

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

May 5, 2021

1:02 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Liz Snyder, Vice Chair
Representative Harriet Drummond
Representative Jonathan Kreiss-Tomkins
Representative David Eastman
Representative Christopher Kurka
Representative Sarah Vance

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 65 (JUD)

"An Act relating to immunity for consulting physicians, podiatrists, osteopaths, advanced practice registered nurses, physician assistants, chiropractors, dentists, optometrists, and pharmacists."

- HEARD & HELD

HOUSE BILL NO. 87

"An Act relating to electric-assisted bicycles."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 65

SHORT TITLE: LIABILITY CONSULTING HEALTH CARE PROVIDER

SPONSOR(s): SENATOR(s) KIEHL

02/03/21	(S)	READ THE FIRST TIME - REFERRALS
02/03/21	(S)	HSS, JUD
02/16/21	(S)	HSS AT 1:30 PM BUTROVICH 205
02/16/21	(S)	Heard & Held
02/16/21	(S)	MINUTE (HSS)
02/18/21	(S)	HSS AT 1:30 PM BUTROVICH 205
02/18/21	(S)	OPIOID OVERDOSE DRUGS

02/19/21 (S) HSS RPT CS 3DP 1NR NEW TITLE
 02/19/21 (S) DP: WILSON, BEGICH, HUGHES
 02/19/21 (S) NR: REINBOLD
 03/05/21 (S) JUD AT 1:30 PM BUTROVICH 205
 03/05/21 (S) -- MEETING CANCELED --
 03/08/21 (S) JUD AT 1:30 PM BUTROVICH 205
 03/08/21 (S) Heard & Held
 03/08/21 (S) MINUTE(JUD)
 03/12/21 (S) JUD AT 1:30 PM BUTROVICH 205
 03/12/21 (S) Heard & Held
 03/12/21 (S) MINUTE(JUD)
 03/31/21 (S) JUD AT 1:30 PM BUTROVICH 205
 03/31/21 (S) Moved CSSB 65(JUD) Out of Committee
 03/31/21 (S) MINUTE(JUD)
 04/03/21 (S) JUD RPT CS 3DP 2NR NEW TITLE
 04/03/21 (S) DP: KIEHL, HUGHES, MYERS
 04/03/21 (S) NR: REINBOLD, SHOWER
 04/12/21 (S) TRANSMITTED TO (H)
 04/12/21 (S) VERSION: CSSB 65(JUD)
 04/14/21 (H) READ THE FIRST TIME - REFERRALS
 04/14/21 (H) HSS, JUD
 04/27/21 (H) HSS AT 3:00 PM DAVIS 106
 04/27/21 (H) Heard & Held
 04/27/21 (H) MINUTE(HSS)
 04/29/21 (H) HSS AT 3:00 PM DAVIS 106
 04/29/21 (H) -- MEETING CANCELED --
 05/04/21 (H) HSS AT 3:00 PM DAVIS 106
 05/04/21 (H) Moved HCS CSSB 65(HSS) Out of Committee
 05/04/21 (H) MINUTE(HSS)
 05/05/21 (H) JUD AT 1:00 PM GRUENBERG 120

BILL: HB 87

SHORT TITLE: ELECTRIC-ASSISTED BICYCLES

SPONSOR(s): REPRESENTATIVE(s) WOOL

02/18/21 (H) READ THE FIRST TIME - REFERRALS
 02/18/21 (H) TRA, JUD
 04/20/21 (H) TRA AT 1:00 PM BARNES 124
 04/20/21 (H) Heard & Held
 04/20/21 (H) MINUTE(TRA)
 04/27/21 (H) TRA AT 1:00 PM BARNES 124
 04/27/21 (H) Moved HB 87 Out of Committee
 04/27/21 (H) MINUTE(TRA)
 04/28/21 (H) TRA RPT 4DP 2NR
 04/28/21 (H) DP: DRUMMOND, HANNAN, MCKAY, MCCABE
 04/28/21 (H) NR: CRONK, HOPKINS
 05/03/21 (H) JUD AT 1:00 PM GRUENBERG 120

05/03/21 (H) Heard & Held
05/03/21 (H) MINUTE (JUD)
05/05/21 (H) JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

SENATOR JESSE KIEHL
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As prime sponsor, introduced SB 65.

CATHY SCHLINGHEYDE, Staff
Senator Kiehl
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: On behalf of Senator Kiehl, prime sponsor, presented SB 65.

ROBERT CRAIG, Chief Executive Officer
Alaska Heart and Vascular Institute
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 65.

JACOB KELLY, M.D.
Alaska Heart and Vascular Institute
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 65.

ASHLEY CARRICK, Staff
Representative Adam Wool
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: On behalf of Representative Wool, prime sponsor, answered questions during the hearing on HB 87.

ANDREW DUNMIRE, Attorney
Legislative Legal & Research Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 87.

REPRESENTATIVE ADAM WOOL
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As prime sponsor, answered questions during the hearing on HB 87.

ACTION NARRATIVE

[1:02:53 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:02 p.m. Representatives Vance, Drummond, Snyder, and Claman were present at the call to order. Representatives Kreiss-Tomkins, Eastman, and Kurka arrived as the meeting was in progress.

SB 65-LIABILITY CONSULTING HEALTH CARE PROVIDER

[1:03:28 PM](#)

CHAIR CLAMAN announced that the first order of business would be CS FOR SENATE BILL NO. 65(JUD), "An Act relating to immunity for consulting physicians, podiatrists, osteopaths, advanced practice registered nurses, physician assistants, chiropractors, dentists, optometrists, and pharmacists." [Before the committee was HCS CSSB 65(HSS).]

[1:03:55 PM](#)

SENATOR JESSE KIEHL, Alaska State Legislature, introduced SB 65 as prime sponsor. He said that SB 65 is a proposed tort bill pertaining to health care. He explained that health care providers regularly consult formally and informally with colleagues. He characterized the informal, uncompensated consultations as "curbside consultations" which take place both in person and telephonically. He further qualified a curbside consultation as one in which there exists no financial or business relationship between providers, and the consulted provider as having no doctor/patient relationship with the patient. He explained that a case had been brought before the Minnesota Supreme Court in which it had been ruled that a healthcare provider who had no doctor/patient relationship was required to defend his/herself against a medical malpractice claim. He stated that the effect of the ruling in the case had resulted in providers ceasing to provide uncompensated consultations or reconsidering whether to establish a doctor/patient relationship in such cases. He suggested that SB 65 would limit liability to the treating physician or provider. He added that SB 65 would further limit that liability and would not be shifted [from a treating physician] nor would it be reduced.

[1:08:54 PM](#)

CATHY SCHLINGHEYDE, Staff, Senator Kiehl, Alaska State Legislature, on behalf of prime sponsor, presented a sectional analysis during the hearing on SB 65, [included in the committee packet] which read as follows: [original punctuation provided]:

Sec. 1 of the bill creates a new section in AS 09.55:

Sec. 09.55.552(a): Consulting physicians, osteopaths, podiatrists, advanced practice registered nurses, physician assistants, chiropractors, dentists, optometrists, pharmacists, physical therapists, and occupational therapists are not liable for providing a consultation if they meet a list of requirements that establishes the consultant was not compensated and had no doctor-patient relationship.

Sec. 09.55.552(b): The health care provider cannot use the consultant's advice to reduce his or her own liability in a medical malpractice case.

Sec. 09.55.552(c): Defines the health care providers and health care facilities covered by this bill

[1:09:38 PM](#)

CHAIR CLAMAN introduced invited testimony.

[1:09:49 PM](#)

ROBERT CRAIG, Chief Executive Officer, Alaska Heart and Vascular Institute, testified in support of SB 65. He explained that the members of the Alaska Heart and Vascular Institute were cardiologists who remain on call to treating physicians throughout the state for uncompensated consultations pertaining to cardiovascular care. He stated that the institute remained committed to provide timely and accurate medical expertise for patients under another physician's care to aid in care and transportation decisions. He stated that the alternate to uncompensated consultations would be for the consulted physician to instruct the treating physician to either refer the patient for a paid consultation or to transport the patient to the consulting physician, either of which could delay care and increase costs. He stated that the goal of the institute's physicians is to provide high quality and low-cost cardiac service to the state's healthcare providers.

1:11:39 PM}

JACOB KELLY, M.D., Alaska Heart and Vascular Institute, testified in support of SB 65. He stated that he was a heart failure cardiologist at the Alaska Heart and Vascular Institute and had been practicing medicine and providing consultation during his four years in Alaska. He explained that requests for consultation, occasionally in excess of 20 per day, occurred during all hours and from all areas of the state. He explained that physicians calling for consultations represent a variety of different practitioners who may need consultation to aid the safety and comfort of their patients. He explained that, should physicians become wary of the risk of litigation, inappropriate and costly requests for [patient] transfers and care may occur for common conditions. He suggested that allowing for curbside consultation is helpful to all fields of medicine to increase the safety and quality of all local patient care.

1:16:04 PM

REPRESENTATIVE EASTMAN stated his support for immunity for the professions listed in the bill, and asked whether family therapists, acupuncturists, ophthalmologists, and massage therapists, among others should also receive immunity should SB 65 pass.

SENATOR KIEHL answered that it had been considered to use the term "health care providers," and a more specific list had been determined to be most appropriate. He added that ophthalmologists are licensed physicians and would be included. He further explained that the immunity granted with the passage of SB 65 pertained to the scope of practice, potential risk to patients, and the ability of the treating health care professional to independently evaluate and analyze the advice that he/she is given [during a curbside consultation]. He stated that the list had been adjusted through the hearing process and includes professions that he deemed appropriate, and that immunity granted should be carefully considered when making tort reform.

1:18:50 PM

REPRESENTATIVE EASTMAN noted that occupational therapists are listed in the bill; however, family therapists are not. He recalled that there had been a situation in which a supervisor at a youth detention facility was unable to be prosecuted for a

sexual relationship with a minor due to [the category of the detention officer] not being included in the list of those who may be prosecuted. He asked whether a court would be likely to rule that the immunity as proposed in SB 65 would not apply to family therapists.

[1:19:55 PM](#)

MS. SCHLINGHEYDE answered that courts in Alaska have ruled that medical malpractice cases are treated differently than other cases of alleged negligence. She referred to the ruling in Smith v. Radecki in which it was established that a special relationship exists between a physician and a patient. She further explained that other cases of alleged negligence are evaluated on a "foreseeability" test. She added that individuals not listed in SB 65 would still be subject to potential liability for negligence under foreseeability and duty of care.

[1:20:46 PM](#)

REPRESENTATIVE EASTMAN asked why a family therapist was not included in the list of professions.

[1:21:05 PM](#)

CHAIR CLAMAN offered that the categories of professions listed in SB 65 specifically relate to medical malpractice and that a family therapist would never fall into that category.

[1:21:24 PM](#)

SENATOR KIEHL explained his intent was to address liability among physical health practitioners and not mental health practitioners, the dichotomy of which exists elsewhere in statute.

[1:21:49 PM](#)

CHAIR CLAMAN referred to a case in the State of Minnesota [included in the committee packet], titled "SB 65 Additional Document - Warren v. Dinter Supreme Court of Minnesota April 17, 2019 (Distributed by HJUD Committee)," in which the court was specific in its ruling that the case did not pertain to curbside consultations. He asked why the perception following the ruling was that it did pertain to curbside consultations.

[1:22:22 PM](#)

SENATOR KIEHL explained that, while a dissenting opinion in the ruling did not have precedential value, the matter of the ruling having no pertinence to the curbside consultations was a controversial one. He stated that the ruling having pertinence to cases in which there did not exist a doctor/patient relationship likely contributed to the perception that there exists a risk in consultation when no such relationship exists. He suggested that HB 65 would further define boundaries which remained unclear following the ruling in the State of Minnesota.

[1:23:28 PM](#)

CHAIR CLAMAN postulated that the ruling in the Minnesota case, including case precedent in Alaska, had taken into consideration the foreseeability of harm and he asked why the ruling in the State of Minnesota would have an effect different from those upon which the courts in Alaska had already ruled.

[1:24:09 PM](#)

MS. SCHLINGHEYDE stated that the ruling in Smith v. Radecki held that a doctor/patient relationship must exist [to allow for litigation for malpractice] and that footnotes in the case address but do not fully explore fact patterns which may result in the existence of a doctor/patient relationship. She noted that another case in the State of Rhode Island that held a similar ruling to Smith v. Radecki did not offer any additional clarity on when the doctor/patient relationship exists.

[1:24:55 PM](#)

REPRESENTATIVE VANCE asked at what point a doctor/patient relationship exists in telehealth consultations.

MS. SCHLINGHEYDE answered that telehealth consultations would be categorized the same as in person visits with the passage of SB 65, and that the question of malpractice liability exists when a provider consults another provider. She added further that legal malpractice precedents existed in which liability to an attorney could occur despite a client not having formally retained the attorney. She stated that, in cases of medical malpractice liability, the precedent of the legal liability could be applied similarly to medical malpractice liability.

[1:26:54 PM](#)

SENATOR KIEHL added that SB 65 proposed to broadly define that a doctor/patient relationship shall exist if a doctor is paid by the patient, and immunity would not apply.

[1:27:19 PM](#)

REPRESENTATIVE CLAMAN recalled, in reference to Representative Vance's line of questioning, that, during the COVID-19 pandemic, health care providers had encountered difficulties in providing care via telehealth and in establishing a doctor/patient relationship due to travel restrictions, and telehealth consultations had resulted in doctor/patient relationships and would not be considered the curbside consultation that was contemplated in SB 65.

[1:28:04 PM](#)

REPRESENTATIVE VANCE asked whether, similar to attorneys providing consultations pro-bono, doctors have an equivalent, uncompensated consulting relationship with certain patients.

SENATOR KIEHL stated that SB 65 pertained only to uncompensated consultations between health care providers and not to those between physicians and patients.

[1:29:40 PM](#)

REPRESENTATIVE EASTMAN asked, should SB 65 pass, what other professions may be affected, such as immunity for structural engineers such as in the case of a building collapse.

SENATOR KIEHL answered that tort statutes treat medical malpractice differently than other cases involving malpractice. He added that there exist several court rulings in Alaska which address medical malpractice as separate from other forms of malpractice.

[1:31:18 PM](#)

CHAIR CLAMAN opened public testimony on HCS CSSB 65(HSS). After ascertaining that there was no one who wished to testify, he closed public testimony.

[1:32:13 PM](#)

The committee took a brief at-ease.

[1:32:59 PM](#)

CHAIR CLAMAN announced that HCS CSSB 65 (HSS) was held over.

[1:33:44 PM](#)

ADJOURNMENT

The House Judiciary Standing Committee was recessed at 1:34 p.m. to a call of the chair.

[2:46:42 PM](#)

CHAIR CLAMAN called the House Judiciary Standing Committee meeting back to order at 2:47 p.m. Present at the call back to order were Representatives Claman, Vance, and Eastman.

HB 87-ELECTRIC-ASSISTED BICYCLES

[2:46:42 PM](#)

CHAIR CLAMAN announced that the final order of business would be HOUSE BILL NO. 87, "An Act relating to electric-assisted bicycles."

[2:47:16 PM](#)

ASHLEY CARRICK, Staff, Representative Adam Wool, Alaska State Legislature, on behalf of prime sponsor, answered questions during the hearing on HB 87. She referred to questions that the committee had requested follow up on pertaining to HB 87 and recommended that Legislative Legal and Research Services provide answers to those. She referred first to questions that were posed on Section 2 of the bill which pertained to municipality regulations for e-bikes used on sidewalks.

CHAIR CLAMAN stated that the question pertaining to Section 2 of the bill was whether municipalities would be prohibited from regulating the use of e-bikes on sidewalks, should HB 87 pass.

[2:48:43 PM](#)

ANDREW DUNMIRE, Attorney, Legislative Legal and Research Services, Legislative Affairs Agency, answered questions during the hearing on HB 87. He opined that, should HB 87 pass, municipalities would not be restricted in regulating the use of

e-bikes on their own pathways. He referenced Section 3 of the bill that specifies that municipalities may enact regulations for e-bikes for their locality.

[2:49:35 PM](#)

CHAIR CLAMAN recalled an earlier question posed by Representative Vance whether it would be beneficial to include the three-tiered classification such as exists in the State of California.

[2:50:13 PM](#)

MR. DUNMIRE stated his understanding of the question to be whether an amendment classifying e-bikes in a three-tiered structure would be beneficial, and he suggested that such an amendment would be a policy decision to be determined by the legislature. He suggested that, should the legislature deem such a classification system to be unnecessary, his recommendation would be not to include a definition since it would limit how e-bikes are defined.

[2:51:14 PM](#)

REPRESENTATIVE VANCE added that her constituents had endorsed including the three-tiered definition of e-bikes as proposed by the People for Bikes to achieve uniformity among different states' regulations. She suggested that the question of whether to amend the bill to include the three-tiered classification should be at the discretion of the bill sponsor, and she offered her understanding that including a three-tiered definition may not provide any legal benefit.

[2:51:48 PM](#)

REPRESENTATIVE ADAM WOOL, Alaska State Legislature, as prime sponsor, offered additional information to describe the various types of vehicles and assisted bicycles. He stated that there exist bikes which can be operated by a throttle without pedaling and that those are not considered in the proposed bill. He added that it remained a policy decision for the legislature to determine whether to include the three-tiered classification system or to combine class 1 and class 3 e-bikes. He added that it would be difficult to ascertain motor size and whether a pedal assist to engage a motor by simply looking at an e-bike. He added that motor size would be capped at [a maximum] of 750 watts and the speed capped at 20 miles per hour.

[2:53:56 PM](#)

CHAIR CLAMAN recalled an earlier question posed by Representative Eastman pertaining to vehicles that have two, non-tandem wheels and how they relate to the proposed bill.

MR. DUNMIRE explained that a Segway, which consists of two tandem wheels on which a rider balances, would be included in the definition, and that a three-wheeled mobility cart, such as one might see at a grocery store, would not.

REPRESENTATIVE EASTMAN stated his understanding of the intent of the bill would be to allow devices such as a Segway be allowed to operate on a sidewalk and asked why [a three-wheeled mobility cart, such as one might see at a grocery store] would not. During the discussion, he asked whether HB 87 would forbid grocery store scooters from being operated on a sidewalk.

REPRESENTATIVE WOOL answered that HB 87 permits only those devices which have operable pedals to be classified as e-bikes, and that neither a Segway nor an assistive cart would be classified as an e-bike. He added that a tricycle with an electric assist might be included in the definition should it have operable pedals.

[2:56:49 PM](#)

CHAIR CLAMAN recalled an earlier question posed by Representative Snyder in which she referenced assistive technology as defined in AS 45.45.600 and whether HB 87 pertained to any of those devices, which she had suggested that it would not.

MR. DUNMIRE stated his belief that Representative Snyder's assertion that HB 87 would not pertain to assistive technologies described in the statute was correct.

[2:57:32 PM](#)

REPRESENTATIVE EASTMAN suggested that replacing the word "bicycle" with "cycle" would allow for devices with one to three wheels to be categorized as e-bikes under the proposed bill and would include tricycles and unicycles.

REPRESENTATIVE WOOL asked whether Representative Eastman had suggested that e-cycle be the referenced terminology instead of

e-bikes for devices with one to three, but not four, wheels as currently written in the proposed bill. He offered to consider the change to the language if there existed sufficient public interest on the matter, and if there existed many individuals operating electric assisted three-wheeled bikes. He stated his preference to maintain the word "bicycles" in the proposed bill.

[2:59:10 PM](#)

CHAIR CLAMAN asked Ms. Carrick whether the committee and invited testimony had answered all the questions previously posed by the committee.

MS. CARRICK stated her belief that, for the most part, it had, and she invited additional questions should they arise. She added that Representative Kurka had asked whether gas- or fuel-operated motors would be included in the definition of e-bikes.

REPRESENTATIVE WOOL explained that fuel-driven assisted bicycles with an engine size of 50 cubic centimeters (cc) or less are classified as a motor-driven cycle.

[3:00:19 PM](#)

MS. CARRICK explained that terms are defined in the bill. In Section 5, on page 3, line 22 is the definition of an electric personal motor vehicle, which differentiates between a Segway and a motorized grocery cart. She added that in Section 6, on page 3, line 28 motor vehicle is defined, and on page 4, line 2, motor-driven cycle is referenced. She explained that an engine which is 50 cubic centimeters (cc) or less would be covered and those greater than 50 cc would be classified as a motorcycle. She pointed out that there exists a difference between a "motorcycle" and a "motor-driven cycle" and suggested that there exists some confusion between the two.

[HB 87 was held over.]

[3:02:20 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:02 p.m.