

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

March 8, 2017

1:04 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Zach Fansler, Vice Chair
Representative Gabrielle LeDoux
Representative Jonathan Kreiss-Tomkins
Representative David Eastman
Representative Chuck Kopp
Representative Lora Reinbold

MEMBERS ABSENT

Representative Charisse Millett (alternate)
Representative Louise Stutes (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 20

"An Act relating to marriage solemnization; and authorizing elected public officials in the state to solemnize marriages."

- MOVED CSHB 20(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 121

"An Act relating to occupational safety and health enforcement penalties; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 20

SHORT TITLE: SOLEMNIZE MARRIAGE: ELECTED OFFICIALS

SPONSOR(s): REPRESENTATIVE(s) CLAMAN

01/18/17s	(H)	PREFILE RELEASED 1/9/17
01/18/17	(H)	READ THE FIRST TIME - REFERRALS
01/18/17	(H)	STA, JUD
02/16/17	(H)	STA AT 3:00 PM GRUENBERG 120
02/16/17	(H)	Heard & Held
02/16/17	(H)	MINUTE (STA)
02/18/17	(H)	STA AT 11:00 AM GRUENBERG 120

02/18/17 (H) Moved CSHB 20(STA) Out of Committee
02/18/17 (H) MINUTE (STA)
02/22/17 (H) STA RPT CS (STA) 4DP 2DNP
02/22/17 (H) DP: TUCK, KNOPP, JOSEPHSON, KREISS-
TOMKINS
02/22/17 (H) DNP: JOHNSON, BIRCH
03/03/17 (H) JUD AT 1:00 PM GRUENBERG 120
03/03/17 (H) Heard & Held
03/03/17 (H) MINUTE (JUD)
03/06/17 (H) JUD AT 1:00 PM GRUENBERG 120
03/06/17 (H) Heard & Held
03/06/17 (H) MINUTE (JUD)
03/08/17 (H) JUD AT 1:00 PM GRUENBERG 120

BILL: HB 121

SHORT TITLE: OCC. HEALTH AND SAFETY CIVIL PENALTIES
SPONSOR(s): LABOR & COMMERCE

02/13/17 (H) READ THE FIRST TIME - REFERRALS
02/13/17 (H) L&C, JUD
02/27/17 (H) L&C AT 3:15 PM BARNES 124
02/27/17 (H) Heard & Held
02/27/17 (H) MINUTE (L&C)
03/01/17 (H) L&C AT 3:15 PM BARNES 124
03/01/17 (H) Moved HB 121 Out of Committee
03/01/17 (H) MINUTE (L&C)
03/03/17 (H) L&C RPT 4DP
03/03/17 (H) DP: STUTES, WOOL, JOSEPHSON, KITO
03/08/17 (H) JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

LINDA BRUCE, Attorney
Legislative Legal and Research Services
Legislative Affairs Agency
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 20, answered questions.

BIANCA CARPENETTI, Staff
Representative Sam Kito, III
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 121, introduced the legislation on behalf of the Labor and Commerce Committee, Representative Kito, Chair.

DEBORAH KELLY, Director
Division of Labor Standards and Safety
Department of Labor & Workforce Development
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 121, testified and answered questions.

SAM KITO, III
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 121, testified and answered questions.

ACTION NARRATIVE

[1:04:32 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:04 p.m. Representatives Claman, Reinbold, Kopp, Kreiss-Tomkins, LeDoux, Eastman, and Fansler, were present at the call to order.

HB 20-SOLEMNIZE MARRIAGE: ELECTED OFFICIALS

[1:05:16 PM](#)

CHAIR CLAMAN announced that the first order of business would be HOUSE BILL NO. 20, "An Act relating to marriage solemnization; and authorizing elected public officials in the state to solemnize marriages."

CHAIR CLAMAN advised that the committee would discuss and vote on the remaining amendments. He reminded the committee, at the conclusion of the meeting on 3/6/17, there was a 5:00 p.m. deadline for amendments, and the rule applied equally to every member. He added that Representative Reinbold submitted amendments well after 5:00 p.m. yesterday, and in his role as chair he did not accept those amendments for consideration today.

CHAIR CLAMAN passed the gavel to Vice Chair Fansler for the duration of the hearing of HB 20.

[1:06:13 PM](#)

VICE CHAIR FANSLER recapped that Amendment 1 was adopted, Amendments 2-9 failed.

[1:06:40 PM](#)

REPRESENTATIVE EASTMAN moved to adopt Amendment 10, Version 30-LS0242\D.10, which read as follows:

Page 1, line 13, following "congregation;":

Insert "nothing in this paragraph requires or obligates a religious organization or congregation to solemnize a marriage;"

REPRESENTATIVE CLAMAN objected.

[1:06:51 PM](#)

REPRESENTATIVE EASTMAN explained that Amendment 10 adds to those currently not required to solemnize a marriage "a religious organization or a congregation."

CHAIR CLAMAN pointed out that this language was covered by adopted Amendment 1.

[1:07:44 PM](#)

REPRESENTATIVE REINBOLD asked permission from the sponsor to allow friendly Amendments 1 and 2 to Amendment 10.

[1:07:58 PM](#)

REPRESENTATIVE EASTMAN said he was amenable to the amendments.

CHAIR CLAMAN objected to adding Amendments 1 and 2 to Amendment 10 as they were the exact amendments provided late to his office. He reminded the committee that it has amendment deadlines and these amendments should not be accepted.

REPRESENTATIVE REINBOLD advised that these were "his amendments originally" so it is germane "to him," and germane to the topic. Previously, members were allowed to offer friendly amendments, and she asked whether this is a new process where members are not allowed to amend amendments.

REPRESENTATIVE EASTMAN pointed out that Representative Reinbold had not offered a reason for adding the amendments.

1:09:25 PM

CHAIR CLAMAN called a point of order. He stated that "friendly amendment" is a topic that is periodically discussed and it has an informal meaning. He continued that he didn't think [these were] friendly amendments. He continued that it is either an amendment that gets adopted or it doesn't get adopted.

REPRESENTATIVE REINBOLD reiterated that the amendments were germane and critical to the discussion of this bill. She stated that if she was not allowed to speak to the amendments, she wanted to speak to the topic.

1:10:10 PM

VICE CHAIR FANSLER advised Representative Eastman that in the event he would like these to be friendly amendments, they would be included, and if not, the committee would attend to Amendment 10 as written.

REPRESENTATIVE EASTMAN said that he believes they are.

1:10:31 PM

REPRESENTATIVE KOPP spoke to the point of order, and said that Amendment 4 was withdrawn.

REPRESENTATIVE REINBOLD explained that the amendments were related to Version J, and not Version D.

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VICE CHAIR FANSLER advised the committee that Amendment 1 to Amendment 10 - J.4, was not quite identical to Amendment 4, but it was similar, and he asked for copies of the amendments.

REPRESENTATIVE LEDOUX asked whether Chair Claman's point of order had been ruled on as to whether the "friendly" amendments were out of order.

REPRESENTATIVE REINBOLD said "And he is the chair, and he said that he was accepting them under the provision, so the point was made by who actually has the gavel and agreed to accept them."

1:12:55 PM

VICE CHAIR FANSLER ruled that he accepted Amendment 1 to Amendment 10, Version 30-LS0242\J.4, which read as follows:

Page 1, lines 5 - 6 of the amendment:

Delete all material and insert:

"(c) A person authorized to solemnize a marriage under (a) of this section may refuse to solemnize a marriage for any reason, including for reasons of religious scruple or conscience."

VICE CHAIR FANSLER ruled that he accepted Amendment 2 to Amendment 10, Version 30-LS0242\J.5, which read as follows:

Page 2, lines 1 - 4:

Delete all material and insert:

"(4) by an individual holding an elective public office in the state.

* **Sec. 2.** AS 25.05.261 is amended by adding new subsections to read:

(c) A person authorized to solemnize a marriage under (a) of this section may, for any reason, including for reasons of religious scruple or conscience, refuse to

(1) solemnize a marriage; or

(2) provide services, accommodations, facilities, goods, or privileges for a purpose related to the solemnization, formation, or celebration of a marriage.

(d) A person permitted to solemnize a marriage under (a) of this section is not subject to criminal or civil liability for refusing to solemnize a marriage or refusing to provide services, accommodations, facilities, goods, or privileges for a purpose related to the solemnization, formation, or celebration of a marriage.

(e) The state or a municipality may not penalize a person who is permitted to solemnize a marriage under (a) of this section for refusing to solemnize a marriage or refusing to provide services, accommodations, facilities, goods, or privileges for a purpose related to the solemnization, formation, or celebration of a marriage. In this subsection, "penalize" means to take an action affecting a benefit or privilege guaranteed to the person by law, including a tax exemption or state or municipal contract, grant, or license."

Renumber the following bill section accordingly.

1:12:57 PM

VICE CHAIR FANSLER ruled that Amendment 10 now encompassed two amendments [Versions 30-LS0242\J.4 and J.5] and the original Amendment 10 [Version 30-LS0242\D.10] together.

REPRESENTATIVE EASTMAN noted that he did withdraw Amendment 4 earlier and the committee did not take a position on it; therefore, it is still an open question for the committee.

REPRESENTATIVE REINBOLD said she was trying to send a clear message by amending this amendment to prevent problems in the courts. She related that it had become a huge issue across the nation and she was trying to protect the right of conscience for judges, atheists, business owners, and such. [She began paraphrasing from: "Here it is: the Complete catalogue of 'same-sex marriage' violations of faith" into the record, found at "<http://www.wnd.com/2015/04/courts-conclude-faith-loses-to-gay-demands/#B7MEDfZlxuh3ldeX.99>."]

1:16:33 PM

CHAIR CLAMAN called a point of order. He pointed out that Representative Reinbold was making reference to something that has nothing to do with this bill.

VICE CHAIR FANSLER agreed, and he asked Representative Reinbold to please stick to the facts of the bill and amendments, rather than other scenarios.

REPRESENTATIVE REINBOLD agreed, and she said it was 100 percent germane because Amendment 10 says, and she paraphrased as follows: "A person authorized to solemnize marriage of this section may refuse to solemnize marriage for any reason, including reasons of religious scruple or conscience." She stated that this does apply to judges, and in addition, Amendment 2 to Amendment 10 talks ...

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CHAIR CLAMAN called a point of order. He said he does not believe [what Representative Reinbold was paraphrasing] fits within the "germaneness definition" in terms of Representative Eastman's Amendment 10. He said that Representative Eastman offered the opinion that Amendment 10 was consistent with

Amendments 1 and 2 to Amendment 10, except that Amendment 1 to Amendment 10 was far broader and covered topics the committee previously rejected in amendments offered by Representative Eastman. Therefore, he related, Amendment 1 to Amendment 10 was not germane or consistent with Amendment 10, and there was not a basis to find it was a friendly amendment.

CHAIR CLAMAN stated he was making the same point of order objection with regard to Amendment 2 to Amendment 10, because it related to elected public officials and it was trying to do the same thing as [withdrawn] Amendment 4. He continued that Amendment 10 addresses a narrow and specific point in the bill related to religious organizations. Therefore, he pointed out, to then expand it by either Amendments 1 or 2 to Amendment 10 was not germane and well beyond the scope of Amendment 10. He asked Vice Chair Fansler to reconsider his decision as to whether these would be appropriate amendments given the prior actions of this committee and the narrow focus of Amendment 10.

[1:19:05 PM](#)

The committee took an at-ease from 1:19 p.m. to 1:21 p.m.

[1:21:01 PM](#)

VICE CHAIR FANSLER ruled that with regard to the point of order from Chair Claman, it should be duly noted on the record that despite the germaneness issue, he would allow the committee to continue hearing [Amendment 10] which was now all one amendment.

[1:21:36 PM](#)

REPRESENTATIVE REINBOLD related she would like to continue reading [from "Here it is: the Complete catalogue of 'same-sex marriage' violations of faith"] and said it speaks to Amendment 2 to Amendment 10, of which impacts different businesses.

CHAIR CLAMAN called a point of order. He said that reference to businesses is far outside the scope of this particular statute and bill and that the entire reference to businesses was not germane to Amendment 10, or to CSHB 20, Version J.

VICE CHAIR FANSLER said "absolutely," and ruled that Representative Reinbold speak strictly to what is in front of the committee, and wrap up.

REPRESENTATIVE REINBOLD stressed that she needs to be able to express why this is important, and that it is absolutely germane to solemnization of marriage. The bill is titled, "An Act relating to marriage solemnization; and authorizing elected public officials in the state to solemnize marriages," of which she described as a broad title.

VICE CHAIR FANSLER pointed out that businesses cannot solemnize marriages under this Act, and asked that she speak to her amendments.

REPRESENTATIVE REINBOLD referred to Amendment 2 to Amendment 10, page 1, lines 8-9, which read as follows:

(2) provide services, accommodations, facilities, goods, or privileges for a purpose related to the solemnization, formation, or celebration of a marriage.

REPRESENTATIVE REINBOLD related that it is germane, and she doesn't appreciate being shut out of the process Alaska's businesses will be affected. She continued that whether a person is atheist, Christian, or Islamic, they will be affected by this, and it is important to put on the record why Amendment 2 to Amendment 10 needs to be adopted, she said.

VICE CHAIR FANSLER thanked Representative Reinbold and advised that she had just done that very well.

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REPRESENTATIVE EASTMAN remarked that he had already made his case as to why Amendment 10 was a good amendment.

REPRESENTATIVE LEDOUX asked whether the committee was amending Amendment 10 with Amendments 1 and 2 to Amendment 10.

[1:24:05 PM](#)

The committee took a brief at ease.

[1:24:45 PM](#)

VICE CHAIR FANSLER requested a roll call vote on Amendment 10, which included Amendments 1 and 2 to Amendment 10.

[1:24:52 PM](#)

A roll call vote was taken. Representatives Eastman and Reinbold voted in favor of the adoption of amended Amendment 10. Representatives Kreiss-Tomkins, LeDoux, Fansler, Kopp, and Claman voted against it. Therefore, amended Amendment 10 failed to be adopted by a vote of 2-5.

[1:25:41 PM](#)

REPRESENTATIVE EASTMAN moved to adopt Amendment 11, 30-LS0242\D.5, which read as follows:

Page 2, lines 7 - 9:

Delete "minister, priest, or rabbi of a church or congregation in the state, [OR] a judicial officer, **a [OR] marriage commissioner, or an individual holding an elective public office in the state"**

Insert "**person authorized to solemnize marriages in the state under AS 25.05.261(a)** [MINISTER, PRIEST, OR RABBI OF A CHURCH OR CONGREGATION IN THE STATE OR A JUDICIAL OFFICER OR MARRIAGE COMMISSIONER]"

CHAIR CLAMAN objected.

REPRESENTATIVE EASTMAN explained that Amendment 11 relates to a discrepancy in current statute, and that the bill was broken into two sections, as follows: Section 1 [AS 25.05.261(a)] contains a list of the various people allowed to solemnize marriage; and Sec. 2 [AS 25.05.281] contains a second list that includes most, but not all of the individuals and items contained in Section 1. He referred to AS 25.05.281, and said that when considering previous discussions, the committee can quickly identify that "we've left out" principal officers or elders of recognized churches or congregations, and also commissioned officers of the Salvation Army. He commented that while flying back to Juneau he sat next to three commissioned officers of the Salvation Army who, in response to his question, responded that they solemnize marriages on a fairly frequent basis. Currently, he said, officers of the Salvation Army do not receive the same treatment contained within Sec. 2, of Version J. He explained that it deals specifically with a situation wherein a couple was married by someone the couple believed was a priest, rabbi, or elected official, the marriage was consummated and later it turned out that the person who married them was either misinformed about their authority to perform marriages, or lied about it. In either case, the statute said "We acted in good faith when we went to that person

or congregation and got married, and that marriage is valid for purposes of law." He related that he could not think of a reason why the committee would make that be the case with ministers, priests, and rabbis, but exclude those who, in good faith, go to a commissioned officer of the Salvation Army. He reminded the committee that in many villages, that may be the only person people can go to, which is probably why they were added to the list in the first place. Certainly, he said, that marriage ought to be every bit as valid as any other marriage.

[1:29:51 PM](#)

CHAIR CLAMAN withdrew his objection.

[1:29:55 PM](#)

REPRESENTATIVE KREISS-TOMKINS objected for discussion.

REPRESENTATIVE KOPP commented that Representative Eastman identified a more elegant and concise way to pull in all of those persons authorized to solemnize marriages. It does appear to be an oversight that the Salvation Army was left off, and it does make the statute's intent more clear and easier for a lay person to understand, he remarked.

[1:31:04 PM](#)

LINDA BRUCE, Attorney, Legislative Legal and Research Services, Legislative Affairs Agency, Alaska State Legislature, said she was available for questions.

[1:31:11 PM](#)

REPRESENTATIVE KREISS-TOMKINS asked why classes of people were inadvertently left out of the statute of which Amendment 11 reconciles.

MS. BRUCE explained that the legislative history on this topic is vague; however, she could speak briefly on the history of AS 25.05.281. She explained that the provisions had not been amended since their adoption in 1963, and she could not locate any documents addressing the intent of the legislature. However, she pointed out, commissioned officers of the Salvation Army were first authorized to solemnize marriages under the Territorial Laws of Alaska, in 1929, and it is similar to current statute under AS 25.05.281.

[1:32:30 PM](#)

REPRESENTATIVE KREISS-TOMKINS said he concurred with Representative Kopp in that it was good clean-up.

REPRESENTATIVE LEDOUX commented that Amendment 11 is befitting the individual with whom this room was named after. Representative Gruenberg is probably looking down upon the committee and appreciating Representative Eastman, she related.

REPRESENTATIVE REINBOLD offered that she likes the intent as it covers much of what "we've been trying to do with all these other amendments."

REPRESENTATIVE KREISS-TOMKINS withdrew his objection.

There being no further objection, Amendment 11 was adopted.

[1:33:35 PM](#)

REPRESENTATIVE EASTMAN moved to adopt Amendment 12, 30-LS0242\D.13, which read as follows:

Page 2, following line 11:

Insert a new bill section to read:

"* **Sec. 3.** AS 25.05.311 is amended to read:

Sec. 25.05.311. Marriage without solemnization. A marriage contracted after January 1, 1964, is void unless the marriage has been solemnized as provided in this chapter. [IF THE PARTIES TO A MARRIAGE VOID FOR FAILURE TO SOLEMNIZE THE MARRIAGE VALIDATE THE MARRIAGE BY COMPLYING WITH THE REQUIREMENTS OF THIS CHAPTER, THE ISSUE OF THE VOID MARRIAGE ARE LEGITIMATE.]"

REPRESENTATIVE CLAMAN objected.

REPRESENTATIVE EASTMAN paraphrased AS 25.05.311, and read as follows:

If the parties to a marriage void for failure to solemnize the marriage validate the marriage by complying with the requirements of this chapter, the issue of the void marriage are legitimate.

REPRESENTATIVE EASTMAN advised that, under certain circumstances the children from a marriage are legitimate in the state's eyes.

The legislative history indicates that this language has not been changed since January 1, 1964, and in those days it was thought appropriate for the state to have a definition of what a legitimate and illegitimate child was. He opined that over the passage of time, however, the state has come to see that that was not necessarily a responsibility of the state. Currently, he pointed out, the state has other laws dealing with paternity at great length, such as, options for DNA testing that was not available in 1964. Amendment 12 removes this language and Legislative Legal and Research Services advised that this will not deprive anyone of their inheritance and such, he said.

[1:35:40 PM](#)

REPRESENTATIVE KOPP referred to Amendment 12, page 1, line 8, and suggested changing the word from "issue" to "children." In that manner, he pointed out, the entire reading of it becomes apparent that the provision was saying that children of a void marriage are legitimate, rather than the issue.

REPRESENTATIVE KREISS-TOMKINS asked Ms. Bruce whether she read "issue" in the same manner as Representative Kopp.

[1:36:51 PM](#)

MS. BRUCE responded that she agrees with Representative Kopp's suggestion that "issue" does mean "children."

REPRESENTATIVE LEDOUX asked Ms. Bruce, in the event this amendment was adopted and removed the bracketed language, what effect, if any, would this have on anything legal.

[1:37:31 PM](#)

MS. BRUCE answered that the legitimation in this context was the process of establishing that a putative parent was the child's biological parent. Under AS 25.20.050, it provides the process for determining "legitimation," but it essentially means determining that a putative parent was a biological parent. She continued that the provision provides that a child born to parents not legally married, is legitimated and considered heir of the putative parent when the parents subsequently get married legally. She explained that it is covered under another statute and placing it under AS 25.05.311 may clarify the issue, but it was covered under another provision of law.

[1:38:37 PM](#)

REPRESENTATIVE LEDOUX commented that it sounds like taking it out might muddy the issue.

MS. BRUCE responded that it is possible this may confuse a court, but it is hard to say how a court would consider it due to the other statute. In the event there was an established record with legislative intent on this section it may help to clarify, she opined.

[1:39:33 PM](#)

REPRESENTATIVE LEDOUX queried whether Ms. Bruce would recommend that rather than taking it out now, to possibly flag it for the revisor's cleanup work.

MS. BRUCE answered that this may be interpreted as a clarification of another statute rather than cleanup, but she would have to speak with the revisor on that issue.

REPRESENTATIVE REINBOLD asked Ms. Bruce to advise the committee, in her own words, what this amendment does.

MS. BRUCE replied that "this amendment removes the provision" that if a marriage was determined to be void because the marriage was not solemnized correctly under this chapter, then the children of that marriage were considered legitimate if the marriage was subsequently made legally binding.

REPRESENTATIVE REINBOLD surmised that all it does is legitimize children regardless of whether a marriage is void or not.

MS. BRUCE clarified that it is not that it legitimizes children whether the marriage was void or not. Rather, she explained, it provides that if a marriage was void due to an incorrect solemnization of the marriage, and if children had been born to that union, at the time the marriage was subsequently made legally binding, those children were legitimated for both parents.

[1:42:16 PM](#)

REPRESENTATIVE REINBOLD asked whether there would be any intended or unintended consequences to, for example, the Department of Health and Social Services, another statute, entitlement programs, or the budget, or whether it was "pretty clean."

MS. BRUCE responded that she was not aware of any unintended consequences. Although, if this provision was removed, there is the possibility that the court may interpret that children from that union were not legitimate; however, since there is another provision of law that performs a similar function, she opined, it is unlikely.

[1:43:22 PM](#)

REPRESENTATIVE LEDOUX asked Ms. Bruce, in her legal opinion, whether the provision should be removed, or left it in, and which language would more precise.

MS. BRUCE responded that without knowing more about how this provision had been interpreted in practice, said that she could not say whether judges or individuals actually relied on this provision. From a drafting standpoint, she offered, it could be removed, but again, she was unsure based upon how it was actually being employed in practice.

[1:44:25 PM](#)

REPRESENTATIVE EASTMAN noted that this issue was discussed during drafting, and he elected to leave this section in the law dealing with marriage without solemnization. He explained that the more important part of this provision was that a marriage was legally void unless it had been solemnized according to this chapter. He reiterated Ms. Bruce's statement that there are multiple parts of the statute that speaks to the same issue. He related that there is no reason for the committee to speak to this specific issue here, but if the committee feels that it offers greater clarity and the public interest would be served by leaving it, he had no objection.

REPRESENTATIVE LEDOUX said that while she appreciates the maker of the amendment trying to clarify the statute, without a firm legal opinion it would not do something the committee didn't want it to do, she felt uncomfortable changing it.

[1:46:14 PM](#)

REPRESENTATIVE KREISS-TOMKINS related that the amendment appears to be a prudent course and a common sense amendment, and that a future committee could attend to this if more diligence was performed.

REPRESENTATIVE EASTMAN said he went as far as he could with Legislative Legal and Research Services and there was not a lot of other knowledge to be had at the moment. He commented that it would be good for the state to find another way of characterizing the importance of paternity, marriage solemnization, and so forth, as far as inheritance and such. He remarked that he would like the state to move away from declaring people legitimate or illegitimate, and he withdrew Amendment 12.

[1:47:46 PM](#)

REPRESENTATIVE EASTMAN moved to adopt Amendment 13, Version 30-LS02452\J.2, which read as follows:

Page 1, line 5 of the amendment, following "duty":
Insert "or obligation"

Page 1, line 6 of the amendment:
Delete the second occurrence of "a"
Insert "any"

VICE CHAIR FANSLER objected for purposes of discussion.

[1:48:06 PM](#)

The committee took an at-ease from 1:48 p.m. to 2:05 p.m.

[2:05:42 PM](#)

REPRESENTATIVE EASTMAN explained that Amendment 13 amends Amendment 1, and makes two small changes by adding the words "or obligation" and "any." He asked Ms. Bruce to respond to the significance this amendment.

[2:06:51 PM](#)

MS. BRUCE answered that the word "obligation" slightly expands what is accomplished with this amendment because obligation would include a moral obligation, a legal obligation, or a commitment to do something.

[2:07:26 PM](#)

REPRESENTATIVE EASTMAN asked her legal opinion as to whether there is any significance in changing the word "a" to "any."

MS. BRUCE answered that "any" clarifies, for the purposes of Amendment 13, that a person authorized to solemnize a marriage wouldn't be required or obligated to solemnize any marriage. Therefore, they could solemnize some marriages and choose to not solemnize others.

[2:08:11 PM](#)

CHAIR CLAMAN asked Ms. Bruce the difference between a duty on a person and an obligation on a person. He further asked whether, in the manner in which Alaska's courts have applied it, the language "or obligation" would change the way the courts would apply something like this.

MS. BRUCE responded that she was not aware of any case wherein the courts specifically looked at the use of these words; however, the commonly understood meaning of "obligation" was similar to duty except it expands it out to include a commitment. The courts look at the commonly understood meaning of these words, and it appears this might broaden the scope slightly, she offered.

CHAIR CLAMAN surmised that inserting the language "any" would basically indicate that, with this amendment, a person might choose to marry two Hindu individuals and decline to marry two Baathist individuals. Therefore, he asked whether the word "any" would clarify the ability to pick and choose who they may elect to marry.

MS. BRUCE opined that a person could choose to marry certain people and not other people; however, it is possible that under the state's antidiscrimination statute, at least as far as elected officials, if they were choosing not to solemnize certain marriages for reasons of the persons religion or race, or one of the protected groups, that would possibly violate the state's antidiscrimination law.

[2:10:32 PM](#)

REPRESENTATIVE REINBOLD related that Amendment 13 adds clarity and equal protection for all, and it empowers more equal protections for anyone. She said she supports Amendment 13.

[2:11:12 PM](#)

REPRESENTATIVE EASTMAN asked the sponsor of the bill whether this amendment would be an improvement to the bill.

[2:11:27 PM](#)

The committee took an at-ease from 2:11 p.m. to 2:12 p.m.

[2:12:05 PM](#)

CHAIR CLAMAN responded to Representative Eastman that he does not object to this amendment.

VICE CHAIR FANSLER withdrew his objection. There being no objection, Amendment 13 was adopted.

REPRESENTATIVE FANSLER returned the committee to CSHB 20, Version J, for further discussion. He put forth that there had been a lot of discussion on this bill and that the members were limited to two minutes with their discussion directly related to the bill, and there would then be final comments, he advised.

[2:13:52 PM](#)

REPRESENTATIVE REINBOLD commented that her testimony was cut off earlier and she returned to paraphrasing portions of: "Here it is: the Complete catalogue of 'same-sex marriage' violations of faith." She further commented that the constitution is at risk by activists, and that almost 250 years of protected rights making Alaska great are being violated. People are receiving civil penalties for refusing to do things that are against their conscience.

VICE CHAIR FANSLER said that the committee will move forth from there, with a note that he sees nothing in this bill discussing businesses.

REPRESENTATIVE KOPP commented the freedom to live out ones faith in the marketplace is an important freedom to protect, and this bill has absolutely nothing to do with businesses. He related that he appreciates Amendment 13 because it expands protections and emphasizes that the committee does want to protect the freedom of the newly established class of persons authorized to solemnize marriages, elected officials, and Alaska's faith leaders and congregations. The protection of marriage is an important institution in the eyes of the church and the state, and he appreciates the bill sponsor bringing the bill forward.

[2:17:34 PM](#)

REPRESENTATIVE EASTMAN related that the two items of greatest importance to him are adding elective officials to an expansive list, and also, by merely having elective officials on a list of those authorized to solemnize marriages brings cause for concern when someone raises an issue of discrimination in the event someone decides not to marry a particular couple. He pointed out that because that language is lingering out there, there is too much room for a judge to see unintended consequences.

REPRESENTATIVE FANSLER reminded the committee that the bill does not deal with businesses, and to speak to solemnization of marriages.

REPRESENTATIVE LEDOUX described CSHB 20 as a good bill, it accomplishes the original purpose of the sponsor to add elective officials to the group of people solemnizing a marriage, and through the committee and amendment process it enhanced protections given to the faith community to determine which marriages to solemnize.

REPRESENTATIVE KOPP informed that committee that, yesterday, the Wyoming Supreme Court overruled the Wyoming Judicial Conduct Board and reinstated Judge Ruth Neely. The court ruled that the judge was able to express her personal opinion and not be removed from the bench, he pointed out.

REPRESENTATIVE REINBOLD argued that the bill does impact businesses because some elected officials own businesses and it can affect their churches. She said she is troubled because as elected officials, "we're now being asked to not have to go down to the courthouse and get a -- the bureaucracy in going down and doing the paperwork and paying our \$25 fee -- we're being held to a different standard than maybe the average citizen." She asked the sponsor of the bill whether it was his intention to protect everyone equally and protect all branches of government, all citizens, with the right to refuse based on the right of conscience or for any religious scruple.

[2:24:08 PM](#)

The committee took an at-ease from 2:24 p.m. to 2:27 p.m.

[2:27:55 PM](#)

REPRESENTATIVE FANSLER asked whether there were further final comments.

REPRESENTATIVE EASTMAN offered that this bill is an improvement over the bill that arrived from the House State Affairs Standing Committee, and he acknowledged all of the hard work that went into it.

VICE CHAIR FANSLER thanked the committee for its hard work on the bill and noted that it is good to see there are times the members can all agree. It is also good to debate and look at the issues from all sides, and he looks forward to supporting this bill as it moves forward, he commented.

CHAIR CLAMAN thanked the committee for taking its time on the bill and going into great depth, and that as a product of that depth the bill was improved. He related that in the end, this bill is not about businesses, it's about one basic thing, which is that elected public officials need to go get a \$25 license to marry people.

[2:30:34 PM](#)

REPRESENTATIVE KREISS-TOMKINS moved to report CSHB 20(STA) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 20(JUD) moved from the House Judiciary Standing Committee.

VICE CHAIR FANSLER returned the gavel to CHAIR CLAMAN.]

HB 121-OCC. HEALTH AND SAFETY CIVIL PENALTIES

[2:31:15 PM](#)

CHAIR CLAMAN announced that the final order of business would be HOUSE BILL NO. 121, "An Act relating to occupational safety and health enforcement penalties; and providing for an effective date."

[2:31:51 PM](#)

The committee took a brief at ease.

[2:32:49 PM](#)

BIANCA CARPENETTI, Staff, Representative Sam Kito, III, Alaska State Legislature, advised that the legislation is a House Labor and Commerce Standing Committee by request of the Department of Labor & Workforce Development (DLWD). She briefly paraphrased the following:

House Bill 121 brings Alaska's Occupational Safety and Health (AKOSH) state plan into compliance with federal requirements, ensuring continued eligibility for federal grant funds and helping to protect workers from workplace injuries, illnesses, and fatalities.

2:34:01 PM

DEBORAH KELLY, Director, Division of Labor Standards and Safety, Department of Labor & Workforce Development, paraphrased her written testimony as follows:

I'm sure you are all familiar with OSHA [Occupational Safety and Health Administration]. Well, Alaska Occupational Safety and Health or (AKOSH) is Alaska's state plan. This means that Alaska Occupational Safety and Health receives federal grants and is responsible for the safety and health standards that protect almost all Alaskan workers.

... A state plan such as AKOSH must be at least as effective as federal OSHA, so Alaska's program develops and implements safety and health standards that fit Alaska's unique environment using input from Alaskan industries, workers, and the public. Federal standards are much less responsive to local needs. Alaska's program also provides free consultation services to employers with an emphasis on small employers, helping them to understand the standards and implement them to keep their employees safe. AKOSH inspects all private and public workplaces in Alaska, with a few federal exceptions.

2:35:21 PM

If, during the course of an inspection, an employer is found violating a safety or health standard, AKOSH may issue a citation to the employer that includes penalties. The maximum penalties, and one minimum penalty, that AKOSH may assess for various types of violations are set in Alaska's statutes. Now, maximum penalties mean just that, the maximums. These are the amounts reserved for the most egregious and severe cases. The actual penalties assessed are calculated based on numerous factors beginning with the probability of an injury or illness actually

occurring, and the severity of the injury or illness that could occur. After that, the penalties reduce based on numerous factors. The biggest single reduction factor is business size, small employers see a standard reduction of 60 percent and even more in some cases. Penalties are also reduced for good faith efforts on the part of the employer to keep their employees safe, as well as the employer's history of violations with AKOSH. Penalties can be, and often are, reduced up to 100 percent. To illustrate the difference between the statutory maximums and what employers actually pay, we looked at the difference between penalties collected in FY2016, and the maximum amount that AKOSH could have assessed for all violations. So, for FY16 -- 2016, AKOSH collected roughly 6 percent of the statutory maximum for the violations cited. This is not a fluke, it just reflects the built-in process that protects small businesses, and protects the majority of employers who hard to keep their employees safe. So, in 2015 Congress passed an Act requiring many agencies to adjust penalties for inflation going back to 1990, and then to continue to adjust those penalties yearly with the consumer price index. OSHA complied and raised their penalties in July of last year, Alaska has six months to come into compliance with federal changes like these, and as of January 1, 2017, we are out of compliance. So why does this matter? A failure to comply will risk most of the over \$2 million in federal grant funds we receive every year, and eventually will risk a federal takeover of jurisdiction. This means federal OSHA will come in and enforce the higher penalty amounts anyway, the over \$1 million in estimated yearly penalties that we will bring in will go to the federal government instead of to the state general fund. Businesses will face the burden of out-of-state proceedings when they disagree with citations, and we will lose the safety and health standards developed locally to fit Alaska's unique conditions, such as logging, oil and gas, and temporary labor camp standards. And, Alaskan businesses will lose the high level of input they currently have in the development of safety and health standards. Loss of state jurisdiction would also mean that state and local government employees would lose their work -- workplace safety and health protections

since federal OSHA does not have jurisdiction over those public employees.

2:38:49 PM

The fact is that local enforcement works. AKOSH has concentrated on the transportation and warehousing industry which saw over an 18 percent decline in lost time injury rates last year. Our emphasis in the construction industry has also paid off, lost time industry -- injuries in that industry fell over 32 percent last year. The 10 year averages for our emphasis industries show a long-term decline in injury and illness rates. And, in fact, lost time injuries and illnesses for working Alaskans, overall, has fallen by over 50 percent in the last 10 years. The payoff is huge for businesses who save on workers' compensation costs, and for families and workers who get to go home safe every day.

House Bill 121, is a bill to bring Alaska Occupational Safety and Health in compliance. No more, no less. The bill requires the Department of Labor and Workforce Development to adopt maximum penalty amounts by regulation and limits those amounts to the corresponding federal amounts for each violation type. This simply allows the department to comply with federal law and stay compliant -- in compliance as the consumer price index adjusts from year to year. This will preserve our state plan and ensure that we can continue in our effort to reduce injuries, illnesses, and fatalities for Alaskan workers.

2:40:40 PM

REPRESENTATIVE KOPP surmised that this federal compliance request was asked of all 50 states to stay current with the federal penalty schedule. He asked whether Alaska must comply by law.

MS. KELLY responded that there are 26 state plans, including Porto Rico and perhaps one other territory. She advised that the federal jurisdiction states had already raised their penalties, and the 26 state plans are required to come into compliance as a condition of their state plan, which was a law passed in 2015.

REPRESENTATIVE KOPP surmised that by not adopting the updated schedule, Alaska would then fall under federal jurisdiction.

MS. KELLY answered that the failure to at least maintain the same penalties as the federal OSHA would result in a federal jurisdictional takeover, and many states are dealing with that now. Although, she explained, as long as Alaska makes positive progress toward adopting the federal penalties, it will be recognized because the legislative process does take time.

REPRESENTATIVE KOPP pointed out that Alaska has AKOSH regardless, and asked "Do we do business with the devil we know, or the devil we don't -- with state employees or with the feds?"

MS. KELLY responded that this issue was debated around 1999, and many local businesses and industry representatives came out to support the Alaska plan. Ms. Kelly said she would paraphrased a quote from a representative of the industry at that time as follows: "AKOSH may be SOB's, at least they are Alaskan SOB's." She remarked "And, that's a fact," people can talk with the division on developing standards that work for Alaskan industries and Alaskan businesses.

[2:43:55 PM](#)

REPRESENTATIVE LEDOUX surmised that in the event the federal government takes over, Alaskan residents would be working for the federal government and administration and wouldn't be "our SOB's?" She asked the amount of money the state would save by calling the federal government's bluff and letting them have jurisdiction.

MS. KELLY agreed that on site compliance officers under federal jurisdiction would be Alaskan residents, but the people overseeing those residents would not be Alaskans. In the event an employer appealed a citation it would not be an Alaskan process as it would take place with an administrative law judge out-of-state. More importantly, she explained, Alaska would lose numerous local and state standards specific to Alaska. In response to the amount of money Alaska would save, she said she would perform research and get back to the committee.

[2:45:54 PM](#)

SAM KITO, III, Alaska State Legislature, added that another dynamic to consider is that Alaska could not expect that the federal government would open an office in Alaska. Therefore,

it is likely that the Alaska office of Occupational Safety and Health would not be managed by Alaskan residents, and would possibly be out of San Francisco or Seattle because the federal government was also experiencing budgetary constraints. Also, in the event the legislature lets the Alaska Occupational Safety and Health revert to the federal government, Alaska would lose the protections it currently has for state employees not covered under a federal plan.

[2:47:14 PM](#)

REPRESENTATIVE REINBOLD asked whether it is true the fees are being removed from statute and put into regulations.

REPRESENTATIVE KITO responded that HB 121 allows the Department of Labor & Workforce Development to have the statutory authority to produce regulations allowing continued compliance with the federal government's requirements, of which possibly changes annually. He opined that probably the legislature does not want to come back here and establish those maximum standards every year because they are indexed to inflation. In the event the legislature allows the department the regulatory authority, it can keep up with the federal changes with regulations, as opposed to coming back to the legislature every year, he described.

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REPRESENTATIVE REINBOLD offered that "where the rub hits with me is I don't want any -- any less authority" and this shifts authority from the legislature to the executive branch "that has a whole lot of power." and that she is a local control person. She then asked whether that was his understanding.

REPRESENTATIVE KITO answered that that was his understanding. As a sitting legislator, he pointed out, there are various concerns as to whether or not to put automatic increments into state law, except in this case, the federal government does have an automatic increment and this does take control away from the legislature to adjust every year. He asked whether this was something the legislature really wants to deal with every year, given it has the budget and such to deal with. Statutorily, he acknowledged, he does not know of another way to effectively deal with the department meeting compliance, unless the legislature goes in and far exceeds the maximums of the federal government in the hopes it wouldn't catch up with Alaska for a few years and allow the department to work below that number.

He described that it was sloppy because it establishes a standard that a legislature in two to four years down the road may have forgotten about, thereby, leaving a number out there that people may not change, and possibly may not remember why it was established. He expressed that it is important, in this situation, to allow the department that flexibility.

[2:51:12 PM](#)

REPRESENTATIVE REINBOLD offered concern about constantly changing fees and yielding to the federal government rather than keeping things local. She offered further concern about increasing penalties and how it would impact businesses when Alaska was in a recession.

[2:52:17 PM](#)

MS. KELLY responded to Representative Reinbold as follows:

This bill is very strictly written, so that while it is moved to regulations, the department is really only given one option which is to set the federal amounts, and no more. So, that does limit that.

But, I would like to speak to your concern about raising penalties because you're right. Quite frankly, all these penalties will automatically -- this first adjustment will be a 78 percent increase. And, I can't sugarcoat that, and keep in mind these are maximums, these are not the actual penalties. So, when you see those numbers, that sticker shock isn't what most businesses are seeing when a cost shows up.

That being said, it -- it's a tough call, but it's either us issuing those higher penalties, or it's the federal government issuing those higher penalties and taking that money back to the federal government instead of depositing it as into the state general fund.

Second of all, I -- I have several studies here that show that an employer who receives a penalty from OSHA or from AKOSH, in this case, actually sees a pretty large savings over the next several years in reduced injury and illness and; therefore, reduced workers' compensation costs that far exceed the amount in penalties that they paid. So, there's actually an

economic benefit for an employer paying those penalties because it -- I mean, some employers, a few, actually see these visits from OSHA as a low cost consultation service. It may have been involuntary -- involuntary, but in the end, they are able to get assistance and additional knowledge on what the requirements are and how to better keep their employees safe. So, those workers' compensation costs are really much higher. The cost of an injury and illness are way higher than what the penalties are.

[2:54:25 PM](#)

REPRESENTATIVE REINBOLD agreed that it as sticker shock. Now, she said, the big gun was being used by increasing penalties by 78 percent, and she had received many complaints about these agencies being trigger happy.

[2:54:53 PM](#)

CHAIR CLAMAN commented that the bill presents an interesting situation in that the federal government doesn't state that Alaska must raise its statute, it leaves it up to Alaska to choose with the caveat that if Alaska doesn't follow the federal government it will come in and take over. The price for maintaining some degree of autonomy is that Alaska must be in compliance with the federal limits. The legislature could make the choice to let the federal government come in but, he surmised, most of the public would prefer the legislature maintain control of this particular element, and he offered concern about the cost of compliance. He then referred to a death at an Anchorage construction site because the employer was grossly out-of-compliance and when looking at those high fines, they were appropriate. Everyone wants employers to succeed but not by putting their workers in dangerous situations, he stressed.

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REPRESENTATIVE EASTMAN referred to the statement that the state had only one option in dealing with the maximum amount established on the federal side, and noted that the language in the bill read as follows: "not more than the maximum amount." He commented that it would be appealing to save lots of money by eliminating the state work if the state was just doing exactly what the federal government would be doing anyway. In the event the state has another governmental partner willing to do work

for the state, he said he is all for it in some circumstances. He then asked whether the state was expected to access fines at that maximum amount if the department or other persons setting those amounts chose to set a low amount. He further asked whether the federal government would come in and say that Alaska was out of compliance because it was not fining enough, even though the legislature gave statutory authority to fine to that maximum amount.

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MS. KELLY addressed the first part of Representative Eastman's question, and related that she does not believe the department was doing exactly what the federal government was doing, such that the department develops local safety and health standards unique to Alaska's industries. It also provides coverage to both state and local public employees that federal OSHA would not provide, and as far as the ability of the commission to set lower amounts, Representative Eastman was correct. This puts the department between two limits, and the Alaska statutory limit would be the higher limit, and the federal grant requirements and jurisdictional requirements would be the lower limit. Therefore, if a commissioner did decide to set lower amounts by regulation, then the federal equivalents would decide that Alaska was not complying with its requirements. She said that the division ran some numbers and assessed that it was less than 10 percent of the maximum penalties. She reiterated that the numbers of the sticker shock are theoretical maximums and reserved for egregious cases, such as the case Chair Claman referred to earlier. She explained that that situation was what the statutory maximums were there for, and a situation such as that would be the only time the division would assess such high penalties.

[2:59:28 PM](#)

REPRESENTATIVE KREISS-TOMKINS asked the industry's perspective on this because he did not see documents in support or opposition.

MS. KELLY responded that the perspective from the industry was that no one loves OSHA, but in 1999 the overwhelming response was in favor of Alaska jurisdiction. In addition, the division does provide free consultation service wherein it shows up to an employer, with no penalties or citations involved, and assists the employer in coming into compliance and learning how to keep their employees safe and healthy on the job. She described it

as a popular program because it helps folks in the seafood processing industry, in particular, come into compliance and determine how to keep their people safe in that high hazard industry. The OSHA is not popular, but federal OSHA is less popular than AKOSH, she remarked.

3:01:05 PM

REPRESENTATIVE KREISS-TOMKINS requested the quantity of consultations AKOSH performs annually.

MS. KELLY replied that in addition to consultation, AKOSH also offers training to the public and employers which reaches an additional set of people. She said she could provide this information after the meeting.

3:02:01 PM

CHAIR CLAMAN advised Ms. Kelly that she could provide the answer to his query at the next meeting. He continued that Representative Reinbold raised an interesting question of going through the regulation process and, he commented, that "there's a level that what we're essentially doing is saying, in the legislative sense, 'Uncle, we'll -- we'll use your maximum rates.'" He described a component in which one might ask, why the legislature needs to go through the exercise of a regulation, why not just have a statutory provision which read that the Alaska maximum rate would be the maximum rate established by whatever federal statute setting this up. At some point, he asked, why doesn't the legislature just say, "Uncle as a matter of Alaska statute?" Thereby, he remarked, the regulatory process would be unnecessary because the legislature in recognizing the federal government's maximum, would be the maximum Alaska would have.

3:03:20 PM

MS. KELLY explained that it was a balancing test the division performed while it looked at what other states were working on, and the division considered what might be the most acceptable to folks. Quite frankly, she advised, the division ended up balancing on the side of the regulatory process, but it was not opposed to putting it into the statute.

REPRESENTATIVE REINBOLD reiterated that it is critical the legislature writes the statutes, determines the budget, and not just at the beck and call of the federal government. She

pointed out that the legislature needs to keep as much local control and state control as possible, and she agreed that it is a balancing act.

[3:05:05 PM](#)

REPRESENTATIVE KOPP surmised that the committee was simply adopting a maximum penalty schedule, and nothing at all about what the discretion was in that range. He said he understands that there is an approximate 60 percent discount of the penalty schedule for small businesses as a base line.

[3:05:47 PM](#)

REPRESENTATIVE KITO remarked that the legislature was establishing, either through regulation or however the committee ends up doing this bill, a federal maximum penalty. He reiterated Ms. Kelly, and said that even with the current penalty system, the assessments were less than 10 percent of the maximums.

[HB 121 was held over.]

[3:07:00 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:07 p.m.