

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

March 24, 2017

1:04 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Zach Fansler, Vice Chair
Representative Jonathan Kreiss-Tomkins
Representative Gabrielle LeDoux
Representative David Eastman
Representative Lora Reinbold (telephonic)

MEMBERS ABSENT

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

COMMITTEE CALENDAR

HOUSE BILL NO. 69

"An Act repealing the Workers' Compensation Appeals Commission; relating to decisions and orders of the Workers' Compensation Appeals Commission; relating to superior court jurisdiction over appeals from Alaska Workers' Compensation Board decisions; repealing Rules 201.1, 401.1, and 501.1, Alaska Rules of Appellate Procedure, and amending Rules 202(a), 204(a) - (c), 210(e), 601(b), and 603(a), Alaska Rules of Appellate Procedure; and providing for an effective date."

- MOVED CSHB 69(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 108

"An Act adopting and relating to the Revised Uniform Fiduciary Access to Digital Assets Act."

- HEARD & HELD

HOUSE BILL NO. 123

"An Act relating to disclosure of health care services and price information; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 69

SHORT TITLE: REPEAL WORKERS' COMP APPEALS COMMISSION

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/20/17	(H)	READ THE FIRST TIME - REFERRALS
01/20/17	(H)	L&C, JUD
02/06/17	(H)	L&C AT 3:15 PM BARNES 124
02/06/17	(H)	Heard & Held
02/06/17	(H)	MINUTE (L&C)
02/10/17	(H)	L&C AT 3:15 PM BARNES 124
02/10/17	(H)	Moved HB 69 Out of Committee
02/10/17	(H)	MINUTE (L&C)
02/13/17	(H)	L&C RPT 5DP 1NR
02/13/17	(H)	DP: SULLIVAN-LEONARD, STUTES, BIRCH, KNOPP, KITO
02/13/17	(H)	NR: JOSEPHSON
02/22/17	(H)	JUD AT 1:30 PM GRUENBERG 120
02/22/17	(H)	Scheduled but Not Heard
02/27/17	(H)	JUD AT 1:00 PM GRUENBERG 120
02/27/17	(H)	Heard & Held
02/27/17	(H)	MINUTE (JUD)
03/10/17	(H)	JUD AT 1:30 PM GRUENBERG 120
03/10/17	(H)	Heard & Held
03/10/17	(H)	MINUTE (JUD)
03/20/17	(H)	JUD AT 1:00 PM GRUENBERG 120
03/20/17	(H)	Scheduled but Not Heard
03/24/17	(H)	JUD AT 1:00 PM GRUENBERG 120

BILL: HB 108

SHORT TITLE: FIDUCIARY ACCESS TO DIGITAL ASSETS

SPONSOR(s): CLAMAN

02/08/17	(H)	READ THE FIRST TIME - REFERRALS
02/08/17	(H)	L&C, JUD
03/08/17	(H)	L&C AT 3:15 PM BARNES 124
03/08/17	(H)	Heard & Held
03/08/17	(H)	MINUTE (L&C)
03/10/17	(H)	L&C AT 3:15 PM BARNES 124
03/10/17	(H)	Moved HB 108 Out of Committee
03/10/17	(H)	MINUTE (L&C)
03/13/17	(H)	L&C RPT 7DP
03/13/17	(H)	DP: SULLIVAN-LEONARD, STUTES, WOOL, JOSEPHSON, BIRCH, KNOPP, KITO
03/24/17	(H)	JUD AT 1:00 PM GRUENBERG 120

BILL: HB 123

SHORT TITLE: DISCLOSURE OF HEALTH CARE COSTS

SPONSOR(s): SPOHNHOLZ

02/13/17	(H)	READ THE FIRST TIME - REFERRALS
02/13/17	(H)	HSS, JUD
03/02/17	(H)	HSS AT 3:00 PM CAPITOL 106
03/02/17	(H)	Heard & Held
03/02/17	(H)	MINUTE (HSS)
03/09/17	(H)	HSS AT 3:00 PM CAPITOL 106
03/09/17	(H)	Moved CSHB 123(HSS) Out of Committee
03/09/17	(H)	MINUTE (HSS)
03/10/17	(H)	HSS RPT CS (HSS) 5DP 2NR
03/10/17	(H)	DP: JOHNSTON, TARR, EDGMON, SULLIVAN- LEONARD, SPOHNHOLZ
03/10/17	(H)	NR: KITO, EASTMAN
03/24/17	(H)	JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

DEBORAH BEHR, Commissioner
Uniform Law Commission
Alaska Uniform Law Delegation
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 108, offered testimony and answered questions.

KEN HELANDER, Advocacy Director
American Association of Retired Persons (AARP)
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 108, offered support for the legislation.

REPRESENTATIVE IVY SPOHNHOLZ
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 123 on behalf of the House Health and Social Services Standing Committee, Representative Spohnholz, chair.

KIM STALDER
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 123, offered support for health care price transparency.

BECKY HULTBERG
Alaska State Hospital and Nursing Association

Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 123, offered support for health care price transparency, and answered questions.

KYLE MIRKA

Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 123, offered support for the legislation.

PERRY ALLARD

Senior Advisor

Wilson Agency

Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 123, offered support for the legislation.

RHONDA KITTER, Chief Financial Officer

Public Education Health Trust

Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 123, offered support for the legislation.

GEORGE McKEE, Member

Mat-Su Borough Assembly

Palmer, Alaska

POSITION STATEMENT: During the hearing of HB 123, offered support for the legislation.

JOHN MOOSEY, Borough Manager

Matanuska-Susitna Borough Assembly

Palmer, Alaska

POSITION STATEMENT: During the hearing of HB 123, offered support for the legislation.

T.J. ALINEN

Assistant Vice President

Human Resources

Denali Federal Credit Union

Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 123, offered support for the legislation.

TOM WESCOTT, President

Alaska Professional Fire Fighters Association

Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 123, offered support for the legislation, and answered questions.

BLANCHE SHEPPARD
Northrim Benefits Group
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 123, offered support for the legislation.

JEFF RANF, Consultant
Alaskans for Sustainable Healthcare Coalition
Unknown City

POSITION STATEMENT: During the hearing of HB 123, stressed the importance of health care transparency.

JASON HIPSZER
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 123, offered support for the legislation.

DENISE DANIELLO, Executive Director
Alaska Commission on Aging
Department of Health and Social Services
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 123, offered support for the legislation.

BERNICE NISBETT, Staff
Representative Ivy Spohnholz
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: On behalf of Representative Spohnholz, presented the sectional explanation of changes.

ACTION NARRATIVE

[1:04:51 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:04 p.m. Representatives Claman, LeDoux, Fansler, Eastman, and Reinbold (telephonically) were present at the call to order. Representatives Kreiss-Tomkins arrived as the meeting was in progress.

HB 69-REPEAL WORKERS' COMP APPEALS COMMISSION

[1:06:45 PM](#)

CHAIR CLAMAN announced that the first order of business would be HOUSE BILL NO. 69. "An Act repealing the Workers' Compensation Appeals Commission; relating to decisions and orders of the Workers' Compensation Appeals Commission; relating to superior court jurisdiction over appeals from Alaska Workers' Compensation Board decisions; repealing Rules 201.1, 401.1, and 501.1, Alaska Rules of Appellate Procedure, and amending Rules 202(a), 204(a) - (c), 210(e), 601(b), and 603(a), Alaska Rules of Appellate Procedure; and providing for an effective date."

CHAIR CLAMAN noted that subsequent to the last hearing, his office received the white paper prepared by the Office of Administrative Hearings during the prior governor's administration. He advised that the white paper had been distributed and members should have had an opportunity to review that copy.

[1:07:41 PM](#)

REPRESENTATIVE EASTMAN asked whether the intention of the chair was to pass this bill out shortly, whether there were any decisions to be made other than voting on the bill itself, and whether the white paper had inspired any thoughts.

[1:08:00 PM](#)

REPRESENTATIVE LEDOUX said that her reading of the white paper was that it appeared to be a discussion about the Workers' Compensation Appeals Commission's physical location rather than any substantive changes in procedure.

REPRESENTATIVE EASTMAN commented that he found the discussion of saving every single piece of paper since its inception interesting, and yet still not having a full file room. He asked whether there would be more testimony.

CHAIR CLAMAN advised that public testimony was closed, and if someone had questions they could be raised. He noted that his read on the white paper was a housing question about where to put the folks. The question this bill raised was whether the existing structure was working with four volunteer public members and one lawyer that sits as the chair of the commission. He offered that it appeared the public members are "a little on fringes of the process" and there had been a lot of turnover in the position of the commission chair. He continued that this

was a significant savings because according to the white paper, it could save a little rent and have a more efficient use of space. He related that the white paper would have saved some money but nowhere close to the same amount as in HB 69.

[1:10:22 PM](#)

REPRESENTATIVE EASTMAN noted that the jurisdiction was first with the superior court with enough consternation on all parties to create the commission, and now there seems to be a similar amount of consternation at the commission level. He commented that it didn't go so well in the courts, and nothing had changed to expect a better outcome than last time.

[1:11:16 PM](#)

REPRESENTATIVE LEDOUX advised that she was in the legislature when it was transferred from the superior court to the Workers' Compensation Appeals Commission. She said she never thought anyone had presented compelling evidence that there was a problem with the courts and that this new Workers' Compensation Appeals Commission needed to be created. She has ultimately come down on the side of the fact that almost everything else moves from an administrative hearing to the superior court. Therefore, should workers' compensation cases be treated differently, she asked. Her thoughts about moving jurisdiction to the Office of Administrative Hearings was that there had been no commitment that it would not require extra staff, and thus a fiscal note. Hence, she expressed, let it go back to the courts.

[1:12:58 PM](#)

VICE CHAIR FANSLER moved to report CSHB 69, Version 30-GH1773\0, as amended out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 69(JUD) passed from the House Judiciary Standing Committee.

HB 108-FIDUCIARY ACCESS TO DIGITAL ASSETS

[1:13:32 PM](#)

CHAIR CLAMAN announced that the next order of business would be HOUSE BILL NO. 108, "An Act adopting and relating to the Revised Uniform Fiduciary Access to Digital Assets Act."

[Chair Claman passed the gavel to Vice Chair Fansler.]

[1:14:12 PM](#)

CHAIR CLAMAN moved to adopt CSHB 108, Version 30-LS0210\U as the working document. There being no objection, Version U was before the committee.

[1:14:50 PM](#)

CHAIR CLAMAN, in presenting CSHB 108, Version U, advised that in 2015, 74,000 Alaskans, 9.9 percent of Alaska's population, were over the age of 65. Due to the increasingly computer savvy senior population, fiduciary access to digital assets is more important than ever. He explained that this legislation provides fiduciaries the legal authority to manage assets, such as computer files, digital photographs, and electronic communications.

[1:15:46 PM](#)

DEBORAH BEHR, Commissioner, Uniform Law Commission, Alaska Uniform Law Delegation, presented her testimony as follows:

Good afternoon. I'm Deborah Behr and I'm a Uniform Law Delegation member from the State of Alaska.

Alaska has been a member of the Uniform Law Delegation since about 1914. And, Uniform Law Commission is a -- what I consider to be a state right's organization. Each state sends their representative to meet annually to deal with problems that cross state lines, like commerce, like digital assets. And, we come up with a solution after great negotiations that works for all of the states. And this bill is the result of that in terms of digital assets. Twenty -- twenty-four states have already enacted it, it is the law in 24 states. And it is presently pending on 18 states, of which of those 18 states - 2 are sitting on governors' desks. So this is a -- an actively moving bill and it has been generally accepted in other states. And, the Uniform Law Commissioners have reviewed the -- the Alaska delegation have reviewed the CS and we do support the CS and the changes to it.

What I thought I'd do is give an overview of the bill and then ask if you folks have any questions. The Act itself was the result of senior groups coming to the

Uniform Law Commission and saying that they had difficulties when a family -- when a family member died and the fiduciary -- in typical cases a husband and wife, the wife is the fiduciary, she's the one that the husband trusted to deal with her -- his assets when he passed on. And, there's a problem in digital assets right now. The law has not kept pace with digital assets, such that in a typical case, the husband -- and the example of digital assets is like the family photo album. In my house, my husband takes all the family photos, puts them on some cloud or some -- some server that I don't quite understand, and has a -- they're password protected or encrypted so that the average person can't get to his photos. He has also signed a contract with the custodian of those photos and in that contract they agree to keep them confidential, people can't generally have access to it. And, that's generally where the problem is with digital assets and why they're different than your -- your deed, your house, your car, whatever will transfer at your death. Because they are password protected and there's also been a contract promise between -- in my case, it would be my husband that passed away, there would be a contract promise between the custodian Google, Facebook, whatever, to keep my husband's documents on file with them confidential.

[1:18:27 PM](#)

So, we -- we reported -- we received cases from all over the United States about people wanting to get even the most basic thing like the family photo album. And when they would go to Google or Facebook for it, and they'd say, "Geez, we'd really like to help you but your husband, the decedent - the user, when he signed the Terms of Service Agreement with Google or Facebook, he asked for us to keep it confidential. That's our standard form and we're stuck with that. Please get a court order." Court orders are expensive to get and there's a delay in getting them, and it's also at a time for families when it's very stressful for them, there's been a death in the family, there's been a disability in the family, and it just takes time. And, in some cases that time has actual money costs of family. One example that someone gave me was where someone had -- became disabled and he was a sole proprietor of a business. He has all his business

records in the cloud, paperless in his office and somebody had to come and run his business while he recuperated. Well, the problem is, the husband at that point did not have capacity to say what his passwords were or even where they were -- where the digit assets were located. So, it ended up being a big mess for the family. The family defaulted on loans, they had to pay extra interest that they wouldn't have to deal with. And so, that's -- those are the kinds of problems that came to the Uniform Law Commission.

1:19:58 PM

Why we thought a uniform law was important across state lines, because first of all, digital commerce goes across states lines. We don't have any choice in that. And also, residents of Alaska travel a lot. And so you want to make sure that their expectations are followed and then the bill basically says that you look at the residency of where the user, in this case my deceased husband, would be -- what kind of law would apply. So, in this case it would be Alaska law applied.

So, what is the solution that the Uniform Law Commissioners came up with? And, this -- this is a result of a two-year public process, its open public, anybody can come to our meetings. Google, Facebook, the industry was there, senior groups were there, and just anybody who cared to. And, after the end of a two-year process it came up with what I call and "opt in" system. So that the decedent, the person when they're alive has to say to Google or Facebook, this is how I would like my digital assets handled. And, it's called an "online tool," that's the buzz word for it. So, Google or Facebook will have an online tool so that when you open the account, it will come up as a separate electronic document that you will decide whether you want to use it or not. You don't have to, there's no requirement that you do. And, if you do use it, then that sets the clear path for the family photos to go to whoever the decedent had wanted at the time that he opened the account with Google or Facebook. And, you can change it readily, and the nice thing about it, people have asked me about it, you don't need a lawyer to do the online tool. You

can have a different person who has access to your family photos, or your music, whatever makes sense. Like in your financial records, you may not want your children to have access to them, you may want your brother who's a CPA to do them if you pass away. But, your music or the family photos can have children, something like that might be just fine. So, it's an opt in system, person does nothing, they don't -- can't take the benefits of the online tool, but the online tool is available for them.

1:22:10 PM

Okay, what happens if there is no online tool, or the person just decides not to use it, or in the case of probably all of us in this room, we have open digital accounts years ago and this tool wasn't available. Okay, so the tool isn't available, you go onto, what is called the -- you look at the person's will and this bill also covers trusts, powers of attorneys, guardianship and conservatorship. But, I'm going to focus on wills because it is easier to understand. If it is very clear in the will who you want your digital assets to go to, then that -- the bill sets a priority system for that. The issue that came up in, when we were dealing with this, is most wills are the typical, I give all my assets to my wife, or I give all my assets to my husband. And, that generally will -- causes a problem because you don't know whether it's digital assets and you also have this contract that your husband signed, or your wife signs saying that they would like to have this doc -- digital assets treated in a confidential manner. So, if it's clear enough in the will that you can see it, the digital assets were intended and there is expressed consent in there "I want my fiduciary, my wife, or whoever, to get access to them." Then that's the trigger, that's the second level of the online system.

The third level of -- supposing you have no online tool, wasn't available or you just didn't cho -- you were in a hurry and buzzed through that screen on it. Your will is a general will or a lot of Alaskans have no wills. So, you have no will, what happens next? It's the Terms of Service Agreement applied. And, that's the Terms of Service Agreement that my husband signed with Google or Facebook. They are generally

going to mean you've got a court case out of it because of -- in the Terms of Service Agreement there generally, you are going to keep this confidential and so you are basically stuck with a court case on it. So, but if somebody chooses to do nothing, the -- and doesn't do an online tool, their will doesn't address it, then you will look at the Terms of Service Agreement.

[1:24:26 PM](#)

This system has been supported by industry, Google, Facebook, have -- and technical groups have supported it, senior groups nationwide, our National Academy of Elder Attorneys have supported it. In Alaska we're very pleased that the Alaska AARP has supported it, a major trust company in Alaska have said "Yes, this is a problem in Alaska" and they support it, and Alaska Commission on Aging. You will see those endorsement letters in this file.

The other interplay with digital assets is, there is a federal law on this issue dealing with electronic communications and how you store them, but they have to be confidential. So, the bill sets up a system for a special treatment for email, because I think everybody in this room, when you write an email, you don't think people are going to be reading over your shoulder and looking at how you're doing it and all that. So, how the bill sets up a structure for email is, if you give consent, express consent - my fiduciary, my wife can have access to the email, no question, you can get it onto the bill. The other option is a court order because courts right now can monitor that when it's appropriate. If the person has not done an express consent, and there's no court order, then the best that the fiduciary gets is -- in this bill - is what is called the "Catalog of Electronic Communications." And, what that sets up is just the "to, from, and the date and the addresses on it." Not the subject line, not the body of it. Because the person did not express, during his life -- his or her lifetime, that they would want their electronic communications viewed by a third party, even a spouse. And, that's absolutely appropriate. The fiduciaries in this area have said they can do a lot with the name and the email address. They can go

and -- if you see 10 emails from Wells Fargo and the banks, they pretty much have a good idea you have some financial relationship with Wells Fargo and they can go forward and deal with them. And, a big issue that I've done some research recently on is, closing accounts. There's a whole lot of fraud in this area when somebody leaves a digital account open after someone dies. People will go in and open credit cards on it, they will send out flyers saying "I'm ill and I need contributions for my medical care." You really need to close these accounts and this will allow you to identify the accounts and go forward with it.

1:27:16 PM

REPRESENTATIVE LEDOUX noted that Ms. Behr referred to pictures and Facebook, and asked whether this would let someone into a regular Facebook account.

MS. BEHR responded that, currently, Facebook has what is called a "Legacy Form," so if a person opens a Facebook account today, her understanding is that the person can say "If I pass away, this is -- the person can have access to my private part of Facebook." She commented that she is not an expert in electronics and can get way ahead of herself easily, but her understanding is that there is a public part of it where anyone can look at it, and then there's a private part where the person has to friend people and people have to come into it, that's the part that this bill deals with. It also deals with email communications. The definition of digital asset is pretty broad, and it can include things that have a value, like domain names, bit coins - electronic currency. So, it's a big issue nationwide and a big issue that affects seniors.

1:29:01 PM

REPRESENTATIVE LEDOUX referred to people with prior Facebook accounts, and asked whether Facebook is amenable to sending a notice with a link to the legacy form.

MS. BEHR stated that she does not represent Google or Facebook and doesn't want to speak for these businesses. She did acknowledged that [the legacy form] is there and people have been using it. In response to the subset of Representative LeDoux's question, she said that people have asked her about training, and the senior groups advised that they will actively offer education on this topic, and she was advised by the Alaska

Bar Association's Committee on Probate that it is interested in making sure everyone is aware of it. Also, when searching [the internet], she found that a tremendous amount of material was out there. She commented that she doesn't believe it has trickled up to Alaska much, but it is an issue because Alaska does have a major trust company that reported it was a real issue for them.

[1:30:27 PM](#)

MS. BEHR continued her testimony as follows:

What happens if I'm a fiduciary and my -- the decedent, my husband whatever, has said "Yes, you may have access." All the duties and responsibilities the fiduciary has such as like, protecting information, checking on copyrights, things like that. They have the same responsibilities that you have for other assets that are in the estate. And, the bill sets up what kinds of things that they have to give to the Google or Facebook to get the information. It's usually things like a certified death certificate, things like that.

If -- the bill does provide immunity for Google or Facebook if they do it right, according to the bill, and if they respond appropriately within 60 days. And, that's a big deal because right now, this can languish on for long periods of time while Google is checking with its attorney or you're getting a court order. There's no real parameters of trying to get things out. This puts a limit of 60 days to make sure that things are done appropriately according to the bill.

Okay, the bill does not apply to digital assets of employers. So like there's a lot of private employers that pretty much allow people to use the business computer for their own use. It does not -- this bill does not deal with that, that's separate and apart.

Sec. 1 of the CS, and how it differs from the base bill, amends the Alaska statutory form of power of attorney bill to allow people, if they use the canned statutory form of power of attorney, that they can specifically give consent for access to electronic documents. And that was sort of brought to my

attention when I testified last time, that there was an amendment that needed to be done there, and that's appropriate.

[1:32:41 PM](#)

CHAIR CLAMAN referred to Ms. Behr's example of photographs and another example of emails, and noted that it sounds like the bill specifically distinguishes those two. For example, a person might be comfortable giving someone complete access to their Facebook account, but wanted to treat emails differently. In that case, the emails may be set up so that the information people would have access to would be the communication, who it was going to, and who it was coming from, only. This bill allows that distinction to be made, he quiered.

MS. BEHR answered that one of the concerns of privacy groups was to make sure that the content of the email was confidential. Also, within federal law, the content of an email has special privacy rights, which is why it requires an express consent to get at the content of an email, or a court order, she said.

[1:33:52 PM](#)

REPRESENTATIVE EASTMAN said he understands that the Uniform Law Commission decided a bill was appropriate in this instance, and asked why this would not be handled simply by encouraging those who write wills and templets for wills to make sure this was addressed in that will somewhere.

MS. BEHR explained that there is still the problem with Google or Facebook. For example, in the event her husband was deceased and he signed a contract with a third party to keep his information confidential with a third party, she has no relationship with that third party. That, she explained, is the overlay that makes this different from your house, car, or whatever. Also, her husband's photographs or business records are password protected or encrypted, and just putting it in a will does not deal with this major issue of the spouse not being a party to the contract. She asked, why Google would give her access to an account when Google doesn't know whether the two parties have any relationship with each other even though they are still married.

[1:35:31 PM](#)

REPRESENTATIVE EASTMAN asked whether the Uniform Law Commission distinguishes between emails and photographs on the one hand, and digital asset passwords on the other hand. In the event his spouse were to die or vice versa, the passwords would be the most sought after for bank accounts, or any number of different reasons. Those passwords would be part of the digital assets but do not necessarily fall in under Facebook or Google, but rather it is electronic information that was saved somewhere, he said.

[1:36:16 PM](#)

MS. BEHR pointed out that passwords are an interesting and difficult issue because passwords are generally linked with a particular account, such as bank account, Facebook, or whatever, and a person must know the password to have access. The problem with passwords is that they change, people have accounts that they don't necessarily, even for themselves, remember the password. A system must be provided in that situation where, for example a sole proprietor had a stroke and the [fiduciary] didn't know where the accounts or passwords were located. She related that "You have to be able to go directly into the accounts and be able to have a relationship with Google, Facebook, whoever has the electronic assets." She explained that the bill allows several ways to obtain the documents such as, in the case of a guardianship or conservatorship wherein they are limited to financial records. The bill sets up a system to deal with that because passwords change, and also a person doesn't want a booklet sitting around with passwords in it, she said.

[1:38:08 PM](#)

REPRESENTATIVE REINBOLD asked whether this has any impact on "our legislative Facebook accounts?" She referred to former Representative Gruenberg, and how it would have impacted the situation with Representative Gruenberg.

MS. BEHR responded that she was unaware of the situation with former Representative Gruenberg.

[1:38:46 PM](#)

REPRESENTATIVE REINBOLD asked Chair Claman to discuss the situation in that "they didn't have the ability to access some of his important legislative work and items in his office."

1:39:06 PM

CHAIR CLAMAN related that with respect to Representative Gruenberg and Facebook, Representative Gruenberg, for whom this room is named, liked books, papers, and the old style way of doing things and if he had a Facebook account, no one saw it. He opined that there were issues involving his actual papers and who had custody of the papers, and the email communications were probably more undertaken by his staff than Representative Gruenberg. He said was unsure how this would fit into that but in terms of the motivation for the bill, he could assure Representative Reinbold that Representative Gruenberg's recent death had absolutely nothing to do with the bill. The Uniform Law Commission asked him, as the House Judiciary Standing Committee chair, to introduce this bill due to the increasing need, on a national level, to address these issues. He added that as someone fairly familiar with the Uniform Law Commission's process, this legislation seemed like a good bill to bring forward due to the issues it raised.

CHAIR CLAMAN opined that in the world of an estate setting, or a severely disable person who can no longer manage their affairs, he believed the courts would view access to financial information from a bank, with that password, would be important information to let the estate know of their assets, how much money there was, and what other assets they have that need to be managed. Whereas, email communications and privacy concerns enters into a different realm in terms of where does privacy come in. He related that his executors would have an interest in knowing where the money was, which is different from emails in the realm of privacy.

CHAIR CLAMAN commented that most people do not have a will and the bill makes it easier in the instance of an interesse. It creates ways for family members to figure that in, and it also creates a forum for the contractual relationship between places like Facebook and email carriers to be able to deal with those things without a will setting out what to do.

1:43:40 PM

REPRESENTATIVE REINBOLD asked whether this bill would have any impact on a person's work account or a public office and said, for example, she has a "Representative Reinbold" Facebook account.

CHAIR CLAMAN opined that the Facebook account reflects a relationship between you and Facebook even though you have that relationship in your representative capacity, and your Facebook account is not formally part of what the Legislative Affairs Agency manages. Therefore, that becomes a relationship between you, the individual who happens to be a representative, and Facebook. Whereas, your email communications in your Representative Lora Reinbold account, managed by Legislative Affairs Agency, gets into the more complicated questions about public officials, public records, and who controls those.

[1:45:24 PM](#)

REPRESENTATIVE REINBOLD asked Ms. Behr to answer, as the former regulatory review [supervisor].

MS. BEHR advised that she had nothing to follow up with as to Chair Claman's answer.

[1:45:58 PM](#)

REPRESENTATIVE LEDOUX noted that when the discussion is about digital bank account information, she opined there must be a procedure where the executor goes to the bank after someone dies, and the bank provides the information. The digital account is contained in the app, she said.

MS. BEHR said that she noticed that younger attorneys at the Department of Law are moving their private personal financial accounts to be totally paperless. In the situation where a person has a totally paperless account, the concern is the executor locating the account and how they will find the account. In this bill, a person can receive a Catalog of Communications which depicts the following: To, From, Date of emails. For example, her husband recently received something from the bank advising that his tax return form was available and it was around tax time, this information offered a pretty good idea of some financial relationship. Trust companies believe this bill is a good idea because a person has to be able to gather information where the assets are located. The executor still has to go to the bank and fill out its paperwork according to the banking and stock broking laws. She pointed out that this bill helps to locate assets the family or fiduciary didn't know were available.

[1:48:27 PM](#)

REPRESENTATIVE LEDOUX commented that she likes the idea of this law and she wasn't trying to give Ms. Behr a hard time, but if she was the executor of her brother's estate and didn't know where he banked because everything was totally paperless, if she had any relationship with her brother she would probably know where he worked and where they were depositing his checks.

MS. BEHR agreed that that was definitely is a possibility, but there are people without a strong relationship with an employer or they are self-employed. This bill covers a multitude of situations, and it addresses the electronic age and brings the law into conformity with the paperless world, she explained. Therefore, it will become more and more difficult to locate the assets that a fiduciary and executor have a duty to gather, monitor, and pay bills.

[1:50:06 PM](#)

REPRESENTATIVE EASTMAN asked how the Uniform Law Commission looked upon instances where a third party might have an interest in whether or not certain records are disclosed. For example, a legislator specifies in their will that they want all of their digital assets available to their wife. Although, because they work for the legislature there are confidentiality expectations with regard to communications that might, in all likelihood, be part of those records. Or, someone works for the Army, or whoever, and their employer thinks it has an interest in the spouse not having access to those kinds of records, he offered.

[1:50:44 PM](#)

MS. BEHR pointed out that this bill does not change other laws. She referred to copyright, and noted that in the event she receives an asset that is copyrighted, she can't blast it all over the newspaper because she has to follow copyright law. In the event she was trying to get a death benefit for her husband's estate, and acquired confidential medical information, she has to treat those records confidentially, just as her husband would. She reiterated that this bill doesn't change other laws, and it doesn't change how she receives military benefits, or goes into someone's bank account because she still has to conform to the law the legislature adopted in banking, stock, military benefits, and such.

[1:51:36 PM](#)

VICE CHAIR FANSLER referred to industry buy in, and noted Ms. Behr mentioned that Google and Facebook were supportive of this. He asked whether this was a universal buy in, such that Microsoft and Yahoo are buying in, and whether there was 100 percent buy in, or whether some companies are not on board with this.

MS. BEHR explained that, first of all, this bill would not have passed in 23 or 24 states, and pending on two governor's desks if people had serious problems with it. She reiterated that it has been an open public process, and she specifically asked at the national office if they had received complaints or any serious opposition, and she was told "No."

[1:52:53 PM](#)

VICE CHAIR FANSLER inquired as to whether any thought was given, since there was work with the industry, whether the industry was willing to change the user license agreements or terms for their sites. He commented that that might be a way to assure everyone that they have to do this, rather than possibly having to change their will.

MS. BEHR answered that Google and Facebook would say, if they were at the witness table, that they are following federal law. Federal law has certain privacy restrictions on electronic communications; therefore, even if the user agreement was changed, there would still be the problem with federal law requiring that it be confidential, and that they have the consent of the person before "you can get into the content of their electronic communications." She offered that the nice thing about the online tool is that it allows industry to develop the kind of online tool they want for their business. She said she would imagine that Facebook has something different than Wells Fargo because the needs are different. She related that she heard Facebook was setting up legacy pages wherein a person can explain that their loved one passed away, the location of the service, and where to send donations.

[1:54:43 PM](#)

VICE CHAIR FANSLER referred to the industry end and the opt in systems, and asked whether they are general blanket opt in, such that Google has Google G-mail, Google-drive, the calendar and all the different suites. He further asked whether it is opt in by one or a general "you opt in and everything goes over?"

MS. BEHR replied that she doesn't have the expertise to answer that question. Although, the bill sets up for them to have an online tool and she was unsure whether Google has one for each. It's possible that they do because maybe the needs are different, but she was unsure, she said.

[1:55:42 PM](#)

VICE CHAIR FANSLER noted that Facebook is a blending of pictures and media that might be valuable, but a person has Facebook messenger which is similar to an email chat system. He asked whether this bill allows a person to delineate between those two. For instance, say he wanted his future spouse to have access to all of his pictures but not the messenger part of it ...

MS. BEHR opined that the protections for the content of electronic communications apply even if it was a blended account, a person still has to show consent because they have to get around federal law that says "consent." She noted that she reviewed some of the standard forms of consent and offered that it's not something someone easily gives, such that it is similar to the consent given to doctors to release medical records. She described that consent as a large couple of sentences so the person knows what they are doing, and what access they are giving up. Although, she explained, a more general consent would be fine for photographs.

[1:57:08 PM](#)

VICE CHAIR FANSLER surmised that Ms. Behr was saying that Facebook would require the more advanced consent because it has the photographs that need the general consent, but it definitely has the messenger portion to ...

MS. BEHR pointed out that she doesn't advise Google or Facebook, but she can tell them they need to look at federal law, and federal law requires a pretty good consent on giving out contents of electronic communications.

[1:57:39 PM](#)

VICE CHAIR FANSLER opened public testimony on HB 108.

[1:57:56 PM](#)

KEN HELANDER, Advocacy Director, American Association of Retired Persons (AARP), said it had been interesting listening to the testimony and questions because it underscored that this proposed legislation was the consequence of this digital age and the increasing role it plays in everyday lives. Society has long accepted the legally defined role of conservator, executor, and agent, in carrying out fiduciary duties with respect to tangible assets on behalf of the deceased individual or an incapacitated person unable to make decisions. He commented that the many accounts a person now opens digitally could include, commerce, banking, entertainment, research, and social networking, which are all complex and protected by each account's rules of privacy. He said, "I know we all read the fine print on those terms of service agreements," but nevertheless it can be confusing. Financial digital accounts go beyond banking and into an online brokerage as to how a person pays their bills, virtual property accounts like virtual currencies and bit coins, air miles, and he then listed examples of many more accounts. He explained that each of the different types of service have its own terms of service agreement, which is a contract and companies are reluctant to share information it promised not to share. The importance of being able to close accounts, avoid unnecessary expenses, prevent unauthorized account use, or identity theft, requires new approaches in managing these affairs. He pointed out that the bill gives Alaskans the right to treat their digital assets in the same manner they treat their tangible assets, it allows individuals to effect advanced life planning, and give a trusted family member the ability to settle the loved ones financial and personal affairs. He said AARP Alaska supports the passage of HB 108.

[2:01:38 PM](#)

VICE CHAIR FANSLER, after ascertaining no one wished to testify, closed public testimony on HB 108.

[2:01:59 PM](#)

REPRESENTATIVE EASTMAN asked whether there are any deviations between this bill and what the Uniform Law Commission recommended for those other states.

CHAIR CLAMAN noted that it is not the Uniform Law Commission's recommendation. He pointed out that during the course of drafting HB 69, they realized that last year the legislature changed the statutory Power of Attorney form. Consequently, he

said, a subsection was included into the Power of Attorney form and he advised that Sec. 1, page 3, of the bill is the modification to the statutory Power of Attorney form.

[2:02:53 PM](#)

MS. BEHR remarked that in the area of uniform law, it is important that this bill be comparable to what other states do, and she ran this base bill through the Chicago office of the Uniform Law Commission who said it was just fine. There are small style changes that are different for Alaska such that Alaska's definitions are at the end of the bill and in the uniform law they are at the beginning, but it substantively doesn't change anything. With regard to the amendment for the Alaska Pacific Power of Attorney form, the Uniform Law Commission would have no comment on that because it is not a uniform form used in other states, she offered.

[Vice Chair Fansler returned the gavel to Chair Claman.]

[2:03:54 PM](#)

[HB 108 was held over.]

HB 123-DISCLOSURE OF HEALTH CARE COSTS

[2:04:09 PM](#)

CHAIR CLAMAN announced that the final order of business would be HOUSE BILL NO. 123, "An Act relating to disclosure of health care services and price information; and providing for an effective date."

[2:04:37 PM](#)

REPRESENTATIVE IVY SPOHNHOLZ, Alaska State Legislature, presented the bill as follows:

HB 123, price transparency and health care cost is about providing power to consumers. Sir Francis Bacon, who is the father of the scientific methods and knowledge is power. I think we all know this to be true in our everyday lives, but health care is the only market in which we as consumers don't know the price before we have the -- before we consider buying it or we actually use the services.

This removes one of the most fundamental tenets of capitalism, that is the power of the consumer to make choices about what they do or what they don't purchase. While HB 123 isn't the silver bullet we would all like to see solve the problems of outrageous inflationary prices in health care costs. It does put consumers back where they belong and that's in driver's seat by ensuring that they have more information as they consider making medical purchases.

An example that I often think of is, you know, a situation that many of us have been in, and that is, you know, the parent who went to our kid's Tuesday night soccer game and there was a head-on collision between two eight-year olds. And, your child, your son or your daughter, may have, you know, bonked their head and as a conscientious parent you may take them to the ER if you're concerned or the pediatrician, if you're concerned that they may have a concussion. The doctor at this time can do a thoroughly rudimentary physical examination and make recommendations as to the, you know, next course of action without further information. How sometimes -- however, sometimes they may even, despite further evidence, recommend to you that you consider a very expensive MRI. An MRI which could cost \$2,400 but might not actually change the outcome of their recommendations to you. It's our theory, you know -- it's our theory that if consumers had that information they might actually ask the question, "Well, would that change your diagnosis, would it change the treatment, do you need that MRI in order to properly diagnose my patient -- my child?"

[2:07:02 PM](#)

What we've done in HB 123 is, in a manner that is as simple and cost effective to implement as possible, is to try to make sure that consumers have that kind of information. That they have that information in the reception area of the doctor's office that they go to, or the emergency room, that they can also look that information up online, and that that same information is sent in to the Department of Health and Social Services. We've done it in a way that we think reduces the amount of burden to providers. We understand that medical providers already have a lot of onerous burdens required of them in the medical

billing system where we just -- notorious for having about 10,000 different billing codes. But what this bill would do is simply require that they run a report of the 25, if they are an individual provider, or 50 if they are a larger facility most commonly offered procedures in the previous calendar year. Turn that into a pdf, put it on the wall in their reception area, put it on their website which any of us can do pretty simply, and then send it in in an email to the department. The department would simply put it on their website. This will give people a lot more information as consumers.

In the last committee in which this bill was heard there was a little bit of concern that some consumers might be turned off by the price that is being -- that's being proposed in this bill to be listed and that is the -- the undiscounted price. Thank you. Which is the -- which is the price before any preferred provider discounts are offered, before, you know, any other discounts or individual arrangements are provided. And so, we amended the bill to include the opportunity for a disclaimer. This was very important for community health providers who wanted to hear that -- that they could describe that you wouldn't necessarily pay the price that was being listed because they have a sliding fee scale according to your income. This also gives individual providers the opportunity to, you know, indicate that they are a preferred provider with individual health insurance plans. And, once again, to refer patients to the doctor or to the billing office for further information. So, I hope that we've been able to address that concern. The long and the short of this is that this is about making sure that consumers have the kind of information that they need to make informed decisions.

[2:09:56 PM](#)

CHAIR CLAMAN opened public testimony on HB 123.

[2:10:22 PM](#)

KIM STALDER acknowledged that her experience was not directly relevant to this bill, although, it does speak to transparency in health care. She then related the details of events after

her husband's diagnosis of sleep apnea and referral for a sleep study. She remarked that she is in favor of transparency that would allow her to access the information necessary for her insurance company in order to understand what her costs would be for a particular medical procedure.

2:12:47 PM

BECKY HULTBERG, Alaska State Hospital and Nursing Association, advised that the Alaska State Hospital and Nursing Association supports the concept of price transparency and consumer engagement in decision making. She related that the health care payment and delivery system is complex, which makes price transparency difficult and there is not a simple, easy solution for this problem without dismantling and rebuilding the entire system. This legislation is a good first step toward more transparent pricing, she said.

2:13:58 PM

KYLE MIRKA advised that he owns two businesses in Alaska and employs approximately 60 employees. During 2016, he was faced with the decision of whether or not to continue his employer sponsored health care plan because premiums had gone up almost 40 percent. He pointed out that discontinuing the plan and simply paying the AC fine would have been substantially cheaper, but he wanted to provide that benefit to his employees and ultimately decided to continue providing that plan as a benefit. Sadly, he said, the premiums did go up and the employees shouldered that burden of 40 percent increases. In the event similar price increases occur at the end of this year, his choice will be clear and he will not be able to provide those benefits moving forward due to the expense. He related that he shared this story to shed light on the fact that health care costs in Alaska are simply out of control. It is the only industry that an individual is unaware of the costs of service before the services are rendered. He acknowledged that he asked his doctor and dentist friends how it is that they charge so much more for services than in the lower-48, and the standard answer was that it is expensive to practice in Alaska. He said he does not claim to know their business, but he does know in his business, the products he sells are available virtually for the same price here, as in Seattle, Washington or Pocatello, Idaho, or Portland, Oregon. Of course, he related, there are added freight costs for goods and slightly higher labor costs, but nonetheless his prices in Alaska are similar to those in the lower-48. Mr. Mirka referred to the "rack rates" mentioned in

prior testimony from people in opposition to this bill. The testimony was that rack rates don't mean much given all of the discounts the providers may contribute, but he opined it is critical to remember that rack rates are the starting point in which bills are settled. That being said, he commented, the rack rates lead to pricing that is considered and settled (indisc.) 80th percentile. He stated that he believes in transparency, supports HB 123, and also supports removal of the 80th percentile rule.

[2:16:50 PM](#)

PERRY ALLARD, Senior Advisor, Wilson Agency, advised that she is a senior advisor with the Wilson Agency, and a charter member of the Alaska Association of Health Underwriters and sits on its legislative committee. She said she is testifying in support of HB 123, and explained that she has been in the insurance and employee benefits field for over 30 years in her capacity at the Wilson Agency, and that she works statewide with Alaskan employers and their employees and families who at some point are all consumers of health care. With the rising costs of health care in Alaska, it is difficult for individuals and families to cover the cost of this coverage in the first place. In many cases, she pointed out, the Wilson Agency came to the realization that it had become commonplace for Alaskan employers to increase deductibles up to \$2,000, and higher. The 2016 United Benefit Advisors Survey in Alaska pointed out that the average cost for "employee only" coverage is a little over \$14,000, before claims are incurred, and when adding those high deductibles to that, she related, that is a significant spend. In her role of assisting employees to be good consumers of health care, she teaches them to ask a lot of questions. In Alaska, she said, an employee can gather information regarding treatment facilities, treatment options, choosing physicians, discussing what tests are appropriate, and why, but in many cases the employee comes to a complete roadblock when attempting to obtain cost information.

That roadblock is the missing link for the employee to assess their options and make an informed decision. The Wilson Agency supports passage of HB 123. She remarked that the Municipality of Anchorage recently passed a similar ordinance requiring transparency, and HB 123 is a much needed (indisc.) to how they do business.

[2:19:38 PM](#)

RHONDA KITTER, Chief Financial Officer, Public Education Health Trust, advised that the Public Education Health Trust is a not-for-profit health insurance provider for employees of public education in Alaska. Currently, there are 17,000 Alaska residents with health insurance through the Trust. According to the Health Care Incentives Improvement Institute, "The question of how much does it cost is so deeply integrated into the act of buying that consumers often don't have to ask, prices are printed on menus, stamped on tags, and posted online among other places. Rarely do successful professionals get away with answering that question with 'It's hard to say, you'll know when you get the bill,' in response to consumers' inquiries about costs." As a patient, she said she is a consumer of health care with a deductible and co-insurance; however, her consumer experience begins long before she is a patient. Her employer and she are purchasing a product, a product whose costs or premium is tied back to expected costs. She said, "The theory of rack rates, undiscounted rates, or charge master, is not paid by anyone, or that only the insurance companies know the true consumer cost is not the full story." In the event the rack rate, the undiscounted amount, has no materiality, then why do they exist, she asked. The rack rate is what is driving the allowable amount as defined by the State of Alaska's 80th percentile regulation for out of network providers on fully insured products. She related that it is often heard that rates are confidential, yet once she has incurred the expense, the rack rate appears on her claim within the explanation of benefits, also showing the discount or co-insurance amount. However, she pointed out that service had already occurred and a legal obligation existed for her to pay the services she obtained. Once again, she stressed, consumerism begins before the patient experience. While some (indisc.) of placing the onerous either on the state creating a larger governmental administration department or the payor who has limited knowledge of all providers, and this bill correctly requires the disclosure of fees at the provider's office. While transparency for health care is not a silver bullet for a solution of sustainability, it is one silver BB needed to address the rising costs, she remarked.

[2:22:14 PM](#)

GEORGE MCKEE, Member, Mat-Su Borough Assembly, said he considers this legislation to be the single most important tool to begin controlling health care costs in Alaska. He referred to deductibles and co-pays which comes down to employee (indisc.),

everyone testified about that. He commented that the most important issue in this bill is that it will force competition into to the industry. He further commented that the difference between health care costs in Alaska and health care costs in the Pacific Northwest is absolutely staggering with the Alaska [deductible] being \$5,000, and if they went to Seattle they could save that money. The Matanuska-Susitna Borough is self-insured and will go over \$7 million in health care costs, and an 80 percent increase has been projected over the next 12 months. He related that anything to mitigate that, with the economics of the expenses related to the State of Alaska, would be helpful to its taxpayers, and the State of Alaska paid over \$500 million in its self-insured health care plan. The maximum penalty of \$2,500 really isn't one to deter people, and a large health care provider will simply write a check for \$2,500 and think nothing of it. The penalty is insignificant and insufficient, he stressed.

[2:25:14 PM](#)

JOHN MOOSEY, Borough Manager, Matanuska-Susitna Borough Assembly, advised that the Matanuska-Susitna Borough has over 300 employees and families for which it provides health insurance, and it supports this bill. He added that this will provide an incentive for the assembly to require its employees to make good health care decisions, and it puts power back into the common person where they can make good financial decisions. He offered his belief that this will drive up competition which will be better for health care, and noted that people leave the State of Alaska, and leave the United States because they can significantly reduce their health insurance costs. He reiterated that with the added competition, people will stay which will be better for Alaska's health care industry.

[2:26:30 PM](#)

T.J. ALINEN, Assistant Vice President, Human Resources, Denali Federal Credit Union, explained that the Denali Federal Credit Union has 325 employees currently residing in Alaska, and it is the third largest credit union in the state. He said he represents the organization and it is in support of HB 123. The escalation of costs in health care is one of the greatest challenges many organizations in Alaska are facing, and in the spirit of a free market it is important to understand that buyers and sellers engage in some degree of communication in determining services, goods, and pricing. Unfortunately, he commented, this does not occur within the health care industry

which ultimately impacts the pocketbooks of consumers and employers. Market transparency and having information available will assist the credit union's employees, and all Alaskans in becoming better consumers of health care, and hopefully drive the costs down. He indicated that there has been an emphasis on higher deductible health plans in Alaska, and many organizations have implemented the higher deductibles as a way to shift costs between employers and employees. In those situations, it means that these individuals are responsible for higher amounts at the frontend of their health care services and meeting their deductibles. He related that forty percent of the credit union's employees have high deductible health plans and must incur the first \$2,600 in health care expenses annually. It comes down to the fact that there is no real way for his employees to be good consumers because comparing costs between providers and facilities is not possible. In light of the health care crisis all Alaskans are facing the credit union believes it is necessary for the legislature to pass HB 123 to help manage health care better, he remarked.

[2:28:57 PM](#)

TOM WESCOTT, President, Alaska Professional Fire Fighters Association, advised that the Alaska Professional Fire Fighters Association supports HB 123, he has worked on health care issues as an elected union official over a decade, he understands its complexity, and this legislation is an important first step in tackling the out-of-control health care costs. Health care consumers in Alaska are affected by Alaska's geographic isolation and lack of information, and in order to act as rational consumers, one must be armed with information. Unfortunately, he related, obtaining price information for medical procedures is extremely hard and sometimes not even available. The lack of pricing information prevents Alaskans from being rational consumers. He advised that many of the firefighters in Alaska are in a health care trust with their brothers and sisters in the State of Washington, and their eyes have been opened to the price differences charged in both areas. He pointed out that Alaskan fire fighters currently pay 30 percent more for the identical plan as in the State of Washington, and "This last year spent nearly \$1 million more than we put in, and this is not related to usage." He continued that often times in Alaska common procedures can be three to six times the cost as in the State of Washington. Providing transparency can be done and it will help consumers act rationally. He then encouraged the committee to look at the Oklahoma Surgery Center as a place that provides pricing for all

procedures before walking in the door and walking out the door. He stressed that all Alaskans share in the burden of health care costs and the state has a real vested interest in bringing the cost of health care down. The Alaska Professional Fire Fighters are in support of HB 123, he reiterated.

[2:31:06 PM](#)

REPRESENTATIVE KREISS-TOMKINS asked Mr. Wescott whether he could remember the price spread between the different procedures and treatments provided in Alaska, the State of Washington, and the lower-48.

MR. WESCOTT opined that off the top of his head, the Alaska Public Media ran an article about an individual who fell on the blacktop and required shoulder surgery. The individual was quoted roughly \$60,000 or \$70,000 in Alaska, and had it done for \$14,000 at the University of Washington in Seattle. He related that within the Alaska Professional Fire Fighters Association Trust it has seen a breast cancer procedure, with the same codes, at \$60,000 in Alaska, and \$23,000 in the State of Washington. He offered that the data is being gathered, and added that it can be anywhere from twice as expensive to 1,000 times more expensive, and as a group it would like to spend its money at home in Alaska, but it is becoming harder and harder due to the prices charged for certain procedures. He continued that this would include shoulder surgery, ACL repairs, and a lot of the orthopedic injuries that happen to firefighters, police officers, construction workers, people in physical career fields, and Alaskans who like to enjoy the outdoors.

[2:33:32 PM](#)

REPRESENTATIVE KREISS-TOMKINS requested firm concrete numbers that the Trust has received from providers in Anchorage, and also equivalent quotes from providers in the lower-48 for certain procedures, treatments, or codes, to the extent Mr. Wescott was comfortable.

MR. WESCOTT responded that the Trust is working on gathering that data, but obviously it respects privacy. He advised it is attempting to lay out specific health care issues, such as the cost of an ACL procedure in Fairbanks, Seattle, or Spokane.

[2:34:40 PM](#)

REPRESENTATIVE SPOHNHOLZ pointed to the 2013 Alaska Workers' Compensation Fee Schedule Comparative Survey prepared by the Department of Labor & Workforce Development, and pointed out that it contains price comparisons for certain procedures in the State of Alaska. The survey includes Medicare schedules for Washington, Oregon, Idaho, and the Alaska median health care allowance price which is startling. She explained that at the top of the survey, the first procedure listed is an arthroscopy knee with meniscus repair, and the workers' compensation fee schedule is \$5,158.02, the Alaska median health care allowance is \$5,170.00, and the State of Washington's workers' compensation fee schedule is \$912.56. She said that this is an example of the price comparisons of which has already been prepared by the state.

[2:36:09 PM](#)

REPRESENTATIVE KREISS-TOMKINS noted that he had reviewed that survey and that it would be helpful for the Department of Labor & Workforce Development to speak to the origin of the data it received, and for instance, "cluster and bundle CPT codes to constitute a particular treatment or procedure, and standardize that in an apples to apples manner." He said he is also interested in Mr. Wescott's data as a more non-public sector actor.

CHAIR CLAMAN agreed that the information is important, but several people would still like to testify. In the event Representative Kreiss-Tomkins's follow-up with the previous testifiers was similar detailed data questions, he has their contact information.

[2:37:23 PM](#)

BLANCHE SHEPPARD, Northrim Benefits Group, advised she is testifying on her own behalf, works for the Northrim Benefits Group, and is a member of the Alaska Association of Heath Underwriters. Ms. Sheppard remarked that on April 2, 2016, she gave birth, was 28 years old, and it was the first time she had a major medical occurrence in which she was entirely financially responsible. Now that she works in the insurance industry, she can look at her [Explanation of benefits] EOBs and dissect them, question why something wasn't applied to her deductible or her out-of-pocket maximum. She said, "I have an in, most Alaskans don't have that in." She reiterated that she works in insurance and has looked at enough EOBs to know the going rate of some procedures, such as epidurals in Anchorage. In the event the

goal is to encourage patients to become the consumers they are in every other industry, the health industry must be required to support consumer driven health care by displaying those pricing structures openly, she related. Once Alaskan consumers begin to question, they also begin to self-advocate to educate themselves on their health care pricing, and pricing transparency does not hurt any industry in Alaska. In fact, she said, it behooves doctors to have educated and health driven patients, it behooves patients to be educated as to where they can obtain the best care at the most cost effective prices, and it behooves insurance companies to work with doctors to negotiate patient driven prices and; therefore, reduce claims' costs. She advised that some of the major insurers have travel programs and they reimburse patients who travel out-of-state for many procedures because, even taking into account the price of travel to the lower-48, the procedures are still significantly cheaper than in Alaska. Alaskans need to encourage physicians to rise to the challenge of keeping those patients in Alaska and supporting the Alaskan economy. She related that she doesn't just work in the insurance industry, she is an active participant in the health care system. She then offered support for HB 123, and advised that in the event the population can be educated to make healthy choices for their bottom line, and their personal health, everyone will succeed.

[2:40:29 PM](#)

JEFF RANF, Consultant, Alaskans for Sustainable Health Care Coalition, advised that he is testifying on behalf of the Alaskans for Sustainable Health Care Coalition, he is a consultant/broker, and has worked in the health insurance industry for 30 years. He advised that as a longtime veteran in the industry, he was compelled to express the importance of health care transparency because the nation's health care system is unique amongst the advanced industrial countries. America is still a free market system, and hence the reason transparency is needed, just as in any other industry. Most health care in this country, even though it is publically financed, it is still delivered privately. This is important in Alaska, not just because it has the most expensive health care in the USA, but because it is unknown why it is expensive. He suggested that one way to address it is to first understand where the cost to health care is coming from - it begins at the individual level. Despite what the committee may have heard from others in the past, the cost of insurance premiums is a direct result of the underlying costs of health care. However, he pointed out, a large percentage of Alaskans don't understand this and they only

see their health insurance premiums rising every year. He expressed that the importance of knowing the cost, and knowing what the out-of-pocket costs will be before the procedure, seems logical. Mr. Ranf advised that his health insurance requires him to pay the first \$5,000 before his plan kicks into gear, yet it seems logical that he would want to know what that \$5,000 was going toward, and any other expenses that it may apply to in his policy. He related that in the event there were potential costs that could be billed to him after his insurance reimbursed the provider, he would definitely want this information before the procedure was performed. He stated that HB 123 is just one step in the right direction.

[2:43:19 PM](#)

JASON HIPSZER advised that he owns a small business in Alaska, has professional licensing, and is testifying on behalf of his family and himself. He said he supports HB 123, because the health care costs in Alaska are quite extreme, and he advised that he has traveled and used other health care systems and received top notch service in other countries for a much lower price. There is not a lot that "we can control today, it's a very complicated system," but giving Alaskans transparency and the ability to see what they are spending their money on is vital for the free market to function the way it was designed in this country, he remarked.

[2:44:45 PM](#)

DENISE DANIELLO, Executive Director, Alaska Commission on Aging, Department of Health and Social Services, advised that the Alaska Commission on Aging is a governor appointed board, within the Department of Health and Social Services, that plans services for seniors. The Alaska Commission on Aging educates Alaskans regarding senior issues, and makes recommendations directly to the legislature and the governor regarding budget and policy items affecting seniors. On behalf of the commission, she stated, she is expressing its support for CSHB 123, and that seniors, more than any other age group, are consumers of health care and many seniors live on fixed incomes. She expressed that it is important that seniors have information about the cost of their health care services to make informed decisions and have meaningful conversations with their doctors and other primary care providers. She explained that the board conducted community forums at senior centers regarding the Medicaid redesign efforts for the Department of Health and Social Services, and seniors expressed this need.

2:46:06 PM

REPRESENTATIVE LEDOUX noted that seniors are covered by Medicare and in that situation, they would not be paying the cost of their health care.

MS. DANIELLO pointed out that the age of being considered a senior is "kind of a relative term," and it depended upon who was talking. For example, she said, in the area of social security, it could be 67 years of age, Medicare is 65, HUD is 50, and the Administration on Community Living is 60. Older adults are considered people within the ages 55-64, and they pay for their own health care. People age 65 years and older are, for the most part, covered by Medicare, but not everyone because some people did not contribute to Medicare and they would be responsible for paying their own health care costs.

2:47:18 PM

REPRESENTATIVE LEDOUX asked what people wouldn't have contributed to Medicare.

MS. DANIELLO answered that people who have lived a subsistence lifestyle, and people out of the work world for a variety of reasons and didn't contribute to Medicare.

2:48:18 PM

REPRESENTATIVE KREISS-TOMKINS noted to Ms. Hultberg that the bill specifies the top procedure codes, and that the Current Procedural Terminology (CPT) codes sometimes can be myopic. He referred to the average community and regional hospitals that offer a full spectrum of services and asked for examples of the top 25 procedure codes.

MS. HULTBERG responded that she did not have a specific example, but the way the bill is currently written, the Alaska State Hospital and Nursing Association anticipates that at the top of the list would be labs, CPT codes for blood draws, probably chest x-rays, and services quite common for a large number of patients. In speaking with some of the chief financial officers (CFO), they believe that quite a number of lab charges will be on the list. She related that she did not have examples of the top 50 because it hadn't quite polled an exact list from a facility and there may be surgery procedures, but they won't know until they run that data.

REPRESENTATIVE KREISS-TOMKINS said he would ask the same question of the sponsor as to whether she had a sense of what those codes might be or even a list from a specific provider.

2:50:31 PM

REPRESENTATIVE SPOHNHOLZ explained that she chose CPT codes at the recommendation of the Alaska State Hospital & Nursing Home Association (ASHNHA) in an attempt to find an item that could be a little more inclusive, for example, when looking at the price of a surgery it included all of the labs, x-rays, and anything else the patient may receive. She offered that the truth is that there isn't any one system that has already been designed out there to do that. The CPT code is the code of choice used and the Department of Labor & Workforce Development report was actually defined by a CPT code. She offered that when reviewing the report again, the second column from the left is the CPT code. She advised that a local ophthalmologist ran a list for the sponsor that as an example of the list he gives to his front desk billing staff.

REPRESENTATIVE SPOHNHOLZ pointed out that the committee had not yet gotten to the sectional and the members may be missing out on some key pieces of information that the sectional would describe. She then read a few of the actual billing codes the ophthalmologist used, and commented that is the reason for the specific language that the list be written in a common language the lay person could understand. She explained that a reason she asked to keep the list fairly brief was the level of added work asking doctors and/or healthcare facilities to provide, and over time it will become the normal description that lay people will need. The idea for this bill came to her from a constituent who mentioned that when she received health care in Florida, a price list was posted on the wall which caused her to feel empowered as a consumer. As the health care profession continues to evolve, that piece will be added into the data base in the future, she said.

2:53:37 PM

REPRESENTATIVE KREISS-TOMKINS commented that he would look at the workers' compensation report spreadsheet because if a person was having orthopedic knee surgery there would be a bevy of CPT codes, and those details are important. Ultimately, he said, there will be a list of information on the lobby wall that will be helpful and germane to the consumer. Also, he commented, he

spoke with someone in the health care community who pulled the top 10 CPT codes for a large self-insured entity, and they were so arcane that it didn't seem useful.

REPRESENTATIVE SPOHNHOLZ replied that that is why she re-included that language in the bill. Perhaps, she suggested, the committee should go through the bill because that discussion had not yet taken place, and the committee was having a discussion about what's in the bill when it hadn't agreed on what's in the bill yet.

[2:55:01 PM](#)

REPRESENTATIVE LEDOUX offered that she understands how a person would use the rack rate in the event they did not have medical insurance, but why would a person use the rack rate when covered by insurance. Although, she commented, one reason may be in trying to determine the deductible or a co-pay.

REPRESENTATIVE SPOHNHOLZ noted that that was a good question, and a question they spent a lot of time on trying to determine what price point they would use. She explained that in speaking with providers and health care field experts, often there may be as many as 11 different prices a provider may have for one given service. She further explained that the goal was to balance access to information with clarity of information and to focus in on one particular rate, and the undiscounted price, the rack rate, or the charge master by hospitals, is the rate on which all other rates are developed so she decided to opt in there because the rates do vary so much. Although, because that rate was different from what many people pay, she wanted to be clear that this was not the price most people would be paying and included a disclaimer at the bottom of the list. The average price paid for a service will vary for each provider depending on what kind of [insurance] patients they treat that year, such that in the case of a provider seeing a majority of Medicare patients over the last year, that price would be artificially low for someone paying through a private insurance company. In the event a health care provider accepted insurance but was not in the preferred provider network, once again the rate would be significantly higher. Therefore, she said she felt the need to start with some sort of rational basis that for all providers would be exactly the same since there was a fairness and transparency issue with all of the other prices.

[2:58:42 PM](#)

CHAIR CLAMAN, after ascertaining no one wished to testify, closed public testimony on HB 123.

2:59:06 PM

REPRESENTATIVE LEDOUX related that she understands why Representative Spohnholz drafted the bill in this manner, but the way the bill read now, she was unsure whether it did anything for the insured person, and asked the number of uninsured people

2:59:40 PM

REPRESENTATIVE SPOHNHOLZ responded that she could not answer off the top of her head as to how many uninsured people are located in Alaska, although it was in the thousands range. She commented that she was speaking as someone double insured, and that just because someone was insured did not mean they did not care about the cost of health care. She asks before any test, and before a prescription is offered about the cost because she wanted to be certain there was a high return on investment for whatever service was being offered. For example, there is disconnect as to consumers' out-of-pocket costs, and what something actually costs. She then offered an anecdotal personal experience. She then commented that the doctor's goal in her anecdotal experience was to put Representative Spohnholz out-of-pocket costs at an absolute minimum, when in fact the medicine cost roughly \$250, and she could have paid \$15 for an over-the-counter medicine. Representative Spohnholz advised that being the cost hawk she is, she cares about the total cost of health care even if her out-of-pocket would be lower, and after her experience she asks whether the prescription is the correct medicine for her.

3:01:49 PM

REPRESENTATIVE LEDOUX commented that her attitude was quite laudable but she was not positive that would be the general attitude of the insured public. Although, she related, assuming that it was, she still was unsure how the insured cost hawk patient would be able to figure out anything the way this bill is written using the rack rates.

REPRESENTATIVE SPOHNHOLZ pointed out that she was not proposing to solve all health care cost issues with this bill because it was designed to be one small piece of a large effort. She said she is calling it the first mile in a marathon, and noted there

are ways to come up with legislation that would be far more complex to implement such as giving individuals individual quotes. She said she did not take that route but rather aimed toward simplicity and getting more information out there. However, she pointed out, it is important to her to make sure that having more information in the public domain doesn't get in the way of people pursuing health care or determining their actual costs. In that regard, she reiterated that she made certain a disclaimer was allowed on the publication of prices, such as on any menu. She explained that this legislation does not limit the disclaimer and providers can say what they want to say, and clarify that the rack rate isn't necessarily the price a patient will pay. It is the rate on which all other rates are built and it is a fairly rational place to start, she reiterated.

[3:04:35 PM](#)

BERNICE NISBETT, Staff, Representative Ivy Spohnholz, Alaska State Legislature, explained the changes of HB 123 Version O to Version I, as follows [original punctuation provided]:

Section 1

AS 18.15.360(a) authorizes the Department of Health and Social Services to collect, analyze, and maintain databases of information related to health care services and price information collected under AS 18.23.400.

[3:05:17 PM](#)

MS. NISBETT advised Representative LeDoux that the committee was working off of Version I.

MS. NISBETT continued the sectional analysis, as follows [original punctuation provided]:

Section 2

AS 18.23.400 is a new section that mandates the disclosure and reporting of health care services and price information.

Subsection (a) (p. 2, lines 7-11) states that health care providers will compile a list of the 25 most

commonly performed health care services once a year by January 31st.

Subsection (b) (p. 2, lines 12-16) states that health care facilities will compile a list of the 50 most commonly performed health care services once a year by January 31st.

Subsection (c) (p. 2, lines 17-25) states that both the health care provider and health care facility will submit the list to the Department of Health and Social Services, and publish the list in a public area and on their website, if they have one.

MS. NIBETT added that the above information will be compiled annually.

Subsection (d) (p. 2, lines 26-29) states that the health care facility may include statement with their price list that the undiscounted prices may be higher or lower than the amount the individual will pay for their health care service.

Subsection (e) (p. 2, line 30, p. 3, lines 1-3) states that the Department of Health and Social Services will then gather the compiled lists from the health care providers and facilities and post the information on the Department of Health and Social Services website. The information will include the name and location of the health care providers and facilities. This will be updated annually into the department's database.

Subsection (f) (p. 3, lines 4-8) states that if a health care provider or health care facility has fewer than 25 health care services or fewer than 50 health care services performed, the provider or facility will compile a list of all of the health care services and procedures performed by the provider or facility.

Subsection (g) (p. 3, lines 9-15) states that if the health care provider or health care facility fails to comply there will be a civil penalty. The penalty for health care providers will be \$50 a day after March 31st up to \$2,500. The person penalized will be entitled to a hearing conducted by the office of administrative hearings.

Subsection (h) (p. 3, lines 16-31, p. 4, lines 1-21) goes over the definitions for department, health care facility, which excludes the Alaska Pioneers' Home and the Alaska Veterans' Home, an assisted living home, a long-term care nursing facility licensed by the department, a facility operated by an Alaska tribal health organization, and a hospital operated by the United States Department of Veterans Affairs, the United States Department of Defense, or any other federal institution. Health care provider and health care service are also defined, as well as undiscounted price, recipient, and third party.

Section 3

This bill will take effect on January 1, 2018.

[3:08:01 PM](#)

REPRESENTATIVE KREISS-TOMKINS said he was looking at the top 10 CPT codes that were pulled for a private insurer, as follows: 0300 laboratory general cost vacation; 0301 laboratory chemistry, which is similar to her testimony. Reviewing the workers' compensation data for the costs of an arthroscopic knee surgery, or a breast cancer procedure is helpful because that is the bulk of what people pay, those high price CPT codes for thousands and tens of thousands of dollars. He noted that the 25, 50, or 100 most common CPT codes health providers provide in plain English descriptions actually do not constitute the real price and cost of health care that people may be interested in. Maybe, he offered, an ophthalmologist is not so much the case because it is a specialty provider and the most common procedure they provide ends up being the expensive meat of what is charged. Although, he said, for general service providers, the "chicken peck" procedures will dominate the list even though people may be interested in the cost of an MRI, yet an MRI may not make the list.

[3:10:37 PM](#)

REPRESENTATIVE SPOHNHOLZ reiterated that they settled on the CPT code upon advice of Alaska State Hospital and Nursing Home Association (ASHNHA), and other professionals in the field. The CPT code is the standard used within the field and the goal was to make this practical and practicable for people to proceed forward in a simple way. She stressed that she wanted this to be simple to implement and to not create any bureaucracy

because, philosophically, they chose simplicity as the theme in how to approach this issue. Making it simple for a sole practitioners to implement because this legislation is not just about hospitals, it's about country doctors in Talkeetna and smaller communities. There is a simple comparison from provider to provider when using the code that is already being used within the field. With regard to whether or not a provider may have small individual procedures listed that could take up the bulk of the prices offered, she said that almost every general practitioner will have the flu shot and blood draw listed because those are common procedures. She said she is open to the possibility of including more services to make sure the legislation gets to the meat of the issue. She explained that they didn't want to require providers to list everything because there are over 10,000 Medicaid codes for health care services. Also, she pointed out, when addressing the need to know the prices for a total service, she had a small cyst removed from her wrist and in order to receive the total estimate in advance she had to obtain quotes from various institutions. She remarked she is not trying to deliver a comprehensive estimate for any one service through this piece of legislation because the bill asks for services by facility or provider. In the case of her surgery, she had a surgeon, anesthesiologist, surgery center, and labs, and most of those providers were within one [facility]. Although, she pointed out, when discussing an independent practitioner, a person may receive the estimate for the cyst removal from the doctor, and labs from a different place, and so on. She reiterated that this is not about providing individual estimates, and an individual estimate bill would be more along the lines of the ordinance recently passed in Anchorage. This particular bill is more about looking at the Meta level of health care costs, she said.

[HB 123 was held over.]

[3:16:49 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:16 p.m.