

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

March 18, 2005

3:27 p.m.

MEMBERS PRESENT

Representative Tom Anderson, Chair
Representative Pete Kott
Representative Gabrielle LeDoux
Representative Bob Lynn
Representative Norman Rokeberg
Representative Harry Crawford
Representative David Guttenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 147

"An Act relating to the regulation of insurance, insurance licensing, surplus lines, insurer deposits, motor vehicle service contracts, guaranteed automobile protection products, health discount plans, third-party administrators, self-funded multiple employer welfare arrangements, and self-funded governmental plans; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 150

"An Act requiring licensure of occupations relating to radiologic technology, radiation therapy, and nuclear medicine technology; and providing for an effective date."

- MOVED CSHB 150(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 203

"An Act relating to a motor vehicle dealer's selling certain motor vehicles as new model motor vehicles or as new model motor vehicles having a manufacturer's warranty."

- BILL HEARING POSTPONED TO 3/21/05

HOUSE BILL NO. 216

"An Act relating to insurance rate-making and form filing."

- BILL HEARING POSTPONED TO 3/21/05

HOUSE BILL NO. 196

"An Act relating to the alternative energy project loan program of the Alaska Industrial Development and Export Authority."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 147

SHORT TITLE: INSURANCE

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/14/05	(H)	READ THE FIRST TIME - REFERRALS
02/14/05	(H)	L&C, FIN
02/23/05	(H)	L&C AT 3:15 PM CAPITOL 17
02/23/05	(H)	Heard & Held
02/23/05	(H)	MINUTE(L&C)
03/02/05	(H)	L&C AT 3:15 PM CAPITOL 17
03/02/05	(H)	Heard & Held
03/02/05	(H)	MINUTE(L&C)
03/16/05	(H)	L&C AT 3:15 PM CAPITOL 17
03/16/05	(H)	Scheduled But Not Heard
03/18/05	(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 150

SHORT TITLE: LICENSING RADIOLOGIC TECHNICIANS

SPONSOR(S): REPRESENTATIVE(S) ANDERSON

02/14/05	(H)	READ THE FIRST TIME - REFERRALS
02/14/05	(H)	L&C, JUD, FIN
02/23/05	(H)	L&C AT 3:15 PM CAPITOL 17
02/23/05	(H)	Scheduled But Not Heard
03/02/05	(H)	L&C AT 3:15 PM CAPITOL 17
03/02/05	(H)	Heard & Held
03/02/05	(H)	MINUTE(L&C)
03/18/05	(H)	L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

PATRICIA NAULT, Trustee

Alaska State Employee Association (ASEA) Health Benefit Trust
Juneau, Alaska

POSITION STATEMENT: Testified in opposition to Sections 28 and 29 of HB 147.

CHRIS PACE

Juneau, Alaska

POSITION STATEMENT: Testified in opposition to the fiscal note and Sections 28-29 of HB 147.

COLLEEN SAVORI

Public Employees Local 71

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 147.

JON COOK, Director

Alaska Auto Dealers Association

Fairbanks, Alaska

POSITION STATEMENT: Testified in opposition to Sections 30 and 33 of HB 147.

MIKE COMBS

Alaska Independent Agents and Brokers Incorporated (AIABI)

(No address provided)

POSITION STATEMENT: Proposed amendments to HB 147.

LINDA HALL, Director

Division of Insurance

Alaska Department of Commerce, Community, and Economic Development

Anchorage, Alaska

POSITION STATEMENT: Answered questions regarding HB 147.

JON BITTNER, Staff

to Representative Anderson

Alaska State Legislature

POSITION STATEMENT: Presented HB 150 and an amendment as staff to sponsor.

ALEX MALTER, MD

Alaska State Medical Association (ASMA)

Juneau, Alaska

POSITION STATEMENT: Testified in opposition to HB 150.

REPRESENTATIVE PEGGY WILSON

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Testified in opposition to HB 150.

JIM TOWLE, Executive Director

Alaska Dental Society

Anchorage, Alaska

POSITION STATEMENT: Testified in support of Amendment 1 to HB 150.

STEVEN WAHL, MD,
Tok Community Clinic
Tok, Alaska

POSITION STATEMENT: Testified in opposition to HB 150.

DON SMITH, PA
Wasilla Medical Clinic
Wasilla, Alaska

POSITION STATEMENT: Testified in opposition to HB 150.

TIMO SAARINEN
Alaska Society of Radiologic Technologists
Homer, Alaska

POSITION STATEMENT: Testified in support of HB 150.

ACTION NARRATIVE

CHAIR TOM ANDERSON called the House Labor and Commerce Standing Committee meeting to order at [3:27:30 PM](#). Representatives Crawford, Lynn, Guttenberg, LeDoux (via teleconference), Anderson, and Rokeberg were present at the call to order. Representative Kott arrived as the meeting was in progress.

HB 147-INSURANCE

[3:28:42 PM](#)

CHAIR ANDERSON announced that the first order of business would be HOUSE BILL NO. 147, "An Act relating to the regulation of insurance, insurance licensing, surplus lines, insurer deposits, motor vehicle service contracts, guaranteed automobile protection products, health discount plans, third-party administrators, self-funded multiple employer welfare arrangements, and self-funded governmental plans; and providing for an effective date."

PATRICIA NAULT, Trustee, Alaska State Employee Association (ASEA) Health Benefit Trust ("the Trust") commented:

The Trust is one of entities that would be subject to the requirements proposed in Sections 28 and 29 on HB 147. By definition in the Trust agreement, trustees are members of the Alaska State Employee Association

Local 52, so I'm also a union member and a beneficiary of the Trust as well as a trustee. Since 2001, the Trust has been providing employee health benefits under a self-insured plan to approximately 7,000 ASEA members and an additional 10,000 dependents of those members under provisions of the union's collective bargaining agreement with the state. I am a relatively new trustee, having been elected to this responsibility in November 2004 by my fellow union members. I ran for this seat because I felt that by virtue of the experience and knowledge I have gained in 12 years of working in policy and program development at the [Alaska Department of Health and Social Services] and my Master's degree in public administration earned in 1999 from the University of Alaska Southeast, that I could contribute to the long-term success of the Trust. In the total of 20 years that I have worked as a state employee, I have relied on the health benefits provided to state employees to take care of my family's health care needs. I'm now doing my part to make sure future state employees who are members of Local 52 can continue to count on a good benefits package as a reasonable out-of-pocket cost.

MS. NAULT continued:

I am here to express my concern that the requirements on self-funded government plans proposed in HB 147 will increase the Trust's administrative costs without improving its financial solvency or the accountability of the Trust to its beneficiaries. I understand the fiduciary responsibilities I have assumed for the benefit of my fellow ASEA members. I made it my business to satisfy myself to the extent possible at the beginning of my tenure that the Trust operates in a financially responsible manner. It appears to me that the trustees who have served before me and those who currently serve with me have been diligent in operating the health benefits plan according to a responsible and objective set of standards, that being those established by the Employee Retirement Security Act of 1974, even though the Trust is not among the types of plans covered by that federal legislation.

[3:31:40 PM](#)

MS. NAULT continued:

Annual audits by an accounting firm ... confirmed that the Trust is financially sound. Administrative costs are kept to a minimum. The Trust has set an example for other state plans with its positive enrollment policy, which requires members to document that those they are claiming as dependents do indeed meet the plan's definition. And the [Alaska] Department of Administration is currently considering adopting the Trust documentation standard for the state-administered health benefit plan dependents. At a time when the legislature is grappling with a \$5 billion shortfall in employee pension plans administered by the state, it is clear that oversight by a state agency holds no guarantee of solvency for employee benefit plans. [Sections] 28 and 29 will increase the Trust's administrative costs, which will require the Trust to either reduce coverage for health care benefits or increase out-of-pocket costs for our beneficiaries.

[3:32:39 PM](#)

REPRESENTATIVE GUTTENBERG asked if the Trust has a federal reporting requirement.

MS. NAULT replied that the Trust does have reporting requirements, but she wasn't sure if they were federal requirements. In reference to Sections 28 and 29, she commented that she wasn't sure what the purpose of the proposed state reporting requirements is. She noted that the Trust is already audited and is capable of meeting standards.

REPRESENTATIVE GUTTENBERG asked what changes Ms. Nault felt needed to be made to the state system.

MS. NAULT responded:

It appears to me that the complaints that are perhaps the cause of this legislation ... won't be addressed by the legislation, and the circumstances of the people who think they are going to improve what they get by virtue of this legislation; it's not going to play out that way. It's just going to cost them money out of their pockets.

[3:34:51 PM](#)

REPRESENTATIVE GUTTENBERG asked if complaints to the state are forwarded to the Trust.

MS. NAULT responded that when a person complains to the state, the state is supposed to give the person information to directly contact the Trust's administrators. Complaints made to the administrators are passed to the trustees. She explained that there is also an appeal process for people whose claims were denied. She remarked that she prefers the current plan over the previous plan, noting that she has "far better ability to speak to and impact and make people aware of my needs under this plan than I did when a large insurance company ... was declaring the terms of our coverage, and it was much harder to make any impact on that system."

[3:37:28 PM](#)

REPRESENTATIVE GUTTENBERG commented that [beneficiaries] would not lose the ability to file complaints under HB 147.

MS. NAULT stated:

We're just not even sure actuaries will take on the kinds of responsibilities that are specified for them.... There's also some confusion, I think, among people who have read the legislation itself as to what impact it will actually have on the trustees' ability to set policy for the plan versus some other outside authority having more ability to do that.

MS. NAULT, in response to Representative Rokeberg, clarified that the trustees are the board of appeal and they have access to consultants, specialists, medical review, and utilization review to help them in the decision-making process.

REPRESENTATIVE ROKEBERG asked if the administrator has a part in the appeal process.

MS. NAULT replied that the administrator makes the initial determination about whether claims are paid or not, and then any appeals go to the trustees.

REPRESENTATIVE ROKEBERG asked if the arbitration is binding.

MS. NAULT replied, "It is a binding arbitration and the arbitrators that they use are people who are specialized in health benefit claims." In response to further questioning from Representative Rokeberg, she explained, "[The arbitrators] consider all of the documentation that has been presented up to that point to the trustees in the course of the appeal, and that often includes a complete set of medical records and determinations by specialists."

[3:40:08 PM](#)

REPRESENTATIVE ROKEBERG commented, "If state law were applicable to the Trust, then they would have, under the Patient's Bill of Rights, the ability to have a review by a peer review so if somebody who was in that particular specialty would be able to review the decision to ... not grant the benefits." He asked if the Trust has any other outside standards that it is required to meet.

MS. NAULT replied that there is a Trust agreement that sets the terms of operation and the responsibilities of the trustees. She explained that the agreement was a result of collective bargaining. She clarified that [the Trust] has some significant fiduciary responsibilities that are spelled out in the trust agreement.

[3:43:12 PM](#)

REPRESENTATIVE CRAWFORD asked if the appeal process is the same as preauthorization of procedures.

MS. NAULT replied that preauthorization goes through a contracted utilization review organization. She stated that this year, the trustees have had six two-day meetings, but in the past the trustees met via teleconference if there are appeals in the interim.

CHRIS PACE testified in opposition to Sections 28 and 29 of HB 147, as well as the fiscal note. He commented:

One of the positive reasons I like working for the state is that we benefit from a self-funded government health plan sponsored by our union, the [ASEA]. I believe we enjoy more health benefits from our precious health care dollars because we've been successful in our health trust in keeping our administrative overhead costs down. I think HB 147

would reverse that. This bill would result in [an] administrative overhead expense that I don't want or need. My health plan is already being regulated as a trust under Alaska Statute Title 13, and also through our collective bargaining agreement, and then through a letter of agreement between ASEA and the administration and the health trust that contains actuarial reporting requirements and ... a report on the stop-loss coverage it's maintained.

[3:45:31 PM](#)

MR. PACE commented that there are several bills currently in the legislature and in Congress that attempt to cut down health care costs. However, he said, it seems that HB 147 would drive up the state employee health care cost. He pointed out, "There's nothing [in the bill] really to provide anything additional in the way of doctor visits, prescriptions, or dental care. ... It looks like it's going to move money out of state employees' paychecks and into the pockets of actuaries, accountants, and bond-brokers." He commented that HB 147 would increase health care costs for thousands of state employees, but has a fiscal note that only includes funding for one additional regulatory position. He asked, "Shouldn't the fiscal note also include funding to pay the union health plans for the additional actuaries or the cost of buying the huge fidelity bonds that would be required?" He continued:

These added costs weren't factored into the collective bargaining agreements that we just negotiated with the state. Your health plan, the one for the commissioners, the directors, legislators, and your legislative staff ... - that health plan [won't be] burdened with these new costs. It appears to me like it's only the union health plans, the trust funds that will have to shoulder these additional costs. So it doesn't seem like a level playing field. ... My real concern is that the tab for all these additional regulatory costs is going to end up on the backs of state government employees. So I would urge you [to] either not pass this bill or, better yet, to fix it here in committee and remove Sections 28, 29 and the fiscal note.

[3:49:28 PM](#)

COLLEEN SAVORI, Public Employees Local 71 (PE 71), commented regarding HB 147:

This will impose a costly administrative burden. There are some requirements in this bill that might be impossible for these trusts to meet; for example, it's unlikely that any actuary will actually insure a planned fiscal solvency. I would like to comment on a couple of the questions that have been asked previously, because it gets down to the fact that this is an unnecessary ... regulation by the state. These trust plans are subject to a number of federal requirements. The Public Health Service Act [Health Insurance Portability and Accountability Act (HIPAA)] is a great example. So the federal government will come in and make sure that the trusts are following HIPAA regulations. ... The trusts are also regulated by the [Internal Revenue Service (IRS)], and the trusts also have to report to the State of Alaska as it is through the collective bargaining process; that's one of the things that happens when a contract is up for renegotiation. There's a great deal of information that is provided to the state by these trusts, including the annual audit that's done by a third party independent auditor. So there is some oversight by the trust as it is.

[3:50:44 PM](#)

MS. SAVORI continued:

I also wanted to touch upon the fact that these trusts do have peer review and the utilization review process. They do hire medical experts to conduct utilization review; for example, if a participant needs to go in for a hospitalization [and] the utilization provider does determine that a portion of that hospitalization is not medically necessary, there is an internal review process within that utilization review provider. If the participant does not agree with the decision, they can appeal it to the utilization review provider. And there is a peer-to-peer consultation, as well as a review by a physician in the same specialty. So one of the things that the trusts do, because these trustees are fiduciaries and they do not have the medical expertise to make these decisions, they hire medical experts to help them with

that. It is in the trustees' best interest and the Trust's best interest to hold themselves to the highest fiduciary standards and make sure that all participants are treated fairly and appropriately.

[3:51:34 PM](#)

MS. SAVORI, in response to Representative Rokeberg, replied that she is a consultant for ASEA, which undergoes utilization review, including a peer review. She noted, "It is also my understanding that the collective bargaining language is similar to that for PE 71, so when they went through the last round of collective bargaining, we assisted in providing a great deal of information to the state, including the financial information that was discussed."

REPRESENTATIVE ROKEBERG asked for clarification of the annual audit.

MS. SAVORI replied that the annual audit for both trusts is done by the same auditing firm, which specializes in employee benefit plan audits and audits a number of self-funded health plans.

[3:53:30 PM](#)

REPRESENTATIVE GUTTENBERG asked what the standards are for the audits.

MS. SAVORI replied, "It is a financial audit, so they look over the financial statements and the books; they also comment on the trust reserves."

JON COOK, Director, Alaska Auto Dealers Association ("the Association"), explained that the Association represents nearly every new and used car dealer in the State of Alaska. He noted that he also is the general manager and treasurer of Aurora Motors in Fairbanks, Alaska. He commented on Sections 30 and 33 of HB 147, which are enabling legislation with regard to guaranteed automobile protection products (GAPP) and extended service contracts (ESC). He explained that a GAPP is a product that is bought that will pay a deficiency between the balance on the note of a vehicle and the fair market value in the event the vehicle is totaled, while ESCs are contracts that essentially go into effect at the end of a warranty and pay for any repairs on vehicles that are needed after expiration of the warranty. He continued:

The Association believes that enabling legislation such as this merits detailed scrutiny because if it's granted, it's obviously going to allow the [Division of Insurance, Alaska Department of Commerce, Community, and Economic Development] to draw up very specific rules outside the legislative process. We believe the effects of the enabling legislation that's introduced would be damaging to consumers, dealerships, and the economy of the State of Alaska. And the Association strenuously opposes Sections 30 and 33 of HB 147....

MR. COOK continued:

The bill states that GAPP is insurance which would automatically subject automobile dealers to regulation by the state regardless of what regulations are issued. ... The definition of [GAPP] in Section 33 of the proposed statute will not work in any event; the definition uses the word "insurance" to describe the product, which is a conclusion rather than a definition. ... Treating GAPP waivers as insurance demonstrates a misunderstanding of the nature of the relationship between the dealer and its customer; debt cancellation programs are structured very differently from other types of credit insurance programs. With GAPP waivers, the dealer, which acts as the originating lender, enters into a contract with the customer regarding how the debt may be canceled, suspended, or otherwise modified under limited circumstances. It's nothing more than a contract between the dealer and its customer. The dealer in turn may then choose to purchase an insurance policy to cover this potential liability. The insurance contract, which is between the dealer and the insurance company, is already subject to regulation by the Division of Insurance.

[3:57:32 PM](#)

MR. COOK continued:

Thirty-nine other states have ruled that GAPP is not insurance but is actually debt cancellation, which is not subject to regulation by the insurance division. ... The vast majority of GAPP contracts are issued by banks and credit unions. However, due to their

federal charter, they are exempt from state regulation. Contracts are typically sold by highly trained and compensated finance and insurance managers in automobile dealerships, versus part-time low-paid tellers at the banks and credit unions. And we're certain that our employees are more qualified ... yet we would be subject to regulations, and the banks and credit unions would not. We don't feel this is a level playing field.

[3:58:18 PM](#)

MR. COOK continued:

[Guaranteed automobile protection product] contracts are a minimal cost to the customer and profit to the dealer, but they provide an enormous benefit to both parties in the event the customer's vehicle is totaled. The typical contract sells for approximately \$300, at a profit to the dealer of \$150 at the time of sale. However, let's take an example here and assume that the customer totals their vehicle one year after purchase. For discussion's sake, I can assume that the loan balance is approximately \$7,000 higher than the fair market value of the vehicle, as determined by their insurance company. ... In the event that that vehicle's totaled, GAPP will pay the deficiency, period. If the customer doesn't have GAPP coverage, they'll be liable for the deficiency in its entirety and will have to pay off the loan balance. Most customers do not have this much cash in hand and in such cases the loan would go into default. The result of such a default would mean the ruin of the customer's credit rating, or likely leave them without reliable transportation, as banks will not finance someone who's defaulted on a loan. In this scenario, which occurs quite often, the customer loses, the dealership loses, and the economy of the State of Alaska loses.

[3:59:32 PM](#)

MR. COOK explained that the director of the Division of Insurance currently requires dealer personnel who sell GAPP contracts to have a limited lines insurance license. He commented:

First off, this license provides no benefit to dealership personnel or the customers, as it's irrelevant to the product sold. Secondly, there's no clear-cut guidance from the director's office regarding testing, study materials, or accepting continuing education requirements.

MR. COOK pointed out that Section 30, subsection (c) of HB 147 says:

This section does not apply to a motor vehicle service contract issued by the manufacturer of the motor vehicle covered by the service contract.

MR. COOK remarked that he assumes the above statement was inserted into the bill because the Division of Insurance felt that it did not need to police the large automobile manufacturers. However, he pointed out, the wording is flawed and has several unintended consequences. He explained that the manufacturers do not issue the service contracts directly; they issue the service contracts through a subsidiary. He also noted that the language does not exempt, for example, General Motors service contracts sold to non-General Motors vehicles. He said:

Every new car dealer in the State of Alaska sells their manufacturer's service contracts on used vehicles for which they don't have a franchise, which means that the exemption provision would not apply. ... The [Division of Insurance] does attempt to exempt manufacturers, but it does not exempt many other reputable companies who sell service contracts....

[4:01:28 PM](#)

MR. COOK then referred to a particular company that sold service contracts before it recently failed. He said, "That's the only company I'm aware of in the State of Alaska that's failed in the last 10 years." He presented more reasons why the company failed. He then pointed out that HB 147 only applies to automobile dealers, even though there are GAPP and ESC sold by heavy equipment manufacturers, RV dealers, snowmobile dealers, and motorcycle dealers.

[4:03:30 PM](#)

REPRESENTATIVE ROKEBERG asked if there is some existing statutory protection of consumers under consumer protection law for these issues.

MR. COOK replied, "Yes, there is. There's unfair trade practices laws that are on the books, and ... other truth and lending disclosures and things like that that are already on the books to deal with us." He noted that he emailed committee members copies of his testimony.

[4:05:41 PM](#)

MIKE COMBS, Alaska Independent Agents and Brokers Incorporated (AIABI) noted that he serves on the legislative committee for the AIABI. He proposed that the committee consider an amendment to clarify its position regarding owners controlled insurance programs (OCIP) and contractors controlled insurance programs (CCIP). He stated that OCIPs and CCIPs have been designed in the past to provide for uniformity in insurance coverage, limits, and forms for specific large construction projects involving an array of various industry trades. He said, "There are some large employers in Alaska that are contemplating the use of OCIPs and CCIPs in the maintenance and repair of their existing facilities." He explained that there are several problems with using this insurance method for maintenance and repair programs. One problem, he said, was that the removal of any insurance clients from the already fragile Alaska insurance market may lead to further deterioration of the competitive arena. He said:

It's estimated that the payroll right now for some of these large contractors is in excess of \$100 million in payroll. The total volume of insurance business in Alaska is so small that any reduction in the available insurance risk would lead to additional insurance markets exiting the state. Too many laws in the current insurance market would adversely affect the remaining clients' overall bottom line cost. Fewer insurance markets lead to higher costs for the rest of the clients not involved in the OCIPs or the CCIPs. OCIP and CCIP include all owners, contractors, and subcontractors for all aspects of the construction project. All ... employers are defined and included on the insurance program. No dual employer situations exist. The insurance provided is the sole source of remedy for the public and employee exposures. [This

is] not so clear when the OCIP form of insurance is used for maintenance or repair of existing facilities.

4:07:15 PM

MR. COMBS explained that a [construction company] may have jobs in several locations throughout the state during a year, but only a small portion is performed at an OCIP facility. He said that the company would provide worker's compensation benefits to its employees during travel exposures around the state, but the OCIP and the CCIP programs would only provide benefits for the employee while he/she is actually present at the maintenance site. He asked who would be responsible for the travel exposure of the employees in this case. He opined that this could lead to a lot of unnecessary litigation to determine the employee and employer status at the time of injury. He stated that his proposed amendment is to change AS 21.12.140 regarding limitation of OCIPs and CCIPs in Alaska. The amendment would limit these to construction projects in excess of \$50 million only and not include any repair or maintenance operations.

REPRESENTATIVE ROKEBERG commented that the proposed amendments were confusing and asked for further clarification. He asked if Mr. Combs used language from another state as a template for his amendment.

MR. COMBS replied that the construction project language had been developed through a committee process. He noted, "The \$50 million figure is certainly not cast in stone; ... we feel that some number has to be given as far as the ... size of the projects that can go under the OCIP or CCIP projects." He pointed out that this would not eliminate any additions or renovations to a large facility that exceeds [\$50 million].

REPRESENTATIVE ROKEBERG referred to a letter written to the committee by Mr. Combs, dated March 14, 2005 in which Mr. Combs proposed a new Section AS 21.12.140. Representative Rokeberg said, "I'm confused in looking at your [proposed] subsection 6 that says ... 'includes major renovations involving the replacement of more than fifty percent of existing structures, buildings, facilities, or roadways.' It includes major renovations; you just said you wanted to exclude it."

CHAIR ANDERSON commented that the committee will consider Mr. Combs' proposal and will consult with the director of the [Division of Insurance] to see if the proposals are possible.

4:12:06 PM

LINDA HALL, Director, Division of Insurance, Alaska Department of Commerce, Community, and Economic Development, commented:

[Sections 28 and 29] are included in the omnibus insurance bill because I feel, as did the administration when we did this, that this is a policy decision for the legislature. We have approximately 19,000 state employees who are covered under five union health trusts and the proposal here is to determine whether there should be ... some oversight of these plans. And as I said, I think it's a policy decision that you as legislators should make and I will tell you the impetus for it because there's been some question about that today. I have received over the year and a half that I've been in this position a number of complaints.

MS. HALL continued:

In December of 2003, I received a letter from [the ASEA/American Federation of State, County and Municipal Employees (AFSCME) Local 52] specifically quoting statutory language that was passed in 2002 by this body that indicated that if a person is unable to show their subjective jurisdiction of another governmental agency and have not received that certification, that then they will fall under Title 21, the insurance title. I was asked by that group, and I would quote from this letter ..., "As the governing body of ASEA, the executive board expresses concern that the ASEA/AFSCME Local 52 health benefits trust is not accountable to any federal or state agency for the same standards as any unrelated medical ... provider insurer. The level of service and care that ASEA members receive from its trust should be no less than what is expected of any unrelated medical provider or insurer subject to Alaska statutes." I have received other letters that have indicated to me that the ASEA convention delegates voted to ask the state to regulate the plan. This was not something that the Division of Insurance took upon themselves.

4:14:42 PM

MS. HALL continued:

In receiving these letters, on March 19 of 2004 under my signature we wrote letters to all five of the union health trusts quoting the statutory language, asking them to provide us with documentation that they were regulated by another entity, as required by statute. We received a variety of responses which have been evaluated. We have done follow up letters, and in that process it has been our intent to clarify some oversight of these trusts. And I know we've had a lot of discussion. I believe in your packets I have given you a handout where I tried to streamline what's very technical ... of what we require from trust in the statute, what we would require from an insurer, and what we require ... [from Multiple Employer Welfare Arrangements (MEWA)].

4:15:29 PM

MS. HALL continued:

In the second page of that there are some filing requirements. ... There needs to be actuarial analysis of rate levels to ensure that the rates being charged will adequately cover the cost of claims, that the reserves are set at levels are to ensure solvency. ... No actuary ensures the solvency of the plan. What an actuarial plan does is certify that they have done an analysis and that these are appropriate levels of contributions ... [and] that their reserves are adequate to ensure solvency.

4:17:54 PM

MS. HALL commented:

[The Division of Insurance] felt it was in the best interest of the plan participants to have a different level of oversight because there isn't one elsewhere. Again, it's a policy decision and if this body chooses to not have that level of oversight, then I would assume you would remove these sections from the bill.

4:18:34 PM

MS. HALL noted that she has spoken with Mr. Cook, the Auto Dealers Association and Alaska State Senator Ralph Seekins,

about ways to make the bill viable for the auto industry and to provide a level of consumer protection. She remarked, "I want to make sure that we have standards that apply across the board." Regarding Mr. Combs' testimony, she said that she supports the concept behind his proposal and she would be willing to work on the language with the committee.

REPRESENTATIVE LYNN asked if there is anything in HB 147 that clarifies what health benefits are and are not covered. He also asked if prohibition of certain types of benefit coverage could be put into statute.

[4:21:03 PM](#)

MS. HALL responded that on page 17, line 17 of HB 147 there is a reference to AS 21.42.345-21.42.365, and she explained that those are the current benefit mandates that have been passed by the legislature. She said that the inclusion of that line in the bill would require that those mandates be included; today there is no such requirement. She stated, "As far as I know there are no prohibitions [against certain types of coverage]."

REPRESENTATIVE ROKEBERG commented that it seems as though there is no actual oversight for the health benefit trusts. He asked Ms. Hall, "Is there a way we can adopt in essence some of our statutory requirements ... that would mandate at least a template of minimal baseline requirements within these trust agreements?"

MS. HALL replied that on page 17, line 12 of the bill there is a reference to AS 21.07, which she explained refers to a process that would require both an internal and an external review process.

[4:24:36 PM](#)

REPRESENTATIVE ROKEBERG asked if there is the potential to change HB 147 to a simplified review process that would be cheaper.

MS. HALL replied that she doesn't know of any current [health care] plan that does not have an audited financial statement. She remarked that she hoped that an outside firm is doing an audit of the financial standing [of all plans]. She noted, "The only thing that I see in this list of the really standard minimum requirements that may not be met, although I do think most of the plans have, is the actuarial opinion. ... And we

think that is a critical component to any entity who's providing coverage for medical care." She said that if there is something in the bill that is overly burdensome, she is willing to review that issue.

[4:28:23 PM](#)

REPRESENTATIVE GUTTENBERG asked if the division had approached the administration about including [the issues in the bill] in the collective bargaining agreement.

MS. HALL replied that it had not.

REPRESENTATIVE CRAWFORD commented that he is not sure that the bill would be fixing a problem, and instead it might just be adding costs. He said that he was inclined to agree with Representative Rokeberg; that perhaps there could be a simpler, cheaper way to deal with these issues.

CHAIR ANDERSON announced that HB 147 would be held over.

[4:33:33 PM](#)

REPRESENTATIVE ROKEBERG remarked that the bill deserved to be moved but needed to be analyzed and amended first. Regarding the motor vehicle section, Representative Rokeberg asked Ms. Hall, "You want to assert jurisdiction and take this off the attorney general's office for consumer protection?"

MS. HALL responded, "No. ... We currently regulate these products." She explained that the State of Alaska regulates [GAPP and debt waivers] as insurance and requires auto dealers to be licensed to sell them.

[4:34:48 PM](#)

REPRESENTATIVE LEDOUX commented that the committee ought to make sure that the bill has the least impact on "the affected parties."

[HB 147 was held over.]

HB 150-LICENSING RADIOLOGIC TECHNICIANS

[4:36:13 PM](#)

CHAIR ANDERSON announced that the next order of business would be HOUSE BILL NO. 150, "An Act requiring licensure of occupations relating to radiologic technology, radiation therapy, and nuclear medicine technology; and providing for an effective date."

The committee took an at-ease from 4:36 PM to 4:40 PM.

4:41:08 PM

JON BITTNER, Staff to Representative Anderson, Alaska State Legislature, in response to concerns that were raised at the last committee hearing for HB 150, presented an amendment which would include dental hygienists and dental assistants in the license and permit exemption on page 2, line 2 of the bill.

CHAIR ANDERSON moved to adopt Amendment 1, labeled 24-LS0470\Y.5, Mischel, 3/18/05, which read:

Page 2, following line 2:

Insert new paragraphs to read:

"(1) a licensed practitioner;
(2) a dental hygienist or dental assistant who uses equipment emitting radiation on humans under the direct supervision of a licensed practitioner;"

REPRESENTATIVE LEDOUX asked if Amendment 1 is simply an exemption for a licensed practitioner.

MR. BITTNER replied affirmatively and explained that the proposed paragraphs 1 and 2 add the words "licensed practitioner" and "dental hygienist or dental assistant" to the exemption.

[There being no objection, Amendment 1 was adopted.]

MR. BITTNER presented a brief overview HB 150, explaining:

This bill is aimed at protecting Alaskans from excessive exposure to radiation; not just patients but also providers as well. This bill is congruent with nationwide efforts of the Institute of Health Care Improvement and is supported by efforts of the joint commission of accreditation of health care organizations, which is the national accreditation body for 4,000 hospitals, the American Medical Association, the American Nurses Association, the

Centers for Medicare and Medicaid services, the Veterans' Administration, Providence Alaska Medical Center, the Alaska State Hospital and Nursing Home Association, and the American Society of Radiologic Technologists. Both patients and providers deserve the highest level of safety and training available, and HB 150 provides that.

4:44:36 PM

ALEX MALTER, MD, Alaska State Medical Association (ASMA), stated that he is a past president of ASMA and an internist in private practice in Juneau. He provided the committee members with a letter from Paul Worrell, MD, President, ASMA, which he read for the record:

The Alaska State Medical Association represents physicians statewide and is primarily concerned with the health of Alaskans. [The Alaska State Medical Association] has historically supported and advocated for the best health care for all our patients. House Bill 150 provides for a system for the licensure of radiologic technicians. [The Alaska State Medical Association] supports this effort to attempt to provide for safe, quality care. However, ASMA is concerned with an unintended consequence that may detract from timely access to care. Rural physicians and small practices may have x-ray capabilities to provide for the occasional x-ray. However, the volume of that service is not sufficient to be able to hire fully certified radiologic technicians. Physicians in small practices have historically trained other clinic staff to do those uncomplicated x-rays. House Bill 150 would eliminate that mode of practice. Keeping in mind that the employing physician is ultimately responsible legally for the acts of the employee who takes the x-ray. To eliminate this current practice will certainly slow down the care provided and probably add to costs. Perhaps an alternative would be to provide a registration system (as opposed to full licensing system) for [such] people providing x-ray service when in the employ of a physician. This would allow the current practice to continue, yet provide for state oversight.

REPRESENTATIVE ROKEBERG commented that the legislature has in the past used "Bush exemptions" for areas of the state that are

not on the road or ferry system. He noted that this exemption may not work for HB 150 because there may be small towns that are on the road system that still need this exemption.

[4:47:55 PM](#)

DR. MALTER agreed and remarked that even small practices in Juneau would run into some of the aforementioned problems. He noted that he takes one or two x-rays per day in his office, and currently those x-rays are taken by trained staff members.

REPRESENTATIVE LYNN commented that though the physician is responsible, a patient can still get injured by an x-ray machine.

DR. MALTER responded that by taking on the responsibility for the x-ray operators, the physicians ensure that the lab techs are doing a good job.

CHAIR ANDERSON remarked that the local universities now have training programs for the x-ray technicians.

[4:51:38 PM](#)

REPRESENTATIVE CRAWFORD pointed out that damage to a body by x-rays isn't always readily apparent, and "the only thing that protects people is the knowledge that the [operator] had the training ... to correctly administer the x-rays in the first place."

DR. MALTER agreed that people can be exposed to high levels of radiation while receiving full body x-rays or CT scans, which are essentially performed by radiologists. However, he remarked that he didn't think that the people receiving a simple, single x-ray in a physician's office are exposed to the same dangers. He explained that he can x-ray an individual in his office to see if he/she has bronchitis or pneumonia; if HB 147 passed as is, he would not have this ability. He would instead have to send the patient to the hospital for the x-ray, which would take more time and money. He also pointed out that in a small town like Skagway the patient would have to get on a plane or ferry and come to the hospital in Juneau for the x-ray.

DR. MALTER continued, "While I understand that it might sound good that there's going to be a 12 hour internet-based course to get partial certification, my understanding is that it's not delineated in this bill; that would be dependent upon whatever

board or group is going to be overseeing this coming up with that plan or program." He also expressed disappointment that ASMA was not invited to participate in a working group that met last summer regarding these issues.

4:56:12 PM

CHAIR ANDERSON read from his original intent letter for HB 150, which said:

A report prepared for [Department of Health and Human Services (HHS)] by the national toxicology program, NTP, at the National Institute of Environmental Health Sciences said [that] X-radiation and gamma radiation were listed "because human studies show that exposure to these kinds of radiation causes many types of cancer including leukemia and cancers of the thyroid, breast, and lung." The report added that exposure to x-radiation and gamma radiation has shown to cause cancer of the salivary glands, stomach, colon, bladder, ovaries, central nervous system, and skin. And finally, it also stated that 55 percent of worldwide exposures from low-dose medical diagnoses such as bone, chest, and dental x-rays.

4:57:12 PM

REPRESENTATIVE LEDOUX commented that Amendment 1 exempts dental hygienists and assistants as long as they are using equipment under the direct supervision of a licensed practitioner. She asked Dr. Malter if there is any difference between the amount of radiation that a dental assistant would be using and the radiation used by a lab technician in a physician's office.

DR. MALTER replied that he did not know the difference. He stated, "All these groups come in and start a program and folks want to have licensure, but if ... we end up requiring licensure of too many groups ... you end up having a situation where the cost may become prohibitive for some small practices to keep all these folks licensed."

REPRESENTATIVE LEDOUX remarked that her doctor in Kodiak had expressed the same concerns.

REPRESENTATIVE KOTT asked Mr. Malter if he was trained to take x-rays during his studies to become a physician.

DR. MALTER replied that most [physicians'] programs have a stint in radiology to learn how to read the simplest x-rays, but do not do extensive training in taking the x-rays. He said that when small clinics get their laboratories certified by the Division of Public Health, the division goes through the lab's checklists and training lists to ensure that the lab is meeting statewide standards.

REPRESENTATIVE KOTT commented, "If you were a one-person office, could you perform the responsibilities of an x-ray technician?"

DR. MALTER replied affirmatively.

[5:02:33 PM](#)

REPRESENTATIVE PEGGY WILSON, Alaska State Legislature, testified in opposition to HB 150. She voiced concern for small clinics that are on the road system but are still too far from a large hospital for individuals to travel for a simple x-ray. She presented the example of the town of Tok, Alaska where she worked in a clinic for four years. At this clinic, x-rays were not run every day, but only when there was an accident or someone was sick. She said that it would be a big hardship for the patient and the ambulance crew if they had to drive four hours each way to and from Fairbanks to go x-rays. This would add cost to the small clinics. Also, the training might cost around \$800, which she pointed out is a lot of money. She commented, "I just think that you need to be really aware that it's a hardship in many different ways that maybe the consequences we don't even know yet."

[5:05:18 PM](#)

CHAIR ANDERSON commented that studies in California found that healthcare costs did not increase when licensure was required. He noted that 41 other states have passed legislation similar to this. He said that the licensure process only requires three on-line courses, and would not be required for another five years.

REPRESENTATIVE WILSON stated, "Because of the distance and because of the time that it takes to get different places, we usually make allowances in ... many areas of things that we do in this state." She asked if anyone knew how many x-radiation accidents have been documented in Alaska; she commented that she didn't think there were many, "if any at all."

5:09:07 PM

JIM TOWLE, Executive Director, Alaska Dental Society, testified in support of Amendment 1 to HB 150.

5:11:38 PM

STEVEN WAHL, MD, Tok Community Clinic, testified in opposition to HB 150. He commented:

I feel the burden very likely could eliminate x-ray technology from Bush and rural clinics including possibly Tok Clinic, where I practice. That could have an impact on the level of health care that's available to the people here, both in acute care and in long-term care. The burden of traveling 400 miles to obtain an x-ray that currently is readily available with treatment that can be rendered with response to that x-ray, ... is going to have a far greater negative impact on the overall health of Alaskans than the few potential situations of excessive radiation exposure. There is a potential that you could drive advanced practitioners like myself from the Bush; if I lost my ability to do x-ray technology in Tok, I very likely would leave this community and this community would no longer have a physician. So there are very widespread ramifications that need to be considered for Bush and rural Alaska.

DR. WAHL continued:

I think our current practices are safe, and I would like to hear specific testimony of specific cases of routine office x-rays that have led to adverse outcomes to individuals to balance that against the huge potential for misdiagnosis, minor injuries that would be neglected because of people who didn't want to travel the distance to get their treatment, and so on. ... I'm not saying that there may not need for licensure in more advanced practices or in more technical settings, but office-based x-ray, I think, is currently being practiced safely in numerous clinics statewide, and that needs to be taken into account in this bill or you're going to have a very widespread effect on health care in the Bush.

DON SMITH, PA, Wasilla Medical Clinic, testified in opposition to HB 150. He noted that he is a co-owner of clinics in Wasilla and in Anchorage, and opined that the bill will adversely affect both clinics even though they are in urban areas. He predicted that if the bill passed, it would create a bottleneck in clinics with patients coming to the clinic, then going to x-ray facility, and then going back to the clinic. He also commented that as a physician assistant (PA), he has had more training for reading x-rays rather than taking them. He opined that it is a poor assumption that a PA or any licensed practitioner has the ability to physically take x-rays.

TIMO SAARINEN, Alaska Society of Radiologic Technologists, testified in support of HB 150. He commented that Congress has tried to make sure that all states do "quality care as far as radiation is concerned" to make sure that all states are on the same standard. He said that the intent of this bill is to make sure that everybody is trained to the same level, and that the operator and the patient receive minimum radiation exposure. He remarked:

There was a tri-state leukemia survey done which indicated that children of chronic diseases were at special risk from low x-rays. ... Children of mothers x-rayed during pregnancy suffer 1.5 times the leukemia rate as children of mothers not x-rayed. Another analysis showed the young adults with asthma, severe allergies, heart disease, diabetes, arthritis, and so on, were about 12 times as susceptible to radiation-related leukemia as were healthy adults.

CHAIR ANDERSON closed public testimony.

[5:18:35 PM](#)

CHAIR ANDERSON noted that physicians, physician assistants, nurse practitioners, podiatrists, osteopaths, dentists, dental hygienists, dental assistants, and chiropractors can operate x-ray machinery under this bill.

REPRESENTATIVE ROKEBERG suggested that the committee allow for a more liberal transition period rather than make a rural exemption to the bill.

REPRESENTATIVE LEDOUX moved to adopt Conceptual Amendment 2 to "exempt technicians working under the direct supervision of a licensed practitioner."

CHAIR ANDERSON objected to Conceptual Amendment 2 because he said that the amendment would gut the intent of the bill.

[5:23:47 PM](#)

A roll call was taken. Representatives LeDoux and Kott voted in favor of Conceptual Amendment 2. Representatives Crawford, Rokeberg, Lynn, Anderson voted against it. Representative Guttenberg was absent for the vote. Therefore, Conceptual Amendment 2 failed by a vote of 2-4.

REPRESENTATIVE LEDOUX moved to adopt Conceptual Amendment 3, which would exempt technicians working in communities with a population of less than 1,000 which are either off the road system or over 100 miles from a metropolitan statistical area in excess of 50,000 people.

[5:27:42 PM](#)

CHAIR ANDERSON objected to Conceptual Amendment 3.

A roll call was taken. Representatives LeDoux and Kott voted in favor of Conceptual Amendment 3. Representatives Crawford, Rokeberg, Lynn, Anderson voted against it. Representative Guttenberg was absent for the vote. Therefore, Conceptual Amendment 3 failed by a vote of 2-4.

REPRESENTATIVE KOTT commented that he hopes the bill will be further amended in the next committees. He said, "If we had a qualified physician who had a registered technician that was under the direct supervision of that physician, I don't think I'd have a problem. Just because someone is certified and licensed doesn't necessarily mean you're not going to get bad treatment."

REPRESENTATIVE KOTT moved to report HB 150 out of committee as amended with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE ROKEBERG objected. He stated his support for Representative Kott's previous comments and he assured Representative LeDoux and Representative Wilson that "their concerns are not falling on deaf ears." He withdrew his objection.

There being no objection, CSHB 150(L&C) was reported from the House Labor and Commerce Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at [5:31:48 PM](#).