

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

April 3, 2006

3:26 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

CS FOR SENATE BILL NO. 298(JUD)

"An Act relating to loans from trust property; relating to a trustee's power to appoint the principal of a trust to another trust; relating to challenges to, claims against, and liabilities of trustees, beneficiaries, and creditors of trusts and of trusts and estates; relating to individual retirement accounts and plans; relating to certain trusts in divorce and dissolutions of marriage situations; and providing for an effective date."

- MOVED HCS CSSB 298(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 480

"An Act relating to voluntary self-evaluative audits by insurers and providing for an insurance compliance self-evaluative privilege; and indirectly amending Rules 104, 402, and 501, Alaska Rules of Evidence, Rules 16, 26, 30, 31, 33, 34, 36, and 40, Alaska Rules of Civil Procedure, and Rules 15, 16, and 17, Alaska Rules of Criminal Procedure."

- HEARD AND HELD

HOUSE BILL NO. 494

"An Act relating to private professional conservators and private and public guardians."

- BILL HEARING POSTPONED TO 4/5/06

PREVIOUS COMMITTEE ACTION

BILL: SB 298

SHORT TITLE: TRUSTS: CHALLENGES; CLAIMS; LIABILITIES

SPONSOR(S): SENATOR(S) SEEKINS

02/14/06	(S)	READ THE FIRST TIME - REFERRALS
02/14/06	(S)	L&C, JUD
02/23/06	(S)	L&C AT 1:30 PM BELTZ 211
02/23/06	(S)	Moved SB 298 Out of Committee
02/23/06	(S)	MINUTE(L&C)
02/27/06	(S)	L&C RPT 3DP
02/27/06	(S)	DP: BUNDE, SEEKINS, STEVENS B
03/02/06	(S)	JUD AT 8:30 AM BUTROVICH 205
03/02/06	(S)	Moved CSSB 298(JUD) Out of Committee
03/02/06	(S)	MINUTE(JUD)
03/03/06	(S)	JUD RPT CS 4DP 1NR SAME TITLE
03/03/06	(S)	DP: SEEKINS, FRENCH, THERRIAULT, HUGGINS
03/03/06	(S)	NR: GUESS
03/22/06	(S)	TRANSMITTED TO (H)
03/22/06	(S)	VERSION: CSSB 298(JUD)
03/24/06	(H)	READ THE FIRST TIME - REFERRALS
03/24/06	(H)	JUD, FIN
03/27/06	(H)	L&C AT 3:15 PM CAPITOL 17
03/27/06	(H)	Scheduled But Not Heard
03/28/06	(H)	FIN REFERRAL REMOVED
03/28/06	(H)	L&C REFERRAL ADDED BEFORE JUD
04/03/06	(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 480

SHORT TITLE: INSURANCE COMPANY SELF-AUDIT INFORMATION

SPONSOR(S): REPRESENTATIVE(S) ANDERSON

02/13/06	(H)	READ THE FIRST TIME - REFERRALS
02/13/06	(H)	L&C, JUD, FIN
03/31/06	(H)	L&C AT 3:15 PM CAPITOL 17
03/31/06	(H)	<Bill Hearing Postponed>
04/03/06	(H)	L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

SENATOR RALPH SEEKINS
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Spoke as the sponsor of SB 298.

MARK A. AMES

Fairbanks, Alaska

POSITION STATEMENT: Testified during hearing on SB 298.

BETH CHAPMAN, Attorney at Law

Faulkner Banfield, PC

Juneau, Alaska

POSITION STATEMENT: Answered questions during hearing on SB 298.

DOUGLAS BLATTMACHR, President and Chief Executive Officer (CEO)

Alaska Trust Company

Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 298.

MITCHELL GANS, Law Professor

Hofstra University School of Law

Hempstead, New York

POSITION STATEMENT: Answered questions during hearing on SB 298.

DAVID SHAFTEL, Estate Planning Attorney

Law Offices of David G. Shaftel, PC

Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 298.

RICHARD THWAITES, Chairman

Alaska Trust Company

Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 298.

HEATH HILYARD, Staff

to Representative Anderson

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: On behalf of the sponsor, Representative Anderson, explained CSHB 480, Version Y.

BRIAN HOVE, Staff

to Senator Ralph Seekins

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Speaking on behalf of the sponsor, Senator Seekins, explained the changes encompassed in HCS CSSB 298, Version S.

SHELDON WINTERS, Attorney at Law
Lessmeier & Winters
Lobbyist for State Farm Insurance
Juneau, Alaska

POSITION STATEMENT: Explained CSHB 480, Version Y, and answered questions.

MICHAEL SCHNEIDER, Attorney at Law
Law Offices of Michael J. Schneider, PC
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 480.

DONNA MCCREADY, Attorney at Law
Ashburn & Mason;
Alaska Action Trust
Anchorage, Alaska

POSITION STATEMENT: Urged the committee to hold HB 480.

JEFFREY TROUTT, Deputy Director
Juneau Office
Division of Insurance
Department of Commerce, Community, & Economic Development
Juneau, Alaska

POSITION STATEMENT: Testified on HB 480.

ACTION NARRATIVE

CHAIR TOM ANDERSON called the House Labor and Commerce Standing Committee meeting to order at [3:26:07 PM](#). Representatives Kott, Guttenberg, Rokeberg, and Anderson were present at the call to order. Representatives Lynn, LeDoux, and Crawford arrived as the meeting was in progress. Also present was Senator Seekins.

[3:26:33 PM](#)

SB 298-TRUSTS: CHALLENGES; CLAIMS; LIABILITIES

CHAIR ANDERSON announced that the first order of business would be CS FOR SENATE BILL NO. 298(JUD), "An Act relating to loans from trust property; relating to a trustee's power to appoint the principal of a trust to another trust; relating to challenges to, claims against, and liabilities of trustees, beneficiaries, and creditors of trusts and of trusts and estates; relating to individual retirement accounts and plans; relating to certain trusts in divorce and dissolutions of marriage situations; and providing for an effective date."

[3:27:47 PM](#)

SENATOR RALPH SEEKINS, Alaska State Legislature, Sponsor, explained that SB 298 is an improvement to the current trust system in the state. He said that, since 1997, the legislature has worked with individuals who are active in the field to update and improve the laws regarding the use and administration of trusts. As a result, Alaska is one of the premier trust jurisdictions in the country. However, he said, other states have enacted similar legislation in an attempt to take business away from Alaska. He said that the updates proposed in SB 298 are intended to help preserve the state's leading position as a trust provider. In addition, he said, the laws encourage Alaskans to keep their trust assets in the state, and attract capital from all over the country, which creates greater job and investment opportunities for residents of the state. In conclusion, he said, SB 298 clarifies prior trust legislation, making the administration of trusts more efficient and cost effective, which would help maintain Alaska as the jurisdiction of choice.

[3:30:14 PM](#)

CHAIR ANDERSON opined that SB 298 is "timely," and surmised that the law would need to be updated every two years due to the growth of the field.

[3:30:51 PM](#)

MARK A. AMES began by highlighting the six published goals of Alaska's state historic preservation plan. He then pointed out the claimant of interest in the May 1, 1968, trust. He continued by stating that there are premises within the City of Fairbanks "that a trust, with regard to the state of Alaska, regarding federal reserve lands, ... has been abused and violated." He said that [SB 298] does not include adequate protection from this. He stated that he is a claimant and has requested full investigation into the aforementioned trust. He expressed his belief that there was a violation of Sections 1-2 of the constitution. In conclusion, he said that [the state] needs to ensure that its current trusts are not being violated.

[3:34:54 PM](#)

BETH CHAPMAN, Attorney at Law, Faulkner Banfield, PC, stated that she has been practicing law in Juneau for 18 years,

focusing on trusts and estates. She said that she currently represents individual families, along with trustees and trust beneficiaries. She expressed her belief that SB 298 will provide the tools needed to assist clients with their estate planning goals. She said that this includes reducing administrative costs and aligning the trust and probate laws. Referring to Section 2 of the bill, she said that families need the ability to respond to changes in circumstance. This portion of the bill would allow the trustee to continue to hold assets in trust, with the same standards; however, they do not need court approval to do so. Moving on to Section 3, she said that this section relates to the statute of limitations, reducing it from three to one statute of limitations per report. She stated that the beneficiaries must be notified by the trustees of the length of the statute of limitations and informed of what they must do to assert their claims.

[3:37:10 PM](#)

REPRESENTATIVE GUTTENBERG, referring to Section 2, asked for the reasoning behind changing "absolute discretion" to "authority," and "discretion" to "authority."

[3:37:48 PM](#)

MS. CHAPMAN replied that under current law, no standard is needed and only a trustee with "absolute authority" is able to create a new trust for the benefit of the beneficiary. She said that a "typical standard" in a trust states that it can be invaded for the beneficiary's health or education. This change would allow a trust with this standard to create a new trust for the beneficiary, as long as the aforementioned standard is maintained.

[3:38:32 PM](#)

REPRESENTATIVE GUTTENBERG, referring to page 2, line 10, asked for the definition of "inter vivos."

MS. CHAPMAN answered that this means "during life."

[3:39:08 PM](#)

DOUGLAS BLATTMACHR, President and Chief Executive Officer (CEO), Alaska Trust Company, began by noting his support of SB 298. He opined that it will "modernize" the state's trust laws and keep the state competitive.

3:39:30 PM

REPRESENTATIVE ROKEBERG, referring to [pages 3-4], Section 7, noted that the statute of limitations on a claim is being changed from 24 months to 6 months. He asked if this is due to the competitive nature of the business and/or a policy call regarding the statute of limitation policy.

MR. BLATTMACHR replied that both of these are involved. He said that the majority of the professional community wanted to make the timelines more consistent. In addition, he said, reducing the time [to] six months, along with a "bold" print, would cause the beneficiary to "have more of [an] urgency" in taking an action if a problem was detected.

3:40:30 PM

REPRESENTATIVE GUTTENBERG, referring to Section 6, noted that the timeline for a claim has been reduced from 90 to 60 days.

MR. BLATTMACHR said that this is consistent with the probate code, as is the change from 60 to 45 days.

3:40:59 PM

REPRESENTATIVE ROKEBERG, referring to [Section 8], asked if the notification required is judicial notification. He noted that this is a significant difference in the amount of time allowed for filing a claim.

3:41:49 PM

MITCHELL GANS, Law Professor, Hofstra University School of Law, in regard to the statute of limitations, said that Florida currently uses the six month timeframe. He said that from a policy perspective, it is more appropriate to shorten the statute of limitations. He explained that a trustee can shorten the amount of time he/she is liable by "commencing a judicial accounting." This, however, involves an expense which is borne by the beneficiary of the trust. He characterized it as inefficient and inequitable. He said that a judicial accounting results in a shorter statute, while an informal accounting results in a much longer statute, and added that he does not see a "good reason" for this. Finally, a shorter statute of limitations is more likely to result in the beneficiary focusing

more carefully on his/her rights. He said that these reasons show that the [six-month] timeframe is a "very good idea."

[3:44:37 PM](#)

DAVID SHAFTEL, Estate Planning Attorney, Law Offices of David G. Shaftel, PC, informed the committee that he is involved with a group of individuals that has worked with the legislature since 1997 regarding the state's trust statutes. He mentioned that he assisted drafting several sections of SB 298, and offered his belief that [SB 298] contains provisions that are "very helpful," for residents of the state. In addition, nonresidents who are using Alaska law for their estate planning will also benefit from this legislation. In regard to the statute of limitations, he stated that the uniform probate code also provides for a process which has a six-month statute of limitations. He said that he supports SB 298.

REPRESENTATIVE ROKEBERG asked what kind of impact previous changes have had on Mr. Shaftel's business, and on the "Alaska Trust business" in general.

MR. SHAFTEL said:

For example: the ... optional community property system, which the legislature has enacted; the ability to extend [a] trust's duration for as long as the trusts have assets; the ability to create trusts that will be able to allow Alaska residents to save considerable estate taxes and allow other nonresidents to use those kinds of trusts; [these] have ... been very, very beneficial to my clients. ... We use all of [the aforementioned benefits] for all of our clients. Our clients at our practice here in Anchorage are medium to large estates and ... have lived here in Anchorage for a long time. ... They are very appreciative of being able to do this kind of planning. So, it's been a great benefit Indirectly, ... there are ... four institutions here in Anchorage which provide ... trustee services for these kinds of trusts, and I know that there's been a very substantial use of these vehicles.

[3:48:34 PM](#)

MR. SHAFTEL went on to say that in addition to in-state use, many out-of-state individuals are using Alaska's financial

resources. He opined that this can "only be good" in terms of developing the state as a financial center.

[3:48:46 PM](#)

RICHARD THWAITES, Chairman of the Alaska Trust Company, said that he is in support of SB 298.

[3:49:20 PM](#)

MR. THWAITES, in response to a question from Representative Rokeberg, said that many of his clients have found the statutory provisions useful. In particular, he said, his clients have used the optional community property act. He gave an example of a client whose spouse passed away, resulting in a step-up in tax basis for the surviving spouse. He said that the aforementioned client was able to save over \$1 million in savings on the state tax, which would have otherwise fallen to the children of the family. He added that, regarding income tax, there was considerable savings between the death of the mother and father.

MR. THWAITES went on to say that the Alaska Trust Company has had 1,000 or more trusts, 10 percent of which are in-state. He said that at least \$2 million has gone to the state treasury from the increased premium tax. In addition, jobs have been provided to residents of the state.

[3:51:18 PM](#)

REPRESENTATIVE GUTTENBERG asked if the ability of the legislature to be proactive has kept Alaska "ahead of the wave."

MR. THWAITES replied yes, adding that the legislature has developed a "very good" rapport with practitioners in the state. He noted that while it took Alaska [4 years] to pass the initial legislation, Delaware was able, in 16 weeks, to pass an act that mimics the Alaska statutes. He explained that the Delaware act stated that it was "an effort to copy the Alaska statutes recently enacted to keep Delaware the number one in trusts." However, the aforementioned legislation did not include provisions considered "crucial" by the Internal Revenue Service. This discrepancy allowed Alaska to stay ahead in this area. He said "Clearly, the ... legislature in Juneau has ... facilitated that with their ... willingness to listen to these modifications as we go through."

[3:53:12 PM](#)

CHAIR ANDERSON closed public testimony.

REPRESENTATIVE ROKEBERG said that he was "pleased to hear" that the state received \$2 million in premium tax insurance receipts. He reminded the committee that this was due to the legislature limiting the tax on the [trust industry], which increased the investment in the state. He opined that this is a "good exercise" that should be kept in mind.

[3:54:19 PM](#)

CHAIR ANDERSON agreed.

REPRESENTATIVE ROKEBERG moved to report CSSB 298(JUD) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSSB 298(JUD) was reported from the House Labor and Commerce Standing Committee.

[The committee returns to SB 298 later in the meeting.]

[3:54:46 PM](#)

HB 480-INSURANCE COMPANY SELF-AUDIT INFORMATION

CHAIR ANDERSON announced that the final order of business would be HOUSE BILL NO. 480, "An Act relating to voluntary self-evaluative audits by insurers and providing for an insurance compliance self-evaluative privilege; and indirectly amending Rules 104, 402, and 501, Alaska Rules of Evidence, Rules 16, 26, 30, 31, 33, 34, 36, and 40, Alaska Rules of Civil Procedure, and Rules 15, 16, and 17, Alaska Rules of Criminal Procedure."

[3:55:12 PM](#)

HEATH HILYARD, Staff to Representative Anderson, Alaska State Legislature, pointed out that the committee packet should include a proposed committee substitute (CS) to which all the presentation materials refer.

CHAIR ANDERSON moved to adopt Version 24-LS1592\Y, Bailey, 3/15/06, as the working document. There being no objection, Version Y was before the committee.

MR. HILYARD explained that this legislation emulates the law in place in eight other states. This legislation would allow insurance companies to voluntarily conduct self-evaluative

audits in order to determine whether the company's practices and procedures are in concert with all applicable state statute and regulations. Essentially the legislation was brought forward as a model act that had been adopted in Illinois. During the course of deliberations between the Division of Insurance and those who brought the legislation forward, there were four to five iterations of the legislation. The current version doesn't require amendment to the Alaska Rules of Court and Evidentiary Rules. Mr. Hilyard characterized Version Y as a scaled-back version.

[3:56:58 PM](#)

The committee took an at-ease from 3:56 p.m. to 3:59 p.m.

[The committee returns to HB 480 later in the meeting.]

[3:59:32 PM](#)

SB 298-TRUSTS: CHALLENGES; CLAIMS; LIABILITIES

CHAIR ANDERSON returned the committee's attention to SB 298. He explained that the bill was moved from committee prior to the adoption of a committee substitute.

[4:00:12 PM](#)

REPRESENTATIVE ROKEBERG made a motion to rescind the committee's action in reporting CSSB 298(JUD) from the House Labor and Commerce Standing Committee. There being no objection, CSSB 298(JUD) was back before the committee.

REPRESENTATIVE ROKEBERG moved to adopt HCS CSSB 298, Version 24-LS1113\S, Bannister, 3/31/06, as the working document. There being no objection, Version S was before the committee.

REPRESENTATIVE ROKEBERG requested a brief explanation of the changes made by Version S.

[4:01:00 PM](#)

BRIAN HOVE, Staff to Senator Ralph Seekins, Alaska State Legislature, speaking on behalf of Senator Seekins, sponsor, explained that on page 2, line 20, of Version S "beneficiary" is changed to "beneficiaries."

[4:01:28 PM](#)

REPRESENTATIVE ROKEBERG moved to report HCS CSSB 298, Version 24-LS1113\S, Bannister, 3/31/06, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCS CSSB 298(L&C) was reported from the House Labor and Commerce Standing Committee.

[4:01:44 PM](#)

HB 480-INSURANCE COMPANY SELF-AUDIT INFORMATION

CHAIR ANDERSON returned the committee's attention to HB 480.

[4:01:53 PM](#)

MR. HILYARD explained that Version Y is an amalgamation of an ongoing conversation between Allstate Insurance, Legislative Legal and Research Services, and the Division of Insurance.

[4:02:32 PM](#)

SHELDON WINTERS, Attorney at Law, Lessmeier & Winters, Lobbyist for State Farm Insurance, began by saying that Alaska's laws should encourage and protect those who play by the rules as well as those who actively evaluate whether they are following the rules. The aforementioned isn't that simple in this day and age. "Insurance companies that are interested in using proactive, voluntary, self-evaluations are limited by the harsh reality that these evaluations may be turned against them inappropriately and used against them inappropriately," Mr. Winters highlighted. This legislation addresses the aforementioned concerns by providing a limited protection for voluntary self-evaluations. He related that voluntary self-evaluations has wide support throughout the country. Virtually every legal and scholarly writing has supported the policy of such a privilege. Therefore, in a variety of settings virtually every state has adopted some form of a self-evaluative privilege. Most states, including Alaska, have such a privilege for environmental assessments and medical peer reviews. Mr. Winters opined that the aforementioned illustrates bipartisan support for this type of protection. He specified that within the insurance industry and its regulators there is broad support for this protection. In fact, HB 480 is modeled after a model act from the National Conference of Insurance Legislators (NCOIL), although it's watered down quite a bit. Furthermore, the National Association of Insurance Commissioners (NAIC) also supports the policy of encouraging voluntary self-evaluations.

The NAIC is an agency to which the legislature has deferred to before, which has resulted in Alaska Statute including many of NAIC's model laws regarding examinations and conduct of insurers.

MR. WINTERS highlighted that [the insurance industry] has worked with the Division of Insurance to create acceptable legislation, which [Version Y] seems to be. He then explained that Version Y is limited and applies only to a voluntary internal evaluation, specifically designed to identify problems and improve compliance with laws and regulations. However, the legislation doesn't apply to any assessment that a company is required to do by law or the regulator. Furthermore, the legislation doesn't apply to any other preexisting material, files, claims, or file statistics. The legislation only applies to the insurance company's decision to review that data and evaluate it. Still, from a practical standpoint the Division of Insurance would receive more information. Mr. Winters highlighted that the legislation doesn't create immunity from criminal or civil liability. The privilege embodied in Version Y is limited from the NCOIL model and the Division of Insurance receives the self-critical analysis document that it wouldn't have received otherwise.

[4:08:35 PM](#)

MR. WINTERS posed a situation in which an insurance company wants to do a review in Alaska to determine whether it's paying its property damage claims on autos properly. The insurance company takes 3,000 claims files in Alaska for review and discover that in 20 percent of the claims a mistake is being made and enough money isn't being paid. Ideally, the insurance company would pay the claims. Under this legislation, the company could provide the document and review to the Division of Insurance and inform it of the mistake and the corrective action taken. Therefore, the division will be provided with information that it wouldn't have otherwise had. At that point, the division can write off on the aforementioned or if the division believes more involvement is necessary, the division can perform its own investigation and issue its own penalties. Mr. Winters then posed the possibility of one of the claimants suing the insurance company, and specified that there is no difference because the [division] receives the claims file and the other 3,000 claims files could be obtained in order to determine whether [the problem is related] to an inherent policy of the insurance company. Furthermore, the division can perform any assessment it desires, the division just can't receive its

own assessment. Mr. Winters clarified that this matter boils down to whether a voluntary self-evaluation by a company should be provided protection or allowed to be used against that company.

[4:10:46 PM](#)

MR. WINTERS then addressed why this protection is desirable in Alaska. As mentioned earlier, [protection of self-evaluations] encourages self-correction, which is in the public's best interest. Furthermore, such [protection] enhances regulatory enforcement in three ways. First, limited resources don't allow regulators to address all the potential problems. Second, the privilege allows insurers to inform the division of corrective conduct and thereby informs the division of the conduct that it wouldn't otherwise have. Third, the privilege is clarified. He informed the committee that currently there is movement for courts to have a common law privilege. Those states that have adopted such haven't allowed the regulators to obtain the internal, voluntary self-audits. This legislation defines the privilege in a limited manner such that it can be provided to the division. Therefore, the insurance company receives certainty and the regulator receives the document.

[4:12:18 PM](#)

MR. WINTERS then concluded by saying that self-correction is a far better policy than regulation by lawsuits. Self correction, he opined, delivers a more immediate and comprehensive result. Since the division receives the document, there is no downside. He acknowledged that there is some question with regard to any advantage [provided by this legislation]. To that, Mr. Winters said that when deciding whether to be candid or even perform the review, there is concern regarding whether it would be used against the individual or the company. This legislation helps eliminate such concern.

[4:13:46 PM](#)

REPRESENTATIVE LEDOUX inquired as to whether there is any particular impetus for this legislation, which embodies an idea put forth in a 1983 Harvard law review analysis.

[4:14:15 PM](#)

MR. WINTERS said there has been a recent trend to perform self-evaluative privileges for corporations and insurance companies.

He recalled that insurance companies began the process in 1999 and in the short six years since, about eight jurisdictions have adopted this statutorily. Corporations are concerned with ramifications of self-evaluations. Therefore, there are many cases that address this matter, but there isn't a particular case in Alaska.

[4:15:12 PM](#)

MR. WINTERS, in further response to Representative LeDoux, said that Version Y no longer amends the Rules of Evidence. He explained that the NCOIL model act included a provision in which the regulator, the division, didn't automatically receive the [self-evaluation] document. If the insurance company objected to providing the document, a court procedure followed to issue a decision regarding whether the [insurance company] is protected or not. The aforementioned provision isn't included in Version Y because the regulator receives the document upfront. Furthermore, Court Rules 402 and 501 that have been suggested as possibly being impacted both say, "the evidence rule is a general rule that privileges may be recognized in court only as provided ..., except as otherwise provided by the enactments of the Alaska Legislature." Therefore, there is no conflict.

[4:16:45 PM](#)

MR. WINTERS, in response to Representative Crawford, agreed that a self-audit would be inadmissible under [Version Y] if an insurance company undertakes a self-audit, but doesn't follow the recommendation provided. However, the regulator still receives the document, he emphasized.

[4:17:53 PM](#)

CHAIR ANDERSON surmised that HB 480 was introduced because the risk a company would assume when performing self-audits resulted in many not performing them. "If you can be exempted from having to reveal the self-audit ... then it helps the consumer, it helps the process, and there's no one harmed from it," he further surmised.

MR. WINTERS agreed, adding that Chair Anderson's understanding is one of the strongest arguments for the privilege.

REPRESENTATIVE LEDOUX asked if [State Farm Insurance] performs self-audits currently.

MR. WINTERS replied yes, and opined that the good companies are actively trying to do so. However, he indicated that there are probably things that [State Farm Insurance] would want to do in addition. For the companies already performing self-audits, this legislation defines what is to be given to the division.

[4:19:19 PM](#)

REPRESENTATIVE LEDOUX inquired as to how the public will benefit from this legislation, when there are companies that are already performing self-audits. Furthermore, the legislation takes away something that the public would normally be able to obtain.

MR. WINTERS said, "I don't want there to be any confusion that by doing self-audits we are doing everything we possibly can. I certainly believe that there are some other companies out there that maybe would be encouraged to do more with this provision out there." He reemphasized that one of the benefits of this legislation is that there will be more self-audits and they will be more candid.

[4:20:22 PM](#)

REPRESENTATIVE LEDOUX related her understanding that currently the Division of Insurance can require audits under certain circumstances if it believes something is incorrect.

MR. WINTERS replied yes, which includes obtaining documents and materials from the company.

REPRESENTATIVE LEDOUX opined then that in a situation in which [a company] believes something might be wrong and fears that the division might require an evaluation/audit, it would be smarter for the company to perform a self-audit prior to the division requirement. Furthermore, without this legislation the public would be able to obtain the information when the information required the audit.

MR. WINTERS clarified that [under this legislation] the division will always receive the self-audit. However, this legislation doesn't preclude the division from conducting its own examination nor does it immunize the company from any penalty, sanction, or examination.

[4:23:05 PM](#)

REPRESENTATIVE LEDOUX reiterated her concern that the public wouldn't be able to receive the information [under this legislation] whereas if the insurance company required the audit, the public would be able to obtain the information.

MR. WINTERS pointed out that the privilege includes an exception such that if the [self-audit] is performed for fraudulent reasons, then it doesn't apply.

CHAIR ANDERSON related his presumption that eight other states chose this course because it was in the best interest of consumer protection.

[4:24:19 PM](#)

MR. WINTERS agreed because these companies are performing self-audits that they otherwise may not do.

REPRESENTATIVE GUTTENBERG requested a side-by-side of the NCOIL recommendations and this legislation.

[4:25:06 PM](#)

CHAIR ANDERSON agreed to do so.

REPRESENTATIVE GUTTENBERG posed a situation in which [Version Y] passes and a company performs a self-audit and the division recommends changes that the company doesn't make. At this point, the division has the information, although not the work product. In such a situation, what happens if the division does the work to do the same audit and gets the same results as the company's self-audit. He asked if that would preclude it from being public.

MR. WINTERS replied no. This legislation only protects the company's mental process and evaluation. All the underlying data, the claims files, and other records are still "fair game." Mr. Winters said, "The fact that we used that information for our own evaluation doesn't protect that preexisting material whatsoever." The protection, he reiterated, is for the document and the mental process.

[4:27:55 PM](#)

REPRESENTATIVE GUTTENBERG posed a situation in which an insurance company performs an audit that determines 10 percent of [claimants] are being paid late while the division says it's

15 percent. Two years later, an audit specifies that 30 percent of [claimants are paid late]. He questioned whether the product of those two audits [would be available to the public.] Representative Guttenberg opined that this legislation doesn't seem to be consumer friendly.

4:29:02 PM

MR. WINTERS explained that the statistics and data that come up with an analysis are "fair game for anybody at any time" and this legislation doesn't change that. The intent of this legislation and that of the other eight states with such legislation already in place is to encourage the insurer to take the data and review whether things are being done correctly. The review reveals a bad standard, that wouldn't have otherwise been revealed, and how to fix it can be addressed. The aforementioned is what this legislation protects. What the division does on its own has nothing to do with this privilege.

4:30:10 PM

REPRESENTATIVE ROKEBERG related that it seems that the goal is to expose a problem and develop a remedy that minimizes the sanctions while benefiting the public.

MR. WINTERS agreed that [the legislation is being introduced] in order to find the problem, present it to the division, and negotiate with it. If the division isn't happy with the company's remedy, then the company has tipped the division to the problem.

REPRESENTATIVE ROKEBERG pointed out that the legislation specifies that the report is privileged, but the "raw" data is not. Therefore, if the division wants to perform its own investigation, it can do so, he surmised.

MR. WINTERS agreed.

REPRESENTATIVE ROKEBERG requested a column in the aforementioned requested comparison between Version Y and NCOIL's model act that specifies the current status. Representative Rokeberg related his understanding that currently insurers can perform self-audits and don't have to turn them into the division and that wouldn't change under the legislation.

MR. WINTERS replied that currently there is no statute or Alaska case law addressing [whether a company has to provide a self-

audit to the division]. He noted that other states have adopted a self-evaluative privilege. Therefore, one of the reasons for HB 480 is to clear this up by specifying that there is a limited privilege in Alaska.

[4:33:05 PM](#)

REPRESENTATIVE ROKEBERG questioned whether a company that decides, of its own volition, to perform a self-audit has a duty to provide the self-audit to the division or can it withhold the self-audit at the company's discretion.

MR. WINTERS answered that under this legislation, a company can't withhold a self-audit. The self-audit will be provided to the division by the company voluntarily or the division requests the self-audit and the company must provide it.

[4:34:53 PM](#)

REPRESENTATIVE LYNN related his understanding that the self-audit doesn't automatically go to the Division of Insurance. Furthermore, the division may not even know the self-audit was performed and thus wouldn't request it.

MR. WINTERS said that is correct. This legislation doesn't provide that anything the insurers do will automatically be provided to the division.

REPRESENTATIVE LYNN asked if any of the 42 states have reviewed legislation such as HB 480 and expressed why they don't want to implement such legislation.

MR. WINTERS offered to obtain information regarding those states that [haven't expressed interest in similar legislation].

[4:36:26 PM](#)

MICHAEL SCHNEIDER, Attorney at Law, Law Offices of Michael J. Schneider, PC, informed the committee that he has been practicing in Anchorage since 1975. Mr. Schneider stated that he is adamantly opposed to HB 480. He recalled earlier testimony regarding the self-assessment privilege already recognized in Alaska law for environmental and health care matters. The aforementioned areas are areas in which peoples' lives and futures are in the balance. However, this legislation addresses insurance industry money. He highlighted that with few exceptions, the insurance industry is not centered in the

state. He then informed the committee that New York attorney general's testimony before a U.S. Senate committee related that in a recent year, premium income for the insurance industry in the U.S. amounted to 10 percent of the gross domestic product. He said he brings this forth because the idea that the insurance industry is controlled or manipulated by the existing Alaska Fair Claims Settlement Practices Act or the Alaska Division of Insurance is not meritorious.

MR. SCHNEIDER recalled earlier testimony that the narrow definition [in the legislation] only applies to the thoughts, the evaluative process, and the resulting document isn't expressed as such in Version G. He opined that many "sins" could be swept into the self-evaluative insurance audit and protected from view, at least as written [in Version G]. Mr. Schneider further opined that this legislation promotes perjury and will result from this protective legislation. "The gift that this legislation brings to the industry is at the expense, I would suggest, of all of your constituents no matter what side of the aisle you're on," he said. He further said, "There is no need to give the ... most rich and powerful game in town more protection from the law."

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DONNA MCCREADY, Attorney at Law, Ashburn & Mason; Alaska Action Trust, urged the committee to hold HB 480 in order to analyze it further. Ms. McCready related that she had a copy of Version G and believes the legislation to have a lot of downstream consequences. Ms. McCready expressed grave concern that this legislation will hurt consumers as well as the business community. The insurance industry is asking to be given a privilege only given to physicians and those performing environmental evaluations. "There's no reason to do this," she opined. The insurance industry is already performing self-audits as would any business. Although the privilege is being presented as very narrow, she expressed concern that the insurance industry will interpret in a much broader fashion. Ms. McCready inquired as to who is going to enforce this privilege and determine whether the insurance industry is only protecting documents as stated by the proposed legislation. In conclusion, Ms. McCready again urged the committee to hold HB 480 in order to properly analyze it.

[4:44:42 PM](#)

MS. MCCREADY, in response to Representative Rokeberg, explained that the Alaskan Action Trust is a group of plaintiff attorneys and criminal defense attorneys. The group, she further explained, watches legislation that they feel will hurt consumers in the state.

4:45:27 PM

JEFFREY TROUTT, Deputy Director, Juneau Office, Division of Insurance, Department of Commerce, Community, & Economic Development, began by noting that he had problems with the original legislation as it wasn't clear that the Division of Insurance would be entitled to a self-evaluative audit. He was also concerned with the original legislation because there were provisions that excluded it from a criminal trial. He mentioned that he has faced this issue previously with product safety when he worked for the Consumer Product Safety Commission in Washington, D.C. In the product safety arena, there are those who believe that a self-evaluative audit should be excluded from discovery in civil cases. On the federal level most courts have rejected the aforementioned argument. Drawing upon his experience with consumer product safety, Mr. Troutt opined that an environment in which those who work for a company can candidly evaluate what they do is desirable. However, that doesn't mean there shouldn't be consequences when things are found to be wrong. "I'm less persuaded in the insurance agency than in the product safety area that's all that's necessary because as a previous testifier suggested ... nobody's going to die ... as a result of this," he said. Still, he indicated that he believes service could be improved and insurance companies could possibly be more likely to ferret out wrong doing within their own company. If the aforementioned is the case, then this legislation is good consumer litigation.

4:49:31 PM

MR. TROUTT went on to say that this legislation allows one document, a document that may be large and include attachments, out of court and discovery. However, under this legislation the underlying facts aren't privileged and nor is any other document. Mr. Troutt said he understood this legislation not to allow the division to take the insurer's audit and use it against it and implement a civil penalty. Still, the division isn't prevented from taking action [when something is found to be wrong], although it may keep a lucrative admission out of a civil case. He said he understood why the plaintiff's attorneys would want such an admission.

4:51:06 PM

MR. TROUTT opined that this legislation doesn't interfere with the division's work. "It's very important ... that ... the Division of Insurance have access to those kinds of documents and that we be able to use these in a subsequent civil or administrative action," he specified.

4:52:02 PM

REPRESENTATIVE LYNN asked if Mr. Troutt believes HB 480 to be good legislation for consumers.

MR. TROUTT replied, "On balance, it's more likely than not." He assured the committee if this turns out to be bad for consumers, the division will inform the legislature.

4:52:36 PM

REPRESENTATIVE KOTT pointed out that two components are under discussion: the insurance compliance audit and the insurance compliance audit documents. He inquired as to the location in the legislation that would provide the division additional information and authority that requires the insurer to submit the audit to the division. He then pointed out that the legislation says "the insurer may voluntarily" [provide the insurance compliance audit]. Therefore, he inquired as to how the division would obtain [that audit] if the insurer doesn't report it to the division.

MR. TROUTT acknowledged that the division wouldn't always know an [audit] document exists. However, he expected that during a financial or market conduct exam by the division, the first question would be regarding whether the insurer has performed any self-evaluative audits. Presumably, the division would then know whether such existed. In regard to the attachments to the audit, he said that any attachment that exists outside of the audit would be "fair game." He said he could understand why one may not want to exclude photographs, which document a moment in time. Mr. Troutt specified that under [Version Y] any photograph that exists will be subject to the division's process and wouldn't be excluded. "While I can see it would be sensible, you may want to look at it and ask, well documents created in the course of the audit, whether or not those ought to be not subject to a privilege. I think you ... could do that without affecting the underlying thing that you want to

accomplish from this, which is really basically removing ... 'admissions' from discovery or admissibility," he explained.

[4:56:19 PM](#)

REPRESENTATIVE LEDOUX said that if one believes the notion that people aren't candid when they could get into trouble for it, then the fact that these internal review documents are available to the division would seem to decimate the entire analysis.

MR. TROUTT said that's a valid point with which he didn't disagree. However, he didn't believe this legislation would solve that problem. He opined that the only way to solve that problem is to provide the privilege for everyone, which isn't desirable.

REPRESENTATIVE LEDOUX questioned, "Since this bill doesn't solve that problem and that problem is a good portion of the reason for the bill, why do the bill?"

MR. TROUTT said that he isn't enthusiastically sold on HB 480, but he believes there is a balance. "More than likely than not, on balance you'll get better compliance with that bill," he opined.

[4:58:53 PM](#)

REPRESENTATIVE LEDOUX related her understanding that these cases aren't civil personal injury claims, but rather are about situations in which insurance agencies haven't properly serviced their own insurers.

[4:59:28 PM](#)

CHAIR ANDERSON recalled Mr. Troutt's testimony that the legislation is more beneficial to the consumer because of the company regulating and self-auditing, bettering, itself.

MR. TROUTT noted his agreement.

REPRESENTATIVE GUTTENBERG turned the committee's attention to page 4, lines 7-24, which says that the division will fall under the attorney-client privilege. Therefore, the division will never be able to inform the legislature regarding how this legislation is working.

[5:00:13 PM](#)

MR. TROUTT opined that the aforementioned provision doesn't impact existing [restrictions related to the attorney-client privilege].

[5:00:56 PM](#)

CHAIR ANDERSON reviewed the areas requiring further information from the interested parties and announced that the earlier mentioned comparison matrixes will be available at the next meeting.

REPRESENTATIVE KOTT related his assumption that the Division of Insurance doesn't want to see every self-evaluative audit.

MR. TROUTT agreed.

[5:01:53 PM](#)

REPRESENTATIVE KOTT asked if the division would want to see those audits revealing a major discrepancy that negatively impacted the insuree.

[5:02:08 PM](#)

MR. TROUTT replied, absolutely, and added that if it rises to a certain level, the division may want to take administrative action.

[HB 480 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:02 p.m.