

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

March 22, 2005

8:34 a.m.

**MEMBERS PRESENT**

Senator Ralph Seekins, Chair  
Senator Charlie Huggins, Vice Chair  
Senator Gene Therriault  
Senator Hollis French  
Senator Gretchen Guess

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE JOINT RESOLUTION NO. 10  
Supporting the federal marriage amendment.

MOVED SJR 10 OUT OF COMMITTEE

SENATE BILL NO. 67

"An Act relating to claims for personal injury or wrongful death against health care providers; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 70

"An Act relating to controlled substances regarding the crimes of manslaughter, endangering the welfare of a child, and misconduct involving a controlled substance; and providing for an effective date."

HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SJR 10

SHORT TITLE: SUPPORT FEDERAL MARRIAGE AMENDMENT

SPONSOR(s): SENATOR(s) DYSON

02/28/05	(S)	READ THE FIRST TIME - REFERRALS
02/28/05	(S)	JUD

03/09/05 (S) JUD AT 8:30 AM BUTROVICH 205  
03/09/05 (S) Scheduled But Not Heard  
03/17/05 (S) JUD AT 8:30 AM BUTROVICH 205  
03/17/05 (S) Scheduled But Not Heard

BILL: SB 67

SHORT TITLE: CLAIMS AGAINST HEALTH CARE PROVIDERS

SPONSOR(s): SENATOR(s) SEEKINS

01/21/05 (S) READ THE FIRST TIME - REFERRALS  
01/21/05 (S) L&C, JUD  
02/08/05 (S) L&C AT 1:30 PM BELTZ 211  
02/08/05 (S) Heard & Held  
02/08/05 (S) MINUTE (L&C)  
03/01/05 (S) L&C AT 1:30 PM BELTZ 211  
03/01/05 (S) Moved SB 67 Out of Committee  
03/01/05 (S) MINUTE (L&C)  
03/02/05 (S) L&C RPT 3DP 1DNP  
03/02/05 (S) DP: BUNDE, SEEKINS, STEVENS B  
03/02/05 (S) DNP: ELLIS  
03/08/05 (S) JUD AT 8:30 AM BUTROVICH 205  
03/08/05 (S) Heard & Held  
03/08/05 (S) MINUTE (JUD)  
03/17/05 (S) JUD AT 8:30 AM BUTROVICH 205  
03/17/05 (S) Heard & Held  
03/17/05 (S) MINUTE (JUD)

BILL: SB 70

SHORT TITLE: CRIMES INVOLVING CONTROLLED SUBSTANCES

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/21/05 (S) READ THE FIRST TIME - REFERRALS  
01/21/05 (S) HES, JUD  
02/23/05 (S) HES AT 1:30 PM BUTROVICH 205  
02/23/05 (S) Heard & Held  
02/23/05 (S) MINUTE (HES)  
02/25/05 (S) HES AT 1:30 PM BUTROVICH 205  
02/25/05 (S) Moved CSSB 70(HES) Out of Committee  
02/25/05 (S) MINUTE (HES)  
02/28/05 (S) HES RPT CS 1DP 2NR NEW TITLE  
02/28/05 (S) DP: DYSON  
02/28/05 (S) NR: GREEN, ELTON  
02/28/05 (S) FIN REFERRAL ADDED AFTER JUD  
03/22/05 (S) JUD AT 8:30 AM BUTROVICH 205

**WITNESS REGISTER**

Senator Fred Dyson  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Sponsor of SJR 10

Mr. Michael MacLeod-Ball, Director  
Alaska Civil Liberties Union (AkCLU)  
**POSITION STATEMENT:** Testified in opposition of SJR 10

Mr. Ward Murdes, Attorney  
No address provided  
**POSITION STATEMENT:** Testified in opposition of SB 67

Ms. Margaret Luey  
No address provided  
**POSITION STATEMENT:** Testified in opposition of SB 67

Mr. Richard Luey  
No address provided  
**POSITION STATEMENT:** Testified in opposition of SB 67

Mr. Brian Slocum, Administrator  
Tanana Valley Clinic  
**POSITION STATEMENT:** Testified in support of SB 67

Mr. Jim Jordan, Executive Director  
Alaska State Medical Association  
**POSITION STATEMENT:** Testified in support of SB 67

Mr. Dean Guaneli, Chief Assistant Attorney General  
Criminal Division  
Department of Law  
PO Box 110300  
Juneau, AK 99811-0300  
**POSITION STATEMENT:** Introduced SB 70

**ACTION NARRATIVE**

**CHAIR RALPH SEEKINS** called the Senate Judiciary Standing Committee meeting to order at [8:34:27 AM](#). Present were Senators Hollis French, Charlie Huggins, Gretchen Guess, and Chair Ralph Seekins.

**SJR 10-SUPPORT FEDERAL MARRIAGE AMENDMENT**

[8:35:09 AM](#)

SENATOR FRED DYSON introduced SJR 10. Since 1998 44 states have amended their constitution to better define marriage as between

one man and one woman. Courts in Massachusetts, Vermont and California have made decisions casting doubts upon the constitutionality of those laws. Marriages performed in Massachusetts between same sex couple cause difficulty with other states due to the differences in states laws. The US Congress supports the Federal Defense of Marriage Act and Alaska would show support by passing SJR 10.

[8:39:24 AM](#)

Senator Gene Therriault joined the committee.

SENATOR HOLLIS FRENCH expressed preference for letting each state decide its own laws.

SENATOR DYSON expressed preference for consistency across the nation.

[8:41:35 AM](#)

CHAIR SEEKINS asked Senator Dyson whether the Massachusetts decision was done by the courts or by the people.

SENATOR DYSON responded the courts.

SENATOR CHARLIE HUGGINS shared Senator Dyson's perspective.

[8:44:14 AM](#)

SENATOR FRENCH asked Senator Dyson whether he would support adding an exception to the Full Faith and Credit Clause identifying that Alaska does not want to be put in the position of honoring another states laws on marriage.

SENATOR DYSON said it would not have the same urgency as SJR 10.

CHAIR SEEKINS expressed support for Senator French's suggestion.

[8:45:51 AM](#)

MR. MICHAEL MACLEOD-BALL, director, Alaska Civil Liberties Union (AkCLU) testified in opposition to the resolution. He said a couple married in another jurisdiction subjects themselves to Alaska's law when moving to Alaska. There is nothing that would require Alaska courts or companies to acknowledge the validity of the marriage.

[8:47:34 AM](#)

The AkCLU supports the full extension of marriage rights to all couples. The author of the Federal Defense of Marriage Act, Mr. Bob Barr, opposes this type of legislation due to states rights.

[8:49:19 AM](#)

MR. MACLEOD BALL quoted Mr. Barr's testimony to the US Congress:  
By moving what has traditionally been a state prerogative, local marriage laws, to the federal government it's in direct violation of the principals of federalism. In treating the US Constitution as an appropriate place to impose publicly contested social policies it would cheapen the sacrosanct nature of that document opening the door to future meddling by liberals and conservatives. Third, it is unnecessary as long as the Federal Defense of Marriage Act is enforced.

[8:50:39 AM](#)

Conservative representatives have expressed concern about the federal preemption of the state having the ability to make its own decisions. Most people are against discrimination. SJR 10 has the potential to take away rights of partners such as hospital rights, pension rights, and inheritance rights.

[8:51:53 AM](#)

SENATOR THERRIAULT asked Mr. Macleod Ball how Wyoming dealt with the Full Faith and Credit Clause issue.

MR. MACLEOD-BALL did not know.

SENATOR THERRIAULT speculated they chose to ignore it.

MR. MACLEOD BALL quoted Senator John Haynes from Wyoming testimony to the US Congress.

"State courts have over 200 years of experience in deciding which out of state marriages they will recognize."

What he is talking about is an area reserved for the states and the federal government has traditionally stayed out of it.

[8:53:39 AM](#)

CHAIR SEEKINS said in this case the people of Alaska have said marriage should be between one man and one woman.

MR. MACLEOD-BALL said the issue is whether the people of the United States should make decisions for the people in every state.

CHAIR SEEKINS said often courts make decisions that are contrary to what the people would do if they were asked.

[8:58:54 AM](#)

SENATOR THERRIAULT agreed the beginning of the civil rights movement would not have garnered majority support if the people of the US were polled.

MR. MACLEOD BALL asserted an Alaska court might have to interpret Massachusetts's case law in the event of a same sex marriage ending in divorce. However, courts have always been burdened with those types of decisions. Alaska still would not have to recognize the marriage.

[9:01:23 AM](#)

MR. MACLEOD BALL took the position that SJR 10 was not necessary. The Federal Defense of Marriage Act is already in place.

[9:02:59 AM](#)

SENATOR FRENCH asked Mr. Macleod Ball what is in the Federal Defense of Marriage Act that works against the idea of civil unions.

MR. MACLEOD BALL said there was no short answer. The AkCLU's concern is the federal amendment would change the benefit of civil unions.

[9:04:37 AM](#)

CHAIR SEEKINS closed public testimony.

SENATOR HUGGINS moved SJR 10 from committee. Hearing no objections the motion carried.

**SB 67-CLAIMS AGAINST HEALTH CARE PROVIDERS**

[9:06:02 AM](#)

CHAIR SEEKINS announced SB 67 to be up for consideration.

MR. WARD MURDES, attorney, divided his testimony into three concepts: responsibility, trust, and value. Whenever a bill lowers a person's responsibility it invites the same social aspects. No one can prove the insurance companies will lower premiums in response to the bill. SB 67 would punish people who are severely harmed.

[9:10:35 AM](#)

The state should trust the juries and the judges to apply the law. The insurance company attorneys consistently demand a jury

trial because juries are notoriously cheap. The \$250,000 cap would negatively affect the most horribly injured. There is currently no indication that the insurance companies would decrease their rates as a result of SB 67. Doctors should be held accountable for every dollar of damage they cause. He opposed SB 67 in total.

[9:13:38 AM](#)

SENATOR THERRIAULT asked Mr. Murdes to talk about the current system, which has a \$400,000 cap, and the workability of getting around the cap.

MR. MURDES said in 17 years of medical malpractice work he has never had a verdict for personal injury non-economic damages exceeding \$250,000. Alaskan jurors overall simply don't award big money. Getting around the cap is a non-issue.

SENATOR THERRIAULT said the next case might receive the big money judgment.

MR. MURDES asserted that Alaskan jurors are not inclined to award damages against doctors. He urged the committee to do some research into the perceived crisis and he volunteered his time to do an analysis for the committee.

[9:17:27 AM](#)

SENATOR THERRIAULT asked Mr. Murdes his suggestion on allowing an upper limit.

MR. MURDES said the jury addresses the compensatory damage limit. Gross negligence is not defined very well in Alaska law. Sometimes doctors don't do what they are paid to do and they should be held accountable.

[9:19:20 AM](#)

MS. MARGARET LUEY testified in opposition to SB 67. Her husband experienced permanent damage due to medical negligence. At the time he was 49 and in excellent health. He was intellectually gifted and a valued employee of British Petroleum as a computer scientist and lead auditor. He enjoyed fishing, canoeing, camping, hiking, gardening, and woodwork. Now there is not a day that passes that Richard does not struggle. It is a labor for him to communicate and express ideas. He is now stared at and treated as mentally defective. Non-economic losses and pain and suffering are terms that are cavalierly tossed around. Richard suffers from a loss of self-esteem and a loss of his education due to a brain injury.

[9:23:24 AM](#)

When his injury occurred they had just purchased a dream home and a new car. In an instant that all vanished. Today they face a mountain of debt. The legal battle for accountability was a steep uphill fight for five years and they never did get a day in court. Every attorney stopped helping them due to the extraordinarily high cost of expert medical testimony estimated to be \$150,000. Doctors are reluctant to testify against each other and juries tend to presume all doctors are truthful.

[9:25:51 AM](#)

This belief requires a higher level of evidence to prove a doctor has been careless. She urged the committee to quash the bill.

[9:27:41 AM](#)

MR. RICHARD LUEY testified against SB 67.

[9:28:53 AM](#)

MR. BRIAN SLOCUM, administrator, Tanana Valley Clinic, testified in support of SB 67. He said the bill would bring badly needed physicians into Alaska. There is a growing shortage of doctors in Alaska's interior. A 2003 American Medical Association review found that between 1965-2002 non-federal physicians increased at a rate of 213% while the US population only grew about 51%.

[9:30:50 AM](#)

The data suggests the problem of physician shortages is a localized problem. A recent editorial in Modern Healthcare predicts a shortage of up to 200,000 doctors by 2020.

[9:32:40 AM](#)

This shortage computes that approximately 465 patients will not be seen daily by the year 2008.

[9:36:01 AM](#)

Medical malpractice insurance costs new doctors \$250,000 in Alaska, which causes them to decide to practice elsewhere. Passing SB 67 will curb a healthcare collapse.

[9:37:03 AM](#)

SENATOR FRENCH asked Mr. Slocum what role the Division of Insurance played in approving the recent medical malpractice premium increase.

MR. SLOCUM said he didn't know.

SENATOR FRENCH asked for a link between medical malpractice caps and doctor availability.

[9:38:46 AM](#)

MR. SLOCUM said he did not have specific information on that.

SENATOR GUESS asked Mr. Slocum to comment whether the clinic has had an arbitration case go to a review panel.

MR. SLOCUM said they did have a case that was settled before trial. Typically attorneys make the decision regarding arbitration and review panels.

[9:41:08 AM](#)

SENATOR GUESS asked whether he had any information to show that the two existing insurance companies wouldn't leave if a cap is put in place.

MR. SLOCUM had no proof of that.

[9:43:10 AM](#)

MR. JIM JORDAN, executive director, Alaska State Medical Association, testified in support of SB 67. The six states that have fewer doctors per capita than Alaska are Idaho, Oklahoma, Mississippi, Nevada, Wyoming and Iowa. One reason why the Medical Indemnity Corporation of Alaska (MICA) disappeared is it was an effective victim of it's own success. It produced positive gains and the Internal Revenue Service taxed it federally. There was concern that same theory would be applied to other state organizations i.e. the Permanent Fund.

[9:50:21 AM](#)

Mr. Jordan disagreed with concern expressed that if the cap were established at \$250,000 it would impact the ability of people to go to court. Two of the three insurance companies who left Alaska do business in Idaho with a premium rate of 48 percent lower.

[9:54:59 AM](#)

An OBGYN working in Nome could no longer afford the premiums and had to quit doing certain medical procedures.

[9:55:54 AM](#)

SENATOR THERRIAULT asked Mr. Jordan to speak of punitive damages.

MR. JORDAN said AS 09.17.020 explains that.

SENATOR GUESS asked whether Mr. Jordan knew of case law on how future economics work for children.

MR. JORDAN knew of no case law. The Alaska State Medical Association's attorney does medical malpractice awards and he indicated it is very unusual for the plaintiff and defense to differ on the value of future economic earnings, including children.

[9:57:45 AM](#)

SENATOR GUESS asked Mr. Jordan whether the Legislature should attempt to increase the Washington, Alaska, Montana, Idaho (WAMI) program in order to address the shortage of physicians.

[9:59:24 AM](#)

MR. JORDAN agreed expansion of the WAMI program would help.

[10:00:54 AM](#)

SENATOR FRENCH advised Mr. Jordan much of the information the Legislature has received on SB 67 does not confirm that rates would change as a result of passage of the bill. He asked for a response.

MR. JORDAN said all other things remaining equal rates would decrease. However, other impacts will cause the rates to rise.

CHAIR SEEKINS closed public testimony. He held the bill in committee.

[10:15:32 AM](#) < Recess > [10:15:52 AM](#)

**SB 70-CRIMES INVOLVING CONTROLLED SUBSTANCES**

[10:15:52 AM](#)

CHAIR SEEKINS announced SB 70 to be up for consideration.

MR. DEAN GUANELI, chief assistant attorney general, Department of Law (DOL) explained SB 70 is commonly referred to as the governor's methamphetamine bill.

[10:16:50 AM](#)

CHAIR SEEKINS clarified the committee was considering Version \G.

MR. GUANELI detailed Section 1 addresses all forms of drugs manufactured or sold in Alaska. If a person were to make or sell these drugs and someone dies as a result of direct ingestion it would be a manslaughter charge. Section 2 creates a defense in the case of drugs stolen out of a secure area.

[10:19:51 AM](#)

Sections 3, 4, and 5 are provisions that directly relate to methamphetamine (meth) manufacturing. The manufacturing of meth is a dangerous activity using flammable, explosive, and toxic materials.

[10:22:03 AM](#)

Section 6 addresses a specific type of meth commonly called meth oil. Section 7 makes anabolic steroids a controlled substance under the Alaska criminal code.

[10:27:53 AM](#)

SENATOR THERRIAULT noted there was no definition of ingestion in Alaska statutes.

MR. GUANELI said it was the intent that ingestion would be a broader term than in the mouth. The intent is to cover all forms of use. SB70 is intended to get to the manufacturers of the drugs.

[10:30:43 AM](#)

SENATOR THERRIAULT speculated there was a possible problem with using the words "result of use."

MR. GUANELI explained in the situation where someone unknowingly takes a controlled substance they wouldn't be charged with using. Deliberate or accidental use would be an appropriate amendment.

[10:31:44 AM](#)

SENATOR FRENCH noted sometimes addicts inject each other. That denotes voluntary action. He asked whether that situation was addressed in the bill.

MR. GUANELI said it was intended since the person injecting controls the dosage.

[10:34:17 AM](#)

SENATOR HUGGINS read the manufacturing of meth has a poisonous effect on the building. He asked about the net effect of that.

MR. GUANELI answered potentially there is an effect on future residents but it depends on how contaminated the site is. He indicated the Alaska State Troopers would have expansive testimony regarding that topic.

[10:36:24 AM](#)

SENATOR GUESS referred Senator Huggins to another bill, which addresses meth lab clean up.

[10:38:04 AM](#)

CHAIR SEEKINS held SB 70 in committee. There being no further business to come before the committee, he adjourned the meeting at [10:38:44 AM](#).