

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

May 3, 2006
8:38 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

CS FOR HOUSE BILL NO. 442(JUD) am

"An Act relating to the validity of advance health care directives, individual health care instructions, and do not resuscitate orders; relating to the revocation of advance health care directives; relating to do not resuscitate orders; relating to resuscitative measures; relating to the liability and discipline of health care providers, institutions, and facilities; relating to proceedings for judicial relief; relating to an individual's capacity for making health care decisions; and providing for an effective date."

MOVED CSHB 442(JUD) am OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 190(FIN)

"An Act relating to the purchase of alcoholic beverages and to access to licensed premises; relating to civil liability for certain persons accessing licensed premises; requiring driver's licenses and identification cards to be marked if a person is restricted from consuming alcoholic beverages as a result of a conviction or condition of probation or parole and relating to fees for the marked license; and requiring the surrender and cancellation of driver's licenses under certain circumstances."

MOVED SCS CSHB 190(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 322(JUD) am

"An Act relating to infants who are safely surrendered by a parent shortly after birth."

MOVED CSHB 322(JUD) am OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 9 am

Urging the United States Congress to honor the process and judgment of the federal courts in the case of the Exxon Valdez disaster and to refrain from enacting legislation that would affect the outcome of the courts' resolution of the case.

HEARD AND HELD

SENATE JOINT RESOLUTION NO. 17

Urging the United States Department of Justice and the Alaska Department of Law to identify all natural resource damages from the Exxon Valdez oil spill that were unanticipated at the time of the 1991 settlement, to develop plans to remedy the damages, and to present the ExxonMobil Corporation with a request for the full \$100,000,000 that is available through the "Reopener for Unknown Injury" clause of the 1991 civil settlement to carry out these plans.

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 442

SHORT TITLE: HEALTH CARE DECISIONS

SPONSOR(S): REPRESENTATIVE(S) WEYHRAUCH

02/10/06	(H)	READ THE FIRST TIME - REFERRALS
02/10/06	(H)	HES, JUD
02/21/06	(H)	HES AT 3:00 PM CAPITOL 106
02/21/06	(H)	Scheduled But Not Heard
02/23/06	(H)	HES AT 3:00 PM CAPITOL 106
02/23/06	(H)	Heard & Held
02/23/06	(H)	MINUTE(HES)
02/28/06	(H)	HES AT 3:00 PM CAPITOL 106
02/28/06	(H)	Moved CSHB 442(HES) Out of Committee
02/28/06	(H)	MINUTE(HES)
03/03/06	(H)	HES RPT CS(HES) NT 4DP 1NR
03/03/06	(H)	DP: SEATON, GARDNER, KOHRING, WILSON;
03/03/06	(H)	NR: CISSNA
03/24/06	(H)	JUD AT 1:00 PM CAPITOL 120
03/24/06	(H)	Scheduled But Not Heard
03/27/06	(H)	JUD AT 1:00 PM CAPITOL 120
03/27/06	(H)	Moved CSHB 442(JUD) Out of Committee
03/27/06	(H)	MINUTE(JUD)
03/29/06	(H)	JUD RPT CS(JUD) NT 5DP
03/29/06	(H)	DP: GARA, COGHILL, GRUENBERG, KOTT, MCGUIRE
04/10/06	(H)	TRANSMITTED TO (S)
04/10/06	(H)	VERSION: CSHB 442(JUD) AM

04/12/06 (S) READ THE FIRST TIME - REFERRALS
 04/12/06 (S) HES, JUD
 04/21/06 (S) HES AT 1:30 PM BUTROVICH 205
 04/21/06 (S) -- Meeting Canceled --
 04/24/06 (S) HES AT 1:30 PM BUTROVICH 205
 04/24/06 (S) POSTSECONDARY TUITION FOR FOSTER
 CHILDREN
 04/25/06 (S) JUD AT 8:30 AM BUTROVICH 205
 04/25/06 (S) Scheduled But Not Heard
 04/28/06 (S) HES AT 1:30 PM BUTROVICH 205
 04/28/06 (S) Moved CSHB 442(JUD) am Out of Committee
 04/28/06 (S) MINUTE(HES)
 04/29/06 (S) HES RPT 5DP
 04/29/06 (S) DP: DYSON, ELTON, WILKEN, GREEN, OLSON
 05/02/06 (S) JUD AT 8:30 AM BUTROVICH 205
 05/02/06 (S) Heard & Held
 05/02/06 (S) MINUTE(JUD)
 05/03/06 (S) JUD AT 8:30 AM BUTROVICH 205

BILL: HB 190

SHORT TITLE: REQUIRED ID FOR PURCHASING ALCOHOL

SPONSOR(S): REPRESENTATIVE(S) FOSTER

03/01/05 (H) READ THE FIRST TIME - REFERRALS
 03/01/05 (H) L&C, JUD
 03/22/05 (H) L&C AT 1:00 PM CAPITOL 17
 03/22/05 (H) Heard & Held
 03/22/05 (H) MINUTE(L&C)
 04/20/05 (H) L&C AT 3:15 PM CAPITOL 17
 04/20/05 (H) Moved CSHB 190(L&C) Out of Committee
 04/20/05 (H) MINUTE(L&C)
 04/22/05 (H) L&C RPT CS(L&C) NT 3DP 2NR
 04/22/05 (H) DP: CRAWFORD, LYNN, KOTT;
 04/22/05 (H) NR: LEDOUX, GUTTENBERG
 04/22/05 (H) FIN REFERRAL ADDED AFTER JUD
 02/10/06 (H) JUD AT 1:00 PM CAPITOL 120
 02/10/06 (H) Moved CSHB 190(JUD) Out of Committee
 02/10/06 (H) MINUTE(JUD)
 02/13/06 (H) JUD RPT CS(JUD) NT 1DP 4NR
 02/13/06 (H) DP: WILSON;
 02/13/06 (H) NR: GARA, KOTT, GRUENBERG, MCGUIRE
 03/14/06 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 03/14/06 (H) Heard & Held
 03/14/06 (H) MINUTE(FIN)
 03/24/06 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 03/24/06 (H) Moved CSHB 190(FIN) Out of Committee
 03/24/06 (H) MINUTE(FIN)

03/27/06 (H) FIN RPT CS(FIN) NT 3DP 5NR
03/27/06 (H) DP: WEYHRAUCH, KERTTULA, FOSTER;
03/27/06 (H) NR: HAWKER, KELLY, MOSES, STOLTZE,
MEYER
04/24/06 (H) TRANSMITTED TO (S)
04/24/06 (H) VERSION: CSHB 190(FIN)
04/25/06 (S) READ THE FIRST TIME - REFERRALS
04/25/06 (S) JUD, FIN
04/27/06 (S) JUD AT 8:30 AM BUTROVICH 205
04/27/06 (S) Scheduled But Not Heard
04/28/06 (S) JUD AT 9:30 AM BUTROVICH 205
04/28/06 (S) Scheduled But Not Heard
05/02/06 (S) JUD AT 8:30 AM BUTROVICH 205
05/02/06 (S) Heard & Held
05/02/06 (S) MINUTE(JUD)
05/03/06 (S) JUD AT 8:30 AM BUTROVICH 205

BILL: HB 322

SHORT TITLE: SAFE SURRENDER OF BABIES

SPONSOR(s): REPRESENTATIVE(s) LEDOUX, GRUENBERG

01/09/06 (H) PREFILE RELEASED 12/30/05
01/09/06 (H) READ THE FIRST TIME - REFERRALS
01/09/06 (H) HES, JUD
04/25/06 (H) HES AT 3:00 PM CAPITOL 106
04/25/06 (H) Moved CSHB 322(HES) Out of Committee
04/25/06 (H) MINUTE(HES)
04/26/06 (H) HES RPT CS(HES) 4DP 1NR
04/26/06 (H) DP: GARDNER, GATTO, SEATON, WILSON;
04/26/06 (H) NR: CISSNA
04/26/06 (H) JUD AT 1:00 PM CAPITOL 120
04/26/06 (H) Moved CSHB 322(JUD) Out of Committee
04/26/06 (H) MINUTE(JUD)
04/27/06 (H) JUD RPT CS(JUD) 5DP
04/27/06 (H) DP: GARA, KOTT, ANDERSON, GRUENBERG,
MCGUIRE
04/28/06 (H) TRANSMITTED TO (S)
04/28/06 (H) VERSION: CSHB 322(JUD) AM
05/01/06 (S) READ THE FIRST TIME - REFERRALS
05/01/06 (S) JUD
05/03/06 (S) JUD AT 8:30 AM BUTROVICH 205

BILL: HJR 9

SHORT TITLE: URGE CONGRESS HONOR EXXON VALDEZ JUDGMENT

SPONSOR(s): REPRESENTATIVE(s) LEDOUX

02/14/05 (H) READ THE FIRST TIME - REFERRALS

02/14/05 (H) RES, JUD
 03/30/05 (H) RES AT 1:00 PM SENATE FINANCE 532
 03/30/05 (H) Moved Out of Committee
 03/30/05 (H) MINUTE(RES)
 04/01/05 (H) RES RPT 6DP
 04/01/05 (H) DP: OLSON, ELKINS, LEDOUX, CRAWFORD,
 RAMRAS, SAMUELS
 04/11/05 (H) JUD AT 1:00 PM CAPITOL 120
 04/11/05 (H) Moved Out of Committee
 04/11/05 (H) MINUTE(JUD)
 04/12/05 (H) JUD RPT 4DP 3NR
 04/12/05 (H) DP: GRUENBERG, ANDERSON, COGHILL, GARA;
 04/12/05 (H) NR: KOTT, DAHLSTROM, MCGUIRE
 04/19/05 (H) TRANSMITTED TO (S)
 04/19/05 (H) VERSION: HJR 9 AM
 04/20/05 (S) READ THE FIRST TIME - REFERRALS
 04/20/05 (S) RES, JUD
 04/25/05 (S) RES AT 3:30 PM BUTROVICH 205
 04/25/05 (S) Moved HJR 9 am Out of Committee
 04/25/05 (S) MINUTE(RES)
 04/26/05 (S) RES RPT 3DP 1NR
 04/26/05 (S) DP: WAGONER, ELTON, STEDMAN
 04/26/05 (S) NR: DYSON
 01/25/06 (S) JUD AT 8:30 AM BUTROVICH 205
 01/25/06 (S) <Bill Hearing Canceled by Sponsor>
 05/03/06 (S) JUD AT 8:30 AM BUTROVICH 205

BILL: SJR 17

SHORT TITLE: COLLECT MORE EXXON VALDEZ SPILL DAMAGES

SPONSOR(s): SENATOR(s) FRENCH

02/01/06 (S) READ THE FIRST TIME - REFERRALS
 02/01/06 (S) RES, JUD
 04/19/06 (S) RES AT 3:30 PM BUTROVICH 205
 04/19/06 (S) Scheduled But Not Heard
 04/24/06 (S) RES AT 3:30 PM BUTROVICH 205
 04/24/06 (S) -- Meeting Canceled --
 04/26/06 (S) RES AT 3:30 PM BUTROVICH 205
 04/26/06 (S) Moved CSSJR 17(RES) Out of Committee
 04/26/06 (S) MINUTE(RES)
 04/27/06 (S) RES RPT CS 5DP 2NR SAME TITLE
 04/27/06 (S) DP: WAGONER, KOOKESH, ELTON, STEDMAN,
 STEVENS B
 04/27/06 (S) NR: DYSON, SEEKINS
 05/03/06 (S) JUD AT 8:30 AM BUTROVICH 205

WITNESS REGISTER

Representative Bruce Weyhrauch
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of HB 442

Jacqueline Tupou, Legislative Aide
Staff to Representative Bruce Weyhrauch
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Answered questions regarding HB 442

John Dawson, Attorney
Davis Wright Tremaine LLC
No address provided
POSITION STATEMENT: Testified in support of HB 442

Mike Schneider, Attorney
Anchorage, Alaska
POSITION STATEMENT: Testified in opposition to HB 442

Paul LaBolle, Legislative Aide
Staff to Representative Richard Foster
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Introduced HB 190

Representative Harry Crawford
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Answered questions regarding HB 190

Dean Guaneli, Chief Assistant Attorney General
Criminal Division
Department of Law
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Answered questions regarding HB 190

Representative Gabrielle LeDoux
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of HB 322

Christine Marasigan, Legislative Aide
Staff to Representative LeDoux
Alaska State Capitol

Juneau, AK 99801-1182

POSITION STATEMENT: Answered questions regarding HB 322

Tammy Sandoval, Deputy Commissioner
Office of Children's Services
Department of Health & Social Services
PO Box 110601
Juneau, AK 99801-0601

POSITION STATEMENT: Answered questions regarding HB 322

Jan Rutherford, Assistant Attorney General
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Answered questions regarding HB 322

Senator Hollis French
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of SJR 17

Tim Joyce, Mayor of Cordova
Cordova, Alaska

POSITION STATEMENT: Testified in support of SJR 17

Robert Maxwell, Commercial Fisherman
Cordova, Alaska

POSITION STATEMENT: Testified in support of SJR 17

Jeff Short, Research Scientist
Auke Bay Fisheries Laboratory
Juneau, Alaska

POSITION STATEMENT: Testified in support of SJR 17

Ken Adams, Research Scientist
Cordova, Alaska

POSITION STATEMENT: Testified in support of SJR 17

Suzanne Hancock, Legislative Aide
Staff to Representative LeDoux
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Introduced HJR 9

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at [8:38:32 AM](#). Present were Senators Hollis French, Charlie Huggins, Gretchen Guess, and Chair Ralph Seekins.

HB 442-HEALTH CARE DECISIONS

[8:39:06 AM](#)

CHAIR RALPH SEEKINS announced CSHB 442(JUD) to be up for consideration.

REPRESENTATIVE BRUCE WEYHRAUCH offered to answer questions for the committee.

CHAIR SEEKINS informed him that previous testimony from an attorney representing the Alaska Trial Lawyers Association suggested that the committee add the word "negligence" on page 5, line 16 just before the words "gross negligence." He asked Representative Weyhrauch to comment.

REPRESENTATIVE WEYHRAUCH responded that the bill already replaces the words "reasonable" with "good faith." Part of the reason for that is because the family is usually in a highly emotional state when the physician is giving them options for the patient, while recognizing that the patient is terminally ill. The patient has already communicated their desire to their "agent" that there be no extraordinary measures taken to keep them alive. Often family members insist that every conceivable measure be taken and so the physician and the agent need to have that good faith reliance that the advanced healthcare directive has been specific and legally executed.

The intent of the bill is not to relieve anyone from liability, it is to ensure that the healthcare provider operate in a good faith manner when making decisions.

[8:43:48 AM](#)

SENATOR GRETCHEN GUESS recognized that there is not a working definition of "good faith" in statute and yet there is a working definition of "reasonable."

REPRESENTATIVE WEYHRAUCH responded that the working definition of "reasonable" is the same as "good faith." He said that "reasonable" isn't always a defined term and can't always be specifically defined because a case will always have factual nuances.

SENATOR GUESS asked whether it was his opinion that there is enough case law to establish a standard for "good faith."

REPRESENTATIVE WEYHRAUCH said yes.

JACQUELINE TUPOU added that she reviewed three different cases where "good faith" had been a standard; it was up to the defense to prove that there was no ulterior motive.

[8:46:53 AM](#)

SENATOR HOLLIS FRENCH said from a patient's point of view, they generally would want a healthcare provider to correct any error that they caused through negligence and not just use the DNR as an "out."

REPRESENTATIVE WEYHRAUCH asserted the bill would not let any physician off the hook for negligently causing a terminally ill patient to die before their time.

MS. TUPOU added that anesthesiology is not an exact science and too much can often cause a person to "flat-line." She said that would be a qualifying reason for the physician to bring the patient back to life.

[8:51:27 AM](#)

SENATOR FRENCH asked whether this was an emerging issue in the area of healthcare directives.

REPRESENTATIVE WEYHRAUCH said HB 442 was due to an omission in the original bill and healthcare providers recognized the omission late in the process. He said he did not want to introduce HB 442 until he knew that enough research had been done and that it was necessary.

SENATOR GUESS said she did not understand the reason the sponsor was hesitant to add "negligence" to the exemptions on page 5, line 16.

REPRESENTATIVE WEYHRAUCH explained his resistance was to ensure that the agent and the healthcare provider act in good faith and that they have the comfort level to implement the terms of the advanced healthcare directive.

[8:55:35 AM](#)

SENATOR GUESS noted that Section 9 doesn't have "good faith" in it anywhere. It says that the immunity doesn't apply under gross

negligence or recklessness or intentional actions. The discussion is whether to add negligence and, she said, she still didn't understand the reluctance.

SENATOR FRENCH referred to Section 15 and asked the reason for the retroactivity to 2005.

MS. TUPOU said that was added in House Health, Education, and Social Services Committee (HESS). They decided that the liability pertaining to the "Healthcare Act," should begin with inception of the Act.

[8:57:44 AM](#)

JOHN DAWSON, Partner in the law firm Davis Wright Tremaine LLC, representing Providence Anchorage Anesthesia Medical Group, testified. He said the essence of Section 9 is that "it is fundamentally unfair to tie a doctor's hands with a DNR order and then to sue him when his hands have been tied." In the case of mere negligence, there is a patent unfairness in preventing the doctor from giving CPR yet putting him liable for suit. He noted the retroactivity was added in the House Judiciary Committee.

SENATOR FRENCH asked for clarification on which House committee made the amendment.

MS. TUPOU stood corrected. She said initially it was offered in HESS by Representative Paul Seaton but didn't pass. Representative Max Gruenberg then offered it in the House Judiciary Committee and it was accepted.

[9:01:17 AM](#)

Senator Gene Therriault joined the meeting.

MIKE SCHNEIDER, Attorney, testified that the emotional context of the decisions is a reality. The bill is an institutional disregard of jury trial and the reasonability of juries to decide when people act reasonably, he accused. "That is a path that shouldn't be trodden." It takes rights away from citizens and gives healthcare providers more protection than the rest of the population. He said he was pleased to hear from the sponsor that the intent of the bill is not to excuse the physician from any negligent acts leading up to the need for resuscitative care.

[9:04:35 AM](#)

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

HB 190-REQUIRED ID FOR PURCHASING ALCOHOL

9:06:22 AM

CHAIR RALPH SEEKINS announced CSHB 190(FIN) to be up for consideration.

PAUL LABOLLE, Staff to Representative Richard Foster, and REPRESENTATIVE HARRY CRAWFORD introduced themselves for the record.

MR. LABOLLE offered a proposed amendment for the bill to capture municipality ordinances.

CHAIR SEEKINS noted that the proposed changes would apply to version R.

9:08:38 AM

SENATOR HOLLIS FRENCH asked Mr. LaBolle whether the bill sponsor considered broader language that would capture out of state convictions.

MR. LABOLLE responded they did consider that but the drafter advised that it would open up a "legal rats nest."

SENATOR FRENCH moved Amendment 1.

24-LS0617\R.1
Luckhaupt

A M E N D M E N T 1

OFFERED IN THE SENATE
TO: CSHB 190(FIN)

Page 2, line 9:
Delete "or 28.35.032"
Insert ", 28.35.032, or a similar municipal ordinance"

Page 2, line 10:
Delete "or 28.35.032"
Insert ", 28.35.032, or a similar municipal ordinance"

Page 4, lines 5 - 6:
Delete "or 28.35.032"

Insert "28.35.032, or a similar municipal ordinance"

Page 4, line 7, following "sections":

Insert "or a similar municipal ordinance"

Hearing no objections, Amendment 1 was adopted.

SENATOR GENE THERRIAULT asked the type of restrictions that would be placed on people.

REPRESENTATIVE CRAWFORD responded the intent is not to limit a person from eating at a particular restaurant but the bill would attempt to prevent that person from buying alcohol there. Often times with aggravators the judge orders a person not to enter premises where alcohol is served and also not to consume alcohol but the intent of the bill is not to restrict anyone from having a meal at a restaurant.

SENATOR THERRIAULT noted that he had a bill that gives a judge the power to order someone not to drink for a period of, say, ten years. He asked Representative Crawford whether he would consider adding something like that to HB 190.

REPRESENTATIVE CRAWFORD said he would consider it.

[9:13:28 AM](#)

DEAN GUANELI, Chief Assistant Attorney General, Department of Law (DOL) said he wanted to clarify the issue involving the scope of the convictions that would subject a person to the designation on their license. He agreed with Amendment 1 but expressed a preference to also capture out of state convictions to the extent that the DOL find out about them. From a legal standpoint, he said, it is important to make sure that people with other state restrictions who move to Alaska be treated the same as Alaskans with restrictions.

[9:16:18 AM](#)

MR. GUANELI suggested the law could be challenged since the Alaska Supreme Court has given a higher level of protection under the right to privacy in the Alaska State Constitution. He suggested that the committee modify the language in the bill to include a similar law in another jurisdiction.

CHAIR SEEKINS announced a brief recess at [9:18:20 AM](#).

[9:29:00 AM](#)

SENATOR FRENCH moved to rescind Amendment 1. Hearing no objections, the motion carried.

SENATOR FRENCH moved Amendment 2. Use the language in Amendment 1 but on lines 3, 7, 11 and 14; strike "municipal ordinance" and insert "law or ordinance from another jurisdiction." Hearing no objections, Amendment 2 was adopted.

CHAIR SEEKINS held HB 190 in committee.

HB 322-SAFE SURRENDER OF BABIES

[9:31:12 AM](#)

CHAIR RALPH SEEKINS announced CSHB 322(JUD) AM to be up for consideration.

REPRESENTATIVE GABRIELLE LADOUX introduced her aide, Christine Marasigan.

CHRISTINE MARASIGAN, Staff to Representative LeDoux, introduced the bill, which she referred to as the "Safe Surrender of Infants Act." To date there are 47 states with similar legislation. It is a bill that would allow parents to safely surrender an infant up to 21 days after birth without fear of being criminally prosecuted. The intent of the bill is to encourage people to not abandon infants in a way that could lead to injury or death. There are letters of support in the bill packet from Planned Parenthood and the Alaska Women's Lobby.

SENATOR HOLLIS FRENCH asked whether the bill has seen any opposition.

MS. MARASIGAN stated no.

CHAIR SEEKINS asked the current process for when someone abandons a baby.

MS. MARASIGAN deferred the question to Tammy Sandoval.

[9:34:13 AM](#)

TAMMY SANDOVAL, Deputy Commissioner, Office of Children's Services (OCS), Department of Health and Social Services (DHSS), introduced herself and JAN RUTHERDALE, Assistant Attorney General, Department of Law (DOL).

CHAIR SEEKINS reiterated his question regarding the legal process when a parent abandons a baby.

MS. RUTHERDALE explained the process for when a mother abandons her child under HB 190; the official that she abandons the child to would immediately contact OCS and DHSS. OCS would contact the DOL and together they would file for a petition for child in need of aide (CINA). It would be treated as any CINA petition and the grounds would be abandonment. If the mother refuses to name the father it makes things harder but that is also common. As far as issuing a birth certificate, there would be one issued.

CHAIR SEEKINS asked the process if it were the father that brings the child in.

MS. RUTHERDALE said there would be no difference. The process would be the same. She did note that a paternity test is simple to do and orders are easy to obtain.

MS. SANDOVAL added that the issue is to address young mothers who become overwhelmed by the prospect of parenthood. It is a passionate response, she said, and the Department wants to encourage the parent to surrender the baby without fear of prosecution. There are contingencies that state the parent cannot have abused or neglected the child. She said she believes the bill would address the rare circumstance of abandonment.

[9:38:16 AM](#)

SENATOR GRETCHEN GUESS noted the purpose of the bill was to stem the cases of children being abandoned in unsafe areas or conditions.

MS. RUTHERDALE agreed.

[9:40:16 AM](#)

CHAIR SEEKINS closed public testimony.

SENATOR GUESS moved CSHB 322(JUD) AM from committee with individual recommendations and attached fiscal notes. Hearing no objections, the motion carried.

HB 442-HEALTH CARE DECISIONS

[9:50:15 AM](#)

CHAIR RALPH SEEKINS announced CSHB 442(JUD) to be up for consideration.

SENATOR HOLLIS FRENCH moved Amendment 1. Page 5, line 16, after the word "by" insert the word "negligence."

JACQUELINE TUPOU, Staff to Representative Bruce Weyhrauch, disagreed. She said it is necessary to give doctors more protection from liability so that they can continue to treat DNR patients and so that people are afforded the right to choose a DNR directive. Negligence is the lowest standard to be able to prove, she stated. Representative Weyhrauch has worked hundreds of hours on this legislation, she asserted, to make sure there is a balance so that there will be doctors who honor healthcare directives and also remain willing to operate or treat someone with a DNR.

[9:54:09 AM](#)

CHAIR SEEKINS clarified Senator French's proposed Amendment 1.

SENATOR GUESS said she appreciated the passion but the committee is here to do the right thing. Negligence is a standard and has weight and proof in a court of law. She did not understand the reason for the objection to having all the current standards of law in the bill. She said if a family is so upset with a person's DNR directive, they might sue regardless. The real question is whether or not to hold someone accountable for his or her actions, she stated. She expressed support for Amendment 1.

CHAIR SEEKINS said the bill wouldn't be letting anyone off the hook in terms of a negligent act.

SENATOR CHARLIE HUGGINS suggested the term "negligence" creates a playground for lawyers.

SENATOR FRENCH stated the committee has been asked to make a false choice between allowing carelessness and offering immunity. Doctors should be held to a standard of care consistent to how the statute reads. Without the amendment, the bill leaves out protection for the patients and families.

Roll call proved Amendment 1 failed on a 3-2 vote with Senators Huggins, Therriault and Seekins voting Nay, and Senators French and Guess voting Yea.

SENATOR HUGGINS moved CSHB 442(JUD) am from committee with individual recommendations and attached fiscal notes. Hearing no objections, the motion carried.

HB 190-REQUIRED ID FOR PURCHASING ALCOHOL

[10:01:34 AM](#)

CHAIR RALPH SEEKINS announced SCS CSHB 190(JUD) to be up for consideration. He said he preferred that the bill be amended to put a penalty on someone who sets a trap for profit.

SENATOR HOLLIS FRENCH moved SCS CSHB 190 (JUD) from committee with individual recommendations and attached fiscal notes. Hearing no objections, the motion carried.

SJR 17-COLLECT MORE EXXON VALDEZ SPILL DAMAGES

[10:05:53 AM](#)

CHAIR RALPH SEEKINS announced SJR 17 to be up for consideration.

SENATOR HOLLIS FRENCH introduced the resolution. He explained that it simply asked the state and the federal government to pursue the "Reopener for Unknown Injury" clause in the 1991 civil settlement with the Exxon Corporation over the 1989 Exxon Valdez oil spill in Prince William Sound.

Since the spill and settlement, scientists have determined a number of unanticipated injuries to the spill zone, such as the 1993 crash of the herring population. Also, crude oil has yet to biodegrade on many of the beaches in the Sound. These issues, among others, show the necessity of pursuing the "reopener clause" and the \$100 million dollars that would help remedy the harm.

[10:09:17 AM](#)

TIM JOYCE, Mayor of Cordova, testified in support of the legislation. He detailed the negative economic impacts since the 1989 Exxon Valdez oil spill surrounding Prince William Sound. He described the downfall of the herring fishery and said there was strong evidence that the collapse started in 1989 with the oil spill. The surrounding economy has suffered for over ten years and continues to suffer, he stated.

There are three criteria the government must establish to reopen the claim; that a population, habitat, or species has suffered a substantial loss or decline, the loss or decline must be attributed to the oil spill, and the loss or decline could not have been known or reasonably anticipated when the settlement was signed in 1991. He said he could list at least two instances that meet the criteria including the unanticipated lingering effects of the herring population.

[10:13:39 AM](#)

MR. JOYCE asserted that the oil is lingering under the surface on the beaches and would remain a toxic environment far longer than the experts thought it would.

ROBERT MAXWELL, Commercial Fisherman, testified that the loss of the herring fishery has negatively impacted his family and the community of Cordova profoundly. He recalled years past with great herring fisheries and the accompanying positive economic impacts. He testified in support of SJR 17.

[10:16:49 AM](#)

JEFF SHORT, Research Scientist, Auke Bay Fisheries Laboratory, offered to answer questions regarding research done on the Exxon Valdez oil spill and the effects of the lingering oil.

SENATOR FRENCH asked Mr. Short to give the committee an overview of the research they have done and of the effects of the lingering oil.

MR. SHORT complied. He said the study was sponsored by the Exxon Valdez Trustee Council and was executed in the summer of 2001. It was a random sampling design aimed at providing an estimate of the amount of oil left. They sampled over 90 beaches and dug over 7000 pits. They estimate between 100-200 tons of oil remains on the subsurface of the beach, meaning it is mainly non-visible. Oil that remains visible on the beach is hard and resembles pavement. The beaches are still extremely toxic and will remain so indeterminately.

[10:20:07 AM](#)

MR. SHORT continued the area of damage corresponds to approximately six miles of shoreline. Studies conducted indicate the oil dissipation through natural processes is extremely slow and is expected to remain for several decades.

CHAIR SEEKINS asked Mr. Short whether there is a scientific connection between the oil spill and the decline of the herring fishery.

MR. SHORT said that is a difficult question because the science is not clear. There is a reason to believe there may be a relationship but reason to believe otherwise, he said.

[10:23:25 AM](#)

CHAIR SEEKINS asked Mr. Short whether there have been other fisheries negatively impacted by something not connected to an oil spill.

MR. SHORT said yes. There was a major herring stock in Russia that vanished in the 1950s for unknown reasons.

CHAIR SEEKINS asked whether there was a similar impact in any Alaska fishery.

MR. SHORT said not on the scale of the Prince William Sound incident. He conceded he was not an expert in that arena, but as an environmental chemist he was specifically following the herring fishery closely.

KEN ADAMS, Cordova, testified in support of the resolution. He said he is one of the stakeholders trying to achieve the application of science for the improvement of fisheries. He spoke about the Herring Summit that was held by the ExxonMobil Corporation in Anchorage in April of 2006. A dozen expert scientists and other stakeholders attended and testified. The group presented a plan to aid the restoration of herring, as they believe that through direct intervention something can be done. The current population estimate is at 17,000 tons. Prior to the oil spill the population estimate was 120,000 tons. "Nature is not aiding the recovery of herring," he said.

[10:27:31 AM](#)

MR. ADAMS said the group proposed to utilize the expertise of fishermen and scientists toward a major resource plan that he referred to as the "sound ecosystem assessment." The intervention program would involve moving herring eggs and larvae into locations that would make it more suitable for survival. He explained the technique to be used to track the movement of herring called "otolith marking" through spectrophotometry.

MR. ADAMS compared Prince William Sound with Sitka Sound and said that for years the two herring fisheries were identical. However, after the oil spill, the two could no longer be compared. Sitka Sound continues to be a normal productive fishery and Prince William Sound is not.

[10:32:38 AM](#)

CHAIR SEEKINS held the resolution in committee.

HJR 9-URGE CONGRESS HONOR EXXON VALDEZ JUDGMENT

[10:33:18 AM](#)

CHAIR RALPH SEEKINS announced HJR 9 to be up for consideration.

SUZANNE HANCOCK, Staff to Representative Gabrielle LeDoux, introduced the resolution. More than 11 years after the original jury verdict, the plaintiffs are still waiting for resolution of the lawsuit. The resolution would urge the United States Congress to respect the judicial process and refrain from enacting any legislation that would reduce or delay payment of the punitive damages awarded to more than 32,000 plaintiffs as a result of the oil spill. ExxonMobil has sought to substantially reduce the punitive damages they are due to pay for the Exxon Valdez oil spill. HJR 9 urges Congress to let the courts determine the matter.

[10:34:58 AM](#)

MS. HANCOCK directed committee members to a lengthy timeline of litigation in their bill packets. The litigation has been in the district courts, the Ninth Circuit Courts, and the United States Supreme Court. If Congress were to get involved, it would take the issue out of courts and the resolution is meant to encourage them not to intervene.

SENATOR THERRIAULT asked Ms. Hancock whether there really was any threat of Congress excusing ExxonMobil from its responsibility.

MS. HANCOCK responded there was concern about efforts being made in Washington D.C. to effect a release of responsibility.

CHAIR SEEKINS said so far, no one has sought any active participation in 15 years.

Ms. Hancock responded, "To the best of my knowledge."

CHAIR SEEKINS speculated that people were more apt to make the oil company pay more than less. He speculated that the Ninth Circuit Court was going to decide the punitive damages soon.

SENATOR FRENCH indicated he was not up to date on that information.

CHAIR SEEKINS suggested that the committee roll SJR 17 and HJR 9 together and present it as one resolution.

[10:38:22 AM](#)

CHAIR SEEKINS held the HJR 9 in committee.

There being no further business to come before the committee,
Chair Seekins adjourned the meeting at [10:39:52 AM](#).