

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 30, 2018

2:48 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Jonathan Kreiss-Tomkins, Vice Chair
Representative Louise Stutes
Representative Gabrielle LeDoux
Representative David Eastman

MEMBERS ABSENT

Representative Chuck Kopp
Representative Lora Reinbold
Representative Charisse Millett (alternate)
Representative Tiffany Zulkosky (alternate)

COMMITTEE CALENDAR

SENATE BILL NO. 93

"An Act relating to security freezes on the credit reports or records of incapacitated persons and certain minors."

- MOVED HCS SB 93 (JUD) OUT OF COMMITTEE

HOUSE BILL NO. 184

"An Act adding to the powers and duties of the State Commission for Human Rights; and relating to and prohibiting discrimination based on sexual orientation or gender identity or expression."

- HEARD & HELD

HOUSE BILL NO. 355

"An Act relating to the crime of criminally negligent burning; relating to protection of and fire management on forested land; relating to prohibited acts and penalties for prohibited acts on forested land; and providing for an effective date."

- HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: SB 93

SHORT TITLE: CREDIT REPORT SECURITY FREEZE

SPONSOR (s) : SENATOR (s) COGHILL

03/13/17 (S) READ THE FIRST TIME - REFERRALS
03/13/17 (S) L&C
03/28/17 (S) L&C AT 9:00 AM BELTZ 105 (TSBldg)
03/28/17 (S) Bill Postponed to 1:30 p.m. 3/28/17
03/28/17 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
03/28/17 (S) Heard & Held
03/28/17 (S) MINUTE(L&C)
04/04/17 (S) L&C RPT 5DP
04/04/17 (S) DP: COSTELLO, HUGHES, STEVENS, MEYER,
GARDNER
04/04/17 (S) L&C AT 9:00 AM BELTZ 105 (TSBldg)
04/04/17 (S) Moved SB 93 Out of Committee
04/04/17 (S) MINUTE(L&C)
04/10/17 (S) TRANSMITTED TO (H)
04/10/17 (S) VERSION: SB 93
04/11/17 (H) READ THE FIRST TIME - REFERRALS
04/11/17 (H) L&C
04/17/17 (H) L&C AT 3:15 PM BARNES 124
04/17/17 (H) Heard & Held
04/17/17 (H) MINUTE(L&C)
01/19/18 (H) L&C AT 3:15 PM BARNES 124
01/19/18 (H) Moved SB 93 Out of Committee
01/19/18 (H) MINUTE(L&C)
01/22/18 (H) L&C RPT 6DP 1NR
01/22/18 (H) DP: SULLIVAN-LEONARD, STUTES, WOOL,
BIRCH, KNOPP, KITO
01/22/18 (H) NR: JOSEPHSON
03/19/18 (H) JUD REFERRAL ADDED AFTER RLS
03/28/18 (H) JUD AT 1:00 PM GRUENBERG 120
03/28/18 (H) Heard & Held
03/28/18 (H) MINUTE(JUD)
03/30/18 (H) JUD AT 1:00 PM GRUENBERG 120

BILL: HB 184

SHORT TITLE: DISCRIMINATION: GENDER ID.;SEXUAL ORIENT.

SPONSOR (s) : REPRESENTATIVE (s) JOSEPHSON

03/17/17 (H) READ THE FIRST TIME - REFERRALS
03/17/17 (H) STA, JUD
05/04/17 (H) STA AT 3:00 PM GRUENBERG 120
05/04/17 (H) Heard & Held
05/04/17 (H) MINUTE(STA)
02/27/18 (H) STA AT 3:15 PM GRUENBERG 120
02/27/18 (H) Heard & Held
02/27/18 (H) MINUTE(STA)

03/06/18 (H) STA AT 3:15 PM GRUENBERG 120
03/06/18 (H) Moved HB 184 Out of Committee
03/06/18 (H) MINUTE(STA)
03/07/18 (H) STA RPT 3DP 1DNP 2NR
03/07/18 (H) DP: TUCK, WOOL, KREISS-TOMKINS
03/07/18 (H) DNP: JOHNSON
03/07/18 (H) NR: BIRCH, KNOPP
03/08/18 (H) STA AT 3:15 PM GRUENBERG 120
03/08/18 (H) <Bill Hearing Canceled>
03/30/18 (H) JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

SARAH PERMAN, Staff
Representative Matt Claman
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing of SB 93, presented Amendment 1 to the legislation.

RYNNIEVA MOSS, Staff
Senator John Coghill
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing of SB 93, answered a question.

REPRESENTATIVE ANDY JOSEPHSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 185, presented the legislation as prime sponsor.

MEGAN HOLLAND, Staff
Representative Andy Josephson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 184, presented a sectional analysis, and a PowerPoint titled, HB 184: Non-Discrimination Based on Sexual Orientation, Gender, Identity, or Expression.

JENNIFER SMITH
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 184, testified in support of the legislation.

JAN CAULFIELD
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 184, testified in support of the legislation.

BRENDA BOWERS
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 184, testified.

LIN DAVIS
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 184, testified in support of the legislation.

ALYSON CURREY, Legislative Liaison
Planned Parenthood Votes, Alaska
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 184, testified in support of the legislation.

MINDY O'NEAL
Fairbanks, Alaska

POSITION STATEMENT: During the hearing of HB 184, testified in support of the legislation.

MELANIE LINDHOLM
Fairbanks, Alaska

POSITION STATEMENT: During the hearing of HB 184, testified in support of the legislation.

REVEREND LESLIE AHUVAH FAILS
Unitarian Universalist Fellowship of Fairbanks
Fairbanks, Alaska

POSITION STATEMENT: During the hearing of HB 184, testified in support of the legislation.

REBECCA DUNNE
Fairbanks, Alaska

POSITION STATEMENT: During the hearing of HB 184, testified in support of the legislation.

ALYSSA QUINPYNE
Fairbanks, Alaska

POSITION STATEMENT: During the hearing of HB 184, testified in support of the legislation.

CHRIS EICHENLAUB

Eagle River, Alaska

POSITION STATEMENT: During the hearing of HB 184, testified in opposition to the legislation.

MIKE COONS

Palmer, Alaska

POSITION STATEMENT: During the hearing of HB 184, testified in opposition to the legislation.

SERENE ROSE OHARA-JOLLEY

Fairbanks, Alaska

POSITION STATEMENT: During the hearing of HB 184, testified in support of the legislation.

MAUREEN LONGWORTH, M.D.

Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 184, testified in support of the legislation.

STEVE KOTEFF, Attorney

Alaska State Commission for Human Rights

Office of the Governor

Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 184, testified on behalf of the Alaska State Commission for Human Rights, and answered questions.

CAITLYN SHORTELL, Attorney

Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 184, testified in support of the legislation.

ACTION NARRATIVE

[2:48:39 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 2:48 p.m. Representatives Claman, Stutes, LeDoux, and Eastman were present at the call to order. Representative Kreiss-Tomkins arrived as the meeting was in progress.

SB 93-CREDIT REPORT SECURITY FREEZE

[2:49:10 PM](#)

CHAIR CLAMAN announced that the first order of business would be SENATE BILL NO. 93, "An Act relating to security freezes on the credit reports or records of incapacitated persons and certain minors."

[2:50:09 PM](#)

CHAIR CLAMAN moved to adopt Amendment 1, labeled 30-LS0265\0.2, Banister, 3/13/18, which read as follows:

Page 1, line 1, following "Act":

Insert "**relating to the fees that may be charged by a consumer credit reporting agency; relating to the placement of security freezes on credit reports and credit scores; and**"

Page 1, following line 3:

Insert new bill sections to read:

*** Section 1.** AS 45.48.160(a) is amended to read:

(a) Except as provided by [(b),] (c) [, OR (d)] of this section, a consumer credit reporting agency may not charge a consumer to place or remove a security freeze, to provide access under AS 45.48.130, or to take any other action, including the issuance of a personal identification number, password, or similar device under AS 45.48.120, that is related to the placement of, removal of, or allowing access to a credit report or credit score on which a security freeze has been placed.

*** Sec. 2.** AS 45.48.160(e) is amended to read:

(e) A consumer credit reporting agency may not charge a consumer a fee under [(b) OR] (c) of this section if the consumer has been a victim of identity theft and provides the consumer credit reporting agency with a complaint filed by the consumer with a law enforcement agency.

*** Sec. 3.** AS 45.48.170 is amended to read:

Sec. 45.48.170. Notice of rights. When a consumer credit reporting agency is required to give a consumer a summary of rights under 15 U.S.C. 1681g (Fair Credit Reporting Act), a consumer credit reporting agency shall also give the consumer the following notice:

Consumers Have the Right to Obtain a Security Freeze

You may obtain a security freeze on your credit report and credit score without charge [FOR \$5] to protect your privacy and ensure that credit is not

granted in your name without your knowledge. [YOU MAY NOT HAVE TO PAY THE \$5 CHARGE IF YOU ARE A VICTIM OF IDENTITY THEFT.] You have a right to place a security freeze on your credit report and credit score under state law (AS 45.48.100 - 45.48.290).

The security freeze will prohibit a consumer credit reporting agency from releasing your credit score and any information in your credit report without your express authorization or approval.

The security freeze is designed to prevent credit, loans, and other services from being approved in your name without your consent. However, you should be aware that using a security freeze to take control over who gets access to the personal and financial information in your credit report and credit score may delay, interfere with, or prohibit the timely approval of any subsequent request or application you make regarding a new loan, credit, a mortgage, a governmental service, a governmental payment, a cellular telephone, a utility, an Internet credit card application, an extension of credit at point of sale, and other items and services.

When you place a security freeze on your credit report and credit score, within 10 business days, you will be provided a personal identification number, password, or similar device to use if you choose to remove the freeze on your credit report and credit score or to temporarily authorize the release of your credit report and credit score to a specific third party or specific third parties or for a specific period of time after the freeze is in place. To provide that authorization, you must contact the consumer credit reporting agency and provide all of the following:

(1) proper identification to verify your identity;

(2) the personal identification number, password, or similar device provided by the consumer credit reporting agency;

(3) proper information necessary to identify the third party or third parties who are authorized to receive the credit report and credit score or the specific period of time for which the credit report and credit score are to be available to third parties.

A consumer credit reporting agency that receives your request to temporarily lift a freeze on a credit

report and credit score is required to comply with the request within 15 minutes, except after normal business hours and under certain other conditions, after receiving your request if you make the request by telephone, or an electronic method if the agency provides an electronic method, or within three business days after receiving your request if you make the request by mail. The consumer credit reporting agency may charge you \$2 to temporarily lift the freeze. You may not have to pay the \$2 charge if you are a victim of identity theft.

A security freeze does not apply to circumstances where you have an existing account relationship and a copy of your credit report and credit score are requested by your existing creditor or its agents or affiliates for certain types of account review, collection, fraud control, or similar activities.

If you are actively seeking credit, you should understand that the procedures involved in lifting a security freeze may slow your own applications for credit. You should plan ahead and lift a freeze, either completely if you are shopping around, or specifically for a certain creditor, days before applying for new credit.

You have a right to bring a civil action against someone who violates your rights under these laws on security freezes. The action can be brought against a consumer credit reporting agency."

Page 1, line 4:

Delete "**Section 1**"
Insert "**Sec. 4**"

Renumber the following bill sections accordingly.

Page 6, following line 28:

Insert a new bill section to read:

"* **Sec. 6.** AS 45.48.160(b) and 45.48.160(d) are repealed."

Renumber the following bill section accordingly.

REPRESENTATIVE KREISS-TOMKINS objected for purposes of discussion.

[2:50:23 PM](#)

SARAH PERMAN, Staff, Representative Matt Claman, Alaska State Legislature, explained that earlier this month the United States Senate passed S.2155 [of the 115th Congress, the Economic Growth, Regulatory Relief, and Consumer Protection Act] which included language eliminating consumer fees for placing or removing credit freezes. The change came after the Equifax data breach that is projected to have compromised the personal credit of more than 145 million consumers. Amendment 1, she explained, updates Alaska Statutes to remove credit freeze fees entirely. Under current Alaska law, only victims of identity theft are exempted from paying these fees, which range from \$2 to \$5 depending upon whether the fees are for placement or removal of a freeze, and Amendment 1 allows that all consumers may request placement or removal of a freeze without charge. She advised that Alaska would be the ninth state to eliminate these fees behind the States of Maine, Indiana, North and South Carolina, Maryland, New York, Colorado, New Jersey, and Washington D.C. Clearly, she said, consumers never request credit agencies to collect their personal data, thereby making it an unreasonable burden for consumers to have to pay to protect their information, she said. This amendment does not impact the \$5 fee contained within SB 93, for creating a credit report for a minor or an incapacitated person, it solely eliminates the fee for placing or removing a freeze.

[2:51:58 PM](#)

REPRESENTATIVE EASTMAN asked the bill sponsor's opinion of Amendment 1.

[2:52:17 PM](#)

RYNNIEVA MOSS, Staff, Senator John Coghill, Alaska State Legislature, advised that Chair Claman had discussed Amendment 1 with Senator Coghill, and he is in agreement.

[2:52:31 PM](#)

REPRESENTATIVE KREISS-TOMKINS withdrew his objection. There being no objection, Amendment 1 was adopted.

[2:52:55 PM](#)

REPRESENTATIVE KREISS-TOMKINS moved to report SB 93, labeled 30-LS0265\0.2, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being

no objection, CSSB 93(JUD) was moved out of the House Judiciary Standing Committee.

[2:53:15 PM](#)

The committee took an at-ease from 2:53 p.m. to 2:55 p.m.

HB 184-DISCRIMINATION: GENDER ID.;SEXUAL ORIENT.

[2:55:47 PM](#)

CHAIR CLAMAN announced that the final order of business would be HOUSE BILL NO. 184, "An Act adding to the powers and duties of the State Commission for Human Rights; and relating to and prohibiting discrimination based on sexual orientation or gender identity or expression."

[2:56:19 PM](#)

REPRESENTATIVE ANDY JOSEPHSON, Alaska State Legislature, advised that one remaining segment of society suffers from some discrimination in the State of Alaska. He clarified that he was not implying that there are not ongoing issues in Alaska involving race, gender, and national origin, that require the state's focus and intention. He then pointed to the one segment of society [the Lesbian, Gay, Bisexual, Transgender, Queer] (LGBTQ) community for which discrimination is lawful in Alaska, with the exception of Juneau and Anchorage. He offered that the issue of whether the Anchorage ordinance regarding the prohibition of discrimination based on sexual orientation, gender identity or expression, will survive a challenge will be decided via this upcoming election. Currently, other than the municipalities of Juneau and Anchorage, he explained that it is fully lawful to allow discrimination for public accommodations from lenders, landlords, subdivisions of the state, and local governments. Although, he said, there is a possible exception under Price Waterhouse [v. Hopkins, 490 U.S. 228 (1989)], and "sexual stereotyping." He advised that the Equal Employment Opportunity Commission (EEOC) has used that case and infused it with more meaning so in cases of employment discrimination under federal law, there can sometime be some protection. The Alaska Department of Law (DOL) informed the Alaska State Commission for Human Rights that this statute is the remedy necessary for Alaska's LGBTQ community to fully engage in every respect and receive the same economic benefits as others in society, he advised. Representative Josephson described the current process

regarding a violation, as follows: a complaint is filed with the Alaska State Commission for Human Rights; there would be an effort to mediate that complaint; failing that, at the commission's discretion, there could be an investigation into the complaint; depending on the results of that investigation and whether any compromise could be reached, the complaint would move to the commission; and from there, potentially, move to the superior court, and the Alaska Supreme Court. Fundamentally, he related, this is a moral issue and this legislation is an opportunity to offer further justice and make history, he remarked.

[3:01:04 PM](#)

MEGAN HOLLAND, Staff, Representative Andy Josephson, Alaska State Legislature, turned to the PowerPoint presentation "HB 184: Non-Discrimination Based on Sexual Orientation, Gender Identity or Expression" slide 3, and advised that historically speaking, Alaska has been a pioneer state in the advancement of civil rights protections. She advised that the original Alaska civil rights law [championed by Elizabeth Peratrovich and signed into law by Governor Ernest Gruening on February 6, 1945], became state law 20 years prior to the United States Civil Rights Act of 1964, enacted on July 2, 1964. The protected classes that exist within current statute include: race, religion, color, national ancestry, physical or mental disability, age, sex, marital status, changes in marital status, pregnancy, and parenthood. This legislation, she explained, adds an additional protected class of sexual orientation, or gender identity or expression, and based on current Alaska law, this class suffers discrimination as to employment, credit and financing, public accommodations, and sale, lease, or rental of property. She stressed that this legislation does not create any new rights or privileges that do not exist under current statute, it merely creates a new protected class to be included under the existing civil rights protections under state law.

[3:02:55 PM](#)

MS. HOLLAND turned to slide 4, "Alaska State Human Rights Commission (ASHRC) Resolution & Recent Action," and advised that the ASHRC does not currently process complaints on the basis of sexual orientation, gender identity or expression. She noted that the commission had advised that people do call with these complaints and are turned away because the Alaska Supreme Court determined that sex discrimination is not based on sexual orientation, gender identity or expression. However, she

pointed out, that decision does not coincide with how the United States Supreme Court and other federal courts have defined sex discrimination. A significant amount of caselaw has developed over the past few years that changed this definition of sex discrimination to be inclusive of discrimination based on sexual orientation, or gender identity or expression given that the discrimination based on these factors is inherently sex-based. The Alaska Supreme Court offered a ruling that did not necessarily matchup with the above definition, and the Equal Employment Opportunity Commission's (EEOC) interpretation of sex discrimination came from that developing caselaw. In 2016, the Alaska State Commission for Human Rights passed a resolution urging the state legislature to pass legislation identical to HB 184. The commission also worked with the Alaska Department of Law (DOL) to remediate this issue through the regulatory process and expand its definition of sex discrimination. That language was developed last year and after meeting with the DOL, the commission decided this issue would best be addressed through legislation rather than through the regulatory process, she said.

[3:05:32 PM](#)

MS. HOLLAND turned to slide 5, "LGBTQ Discrimination in Alaska," and advised that the state does not have a lot of data on LGBTQ discrimination because most of the data obtained is through other states and their agencies that process complaints, and Alaska currently does not process complaints. Although, a survey specific to Anchorage was performed in 2011, and it found that LGBTQ Alaskans do experience discrimination in the areas of public accommodations, employment, and all of the areas under protected civil rights law, and she opined that there is a large amount of anecdotal evidence to support that finding as well. She referred to the map located on slide 5 to demonstrate that the locations of LGBTQ discriminations are not specific to any one area or district in Alaska, and she pointed out that LGBTQ discrimination spans from the far North to the far South, and this is not an urban or district issue because it affects the entire state.

[3:07:01 PM](#)

MS. HOLLAND turned to slide 6, "National Rates," and advised that the slide presents a better idea of the fact that this discrimination is an issue. This data was taken from various states that process complaints of discrimination based on sexual orientation, gender identity or expression. The rates can be

comparable to discrimination based on race or sex, depending on the type of discrimination, and Alaska is not included in this data because it does not process complaints, she reiterated.

[3:07:44 PM](#)

MS. HOLLAND turned to slides 7-9, "Existing Protections" and noted that on a national level, 20 states and Washington D.C., prohibit discrimination based on sexual orientation, or gender identity; two states prohibit discrimination based solely on sexual orientation; seven states prohibit discrimination against public employees based on sexual orientation, or gender identity; and five states, including Alaska, prohibit discrimination against public employees based solely on sexual orientation. Alaska does have municipal ordinances in Juneau, Anchorage, and Sitka that are "incredibly similar" to HB 184, and the anti-discrimination ordinance in Bethel is specific to employment and does not cover every area of the civil rights laws that this legislation covers.

[3:08:51 PM](#)

MS. HOLLAND turned to slide 10, "Equal Employment Opportunity Commission (EEOC)," and advised that some remediation is available through this national commission if an LGBTQ individual in Alaska is discriminated against in the area of employment specifically. The individual can call the EEOC to file a complaint; however, this remediation is not sufficient because it is a federal organization and federal bureaucracy is difficult to navigate. The EEOC has a limited ability to process these complaints and these issues, she said.

[3:09:38 PM](#)

MS. HOLLAND turned to slide 11, "Where's the gap?" and advised that unless an LGBTQ Alaskan is a resident of a protected municipality, they have no protections in areas of: housing, financing, credit, public accommodations, and unlawful practices by the state or its political subdivisions. She advised that there are some remediations available in the area of employment but they are grossly unequal.

[3:10:05 PM](#)

MS. HOLLAND turned to slides 12-13, "LGBTQ Non-Discrimination Policies: Good for Commerce," and paraphrased slide 13 as follows:

96% of top Fortune 500 companies include sexual orientation in their non-discrimination policies and 70% include gender identity

53% of the top 50 federal government contractors link internal policies prohibiting this form of discrimination to improving their bottom line

Economic benefits include:

Higher recruitment & retention

Increased generation of ideas & innovation

Diversified consumer base

Increased employee productivity

Securing more public sector clients

Improved employee relations & morale

MS. HOLLAND explained that the above data is the result of a 2011, Williams Institute [UCLA Law] study that surveyed employers with these types of policies. She advised that included on this slide is a list of companies employing these policies, and noted that the Anchorage Economic Development Corporation, Anchorage Chamber of Commerce, and Visit Anchorage Alaska, all support the Anchorage non-discrimination ordinance. Slide 13, she pointed out, shows that this is becoming good business practice that has taken place without the requirement of law.

[3:12:24 PM](#)

MS. HOLLAND turned to slides 14-21, "Sectional," and continued paraphrasing the sectional analysis as follows [original punctuation provided]:

Section 1: Adds "sexual orientation, gender identity or expression" to the list of protected categories that currently include race, religion, color, national ancestry, physical or mental disability, age, sex,

marital status, changes in marital status, pregnancy, or parenthood.

Section 2: Adds "sexual orientation, gender identity or expression" to the list of discriminations which are cause for public concern, and asserts the need for the state to prevent such discrimination in employment, credit and financing practices, public accommodations and sale, lease or rental of real property.

Section 3: Adds "sexual orientation, gender identity or expression" to the categories of protected civil rights.

Section 4: Adds "sexual orientation, gender identity or expression (SOGI)" to the prohibitions against unlawful employment practices.

Refusal of employment because of SOGI, when demands of the position do not require distinction on the basis of SOGI.

[3:13:36 PM](#)

MS. HOLLAND noted that the above requirements include other protected classes, for example, pregnancies are a protected class with an exemption. She offered that if a pregnant woman applied for a job that required her to "be hanging upside down or doing something incredibly labor intensive," the pregnant woman could lawfully be turned away from that job.

MS. HOLLAND continued paraphrasing the sectional analysis as follows [original punctuation provided]:

Labor organizations cannot expel or refuse membership due to an individual's SOGI

Employers cannot circulate discriminatory statements

Employers may not fire a person for filing a complaint

Section 5 inserts: Ministerial exemption, under Hosanna-Tabor v. EEOC, Supreme Court case, ruled that

federal discrimination laws do not apply to religious organization's selection of religious leaders

Language does not affect the implementation of this legislation, as it is a federal interpretation that would be applied regardless.

[3:15:09 PM](#)

MS. HOLLAND noted that a more expansive religious exemption is contained within current state law, and that is the definition of employer within this area of statute.

AS 18.80.300(5), definition of employer

"A person, including the state and a political subdivision of the state, who has one or more employees in the state **but does not include a club that is exclusively social, or a fraternal, charitable, educational, or religious association or corporation, if the club, association, or corporation is not organized for private profit.**"

Section 6: Adds "sexual orientation, gender identity or expression" to the prohibitions against unlawful practices in public accommodations

Refusal or denial of any services, goods, facilities, advantages or privileges because of SOGI

Circulation of discriminatory communication

Excludes physical fitness facilities which may place limits based on sex

AS 18.80.300(16) public accommodations definition

"a place that caters or offers its services, goods, or facilities to the general public and includes a public inn, restaurant, eating house, hotel, motel, soda fountain, soft drink parlor, tavern, night club, roadhouse, place where food or spiritous or malt liquors are sold for consumption, trailer park, resort, campground, barber shop, beauty parlor, bathroom, rest house, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company, and all other public amusement

and business establishments, subject only to the conditions and limitations established by law and applicable alike to all persons."

Section 7: Adds "sexual orientation, gender identity or expression" to the prohibitions against unlawful practices in the sale or rental of real property

Refusal to sell, lease, or rent property because of SOGI when otherwise qualified

Discrimination because of SOGI in a term, condition, or privilege relating to the use, sale, lease, or rental of real property

Making a written inquiry of SOGI

Falsify availability of property

Blockbusting

Publishing statements that indicate preference in regard to SOGI

Section 8: adds "sexual orientation, gender identity or expression" to the prohibitions against unlawful practices in financing and accreditation

Discriminate because in applications for financial assistance or credit

Discriminate in a term, condition, or privilege relating to the obtainment or use of the institution's financial assistance or credit

Make or cause written inquiry of applicant's protected classes

Section 9: adds "sexual orientation, gender identity or expression" to the prohibitions against unlawful practices by the state or its political subdivisions

Refusal or denial of any local, state, or federal funds, services, goods, facilities, advantages, or privileges

Circulation of discriminatory communication implying refusal or denial of services

Section 10: adds "sexual orientation, gender identity or expression" to the prohibitions against unlawful practices in blockbusting, or practices by real estate agents to close a transaction

Blockbusting: the practice of persuading owners to sell property cheaply because of the fear of people of another race or class moving into the neighborhood, thus profiting by reselling at a higher price.

Section 11: defines "sexual orientation" and "gender identity or expression"

sexual orientation: means heterosexuality, homosexuality, and bisexuality.

Gender identity or expression: means having or being perceived as having or expressing a gender, self-image, appearance, or behavior, regardless of whether that gender, self-image, appearance, or behavior is different from that traditionally associated with the sex assigned to that person at birth.

[3:18:10 PM](#)

REPRESENTATIVE KREISS-TOMKINS referred to Ms. Holland's statement as to how the EEOC adjudicates sexual orientation, or gender identity [or expression] related employment discrimination complaints and asked whether data relating to Alaska for such complaints exist, and if so, to explain that data.

MS. HOLLAND responded that she was unaware whether the EEOC has that data, and she will research that issue.

[3:18:56 PM](#)

REPRESENTATIVE LEDOUX asked how, if at all, this bill may affect intercollegiate or high school sports events as to transgender men who may identify as women.

MS. HOLLAND replied that HB 184 includes the state and its political subdivisions, which would include the Alaska public

schools. She said that she would research the question but believes Alaska's school would be included within this policy and the same concept would be applied.

REPRESENTATIVE JOSEPHSON added that his office would check, for example, a test case with the Anchorage School District, and he would not be surprised if its athletics office follows some sort of protocol. He commented that he suspects there is enough authority in this legislation to protect the interests to which Representative LeDoux referred. While the issue is not directly noted in the legislation, it is certainly within the spirit of the legislation. It could be that some other community has a protocol of some sort and Anchorage does not, but he tends to think Anchorage may have a protocol, he offered.

[3:21:12 PM](#)

REPRESENTATIVE STUTES referred to the definition of employer and noted that it appeared odd because the definition would exclude organizations, such as the American Legion, Elks Club, or any club along those lines.

MS. HOLLAND answered that in the event the organization is not for-profit, the person in charge is not defined as an employer within this area of statute.

CHAIR CLAMAN noted that, just this week, the Alaska State Commission for Human Rights asked him why so many non-profits are excluded.

REPRESENTATIVE STUTES remarked that some people in these types of organizations are employees, such as bartenders, and she finds it odd that they would be excluded.

REPRESENTATIVE JOSEPHSON added that when he taught constitutional law, under Boy Scouts of America et al. v. Dale, [530 U.S. 640 (2000)], United States Supreme Court Justice William Rehnquist found that the Boy Scouts of America could discriminate against a boy scout troop leader who was a gay man, and United States Supreme Court Justice John Paul Stevens wrote an important dissent. Since that time, he advised, the Boy Scouts of America reversed its course and in effect took its victory from the court and tore it up, saying that it would admit "who we want to admit."

[3:23:17 PM](#)

REPRESENTATIVE LEDOUX noted that the protocol in the Anchorage School District might be covered under the [September 2015,] Anchorage Assembly Ordinance [AO-96, updating its non-discrimination laws to include sexual orientation, or gender identity]. She remarked that she wanted to be clear as to whether the intent of this legislation, or the spirit of this legislation, is that a transgender man who identifies as a woman could compete in women's athletics.

REPRESENTATIVE JOSEPHSON responded that when pondering this legislation, his thoughts were of other issues, such as a gay or lesbian couple being able to rent an apartment or being treated with respect and equality when applying for a job. While the issue is not expressly covered in this legislation, he said he could see a court ruling that based on common law, this bill's successful passage, and the Anchorage ordinance, such a result could occur. He acknowledged that he took Representative LeDoux's point, he would look for a concrete answer, and related that because Anchorage currently has an ordinance, it may not be the best test because the Anchorage School District may feel compelled to have the protocol he had addressed.

[3:25:11 PM](#)

REPRESENTATIVE EASTMAN asked the significance the Anchorage Chamber of Commerce held in this presentation.

REPRESENTATIVE JOSEPHSON responded that, for him, it has profound significance because it says that the folks on the Anchorage Chamber of Commerce want to be on the side of tolerance when it comes to the LGBTQ community.

[3:26:22 PM](#)

REPRESENTATIVE EASTMAN asked whether there was concern that the bill's passage may result in a person who expresses as a female, and yet has the physical attributes of a male, "would be not able to be prohibited from competing" in women's boxing, for example.

REPRESENTATIVE JOSEPHSON responded that the Anchorage School District does not offer women's or men's boxing and opined that women's boxing occurs in an amateur or professional status. He related that he shares in the concerns about the outlying hypotheticals that may or may not occur. Economically and morally, he offered, his position is that those situations must

be worked through one at a time, otherwise the issue is effectively abandoned and "we're just stuck."

[3:28:19 PM](#)

REPRESENTATIVE EASTMAN asked that due to reports of women being on the receiving end of that sort of event taking place and being severely injured, whether the goal should be to structure this bill in such a manner that that does not take place in Alaska.

REPRESENTATIVE JOSEPHSON referred to the Constitution of the United States, Ninth Amendment, which read as follows:

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

REPRESENTATIVE JOSEPHSON explained that the Ninth Amendment was designed to point out that it is not possible to list everything in the realm of human nature within the first ten amendments. Similarly, he remarked, the legislature cannot possibly codify every potentiality that may spin off from this legislation.

[3:29:40 PM](#)

CHAIR CLAMAN opened public testimony on HB 184.

[3:30:15 PM](#)

JENNIFER SMITH advised that she has been a resident of Juneau since 1971, and she supports HB 184 because it extends Alaska's anti-discrimination statutes to protect against discrimination based upon sexual orientation, or gender identity. Ms. Smith advised that she had served as a commissioned officer in the United States Air Force for 13 years and entered the service through the ROTC program at the Massachusetts Institute of Technology (MIT). At the time of graduation, "I was deeply in love" with another young woman, but the relationship was eventually crushed under the weight of the "very real fear" of a dishonorable discharge accompanied by a prison sentence in a federal penitentiary should the relationship be discovered. Thankfully, as a nation, society has progressed to the point that all people are welcome to serve in the military without regard to sexual orientation, or gender identity, and their families are extended the same benefits as all other service member families. She related that the nation has come so far

that it appears strange this issue is even up for debate. However, she pointed out, given the recent state of discrimination and discriminatory ordinances cropping up at the local level, it is important to act together as a state to put this issue to rest and help ensure that all Alaskans are treated fairly. The United States Pledge of Allegiance is a testament to this nation's values and it ends with the words "one nation under God, indivisible, with liberty and justice for all." Speaking as one who has been legally discriminated against, she said she knows that no matter how fervently she believes in these ideals, the fact is, those words ring hollow when she knows that "all" does not include her. Historically, Alaska led the United States in tackling discrimination when its territorial legislature passed the Anti-Discrimination Act of 1945 [signed into law by Alaska Governor Ernest Gruening on February 16, 1945] and, she pointed out, it was the first anti-discrimination act in the nation. Ms. Smith asked that the committee build on that leadership and consider the words "liberty and justice for all," and vote yes to move HB 184 forward and help ensure that Alaska embodies the values of "freedom and justice for all."

[3:32:54 PM](#)

JAN CAULFIELD advised that she has been a resident of Alaska since 1979 and offered support for HB 184 because the State of Alaska's non-discrimination laws should apply to everyone, including its LGBTQ community members. She extended pride in Juneau because it previously adopted these protections within its own municipality. Frankly, she pointed out, it all appears to be straight-forward because every person living in Alaska has the same civil rights and should be covered under Alaska's non-discrimination law. Ms. Caulfield stressed that by omitting Alaskans from these non-discrimination laws due to the circumstances of their personal and private lives, the state implies that LGBTQ individuals are not worthy of their civil right protections and thereby, deny their remedies. Extending protections through HB 184 will solve this omission and relieve the uncertainty and fear that is currently faced by LGBTQ individuals and their families. This is the 21st Century, she expressed, and Alaska needs to update its laws and protect all of its residents equally. One of the reasons this legislation is important to her, she advised, is that within her own family group of generations of siblings, nieces and nephews, there are transgender, non-binary gender, gay, lesbian, (indisc.) gender, and heterosexual individuals. Her family members, she pointed out, are all simply trying to do what people do, they are trying

to work, have safe homes, marry, raise children, and provide financial security for each other and their children. It is her belief, she related, that everyone deserves to have their civil rights protected by our state government to ensure that those goals can be achieved. She asked the committee to look at the big picture that Representative Josephson spoke to in response to some of the committee member's questions, and to not simply focus on what appears to be smaller issues that may need to be determined after the implementation of HB 184. Ms. Caulfield reiterated her request that the committee not lose track of the big picture which includes: employment, homes, finances, and all matters an individual and a family may undertake.

[3:35:17 PM](#)

BRENDA BOWERS advised that she has lived in Juneau for approximately 50-years, and presented pictures and offered a short story as follows:

I have a picture here of two little girls, identical twins, I am one. My sister became my brother. At somewhere around 40-years old, he identifies as transgender male. And, what I see before us right now is, we have an issue where we have gender identity on the table to be considered for non-discrimination. We have gender expression and sexual orientation. So, to sum up real quickly, sexual orientation: who do I want to sleep with? Gender identity: who am I am? How do I identify? And, gender expression, which opens up a huge, huge, door. We all have gender expression, we all have gender identity. Some of us, including myself, have never had to question it, consider it. I have the privilege of walking down the hall and going to the bathroom without question, no one will stop me, I don't have to fear for my safety. And, however, my brother does. And, I also wanted to show this picture because this -- these are the identical twins today. So, I'm sorry for the people in the back who can't see. We are still identical twins, we present very differently, our gender expression is very different. That's what you see and that's where a lot of discrimination takes place. Gender identity, we don't know unless we ask. Sexual orientation, we don't know unless we ask. I really had the pictorial story in mind and I think I've expressed that, and I believe this is a basic human rights safety issue, as well as just civil rights.

[3:37:58 PM](#)

LIN DAVIS advised that she lives in Douglas, is a retired state employee, and worked at the Juneau Job Center for 15 years where she often witnessed LGBTQ job discrimination and described it as a wound to the soul. Last week, she said, she had an experience that made her freshly proud to be an American, as follows:

I got to see Hamilton, the musical, in New York City. And, the experience of disfavored groups, people of color and immigrants who hammered out our democracy was very inspiring. And, I have a question for you who remain today, have you been able to take in your American history classes an LGBTQ history survey going back to the American Revolution? Anybody had that?

CHAIR CLAMAN explained that this is public testimony and questions are not asked of the committee.

MS. DAVIS continued as follows:

It's rare that this is offered and that people don't really know the wide scope of our judicial legal history. You may remember Ted Olson, the famous Republican lawyer who argued Gore v. Bush, [531 U.S. 98 (2000)] and won. And then, he studied American LGBTQ history, discovered how troubling it was, and he went on to work on [Defense of Marriage Act] DOMA, Edie Windsor [United States v. Windsor, 570 U.S. 744 (2013)].

Right now, judicially, all of you have a profound opportunity to help us follow in the footsteps of Elizabeth, and Roy, ANS, ANB, and make us freshly proud to be Americans, it's the right time to do the right thing.

[3:40:09 PM](#)

ALYSON CURREY, Legislative Liaison, Planned Parenthood Votes, Alaska, advised that Planned Parenthood Votes, Alaska is proud to stand in support of HB 184. Quite simply, she said, all people, no matter who they are or who they love, should be free to live their lives without discrimination or fear of discrimination based on their personal and private lives. As a health care provider and employer, Planned Parenthood knows that

this legislation is good for public health and good for business. Due to discrimination and fear of discrimination, she pointed out, many gay and transgender people hide their identities at work, are paid less, and have fewer employment opportunities, and put these individuals at increased risk of poor physical and mental health. Sexual orientation, gender identity or expression have zero relationship to employability, workplace performance, or even eligibility for housing, leasing, loans, and credit, she remarked. She is proud, as others have testified, to live in a city that has already taken steps to support equal protection under the law for all people and it is time for the state to catch up. She asked the committee to support the passage of HB 184.

[3:41:30 PM](#)

MINDY O'NEAL asked the committee to support the passage of HB 184, because she wholeheartedly believes this bill will protect the rights of LGBTQ individuals to work, live in a community, and contribute to society. Earlier in this meeting and in other conversations, she said she has heard that Alaska is not open for business. In the event, it is truly the intent of this body to stop the brain-drain and encourage people to remain in Alaska, to have families, and work, then this state owes it to its current and future residents to set them up to succeed here. This bill, she described, is a step toward equality that says Alaska is open for business and it welcomes all humans into "our Alaskan family." She asked the committee to please help Alaska join this century with this policy and allow an inclusive vision for the future.

[3:43:09 PM](#)

MELANIE LINDHOLM advised that she represents herself and her fiancé and they both identify as part of the LGBTQ community in Alaska. She offered that they both have experienced discrimination due to their identities, especially as to employment, and she offered the following:

In 2015, after 13-years as a contractor at an Army hospital, my fiance was fired for coming out as transgender. The same year, I was denied employment at UAS because it was known by the hiring committee that my fiancé is transgender.

We support HB 184 because we believe that all Alaskans should have employment protections. We support

equality of all citizens and value all Alaskans regardless of their orientation, identity, or expression. We are all humans deserving human rights and equal protections.

3:44:09 PM

REVEREND LESLIE AHUVAH FAILS, Unitarian Universalist Fellowship of Fairbanks, advised that she represents the Unitarian Universalist Fellowship of Fairbanks, described that this church serves a number of people from the LGBTQ community, and offered the following:

In this season, I'm aware that today is Good Friday and that we are in this season of waiting for redemption, many people of faith all across the country and the world. And so, knowing that there is a number of people who are waiting with baited breath and with nervousness to find out if this very important piece of legislation will pass to help protect them. I want to honor them and where they're at and all the waiting that they have been doing for equality to read just a very brief prayer. These are words from my colleague the Reverend Brian Keely, "If the spirit of life has one lesson for us, it is that all life is beautiful, and we are each born into this world who we are, tall or short, our own color of skin, our own sexual orientation, or gender identity." And, to paraphrase Libby Roderick, "How can anyone ever tell us we are anything less than beautiful and anything less than whole." I pray that this great state and every state will remember their duty to protect human life. I pray that we will enshrine equal protection for all people into law. I pray that those who are placed in grave danger simply for being the person who they were born to be will find equality. All human beings are born free, equal in dignity and rights. They are endowed with reason and conscience. May we act -- all acts towards one another in affirmation of our common humanity. Amen.

3:45:54 PM

REBECCA DUNNE advised that she is a lesbian and is married to a transgender man, which for the benefit of those who do not know, it means he was born as an assigned female at birth and he now lives legally and socially as a man. She related that LGBTQ

people have become more visible in Alaska and across the nation in recent decades, although they have always "been here, but we're less afraid to hide." Due to living more honest lives, she advised that they are also open to discrimination in housing and the workplace. Alaska, she said, has a patchwork of municipal protections, and her Fairbanks landlord could still decide to evict them for being or appearing gay, and her husband's boss could fire him for being or appearing transgender. She advised that they are looking to buy a house in the upcoming months and there is a real fear that a lender could deny financing due to her sexual orientation or her husband's gender identity. She stressed that, "Fairbanks is our home and we want to live and work here without fear of being evicted or fired, the same as everybody else." This legislation is about fairness, she described, and it protects thousands of Alaskans and hurts none. She urged the committee to support HB 184.

[3:47:42 PM](#)

ALYSSA QUINPYNE offered support for this legislation because it is imperative that the state adequately protect its constituents and communities, and the LGBTQ community deserves that protection. As it stands in the state, when an LGBTQ person is fired, evicted, denied resources from a private, public, or governmental agency, office, or department, due to their identity, expression, or orientation, they have no legal recourse to protect themselves and combat that harm, she advised. As to Alaska's youth in school districts, their parents have no legal avenue to protect their children and themselves. Those people who choose to discriminate, and the police officers who choose not to investigate these incidents, are not held accountable for that discrimination and neglect, she pointed out. Currently, there is nothing in the law that specifically protects this community and this bill ensures that the LGBTQ community will have protection and legal standing in order to protect themselves and others. Thereby, she pointed out, the passage of this legislation into law will hold those who choose to discriminate accountable. As an ally, trainer, and a community member, she related that it is depressing to see her friends, family members, and co-workers, "my community" suffer and live in fear. Especially, she pointed out, to see Alaska's youth discriminated against without [a legal] avenue to stand up and protect themselves. This state cannot continue in this manner, she stressed, and urged committee's support for this important and imperative bill because it is life saving and ensures that the LGBTQ community is not only protected, but

honored and celebrated in every single way possible, as with every other community.

[3:50:09 PM](#)

CHRIS EICHENLAUB asked the definition of LGBTQ.

CHAIR CLAMAN advised that LGBTQ stands for lesbian, gay, bisexual, transgender, queer.

MR. EICHENLAUB advised that he is in opposition to HB 184. He said he is seeing more on the news about people getting their cars stolen "and stuff like that," and he suggested "we could work on something more productive." He said he has not heard about anyone in his conservative community experiencing discrimination.

[3:52:16 PM](#)

MIKE COONS offered testimony as follows:

The President of the United States has gotten rid of transgenders out of the military and that's happened, so I want to clarify that for the speaker.

I strongly oppose HB 184 on constitutional grounds. This bill adds sexual orientation, or gender identity or expression, as an additional class into the powers of the State Commission for Human Rights which oversees and enforces Article 1, Section 3 of the Alaska State Constitution. This is being attempted when there is not change to Article 1, Section 3 of our constitution. Pages 15 and 16 of the Alaska's Constitution, A Citizen's Guide, clearly lays out the meaning, history, and intent, specifically page 16, paraphrasing for time:

The word "sex" was adopted by amendment in 1972. Delegate [Mildred] Hermann argued that the word "person" was intentionally used throughout the constitution to refer to both sexes. To further avoid the possibility of any sex bias in the interpretation of the constitution, the delegates specified in Article XII, Section 10 that personal pronouns be construed as including either sex.

A person that is male or female has clearly defined rights. If one is homosexual or identifies as another sex, they are still a person. Biologically, one cannot change their sex, one may decide to act and dress differently in the sex they are, but their biological sex is ingrained in their chromosomes no matter how much surgery or hormones one takes. This bill is desired by the progressive far left to demand additional rights and protections to classes that are not, nor ever were, considered by our Founding Fathers without a constitutional amendment. ... I, as a private citizen, have the right to discriminate against someone or something that I find abhorrent, i.e., associate within or out of my ... circle. Employers have the right and duty to ensure a workforce in an area that is free of stress and strife.

[3:55:13 PM](#)

SERENE ROSE OHARA-JOLLEY advised that she supports HB 184, and Alaska is her home where she is dedicated to helping make this state a better place. She advised that she had worked as an educator of young children with special needs for over 13-years and she is currently teaching teachers at the University of Alaska, Fairbanks (UAF). Although, she related, she does not worry about losing her job at UAF, while previously living in a rural community she had to hide her identity from employers and landlords out of fear. In Alaska, for many people living in rural communities, housing is connected to their employment and she would have had to leave within 24-hours if she had been fired. She described that forty-four percent of LGBTQ people report discrimination at work, and it is unacceptable that she could be denied employment, housing, or other services, in the place she calls home due to her gender identity and who she loves. She advised that she wanted to state on the record, "I am queer and as a result of that I could be denied further employment or kicked out my house in Fairbanks." She further advised that the cities of Juneau, Sitka, and Anchorage passed [ordinances] protecting the LGBTQ communities from discrimination, which means over 340,000 Alaskans, almost one-half of the state's population, already have protection. It is time to stop with this patchwork approach to protections and let all Alaskans know that they are valued, and she asked the committee to please support HB 184.

[3:57:18 PM](#)

MAUREEN LONGWORTH, M.D., advised that she is a retired physician and has worked in Alaska since 1992. Dr. Longworth stated that there is very good evidence in the medical community that the health of an entire community improves when rights are equal for all in the community. The Alaska Association of Family Physicians, the American Academy of Family Physicians, of which she and many Alaska physicians are members, always support any legislation that gives equal rights to, particularly, the LGBTQ community. She advised that every medical study has shown that these families provide healthy care and environments for their families, but they can only do so when their rights are protected by the government, of which everyone deserves, and no one should be excluded. In addition, she pointed out, the American Psychiatric Association, the American Academy of Pediatrics, "I could go on and on and on," and the American Medical Association all support this type of legislation before the committee today. She described that any action other than approving HB 184, would be moving backwards, and asked the members to use their evidence-based judgement of which is the judgement a person wants when being cared for by their physician. She related that, "We're forced to use that, and it's your duty, I feel, to also use that in voting yes to pass this bill today."

[3:59:58 PM](#)

STEVE KOTEFF, Attorney, Alaska State Commission for Human Rights, Office of the Governor, advised that he is the Human Rights Advocate at the Alaska State Commission for Human Rights and has been an attorney for the commission for approximately 20-years. Mr. Koteff related that he is speaking on behalf of the commissioners who had considered the issue of providing protection against discrimination on the basis of sexual orientation, and gender identity in 2016. The commission passed a resolution recognizing advancements in the law, both locally and across the country, and directed the commission's staff to draft proposed regulations to include sexual orientation, and gender identity or expression within the meaning of the term "sex" within the Alaska Human Rights Law, he explained. The resolution also specifically called on the legislature to revise AS 18.80 to expressly prohibit discrimination on this basis because the commission is aware of the discrimination based on sexual orientation, and gender identity or expression in Alaska. The Alaska Equal Employment Opportunity Commission (EEOC) does accept complaints on this basis and it estimates that approximately two percent of all complaints allege

discrimination on the basis of sexual orientation, and gender identity or expression, and according to the EEOC, two percent is consistent with its nationwide statistics. In the event this legislation becomes law, he remarked that the Alaska State Commission for Human Rights would expect to investigate these cases at a similar rate. Although the commissioners did not ultimately approve language for a proposed regulation, the commission's official position, since 1990, is that protection on the basis of sexual orientation, or gender identity or expression should be afforded equal protection under the Alaska Human Rights Law. He informed the committee that the commission asks that the legislature specifically amend AS 18.80 to include these protections.

[4:02:17 PM](#)

REPRESENTATIVE LEDOUX asked whether he views this legislation as a statewide mandate that a man who identifies as a woman be allowed to participate in women's athletic activities.

MR. KOTEFF responded that that is a hard question to answer legally, and although he has a lot of experience in the civil rights arena, these protections are not covered under Alaska law; therefore, he has less experience looking at the legal analysis when it comes to protections for sexual orientation, or gender identity or expression. Cases have been decided in recent years throughout the country that do address some of these issues. He remarked that he is not aware of caselaw that provides protection with regard to Representative LeDoux's sports question and issues of competitiveness. As an analogy, he offered, it is known that official competitive sports bodies, such as the International Olympic Committee, use specific tests before determining who can compete in men's or women's competitions. He related that he did not know whether that is something the courts would consider under these legal challenges, but he could look at it and get back to the committee.

[4:04:23 PM](#)

REPRESENTATIVE LEDOUX remarked that she would like Mr. Koteff to get back to the committee with the answer. She then asked whether Mr. Koteff would view it, within the spirit of this legislation, that that is something that should happen. In other words, she offered, "would you want it to happen."

MR. KOTEFF answered that he is speaking today on behalf of the commission and what he would want to take place is not within his purview to say, and he could not speak to the spirit of the legislation. He opined that all legislation includes the potential for coverages that may not be intended or may not be contemplated so he could not answer as to the spirit of the legislation. There are many examples of people who are transgender or have a specific gender identity being discriminated against in these fields, but when discussing the competitive sports area, that is something he is not familiar with as a legal matter. He reiterated that he would look for some of those cases to offer more information if Representative LeDoux so desired.

[4:05:42 PM](#)

REPRESENTATIVE LEDOUX advised that she would like more information as it appears there may not be a definitive answer to the question regarding competitive sports. She asked whether he saw any problem in making it quite clear that this legislation does not mandate that men who identify as women be permitted to compete in women's sports events.

MR. KOTEFF replied that he did not think, as a legal matter, there would be any problem because it is within the legislature's discretion to determine the limits of legislation. He said that he is "not aware of any, perhaps, constitutional limitation on such a limitation," and related that that was as far as he could go in terms of his expertise with that answer.

[4:07:12 PM](#)

CAITLYN SHORTELL, Attorney, echoed Mr. Koteff's testimony and noted that she is a private lawyer who represents members of the LGBTQ community, and she had previously worked as the Human Rights Advocate for the Alaska State Commission for Human Rights. She related that she supports HB 184, and she has supported this issue for as long as she could remember for a few of the following important reasons: it is fair for every Alaskans to have equal access to the law; and her view of the spirit of this legislation is that it grants people, who are members of a particular class, access to the Alaska Human Rights Law so they can file a complaint. The myriad of situations that may cause someone to file a complaint are unknown, and with the aid of regulations and caselaw, it is up to the Alaska State Commission for Human Rights to determine the laws that apply and whether a complaint relies on those facts, she explained. It is

only fair and right, and arguably constitutional, she described, that a whole group of people should not be denied access to the commission and have a complaint accepted. This issue, she pointed out, is about basic fairness, equal protection under the law which many Supreme Court cases indicate is due to members of this community, and for these reasons she urged the committee to vote yes on HB 184.

[4:10:27 PM](#)

CHAIR CLAMAN, after ascertaining that no one wished to testify, closed public testimony on HB 184.

[4:10:33 PM](#)

REPRESENTATIVE EASTMAN asked whether there are any attorneys the committee can turn to in working out this bill.

CHAIR CLAMAN answered that he was sure an attorney from Legislative Legal and Research Services could be available at the next hearing, but no one is online today.

[4:11:05 PM](#)

REPRESENTATIVE EASTMAN asked the intent of this legislation with regard to community groups, such as Big Brothers/Big Sisters, because communities and cities have previously worked with those organizations for grants and so forth. For example, he said, say the Big Brother/Big Sister organization adopted a policy against assigning a biological male who expressed as a female to work within a little sister/big brother situation. He asked whether the intent of this legislation is to tell that community organization that the policy was prohibited activity due to discrimination.

MS. HOLLAND reiterated that if the organization is not for-profit, these requirements would not apply. Ms. Holland advised that she was unsure whether Big Brothers/Big Sisters and Representative Eastman's scenario is for-profit. She opined that if the organization is not for-profit, it would be free to discriminate on this basis, or any basis.

[4:12:35 PM](#)

REPRESENTATIVE LEDOUX related confusion about this non-profit issue because HB 184 read that a non-profit employer is exempt, except it was her belief that non-profit organizations, such as

the Elks, Moose, and Lion's Clubs, were all subject to the Public Accommodations Law. When first arriving in Alaska, she advised that these service clubs exempted women. Eventually, the service clubs "gave up on their bylaws that did not allow women" because they were losing the Public Accommodations Law fight.

MS. HOLLAND related that she was confused by that issue as well, and she had not heard about those situations.

REPRESENTATIVE LEDOUX advised that it was when dinosaurs roamed the earth.

MS. HOLLAND advised that she would research whether incidents of this nature had occurred in the not-for-profit realm, and advised that she had been referring to the definition of employer in this statute which explicitly exempts not-for-profit clubs, social fraternities, and religious organizations. Together with the other non-resolved issue discussed today, she said she will research past situations and look for resolution.

[4:14:38 PM](#)

CHAIR CLAMAN asked whether it was Mr. Koteff's understanding that non-profit organizations are not subject to the jurisdiction of the Alaska State Commission on Human Rights.

MR. KOTEFF answered in the affirmative. In response to another question, he informed Chair Claman that Providence Hospital is a non-profit employer that is organized, in large part, for charitable purposes, and it does not fall within the jurisdiction of the Alaska Human Rights Law.

[4:15:45 PM](#)

REPRESENTATIVE LEDOUX asked that in the event a doctor or medical provider was seeking employment at Providence Hospital, which happens to be one of the biggest employers in the state, that Providence Hospital could discriminate against the person for race, religion, and so forth." Except, she commented, if it was a "mom and pop" grocery store, it would be subject to civil rights law. She described that that was mind boggling.

MR. KOTEFF answered that Representative LeDoux was absolutely correct. The commission is trying to bring this issue to the legislature's attention because it does see a lot of potential violations falling through the cracks. He clarified that he is

not saying it is Providence Hospital, but there are "many, many, many non-profit employers" out there.

MR. KOTEFF, in addressing the question about the various service clubs, such as the American Legion or Elks Club, advised that they are universally non-profit and typically organized for charitable or educational purposes. Except, he explained, that only applies to these organizations when they are employing people, such as the bartender. For example, he offered, someone who works at the Elks Club would not be protected, but they are also places of public accommodation under the law. Therefore, someone who wanted to come into one of those clubs as a member of the public would be protected because there is no non-profit exemption under the public accommodation statute, AS 18.80.230. He explained that that is the difference.

[4:18:00 PM](#)

REPRESENTATIVE LEDOUX commented that this is confusing because a person cannot walk into the Elks Club, for example, unless they are either a member or a guest of a member. She asked whether she was hearing correctly that if a person wants to become a member of one of these service clubs, they are subject to this law, but if a person is employed by the club or seeking employment, they are not covered by this law.

MR. KOTEFF answered, "In a nutshell, yes."

REPRESENTATIVE LEDOUX commented, "Well, that's sure interesting."

[4:18:57 PM](#)

REPRESENTATIVE EASTMAN referred to the discussion of Sec. 4 and noted that it appears to exempt these organizations, except Sec. 6 brings them right back into it through public accommodation. He asked about volunteers at these non-profits and if it is a public accommodation, are the volunteers covered under these prohibitions or do they get a pass.

MR. KOTEFF explained that when looking at a volunteer for any organization, whether it is non-profit or for-profit, the law essentially does not cover them in the employment context. There is a lot of caselaw in the rest of the country regarding volunteers and the commission tends to look to that caselaw in enforcing the human rights laws. An employer/employee relationship depends on there being some remuneration for

services, and when there is no remuneration, there is not that type of relationship. Similar to an independent contractor who would not be covered as well, obviously they are more likely working for payment, but without that employer/employee relationship, there is no coverage under the employment protections of state law.

[HB 184 was held over.]

[4:21:07 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 4:21 p.m.