

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

May 5, 2005

1:19 p.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson
Representative John Coghill
Representative Nancy Dahlstrom
Representative Pete Kott
Representative Les Gara
Representative Max Gruenberg

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Representative Harry Crawford

COMMITTEE CALENDAR

HOUSE BILL NO. 193

"An Act relating to the licensing, regulation, enforcement, and appeal rights of ambulatory surgical centers, assisted living homes, child care facilities, child placement agencies, foster homes, free-standing birth centers, home health agencies, hospices or agencies providing hospice services, hospitals, intermediate care facilities for the mentally retarded, maternity homes, nursing facilities, residential child care facilities, residential psychiatric treatment centers, and rural health clinics; relating to criminal history requirements, and a registry, regarding certain licenses, certifications, approvals, and authorizations by the Department of Health and Social Services; making conforming amendments; and providing for an effective date."

- MOVED CSHB 193(JUD) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 130(FIN) am

"An Act relating to a special deposit for workers' compensation and employers' liability insurers; relating to assigned risk pools; relating to workers' compensation insurers; stating the intent of the legislature, and setting out limitations,

concerning the interpretation, construction, and implementation of workers' compensation laws; relating to the Alaska Workers' Compensation Board; assigning certain Alaska Workers' Compensation Board functions to the division of workers' compensation in the Department of Labor and Workforce Development and to that department, and authorizing the board to delegate administrative and enforcement duties to the division; providing for workers' compensation hearing officers in workers' compensation proceedings; establishing a Workers' Compensation Appeals Commission; relating to workers' compensation medical benefits and to charges for and payment of fees for the medical benefits; relating to agreements that discharge workers' compensation liability; relating to workers' compensation awards; relating to reemployment benefits and job dislocation benefits; relating to coordination of workers' compensation and certain disability benefits; relating to division of workers' compensation records; relating to release of treatment records; relating to an employer's failure to insure and keep insured or provide security; providing for appeals from compensation orders; relating to workers' compensation proceedings; providing for supreme court jurisdiction of appeals from the Workers' Compensation Appeals Commission; providing for a maximum amount for the cost-of-living adjustment for workers' compensation benefits; relating to attorney fees with respect to workers' compensation; providing for the department to enter into contracts with nonprofit organizations to provide information services and legal representation to injured employees; providing for administrative penalties for employers uninsured or without adequate security for workers' compensation; relating to fraudulent acts or false or misleading statements in workers' compensation and penalties for the acts or statements; providing for members of a limited liability company to be included as an employee for purposes of workers' compensation; establishing a workers' compensation benefits guaranty fund; making conforming amendments; providing for a study and report by the medical services review committee; establishing the Task Force on Workers' Compensation; and providing for an effective date."

- FAILED TO MOVE OUT OF COMMITTEE

SENATE BILL NO. 137

"An Act providing that an institution providing accommodations exempt from the provisions of the Uniform Residential Landlord and Tenant Act may evict tenants without resorting to court proceedings under AS 09.45.060 - 09.45.160."

- SCHEDULED BUT NOT HEARD

CS FOR SENATE BILL NO. 135(JUD)(efd am)

"An Act relating to the crimes of assault and custodial interference; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

CS FOR SENATE BILL NO. 20(JUD)

"An Act relating to offenses against unborn children."

- SCHEDULED BUT NOT HEARD

SENATE BILL NO. 132(efd fld)

"An Act relating to complaints filed with, investigations, hearings, and orders of, and the interest rate on awards of the State Commission for Human Rights; and making conforming amendments."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 232

"An Act relating to property crimes."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 193

SHORT TITLE: LICENSING MEDICAL OR CARE FACILITIES

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

03/02/05	(H)	READ THE FIRST TIME - REFERRALS
03/02/05	(H)	HES, JUD, FIN
03/15/05	(H)	HES AT 3:00 PM CAPITOL 106
03/15/05	(H)	Scheduled But Not Heard
03/17/05	(H)	HES AT 3:00 PM CAPITOL 106
03/17/05	(H)	Heard & Held
03/17/05	(H)	MINUTE(HES)
04/07/05	(H)	HES AT 3:30 PM CAPITOL 106
04/07/05	(H)	Heard & Held
04/07/05	(H)	MINUTE(HES)
04/19/05	(H)	HES AT 3:00 PM CAPITOL 106
04/19/05	(H)	Heard & Held
04/19/05	(H)	MINUTE(HES)
04/21/05	(H)	HES AT 3:00 PM CAPITOL 106
04/21/05	(H)	Scheduled But Not Heard
04/22/05	(H)	HES AT 9:00 AM CAPITOL 120

04/22/05 (H) Moved CSHB 193(HES) Out of Committee
 04/22/05 (H) MINUTE(HES)
 04/26/05 (H) HES RPT CS(HES) NT 1DP 3NR 2AM
 04/26/05 (H) DP: CISSNA;
 04/26/05 (H) NR: GARDNER, ANDERSON, MCGUIRE;
 04/26/05 (H) AM: KOHRING, WILSON
 05/03/05 (H) JUD AT 1:00 PM CAPITOL 120
 05/03/05 (H) Scheduled But Not Heard
 05/05/05 (H) JUD AT 1:00 PM CAPITOL 120

BILL: SB 130

SHORT TITLE: WORKERS' COMPENSATION/ INSURANCE

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

03/03/05 (S) READ THE FIRST TIME - REFERRALS
 03/03/05 (S) L&C, FIN
 03/08/05 (S) L&C AT 1:30 PM BELTZ 211
 03/08/05 (S) Heard & Held
 03/08/05 (S) MINUTE(L&C)
 03/10/05 (S) L&C AT 1:30 PM BELTZ 211
 03/10/05 (S) Heard & Held
 03/10/05 (S) MINUTE(L&C)
 03/15/05 (S) L&C AT 1:30 PM BELTZ 211
 03/15/05 (S) Heard & Held
 03/15/05 (S) MINUTE(L&C)
 03/17/05 (S) L&C AT 1:30 PM BELTZ 211
 03/17/05 (S) Heard & Held
 03/17/05 (S) MINUTE(L&C)
 03/22/05 (S) L&C AT 1:30 PM BELTZ 211
 03/22/05 (S) Heard & Held
 03/22/05 (S) MINUTE(L&C)
 03/24/05 (S) L&C AT 2:00 PM BELTZ 211
 03/24/05 (S) Heard & Held
 03/24/05 (S) MINUTE(L&C)
 03/29/05 (S) L&C AT 1:30 PM BELTZ 211
 03/29/05 (S) -- Meeting Canceled --
 03/31/05 (S) L&C AT 1:30 PM BELTZ 211
 03/31/05 (S) Moved CSSB 130(L&C) Out of Committee
 03/31/05 (S) MINUTE(L&C)
 04/01/05 (S) L&C RPT CS 2DP 1NR 2AM NEW TITLE
 04/01/05 (S) DP: BUNDE, STEVENS B
 04/01/05 (S) NR: SEEKINS
 04/01/05 (S) AM: DAVIS, ELLIS
 04/01/05 (S) JUD REFERRAL ADDED AFTER L&C
 04/05/05 (S) JUD AT 8:30 AM BUTROVICH 205
 04/05/05 (S) Heard & Held
 04/05/05 (S) MINUTE(JUD)

04/06/05 (S) JUD AT 8:30 AM BUTROVICH 205
 04/06/05 (S) Heard & Held
 04/06/05 (S) MINUTE(JUD)
 04/07/05 (S) JUD AT 8:30 AM BUTROVICH 205
 04/07/05 (S) Heard & Held
 04/07/05 (S) MINUTE(JUD)
 04/08/05 (H) JUD AT 8:00 AM CAPITOL 120
 04/08/05 (S) Moved CSSB 130(JUD) Out of Committee
 04/08/05 (S) MINUTE(JUD)
 04/08/05 (S) FIN AT 9:00 AM SENATE FINANCE 532
 04/08/05 (S) <Pending Referral>
 04/08/05 (S) JUD RPT CS FORTHCOMING 1DP 4NR
 04/08/05 (S) DP: SEEKINS
 04/08/05 (S) NR: FRENCH, GUESS, THERRIAULT, HUGGINS
 04/11/05 (S) FIN AT 9:00 AM SENATE FINANCE 532
 04/11/05 (S) Moved CSSB 130(FIN) Out of Committee
 04/11/05 (S) MINUTE(FIN)
 04/11/05 (S) FIN RPT CS 5DP 1NR 1AM NEW TITLE
 04/11/05 (S) DP: GREEN, WILKEN, BUNDE, DYSON,
 STEDMAN
 04/11/05 (S) NR: HOFFMAN
 04/11/05 (S) AM: OLSON
 04/11/05 (S) JUD CS RECEIVED NEW TITLE
 04/14/05 (S) TRANSMITTED TO (H)
 04/14/05 (S) VERSION: CSSB 130(FIN) AM
 04/15/05 (S) FIN AT 9:00 AM SENATE FINANCE 532
 04/15/05 (S) Moved Out of Committee 4/11
 04/15/05 (S) MINUTE(FIN)
 04/15/05 (H) READ THE FIRST TIME - REFERRALS
 04/15/05 (H) L&C, JUD, FIN
 05/04/05 (H) L&C AT 2:00 PM CAPITOL 17
 05/04/05 (H) Moved HCS CSSB 130(L&C) Out of
 Committee
 05/04/05 (H) MINUTE(L&C)
 05/04/05 (H) L&C RPT HCS(L&C) 2DP 3NR 2AM
 (FORTHCOMING)
 05/04/05 (H) DP: KOTT, LEDOUX;
 05/04/05 (H) NR: CRAWFORD, LYNN, GUTTENBERG;
 05/04/05 (H) AM: ROKEBERG, ANDERSON
 05/05/05 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE SHARON CISSNA
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Testified during discussion of HB 193 and responded to a question.

RICHARD MANDSAGER, M.D., Director
Division of Public Health
Department of Health and Social Services (DHSS)
Juneau, Alaska

POSITION STATEMENT: Presented HB 193 on behalf of the administration.

STACIE KRALY, Senior Assistant Attorney General
Human Services Section
Civil Division (Juneau)
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Responded to questions and provided comments during discussion of proposed amendments to HB 193.

STEVEN P. ASHMAN, Director
Division of Senior and Disabilities Services
Department of Health and Social Services (DHSS)
Juneau, Alaska

POSITION STATEMENT: Provided comments and responded to questions during discussion of proposed amendments to HB 193.

GREG O'CLARAY, Commissioner
Department of Labor & Workforce Development (DLWD)
Juneau, Alaska

POSITION STATEMENT: Testified in support of a proposed conceptual amendment to SB 130.

JOEL SIGMAN
Wasilla, Alaska

POSITION STATEMENT: During discussion of SB 130, provided comments and recounted his personal experience [with the workers' compensation system].

MICHAEL BLODGETT
Wasilla, Alaska

POSITION STATEMENT: During discussion of SB 130, provided comments, recounted his wife's personal experience [with the workers' compensation system], and suggested changes.

ERROL CHAMPION, Director
Alaska Timber Exchange Management Corporation
Ketchikan, Alaska

POSITION STATEMENT: Testified in support of a proposed conceptual amendment to SB 130.

RICHARD CATTANACH, Executive Director
Associated General Contractors (AGC) of Alaska
Anchorage, Alaska

POSITION STATEMENT: During discussion of SB 130, provided comments and responded to questions.

PAUL F. LISANKIE, Director
Division of Workers' Compensation
Department of Labor & Workforce Development (DLWD)
Juneau, Alaska

POSITION STATEMENT: Responded to questions during discussion of SB 130.

DOUG WOOLIVER, Administrative Attorney
Administrative Staff
Office of the Administrative Director
Alaska Court System (ACS)
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of SB 130.

ACTION NARRATIVE

CHAIR LESIL MCGUIRE called the House Judiciary Standing Committee meeting to order at [1:19:56 PM](#). Representatives McGuire, Coghill, Dahlstrom, Gruenberg, and Gara were present at the call to order. Representatives Anderson and Kott arrived as the meeting was in progress.

HB 193 - LICENSING MEDICAL OR CARE FACILITIES

[1:21:28 PM](#)

CHAIR MCGUIRE announced that the first order of business would be HOUSE BILL NO. 193, "An Act relating to the licensing, regulation, enforcement, and appeal rights of ambulatory surgical centers, assisted living homes, child care facilities, child placement agencies, foster homes, free-standing birth centers, home health agencies, hospices or agencies providing hospice services, hospitals, intermediate care facilities for the mentally retarded, maternity homes, nursing facilities, residential child care facilities, residential psychiatric treatment centers, and rural health clinics; relating to criminal history requirements, and a registry, regarding certain

licenses, certifications, approvals, and authorizations by the Department of Health and Social Services; making conforming amendments; and providing for an effective date." [Before the committee was CSHB 193(HES).]

[Because of its length, what became known as Amendment 1 can be found at the end of the first set of minutes for HB 193 for this date.]

[1:21:32 PM](#)

REPRESENTATIVE SHARON CISSNA, Alaska State Legislature, indicating that she would be providing testimony, first referred to Section 54, located on pages 42-43 of CSHB 193(HES).

CHAIR McGUIRE noted that members' packets contain a proposed amendment that would remove Section 54 from CSHB 193(HES).

REPRESENTATIVE CISSNA relayed her understanding that the purpose of Section 54 is to keep seniors in their own homes and save money through the use of home healthcare. The federal policy has been "least restrictive" and Alaska has been responding via Personal Care Attendants (PCAs). However, the costs for that have risen. She referenced a PowerPoint presentation and noted that it contains a chart illustrating that rise. She surmised that the Department of Health and Social Services (DHSS) met the challenge predominately by cutting and capping various services such as respite care and other items. The problem, she recounted, is that these cuts and caps have jeopardized the ability of seniors to stay in their homes.

REPRESENTATIVE CISSNA referred to page 4 of the aforementioned presentation and recounted the situation of a woman who's working full time but whose mother has Alzheimer's. Although the mother qualifies for the "Medicaid Waiver" and could go to a nursing home, the daughter wants her mother to be able to stay at home, in a loving environment. However, currently the daughter can only get a PCA for her mother for 26 hours [during the workweek]. Representative Cissna then played a recording of an interview with the daughter for committee members wherein the daughter expresses concerns regarding her mother's safety.

[This interview recording was not picked up well on the meeting recording.]

REPRESENTATIVE CISSNA mentioned that the mother's previous plan would cover her for approximately 50 hours per week, and this allowed the daughter to maintain her fulltime job.

[1:28:17 PM](#)

REPRESENTATIVE CISSNA summarized by saying that after new regulations became effective and after the previous plan expired, the mother's new plan now covers only 30 hours per week. This has resulted in the daughter having to cut back hours at work, which might, incidentally, jeopardize her health insurance benefits. Representative Cissna opined that such cuts will ultimately result in higher costs to the state. And so although the department now has the authority to make cuts to the aforementioned types of programs, she asked that the committee not remove Section 54 from the bill, reiterating that Section 54 proposes to keep people at home at a competitive price.

CHAIR McGUIRE acknowledged the work Representative Cissna has put into senior care issues.

REPRESENTATIVE CISSNA opined that the cuts and caps will ultimately have a detrimental impact on family caregivers.

REPRESENTATIVE GARA said he supports Representative Cissna's attempt to get the program proposed in Section 54 started. He asked what "chore" services have been cut to.

REPRESENTATIVE CISSNA offered her understanding that it is now 10 hours per week, and that respite services cannot be used while the primary caregiver is at work.

[1:33:12 PM](#)

RICHARD MANDSAGER, M.D., Director, Division of Public Health, Department of Health and Social Services (DHSS), presented HB 193 on behalf of the administration. He relayed that the companion bill to HB 193 has just passed the Senate, and that HB 193 has three main purposes. He elaborated:

The first purpose is to deal with an incredible statutory and regulatory variation around the multiplicity of types of organizations and entity that the Department of Health and Social Services licenses or certifies, and the intent is to simplify [and] streamline - [the process] ... - to make it more

standard and more straightforward. The second goal is to also standardize, across all the various entities and individuals that work for those entities, the kinds of background checks that are done before employment - to work toward improving the health and safety of vulnerable Alaskans - and the intent is to deal both on the criminal side - with criminal background checks - and on the civil side - with fraud, abuse, neglect, and Medicaid fraud - both for entities, the organizations, the CEOs, and for the individuals that work with ... clients (indisc.).

CHAIR McGUIRE raised the issue of predators of children, and offered her understanding that the system being proposed via HB 193 may well be affordable and accessible to nonprofit and volunteer organizations that should also be doing background checks but have found doing so to be too costly.

DR. MANDSAGER referred to a handout, derived from a PowerPoint presentation, provided by the DHSS and dated 5/4/05, and relayed that it in part provides the committee with examples of problems occurring under existing regulations. For example, a supported-living home provider was misappropriating funds from residents; no background check had been conducted on that provider, since current law did not require that particular home to be licensed. There have also been instances of physical violence against and mistreatment of residents. He noted that currently PCAs, who are typically listed by multiple employment agencies, must submit separate fingerprint-based background checks for each agency, and [HB 193] proposes to allow one such background check to be made available to various employers.

DR. MANDSAGER referred to page 4 of the DHSS's handout, and said it reflects that the DHSS administers 19 programs under as least 12 different statutory schemes for licensure. Furthermore, various agencies/entities are governed by different rules - some statutory, some regulatory. As a result of the passage of executive order (EO) 108, consolidation of licensing and certification activities in the Division of Public Health has begun, but there is internal tension with regard to different divisions' fiscal responsibilities. Page 6 of the aforementioned handout, he remarked, highlights some of the variations in rules for the different types of organizations licensed and/or certified by the DHSS. This page also lists the various types of organizations that will be subject to background checks should HB 193 pass.

DR. MANDSAGER said that page 7 of the handout lists which statutes will be changed by passage of the bill, and page 8 lists some of the items included in the bill. For example, HB 193 is proposing a new article that will define who is required to have background checks, will provide for regulatory definition of barrier conditions, and will require the establishment and maintenance of a centralized registry available to all [prospective] employers. He characterized background checks as reflecting the criminal side of a person's history, and characterized what he termed as the misconduct registry as reflecting the "civil side" of a person's history, the latter registry being modeled on what currently exists for certified nurse attendants (CNAs) in nursing homes and assisted-living homes.

DR. MANDSAGER relayed that the key provisions of HB 193 are listed on page 9 of the aforementioned handout and pertain to barrier conditions, background checks, barring of employment in instances where barrier crimes are committed, the misconduct registry, and waiver and appeals processes. He noted that page 10 of the handout outlines for the committee the regulations that [licensing and certifying] staff must keep track of.

[1:42:32 PM](#)

CHAIR McGUIRE made a motion to adopt Amendment 1, labeled 05/04/05, 10:15 a.m. [Amendment 1 can be found at the end of the first set of minutes for HB 193 for this date.]

REPRESENTATIVE DAHLSTROM objected for the purpose of discussion.

DR. MANDSAGER explained that Amendment 1 would alter CSHB 193(HES) such that it would then be identical to the aforementioned Senate companion bill. He also noted that members' packets contain a side-by-side comparison between that companion bill and CSHB 193(HES). The first two changes proposed by Amendment 1 address concerns regarding firearms being possessed by individuals who are picking up their child at a licensed child care facility.

REPRESENTATIVE GRUENBERG asked what the language, "encased in a container of a motor vehicle" means.

[1:45:19 PM](#)

REPRESENTATIVE ANDERSON surmised that that would mean a gun case.

REPRESENTATIVE GRUENBERG asked whether the gun case would have to be locked.

DR. MANDSAGER relayed that the discussion that took place in Senate committee hearings implied that the gun case would be locked.

CHAIR McGUIRE noted that Representative Dahlstrom has mentioned that the term could also refer to a glove compartment.

REPRESENTATIVE GRUENBERG said his concern is that a firearm could still be easily obtained from an unlocked gun case.

REPRESENTATIVE DAHLSTROM mentioned that the flip side of that is the attention that's being drawn by someone who transfers his/her firearm to and from the trunk of a car while at a licensed child care facility. She noted that people carry firearms for protection and various other reasons, none of which, she surmised, are furthered by having the firearm in the trunk of a vehicle.

[1:46:49 PM](#)

REPRESENTATIVE GARA asked why this change is needed.

DR. MANDSAGER indicated that current law prohibits a person from bringing a firearm to a [licensed child care] facility.

REPRESENTATIVE GARA offered his understanding, though, that one cannot currently bring a firearm to a school. Therefore, why should one be permitted to bring a firearm to a child care facility?

[1:47:35 PM](#)

STACIE KRALY, Senior Assistant Attorney General, Human Services Section, Civil Division (Juneau), Department of Law (DOL), relayed that the discussion in the Senate committee hearings revolved around the issue of whether an individual would be allowed to have an unloaded firearm in his/her vehicle when he/she goes to pick up or drop off his/her child at a licensed child care facility. In other words, the qualifier used in the proposed change was that the firearm be unloaded, not that it was locked up in the trunk or encased in a container. She said that the DOL is neutral on that proposed change.

REPRESENTATIVE GRUENBERG, in response to comments, noted that current law prohibits one from possessing a firearm at certain facilities. He opined that if the intent is to ensure that a firearm be encased in a gun case, then the language should actually state "gun case" rather than "container of a motor vehicle", particularly since a gun case is not actually a container of a motor vehicle and is instead a portable item.

REPRESENTATIVE GRUENBERG made a motion to conceptually amend Amendment 1, to change the words, "encased in a container of a motor vehicle" to "encased in a gun case in a motor vehicle".

REPRESENTATIVE DAHLSTROM said she has problems with the practicality of the language in that portion of Amendment 1 - both its current language and that which is being offered via the amendment to Amendment 1. She offered her belief that most people who carry firearms will not have them locked up in a gun case nor will the firearms be unloaded. What good is an unloaded gun, she queried.

[1:52:30 PM](#)

REPRESENTATIVE GRUENBERG said his concern is that he doesn't know what is meant by the term "in a container of a motor vehicle". Would that be a glove box, for instance?

REPRESENTATIVE DAHLSTROM said that that meaning would be fine with her.

REPRESENTATIVE GRUENBERG concurred, but offered his understanding that the language makes it sound as though the container must be a part of the car - thus a gun case would not apply.

CHAIR McGUIRE concurred with Representative Gruenberg's summation. She asked whether changing the language to "encased in a glove compartment or a locked gun case".

REPRESENTATIVE GRUENBERG indicated that he would be amenable to such a change.

CHAIR McGUIRE offered her belief that the current language in Amendment 1 would not allow for the use of a gun case.

[1:53:34 PM](#)

REPRESENTATIVE GARA said he would be more comfortable changing the language in Amendment 1 such that it mirrors the language pertaining the possession of firearms on school grounds.

REPRESENTATIVE GRUENBERG withdrew his motion to amend Amendment 1, but indicated that he may wish to revisit the issue later.

DR. MANDSAGER explained that the next change proposed by Amendment 1 would delete Section 14 of CSHB 193(HES). Section 14, he relayed, has been found to be adding language in the wrong place, and so needs to be removed. The changes Amendment 1 proposes to pages 12 and 14, he opined, are important because they add the crime of medical assistance fraud to the criminal history and registry provision and applies both to individuals and to entities.

[1:55:29 PM](#)

DR. MANDSAGER explained that the change proposed by Amendment 1 to page 16 will insert language, via a new Section 47.05.350, regarding immunity for using information obtained under a criminal history background check.

MS. KRALY additionally explained that this proposed language is already included in the bill but in the wrong place, and so Amendment 1 also includes a corresponding change to delete this language from that wrong location.

DR. MANDSAGER explained that the change proposed by Amendment 1 to page 21, line 9, is in response to concerns that the department could issue policies or procedures independent of regulation, and the change clarifies that any policies or procedures are not simply arbitrary rules but have gone through the regulatory process.

[1:56:43 PM](#)

REPRESENTATIVE GRUENBERG asked whether the department must follow the Administrative Procedure Act (APA) regarding the adoption of regulations.

MS. KRALY confirmed that the department must follow the APA in that regard.

DR. MANDSAGER explained that the change proposed by Amendment 1 to page 23, lines 30-31 should clarify that licensing by the

department does not obligate the department to place or maintain an individual.

[1:57:26 PM](#)

MS. KRALY, in response to questions, relayed that the term "entity" is defined in statute as referring to any of the 18 entities that the department licenses, and that use of that term in the proposed change is also meant to apply to any of those entities. In other words, the department is not obligated to find residents for any entity just because the department licensed the entity, nor is the department obligated to subsidize any entity it licenses. In response to further questions, acknowledged that this proposed change basically seeks to immunize the department from financial responsibility towards the entities it licenses.

DR. MANDSAGER explained that the change proposed by Amendment 1 to page 32, line 4, will ensure that the provisions of the APA also apply.

MS. KRALY, in response to questions, clarified that both the provisions of the APA and the procedures for administrative hearings would apply to the quasi-adjudicatory process established via proposed AS 47.32.150(a), and that for the most egregious type of sanctioning and licensing actions an administrative law judge will be used.

[2:01:44 PM](#)

DR. MANDSAGER, in response to comments, offered his belief that the rest of the changes proposed by Amendment 1 are technical in nature - conforming language and renumbering.

REPRESENTATIVE COGHILL, referring to the change proposed by Amendment 1 regarding firearms, offered his understanding that it merely mirrors language pertaining to the possession of firearms around school areas.

REPRESENTATIVE DAHLSTROM removed her objection to the adoption of Amendment 1.

CHAIR MCGUIRE asked whether there were any further objections.

REPRESENTATIVE GRUENBERG referred to the change proposed by Amendment 1 to delete proposed AS 47.32.900(1)(B), which defines

"ambulatory surgical center" as including a facility that performs invasive diagnostic or therapeutic services.

DR. MANDSAGER said that after discussion with industry personnel and physicians, it became clear to him that inclusion of such a definition was impractical and so he has decided to have that language removed. He offered his understanding that this language was removed via an amendment in the House Health, Education and Social Services Standing Committee, but Legislative Legal and Research Services neglected to include the change in CSHB 193(HES).

[2:03:27 PM](#)

CHAIR McGUIRE, after ascertaining that there were no further objections, announced that Amendment 1 was adopted.

REPRESENTATIVE ANDERSON made a motion to adopt Amendment 2, labeled 04/29/05, 2:30 PM., which read [original punctuation provided]:

Page 1, lines 9 - 11:

Delete **"expanding reimbursable services under Medicaid waivers for older Alaskans and adults with disabilities to include adult companion services;"**

Page 42, line 24 through page 43, line 23:

Delete all material.

ReNUMBER bill sections accordingly.

Page 47, line 9:

Delete "58"

Insert "57"

Page 47, line 10:

Delete "59"

Insert "58"

Page 47, line 13:

Delete "58(b)"

Insert "57(b)"

Page 47, line 15:

Delete "60 - 62"

Insert "59 - 61"

DR. MANDSAGER relayed that Amendment 2 reflects the administration's desire to have Section 54, and its corresponding language in the title, deleted. It is the administration's position, he remarked, that HB 193 is not the appropriate bill with which to deal with Medicaid waiver issues,

particularly given that a study regarding such issues is scheduled to be launched this summer.

REPRESENTATIVE GARA objected to the motion. He said he is concerned that those with disabilities are being forced into nursing homes; opined that Representative Cissna's proposed language - Section 54 - attempts to address this issue now; and relayed that it is not acceptable to him for the legislature to delay addressing this issue until next year, until after the aforementioned study is completed.

STEVEN P. ASHMAN, Director, Division of Senior and Disabilities Services, Department of Health and Social Services (DHSS), relayed that under the new regulations, the frequency of services was reduced. However, the division has not seen anyone that's been diverted from the waiver program and placed into an institution. Instead, the division has seen some of the cost efficiencies that were anticipated under the respite program being shifted over to the PCA budget, which has helped many families. He, too, noted that the division will be doing a long-term-care study, and said the division anticipates spending \$260 million next year for long-term-care services and wants to ensure that any changes which will be made will be good changes, that they will be the best practices.

[2:06:52 PM](#)

REPRESENTATIVE GARA pointed out, however, that next year is still next year. He surmised that the reason the division has not seen people going into nursing homes is because family members are making more sacrifices to keep their loved ones at home, and so that is not a good indication that there isn't a problem. He reiterated that he objects to the motion to adopt Amendment 2.

CHAIR McGUIRE said she supports [Amendment 2] but agrees with Representative Gara. She added:

It really was frustrating this interim to try to communicate a message ... from our constituents. And it is three branches of government, but we're supposed to be the lawmaking branch and we're supposed to be setting the policies and then we pay for whatever it is that we set. ... Not the other way around - that you set it and then cut the budget that you request from us - and I sort of feel a little bit like that went on.

2:09:02 PM

A roll call vote was taken. Representatives McGuire, Anderson, Coghill, Kott, and Dahlstrom voted in favor of Amendment 2. Representatives Gruenberg and Gara voted against it. Therefore, Amendment 2 was adopted by a vote of 5-2.

REPRESENTATIVE GRUENBERG referred to Amendment 1, specifically the change proposed to page 38, lines 7-15. He asked whether that is a substantive change.

DR. MANDSAGER replied that this change will clarify that "assisted living homes" means the same thing throughout the bill.

REPRESENTATIVE GRUENBERG asked whether the change will result in any diminution of service to the client.

DR. MANDSAGER said no, adding that the language will merely match the current statutory definition.

2:11:39 PM

REPRESENTATIVE GRUENBERG, noting that one of the changes proposed by Amendment 1 will repeal AS 25.27.244(s)(2), asked what that statute pertains to.

MS. KRALY said that it pertains to child support, and the proposed change is in response to a concern raised by Legislative Legal and Research Services. She added:

The premise is that we're licensing entities rather than individuals, and so what that was doing was allowing some garnishment issues, and there's another issue that deals with postsecondary education loans. And you can't garnish an entity for a loan default but you can garnish an individual, and since we're licensing entities, rather than individuals, that needed to be changed.

2:12:53 PM

REPRESENTATIVE GARA made a motion to adopt Amendment 3, which, with handwritten additions, read [original punctuation provided]:

Page 1, line 9, following "Services;":

Insert "relating to public assistance for health facilities and assisted living homes, to rates charged by an assisted living home, and to the liability of recipients of home or community-based services to pay for those services;

Page 18, following line 9

Insert new bill sections to read:

Sec. 22 AS 47.07.070(a) is amended to read:

(a) Except as provided under (d) - (f) of this section, the [THE] department shall, by regulation, set rates of payment for health facilities under this chapter and AS 47.25.120 - 47.25.300 in accordance with 42 U.S.C. 1396 (Title XIX, Social Security Act, Medical Assistance) and this section. A rate established under this section takes effect under AS 44.62 (Administrative Procedure Act) but not until approved in writing by the commissioner. The commissioner may delegate the performance of these functions.

Sec. 23 AS 47.07.070 is amended by adding new subsections to read:

(d) For residential support living services provided to an eligible recipient of medical assistance living in an assisted living home licensed under AS 47.33, the minimum daily reimbursement rate to the assisted living home for room and board expenses is \$28.

(e) The department may not establish a maximum daily rate for room and board expenses charged by an assisted living home.

(f) A calculation of the rate for administrative and general costs for a provider, including an assisted living home, shall be determined in the same way as a calculation of the administrative and general cost rate for a Pioneers' Home. In this subsection, "administrative and general costs" means those expenses that are common to the overall operation of a provider providing home and community-based waiver services and that are not directly assignable to or borne by a specific program or recipient of a home and community-based service.

Re-number the following bill sections accordingly.

Page 41, following line 5

Insert a new bill section to read:
Sec. 49 AS 47.07.070(c) is repealed."

Renumber the following bill sections accordingly.

Page 41, following line 14

Insert a new bill section to read:
Sec 52. The uncodified law of the State of Alaska is amended by adding a new section to read:

REGULATIONS ANNULLED. 7 AAC 43.1058(j) and 7 AAC 43.1058(k)(1)(B) are annulled."

Renumber the following bill sections accordingly.

Note to Leg. Legal: Conform all internal bill section references as necessary.

REPRESENTATIVE GARA, indicating that the goal of Amendment 3 is to establish a minimum room and board rate for assisted living homes, made a motion to amend Amendment 3, to take out proposed subsection (e) of proposed AS 47.07.070. There being no objection, the amendment to Amendment 3 was adopted.

REPRESENTATIVE GARA acknowledged that several legislators have had concerns about the reduction in the rates paid to help people stay at assisted living homes. That reduction was essentially a transfer, he noted, and went from \$28 a day to \$18 a day, and although some monetary compensation occurred via the Medicaid program, many assisted living homes feel that they can't legally use that program. Amendment 3, as amended, attempts to "roll back the new summer regulation to the former \$28 [per] day compensation rate." He offered his understanding that corresponding amendments with regard to funding have been made to the [operating] budget. However, also according to his understanding, he remarked, until a new regulation is adopted, any forthcoming funds cannot be spent; thus the department may relay the need to adopt a new regulation.

[2:15:18 PM](#)

MR. ASHMAN said that Amendment 3, as amended, will deal with individuals who have incomes in excess of Supplemental Security Income (SSI) and Adult Public Assistance (APA), and will allow clients to retain their SSI and APA and use it for whatever purpose they wish. Furthermore, if the department becomes authorized to promulgate emergency regulations on this issue, it

will then do so, providing for an effective date of July 1, 2006.

REPRESENTATIVE GARA said he wants to be assured that if the funding is made available this year, that assisted living homes will be compensated at \$28 per day immediately, not 2006.

MR. ASHMAN offered his understanding that an option might be to institute reimbursement retroactively.

MS. KRALY also offered her understanding that if the funding is made available via the budget, monies would be paid to assisted-living home operators starting July 1, and that in lieu of regulatory authorization, the [DHSS] will work as quickly as possible to amend the regulations back to what they were a year ago.

REPRESENTATIVE GARA indicated that for the time being his intention is try to get Amendment 3, as amended, adopted and then, when he gets something in writing assuring him of the department's intent on this issue, he will withdraw Amendment 3 as the bill continues through the legislative process.

[2:18:04 PM](#)

CHAIR McGUIRE said she would agree to oppose Amendment 3, as amended, but pointed out that it would be nice to have something in writing anyway so as to understand the timing on the regulation process. She remarked that Representative Gara makes a good point, that assisted living homes are under the assumption that they will be fine if the budgetary change is forthcoming and so are acting a certain way in order to stay afloat; therefore if the monies aren't actually going to be made available until 2006, it won't help assisted living homes now. She reiterated that it would be nice to have something in writing, something stating that the department will pursue the promulgation of emergency regulations.

[2:20:05 PM](#)

MR. ASHMAN said he would discuss the issue with the commissioner of DHSS, adding his assurance that the department does have a commitment to follow through if the funding is made available.

[2:20:19 PM](#)

CHAIR McGUIRE objected to the motion to adopt Amendment 3, as amended.

[2:20:40 PM](#)

A roll call vote was taken. Representatives Dahlstrom, Gruenberg, and Gara voted in favor of Amendment 3, as amended. Representatives McGuire and Anderson voted against it. Therefore, Amendment 3, as amended, was adopted by a vote of 3-2.

The committee took an at-ease from 2:21 p.m. to 2:23 p.m.

[2:23:03 PM](#)

CHAIR McGUIRE relayed that the House Judiciary Standing Committee would continue discussion - perhaps even moving on to the next bill - and be awaiting a letter from the DHSS addressing members' concerns regarding the assisted living provider regulations.

REPRESENTATIVE GRUENBERG referred to Amendment 1 and offered his understanding that it would repeal a provision that would allow the department to pull a person's license if he/she has not paid child support.

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 4, to delete the language added to the bill via adoption of Amendment 1 that read:

Page 41, following line 2:

Insert a new bill section to read:

"* **Sec. 46.** AS 25.27.244(s)(2) is repealed."

REPRESENTATIVE ANDERSON objected for the purpose of discussion.

[2:25:13 PM](#)

MS. KRALY said that the DOL has no objection Amendment 4.

CHAIR McGUIRE announced that Amendment 4 was adopted.

CHAIR McGUIRE announced that CSHB 193(HES), as amended, would be set aside until later in the meeting.

AMENDMENT(S)

Amendment 1 [Labeled 05/04/05, 10:15 a.m.] (adopted):

Page 1, line 7, following "clinics;":

Insert "**relating to possession of a firearm at licensed entities and facilities;**"

Page 4, line 3, following "children":

Insert "**, except that a person 21 years of age or older may possess an unloaded firearm in the trunk of a motor vehicle or encased in a container of a motor vehicle**"

Page 6, line 31 through page 8, line 15:

Delete all material.

Renumber the following bill sections accordingly.

Page 12, line 16, following "jurisdiction":

Insert "or to have committed medical assistance fraud under AS 47.05.210 or a substantially similar provision in another jurisdiction"

Page 14, line 8, following "jurisdiction":

Insert "or to have committed medical assistance fraud under AS 47.05.210 or a substantially similar provision in another jurisdiction"

Page 16, following line 11:

Insert "**Sec. 47.05.350. Immunity.** An entity or individual service provider that obtains information about an employee under a criminal history check under AS 47.05.310 may use that information only as provided in regulations adopted by the department under AS 47.05.320. However, if that entity or individual service provider reasonably relies on that information provided under the regulations adopted by the department to deny employment to an individual who was selected for hire as an employee, including during a period of provisional employment, the entity or individual service provider is not liable in an action brought by the individual based on the employment determination resulting from the information."

Page 21, line 29, following "AS 47.32.010(b)":

Insert ", as defined by regulation"

Page 23, line 30, following "(c)", through line 31:

Delete all material and insert "The issuance of a license by the department does not obligate the department to place or maintain an individual in an entity or through an entity, or to provide financial support to an entity."

Page 32, line 4:

Delete "applies"

Insert "and AS 44.62.330 - 44.62.630 apply"

Page 32, lines 24 - 30:

Delete all material.

Page 34, line 21, following "ambulatory surgical center":

Insert "means a facility that"

Page 34, line 22:

Delete all material.

Page 34, line 23:

Delete "(i)"

Insert "(A)"

Page 34, line 25:

Delete "(ii)"

Insert "(B)"

Delete "and"

Page 34, lines 27 - 28:

Delete all material.

Page 35, line 5:

Delete "or"

Page 35, following line 5:

Insert "(iii) offers personal assistance as defined in AS 47.33.990; or"

Page 35, line 6:

Delete "(iii)"

Insert "(iv)"

Page 37, line 13, following "care":

Insert "or rehabilitative services"

Page 37, line 31:

Delete "35"

Insert "34"

Page 38, line 7, following "to", through line 15:

Delete all material and insert "assisted living homes as defined in AS 47.32.900."

Page 41, following line 2:

Insert a new bill section to read:

"* Sec. 46. AS 25.27.244(s)(2) is repealed."

Page 41, line 6:

Delete "47.33.420,"

Page 41, line 18:

Delete "1 - 15, 17 - 19, 21 - 35, 37 - 42, and 44
- 51"
Insert "1 - 14, 16 - 18, 20 - 34, and 36 - 51"
Page 41, line 21:
Delete "35"
Insert "34"
Page 41, line 22:
Delete "35"
Insert "34"
Page 41, line 24:
Delete "1 - 15, 17 - 19, 21 - 35, 37 - 42, and 44
- 51"
Insert "1 - 14, 16 - 18, 20 - 34, and 36 - 51"
Page 41, line 25:
Delete "1 - 15, 17 - 19, 21 - 35, 37 - 42, and 44
-"
Insert "1 - 14, 16 - 18, 20 - 34, and 36 -"
Page 41, line 27:
Delete "35"
Insert "34"
Page 41, line 30:
Delete "1 - 15, 17 - 19, 21 - 35, 37 - 42, and 44
- 51"
Insert "1 - 14, 16 - 18, 20 - 34, and 36 - 51"
Page 42, line 2:
Delete "SEC. 20"
Insert "SECS. 19 AND 35"
Page 42, line 3:
Delete "sec. 20"
Insert "secs. 19 and 35"
Page 42, line 5:
Delete "sec. 20"
Insert "secs. 19 and 35"
Page 42, line 8:
Delete "20"
Insert "19"
Page 42, line 9:
Delete "35"
Insert "34"
Page 42, line 12:
Delete "sec. 20"
Insert "secs. 19 and 35"
Page 42, line 14:
Delete "20"
Insert "19"
Page 42, line 17:
Delete "sec. 20"

Insert "secs. 19 and 35"
Page 42, line 20:
Delete "20"
Insert "19"
Delete "35"
Insert "34"
Page 42, line 21:
Delete "20"
Insert "19"
Page 42, line 23:
Delete "20"
Insert "19"
Page 43, line 27:
Delete "35"
Insert "34"
Page 43, line 28:
Delete "35"
Insert "34"
Page 43, line 29:
Delete "1 - 15, 17 - 19, 21 - 35, 37 - 42, and 44
- 51"
Insert "1 - 14, 16 - 18, 20 - 34, and 36 - 51"
Page 44, line 5:
Delete all material.
Page 44, line 6:
Delete "(4)"
Insert "(3)"
Delete "18"
Insert "17"
Page 44, line 7:
Delete "(5)"
Insert "(4)"
Delete "19"
Insert "18"
Page 44, line 8:
Delete "(6)"
Insert "(5)"
Delete "21"
Insert "20"
Page 44, line 9:
Delete "(7)"
Insert "(6)"
Delete "22"
Insert "21"
Page 44, line 10:
Delete "(8)"
Insert "(7)"

Delete "23"
Insert "22"
Page 44, line 11:
Delete "(9)"
Insert "(8)"
Delete "24 and 25"
Insert "23 and 24"
Page 44, line 12:
Delete "(10)"
Insert "(9)"
Delete "27"
Insert "26"
Page 44, line 13:
Delete "(11)"
Insert "(10)"
Delete "28"
Insert "27"
Page 44, line 14:
Delete "(12)"
Insert "(11)"
Delete "29"
Insert "28"
Page 44, line 15:
Delete "(13)"
Insert "(12)"
Delete "30"
Insert "29"
Page 44, line 16:
Delete "(14)"
Insert "(13)"
Delete "31"
Insert "30"
Page 44, line 17:
Delete "(15)"
Insert "(14)"
Delete "32"
Insert "31"
Page 44, line 18:
Delete "(16)"
Insert "(15)"
Delete "33"
Insert "32"
Page 44, line 19:
Delete "(17)"
Insert "(16)"
Delete "34"
Insert "33"

Page 44, line 20:
Delete "(18)"
Insert "(17)"
Delete "38"
Insert "37"

Page 44, line 21:
Delete "(19)"
Insert "(18)"
Delete "41"
Insert "40"

Page 44, line 26:
Delete "1 - 15, 17 - 19, 21 - 35, 37 - 42, and 44
- 51"
Insert "1 - 14, 16 - 18, 20 - 34, and 36 - 51"

Page 45, line 1:
Delete "35"
Insert "34"

Page 45, line 4:
Delete "35"
Insert "34"

Page 45, line 14:
Delete "35"
Insert "34"

Page 45, line 15:
Delete "1 - 15, 17 - 19, 21 - 35, 37 - 42, and 44
- 51"
Insert "1 - 14, 16 - 18, 20 - 34, and 36 - 51"

Page 45, line 17:
Delete "1 - 15, 17 - 19, 21 - 35, 37 - 42, and 44
- 51"
Insert "1 - 14, 16 - 18, 20 - 34, and 36 - 51"

Page 45, lines 19 - 20:
Delete "1 - 15, 17 - 19, 21 - 35, 37 - 42, and 44
- 51"
Insert "1 - 14, 16 - 18, 20 - 34, and 36 - 51"

Page 45, line 25:
Delete "1 - 15, 17 - 19, 21 - 35, 37 - 42, and 44
- 51"
Insert "1 - 14, 16 - 18, 20 - 34, and 36 - 51"

Page 45, line 28:
Delete "1 - 15, 17 - 19, 21 - 35, 37 - 42, and 44
- 51"
Insert "1 - 14, 16 - 18, 20 - 34, and 36 - 51"

Page 45, line 30:
Delete "35"
Insert "34"

Page 46, line 3:

Delete "35"
Insert "34"
Page 46, line 12:
Delete "20"
Insert "19"
Page 46, line 14:
Delete "20"
Insert "19"
Page 46, line 15:
Delete "20"
Insert "19"
Page 46, line 16:
Delete "20"
Insert "19"
Page 46, line 18:
Delete "20"
Insert "19"
Page 46, line 21:
Delete "20"
Insert "19"
Page 46, line 23:
Delete "20"
Insert "19"
Page 46, lines 30 - 31:
Delete "1 - 15, 17 - 19, 21 - 35, 37 - 42, and 44
- 51"
Insert "1 - 14, 16 - 18, 20 - 34, and 36 - 51"
Page 47, line 3:
Delete: "16, 20, and 36"
Insert "15, 19, and 35"
Page 47, line 11:
Delete all material.
Renumber the following bill sections accordingly.
Page 47, line 12:
Delete "16, 20, and 36"
Insert "15, 19, and 35"
Page 47, line 15:
Delete "62"
Insert "61"

[End of amendment(s); CSHB 193(HES), as amended, was set aside until later in the meeting.]

SB 130 - WORKERS' COMPENSATION/ INSURANCE

[2:25:54 PM](#)

CHAIR McGUIRE announced that the next order of business would be CS FOR SENATE BILL NO. 130(FIN) am, "An Act relating to a special deposit for workers' compensation and employers' liability insurers; relating to assigned risk pools; relating to workers' compensation insurers; stating the intent of the legislature, and setting out limitations, concerning the interpretation, construction, and implementation of workers' compensation laws; relating to the Alaska Workers' Compensation Board; assigning certain Alaska Workers' Compensation Board functions to the division of workers' compensation in the Department of Labor and Workforce Development and to that department, and authorizing the board to delegate administrative and enforcement duties to the division; providing for workers' compensation hearing officers in workers' compensation proceedings; establishing a Workers' Compensation Appeals Commission; relating to workers' compensation medical benefits and to charges for and payment of fees for the medical benefits; relating to agreements that discharge workers' compensation liability; relating to workers' compensation awards; relating to reemployment benefits and job dislocation benefits; relating to coordination of workers' compensation and certain disability benefits; relating to division of workers' compensation records; relating to release of treatment records; relating to an employer's failure to insure and keep insured or provide security; providing for appeals from compensation orders; relating to workers' compensation proceedings; providing for supreme court jurisdiction of appeals from the Workers' Compensation Appeals Commission; providing for a maximum amount for the cost-of-living adjustment for workers' compensation benefits; relating to attorney fees with respect to workers' compensation; providing for the department to enter into contracts with nonprofit organizations to provide information services and legal representation to injured employees; providing for administrative penalties for employers uninsured or without adequate security for workers' compensation; relating to fraudulent acts or false or misleading statements in workers' compensation and penalties for the acts or statements; providing for members of a limited liability company to be included as an employee for purposes of workers' compensation; establishing a workers' compensation benefits guaranty fund; making conforming amendments; providing for a study and report by the medical services review committee; establishing the Task Force on Workers' Compensation; and providing for an effective date." [Before the committee was HCS CSSB 130(L&C).]

The committee took an at-ease from 2:26 p.m. to 2:27 p.m.

CHAIR McGUIRE relayed that HCS CSSB 130(L&C) no longer proposes to change certain "structures in the court regarding appeals," and voiced her understanding that Representative Dahlstrom would be offering a conceptual amendment to reinstate the "second injury fund."

GREG O'CLARAY, Commissioner, Department of Labor & Workforce Development (DLWD), relayed simply that the DLWD supports the aforementioned conceptual amendment.

[2:29:16 PM](#)

JOEL SIGMAN, referring to the [second injury fund], said he didn't think it's right to have the financial burden of a second injury placed on the employee, particularly since, in his opinion, "they" aren't taking care of the employee for the first injury. He indicated that he has been dealing with this issue for eight years and has been misrepresented throughout, and gave details regarding the information that he has been told, the information that has been kept from him, and what he's had to go through. Even though he has had a doctor acknowledge that he needs surgery, he relayed, [workers' compensation] refuses to do anything. He opined that if an insurance company does not do what it is supposed to do, then the employee ought to be able to sue the employer. He mentioned that before he was injured he was able to earn \$4,000 to \$5,000 per month, but since his injury his life has been destroyed and he is not getting any assistance from the government.

[2:32:49 PM](#)

MICHAEL BLODGETT relayed that his wife was injured seven months ago, and that after her injury workers' compensation paperwork was filed with her employer but her employer refused to turn the paperwork over to the insurance company. It has taken seven months for his wife to "get through the system," he recounted, adding that his wife describes her pain as being like having an ice pick shoved into her shoulder and then periodically moved around. He relayed that they'd recently been offered a deal with the insurance company and the employer but would have had to give up all fines, penalties, and fees. Turning attention to provisions of the bill, he suggested that the \$10,000 fine [established in AS 23.30.175(b)] be increased to \$100,000 at 21 percent interest, be made nonnegotiable, and be split equally between the State and the injured party. He opined that medical costs should not be the responsibility of the employee but rather the responsibility of the insurance company and employer.

MR. BLODGETT acknowledged that when most people consider the issue of workers' compensation fraud, they think of someone who claims to have been injured but then goes back to work while also collecting workers' compensation. However, there are also situations in which it is the employer committing the fraud. He suggested that [the legislature] quit following other states and start being leaders with regard to workers' compensation issues - impose fines on employers and insurance companies that allow the kind of situation his wife is experiencing to occur and/or continue. Mr. Blodgett referred to Mr. Sigman and offered his belief that Mr. Sigman has spent the last eight years in pain simply because the system currently in place is flawed. In conclusion, Mr. Blodgett said:

I applaud our legislators for taking thus under their wing. I realize this is a very hot topic, I realize that it applies to a tremendous number of people. Insurance companies want to continue making money. People would like to get fixed. If we take and say, "Look, you're going to be putting out \$100,000 for not taking care of these people, per person," then maybe you will be able to get this to a stop and the [Workers' Compensation Board] slimmed down and their cases thinned out.

[2:37:24 PM](#)

ERROL CHAMPION, Director, Alaska Timber Exchange Management Corporation, said simply that he supports the aforementioned proposed conceptual amendment regarding the "second injury fund" and hopes that it will be adopted. Second injury funds are extremely important for the reemployment of Alaskans, particularly in the timber industry, he concluded.

[2:38:08 PM](#)

RICHARD CATTANACH, Executive Director, Associated General Contractors (AGC) of Alaska, after relaying that he is also the "Management" co-chair of the Labor-Management ad hoc committee, opined that SB 130 reflects about six months of hard work on the part of both employers and employees, and represents the first step in what he characterized as a major overhaul of Alaska's workers' compensation statutes; a needed first step, he remarked, though it is far from perfect. He also opined that the second injury fund is "a system that isn't working," that it

hasn't worked for a long time, and that it is an expensive system. He elaborated:

If you are a good employer and you hire somebody, you can't ask them the questions that's essential to get into the second injury fund, and that is, "Does he have a preexisting injury?" because ... it's illegal to ask that question under federal law. And if you don't ask that question, you're not entitled to use the second injury fund. So we don't have many people getting into the second injury fund at all, and it's just a system not working.

CHAIR MCGUIRE surmised, then, that during an interview an employer isn't able to ask about physical injuries.

MR. CATTANACH concurred.

CHAIR MCGUIRE asked what triggers entry into the second injury fund.

MR. CATTANACH reiterated his belief that the employer has to have knowledge of a preexisting injury before he/she hires the employee and that under federal law an employer is precluded from having such knowledge. He said that he is not sure how anyone is getting into the second injury fund now, but pointed out that some people have been in that system for over 20 years. He offered his understanding that there are only between five and ten new cases a year qualifying for the second injury fund.

MR. CATTANACH, in response to questions, offered his understanding that between \$3 million and \$4 million is currently in the second injury fund, and that insurance companies are assessed 6 percent of the indemnity payments that they make and this essentially amounts to a "tax" on employers of about 2.5 to 3 percent on their premiums.

[2:42:53 PM](#)

MR. CHAMPION, in contrast to Mr. Cattanach's comments, offered his understanding that nothing prevents an employer from asking a potential employee to get a pre-employment physical exam, and that the employer simply can't discriminate on the basis of a preexisting injury. Thus preexisting conditions can be identified before a person is hired and even after a person is hired; it is not factual that an employer can't ask about a preexisting condition, he assured the committee.

2:44:16 PM

PAUL F. LISANKIE, Director, Division of Workers' Compensation, Department of Labor & Workforce Development (DLWD), in response to a question, acknowledged that perhaps some employers have a fear of running afoul of the Americans with Disabilities Act (ADA) and so avoid asking about preexisting injuries before hiring someone. Now, in order to still qualify for the second injury fund, an employer can simply "prove it up" after the hire. In other words, if an employer can prove that an employee is being retained even though he/she has a preexisting condition, then the employer can still qualify for second injury fund protection.

CHAIR McGUIRE asked what a worker's remedy would be if there were no second injury fund.

MR. LISANKIE clarified that the second injury fund isn't really a remedy for employees; rather, it is a remedy for the employer or insurer. The second injury fund reimburses the insurance company after it pays a certain amount of benefits "and then the fund picks up the rest." If there was no second injury fund, the burden would remain on the shoulders of insurance company for the entire life of the claim.

CHAIR McGUIRE questioned, then, whether the proposed conceptual amendment is intended to help insurance companies.

REPRESENTATIVE DAHLSTROM said no.

2:47:18 PM

REPRESENTATIVE DAHLSTROM offered her understanding that under the current workers' compensation law, there is a provision known as the "last injurious exposure rule," which would hold a former employer liable should a second injury with a new employer render the employee disabled.

MR. LISANKIE concurred, and explained that when the Alaska Supreme Court was addressing the issue of whether to adopt that rule, it recognized that it might not be equitable in every situation to place all of the responsibility for the [disability] on the final employer. The Alaska Supreme Court decided that [this rule] was less inequitable because of the existence of the second injury fund, since "that last employer will only pay for a limited period of time and then the second

injury fund will kick in"; so [the rule] really won't be that harsh [for the employer].

2:48:42 PM

REPRESENTATIVE DAHLSTROM pointed out, though, that at one job she'd had in the past, at the time she was hired she was required to sign a letter stating that she would undergo a physical exam and that her continued employment was contingent upon the results of the exam.

REPRESENTATIVE ANDERSON offered a hypothetical example involving an employee who is injured while on the job and subsequently receives workers' compensation benefits. If that person goes on to work for someone else and is injured again, who would be liable?

MR. LISANKIE explained that the apportionment of who would pay is based on a legal test and the existence of the second injury fund doesn't factor into the question of who would be liable. In most instances, though, the second employer would be liable unless the injury that occurred while under the employment of that second employer was found to not be a substantial factor in bringing about the disability.

MR. LISANKIE, in response to a further question, said that as long as a second injury fund exists, if the second employer has correctly followed the procedures necessary to qualify an employee for the second injury fund, and if the employee then becomes injured in a second injury to the point where he/she is disabled and off work for more than two years, then the employer - or their insurer - would be reimbursed by the second injury fund for the "time lost benefits." He elaborated:

So you pay a lot of benefits before you get anything, and you do have to pay for medical benefits notwithstanding the existence of the second injury fund. But it is true that the cases that you see being paid from the second injury fund are people who - due to the second injury, no matter how small or large the injury is - are getting paid benefits, usually for life. They're usually permanent total disability benefits, so they can be very expensive cases, which is why it's entirely true that there's only about 130 of them, but ... it's a "grants" (ph) line item out of our vision, and it's about \$3 million

a year right now that's being paid out, so it's substantial.

CHAIR McGUIRE asked what other states do as an alternative to [the second injury fund].

[2:53:05 PM](#)

MR. LISANKIE offered that when a state stops having a second injury fund, it attempts to redirect those dollars to some other program that is orientated towards trying to get people back to work after being injured. The second injury fund merely provides a fall back position for employers contemplating hiring a previously injured person, and thus they may be more likely to hire that person. An alternative would be to establish laws that not only require employers to hire people notwithstanding any previous injury but that also try to get those individuals back to work somehow should they get injured again.

MR. CATTANACH, in response to a question, offered his belief that the second injury fund results in an increase to workers' compensation insurance rates of about 1 to 2 percent.

MR. LISANKIE explained that for [the second injury fund], everyone who pays workers' compensation benefits during a particular period of time is assessed at a certain percentage - between 0 and 6 percent.

[2:55:52 PM](#)

REPRESENTATIVE KOTT asked Mr. Lisankie to comment on Mr. Cattanach's statement that the second injury fund system doesn't work.

MR. LISANKIE said:

It's a system that has a lot of hoops that you have to go through to qualify, to get anything out of it, and it can be very difficult to get all of the things in line to qualify an employee. ... So if the statement is, "Does this affect a lot people, does this really help a lot of people year in and year out?" [then] I guess the answer would be, "Probably not." But ... the idea is that some of those people wouldn't have gotten a job unless their employer had the security of knowing that if they were really going to incur this big liability, that they'd get bailed out of it. ...

That's the focus of the second injury fund, and it has been for the many years that it's been in ... [existence]. You can certainly make an argument that you can try and do something else that might have broader application, but the theory behind the second injury fund has been pretty much that: ... in every state, for many years, ... you just try and soften the blow to employers of people who come to the workplace with a serious injury and then get seriously injured [again].

[2:57:37 PM](#)

REPRESENTATIVE KOTT asked whether, from the division's perspective, there is anything in SB 130 that is onerous, impractical, or unworkable.

MR. LISANKIE indicated that he wouldn't characterize any of the bill's provisions as either onerous, impractical, or unworkable.

REPRESENTATIVE KOTT asked whether the division has taken a position on SB 130.

MR. LISANKIE indicated that if the division has taken a position on the bill, he is unaware of what it is.

[HCS CSSB 130(L&C) was set aside until later in the meeting].

HB 193 - LICENSING MEDICAL OR CARE FACILITIES

[2:59:04 PM](#)

CHAIR McGUIRE announced that the committee would next return to the hearing on HOUSE BILL NO. 193, "An Act relating to the licensing, regulation, enforcement, and appeal rights of ambulatory surgical centers, assisted living homes, child care facilities, child placement agencies, foster homes, free-standing birth centers, home health agencies, hospices or agencies providing hospice services, hospitals, intermediate care facilities for the mentally retarded, maternity homes, nursing facilities, residential child care facilities, residential psychiatric treatment centers, and rural health clinics; relating to criminal history requirements, and a registry, regarding certain licenses, certifications, approvals, and authorizations by the Department of Health and Social Services; making conforming amendments; and providing for an

effective date." [Before the committee was CSHB 193(HES), which was amended earlier in the meeting.]

REPRESENTATIVE GRUENBERG made a motion to rescind the committee's action in adopting Amendment 4, adopted earlier in the meeting, that deleted the language added to the bill via adoption of Amendment 1 that read:

Page 41, following line 2:

Insert a new bill section to read:

"* **Sec. 46.** AS 25.27.244(s)(2) is repealed."

CHAIR MCGUIRE, after ascertaining that there were no objections to the motion to rescind the committee's action in adopting Amendment 4, announced that the committee has rescinded its action in adopting Amendment 4; therefore the language that proposes to repeal AS 25.27.244(s)(2) is now still part of the bill.

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 5, to alter the language added via Amendment 1 that proposes to repeal AS 25.27.244(s)(2) such that it would instead repeal AS 25.27.244(s)(2)(B)(ii). There being no objection, Amendment 5 was adopted.

[3:01:48 PM](#)

CHAIR MCGUIRE - after recapping some of the actions taken and intentions expressed earlier in the meeting with regard to Amendment 3, as amended - made a motion to rescind the committee's action in adopting Amendment 3, as amended [text provided during the first portion of the minutes on HB 193 for this date].

REPRESENTATIVE GARA objected to the motion.

STEVEN P. ASHMAN, Director, Division of Senior and Disabilities Services, Department of Health and Social Services (DHSS), said that Amendment 3, as amended, essentially restores [the former regulatory language] with regard to clients being able to retain their Supplemental Security Income (SSI) and Adult Public Assistance (APA) and spend it any way they desired. He said he has gone on record as saying, and written letters to the effect that it is the intent of the department to allow the clients to spend the aforementioned income any way they want.

[3:04:41 PM](#)

REPRESENTATIVE GARA said he wants to ensure that the former process under which clients got \$362 per month in APA payments and could use it for room and board would still apply. He offered his understanding that should the funding go through, then the APA payments would go back up to \$362 for those that used to qualify for those payments.

MR. ASHMAN clarified, however, that it is the department's intent to retain the Medicaid refinancing and the "cost shift" that occurred last year. He offered his understanding that [Amendment 3, as amended] will free up, for the aforementioned clients, all excess funds, funds which can then be spent in any fashion, just as was the case prior to the adoption of the [latest] regulations.

REPRESENTATIVE GARA said he still has a concern.

CHAIR MCGUIRE said she hopes that the committee will rescind its action in adopting amendment 3, as amended, and that afterwards she and other members can work together with the department to ensure that their concerns are addressed.

REPRESENTATIVE GARA expressed a preference for retaining Amendment 3, as amended, as a means of encouraging the department to address members' concerns.

[3:07:32 PM](#)

A roll call vote was taken. Representatives McGuire, Anderson, Coghill, Kott, and Dahlstrom voted in favor of the committee rescinding its action in adopting Amendment 3, as amended. Representatives Gruenberg and Gara voted against it. Therefore, the committee rescinded its action in adopting Amendment 3, as amended, by a vote of 5-2.

REPRESENTATIVE DAHLSTROM moved to report CSHB 193(HES), as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE GARA objected to note that the motion should include the forwarding of the attached letter from Mr. Ashman.

CHAIR MCGUIRE acknowledged that point and asked whether there were any further objections. There being none, CSHB 193(JUD) was reported from the House Judiciary Standing Committee.

3:08:42 PM

CHAIR McGUIRE announced that as a final order of business the committee would return to the hearing on CS FOR SENATE BILL NO. 130(FIN) am, "An Act relating to a special deposit for workers' compensation and employers' liability insurers; relating to assigned risk pools; relating to workers' compensation insurers; stating the intent of the legislature, and setting out limitations, concerning the interpretation, construction, and implementation of workers' compensation laws; relating to the Alaska Workers' Compensation Board; assigning certain Alaska Workers' Compensation Board functions to the division of workers' compensation in the Department of Labor and Workforce Development and to that department, and authorizing the board to delegate administrative and enforcement duties to the division; providing for workers' compensation hearing officers in workers' compensation proceedings; establishing a Workers' Compensation Appeals Commission; relating to workers' compensation medical benefits and to charges for and payment of fees for the medical benefits; relating to agreements that discharge workers' compensation liability; relating to workers' compensation awards; relating to reemployment benefits and job dislocation benefits; relating to coordination of workers' compensation and certain disability benefits; relating to division of workers' compensation records; relating to release of treatment records; relating to an employer's failure to insure and keep insured or provide security; providing for appeals from compensation orders; relating to workers' compensation proceedings; providing for supreme court jurisdiction of appeals from the Workers' Compensation Appeals Commission; providing for a maximum amount for the cost-of-living adjustment for workers' compensation benefits; relating to attorney fees with respect to workers' compensation; providing for the department to enter into contracts with nonprofit organizations to provide information services and legal representation to injured employees; providing for administrative penalties for employers uninsured or without adequate security for workers' compensation; relating to fraudulent acts or false or misleading statements in workers' compensation and penalties for the acts or statements; providing for members of a limited liability company to be included as an employee for purposes of workers' compensation; establishing a workers' compensation benefits guaranty fund; making conforming amendments; providing for a study and report by the medical services review committee; establishing the Task Force on

Workers' Compensation; and providing for an effective date."
[Before the committee was HCS CSSB 130(L&C).]

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on SB 130. She noted that the committee will be considering whether to adopt a conceptual amendment to SB 130.

REPRESENTATIVE KOTT asked Mr. Wooliver from the Alaska Court System to comment.

DOUG WOOLIVER, Administrative Attorney, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), noted that many earlier iterations of this bill and many similar pieces of legislation have contained a provision that would bypass the Alaska Superior Court and send all appeals from the agency directly to the Alaska Supreme Court, one of the rationales for such a change being that it would speed up the process. He opined however that such an action wouldn't speed up the process, particularly since most cases that are appealed stop at the superior-court level, with only about eight cases per year going on to the supreme-court level. If cases bypass the Alaska Superior Court, in essence this results in the faster court being bypassed in favor of the slower court.

MR. WOOLIVER relayed that from the time one files a case until the time the court issues an opinion, the Alaska Supreme Court takes an average of 20 months. This is a lot longer than if cases are left to go through the process at the superior-court level, at which a case can be completed in as little as a year [or less]. He acknowledged, however, that bypassing the Alaska Superior Court will save time for those cases that ultimately do get appealed to the Alaska Supreme Court, but that is not what happens with most cases. Furthermore, anytime the Alaska Supreme Court's caseload is increased, the rest of the work that's before the court is necessarily slowed down.

[3:12:05 PM](#)

REPRESENTATIVE GRUENBERG noted that there has been some concern with regard to whether the Alaska Superior Court has as much expertise as administrative law judges would have.

MR. WOOLIVER pointed out that superior court judges are judges of general jurisdiction and so hear every kind of case. One could always have some kind of specialty court with unique experience in a particular area that could develop greater

expertise than a superior court judge. However, this same argument could be applied to every single case that comes before the [Alaska Superior] court. In conclusion, he opined that since the Alaska Superior Court is capable of understanding all of the details involved in the incredibly complicated issue of an oil company's duty to develop, for example, it can certainly understand a workers' compensation appeal.

3:13:30 PM

REPRESENTATIVE DAHLSTROM made a motion to adopt Conceptual Amendment 1, to "add the second injury fund and insert it in the appropriate places of the bill."

CHAIR MCGUIRE objected for the purpose of discussion.

REPRESENTATIVE DAHLSTROM opined that Conceptual Amendment 1 will provide a needed leveling mechanism for business.

REPRESENTATIVE ANDERSON indicated that he agrees with Mr. Cattanach's comments regarding the second injury fund, and therefore he objects to Conceptual Amendment 1.

REPRESENTATIVE GARA said he supports Conceptual Amendment 1 and is wondering whether eliminating the second injury fund will have a lingering affect on insurance premiums for some employers.

CHAIR MCGUIRE said she supports Conceptual Amendment 1 and anticipates further discussion on the issue as the bill continues through the process.

REPRESENTATIVE COGHILL referred to the aforementioned recognition by the Alaska Supreme Court that if there is no second injury fund, then the last employer could end up bearing great responsibility because of the existence of the last injurious exposure rule, adding that this causes him concern. He said he would be supporting Conceptual Amendment 1.

3:17:25 PM

A roll call vote was taken. Representatives McGuire, Coghill, Dahlstrom, Gruenberg, and Gara voted in favor of Conceptual Amendment 1. Representatives Anderson and Kott voted against it. Therefore, Conceptual Amendment 1 was adopted by a vote of 5-2.

[3:17:49 PM](#)

REPRESENTATIVE ANDERSON moved to report HCS CSSB 130(L&C), as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE KOTT objected, and said that he is not prepared to move the bill from committee today because he wants to be very sure Conceptual Amendment 1 will have the desired effect.

[3:19:01 PM](#)

CHAIR McGUIRE expressed a preference for moving the bill from committee today, and suggested that further concerns could be addressed as the bill continues through the process.

REPRESENTATIVE ANDERSON concurred.

[3:20:28 PM](#)

A roll call vote was taken. Representatives McGuire, Anderson, and Coghill voted in favor of reporting HCS CSSB 130(L&C), as amended, from committee. Representatives Kott, Dahlstrom, Gruenberg, and Gara voted against it. Therefore, the motion to report HCS CSSB 130(L&C), as amended, from committee failed by a vote of 3-4.

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:21 p.m.