

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

April 16, 2016

3:24 p.m.

**DRAFT**

**MEMBERS PRESENT**

Senator Mia Costello, Chair  
Senator Cathy Giessel, Vice Chair  
Senator Kevin Meyer  
Senator Gary Stevens

**MEMBERS ABSENT**

Senator Johnny Ellis

**COMMITTEE CALENDAR**

HOUSE BILL NO. 81

"An Act relating to an exemption from the regulation of construction contractors."

- PENDING REFERRAL

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 372(L&C) AM

"An Act relating to insurance; relating to the annual report by the director of policies and variable annuities; establishing limitations on issuance of long-term care insurance; relating to expenses for insurance examinations; relating to regulations for insurance; relating to requirements for group health insurance policies; amending the insurance utilization review, benefits determination, health care insurance grievance definition of 'group health insurance'; relating to motor vehicle service contracts; resolution procedures, independent review of adverse determinations or final adverse relating to notice requirements for meetings of stockholders or members of a domestic determinations, independent review organizations, and continuing education providers; insurer; establishing a definition of 'bona fide association'; relating to requirements and relating to required provisions for health care insurance contracts and policies, penalties for committing a fraudulent or criminal insurance act; updating criteria for including health care provider choice; establishing civil penalties for insurers for failure examinations; relating to rate filing deviations; establishing civil penalties for certain to provide requested

records; amending the definition of 'wet marine and wilful violations; and providing for an effective date." transportation' insurance; amending provisions on limited licenses to include crop insurance; relating to third-party administrator notification requirements; relating to certification filing by reinsurance intermediary brokers; relating to rate filings, delivery of insurance policies or endorsements; relating to refunds of variable life insurance

- MOVED SCS CSHB 372(L&C) OUT OF COMMITTEE

#### PREVIOUS COMMITTEE ACTION

BILL: HB 372

SHORT TITLE: OMNIBUS INSURANCE

SPONSOR(S): LABOR & COMMERCE

03/21/16	(H)	READ THE FIRST TIME - REFERRALS
03/21/16	(H)	L&C
03/28/16	(H)	L&C AT 3:15 PM BARNES 124
03/28/16	(H)	Heard & Held
03/28/16	(H)	MINUTE (L&C)
03/30/16	(H)	L&C AT 3:15 PM BARNES 124
03/30/16	(H)	Heard & Held
03/30/16	(H)	MINUTE (L&C)
04/04/16	(H)	L&C AT 3:15 PM BARNES 124
04/04/16	(H)	Heard & Held
04/04/16	(H)	MINUTE (L&C)
04/06/16	(H)	L&C AT 3:15 PM BARNES 124
04/06/16	(H)	Moved CSHB 372(L&C) Out of Committee
04/06/16	(H)	MINUTE (L&C)
04/07/16	(H)	L&C RPT CS (L&C) 1DP 6NR
04/07/16	(H)	DP: OLSON
04/07/16	(H)	NR: LEDOUX, TILTON, HUGHES, KITO, JOSEPHSON, COLVER
04/13/16	(H)	TRANSMITTED TO (S)
04/13/16	(H)	VERSION: CSHB 372(L&C) AM
04/14/16	(S)	READ THE FIRST TIME - REFERRALS
04/14/16	(S)	L&C
04/14/16	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
04/14/16	(S)	Heard & Held
04/14/16	(S)	MINUTE (L&C)
04/15/16	(S)	L&C AT 5:00 PM BELTZ 105 (TSBldg)
04/15/16	(S)	Scheduled but Not Heard
04/16/16	(S)	L&C AT 11:00 AM BELTZ 105 (TSBldg)

#### WITNESS REGISTER

LORI WING-HEIER, Director  
Division of Insurance  
Department of Commerce, Community and Economic Development  
Anchorage, Alaska

**POSITION STATEMENT:** Continued the sectional analysis for HB 372 and answered related questions.

SHELDON WINTERS, Retained Counsel  
State Farm Insurance  
Juneau, Alaska

**POSITION STATEMENT:** Testified in opposition to Section 65 of version N for HB 372.

WESTON EILER, Staff  
Senate Labor and Commerce Standing Committee and  
Senator Mia Costello

**POSITION STATEMENT:** Reviewed the changes in the Senate CS for HB 372.

KONRAD JACKSON, Staff  
Senator Kurt Olson  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Testified the sponsor does not support Amendment 1 for HB 372.

#### **ACTION NARRATIVE**

[3:24:58 PM](#)

**CHAIR MIA COSTELLO** called the Senate Labor and Commerce Standing Committee meeting to order at 3:24 p.m. Present at the call to order were Senators Meyer, Stevens, and Chair Costello. Senator Giessel arrived soon thereafter.

#### **HB 372-OMNIBUS INSURANCE**

[3:25:31 PM](#)

CHAIR COSTELLO announced the consideration of CS FOR HOUSE BILL NO. 372(L&C) am; "An Act relating to insurance; relating to the annual report by the director of insurance; relating to expenses for insurance examinations; relating to regulations for insurance utilization review, benefits determination, health care insurance grievance resolution procedures, independent review of adverse determinations or final adverse determinations, independent review organizations, and continuing

education providers; relating to required provisions for health care insurance contracts and policies, including health care provider choice; establishing civil penalties for insurers for failure to provide requested records; amending the definition of 'wet marine and transportation' insurance; amending provisions on limited licenses to include crop insurance; relating to third-party administrator notification requirements; relating to certification filing by reinsurance intermediary brokers; relating to rate filings, delivery of insurance policies or endorsements; relating to refunds of variable life insurance policies and variable annuities; establishing limitations on issuance of long-term care insurance; relating to requirements for group health insurance policies; amending the definition of 'group health insurance'; relating to motor vehicle service contracts; relating to notice requirements for meetings of stockholders or members of a domestic insurer; establishing a definition of 'bona fide association'; relating to requirements and penalties for committing a fraudulent or criminal insurance act; updating criteria for examinations; relating to rate filing deviations; establishing civil penalties for certain wilful violations; and providing for an effective date."

She relayed the intention to continue the sectional analysis, take questions and public testimony, adopt a committee substitute (CS), and look to the will of the committee.

[3:26:54 PM](#)

LORI WING-HEIER, Director, Division of Insurance, Department of Commerce, Community and Economic Development (DCCED), continued the sectional analysis for HB 372, starting with Section 60.

**Sec. 60 AS 21.69.310(c) Meetings of stockholders or members**

Subsection (c) is amended to give the director discretion to approve a date for an annual meeting later than the first six months of each calendar year upon a written request for approval for good cause. The request for approval must be made at least 30 days before the end of the six-month requirement. This amendment reflects the fact that annual meetings of Alaska insurers cannot always be held within the first six months of the calendar year due to the wide disbursement of board members and to the differing requirements for the timing of annual meetings of other states where holding companies with Alaska insurers are domiciled.

**Sec. 61 AS 21.69.390(b) Home office and records**

Subsection (b) is amended to delete the reference AS 21.69.390(d) as that subsection is being repealed for the reasons as stated in Sec. 67 of this Bill Analysis.

**Sec. 62 AS 21.85.500(5) Definitions**

Paragraph (5) is amended to change the definition of "multiple employer welfare arrangement" to conform with the meaning of the term as defined under 29 U.S.C. 1002.

**Sec. 63 AS 21.97.020 General penalty**

The general penalty amounts are being updated to be more consistent with other penalty provisions in AS 21 such as AS 21.27.440 and to provide a mechanism to use under section four of the bill and for market conduct enforcement. This section has not been updated for over 30 years.

**Sec. 64 AS 21.97.900(47) Definitions for title**

New paragraph (47) defines "bona fide association".

**Sec. 65 Repeals the following provisions:**

AS 21.06.087 (Insurance report) Repeal of this section removes the requirement that the division report annually on the impacts of tort reforms enacted in 1997 (chapter 26, SLA 1997). This report has not been updated since 2004. At this time, it would be difficult to attribute observed changes in the market to the tort reform legislation.

AS 21.07.250(9) (Definitions) The definition of "medical emergency" is repealed as it is being replaced by the definition for "emergency medical condition".

AS 21.54.500(4) (Definitions) The definition of "bona fide association" is no longer needed in this chapter because an updated definition of the term has been added to AS 21.97 by section 58 of the bill.

AS 21.69.390(d) is outdated as books and records are increasingly being maintained electronically and access can be made remotely or on-site at the home office of an insurer. The division also can access a company's financial filings with the NAIC

electronically. AS 21.06.140 requires examinations of domestic, foreign and Canadian insurers to be conducted at an insurer's home office or at other places where the records are kept, not at the insurer's principal place of business in the state.

**Sec. 66 Repeals the following provisions**

AS 21.07.050 (External health care appeals) AS 21.07.060, (Qualifications of external appeal agencies), AS 21.07.070 (Limitation on liability of reviewers), AS 21.07.250(1), (2), and (7), (Definitions) are repealed. These provisions are no longer needed due to Section 4 of the bill which requires the director to adopt by regulation the National Association of Insurance Commissioners model acts.

**Sec. 67 Repeals the following provisions**

AS 21.27.115(8) crop insurance is removed as a line of authority due to section 16 of the bill which provides that crop insurance is a limited line of authority consistent with national uniformity licensing standards.

AS 21.27.115(9) surety insurance is removed as a line of authority to be consistent with national uniformity licensing standards.

**Sec. 68**

Provides for an uncodified new section outlining the timing of when the director of insurance may adopt regulations.

**Sec. 69**

Provides for a revisor's instruction to change the catch line of AS 21.27.380.

**Sec. 70**

Provides that section 67 of the bill takes effect immediately under AS 01.10.070(c).

**Sec. 71**

Provides that section 65 of the bill takes effect January 1, 2017.

**Sec. 72**

Provides that AS 21.27.150(a)(9), enacted by section 18 of the bill, and section 66 of the bill take effect March 1, 2017.

3:31:00 PM

CHAIR COSTELLO referenced the language on page 25, line 10, and asked about protection in the event the director doesn't do something that's covered by the statute.

MS. WING-HEIER said this section lists what an insurer may do to form a group association for life insurance. It gives authority for the director to establish regulations to list the criteria as it changes. It does not give the director the authority to simply issue a regulation and have it become effective. The normal regulatory process has to be followed.

CHAIR COSTELLO directed attention to the deleted text in Section 6 on page 6, line 3 through page 7, line 18, relating to a time period established in statute. She asked for an explanation of what those time periods are and why they're being deleted.

MS. WING-HEIER said the division requested the deletions, but will add some back through statute and some through regulation. She explained that the division drafted utilization review, benefit determination, and grievance procedures based on the model laws put together in the Affordable Care Act (ACA). The majority of those will be adopted by regulation in recognition of the diversity of Alaska from Barrow to Ketchikan to Anchorage. The model laws have been well vetted and are part of the National Association of Insurance Commissioners (NAIC) model regulations. She assured the committee that the regulations would be an open process with public hearings and will include work with providers and consumers.

3:35:20 PM

CHAIR COSTELLO opened public testimony.

3:35:51 PM

SHELDON WINTERS, Retained Counsel, State Farm Insurance, stated that he wanted to address Section 65 in the Senate CS for HB 372 that is the clarification on the underinsured and uninsured motorist coverage.

CHAIR COSTELLO informed Mr. Winters that he was free to address the CS but the committee had yet to adopt it.

MR. WINTERS suggested that while the intent is to add clarity to insurance policies, Section 65 may make them less clear. He explained how this applies to uninsured and underinsured motorist coverage. The coverage provision in the State Farm policy is very simple and broad. It basically states that an insured motorist that is struck by an uninsured or underinsured motor vehicle is covered. It doesn't matter if you're: riding in a car, a pedestrian, a bicyclist, riding a horse, or on a playground. There is even coverage for the person who is struck while they're sitting in their house.

He said that with due respect to Mr. Donley who suggested the clarification, we sometimes look at the trees and forget to see the forest. He opined that the forest in this instance is the simple coverage provision that is intentionally broad. He maintained that specifically listing coverage for a pedestrian or bicyclist opens the question about coverage for someone who is riding in a car or on a horse or sitting in their house. He questioned whether the addition doesn't make it more complicated and less clear than it should be.

MR. WINTERS noted that Mr. Donley last week said the intent was not to add or restrict any coverages, but the language arguably may be used to do that because of the exclusions in many policies. For example, the State Farm policy excludes an insured who is walking down the street and is struck by the vehicle that is insured. He opined that the thinking is that it is out of bounds when one family member strikes another driving the same vehicle.

He expressed appreciation for the effective date of January 1, 2019 which gives time for insurance companies to comply, should the bill pass.

[3:41:14 PM](#)

SENATOR STEVENS asked if he is saying that passing the language may mean that an insured may end up with less coverage in some instances.

MR. WINTERS replied he isn't saying that. He's saying the additional language makes the policy less clear because it lists just certain circumstances.

SENATOR MEYER asked why this would be an additional cost.

MR. WINTERS replied it would cost insurance companies to add the new language to their policies. He noted that existing language

is national language and what's been applied and interpreted throughout the country and he questions the reason for inserting different language in Alaska policies.

[3:42:51 PM](#)

SENATOR GIESSEL joined the committee.

SENATOR MEYER said he can see the benefit either way. Mr. Donley was stating that bicyclists in particular should be specified.

[3:43:55 PM](#)

CHAIR COSTELLO closed public testimony on HB 372. She invited the committee aide to explain the Senate committee substitute.

[3:44:21 PM](#)

WESTON EILER, Staff, Senate Labor and Commerce Standing Committee and Senator Costello, advised that Section 65 on page 36 adds a new subsection (i) to AS 28.20.445 that states that policies that provide uninsured and underinsured motorist coverage clearly state that coverage includes injuries sustained as a pedestrian or bicyclist by a motor vehicle. The second change on page 37, line 17, adds an effective date for Section 65 of January 1, 2019. This provides insurance companies time to make this change to their policies.

[3:47:10 PM](#)

SENATOR GIESSEL moved to adopt the Senate CS for CS for HB 372, labeled 29-LS1379\N, as the working document.

CHAIR COSTELLO found no objection and version N was before the committee.

SENATOR GIESSEL said she had an amendment to offer.

[3:47:51 PM](#)

At ease

[3:52:25 PM](#)

CHAIR COSTELLO reconvened the meeting.

SENATOR GIESSEL moved Amendment 1, labeled 29-LS1379\E.A.

**AMENDMENT 1**

OFFERED IN THE SENATE  
TO: CSHB 372(L&C) am

Page 20, following line 20:

Insert a new bill section to read:

"\* **Sec. 31.** AS 21.36.125(c) is amended to read:

(c) The director of insurance shall adopt regulations to implement, define, and enforce this section, except that the director may not adopt a regulation that sets the final payment of a covered service."

Renumber the following bill sections accordingly.

Page 36, following line 27:

Insert a new bill section to read:

"\* **Sec. 69.** 3 AAC 26.110(a)(2)(B) and (5)(A) are annulled."

Renumber the following bill sections accordingly.

Page 37, line 8:

Delete "Section 68"

Insert "Section 70"

Page 37, line 9:

Delete "Section 66"

Insert "Section 67"

Page 37, line 10:

Delete "sec. 66"

Insert "sec. 67"

CHAIR COSTELLO objected for discussion purposes.

SENATOR GIESSEL said the amendment provides an opportunity to address the high cost of health care delivery in Alaska that ripples out to the cost of insurance. In large part these high costs are due to a regulation that requires the insurance to be equal to or greater than the 80<sup>th</sup> percentile of the charges for health care services or supplies. She said Alaska is the only state that has this regulation. The director of insurance sees the value of removing the regulation as well as the value of maintaining it, and the governor is interested in removing it.

CHAIR COSTELLO asked the sponsor's staff to comment on the amendment.

[3:56:16 PM](#)

KONRAD JACKSON, Staff, Senator Kurt Olson, Alaska State Legislature, sponsor of HB 372, said the sponsor does not support the amendment. He expressed some reservation and concern that removing the 80<sup>th</sup> percentile likely wouldn't have the desired effect.

[3:57:49 PM](#)

MS. WING-HEIER said it's hard to argue that the cost of health care in Alaska isn't out of control and insurers and brokers have argued that, in part, it's due to the 80<sup>th</sup> percentile. However, consumers tend to support the regulation because their bill is paid at the 80<sup>th</sup> percentile when they visit an out of network provider. Without it there is no guarantee at what level the bill will be paid and there could be huge balance billings. That is a nationwide problem. There are pros and cons to the amendment and the hope is that it will help stabilize the cost of health care. However, there is no guarantee that it will. She confirmed that the Governor is interested in doing away with the regulation.

CHAIR COSTELLO said the legislature wants to do everything it can to reduce health care costs to consumers.

[4:01:37 PM](#)

SENATOR GIESSEL asked if insurance companies pay a tax on the sale of premiums in the state.

MS. WING-HEIER said it's generally 2.7 percent, although Premera Blue Cross Blue Shield of Alaska has a little different structure.

SENATOR GIESSEL asked how much revenue that generates for the state.

MS. WING-HEIER replied it's about \$60 million from all insurance companies.

SENATOR GIESSEL asked how much of that is paid by health care insurance companies.

MS. WING-HEIER estimated it's about half or \$30 million.

SENATOR GIESSEL asked where that \$30 million goes.

MS. WING-HEIER replied it goes into the general fund.

SENATOR GIESSEL asked if putting the \$30 million into the ACHIA fund would solve that gap.

MS. WING-HEIER said the CS for HB 374 asks the legislature to appropriate the premium tax for all lines of insurance to ACHIA to be used as the reinsurance fund.

[4:05:12 PM](#)

SENATOR GIESSEL offered data from March 2016 on what doctors earn: In Alaska, the average doctor's salary is \$330,000; the average specialist's salary is \$376,000; and the average resident's salary is \$54,000. She pointed out that as physicians charge more for their services, insurance companies have to charge higher premiums.

MS. WING-HEIER agreed; the primary driver for the cost of insurance is the cost of health care. She related that she went on record earlier today saying a couple making \$80,000 a year can expect to put half of their disposable income into the Affordable Care Act.

[4:07:10 PM](#)

CHAIR COSTELLO maintained her objection to Amendment 1.

SENATOR MEYER asked if it's a priority of the Governor to get rid of the 80<sup>th</sup> percentile.

MS. WING-HEIER answered yes.

[4:07:35 PM](#)

At ease

[4:07:44 PM](#)

CHAIR COSTELLO reconvened the meeting and asked for a roll call on Amendment 1.

A roll call vote was taken. Senators Giessel and Stevens voted in favor of Amendment 1 and Senators Meyer and Costello voted against it. Therefore, Amendment 1 failed by a 2:2 vote.

[4:08:21 PM](#)

SENATOR GIESSEL moved to report the Senate CS for CS for HB 374, labeled 29-LS1379\N, from committee with individual recommendations and attached fiscal note.

CHAIR COSTELLO announced that without objection, SCS CSHB 372(L&C) is reported from Senate Labor and Commerce Standing Committee.

4:09:40 PM

There being no further business to come before the committee, Chair Costello adjourned the meeting at 4:09 p.m.