

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

April 10, 2017

3:51 p.m.

MEMBERS PRESENT

Representative Sam Kito, Chair
Representative Adam Wool, Vice Chair
Representative Andy Josephson
Representative Louise Stutes
Representative Chris Birch
Representative Gary Knopp
Representative Colleen Sullivan-Leonard

MEMBERS ABSENT

Representative Mike Chenault (alternate)
Representative Bryce Edgmon (alternate)

OTHER MEMBERS PRESENT

REPRESENTATIVE DAN SADDLER

COMMITTEE CALENDAR

HOUSE BILL NO. 9

"An Act relating to the Board of Pharmacy; relating to the licensing and inspection of certain facilities located outside the state; relating to drug supply chain security; and creating a position of executive administrator for the Board of Pharmacy."

- MOVED CSHB 9(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 38

"An Act relating to the calculation and payment of workers' compensation benefits in the case of permanent partial impairment; relating to the calculation and payment of workers' compensation death benefits payable to a child of an employee where there is no surviving spouse; relating to the calculation and payment of workers' compensation death benefits for an employee without a surviving spouse or child; relating to notice of workers' compensation death benefits; and providing for an effective date."

- MOVED CSHB 38(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 124

"An Act relating to corporations, including benefit corporations, and other entities; and providing for an effective date."

- MOVED CSHB 124(L&C) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 9

SHORT TITLE: PHARMA BD & EMPLOYEES;DRUG DIST/MANUFAC

SPONSOR(s): REPRESENTATIVE(s) SADDLER

01/18/17	(H)	PREFILE RELEASED 1/9/17
01/18/17	(H)	READ THE FIRST TIME - REFERRALS
01/18/17	(H)	L&C, FIN
04/07/17	(H)	L&C AT 3:15 PM BARNES 124
04/07/17	(H)	Heard & Held
04/07/17	(H)	MINUTE(L&C)
04/10/17	(H)	L&C AT 3:15 PM BARNES 124

BILL: HB 38

SHORT TITLE: WORKERS' COMPENSATION: DEATH BENEFITS

SPONSOR(s): REPRESENTATIVE(s) JOSEPHSON

01/18/17	(H)	PREFILE RELEASED 1/13/17
01/18/17	(H)	READ THE FIRST TIME - REFERRALS
01/18/17	(H)	L&C, FIN
02/24/17	(H)	L&C AT 3:15 PM BARNES 124
02/24/17	(H)	Heard & Held
02/24/17	(H)	MINUTE(L&C)
04/10/17	(H)	L&C AT 3:15 PM BARNES 124

BILL: HB 124

SHORT TITLE: BENEFIT CORPORATIONS

SPONSOR(s): REPRESENTATIVE(s) KITO

02/15/17	(H)	READ THE FIRST TIME - REFERRALS
02/15/17	(H)	L&C, FIN
04/01/17	(H)	L&C AT 1:00 PM BARNES 124
04/01/17	(H)	Heard & Held
04/01/17	(H)	MINUTE(L&C)
04/07/17	(H)	L&C AT 3:15 PM BARNES 124
04/07/17	(H)	Scheduled but Not Heard
04/10/17	(H)	L&C AT 3:15 PM BARNES 124

WITNESS REGISTER

RICHARD HOLT, PharmD
Vice Chair, Board of Pharmacy
Wasilla, Alaska

POSITION STATEMENT: Testified in support of HB 9.

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

POSITION STATEMENT: On behalf of Representative Kito, prime sponsor of HB 124, explained the changes made in the proposed committee substitute, Version D.

ACTION NARRATIVE

[3:51:49 PM](#)

CHAIR SAM KITO called the House Labor and Commerce Standing Committee meeting to order at 3:52 p.m. Representatives Kito, Sullivan-Leonard, Knopp, Birch, Josephson, and Wool were present at the call to order. Representative Stutes arrived as the meeting was in progress.

HB 9-PHARMA BD & EMPLOYEES;DRUG DIST/MANUFAC

[3:52:37 PM](#)

CHAIR KITO announced that the first order of business would be HOUSE BILL No. 9, "An Act relating to the Board of Pharmacy; relating to the licensing and inspection of certain facilities located outside the state; relating to drug supply chain security; and creating a position of executive administrator for the Board of Pharmacy." [Before the committee was the proposed committee substitute (CS) for HB 9, Version 30-LS0131\J, Bruce, 4/6/17, adopted on 4/7/17 as the working document.]

CHAIR KITO opened the hearing with the continuation of invited testimony.

[3:53:28 PM](#)

RICHARD HOLT, PharmD, Vice Chair, Board of Pharmacy, testified in support of HB 9. He said the Board of Pharmacy is requesting the authority to license and write regulations around that statute to have the ability to oversee the pharmacy supply chain

of medication coming into Alaska. It is not uncommon for other states to have similar legislation for the safety of their patients, he pointed out. Only Alaska, Hawaii, Guam, Utah, and Massachusetts don't have the ability to license these wholesale distributors. The Board of Pharmacy is asking for the licensing opportunity to take care of patients in Alaska and maintain their safety.

DR. HOLT stated that the proposed executive administrator position is really needed to assist the Board of Pharmacy in all the regulations that the board is currently working on. He noted that pharmacy continues to evolve very rapidly to things that are being seen elsewhere in the country, but which haven't begun to be touched upon in Alaska, which really impacts patient safety. This legislation is very important to achieve, he said.

3:55:19 PM

REPRESENTATIVE KNOPP inquired whether he is correct in his understanding that Alaska, Guam, and Hawaii have not set up inspection programs.

DR. HOLT replied that the information he has from the National Association of Boards of Pharmacy is that the last remaining areas that have not [set up inspection programs] are Alaska, Hawaii, Guam, Utah, and Massachusetts. He said he has been informed that those other areas are actively working on legislation, but the legislation is not finalized.

REPRESENTATIVE KNOPP stated it is a good bill in concept and he is not opposed to it. However, he continued, he is reluctant to create a position in the current fiscal climate because he is not big on growing government. He asked why [the Board of Pharmacy] doesn't think Alaska is adequately protected if [other states] have an inspection process and verification of the supply chain.

DR. HOLT responded that [the Board of Pharmacy] currently has statutory authority to register out-of-state pharmacies and part of that is reviewing out-of-state inspections. Some of the inspections he has seen coming in from other states, he advised, show him great cause to be alarmed. Some of them have little to no detail at all, yet [the board] accepts them in that circumstance. He noted that with professionals in this field, licensed pharmacists, and two public members, [the board] feels that it is its profession to protect the patients in Alaska, so having the authority to do inspections is important.

DR. HOLT further advised that it must be kept in mind that even if a facility has a great inspection and meets the adequacies that [the Board of Pharmacy] would write regulations to, if something happens [the board] still doesn't have the authority over that wholesale distributor or other facility if there is not this piece of legislation. He explained that if the wholesaler shipped a drug and something happened to the patients in Alaska, [the board] could not reprimand that facility because the facility is out of the board's jurisdiction.

[3:58:18 PM](#)

REPRESENTATIVE WOOL noted that Massachusetts doesn't have a law like this and it has a strong medical community. He inquired why Massachusetts doesn't have a law like this.

DR. HOLT answered he doesn't know the current status, but he has been told Massachusetts is working on this in light of the 2012 compounding situation in which the New England Compounding Center was an unlicensed manufacturer of steroid medications. Based on whether the medication was mislabeled or from unsanitary contamination, the result was 64 people dying and 800 people sick with fungal meningitis from what this center shipped across the country.

REPRESENTATIVE WOOL offered his understanding that HB 9 is trying to solve a few problems, one of them being bad actors and unclean conditions in compounding facilities, and the other being pharmacists approached by midlevel distributors that are often cheaper but without a way of knowing the source and perhaps the medication being counterfeit. He recalled it was the sourcing of the medication that was in question and not so much the process. He said he shares Representative Knopp's concern about having to hire someone to do more digging around to verify these licenses. He asked whether it is possible to avoid midlevel distributors and go with certified big pharmaceutical distributors.

DR. HOLT replied that in his capacity with his retailer he doesn't purchase directly. But, he advised, that would limit the sources and options for the patients receiving those medications, as well as impacting the economical side of a business. The intention is not to limit business, but rather to make sure that the sources of these compounded medications, the wholesale distributors, and so forth are licensed. Whether it is a clinic, hospital, or retail pharmacy, there is comfort in

knowing something about that business, he said. Right now [the board] doesn't license them and it is unknown where things are coming from, nothing has been looked at. He pointed out that under HB 9 the executive administrator (EA) position would be paid from the fees from these three licensing categories, not just from wholesale distributors.

[4:02:50 PM](#)

CHAIR KITO closed public testimony on HB 9 after ascertaining no one else wished to testify.

[4:03:17 PM](#)

REPRESENTATIVE JOSEPHSON commented he thinks HB 9 is a fine bill and is a quintessential example of how the public doesn't understand all the things that the State of Alaska does. The bill, he continued, is a textbook example of what government must do.

[4:03:47 PM](#)

REPRESENTATIVE WOOL moved to report CSHB 9, Version 30-LS0131\J, Bruce, 4/6/17, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 9(L&C) was reported from the House Labor and Commerce Standing Committee.

[4:04:15 PM](#)

The committee took an at-ease from 4:04 p.m. to 4:07 p.m.

HB 38-WORKERS' COMPENSATION: DEATH BENEFITS

[4:07:19 PM](#)

CHAIR KITO announced that the second order of business would be HOUSE BILL NO. 38, "An Act relating to the calculation and payment of workers' compensation benefits in the case of permanent partial impairment; relating to the calculation and payment of workers' compensation death benefits payable to a child of an employee where there is no surviving spouse; relating to the calculation and payment of workers' compensation death benefits for an employee without a surviving spouse or child; relating to notice of workers' compensation death benefits; and providing for an effective date."

[4:07:26 PM](#)

REPRESENTATIVE WOOL moved to adopt the proposed committee substitute (CS) for HB 38, Version 30-LS0160\J, Wallace, 3/23/17, as the working document. There being no objection, Version J was before the committee.

[4:07:59 PM](#)

REPRESENTATIVE JOSEPHSON, prime sponsor of HB 38, reviewed the two changes in Version J. He said the first change is that the amount of money that would be received by the estate of a person who died without a spouse or children is reduced from about \$125,000 in the original version to \$70,000 in Version J. The reason for that reduction, he continued, is that it is a more modest number, but is also pegged at the highest number afforded by a state in the U.S., which is Louisiana which is also at approximately \$70,000. He pointed out that New York is at \$50,000.

REPRESENTATIVE JOSEPHSON said the second change is that there is a category of dependents, as noted on page 3, lines 12-16, where a person may be living alone but have people who are recognizable as legal dependents. For example, a man might have an 80-year-old mother living in an independent living facility that is reliant him for \$1,000 a month and it could be that the man's estate could prove that. In that group, he explained, the bill would reduce that number to \$100,000, which had been based on the whole-body number of \$255,000.

REPRESENTATIVE JOSEPHSON discussed the two things that the bill would do. First, he said, for the first time in Alaska history, the life of a person who never married and didn't have children but who dies at work would have legally recognizable value. The bill says it's recognizable as \$70,000, whereas currently it's only recognizable in a funeral benefit of \$10,000. This is paying homage and respect to single childless people who die at work. Second, he stated, the bill would increase the permanent partial impairment (PPI) whole body number from \$177,000 to \$255,000 to reflect an increase in inflation.

[4:11:41 PM](#)

REPRESENTATIVE JOSEPHSON brought attention to his PowerPoint presentation entitled, "HB 38, Abigail Caudle Act". Displaying the fourth slide entitled, "What is the current law?" he said the current law for PPI is \$177,000 and HB 38 would increase

that to \$255,000. He referenced a document in the committee packet from Legislative Research Services that says the amount would be \$255,000 had the consumer price index been in effect the last 17 years. A way to think about this, he suggested, is that it's as if minimum wage is being paid at whatever it was in the year 2000. The bill would raise the PPI rating from \$177,000 for the whole body to \$255,000 and would link it to the consumer price index.

REPRESENTATIVE JOSEPHSON continued discussing the fourth slide and explained that, under current law, for deceased workers there is no provision for compensating the estate if there are no surviving widow, widower, or dependents. Two different concepts are included in the same bill, he explained, because they both are in workers' compensation statutes and it is like a mini-omnibus workers' compensation bill.

REPRESENTATIVE JOSEPHSON moved to the fifth slide entitled, "How do we fix it?" and discussed the first bullet point. He stated that if the PPI were properly set at \$177,000 in the year 2000, then it would be proper that it's set at \$255,000 now. If it's not that now, he continued, then one is really saying that it never should have been \$177,000 in the year 2000. He addressed the next set of bullet points and noted that if the deceased did not have dependents that lived at home but there were dependents that relied on the deceased, then the bill would increase the amount from \$20,000 to \$100,000. He pointed out that the figure of \$20,000 hasn't changed since 1968, so the amount of money the state gives to those dependents hasn't changed in about 50 years. The real reform, along with reforming the PPI, he stated, is the creation of a workers' compensation award for the estate of the person who died unmarried and without children.

[4:14:44 PM](#)

REPRESENTATIVE KNOPP brought attention to page 3, line 19, which states, "if there is no widow or widower or child or children, and the father, mother, grandchildren, brothers, and sisters were not dependent on the deceased at the time of injury, then \$70,000 is payable in a lump sum to the estate of the decedent." He asked why the state would in this case pay \$70,000 to the estate.

REPRESENTATIVE JOSEPHSON replied that there are three things the state can do with single people who could be of any age. One is nothing - leave the law the way it is. But, he continued, imagine talking to the parent of a 22-year-old child who died at

the work place, like Abigail Caudle did, but hadn't yet met a spouse or borne a child. Raven Electric, Inc. did have some OSHA fines, and, in effect, it is being said that all Raven Electric had to do was cut a check for Abigail's funeral expenses. He asked, "How would you have that conversation with Marianne Burke, her mother?" It is being said that the value of a single person's life is less to the legal system than everyone else. Other states provide this benefit, he pointed out. Version J cuts this benefit almost in half, down to \$70,000 from the original [proposed] benefit of \$125,000. This benefit, he argued, would create a little further incentive for a company to say it better have a safe work place. This is an exclusive remedy, he further noted, as these single, childless people cannot sue, and their estates cannot sue.

REPRESENTATIVE JOSEPHSON continued his answer by posing a scenario in which two people are in an elevator at a business when the elevator suddenly crashes downward, killing both people. One of the people was an unmarried, childless worker at the business and the other a customer of the business. He explained that the customer could collect potentially millions of dollars in damages, but under Alaska law the worker would receive nothing. Two lives experienced the same thing, he continued, and this is an injustice that [the legislature] can correct. He referred to the [Division of Legal and Research Services'] research paper provided to committee members and pointed out that it states there would not be an appreciable amount of workers' compensation impact. For example, he continued, the State of Oregon said a change in these benefits would not materially affect workers' compensation premium rates due to the small number of compensable deaths each year.

[4:18:36 PM](#)

REPRESENTATIVE KNOPP maintained that the aforementioned elevator scenario is not an apples-to-apples comparison because the customer would collect under civil or criminal litigation and the employee's family would have the same option. It isn't an apples-to-apples comparison, he continued, because the customer would not collect under workers' compensation litigation. He asked why an employee's family would not be eligible under the same rules that applied to the customer as far as civil or criminal litigation.

REPRESENTATIVE JOSEPHSON responded that Title 9 is Alaska's personal injury or torts statute and is the rules of the road for personal injury damages, and Title 23 is Alaska's rules of

the road for workers' compensation. In the elevator scenario, he explained, the worker's benefits would fall entirely under [Title 23], and that statute says the worker would get \$10,000 funeral expenses, period. If the family goes to the supreme court like Abigail Caudle's mother did, he said, he thinks that ultimately the court will say it can't help because the people in Juneau won't help. Abigail's mother went to the [Alaska Workers' Compensation Appeals Commission], he continued, which told her that policy arguments must be directed to legislature, which will be in connection with currently pending legislation. He added, "That is the bill before us."

REPRESENTATIVE JOSEPHSON continued and stated that the ultimate answer to Representative Knopp's question is, "It's not like you could really, really try to file a wrongful death and maybe they'll let you do it - it is 1,000 percent prohibited." If it is not in the workers' compensation statute, he continued, "and you're a worker, you don't get a benefit." In the elevator scenario, he added, the customer's family at least gets a feeling that the issue of not checking the elevator shaft or doing maintenance will get recognized and the family can come after the business for damages as appropriate. The customer's family would get that, but the worker's family would not.

[4:21:14 PM](#)

REPRESENTATIVE BIRCH stated that this must be hugely frustrating to attorneys. He said he looks at workers' compensation as a form of insurance providing for wage replacement and medical benefits to employees injured in the course of employment. But, he posited, what is being talked about [in the bill] is life insurance. While workers' compensation pays to bury someone, he said, he struggles to understand how workers' compensation migrates over into a life insurance policy, which is effectively what the bill does. Every employer must pay for workers' compensation and it is for medical benefits and to replace wages lost due to injury. He asked what prohibits any employee from buying a large [life] insurance policy like he has done for himself. He requested the sponsor to address how workers' compensation is being migrated into a life insurance deal.

REPRESENTATIVE JOSEPHSON answered that it presumes that an unsophisticated person in their early twenties would think that they could die at this job and need to provide a remedy to the people who care about him or her. It's not a fix for unsafe workplaces, so it doesn't solve that problem, he said. The bill adds [paragraph] (6) to a death benefit section where there are

already death benefits being paid out. He noted that other states do this and that the [proposed] award is fairly modest and would not materially change the workers' compensation rates. There really are only three options, he said: do nothing; do something like this bill; or offer these single, childless people the chance to sue [the employer's] pants off. Under wrongful death, he continued, they would then carry the burden by a preponderance of the evidence that they themselves weren't negligent. He added that if he were an employer, he would not be sure he'd want the third option because the damages total in workers' compensation could be far greater. Given that other states are doing this, if he were the employer, he would say he could work with this. Otherwise, it seems highly unjust.

REPRESENTATIVE BIRCH noted that the Department of Labor and Workforce Development can fine an employer for unsafe work conditions, so he surmised the department would also be able to "sue the pants off of" an employer for an unsafe work condition. He said all he hears about workers' compensation is how expensive it is, especially for jobs that are more dangerous than others. Workers' compensation rates are high and getting higher, he opined, and HB 38 doesn't seem like it is going to mitigate the cost of workers' compensation and therefore he would like to see the additional cost component.

[4:26:30 PM](#)

REPRESENTATIVE WOOL recalled Representative Josephson's statement about how to have the conversation with the family. Obviously, he continued, it would be a very difficult conversation, whether or not the individual has dependents. He said he agrees in some ways with Representative Birch that workers' compensation insurance covers certain things and life insurance covers other things. He offered his agreement that the current \$10,000 for funeral expense is a paltry amount. He inquired whether the sponsor is saying that by adding more it would make a bad situation a little better.

REPRESENTATIVE JOSEPHSON replied yes. He related that last year in Anchorage a hole was dug in the ground and the man in the hole died when it caved in. The man was young and therefore could have been single and childless. He said the difference is that it is one thing to go to the other family and say that the state has a remedy for the widow or children that will offer them a modicum of solace. It's another thing, he continued, to go to the other person and say your child didn't have any kids and never married and while the parent can sue it will likely be

thrown out immediately, no damages can be filed, and there is no award from workers' compensation.

4:28:41 PM

REPRESENTATIVE WOOL posed a scenario in which he works for a company and is driving the company car one day when suddenly the brakes don't work, and he drives off the road and is killed. He said he would think he has some legal recourse for negligence and that people could sue, so he therefore finds it hard to believe that that would not be the case. He further stated that it is hard to believe that if it were blatant negligence then a customer could sue to the full extent of the law, but an employee could not, which is shocking, he added. He surmised that more people die in the fishing industry than in the restaurant industry and asked whether the fishing industry would therefore be more affected.

REPRESENTATIVE JOSEPHSON offered his belief that the Jones Act or other maritime acts would answer that. He said he thinks fishermen are covered differently. He added that for fishermen there is a huge carve-out under federal law often in terms of Jones Act damages. In terms of Representative Wool's scenario, he agreed it would be negligent of the company. He gave his assurance to the committee that it truly is the exclusive remedy. He said it might be that if the brake manufacturer could be sued independent of the company that owned the car for which the brakes gave out there could be possibility of litigation. Workers' compensation is the grand compact that was designed to end litigation, he continued, although it never really did do that.

REPRESENTATIVE STUTES pointed out that fishermen are independent contractors and therefore not covered by workers' compensation, so the bill's provisions would not apply. She commented that it seems odd to have any kind of law that would make a carve-out where it had to be said to someone that his or her child has no value. She said it is inconceivable to her to think along those lines and therefore it is very difficult for her when it is an easy remedy to fix.

4:32:00 PM

REPRESENTATIVE KNOPP stated that instead of putting a death benefit into the workers' compensation bill he would rather see legislation that would allow surviving members, dependent or not, to have a course of legal action against the employer for

something unjust. He said he has issues with there being a death benefit of \$10,000 in funeral expense on page 2, line 27, and \$70,000 in addition to be given to the estate of someone who has died and has no dependents, and this figure being tied to the rate of inflation. More important, he continued, is the provision for partial impairment. He drew attention to language on page 1, line 12, through page 2, line 2, which states: "In case of impairment partial in character but permanent in quality, and not resulting in permanent total disability, the compensation is \$255,506 [\$177,000] multiplied by the employee's percentage of permanent impairment of the whole person." He opined that this is complicated and complex.

REPRESENTATIVE JOSEPHSON responded that the \$70,000 provision is not tied to inflation and is a fixed amount. Twenty years from now, he continued, \$70,000 may not seem like what it is now, and someone may ask to increase it. Regarding partial impairment, he pointed out that the cited language is existing law, not the bill, and that what HB 38 does is grow the number from \$177,000 to \$250,000. He further pointed out that that is not the amount the person gets, it is the base amount from which a permanently damaged appendage or bodily organ would be multiplied. He noted that about a dozen other states do this; for example, Minnesota provides \$60,000; New York provides \$50,000; and Louisiana provides \$75,000 to each surviving parent.

[4:36:01 PM](#)

REPRESENTATIVE WOOL moved to report CSHB 38, Version 30-LS0160\J, Wallace, 3/23/17, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 38(L&C) was reported from House Labor and Commerce Standing Committee.

[4:36:27 PM](#)

The committee took an at-ease from 4:36 p.m. to 4:38 p.m.

HB 124-BENEFIT CORPORATIONS

[4:38:41 PM](#)

CHAIR KITO announced that the final order of business would be HOUSE BILL NO. 124, "An Act relating to corporations, including benefit corporations, and other entities; and providing for an effective date."

[4:38:46 PM](#)

REPRESENTATIVE WOOL moved to adopt the proposed committee substitute for HB 124, Version 30-LS 0348\D, Bannister, 4/4/17, as the working document.

[4:39:00 PM](#)

CHAIR KITO objected for purposes of discussion.

[Chair Kito passed the gavel to Vice Chair Wool.]

[4:39:26 PM](#)

CHAIR KITO, prime sponsor of HB 124, stated that the committee heard the bill previously and there are some changes, most of which are technical.

[4:39:56 PM](#)

BIANCA CARPENETI, Staff, Representative Sam Kito, Alaska State Legislature, on behalf of Representative Kito, prime sponsor of HB 124, reviewed the five changes in Version D. She said the first change is to standardize the use of the term "general public benefit". Since this term is a unitary concept it does not take an indefinite article, she explained, and there were some inconsistencies in the [original] bill where there was an indefinite article. This change is seen on page 5, line 29; page 9, lines 7 and 24; page 10, line 7; and page 11, line 2. The second change, she stated, is changing the word "reasonably" to "rationally" in keeping with model legislation establishing benefit corporations. This change occurs in four places - twice on page 6, lines 9 and 11, and page 9, lines 17 and 19. She said the third change is removal of "for general public benefit purposes" to avoid redundancy on page 15, line 7. The fourth change, she continued, is deletion of the word "purpose" in order to use the definition of those terms in the definition section without tying them to the public benefit corporation requirements. This change occurs on page 15, line 11. The fifth change, she reported, is that the effective date is changed to July 1, 2018. This change occurs on page 17, line 7.

MS. CARPENETI addressed questions asked by committee members during the bill's previous hearing. Regarding Representative Knopp's question about examples of benefit corporations, she noted that many types of businesses have become benefit corporations since the first law was passed in Maryland in 2010.

The benefit corporations currently incorporated in the U.S. come from a range of industries, including retail, manufacturing, technological, service, professional services, private education, and food and beverage production. They come in all sizes from one-person service companies to large-scale international brands. Examples of well-known benefit corporations, she related, include Method, Kickstarter, Plum Organics, King Arthur Flour, Patagonia, Solberg Manufacturing, Laureate Education, and Alt School.

MS. CARPENETI addressed the committee's question about whether a benefit corporation must be publicly traded and reported that they do not have to be publicly traded to be a benefit corporation. She said the legal designation of a benefit corporation does not set requirements as to whether a benefit corporation is publicly traded or privately held. Currently there are around 5,000 benefit corporations throughout the U.S. and only one of them is publicly traded and that is Laureate Education and Alt School, which went public in February 2017.

MS. CARPENETI addressed the question about why the need for a benefit corporation if it isn't publicly traded. She explained that most of the 5,000 benefit corporations throughout the U.S. are private companies. However, she continued, many have also taken outside capital in the form of venture capital or private equity dollars and so being able to protect the company's mission over time and consider stakeholders is incredibly important to these entrepreneurs, especially when outside capital has been raised.

MS. CARPENETI noted there were several questions about a special taxation benefit conferred to benefit corporations. She said there is no special tax benefit conferred, the benefit corporation status only affects requirements of corporate purpose, accountability, and transparency. Everything else regarding corporation laws and tax laws remain the same, she reported. So, a type of corporation - whether C or S - must still be elected.

MS. CARPENETI addressed Representative Wool's question about whether Newman's Own is an example of a benefit corporation. She said she's found no indication of Newman's Own being registered as a benefit corporation, rather Newman's Own gives 100 percent of its after-tax profits to the Newman's Own Foundation, a private non-profit foundation, which in turn gives the money to various educational and charitable organizations. While the way Newman's Own operates is commendable, she

continued, it's probably not a good example of being a benefit corporation because being a benefit corporation means the business is run in a particular way. So, if a company were a poor employer and had bad corporate citizens in a community where it operated but gave away some of its profits, that would not make it a benefit corporation. The focus of benefit corporations, she continued, is on being profitable in a responsible way, not what the corporation does with its profits once they've been earned.

MS. CARPENETI addressed another question from Representative Wool about whether benefit corporations would be exempted if the tax law were changed. She explained that tax wise benefit corporations still elect whether to be C or S corporations, so this benefit corporation status only affects the requirements for corporate purpose, accountability, and transparency. Everything else regarding the tax status remains the same.

[4:44:59 PM](#)

REPRESENTATIVE BIRCH posed a scenario of Microsoft with Bill Gates operates Microsoft as a regular corporation. He said whoever owns those shares can decide whether to direct shares to a charitable purpose. He said he is still trying to understand the merits of a benefit corporation since there is not a tax benefit he is aware of.

CHAIR KITO recounted that in previous discussion it was mentioned that it is a culture of social responsibility, so a corporate structure that would allow individuals within the corporation as well as the earnings of the corporation to be utilized for a tangible beneficial purpose. With just a profit motive or fiduciary motive then the profits could be used for a charitable purpose or not. But as was heard last week from Mr. Letourneau, he continued, a corporation would like to operate with a culture of being responsible and giving back to the community and this can be done by registering as a benefit corporation, which allows the company to be accountable to its shareholders and that the shareholders would also expect certain behaviors from employees, directors, or others, so not just a profit or charitable giving motivation.

REPRESENTATIVE BIRCH asked what the advantage is in doing it in that manner as opposed to a non-profit like United Way.

CHAIR KITO replied that there are significant differences between the services provided by a non-profit and the services

provide by a profit. For example, if he operated a for-profit corporation that made and sold a "widget", he doesn't know that he would be able to convert that into a non-profit organization and if he did, 100 percent of that benefit would go to the non-profit. He said it is about cultural sensitivity and giving back to the community and, depending on what form a particular owner, or a board of directors would want to take for their corporation, they could structure with this bill a corporation that would allow them to do what they would like to give back in their way. For example, if their company was a mountain guide company, rather than just making a profit the company could choose to have its employees do 20 hours of community service once a month and that could be part of the corporate culture and bylaws so that that whole mountain guide company is committed to giving back to some component of the community.

[4:48:18 PM](#)

VICE CHAIR WOOL recalled that in the committee's conversation with the gentleman from Anchorage last week it was said that this could almost be used as a marketing badge to say, "This is how we run our company and another reason to support them."

CHAIR KITO said that is one of those things that are identified specifically in the bill - that it is not a designation for marketing purposes - but it can be utilized as a selling point of the company and what the company might be able to offer.

MS. CARPENETI added that corporations are also generally expected to put the interests of their shareholders as their primary consideration. Two cases have set the precedent for this, she said. One is Dodge v. Ford Motor Company and the other is eBay Domestic Holdings Inc. v. Newmark. Both cases affirmed that all activities of a for-profit corporation must seek to maximize the economic value for its stockholders. It is important to note, she continued, that the benefit corporation status is needed to protect mainly directors from being sued in a derivative suit. So, it is a legal protection as well for the corporation to say that it is going to add the consideration of its mission in addition to its economic.

[4:50:10 PM](#)

CHAIR KITO removed his objection to the adoption of Version D as the working document.

[Vice Chair Wool returned the gavel to Chair Kito.]

4:50:21 PM

REPRESENTATIVE WOOL moved to report CSHB 124, Version 30-LS 0348\D, Bannister, 4/4/17, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 124(L&C) was reported from the House Labor and Commerce Standing Committee.

4:51:18 PM

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:51 p.m.