

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

April 26, 2018

1:03 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Charisse Millett (alternate)
Representative Tiffany Zulkosky (alternate)

OTHER LEGISLATORS

Representative Andy Josephson
Representative Les Gara
Representative Scott Kawasaki

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 81 (HSS)

"An Act relating to criminal and civil history record checks and requirements; relating to licenses, certifications, appeals, and authorizations by the Department of Health and Social Services; relating to child protection information; and providing for an effective date."

- MOVED HCS CSSB 81 (JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 81

SHORT TITLE: DHSS CENT. REGISTRY; LICENSE; BCKGROUND CHK

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

03/08/17	(S)	READ THE FIRST TIME - REFERRALS
03/08/17	(S)	HSS, JUD
02/02/18	(S)	HSS AT 1:30 PM BUTROVICH 205
02/02/18	(S)	Heard & Held

02/02/18 (S) MINUTE (HSS)
 02/05/18 (S) HSS AT 1:30 PM BUTROVICH 205
 02/05/18 (S) -- MEETING CANCELED --
 03/14/18 (S) HSS AT 1:30 PM BUTROVICH 205
 03/14/18 (S) Heard & Held
 03/14/18 (S) MINUTE (HSS)
 03/16/18 (S) HSS AT 1:30 PM BUTROVICH 205
 03/16/18 (S) Moved CSSB 81 (HSS) Out of Committee
 03/16/18 (S) MINUTE (HSS)
 03/19/18 (S) HSS RPT CS 2DP 2NR NEW TITLE
 03/19/18 (S) NR: WILSON, MICCICHE
 03/19/18 (S) DP: BEGICH, VON IMHOF
 04/16/18 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 04/16/18 (S) <Above Item Removed from Agenda>
 04/16/18 (S) MINUTE (JUD)
 04/18/18 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 04/18/18 (S) Heard & Held
 04/18/18 (S) MINUTE (JUD)
 04/19/18 (S) JUD RPT CS (HSS) 1DP 3NR
 04/19/18 (S) DP: COGHILL
 04/19/18 (S) NR: WIELECHOWSKI, SHOWER, KELLY
 04/19/18 (S) JUD AT 9:00 AM BELTZ 105 (TSBldg)
 04/19/18 (S) Moved CSSB 81 (HSS) Out of Committee
 04/19/18 (S) MINUTE (JUD)
 04/20/18 (S) TRANSMITTED TO (H)
 04/20/18 (S) VERSION: CSSB 81 (HSS)
 04/23/18 (H) READ THE FIRST TIME - REFERRALS
 04/23/18 (H) JUD
 04/25/18 (H) JUD AT 1:05 PM GRUENBERG 120
 04/25/18 (H) Heard & Held
 04/25/18 (H) MINUTE (JUD)
 04/26/18 (H) JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

REPRESENTATIVE ANDY JOSEPHSON
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: During the hearing of CSSB 81, explained Amendment 1.

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

POSITION STATEMENT: During the hearing of CSSB 81, answered questions regarding Amendment 1.

STACIE KRALY, Chief Assistant Attorney General
Statewide Section Supervisor
Human Services Section
Civil Division (Juneau)
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: During the hearing of CSSB 81, answered questions.

GREG SMITH, Staff
Representative Gabrielle LeDoux, Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing of CSSB 81, explained Amendment 3.

JAYSON WHITESIDE, Hearing Officer
Division of Motor Vehicles
Department of Administration
Anchorage, Alaska

POSITION STATEMENT: During the hearing of CSSB 81, answered questions.

MARGARET BRODIE, Director
Division of Health care Services
Department of Health and Social Services (DHSS)
Anchorage, Alaska

POSITION STATEMENT: During the hearing of CSSB 81, answered questions.

ACTION NARRATIVE

[1:03:46 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:03 p.m. Representatives Claman, Eastman, Reinbold, Kopp, Stutes, LeDoux, and Kreiss-Tomkins were present at the call to order.

SB 81-DHSS CENT. REGISTRY;LICENSE;BCKGROUND CHK

[1:04:29 PM](#)

CHAIR CLAMAN announced that the only order of business would be CS FOR SENATE BILL NO. 81(HSS), "An Act relating to criminal and civil history record checks and requirements; relating to licenses, certifications, appeals, and authorizations by the

Department of Health and Social Services; relating to child protection information; and providing for an effective date."

[1:05:18 PM](#)

REPRESENTATIVE LEDOUX moved to adopt Amendment 1, labeled 30-GS1676\D.3, Bruce, 4/24/18, which read as follows:

Page 2, following line 11:

Insert a new bill section to read:

"* **Sec. 2.** AS 17.38.200(a) is amended to read:

(a) Each application or renewal application for a registration to operate a marijuana establishment shall be submitted to the board. A renewal application may be submitted up to 90 days before the expiration of the marijuana establishment's registration. When filing an application for a new registration under this subsection, the applicant shall submit the applicant's fingerprints and the fees required by the Department of Public Safety under AS 12.62.160 for criminal justice information and a national criminal history record check. When filing an application for renewal of registration, an applicant shall submit the applicant's fingerprints and the fees required by the Department of Public Safety under AS 12.62.160 for criminal justice information and a national criminal history record check every five years. The board shall forward the fingerprints and fees to the Department of Public Safety to obtain a report of criminal justice information under AS 12.62 and a national criminal history record check under AS 12.62.400."

Renumber the following bill sections accordingly.

Page 13, line 27:

Delete "secs. 3 - 10"

Insert "secs. 4 - 11"

REPRESENTATIVE REINBOLD objected.

[1:05:24 PM](#)

REPRESENTATIVE LEDOUX commented that Amendment 1 may have been passed unanimously on the floor of the House of Representatives, and the amendment relates to fingerprinting with respect to marijuana establishments. She then asked Representative Andy Josephson to come forward and explain Amendment 1.

[1:06:10 PM](#)

REPRESENTATIVE ANDY JOSEPHSON, Alaska State Legislature, advised that Amendment 1 simply requires that a commercial seller of marijuana be fingerprinted every five years, and currently the requirement is every year.

[1:06:46 PM](#)

REPRESENTATIVE EASTMAN opined that the committee passed a ten year designation and it was compromised down to six years, he asked whether the six year requirement was passed on the floor of the House of Representatives.

REPRESENTATIVE JOSEPHSON answered in the affirmative.

CHAIR CLAMAN asked Representative Josephson whether it was six years, and if it was six years, why does Amendment 1 read five years.

REPRESENTATIVE JOSEPHSON responded that it read five years because "we think this is an opportunity to move this bill along the path," and it is appropriate under the title of the bill. This is what the marijuana board wishes and the department definitely believes this amount of time is adequate, he said.

[1:08:11 PM](#)

REPRESENTATIVE KREISS-TOMKINS commented that he likes six years.

[1:08:17 PM](#)

REPRESENTATIVE REINBOLD asked why not keep it at the one year requirement.

REPRESENTATIVE JOSEPHSON opined that the department believes one year is inconsistent in treating marijuana the same as alcohol, it is onerous, and it is more than is necessary.

REPRESENTATIVE REINBOLD commented that it is a new industry and she believes one year should be fine, especially if that is as currently written in statute. She said that the issue is not what the department wants, but what the people want, it is a public safety issue, and five years seems like an awfully long period of time.

[1:09:14 PM](#)

REPRESENTATIVE EASTMAN asked Representative Josephson to remind the committee of the current time period for the alcohol industry once an establishment has a license, and whether it must come back every five years for a federal background check.

REPRESENTATIVE JOSEPHSON deferred to Megan Holland, staff.

[1:09:42 PM](#)

MEGAN HOLLAND, Staff, Representative Andy Josephson, Alaska State Legislature, answered that there is no statutory requirement to obtain additional fingerprints to renew alcohol registration. However, she offered, in the alcohol regulations it is common practice to require additional fingerprints approximately every five years or whenever there is a transfer or change.

REPRESENTATIVE STUTES opined that the practice is that a person is fingerprinted when there is a transfer of the license and not every five years.

REPRESENTATIVE EASTMAN commented that that was his understanding as well.

CHAIR CLAMAN asked Stacie Kraly, DOL, whether the administration has any objection to Amendment 1.

[1:10:42 PM](#)

STACIE KRALY, Chief Assistant Attorney General, Statewide Section Supervisor, Human Services Section, Civil Division (Juneau), Department of Law (DOL), responded that the department has no objection with Amendment 1.

[1:11:07 PM](#)

REPRESENTATIVE EASTMAN offered Conceptual Amendment 1 to Amendment 1 to change five years to six years, which was the compromise language.

REPRESENTATIVE REINBOLD objected.

[1:11:27 PM](#)

REPRESENTATIVE EASTMAN said that as a matter of fact, there has never been a case in Alaska where an application for a license has been denied since the program began. He offered that he does not know why people have to go through this needless cost of re-fingerprinting when there had been no evidence of any type of violation, and nothing had demonstrated a need.

[1:12:04 PM](#)

REPRESENTATIVE LEDOUX commented that she could live with five year, six years, ten years, and because she could live with all of those timelines, since the bill's sponsor and the board are recommending five years, she said to leave it at five years.

REPRESENTATIVE KREISS-TOMKINS commented that he does not take what the Marijuana Control Board (MCB) says as gospel or necessarily representative of what is in the best interest of the industry. Especially, he offered, given the board's flavor and tilt that is not necessarily reflective of what he believes are the views of a majority of legislators toward the now de-criminalized industry. He said that six years was the compromise on the floor of the House of Representatives and he supports it as a compromise in this context as well.

[The committee treated the objection to Amendment 1 as maintained.]

[1:13:21 PM](#)

A roll call vote was taken. Representatives Eastman and Kreiss-Tomkins voted in favor of the adoption of Conceptual Amendment 1 to Amendment 1. Representatives LeDoux, Reinbold, Kopp, Stutes, and Claman voted against it. Therefore, Conceptual Amendment 1 to Amendment 1 failed to be adopted by a vote of 2-5.

[1:14:03 PM](#)

REPRESENTATIVE EASTMAN commented that in recognizing that this committee has been down this road before, he said that he will maintain his objection to the adoption of Amendment 1 because he does not see the value in putting this additional hurdle on applicants for licenses. The legislature decided to make it legal, and it should be treated in the same manner as alcohol. He pointed out that that was the whole point of the initiative, it is what the public wanted, and on behalf of his district, he would be a no vote.

REPRESENTATIVE LEDOUX noted that Representative Eastman had commented that he would object to Amendment 1 because he does not want to put more hurdles on the people in the industry. Except, she pointed out, if Amendment 1 does not pass, then those people have to be fingerprinted every year, so that is the hurdle for people in the industry. She related that if she were in the industry, which she is not, she would rather be fingerprinted every five years rather than every year, which is the status quo.

[1:15:26 PM](#)

A roll call vote was taken. Representatives Stutes, LeDoux, Kreiss-Tomkins, Kopp, and Claman voted in favor of the adoption of Amendment 1. Representatives Eastman and Reinbold voted against it. Therefore, Amendment 1 was adopted by a vote of 5-2.

[1:15:52 PM](#)

REPRESENTATIVE LEDOUX moved to adopt Amendment 2, labeled 30-GS1676\D.4, Bruce, 4/24/18, which read as follows:

Page 1, line 6:

Delete "a new paragraph"
Insert "new paragraphs"

Page 2, line 11, following "Services":

Insert "
(20) a position in the classified, partially exempt, or exempt service of the state that is subject to a limitation on hiring or retention under AS 39.90.050"

Page 2, following line 11:

Insert a new bill section to read:

"* Sec. 2. AS 39.90 is amended by adding a new section to article 1 to read:

Sec. 39.90.050. Employment of individuals with access to vital statistics records. (a) A hiring authority may not hire or retain an individual in a position in the classified, partially exempt, or exempt service under AS 39.25 for which regularly assigned duties include handling or having access to vital statistics records, unless the

(1) individual submits to the hiring authority two full sets of the individual's fingerprints; and

(2) hiring authority verifies that the Federal Bureau of Investigation has, based on the fingerprints provided under (1) of this subsection,

(A) conducted a national criminal history record check of the individual under AS 12.62.400(a); and

(B) advised that the individual has not been convicted of a criminal offense of which the use or misuse of vital statistics records was an element.

(b) Upon receipt of an individual's fingerprints under (a) of this section, the hiring authority shall submit the fingerprints to the Department of Public Safety. The Department of Public Safety shall submit the fingerprints to the Federal Bureau of Investigation for a national criminal history record check under AS 12.62.400(a).

(c) Upon receipt of the results of the national criminal history record check under (b) of this section, the Department of Public Safety shall advise the hiring authority whether the individual has been convicted of a criminal offense of which the use or misuse of vital statistics records was an element.

(d) In this section,

(1) "hiring authority" means a person with authority to hire or retain an individual in a position in the classified, partially exempt, or exempt service under AS 39.25;

(2) "vital statistics" has the meaning given in AS 18.50.950."

Renumber the following bill sections accordingly.

Page 13, line 24:

Delete "This Act applies"

Insert "(a) AS 12.62.400(a)(19), enacted by sec. 1 of this Act, and secs. 3 - 24 of this Act apply"

Page 13, line 27:

Delete "secs. 3 - 10"

Insert "secs. 4 - 14"

Page 13, following line 27:

Insert a new subsection to read:

"(b) AS 12.62.400(a)(20), enacted by sec. 1 of this Act, and AS 39.90.050, enacted by sec. 2 of this Act, apply to the hiring or retention of an individual in a position in the classified, partially exempt, or exempt service of the state for which assigned duties include handling or having access to vital statistics records under AS 39.90.050, enacted by sec. 2 of this Act, on or after the effective date of this Act."

REPRESENTATIVE KREISS-TOMKINS objected.

1:15:58 PM

REPRESENTATIVE LEDOUX explained that the impetus for Amendment 2 came about because an employee in the Health Analytics and Vital Records Section, Department of Health and Social Services (DHSS), pointed out to her that the people in that section have access to "really, really important information." She offered that if that information got into the wrong hands, it could cause disastrous security breaches because it could be used to create identities and a credit history or passport for someone. She said she would like to hear the department's view of this amendment.

1:17:14 PM

MS. KRALY responded that while the department does not object to the overall policy considerations within Amendment 2, it believes there is a broader issue than solely vital statistics, and there are a couple of concerns and considerations the department believes should be taken into fact here. Ms. Kraly relayed that the Department of Health and Social Services (DHSS) has a number of employees with access to all sorts of information, and the Health Analytics and Vital Records Section is one. There are other divisions and other components of DHSS that have confidential information and important information that should also be evaluated. Therefore, she said, it is the department's belief that it would be most effective and efficient if the department evaluated the entire department's employees' pool to determine who should be included within a more rigorous employment check for DHSS, she offered. The department also believes there are potentially significant collective bargaining and personnel issues related to adding a provision such as Amendment 2. Ms. Kraly advised that the department requests that it have an opportunity to look at this issue more globally and more comprehensively and draft a future legislative fix to address the background check, the background

requirements, or the employment qualifications for individuals employed in DHSS. She explained that the global and comprehensive review would be above and beyond the Health Analytics and Vital Records Section because the department needs a more robust employment review for people being hired, and that would be accomplished outside of this amendment.

[1:18:46 PM](#)

REPRESENTATIVE LEDOUX asked Ms. Kraly whether she was willing to work on this issue over the interim with her.

MS. KRALY answered that she "absolutely" would work with Representative LeDoux.

REPRESENTATIVE LEDOUX advised that based upon those assurances, withdrew Amendment 2.

[1:19:05 PM](#)

REPRESENTATIVE LEDOUX moved to adopt Amendment 3, labeled 30-GS1676\D.2, Bruce, 4/25/18, which read as follows:

Page 1, line 3, following "**information;**":

Insert "**relating to revocation of a driver's license;**"

Page 2, following line 11:

Insert a new bill section to read:

"* **Sec. 2.** AS 28.35.030(o) is amended to read:

(o) Upon request, the department shall review a driver's license revocation imposed under (n)(3) of this section and

(1) may restore the driver's license if

(A) the license has been revoked for a period of at least 10 years;

(B) the person has not been convicted of a driving-related criminal offense **in the 10 years preceding the request for restoration of the license**

[SINCE THE LICENSE WAS REVOKED]; and

(C) the person provides proof of financial responsibility;

(2) shall restore the driver's license if

(A) the person has been granted limited license privileges under AS 28.15.201(g) and has successfully driven under that limited license for

three years without having the limited license privileges revoked;

(B) the person has successfully completed a court-ordered treatment program under AS 28.35.028 or a rehabilitative treatment program under AS 28.15.201(h);

(C) the person has not been convicted of a violation of AS 28.35.030 or 28.35.032 or a similar law or ordinance of this or another jurisdiction since the license was revoked;

(D) the person is otherwise eligible to have the person's driving privileges restored as provided in AS 28.15.211; in an application under this subsection, a person whose license was revoked for a violation of AS 28.35.030(n) or 28.35.032(p) is not required to submit compliance as required under AS 28.35.030(h) or 28.35.032(l); and

(E) the person provides proof of financial responsibility."

Renumber the following bill sections accordingly.

Page 13, line 24:

Delete "This Act applies"

Insert "(a) AS 12.62.400(a)(19), enacted by sec. 1 of this Act, and secs. 3 - 25 of this Act apply"

Page 13, line 27:

Delete "secs. 3 - 10"

Insert "secs. 4 - 11"

Page 13, following line 27:

Insert a new subsection to read:

"(b) AS 28.35.030(o), as amended by sec. 2 of this Act, applies to revocation of a driver's license occurring before, on, or after the effective date of sec. 2 of this Act, for conduct occurring before, on, or after the effective date of sec. 2 of this Act."

REPRESENTATIVE KREISS-TOMKINS objected.

[1:19:15 PM](#)

REPRESENTATIVE LEDOUX explained that a constituent called her and explained that his license was forever revoked, it was due to "three strikes, you're out" for a DWI. Currently, she offered, this person has been absolutely clean for 14 years, he has a

wife, two children, a house, and a business. Her constituent's experience was that he had three DUI's and was then caught driving while his license was revoked, and under those circumstances, a person can never possess a legal driver's license again. The Division of Motor Vehicles (DMV) advised her staff that if this person was caught driving while under the influence now, he could attend therapeutic court and once he had completed its requirements, based upon a law passed a few years ago there would be a path to licensure. Except, she advised, this person does not want to be arrested for a DUI because he no longer drinks, yet that would be required for him and the other people in his situation to regain their driving licenses.

[1:22:12 PM](#)

GREG SMITH, Staff, Representative Gabrielle LeDoux, Alaska State Legislature, opined that if someone's license was permanently revoked, pre-Senate Bill 91 [passed in the Twenty-Eighth Alaska State Legislature] "and yet, after the time of revocation receives a driving related criminal offense, there is -- let me back up. If this happened, I believe, pre-SB 91, pre -- there is another pathway that SB 91 put in. And, if this had happened prior to this time, in the case of the constituent it was 2002, permanent revocation of a license, and then receives a driving related criminal offense, our understanding from DMV and the courts is that there is not a pathway for this person to ever receive their driver's license. Except, in the case they said to us, through going back to therapeutic court, which would require them to be charged with another crime."

[1:23:30 PM](#)

REPRESENTATIVE KREISS-TOMKINS asked the Division of Motor Vehicles (DMV) to confirm the statement of facts laid out in association with Amendment 3.

[1:24:04 PM](#)

JAYSON WHITESIDE, Hearing Officer, Division of Motor Vehicles, Department of Administration, advised that he has experience in reviewing terminations or revocations for these felony DUI offenders, and noted that everything Representative LeDoux stated is correct. This issue has been a concern at the DMV for a while and the division wanted this language to be included in Senate Bill 91, but it never made it into the bill. He commented that it is good to see this issue come forward.

[1:24:36 PM](#)

REPRESENTATIVE EASTMAN noted that the language being removed in Amendment 3, is that now if a person has been convicted of a driving related criminal offense, and their license was revoked, and after their license was revoked they were convicted of another driving related criminal offense, this provides a pathway for a person to wait ten years and request that their license be re-instated.

MR. WHITESIDE answered that in some of the instances seen at the DMV, when an individual is convicted for a (audio difficulties) DUI, during the ten years of their reviewed revocation they have been convicted of a driving related criminal offense. Under current law, that disqualifies the person from a termination of revocation, and under Senate Bill 91, the only other pathway for a person to get to re-licensure is to attend therapeutic court. Mr. Whiteside explained that proposed Amendment 3 basically creates a sliding window wherein "they may have a person committed a driving related criminal offense, but since it's just within ten years prior to their application, they can wait until they serve ten years without a driving related criminal offense."

[1:26:10 PM](#)

REPRESENTATIVE EASTMAN asked whether there are parameters on this, for instance if a person, as part of that driving related criminal offense after their license was revoked, actually killed someone. He further asked whether that person would still be eligible under this amendment for the sliding window he spoke of, or whether that is precluded by something else.

REPRESENTATIVE CLAMAN asked whether Representative Eastman was referring to a person killing someone in a driving related offense.

REPRESENTATIVE EASTMAN said he agreed with Chair Claman's clarification.

MR. WHITESIDE responded that there is nothing in this that would prevent that because it is black and white driving related criminal offense. What "we're actually terming is a felony DUI." There would have to be a license removal from a separate charge, (audio difficulties) kill or manslaughter, those sort of things, vehicular homicide where the license has been removed.

He related that if it is just a felony DUI, those merits don't take course in any of the review process.

[1:27:11 PM](#)

REPRESENTATIVE REINBOLD commented that she has heard that many people drive while under the influence and many people are not caught. She asked how many times people drive while dangerously under the influence, and how many times do they drive before they are actually convicted.

MR. WHITESIDE answered that obviously that is a hard number to nail down because without the person actually being arrested and charged with an offense, there are no numbers. From what he has seen statistically, he said that for those people driving with their license revoked or charged with a subsequent DUI, it takes place within a few years after their original offense. Typically, he offered, the event takes place closer to the action because they had not yet received the help they needed.

[1:28:18 PM](#)

REPRESENTATIVE REINBOLD commented that "it sounds too bad to be true" with regard to the fact that if someone decides to "clean their act up" and their license is permanently revoked, yet under current law, they have to get drunk again and do something stupid in order to have a pathway to licensure. She asked whether it is true that a person must go out and commit "another act," and whether their previous history still comes into play.

MR. WHITESIDE confirmed that what is being said is true. Under current law, in order for the person in a situation where their revocation cannot be terminated, they would have to be arrested for a felony DUI, and go through the therapeutic court path in order to obtain re-licensure.

REPRESENTATIVE REINBOLD commented that that is absolutely an unbelievable mess.

[1:29:40 PM](#)

REPRESENTATIVE EASTMAN commented that he is slightly sympathetic for the person who has pulled their life together, and for the person who at no fault of their own, wound up in this situation. He remarked that just this month a person killed someone in one of the most heinous acts his district has experienced ever, and someone did die. He opined that his district would like to know

that the person behind the wheel that killed the young lady, who still had a blood alcohol content of over .3 more than three hours after he killed her, will not ever receive a license again. He related that because he does not see that in this amendment as currently written, he is opposed to Amendment 3.

[1:31:02 PM](#)

REPRESENTATIVE KOPP said that he echoes a lot of the sentiment expressed by Representative Eastman, but there is a distinction between the person going through a period of their life suffering from substance abuse issues and receiving their third moving violation DUI, without any instance of personal injury or death. For those folks who have taken all of the steps to show they are trustworthy and able to handle that responsibility, there is wisdom in having insured drivers on the road versus uninsured. Many of these folks choose to drive to work and are uninsured, thereby putting the rest of us at risk. While he is empathetic, he said, in helping certain people get on the stringent and hard path back unless the person's actions caused harm or death to anyone because part of feeling the pain of their victims is permanently losing their driving privileges. He offered that he does not think Amendment 3 gets at that differentiation and he would be happy to help work on that issue.

[1:32:39 PM](#)

REPRESENTATIVE KREISS-TOMKINS said that he echoes Representative Kopp's comments and that this issue puts him in mind of Representative Stutes [HB 259] unsecured loads bill. It was his recollection, he said, that the committee wanted to keep the distinction between someone being maimed or suffering bodily damage due to an unsecured load that flies off of a vehicle versus a dented bumper because a rock flew off of a load. Those are two distinct circumstances and correctly should be treated differently. In this instance, there are DUIs wherein someone is hurt or killed, and there are DUIs within which that does not take place, he remarked. There is some value in that distinction, he commented, but he likes the overall thrust of Amendment 3 because it gets at an inconsistency in the law.

[1:33:51 PM](#)

REPRESENTATIVE REINBOLD commented that she is never a fan of an amendment due to one person, "it always just chaps me, and it just reminds me of (audio difficulties) and trying to get that

sex offender, you know, amendment in Senate Bill 91, you know, based on one friend of hers." In the event someone receives a third DUI, how many times have they been driving drunk, risking Alaskans, risking innocent babies and mothers in their cars, she asked. Alaska currently suffers from a horrible substance abuse problem, the state needs to get tougher, not weaker, and she will be a no vote on Amendment 3.

[1:34:33 PM](#)

REPRESENTATIVE STUTES asked Representative Kopp whether he had made an offer to the maker of this amendment wherein he would help refine the terms as to the type of [driving related] violation a person had, whether it was just a DUI with no bodily injury as opposed to a DUI causing severe bodily injury or something along that line.

REPRESENTATIVE KOPP advised that he had drawn the distinction that the conversation is worth having if personal injury or death was not involved in the factors that lead to the felony DUI in the first place. He stated that he is all for having a stringent path to licensure, whatever the time period, because he believes that giving certain individuals a path back and a chance for restoration is important. He reiterated that if a person has committed certain acts against people and harmed them, then that is part of feeling the pain of their victims and the person earned the right to not have a license for the rest of their life. The balance in there is something he is willing to look at, but the amendment does not get the committee to that balance, he suggested.

REPRESENTATIVE STUTES commented that she would be happy to work on something in that direction over the interim.

[1:36:14 PM](#)

CHAIR CLAMAN commented that some of the questions Representatives Kopp and Eastman raised might be issues about distinguishing what occurred in the DUI, but it may be beyond the scope of Amendment 3. He opined that it may require a much more detailed statutory change.

[1:36:41 PM](#)

REPRESENTATIVE LEDOUX suggested that the committee hold this bill for one day in order to determine whether Representative

Kopp and she could come up with an amendment that satisfied everyone's concerns.

[1:37:04 PM](#)

The committee took an at-ease from 1:37 p.m. to 1:38 p.m.

[1:38:14 PM](#)

REPRESENTATIVE LEDOUX withdrew Amendment 3, and related that she will work on this issue during the interim. Except, with respect to Representative Reinbold's comments, she argued that while one of her constituents brought this issue to her, it affects many other people who are similarly situated and it is not solely for one constituent.

[1:39:35 PM](#)

REPRESENTATIVE KOPP asked Ms. Kraly whether an ex parte domestic violence protection order would qualify as a barrier condition, as separate from the long term domestic violence protection order.

MS. KRALY deferred to Margaret Brody, and offered that she does not believe the ex parte domestic violence protection orders are part of the barring condition because the person would have had to have been convicted of a crime of domestic violence for it to be a barring crime or condition.

[1:40:12 PM](#)

MARGARET BRODIE, Director, Division of Health care Services, Department of Health and Social Services (DHSS), responded to Representative Kopp's question regarding ex parte domestic violence protection orders, and advised that Ms. Kraly was correct, they are not counted. (Audio difficulties.)

CHAIR CLAMAN surmised that a long term domestic violence protection order would not count as any sort of a barrier.

MS. KRALY answered that Chair Claman was correct.

[1:41:26 PM](#)

REPRESENTATIVE KOPP referred to CSSB 81, Section 8, [AS 47.05.310] page 4, lines 5-14, which read as follows:

AS 47.05.310 is amended by adding a new subsection to read:

(1) A person is presumed to be acting in good faith and is immune from civil or criminal liability if the person

(1) makes a report of medical assistance fraud, abuse, neglect, or exploitation;

(2) submits information to a civil history database identified under AS 47.05.330; or

(3) fails to hire or retain an employee or unsupervised volunteer because the employee or unsupervised volunteer is included in a civil history database identified under AS 47.05.330.

REPRESENTATIVE KOPP asked whether this subsection would allow a person who is guilty of the above, but in making the report would be alleviate from their culpability.

MS. KRALY answered, "No."

REPRESENTATIVE KOPP offered a scenario where the person made the report except they falsified the report or they did not use good candor and painted a bad picture through (indisc.), are they still immune.

MS. KRALY asked Representative Kopp to restate his question.

[1:43:14 PM](#)

REPRESENTATIVE KOPP offered that his question relates to AS 47.05.310. Criminal History; Criminal History Check; Compliance. Under current law, AS 47.05.310(a) read as follows:

(a) If an individual has been charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for, a crime that is inconsistent with the standards for licensure or certification established by the department by regulation, that individual may not own an entity, or be an officer, director, partner, member, or principal of the business organization that owns an entity. In addition, an entity may not

(1) allow that individual to operate the entity;

(2) hire or retain that individual at the entity as an employee, independent contractor, or unsupervised volunteer of the entity;

(3) allow that individual to reside in the entity if not a recipient of services; or

(4) allow that individual to be present in the entity if the individual would have regular contact with individuals who receive services from the entity, unless that individual is a family member of or visitor of an individual who receives services from the entity.

REPRESENTATIVE KOPP then referred to CSSB 81, Section 8, [AS 47.05.310] page 4, lines 5-14, which read as follows:

AS 47.05.310 is amended by adding a new subsection to read:

(1) A person is presumed to be acting in good faith and is immune from civil or criminal liability if the person

(1) makes a report of medical assistance fraud, abuse, neglect, or exploitation;

(2) submits information to a civil history database identified under AS 47.05.330; or

(3) fails to hire or retain an employee or unsupervised volunteer because the employee or unsupervised volunteer is included in a civil history database identified under AS 47.05.330.

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REPRESENTATIVE KOPP surmised that clearly reports are encouraged by offering a person immunity. He asked that if the report contains false information in a portion of the report, or its entirety, or in some other manner that Department of Law (DOL) finds is clearly lacking candor in the report, whether that immunity is still there or is it a judgment call on the part of the DOL.

MS. KRALY responded that the immunity provisions in this section relates to the submission of information to the department for purposes of a background check. Therefore, if someone submitted information to the department that was not totally above-board or truthful ...

CHAIR CLAMAN recognized Representative Les Gara and Representative Scott Kawasaki.

[1:45:53 PM](#)

MS. KRALY responded that if a person submitted patently false information or misrepresented information, those immunities would not apply because the immunity is based upon a good faith application of the submission of information. In the event a person is playing fast and loose with that information, those immunities would not apply, she advised.

[1:46:32 PM](#)

REPRESENTATIVE EASTMAN asked, at what point would an omission of relevant details in the report surpass the criminal and civil immunity being given to that person. He further asked the standard against which those omissions would be weighed.

MS. KRALY replied that she was unsure she understood his question.

REPRESENTATIVE EASTMAN asked how much relevant information could be omitted before it would trigger that the person was no longer immune under Sec. 8.

MS. KRALY opined that the standard would be one of materialism, a substantial material of omission. She offered that people submit information with honest errors and honest mistakes and it would have to be material and significant to the issue within the report before it would trump that immunity.

[1:47:49 PM](#)

REPRESENTATIVE EASTMAN asked where that standard is located.

CHAIR CLAMAN asked whether he meant the materiality standard.

REPRESENTATIVE EASTMAN said that he did mean the materiality standard and where it is defined.

MS. KRALY answered that when reviewing the overall immunity information, it is under AS 47.05.350, and it is a common law standard.

CHAIR CLAMAN assured Representative Eastman that there is a fairly substantial body of federal common law and he was unsure

how much state common law was available. On a federal level, there is an enormous body of common law regarding the definition of materiality and its application. He remarked that the committee would not want to try to summarize those in a definition here.

[1:48:29 PM](#)

REPRESENTATIVE REINBOLD said that she wanted to compliment Ms. Kraly because "you are so composed and so focused amongst all of the distractions, and it just amazes me, so good job for that ... I just wanted to thank you for really helping us understand this issue."

MS. KRALY answered, "You are welcome."

[1:49:58 PM](#)

REPRESENTATIVE EASTMAN noted that this is a bill dealing with background checks for the department, he asked why the legislature would need to come back next year with another bill dealing with background checks for the department when it is already known that it is an issue that is bigger than simply vital records. He asked that the committee hold the bill for one day because ...

CHAIR CLAMAN instructed Representative Eastman to make comments related to the bill ...

REPRESENTATIVE EASTMAN interrupted and said that he suspects the legislature will be in session past tomorrow and there is some interest in working further on [Amendment 3], and he would support that effort.

[1:51:36 PM](#)

REPRESENTATIVE KREISS-TOMKINS moved to report CSSB 81, labeled 30-GS1676\D, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE EASTMAN objected.

[1:51:57 PM](#)

A roll call vote was taken. Representatives Kopp, Stutes, LeDoux, Kreiss-Tomkins, Reinbold, and Claman voted in favor of the passage of CSSB 81 out of committee. Representative Eastman

voted against it. Therefore, CSSB 81(JUD) was reported out of the House Judiciary Standing Committee by a vote of 6-1.

[1:52:49 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 1:52 p.m.