

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

March 12, 2021

1:38 p.m.

MEMBERS PRESENT

Senator Mike Shower, Vice Chair
Senator Shelley Hughes
Senator Robert Myers
Senator Jesse Kiehl
Senator Lora Reinbold (via Teams)

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CONFIRMATION HEARING(S) :

Commission on Judicial Conduct
Donald McClintock III - Anchorage

- CONFIRMATION ADVANCED

SENATE BILL NO. 65

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

- HEARD & HELD

PRESENTATION:

Legislative Legal Lawsuit on Governor's Appointees

- SCHEDULED BUT NOT HEARD

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

WITNESS REGISTER

DONALD MCCLINTOCK III, Appointee
 Commission on Judicial Conduct
 Alaska Court System
 Anchorage, Alaska

POSITION STATEMENT: Testified as appointee to the Commission on Judicial Conduct.

MELINDA RATHKOPF, Physician; Medical Director
 Allergy, Asthma and Immunology Center of Alaska
 Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 65.

ACTION NARRATIVE

[1:38:17 PM](#)

VICE CHAIR MIKE SHOWER called the Senate Judiciary Standing Committee meeting to order at 1:38 p.m. Present at the call to order were Senators Hughes, Myers, Kiehl, and Senator Reinbold (via Teams), and Vice Chair Shower.

CONFIRMATION HEARING(S)
Commission on Judicial Conduct

[1:39:25 PM](#)

VICE CHAIR SHOWER announced consideration of Governor Appointees to Boards and Commissions. He asked Donald McClintock III to tell the committee about himself and why he wants to continue to serve on the Commission on Judicial Conduct.

[1:39:58 PM](#)

DONALD MCCLINTOCK III, Appointee, Commission on Judicial Conduct, Alaska Court System, Anchorage, Alaska, stated he is an attorney at Ashburn and Mason, P.C. He said he has served on the Commission on Judicial Conduct (CJC) since March 2017. He is seeking reappointment. He originally applied to serve on the CJC to contribute to the administration of justice in Alaska. He offered his view that this is an important position in the interface between the public and respect for the rule of law and the judiciary administers it. He related he has considerable experience in the courts working with other practitioners, judges and clients. Before serving on the CJC, he thought he knew a lot about the Code of Judicial Ethics. However, since serving on the commission, he has appreciated that judges are essentially required to retire from society to a certain degree. He said how judges comport themselves and arrive at their decisions needs to be reviewed and considered. Since 2017, he has spent time learning and being mentored by other CJC members. He said he would like to serve another term.

[1:42:49 PM](#)

VICE CHAIR SHOWER asked if he had anything in his background such as a criminal conviction, arrest or other issues that could be construed as a "skeleton in his closet."

MR. MCCLINTOCK said he does not have any convictions. He said after he graduated from college, he was arrested for trespass at a student protest to request Stanford University's Board of Governors to divest their investments in South Africa.

VICE CHAIR SHOWER thanked him for his candor.

SENATOR REINBOLD asked if he felt comfortable commenting on SB 14.

MR. MCCLINTOCK, after clarifying SB 14 changes the appointment process for District Court and Superior Court judges, he responded that he has worked with one of the nonprofits, Justice Not Politics Alaska. This organization publicly advocated against the bill and his law office also testified. However, the bill was amended so that the Commission on Judicial Conduct is no longer involved in evaluating judges. He offered his view that this change reduced the fiscal note. He supported the change, he said.

[1:46:31 PM](#)

VICE CHAIR SHOWER asked Daniel Weatherly to tell the committee about himself and his interest in continuing to serve on the Alaska Police Standards Council.

[VICE CHAIR SHOWER was informed that Mr. Weatherly was not available.]

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At ease

[1:49:10 PM](#)

VICE CHAIR SHOWER reconvened the meeting. He stated that the committee would not hear from additional appointees because confirmation hearings were not noticed. He apologized to the appointee, who was online.

[1:50:13 PM](#)

VICE CHAIR SHOWER opened public testimony and, after first determining no one wished to testify, closed public testimony on the appointment of Donald McClintock III to the Commission on Judicial Conduct.

[1:50:33 PM](#)

SENATOR HUGHES stated that in accordance with AS 39.05.080, the Senate Judiciary Standing Committee reviewed the following and recommends the appointments be forwarded to a joint session for consideration:

Commission on Judicial Conduct

Donald McClintock III - Anchorage

SENATOR HUGHES reminded members that signing the reports regarding appointments to boards and commissions in no way reflects individual members' approval or disapproval of the appointees; the nominations are merely forwarded to the full legislature for confirmation or rejection.

SB 65-LIABILITY CONSULTING HEALTH CARE PROVIDER

[1:51:23 PM](#)

VICE CHAIR SHOWER announced the consideration of SENATE BILL NO. 65 "An Act relating to immunity for consulting physicians, podiatrists, osteopaths, advanced practice registered nurses, physician assistants, dentists, optometrists, and pharmacists."

[CSSB 65(HSS) was before the committee.]

[1:51:45 PM](#)

VICE CHAIR SHOWER stated the committee would consider amendments.

[1:52:43 PM](#)

SENATOR KIEHL, speaking as sponsor, said at the first hearing on SB 65 Senator Myers asked whether there was a reason to exclude federal hospitals from the definition of a health care facility. He said it was an unintentional exclusion, so his office prepared an amendment to include federal hospitals in the definition. He stated it would have a limited application in Alaska since most medical practitioners practicing at federal hospitals are federal employees. The federal tort law that allows a person to sue a federal employee would preempt state law. Still, there may be Alaska licensed health care professionals with privileges to practice in a federal hospital, so including federal hospitals will ensure that these hospitals are covered under the provisions of SB 65.

[1:54:20 PM](#)

SENATOR HUGHES asked if Alaska has any Native health hospitals and if so, whether "federal" would cover those.

SENATOR KIEHL answered that the Alaska Native Medical Center (ANMC) in Anchorage is owned by a nonprofit covered by the bill's private nonprofit language.

SENATOR HUGHES asked if the hospital in Bethel, which is run by the Yukon-Kuskokwim Health Corporation (YKHC) is set up in the same way.

SENATOR KIEHL responded that the only category that might not be covered by private, municipal, state, or federal would be if someone built a tribal hospital. He stated that there are not any tribe-owned hospitals in the state to date, and he is not aware of any proposals to build one.

SENATOR HUGHES asked if the Alaska State Hospital and Nursing Home Association (ASHNHA) has reviewed the bill since that organization would know if any hospitals would be excluded.

SENATOR KIEHL replied that ASHNHA had written a letter of support.

[1:56:32 PM](#)

SENATOR MYERS moved to adopt Amendment 1, [work order 32-LS0002\I.1]:

AMENDMENT 1

OFFERED IN THE SENATE
TO: CSSB 65(HSS)

BY SENATOR KIEHL

Page 2, line 23:
Delete "or"
Following "state":
Insert ", or federal"

[1:56:35 PM](#)

VICE CHAIR SHOWER objected for discussion purposes.

[1:57:03 PM](#)

SENATOR MYERS explained Amendment 1. He directed attention to page 2, line 23, which would add "federal" to the definition of health care. It would read, "private, municipal, state, or federal hospital."

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SENATOR REINBOLD, testifying via teleconference, said the Senate Health and Social Services Standing Committee heard SB 65. She offered her support for Amendment 1.

[1:59:15 PM](#)

VICE CHAIR SHOWER removed his objection. There being no further objection, Amendment 1 was adopted.

[1:59:47 PM](#)

VICE CHAIR SHOWER moved to invited testimony.

[2:00:24 PM](#)

MELINDA RATHKOPF, Physician; Medical Director, Allergy, Asthma and Immunology Center of Alaska, Anchorage, Alaska, said she is a pediatrician. She also serves on the Board of Trustees for the Alaska State Medical Association. She spoke in support of SB 65. She said she is speaking as a specialist, noting that for the first 10 of 15 years, the Allergy, Asthma, and Immunology Center of Alaska was the only allergy immunology practice in the state outside of the military. She related that this practice has taken, and still takes, phone calls from other providers throughout Alaska about their patients with allergy or

immunology needs. In the past several years, their most unique role has been screening newborns for a severe combined immune deficiency (SKID) defect, which can be life-threatening if not diagnosed immediately. She said her group is on call statewide to consult on any newborn with an abnormal screening. These calls are for patients that the doctors in her practice may never meet, but the doctors give their expert advice and guidance for the care of these fragile infants. She indicated that in these instances there is never a doctor to patient relationship formed. However, the clinic may treat the patient later for an in-person visit. Typically, these patients are cared for by their primary care providers. The doctors at her clinic are never reimbursed, she said.

[2:02:38 PM](#)

DR. RATHKOPF explained that she might get a call from a Bethel resident on how to care for an immune issue or receive a call from a family practice doctor in Fairbanks on a severe asthmatic patient. Her practice receives calls from providers throughout Alaska on how to care for patients, but the doctors often never meet the patients. She informed members that her practice has seven satellite clinics in Alaska, most of which require air travel, including in Ketchikan or Valdez. This bill allows physicians to provide advice without fear of liability for advice given without establishing a doctor-patient relationship or having seen the patient in person.

[2:03:46 PM](#)

VICE CHAIR SHOWER asked if Alaska needs the protection offered by SB 65 more than other states in the Lower 48 due to Alaska's size and limited road system and isolated communities.

DR. RATHKOPF agreed that the need is greater due to geographical issues and since Alaska has fewer specialists, many of whom are concentrated in Anchorage. Further, inclement weather issues may prevent patients from coming to Anchorage.

[2:05:37 PM](#)

SENATOR HUGHES thanked her and her colleagues because of the time spent assisting patients without receiving any financial reimbursement. She asked if her phone consults are primarily outside the Anchorage Bowl and if primary care physicians are more likely to refer patients to see her in person. She surmised that she likely takes more calls than her counterparts in other states.

DR. RATHKOPF agreed that her practice likely takes more calls. Someone is on call 24/7 in the state to assist patients. She added that being physicians and providing expertise is what they love and are passionate about. She said she could not imagine a provider who is unwilling to take these calls. She related that some pressure has come from malpractice carriers on the liability insurance issue. She said it is fulfilling to help patients, many of whom are eventually seen by her practice.

[2:07:41 PM](#)

SENATOR HUGHES said she applauded her because the initial consults did not result in any financial gain. She said she appreciated the passion she brings to help Alaska residents who face some of the problems she can address.

[2:07:57 PM](#)

VICE CHAIR SHOWER asked if this is a problem in other states.

SENATOR KIEHL responded that this issue arose from a Minnesota Supreme Court Case. A doctor provided an unpaid consultation without forming a doctor-patient relationship or duty of care, which led to a lawsuit. He related that this decision sent shock waves throughout the medical community. He stated that insurers like to limit their risk. In some instances, specialists were advised not to take the calls. However, he offered his view that a better approach was to ensure that those who truly do not have a duty of care are not subject to litigation and liability. SB 65 takes this approach, he said. He mentioned that several other states are considering legislation similar to this. He recalled that this concept has passed in Idaho and several other states are considering this legislation.

[2:09:52 PM](#)

SENATOR REINBOLD characterized it as a Good Samaritan law. She said she hopes to get this bill to the Senate floor soon.

[2:11:55 PM](#)

VICE CHAIR SHOWER held SB 65 in committee.

[2:12:14 PM](#)

There being no further business to come before the committee, Vice Chair Shower adjourned the Senate Judiciary Standing Committee meeting at 2:12 p.m.