

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

April 12, 2011

2:08 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. 115

"An Act defining portable electronics insurance and authorizing the director of insurance to issue a limited producer license to a person that sells portable electronics insurance."

- MOVED CSSB 115(L&C) OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 24(FIN)

"An Act extending the termination date of the Regulatory Commission of Alaska; and providing for an effective date."

- MOVED CSHB 24(FIN) OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 130(L&C)

"An Act relating to municipal building code requirements for fire sprinkler systems in certain residential buildings."

- MOVED CSHB 130(L&C) OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 164(FIN)

"An Act relating to health care insurance, exemption of certain insurers, reporting, notice, and record-keeping requirements for insurers, biographical affidavits, qualifications of alien insurers assuming ceded insurance, risk-based capital for insurers, insurance holding companies, licensing, federal requirements for nonadmitted insurers, surplus lines insurance, insurance fraud, life insurance policies and annuity contracts, rate filings by health care insurers, long-term care insurance,

automobile service corporations, guaranty fund deposits of a title insurer, joint title plants, fraternal benefit societies, multiple employer welfare arrangements, hospital and medical service corporations, health maintenance organizations, and alternate forms of payment to policyholders; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 74

"An Act requiring insurance coverage for autism spectrum disorders, describing the method for establishing a covered treatment plan for those disorders, and defining the covered treatment for those disorders; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

CS FOR HOUSE BILL NO. 155(L&C)

"An Act relating to the applicability of prevailing wage rates to public construction contracts; and, with regard to public construction contracts, relating to notifications, bonding notifications, filings, notices, primary contractors, final payments, penalties, advertised specifications, required contract provisions, terminations, lists of violating contractors, and remedies."

- SCHEDULED BUT NOT HEARD

CS FOR HOUSE BILL NO. 87(L&C)

"An Act relating to civil and criminal penalties for antitrust violations."

- SCHEDULED BUT NOT HEARD

#### **PREVIOUS COMMITTEE ACTION**

BILL: SB 115

SHORT TITLE: PORTABLE ELECTRONICS INSURANCE

SPONSOR(s): LABOR & COMMERCE

03/25/11	(S)	READ THE FIRST TIME - REFERRALS
03/25/11	(S)	L&C, FIN
04/07/11	(S)	L&C AT 2:00 PM BELTZ 105 (TSBldg)
04/07/11	(S)	Heard & Held
04/07/11	(S)	MINUTE(L&C)
04/12/11	(S)	L&C AT 2:00 PM BELTZ 105 (TSBldg)

BILL: HB 24

SHORT TITLE: EXTEND REGULATORY COMM. OF ALASKA SUNSET

SPONSOR(s): OLSON

01/18/11 (H) PREFILE RELEASED 1/7/11  
01/18/11 (H) READ THE FIRST TIME - REFERRALS  
01/18/11 (H) L&C, FIN  
03/16/11 (H) L&C AT 3:15 PM BARNES 124  
03/16/11 (H) Moved CSHB 24(L&C) Out of Committee  
03/16/11 (H) MINUTE(L&C)  
03/18/11 (H) L&C RPT CS(L&C) 7DP  
03/18/11 (H) DP: CHENAULT, THOMPSON, SADDLER,  
JOHNSON, HOLMES, MILLER, OLSON  
03/22/11 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
03/22/11 (H) Moved CSHB 24(FIN) Out of Committee  
03/22/11 (H) MINUTE(FIN)  
03/23/11 (H) FIN RPT CS(FIN) 8DP 2NR  
03/23/11 (H) DP: FAIRCLOUGH, T.WILSON, JOULE,  
COSTELLO, EDGMON, DOOGAN, STOLTZE,  
THOMAS  
03/23/11 (H) NR: GUTTENBERG, GARA  
03/28/11 (H) TRANSMITTED TO (S)  
03/28/11 (H) VERSION: CSHB 24(FIN)  
03/30/11 (S) READ THE FIRST TIME - REFERRALS  
03/30/11 (S) L&C, FIN  
04/07/11 (S) L&C AT 2:00 PM BELTZ 105 (TSBldg)  
04/07/11 (S) Heard & Held  
04/07/11 (S) MINUTE(L&C)  
04/12/11 (S) L&C AT 2:00 PM BELTZ 105 (TSBldg)

BILL: HB 130

SHORT TITLE: RESIDENTIAL SPRINKLER SYSTEMS

SPONSOR(s): LABOR & COMMERCE

01/28/11 (H) READ THE FIRST TIME - REFERRALS  
01/28/11 (H) CRA, L&C  
02/08/11 (H) CRA AT 8:00 AM BARNES 124  
02/08/11 (H) Moved Out of Committee  
02/08/11 (H) MINUTE(CRA)  
02/09/11 (H) CRA RPT 6DP  
02/09/11 (H) DP: AUSTERMAN, CISSNA, DICK, FOSTER,  
GARDNER, MUNOZ  
02/14/11 (H) L&C AT 3:15 PM BARNES 124  
02/14/11 (H) Moved CSHB 130(L&C) Out of Committee  
02/14/11 (H) MINUTE(L&C)  
02/16/11 (H) L&C RPT CS(L&C) NT 7DP

02/16/11 (H) DP: THOMPSON, SADDLER, JOHNSON, HOLMES,  
SEATON, MILLER, OLSON  
03/11/11 (H) TRANSMITTED TO (S)  
03/11/11 (H) VERSION: CSHB 130(L&C)  
03/14/11 (S) READ THE FIRST TIME - REFERRALS  
03/14/11 (S) CRA, L&C  
03/22/11 (S) CRA AT 3:30 PM BELTZ 105 (TSBldg)  
03/22/11 (S) Scheduled But Not Heard  
03/29/11 (S) CRA AT 3:30 PM BELTZ 105 (TSBldg)  
03/29/11 (S) Moved CSHB 130(L&C) Out of Committee  
03/29/11 (S) MINUTE(CRA)  
03/30/11 (S) CRA RPT 3DP 1NR  
03/30/11 (S) DP: KOOKESH, MENARD, WAGONER  
03/30/11 (S) NR: OLSON  
04/07/11 (S) L&C AT 2:00 PM BELTZ 105 (TSBldg)  
04/07/11 (S) Heard & Held  
04/07/11 (S) MINUTE(L&C)  
04/12/11 (S) L&C AT 2:00 PM BELTZ 105 (TSBldg)

BILL: HB 164

SHORT TITLE: INSURANCE: HEALTH CARE & OTHER

SPONSOR(S): LABOR & COMMERCE

02/18/11 (H) READ THE FIRST TIME - REFERRALS  
02/18/11 (H) L&C, FIN  
02/21/11 (H) L&C AT 3:15 PM BARNES 124  
02/21/11 (H) Heard & Held  
02/21/11 (H) MINUTE(L&C)  
02/23/11 (H) L&C AT 3:15 PM BARNES 124  
02/23/11 (H) Heard & Held  
02/23/11 (H) MINUTE(L&C)  
02/28/11 (H) L&C AT 3:15 PM BARNES 124  
02/28/11 (H) Scheduled But Not Heard  
03/07/11 (H) L&C AT 3:15 PM BARNES 124  
03/07/11 (H) Moved CSHB 164(L&C) Out of Committee  
03/07/11 (H) MINUTE(L&C)  
03/09/11 (H) L&C RPT CS(L&C) NT 4DP 2NR  
03/09/11 (H) DP: THOMPSON, HOLMES, MILLER, OLSON  
03/09/11 (H) NR: CHENAULT, JOHNSON  
03/09/11 (H) L&C AT 3:15 PM BARNES 124  
03/09/11 (H) <Bill Hearing Canceled>  
03/22/11 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
03/22/11 (H) Heard & Held  
03/22/11 (H) MINUTE(FIN)  
03/30/11 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
03/30/11 (H) Scheduled But Not Heard  
04/06/11 (H) FIN AT 1:30 PM HOUSE FINANCE 519

04/06/11 (H) Moved CSHB 164(FIN) Out of Committee  
 04/06/11 (H) MINUTE(FIN)  
 04/07/11 (H) FIN RPT CS(FIN) NT 3DP 6NR 1AM  
 04/07/11 (H) DP: GARA, HAWKER, DOOGAN  
 04/07/11 (H) NR: GUTTENBERG, T.WILSON, JOULE,  
 COSTELLO, EDGMON, STOLTZE  
 04/07/11 (H) AM: FAIRCLOUGH  
 04/08/11 (H) TRANSMITTED TO (S)  
 04/08/11 (H) VERSION: CSHB 164(FIN)  
 04/11/11 (S) READ THE FIRST TIME - REFERRALS  
 04/11/11 (S) L&C  
 04/12/11 (S) L&C AT 2:00 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

REPRESENTATIVE KURT OLSON  
 State Capitol Bldg.  
 Alaska State Legislature  
 Juneau, AK

**POSITION STATEMENT:** Sponsor of HB 24, and chair of the House Labor and Commerce Committee, sponsor of HB 130 and HB 164.

LINDA HALL, Director  
 Division of Insurance  
 Department of Commerce, Community and Economic Development  
 (DCCED)  
 Juneau, AK

**POSITION STATEMENT:** Supported HB 164.

JOSHUA KORVER  
 Insurance Center  
 Anchorage, AK

**POSITION STATEMENT:** Had concerns with HB 164.

GARY SLEEPER  
 Denali Alaskan Federal Credit Union

**POSITION STATEMENT:** Had concerns with section 79 of HB 164.

STEVE STEPHAN, Director  
 Governmental Relations  
 National Association of Professional Surplus Lines Offices  
**POSITION STATEMENT:** Had concerns about HB 164.

**ACTION NARRATIVE**

[2:08:03 PM](#)

**CHAIR DENNIS EGAN** called the Senate Labor and Commerce Standing Committee meeting to order at 2:08 p.m. Senators Paskvan, Giessel, Davis, and Egan were present at the call to order.

**SB 115-PORTABLE ELECTRONICS INSURANCE**

[2:10:17 PM](#)

CHAIR EGAN announced SB 115, sponsored by the Senate Labor and Commerce Committee, to be up for consideration. He asked his staff, Dana Owen, to come forward for questions.

SENATOR MENARD remarked that Asurian had testified on this bill and it had been well-vetted.

[2:10:22 PM](#)

SENATOR PASKVAN moved to report CSSB 115 (L&C), labeled 27-LS0609\I from committee with individual recommendations and attached fiscal note(s). There were no objections and it was so ordered.

[2:10:46 PM](#)

At ease from 2:10 to 2:12 PM.

**HB 24-EXTEND REGULATORY COMM. OF ALASKA SUNSET**

[2:12:17 PM](#)

CHAIR EGAN announced HB 24 to be up for consideration [CSHB 24(FIN) was before the committee].

REPRESENTATIVE KURT OLSON, sponsor of HB 24, said this measure would extend the Regulatory Commission of Alaska (RCA) one year to allow them to deal with some of their outstanding recommendations as per the Legislative Audit.

SENATOR PASKVAN moved to report CSHB 24(FIN), version \B, from committee with individual recommendations and attached fiscal note. There were no objections and it was so ordered.

[2:13:48 PM](#)

At ease from 2:13 to 2:15 PM.

**HB 130-RESIDENTIAL SPRINKLER SYSTEMS**

[2:15:16 PM](#)

CHAIR EGAN announced HB 130, sponsored by the House Labor and Commerce Committee, to be up for consideration [CSHB 130(L&C), 27-LS0332\B was before the committee].

REPRESENTATIVE OLSON, chair of the House Labor and Commerce Committee, said he had no further comments on this measure.

SENATOR PASKVAN moved to report CSHB (L&C), version \B, from committee with individual recommendations and attached fiscal note. There were no objections and it was so ordered.

[2:16:01 PM](#)

At ease from 2:16 to 2:17 PM.

**HB 164-INSURANCE: HEALTH CARE & OTHER**

[2:17:30 PM](#)

CHAIR EGAN announced HB 164, sponsored by the House Labor and Commerce Committee, to be up for consideration [CSHB 164(FIN) was before the committee].

REPRESENTATIVE OLSON, chair, House Labor and Commerce Committee, sponsor of HB 164, asked the committee to allow Linda Hall to present the bill so they wouldn't be presenting it twice. Then he would like to comment on the two contentious sections.

[2:18:48 PM](#)

LINDA HALL, Director, Division of Insurance, Department of Commerce, Community and Economic Development (DCCED), said the bill is lengthy and involves a number of issues. Seven tabs deal with a particular piece of change to Alaska's statutes that she thought would enhance her division's regulatory ability and the overall marketplace in Alaska.

She explained that in sections 2 - 21, pages 1-15, the term "managed care" is changed to "health care". Today the term is used only in AS 21.07 and it's not consistent with the rest of their title.

[2:20:53 PM](#)

The actual substantive changes are under the Financial heading (pages 15-22) and are predominantly changes to meet national models to enhance her solvency oversight, what she views is the primary mission of her division. Companies doing business in Alaska must have adequate funds to pay claims, she elaborated, and insurance companies are being required to submit biographical affidavits so she knows who is running the companies and to submit electronic addresses to make communication more efficient. She said it's fairly standard to

adopt reinsurance and other kinds of model laws across the country.

MS. HALL said the next tab is "Licensing" and proposes to streamline their entire agent licensing process. They would no longer have individual-in-a-firm licenses, but just an individual license that is actually more portable. They are trying to make sure that the employee in a firm can take their license and move to another firm, but that they can operate under the firm appointments with insurance companies. She elaborated that the firm's records are considered their records; the fiduciary accounts are considered the records of the individual. This leads to the requirement for an employment contract. She said this type of concept has been discussed for several years and she believes that agents are supportive of these kinds of changes. It will streamline the process for both agents and her division.

CHAIR EGAN objected for questions.

SENATOR PASKVAN asked her to explain the trust accounts and licensing going to the individual again.

MS. HALL explained that under this legislation the individual employee in a firm would have his own license; today it's called "an individual in a firm." They could leave employment in firm A and go to firm B. Because the license is no longer tied to that firm, provisions were made that the firms keep the appointments with insurance companies and the fiduciary accounts. That individual is allowed to operate under all of those things. The individual is not being required to maintain extensive records and have their own appointments by insurance companies, which would add a burden they don't have today.

[2:25:03 PM](#)

SENATOR PASKVAN asked if this promotes the mobility of the individual.

MS. HALL responded that's correct.

SENATOR MENARD said so you have State Farm and Mat Valley Federal Credit Union and she is working in the insurance division at that bank, which has a trust department, and Senator Paskvan has given her to manage his trust papers. Now she has decided to leave that company; her license is still good at State Farm, but is she free to move Senator Paskvan's information over to State Farm?

MS. HALL replied that typically the client information would be addressed in her employment contract; generally, that information is considered to be proprietary and owned by the firm - in Senator Menard's case the Federal Credit Union. It becomes a contractual matter, not an insurance regulatory matter. Her division just sets out certain things that must be addressed, the three that she has mentioned. The fiduciary accounts are short term money accounts where Senator Paskvan paid Senator Menard his premium, and she put it in an account that is considered a trust account, but it's not a "trust" as in long term trust, but probably a checking account.

SENATOR MENARD said her late husband's dental records still belong to Wasilla Palmer Dental Center. If a patient leaves the practice, their records still belong to her corporate structure.

MS. HALL said that was correct, but it would be part of the employment contract between the firm (ABC).

REPRESENTATIVE OLSON added that he considers himself to be knowledgeable on surplus lines; a number of years ago he and Ms. were surplus lines brokers in Anchorage while at the same time serving on the Board of the State Surplus Lines Association. He is currently on the Executive Board of the National Council of Insurance Legislators (NCOIL). The reason he brings this up is because NCOIL has a different approach that the State of Alaska is attempting to pursue of setting up a clearing house run by industry to collect the surplus lines taxes. He believes the division would be giving up the right and duty to handle that function via the Division of Insurance. Coincidentally the model they are using for that is from an organization called "Interstate Insurance Product Review Committee" and it consists of eight state regulators such as Ms. Hall. That organization has nothing to do with the collection of taxes; they review life, health and long term care policies so a standard form can be used for the whole country to provide for people moving around. It has no bearing on taxes and he didn't know why that is being used as a model.

[2:31:34 PM](#)

SENATOR PASKVAN asked what Alaska gains or loses when it can't regulate a nonadmitted insurer (it says Alaska will not be able to tax or regulate under the surplus lines) compared to what happens now.

MS. HALL answered that she wasn't sure what he was referring to, but the division is not giving up control of regulating surplus lines insurers. Today the department has a different regulatory authority ability over surplus lines insurers who don't file for certificate of authority. They are merely listed on a "white list" and authorized to do business here. They don't undergo the same financial scrutiny; they don't file their forms and rates for approval.

She stated that this bill does not change the division's regulatory authority. One of the two things it does change is a portion of state law to meet a federal law that specifically preempts state law, and that is effective in July 2011. Instead of collecting taxes on these particular types of accounts the way it is done today, it would mandate that the division adopt a definition of "home state," which is a principle place of business, and then collect 100 percent of the home state tax instead of just the piece they collect today (part of the federal law). And it also prohibits a state from having its surplus lines agent follow laws of a state unless they are the home state. So, they don't have to follow laws of five different states for the same actual policy placement.

She recapped that they are asking first to bring Alaska statute into compliance with the federal law. Second, there are two ways to proceed after that is changed. The division will still collect taxes; today she collects approximately \$50 million in premium tax today. What this piece of HB 164 does is they collect approximately \$3.5 million in taxes on surplus lines coverage. It really only changes the way they tax accounts (policies) that cover things in multiple states, probably a very small portion of the surplus lines (maybe a half million dollars). It will change how it is collected and whether or not the division allocates it back to the state where it properly belongs, because that is where the risk is. The National Association of Insurance Commissioners (NAIC), through the state regulators, have voted on a simple clearing house to do that and that is why this section has the authority for the director to join in an agreement that can collect and allocate out to the states where the risk belongs. It doesn't change the amount they are taxed; it doesn't change the tax on an Alaskan account, but it does collect differently and allocate differently than what is done today. She said the other way to do that is through a much more complex formalized compact that Representative Olson just addressed.

SENATOR PASKVAN asked if the regulator process for nonadmitted insurers remains the same.

MS. HALL replied yes.

[2:36:23 PM](#)

She went on to the "Miscellaneous" tab on page 37; there she pointed out a new consumer protection in section 59 that would require an insurer to provide a notice to the covered individual 45 days before the date of cancellation. Today there is no requirement for that.

She said section 60 would make no sense to them on the surface, because it's a bunch of numbers and letters. So, she described what it did. This section deals with fraud and the insurance code and the criminal code. Under the current insurance code the Division of Insurance has the authority to bring criminal charges. The division has a part time dedicated prosecutor and fraud investigators who are law enforcement people. This removes one piece from the criminal code and makes it a Class B felony in the insurance code instead. The language actually says: "Knowingly issues a forged certificate of insurance or other document relating to insurance."

MS. HALL explained that the criminal code requires intent to defraud insurance code and prosecutes felonies. This is critically important to them, because they had an incident about a year ago when an individual issued certificates of insurance, but did not collect money and never placed the coverage. The first time she heard this, the division had a complaint from an individual who owned two tour buses and had a certificate of insurance showing that he had coverage, but his two tour buses were out on the road full of tourists and he had no insurance.

Right now the division has no ability to criminally prosecute this individual because he didn't collect any money. She said they have jail sentences for agents who collect money and use it for their own purposes and don't place coverage. But this is a case where there is no money involved, and that needs to be changed so that issuing false documents becomes an offense.

SENATOR PASKVAN asked how the person found out he wasn't covered.

MS. HALL answered that he didn't get a bill and finally called the insurance company that had supposedly issued the certificate to ask about his coverage and found it didn't exist. Ultimately,

she sent a team to the particular Southeast town to go through files; they found several instances of false certificates being issued and to the best of their knowledge they found them all and there was never an unpaid claim.

[2:40:21 PM](#)

SENATOR MENARD asked if she had vetted this with the Department of Law (DOL) and if had been reviewed in the Judiciary Committee.

MS. HALL replied yes; this has been carefully vetted through the department, her criminal prosecutor and through Legislative Legal Services and she hadn't had any push back on it. No, it hasn't been through the Judiciary Committee.

She said the last section under "Miscellaneous" is new and it is also a new concept in Alaska. It would give the Division of Insurance oversight of premium rates charged for individual health insurance plans today. Now they only have prior review of rates before they are used for Premera Insurance. While they are the largest of the state's health insurers with about 73 percent of the market, rating standards are used for the other 27 percent of the market. If she gets a complaint, they are entitled to look at the company's actuarial justification, but they don't have an opportunity to review it before it's used. The same provision is used later in the bill for group health insurance review.

[2:43:13 PM](#)

MS. HALL said the long term care section goes from page 39 to 48. The current long term care statutes are 20 years old and don't reflect the products that are sold today. Here they seek to adopt the NAIC model and to have approval of long term care rates, which they don't have today. A number of consumer protections are in this section: section 68 says, for instance, if you return your policy within 30 days of purchase you can have a refund. Companies are also required to give you a clear outline of coverage; they are required to give you written reason for a claim denial.

It also changes some provisions for benefits if you drop your coverage after paying for it for a number of years, because maybe you couldn't afford the rate increases. Today you lose that coverage, but under this bill the insurer would be required to provide some benefit. It's called "nonforfeiture" - getting something for money put in over the years.

SENATOR PASKVAN asked what that something might be.

MS. HALL replied that that is left fairly open; it could be a much smaller but paid up benefit - so you haven't just lost everything. A couple of years ago, a company had dramatic rate increases; people just couldn't afford them anymore and forfeited the money they had put in it.

SENATOR PASKVAN asked if it could be similar to the cash value of a whole life policy.

MS. HALL answered yes.

SENATOR MENARD asked why she didn't specifically state that.

MS. HALL replied that an individual doesn't have to buy the benefit; the insurer may offer a nonforfeiture benefit in the form of a rider to the policy. Language on page 44, line 14, says:

If a policyholder declines the nonforfeiture benefit, the insurer shall provide a contingent benefit upon lapse that is available for a specified period of time following a substantial increase in premium rates.

She explained that the change is adopted in statute, additional detail would be provided in regulations.

SENATOR MENARD said she wanted some assurance that when Ms. Hall is gone, that there would be enough specifics for someone else to follow.

MS. HALL answered that the language has enough specificity to adopt the regulations that go through the public hearing process and it is difficult to manipulate that process.

SENATOR MENARD said she was somewhat uncomfortable going down this path, but would rely on the wisdom of the committee.

SENATOR PASKVAN asked if there could be some annual disclosure in, maybe, the premium notice of what the accumulated forfeiture might be.

[2:50:21 PM](#)

MS. HALL said that not all long term care policies would have this benefit; it would be offered as a rider. A person could choose to purchase a policy without it, but she assumes that

there would be a charge for that benefit. But a disclosure makes sense.

2:50:51 PM

She left the long term care issue and went to section 77 on page 49, the filing and approval of group insurance rates that would be the same as she discussed for the individual rates.

The only other section that she wanted to comment on was section 79. She explained that about a year and a half ago the division got a consumer complaint from a woman who had been terminated from employment and sought to get COBRA benefits. She was told she could not get them, because the employer did not have group health insurance any longer. She had a friend who still worked at this place of employment and she still had health insurance. What had occurred was a group health policy had been terminated and instead the employer was helping the employees purchase individual policies. But, any time the employer puts money into a single plan, it becomes a group plan. Alaska statutes provide a number of protections for group plans. Among those, and probably the most important, is the guarantee issue. If you are a small employer with 2 to 50 employees, you can buy coverage for your group even if you have an employee with some type of a health condition.

She explained that individual policies are underwritten for health conditions and include charges for them. In a group market, those charges for health conditions are limited. What she saw happening was a circumvention of the group health law protections. So, they have proposed language, but she said it is clearly a policy call, indicating in (a) on page 50, line 6, that a person may not sell, solicit or negotiate an individual health care policy to an employee or an insurer may not issue. In (b) some conditions are provided saying that you could do that (line 14) "if the employee is not an eligible employee" meaning those who would not normally fall under the definition of "group" like part time or seasonal employees. The employer could contribute to an individual health policy.

However, Ms. Hall said, (2) on line 16 is a disincentive because you could not cancel a group policy and offer individual policies if your plan has been without a waiting period of six months. Ms. Hall said it is critically important that the ability to keep group coverage continue because of the protections in small group law. This proposed six-month waiting period protects employees with health conditions and the only other choice for them would be a high risk pool - and it

protects premiums with a limit for increases. The other thing it does is put individual employees who don't have a health condition for that six months at risk. The individual can buy insurance or supplemental insurance with their own money, but the employer cannot contribute to an individual plan for at least six months after the dropping group coverage.

She said the employer can do things like investigate higher deductibles or do HSAs and help fund those deductibles. They could negotiate a different level of payment with their insurance company where instead of paying 80 percent of your health insurance today, they only pay 50 percent. So, when premiums get unaffordable, which they are today, there are other avenues an employer can explore and they propose that there be some kind of a disincentive for canceling that policy.

[2:56:16 PM](#)

SENATOR MENARD said that COBRA is federal and it applies for 18 months after a person is terminated and it's very expensive. Do the individual policies have the COBRA option?

MS. HALL replied that she believed so.

CHAIR EGAN asked if there is a concern that this piece of legislation passes the legislature this session.

MS. HALL answered that not necessarily for the surplus lines piece and the mechanisms used to collect and allocate taxes, but the conformance with federal law goes into effect on July 2011. It's important to bring state statutes in conformance with that or the division stands to lose its ability to collect premium taxes in the way that is mandated by the federal law on July 21, 2011.

CHAIR EGAN informed the committee that this legislation had no further referrals.

SENATOR DAVIS asked how many states have already met the requirement.

MS. HALL answered that some type of legislation is in approximately 40 states; about 5 have legislation just to meet the federal mandate; about 20 states have passed and 3 have put in place this type of mechanism. Approximately 10 have proposed the other type of compact; 2 have actually signed those into statute. About 5 states have both versions in their legislature and she wasn't sure what they were doing. She pointed out that

some states don't meet every year, so about 10 states may not be doing anything.

[2:59:17 PM](#)

SENATOR PASKVAN asked what is attributable to the surplus lines.

MS. HALL replied that \$3.5 million is surplus lines and it's really a rough estimate based on reviewing forms.

REPRESENTATIVE OLSON said he thought about 21 states are going in this bill's direction.

[3:00:24 PM](#)

JOSHUA KORVER, Insurance Center, Anchorage, said they are a local Managing General Agents' Office (MGA), which puts them in the wholesale spot within the stream of getting people insurance coverage. He raised two issues on HB 164; one deals with licensing. He knows that they are trying to meet national standards with this legislation and his concern is that the goal of being able to have a license that goes with a person from one office to another, while laudable, might not be most efficiently accomplished with the mechanism of an employment contract and its cost might be difficult for some people.

He said that employment law controls employment contracts and it's fairly specific on what a contract needs. It has to have a term, responsibilities, benefits, reasons for termination and a dispute resolution processes. A lot of the independent agents in Alaska are going to have to hire attorneys to put these agreements together and that will require a significant upfront cost which smaller agents might not be able to afford. A person has to work the term of their contract so he didn't know how it could be that more mobile.

Using employment contracts moves you from an at-will employment scenario to an employment contract scenario and Mr. Korver said "You can't use the handbook anymore; you've got to have everything spelled out in a person's employment contract." This seems to go against the goal, which is to allow people to be more mobile. One of the big things about employment contracts is term and the reasons for termination. A person under employment contract can't just pack up and leave; they have to work the term of the contract. So, again, he didn't see how it makes one more mobile.

MR. KORVER said employment contracts must specify lines and classes of authority and "authority" is a term of art in

insurance; it is something that is usually granted by a carrier and their ability to write. An authority can be at the class level, but it's impossible to list those. A general liability policy can have hundreds of classes and to be able to list out for a particular individual based on all the carriers that you may have an affiliation with as an individual insurance office is an exercise in "absolute futility" because it's too much to keep track of. He has never heard of employment contracts being legislatively mandated.

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MR. KORVER said his second issue concerns the surplus lines allocation method. He knows there is a deadline to do 100 percent taxation on the premium, but a lot of industry people disagree that this approach is the best method to go with. A better way to go is the compact method, which even though it's complex in its legislation, is easy in its implementation. He concluded by asking them to not move this forward too quickly without looking at what the rest of the country is doing.

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GARY SLEEPER, Denali Alaskan Federal Credit Union, said his testimony will deal with section 79 of HB 164 that deals with the sale of individual health insurance policies to the group market. In general, section 79 would do two things - first it would prohibit an insurance agent from selling an individual health insurance policy to an employee if the employee's employer offers a group plan. It would also prohibit an insurance company from issuing an individual health insurance policy to an employee whose employer offers a group plan. Denali Alaska opposes passage of section 79, because it believes this section limits both an employee's and an employer's choice of health insurance coverage. Under section 79, if an employee is covered under a group policy but wants to purchase an individual health insurance policy even if the employee has opted out of the group policy, the employee can't do this. That is because even though the employee may want the coverage, section 79 prohibits an insurance company from issuing a policy if the employer offers a group plan.

He said that section 79 is so broadly drafted that it would prohibit an insurance agent from even discussing the merits of individual policies with an employee or an employer. Denali believes that Alaskans should be allowed to freely choose which type of health insurance coverage they want and section 79 doesn't give them that choice.

MR. SLEEPER said even if they were to support the policy of section 79, they believe the statute may have been drafted in such a way as to create an unintended consequence. It appears under certain circumstances the statute would prevent an individual from having any health insurance coverage whatsoever for what could be an extended period of time.

He explained that section 79 contains an absolute ban against marketing an individual insurance policy or issuing an individual health insurance policy to an employee if the employer offers a group plan. As the director pointed out there are only two exceptions to this ban. The first allows the marketing or sale of an individual insurance policy to a part-time employee. The second allows the marketing or sale of an individual policy to employees, but only so long as the employer does not offer a group plan and has not offered a group plan in the last six months. This is where the problem arises. Sometimes employers have no choice but to cancel their group health insurance plans because they can't afford them.

His concern was that under the language of the proposed statute, if an employer voluntarily terminates its group plan, employees may not be able to purchase their own health insurance for at least six months. This is because the statute prohibits an insurance company from issuing a policy even if the employee asks for one unless the employer hasn't offered group insurance for at least six months. So, a person may be left with no health insurance coverage whatsoever for a substantial period of time even if the person wants to buy his own policy.

He remarked that the director said the statute wouldn't preclude an individual from purchasing their own policy, just that the employer could not make any contribution towards that. But he didn't see the language that would allow that to happen. He said a person with a health issue might have no insurance for six months and it could be even worse if there was a waiting period for the person to get his own coverage.

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SENATOR PASKVAN said he understood the purpose of section 79 to be that as long as the employer continues with group coverage, then the former employee would obtain coverage under COBRA. Does that make sense?

MR. SLEEPER replied that section 79 deals more with current employees. If the employer has a group plan in place when the employee terminates and if they are subject to COBRA (you need

20 or more employees to be subject to COBRA), then the terminated employee would be able to get insurance coverage for 18 months. Section 79 deals with current employees of an employer. It says an insurance company cannot simply issue an individual health policy to an employee if the employer offers group coverage. One of the points they are making is that sometimes there may be benefits to individual policies as opposed to group policies. They are portable, for example, or you may be working for an employer who offers group coverage, but it may have a huge deductible and huge co-payment and they want to buy their own because they could take the policy with when they leave. You can't do that if you're part of a group policy and don't have COBRA right; if you leave you lose your coverage.

The way the statute is drafted, it simply says the agent can't even talk to the employee or the employer about individual policies because it says you can't sell, solicit or negotiate and then it goes on to say that an insurance company cannot issue a policy. So it completely precludes individual employees from purchasing their policies if their employer offers a group policy. The problem is compounded because if the employer were to terminate their group coverage on January 1, the individual employees of that employer cannot purchase individual policies for six months, because the insurance companies are precluded by this statute from issuing the policy.

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STEVE STEPHAN, Director, Governmental Relations, National Association of Professional Surplus Lines Offices, said he wanted to address a clause in the surplus lines bill that authorizes the commissioner to enter into a compact or agreement for the allocation of taxes. His first point is that nothing is mandated in the federal bill regarding the allocation of taxes and nothing has to happen today. The exact language in the federal bill says that the states "may" enter into a compact or agreement to allocate among the states the premium taxes. The word "may" was inserted intentionally after a meeting in Washington where they discussed whether it would be mandatory or voluntary and they decided to make it a voluntary tax sharing arrangement if the states decided they wanted to share taxes.

MR. STEPHAN said he didn't think they had enough facts to make a decision today. They don't know if the state would make money on surplus lines taxes or lose money; Alaska would be required to send some of that money to the other states. He had not seen an estimate of how much that would be. The other issue with this

model is that taxes will have to be raised on some Alaska policy holders and the whole idea of that agreement is that you will charge the tax rate on the location based on some other criteria such as sales. So, if an Alaskan corporation had sales in Florida or Mississippi or Alabama, you would need to charge much higher tax rates, which are frequently in the 10 percent range. So, an Alaskan policy holder would be charged a higher rate for the purpose of sending that money to those other states. Those clearly are legislative issues and he thought those decisions by were being delegated to the director of revenue. He said another clause would also impose a surcharge on policy holders, but again, that surcharge is not specified.

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CHAIR EGAN found no more comments and closed public testimony.

MS. HALL commented that she really thinks there is a misinterpretation of what is called the NEMA proposal, which this is, that it is more complex and burdensome. There wouldn't be an increase on Alaskan policy holders. The taxes that they would pay are the same taxes they pay today, and besides that, she wouldn't likely propose something that increases taxes on Alaskans.

The allocation method is not specified in statute, but that would be done by regulations and it is under discussion by regulators and industry today. She is the vice chair of the National Association of Insurance Commissioner's Surplus Lines Task Force and is highly involved on a national level on this issue. As she said earlier, 20 plus states are pursuing the same path.

SENATOR DAVIS asked her to comment specifically on Mr. Sleeper's comments about section 79.

MS. HALL said she actually looked at the language and they fully believe that it would allow an individual to buy an individual policy with their own money, not with an employer's money. They certainly don't want to preclude an individual from buying a policy with their own money.

SENATOR PASKVAN said the first witness talked about the increased cost between the employer and employee and he asked if that was accurate.

MS. HALL replied that had been taken out of context. They are proposing a contract, but not an employment contract that would

disrupt any at-will employment or for a particular period of time; it's a contract that would allow certain things to happen. She worked with the Agents Association on this and they support this bill. They think this language is a good thing for them to have; it's good business practice and this is the first criticism she has heard.

SENATOR PASKVAN said he was wondering if he was missing something.

MS. HALL responded that she didn't believe so.

REPRESENTATIVE OLSON commented that he has participated in the National Conference of Insurance Legislators (NCOIL) for the last five years and it is one of the most professional organizations he has participated in. When you are talking with all the states, trust territories, and Washington, industry people and consumer groups, it takes three to five years to develop a model law; it gets thoroughly vetted. This one has been around for one year and some people don't have all the information. He thought the collection authority on surplus lines taxes should stay with the state.

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CHAIR EGAN said HB 164 would be held for the next meeting. Finding no further business to come before the committee, he adjourned the meeting at 3:26 p.m.