

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

May 17, 2021

1:36 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

SENATE BILL NO. 122

"An Act relating to the definition of 'victim.'"

- MOVED HCS SB 122 (JUD) OUT OF COMMITTEE

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."

- MOVED HCS CSSB 65 (JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 122

SHORT TITLE: VICTIM DEFINITION

SPONSOR(s): SENATOR(s) REINBOLD

04/07/21	(S)	READ THE FIRST TIME - REFERRALS
04/07/21	(S)	JUD
04/14/21	(S)	JUD AT 1:30 PM BUTROVICH 205
04/14/21	(S)	Heard & Held
04/14/21	(S)	MINUTE (JUD)
04/19/21	(S)	JUD AT 1:30 PM BUTROVICH 205
04/19/21	(S)	Scheduled but Not Heard

04/21/21 (S) JUD AT 1:30 PM BUTROVICH 205
 04/21/21 (S) Heard & Held
 04/21/21 (S) MINUTE(JUD)
 04/23/21 (S) JUD AT 1:30 PM BUTROVICH 205
 04/23/21 (S) <Bill Hearing Canceled>
 04/26/21 (S) JUD AT 1:30 PM BUTROVICH 205
 04/26/21 (S) Moved SB 122 Out of Committee
 04/26/21 (S) MINUTE(JUD)
 04/28/21 (S) JUD RPT 5DP
 04/28/21 (S) DP: HOLLAND, MYERS, HUGHES, SHOWER,
 KIEHL
 05/05/21 (S) TRANSMITTED TO (H)
 05/05/21 (S) VERSION: SB 122
 05/06/21 (H) READ THE FIRST TIME - REFERRALS
 05/06/21 (H) JUD
 05/10/21 (H) JUD AT 1:00 PM GRUENBERG 120
 05/10/21 (H) -- MEETING CANCELED --
 05/12/21 (H) JUD AT 1:00 PM GRUENBERG 120
 05/12/21 (H) Heard & Held
 05/12/21 (H) MINUTE(JUD)
 05/14/21 (H) JUD AT 1:00 PM GRUENBERG 120
 05/14/21 (H) Heard & Held
 05/14/21 (H) MINUTE(JUD)
 05/15/21 (H) JUD AT 1:00 PM GRUENBERG 120
 05/15/21 (H) -- MEETING CANCELED --
 05/17/21 (H) JUD AT 1:00 PM GRUENBERG 120

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) Moved CSSB 65(HSS) Out of Committee
 02/18/21 (S) MINUTE(HSS)
 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) HSS RPT HCS(HSS) NEW TITLE 4DP 2NR
 05/05/21 (H) DP: MCCARTY, SPOHNHOLZ, SNYDER,
 ZULKOSKY
 05/05/21 (H) NR: PRAX, KURKA
 05/05/21 (H) JUD AT 1:00 PM GRUENBERG 120
 05/05/21 (H) Heard & Held
 05/05/21 (H) MINUTE(JUD)
 05/17/21 (H) JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

TAYLOR WINSTON, Director
 Office of Victims' Rights
 Anchorage, Alaska

POSITION STATEMENT: Testified during the hearing on SB 122.

SENATOR JESSE KIEHL
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: As prime sponsor, presented SB 65.

ACTION NARRATIVE

[1:36:47 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:36 p.m. Representatives Kurka, Vance, Drummond, Snyder, Kreiss-Tompkins, and Claman were present at the call to order. Representative Eastman arrived as the meeting was in progress.

SB 122-VICTIM DEFINITION

[1:37:29 PM](#)

CHAIR CLAMAN announced that the first order of business would be SENATE BILL NO. 122, "An Act relating to the definition of 'victim.'"

CHAIR CLAMAN stated that Legislative Legal & Research Services was authorized to make any technical or conforming changes to the bill.

[1:38:09 PM](#)

REPRESENTATIVE KURKA moved to adopt Amendment 2, labeled 32-LS0422\B.2, Dunmire, 5/15/21, which read:

Page 1, line 5, following "perpetrated;":
Insert "or"

Page 1, line 7:
Delete "or"
Insert "[OR]"
Following "incapacitated":
Insert ", or dead"

Page 1, line 9:
Delete "; or"
Insert "or who was living in a spousal relationship with the person specified in (A) of this paragraph when the person died; [OR]"

Page 1, line 10:
Delete "adult"
Insert "[ADULT]"
Following "child":
Insert ", brother, sister, grandparent, grandchild"

Page 1, line 11, following "person;":
Insert "or"

(iii) any other interested person, as may be designated by a person having authority in law to do so"

Page 1, line 12, through page 2, line 4:

Delete all material and insert:

"[(C) ONE OF THE FOLLOWING, NOT THE PERPETRATOR, IF THE PERSON SPECIFIED IN (A) OF THIS PARAGRAPH IS DEAD:

(i) A PERSON LIVING IN A SPOUSAL RELATIONSHIP WITH THE DECEASED BEFORE THE DECEASED DIED;

(ii) AN ADULT CHILD, PARENT, BROTHER, SISTER, GRANDPARENT, OR GRANDCHILD OF THE DECEASED; OR

(iii) ANY OTHER INTERESTED PERSON, AS MAY BE DESIGNATED BY A PERSON HAVING AUTHORITY IN LAW TO DO SO]."

REPRESENTATIVE SNYDER objected.

REPRESENTATIVE KURKA explained that the intent of Amendment 2 was to consolidate the definitions of victims listed in the proposed bill.

CHAIR CLAMAN referred to a message from the general counsel of the Alaska Court System which conveyed that under AS 12.45.015, introduction of the victim and criminal defendant to the jury, under subsection (a), during jury selection and part of an opening statement at trial, a trial attorney may introduce the victim and defendant to the jury; the message expressed concern that Amendment 2 could subject very young victims to a jury in the midst of a criminal trial.

[1:40:30 PM](#)

REPRESENTATIVE SNYDER asked whether a youth may or may not be called to trial under current law.

CHAIR CLAMAN answered that Amendment 2 would not pertain to testimony at a trial but to the introduction of a victim during a jury trial.

REPRESENTATIVE SNYDER suggested that there had been disagreement of whether it would be appropriate to allow introduction of minor victims during trial.

CHAIR CLAMAN allowed that there exists a very different perspective between matters concerning a victim at age 15 and a victim at age 3.

REPRESENTATIVE SNYDER asked whether the proposed amendment would compel a minor to testify at trial.

CHAIR CLAMAN answered that the statute contained the word "may" and that a larger concern would be a hypothetical situation in which the picture of a baby who may have been impacted [by an alleged crime] was presented during jury selection and could be prejudicial to the trial process.

REPRESENTATIVE KURKA characterized the concerns brought forth by the Alaska Court System were valid and suggested that the same concern would exist with the underlying bill. He noted that brothers and sisters who may or may not be adults should be included as victims.

CHAIR CLAMAN stated that he would not speak on behalf of the general counsel for the Alaska Court System but speculated that if she were present to offer testimony, she might suggest that the question of Amendment 2 would be one of a policy decision by the legislature.

[1:44:44 PM](#)

The committee took an at-ease from 1:44 p.m. to 1:45 p.m.

[1:46:03 PM](#)

TAYLOR WINSTON, Director, Office of Victims' Rights, stated that the existing definition of victim consists of three separate sets of victims, and the Alaska Court System had pointed out potential difficulties in merging them. She stated that additional issues that may have not been vetted and contemplated may exist should the three sets be combined. In response to Chair Claman, she confirmed that the Office of Victims' Rights did not support the proposed amendment.

[1:48:21 PM](#)

REPRESENTATIVE EASTMAN asked whether there existed a benefit to allowing adult siblings to qualify as victims.

MS. WINSTON answered that it was her belief that it would diminish existing rights and explained that in a homicide, all family members are affected and that an individual's minor status should not preclude them from victim status.

[1:49:18 PM](#)

REPRESENTATIVE SNYDER asked whether the Office of Victims' Rights did not support the proposed amendment solely because it had not been fully vetted by the organization or based on its merits.

MS. WINSTON stated that in her professional experience, no issues had arisen due to the three separate groups of victims and suggested that ongoing discussions or examination of other areas of law may still be appropriate.

REPRESENTATIVE KURKA asked the reason for a qualifying difference between victims defined in subsections (b) and (c) and suggested that minor children should be included as victims in subsection (c).

MS. WINSTON answered that the original intent of SB 122 differed from that which was trying to be gained through amendments. She stated that all victims are defined in subsection (a) and that victims identified under (b)(i) and (b)(ii) could have victims' rights expanded to include minors due to an exception that may be made due to an individual's minor status or incapacity, and the bill would allow an adult individual to advocate on the minor's behalf. She allowed that other areas of law may exist that the change to definition could exist to achieve the stated goals of the amendment; she stated her belief that there could be unintended consequences should the amendment be adopted and HB 122 pass.

[1:56:35 PM](#)

REPRESENTATIVE KURKA stated that he considered the amendment reasonable and potential scenarios existed where adult and minor children should be defined as victims.

REPRESENTATIVE SNYDER maintained her objection to the motion to adopt Amendment 2.

[1:57:58 PM](#)

A roll call vote was taken. Representatives Kurka, Snyder, Kreiss-Tomkins, and Eastman voted in favor of Amendment 2 to SB 122. Representatives Vance, Drummond, and Claman voted against it. Therefore, Amendment 2 was adopted by a vote of 4-3.

[1:59:44 PM](#)

REPRESENTATIVE EASTMAN expressed his appreciation to the bill sponsor in examining the existing statute to include additional victims.

REPRESENTATIVE KURKA expressed his support for SB 122, as amended.

[2:01:08 PM](#)

REPRESENTATIVE SNYDER moved to report SB 122, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCS SB 122(JUD) was reported out of the House Judiciary Standing Committee.

[2:02:10 PM](#)

ADJOURNMENT

CHAIR CLAMAN recessed the House Judiciary Standing Committee meeting to a call of the chair.

[6:17:06 PM](#)

CHAIR CLAMAN called the House Judiciary Standing Committee meeting back to order at 6:17 p.m. Representatives Eastman, Drummond, Snyder, and Claman were present at the call back to order. Representatives Kreiss-Tomkins and Kurka arrived as the meeting was in progress.

SB 65-LIABILITY CONSULTING HEALTH CARE PROVIDER

[6:17:18 PM](#)

CHAIR CLAMAN announced that the final 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).]

CHAIR CLAMAN referred to Mason's Manual, Section 1.2, which emphasizes orderly and businesslike consideration of questions before the body to eliminate confusion and waste of time and effort.

CHAIR CLAMAN stated that the bill had been introduced to address potential ambiguity in Alaska medical malpractice law as it pertains to "curbside consults" where a medical professional may consult with another medical professional who has no doctor/patient relationship with the patient receiving treatment. He referred to the State of Minnesota court case Warren v. Dinter, which had raised the question whether a doctor/patient relationship must exist for liability to be established in a medical malpractice claim. He referred to three Alaska Supreme Court Cases, M.A v the United States (1998), Smith v. Radecke (2010), and Cornelison v. TIG Insurance (2016), which may have left ambiguity whether the doctor/patient relationship must exist in a malpractice claim, and he stated that the proposed legislation seeks to remedy that ambiguity. He stated that multiple amendments may have detracted from the bill sponsor's intent of the bill. He stated that adding the physician/patient requirement to the medical malpractice statute, AS 09.55.540, would remove ambiguity that may exist in court opinions and in statute and uses fewer words. He suggested it would result in fewer lawsuits and less confusion among providers and patients.

[6:21:13 PM](#)

SENATOR JESSE KIEHL, Alaska State Legislature, as prime sponsor, stated that the fundamental purpose of the proposed legislation was elegantly restated via a proposed House committee substitute available to the committee, despite being an approach significantly different from the initial draft of SB 65. He added that the House committee substitute would remove the question of whether a medical professional may be held liable for medical malpractice outside of a doctor/patient relationship and it would maintain focus on medical malpractice liability. He stated his appreciation for the committee substitute's limitation to parties to a malpractice lawsuit and would not permit non-party participation. He expressed his support for the adoption of the House committee substitute.

[6:24:38 PM](#)

REPRESENTATIVE SNYDER moved to adopt the proposed House committee substitute (HCS) for SB 65, labeled 32-LS0002\R, Fisher, 5/17/21. There being no objection, Version R was before the committee.

[6:26:07 PM](#)

REPRESENTATIVE KREISS-TOMKINS expressed his appreciation of the elegance and precision arrived at in cooperation with the bill's sponsor within the committee substitute.

REPRESENTATIVE SNYDER stated that she had observed the deliberation of SB 65 that had taken place in the House Health and Social Services Standing Committee and lauded the solution put forth in the [newly adopted] committee substitute, which she also characterized as elegant.

REPRESENTATIVE KURKA lauded the brevity of [Version R] and asked what prompted the elimination of consideration of "duty of care" that had been addressed in the underlying bill.

CHAIR CLAMAN reiterated his opening comments and shared that Version R reflected the clarity that was required to address concerns brought by members of the medical profession that they could be sued by an individual who is not their patient.

[6:30:33 PM](#)

REPRESENTATIVE SNYDER moved to report HCS CSSB 65(JUD), labeled 32-LS0002\R, Fisher, 5/17/21, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCS CSSB 65(JUD) was reported out of the House Judiciary Standing Committee.

[6:31:36 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 6:32 p.m.