

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

March 3, 2004
8:05 a.m.

TAPE(S) 04-13,14

MEMBERS PRESENT

Senator Ralph Seekins, Chair
Senator Scott Ogan, Vice Chair
Senator Gene Therriault
Senator Hollis French

MEMBERS ABSENT

Senator Johnny Ellis

COMMITTEE CALENDAR

SENATE BILL NO. 333

"An Act relating to judicial relief before final administrative decisions of state agencies."

MOVED CSSB 333(JUD) 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(JUD) OUT OF COMMITTEE WITH LETTER OF INTENT

HOUSE BILL NO. 31

"An Act relating to initiative and referendum petitions; and providing for an effective date."

MOVED HB 31 OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 5

Proposing an amendment to the Constitution of the State of Alaska relating to initiative and referendum petitions.

MOVED HJR 5 OUT OF COMMITTEE

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(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 252(STA)

"An Act relating to the terms and duties of the members of the State Board of Registration for Architects, Engineers and Land Surveyors."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 333

SHORT TITLE: IF UNREAS. AGENCY DELAY, COURT DECIDES

SPONSOR(S): SENATOR(S) THERRIAULT

02/16/04	(S)	READ THE FIRST TIME - REFERRALS
02/16/04	(S)	JUD, FIN
02/25/04	(S)	JUD AT 8:00 AM BUTROVICH 205
02/25/04	(S)	Heard & Held
02/25/04	(S)	MINUTE(JUD)
03/03/04	(S)	JUD AT 8:00 AM 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
01/28/04	(S)	Moved CSSB 217 (HES) Out of Committee
01/28/04	(S)	MINUTE(HES)
01/30/04	(S)	HES RPT CS 1DP 1NR 2AM NEW TITLE
01/30/04	(S)	DP: DYSON; NR: GUESS;
01/30/04	(S)	AM: GREEN, WILKEN
02/06/04	(S)	JUD AT 8:00 AM BUTROVICH 205
02/06/04	(S)	Heard & Held
02/06/04	(S)	MINUTE(JUD)
02/18/04	(S)	JUD AT 8:00 AM BUTROVICH 205
02/18/04	(S)	Scheduled But Not Heard
02/25/04	(S)	JUD AT 8:00 AM BUTROVICH 205
02/25/04	(S)	Heard & Held
02/25/04	(S)	MINUTE(JUD)
03/03/04	(S)	JUD AT 8:00 AM BUTROVICH 205

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
01/28/04 (S) Moved SCS CS HB260 (HES) Out of
Committee
01/28/04 (S) MINUTE(HES)
01/30/04 (S) HES RPT SCS 2DP 2AM SAME TITLE
01/30/04 (S) DP: DYSON, WILKEN; AM: GREEN, GUESS
02/25/04 (S) JUD AT 8:00 AM BUTROVICH 205
02/25/04 (S) Heard & Held
02/25/04 (S) MINUTE(JUD)
03/03/04 (S) JUD AT 8:00 AM BUTROVICH 205

BILL: HB 31

SHORT TITLE: INITIATIVE/REFERENDUM PETITIONS

SPONSOR(S): REPRESENTATIVE(S) WILLIAMS

01/21/03 (H) PREFILE RELEASED (1/10/03)
01/21/03 (H) READ THE FIRST TIME - REFERRALS
01/21/03 (H) STA, JUD
03/04/03 (H) STA AT 8:00 AM CAPITOL 102
03/04/03 (H) Heard & Held
03/04/03 (H) MINUTE(STA)
03/25/03 (H) STA AT 8:00 AM CAPITOL 102
03/25/03 (H) Moved Out of Committee
03/25/03 (H) MINUTE(STA)

03/31/03 (H) STA RPT 2DP 4NR
 03/31/03 (H) DP: HOLM, WEYHRAUCH; NR: SEATON,
 03/31/03 (H) GRUENBERG, LYNN, DAHLSTROM
 04/04/03 (H) JUD AT 1:00 PM CAPITOL 120
 04/04/03 (H) Heard & Held
 04/04/03 (H) MINUTE(JUD)
 04/23/03 (H) JUD AT 1:00 PM CAPITOL 120
 04/23/03 (H) Moved Out of Committee
 04/23/03 (H) MINUTE(JUD)
 04/24/03 (H) JUD RPT 4DP 1DNP 1NR
 04/24/03 (H) DP: SAMUELS, OGG, ANDERSON, MCGUIRE;
 04/24/03 (H) DNP: GARA; NR: HOLM
 02/05/04 (H) TRANSMITTED TO (S)
 02/05/04 (H) VERSION: HB 31
 02/06/04 (S) READ THE FIRST TIME - REFERRALS
 02/06/04 (S) JUD, FIN
 02/20/04 (S) JUD AT 8:00 AM BUTROVICH 205
 02/20/04 (S) Scheduled But Not Heard
 02/23/04 (S) JUD AT 8:00 AM BUTROVICH 205
 02/23/04 (S) -- Meeting Canceled --
 03/01/04 (S) JUD AT 8:00 AM BUTROVICH 205
 03/01/04 (S) Heard & Held
 03/01/04 (S) MINUTE(JUD)
 03/03/04 (S) JUD AT 8:00 AM BUTROVICH 205

BILL: HJR 5

SHORT TITLE: CONST AM: INITIATIVE/REFERENDUM PETITIONS

SPONSOR(S): REPRESENTATIVE(S) WILLIAMS

01/21/03 (H) PREFILE RELEASED (1/10/03)
 01/21/03 (H) READ THE FIRST TIME - REFERRALS
 01/21/03 (H) STA, JUD, FIN
 03/04/03 (H) STA AT 8:00 AM CAPITOL 102
 03/04/03 (H) Heard & Held
 03/04/03 (H) MINUTE(STA)
 03/25/03 (H) STA AT 8:00 AM CAPITOL 102
 03/25/03 (H) Moved Out of Committee
 03/25/03 (H) MINUTE(STA)
 03/31/03 (H) STA RPT 1DP 5NR
 03/31/03 (H) DP: HOLM; NR: SEATON, GRUENBERG, LYNN,
 03/31/03 (H) DAHLSTROM, WEYHRAUCH
 04/04/03 (H) JUD AT 1:00 PM CAPITOL 120
 04/04/03 (H) Heard & Held
 04/04/03 (H) MINUTE(JUD)
 04/23/03 (H) JUD AT 1:00 PM CAPITOL 120
 04/23/03 (H) Moved Out of Committee
 04/23/03 (H) MINUTE(JUD)

04/24/03 (H) JUD RPT 4DP 1DNP 1NR
 04/24/03 (H) DP: SAMUELS, OGG, ANDERSON, MCGUIRE;
 04/24/03 (H) DNP: GARA; NR: HOLM
 04/30/03 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 04/30/03 (H) Moved Out of Committee
 04/30/03 (H) MINUTE(FIN)
 05/01/03 (H) FIN RPT 4DP 2DNP 1NR 1AM
 05/01/03 (H) DP: MEYER, FOSTER, HARRIS, WILLIAMS;
 05/01/03 (H) DNP: STOLTZE, CROFT; NR: HAWKER;
 05/01/03 (H) AM: CHENAULT
 02/05/04 (H) TRANSMITTED TO (S)
 02/05/04 (H) VERSION: HJR 5
 02/06/04 (S) READ THE FIRST TIME - REFERRALS
 02/06/04 (S) JUD, FIN
 02/23/04 (S) JUD AT 8:00 AM BUTROVICH 205
 02/23/04 (S) -- Meeting Canceled --
 03/01/04 (S) JUD AT 8:00 AM BUTROVICH 205
 03/01/04 (S) Heard & Held
 03/01/04 (S) MINUTE(JUD)
 03/03/04 (S) JUD AT 8:00 AM BUTROVICH 205

BILL: HB 252

SHORT TITLE: OCC LICENSING: TERMS OF BD & CONT. EDUC
 SPONSOR(S): REPRESENTATIVE(S) MCGUIRE

04/08/03 (H) READ THE FIRST TIME - REFERRALS
 04/08/03 (H) L&C, STA
 05/02/03 (H) L&C AT 3:15 PM CAPITOL 17
 05/02/03 (H) Moved CSHB 252(L&C) Out of Committee
 05/02/03 (H) MINUTE(L&C)
 05/05/03 (H) L&C RPT CS(L&C) NT 4DP
 05/05/03 (H) DP: LYNN, DAHLSTROM, ROKEBERG, ANDERSON
 05/07/03 (H) STA AT 8:00 AM CAPITOL 102
 05/07/03 (H) Moved CSHB 252(STA) Out of Committee
 05/07/03 (H) MINUTE(STA)
 05/08/03 (H) STA RPT CS(STA) NT 4DP 1NR
 05/08/03 (H) DP: DAHLSTROM, LYNN, SEATON, WEYHRAUCH;
 05/08/03 (H) NR: BERKOWITZ
 05/15/03 (H) TRANSMITTED TO (S)
 05/15/03 (H) VERSION: CSHB 252(STA)
 05/16/03 (S) READ THE FIRST TIME - REFERRALS
 05/16/03 (S) L&C, JUD
 05/19/03 (S) L&C RPT 2DP 1NR
 05/19/03 (S) DP: SEEKINS, STEVENS G; NR: FRENCH
 05/19/03 (S) L&C AT 8:00 AM BELTZ 211
 05/19/03 (S) Moved SCS(L&C) Out of Committee
 05/19/03 (S) MINUTE(L&C)

02/18/04 (S) JUD AT 8:00 AM BUTROVICH 205
02/18/04 (S) Heard & Held
02/18/04 (S) MINUTE(JUD)
02/25/04 (S) JUD AT 8:00 AM BUTROVICH 205
02/25/04 (S) Scheduled But Not Heard
03/03/04 (S) JUD AT 8:00 AM BUTROVICH 205

WITNESS REGISTER

Mr. Dave Stancliff
Staff to Senator Therriault
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Presented SB 333 for the sponsor

Senator Donny Olson
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of SB 217

Mr. John George
American Council of Life Insurers
Juneau, AK
POSITION STATEMENT: Opposed SB 217 and proposed an amendment

Mr. Tim Barry
Staff to Representative Williams
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Presented HB 31 and HJR 5 and answered questions

Representative Paul Seaton
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Answered questions about SCS CSHB 260(JUD)

Ms. Joan Fisher, Executive Director
Anchorage Neighborhood Health Center
1217 E 10th Ave.
Anchorage, AK
POSITION STATEMENT: Supports SCS CSHB 260(JUD)

Dr. Cathy Schumacher, Chair
Anchorage Access to Healthcare Coalition
No address provided
POSITION STATEMENT: Supports SCS CSHB 260(JUD)

Mr. John Haugen
Alaska Physicians and Surgeons
4325 Laurel St.
Anchorage, AK

POSITION STATEMENT: Supports SCS CSHB 260(JUD)

ACTION NARRATIVE

TAPE 04-13, SIDE A

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at 8:05 a.m. Senators Therriault, Ogan, French and Chair Seekins were present. Senator Ellis was excused. The first order of business to come before the committee was SB 333.

SB 333-IF UNREAS. AGENCY DELAY, COURT DECIDES

SENATOR THERRIAULT moved to adopt the proposed committee substitute (CS) to SB 333, labeled version H, as the working document before the committee.

SENATOR OGAN objected for the purpose of an explanation.

MR. DAVE STANCLIFF, staff to the Administrative Regulation Review Committee (ARRC), told members that at a previous hearing the committee questioned whether the regulatory clock would continue to run while the court considers an extrication process. The committee believed it should, therefore language was added on page 2, lines 24-25, that indicates that a state agency should continue a proceeding unless the court enjoins the proceeding or issues an order. He added that the title was also changed to address the fact that the administrative procedures would be changed.

SENATOR OGAN removed his objection; therefore version H was before the committee.

CHAIR SEEKINS commented, "Mr. Stancliff, one could anticipate, since we have now told the administration that the clock keeps ticking, that there will be motions to stop the clock by the court based on the court's calendar, I would imagine."

MR. STANCLIFF believed that is a fair assumption.

SENATOR FRENCH asked Mr. Stancliff if he was able to find out the length of the shortest and median administrative proceeding.

MR. STANCLIFF answered that the Legislative Research Agency is currently compiling the number of cases each agency has handled each year and the number of those cases that have been open in excess of one year, which he would distribute to members.

With no further testimony or questions, CHAIR SEEKINS asked the will of the committee.

SENATOR THERRIAULT moved CSSB 333(JUD), version H, and its accompanying fiscal notes from committee with individual recommendations.

SENATOR FRENCH objected.

The motion carried with Senators Therriault, Ogan and Seekins in favor, and Senator French opposed.

SB 217-GENETIC PRIVACY

SENATOR DONNY OLSON, sponsor, told members he introduced SB 217 because current law does not adequately protect and define an individual's right to his or her genetic information. Without such protection, an individual and his or her blood relatives could be abused.

CHAIR SEEKINS asked why the legislature should enact a bill that restricts these activities for private industry but not for government entities.

SENATOR OLSON said that is a good question, as many people are apprehensive about the actions of government agencies. He pointed out that [indisc.] and AS 09.65.070 pertain to actionable claims against the state, and address everything not covered in the exemptions in SB 217.

CHAIR SEEKINS expressed concern that the definition of "a person" in the bill does not include a government agency. He said he would not want the Department of Health and Social Services (DHSS) to be able to collect DNA samples without the same restrictions that will apply to an insurance company.

SENATOR OGAN concurred with Chair Seekins' analysis that "we shouldn't necessarily trust the government just because we're the government and we're here to help you." He recalled an

incident several years ago in which confidential criminal background records of candidates were accessed by a public employee during an election campaign and said the potential for misuse is there.

CHAIR SEEKINS referred to paragraph 2, line 11, on page 1, and noted that language makes a DNA sample and analysis the exclusive property of a person. He doesn't want anyone to imply that language applies except in the hands of a government agency.

SENATOR FRENCH asked that a representative from DHSS explain to the committee when and why it would use that information.

SENATOR OGAN referred to the private right of action section on page 2, and suggested getting a legal interpretation of whether or not a government agency would be included in the definition of "a person."

SENATOR FRENCH said irrespective of whether an agency is at fault, a right of action could be taken against an individual who illegally sold or disclosed confidential information. The next question would be whether the agency is immune to a lawsuit if it adopted a policy of dissemination contrary to law.

CHAIR SEEKINS asked whether an employee would be immune from disseminating information if the agency for which the person worked is not restricted from disseminating that information.

SENATOR FRENCH said in his opinion, a statute trumps policy but He suggested that DHSS brief the committee on its policies.

SENATOR OLSON reminded members that the intent of the bill is to provide some type of protection to an individual regarding his or her DNA information. He noted that although members' concerns are valid, DHSS is not exempt from the informed consent requirement, and the main point of SB 217 is to require informed consent. He repeated that DHSS must get informed consent but what happens afterward is not the focus of the bill; that should be the focus of other legislation.

CHAIR SEEKINS asked if government agencies are not specified in the bill for some structural reason.

SENATOR OLSON nodded no.

SENATOR THERRIAULT asked if another section of statute governs the way a government agency would gather and handle that information. He then expressed concern that the bill uses the word "person" interchangeably to refer to an individual collecting a sample and the person from which a sample is taken.

CHAIR SEEKINS commented that he completely agrees with the concept behind SB 217 but is still concerned about plugging all leaks to protect the individual's privacy.

SENATOR OLSON said no legislation can plug every leak. Regarding Senator Therriault's concern, he noted other sections of statute deal with actionable claims against the state. That arena is very complex and convoluted. He expressed concern that getting involved in that area would detract from what he is trying to do in this bill.

SENATOR THERRIAULT asked if AS 44.41.035 addresses the collection of a DNA sample to establish paternity by DHSS.

SENATOR OLSON said AS 44.41.035 deals with the law enforcement exemptions.

SENATOR FRENCH commented that subsection (f) spells out the restrictions on the people who collect this data and says the DNA registration system is confidential and can only be used for the reasons listed. He said the committee heard a fair amount of testimony on this issue last year when it contemplated expanding the number of crimes that DNA samples could be collected for. DPS gave a good presentation at that time about how tightly that information is tracked.

SENATOR OGAN asked if anyone was available to testify from the Department of Law (DOL).

CHAIR SEEKINS said no one was present.

SENATOR OGAN noted, for the record, that he has noticed an absence of anyone from DOL at the committee hearings this session.

SENATOR FRENCH pointed out that SB 217 was written to hit 90 percent of the target and gives clear direction to the public and the government about when informed consent is required to obtain a DNA sample. He argued that he cannot imagine a situation in which a government official could start selling DNA samples to insurance companies but, if that did happen, a

lawsuit and employee firing would resolve the problem. He said he believes this bill is ready to move out of committee.

CHAIR SEEKINS said he is trying to find peace with his concerns about the bill.

SENATOR THERRIAULT said some of his concerns have been allayed by the fact that other statutes speak to how a sample can be collected and used. He asked, in reference to page 1, line 15, what "other jurisdiction" encompasses and whether it covers a local government or other state agencies.

SENATOR FRENCH replied:

If I were just speaking off the top of my head, I would say it...would be a statute specifically dealing with a DNA identification system and, moreover, it would be a DNA identification system supervised by the Department of Public Safety. If it were something more like paternity or screening newborns or emergency medical treatment, it would fall under the other exceptions under subsection (b). So it would be a DNA identification system and I would say either conducted by the United States Government for their law enforcement purposes or by another state.

SENATOR FRENCH thought it unlikely that it would apply to a local government because no other local jurisdiction has DNA identification systems for criminal justice purposes.

CHAIR SEEKINS thought "jurisdiction" could apply to a local police department or a subdivision of state government with a law enforcement unit.

SENATOR FRENCH disagreed as he thought that reading was too broad.

CHAIR SEEKINS asked what a comparable provision would be.

SENATOR FRENCH said it must be comparable to AS 44.41.035, which is about DNA identification for the purpose of public safety.

CHAIR SEEKINS said if the City of Fairbanks could collect a DNA sample, it would.

SENATOR FRENCH said if it did, the sample would be sent to the state crime lab for analysis and retention. The crime lab would

then send a report to the City of Fairbanks saying whether the sample was a match taken at the crime scene.

CHAIR SEEKINS asked why "another jurisdiction" is included in the bill if it is meaningless.

SENATOR OGAN suggested that it may have been included in case an Alaskan city gets its own crime lab in the future.

CHAIR SEEKINS said he still feels that government should be required to hold the information as private as anyone else.

SENATOR OLSON agreed.

CHAIR SEEKINS asked about the letter of intent.

SENATOR THERRIAULT said the sponsor was agreeable to [placing the legislative findings and purpose section of the original bill in] a letter of intent. He noted two corrections need to be made to the letter of intent:

- Replace the word "has" with "have" on the first line
- Add an apostrophe to the end of the word "families" on line 2

SENATOR OLSON said the letter of intent is concise and focuses on what he wants to do with the bill. He commented that the field of biotechnology is getting more and more complicated so it is important to get a handle on it now.

SENATOR OGAN said he supports moving the bill from committee today.

CHAIR SEEKINS announced that he would take public testimony.

8:43 a.m.

MR. JOHN GEORGE, representing the American Council of Life Insurers (ACLI), asked to clarify a few points made at the last meeting regarding how insurance companies share health information. The Division of Insurance is in the process of adopting a privacy regulation. That model closely follows the National Association of Insurance Commissioners' model and the National Conference of Insurance Legislators' model. Those bodies and the Division of Insurance recognize very specific reasons to share health care and genetic information: claims administration and adjustment, underwriting, guarantee fund

functions, reinsurance, risk and case management, quality assurance for consumers, actuarial scientific grievance procedures, internal administration and compliance, policyholder services, and audits. The ACLI is concerned that if it cannot share that information, it will be unable to fulfill its legal obligations to policyholders and regulatory bodies. He said insurance companies are very protective of health information. Alaska would be the only state that requires a separate notice, which would make it more difficult for insurers to do business in Alaska. This bill would provide that if a person withdrew his or her authorization, the insurance company would have to remove it from the individual's file and destroy it. The insurance company would then be unable to justify its rating classification.

MR. GEORGE told members the ACLI is concerned about the definitions of genetic testing and genetic analysis in the bill. Those definitions are very broad and would include tests the general public might not consider to be genetic tests but could fall within the definition. The ACLI would prefer a narrower definition to exclude specific test results that are collected now. In addition, if a separate authorization is required, the ACLI would prefer that it be drafted and approved by the Division of Insurance rather than DHSS for the sake of consistency.

SENATOR THERRIAULT asked for an example of a routine test that would get swept into the definition in the bill.

MR. GEORGE said that Dr. Gleason of Northwest Mutual assured him that definition would include iron levels in the blood. He added that any blood test could potentially be a DNA test. He then referred to a proposed amendment and read:

A genetic test does not mean a routine physical measurement; a test for drugs, alcohol, cholesterol, or HIV; a test performed for the purpose of diagnosing or detecting disease, illness, impairment, or disorder; or a chemical, blood, or urine analysis or other test that is widely accepted and in use in clinical practice.

He noted that Senator Olson might be better able to answer Chair Seekins' question.

SENATOR THERRIAULT thought that a routine test would not be considered to be a genetic test under the definition in the bill.

CHAIR SEEKINS asked what will change if the definition in the proposed amendment is adopted.

MR. GEORGE said people at the ACLI and medical doctors wrote the definition from the member companies. He said he does not have enough medical expertise to answer that question so again deferred to Senator Olson.

SENATOR OLSON said he discussed with Dr. Gleason, a professional consultant for the insurance industry, the definition of genetic testing. He told members:

As you walk down this very complicated issue, you're going to have people on one side and entities on the other, whether it's the industry on one side and the ACLU on the other, it's a very - quite a tightrope to go ahead and get a handle on and that's the reason for...[END OF SIDE A].

TAPE 04-13, SIDE B

...before we start getting off into a real complicated biotechnological problem. Specifically, where I had difficulty with the amendment related to the genetic test was that the definition as compared to what's in the bill starts to have a little bit of broader range exemptions for the insurance industry than I was willing to go ahead and take on. For example, as you go ahead and look at some of the issues here, a test performed for the purpose of ... where it says 'tests performed for the purpose of diagnosing and detecting diseases', and then compare that with the last sentence...which is 'widely accepted for use in clinical practice'. All of a sudden the bill has no teeth in it and because of that, I - rather than go through this whole exercise, it becomes an exercise in futility if we don't have any type of solid sentence structure that we can point to that doesn't allow for the purposes of diagnosing and detecting diseases.

CHAIR SEEKINS asked Senator Olson if an impairment or disorder can be genetic.

SENATOR OLSON said either can.

CHAIR SEEKINS asked if a test to diagnose an impairment or disorder could be a DNA analysis.

SENATOR OLSON said it could.

CHAIR SEEKINS asked, "So, in that case, DNA or RNA...or chromosome test could be used to detect disorder or impairment and would escape this loophole - am I correct or am I wrong - escape the prohibition?"

SENATOR OLSON said [the proposed definition] is too broad in his estimation.

CHAIR SEEKINS asked if impairment could be a predisposition.

SENATOR OLSON said all mortals have some kind of impairment and disorder.

CHAIR SEEKINS commented that widens the loophole too much.

SENATOR FRENCH agreed and noted that switching to a genetic test would mean a basic rewrite of the bill because the bill speaks throughout about DNA analysis and the current definition is of a DNA analysis.

CHAIR SEEKINS again said he is concerned about broadening the definition.

SENATOR OGAN thanked Senator Olson for taking time from his profession as a medical doctor to serve in the legislature.

CHAIR SEEKINS asked for the will of the committee.

SENATOR FRENCH moved CSSB 217(JUD), version I, and its attached fiscal note from committee with individual recommendations.

CHAIR SEEKINS announced that without objection, the motion carried.

SENATOR FRENCH moved the letter of intent from committee with the noted grammatical corrections.

CHAIR SEEKINS announced that without objection, the motion carried.

CHAIR SEEKINS announced a 5-minute at-ease.

HB 31-INITIATIVE/REFERENDUM PETITIONS
HJR 5-CONST AM: INITIATIVE/REFERENDUM PETITIONS

9:13 a.m.

MR. TIM BARRY, staff to Representative Williams, sponsor of HB 31 and HJR 5, reminded members that at the last hearing, Senator Ogan asked about limiting the scope of HJR 5 and HB 31 to wildlife initiatives. He told members that Representative Williams has been working on this legislation for six years now, during which time various suggestions have been made. The current version has developed statewide support and he is reluctant to make any changes at this time.

SENATOR FRENCH asked how the two pieces of legislation work together.

MR. BARRY explained that the Constitution sets out the procedure to put a question on the ballot. In addition, statutory language also addresses that process. In order to make this change, both the Constitution and statute will have to be amended. The statutory change is contingent upon passage of the constitutional amendment by the voters.

SENATOR FRENCH said he understands that people from Anchorage drive the initiative process while rural folks don't get to participate, with the exception of one voter from a district. He asked Mr. Barry to elaborate on the sponsor's concerns about wildlife initiatives.

CHAIR SEEKINS interjected that a good illustration is on the charts of district participation in initiative petitions, and the concern is that the primary movers of initiatives that get on the ballot are from the urban areas; there is very little inclusion of the rural folks in the initial question. He said he agrees with the premise that expanding the requirements to a broader cross section of the community that includes rural folks is more equitable.

MR. BARRY agreed and said Representative Williams has heard from many people who are concerned about what could happen, such as in California where the legislature's hands are tied by the initiative process. In addition, he has heard many concerns about out-of-state organizations that create an issue over wildlife management that is not of concern to many Alaskans. When these bills were debated on the House floor, rural

legislators discussed the English-only initiative that was on the ballot a few years ago.

CHAIR SEEKINS announced that with no further participants, public testimony was closed.

SENATOR THERRIAULT moved HJR 5 from committee with its attached fiscal notes.

SENATOR OGAN stated that some will claim this legislation is a legislative power grab in an attempt to end run the will of the voters. He said he believes this legislation goes a long way to change the perception of rural Alaskans that the will of the urban areas is being foisted on them. This will not undo the will of the voters at all because the voters will cast their vote on the measures. He said this accurately takes into account the shift in demographics toward the urban areas and will better reflect the will of people throughout the state.

CHAIR SEEKINS agreed and said it is an attempt to make the political process more inclusive. He then announced that with no objection, HJR 5 moved from committee.

SENATOR THERRIAULT moved HB 31 and its attached fiscal notes with individual recommendations from committee.

CHAIR SEEKINS announced that without objection, the motion carried.

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

REPRESENTATIVE PAUL SEATON, sponsor of HB 260, provided the following answers to four questions asked by members at the last meeting. The first question was whether a nurse would be immune from liability if s/he followed the negligent order of a doctor and whether the hospital or non-profit agency would be liable. He explained the research shows that a nurse would only be liable for his or her actions and cannot be held liable for the negligence of another. However, if a nurse should have known that a doctor's order was negligent, based on the nurse's standard of expertise, the nurse would be considered negligent. Also, the medical facility or agency could be held liable as well. There is some case history established on that question, which he provided in a memo to committee members dated February 27.

REPRESENTATIVE SEATON said the second question was whether a doctor, when volunteering medical services aboard a cruise ship, would be considered to be receiving compensation. He said immunity is only provided when the volunteer services are provided in a medical facility owned or operated by a governmental agency or a non-profit agency. He said although it seems unlikely that a medical facility on a cruise ship would be owned by such an entity, the committee could limit the legislation to land-based facilities or specifically exclude cruise ships. He cautioned that a cruise ship could function as an emergency medical facility at some time.

The third question was whether all Alaska hospitals require physicians to have medical liability insurance before they are given hospital privileges and, if so, could the doctor operating in a hospital take advantage of the immunity provided under this act. He explained that most hospitals do require physicians to have medical liability insurance. Alaska Regional Hospital does not. If a hospital does require insurance, the hospital would have to have specific provisions in its by-laws to accommodate the use of the facility. That would not apply to nurses because most nurses do not carry personal liability insurance and rely on the facility's protections.

REPRESENTATIVE SEATON said the last question was whether all non-profits have insurance. He said Alaska does not have a mandatory insurance law for health care providers, except for emergency room physicians. Recognizing that a non-profit could be held liable for employees and volunteers, he surmised that an agency would want to protect itself from liability with insurance.

SENATOR OGAN said the committee discussed a scenario where a physician who is immune from liability gave a direct order to a paid staff person. He asked whether that staff person is immune from liability as well. He asked Representative Seaton to discuss the legal opinion on that question.

REPRESENTATIVE SEATON said the discussion surrounded a nurse who was carrying out a doctor's orders. The nurse would not assume liability for a doctor's orders unless the order or procedure was within the scope of her knowledge, experience and expertise.

CHAIR SEEKINS said if the nurse refused a doctor's order and it was later shown that she was acting in a precautionary manner within the scope of her authority but was wrong, she would be liable.

REPRESENTATIVE SEATON said the legal opinion addresses whether or not the non-profit organization would be liable and it would be. He thought there may be some concerns that insurance costs for non-profits may rise.

REPRESENTATIVE SEATON said he believes that non-profits and government agencies would want to carry liability insurance for both paid doctors and volunteer doctors.

CHAIR SEEKINS said a constituent asked him whether a doctor who performed an abortion in a non-profit clinic would be immune from liability under this law.

REPRESENTATIVE SEATON replied that this bill only covers illness or injury so it would not apply in the case of abortion because pregnancy has never been classified as an illness or injury. He noted the House Judiciary Committee had an extensive discussion on that question. He said it is not his intent to cover abortion procedures under this bill.

CHAIR SEEKINS commented that he likes the intent of HB 260 but he is not sure of the unintended consequences for all parties.

REPRESENTATIVE SEATON reminded members that this bill requires written notification to any patient.

CHAIR SEEKINS took public testimony.

MS. JOAN FISHER, Executive Director of the Anchorage Neighborhood Health Center (ANHC), stated support for HB 260. The ANHC often has physicians who want to volunteer at the clinic. The ANHC has Federal Claims Tort Act Coverage but that insurance does not cover volunteers. She noted that when physicians and nurses with insurance coverage volunteer at the clinic, the ANHC checks to see if they have valid licenses and whether they have had any claims filed against them. This legislation will help the ANHC to help very low-income patients with no insurance. She noted that many mid-level practitioners are willing to see patients on a volunteer basis but are afraid to because of the liability issue. She said this bill is necessary in order to set up a volunteer network.

SENATOR OGAN asked Ms. Fisher if the ANHC is concerned about an increase in insurance rates resulting from this bill.

MS. FISHER said it is not because it has Federal Claims Tort Act coverage, which is paid for by the federal government. In addition, the ANHS is careful to credential all volunteers and provide quality oversight.

DR. CATHY SCHUMACHER, Chair of the Anchorage Access to Healthcare Coalition, stated support for HB 260 because this legislation will allow physicians to volunteer their time without fear of litigation. The Coalition is working with the ANHS on a volunteer model, based on a model developed in Asheville, North Carolina. North Carolina has similar legislation that allows its network to function.

CHAIR SEEKINS asked if doctors generally support being able to provide volunteer care without having to burden their malpractice coverage.

MR. JOHN HAUGEN, Alaska Physicians and Surgeons, said he does not believe that was the intent. This legislation will allow physicians to volunteer their services in a village. He noted those physicians would be carrying malpractice insurance anyway. This issue arose with a group of some of Alaska Physicians and Surgeons more senior doctors who are close to retiring. Those physicians are looking for ways to continue to participate in their profession and give back to their communities. He noted that although the retired physician component was emphasized, it is broad enough to encompass other healthcare providers because of a desire by other constituencies to participate.

CHAIR SEEKINS asked if any healthcare provider, not just a retired physician, that provides volunteer services to another person is not liable for civil damages resulting from an act of omission.

MR. HAUGEN added if a patient signs an informed consent.

REPRESENTATIVE SEATON added that the services must be provided under the auspices of a non-profit or governmental agency and only if the physician is operating within the scope of his or her current license.

MR. HAUGEN clarified that Alaska is a several liability state so if one envisions a lawsuit as a pie, and the doctor's share is one-third, the nurse's share is one-third, and the facility's share is one-third, this bill does not increase the potential liability for the nurse or the hospital. It removes the doctor's

pro-rata share of a potential judgment but the other two parties will only be responsible for their one-third shares.

SENATOR OGAN felt HB 260 is a great bill. He said it will go a long way to help Alaskans who cannot afford healthcare.

CHAIR SEEKINS noted for the record that his wife is a registered nurse who does a lot of volunteer work. He then announced that with no further participants, public testimony was closed.

SENATOR OGAN moved SCS CSHB 260(JUD), version V, from committee with individual recommendations. There being no objection, the motion carried.

TAPE 04-14, SIDE A

CSHB 252(STA)-OCC LICENSING: TERMS OF BD & CONT. EDUC

Due to time constraints, CHAIR SEEKINS announced that the committee would schedule HB 252 on its next available calendar.

SENATOR THERRIAULT informed members that he plans to propose an amendment that addresses the educational requirements. He said he is not wedded to the language in the amendment and would be willing to rewrite it with the sponsor.

CHAIR SEEKINS agreed that he also wants to put a ceiling on the educational requirement as well. He then adjourned the meeting at 9:50 a.m.