

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

March 22, 2011

2:19 p.m.

**MEMBERS PRESENT**

Senator Dennis Egan, Chair  
Senator Joe Paskvan, Vice Chair  
Senator Linda Menard  
Senator Bettye Davis  
Senator Cathy Giessel

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 70

"An Act establishing the Alaska Health Benefit Exchange; and providing for an effective date."

- MOVED CSSB 70(L&C) OUT OF COMMITTEE

SENATE BILL NO. 78

"An Act relating to liability of certain limited liability organizations holding liquor licenses."

- HEARD AND HELD

CS FOR HOUSE BILL NO. 28(FIN)

"An Act relating to temporary courtesy licenses for certain nonresident professionals and to a temporary exemption from fees and other licensing requirements for active duty members of the armed forces."

- BILL HEARING RESCHEDULED TO 3/24/11

**PREVIOUS COMMITTEE ACTION**

BILL: SB 70

SHORT TITLE: ALASKA HEALTH BENEFIT EXCHANGE

SPONSOR(S): SENATOR(S) FRENCH

01/26/11           (S)           READ THE FIRST TIME - REFERRALS  
01/26/11           (S)           L&C, FIN

02/08/11 (S) L&C AT 2:00 PM BELTZ 105 (TSBldg)  
02/08/11 (S) Heard & Held  
02/08/11 (S) MINUTE(L&C)  
02/15/11 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)  
02/15/11 (S) Heard & Held  
02/15/11 (S) MINUTE(L&C)  
03/08/11 (S) L&C AT 2:00 PM BELTZ 105 (TSBldg)  
03/08/11 (S) Bill Postponed To March 17  
03/22/11 (S) L&C AT 2:00 PM BELTZ 105 (TSBldg)

BILL: SB 78

SHORT TITLE: LIQUOR LICENSE HOLDER LIABILITY

SPONSOR(s): SENATOR(s) MCGUIRE BY REQUEST

02/04/11 (S) READ THE FIRST TIME - REFERRALS  
02/04/11 (S) L&C, JUD  
03/22/11 (S) L&C AT 2:00 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

SENATOR FRENCH

Alaska State Legislature

Juneau, AK

**POSITION STATEMENT:** Sponsor of SB 70.

BEVERLY SMITH

Christian Science Committee on Publication for Alaska

Juneau, AK

**POSITION STATEMENT:** Supported SB 70 with some additional language.

WILLIAM STREUR, Commissioner-Designee

Department of Health and Social Services (DHSS)

Juneau, AK

**POSITION STATEMENT:** Opposed SB 70.

ESTHER TEMPLE

Staff to Senator McGuire

Alaska State Legislature

Juneau, AK

**POSITION STATEMENT:** Commented on SB 78 for the sponsor.

BOB KLEIN, Chairman

Alcohol Beverage Control Board (ABC)

Anchorage, AK

**POSITION STATEMENT:** Supported SB 78.

DICK ROSTEN

Attorney with Dorsey & Whitney

Representing Alyeska Resort

No address provided

**POSITION STATEMENT:** Answered questions on SB 78 issues.

**ACTION NARRATIVE**

2:19:02 PM

**CHAIR DENNIS EGAN** called the Senate Labor and Commerce Standing Committee meeting to order at 2:19 p.m. All members were present at the call to order.

2:20:14 PM

**SB 70-ALASKA HEALTH BENEFIT EXCHANGE**

CHAIR EGAN announced SB 70 to be up for consideration.

SENATOR PASKVAN moved to adopt CSSB 70( ), labeled 27-LS0286\I.

CHAIR EGAN objected for discussion purposes.

SENATOR FRENCH, sponsor of SB 70, that the committee substitute (CS) is a result of many hours of work from this committee, Senator Egan and his staff, Andy Moderow, interest groups and members of the administration.

He said the changes start on page 2 where the makeup of the board that will oversee the operations of the exchanges is changed. The board was originally 13 members and that has been reduced to 7. He thought it was a good change that streamlines the operations of the board. The voting members now include the Department Health and Human Services (DHSS) commissioner or his designee, one representative of small employers, one representative of the health care insurance business, one member with expertise in health plan financing, one member with expertise in health plan administration, a health care actuary or someone with similar economic experience, and one consumer representative. In addition to those members, the director of the Division of Insurance will act as a non-voting member.

Also, now on line 9, page 3, subsection (i) confirms that board members won't be civilly or criminally liable for the acts they take within the scope of their employ, a standard liability exemption for state employees who work within the scope of their duties. Also on lines 18-20, page 3, all numbers were renumbered because (a)(2) was deleted.

The next substantive change was on line 31, page 3 - line 4, page 4, and it requires the Division of Insurance to implement procedures relating to health plan certification, recertification and decertification - something the division is very familiar with and uniquely qualified to undertake. On page 4, lines 10-14, language requires the division to determine the level of each qualifying plan that will be offered within the exchange.

Language on page 6, lines 13-17, places the Navigator Grant Program under the Division of Insurance, again to give the division a strong voice in the operation of the exchange and allow them to help the program take effect. Also on page 6, lines 26-28, the legislation directs complaints about health benefit plans to the Division of Insurance and not to the federal government as the old draft did.

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On page 7, lines 1-4 require the Division of Insurance to review the rate of premium growth both inside and outside the exchange, a crucial aspect to see if it's working - keeping premiums at a reasonable level and providing recommendations about whether or not expanding the size of a small employer from 50-100 people for the purpose of SHOP marketplace makes sense for Alaska. Before, this responsibility rested with the exchange board and it would now go to the Division of Insurance to strengthen their voice in the exchange's operation.

Lines 5-8 on page 7 require the division to develop policies and procedures to minimize adverse selection within the exchange and between plans sold inside and outside the exchange.

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Lines 26-29 on page 7 give the board the authority to establish advisory groups to provide expertise and input about exchange operations. Advisory groups can be rather informal; they are collections of interested, knowledgeable individual citizens who can provide expertise and advice to the board about the operation of the exchange.

On page 8, lines 1-13 establish a new annual accounting report; it reviews new enrollment, changes in enrollment, tax credits and individual responsibility exemptions broken down by insurer and by benefit plan where applicable. Again, it's the overseeing of what the exchange's effect on the marketplace of insurance has statewide both in and outside the exchange.

Also on lines 14-23 on page 8 require the exchange to cooperate with an investigation by the Division of Insurance; this makes it explicit. It also requires cooperation with federal investigations.

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Lines 2-5 on page 9 state that the exchange will rely on the Division of Insurance determination relating to the potential for Interstate compacts. This goes back to the idea of pooling and of buying insurance across state lines and is something that small states like Alaska may be able to benefit from.

Also on page 9, lines 6-28 require the exchange board to establish a plan of operation, which is reviewed and approved by the director of the Division of Insurance. If a suitable plan isn't developed, the new subsection allows for the director to adopt reasonable regulations to carry out the responsibilities of the exchange.

SENATOR FRENCH said lines 17-18 on page 14 at the end of the bill solve the so-called "AFLAC problem," which is when insurance companies don't offer plans inside the exchange and don't want to pay for its operation. This seems fair; so only those companies offering plans inside the exchange will be assessed a fee to run it.

On page 14, lines 24-25 were changed to give the Division of Insurance authority to adopt regulations to implement their authority under the legislation. Similarly, lines 25-17 on page 19 were changed to give the director of the Division of Insurance the ability to adopt regulations that also make it clear that such regulations won't be effective until the effective date of the statutory changes.

SENATOR FRENCH said the last two changes were conforming to the adopted practice with respect to, for example, the Board of Fisheries which has the power to adopt their regulations or the Board of Game's identical power.

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He said language on page 19, line 31, had been modified to make the transitional provisions related to board terms effective on July 1, 2011. Before, those provisions had an immediate effective date.

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SENATOR MENARD asked since the seventh person, either the CEO or executive director, won't have voting privileges, how would the board be able to break a tie.

SENATOR FRENCH answered that his understanding is subsection (b) on page 2, lines 14-17, puts the commissioner of DHSS on the board, but he isn't numbered; then six more members are listed for a total of seven. So, the board has a natural tie-breaking function within itself.

SENATOR MENARD said she missed that.

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BEVERLY SMITH, Christian Science Committee on Publication for Alaska, said she is the legislative and media representative in Alaska. She asked to add one more duty to the Alaska Health Benefit Exchange Board. She read from a handout she had given the committee two weeks ago that explained:

The Alaska Health benefit Exchange Board shall consider the extent and circumstances under which benefits for spiritual care services that are deductible under section 213(d) of the Internal Revenue Code as of January 2, 2010 will be made available under the exchange.

She said the handout provides the explanation and justification for this request and in her words:

The goal of health care reform is coverage for all. In 2014 when everyone is required to purchase insurance, the premiums should be of value to every individual. That includes those who rely on spiritual care for their health care. Each person should be able to use that insurance that they have paid for to pay for the health care they have found most effective.

There are federal insurance programs and some state plans that offer benefits for spiritual care, and on the back of the handout I have listed some examples of spiritual care coverage. Alaska Care, here in the state, provides state employees and retirees' benefits for costs of Christian Science practitioners authorized by the First Church of Christ Scientist in Boston. And I think the Insurance Exchange should offer the public the same programs that are available to state workers and retirees.

Some parameters that are set in the amendment would include those spiritual care services that are recognized by the IRS as medical deductions. Those are - and I checked with Washington, D.C. - Christian Science, Religious Science and Navajo Healing Services.

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MS. SMITH said the reason they are asking for this consideration now instead of after the exchange is set up is because when the state of Massachusetts was setting up its exchange, church officials went to legislators and were told to not worry about it, but wait until the legislation goes through and then deal with the insurance exchange companies. So, they did that. Then the insurance companies said they needed to only offer the benefits that were directed to them in statute by the legislature. So, here they are front loading this legislation to provide the possibility of having the insurance companies in the exchange provide benefits for spiritual care so that all citizens have access to the health care of their choice. Ms. Smith said this is an issue of fairness and many have found spiritual healing to be effective. She didn't see that this would add anything to the fiscal note.

2:37:05 PM

SENATOR MENARD asked if Kansas, Missouri, Oregon, Illinois, California, Oklahoma, Colorado, Texas [mentioned in the handout] are the states that have allowed Christian Science, religious science and Navajo Healing Services to do this.

MS. SMITH answered no; these are examples of states that allow coverage for Christian Science care in their state plans. Right now the federal government, through the IRS, allows those three particular entities to claim their health care expenses as medical deductions in their income taxes.

SENATOR MENARD asked which states put it into an exchange.

MS. SMITH replied that she is aware of one recently, Utah, which passed a bill setting up a task force to investigate setting up the exchange. It isn't as far along as Alaska is, but spiritual care is an accepted consideration.

SENATOR MENARD asked if Alaska would be the first to actually follow through should this pass out.

MS. SMITH replied yes and she thought that would be great.

SENATOR DAVIS asked if they tried to get Christian healing practices in the Massachusetts bill after it was passed.

MS. SMITH replied yes, but they weren't able to get it in.

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SENATOR PASKVAN said he understood systems that say prayer can heal, but the question that one ultimately has to come back to is, "We're a civil law authority; we're not religious leaders here. So, the question is what standard of medical treatment/care is it that is being followed. Given otherwise, I see no objective treatment standard other than just a belief system."

MS. SMITH answered right now they are going with what the federal government has recognized as acceptable for medical deductions through the IRS and with various insurance companies that do grant benefits for spiritual care. There is a record of healing and it has been recognized as effective. Christian Science healing practitioners have to meet standards and are granted authorization through the church.

SENATOR PASKVAN asked if anything in the law currently prohibits anyone from participating in a prayer healing process.

MS. SMITH answered that everyone is allowed to participate in whatever faith tradition they have, but only certain ones are granted this recognition through the IRS.

SENATOR PASKVAN asked if the ultimate intent is to have government monies be used for "that healing ceremony."

MS. SMITH replied no. But she knows that those who do not have insurance now would be able to purchase it through the exchange. And those that do not have the money to purchase would get some subsidy. That would be where government money would be involved, she guessed. She reiterated that citizens should be able to get benefits that they pay for and should be able to have choice in their health care benefits.

SENATOR MENARD asked her to clarify exactly what she was asking for.

MS. SMITH replied that she wanted consideration of spiritual benefits to be included in this package; whether it's through

her proposed amendment or some other vehicle the committee thinks would work.

SENATOR MENARD said she wanted the sponsor to respond.

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SENATOR FRENCH said this is a difficult question and better suited for a separate piece of legislation that will focus on the issue of the efficacy of spiritual healing and whether it's something insurance companies should reimburse practitioners for. That is ultimately what it would lead to.

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SENATOR PASKVAN moved to adopt Amendment 1 as follows:

27-LS0286\I.1  
Bailey  
3/22/11

**AMENDMENT 1**

OFFERED IN THE SENATE BY SENATOR PASKVAN  
TO: CSSB 70(L&C), Draft Version "I"

Page 10, line 10, following "entities":

Insert "; the exchange shall make records of application for or receipt of grants or donations under this paragraph available to the public on the exchange's Internet website within 30 days after application or receipt"

He explained that the purpose of this amendment is to require timely disclosures of any contributions that may come into this exchange - within 30 days on its website. The exchange on page 10, lines 9-10, is given the ability to "apply for and receive grants or donations from federal, state, local government foundations, or private entities." The idea is to make these monies are "transparent and open."

SENATOR MENARD reasoned that she runs "a pretty efficient office" and sometimes "30 days just came and went," and she preferred going to 60 days.

SENATOR PASKVAN responded that if the exchange found 30 days to be an impossible burden, he hoped they would advise them of it.

The intent of this bill is if there are donations from private entities and decisions that are coming out of that exchange that they be transparent - "a paper trail in and decisions out."

SENATOR FRENCH said he supported the amendment.

SENATOR MENARD moved to adopt Amendment 1. There were no objections and it was so ordered.

SENATOR GIESSEL said she just got copy of a letter addressed to Senator French from the Governor's Office, dated March 11. The last paragraph summarizes it:

No health insurance exchange legislation is necessary during this 2011 legislative session. We have the internal capacity through DHSS and DCCED to complete the planning work for the insurance exchange mandated by federal law. Accordingly, I do not support SB 70 on policy grounds, nor do I believe a state statute is required for the state to begin implementation.

She hadn't seen this until an hour ago, and asked the sponsor for his comment.

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SENATOR FRENCH thanked her for bringing it up. His reply to governor was sent a day later that had several thoughts. As a member of the legislative branch of government, he was sure she was jealous of their prerogatives and power. He was certain she would be hesitant to cede to the governor the authority to set up a structure like this. He pointed out the collaborative nature of the committee process, the back and forth of ideas, the compromise that takes place when they do business in public, on the record, with the cameras running - open to any suggestion the public may bring forward - as opposed to what would be a closed-door, top-down, agenda-driven operation from inside the governor's office.

SENATOR FRENCH said he has a great amount of respect for the DHSS commissioner and the people who work within the administration that and they had been very helpful with this specific bill. But there is a reason why the legislature has its power and duties and they have theirs; they administer the laws the legislature writes. He thought that collaboratively the 60 of them could come up with a better health care exchange than the administration could acting essentially alone without legislators' input.

SENATOR GIESSEL commented that originally it was in the hands of the governor. It was only the introduction of the bill that brought it to the legislative arena. "A bill was not required for the establishment of the exchange," she said. The governor indicated, with the ruling of his attorney general, that he would implement an exchange and she is questioning the necessity of going through the lengthy process of passing legislation.

SENATOR FRENCH responded that he didn't know of any other governor that had taken the position that no enabling legislation is necessary. Some governors are opposed to the Affordable Care Act; they don't like the individual mandate or the changes in the reforms. Some are opposed to the whole idea of insurance reform and getting affordable insurance in the hands of every citizen. Then there are shades of opposition down the line and Alaska's governor has been fairly blunt about pushing back against what he sees as an unconstitutional act.

Senator French said he has a different view and has publicly disagreed. He thought the federal bill envisioned each state creating its own health care exchange through the collaborative process of legislation. If he had thought at the beginning of the session when the governor was "standing four-square opposed to the federal bill" that he intended to create a health care exchange through his own administration, perhaps he would not have filed the bill. But he did, because he thinks it's important that everyone has a voice and does their job to put the exchange into effect in a way that they all think is best. If the governor "winds up creating something exactly like my bill, God bless him and we can all go forward and have a health care exchange that works for Alaskans." In the meantime, they have a duty to continue their work.

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CHAIR EGAN asked if the administration supports SB 70.

WILLIAM STREUR, Commissioner-Designee, Department of Health and Social Services (DHSS), replied no.

CHAIR EGAN asked now that the Florida court has ruled that the Patient Protection and Affordable Care Act must be accepted by law, if the administration intends to comply with that mandate or to provide an insurance exchange if SB 70 doesn't pass. Is he aware that the federal government might institute one if the state declines to do so?

COMMISSIONER STREUR replied that the administration is in the process of planning an exchange for the State of Alaska and will continue with that until legislation is either overturned or new rules come forward regarding it. They do not want the federal government involved in any way.

CHAIR EGAN asked how the administration's exchange would differ from SB 70.

COMMISSIONER STREUR answered that he didn't know, because the design of the exchange is still in the planning stages. One of their issues with this bill is that they need the latitude to design what is best for the State of Alaska based on best practices they see in various developing exchanges.

CHAIR EGAN asked if he is saying the administration has the authority to establish that now.

COMMISSIONER STREUR replied, "We believe the administration has the authority to plan for and design and implement the exchange. However, to go live with the exchange we are probably going to need legislation; we are going to need statute. We are going to need something, because it has to be self-funded and there are many rules around that that are best established through legislation."

SENATOR DAVIS said that doesn't keep this legislation from moving forward, because something has to be out there by 2014 or the federal government will do it for us.

COMMISSIONER STREUR replied that by 2014 the state needs an exchange that is up and running; by January 2013 they have to have a "solid plan" in place to implement the exchange.

SENATOR DAVIS moved to report CSSB 70(L&C) as amended from committee with individual recommendations and attached fiscal note(s). There were no objections and it was so ordered.

[3:01:14 PM](#)

At ease from 3:01 to 3:03 p.m.

[3:03:40 PM](#)

**SB 78-LIQUOR LICENSE HOLDER LIABILITY**

CHAIR EGAN announced SB 78 to be up for consideration. [27-LS0282\M version was before the committee.]

ESTHER TEMPLE, staff to Senator McGuire, sponsor of SB 78, said the intent of this bill is to provide equal treatment to limited liability companies (LLC) and foreign LLCs in the liquor liability context as they are treated in the business generally.

She explained that presently persons engaged in businesses commonly use LLCs instead of corporations while leaving intact the limited liability of the LLC members for all other business purposes. Currently, AS 04.21.035 is an exception to the protections against individual liability offered to partners of properly registered and maintained LLPs and LLCs. In other words, partners and members of LLPs and LLCs are not relieved of the obligation or the liability otherwise imposed upon a liquor license holder under Title 4. So, in order to avoid that result owners of liquor businesses that hold a liquor license that seek limited liability protection have to do business through a corporate entity.

She said that businesses have increasingly turned to LLCs as a preferred entity for doing business in order to have greater management and efficiency without sacrificing the limited liability protection from business creditors that are afforded to owners of corporations.

MS. TEMPLE said that LLCs are commonly used in Alaska as well as in the United State as limited liability protection entities in place of corporations. Therefore, SB 78 would amend existing statute to state that the liability will be imposed only on partners of a limited liability partnership or a foreign limited liability partnership, but will no longer apply a LLC or a foreign LLC. If passed, SB 78 would encourage business development by reflecting the fact that LLCs are more similar to those used in the business world as an alternative to corporations and are less commonly used as alternatives to sole proprietorships or general partnerships, which pass on general liability to their owners.

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SENATOR PASKVAN asked if a foreign corporation can own a liquor license. He knows that state-formed corporations can own a liquor license. The reason he asked is because "foreign LLPs" are included in the language of SB 78.

MS. TEMPLE answered that she didn't know that answer, but would look into it for him.

CHAIR EGAN asked if anyone in the audience could answer.

3:08:30 PM

BOB KLEIN, chairman, Alcohol Beverage Control Board (ABC), said he is an industry member because he is the Brown Jug Liquor Stores director of sales in Anchorage. He is also a member of CHARR and serves on their Government Affairs Committee.{'

MR. KLEIN related that he was on the ABC board when LLCs were first introduced into Title 4 language. Their intent at the time was to give LLCs the same protections as partnerships and corporations. Recently he found that they missed the mark, because of inexperience and it now makes sense to insert Senator McGuire's changes.

SENATOR PASKVAN said he agreed with him. He asked if a foreign LLP could own a liquor license.

MR. KLEIN responded that he didn't know the answer.

3:11:08 PM

DICK ROSTEN, Attorney, Dorsey & Whitney, representing Alyeska Resort as well as other holders of liquor licenses said the answer is yes; foreign corporations can own a liquor license if they are qualified to do business in Alaska.

SENATOR PASKVAN asked if they do it by forming an Alaskan entity.

MR. ROSTEN replied that they use a different process. Any corporation that is not formed in Alaska is known under our statutes as a "foreign corporation" whether they were formed in Canada or in Nevada or Delaware. They go through a qualifying process followed by a certificate of authority to own a business in Alaska.

SENATOR PASKVAN asked if the assets of either the foreign entity or an Alaskan entity are equally subject to a judgment.

MR. ROSTEN answered yes: whoever holds a liquor license, regardless of whether it's an Alaskan domestic corporation or a Nevada corporation, for example, those assets would be at risk.

SENATOR PASKVAN asked if that is established as part of the process of qualifying to do business in Alaska by the foreign entity.

MR. ROSTEN answered yes.

3:13:44 PM

CHAIR EGAN thanked everyone for their comments and closed public testimony. He announced that SB 78 would be held, and finding no further business to come before the committee, he adjourned the meeting at 3:15 p.m.