

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

January 28, 2004

1:35 p.m.

TAPE(S) 04-2&3

MEMBERS PRESENT

Senator Fred Dyson, Chair
Senator Lyda Green, Vice Chair
Senator Gary Wilken
Senator Gretchen Guess

MEMBERS ABSENT

Senator Bettye Davis

OTHER LEGISLATORS PRESENT

Senator Con Bunde

COMMITTEE CALENDAR

OVERVIEW: IMPROVING ALASKA'S ASSESSMENT SYSTEM
COMMISSIONER ROGER SAMPSON, DEPARTMENT OF EDUCATION AND EARLY
DEVELOPMENT

CS FOR HOUSE BILL NO. 260(JUD)

"An Act relating to immunity for free health care services provided by certain health care providers; and providing for an effective date."

MOVED SCS CSHB 260(HES) OUT OF COMMITTEE

SENATE BILL NO. 217

"An Act relating to genetic privacy; and amending Rule 82, Alaska Rules of Civil Procedure, and Rule 508, Alaska Rules of Appellate Procedure."

MOVED CSSB 217(HES) OUT OF COMMITTEE

PREVIOUS ACTION

BILL: HB 260

SHORT TITLE: IMMUNITY FOR PROVIDING FREE HEALTH CARE

SPONSOR(S): REPRESENTATIVE(S) SEATON

04/11/03 (H) READ THE FIRST TIME - REFERRALS

04/11/03 (H) L&C, JUD
04/28/03 (H) L&C AT 3:15 PM CAPITOL 17
04/28/03 (H) Moved CSHB 260(L&C) Out of Committee
04/28/03 (H) MINUTE(L&C)
04/30/03 (H) L&C RPT CS(L&C) 2NR 5AM
04/30/03 (H) NR: LYNN, ROKEBERG; AM: GATTO,
04/30/03 (H) CRAWFORD,GUTTENBERG, DAHLSTROM,
04/30/03 (H) ANDERSON
05/09/03 (H) JUD AT 1:00 PM CAPITOL 120
05/09/03 (H) Moved CSHB 260(JUD) Out of Committee
05/09/03 (H) MINUTE(JUD)
05/10/03 (H) JUD RPT CS(JUD) 6DP
05/10/03 (H) DP: HOLM, GARA, OGG, GRUENBERG,
05/10/03 (H) SAMUELS, MCGUIRE
05/19/03 (H) TRANSMITTED TO (S)
05/19/03 (H) VERSION: CSHB 260(JUD)
05/20/03 (S) READ THE FIRST TIME - REFERRALS
05/20/03 (S) HES, JUD
01/28/04 (S) HES AT 1:30 PM BUTROVICH 205

BILL: SB 217

SHORT TITLE: GENETIC PRIVACY
SPONSOR(s): SENATOR(s) OLSON

05/09/03 (S) READ THE FIRST TIME - REFERRALS
05/09/03 (S) HES, JUD
01/28/04 (S) HES AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

MS. PATRICIA SENNER, Advanced Nurse Practitioner (ANP);
Chair of the legislative committee,
Alaska Nurses Association (ANA)
POSITION STATEMENT: Supports HB 260, with concerns.

DR. MICHAEL NORMAN, Physician
Alaska Physicians and Surgeons
Anchorage, AK
POSITION STATEMENT: Supports HB 260.

REPRESENTATIVE PAUL SEATON
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of HB 260.

MR. CAMERON YOURKOWSKI
Staff to Representative Paul Seaton

Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Provided information pertaining to HB 260.

MS. KARA NYQUIST, Attorney
Director of Advocacy,
Covenant House Alaska;
Legislative chair,
Alaska Association of Homes for Children (AAHC)

POSITION STATEMENT: Supports HB 260.

MR. CHIP WAGONER
Alaska Association of Homes for Children (AAHC);
Alaska Catholic Conference

POSITION STATEMENT: Supports HB 260.

SENATOR DONNY OLSON
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of SB 217.

MR. JOHN GEORGE
American Council of Life Insurers (ACLI)

POSITION STATEMENT: Testified that ACLI has substantial problems with SB 217.

MR. JOHN MALLONEE
Child Support Enforcement Division (CSED)
Department of Revenue (DOR)
550 W. 7th Ave. Suite 310
Anchorage, AK 99501

POSITION STATEMENT: Answered questions pertaining to SB 217.

MR. CHRIS BEHEIM
Scientific Crime Detection Laboratory
Department of Public Safety (DPS)
5500 E. Tudor Rd.
Anchorage, AK 99507-1221

POSITION STATEMENT: Answered questions pertaining to SB 217.

TAPE 04-2, SIDE A

CHAIR FRED DYSON convened the meeting of the Senate Health, Education and Social Services Standing Committee at 1:35 p.m. Present were Senators Green, Wilken and Chair Dyson. Senator Guess arrived shortly thereafter. Also present was Senator Bunde.

SUMMARY OF INFORMATION

ROGER SAMPSON, COMMISSIONER, Department of Education and Early Development (DEED), announced that the PowerPoint presentation was a response to questions from a number of legislators concerning the reasons that the department went to a competitive bidding process for the Alaska assessment system. For purposes of history, in June 2003, Mr. Sampson was appointed to the position of commissioner. Immediately, he was faced with urgent issues such as the federal No Child Left Behind Act (NCLB) and the state testing system. It became clear that several common themes were present in the state testing system: testing occurs too early in the school year; excessive delays in receiving results from testing; time windows for retaking tests are too limited and inflexible; the state is not in compliance with NCLB concerning assessments; and the state's contract costs for assessments are high and escalating. In addition, the State Board of Education and Early Development recently adopted a goal to reform the state's testing system to: provide instructional value; align with state standards, provide a method to measure growth; and to ensure timely receipt of results.

COMMISSIONER SAMPSON said he attempted to address concerns by first working with the state's current contractor, CTB/McGraw-Hill, who responded that little could be done to ameliorate these concerns. Commissioner Sampson was faced with a choice: to continue with the current sole source contractor, who was unwilling or unable to make necessary improvements, or to use the competitive bid process. Before choosing between these alternatives, he contacted other states to find out if their contractors were addressing similar issues. He learned that since NCLB was enacted, many more companies are beginning to offer testing services, which created a competitive atmosphere that benefits states, especially in the areas of scheduling, scoring, turnaround time of results, data collection, reporting, and lower costs.

COMMISSIONER SAMPSON continued that currently, NCLB imposes several requirements on state testing systems. States must annually test all students in grades 3-8 and one high school level in reading and math. State assessments must be aligned with state standards, not national standards. Also, testing will demonstrate accountability of schools and school districts, not accountability for students. Alaska's current Benchmark test in grades 3, 6, and 8 operates according to Alaska standards and will need additional questions in order to fulfill NCLB

requirements. The Terra Nova program uses national standards in testing grades 4, 5, 7, and 9. This program also falls short of NCLB requirements and will require a second test based on state standards. Finally, the High School Graduation Qualifying Examination (HSGQE) is based on Alaska standards, but will need to include an advanced level in order to comply with NCLB.

COMMISSIONER SAMPSON maintained that although these testing programs are currently noncompliant with NCLB, the tests are effective in that they achieve the goals for which they were designed. These tests were created by Alaskans to focus on Alaska standards, to provide comparison with national test scores, and to ensure students had minimal reading, writing, and math skills before receiving a diploma. The NCLB requirements came after, without considering the current goals of the state. He said Alaska could meet each requirement of NCLB and still fail to improve student performance. The needs of students, teachers, and parents should not be sacrificed in order to reach compliance with NCLB.

COMMISSIONER SAMPSON told members that the competitive bid process will not change Alaska standards, district curriculum or instructional materials, performance bars, or the amount of work completed previously with the testing system. Other misconceptions exist as well, such as: Alaska's assessment system is compliant with NCLB; Alaska will discontinue testing that references national norms; new tests will not contain responses other than multiple choice; and competitive bidding will increase costs to the state. In actuality, the competitive bid process will benefit the state in several aspects. The process will provide increased instructional value and ability to track student progress from year to year. Alaska standards will be more widespread. Results will be received in a timelier manner. Compliance with NCLB will be achieved, and costs will be decreased. Initiating the competitive bid process, Commissioner Sampson concluded, has been logical, sequential, and founded in "basic common sense."

SENATOR WILKEN shared that the Fairbanks School District is unsupportive of this move to a competitive bid process and asked how it could be proven that this move will not lower proficiency.

LES MORSE, Director, Assessment and Accountability, DEED, offered that the department has declared and attempted to not change test scores. Potential contractors were asked to develop strategies to ensure accurate comparison between scores.

SENATOR WILKEN reported that Alaska's current position was achieved over five years with the massive efforts of hundreds of people and state costs of \$18 million. Considering the current controversy surrounding the HSGQE, moving to a competitive bid process seems abrupt and wasteful of previous efforts. He asked about the department consultation process.

COMMISSIONER SAMPSON responded that the department has met with principals, superintendents, school board members, and the National Education Association - Alaska. Senator Wilken continued that he has received much feedback suggesting that the department has not actively sought stakeholder involvement and collaboration in the discussions and plans to initiate a competitive bid process. Mr. Morse explained his contact with consultants in September through November 2003. In response to a question from Senator Wilken, Commissioner Sampson maintained that although it has taken the state five years and \$18 million dollars to get to our current status, our plan-to change direction and reach a different goal in nine months-is achievable and defensible. Mr. Morse continued that such a challenge has been in focus since the beginning of the consultation process, and each request for proposal asked each potential contractor how he or she would respond to that challenge. He also reported that consultants have offered strategies to develop methodologies that use data from current testing programs to meet new requirements. In response to questions from Senator Wilken, Commissioner Sampson reaffirmed the state's commitment to maintaining some form of nationally normed test.

SENATOR GUESS asked whether students in grades 4, 5, 7, and 9 would be tested twice annually.

COMMISSIONER SAMPSON responded "not necessarily." This issue has not been resolved at this point. In response to a question from Senator Wilken, Mr. Morse spoke to the need to change testing dates for Benchmark tests to more accurately measure skills learned during specific years of study. In response to another question from Senator Wilken, Commissioner Sampson explained the dramatic escalation of testing costs as due to increased exit examinations, Benchmark testing, field testing, and compliance with NCLB. Senator Wilken restated his concern that most people do not understand the Department's recent change in light of past time and expenditures. Also, he continued, there is great need to proceed with consideration of the amount of unsatisfied feedback and attention to accountability for students, teachers,

parents, and schools. Commissioner Sampson offered his belief that the testing atmosphere will experience continual change in the future. In response to a question from CHAIR DYSON, Commissioner Sampson stated that, in terms of turnaround time, new proposals indicate that results maybe received from two to four weeks after testing, depending on priority. The current system often takes two to four months.

ANNOUNCEMENTS

During the above question-and-answer session of DEED's presentation on Alaska's assessment system, CHAIR DYSON informed members that due to time constraints, the committee would hear testimony from medical professionals pertaining to HB 260. Then the committee would take up HB 260, followed by SB 217. [The committee heard testimony from the following two medical professionals.]

MS. PATRICIA SENNER, advanced nurse practitioner, and chair of the legislative committee for the Alaska Nurses Association (ANA), testified via teleconference in support of HB 260. ANA's interest in the bill stems from efforts over the past two years to set up a network of nurses willing to volunteer in the event of an emergency. The issue of liability coverage for volunteers repeatedly arises during these planning efforts. She testified as follows:

Our primary concern with HB 260 concerns the wording the section 09.65.290(3) where the immunity for providing free health care services applies to services provided in a "medical clinic, medical facility, non-profit facility or facility owned by a municipality, the state or the US government. This attaches the exemption from civil damages to a physical location.

Our concern is that in an event of an emergency, services might be provided in a physical location other than defined above. A good example occurred this last summer when the wildfires hit Southern California. There the Red Cross set up emergency shelters in a warehouse. The actual facility may have been owned by a private for-profit entity, but the services were provided by the non-profit Red Cross.

Because we know that lawyers are great getting very literal in their interpretation of statute wording, we would prefer that the term "temporary emergency facility" be added to the list of places where the exempt health care is provided.

We also wish to state that the Alaska Nurses Association is in favor of the Section 09.65.290(5)A requiring informed consent from individuals receiving free health care services. This should be easily implemented in all but the most extreme emergencies.

CHAIR DYSON asked if Alaska's "Good Samaritan" law protects voluntary rendering of assistance in emergencies.

MS. SENNER responded that there is a section that deals with a person or hospital rendering emergency care or emergency counseling. This section would be fine in a severe disaster because the person rendering aid determines that the person needs aid to avoid serious harm or death. A lot of the services offered in Red Cross shelters are for people who have chronic health care situations who are not in serious immediate danger or harm. With chronic illnesses such as diabetes, access to normal healthcare supplies have been displaced; that's a different type of service.

DR. MICHAEL NORMAN, physician in Anchorage representing Alaska Physicians and Surgeons, testified that he is a 59-year old anesthesiologist who has lived in Alaska for 24 years and hopes to stay in Alaska and to provide community services after retirement. There is an untapped resource in Alaska of retired physicians capable of rendering service but who cannot afford medical malpractice insurance. This legislation would free up many healthcare providers, allowing for a win-win situation for both healthcare providers and patients.

CSHB 260(JUD)-IMMUNITY FOR PROVIDING FREE HEALTH CARE

REPRESENTATIVE PAUL SEATON, sponsor of HB 260, explained that this measure is an attempt to encourage health care workers and providers of volunteer services to Alaskan residents who would otherwise be unable to afford proper health care. HB 260 encourages volunteerism by providing immunity from liability for civil damages, "resulting from an act or omission in providing health care services," that are provided free of charge.

REPRESENTATIVE SEATON said CSHB 260(JUD) does not provide immunity from civil damages resulting from gross negligence, recklessness, or intentional misconduct. Consumers would be protected by the requirement that providers must still act within the scope of their current licenses, must provide services at an appropriate facility, and must provide advance written notice of immunity and obtain written consent. CSHB 260(JUD) is consistent with the Volunteer Protection Act that passed Congress in 1997. Forty-three other states have adopted similar legislation. This bill has the support of Alaska Physicians [Association], Covenant House, Alaska Nurses Association, AARP, the Naturopathic Physicians, the Alaska State Hospital and Nursing Home Association, and many others.

REPRESENTATIVE SEATON added that all providers under this act must be licensed by the Division of Occupational Licensing. Those providers are regulated by boards, except dental hygienists and naturopaths; dental hygienists are regulated by the Board of Dental Examiners and naturopaths must have four years of college and pass the national naturopath licensing examination. He noted that nurse midwives are covered as advanced nurse practitioners and are regulated by the Board of Nursing. He offered to answer questions.

CHAIR DYSON asked Representative Seaton to respond to Ms. Senner's question about adding "temporary emergency facility" to AS 09.65.290 (page 2, section 3).

REPRESENTATIVE SEATON said he thought that was covered under AS 09.65.090(a), but it might need further clarification. Subsection (a) provides immunity to a person at a hospital or at any other location who renders emergency care or emergency counsel to an injured, ill or emotionally distraught person. He said he is agreeable to further clarification if the committee wishes to do that.

CHAIR DYSON asked Representative Seaton if the section he quoted was the "Good Samaritan stuff."

REPRESENTATIVE SEATON said it is.

CHAIR DYSON noted Ms. Senner's point was that the Good Samaritan provision applies to a person who might stop to help a victim alongside the road, not necessarily a temporary facility set up at the scene of an emergency.

REPRESENTATIVE SEATON said he did not intend to exclude such facilities.

CHAIR DYSON asked that he and staff consider additional clarifying language.

SENATOR GUESS suggested using the phrase, "temporary medical facility."

2:38 p.m.

SENATOR GREEN asked if this act would bring Alaska under the Volunteer Protection Act as passed by Congress and questioned why the state must do anything.

REPRESENTATIVE SEATON explained that CSHB 260(JUD) is consistent with the provisions of the Volunteer Protection Act. However, civil liability suits can be in state as well as federal courts. That is why 43 other states have adopted similar legislation.

SENATOR GREEN asked if the federal act is cited in HB 260.

REPRESENTATIVE SEATON said it is not.

SENATOR GREEN noted that the federal act is actually quite different.

SENATOR GUESS said she appreciates Representative Seaton's intent but pointed out the bigger issue is that CSHB 260(JUD) limits a person's rights so that providers can offer health care. She referred to the findings on page 2, lines 4 through 10, and asked whether any proof exists that increased access to free health care has caused these problems in other states.

MR. CAMERON YOURKOWSKI, staff to Representative Seaton, said he does not have data on the effect of similar bills in other states. Medical professionals have told him that some providers are waiting to utilize this bill and volunteer their services.

SENATOR GUESS asked what a provider would continue to be liable for and whether medical incompetence would be included in the exemption.

REPRESENTATIVE SEATON said the provider must be operating within the scope of his or her current license. He indicated that the definition of "gross negligence" is in statute and where it is

not defined, the court determines the definition on a case-by-case basis. He stated:

The whole thrust of this is to take it out of an act of omission or simple negligence because gross negligence - I mean somebody can always sue and if the court determines it's gross negligence, the person is liable. The reason it was put in on the House side - we added the language about informed consent - was that we have it so that anybody that comes into a clinic or any other place and receives free medical services must sign that they understand that they are ... receiving this from a health care professional who will not be liable for not doing enough tests, ... and those kinds of things, which are the normal kind of suits that are experienced.

SENATOR GUESS responded, "I'll let Judiciary handle this but there is still some liability in this for people who are just incompetent."

REPRESENTATIVE SEATON agreed and said nothing in CSHB 260(JUD) exempts the facility itself. Therefore, a clinic that offers services has oversight responsibility for any patients served there and would be liable.

SENATOR GUESS referred to the language on page 2, line 29, and asked if a standard definition exists of "advance written notice." She expressed concern about language barriers and illiteracy.

MR. YOURKOWSKI replied that the standards for advance written notice are in statute.

SENATOR GREEN asked if advance written notice could be a placard on the counter.

MR. YOURKOWSKI said, basically, the patient must sign an acknowledgement provided by the physician or nurse.

SENATOR GUESS asked for a copy of one. She then asked how this might apply to a person who has health insurance or the means to pay even though the health provider is not being paid. She agreed this might sound odd but said in some communities the local clinic might be the closest place to get care.

REPRESENTATIVE SEATON said this bill does not address the issue of needs-based services; it simply addresses liability for the health care provider. He presumed that a clinic would look at the financial means of the people it serves.

SENATOR GUESS said her district has a variety of clinics, some are free and some are not. Having clients with insurance coverage sometimes helps a facility to provide services to others who do not. She clarified that she was speaking to a situation in which a person went to a clinic and showed proof of insurance and did not ask for free services. However, after feeling wronged by the provider, that person lost in court because the doctor volunteered his or her services and was exempted.

REPRESENTATIVE SEATON said he believes that situation would be covered by the fact that the client must receive and sign a written notice before receiving services.

SENATOR GREEN asked if any other professions are exempt from liability if its members provide free services.

REPRESENTATIVE SEATON replied that several immunity bills have passed the Legislature, one provided immunity from certain liabilities for pilots who transport people for no pay. He said most professions, such as plumbers, do not offer volunteer services.

SENATOR GUESS referred to the language on page 3, line 4, and expressed concern that the following language is ambiguous:

This section does not preclude a health care provider from receiving payment or being reimbursed for expenses, including travel and room and board while providing voluntary services;

She questioned whether that language is tight enough to be defined as a volunteer service.

REPRESENTATIVE SEATON told members the legislative drafter believes it is. The intent of that language is to provide immunity to health care providers who travel to villages to offer free services but are reimbursed for travel expenses.

SENATOR GUESS shared Senator Green's concern and asked Representative Seaton to consider specifying in a future draft that the payment be for travel, room and board only.

SENATOR GREEN felt the language was too broad because most people traveling to a village would be providing services at a government run or Native corporation health care facility.

2:47 p.m.

CHAIR DYSON took public testimony.

MS. KARA NYQUIST, Director of Advocacy at Covenant House Alaska and a licensed attorney in Alaska, told members she provides pro bono services for youth at the Covenant House and is the legislative chair for the Alaska Association of Homes for Children (AAHC). She explained that the Association is made up of 20 different service providers throughout the state. Collectively, those providers offer a continuum of care for homeless and at-risk youth and children and youth in need of mental health services. She stated support for CSHB 260(JUD) and noted that Covenant House and several other agencies are already providing free health care to homeless youth, who are obviously low-income as well. Covenant House employs a full-time nurse practitioner and has received requests from others who would like to volunteer. They have been prevented from volunteering because of their concerns about medical malpractice. For example, last year a military doctor wanted to provide services at Covenant House but her malpractice insurance did not cover civilian care.

MS. NYQUIST said the Covenant House provides services 24 hours per day to homeless youth at its crisis center. It also provides health care on a walk-in basis to youth and has two transitional living programs at which it provides free health care to youth in transitional living. She hopes this bill will encourage more people to volunteer. The bill also covers chiropractic care, ophthalmologists, dental assistants and dentists. CSHB 260(JUD) is necessary because it will help protect the health, safety and welfare of Covenant House clients and other citizens. Its clients are often in need of immediate medical care and are unlikely to make appointments at clinics. Many clients have communicable diseases and STDs. Covenant House is able to provide services to those clients to minimize risk to others.

MS. NYQUIST told members that Covenant House has been experiencing an increase in the request for services at its free clinic. Several family practitioners in Anchorage do not accept Medicare or Medicaid patients so, although some of Covenant House's clients do have coverage, they have difficulty finding

practitioners who will provide services. The clinics that provide services on a drop-in basis are often full with middle class citizens. Volunteer providers will help Covenant House offer more service to those in need.

MS. NYQUIST told members that as an attorney, she feels comfortable with the language in the bill. Citizens are frequently asked to waive their rights for free services and those waivers of immunity are often much more inclusive than the waiver requested in the bill. Waivers for other services often include immunity from gross negligence or intentional misconduct. This bill does not request such broad limitation of liability.

MR. CHIP WAGONER, also representing the Alaska Association of Homes for Children, told members the AAHC endorsed this legislation at its spring meeting. He said he is also representing the Alaska Catholic Conference, which met last week and also supports CSHB 260(JUD).

SENATOR GUESS asked if providers of free mental health services are also immune from liability.

REPRESENTATIVE SEATON affirmed that they are. He clarified that the federal legislation defines "volunteer" as:

an individual performing services for a non-profit organization or a governmental entity who does not receive a compensation other than reasonable reimbursement or allowance for expenses actually incurred.

SENATOR GUESS questioned whether that is referenced in CSHB 260(JUD).

SENATOR GREEN noted that she would look into that question.

CHAIR DYSON noted that psychiatrists are licensed doctors so they would be covered under the words "licensed physician" in the definition in the bill.

CHAIR DYSON proposed the following housekeeping amendment [Amendment 1]:

On page 1, line 7, delete 2003 and replace with 2004
On page 3, line 20, delete July 1, 2003 and insert
"immediately under AS 01.10.070(c)"

He noted that without objection, Amendment 1 was adopted.

CHAIR DYSON then moved Amendment 2:

On page 2, line 20, after "nonprofit facility," insert the words "temporary emergency site"

REPRESENTATIVE SEATON said he was agreeable to that change.

CHAIR DYSON asked if anyone objected.

SENATOR GUESS asked Chair Dyson if he was confident that "emergency" is defined in statute.

SENATOR GREEN believed that to be a problem because, "It'd always be an emergency."

SENATOR GUESS asked Representative Seaton to be prepared to address that question in the Senate Judiciary Committee.

CHAIR DYSON asked Senators Guess and Green if either had language they would prefer to insert on page 3, line 4.

Neither did.

CHAIR DYSON asked if they preferred to hold the bill in committee or if they would agree to allow the Senate Judiciary Committee to address it.

SENATOR GREEN said she did not object to moving it out but believes that language needs to be discussed.

REPRESENTATIVE SEATON said he would ask the legal drafter to address that question.

CHAIR DYSON noted that without further objection to Amendment 2, it was adopted.

SENATOR WILKEN moved to report SCS CSHB 260(HES) from committee with individual recommendations.

CHAIR DYSON announced that without objection, the motion carried.

3:00 p.m.

SB 217-GENETIC PRIVACY

The committee took up SB 217.

CHAIR DYSON asked for a motion to adopt Version D as the work draft before the committee.

SENATOR WILKEN so moved.

CHAIR DYSON announced that without objection, Version D was before the committee.

SENATOR DONNY OLSON, sponsor of SB 217, explained to members this legislation is his attempt to get a handle on the complicated issue of genetic privacy. His sponsor statement follows:

On June 26, 2000, The Human Genome Project, a public consortium, and Celera Genomics, a private company, jointly announced the completion of a 'working draft of the human genome,' spelling out the 3 billion 'letters' of the human genome - the biochemical messages encoded in our DNA for manufacturing and operating a complete human being.

This is the stepping-stone in deciphering the blueprint that makes us human. Every human cell - hair, blood, fingernail parings, and body tissue - carries a complete set of our genes. Consequently, these genetic profiles will yield information that could be used against us. For example, insurance companies can decide whether to issue life insurance based upon our gene make-up, i.e., predisposition to cancer, alcoholism, or other health concerns.

We have state laws to restrict access to medical records; however, the State of Alaska has yet to specify any protection of genetic information. Medical information is presumed confidential, but the increasing capability to store and rapidly transfer data escalates the challenge of protecting privacy.

At the present time, there is no national statute regarding genetic privacy laws. Fifteen states have required informed consent for a third party to perform or require a genetic test or to obtain genetic information. Twenty-three states require informed consent to disclose genetic information.

TAPE 04-3, SIDE B

SENATOR OLSON continued:

I have introduced SB 217 to give special consideration to the advancing biotechnology and protect our genetic privacy rights.

SENATOR OLSON told members his intention is not to interfere with law enforcement, medical necessity, or paternity determination. He said this is the first step in a multi-step action to try to make sure each resident in the state has protection for his/her genetic privacy. He informed members that SB 217 covers all genetic material.

There being no questions from members, CHAIR DYSON took public testimony.

MR. JOHN GEORGE, American Council of Life Insurers (ACLI), told members that SB 217 is aimed largely at insurance companies to prohibit discrimination. He said by definition in the Alaska Insurance Code, AS 21, discrimination is permitted but cannot be unfair. Rates must be adequate and not unfairly discriminatory. However, anyone can recognize that some people should pay more for auto insurance based on their characteristics. Although every 16-year-old male driver may not have an accident, that driver falls within a class of people with a higher risk than 35-year-old male drivers. Therefore, insurance, by definition, does discriminate. Life insurance rates differ for males and females. Companies cannot discriminate based on rates, but mortality tables show that men and women have different life expectancies. That information is used to determine rates.

MR. GEORGE told members that genetic information indicates a person's propensity [for diseases]. He said the ACLI is very concerned that "genetic information" is defined broadly enough to exclude any medical information. The ACLI believes in confidentiality of genetic information and insurance regulations deal with that issue. However, once an insurance company has appropriate underwriting information, it will need to keep that information for the life of the policy to justify why it put a person in a particular underwriting class. SB 217 indicates that once the information is used, it must be disposed of. He said the ACLI has substantial problems with the bill. He spoke with Senator Olson and is in the process of providing suggested language changes. He noted the sponsor indicated that insurance underwriting is a main reason for the introduction of the bill. He said he has not seen Version D before today and is not prepared to

address it. He repeated that the ACLI has some serious problems with the original bill and that he is willing to work with the sponsor to come up with some compromise language.

SENATOR GUESS asked for an explanation of how the genetic information of groups is currently being used by insurance companies.

MR. GEORGE stated:

...first of all, in the broad definition of what is genetic information, if we're talking about looking at a specific gene, a propensity for cancer for instance, that is more specific than information you might find on a questionnaire - has anyone in your family ever had cancer - but it's still genetic information. Any information you get from a blood test - I'm certainly not an expert and I've come late to the table on this, but they are very concerned that the information they are getting now they would not be able to. We don't know what kind of information is going to be available - readily available in the future.

I think, as the Senator described, they have made vast progress in unwinding the helix and I guess you come down to a fundamental question of should people pay a rate for their insurance based on what their real characteristics are or should everybody pay the same rate or should we only have three classes or 12 classes. If we're really talking about protecting the information, that's already being done largely. The Division of Insurance has regulations that do that. If we're talking about future uses, who knows what that's going to be.

But, they are concerned that information they are getting now [indisc.] that the consent form would be unique to Alaska and so that would create an additional administrative burden because they deal in all 50 states. They do have a form now that H&SS comes up with that they're using. They would have to have a separate form. Failing to do that, if they had an error then there's fairly substantial penalties. I mean there are lots of things that just don't quite work here.

SENATOR GUESS asked for a specific example of genetic information the insurance companies use now that they do not believe they could use in the future if SB 217 is enacted.

MR. GEORGE said he could not provide one but he would get back to her with an answer.

CHAIR DYSON said he assumes the Senator's concern is that a huge data bank could be created in the future involuntarily.

SENATOR GUESS said that is one of her concerns. She also questioned at what point it would become an involuntary act so that a person will not be able to purchase insurance without a DNA test.

CHAIR DYSON asked Mr. Mallonee if DNA information is used to prove and disprove paternity.

MR. JOHN MALLONEE, testifying on behalf of the Child Support Enforcement Division (CSED), Department of Revenue (DOR), said it is.

CHAIR DYSON asked Mr. Mallonee if anything in this legislation would inhibit CSED's present use of DNA.

MR. MALLONEE said Version D is written in such a way to protect CSED's right to use DNA to establish paternity.

CHAIR DYSON asked Mr. Beheim if he is aware of anything in this legislation that will inhibit crime investigation.

MR. CHRIS BEHEIM, Scientific Crime Detection Laboratory, Department of Public Safety (DPS), said he is not; the bill appears to exempt law enforcement from any [restricted use] of DNA in criminal investigation.

CHAIR DYSON said he is torn between holding the bill in committee for a week to give Senator Olson and the insurance companies the chance to weigh in with further suggestions or moving it to the Senate Judiciary Committee.

SENATOR GUESS stated if the sponsor is willing to work with the insurance company to come up with better language, the Senate Judiciary Committee could address that language.

SENATOR GREEN said she would prefer that the sponsor and the insurance representative report back to the Senate HESS Committee but she would not hold it up.

SENATOR GUESS moved CSSB 217(HES) and its attached fiscal notes from committee with individual recommendations.

CHAIR DYSON announced that without objection, the motion carried.

CHAIR DYSON then told members that a group that works with folks who have lost their drivers' licenses because of alcohol and substance abuse violations and have served their sentences and are under court supervision, would like the Legislature to enact legislation allowing them to get provisional drivers' licenses to drive to work. He has been asked whether the committee would consider sponsoring such legislation. He offered to distribute a copy of draft legislation to members for their consideration.

SENATOR WILKEN announced that Marty Meyer was present today and that she would be handling all health and social services issues for him. He noted that Sheila Peterson would continue to handle education issues for him.

With no further business to come before the committee, CHAIR DYSON adjourned the meeting at 3:20 p.m.