ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE
March 6, 2003
8:01 a.m.

MEMBERS PRESENT

Representative Bruce Weyhrauch, Chair
Representative Jim Holm, Vice Chair
Representative Nancy Dahlstrom
Representative Bob Lynn
Representative Paul Seaton
Representative Ethan Berkowitz
Representative Max Gruenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 5
"An Act prohibiting discrimination by credit rating or credit scoring in insurance rates; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 92
"An Act relating to reports by members of the clergy and custodians of clerical records who have reasonable cause to suspect that a child has suffered harm as a result of child abuse or neglect."

- HEARD AND HELD

HOUSE BILL NO. 18
"An Act relating to the liability of parents and legal guardians of minors who destroy property."

- MOVED CSHB 18(STA) OUT OF COMMITTEE

OVERVIEW: DEPARTMENT OF TRANSPORTATION, PUBLIC FACILITIES PORTION

- HEARD [See 10:15 a.m. minutes for this date]

PREVIOUS ACTION

BILL: HB 5
SHORT TITLE:INSURANCE DISCRIMINATION BY CREDIT RATING
SPONSOR(S): REPRESENTATIVE(S)CRAWFORD

Jrn-Date	Jrn-Page		Action
01/21/03	0031	(H)	PREFILE RELEASED (1/10/03)
01/21/03	0031	(H)	READ THE FIRST TIME - REFERRALS
01/21/03	0031	(H)	STA, L&C
01/21/03	0031	(H)	REFERRED TO STATE AFFAIRS
03/06/03		(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 92
SHORT TITLE:CLERGY TO REPORT CHILD ABUSE
SPONSOR(S): REPRESENTATIVE(S)LYNN

Jrn-Date	Jrn-Page		Action
02/12/03	0186	(H)	READ THE FIRST TIME - REFERRALS
02/12/03	0186	(H)	STA, HES
02/12/03	0186	(H)	REFERRED TO STATE AFFAIRS
02/19/03	0257	(H)	COSPONSOR(S): KERTTULA
03/06/03		(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 18
SHORT TITLE:PARENTAL LIABILITY FOR CHILD'S DAMAGE
SPONSOR(S): REPRESENTATIVE(S)MEYER

Jrn-Date	Jrn-Page		Action
01/21/03	0036	(H)	PREFILE RELEASED (1/10/03)
01/21/03	0036	(H)	READ THE FIRST TIME - REFERRALS
01/21/03	0036	(H)	STA, JUD
02/07/03	0153	(H)	COSPONSOR(S): ANDERSON
02/20/03		(H)	STA AT 8:00 AM CAPITOL 102
02/20/03		(H)	Heard & Held MINUTE(STA)
03/06/03		(H)	STA AT 8:00 AM CAPITOL 102

WITNESS REGISTER

REPRESENTATIVE HARRY CRAWFORD
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Testified as sponsor of HB 5.

CYNTHIA LAMB FAUST, Safe Church Program Consultant
Fairbanks, Alaska
POSITION STATEMENT: Testified as a representative for the Right Reverend Mark MacDonald, bishop of the Episcopal Diocese of Alaska, during testimony of HB 92.

JOANNE GIBBENS, Program Administrator
Division of Family & Youth Services
Department of Health & Social Services
Juneau, Alaska
POSITION STATEMENT: Testified on HB 92.

CHIP WAGONER, Lobbyist
for the Alaska Catholic Conference (ACC)
Anchorage, Alaska
POSITION STATEMENT: Testified during the hearing on HB 92.

TERESA WILLIAMS, President
Pissed Off Parents (POP)
Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 92.

W.M. THOMAS MOFFATT, Rev., Staff
to Representative Bob Lynn
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Answered questions on HB 92 on behalf of Representative Lynn, sponsor.

RICHARD BLOCK, Representational Lobbyist
for Christian Science Committee on Publication in Alaska
Anchorage, Alaska
POSITION STATEMENT: Testified on HB 92.

FLOYD V. SMITH
Alaska District Council of the Assemblies of God
Anchorage, Alaska
POSITION STATEMENT: During hearing on HB 92, testified about confidential communications, immunity, and insurance problems for churches.

TED BOATSMAN, District Superintendent
Alaska District Council of the Assemblies of God
Anchorage, Alaska

POSITION STATEMENT: During hearing on HB 92, testified regarding its possible effects on proving the intent of confidential communication,.

KENT REDFEARN
Anchorage, Alaska
POSITION STATEMENT: Testified on HB 92.

LAUREE HUGONIN
Alaska Network on Domestic Violence & Sexual Assault (ANDVSA)
Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 92.

REPRESENTATIVE KEVIN MEYER
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Testified as sponsor of HB 18.

ACTION NARRATIVE

TAPE 03-16, SIDE A
Number 0001

CHAIR BRUCE WEYHRAUCH called the House State Affairs Standing Committee meeting to order at 8:01 a.m. Representatives Holm, Seaton, Lynn, Gruenberg, and Weyhrauch were present at the call to order. Representatives Dahlstrom and Berkowitz arrived as the meeting was in progress.

HB 5-INSURANCE DISCRIMINATION BY CREDIT RATING

Number 0040

CHAIR WEYHRAUCH announced that the first order of business was HOUSE BILL NO. 5, "An Act prohibiting discrimination by credit rating or credit scoring in insurance rates; and providing for an effective date."

[Chair Weyhrauch asked potential testifiers to be available to testify at the next planned hearing, March 29, 2003.]

Number 0264

REPRESENTATIVE HARRY CRAWFORD, Alaska State Legislature, sponsor of HB 5, told the committee the process of working on the proposed legislation began about a year ago after receiving complaints from constituents about increased home and auto

insurance rates because of bad credit scores; most people want to know what their credit has to do with setting their insurance rates. He said that as he has gone through the process [of working on HB 5], he has decided that credit scoring really has no place in setting insurance rates.

CHAIR WEYHRAUCH observed that [HB 5] is broader than HB 47 because it would prohibit scoring for business and personal lines of credit.

REPRESENTATIVE CRAWFORD affirmed that. He explained that he wanted to coordinate with members of the Senate and is open to suggestion and modification, if he can be shown a justification for using credit scoring. He noted that Mr. Lessmeier [lobbyist for] State Farm Insurance Company, spent a lot of time the previous year working with him to illustrate what he felt was worthwhile regarding credit scoring.

Number 0476

CHAIR WEYHRAUCH requested empirical facts showing that [a consumer's] credit was used to set an insurance rate, the consumer's complaint to the Division of Insurance, and how the Division of Insurance addressed the complaint.

REPRESENTATIVE CRAWFORD responded that he could provide lots of anecdotes, but doesn't know how the Division of Insurance has dealt with [incidents] or whether those have been corrected at all. He noted that over the past couple of years there have been no bans or limitations on the use of credit scoring. He told the committee about a phone call [received by his staff] within the past week from a 70-year-old man with human immunodeficiency virus (HIV) who is no longer able to pay his medical bills; because of that, his credit score is almost nonexistent now, and although the man has never had an accident, his insurance rates have almost tripled.

REPRESENTATIVE CRAWFORD said the insurance industry was banned from using "red lining" in disadvantaged economic districts. He mentioned studies, including one by the Division of Insurance, which show that credit scoring hurts people in disadvantaged neighborhoods more than in wealthy neighborhoods. For example, a man with two [convictions for driving while intoxicated (DWI)] was given a lower insurance rate because of stellar credit, while some people with great driving records have a change of economic situation - because of divorce, for example - and find their insurance rates skyrocketing. He cited an example of a

man who was laid off from a company that didn't allow people with low credit scores to work there because "somebody's selling this as a predictor of theft." He also recalled hearing that Delta Airlines will start color-coding passengers as posing a terroristic threat based in part on their credit scores; he said he can't imagine what use that has as a predictor of a terrorist.

Number 0876

CHAIR WEYHRAUCH noted that the bill only addresses credit scores as a function of insurance.

REPRESENTATIVE CRAWFORD agreed but said, "It's a slippery slope that's being sold as a predictor for all sorts of things." He explained that elements which go into a credit score are proprietary - secret - and not revealed to the Division of Insurance, which would be required to disclose some of that information if it were in the public realm. He listed what he'd been told are the five components [of a credit score], which are kept secret: 35 percent payment history, 30 percent outstanding debt, 15 percent length of credit history, 10 percent recent new applications or opened accounts, and 10 percent a mix of credit and types of accounts and loans.

Number 1022

CHAIR WEYHRAUCH announced his intention to carefully review the report from the Division of Insurance before the next hearing.

REPRESENTATIVE CRAWFORD offered his belief that the basic premise of that report is that "they say we can't prove that credit scores don't have correlation with the setting of insurance rates." He added, however, that it can't be proven that they do [correlate]. Referring to examples of past studies showing that people with a certain color of hair or certain zodiac sign were better or worse drivers, for example, he said, "We never would use those things as a basis to set insurance rates, and I think that credit scores have just about as much efficacy as what sign you were born under."

Number 1147

REPRESENTATIVE CRAWFORD told the committee about a letter received from Washington, D.C. He said proponents of credit scoring claim that if passed, HB 5 [may] be preempted by the federal Fair Credit Reporting Act (FCRA). Addressing the

purpose and intent of FCRA and why he believes the preemption argument is invalid, he told members:

> First, it's important to keep our terms straight. Proponents of credit scores, particularly those who are claiming preemption of the FCRA, frequently use "consumer reports" and "consumer information" because those are the terms used in the FCRA. The appropriate term, however, in the context of this argument, is "credit score."
>
> Credit scores are not consumer information, as contemplated under the FCRA. They are a computation based on consumer information. ... In short, the purpose of the FCRA was to level the playing field between consumers and lenders. Consumers were to be allowed to see the same information used by lenders and underwriters, in a clear and understandable fashion. ... And the use of credit history was regulated to ensure it was accurate and fair to the consumer.
>
> The most basic problem with credit scores, in terms of the FCRA, is that they are the result of a secret methodology. The information used is secret, the weight given to that information is secret, and the formulas used to compute those scores from the information [are] secret. As a result, the playing field is no longer level, and the consumer protection afforded under the FCRA has been corrupted. The FCRA was basically a federal floor on legislation.

CHAIR WEYHRAUCH asked about any judicial cases on [possible preemption in other states].

REPRESENTATIVE CRAWFORD answered that he doesn't think there have been any challenges so far. In response to a follow-up question, he said he believed the original Act was passed in 1970 and has been modified a few times. He said he thinks the last time it was updated was in either 1996 or 1998, and the credit score was never contemplated and never mentioned until the very last modification, which he thought was in 1998. He added, "But it doesn't say that the use of credit scores is either prohibited or that it should be used."

Number 1525

REPRESENTATIVE GRUENBERG said he would appreciate Representative Crawford's presence at the March 29 meeting. He also asked someone from the Division of Insurance to address at the next hearing the question of whether a simpler way to deal with this might be to enact a fair credit reporting Act in Alaska and extend it to insurance, as "insurance consumers' right-to-know legislation." He opined that the real question is a matter of disclosure. [HB 5 was held over.]

HB 92-CLERGY TO REPORT CHILD ABUSE

Number 1600

CHAIR WEYHRAUCH announced that the next order of business was HOUSE BILL NO. 92, "An Act relating to reports by members of the clergy and custodians of clerical records who have reasonable cause to suspect that a child has suffered harm as a result of child abuse or neglect." [In packets was a proposed committee substitute (CS), Version 23-LS025\D, Lauterbach, 3/5/03.]

Number 1650

REPRESENTATIVE LYNN, sponsor of HB 92, remarked, "This is America and no one is above the law, but first there needs to be a law." He told members:

> One only has to read national headlines to conclude it's long past time to mandate reporting by clergy of actual or suspected sexual abuse of children. Doctors, nurses, and teachers already are required to report. Alaska's children and Alaska's faith communities are Alaska's most important and valuable resources and resources most worthy of projection.

REPRESENTATIVE LYNN offered his belief that HB 92 is good for children, "all of our churches," and Alaska. He said his intent is not to cast stones at any particular church, individual, or group of individuals. He pointed out that he'd asked for this to be drafted while still a Representative-elect, before the publicity involving Archbishop Hurley's honorable apology [for failure to help a teenage parishioner who reported sexual abuse]. Representative Lynn noted that he is a practicing Roman Catholic, but was testifying strictly as a layperson and legislator. He said, thankfully, there has been no personal involvement of his family or him with any of the situations that prompted him to introduce HB 92.

Number 1817

REPRESENTATIVE LYNN continued as follows:

> Headlines don't tell the entire story. No church has a monopoly on sinners, whether they be clergy or nonclergy. And no church has a shortage of people who will find inaction more convenient than action. It's neither fair nor accurate to conclude from newspaper headlines that sexual abuse, or failure to report abuse, is territory limited to one church. The church organized with a hierarchy of clergy, as in the Catholic Church and several other churches, may actually have an easier reporting situation than churches in which clergy report only to their own congregation, where there's not one boss and no single keeper of personnel records.
>
> The point is that however a church is organized, the appalling failure of any clergy member to voluntarily report abuse should not become an excuse for bashing anyone's church. The surreptitiousness accompanying the sexual mistreatment of children and the failure to report abuse has no denominational boundaries. HB 92 is intended to protect our children and strengthen the entire spectrum of our faith communities in doing what common sense tells us needs to be done. All 50 states have some form of mandated reporting of sexual abuse of children, and many include clergy among the mandated reporters.

Number 1893

REPRESENTATIVE LYNN continued:

> HB 92 does, in fact, provide a reporting exception for the thing we call "penitential communication," commonly known as "confession." The nature of the rite of confession, in my faith family, we term as a sacrament. It's not generally well understood outside the churches that practice it. It's understandable that some may believe exclusion of mandatory reporting of confession [in] HB 92 is, quote, "unfair to churches that don't practice a formal rite of confession."

The only thing I can say is, this hearing and this bill are not the place to debate the theology of confession, or any other church doctrine of practice. It may also not be commonly known that the rite of confession is not limited to the Roman Catholic Church. Other churches have similar special rites of confession, including Episcopalians and the various Orthodox churches, such as Greek Orthodox, Russian Orthodox, and Orthodox Church of America.

Some well-meaning person is sure to ask: "What's more important, reporting child abuse, or protecting the seal of confession?" And, frankly, the answer to that is above my pay grade. I suppose God would have to answer that. The reality is, however, the absolute protection of the seal of confession goes back to biblical days, and priests of have suffered execution rather than reveal a confession.

According to the Catholic encyclopedia, sins revealed in a sacramental confession bind the priest in viable secrecy. Under this obligation, the priest cannot be excused, either to save his own life or good name, to save the life of another, or to further the aims of human justice, or to avert any public calamity. No law can compel him to divulge the sins confessed to him. With this in mind, we can see that no state law is going to trump that ..., even though some states have, in fact, seen fit to have this unenforceable law in their statute book.

Number 1999

REPRESENTATIVE LYNN surmised that HB 92 would probably encompass 95 to 98 percent of the abusers who should be reported. He opined, "Something is better than nothing." He said a case could also be made that everyone should be mandated to report sexual abuse, and noted that some states have such a law. He suggested at some point that perhaps the legislature should visit that option, but said now is the time to put clergy on a mandated reporting list.

REPRESENTATIVE LYNN told the committee a 10-year look-back provision has been added to [the proposed CS], which states that past suspected sexual abuse shall be reported. He added that abuse suspected more than 10 years ago, may - emphasis on the word "may" - be reported. He said, "These sections apply even

if the victim has already obtained the age of majority." Failure to report, as required, would be a class B misdemeanor. He added, "This brings HB 92 into alignment with language that currently exists for currently mandated reporters."

REPRESENTATIVE LYNN noted that not every allegation of abuse is valid and said, "Properly reported, an allegation can be investigated and, if necessary, guilt or innocence determined by a court of law; ... there can be no due process of law, however, without a law." Highlighted a broad range of support evidenced by letters in the committee packet, he concluded by saying nobody of any age or situation should suffer sexual abuse, and that type of abuse should be reported. Thus HB 92 simply asks clergy, who treat the health of the soul, to be added to the current list of mandated reporters - a list that already includes doctors, nurses, and teachers, for example. This is not a panacea, but a practical step in the right direction.

CHAIR WEYHRAUCH told Representative Lynn that he appreciates the homework he has done regarding HB 92 and the support that he's gained for the proposed bill.

Number 2232

REPRESENTATIVE SEATON moved to adopt the proposed committee substitute (CS) for HB 92, Version 23-LS025\D, Lauterbach, 3/5/03, as a work draft.

CHAIR WEYHRAUCH referred to page 1, line 8. He asked if the essence of the bill is to report child abuse.

REPRESENTATIVE LYNN said yes.

CHAIR WEYHRAUCH suggested that clergy report the abuse of any person [regardless of the victim's age]. He noted that his own father had suffered abuse at the hands of a worker in a long-term care facility.

REPRESENTATIVE LYNN said he would be happy to expand [the language] to include anyone under those circumstances.

CHAIR WEYHRAUCH, noting that he is a Presbyterian, gave an example of a Presbyterian minister being under legal obligation to report abuse and, therefore, telling someone to confess instead to a Catholic priest. He asked, "If a confession of abuse comes out in a Catholic confessional, is it not subject to

reporting, but if it comes out with a Presbyterian minister, is it subject to ... reporting?"

REPRESENTATIVE LYNN offered his understanding that the answer is yes; it creates a difficult situation. He said he didn't know the answer to the aforementioned example; he didn't know whether a non-Catholic could actually go get a confession [from Catholic clergy]. He reminded the committee that the object is to protect children and perhaps everybody who has suffered abuse at the hands of "a church member, or by anybody else."

REPRESENTATIVE LYNN noted several people on a list to testify. He said he'd prefer that questions regarding denominations other than his own be addressed by clergy of other denominations.

Number 2558

CHAIR WEYHRAUCH returned attention to the motion to adopt Version D as a work draft. He announced that without objection, Version D was before the committee.

REPRESENTATIVE SEATON referred to page 1, line 9, and the title. He sought clarification as to whether the intent of the proposed legislation is to require that all clergy report, to the legal authorities, all cases in which there is perceived neglect, as well as abuse.

REPRESENTATIVE LYNN answered in the affirmative.

Number 2648

REPRESENTATIVE BERKOWITZ referred to Chair Weyhrauch's question regarding different reporting requirements for different faiths. He clarified that his concern is with having different treatments of different religions in the statutes.

CHAIR WEYHRAUCH suggested it's a matter of separation of church and state and how each [denomination] defines its own practice.

REPRESENTATIVE BERKOWITZ surmised, "Denominational choice, then."

REPRESENTATIVE LYNN replied, "To the best of my knowledge, there's nothing in the statute that defines responsibility of one faith community compared to another one." He said he has been advised that the neglect portion is already covered under other "currently mandated reporters."

Number 2737

REPRESENTATIVE BERKOWITZ said in the rules of court there is priest-penitent privilege that can be asserted in trials. He asked how HB 92 would intersect with that court rule.

REPRESENTATIVE LYNN offered his belief that nothing in HB 92 would interfere with that. He said the state cannot force the seal of confession to be broken, but added, "If it's already in the bill in some other fashion - not necessarily in the name of confession - (indisc.) reconciliation or the right of penance, I suppose that that would work, would it not?"

CHAIR WEYHRAUCH said he thinks Representative Berkowitz was talking about a rule of evidence, but said he is not sure how this amendment to the statute would be incorporated into that.

REPRESENTATIVE HOLM expressed appreciation for HB 92 as a great step. He referred to previous comments by Representative Seaton and noted that "neglect" isn't defined in the bill. He said he wanted to see if it's defined in state law as referenced in AS 47.17.290.

Number 2843

REPRESENTATIVE BERKOWITZ referred to AS 47.17.290(10), which reads:

> (10) "neglect" means the failure by a person responsible for the child's welfare to provide necessary food, care, clothing, shelter, or medical attention for a child;

REPRESENTATIVE HOLM asked if that is the same statute that applies to teachers, for example.

CHAIR WEYHRAUCH said, "In terms of neglect it would be defined, because teachers and staff are included already under the existing statute."

REPRESENTATIVE BERKOWITZ said the definitions in Title 47.17 would apply to "the prohibited acts, or the required acts."

Number 2894

REPRESENTATIVE SEATON said he wants to make sure the bill's intent is to require clergy to report class B misdemeanor violations, just as those in counseling are required to do currently.

REPRESENTATIVE LYNN replied that the intent of the drafters of HB 92 was to bring the requirement for clergy reporting in line with reporting already required for other classes or persons so that there wouldn't be a dichotomy between what clergy have to do and what doctors and nurses have to do, for example.

TAPE 03-16, SIDE B
Number 2999

REPRESENTATIVE SEATON asked if the requirement [to go back 10 years in the records] is a requirement for "all the other agencies" or is specific to clergy.

REPRESENTATIVE LYNN said he didn't know.

REPRESENTATIVE BERKOWITZ referred to Section 3, which read in part, "recognized religious denomination or religious organization." He asked, "Recognized by whom?"

REPRESENTATIVE LYNN surmised that it would be denominations or religious organizations recognized by the federal government for tax-exemption purposes.

CHAIR WEYHRAUCH opened the hearing to public testimony.

Number 2918

CYNTHIA LAMB FAUST, Safe Church Program Consultant, representing the Right Reverend Mark MacDonald, bishop of the Episcopal Diocese of Alaska, testified as follows:

> For over 10 years the Episcopal Church in the U.S.A. has required that every diocese develop and implement a program to prevent sexual misconduct on the part of clergy and church leaders. In our diocese here in Alaska, part of our Safe Church Program includes an 8-hour training for clergy and laity, and deals directly with sexual abuse of children, elders, disabled, and those who are not legally competent to give consent.

MS. FAUST read from part of the manual used by the Safe Church Program as follows:

> Sexual misconduct is more about the misuse of power than it is about sex. In relationships of trust with children or adults, church leaders must use great care to avoid taking advantage of or abusing their power so they do not betray God's image in themselves and others by becoming reckless bullies. It is the responsibility of every church leader to keep a clear boundary between conduct that is trustworthy and misconduct. Keeping this high standard is always the responsibility of the minister or leader.
>
> Sexual abuse is sexual involvement or contact by a person with a minor, an elder, a disabled person, or someone who may not [be] legally competent to give consent. Abuse of power, especially, hurts children and those too weak to defend themselves. Children are not able to give consent to sexual activity because they don't and can't understand everything involved in ... what they are being asked to do and what it will do to them. Therefore, even if they "go along" with what the older and more powerful abuser wants, children cannot be considered capable of true "consent."
>
> The Gospel shows Jesus always takes the side of children and the weak against those who misuse their power to hurt others. The church forbids this behavior. It is a criminal offense, to be reported to law enforcement officials. If you suspect or are aware that a child, elder, or disabled person is being abused and it is within your ability, seek to protect them from further harm. Contact the nearest office of the Division of Family and Youth Services and/or the Alaska State Troopers or police and report it. If the abuser is a church leader, notify the bishop immediately.

Number 2724

[A portion of Ms. Faust's testimony was indiscernible because of technical difficulties.]

MS. FAUST told the committee Bishop MacDonald heartily agrees with a need for reporting and has agreed to support HB 92. She continued:

I can also say that, in our training, we talk about the confessional seal. We do let priests know ..., if they suspect that someone is coming to them to confess, that they also warn people that we do [report]. And if the person does choose to use the confessional as a way to unburden themselves, the priest always has the opportunity to withhold absolution until the person does confess.

So, while I am not in a position to speak to all of the intricacies of that, I did want to say that that is part of program to discuss this with clergy and to make the ... people in the congregations aware that reporting is something that we strongly encourage all of our clergy to do already.

Number 2680

REPRESENTATIVE SEATON said Ms. Faust's testimony seemed to revolve around sexual abuse or misconduct, especially [by] those who are in power. He asked whether Ms. Faust's testimony concerns the requirement that any member of the clergy would, under this law, be required to report neglect.

MS. FAUST answered that she appreciates the distinction, but Bishop MacDonald hadn't instructed her to speak to that. She said her sense is that she is testifying on the bishop's behalf to support the reporting of sexual abuse.

REPRESENTATIVE SEATON asked Ms. Faust to check with Bishop MacDonald to find out the position on requiring clergy to report any cases of neglect that come to their knowledge from the congregation.

Number 2582

JOANNE GIBBENS, Program Administrator, Division of Family & Youth Services, Department of Health & Social Services (DHSS), told the committee DHSS supports HB 92. She noted that approximately 13 states currently include members of the clergy among those specifically mandated to report known or suspected child abuse or neglect. In 18 additional states, any person who suspects child abuse or neglect is required to report. She clarified that the clergy would be included within the definition of "any person." Other states are currently considering similar legislation, she said. She concluded that the department hasn't had a chance to look at the proposed CS,

but believes it would be of benefit regarding the protection of children. In response to a request by Representative Gruenberg, she said she'd provide a copy of other states' statutes in the next day or two.

REPRESENTATIVE GRUENBERG mentioned organizations such as the Society of Friends [the Quakers] who don't have ordained priests and ministers. He asked how those are handled.

MS. GIBBENS answered that she doesn't know. She surmised that it would be a legal question.

REPRESENTATIVE GRUENBERG asked for any information she could find "in her network of other administrators." Referring to the look-back provision in Section 4, he asked if Ms. Gibbens was aware of any other states with anything like that.

Number 2454

MS. GIBBENS said not at present, but she hadn't had time to review and analyze [Version D] before the meeting. She said she'd be happy to look into it.

REPRESENTATIVE GRUENBERG asked if Ms. Gibbens was aware of similar look-back provisions elsewhere in Alaska law.

MS. GIBBENS answered, "Not that I'm aware of."

REPRESENTATIVE GRUENBERG said, "Neither am I."

Number 2394

CHIP WAGONER, Lobbyist for Alaska Catholic Conference (ACC), explained that the ACC is composed of the three Roman Catholic bishops in Alaska and is the vehicle they use to speak with one voice on public policy matters. He announced that he would hand out a brochure at the conclusion of his testimony. Noting that ACC met twice the prior week, he said HB 92 was on the agenda and was endorsed unanimously, is consistent with the church's policy, and is good for the children and the churches of Alaska.

MR. WAGONER referred to amendments in [Version D], saying ACC hadn't taken a position on the proposed CS. He said two are housekeeping amendments, but one makes the permissive past-reporting requirement mandatory, going back 10 years; he expressed ACC's need for discussion on this provision. He said if the bill is merely directing churches to report allegations

of past sexual abuse or suspected allegations of sexual abuse of a minor by a clergy member within the last 10 years, that would be one thing; that information would be in the records of the church. However, the bill goes much further than that, requiring all clergy members to report all past allegations of sexual abuse, or suspected sexual abuse, that the clergy member had knowledge of or suspected.

MR. WAGONER suggested that the latter requirement would mean the bill is not so much directed towards the clergy as towards the parishioners of the clergy member. He suggested that members keep this distinction in mind while debating HB 92. He explained, "The first one is much easier for the churches to comply with, because of the record keeping and [because] we're looking at specific clergy members." He said to ask the clergy to try to remember conversations or counseling sessions they had over a 10-year period, without written records, would be much more difficult to comply with. He told the committee that whatever it decides, [the Catholic] Church will do its best to meet the requirements of the law; however, he emphasized that there are two very different requirements being considered. He added that it is a concern that a clergy member who "misses something" in the 10 years can be incriminated for it.

Number 2191

MR. WAGONER referred to use of the word "priest" in statute and said in [the Catholic] Church that would include the definition for bishop. Noting that the bill provides for an exception for reporting of penitential communication, he pointed out that the technical term [for confession] is "the sacrament of penance and reconciliation." Mr. Wagoner said only a bishop or priest, through a bishop's authority, can give confessions. It's a very narrow exception and wouldn't include when someone came in to talk to the priest about a family problem and an allegation of sexual abuse arose during the session, for example - it would only be the sacrament of penance and reconciliation.

MR. WAGONER noted that sacraments are an essential component of the church; [the sacrament of penance and reconciliation] is one of the seven sacraments and has been around for 1,300 to 1,500 years. The church has a body of cannon law that regulates it. Cannon Law 983 states that the sacramental seal is inviolable; therefore, it is absolutely forbidden for a confessor - a priest or bishop - to betray in any way a penitent, in words or in any manner or for any reason.

Number 2042

REPRESENTATIVE BERKOWITZ referred to Mr. Wagoner's definition of clergy members. He asked if a nun, for example, would be a clergy member under [the bill].

MR. WAGONER answered no. He said he interpreted the bill to define "clergy member" as "priest, minister, or rabbi of a church". It wouldn't include Sunday school teachers or full-time ministers, for example.

REPRESENTATIVE BERKOWITZ asked if members of other faiths who use different terminology for their religious leaders would be covered.

MR. WAGONER said he didn't know.

Number 1955

REPRESENTATIVE LYNN asked if nuns and brothers, while not considered clergy, would be considered "religious".

MR. WAGONER responded that "religious" would include sisters; the brothers would be ordained and are not usually associated with a diocese, but with an order. He added, "They would be covered." In further response, he clarified that a brother who is a priest could hear a confession.

Number 1900

CHAIR WEYHRAUCH referred to [page 2, lines 27-28], which reads:

> (17) "clergy member" means a priest, minister, or rabbi of a church, temple, or recognized religious denomination or religious organization.

He said many recognized religious denominations don't have those kinds of names, for example, a reader in a Christian Science church. He suggested the question being asked is whether the definition is enough to sweep in those in a religious context who hear reports of abuse, or whether it should do so. He said it is a fundamental policy question and he thinks the answer is yes.

MR. WAGONER reiterated his belief that the current bill would cover priests and bishops, not volunteers who teach religious education classes, for example.

Number 1831

REPRESENTATIVE SEATON asked Mr. Wagoner if he is comfortable supporting the position with regard to reporting potential cases of neglect within the congregation.

MR. WAGONER asked, "The past or the present?"

REPRESENTATIVE SEATON said the past is only for sexual abuse, but the title of the bill and the requirement is that clergy will report any neglect, as well as abuse. He asked if that is [ACC's] understanding [of the bill] and if it supports that.

MR. WAGONER said it wasn't discussed at the meeting, but he can't imagine that the bishops would have a problem with reporting present or future issues of neglect; he said he'd have to verify that with them.

REPRESENTATIVE SEATON said he'd appreciate it if Mr. Wagoner did that because he sees a stark difference between requiring the clergy to report any suspected neglect of children within their congregation, versus sexual abuse, sexual misconduct, or physical abuse from members of their organization. He said he could see that the current definitions [in HB 92] could cause problems in how congregations function.

Number 1666

TERESA WILLIAMS, President, Pissed Off Parents (POP), told the committee POP supports HB 92. Its position is that everyone should be reporting. She said she hears a lot of concern regarding neglect, and there are more victims of neglect, statewide and nationwide, than any other crime against children. She posited that it is only fitting that those who administer to "our spiritual selves" should also administer to children.

Number 1600

W.M. THOMAS MOFFATT, Rev., Staff to Representative Bob Lynn, Alaska State Legislature, told the committee he is an Eastern Orthodox Christian priest. He said the central purpose of HB 92 is to require of clergy what is already required from "the eight other categories" of professions. Father Thomas said he and the bishops with whom he has spoken appreciate Representative Seaton's previously stated concern regarding the effect of requiring neglectful situations involving children to be

reported by clergy. He added, "No problem." He referred to [page 1, lines 6-10], which reads in part:

> (a) The following persons who, in the performance of their occupational duties, or with respect to (8) of this subsection, in the performance of their appointed duties, have reasonable cause to suspect that a child has suffered harm as a result of child abuse or neglect shall immediately report the harm to the nearest office of the department:

FATHER THOMAS read "reasonable cause to suspect that a child has suffered", placing emphasis on the word "has". He said the whole purpose of HB 92 is to protect children who are suffering or being caused to suffer.

Number 1415

FATHER THOMAS mentioned the definition of clergy. He said "we" use three specific words: priest, minister, or rabbi. He said the word "minister" in the bill is meant to cover "a whole raft of titles of people," including ayatollahs and Christian Science practitioners - "those who have responsibility." He said it was the intent of [the sponsor] of HB 92 to "snare in the net" those people who have the title of priest, minister, or rabbi. He said he, Representative Lynn, and all the clergy with whom he has spoken hope, as the bill moves, that "perfect doesn't get in the way of accomplishing good."

FATHER THOMAS suggested perhaps every citizen should have the duty to report child abuse or neglect. He related his understanding that the eight categories currently required to report do so to the Department of Health & Social Services. Referring to a previous question regarding whether Quakers would be included as clergy, he said, "They don't have clergy, so they don't get included." Bringing attention to Representative Gruenberg's previous mention of the look-back provision, he said, "Yes, perhaps this would be unique, but a lot of the controversy in most recent days is resolved around the past." He said the first part of the bill, hopefully, addresses the present and the future, "but we do provide this look-back provision." In response to a question from Representative Holm, he noted that the eight categories are listed in the bill [beginning on page 1, line 11].

Number 1115

REPRESENTATIVE HOLM told Father Thomas that when he uses the word "ministers" it doesn't reflect religious leaders. He suggested "religious leaders" might be a more appropriate phrase.

FATHER THOMAS explained that in the Episcopal Church, "minister" refers to a vicar or a rector, someone in charge of a congregation. He said he thought the intention related to leadership, for example.

Number 0990

REPRESENTATIVE HOLM said when he thinks of ministers - religious leaders - he thinks of the barrio in Mexico and poor, indigent people, perhaps without a good education, who need help. He asked how [the bill] would help people who need to be ministered to, if [the legislature] puts a requirement on those who minister to them to make the definition between whether they're good parents, [by deciding] whether they have enough money and education, or whether they even should be parents. He asked, "When we make law that requires that there's a penalty if you do not, as a minister, make those definitions, are we really doing what we want to do here in this bill?" Sexual abuse is one issue, but he said he has a problem with the neglect portion of this bill.

FATHER THOMAS said the intent is to have the clergy treated the same as those in the previously mentioned eight categories who are required to report.

Number 0722

REPRESENTATIVE GRUENBERG voiced concern that the bill may be underinclusive in regard to those religious groups who don't have "official people" and also overinclusive in the sense that there may be a minister without a parish.

FATHER THOMAS responded that there are priests, for example, who don't have a parish; he himself is one, he would want to be included [in the proposed requirement], and he doesn't know anyone who wouldn't. He said [the sponsor] attempted to do some good by requiring that clergy be included in the requirement. He added, "If you want to include, for all eight or nine categories, the requirement for the reporting of spousal abuse or the reporting of the elderly who are abused, ... go for it."

Number 0409

RICHARD BLOCK, Representational Lobbyist for Christian Science Committee on Publication in Alaska, told the committee he represents those people in the state who rely on prayer for healing and who choose to protect the ability to recognize the importance of spirituality as a path to healing. Mr. Block indicated although his organization doesn't have an official position on HB 92 or object to its passage, it does recognize the social issues and problems the legislature is dealing with, and that it may be necessary to impose broader reporting requirements than currently exist in order to effectuate that level of protection.

MR. BLOCK expressed concern that Sections 2 and 3 be preserved. He opined that the primary and ultimate objective of the bill should be the healing of those who are abused and of the alleged perpetrators. He stated his belief that the ability of the person abused, or even the perpetrator, to communicate in a confidential way with a spiritual leader is a vital first step in that healing process.

MR. BLOCK referred to the change in Version D that removes "religious practitioner, or similar functionary" from Section 3. He said he is puzzled because he isn't sure what that does. He indicated he'd like some time to think about it and talk with the sponsor's staff. He suggested the result of Version D might be to exempt Christian Science practitioners. Referring to previous testimony regarding the meaning of the "minister", he stated his belief that a minister is someone who is ordained by his/her church, or maybe even recognized in state law as having official capacity with a church; thus people in the Christian Science church, for example, who are not official clergy wouldn't be included in [Version D].

TAPE 03-17, SIDE A
Number 0001

FLOYD V. SMITH, testifying on behalf of the Alaska District Council of the Assemblies of God ("Assemblies of God"), said he would like to confine his testimony to confidential communications, the question of immunity, and "some very significant insurance problems, which are raised for churches by this particular bill - particularly the retroactive application of a reporting requirement."

MR. SMITH referred to the Alaska Rules of Evidence and the related commentaries, which had been alluded to. He told members:

> We've been operating under those rules for many, many years - I think, at least back [to] 1979 - predating the adoption of the abuse and neglect Act. Specifically, what we're referring to here is Rule 506 of the Alaska Rules of Evidence, promulgated by the Alaska Supreme Court. And that rule provides that a communication is confidential if it's made privately, and not intended for further disclosure, except to other persons present, in furtherance of the purpose of the communication.
>
> We've heard some very articulate testimony this morning in respect to the sacramental exemptions and privileges that were attached to particular churches that have a sacramental or confessional tradition.
>
> The Alaska Supreme Court rule, I would suggest to you, avoids the problem of having the legislature have to carve out exceptions for particular denominations or particular doctrines by making any communication intended to be confidential - notwithstanding the denomination or status of the person receiving it - confidential. We would infinitely prefer that, as opposed to being in a position where somebody said the Presbyterian might have to go down the street to the Catholic Church for confession.
>
> The commentary to the Alaska Rules of Evidence promulgated by the supreme court states that this privilege - and it is a privilege - recognizes the need for a private enclave for spiritual counseling, which is not confined to those whose religion requires confession, but extends to all who attempt to lead righteous lives, with the aid and comfort of their religion and religious advisors.
>
> We, for many, many years, have taken the position that a communication made to a pastor or minister - whichever term you prefer - is meant to be confidential, and we will preserve the confidentiality of that communication. The Alaska Supreme Court has told us, in their rules, that we are obligated to do so.

Number 0304

MR. SMITH referred to Plant v. State. He noted that in this particular sexual abuse case, the person involved went to his protestant minister to discuss the problems of sexual abuse; the supreme court would not allow the minister to testify in court because the privilege belongs to the person who makes the communication. He continued:

> When we're told that we might have to go back 10 years and report cases of sexual abuse that the clergy might know of - not just the church, but the individual clergy might suspect - we believe that this means that we would then have to go ahead and contact each and every person who may have made a communication to a pastor, and secure their consent to report this, because this bill, as I understand it, does not attempt to supersede the rules of the supreme court. If it did attempt to do so, I think that the problem is, the bill would have to be redenominated as a bill to eliminate or change a procedure rule of the supreme court, and would require a two-thirds vote in each house. Whether or not this bill would stand, or whether or not you'd have to put in a committee substitute, I have no knowledge. You'd have to consult with your legislative attorneys.

MR. SMITH went on to say that a requirement to report 10 years back would create problems with insurance that may be voided in respect to that. He reiterated that his church doesn't believe it could do the required reporting without the consent of those who made communications, and has had a policy of absolute abhorrence of sexual abuse and a no-second-chance policy for many years.

Number 0783

TED BOATSMAN, District Superintendent, Alaska District Council of the Assemblies of God, noted that that the information regarding HB 92 was received on short notice. He said he believes the languages reads in favor of sacramental confession, which leaves the protestant side "a little bit in confusion," because protestants do not have sacramental confession in the same manner as the Catholic Church. He said, "That leaves us ... to having to prove the intent of the confidential

communication that we have as ministers." He told the committee that he is ordained.

MR. BOATSMAN, regarding the look-back provision, said it is hard to comprehend how someone would decide if the intent of communication years ago was in confidence or was "a mere communication" during a premarital conference, for example. He said having to prove the intent of confidence would be a real struggle, especially when the supreme court has ruled on the side of the confessor.

Number 0839

KENT REDFEARN testified, saying he thinks the reason clergy members are being considered as an addition to the other eight categories [of those who report] is because they've always been considered different from the other eight. He maintained that clergy members are different from childcare providers and administrative offices of institutions, for example. He expressed concern about how this would be managed.

Number 0887

LAUREE HUGONIN, Alaska Network on Domestic Violence & Sexual Assault (ANDVSA), said ANDVSA supports HB 92 and would also support the addition of elders and disabled persons in the language of the bill, as was previously discussed. Regarding neglect, she opined that it would be [based upon] the community standard. She said a DHSS representative would probably be more knowledgeable to speak to the issue, but added, "As a person maybe who has a middle or upper income, I wouldn't go into a community that was in a lower income and immediately start reporting people. That's not what neglect is."

MS. HUGONIN said domestic-violence and sexual-assault workers were already in statute as required reporters "before we gained our privilege." She added, "But when we did gain the privilege, in order to accommodate our responsibility as required reporters, they put an exception in. So that might be something that you could consider, if that continues to be an area of confusion or contention."

Number 1031

REPRESENTATIVE SEATON said his concern regarding the issue of neglect comes in part from reports that indicate over 35 percent of the children in protective custody in the Anchorage area are

Alaska Native. He offered his perception that a number of those reports are based on cultural perspective on what is neglect. He told [Ms. Hugonin] that he is not sure that she is correct. He said if the state has a definition of neglect, a clergy member who is under threat of a class B misdemeanor to report neglect may not be able to say, "Well, this is just a general, cultural way these people live, and so that's not neglect." He asked [Ms. Hugonin] if she is saying there are factors other than cultural differences explaining why these numbers are high.

MS. HUGONIN responded that she is not aware of those numbers, but reiterated that there is concern regarding the community standard. She said, for example, it is "so you don't have somebody from outside a community coming in and just saying, 'Well, obviously that's neglectful - the child hasn't brushed his teeth three times a day, and that's my standard - anything less than that is neglect'."

MS. HUGONIN suggested everyone wants children who are in dangerous situations or neglected to be brought to the attention of somebody who can provide resources to the family to help them out. She said she thinks the intention of requiring the report of neglect is so that the family is brought to the awareness of the system that can provide some support for them, in order to get the child in a safer environment.

Number 1233

REPRESENTATIVE SEATON offered the following statement:

> I'm afraid that when we go and all of a sudden make an Alaska Statute, we are not saying "local community norms," we are saying that the clergy is going to be responsible for reporting something that is within the Alaska Statute definition, and we are not saying "community norms." So, I appreciate your idea; I'm just not sure if it's correct or not. And if it's not correct, then we are going to be placing the clergy in an awful position of either being eligible for ... class B misdemeanors a lot of times or, basically, putting them in a very untenable position within some of the communities that they're to minister to.

REPRESENTATIVE SEATON said he is not opposed to the section of the bill dealing with sexual abuse, but has problems with the [look-back] reporting requirement in the bill because it is specific to clergy and nobody else is required to do it.

Number 1354

REPRESENTATIVE GRUENBERG asked Mr. Smith and Mr. Block to take part in future committee hearings on HB 92.

CHAIR WEYHRAUCH said he hopes the issues discussed will be resolved by working with the sponsor of the bill.

Number 1393

REPRESENTATIVE LYNN noted that the problems of reporting - what to report and when to report it - are not confined to one church tradition, which he said is why he thinks there needs to be one standard. He thanked members for their cooperation.

CHAIR WEYHRAUCH announced that HB 92 would be held over.

[There are approximately four minutes of blank tape preceding HB 18 because the tape kept rolling, but not recording, while the committee took an at-ease.]

HB 18-PARENTAL LIABILITY FOR CHILD'S DAMAGE

CHAIR WEYHRAUCH announced that the last order of business was HOUSE BILL NO. 18, "An Act relating to the liability of parents and legal guardians of minors who destroy property."

Number 1615

REPRESENTATIVE GRUENBERG moved to adopt the proposed committee substitute (CS), Version 23-LS0110\D, Luckhaupt, 2/28/03, as a work draft. There being no objection, Version D was before the committee.

Number 1647

REPRESENTATIVE KEVIN MEYER, Alaska State Legislature, sponsor of HB 18, explained that the purpose of Version D is to raise the existing $10,000 cap to $20,000, a substantial increase. He referred to previous testimony [at the February 20, 2003, House State Affairs Standing Committee meeting] that parents who adopt high-risk children would be less likely to adopt if there were unlimited liability. He added, "Certainly, we want to encourage adoptions as much as possible." He said the cap has been in place since 1967 and was last raised in 1995 from $2,000 to $10,000.

Number 1709

REPRESENTATIVE MEYER told the committee that since the last hearing on HB 18, [his office] had heard from the insurance companies regarding their concern with unlimited liability and parents' being tempted to use their homeowners' insurance to cover the cost of their children's [vandalism]. He said, "Their concern is that, with unlimited liability, ... they would have to raise the homeowners' insurance rates; however, if we kept the cap on, they did not see a problem with it impacting homeowners' insurance rates."

REPRESENTATIVE MEYER said [his office] also heard from Carol Comeau, superintendent for the Anchorage School District, who indicated she'd like to see an unlimited cap because she wants to be able to recoup all expenses for each incident. Representative Meyer noted that 90 percent of vandalism that occurs is minor, such as breaking windows and graffiti, and the [proposed] $20,000 cap would cover those expenses. The [acts of vandalism] over $100,000 are rare criminal acts, he said. He offered an example that sometimes four children could be involved in vandalism, in which case the school district could [possibly] get $20,000 from each [set of] parents.

REPRESENTATIVE MEYER told the committee only five states don't have a cap. He said his research showed that there is no proof that not having a cap is a deterrent to vandalism. Almost all the other states have a cap; they range from as low as $2,000 to California's $25,000 cap. A $20,000 cap would make Alaska's one of the highest [in the country]. He described coming up with the [proposed] $20,000 cap as a "balance act." The intent is for school districts to be able to recover a substantial amount for damages done. He concluded by saying, "We've been ... trying to work with as many groups as we can that are involved with this, and this is the balance that we've come up with."

Number 1874

CHAIR WEYHRAUCH said in the interim he'll be considering some mechanisms in a separate bill to deal with school vandalism.

REPRESENTATIVE GRUENBERG noted that he has been working with Representative Meyer on this issue. He referred to a delinquency statute and AS 47.12.155; he said he has prepared an amendment that he will offer in the House Judiciary Standing Committee, which he and Representative Holm are members of.

That amendment would add, at the end, "When damages are sought in a civil action against a parent, both parents, or guardian of a minor, under this subsection, the parent, parents, or guardian shall disclose the existence of any insurance that may provide coverage for the action of the minor."

Number 2001

REPRESENTATIVE GRUENBERG posited that a civil action should be intended to make the school district "or whatever it is" whole again. He read part of subsection (c) of [AS 47.12.155], which reads:

> (c) If a court orders a minor's parent or guardian to participate in treatment under (b) of this section, the court also shall order the parent or guardian to use any available insurance or another resource to cover the treatment, or to pay for the treatment if other coverage is unavailable.

REPRESENTATIVE GRUENBERG said that deals with treatment, but requires the disclosure of insurance. He noted that that statute doesn't have a cap on it. He said his intent was to work with the sponsor to make that also a cap, "like this." He indicated a Colorado statute contains some good language, and mentioned some other states' statutes that require the court to order parents to undergo some parental training to ensure that the children are helped so that "this kind of behavior doesn't repeat itself." He concluded, "And it shouldn't be necessary to do that in the context of a delinquency, but I think that it might be something that we would consider in this, so that the school district is protected in the future."

Number 2069

REPRESENTATIVE BERKOWITZ moved to report CSHB 18, Version 23-LS0110\D, Luckhaupt, 2/28/03, from committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 18(STA) was reported from the House State Affairs Standing Committee.

ADJOURNMENT

The House State Affairs Standing Committee took an at-ease at 10:12 a.m. in order to prepare for the overview. [For the overview by the Department of Transportation & Public Facilities, see the 10:15 a.m. minutes for this date.]