

**ALASKA STATE LEGISLATURE  
SENATE JUDICIARY STANDING COMMITTEE**

April 29, 2004

8:08 a.m.

TAPE(S) 04-56

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

None

**COMMITTEE CALENDAR**

SENATE BILL NO. 369

"An Act exempting a person who allows a student of the University of Alaska to gain practical work experience with the person while participating in a practicum from vicarious liability as an employer, and exempting the student participating in a practicum from the Alaska Wage and Hour Act and workers' compensation coverage."

MOVED CSSB 369(L&C) OUT OF COMMITTEE

SENATE JOINT RESOLUTION NO. 33

Urging our United States Senators to work to allow a timely vote on the floor on all judicial nominations.

SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 188

"An Act relating to the authority of the Department of Natural Resources to issue citations for certain skiing violations; relating to establishing a bail schedule for certain skiing violations and to procedures for issuing a citation for a skiing violation."

MOVED HB 188 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."

MOVED SCS CSHB 25(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 514(FIN) am

"An Act relating to child support modification and enforcement, to the establishment of paternity by the child support enforcement agency, and to the crimes of criminal nonsupport and aiding the nonpayment of child support; amending Rule 90.3, Alaska Rules of Civil Procedure; and providing for an effective date."

SCHEDULED BUT NOT HEARD

#### PREVIOUS COMMITTEE ACTION

BILL: SB 369

SHORT TITLE: UNIV. STUDENT PRACTICUM LIABILITY/WAGES

SPONSOR(s): JUDICIARY

03/19/04	(S)	READ THE FIRST TIME - REFERRALS
03/19/04	(S)	L&C, JUD
04/20/04	(S)	L&C AT 2:00 PM BELTZ 211
04/20/04	(S)	Scheduled But Not Heard
04/22/04	(S)	L&C AT 1:30 PM BELTZ 211
04/27/04	(S)	L&C AT 1:30 PM BELTZ 211
04/27/04	(S)	Moved CSSB 369(L&C) Out of Committee
04/27/04	(S)	MINUTE(L&C)
04/28/04	(S)	L&C RPT CS 3DP 1DNP NEW TITLE
04/28/04	(S)	DP: BUNDE, SEEKINS, STEVENS G;
04/28/04	(S)	DNP: FRENCH
04/29/04	(S)	JUD AT 8:00 AM BUTROVICH 205

BILL: HB 188

SHORT TITLE: BAIL SCHEDULE FOR SKIING VIOLATION

SPONSOR(s): REPRESENTATIVE(s) HAWKER

03/12/03	(H)	READ THE FIRST TIME - REFERRALS
03/12/03	(H)	RES, STA
02/25/04	(H)	RES AT 1:00 PM CAPITOL 124
02/25/04	(H)	Moved Out of Committee
02/25/04	(H)	MINUTE(RES)
02/26/04	(H)	RES RPT 5DP 2NR 1AM
02/26/04	(H)	DP: HEINZE, LYNN, KERTTULA, MASEK,
02/26/04	(H)	DAHLSTROM; NR: STEPOVICH, GUTTENBERG;
02/26/04	(H)	AM: GATTO
03/23/04	(H)	STA AT 8:00 AM CAPITOL 102
03/23/04	(H)	Moved Out of Committee

03/23/04 (H) MINUTE(STA)  
 03/24/04 (H) STA RPT 2DP 1DNP 4NR  
 03/24/04 (H) DP: COGHILL, WEYHRAUCH; DNP: HOLM;  
 03/24/04 (H) NR: SEATON, GRUENBERG, LYNN, BERKOWITZ  
 04/14/04 (H) TRANSMITTED TO (S)  
 04/14/04 (H) VERSION: HB 188  
 04/15/04 (S) READ THE FIRST TIME - REFERRALS  
 04/15/04 (S) JUD  
 04/26/04 (S) JUD AT 8:00 AM BUTROVICH 205  
 04/26/04 (S) Heard & Held  
 04/26/04 (S) MINUTE(JUD)  
 04/29/04 (S) JUD AT 8:00 AM BUTROVICH 205

BILL: HB 25

SHORT TITLE: HEALTH CARE SERVICES DIRECTIVES

SPONSOR(S): REPRESENTATIVE(S) WEYHRAUCH

01/21/03 (H) PREFILE RELEASED (1/10/03)  
 01/21/03 (H) READ THE FIRST TIME - REFERRALS  
 01/21/03 (H) HES, JUD, FIN  
 02/13/03 (H) HES AT 3:00 PM CAPITOL 106  
 02/13/03 (H) Heard & Held  
 02/13/03 (H) MINUTE(HES)  
 02/27/03 (H) HES AT 3:00 PM CAPITOL 106  
 02/27/03 (H) Heard & Held  
 02/27/03 (H) MINUTE(HES)  
 03/06/03 (H) HES AT 3:00 PM CAPITOL 106  
 03/06/03 (H) Moved CSHB 25(HES) Out of Committee  
 03/06/03 (H) MINUTE(HES)  
 03/10/03 (H) HES RPT CS(HES) NT 7DP  
 03/10/03 (H) DP: GATTO, WOLF, HEINZE, SEATON,  
 03/10/03 (H) CISSNA, KAPSNER, WILSON  
 03/26/03 (H) JUD AT 1:00 PM CAPITOL 120  
 03/26/03 (H) -- Meeting Canceled --  
 03/28/03 (H) JUD AT 1:00 PM CAPITOL 120  
 03/28/03 (H) Heard & Held  
 03/28/03 (H) MINUTE(JUD)  
 03/31/03 (H) JUD AT 1:00 PM CAPITOL 120  
 03/31/03 (H) Moved CSHB 25(JUD) Out of Committee  
 03/31/03 (H) MINUTE(JUD)  
 04/07/03 (H) JUD RPT CS(JUD) NT 5DP  
 04/07/03 (H) DP: SAMUELS, HOLM, GARA, OGG, MCGUIRE  
 04/07/03 (H) FIN REFERRAL WAIVED  
 05/06/03 (H) TRANSMITTED TO (S)  
 05/06/03 (H) VERSION: CSHB 25(JUD)  
 05/07/03 (S) READ THE FIRST TIME - REFERRALS  
 05/07/03 (S) HES, JUD

05/16/03 (S) HES AT 1:30 PM BUTROVICH 205  
 05/16/03 (S) Heard & Held  
 05/16/03 (S) MINUTE(HES)  
 03/08/04 (S) HES AT 1:30 PM BUTROVICH 205  
 03/08/04 (S) Heard & Held  
 03/08/04 (S) MINUTE(HES)  
 03/24/04 (S) HES AT 1:30 PM BUTROVICH 205  
 03/24/04 (S) Heard & Held  
 03/24/04 (S) MINUTE(HES)  
 04/02/04 (S) HES AT 1:30 PM BUTROVICH 205  
 04/02/04 (S) Bill Postponed to 04/07/04  
 04/07/04 (S) HES AT 1:30 PM BUTROVICH 205  
 04/07/04 (S) -- Rescheduled to 5:30 pm 04/07/04 --  
 04/07/04 (S) HES AT 5:30 PM BUTROVICH 205  
 04/07/04 (S) -- Rescheduled from 1:30 04/07/04 --  
 04/14/04 (S) HES AT 1:30 PM BUTROVICH 205  
 04/14/04 (S) Heard & Held  
 04/14/04 (S) MINUTE(HES)  
 04/16/04 (S) HES AT 1:30 PM BUTROVICH 205  
 04/16/04 (S) Heard & Held  
 04/16/04 (S) MINUTE(HES)  
 04/19/04 (S) HES AT 1:30 PM BUTROVICH 205  
 04/19/04 (S) Moved SCS CSHB 25(HES) Out of Committee  
 04/19/04 (S) MINUTE(HES)  
 04/20/04 (S) HES RPT SCS 2DP 3NR SAME TITLE  
 04/20/04 (S) DP: DYSON, WILKEN;  
 04/20/04 (S) NR: GUESS, GREEN, DAVIS  
 04/26/04 (S) JUD AT 8:00 AM BUTROVICH 205  
 04/26/04 (S) Heard & Held  
 04/26/04 (S) MINUTE(JUD)  
 04/29/04 (S) JUD AT 8:00 AM BUTROVICH 205

**WITNESS REGISTER**

Mr. Pete Kelly  
 University of Alaska  
 Fairbanks, AK  
**POSITION STATEMENT:** Presented SB 369

Mr. Jamo Parrish, Counsel  
 University of Alaska  
 Fairbanks, AK  
**POSITION STATEMENT:** Answered questions about SB 369

Representative Mike Hawker  
 Alaska State Capitol  
 Juneau, AK 99801-1182

**POSITION STATEMENT:** Sponsor of HB 188

Mr. Paul Swanson, Manager  
Eaglecrest Ski Area  
City and Borough of Juneau  
**POSITION STATEMENT:** Supports HB 188

Ms. Linda Sylvester  
Staff to Representative Weyhrauch  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Presented HB 25

Senator Fred Dyson  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Supports HB 25

Dr. Maria Wallington, Ethicist  
Providence Hospital  
Anchorage, AK  
**POSITION STATEMENT:** Supports HB 25

Mr. Pat Luby  
AARP - Alaska  
Juneau, AK  
**POSITION STATEMENT:** Supports HB 25

Ms. Carol Edwards  
Juneau, Alaska  
**POSITION STATEMENT:** Supports HB 25

Mr. Chip Wagoner  
Alaska Catholic Conference  
Juneau, Alaska  
**POSITION STATEMENT:** Supports HB 25

**ACTION NARRATIVE**

**TAPE 04-56, SIDE A**

**CHAIR RALPH SEEKINS** first formally adjourned the April 28, 2004 Senate Judiciary meeting and then called the April 29 Senate Judiciary Standing Committee meeting to order at 8:08 a.m. Senators Therriault, Ellis, French and Chair Seekins were present. He explained that the previous day's meeting was a bit confusing and, upon reflection, he determined that his original

ruling that Senator French's motion to pass SB 246 out of committee failed was correct according to Uniform Rule 24(a).

SENATOR ELLIS responded, "Mr. Chairman, I believe your statement is incorrect. There was a quorum present in the committee yesterday. Two votes to one vote does move the bill on to the next committee of referral with individual recommendations."

CHAIR SEEKINS asked according to what rule.

SENATOR ELLIS did not have the Uniform Rules available but stated that he was appealing the ruling of the chair on this matter.

CHAIR SEEKINS stated that a ruling of the chair in a committee is not appealable. He noted that Senator Ellis could appeal the ruling to the full Senate.

SENATOR ELLIS said he would consider his options but believes the bill moved out of committee. He then said he went to Chair Seekins' office several times to sign the committee report but it was kept from him, which he considers to be improper behavior. He asked Chair Seekins to reconsider allowing him to sign the committee report.

CHAIR SEEKINS repeated that his original ruling was correct under the Uniform Rules and that Senator Ellis was welcome to appeal that ruling to the full body.

SENATOR FRENCH asked for a brief at-ease to review the Uniform Rules.

CHAIR SEEKINS said the committee would continue its business and that he would take several at-eases, during which Senator French could review the rules.

**SB 369-UNIV. STUDENT PRACTICUM LIABILITY/WAGES**

SENATOR PETE KELLY, representing the University of Alaska (UA), told members that SB 369 addresses a problem that UA has encountered. About five years ago, UA was given money for the first time over and above the amount needed for operating costs. With that, the Board of Regents and President established a number of new degree programs that are more "hands on," most of which deal with medical professions and the construction industry. A number of these programs require a certain number of hours of practicum work. As UA has approached providers for

practicum purposes, it has learned that liability has become more of a problem that is discouraging some employers from participating in the programs. Many of the programs are growing and UA anticipates continued growth. This year in Fairbanks, UA was able to only arrange the bare minimum requirements for its dental program. That situation brought the UA's attention the need to address a statutory resolution to give some relief from liability to the providers.

MR. KELLY said SB 369 states that for purposes of a practicum program, the students are not to be considered employees. If they were considered as employees, the employer would be strictly liable, which is where the problem lies. SB 369 makes participants responsible for their own liability. If UA is negligent, it would be responsible, likewise with the employer or student. He explained, "Also, in anticipation that the courts might determine that the experiential benefit of being able to ...derive experience and education from these companies might trigger the Fair Labor Standards Act, we also have a recommended section in there dealing with minimum wage so that it could not be claimed that the students who are currently not paid - and as a matter of fact that is the nature of a practicum program is that they are not paid, they are different from interns - that they couldn't trigger the Fair Labor Standards Act and require these providers to give them minimum wage." He deferred to Mr. Parrish to answer questions. He affirmed that Mr. Parrish produced the 6-page analysis in members' packets.

CHAIR SEEKINS asked Mr. Parrish to summarize the liability that UA would have if SB 369 does not pass.

MR. JAMO PARRISH, general legal counsel for UA, said SB 369 addresses the liability of the practicum site, not the liability of UA. However, UA currently is liable for any negligence it commits and SB 369 would not change that. The practicum site would be liable for any negligence it commits; SB 369 does not seek to change that. However, as Mr. Kelly said, the practicum site, if it is determined to be an employer, would be liable for any negligence committed by the student, which is the concern that SB 369 would address.

CHAIR SEEKINS asked if SB 369 will prevent a practicum student from initiating a wage and hour action at a later date against the company that agreed to provide the student with practical experience.

MR. PARRISH said that is correct.

CHAIR SEEKINS announced that with no further questions, he would set the bill aside and move on to HB 188.

**HB 188-BAIL SCHEDULE FOR SKIING VIOLATION**

REPRESENTATIVE MIKE HAWKER noted that since the committee has already held a hearing on HB 188, he was available to answer questions.

CHAIR SEEKINS announced that members had no additional questions. He then asked if anyone wished to testify.

MR. PAUL SWANSON, Eaglecrest Ski Area, Juneau, stated support for HB 188 as it identifies things pertaining to the bail bond addressed in the Alaska Ski Safety Act (ASSA).

With no further participants, CHAIR SEEKINS announced that public testimony was closed and announced he would hold it for consideration later in the meeting.

**HB 25-HEALTH CARE SERVICES DIRECTIVES**

MS. LINDA SYLVESTER, staff to Representative Weyhrauch, said she would provide a three-minute synopsis of the bill, answer questions, and explain an amendment proposed by the Department of Health and Social Services (DHSS) on behalf of emergency medical technicians. She stated:

What HB 25 does is it repeals current statute. Alaska has, on the books, a do-not-resuscitate order statute, a living will - in the power of attorney statutes...in a couple of places there is a little check-off where you can appoint an unnamed person to make your health care decisions. That will be repealed. In the mid-'90s, Alaska passed the advanced directives for mental health care. That is being repealed. And the anatomical gift act is being repealed. It's being put into one chapter and that's HB 25.

The new law is surrogates, and that's on page 5 of the bill. The concept of surrogates is not new at all. What's new though is providing a statutory guideline for how surrogates are to function in their decision making capacity. If you sign a document, if you have a power of attorney or if you sign an advanced directive naming your spouse or naming some other individual,

then you're the principal, they have the power of attorney. You call them in HB 25 your agent. If you've never gone through the process of signing a power of attorney, like 95 percent of us have never done that, then you have a health care surrogate. So for myself or my husband, if I were incapacitated, my husband would be making decisions for me. He's the right person to make decisions for me because we have a relationship. I love him, he loves me, he knows who I am and he knows what my values and goals are. That's the right decision.

HB 25 sets out criteria for who these people will be in the order - your spouse, your living parent, your adult child, your sibling, that type of a thing. And then the guidelines for how they make their decision for you are based on your best interests and that's carefully defined and has been carefully worked out and it's consistent with current medical practice. This is a part of the movement known as the five wishes. Paul Malley (ph) testified earlier on this notion. It's obvious. It makes sense. It's just a new concept to be put into statute.

The concern with surrogates, however, is that they're just not making decisions for whether or not you get a medication for a fever. Some of the decisions are life and death and decisions of life-sustaining procedures. That's a concern and it's appropriate for the state to carefully consider protections to make sure that people are not being taking advantage of. So, on page 8, we have carefully worked out protections and guidelines for the withholding and withdrawal of life-sustaining procedures. Again, this happens everyday. Right now these decisions are being made in hospitals. It's nothing new. We're not making new law. We're not telling people how to live and die. We're providing guidelines and protections. According to the Supreme Court, in the Cruzan (ph) case, this is appropriate for the state to do this.

In order for a surrogate or an agent to make a decision regarding life-sustaining procedures, two conditions have to be met. You have to be incapacitated and you have to have a qualifying condition. So a decision to withdraw life-sustaining procedures - that could be renal dialysis - that could

be CPR - that could be anything, those decisions are not going to be made when a situation is inappropriate. You have to have a qualifying condition and the qualifying conditions are one of two things: a terminal condition or a condition of permanent unconsciousness and they're carefully defined. Again, they come from the practice of medicine. These are what's going on in the real world now. The decisions are between the doctor and the family. There's no euthanasia going on. Alaska does not authorize euthanasia.

This bill specifically [prohibits] euthanasia. In Alaska, it's manslaughter if a doctor assists you in your suicide and you do not have a right under the Constitution to request someone to assist you in suicide. That exists outside of HB 25. HB 25 just makes reference to the prohibition. It doesn't deal with it. That stuff exists whether HB 25 is here or goes away.

The need for HB 25 is apparent and it's convenient. It includes an optional form where individuals can make their wishes known and this is desirable because family members, whether they're your agent - you have an agent, or if you are just a surrogate decision maker, family members are going to be scrambling to try to understand what your wishes are. This form increases the dialog and the form allows individuals to state their wishes, their attitudes, their goals and the sum of it is that your desires for your health care will follow you even after you have lost capacity.

The amendment that we have is, again, offered by the Department of Health and Social Services. It was unclear with the existing language whether or not a do-not-resuscitate order from out of state would be recognized in the state of Alaska and that's very critical for EMTs who are out in the field. This would be, if they come upon an individual with a bracelet, some kind of an identification program that's operated by either the State of Alaska or another state, they're very common programs, EMTs are required to always resuscitate. If they have this band, they just have to have the assurance that - they have to be able to assume that the band is appropriately issued and

they can't be required to determine whether a state matches Alaska law. However, these do-not-resuscitate orders will only be executed to the extent that they conform to Alaska law.

I would also like to point out to the committee Senator Dyson, who has joined us and he's graciously become a co-sponsor of this bill. Representative Weyhrauch has worked very closely with Senator Dyson on some of the sensitive issues in HB 25 and our absolute goal was that we would never pass a bill out of the Senate HESS Committee until Senator Dyson was comfortable with it and supported it. We're very pleased that he's joining us.

CHAIR SEEKINS directed attention to Amendment 1, which reads as follows.

23-LS0137\Z.3  
Bannister

**A M E N D M E N T 1**

OFFERED IN THE SENATE

TO: SCS CSHB 25(HES)

Page 15, lines 23 - 24:

Delete "effective for the purposes of this chapter to the extent it complies with the law of this state"

Insert "recognized for the purposes of this chapter. However, the do not resuscitate order or the do not resuscitate identification may be implemented only to the extent that the implementation does not conflict with the laws of this state"

CHAIR SEEKINS moved to adopt Amendment 1. With no objection, Amendment 1 was adopted.

SENATOR FRED DYSON told members he feels like this bill is one of his foster children. He has spent more time on HB 25 this session than on any other piece of legislation, with the exception of the spending limit. He said HB 25 is an excellent piece of work, and has been called the finest end of life directives bill in the nation. Representative Weyhrauch has

pulled all of the stakeholders into the process during the last 16 months.

SENATOR DYSON informed members that two issues were controversial. The Senate HESS Committee added language so that there is a presumption that when dealing with a comatose woman who is pregnant, and in a permanent, unconscious state, and is terminal, that woman would be kept alive as long as possible to give the unborn child a chance to survive outside of the womb. Language was added at the request of Senator Guess that directs women to consider including such language in end-of-life directives. He emphasized that in the version before members, in all options, if there is any doubt, the bill presumes that medical staff will opt for life.

He told members that one controversial issue that a lot of time has been spent on is when artificial hydration and food would be withdrawn. He said as he understands the bill, that would only be done when the person meets the following qualifying conditions:

- The person has a terminal condition and will die within a relatively short period of time, meaning weeks and days.
- The person is in a permanent unconscious state with no known medical technology to restore health, and has executed an end-of-life directive saying he or she does not want his or her dying body preserved artificially. If no advanced directive exists, then the decision is made according to the best interest of the patient, which must take into account pain by the family and medical staff.
- This bill allows for judicial appeal so that a party who opposes the decision can go to court to get a stay.

SENATOR DYSON said he believes this bill makes the proper distinction that the default position is life in all cases. An advanced directive to the contrary would put sideboards on that. This bill also updates Alaska statutes on organ donation and puts clear directives in statute. He repeated that he believes this may be one of the finest pieces of legislation that has come out of this legislative session.

8:35 a.m.

SENATOR OGAN asked Senator Dyson to elaborate on the determination of the best interest of the patient, and how that would be determined if no family members are available, for example with an unidentifiable homeless person.

SENATOR DYSON deferred to Dr. Wallington to answer that question but reminded members that such a decision will only be made if the patient meets the qualifying conditions. He explained that the person must be terminally ill and determined by a neurological expert to be permanently unconscious. He said in the case of a person with no surrogate or state appointed guardian, the medical team would make that decision.

DR. MARIA WALLINGTON, a medical ethicist at Providence Hospital, told members that some of the patients will not be dying, and if the medical team recognizes that a patient will remain unable to make his or her own decision, the medical staff will automatically go to court for guardianship. If the patient has a very short time to live, the usual practice is that physicians want multiple inputs in the decision and, as the ethicist, her involvement is commonly requested. The bill does not actually require that an ethicist be involved. She said she believes the bill does a complete job of trying to protect patients and reflects current practice.

CHAIR SEEKINS asked Dr. Wallington if she agrees that this bill is not a step toward euthanasia.

DR. WALLINGTON said she absolutely agrees and, "We have no intention of supporting an act of killing people. What we're trying to do here is outline a process to be sure that people's wishes [indisc.] to assess them, and it gives the process to follow if we don't have that information. We are not intending to do away with people in any way."

SENATOR OGAN questioned whether the bill contains any safeguards in case a physician believed in the philosophy of speeding a person's death.

DR. WALLINGTON said HB 25 is not an attempt to rewrite the legislation that deals with homicide and she believes it improves direction to the health community by encouraging them to take advantage of the legal avenues available.

MS. SYLVESTER added that the concern is not so much physicians, because the other factors that are operating are individual liability and the possibility of losing a license to practice. Those factors have created a situation in which doctors always err on the side of life because they cannot be sued for keeping a person alive. She noted that nefarious intentions on the part

of family members who might want access to the patient's assets have been considered. She explained:

We trust doctors to practice to look after life and to recognize when they're in situations when someone is not behaving or talking one thing but their actions are not in the best interest of the patient they are making decisions for. In those situations, doctors ethically are bound to not take action but our bill goes a step farther to remind doctors that if they are in a situation where something doesn't look right, doesn't smell right, then they stop, they don't act on the decisions, and they report it to the institution. The intention is that will trigger the ethics board and that will trigger someone going immediately to get the public guardian involved and get others involved, so the alarms are going to go off. So we've considered that safety valve and that's probably the bigger concern, rather than doctors who are obligated by criminal law to behave in a certain way, and civil law, and then also by their professional code of ethics.

SENATOR DYSON said he is comfortable with the practice in Alaska hospitals and that the intent language in the bill is very clear in two places that the presumption is in favor of life. He said one scenario of concern, for example, was that of an 85-year-old man who was getting hospice care at home and was marginally conscious. He fell in love, married his 35-year-old caregiver and died shortly afterward. His prescribing physician was the "main squeeze" of the caregiver, who had a substantial estate. He said the family contacted a medical examiner to do an autopsy, during which a lot of toxic medications were found in the man's system. He said a second bothersome scenario is one in which a caregiver got a patient to sign an advance directive and durable power of attorney, under which she was the executor of his considerable estate. He then died within 10 days. Those situations did not occur in hospitals. He noted he is making efforts to get more funding for state medical examiner offices.

CHAIR SEEKINS asked for a definition of "permanently unconscious."

DR. WALLINGTON told members that term is defined in the bill. She explained that permanently unconscious is already applied if there has been a long period of observation, a month or longer, depending on the situation. She leaves that determination to a

neurologist. She added that determination requires that a certain length of time pass.

CHAIR SEEKINS asked how a neurologist would come to that conclusion.

DR. WALLINGTON said the neurologist would make that determination based on the history, insult and the results of brain studies. Neurologists know that over time, if a person has not recovered a certain level of activity or brain function, the chance of recovery gets smaller.

CHAIR SEEKINS asked if physicians commonly make that determination now.

DR. WALLINGTON said physicians make that diagnosis when it's present.

SENATOR THERRIault asked if the estate planning council in Alaska has reviewed this bill.

MS. SYLVESTER said she did identify those individuals and raised it with them. Beth Chapman, a local attorney whose practice focuses on estates, wills, and guardianship issues, worked on this bill. Her interest was to fix the current situation with the power of attorney and getting decisions out of the courts. She pointed out that HB 25 does not address estate planning.

CHAIR SEEKINS took public testimony.

MR. PAT LUBY, Advocacy Director of AARP in Alaska, told members the development of HB 25 has involved an extremely long process. He pointed out that the bill creates a voluntary program in that no one has to sign an advanced directive. However, AARP encourages all of its members to sign them. AARP sees this as a consumer issue; that people should make their own decisions about how they want to be treated at the end of life and convey those decisions to family members and medical professionals. AARP strongly supports HB 25.

MS. CAROL EDWARDS, an oncology nurse in Juneau for over 20 years, said she is also the health policy liaison for the National Oncology Nursing Society and a member of the Board of Directors of the Alaska Nurses Association, which she is representing today. She said she began working on this legislation four years ago and is glad to see its progress. She maintained that HB 25 does not tell people what to do; it allows

them to make choices. It is not a bill representing one particular religion. She continued:

Death is something that we all must face. The type of death that we have can be, in large part, within our own control. HB 25 allows us to outline the treatment that we do or do not want in our last days. Death can be a beautiful and a peaceful experience for the patient as well as for the family and friends or it can be extremely traumatic and painful and stressful for all involved.... I just want to say that everyone has a right to pass from this world in a way that is in harmony with their own beliefs, whatever they may be and to make these desires known and to assure a peaceful ending. This is for the individual himself and also for the family that is left behind to make this a positive experience, as best as it can be. It is our responsibility, your responsibility, to guarantee this right for all Alaskans and I sincerely hope that this bill will be passed before this session is ended. Thank you so much.

MR. CHIP WAGONER, representing the Alaska Catholic Conference gave the following testimony:

Thank you sir. This is the public policy arm of the church in Alaska, currently made up of the four bishops and archbishops. The church has been involved with this issue - the end of life issues - for over 500 years and has written extensively on it. The conference supports the bill, which is before you today. We don't agree on all of the aspects of the bill but we recognize that the bill is a vast improvement and is a good bill and, in fact, it is an excellent bill.

There are two qualifying conditions and Senator Dyson made very, very clear that one of those qualifying conditions in which life-sustaining support of procedures can be withheld or withdrawn is terminal illness where you're going to die within a relatively short period of time. This would not include a 45-year-old person who is otherwise healthy but needs to be on a dialysis machine in order to continue life. This is for somebody near death and that qualifying condition, to remove or withhold life sustaining procedures, under Catholic theology is appropriate if

you take into account the risk, the burdens, the benefits on the patient and, in our teaching, on the community and on the family. The best interest standards deal with resuscitation, but that is appropriate given that this is a bill and we're not writing church doctrine. It is something, as was stated by the speaker just before me, [which] deals with a journey of life. With Catholic teachings, and many other peoples believe your journey does not end with your death, it continues gloriously so that qualifying condition is one the church accepts.

The second qualifying condition, we had a recent change with the statement from the Holy Father on March 31<sup>st</sup> of this year in which he had stated that providing of artificial hydration and nutrition to permanently - actually they used permanently vegetative state, which is somebody who is permanently unconscious for a year or more in medical technology, would be ordinary care and should be continued to be provided and the bishops have asked me to state that they do not agree with that provision as a qualifying condition in this bill but we support the bill even with that provision in it because it is, as I said, a good bill and it has lots of other protections.

The last point I would like... [END OF SIDE A]

**TAPE 04-56, SIDE B**

MR. WAGONER continued:

...is that in regard to the best interests standards, the term - you're evaluating the treatments of the - the benefits of the treatments, the effect on the patient, the pain on the patient and the like, and we had wanted an amendment to that. We are not going to seek that amendment or any amendments. We would like to see this bill move out of this committee today and we would like to see this bill pass. But I would like to point out for the record that Section 13.52.135 deals with the best interest standards, which states that in determining the best interest, health care treatment may not be denied to a patient because the patient has a disability or is expected to have a disability. With that in the bill, and I had forgotten that it specifically mentioned best interest, with

that in the bill I think that concern is alleviated. It's not the way I would have written it as an attorney but this compromise is acceptable.

I can't tell you the number of hours that some of us have put into this bill - hundreds of hours. Senator Dyson was correct. His staff is to be commended; Representative Weyhrauch [is] to be commended. Is it an absolute perfect bill from Catholic theology? No. Is it a very, very good bill that the Catholic Church supports in Alaska? Yes and we would urge you to move it out of this committee and have it go to the floor, have it pass, and have this law in the State of Alaska. And I'd be happy to answer any questions.

He commended Ms. Sylvester for the work she has done on this bill.

CHAIR SEEKINS announced that with no further participants, public testimony was closed and that the committee would take a 5-minute recess.

9:02 a.m.

Upon reconvening, SENATOR OGAN moved CSSB 369(L&C) from committee with individual recommendations and attached fiscal note(s). There being no objection, the motion carried.

SENATOR OGAN then moved HB 188 from committee with individual recommendations and attached fiscal note(s). There being no objection, the motion carried.

SENATOR OGAN moved SCS CSHB 25(JUD) from committee with individual recommendations and attached fiscal note(s). There being no objection, the motion carried.