**ALASKA STATE LEGISLATURE**
**SENATE HEALTH, EDUCATION AND SOCIAL SERVICES STANDING COMMITTEE**
March 31, 2008
1:33 p.m.

**MEMBERS PRESENT**

Senator Bettye Davis, Chair
Senator Joe Thomas, Vice Chair
Senator John Cowdery
Senator Kim Elton
Senator Fred Dyson

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 179
"An Act requiring family health care insurance coverage for dependent children who are less than 26 years of age."
HEARD AND HELD

CS FOR HOUSE BILL NO. 319(L&C)
"An Act relating to the practice of dentistry, to dental assistants, and to dental hygienists."
HEARD AND HELD

CS FOR HOUSE BILL NO. 354(JUD)
"An Act relating to adoptions, to subsidies for a hard-to-place child, to criminal sanctions for unlawful disclosure of confidential information pertaining to a child, to child support orders in child-in-need-of-aid and delinquency proceedings, and to civil actions on behalf of children in need of aid who are injured or die while in state custody; and providing for an effective date."
MOVED CSHB 354(JUD) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: SB 179
SHORT TITLE: DEPENDENT HEALTH INSURANCE; AGE LIMIT
SPONSOR(s): SENATOR(s) DAVIS

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| 05/14/07 | (S) | READ THE FIRST TIME - REFERRALS |
| 05/14/07 | (S) | L&C, HES, FIN |

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|---|---|---|
| 03/18/08 | (S) | L&C AT 1:30 PM BELTZ 211 |
| 03/18/08 | (S) | Heard & Held |
| 03/18/08 | (S) | MINUTE(L&C) |
| 03/25/08 | (S) | L&C AT 1:30 PM BELTZ 211 |
| 03/25/08 | (S) | Moved CSSB 179(L&C) Out of Committee |
| 03/25/08 | (S) | MINUTE(L&C) |
| 03/26/08 | (S) | L&C RPT CS 2DP 1DNP 1NR NEW TITLE |
| 03/26/08 | (S) | DP: ELLIS, DAVIS |
| 03/26/08 | (S) | DNP: BUNDE |
| 03/26/08 | (S) | NR: STEVENS |
| 03/31/08 | (S) | HES AT 1:30 PM BUTROVICH 205 |

BILL: HB 319
SHORT TITLE: DENTISTS & DENTAL ASSISTANTS
SPONSOR(s): REPRESENTATIVE(s) RAMRAS

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| 01/15/08 | (H) | READ THE FIRST TIME - REFERRALS |
| 01/15/08 | (H) | HES, L&C |
| 02/07/08 | (H) | HES AT 3:00 PM CAPITOL 106 |
| 02/07/08 | (H) | Heard & Held |
| 02/07/08 | (H) | MINUTE(HES) |
| 02/12/08 | (H) | HES AT 3:00 PM CAPITOL 106 |
| 02/12/08 | (H) | Moved CSHB 319(HES) Out of Committee |
| 02/12/08 | (H) | MINUTE(HES) |
| 02/15/08 | (H) | HES RPT CS(HES) 1DP 2NR 3AM |
| 02/15/08 | (H) | DP: FAIRCLOUGH |
| 02/15/08 | (H) | NR: KELLER, GARDNER |
| 02/15/08 | (H) | AM: CISSNA, ROSES, WILSON |
| 03/03/08 | (H) | L&C AT 3:00 PM CAPITOL 17 |
| 03/03/08 | (H) | Moved CSHB 319(L&C) Out of Committee |
| 03/03/08 | (H) | MINUTE(L&C) |
| 03/04/08 | (H) | L&C RPT CS(L&C) NT 5DP |
| 03/04/08 | (H) | DP: GARDNER, BUCH, RAMRAS, NEUMAN, OLSON |
| 03/19/08 | (H) | TRANSMITTED TO (S) |
| 03/19/08 | (H) | VERSION: CSHB 319(L&C) |
| 03/21/08 | (S) | READ THE FIRST TIME - REFERRALS |
| 03/21/08 | (S) | HES |
| 03/31/08 | (S) | HES AT 1:30 PM BUTROVICH 205 |

BILL: HB 354
SHORT TITLE: CHILD IN NEED OF AID/ADOPTIONS
SPONSOR(s): REPRESENTATIVE(s) COGHILL

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| 02/06/08 | (H) | READ THE FIRST TIME - REFERRALS |
| 02/06/08 | (H) | HES, JUD, FIN |
| 02/28/08 | (H) | HES AT 3:00 PM CAPITOL 106 |

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| 02/28/08 | (H) | Moved CSHB 354(HES) Out of Committee |
| 02/28/08 | (H) | MINUTE(HES) |
| 02/29/08 | (H) | HES RPT CS(HES) NT 7DP |
| 02/29/08 | (H) | DP: CISSNA, KELLER, GARDNER, FAIRCLOUGH, SEATON, ROSES, WILSON |
| 03/13/08 | (H) | JUD AT 1:00 PM CAPITOL 120 |
| 03/13/08 | (H) | Moved CSHB 354(JUD) Out of Committee |
| 03/13/08 | (H) | MINUTE(JUD) |
| 03/17/08 | (H) | JUD RPT CS(JUD) NT 5DP |
| 03/17/08 | (H) | DP: GRUENBERG, COGHILL, DAHLSTROM, HOLMES, RAMRAS |
| 03/18/08 | (H) | FIN REFERRAL WAIVED |
| 03/27/08 | (H) | TRANSMITTED TO (S) |
| 03/27/08 | (H) | VERSION: CSHB 354(JUD) |
| 03/28/08 | (S) | READ THE FIRST TIME - REFERRALS |
| 03/28/08 | (S) | HES, JUD |
| 03/31/08 | (S) | HES AT 1:30 PM BUTROVICH 205 |

**WITNESS REGISTER**

TOM OBERMEYER, Staff
Senator Davis
Alaska State Capitol
Juneau, AK
**POSITION STATEMENT:** Presented an overview of SB 179.

DENNY DEWITT, State Director
National Federation of Independent Business (NFIB)
Juneau, AK
**POSITION STATEMENT:** Opposed SB 179.

PATTY KRUEGER, Staff
Representative Ramras
North Pole, AK
**POSITION STATEMENT:** Presented an overview of CSHB 319.

DAVE LOGAN, Alaska Dental Society
Juneau, AK
**POSITION STATEMENT:** Supported CSHB 319.

DAVE EICHLER, DMD PC
Board of Dental Examiners
North Pole, AK
**POSITION STATEMENT:** Supported CSHB 319.

RYNNIEVA MOSS, Staff
Representative Coghill

Alaska State Capitol
Juneau, AK
**POSITION STATEMENT:** Presented an overview of CSHB 354.

JAN RUTHERDALE, Assistant Attorney General
Civil Division
Child Protection Section
Department of Law
Juneau, AK
**POSITION STATEMENT:** Answered questions about CSHB 354.

**ACTION NARRATIVE**

**CHAIR BETTYE DAVIS** called the Senate Health, Education and Social Services Standing Committee meeting to order at 1:33:53 PM. Present at the call to order were Senators Kim Elton, Fred Dyson, Joe Thomas, John Cowdery and Chair Bettye Davis.

**SB 179-DEPENDENT HEALTH INSURANCE; AGE LIMIT**

CHAIR DAVIS announced consideration of SB 179.

1:34:41 PM
TOM OBERMEYER, Staff to Senator Davis, presented SB 179, Version \M. The title was changed by a previous committee to make it shorter; it is "An Act requiring family health care insurance coverage for dependent children who are less than 26 years of age." He said this bill presented questions that he hoped to address in the sponsor statement and the explanation that was handed out to committee members. He then proceeded to read the sponsor statement.

> SB 179 mandates family private health insurance coverage for dependent children through age 25. It prohibits a health care insurer from denying or removing enrollment or eliminating coverage under age 26.
>
> Young adults, ages 19-29, are one of the largest growing segments of the U.S. population without health insurance. In 2004 almost 14 million young adults lacked coverage, an increase of 2.5 million since 2000. This rapid change is due in part to their losing coverage under their parents' policies at 19, or Medicaid, or State Children's Health Insurance Program, or graduation from high school or college.

> Almost half of college graduates and high graduates will be uninsured for a substantial time after graduation.
>
>> Age 19 is a crucial year in health insurance coverage. Both public and private insurance plans treat this age as a turning point for insurance coverage. Even if youth go on to college, parents' insurance plans often stop before graduation. Almost all private universities and about one fourth of public universities require health insurance as a condition of enrollment. Forty percent of part-time students and non-students, and 20 percent of full-time students ages 19-23 are uninsured.
>>
>> States are taking action to mandate coverage for young adults, often allowing for targeted policy options. For example, in 2006 New Jersey required most group health plans to cover single adult dependents up to age 30. Massachusetts as part of its expanded health insurance law in 2006 considered dependents for insurance purposes up to age 25 or for two years after they are no longer claimed on their parents' tax returns. Since 1994 Utah has required coverage through age 26, and New Mexico provides coverage for unmarried dependents up to age 25, regardless of school enrollment. Texas in 2003 allowed full-time students up to be covered by their parents' insurance plans to age 25. It is not uncommon, or unreasonable, therefore, that Senate Bill 179 requires offering family health insurance coverage to dependent children up to age 26.

MR. OBERMEYER added that there had been questions by insurers as to how this might be implemented, so he drew on an example from a previous bill, SB 190. He hoped this explanation would help assure insurers that SB 179 would not wrest control of benefits and premium costs from them.

SB 179 added a new subsection (e) to AS 21.345 [21.42.345] "Required provision for coverage of dependents." This was similar to the addition to the same subsection in SB 170 regarding well-baby exams, which was sponsored by Senator McGuire and was in Senate Rules.

1:38:25 PM
Linda Hall, Director, Division of Insurance, Department of Commerce, Community & Economic Development, Juneau, AK, in a letter to Senator Green on March 18, 2008, explained and compared the coverage for well-baby exams to existing mandates for dental, vision and hearing under the same subsection 21.42.385. Ms. Hall wrote, in part:

> With respect to how a mandated offer requirement is implemented, first of all, insurers who write health care insurance and offer dependent coverage would be required to provide coverage forms which include coverage for well-baby care, that is for this particular benefit, in this case up to age 26. Second, insurers are responsible for assuring compliance with mandates and we have seen insurers comply with 21.42.385 in a number of different ways including:
>
> a) offering the specified benefit in their health policies (if the insurer already includes coverage, no additional offer would need to be made.
>
> b) developing or offering a separate rider or amendment that provides the specified benefit, which is then offered in conjunction with a base health insurance policy for a separate premium. The application form would provide an option to select the specified benefit.
>
> c) developing and offering a stand-alone policy that contains the required benefit, or
>
> d) offering the benefit as one of several available optional benefits from which employers or individuals can select and which, if selected on the application form, is incorporated directly into that employer's or individual's health insurance policy as a premium.

MR. OBERMEYER said, as he understood it, this provided that the insurers still had a number of options available to control their costs. There was no actuarial basis at that time to determine what the costs might be, which was why the zero fiscal note indicated an "indeterminate" dollar amount.

It had been recognized that, particularly in family plans, students in the middle of their college career might suddenly be faced with a significant premium to maintain health insurance required by the school. This would allow these people in particular, to extend coverage under the family plan for a little longer.

1:41:45 PM
SENATOR ELTON asked Mr. Obermeyer for the definition of a dependent child.

MR. OBERMEYER answered that he thought the definition was covered in each policy by each insurer, but was not sure.

SENATOR ELTON asked if he had understood correctly that each insurer could offer a different health insurance plan say, for a child who was 23 and one who was 16; for example the insurer might have a health policy that would cover catastrophic illness, but not vision and dental. He asked Mr. Obermeyer if that was possible under this bill.

MR. OBERMEYER said he did not understand all the nuances of it, but the implication of the letter from Ms. Hall regarding SB 170 under mandated coverage was that there would be a lot of flexibility in how they drafted their policies. Also, the coverage would not be free. If a family wanted to continue to cover their children, they would have to elect that coverage and pay for it. This bill simply required the company to offer it. That was the mandate.

SENATOR ELTON read it differently. The language said the insurer "may not deny enrollment and may not disenroll or eliminate coverage" and it seemed to him that meant the insurer would have to continue to extend the same kind of policy they had when the child was 18. He asked Mr. Obermeyer if he was reading it incorrectly.

1:45:32 PM
MR. OBERMEYER answered that the way he read it, the concept of disenrolling or eliminating [coverage] would be if a party was already enrolled and the insurance company wanted to remove that person for some reason. He did not have a definite answer however; he apologized for not having someone from the Division of Insurance on hand.

CHAIR DAVIS said she would like to speak to that. The bill had already been heard in Labor and Commerce, where they had

discussed the matter of being "disenrolled." Once the child was on the coverage, neither the parents nor the insurance company could disenroll them until their 26th birthday. As for having different coverage for an 18 year old vs. a 24 year old, she could not respond to that but would get an opinion from legal.

SENATOR ELTON insisted that it would depend on the definition of a dependent child.

CHAIR DAVIS said she had not pursued a definition because she thought each insurance company might have their own; but if he felt it would be helpful, they could put a definition in the corpus of the bill.

SENATOR ELTON pointed out that if a dependent child was considered simply someone who lived at home until the age of 26, that dependent child might have a job and have insurance through that job; it seemed to him they would want a provision that, if the child was covered under another plan, they need not be covered under the family plan.

CHAIR DAVIS agreed.

SENATOR DYSON asked Mr. Obermeyer if he had meant to imply that the enactment of this piece of legislation would not keep the insurance company from raising the cost of the insurance policy.

MR. OBERMEYER responded that he believed, based on his interpretation of the bill and the letter from Linda Hall from Division of Insurance, that the insurer would have the ability to offer riders, which would be a separate addition to a policy and would add to the cost of the policy; or offer other options that could be worked into the existing policy. It wasn't anticipated that this would be blended into all rates unless they elected to do that because of actuarial experience; so he could not respond specifically to the question, except to say that it would offer some flexibility to insurers and they would not be locked into a particular fee schedule.

SENATOR DYSON continued that he thought he had just heard Mr. Obermeyer say yes; so indeed the insurance company could raise the cost of that rider to the point that it would be prohibitive to continue the coverage. He said that before he would be willing to vote this out of committee, he would want to be clear on the definition of a dependent and what the insurance companies would be free to do with the costs. He felt they could all agree that a teenager not living at home, now able to drive

a car, would add some risk to the insurer; but he would want clarification.

CHAIR DAVIS said they could call upon someone from legal to discuss Senator Dyson's question later on.

SENATOR COWDERY asked what this would do to a dependent who produced a child of his or her own; would it require the insurer to cover the dependent of the dependent?

CHAIR DAVIS said she was not able to answer that.

SENATOR DYSON commented that was a good question.

SENATOR COWDERY continued to say that whether the dependent were the mother or the father of a child or children, if they were dependent on his or her parents, he would be interested to know how far down the line insurance coverage would go.

CHAIR DAVIS noted that Senator Thomas had left the room.

She pointed out that some insurance companies covered full-time students until they were 21 to 23 years old; but with the cost of college and the length of time many students had to attend, this bill would ensure access to the required medical coverage throughout their college years without having to bear another expense.

She asked if there was someone present from legal who could answer questions about the bill. There was not.

1:55:00 PM
SENATOR DYSON disagreed with the notion that dependent children would continue to get coverage without additional cost; somebody would pay. He also disagreed with the idea that it was the government's responsibility to make sure everyone had insurance; he thought what they were really interested in was everyone taking responsibility for their own health and their health care in whatever way they chose.

He added that on a national level, the more mandates put upon the insurance companies, the less attractive Alaska appeared to health insurance companies that might want to come into the market.

1:57:12 PM

DENNY DEWITT, State Director, National Federation of Independent Business (NFIB), Juneau, AK, opposed SB 179. The NFIB appreciated where Chair Davis was headed with it and he understood personally, having just who reached the age at which they had to purchase insurance. The difficulty the NFIB saw was that this bill focused on a very small percentage of Alaskans covered by insurance, those who were in traditional insurance programs regulated by the state. It would not cover those in union pension welfare programs; it would not cover anyone who worked for the state; it would not cover anyone whose employer had an ARISA plan; small employers would have to fund this while larger employers would be exempt. So while the intent was admirable, the implementation of it was very biased against small Alaska-based companies.

He pointed out that there was no real cost to the insurance company; the cost was to the premium payer and the premium payer in this case would most likely be small businesses that were trying to provide coverage to their employees. Insurance companies moved money around and administered programs; but in fact, the cost fell upon the person who paid the premiums, which tended to be the small employer. The language, in their judgment, was also somewhat confusing. It appeared to be a mandated offering bill but at the same time, should an employer choose that offering, there did not appear to be any way out. By preventing disenrollment, a small employer who might be looking at it optimistically and hoping the cost would be very small, would be forced to consider that if he were wrong, he would be on the hook with no way to get out.

MR. DEWITT said that rather than encouraging companies to look at this and take the risk, most would be reluctant to do so. Also, when some disabled youth turned 18 they became eligible for public programs as their family plans no longer covered them; he was concerned that those costs would be shifted back to private employers from age 18-26 and if that were the case, it would indeed drive the cost of this benefit significantly higher than they had anticipated.

2:02:01 PM

CHAIR DAVIS did not feel there would be a problem with disabled youth being forced back on their parents' insurance, but she said she would check on it. She agreed that the unions and the state's plan would not fall under this mandate, but pointed out that the state's plan changed at least every 2 years and if there were enough employees interested in that coverage, they might add it, just as they had the well-baby exams.

MR. DEWITT said the NFIB wondered why it was appropriate for them to mandate a particular coverage on employees of small businesses if they, as employers, were unwilling to mandate that coverage on their own employees.

CHAIR DAVIS said that before she heard the bill for the well-baby exams, she believed that it would include the state plan; if left up to her it would.

CHAIR DAVIS set SB 179 aside for further work.

**HB 319-DENTISTS & DENTAL ASSISTANTS**

2:04:25PM
CHAIR DAVIS announced consideration of HB 319. [Before the committee was CSHB 319(L&C).]

PATTY KRUEGER, Staff to Representative Ramras, thanked the committee for the opportunity to present HB 319 and said it might sound familiar to them because it was very similar to SB 239. She said there was only one change that had been made in this bill and she would bring it to their attention.

> Ultimately oral health plays a key role in over all health and unfortunately, not all Alaskans enjoy good dental health due to geographical barriers, cost of dental care and limitations in dental personnel. HB 319 follows the provisions already in place in 36 other states, allowing expanded duties of dental assistants, thereby improving access to dental care and reducing cost for dental care.
>
> With expanded duties, dental assistants can help community health centers and traveling dental teams, provide greater access to care; and more cost-effective care. This bill specifically lays the framework for expanding dental assistant duties for 2 specific functions. It would allow a certified dental assistant under a dentist's direct supervision to place fillings into a cavity prepared by a licensed dentist, and allow a certified dental assistant under a dentist's direct supervision to polish teeth that are already clean of tartar.
>
> Dental assistants who perform expanded duties of packing cavities or polishing teeth will have to pass

a training program and an exam prior to becoming eligible for certification by the Alaska Dental Board. Furthermore, supervising dentists must personally authorize the procedure and examine the patient afterward.

This bill is supported by the Alaska Dental Society, Alaska Board of Dental Examiners, the Alaska Dental Outreach Consortium and the Alaska Native Tribal Health Consortium. HB 319 meets the goals of the preliminary report of the Governor's Health Care Strategies Planning Council.

The CS before the committee came from House Labor and Commerce and incorporated a change that was brought forth from a legal memo which accompanied the House version of HB 319. That change was found on page 3, line 3; it restricted the duties that could be delegated to a dental assistant.

MS. KRUEGER continued to say that as HB 319 moved to Senate Finance, the intention was to add HB 136, which was "An Act relating to the supervision of dental hygienists by dentists, establishing a restorative function license endorsement for dental hygienists and allowing collaborative agreements between licensed dentists and dental hygienists."

2:08:51 PM
She commented that HB 136 was heard previously in the Senate Department of Health and Social Services (DHSS) Committee and passed out with a vote of 3 do pass and 2 no recommendation; it was passed out of Senate Labor and Commerce and was awaiting a hearing in Senate Finance.

MS. KRUEGER thanked the committee for hearing the bill and for their support of the legislation.

2:09:47 PM
DAVE LOGAN, Alaska Dental Society, Juneau, AK, said that Patty did an excellent job of explaining the bill and offered to answer questions.

SENATOR COWDERY asked Mr. Logan if the dentists supported this bill.

MR. LOGAN answered yes, that the Dental Society supported HB 319.

CHAIR DAVIS confirmed that they had heard HB 136 and SB 239 and asked Ms. Krueger if she understood her to say that she would like to have HB 136 rolled into HB 319.

MS. KRUEGER testified that she would.

CHAIR DAVIS said she had spoken with Senator Thomas and he had no problem with combining them, but she wanted to hear from other members of the committee. There were no objections, so she agreed they would combine them.

2:11:50 PM
MS. KRUEGER said Mark Davis was available should any questions related to the new fiscal note need to be addressed.

DAVE EICHLER, DMD PC, Board of Dental Examiners, North Pole, AK agreed that HB 319 was substantially similar to SB 239 that he had testified in favor of it in early February; he reiterated the Board's support for the concept of the bill and indicated that the current version was acceptable to them.

CHAIR DAVIS asked whether Mr. Eichler had any problem with combining HB 136 and HB 319.

Mr. Eichler replied that he had not been aware of the fiscal note that recently came through on this bill and he would really have liked to avoid Senate Finance and any entanglements there; but if that was how things had to work, that was how things had to work.

CHAIR DAVIS announced that she would put HB 319 aside until a new CS could be prepared.

**HB 354-CHILD IN NEED OF AID/ADOPTIONS**

2:14:23 PM
CHAIR DAVIS announced consideration of HB 354. [Before the committee was CSHB 354(JUD).]

RYNNIEVA MOSS, Staff to Representative Coghill, presented an overview of HB 354 She explained that the bill started at the request of Office of Children's Services (OCS) and the Department of Law (DOL) to clarify some practices that were being performed by OCS; it grew to address a constituent issue and a concern that Representatives Gara and Coghill shared.

Sections 1 and 2 addressed a constituent concern. An 18 year old in Fairbanks had been raised by a stepfather [who wished to adopt him] and had never met his biological father; but there was a contradiction in the law and because he wasn't 19, he was required to try to locate and provide legal notice to the father. This bill attempted to bring 2 sections of law together on notification so that an 18 year old could be adopted without trying to find a missing parent.

Section 3 transferred from the commissioner to the department, the authority to adopt regulations to set the amount and [length of] time that a subsidy for a hard-to-place child could be granted. Under the current language it could be disputed that, even if a child had no special needs, the department would be required to pay a subsidy. This clarified that if there were no special needs, it could be deferred to a later date. It also corrected disparities so that every child would be treated equally.

Section 4 clarified that if public officials or their employees disclosed confidential information that was released to them under HB 53 they could be charged with and convicted of a misdemeanor.

Sections 5 and 7 would allow OCS to adjust child support orders [for minors in state custody] in Child in Need of Aid (CINA) and delinquent minor cases, through administrative order so they would not have to go to court each time they had to adjust a support order.

Section 6 rolled in HB 377, which made it very clear that the state could be held civilly liable for the actions of an employee when it resulted in the death or injury of a child in state custody.

Finally there was an immediate effective date clause.

SENATOR DYSON asked under what circumstances a person would want or need to adopt a child at 18.

MS. MOSS answered that in this case the 18 year old was very close to the stepfather and wanted to carry his name.

SENATOR DYSON suspected that some high needs people might be adopted by caring stepparents for the purpose of providing other family benefits such as insurance.

MS. MOSS advised Senator Dyson that they had had this conversation with Department of Law and that Jan Rutherdale was present to answer questions. She also assured him that other sections of the law would apply to protect special needs individuals from abuse.

SENATOR DYSON was surprised by language on page 2, line 20, which referred to "the spouse of the person to be adopted" and asked under what circumstances that might come in to play.

2:19:51 PM
JAN RUTHERDALE, Assistant Attorney General, Civil Division, Child Protection Section, Department of Law, Juneau, AK, asked Senator Dyson to confirm that his question was under what circumstances a spouse would need to consent to the adoption.

SENATOR DYSON explained that he was trying to understand what circumstances would create a situation in which a child needing adoption might have a spouse.

MS. RUTHERDALE responded that this bill was not limited to children; the rules would apply to anyone who wanted to be adopted. She guessed that, if the 18 year old in Ms. Moss' example were married, the spouse would have to consent because it would affect the laws of intestate succession and that sort of thing.

SENATOR DYSON asked if there was an age limit on adoption in present law.

MS. RUTHERDALE answered "No."

SENATOR DYSON related a hypothetical situation in which a man 89 was hospitalized for some months, drifting in and out of coma, and eventually asked his young nurse to marry him. When he died, his heirs were surprised to find he had married and that she would inherit his substantial estate. It was later discovered that her romantic partner was the doctor who had been administering the medication to her elderly husband. He asked what would keep a person with a substantial estate from adopting someone under similar circumstances.

MS. RUTHERDALE said the short answer was "Nothing." But if a person had a guardian, under AS 25.23.040(b) the court could allow a petition to adopt only if there were written consent of the adult, the adult's spouse and the guardian or conservator.

SENATOR DYSON agreed that should cover the situation. He continued that he was surprised they were allowing a state employee involved in a child's care to be sued under common-law negligence.

MS. RUTHERDALE replied that subsection (b) clarified what already existed in law. This would not change anything. What would become Section (a) made clear that there would be no statutorily-based liability under...

MS. MOSS interjected that it might help to provide Senator Dyson with some history of this matter. She explained there had been a disagreement on this matter in the Department of Law itself, as to what the state's liability was. This would clarify that if a child was injured or died while in state custody because of the actions of a state employee, the state would clearly be civilly liable.

SENATOR DYSON pointed out that it did not say in the bill "because of the actions of the employee," it just said "on behalf of a child who is injured or dies while in" and said he would like a short discussion of the differences between gross negligence, criminal negligence, negligence and common-law negligence.

MS. RUTHERDALE wanted to qualify that her expertise was not in tort law. She knew that Gail Voigtlander did have experience in that area and offered to contact her.

SENATOR DYSON said he would be satisfied with what she could remember from law school.

MS. RUTHERDALE said that certainly gross negligence was more serious than regular negligence and rose to the criminal level; so if a person drove drunk, had a car accident and killed someone, that person might be liable for manslaughter.

SENATOR DYSON added that as he remembered, it became negligence when an ordinary person using common sense would have known that it was a dangerous activity.

MS. RUTHERDALE agreed it was a "reasonable person" standard.

2:27:25 PM
SENATOR DYSON conjectured that if a child in the custody of the state was placed outside the home and was subsequently injured, common-law negligence would apply against the case worker if a

reasonable person would have said that was a dumb place to put the child.

MS. RUTHERDALE confirmed that it would have to be something a reasonable person would have foreseen could be harmful.
SENATOR ELTON thought they had taken care of the situation in which a state employee committed a misdemeanor if they revealed confidential information.

JAN RUTHERDALE agreed that they had; this bill made clear that it was only the release of information that made it a misdemeanor. The criminal sanctions were limited to the disclosure of confidential information.

SENATOR ELTON asked for clarification regarding what types of disclosure constituted a misdemeanor. He questioned whether someone who disclosed information to a legislator while reporting a problem would be guilty of a misdemeanor.

MS. RUTHERDALE said no, the way it worked was that ordinarily under AS 47.10.093, a state employee could not reveal any information in a file; but a statutory exception was created in AS 47.10.092, which allowed an OCS employee to release information to a legislator or ombudsman who requested it to assist with an investigation. The logic behind that was, if a parent came to a legislator and said "look at what is happening with my case" that parent had essentially waived the privacy interest.

2:32:06 PM
SENATOR THOMAS moved to report committee substitute for HB 354, Version \M, from the committee with individual recommendations and accompanying fiscal notes. There being no objection, CSHB 354(JUD) moved from committee.

There being no further business to come before the committee, Chair Davis adjourned the meeting at 2:32:24 PM.