust cases are generally used as evidence against the defendants in other kinds of consumer protection matters.

Number 0621

STEVEN CONN, Executive Director, Alaska Public Interest Research Group (AkPIRG), testified via teleconference. Mr. Conn announced AkPIRG's support of HB 460. He noted the appropriateness of giving the attorney general's office all the authority it needs to serve Alaska and its consumers.

Number 0496

REPRESENTATIVE HAYES moved to report HB 460 out of committee with individual recommendations and the accompanying indeterminate fiscal note. There being no objection, HB 460 was reported from the House Labor and Commerce Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:55 p.m.