

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 24, 2006

2:17 p.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson
Representative John Coghill
Representative Peggy Wilson
Representative Les Gara
Representative Max Gruenberg

MEMBERS ABSENT

Representative Pete Kott

OTHER LEGISLATORS PRESENT

Representative Bill Stoltze

COMMITTEE CALENDAR

HOUSE BILL NO. 329

"An Act relating to bail."

- MOVED CSHB 329(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 446

"An Act relating to the amount of a civil penalty for an unlawful act or practice in the conduct of trade or commerce."

- MOVED CSHB 446(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 441

"An Act relating to operating or driving a motor vehicle, aircraft, or watercraft while under the influence; relating to mitigating factors in sentencing; amending Rule 35, Alaska Rules of Criminal Procedure; and providing for an effective date."

- MOVED HB 441 OUT OF COMMITTEE

HOUSE BILL NO. 414

"An Act relating to allowing a parent or guardian of a minor to intercept the private communications of the minor and to consent

to an order authorizing law enforcement to intercept the private communications of the minor."

- HEARD AND HELD

HOUSE BILL NO. 93

"An Act relating to dentists and dental hygienists and the Board of Dental Examiners; establishing certain committees for the discipline and peer review of dentists; excluding the adjudicatory proceedings of the Board of Dental Examiners and its committees from the Administrative Procedure Act and from the jurisdiction of the office of administrative hearings; and providing for an effective date."

- MOVED CSHB 93(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 329

SHORT TITLE: BAIL RESTRICTIONS

SPONSOR(S): REPRESENTATIVE(S) STOLTZE, LYNN

01/09/06	(H)	PREFILE RELEASED 12/30/05
01/09/06	(H)	READ THE FIRST TIME - REFERRALS
01/09/06	(H)	JUD, FIN
02/23/06	(H)	JUD AT 10:00 AM CAPITOL 120
02/23/06	(H)	Heard & Held
02/23/06	(H)	MINUTE(JUD)
02/24/06	(H)	JUD AT 2:00 PM CAPITOL 120

BILL: HB 446

SHORT TITLE: PENALTY FOR UNLAWFUL TRADE PRACTICE

SPONSOR(S): REPRESENTATIVE(S) MCGUIRE

02/13/06	(H)	READ THE FIRST TIME - REFERRALS
02/13/06	(H)	JUD, FIN
02/24/06	(H)	JUD AT 2:00 PM CAPITOL 120

BILL: HB 441

SHORT TITLE: THERAPEUTIC COURT FOR DUI/SENTENCING

SPONSOR(S): REPRESENTATIVE(S) ROKEBERG

02/10/06	(H)	READ THE FIRST TIME - REFERRALS
02/10/06	(H)	JUD, FIN
02/24/06	(H)	JUD AT 2:00 PM CAPITOL 120

BILL: HB 414

SHORT TITLE: INTERCEPTION OF MINOR'S COMMUNICATIONS
SPONSOR(S): REPRESENTATIVE(S) KOTT

02/01/06 (H) READ THE FIRST TIME - REFERRALS
02/01/06 (H) HES, JUD
02/14/06 (H) HES AT 3:00 PM CAPITOL 106
02/14/06 (H) Moved CSHB 414(HES) Out of Committee
02/14/06 (H) MINUTE(HES)
02/17/06 (H) HES RPT CS(HES) 4DP 1NR 2AM
02/17/06 (H) DP: GARDNER, KOHRING, SEATON, WILSON;
02/17/06 (H) NR: CISSNA;
02/17/06 (H) AM: ANDERSON, GATTO
02/23/06 (H) JUD AT 10:00 AM CAPITOL 120
02/23/06 (H) Scheduled But Not Heard
02/24/06 (H) JUD AT 2:00 PM CAPITOL 120

BILL: HB 93

SHORT TITLE: DENTISTS AND DENTAL HYGIENISTS
SPONSOR(S): REPRESENTATIVE(S) ANDERSON

01/21/05 (H) READ THE FIRST TIME - REFERRALS
01/21/05 (H) L&C, JUD, FIN
01/28/05 (H) L&C AT 3:15 PM CAPITOL 17
01/28/05 (H) -- Meeting Canceled --
02/02/05 (H) L&C AT 3:15 PM CAPITOL 17
02/02/05 (H) Heard & Held
02/02/05 (H) MINUTE(L&C)
01/18/06 (H) L&C AT 3:15 PM CAPITOL 17
01/18/06 (H) Moved CSHB 93(L&C) Out of Committee
01/18/06 (H) MINUTE(L&C)
01/20/06 (H) L&C RPT CS(L&C) 1DP 3NR 2AM
01/20/06 (H) DP: ANDERSON;
01/20/06 (H) NR: LYNN, KOTT, LEDOUX;
01/20/06 (H) AM: CRAWFORD, GUTTENBERG
02/10/06 (H) JUD AT 1:00 PM CAPITOL 120
02/10/06 (H) <Bill Hearing Canceled>
02/24/06 (H) JUD AT 2:00 PM CAPITOL 120

WITNESS REGISTER

BEN MULLIGAN, Staff
to Representative Bill Stoltze
House Finance Committee
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Explained the proposed CS for HB 329, Version Y, on behalf of one of the prime sponsors, Representative Stoltze.

TED POPELY
Legislative Council Legal Office
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 446 on behalf of the sponsor, Representative McGuire.

CYNTHIA DRINKWATER, Assistant Attorney General
Commercial/Fair Business Section
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of HB 446.

STEVE CLEARY, Executive Director
Alaska Public Interest Research Group (AkPIRG)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 446.

HEATHER NOBREGA, Staff
to Representative Norman Rokeberg
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 441 on behalf of the sponsor, Representative Rokeberg.

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

POSITION STATEMENT: Testified in support of HB 441.

MICHAEL O'HARE, Staff
to Representative Pete Kott
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 414 on behalf of the sponsor, Representative Kott.

HEATH HILYARD, Staff
to Representative Tom Anderson

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented the proposed CS for HB 93, Version S, on behalf of the sponsor, Representative Anderson.

DAVID G. LOGAN, D.D.S., Chairman
Legislative Affairs Committee
Alaska Dental Society
Juneau, Alaska

POSITION STATEMENT: Responded to questions during discussion of HB 93.

GEORGE SHAFFER, D.D.S., Member
Legislative Affairs Committee
Alaska Dental Society
Ketchikan, Alaska

POSITION STATEMENT: Responded to questions during discussion of HB 93.

ACTION NARRATIVE

CHAIR LESIL McGUIRE called the House Judiciary Standing Committee meeting to order at [2:17:37 PM](#). Representatives McGuire, Gruenberg, Wilson, and Coghill were present at the call to order. Representatives Gara and Anderson arrived as the meeting was in progress.

HB 329 - BAIL RESTRICTIONS

[2:18:43 PM](#)

CHAIR McGUIRE announced that the first order of business would be HOUSE BILL NO. 329, "An Act relating to bail." [Before the committee was a proposed committee substitute (CS) for HB 329, Version 24-LS1302\F, Luckhaupt, 2/14/06, which had been adopted as the work draft on 2/23/06; in committee packets was a proposed committee substitute (CS) for HB 329, Version 24-LS1302\Y, Luckhaupt, 2/23/06.]

The committee took an at-ease from 2:19 p.m. to 2:20 p.m.

[2:20:25 PM](#)

REPRESENTATIVE COGHILL moved to adopt the proposed CS for HB 329, Version 24-LS1302\Y, Luckhaupt, 2/23/06, as the work draft. There being no objection, Version Y was before the committee.

[2:21:01 PM](#)

BEN MULLIGAN, Staff to Representative Bill Stoltze, House Finance Committee, Alaska State Legislature, one of the prime sponsors of HB 329, relayed on behalf of Representative Stoltze that Version Y will allow the court to temporarily release a defendant for the death of an immediate family member or for the birth of the defendant's child if the defendant is charged with a misdemeanor or a class B or C felony and the court solicits and considers information from the Department of Corrections (DOC) regarding the defendant's conduct while incarcerated.

[2:21:48 PM](#)

REPRESENTATIVE GRUENBERG referred to Amendment 1, which read [original punctuation provided]:

Page 1, Line 11, following "defendant"
Insert "who has not satisfied bail"

REPRESENTATIVE GRUENBERG asked whether there is any problem with Amendment 1.

REPRESENTATIVE COGHILL [although no formal motion had been made] objected for the purpose of discussion.

MR. MULLIGAN relayed that the sponsor, the DOC, and the Department of Law (DOL) have indicated that they are amenable to Amendment 1.

REPRESENTATIVE GRUENBERG [made a motion to adopt] Amendment 1.

CHAIR McGUIRE, in response to a question, offered her belief that the bill's current language is clear, but added that she is amenable to Amendment 1 if others are.

REPRESENTATIVE COGHILL removed his objection.

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

[2:23:13 PM](#)

REPRESENTATIVE COGHILL moved to report the proposed CS for HB 329, Version 24-LS1302\Y, Luckhaupt, 2/23/06, as amended, out of committee with individual recommendations and the accompanying

zero fiscal notes. There being no objection, CSHB 329(JUD) was reported from the House Judiciary Standing Committee.

REPRESENTATIVE GRUENBERG thanked the sponsor and the administration for working with him to address his concerns.

[CSHB 329(JUD) was reported from committee.]

HB 446 - PENALTY FOR UNLAWFUL TRADE PRACTICE

2:23:54 PM

CHAIR MCGUIRE announced that the next order of business would be HOUSE BILL NO. 446, "An Act relating to the amount of a civil penalty for an unlawful act or practice in the conduct of trade or commerce."

CHAIR MCGUIRE, speaking as the sponsor, noted that Alaska continues to top the nation in fraud complaints, and relayed that HB 446 attempts to tighten up Alaska's consumer protection laws and send a strong message that fraud will not be tolerated in Alaska.

2:24:57 PM

TED POPELY, Legislative Council Legal Office, Alaska State Legislature, relayed that HB 446 simply increases the civil penalties that the Department of Law (DOL) may avail itself of under the [Alaska Unfair Trade Practices and Consumer Protection Act], civil penalties that are used as a tool to enforce the Act against companies that may defraud Alaskan consumers. Currently the law permits civil penalties to be sought by the DOL and the attorney general in cases of consumer fraud, consumer deception, and other acts forbidden under the Act. The current civil penalties have been in place since the Act was originally enacted in 1970, and they are rather low in comparison to other states, particularly given the rate of inflation.

MR. POPELY explained that HB 446 proposes to modify two provisions of current law: AS 45.50.551(a) and AS 45.50.551(b). Proposed AS 45.50.551(a) will increase the civil penalty included therein from "\$25,000 per violation" to "\$50,000 for each violation", and will apply in situations where a company violates an injunction [or restraining order] pertaining to deceptive practices. Proposed AS 45.50.551(b) will change the civil penalty included therein from "\$5,000 per violation" to "not less than \$1,000 and not more than \$25,000 for each

violation", and will apply in situations where one violates a provision of the [Alaska Unfair Trade Practices and Consumer Protection Act].

[2:27:58 PM](#)

REPRESENTATIVE GRUENBERG referred to Section 1 of the bill, specifically the language in current law that says in part, "the cause shall be continued". He characterized this phrase as "ancient language," and asked whether it would be sufficient to simply say that the court retains jurisdiction.

CYNTHIA DRINKWATER, Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Anchorage), Department of Law (DOL), agreed that the phrase, "the cause shall be continued", is probably unnecessary.

REPRESENTATIVE GRUENBERG suggested that the same could be said of the phrase, "the attorney general acting in the name of the state may petition for recovery of the penalties", in that it seems to be requiring the attorney general to petition the court in a situation where only a writ of execution needs to be obtained.

MS. DRINKWATER pointed out, however, that the way the DOL requests civil penalties is initially via the complaint itself. Then, once a case is at the point where a final judgment is sought, the DOL asks for civil penalties via a motion for civil penalties. Therefore, according to her understanding, she remarked, the word "petition" is a bit broader than what Representative Gruenberg is suggesting.

REPRESENTATIVE GRUENBERG surmised, then, that the language is referring to the motion for civil penalties rather than a writ of execution.

MS. DRINKWATER concurred. In response to questions, she relayed that she doesn't see a problem with the way the current language in AS 45.50.551(a) is drafted.

REPRESENTATIVE GRUENBERG said he's wondering whether Section 3, the applicability provision of the bill, will cause an ex post facto problem from a constitutional standpoint. He noted that a memorandum he'd received from Legislative Legal and Research Services, written by Dennis C. Bailey, raises this issue and states in part:

In conclusion, I do not know how this issue would be resolved by a court. However, the applicability section you propose changes the penalty for events that have already occurred. The fines are designated as a penalty. It would be difficult to argue that the fines are compensatory rather than punitive. This seems to run afoul of the ex post facto prohibition.

REPRESENTATIVE GRUENBERG said it seems to him that the committee has three choices: leave the language as is and allow the court to decide; strike Section 3; or insert other language. He asked Ms. Drinkwater whether [the DOL] would be prepared to defend the current language if the committee left it as is.

MS. DRINKWATER suggested that perhaps Mr. Popely could better address that issue, but pointed out that Clyde (Ed) Sniffen, Jr. - Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Anchorage), Department of Law (DOL) - had conducted an analysis of that issue and had come to a different conclusion.

[2:34:10 PM](#)

MR. POPELY concurred with Ms. Drinkwater regarding Mr. Sniffen's opinion. Anytime there is an applicability section containing a date other than the effective date of the Act, it will raise a potential ex post facto issue, Mr. Popely remarked, but added that according to conversations he'd had with Mr. Sniffen, Mr. Sniffen doesn't think Section 3 will cause an ex post facto problem for several reasons: generally ex post facto challenges are directed at purely punitive actions, and the civil penalties in the bill are a hybrid of punitive and compensatory action; ex post facto challenges are generally most successful when they pertain to purely criminal acts and criminal violations, and the [Alaska Unfair Trade Practices and Consumer Protection Act] is not a criminal statute; the conduct referred to in the bill will have been illegal at the time the penalties are assessed and the bill doesn't create any new civil or criminal liability - instead the amount of liability is simply altered; and no substantive rights are being denied via the proposed increases.

MR. POPELY said that these are all points that the court looks at in making an ex post facto analysis. Mr. Popely offered his understanding that there are only a handful of pending cases that would be impacted by the proposed applicability provision as it is currently written, and that any new cases that [are

filed] after the effective date of the bill won't be affected by the applicability provision.

REPRESENTATIVE GRUENBERG posited that that won't necessarily be the case, and offered an example wherein an action is brought within the statute of limitations against a company that committed fraud in the past but no one knew about it.

MR. POPELY concurred with that point.

CHAIR McGUIRE suggested that they ought to provide the state with the option of seeking the aforementioned civil penalties if it is willing to pursue them.

REPRESENTATIVE GRUENBERG concurred.

MR. POPELY also concurred.

[2:38:48 PM](#)

STEVE CLEARY, Executive Director, Alaska Public Interest Research Group (AkPIRG), indicated that he concurs with the comments in favor of HB 446, characterizing the bill as a great way to modernize consumer protection in Alaska. It's good to know that the consumer protection laws are about to be updated, he remarked, adding that those updates, along with other legislation currently moving through the process are things that the DOL will be able to make use of. He concluded by indicating that [AkPIRG] is in full support [of the bill].

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on HB 446.

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1, to delete the phrase, "and the cause shall be continued," from page 1, lines 8-9.

REPRESENTATIVE ANDERSON objected for the purpose of discussion.

CHAIR McGUIRE said she is assuming that if Mr. Sniffen had had concerns about the phrase that Amendment 1 proposes to delete, he would have brought those concerns to the committee's attention.

REPRESENTATIVE GRUENBERG, in response to a question, offered that the aforementioned phrase is not modern terminology. He

indicated that he is amenable to having the language reinserted later if Mr. Sniffen objects to its removal.

REPRESENTATIVE COGHILL offered his understanding that by retaining jurisdiction, a district would be able to continue an action.

REPRESENTATIVE GRUENBERG concurred.

REPRESENTATIVE ANDERSON removed his objection.

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

[2:42:37 PM](#)

REPRESENTATIVE COGHILL moved to report HB 446, as amended, out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, CSHB 446(JUD) was reported from the House Judiciary Standing Committee.

HB 441 - THERAPEUTIC COURT FOR DUI/SENTENCING

[2:43:25 PM](#)

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 441, "An Act relating to operating or driving a motor vehicle, aircraft, or watercraft while under the influence; relating to mitigating factors in sentencing; amending Rule 35, Alaska Rules of Criminal Procedure; and providing for an effective date."

[2:43:41 PM](#)

HEATHER NOBREGA, Staff to Representative Norman Rokeberg, Alaska State Legislature, sponsor, relayed on behalf of Representative Rokeberg that therapeutic courts have undergone a lot of improvements and are important to the state, and that HB 441 simply takes all of the therapeutic court tools created over the last several years - including the DUI pilot program that is due to expire on June 30, 2006 - and melds them into one uniform statutory structure for therapeutic courts.

CHAIR McGUIRE noted that committee packets contain a sectional analysis.

[2:45:17 PM](#)

DOUG WOOLIVER, Administrative Attorney, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), indicated that [the ACS] would like to have the provisions of the aforementioned pilot program - established via House Bill 172 in 2001 - placed in statute, and would like to keep therapeutic courts going. He said that as HB 441 moves through the process, the ACS will be working with the therapeutic court judges, the Department of Law (DOL), the Department of Corrections (DOC), the Public Defender Agency (PDA), the Alcohol Safety Action Program (ASAP), and other interested parties to [improve] the bill. He concluded by relaying that the ACS supports HB 441.

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on HB 441.

REPRESENTATIVE ANDERSON characterized the therapeutic court model as innovative and as an improvement over incarceration, and offered his belief that therapeutic courts should be adequately funded and supported.

CHAIR McGUIRE asked that the committee's thanks for his work on this issue be relayed back to the sponsor.

[2:48:13 PM](#)

REPRESENTATIVE ANDERSON moved to report HB 441 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 441 was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 2:48 p.m. to 2:49 p.m.

HB 414 - INTERCEPTION OF MINOR'S COMMUNICATIONS

[2:49:51 PM](#)

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 414, "An Act relating to allowing a parent or guardian of a minor to intercept the private communications of the minor and to consent to an order authorizing law enforcement to intercept the private communications of the minor." [Before the committee was CSHB 414(HES).]

MICHAEL O'HARE, Staff to Representative Pete Kott, Alaska State Legislature, sponsor, said on behalf of Representative Kott that HB 414 is intended to protect children from insalubrious characters and predation. Currently, if a child is communicating with someone, it is illegal for a parent to intercept that communication and take that person to court. In order to address this problem, HB 414 makes it legal for parents of a minor child to intercept communications, and allows parents, if acting in good faith and in the best interest of the child, to give law enforcement officials the authority to intercept the child's communications via court order. He relayed that while the sponsor recognizes that the bill might raise issues regarding the right of privacy, the sponsor feels that the state's compelling interest in the welfare of children outweighs the right of privacy.

MR. O'HARE explained that Section 1 allows the parents or guardians of a minor to petition the court for an ex parte order authorizing law enforcement to conduct a wire tap if the parents or guardians are acting in good faith and with an objectively reasonable belief that doing so is necessary for the welfare of the minor. [Section 3] allows the parents or guardians of a minor to intercept a communication between a minor and a third party unless [that third party is] the minor's attorney or guardian ad litem. [Section 4] defines a minor as a child under the age of 18 who is not emancipated. He mentioned that there is a proposed amendment in members' packets that will add a definition of "parent" to Section 4; that proposed amendment read [original punctuation provided]:

Page 4, after line 5, add:

(12) "parent" means a natural person who is not prohibited by court order from communicating with the minor and is the minor's natural or adoptive parent of the minor's legally appointed guardian; "parent" does not include a person whose parental rights toward the minor have been terminated by court order.

[Following was a brief discussion regarding what version of the bill was before the committee.]

[2:53:28 PM](#)

MR. O'HARE relayed that while the sponsor recognizes the impact HB 414 may have on divorce proceedings and child custody proceedings, the sponsor feels that taking good care of children and monitoring their activities takes precedence, particularly

given that parents are held responsible for the actions of their children.

REPRESENTATIVE GARA asked what will happen in situations where one parent wants to listen in on conversations the child is having with the other parent in order to use that information in a custody battle.

MR. O'HARE referred to [proposed AS 42.20.320(a)(9), which begins on page 3, line 30], and suggested that adding the words, "if it is in good faith and based on the objectively reasonable belief that it is necessary for the welfare of the minor", would address such situations should they arise.

[2:56:23 PM](#)

REPRESENTATIVE COGHILL pondered whether the aforementioned proposed amendment should also reference "custodial parent", suggesting that such a change might address estranged family situations.

REPRESENTATIVE GRUENBERG opined that HB 414 will open up a significant problem in custody cases and divorce cases wherein one parent wants to tape record [the child's] conversations with the other parent, and offered his understanding that a number of federal court of appeals' decisions have addressed the issue of whether the federal wiretapping Act permits such recordings, with the majority of federal courts permitting it as a domestic relations exception. He pointed out that he has been successful in getting a transcript of such a recording by arguing that regardless of whether the recording was illegal, it was permissible [as evidence] in that particular proceeding. Some states are trying to get around the federal issue by raising the question of whether such recordings should be legal under state law. He predicted that in the majority of situations, HB 414 will be used by warring parents to tape record a child's conversations with the other parent, and so he is concerned because any good divorce lawyer will simply advise his/her client to tape record every single communication the child has with the other parent.

REPRESENTATIVE GRUENBERG opined that HB 414 will take on a different dimension in family law cases, and expressed his belief that a child should be able to freely talk privately with his/her parents and siblings unless there is a really good reason for not allowing it. He predicted that at some point lawyers will begin advising a child who is the subject of a

custody battle to not say anything that he/she doesn't want used in court; this will become part of the legal strategy and the child will be put right in the middle of the battle. Currently the courts generally try to keep the child out of the middle of custody battles; for example, the courts don't ask children to testify or speak to them in chamber. Though in one case, he recounted, the child said she wanted to live with her father, and when the judge spoke to the child in chamber the judge found out that the reason the child wanted to live with her father was because he had promised her a pony.

REPRESENTATIVE GRUENBERG suggested that the sponsor and his staff, as well as the committee, get input from family law practitioners, the [American] Bar Association's (ABA's) Family Law section, and the American Academy of Matrimonial Lawyers (AAML) regarding HB 414. "This is not primarily a criminal issue," he stated, reiterating that [the bill] will be used by warring parents. He indicated that his main concern centers on [Section 3] though he'd also like to ensure that [Section 1] will not be misused either.

[3:03:04 PM](#)

MR. O'HARE reiterated that the sponsor's intent is to protect children, and so although there is the possibility that what Representative Gruenberg predicts will occur, the sponsor still feels that it will be in the best interest of Alaska's children to adopt this legislation. Mr. O'Hare indicated that the sponsor would be amenable to inserting language in [proposed AS 42.20.320(a)(9)] specifying that the parents must be acting in good faith.

CHAIR MCGUIRE asked what prompted the introduction of HB 414.

MR. O'HARE said it was a child custody situation in which one parent discovered that the child was being emotionally abused by the other parent and also discovered that recording the child's conversations with that other parent was illegal. For the sponsor, this prompted the question of what happens in situations involving a child who is having conversations with a third party who might be seeking to harm the child or coerce the child into doing something against the law.

CHAIR MCGUIRE indicated that [CSHB 414(HES)] would be held over in order for the sponsor and his staff to further research the issues raised and perhaps find solutions to members' concerns.

The committee took an at-ease from 3:06 p.m. to 3:07 p.m.

HB 93 - DENTISTS AND DENTAL HYGIENISTS

3:07:32 PM

CHAIR McGUIRE announced that the final order of business would be HOUSE BILL NO. 93, "An Act relating to dentists and dental hygienists and the Board of Dental Examiners; establishing certain committees for the discipline and peer review of dentists; excluding the adjudicatory proceedings of the Board of Dental Examiners and its committees from the Administrative Procedure Act and from the jurisdiction of the office of administrative hearings; and providing for an effective date." [Before the committee was CSHB 93(L&C); in committee packets was a proposed committee substitute (CS) for HB 93, Version 24-LS0384\S, Mischel, 2/1/06.]

3:07:37 PM

HEATH HILYARD, Staff to Representative Tom Anderson, Alaska State Legislature, sponsor, noted on behalf of Representative Anderson that committee packets contain a proposed committee substitute (CS) for HB 93.

3:08:07 PM

REPRESENTATIVE COGHILL moved to adopt the proposed CS for HB 93, Version 24-LS0384\S, Mischel, 2/1/06, as the work draft. There being no objection, Version S was before the committee.

MR. HILYARD explained that [Version S] creates a "peer review committee" for the Board of Dental Examiners, which oversees dentists and dental hygienists operating in the state. This will provide members of these professions greater involvement in the adjudicatory proceedings that come before the Board of Dental Examiners. He mentioned that representatives from the Alaska Dental Society were available and could stress the value and importance that the proposed changes represent for them. He mentioned that members' packets contain a summary of the changes encompassed in Version S.

MR. HILYARD reviewed those changes. A change on page 2, line 30, reinserts the words, "or knowingly cooperated in"; this language mirrors language [on page 8], and [counsel] for the Alaska Dental Society believed that keeping the language consistent throughout the bill was of value. A change on page

4, line 3, inserts the word, "physically" between "who" and "reside"; this addresses the concern that those who serve on the Board of Dental Examiners actually reside in the state. A change to page 4, line 3, inserts the word, "clinical" between "the" and "practice"; this addresses the concern that those who serve on the Board of Dental Examiners are currently clinically practicing. A change to page 7, line 2, substitutes the word, "reasonable" for "substantial"; this pertains to the type of evidence that would be required. A change to page 9, lines 8-9, deletes the words, "or an approved provider of continuing education for dentists"; [the Alaska Dental Society felt] that using the term, "dental schools" would be sufficient. A change to page 13, line 28, provides for a \$50,000 civil fine.

REPRESENTATIVE GRUENBERG [although Version S had already been adopted as the work draft] said he was objecting to the adoption of Version S for the purpose of asking a question. He referred to page 4, line 3, and noted that there are types of dentistry practice other than clinical, such as forensic dentistry and academic dentistry. He asked what other types of non-clinical dentistry practices exist.

[3:11:46 PM](#)

DAVID G. LOGAN, D.D.S., Chairman, Legislative Affairs Committee, Alaska Dental Society, acknowledged Representative Gruenberg's point, and said that a dentist performing insurance reviews would also be considered to be practicing dentistry.

GEORGE SHAFFER, D.D.S., Member, Legislative Affairs Committee, Alaska Dental Society, added that "public health dentistry" would also be considered a dentistry practice; a dentist with such a practice analyzes epidemiological data. He indicated that dentists who don't have a clinical practice won't necessarily be staying current with clinical dentistry practices.

REPRESENTATIVE GRUENBERG said he understands why there would be a desire for members of the Board of Dental Examiners to be dentists who actually perform dental procedures on patients. [Although Version S had already been adopted as a work draft] he removed his objection to the adoption of Version S.

REPRESENTATIVE COGHILL noted that proposed AS 08.36.010 - located on page 4, lines 13-16 - specifies what would constitute a "practice of dentistry" and a "practice of dental hygiene" for purposes of that section.

3:15:21 PM

REPRESENTATIVE WILSON offered her understanding that there is a shortage of dentists willing to practice in rural areas of the state, so much so that some Native corporations are sending people down to New Zealand to get training in this field. She asked whether HB 93 would alleviate this problem.

DR. LOGAN said HB 93 would have no affect on that issue; rather, it simply pertains to the make up and function of the Board of Dental Examiners with regard to disciplinary actions, with the intent being to give the Board of Dental Examiners more insight into the cases that come before it.

DR. SHAFFER, in response to a question, said that HB 93 was triggered by the fact that for many years the Board of Dental Examiners was making disciplinary decisions without ever seeing any evidence, and it was felt that this was unfair, particularly given that these decisions could affect a person's career.

DR. SHAFFER emphasized that the Alaska Dental Society would like the state to be more involved [in the Board of Dental Examiners's disciplinary process]. Presently peer review is only done by [and for] Alaska Dental Society members, and if one is not a member, then peer review is not available; passage of HB 93 will allow the peer review process to fall under the purview of the state, which will oversee all parts of that process. Additionally, Version S contains a clause that provides the Board of Dental Examiners with the ability to address situations in which a dentist has issues of drug or alcohol dependence.

REPRESENTATIVE GRUENBERG indicated that he is expecting the Alaska Dental Society to continue developing language that will address some of the concerns expressed by Catherine Reardon, former director the Division of Occupational licensing, and said that he is willing to assist in that effort. In response to a question, he explained that those concerns pertained to: timelines regarding the disciplinary process - possibly eliminating from proposed AS 08.01.087 both the word, "discipline" and subsection (e); the language in proposed AS 08.36.030 regarding what should happen if the president of the Board of Dental Examiners is not a licensed dentist and how the requirements listed on page 10 would then be met; possibly eliminating the word, "only" from page 6, line 2, so that other identifiers could be transmitted; possibly altering language on

page 7 such that examinations could be conducted by someone outside the state who is otherwise qualified; language in proposed AS 08.36.080 regarding how the Alaska Superior Court would review a matter; and a possible conforming amendment on page 10. He predicted that with a little bit of work, these issues could be resolved by the time the bill is heard in the House Finance Committee.

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on HB 93.

[3:25:33 PM](#)

REPRESENTATIVE COGHILL moved to report the proposed CS for HB 93, Version 24-LS0384\S, Mischel, 2/1/06, out of committee with individual recommendations and the accompanying fiscal note.

REPRESENTATIVE GARA objected for the purpose of discussion. He referred to page 11, lines 9, and page 12, line 19. He asked whether a patient has the right to appeal a decision.

REPRESENTATIVE GRUENBERG noted that other language on page 11 specifies that "a party to the peer review" may appeal.

[Chair McGuire turned the gavel over to Representative Anderson.]

REPRESENTATIVE GARA asked whether a patient gets to appeal a decision that doesn't include a recommendation for disciplinary action.

DR. SHAFFER said that he reads the language such that it means either party could appeal a decision.

REPRESENTATIVE GARA noted, though, that the language appears to only pertain to decisions that include a recommendation for disciplinary action.

DR. SHAFFER said that the Alaska Dental Society would have no objection to adding language which specifies that either a patient or a complainant may appeal a decision that does not include a recommendation for disciplinary action. In response to comments, he said the Alaska Dental Society wants [the peer review process] to be an open process, and so would be amenable to any changes to that effect.

REPRESENTATIVE GARA said it seems like language on page 12 only allows a licensee to appeal a decision for disciplinary action.

DR. SHAFFER said the Alaska Dental Society's response is the same regarding that point.

REPRESENTATIVE GARA referred to language on page 2, lines 9-10, and asked whether a finding against a dentist or dental hygienist would remain confidential. He opined that such ought to be made public - the public should know whether a dentist or dental hygienist is performing poorly.

DR. SHAFFER pointed out that the bill contains a provision specifying that the public is notified after the Board of Dental Examiners takes action. He relayed that the Alaska Dental Society is working on a conceptual change to "open that up even more," so that more details can be added when the Board of Dental Examiners notifies the public. He assured the committee that the language on page 2, lines 9-10, is not making an action of the Board of Dental Examiners confidential.

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REPRESENTATIVE GARA said he is considering offering a conceptual amendment which would say that if the board finds that there is a violation, the information relating to the violation shall be made public.

The committee took an at-ease from 3:31 p.m. to 3:33 p.m.

[Representative Anderson returned the gavel to Chair McGuire.]

DR. SHAFFER referred to language on page 6, line 2, and indicated that deleting the word, "only" ought to alleviate Representative Gara's concern.

REPRESENTATIVE GARA pointed out, though, that the language on page 6 pertains to providing notice in a newspaper that the Board of Dental Examiners took some action. He opined that the records relating to the violation should also be made public.

DR. SHAFFER said that the Alaska Dental Society has no intention of purging records or attempting to hide something; if the Board of Dental Examiners takes an action against a [licensee], that "goes on the record" and is reported to the National Practitioner Data Bank (NPDB).

REPRESENTATIVE GARA offered an example wherein a patient dies because of the actions taken by a dentist; future consumers should be informed that such has occurred.

REPRESENTATIVE COGHILL posited that the public will find out about criminal action, and offered his understanding that using newspapers is simply the typical way [that certain organizations] inform the public of their decisions. Perhaps the statutes should be updated to reflect that notification should occur via other methods of communication as well, he remarked.

CHAIR McGUIRE noted that there is a motion to report the bill from committee.

[3:36:30 PM](#)

REPRESENTATIVE COGHILL withdrew the motion to report the bill from committee.

[Following was a brief discussion regarding how the committee wished to proceed.]

[3:38:41 PM](#)

REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment 1, to alter the language on page 2 [lines 9-10] such that when the Board of Dental Examiners finds that there has been a violation by a licensee, the information relating to the violation, including the board's decision, shall be made public except that personal medical records of the licensee shall not be made public. There being no objection, Conceptual Amendment 1 was adopted.

REPRESENTATIVE GARA referred to the language on page 7, lines 30-31, and asked what is meant by the phrase, "impose another form of discipline that the board determines is warranted and necessary".

DR. SHAFFER said this language would allow the Board of Dental Examiners the flexibility to impose lesser forms of discipline than it would for more serious accusations.

REPRESENTATIVE GRUENBERG suggested that Representative Gara work with him and the Alaska Dental Society representatives to address this issue before the bill is heard in the House Finance Committee.

CHAIR McGUIRE noted that the committee could either leave that language as is or strike out all references to it and allow the issue to be addressed before the bill is heard in the House Finance Committee. She opined that the language should be more specific.

DR. SHAFFER referred to language on page 14, lines 28-30, which says in part, "The board shall establish standards in regulation for the imposition of consistent discipline linked to each action giving rise to the discipline". This wording would require the Board of Dental Examiners to specify, via regulations, what type discipline would be administered for each type of [violation]; the promulgation of such regulations would require the Board of Dental Examiners to go through the regulation process and the public notice and comment periods that such a process entails. This will ensure that all future boards apply discipline equally using the same guidelines.

CHAIR McGUIRE acknowledged Dr. Shaffer's points, but opined that the statutory language should be clarified.

REPRESENTATIVE ANDERSON suggested simply replacing the words, "another form" with the words, "a lesser form".

[3:44:01 PM](#)

REPRESENTATIVE WILSON made a motion to adopt Amendment 2, to delete from page 7, line 30, the word "another" and insert the words, "a lesser". There being no objection, Amendment 2 was adopted.

REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment 3, to alter the language on page 9, line 16, such that the Board of Dental Examiners shall comply with federal and state laws governing discrimination. Noting that the current language pertains to decisions based on the existence of a physical disability, he remarked, "I don't want to relax the laws on discrimination."

REPRESENTATIVE ANDERSON suggested instead simply adding the phrase, "with all applicable laws relating to discrimination" this would address situations in which there are municipal laws relating to discrimination.

REPRESENTATIVE GARA said, "Sure; federal, state, and municipal, I guess"

CHAIR McGUIRE opined that "all applicable" would be too [broad].

REPRESENTATIVE COGHILL concurred, noting that a physical disability could actually impair the person's ability [to perform the services correctly]. He surmised that the bill is attempting to address situations in which a licensee has become unable to perform the duties required of a dentist.

REPRESENTATIVE GARA offered his understanding that state and federal laws allow for the termination of someone's license if such a person would be a danger to the public.

CHAIR McGUIRE noted that the language [in proposed AS 08.36.315(C)] starts out by saying, "The board may not discriminate against a licensee solely on the basis of a mental or physical impairment or disability". She asked Representative Gara whether he would like the language to say, "shall comply with both federal and state law".

REPRESENTATIVE GARA remarked, "Federal and state law governing discrimination - yeah."

[3:47:20 PM](#)

REPRESENTATIVE GARA restated his motion to adopt Conceptual Amendment 3, to alter the language on page 9, line 16, such that it says in part, "shall comply with federal and state laws governing discrimination".

REPRESENTATIVE GRUENBERG asked whether the language on lines 10-11 of page 9 would be retained.

REPRESENTATIVE GARA and CHAIR McGUIRE said yes.

REPRESENTATIVE COGHILL characterized the language being proposed by Conceptual Amendment 3 as redundant.

CHAIR McGUIRE, after ascertaining that there were no objections, announced that Conceptual Amendment 3 was adopted.

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REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment 4, "wherever the licensee has a right to appeal, the complainant or ... the department shall also have the same rights to appeal." In response to questions, he said that

Conceptual Amendment 4 would apply to pages 11 and 12 and perhaps elsewhere as well, and would ensure that all parties have the right to appeal equally. There being no objection, Conceptual Amendment 4 was adopted.

REPRESENTATIVE GRUENBERG in response to comments, relayed that he is willing to vote to report the bill from committee as long as he has an opportunity, before the bill is heard in the House Finance Committee, to work with the Alaska Dental Society representatives [and the sponsor's staff] to address his concerns, perhaps via a new proposed CS.

MR. HILYARD agreed to assist Representative Gruenberg.

[3:51:01 PM](#)

REPRESENTATIVE COGHILL moved to report the proposed CS for HB 93, Version 24-LS0384\S, Mischel, 2/1/06, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 93(JUD) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:51 p.m.