

**ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE**

March 14, 2008

3:04 p.m.

MEMBERS PRESENT

Representative Kurt Olson, Chair
Representative Mark Neuman, Vice Chair
Representative Carl Gatto
Representative Jay Ramras
Representative Robert L. "Bob" Buch
Representative Berta Gardner

MEMBERS ABSENT

Representative Gabrielle LeDoux

COMMITTEE CALENDAR

HOUSE BILL NO. 391

"An Act relating to project labor agreements."

- MOVED CSHB 391 (L&C) OUT OF COMMITTEE

SENATE BILL NO. 101

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

- MOVED CSSB 101(2d L&C) OUT OF COMMITTEE

HOUSE BILL NO. 230

"An Act establishing a fee for disposable plastic bags distributed by retail sellers of goods or services to consumers to carry away or protect goods; and establishing the Alaska litter and marine debris reduction and recycling fund."

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: HB 391

SHORT TITLE: STATE CONSTRUCT'N PROJECT LABOR AGREEMENT

SPONSOR(S): REPRESENTATIVE(S) KELLY

02/19/08	(H)	READ THE FIRST TIME - REFERRALS
02/19/08	(H)	L&C, FIN

03/05/08 (H) L&C AT 8:00 AM CAPITOL 17
03/05/08 (H) Heard & Held
03/05/08 (H) MINUTE(L&C)
03/10/08 (H) L&C AT 3:00 PM CAPITOL 17
03/10/08 (H) Heard & Held
03/10/08 (H) MINUTE(L&C)
03/14/08 (H) L&C AT 3:00 PM CAPITOL 17

BILL: SB 101

SHORT TITLE: GUARDIANSHIP/ CONSERVATORS/INCAPACITY
SPONSOR(S): LABOR & COMMERCE

02/28/07 (S) READ THE FIRST TIME - REFERRALS
02/28/07 (S) L&C, STA, FIN
03/08/07 (S) L&C AT 1:30 PM BELTZ 211
03/08/07 (S) Heard & Held
03/08/07 (S) MINUTE(L&C)
03/13/07 (S) L&C AT 1:30 PM BELTZ 211
03/13/07 (S) Moved CSSB 101(L&C) Out of Committee
03/13/07 (S) MINUTE(L&C)
03/14/07 (S) L&C RPT CS 3DP 1NR SAME TITLE
03/14/07 (S) DP: ELLIS, BUNDE, DAVIS
03/14/07 (S) NR: STEVENS
03/27/07 (S) STA AT 9:00 AM BELTZ 211
03/27/07 (S) Heard & Held
03/27/07 (S) MINUTE(STA)
03/29/07 (S) STA AT 9:00 AM BELTZ 211
03/29/07 (S) Moved CSSB 101(STA) Out of Committee
03/29/07 (S) MINUTE(STA)
03/30/07 (S) STA RPT CS 3DP 2NR SAME TITLE
03/30/07 (S) DP: MCGUIRE, GREEN, BUNDE
03/30/07 (S) NR: FRENCH, STEVENS
01/15/08 (S) RETURNED TO L&C COMMITTEE
01/24/08 (S) L&C AT 3:00 PM BELTZ 211
01/24/08 (S) -- Rescheduled to 01/25/08 --
01/25/08 (S) L&C AT 3:00 PM BELTZ 211
01/25/08 (S) -- Rescheduled from 01/24/08 --
01/28/08 (S) L&C RPT CS(2D) 4DP NEW TITLE
01/28/08 (S) DP: ELLIS, BUNDE, DAVIS, HOFFMAN
02/06/08 (S) FIN AT 9:00 AM SENATE FINANCE 532
02/06/08 (S) Heard & Held
02/06/08 (S) MINUTE(FIN)
02/19/08 (S) FIN RPT CS(2D L&C) 4DP 3NR
02/19/08 (S) DP: ELTON, THOMAS, DYSON, HUGGINS
02/19/08 (S) NR: HOFFMAN, STEDMAN, OLSON
02/19/08 (S) FIN AT 9:00 AM SENATE FINANCE 532

02/19/08	(S)	Moved CSSB 101(2d L&C)) Out of Committee
02/19/08	(S)	MINUTE(FIN)
02/25/08	(S)	TRANSMITTED TO (H)
02/25/08	(S)	VERSION: CSSB 101(2D L&C)
02/27/08	(H)	READ THE FIRST TIME - REFERRALS
02/27/08	(H)	L&C, JUD
03/12/08	(H)	L&C AT 3:00 PM CAPITOL 17
03/12/08	(H)	-- MEETING CANCELED --
03/14/08	(H)	L&C AT 3:00 PM CAPITOL 17

WITNESS REGISTER

REPRESENTATIVE MIKE KELLY
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions as the prime sponsor of HB 391.

DEREK MILLER, Staff
to Representative Mike Kelly
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented Amendment 1 on HB 391 on behalf of the prime sponsor, Representative Mike Kelly.

DANA OWEN, Staff
to Senator Johnny Ellis
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented SB 101 on behalf of the prime sponsor, the Senate Labor and Commerce Committee.

JOSH FINK, Director
Anchorage Office
Office of Public Advocacy (OPA)
Department of Administration (DOA)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 101 and answered questions.

DEBORAH BEHR, Chief Assistant Attorney General
Legislation and Regulations Section
Civil Division (Juneau)
Department of Law (DOL)
Alaska Uniform Law Commissioner

National Conference of Commissioners on Uniform State Laws
(NCCUSL)

Juneau, Alaska

POSITION STATEMENT: Answered questions on SB 101.

MARIE DARLIN, AARP Coordinator

AARP Capital City Task Force

Juneau, Alaska

POSITION STATEMENT: Testified in support of SB 101.

ACTION NARRATIVE

CHAIR KURT OLSON called the House Labor and Commerce Standing Committee meeting to order at [3:04:13 PM](#). Representatives Gatto, Buch, Gardner, Neuman, and Olson were present at the call to order. Representative Ramras arrived as the meeting was in progress.

HB 391-STATE CONSTRUCT'N PROJECT LABOR AGREEMENT

[3:04:29 PM](#)

CHAIR OLSON announced that the first order of business would be HOUSE BILL NO. 391, "An Act relating to project labor agreements." [Before the committee is the committee substitute for (CS) HB 391, Version 25-LS1493\C, Wayne, 2/26/08.]

[3:04:39 PM](#)

REPRESENTATIVE GARDNER made a motion to adopt Amendment 1, labeled 25-LS1493\C.1, Wayne, 3/10/08, which read:

Page 2, following line 9:

Insert a new subsection to read:

"(c) An employer or labor representative who participates in or administers a fringe benefits program that is available for selection by an employee under (b) of this section shall provide to the employee a written description of the fringe benefits program within seven days after a request by the employee."

Reletter the following subsection accordingly.

Page 2, line 28, following "**agreement;**":

Insert "**an employer or labor representative who administers a fringe benefits program that is**

available for selection by an employee under this paragraph shall provide the employee with a written description of the fringe benefits program within seven days after a request by the employee;"

[3:04:52 PM](#)

REPRESENTATIVE BUCH objected for purposes of discussion.

[3:05:00 PM](#)

REPRESENTATIVE MIKE KELLY, Alaska State Legislature, asked his staff to present Amendment 1.

[3:05:16 PM](#)

DEREK MILLER, Staff to Representative Mike Kelly, Alaska State Legislature summarized Amendment 1. He stated that Amendment 1 would require an employer to provide a written description of the fringe benefit package at the request of the employee to ensure full disclosure and to allow the employee to make an informed decision. He noted that the language is in proposed SB 276. Amendment 1 satisfies concerns that were raised in the other body on the companion bill. Thus, the sponsor would like to offer Amendment 1 to HB 391 for members' consideration.

[3:06:06 PM](#)

REPRESENTATIVE BUCH made a motion to adopt a Conceptual Amendment to Amendment 1, as follows:

On page 1, line 13

Delete, "a written description of the fringe benefits program"

Insert, "all pertinent information"

REPRESENTATIVE BUCH explained that many of these jobs include all kinds of information. He said he agreed that the information should be given to the employee within 7 days, but items such as material safety data sheets, federal Occupational Safety and Health Administration (OSHA) information, wage options, retirement options, and specific information relating to the job should be made available within 7 days.

[3:07:32 PM](#)

REPRESENTATIVE NEUMAN objected to the amendment to Amendment 1.

REPRESENTATIVE KELLY opined that the amendment to Amendment 1 was too broad. "There is never an end to all pertinent information," he said. He offered that it could refer to the fringe benefits package. He expressed opposition to adopting the amendment to Amendment 1.

[3:08:43 PM](#)

REPRESENTATIVE BUCH related his own experience in working on construction jobs with chemicals present. He opined that by the time the employees requested and obtained the information, that portion of the job was completed. The employees were not aware of the conditions pertinent to the specific chemicals. He expressed concern for the employee's health and safety.

REPRESENTATIVE KELLY maintained his objection to the amendment to Amendment 1. He related his own experiences with safety data sheets and opined that falls under current federal law, including the OSHA requirements. He noted that Amendment 1 assumes that all of the federal requirements will be adhered to, as well as state requirements.

REPRESENTATIVE BUCH acknowledged that information is available on site in a book form. However, he opined that the employee does not have time to do a thorough review and it's important to provide the information to them for their review.

[3:11:45 PM](#)

REPRESENTATIVE NEUMAN inquired as to the specific information that would be included in the amendment to Amendment 1. He related his understanding of the intent of Amendment 1 is that the sponsor would like employees to obtain the necessary information pertaining to the fringe benefits package.

REPRESENTATIVE BUCH answered that pertinent information would be whatever the employee ascertains is important and requests such that he/she should be able to obtain a copy within 7 days. If the supervisor or employer determined the requested information is not available or does not apply, then the employee's request would be denied. In further response to Representative Neuman, Representative Buch explained pertinent would be whatever is germane to the job.

CHAIR OLSON offered that the amendment to Amendment 1 is narrow in scope and is limited to information on employment benefits package, not safety requirements.

REPRESENTATIVE KELLY pointed out that the information Representative Buch is referring to is information that is for all union and non union employees. The information in question is for employers to provide and is competitive such that the employee would need the information to make an analysis of the benefits package, he noted.

[3:15:19 PM](#)

REPRESENTATIVE GARDNER reminded members that the information that is pertinent to the health and safety for employees is covered under current state and federal law. She opined that Amendment 1 speaks to information specific to the fringe benefits package.

REPRESENTATIVE NEUMAN maintained his objection.

[3:17:15 PM](#)

The committee took an at-ease from 3:17 p.m. to 3:18 p.m.

[3:18:15 PM](#)

REPRESENTATIVE BUCH reiterated the amendment to Amendment 1.

REPRESENTATIVE GATTO expressed concern with "all pertinent information" and inquired as to what it would entail.

[3:19:21 PM](#)

A roll call vote was taken. Representative Buch voted in favor of the amendment to Amendment 1. Representatives Gatto, Ramras, Gardner, Neuman, and Olson voted against it. Therefore, the amendment to Amendment 1 failed by a vote of 1-5.

[3:19:55 PM](#)

REPRESENTATIVE GARDNER related her understanding that a written description of the fringe benefits package would include items such as the fringe benefits, the cost to the employee, the vesting period, and other information necessary for the employee to make an informed comparison of the benefits package.

REPRESENTATIVE KELLY agreed.

CHAIR OLSON, after first determining no one else wished to testify, closed public testimony on HB 391.

3:21:05 PM

CHAIR OLSON asked if there were any objections to adopting Amendment 1.

There being no objection, Amendment 1 was adopted.

3:21:50 PM

REPRESENTATIVE BUCH related that employers generally provide a wage, insurance, and often some type of retirement plan. However, the employer is the one to select what wage and benefits that the company will offer. An "at will" employee must abide by the conditions of employment. Employees in a non bargaining unit never have a choice in the wage or benefits package, he opined. He inquired as to whether the sponsor could provide clarification.

CHAIR OLSON related his own experiences, in which he accepted the wage and benefit packages offered to him, except for the period of time when he owned his own company.

REPRESENTATIVE KELLY agreed with Representative Buch that employers select the package offered to employees. However, he highlighted that the requirement for a project labor agreement (PLA) was placed in the AGIA, but specifically omitted the language for collective bargaining since nationwide 82 percent of the work force fall under non bargaining employers. He noted that in Alaska the rate of union employees is higher, ranging from 25 to 27 percent union. This bill recognizes the PLA, but attempts to address the 75 percent of employees who are non union who may wish to work on the pipeline. Under the bill, the non union employee would select the fringe benefits package offered, which would consist of the union or non union fringe benefits package.

3:29:11 PM

REPRESENTATIVE NEUMAN related his understanding that under the PLA, the employee can select his /her benefits package, and that the unions don't object to this concept.

[3:32:04 PM](#)

REPRESENTATIVE GATTO referred to the word "fringe" which is used in Amendment 1, previously adopted. He inquired as to whether "fringe" is a defined term.

REPRESENTATIVE KELLY offered that Wikipedia defines "fringe benefits" as benefits that include but are not limited to group insurance - health, dental, life, etc. -, income protection, retirement benefits, daycare, tuition reimbursement, sick leave, vacation. He said he did not think it is probably not important to define "fringe" since most of us would understand what fringe benefits means.

REPRESENTATIVE BUCH explained that when an employee negotiates for a job, the components are for wages and benefits. He offered that in addition to the wages, the fringe benefits refers to the whole package.

REPRESENTATIVE GATTO argued that he has never heard fringe benefits to include wages.

REPRESENTATIVE BUCH answered that in negotiations employers generally talk about packages, one year it might refer to wages, another year it may apply to benefits. He opined that referring to fringe benefits is a fairly standard practice so he said he understands why "fringe" is included in the language.

[3:38:00 PM](#)

CHAIR OLSON inquired as to whether deleting "fringe" would change HB 391 materially.

REPRESENTATIVE KELLY acknowledged that he has heard benefits referred to in both ways.

REPRESENTATIVE GATTO made a motion to adopt Conceptual Amendment to delete, the word "fringe" from HB 391.

[3:38:41 PM](#)

REPRESENTATIVE GARDNER inquired as to whether adding "employment" instead of "fringe" benefits would clarify the matter.

REPRESENTATIVE KELLY offered his belief that the terms, fringe benefits, employment benefits, and benefits in addition to wages

are all within the jargon. While the term could be defined, he said he did not believe that it needs to be defined. He reiterated that the record would reflect the discussion. He maintained that the terms fringe benefits, employment benefits, or benefits in addition to wages are what the bill means.

[3:39:31 PM](#)

CHAIR OLSON asked if there were any objection to adopting Conceptual Amendment 2.

REPRESENTATIVE NEUMAN objected.

REPRESENTATIVE NEUMAN related that he has never worked on a job and been denied his wages earned, but that fringe benefits are benefits in addition to the wages. A benefits package could be any extra benefit, which is different than just a benefit, he opined.

REPRESENTATIVE BUCH related that he received in addition to the wage, the use of a one bedroom apartment which he would consider a "fringe benefit." He related that in camps, food and tents could also be considered fringe benefits.

REPRESENTATIVE NEUMAN maintained his objection.

REPRESENTATIVE GATTO posed a scenario in which a group of employees is treated to pretzels and potato chips. He opined that would entail a fringe benefit. He opined that a benefit is something bargained for, but that a fringe benefit is something extra and clearly means something different.

[3:43:40 PM](#)

A roll call vote was taken. Representatives Ramras, Gardner, Gatto, and Olson voted in favor of Conceptual Amendment 2. Representatives Buch and Neuman voted against it. Therefore, Conceptual Amendment 2 passed by a vote of 4-2.

[3:44:49 PM](#)

REPRESENTATIVE BUCH referred to page 2, line 15, "qualified residents" and inquired as to whether this would be constitutional since the contractor might be a Canadian company, such as the TransCanada Pipeline, LTD.

REPRESENTATIVE GATTO concurred with Representative Buch's concern.

REPRESENTATIVE KELLY opined that this may already be addressed in AGIA. He further noted his belief that the language recognizes this concern. He agreed to take the matter to the bill drafter to check the constitutionality prior to HB 391 moving on to the next committee of referral.

[3:47:48 PM](#)

REPRESENTATIVE GARDNER objected.

The committee took an at-ease from 3:47 p.m. to 3:48 p.m.

[3:48:08 PM](#)

REPRESENTATIVE GARDNER removed her objection.

REPRESENTATIVE GATTO made a motion to report CSHB 391, Version 25-LS1493\C, Wayne, 2/26/08, as amended, out of committee with individual recommendations and the accompanying fiscal notes and forthcoming fiscal notes.

REPRESENTATIVE BUCH objected.

[3:48:46 PM](#)

A roll call vote was taken. Representatives Gardner, Neuman, Gatto, Ramras, and Olson voted in favor of moving CSHB 391, Version 25-LS1493\C, Wayne, 2/26/08, as amended, out of committee with individual recommendations and the accompanying fiscal notes and forthcoming fiscal notes. Representative Buch voted against it. Therefore, CSHB 391(L&C) was reported out of the House Labor and Commerce Standing Committee by a vote of 5-1.

[3:49:22 PM](#)

The committee took an at-ease from 3:49 p.m. to 3:51 p.m.

SB 101-GUARDIANSHIP/ CONSERVATORS/INCAPACITY

[3:51:31 PM](#)

CHAIR OLSON announced that the final order of business would be SENATE BILL NO. 101, "An Act relating to private professional conservators and private and public guardians."

[3:52:26 PM](#)

DANA OWEN, Staff to Senator Johnny Ellis, Alaska State Legislature, testifying on behalf of the Senate Labor & Commerce Committee, stated that the legislature established licensure and regulatory oversight of private professional guardians and conservators in 2004. This bill was drafted with input from the Office of Public Advocacy (OPA), the Division of Corporations, Business and Professional Licensing (DCBPL), formerly the Division of Occupational Licensing, and the Alaska State Association for Guardianship and Advocacy (SAGA). In addition, SB 101 is supported by the AARP and other advocates for senior citizens. This bill has not had any opposition raised in the numerous hearings held in the Senate, he noted.

MR. OWEN explained that both bills, HB 280 which passed in 2004 and SB 101, have two goals: to ensure that our seniors and other vulnerable adults are not taken advantage of by those entrusted with managing their finances and lives, and to encourage the development of this industry in Alaska. As Alaska's population grows and ages, these services are becoming increasingly necessary. The current version of SB 101 incorporates into statutes the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. This act was developed by the National Conference of Commissioners for Uniform State Laws to establish common procedures among states for settling jurisdictional and enforcement issues in cases that cross state borders. This bill would clarify that the DCBPL may refuse to renew a license as well as take disciplinary action if the licensee has failed to meet the licensure requirements. It would specify those criminal convictions that would preclude an individual from obtaining a license and it would require that public guardians possess the same certification and pass the same background check required of private professional guardians. Additionally, SB 101 would make a number of "housekeeping" improvements including: eliminating the need for multiple licenses and fees; clarifying that bonding and insurance requirements are set by the court; clarifying that individuals caring for family members and certain financial institutions are exempt from the licensing requirement; clarifying the requirements for the annual report required of all guardians and conservators; eliminating the need for a costly expert evaluation in cases where the respondent agrees to

a protective appointment; requiring the court to make written findings if it deviates from the priority list of potential guardians and conservators; and exempting the respondents or awards files from inspection or copying under the public records act unless the records are relevant to an investigation or formal proceeding. He concluded that he has only touched on a few provisions in SB 101.

[3:55:28 PM](#)

JOSH FINK, Director, Anchorage Office, Office of Public Advocacy (OPA), Department of Administration (DOA), explained that Mr. Owen summarized SB 101 well. This bill was introduced by the Senate Labor and Commerce committee to fix some unintended consequences from HB 280, which passed the legislature in 2004. He echoed Mr. Owen's testimony on the bill's history. He noted that the primary unintended consequence of passage of the enabling legislation was that private professional guardians would be subject to multiple licenses, including an organizational license for their business, an individual license for each person in that business. This bill would require an individual license, either a full guardianship which includes conservatorship services, a conservatorship license which does not include the guardianship, but just the financial aspects, or a partial guardianship which allows the guardian to make decisions except for conservator services.

[3:57:30 PM](#)

MR. FINK, in response to Representative Gardner, explained that a conservator has authority over the ward's financial estate such that he/she would pay the bills, receives money, and budgets. A full guardian performs the conservator functions, but can also make legal decisions, medical decisions including treatment, and housing decisions. Partial guardians are used by individuals that do not need the services of the conservator, but still need some legal and medical decisions, he noted.

[3:58:20 PM](#)

REPRESENTATIVE BUCH inquired as to whether a person is required to have a license to care for offspring or relatives.

MR. FINK answered no, that the way the statutes are written, if the conservator or guardian is caring for two or more people, he/she must have a license, but there is an exemption for providing conservator or guardian services for one person.

3:59:06 PM

REPRESENTATIVE GATTO inquired as to whether SB 101 has a conflict of interest provision. He related that as a conservator or financial manager that the person could buy and sell stocks, bonds, or other entities that benefit the conservator.

MR. FINK responded that while that matter is not addressed specifically in SB 101, it is addressed in existing law. A conservator has a fiduciary relationship and is covered by current law. Additionally, the conservator's fees must be approved by the court. The conservator is required to submit an annual report to show actions taken on behalf of the client.

REPRESENTATIVE GATTO related his understanding that some people buy and sell frequently to earn commissions. He inquired as to whether that type of action would be a violation.

MR. FINK explained that in order to become a conservator or guardian someone such as adult protective services or a family friend petitions the court, a court visitor investigates the need for a conservator or guardian, and makes a recommendation for a conservator or guardian. Additionally, the statute establishes a priority, first it is the named choice of the respondent, next the spouse, then the adult children, with the Office of Public Advocacy (OPA) as the last choice. The court appoints an attorney to represent the ward's interests. The court visitor and attorney report to the court their recommendations for conservator or guardian. The court will specify the types of fees that the conservator or guardian can receive. Thus, if the conservator or guardian exceeded those fees he/she could be criminally liable for violating his/her judiciary responsibilities. The court would not appoint someone's stockbroker, he opined.

4:02:12 PM

REPRESENTATIVE GATTO posed a scenario in which a sibling has the power of attorney to act on behalf of the person. Once the sibling is appointed guardian, the sibling would still be trading stocks on behalf of the ward. He inquired as to whether that would be a conflict.

MR. FINK answered that it would depend. If the sibling made a commission on each sale, it would probably be a conflict, he

opined. However, if the sibling received a flat monthly fee and did not profit, it probably would not be a conflict. This bill does not address powers of attorney. Even siblings would be under court purview and would still have to submit to the court investigator, court attorney, and file an annual report, he noted.

REPRESENTATIVE GATTO posed a further scenario in which a sibling is the conservator, but sells the ward's house under the market value to a friend. He asked if that would constitute a crime.

MR. FINK answered that would depend on specific facts. If a person were not a ward of the court, the person could sell a house for less than market value. However, if someone were incapacitated, it might be suspect. He pointed out that his office has an elder fraud and assistance section that would investigate that type of matter.

[4:05:24 PM](#)

REPRESENTATIVE GATTO referred to page 22, lines 8-9, and asked for a definition of "insular possession".

MR. FINK explained that this portion of SB 101 refers to the federal Uniform Jurisdiction Act.

DEBORAH BEHR, Chief Assistant Attorney General, Legislation and Regulations Section, Civil Division (Juneau), Department of Law (DOL), Alaska Uniform Law Commissioner, National Conference of Commissioners on Uniform State Laws (NCCUSL), referred to page [22], lines 7-9, and explained that this is the standard definition that the uniform law commissioners use for states to cover other possessions subject to jurisdiction of the United States such as Guam, Puerto Rico, and American Samoa.

[4:06:47 PM](#)

REPRESENTATIVE NEUMAN referred to page 1, line 7, and asked why "private professional" is added.

MR. FINK answered that "private professional" guardian is clean up language that replaces "individual" or "organizational" throughout the bill. He explained that these changes will remove the necessity for the requirement for numerous licenses that were unintended consequences of the passage of HB 280 in 2004.

REPRESENTATIVE NEUMAN referred to page 6, line 24, which read: "fails to maintain a bond or other surety as required by a court order" and inquired as to whether each individual would be required to get a bond.

MR. FINK explained that currently an organization or individual must show proof of ability to bond. However, the Division of Corporations, Business, and Professional Licensing (DCBPL) does not require social or medical professionals to submit to bonding. Additionally, the court rule allows the court, based on size of estate, to require a bond. Thus, it seemed duplicitous to require proof of ability of bonding without setting a specific amount. Since the size of the estate varies, it posed problems. Therefore, at the hearing when the judge makes the appointment, the judge can determine whether or not a bond is required and the amount of the bond. The specific language on page 6, lines 24-25, is necessary so that in the event the court orders it and the person did not obtain the bond or surety, that it is a license violation.

[4:10:23 PM](#)

REPRESENTATIVE NEUMAN inquired as to whether an individual would have to carry a bond.

MR. FINK answered that the license is particular to the individual, so if a business consists of three guardians, the business would need to be licensed. The bond requirement would attach to each licensee.

REPRESENTATIVE NEUMAN inquired as to whether the cost of the bonding requirement is onerous.

MR. FINK offered that under current law the court can require guardians to submit to a bond. He noted that currently only a handful of private professional guardians practice in the state. He opined that this language would not add any impediments, but would remove the impediment that the licensee must show proof of the ability to bond.

[4:11:55 PM](#)

REPRESENTATIVE NEUMAN referred to page 2, paragraph [4], and asked if a theft of a pack of cigarettes would prevent a person from becoming licensed as a guardian.

MR. FINK answered that only misdemeanors that involve dishonesty such as fraud, omission, or misrepresentation would apply. He noted it is a policy call.

REPRESENTATIVE NEUMAN inquired as to whether the Department of Commerce, Community, & Economic Development (DCCED) would make the determination. He expressed concern that a person convicted of a small theft would not be able to be employed as a guardian, even if his/her debt to society has been paid.

MR. FINK, in response to Representative Neuman, answered that if a person were convicted of a crime of dishonesty the person could not become a guardian or conservator.

REPRESENTATIVE NEUMAN referred to page 5, proposed paragraph (3), with respect to the financial statement, and asked for clarification.

MR. FINK offered that the DCCED and the Alaska State Association for Guardianship and Advocacy (ASAGA) asked for this provision to provide accountability. The conservator is managing someone's estate, so it is relevant to review fees charged and his/her business expenses. In further response to Representative Neuman, Mr. Fink explained that the person would provide this information at the time of licensure.

[4:16:17 PM](#)

REPRESENTATIVE NEUMAN referred to page 6, page 24, and inquired if the bond is at the discretion of the court.

MR. FINK explained that the court would set the amount of the bond based on the particular circumstances. He pointed out that the ward has an attorney to represent his/her interests, but that the court would ultimately decide. He noted that if the person is a family member, he/she would be exempt from the bill. However, he pointed out that under current law, family members would still be required to file an annual report.

[4:18:57 PM](#)

REPRESENTATIVE NEUMAN referred to page 7, lines [12]-14, and asked for clarification of AS 06.26.020.

MR. FINK answered that statute exempts financial institutions which have a trust department that provide these services. The

financial institutions have federal oversight. Mr. Fink further clarified that AS 06.26 is the Revised Alaska Trust Company Act.

CHAIR OLSON opined that the federal oversight provides stricter guidelines for the financial institutions.

4:20:06 PM

REPRESENTATIVE RAMRAS related his experience in employing a developmentally disabled person. He expressed concern that the job coach takes the approximate \$2,500 earnings per year. He inquired as to whether that is appropriate and what oversight, if any, that his office would have in such matters.

MR. FINK pointed out the conservator or guardian would have fiduciary responsibility to use any earnings in the best interests of the ward. He suggested options to investigate matters could include petitioning the court to review the case, or filing a complaint with OPA. He further suggested that a person could also file a complaint with adult services when a concern exists that a developmentally disabled person is being exploited. He further suggested that the conservator or guardian might be able to explain how the money is being spent on behalf of his/her ward. In further response to Representative Ramras, Mr. Fink explained that the court could appoint a visitor to investigate any matter that appears suspicious.

4:23:58 PM

REPRESENTATIVE GARDNER related her experience with a family member with dementia. She explained that her family hired out-of-state professionals, with first a conservator and then a guardian. She pointed out that the annual report is to assure the court that the estate is being handled appropriately and the needs of the ward are being met. The bond is to protect the best interests of the ward. While the statutes may seem cumbersome, she said she felt that the interests of the ward were the first priority of the conservator, the guardian, and the court, she opined.

4:25:07 PM

MR. FINK added that OPA offers a family guardianship program to provide information on all aspects of guardianships. He noted that OPA provides a binder of information along with a video

that are made available and libraries to provide continuing education to family members.

[4:26:05 PM](#)

MR. FINK, in response to Representative Buch, offered that OPA has a family guardianship designated telephone line that provides information on the next classes offered. Besides the office in Anchorage, the Fairbanks office can conduct classes. Rural residents are served via mailing them the binder, including forms and video that provides the information on guardian and conservators.

[4:27:18 PM](#)

REPRESENTATIVE GATTO recalled that former Representative Bruce Weyrauch previously introduced legislation that he believed was called the "five wishes" which collected various statutes. He inquired as to whether Mr. Fink had knowledge of this legislation.

[4:28:00 PM](#)

MS. BEHR answered that the information is located in the statutes. Additionally, she noted that most of the hospitals distribute powers of attorney forms, at no cost, when people check into the hospital. Under this bill the family of the person who had filled out a guardianship form that named a family member would not be required to be involved with OPA.

[4:28:37 PM](#)

REPRESENTATIVE RAMRAS asked to put on the record that he believes Mr. Fink is a tireless advocate who has a tremendous breadth of knowledge on these issues.

[4:29:14 PM](#)

REPRESENTATIVE NEUMAN referred to page 11, proposed Section 24, and inquired as to whether this is new language.

MS. BEHR answered that proposed Section 24 is standard language, that the uniform law commissioners are recommending that all states adopt. This proposed section will help by providing similar procedures between states so that when an Alaska family has a family member outside of Alaska, the process is the same

or similar to our process for appointing a guardian or conservator.

[4:30:02 PM](#)

REPRESENTATIVE NEUMAN inquired as to the reason that prompted this bill besides adopting the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

MR. FINK answered that until 2004, the licensure for private professional guardians did not exist. He explained that at least one large case exists in which a number of people complained that they had a private conservator and within a year their family member's estate was depleted. This resulted in a significant litigation which is still ongoing to recover the estate through insurers. However, these cases highlighted a problem that there wasn't any oversight of conservators and guardians. At the same time, Alaska has an increasing population that requires these services. In 2004, the legislature required licensure and reporting through the DCCED. Unfortunately, the bill inadvertently created some impediments for those seeking licensure. He expressed his desire to nurture this industry and have more private professional guardians and conservators in Alaska. This bill would correct unintended consequences. Since this bill relates to private professional conservators and guardians, the uniform commissioner incorporated provisions into the bill to assist Alaskans who have members living outside Alaska that need services of private professional conservators or guardians.

[4:32:07 PM](#)

MS. BEHR further explained the impetus for the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act was to assist people traveling with family members who need services that require court action. Ms. Behr related her own experience in which her mother, who lives in Fairbanks, traveled to California to visit her daughter and had a major stroke. In this instance, the California court did not know how to proceed with the case since her mother was not a California resident. Her family decided the mother needed to stay in California where the illness occurred, since that is where the care was being provided and since her sister could provide support. However, the California court did not know if the case needed to be held in Alaska, which is expensive, she opined. She pointed out that if her mother recovered and wanted to move to Juneau that the

changes in SB 101 would make it very easy to transfer the guardianship back to Alaska.

[4:33:16 PM](#)

MS. BEHR, in response to Representative Gatto, explained that a will is one of the important documents that people can execute. She offered that a will can help determine many things such as who will care for any children in the event the parents die. She further noted that people writing their own wills can miss vital information such as pension plans.

[4:34:25 PM](#)

MARIE DARLIN, AARP Coordinator, AARP Capital City Task Force, in response to an earlier question, noted that the forms Representative Gatto referred to are called advanced directives and are in statute. She explained the forms allow a person to do whatever he/she wants with respect to appointing someone to care for their needs in the event the person is incapacitated. This bill builds on the previous legislation that created the licensure for conservator and guardians and remedies some of the problems that arose. She noted she provided the committee with a letter of support for SB 101. Ms. Darlin emphasized that as the need for guardians has grown and will continue grow with the aging population. The courts have found it more difficult to find family members who are willing to provide conservator or guardianship services so the need for additional professional people arises. This bill would improve the quality of care for people who need conservators and guardians to assist them, she opined. She noted SB 101 provides safeguards through the licensure and reporting requirements which helps to ensure that conservators and guardians are prepared through training and certification to better understand their responsibilities and requirements to care for incapacitated people. She pointed out that these services are helpful to family members since the incapacitated person is often not in the same town. She offered AARP's full support for SB 101.

[4:37:24 PM](#)

CHAIR OLSON, after first determining no one else wished to testify, closed public testimony on SB 101.

[4:37:43 PM](#)

REPRESENTATIVE GARDNER moved to report CSSB 101(2d L&C) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSSB 101(2d L&C) was reported from the House Labor and Commerce Standing Committee.

[4:38:13 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:38 p.m.