

**ALASKA STATE LEGISLATURE**  
**SENATE HEALTH, EDUCATION AND SOCIAL SERVICES STANDING COMMITTEE**

May 16, 2003

1:51 p.m.

**MEMBERS PRESENT**

Senator Fred Dyson, Chair  
Senator Lyda Green, Vice Chair  
Senator Bettye Davis  
Senator Gretchen Guess

**MEMBERS ABSENT**

Senator Gary Wilken

**COMMITTEE CALENDAR**

HOUSE BILL NO. 270

"An Act relating to the licensure of pharmacists; and providing for an effective date."

MOVED HB 270 OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 18(JUD) am

"An Act relating to the liability of parents and legal guardians of minors who destroy property."

MOVED SCS CSHB 18(HES) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 25(JUD)

"An Act relating to health care decisions, including do not resuscitate orders, anatomical gifts, and mental health treatment decisions, and to powers of attorney relating to health care, including anatomical gifts and mental health treatment decisions; and providing for an effective date."

HEARD AND HELD

**PREVIOUS ACTION**

HB 270 - No previous action to consider.

HB 18 - No previous action to consider.

HB 25 - No previous action to consider.

**WITNESS REGISTER**

Representative Nancy Dahlstrom  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Sponsor of HB 270.

Ms. Margaret Soden, President  
Board of Pharmacy  
PO Box 61328  
Fairbanks AK 99706  
**POSITION STATEMENT:** Supported HB 270.

Ms. Linda Sylvester  
Staff to Representative Weyrauch  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Commented on HB 25 for the sponsor.

Mr. Ron Cowan  
Long Term Care Ombudsman  
**POSITION STATEMENT:** Supported HB 25.

Ms. Marie Darlin  
AARP  
**POSITION STATEMENT:** Supported HB 25.

Ms. Sioux Plummer Douglas  
Juneau Hospice Foundation  
5050 Thane Road  
Juneau AK 99801  
**POSITION STATEMENT:** Supported HB 25.

Dr. Maria Wallington  
**POSITION STATEMENT:** Supported HB 25.

**ACTION NARRATIVE**  
**TAPE 03-28, SIDE A**  
#HB270

**HB 270-PHARMACIST LICENSING**

**CHAIR FRED DYSON** called the Senate Health, Education and Social Services Standing Committee meeting to order at 1:51 p.m. Present were SENATORS DAVIS AND GREEN. The Chair announced HB 270 to be up for consideration.

REPRESENTATIVE NANCY DAHLSTROM, sponsor of HB 270, explained that currently the Board of Pharmacy cannot deny a license to an applicant who may have had a questioned background, a felony drug conviction or a drug abuse problem. The public safety and the pharmacy profession are both compromised because of this situation and the right to deny a license was unintentionally left out of the statute when it was originally drafted.

HB 270 gives the authority to deny a license to a new applicant if they find that they have committed fraud, deceit, falsely advertised or been convicted of a felony as listed in AS 08.80.261. Everyone involved agrees with the changes and she has support letters from the Board of Pharmacy and the Alaska Pharmaceutical Association.

CHAIR DYSON asked who initiated this issue.

REPRESENTATIVE DAHLSTROM replied the State Board of Pharmacy.

CHAIR DYSON asked if there had been any negative testimony in the other two hearings.

REPRESENTATIVE DAHLSTROM replied that there wasn't any negative testimony from anyone.

SENATOR GUESS arrived at 1:54 p.m.

SENATOR DAVIS commented that this is a good bill.

MS. MARGARET SODEN, President, Alaska Board of Pharmacy, strongly supported HB 270, because as the law currently stands, they would have to grant a license to someone with a questionable background, who would then be able to practice pharmacy. Their license would have to be sanctioned somehow. This is not good for the health and safety of Alaskans.

CHAIR DYSON asked if this had been a noticeable problem with any practitioners in the state.

MS. SODEN replied that a couple of years ago, an applicant sought licensure and the board wanted to deny the license. The applicant had falsified their application, as well, and they didn't grant a license based on that. They realized then that they needed this authority.

CHAIR DYSON asked when the board meets next.

MS. SODEN replied that they meet on July 25 in Anchorage.

CHAIR DYSON said he looked forward to working with her on collaborative agreements.

SENATOR GREEN moved to pass HB 270 from committee with individual recommendations. There were no objections and it was so ordered.

#

#HB18

**HB 18-PARENTAL LIABILITY FOR CHILD'S DAMAGE**

CHAIR DYSON announced HB 18 [CSHB 18(JUD) AM] to be up for consideration and that it is similar to SB 2. He asked if the Senate committee substitute, version \I, brings HB 18 into conformity with the Senate bill except that it doesn't have the effective date.

MS. SUSAN CUNNINGHAM, staff to Representative Meyer, sponsor of HB 18, said that is correct.

SENATOR GREEN moved to adopt SCSHB 18(HES), version \I. There were no objections and it was so ordered.

MS. CUNNINGHAM said the committee substitute provides that the intent of the legislation is to promote responsibility as well as the recovery of damages and requires the involvement of the minor who caused the damages to participate in the justice process. It raises the limit on the recovery of damages to \$25,000 and provides consistency between two conflicting statutes, AS 13.26.070 (powers and duties of a guardian of a minor) and AS 34.50.020 (liability for destruction of property by minors).

She explained that currently under AS 13.26.070, a legal guardian is not liable to third persons. The CS removes the legal guardian from all subsections of AS 34.50.020. It also provides that the adoptive parents of hard to place children are not liable. The reasoning is that the amount an adoptive parent could be liable for would actually be a deterrent in the adoption of children, which is not the sponsor's intent. Lastly, the CS involves the unemancipated minor in the court proceedings, so if damages are recovered under the statute, the court will require the minor to produce a report that includes the financial resources he may have available to pay restitution, what restitution has already been made to the

claimant and what, if anything, he has learned from the civil justice process.

CHAIR DYSON said when SB 2 passed from this committee there was no limit to liability, but the Judiciary Committee established a \$25,000 limit.

SENATOR GUESS asked them to comment on holding the minor accountable, aside from the written report. She wanted to know if the court, regardless of whether the minor has a legal guardian, or is hard to adopt or is living with his parents, could make the child responsible and can they be held responsible after they turn 18 years of age.

MS. CUNNINGHAM replied that she did not think the child could be held responsible when he turns 18 as the parent is sued if the child is a minor. As for holding the minor financially responsible, under the Juvenile Justice restitution statutes, the court can order restitution to be paid by the minor.

SENATOR GREEN asked if the restitution could extend past their gaining the age of majority.

MS. CUNNINGHAM replied yes.

CHAIR DYSON said this issue was discussed a lot in the Judiciary Committee where Senator French researched it and found that this was about as good as they could do, given existing law.

SENATOR GUESS followed up that in the Juvenile Justice statute, it doesn't matter if it's a legal guardian or parent. It's the same statute for all kids.

SENATOR GREEN moved to pass SCSHB 18(HES) out of committee with individual recommendations and zero fiscal notes. There were no objections and it was so ordered.

#

2:07 - 2:10 p.m.

#HB25

**HB 25-HEALTH CARE SERVICES DIRECTIVES**

CHAIR DYSON announced CSHB 25(JUD) to be up for consideration.

MS. LINDA SYLVESTER, Staff to Representative Weyrauch, said that this bill had previously passed the House unanimously as HB 197.

It deals with the end of life health care directives and was inspired by a concept called the five wishes. The issue this bill addresses is that the process of dying in American is overly complicated. For example, identifying an individual for power of attorney is in a completely different section than other end of life issues like decisions of how you want to be treated, cremated, die at home, etc. Organ donations are another issue. This bill follows 37 states in taking end of life and health care decision issues, as well as mental health care directives, and repealing them from all of the statutes. It then reimplements them in one section of the statute. HB 25 repeals the organ donation statute, the living will, the do not resuscitate orders, the power of attorney for health care and Alaska's mental health directives.

The new concepts in the bill are entirely logical. She explained that currently in Alaska if you are injured and incapacitated, you're unable to make decisions yourself and you presented to a hospital, they would turn to someone who is with you to act as your surrogate. But, statutes don't support the hospitals in that practice. It's further complicated if you're an older person and have two adult children. The question is who has precedence and what standard of care you will have when they make decisions for you.

HB 25 sets out the hierarchy for surrogates who are not nominated by executing a legal form; they have a standing in statute - like a spouse, an adult child and on down the line to a very close friend. The surrogate makes decisions for you considering your values, intentions, beliefs and expressions you have made about how you want to be treated. There are also discussions about if there is disagreement in the group covering issues like how much pain medication or where someone should live after they are stabilized. HB 25 brings these issues to the forefront so families can discuss them in advance and broadcast them so there is no confusion.

She said that every interested group has reviewed the bill and an incredible amount of work has gone into making sure that nothing has been left out and they are not seeking to make major changes, but are simply combining some sections and inserting a new section on surrogates.

CHAIR DYSON said with today's blended families and serial marriages he could see where certain family members would have vested interest in who is making these decisions. He asked if hospitals and other caregivers have been subject to lawsuits for

not having done end of life decisions the way inheritors might have wanted.

MS. SYLVESTER replied that currently there is always the option of judicial relief if there is a dispute. The primary concern is if there is a dispute over someone, for instance, a mother who is in a vegetative state and will not recover, they can die naturally or linger "as little balls of pain." Medical facilities are in the state of helplessness.

CHAIR DYSON said he understood that, but his question was if a hospital had been sued after the fact.

MS. SYLVESTER asked if he meant if someone has made decision to terminate life support and a family member disagreed with that.

CHAIR DYSON replied it could be one person whose inheritance would change radically depending on who dies first. He suspected there were cases like that and he wanted to know if this legislation gave the hospital some clear guidelines and perhaps some protection if they follow the procedure.

MS. SYLVESTER responded that there is an immunity section on page 9, line 30.

MR. RON COWEN, Long Term Care Ombudsman, said they have been involved in the evolution of this legislation and support the current language. It is an important law and this makes it more understandable to both consumers and providers. In recent scoring of our state in the area of advance directives and health care decisions, we didn't do very well and this is a good step in the right direction.

CHAIR DYSON asked what happens if, for instance, an elderly tourist off a boat collapses in the street and emergency personnel transports them. He wanted to know what procedure a hospital had to go through to find out if there are any existing end-of-life or care provisions for that person.

MR. COWEN replied if someone came in completely alone, the hospital would see if there was any documentation on their person that speaks to their advanced directives, which is rarely found. If someone is with them, the hospital is bound to determine what authority, if any, that person has, in making decisions on that person's behalf, especially if the patient is unable to speak for himself. Short of that, hospitals typically defer to attending physicians in terms of their estimation of

the likelihood or potential for that person to survive. Sometimes a person is put on life sustaining measures until advanced directives can be sought.

MS. SHELLEY OWENS, Community Health and Emergency Medical Services, said she administers the Comfort One Do Not Resuscitate Program for the state. The department supports HB 25, which consolidates existing provisions in law and expands the content of the previous living will provisions. The Comfort One program is the pre hospital program that provides for a terminally ill person to have a do not resuscitate order that is very simple and easily identified by pre hospital medical personnel. She asked them to think of the pre hospital providers as they consider sections in this bill. The Comfort One bill was established in 1996 and their two goals are to honor the wishes of a terminally ill patient not to be resuscitated when his heart or breathing stops and to help develop a system where the patients' wishes can be clearly and unambiguously communicated to health care providers.

MS. OWENS explained when a person's heart stops, they are clinically dead and the issue is do they attempt to resuscitate him. Regarding their question about when a tourist arrives, the EMT would look to see if there is an I.D. bracelet with instructions and make sure it matches the patient.

CHAIR DYSON asked if the state was well equipped to deal with organ donations.

MS. OWENS replied that she couldn't really answer that. Under current law, a person is resuscitated until their organs are harvested, if that's their primary wish.

MS. MARIE DARLIN, AARP, supported HB 25; it is one of the issues they have been involved in for many years. In regards to reciprocity among states, one of the big problems is educating people who have all their information to carry it with them when they travel. Another recommendation is that the hospital has a copy of it.

MS. SIOUX PLUMMER DOUGLAS, Juneau Hospice Foundation, formerly the Juneau End of Life Task Force, originally got this legislation moving. This legislation has passed the House twice and is a better bill than before. It's intended to be useful and helpful and was originally based on the concept of the five wishes: 1. The kind of person you want to make decisions for you when you can't, 2. The kind of medical treatment you want or

don't want, 3. How comfortable you want to be, 4. How you want people to treat you, and 5. What you want your loved ones to know.

She is a passionate supporter of end of life planning, having lost six of her closest family members in four years. There is no question that people knowing what your wishes are will improve your last moments. She pointed out that it isn't only a senior issue, but an issue for Alaskans of all ages.

CHAIR DYSON thanked her for her work.

DR. MARIA WALLINGTON said she has been working with the group on this bill and it handles so many problems that she has to deal with daily at Providence Hospital. She asked if there was anything in particular that they wanted her to address.

CHAIR DYSON said they are pretty well up to speed.

DR. WALLINGTON encouraged them to pass the legislation so patients and hospitals don't have to wait another year.

SENATOR GUESS said she is also passionate about this issue, but she thought there might be some inconsistencies in definitions like adult child and adult brother or sister. She was interested on page 5, line 25, and addressing domestic partners. Often people decide not to go through the marriage process again, but have partners for life and those aren't addressed. She didn't see any definitions of an adult parent or adult sibling and she thought that needed to be clarified.

MS. SYLVESTER said it would be fine to include the extra definitions. Although the basic five wishes come from the Uniform Health Care Decisions Act, there are variations. The main consideration with a spouse is that they would have the utmost priority and inheritance issues must be delineated.

**TAPE 03-28, SIDE B**

SENATOR GUESS suggested having a work session on this issue during the interim to work on technical issues.

CHAIR DYSON said he would be delighted to do that.

MS. SYLVESTER noted that they also need to address women who are pregnant and how this will impact them, because there are circumstances where suddenly there is not one patient, but two.

CHAIR DYSON thanked everyone for the work they had done and held CSHB 25(JUD) in committee.

#

CHAIR DYSON adjourned the meeting at 2:46 p.m.