

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

May 6, 2005

1:44 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

COMMITTEE CALENDAR

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."

- MOVED CSSB 135(JUD)(efd am) 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."

- MOVED HCS CSSB 130(JUD) OUT OF COMMITTEE

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."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 135

SHORT TITLE: ASSAULT & CUSTODIAL INTERFERENCE

SPONSOR(S): SENATOR(S) DYSON

03/08/05	(S)	READ THE FIRST TIME - REFERRALS
03/08/05	(S)	JUD, FIN
04/06/05	(S)	JUD AT 8:30 AM BUTROVICH 205
04/06/05	(S)	Scheduled But Not Heard
04/14/05	(S)	JUD AT 8:00 AM BUTROVICH 205
04/14/05	(S)	Moved CSSB 135(JUD) Out of Committee
04/14/05	(S)	MINUTE(JUD)
04/14/05	(S)	JUD RPT CS 1DP 3NR 1AM SAME TITLE

04/14/05 (S) DP: SEEKINS
 04/14/05 (S) NR: FRENCH, THERRIAULT, HUGGINS
 04/14/05 (S) AM: GUESS
 04/30/05 (S) FIN AT 9:00 AM SENATE FINANCE 532
 04/30/05 (S) Scheduled But Not Heard
 05/01/05 (H) FIN AT 1:00 PM HOUSE FINANCE 519
 05/01/05 (S) Moved CSSB 135(JUD) Out of Committee
 05/01/05 (S) MINUTE(FIN)
 05/01/05 (S) FIN RPT CS(JUD) 3DP 2NR
 05/01/05 (S) DP: WILKEN, GREEN, DYSON
 05/01/05 (S) NR: OLSON, STEDMAN
 05/03/05 (S) TRANSMITTED TO (H)
 05/03/05 (S) VERSION: CSSB 135(JUD)(EFD AM)
 05/04/05 (H) READ THE FIRST TIME - REFERRALS
 05/04/05 (H) JUD, FIN
 05/05/05 (H) JUD AT 1:00 PM CAPITOL 120
 05/05/05 (H) Scheduled But Not Heard
 05/06/05 (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) JUD RPT CS FORTHCOMING 1DP 4NR
04/08/05 (S) DP: SEEKINS
04/08/05 (S) NR: FRENCH, GUESS, THERRIAULT, HUGGINS
04/08/05 (S) FIN AT 9:00 AM SENATE FINANCE 532
04/08/05 (S) <Pending Referral>
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 (H) READ THE FIRST TIME - REFERRALS
04/15/05 (H) L&C, JUD, FIN
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)
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) HCS(L&C) NT RECEIVED
05/05/05 (H) JUD AT 1:00 PM CAPITOL 120
05/05/05 (H) Failed To Move Out Of Committee
05/05/05 (H) MINUTE(JUD)
05/05/05 (H) FIN AT 1:30 PM HOUSE FINANCE 519
05/05/05 (H) <Pending Referral>
05/06/05 (H) JUD AT 1:00 PM CAPITOL 120

BILL: SB 132

SHORT TITLE: HUMAN RIGHTS COMMISSION

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

03/04/05 (S) READ THE FIRST TIME - REFERRALS
03/04/05 (S) STA, JUD
03/17/05 (S) STA AT 3:30 PM BUTROVICH 205
03/17/05 (S) Heard & Held
03/17/05 (S) MINUTE(STA)
03/29/05 (S) STA AT 3:30 PM BELTZ 211
03/29/05 (S) Moved SB 132 Out of Committee
03/29/05 (S) MINUTE(STA)
03/30/05 (S) STA RPT 3NR 1AM
03/30/05 (S) NR: THERRIAULT, WAGONER, HUGGINS
03/30/05 (S) AM: DAVIS
04/07/05 (S) JUD AT 8:30 AM BUTROVICH 205
04/07/05 (S) Scheduled But Not Heard
04/08/05 (H) JUD AT 8:00 AM CAPITOL 120
04/08/05 (S) Scheduled But Not Heard
04/14/05 (S) JUD AT 8:00 AM BUTROVICH 205
04/14/05 (S) Moved SB 132 Out of Committee
04/14/05 (S) MINUTE(JUD)
04/14/05 (S) JUD RPT 1DP 2NR 2AM
04/14/05 (S) DP: SEEKINS
04/14/05 (S) NR: THERRIAULT, HUGGINS
04/14/05 (S) AM: FRENCH, GUESS
04/21/05 (S) TRANSMITTED TO (H)
04/21/05 (S) VERSION: SB 132(EFD FLD)
04/22/05 (H) READ THE FIRST TIME - REFERRALS
04/22/05 (H) STA, JUD
05/03/05 (H) STA AT 8:00 AM CAPITOL 106
05/03/05 (H) Heard & Held
05/03/05 (H) MINUTE(STA)
05/05/05 (H) STA AT 8:00 AM CAPITOL 106
05/05/05 (H) Moved HCS SB 132(STA) Out of Committee
05/05/05 (H) MINUTE(STA)
05/05/05 (H) STA RPT HCS(STA) 4DP 1AM
05/05/05 (H) DP: LYNN, GATTO, ELKINS, SEATON;

05/05/05 (H) AM: GRUENBERG
05/05/05 (H) JUD AT 1:00 PM CAPITOL 120
05/05/05 (H) Scheduled But Not Heard
05/06/05 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

JASON HOOLEY, Staff
to Senator Fred Dyson
Senate Health, Education and Social Services Standing Committee
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented SB 135 on behalf of the sponsor,
Senator Dyson.

DEAN J. GUANELI, Chief Assistant Attorney General
Legal Services Section-Juneau
Criminal Division
Department of Law (DOL)
Juneau, Alaska
POSITION STATEMENT: Responded to questions during discussion of
SB 135.

SCOTT J, NORDSTRAND, Deputy Attorney General
Civil Division
Office of the Attorney General
Department of Law (DOL)
Anchorage, Alaska
POSITION STATEMENT: Presented SB 132 on behalf of the
administration and responded to questions.

ACTION NARRATIVE

CHAIR LESIL McGUIRE called the House Judiciary Standing
Committee meeting to order at [1:44:37 PM](#). Representatives
McGuire, Anderson, Coghill, Kott, and Gara were present at the
call to order. Representatives Dahlstrom and Gruenberg arrived
as the meeting was in progress.

SB 135 - ASSAULT & CUSTODIAL INTERFERENCE

[1:44:50 PM](#)

CHAIR McGUIRE announced that the first order of business would
be 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."

JASON HOOLEY, Staff to Senator Fred Dyson, Senate Health, Education and Social Services Standing Committee, Alaska State Legislature, presented SB 135 on behalf of the sponsor, Senator Dyson. He relayed that the concept of SB 135 was brought to the sponsor by the Criminal Division, Department of Law, in response to a couple of Alaska Court of Appeals cases in which the defendants escaped being held accountable for their actions. The bill addresses two crimes: assault and custodial interference.

MR. HOOLEY explained that currently an adult person commits the crime of assault in the third degree if he/she recklessly causes injury to a child under 10 years of age and the injury reasonably requires medical attention. The bill would modify that language such that the crime of assault in the third degree would apply in instances where the injury would cause a reasonable caregiver to seek medical attention from a health care professional in the form of diagnosis or treatment. He also explained that Section 2 of the bill would add a new subsection to AS 11.41.330 such that if a noncustodial parent takes or holds a child without proper permission or authority, he/she cannot claim the affirmative defense of necessity under AS 11.81.320 unless he/she releases the child within the shorter of either 24 hours or the time necessary to report to a peace officer or social service agency that the child has been abused, neglected, or is in eminent physical danger.

REPRESENTATIVE GARA, referring to the proposed change regarding custodial interference, asked for a description of current law.

[1:47:01 PM](#)

DEAN J. GUANELI, Chief Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), said that it is the DOL's view that there really is no affirmative defense of necessity in a custodial interference case. In Perrin v. State, however, the Alaska Court of Appeals created a form of an affirmative defense for situations in which a parent takes a child and then later claims that he/she took the child because he/she thought that the child was being abused or neglected by the custodial parent. In Perrin, he opined, there was no evidence that the child was being abused or neglected, and that presumably the claim of such was just an attempt to get custody of the child. After one court-approved visitation, the defendant took his child and left the state, changing his appearance and name. The defendant was gone from

the state for over three months, and when he was finally caught by authorities, he argued that he only took the child because he felt that the child was being neglected.

MR. GUANELI said that the DOL doesn't think that such an argument ought to be what state policy provides for, and thinks that such a defense should not be tolerated. He then described the language change being proposed in Section 2 of the bill, adding his belief that if a person is really concerned about the health and welfare of a child, then he/she should speak to the authorities about it or take the matter to court.

[1:50:20 PM](#)

REPRESENTATIVE GARA, after offering his understanding of how the affirmative defense of necessity currently works and how the proposed change would work, opined that the proposed change doesn't seem to be a good policy unless the current system is being abused, particularly given how hard it is to prove affirmative defense of necessity to a jury.

MR. GUANELI suggested that the policy decision for the legislature to make is whether "these kinds of allegations," made without evidence, warrant turning a criminal trial into a re-litigation of all the issues that have already been decided with regard to a child custody matter. He opined that doing such would be improper. He offered his belief that if there really is evidence of abuse or neglect, a peace officer or social service agency is going to take action.

REPRESENTATIVE GARA referred to an Anchorage newspaper article which he said illustrates that 40 percent of all child abuse cases have been "sitting at the Anchorage Police Department (APD) for close to a year." Therefore, he said he is concerned with the idea that it's a crime to take child away from an abusive situation when no one responds to requests for help.

[1:53:53 PM](#)

MR. GUANELI, in response to a question, said that the defendant in the Perrin case was convicted without being allowed to present evidence to the jury, and the Alaska Court of Appeals ruled that the defendant ought to have been allowed do so. He offered his belief that the question before the committee is whether state policy should allow child custody matters to be litigated in a criminal court.

REPRESENTATIVE ANDERSON asked Representative Gara whether he would be amenable to changing the timeframe proposed AS 11.41.330(c)(1) from 24 hours to 48 hours.

REPRESENTATIVE GARA indicated that he would be, though he also indicated that he would be amenable to having an affirmative defense of necessity not be accepted in situations where the case isn't reported to a peace officer or social service agency within "a reasonably necessary amount of time". He characterized "24 hours" as an arbitrary timeframe.

MR. GUANELI predicted that the question would then become what amount of time would be considered reasonably necessary, and that there may be jurors who would find the timeframe of several months, as occurred in the Perrin case, to be "reasonably necessary." He relayed that he has received many calls from custodial parents saying that their children have been taken away and have been missing for months, and that it is heartbreaking to have to say to them that nothing can be done until the children are found. Then, when they are found, to have the person who took them use the affirmative defense of necessity by claiming in court that the children were neglected or abused, even though there is no evidence to support such a claim, is a shame and denies a custodial parent his/her court-granted custodial rights. Mr. Guaneli concluded by characterizing the change proposed via SB 135 as a reasonable one.

[1:57:44 PM](#)

REPRESENTATIVE GARA reiterated that an affirmative defense of necessity is difficult to prove - the courts require a specifically high burden of proof before allowing one to offer such a defense. He said he doesn't buy the argument that there might be some jurors who could consider a few months to be a reasonably necessary amount of time, adding that he doesn't have any fear that such will occur. He again characterized "24 hours" as an arbitrary timeframe.

REPRESENTATIVE GRUENBERG mentioned that he has been involved in cases wherein a noncustodial parent has taken the children and never returned or has taken the children and then killed them before committing suicide. He offered his understanding that at least in Alaska one can obtain an ex parte domestic violence protective order, giving one emergency custody of a child.

MR. GUANELI concurred.

REPRESENTATIVE GRUENBERG predicted that allowing a person a 48-hour "head start" may make it impossible to find him/her and the children he/she took.

[2:01:19 PM](#)

CHAIR MCGUIRE, after ascertaining that no one else wished to testify, closed public testimony on SB 135.

REPRESENTATIVE GARA, after offering a hypothetical example of a situation for which Section 2 of the bill would apply, made a motion to adopt Conceptual Amendment 1, to delete the language on page 2, line 18, and to then stipulate the timeframe to be that which is reasonably necessary. He again characterized the 24-hour timeframe as arbitrary and opined that juries will see through an illegitimate affirmative defense of necessity.

REPRESENTATIVE ANDERSON objected. He indicated a preference for keeping the language in Section 2 as is.

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

[2:04:47 PM](#)

CHAIR MCGUIRE, remarking that she understands Representative Gara's concern, said she would like to receive an update next year from the department regarding whether the proposed language actually addresses the perceived problem or whether it instead causes more harm.

[2:05:58 PM](#)

REPRESENTATIVE GRUENBERG suggested that members might find it worthwhile to read the dissenting opinion in the Perrin case.

REPRESENTATIVE GARA [suggested a possible second] amendment that would alter the language such that it would refer to the shorter of either "72 hours or the time necessary ...". Under such a language change, he predicted, one must still prove that taking a child saved the child from harm.

REPRESENTATIVE GRUENBERG predicted, though, that the argument in such cases will then become what amount of time was necessary.

He remarked that as a practical matter having a bright line such as is currently in the bill will make it easier to determine whether too much time has elapsed. He also predicted that having a 72-hour timeframe will complicate such cases.

REPRESENTATIVE ANDERSON concurred.

REPRESENTATIVE GARA said he would be shocked if the DOL ever returned to the legislature to complain that a particular piece of legislation made it too easy to convict someone.

REPRESENTATIVE GRUENBERG asked how many custodial interference cases are prosecuted in a year.

[2:09:05 PM](#)

MR. GUANELI said less than 20. He agreed that it is very hard to locate people who take a child and flee, and that some never return or return only after the children are all grown, such as occurred in a case wherein the father took his four children to Australia. He said that in this heartbreaking case, the woman pointed out that she had essentially lost her children because the father went out of his way to turn them against her. Mr. Guaneli said he respects Representative Gara's views, but pointed out that in custodial interference cases the DOL takes a careful look to see whether there is a reasonable explanation for why a child was held too long. If there is a reasonable explanation then the DOL won't convict, because the DOL is not interested in prosecuting such cases. The DOL's fear is that someone who is taking a child for the wrong reason will be unjustly acquitted.

REPRESENTATIVE GRUENBERG said he is more interested in focusing on "pre-trial." He asked whether there is anything that the legislature can do to help locate noncustodial parents that take their children and flee the state.

CHAIR McGUIRE suggested that that issue could be better addressed at another time.

[2:11:37 PM](#)

REPRESENTATIVE ANDERSON moved to report CSSB 135(JUD)(efd am) out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, CSSB 135(JUD)(efd am) was reported from the House Judiciary Standing Committee.

SB 130 - WORKERS' COMPENSATION/ INSURANCE

2:11:52 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), as amended on
5/5/05.]

The committee took an at-ease from 2:12 p.m. to 2:13 p.m.

2:13:57 PM

REPRESENTATIVE KOTT relayed that he'd objected to moving the bill from committee yesterday because he'd had concerns regarding the "second injury fund," and was hoping to acquire further information on that issue. He added:

It still seems to be somewhat confusing as to whether or not the second injury fund is working or not. My sense is that we err on the side of conservatism. I think at this point we should leave the second injury fund as is, in the bill, as it was put in yesterday, [and I think] Representative Coghill thought the same - [that] there may be some other impacts from a judicial standpoint. So I think at this point, between now and whenever this bill reaches us on the floor for a vote, there'll still be sufficient time.

But I believe, at this point, that we should leave that second injury fund in the bill in spite of what Mr. Cattanach said, that it's not working. So I haven't been convinced one way or the other that it is or is not working. I know it is somewhat of a cost driver [though] we couldn't get the numbers from the Division of Insurance [regarding] what it was costing employers to keep it in. I still believe there is a tail on some of those cases, and I'm a little concerned that those injured workers may not get what is ultimately due to them.

REPRESENTATIVE KOTT, in conclusion, relayed that having been given some assurance that his concerns are being met, he is now willing to move the bill from committee.

REPRESENTATIVE KOTT moved to report HCS CSSB 130(L&C) [as amended] out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCS CSSB 130(JUD) was reported from the House Judiciary Standing Committee.

SB 132 - HUMAN RIGHTS COMMISSION

CHAIR McGUIRE announced that the final order of business would be 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." [Before the committee was HCS SB 132(STA).]

[2:16:35 PM](#)

SCOTT J, NORDSTRAND, Deputy Attorney General, Civil Division, Office of the Attorney General, Department of Law (DOL), presented SB 132 on behalf of the administration. He said that the bill is designed to enhance the effectiveness of the Alaska State Commission for Human Rights ("commission") by allowing the commission to evaluate complaints of unlawful discrimination and allocate its resources to prosecuting those complaints that will best serve the commission's goal of eliminating unlawful discrimination. The bill will improve the commission's procedures, will enhance the fairness of commission procedures, will clarify the remedies that the commission may award, and will address some housekeeping matters.

MR. NORDSTRAND relayed that in general, SB 132 is designed to address the lack of prosecutorial discretion that the commission now suffers from based on an interpretation of the Alaska Supreme Court case, Department of Fish & Game v. Meyer, which said that a finding of substantial evidence requires the commission to pursue further procedures. The bill adds statutory provisions allowing the commission to exercise prosecutorial discretion and dismiss claims that wouldn't be in the best interest of using state resources. He remarked that procedural aspects are included in the bill, clarifying for participants what they are being charged with and why, and a summary judgment procedure has been added as well. Furthermore, the bill lists the possible remedies available to the commission to alleviate discrimination, though because it is not an all-inclusive list, the statement that any appropriate relief may be awarded has been left in existing statute.

[2:19:31 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1, which read [original punctuation provided]:

Page 2, line 27:

Delete "The commission, in its"

Page 2, line 28, through page 3, line 1:
Delete all material.

Page 3, line 4:
Delete ", in the executive director's
discretion,"

Page 3, following line 15:
Insert the following new material:
"(c) The commission, in its discretion, may, but
is not required to, review the executive director's
order of dismissal under (a) or (b) of this section
and may affirm the order, remand the complaint for
further investigation, or, if the commission concludes
that substantial evidence supports the complaint of an
unlawful discriminatory practice, refer the complaint
for conference, conciliation, and persuasion as
provided in AS 18.80.110, or for hearing."

Page 3, line 16:
Delete "(c)"
Insert "(d)"

Page 3, line 22:
Delete ", in the executive director's
discretion,"

REPRESENTATIVE ANDERSON objected for the purpose of discussion.

MR. NORDSTRAND, in response to comments and questions by Representative Gruenberg, explained that Amendment 1 changes the language currently in Section 4 such that the proposed provision allowing the commission to review an executive director's order of dismissal would apply to both subsection (a) and subsection (b) of proposed AS 18.80.112 - currently that proposed provision only applies to subsection (a) - and also deletes language that suggests that the discretion to review an executive director's order of dismissal lies solely with the executive director.

REPRESENTATIVE ANDERSON removed his objection.

CHAIR McGUIRE asked whether there were further objections to Amendment 1. There being none, Amendment 1 was adopted.

[2:23:29 PM](#)

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on SB 132.

REPRESENTATIVE GRUENBERG mentioned that he and Mr. Nordstrand had discussed another possible amendment. Referring to the language on page 3, line 31 - which stipulates that a person [charged in an accusation] may file a written answer and may appear at the hearing, with or without counsel and submit evidence - he said he wants to be very clear that current law does not provide free counsel. He suggested that the aforementioned language should include the phrase, "at their own expense".

MR. NORDSTRAND, after clarifying that the aforementioned language pertains to those charged in an accusation, he pointed out that the commission retains the discretion to award reasonable expenses, including attorney fees, as it deems appropriate.

REPRESENTATIVE GRUENBERG remarked, then, that he would not offer an amendment to change the aforementioned language.

REPRESENTATIVE GARA opined that SB 132 has substantial problems. For example, the bill refers to "discriminatory practice", and therefore his concern, he relayed, is that such language will stipulate that the behavior must be institutionalized and repetitive before anyone can seek relief. He then indicated that he would be offering an amendment to change the term "discriminatory practice" to "discriminatory conduct".

MR. NORDSTRAND explained that the DOL is merely trying to conform the language in the provisions being changed by the bill to the language currently in AS 18.80.220, for example, which pertains to unlawful employment "practices." The use of the term "discriminatory practice" is not meant to change the intent of the law, but rather to merely provide for consistency. He offered his understanding that a single act of discrimination would certainly still constitute behavior sufficient to give rise to a discrimination claim.

REPRESENTATIVE GARA indicated that he is still concerned about this issue, that the term "practice" will be interpreted to mean only a course of conduct. He asked Mr. Nordstrand whether he would be amenable to a conceptual amendment which would stipulate that a single occurrence can constitute a practice under SB 132.

MR. NORDSTRAND said he doesn't know where such a conceptual amendment would go, and offered his belief that [current] statute already describes [single occurrences] as practices. He elaborated:

What is being described here as being subject of the complaint, it has to refer to violating the rest of the statute, and the rest of the statute describes these things as unlawful employment and discrimination practices. So I think it would make it ... less clear. ... "Unlawful financing practice" - AS 18.80.250; "Unlawful practices in the sale or rental of real property" - that's AS 18.80.240; "Unlawful practices in places of public accommodation" - AS 18.80.230: I think it makes sense for the violation to track what the actual description of the discriminatory practices are, and that's all we were trying to do.

[2:28:47 PM](#)

REPRESENTATIVE GARA, after relaying his understanding of Mr. Nordstrand's point, made a motion to adopt Conceptual Amendment 2, to define, somewhere in statute, "discriminatory practice" as including a practice that involves one occurrence of that conduct.

CHAIR MCGUIRE suggested that Conceptual Amendment 2 should say, "one or more".

REPRESENTATIVE GARA concurred. [Although no formal motion to amend Conceptual Amendment 2 was made, Conceptual Amendment 2 was treated as amended.]

REPRESENTATIVE ANDERSON objected to the motion to adopt Conceptual Amendment 2 [as amended]. He opined that such a definition change ought to be part of a different bill, and offered his interpretation of Mr. Nordstrand's comments.

MR. NORDSTRAND opined that there is a difference between "conduct" and "practice" in the sense that conduct is essentially evidence of a practice, and offered his belief that the statute says one cannot engage in a practice that is illegal under the statute. It's important, he added, to provide consequences for what the statute says is an unlawful practice, and the conduct - whether it be one act or several - gives rise to the unlawful practice itself.

REPRESENTATIVE ANDERSON surmised, then, that Mr. Nordstrand is saying that "practice" encapsulates "conduct", and thus use of the word "practice" will make the bill broader and better.

[2:31:46 PM](#)

MR. NORDSTRAND concurred.

REPRESENTATIVE DAHLSTROM asked whether adoption of Conceptual Amendment 2 [as amended] would weaken the bill. If not, she surmised, then the intent of the bill would remain while members' concerns would also be addressed.

MR. NORDSTRAND said he would be very concerned about trying to define the word "conduct" in a specific way. For example discrimination might not be displayed as an action, it might instead be displayed as a failure to act. Therefore, the best default might perhaps be to have all the statutes use only the word "conduct", he remarked, but pointed out that such a word is ambiguous and the DOL had wanted to avoid that. Furthermore, if the word "conduct" is used, then each of the statutes pertaining to discrimination would have to be rewritten such that they each specifically list what constitutes the unlawful behavior and whether committing that behavior only once is sufficient for violation. He elaborated:

The statute isn't written in terms of actions. It's not written in terms of, "one act of something is unlawful." It says it's unlawful to discriminate. That means if you acted in such a way, for these improper motives -- and it's really about motives, in a sense, not about the particular act, and that's what makes it hard to define that way. I think [it] could make a difference.

REPRESENTATIVE ANDERSON concurred.

[2:34:38 PM](#)

REPRESENTATIVE GARA withdrew Conceptual Amendment 2 [as amended] but noted that when words in the law are changed, courts could construe the act of changing those words to mean that the legislature intends for the law to have a different meaning than it used to. He said he is comfortable with the meaning currently being used, and is a little uncomfortable with the

meaning that could be construed via use of the new term. He expressed a desire for the law to be made clearer.

REPRESENTATIVE GRUENBERG mentioned that he'd served as a hearing officer on a number of State Commission for Human Rights cases several years ago, and noted that there is a whole body of common law construing current law with regard to the terms "practice" and "conduct", adding that his preference would be to be very careful about changing or upsetting what he referred to as a very carefully crafted area of law.

[2:36:57 PM](#)

REPRESENTATIVE GARA referred to page 2, lines 7-9, which stipulates that a complaint must be filed within 180 days. He asked what the current statute of limitations is for the [commission] to bring an action.

MR. NORDSTRAND replied that it, too, is 180 days, though it is a regulatory limitation rather than a statutory limitation.

REPRESENTATIVE GARA said he is a little uncomfortable saying that a person has to complain that quickly in order to get help from the State of Alaska.

MR. NORDSTRAND said that timeframe is consistent with federal law and doesn't preclude an aggrieved person from bringing a human rights Act claim in court for up to two years, the actual statute of limitations; rather, the timeframe of 180 days merely allows the [commission] to set a reasonable period of time after the discriminatory act for a person to come to the [commission] for help. He said the DOL felt it was not appropriate for a statute of limitations to be in a regulation, and therefore thought any timeframe limitation should become part of statute.

REPRESENTATIVE GARA made a motion to adopt Amendment 3, to change - in Section 2, proposed subsection (c) - "180" days to "one year".

REPRESENTATIVE ANDERSON objected. He opined that a half a year is a sufficient timeframe.

REPRESENTATIVE COGHILL asked whether there have been any situations wherein the 180-day timeframe has not been sufficient.

MR. NORDSTRAND said it is possible that someone may have missed the timeframe, but suggested that it makes sense for the commission to have the same statute of limitations regarding agency discrimination claims as the U.S. Equal Employment Opportunity Commission (EEOC), particularly since the two have "sharing agreements."

[HCS SB 132(STA), as amended, was held over with the motion to adopt Amendment 3 left pending.]

ADJOURNMENT

The House Judiciary Standing Committee was recessed at 2:41 p.m. to a call of the chair. [The meeting was never reconvened.]