

HB

65

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 65

Revision Date/Time (Note if correction): _____ Dept. Affected: Health and Social Services
 Title: Corrective Amendments to Title 47. BRU: Family & Youth Services Mgmt
 Component: Family & Youth Services Mgmt
 Sponsor: House Rules by Request COMPONENT SERIAL NO. 2306
 Requestor: House (JUD) See also (SN#): _____

Expenditures/Revenues: _____ (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
CHANGES IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0


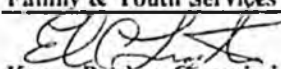
Estimate of any current year (FY1999) cost: \$0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill has no fiscal impact on the division.


 Prepared by: Theresa Tanoury Phone: 465-3191
 Division: Family & Youth Services Date/Time: 1/29/99 4:44 PM

 Approved by Commissioner: Karen Perdue, Commissioner Date: 2/4/99
 Agency: Department of Health & Social Services

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DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 16, 1999

Hon. Pete Kott
Chair
House Judiciary
State Capital
Juneau, AK 99801

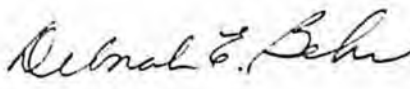
Re: HB 65 - Supplemental revisor's bill
regarding access to criminal justice
information

Dear Representative Kott:

The Department of Law has reviewed HB 65, the supplemental revisor's bill regarding access to criminal justice information. We find no legal problems with the bill. The bill makes appropriate changes to respond to the repeal of AS 12.62.035.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
Deborah E. Behr
Assistant Attorney General

DEB:jf

cc: James Crawford
Assistant Revisor of Statutes

Anne Carpeneti
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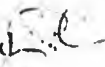
130 Seward Street, Suite 405
Juneau, Alaska 99801-2195

MEMORANDUM

February 12, 1999

SUBJECT: Sectional Summary of the Supplemental Revisor's Bill, HB 65 (Work Order No. 21-LS0342 A)

TO: Representative Pete Kott, Chair
House Judiciary Committee

FROM: James P. Crawford 
Assistant Revisor

The following is a sectional analysis of HB 65, the supplemental revisor's bill. The bill is prepared under AS 01.05.036, which provides, in part, that the revisor of statutes

shall prepare for submission to the legislature legislation for the correction or removal of the deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of ... the statute law of this state.

The aim of all sections of the bill is to correct obsolete provisions and to improve the form or substance of the statute law.

SECTIONAL ANALYSIS

The five substantive sections in this bill contain obsolete references to repealed AS 12.62.035, "Access to certain crime information," a problem brought to the attention of this office by the Department of Law. The problem arose from the fact that in the same year that chs. 45 and 124, SLA 1994 added these references to AS 12.62.035, another act, ch. 118, SLA 1994, repealed that statute.

A working assumption of this bill is that any revisor's bill solution for the obsolete references originating with chs. 45 and 124 should generally be consistent with the legislative intent connected with chs. 45 and 124. As it happens, the legislative intent of these two chapters is not identical; thus, the recommended solutions are not identical.

Section 1. AS 47.05.017(a) contains a reference to "records" under "AS 12.62.035(a)." Essentially the same reference is also found in AS 47.14.100(h), amended by sec. 2; AS 47.65.050(b), amended by sec. 4; and AS 47.65.100(e), amended by sec. 5. These references all originated in ch. 45, SLA 1994. In that chapter, the legislature conditioned the use of public money targeted for certain care providers upon a grantee, contractor, or sponsor making a criminal records request. Specifically, the request related to records for individuals hired to actually furnish care services to persons needing those services. At the time, the

information available to an appropriate requestor under AS 12.62.035 generally fell into three categories of "records" consisting of the following:

- (1) felony convictions;
- (2) convictions involving contributing to the delinquency of a minor; and
- (3) "sex crime" convictions, with "sex crime" being defined to include specific listed offenses.

The repeal of this section became effective on July 1, 1995.

To solve the problem caused by the repeal while staying within the confines of the legislative intent connected with ch. 45, an effort was made to determine what solution would be consistent with the intent in to add a records check requirement in ch. 45 in the first place. In other words, had the legislature known when it conditioned use of public funds on requesting records in 1994 that another bill repealing that records statute would also pass, what replacement would it have wanted? Based on the legislative history of ch. 45, it seems logical that the legislature would have wanted a solution that addressed the chief concerns that gave rise to ch. 45 and the records requirement in the first place.

The concerns driving ch. 45 were reflected in hearings held in the bill's six committees of referral: the House and Senate HESS committees, the House and Senate Judiciary committees, and the House and Senate Finance Committees.¹ Both the committee minutes and the committee tape recordings of the hearings reveal (1) a general concern to provide greater protection for those persons who, for one reason or another, were in need of home care or related services, and (2) a specific concern to provide protection for those people from fraud or theft. The latter concern arose in response to an elderly person having been defrauded of approximately five hundred thousand dollars by a home care provider who had gained control of the person's bank accounts.

The general concern to increase protection is illustrated by the following testimony excerpts:

Under this bill, the Commission would in fact require criminal checks on people doing in home services, and we think that's a very good idea because it would prevent exploitation of people who definitely need to be protected.

Fran Johnson, Associate Coordinator at the Older Alaskans Commission, testifying at the Senate Judiciary Committee Hearing on February 16, 1994, tape counter no. 504, side B.

The bill is, I guess, just straightforward, Mr. Chairman, requiring background checks so that we're not having people with criminal backgrounds that would and can prey on this vulnerable section of our society.

¹ Excerpts of the committee minutes are attached as appendix A.

THE
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Representative Jerry Mackie, prime sponsor of HB 3 (ch. 45), testifying at the Senate Judiciary Committee Hearing on February 16, 1993, tape counter no. 140, side B.

This bill will provide some protection to elderly and disabled persons from those responsible for their care.

Representative Jerry Mackie, prime sponsor of HB 3 (ch. 45), testifying at the House Judiciary Committee Hearing on March 27, 1993, tape counter no. 239, side A.

These groups are particularly vulnerable to abuse because of age, illness, disability, and the isolation of being alone in their home with a care giver.

Representative Jerry Mackie, prime sponsor of HB 3 (ch. 45), testifying at the House HCSS Committee Hearing on March 8, 1993, tape counter no. 426, side A.

It is important to take these steps now, while Alaska is on the brink of an explosion in home care services.

Representative Jerry Mackie, prime sponsor of HB 3 (ch. 45), testifying at the House Finance Committee Hearing on May 5, 1993, tape counter no. 170, side A.

Of all background checks that are done, thirty percent of these people do have criminal histories, so I think it's important also to apply that aspect, especially to the home care provider industry.

Representative Jerry Mackie, prime sponsor of HB 3 (ch. 45), testifying at the House HCSS Committee Hearing on March 8, 1993, tape counter no. 469, side A.

The specific concern to protect from fraud is illustrated by the following testimony excerpt:

A home care provider is in court right now being charged with disposing of approximately a half a million dollars worth of assets of this elderly person, basically all the life savings, and so forth, and I felt and the department feels it's probably inappropriate for a home care provider that's being paid with state dollars to be able to have the ability to have power of attorney over somebody's money.

Representative Jerry Mackie, prime sponsor of HB 3 (ch. 45), testifying at the House Finance Committee Hearing on May 5, 1993, tape counter no. 386, side A.

This revisor's bill attempts to address the concerns set out above by recommending a solution that substitutes "criminal justice information" for noun or pronoun references to "records" and substitutes "AS 12.62.160" for "12.62.035(a)" in secs. 1, 2, 4, and 5. The same chapter that repealed AS 12.62.035 also added AS 12.62.160, "Release and use of criminal justice information; fees," which appears to have been intended as a replacement to AS 12.62.035, making it a logical starting point to solve the present problem. As could be expected, there are similarities between the sections.

However, a difference between repealed AS 12.62.035 and new AS 12.62.160 to be aware of is that instead of referring to "records" of convictions, new AS 12.62.160 section refers to "criminal justice information." This phrase is defined at AS 12.62.900, also added by ch. 118, and under new AS 12.62.160, a broader range of information is potentially available than was the case under the repealed section it replaced.

Despite this, some of the potential broadness is reduced by the fact that, as amended, these statutes would not allow access to national criminal justice information. According to Ms. Diane Schenker, an official with the Department of Public Safety, before national criminal justice information will be released, the FBI interprets federal law to require greater specificity in an authorizing statute than that which appears in these statutes. Consequently, the requestor is limited to state records.

The practical effect, according to Ms. Schenker, is that, basically, the records that a requestor will get are likely to be the sort of records that are available through an "interested person" request under AS 12.62.160(b)(10), which represents a subset of the broader term "criminal justice information."

This is significant because when it was enacted in 1994, AS 12.62.160(b)(10) information was essentially the same as AS 12.62.035 information -- an even match. Amendments since 1994 have broadened (b)(10) beyond repealed AS 12.62.035, but the main difference is that (b)(10) now also makes available records of crimes involving domestic violence punishable as misdemeanors. Thus, the general effect of the statutes as amended is that the much of the information that one will get is likely to be similar to the sort of information one got under the repealed records statute.

That said, it does remain possible that a requestor will receive more records under the statutes as amended by this bill than were available under the repealed statute. Note, however, that among the additional categories of records potentially available would be records of certain crimes involving theft or fraud punishable as misdemeanors. Given the legislature's concern in 1994 to increase protection, including protection from fraudulent acts, and given that the legislature connected the concept of protection to the concept of receipt of records, the potential for receiving a broader range of records appears to be consistent with the legislature's generally expressed intent to increase protection.

Section 2. See explanation for section 1.

Section 3. AS 47.35.130(a), like the other sections, contains a reference to AS 12.62.035, but the reference is distinct enough to warrant separate treatment. Rather than mentioning all "records" available under AS 12.62.035(a), this statute only mentions one of the three types of "records": "sex crime." Additionally, unlike the ch. 45 statutes, this statute does not involve a records request requirement. Instead, the reference in this statute originated in ch. 124, SLA 1994, where the legislature based revocation or declining to renew licenses of certain child care facilities on the commission of sex crimes by individuals connected to the facilities.

As with ch. 45, a revisor's bill solution for the obsolete reference originating with ch. 124 should be consistent with the legislative intent connected to ch. 124, to the extent that intent can be ascertained.

Representative Pete Kott, Chair
House Judiciary Committee
February 12, 1999
Page 5

Unfortunately, neither the committee minutes nor the committee tape recordings of the hearings surrounding ch. 124 were particularly useful in ascertaining the legislature's intent.² What can be determined about legislative intent comes from the words of the statute itself. By restricting the category of information under discussion to "sex crime" only -- which was but one of the three categories of information available within the broader umbrella term "records" under AS 12.62.035 -- the statute suggests a legislative intent to keep the reference to the records statute relatively limited.

Consequently, the solution recommended here is simply to replace the reference to a "sex crime as defined in AS 12.62.035" with the specific list of offenses that constituted a "sex crime" under the repealed statute. Note that the portion of this statute that is not being amended already references felonies and offenses involving contributing to the delinquency of a minor. Thus, all categories of information available under repealed AS 12.62.035 are in the statute even though the reference to AS 12.62.035 remains limited to only crimes defined as "sex crimes."

Section 4. See explanation for sec. 1.

Section 5. See explanation for sec. 1.

Section 6. Effective date.

JPC:glc
99-060.glc

² For what they are worth, excerpts of the minutes are attached as appendix B.

Appendix A

**Committee Minutes Excerpts
HB 3 (Chapter 45, SLA 1994)**

8 March 1993 House HESS Committee

27 March 1993 House JUD Committee

5 May 1993 House FIN Committee

21 April 1993 Senate HESS Committee

16 February 1994 Senate JUD Committee

17 March 1994 Senate FIN Committee

8 March 1993 House HESS Committee

ACTION NARRATIVE

TAPE 93-30, SIDE A
Number 000

CHAIR TOOHEY called the meeting to order at 3:07 p.m., noted members present, and announced the calendar.

HB 3 - REGULATION OF HOME CARE PROVIDERS

Number 445

*[Tape counter No. 426, Side A]

REP. JERRY MACKIE testified as PRIME SPONSOR of HB 3. He noted that similar bills passed through the Senate in 1992, but died in the session's final days. He read a sponsor statement, which is on file in the committee room. In summary, the statement said that HB 3 would protect elderly people by restricting public home care providers (HCPs) from assuming sole power of attorney for their clients, and by requiring background checks on home care providers paid under certain state programs. He referred to a case in which a health care provider took control of a client's finances through a power of attorney and spent \$500,000 of the client's money. He said he was not attacking the HCPs, but was trying to afford their clients' protection. He noted that 30 percent of state required background checks reveal criminal histories.

Number 496

REP. BUNDE asked whether a criminal record automatically barred a person from working as an HCP.

REP. MACKIE stated that this might be a question that would be addressed in regulations under the bill, not by the statutory language. He said the bill proposed in the previous legislative session required background checks to

be completed within 10 days of hiring and upon request, and that certain actions had to take place within five days of receipt of such reports. He said such provisions were in effect in HB 3.

Number 522

REP. BUNDE asked again whether a criminal record automatically barred a person from working as an HCP.

REP. MACKIE said it would depend on individual circumstances, and the issue would be addressed in regulations.

Number 522

REP. VEZEY observed that HB 3 would do little to deter a determined fraud.

REP. MACKIE said all legislation can do is provide penalties for crimes, but cannot order 100 percent compliance with law. He said the bill is a substantial improvement over current law. He stated that courts, which usually give powers of attorney, would have to determine an acceptable second person, most likely not a partner of the HCP, but a relative of the elderly person.

REP. VEZEY asked the need for two powers of attorney if an elderly person had a relative to whom such power could be given.

Number 546

REP. MACKIE said that would be a decision of the court. The bill would prevent the HCP from being sole power of attorney, he said.

REP. VEZEY asked whether HB 3 deprived elderly people of the right to bestow power of attorney of their own, and if it was directing the court to appoint people who would have power of attorney.

Number 552

CHAIR TOOHEY said lonely old people frequently become dependent on HCPs as surrogate families. She related a case in which one client granted power of attorney to the HCP, who then proceeded to wipe out the client's money. Chair Toohey said under the bill, the courts could bar an HCP from assuming the sole power of attorney for a client.

REP. VEZEY asked what was to bar an elderly person from signing over a second power of attorney to the HCP's partner in crime.

CHAIR TOOHEY answered that nothing prevented that.

REP. VEZEY said the bill therefore provided no protection.

CHAIR TOOHEY said she disagreed.

Number 565

REP. BUNDE said that, in his experience working with nonprofits, he had learned that it was best to share responsibility for financial expenditures between two people as a way to reduce the possibility of theft.

Number 572

REP. VEZEY said HB 3 provided very little protection against a determined fraud.

REP. MACKIE asked for suggestions on how to address that concern.

REP. VEZEY said he had none.

REP. MACKIE pointed out the limits of law to deter determined criminals.

Number 580

REP. VEZEY suggested amending HB 3 to bar HCPs from holding power of attorney for their clients.

REP. MACKIE said that in some cases it may be beneficial to grant an HCP the authority to act on a client's behalf, with oversight from a relative of the client's.

REP. VEZEY stated it was not necessary to have power of attorney in such cases.

Number 590

REP. MACKIE said it was beneficial not to give power of attorney to just one person. He referred to a situation in which an HCP in Haines had sole power of attorney and abused that power. He said some elderly people are being robbed of benefits through physical intimidation, with no legal protection.

CHAIR TOOHEY said nurse practitioners are state licensed and may lose their licenses for unethical actions, while most HCPs do not have licenses. She expressed support for HB 3 as a bill that would address the needs she has seen as a nurse.

Number 604

REP. G. DAVIS asked Rep. Mackie whether the section of the bill identified as Section 13.26.358 resulted from changes to the bill in the 1992 legislative session.

TAPE 93-30, SIDE B
Number 000

REP. MACKIE said the bill was modified through much work by the committees and had been thoroughly considered.

Number 015

REP. BUNDE cautioned against barring an HCP from being granted power of attorney for a client. He said the bill might reduce the temptation to commit fraud on elderly people.

REP. MACKIE said it might be necessary to consider whether elderly people who had become state wards or subject to

governance by an estate might not need to have a second power of attorney appointed for them in addition to the state or estate.

Number 066

REP. BRICE noted that HB 3 dealt with publicly funded HCPs who were not necessarily invited into the client's home.

REP. MACKIE said section 2 of his bill bars the state from paying for an HCP without subjecting that person to a background check within 10 days of hire.

Number 100

CHAIR TOOHEY asked if Rep. Mackie was referring to Medicaid funding for HCPs.

REP. MACKIE answered that he meant any public funds, not just funds through the Medicaid program.

Number 106

REP. VEZEY said he had not interpreted HCPs as indicating solely a public employees.

REP. MACKIE said the bill referred to HCPs paid with state funds. He said the bill did not bar an elderly person from hiring and giving power of attorney to any private individual. He stated it was aimed at taking steps to prevent the state from paying for HCPs that might try to take advantage of their clients by obtaining powers of attorney.

Number 123

CHAIR TOOHEY said that caring for elderly people with home care providers was an alternative to institutionalizing the elderly.

REP. BUNDE asked what might happen if the state funded an HCP for a person with no living relatives, and therefore no one to whom a second power of attorney could be granted.

Number 140

REP. MACKIE said it would be in the elderly person's best interest to have another person other than the state, such as a minister or public official, with power to sign off on actions concerning that elderly person.

Number 143

REP. VEZEY said he believed that courts require bonds of those to whom they grant powers of attorney, usually members of the bar association.

REP. BUNDE noted that such people get paid for that service.

REP. VEZEY said they get paid fees from the elderly person's benefits.

REP. MACKIE said it only related to HCPs.

REP. VEZEY said a court would never grant power of attorney to a non-bonded person, to ensure accountability.

Number 156

REP. MACKIE said he wanted to make sure the courts did not appoint just an HCP as a person with power of attorney and not a second person.

REP. VEZEY said requiring bonds of HCPs would alleviate the problem.

Number 164

CHAIR TOOHEY noted that HCP jobs pay only about \$8 per hour, and few, if any, are bonded.

REP. BUNDE said the second person would probably be an attorney. He asked whether the attorney would be paid from the elderly person's estate.

Number 180

REP. MACKIE said that question dealt with a different area of state statutes than that addressed by HB 3. He repeated that the bill just dealt with what HCPs could and could not do; an HCP cannot have sole power of attorney for a client. He said it might cause problems if the client had no relatives, but he said that the abuses of powers of attorney by HCPs far outweighed any inconvenience the court may have in dealing with such possibilities.

REP. BUNDE said he was trying to visualize some of the demands that might come up.

Number 198

REP. ERICE moved passage of HB 3 with individual recommendations.

CHAIR TOOHEY, hearing no objections, declared HB 3 passed with individual recommendations. She then brought HB 4 to the table.

27 March 1993 House JUD Committee

ACTION NARRATIVE

TAPE 93-39, SIDE A
Number 000

The House Judiciary Standing Committee meeting was called to order at 1:08 p.m., on March 22, 1993. A quorum was present. Chairman Porter announced that the committee would take up HB 4 first.

[Tape counter No. 234, Side A]

HB 3: REGULATION OF HOME CARE PROVIDERS

. Number 352

REPRESENTATIVE JERRY MACKIE, PRIME SPONSOR of HB 3, stated that his bill would restrict the ability of a home care provider to assume powers of attorney, and required criminal history background checks for home care providers being paid with public funds. He said that HB 3 would provide a measure of protection for elderly and disabled persons from those responsible for their care. He said that these people were particularly vulnerable to abuse, due to age, illness, disability, and the isolation of being alone in their home with a care giver.

REPRESENTATIVE MACKIE commented that Alaska was on the brink of an explosion in home care services. He mentioned the rapid expansion of Alaska's senior citizen population, and said that the state had just received approval for Medicaid waivers for home- and community-based services, as an alternative to institutionalization. He said that once the Medicaid waiver program was in effect, the home care services industry would see rapid growth.

REPRESENTATIVE MACKIE commented that HB 3 would also require criminal history records' checks for home care providers paid by Older Alaskans Commission (OAC) grants and respite

care providers paid by the Division of Family and Youth Services (DFYS). He noted that HB 3 would require the Department of Health and Social Services (DHSS) to implement regulations identifying actions to be taken upon receiving reports of harm by home care providers.

REPRESENTATIVE MACKIE mentioned an incident in his district which had given rise to the introduction of HB 3. He said that in that incident, a home care provider had walked off with approximately \$500,000 of an elderly person's money. He noted that similar situations had occurred across the state. He said that elderly persons, due to their vulnerability, were being targeted for exploitation. He mentioned that the state Pioneers Homes were full, with long waiting lists to get in.

REPRESENTATIVE MACKIE said that more and more elderly people would be cared for in their own homes, making it important for the state to regulate home care providers. He said that the Department of Public Safety (DPS) had informed him that 30% of criminal history background checks run on school teachers, day care providers, and others revealed criminal histories. He said that a bill similar to HB 3 had passed the House the year before.

Number 428

REPRESENTATIVE GREEN stated that HB 3 seemed like a very good bill. However, he did not see representatives of the senior citizen community present, and asked Representative Mackie if he had spoken with members of that community.

Number 433

REPRESENTATIVE MACKIE replied that the OAC was on record in support of the bill. He added that he was not aware of any opposition to either HB 3 or HB 4.

Number 453

WALTER MAJOROS testified on behalf of the OAC in support of HB 3. He noted that the OAC would like to see section 1, relating to powers of attorney, strengthened. He

recommended that powers of attorney for publicly-paid home care providers be prohibited, except in certain circumstances, or alternatively stipulating that the person with whom the power of attorney was shared could not be a person who had either a financial or a personal relationship with the home care worker.

Number 479

REPRESENTATIVE DAVIDSON asked what incentive a third party might have to become a partner in a power of attorney situation.

Number 485

MR. MAJOROS did not feel prepared to answer Representative Davidson's question.

Number 492

REPRESENTATIVE DAVIDSON said that when a person took a job as a home care provider, that person took on a certain amount of risk and liability. He expressed concern that a person could unknowingly become involved in a messy situation.

Number 507

CHAIRMAN PORTER asked Representative Davidson if he was referring to an additional signer, in addition to the home care provider, on the power of attorney. He thought of the third party as being a relative of the person receiving the home care, co-signing with the home care provider as a convenience.

MR. MAJOROS expressed the OAC's position that those two people should share the power of attorney to ensure there was no abuse.

Number 524

CHAIRMAN PORTER asked Mr. Majoros if he had any proposed language to offer.

MR. MAJOROS had no language to offer at this time.

Number 527

REPRESENTATIVE DAVIDSON commented that his question had been prompted by a situation in which an elderly person had no remaining relatives.

Number 531

CHAIRMAN PORTER mentioned that surviving relatives sometimes lived far away from an elderly person receiving home care services.

Number 539

REPRESENTATIVE MACKIE noted that home care providers were sometimes relatives of those for whom they cared. He commented that not every situation could be covered by statute. He said that the main purpose of HB 3 was to not allow a home care provider to also have sole power of attorney. He said that at least one other person should be involved in the relationship, to prevent a home care provider from abusing the position. He commented that HB 3 would only apply in cases where public funds were being used.

Number 567

REPRESENTATIVE JEANNETTE JAMES mentioned that the legislature could not solve every problem that existed through statute. Sometimes, she said, the legislature passed laws to solve one problem, and created even more problems in the process. She commented that the job of a home care provider was not an easy one. She supported criminal history background checks for home care providers. She was of the opinion that powers of attorney could affect more than just financial transactions. She did not see why a home care provider would need to have a power of attorney for a person in his or her care.

REPRESENTATIVE JAMES expressed concern that putting two

people on a power of attorney would create an impediment to making quick decisions. She preferred that a power of attorney be held by one individual, someone other than the home care provider.

Number 595

REPRESENTATIVE MACKIE said that in some instances, a home care provider was the only person caring for a particular individual. In that case, he said, the home care provider would do all of the shopping, banking, and bill paying transactions. In that situation, he said, it would be convenient for a home care provider to have a power of attorney. House Bill 3 would allow for that to happen, as long as a third party co-signed on the power of attorney. He noted that he had tried to focus HB 3 on those areas with the greatest potential for abuse.

Number 615

REPRESENTATIVE JAMES said that HB 3 only affected home care providers whose services were paid for by the state. She commented that if a person had a great deal of money to steal, that same person probably would not be eligible for a publicly-funded home care provider. She expressed her opinion that HB 3 should be expanded to include all home-care providers, not just those who received public funds.

Number 627

REPRESENTATIVE MACKIE said that Representative James had made a good point. However, he noted that there were constitutional problems involved in regulating privately-funded home care providers.

Number 643

REPRESENTATIVE PHILLIPS asked Representative Mackie why he chose to apply the provisions of HB 3 only to publicly-funded home care providers.

Number 647

REPRESENTATIVE MACKIE reiterated his point that people could spend their own money in any manner they saw fit. However, when public funds were involved, he did not feel that home care providers should be allowed to exercise a great deal of control over the affairs of elderly or disabled persons.

Number 666

PAT O'BRIEN, on behalf of the DHSS, commented that the year before, the DHSS had suggested language to tighten up who could have a power of attorney. She said that the House Health, Education, and Social Services (HESS) Committee had raised the issue of the cumbersomeness of requiring two signatures on every transaction. Also, she said that the HESS committee had mentioned the difficulty of finding home care providers in the first place, due to the heavy responsibility associated with the job. If too many restrictions were placed on the profession, she noted, it would become even harder to find people willing to serve as home care providers.

Number 680

MS. O'BRIEN said that although the HESS Committee had considered tightening up the requirements for powers of attorney, they had eventually agreed that that was not a good idea. The result was the language now contained in HB 3, she added.

Number 687

REPRESENTATIVE JAMES asked Ms. O'Brien if she saw HB 3 as being a burden on home care providers.

Number 702

MS. O'BRIEN replied in the negative. She said that a home care provider would not be required to accept a grant of power of attorney, and might choose not to accept such a designation.

Number 709

REPRESENTATIVE MACKIE noted that HB 3's provisions might help to weed out those home care providers with bad intentions. He said that powers of attorney could take many different forms. He admitted that the provision in question could not be easily enforced. The intent behind the provision was simply to create a condition of employment and a vehicle for disciplinary action or termination.

Number 726

REPRESENTATIVE GREEN made a MOTION to MOVE HB 3 out of committee with individual recommendations and an accompanying fiscal note. There being no objection, IT WAS SO ORDERED.

5 May 1993 House FIN Committee

TAPE HFC 93-93, Side 1, #000 - end.

TAPE HFC 93-93, Side 2, #000 - 193.

[Tape counter No. 161, Side A]

REPRESENTATIVE MACKIE noted that HB 3, An Act relating to public home care providers, restricts the ability of a home care provider to assume power of attorney and requires criminal background checks on any individual providing home care services paid for by public funds for an elderly or disabled person.

Representative Mackie stressed that HB 3 will provide some protection to elderly and disabled persons from those responsible for their care. He asserted that these groups are particularly vulnerable to abuse because of age, illness, disability and the isolation of being alone in their home with a care giver.

Representative Mackie emphasized that it is important to take these steps now, while Alaska is on the brink of an explosion in home care services. He stressed that the state's senior citizen population is rapidly expanding and the state has just received approval for a Medicaid Waiver to provide home and community based services as an alternative to institutionalization. He maintained that once the Medicaid Waiver is effective, and there is a payment system available for expanded home based services, the home care services industry will see rapid growth. The bill also requires background checks on home care providers paid through Older Alaskans Commission grants, and respite care providers paid through the Division of Family and Youth Services.

Representative Mackie noted that the Department of Health and Social Services is required to implement regulations identifying actions to be taken upon reports of harm by a home care provider; it also protects the due process rights of the provider. The companion bill, HB 4, provides that conviction of a person licensed, certified or regulated by a

board or the Department of Commerce, for abuse of an elderly or disabled person may be considered ground for disciplinary proceedings or sanctions.

Representative Mackie pointed out that 30 percent of background checks made by the Department of Public Safety have a criminal history. He provided members with a letter citing abuses of elderly nursing patients (Attachment 1).

Representative Parnell asked if a family member can be a home care provider under state contract.

PAT O'BRIEN, FAMILY AND YOUTH SERVICES, DEPARTMENT OF HEALTH AND SOCIAL SERVICES clarified that it would be unusual for a family member to be a contract care provider.

Representative Hanley asked if "held jointly" means that both powers of attorney would have to execute. Representative Mackie replied that they would. Representative Hanley noted that the spouse of the primary power of attorney could be the second power of attorney. He asserted that it would be easy for couples to abuse their charge. He suggested that the second power of attorney not be the spouse.

Representative Martin expressed concern with the fiscal cost. Representative Mackie clarified that no new programs would be created. He pointed out that the current program is funded through federal Medicaid funds. He noted that the legislation only changes employment requirements. Representative Martin stressed that background checks would be mandated. The funding source of background checks was

not specified.

Representative Parnell MOVED to report HB 3 out of Committee with individual recommendations and with the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

HB 3 was reported out of Committee with a "do pass" recommendation and with a zero fiscal note by the Department of Administration, dated 3/10/93 and with a fiscal impact

note by the Department of Health and Social Services and
with a zero fiscal note by the Department of Health and
Social Services.

21 April 1993 Senate HESS Committee

ACTION NARRATIVE

TAPE 93-38, SIDE A
Number 001

CHAIRMAN RIEGER called the Senate Health, Education and Social Services (HESS) Committee to order at 1:45 p.m. He introduced HB 3 (REGULATION OF HOME CARE PROVIDERS) and CSHB 4(JUD) (PROTECT ELDERLY AND DISABLED ADULTS) as the first order of business.

REPRESENTATIVE JERRY MACKIE, prime sponsor of HB 3 and HB 4, explained the legislation restricts the ability of a home care provider to assume power of attorney and requires criminal background checks on any individual providing home care services paid for with public funds for elderly or disabled persons. These groups are particularly vulnerable to abuse because of age, illness, disability and the isolation of being at home alone with a care giver.

The bill also requires background checks on home care providers paid through Older Alaskan Commission grants and respite care providers paid through the Division of Family & Youth Services.

An important aspect of HB 3 is that the Department of Health and Social Services is required to implement regulations identifying actions to be taken upon reports of harm by a home care provider. It also protects the due process rights of the provider.

Representative Mackie said CSHB 4(JUD) provides that conviction of a person licensed, certified or regulated by a board or the Department of Commerce for abuse of an elderly or disabled person may be considered grounds for disciplinary proceedings and sanctions.

There being no further testimony on HB 3 and CSHB 4(JUD), CHAIRMAN RIEGER asked for the pleasure of the committee.

SENATOR LEMAN moved that HB 3, along with the accompanying fiscal notes, be passed out of committee with individual recommendations. Hearing no objection, it was so ordered.

SENATOR MILLER moved that CSHB 4(JUD), along with the accompanying fiscal notes, be passed out of committee with individual recommendations. Hearing no objection, it was so ordered.

Number 110

16 February 1994 Senate JUD Committee

ACTION NARRATIVE

TAPE 94-11, SIDE A
Number 001

CHAIRMAN ROBIN TAYLOR called the Judiciary Committee meeting to order at 1:32 p.m. and introduced SB 252 (POSSESSION OF CHILD PORNOGRAPHY) as the first order of business before the committee.

[Tape counter No. 400, Side B]

REPRESENTATIVE JERRY MACKIE stated that HB 3 (REGULATION OF HOME CARE PROVIDERS) would add protections for the elderly and disabled of Alaska. HB 3 would restrict the ability of a home care provider in obtaining power of attorney of the client they serve. HB 3 would require criminal background checks of persons providing home care services that are paid by state funds. He noted that grantees who contract with state agencies to provide these services would be required to order criminal background checks on their employees. HB 3 requires that the Department of Health and Social Services (DHSS) implement regulations on actions due to reports of harm by a home care provider while protecting the due process rights of that provider. He stated support of HB 3 by the Division of Family and Youth Services and the Older Alaskans Commission.

Representative Mackie urged the committee's positive consideration of HB 3 with a minor change. He suggested changing the dates on page 3, lines 26 and 27 from "1994" to "1995" which would be a technical change. He said that he had reintroduced this legislation due to circumstances in his district where a home care provider had assumed power of attorney over an elderly individual's bank accounts. The home care provider spent almost all of the elderly individual's life savings. He informed the committee that Pioneer Homes are full with increasingly longer waiting lists, while the senior population is rapidly growing. He expressed his personal belief that elderly individuals are more comfortable in their own homes. He also pointed out that HB 3 does not allow someone to have direct control of an elderly person's finances; there would have to be a third party involved.

SENATOR JACKO asked if there would be a charge for the background check. REPRESENTATIVE MACKIE said that Public Safety would do those. He referred to the attached fiscal notes. NANCY WELLER, staff to Representative Mackie, stated that the person who requests the background check would be charged. She did note the new situation with Adult Protective Services being transferred to the Division of Senior Services from the Division of Family and Youth Services (DFYS). Before this shift the DFYS had agreed to pay some of the background check while providing slightly less services in order to protect this population of individuals.

REPRESENTATIVE MACKIE said that perhaps DFYS felt that they could absorb that cost from within without requiring additional legislative appropriations. He stated that there had been strong administrative support of this legislation. He asked if there could be a user fee, the individual would pay, as a condition of employment since the division has the ability to regulate.

Number 203

CHAIRMAN TAYLOR stated that HB 3 seems to provide a request for records. REPRESENTATIVE MACKIE said that would be the criminal background check. In response to Chairman Taylor, Representative Mackie pointed out that HB 4, a companion bill to HB 3, does tie in some of the provisions not in HB 3.

CHAIRMAN TAYLOR expressed concern with setting up another bureaucracy to license people who take care of elder individuals. REPRESENTATIVE MACKIE said that HB 3 takes the basic essentials to do a better job from a public policy standpoint.

CHAIRMAN TAYLOR moved to amend lines 26 and 27 on page 3; deleting "1994" and inserting "1995" for an effective date. Hearing no objection, HB 3 was amended.

FRAN JAMESON, Associate Coordinator at the Older Alaskans Commission, noted their position paper and their support of HB 3. She said that criminal checks would protect the elderly and disabled from exploitation. The agency would require in the condition of grant award that community agencies do background checks. From the grant money the agency would pick up the cost, approximately \$75, with a reduction in overall services, about three fewer hours of service for each client. She felt that the

protection of the clients would be worth that reduction of service.

Number 145

CHAIRMAN TAYLOR asked why the applicant could not pay for the background check. FRAN JAMESON said that some individuals could not pay the fee. Ms. Jameson clarified for Senator Little that the background check would cost approximately \$75.

CHAIRMAN TAYLOR inquired about the wages of the employees. FRAN JAMESON informed the committee that Respite Care wages range from \$7 to \$9 per hour; however, there are others in home services that may be as expensive as \$15 per hour. She reiterated that the general cost of a criminal background check would be around \$75.

REPRESENTATIVE MACKIE suggested that perhaps the applicant should pay for the background check, especially due to the limited funding and the reduction of services.

CHAIRMAN TAYLOR discussed the various positions that require background checks. He expressed surprise that the cost was as high as \$75. He said that question could be addressed in finance.

FRAN JAMESON submitted a position paper to the committee.

SENATOR DONLEY moved HB 3 as amended out of committee with individual recommendations. Hearing no objections, it was so ordered.

17 March 1994 Senate FIN Committee

SFC-94, #43, Side 2 (200-000)

SFC-94, #44, Side 1 (000-120)

SENATE CS FOR HOUSE BILL NO. 3(JUD):

An Act relating to public home care providers; and providing for an effective date.

Co-chair Pearce invited David Gray, aide to Representative Mackie, sponsor of HB 3 and HB 4, to join the members at the table and speak to the bill.

[Tape counter No. 394, Side B]

DAVID GRAY [aide to Representative Mackie] said HB 3 had been around for awhile and had not

changed too much. The bill originated after a senior passed away who had a health care provider and there was a complaint from the family that the estate had been misused. In response, Representative Mackie looked at the home health care provider situation and how dependent the senior could become on this person. It could involve handling a senior's money and other matters. The bill's main effect would prohibit home care providers to be the sole power of attorney, and anyone who was using public moneys was required to have a criminal background check. Representative Mackie also felt this bill was in tune with the administration's efforts to turn to more home health

care service for seniors.

Senator Kerttula stated this bill was related to his own personal concerns. He supported a system where more than one person would be involved, and also supported a background check.

In answer to Senator Rieger, Mr. Gray said the statutes defined when the state would pay for a home care provider.

Appendix B

**Committee Minutes Excerpts
HB 412 (Chapter 124, SLA 1994)**

14 March 1994 House HESS Committee

22 March 1994 Senate HESS Committee

4 May 1994 Senate FIN Committee

14 March 1994 House HESS Committee

CHAIR BUNDE then brought HB 412 to the table.

[Tape 94-48]

[Tape counter No. 474, Side A]

HB 412 - COMMUNITY CARE FACILITIES

CHAIR BUNDE asked PAT O'BRIEN to address HB 412.

Number 995

PAT O'BRIEN, Social Services Program Officer, Division of Family and Youth Services (DFYS), Department of Health and Social Services (DHSS), testified in support of HB 412. She stated that she has been involved in licensing for more than 20 years and that she was grateful to the co-chairs for scheduling a hearing on the legislation. She reminded the committee that among them was an expert in the area of licensing, Rep. Betty Davis. She asserted that the licensing of programs for vulnerable populations is a vital public function and one that the state has had difficulty keeping up with in recent years. She said the focus of the bill is to work smarter by consolidating a number of licensing procedures into one particular place to make it easier for licensers.

MS. O'BRIEN explained that there are over 2000 licensing facilities and referred to the pie chart in the bill packet which shows that foster homes and child and child care facilities take up the majority of the chart. She indicated that the smaller sections of the chart are very complex sections. She explained that when the legislation is passed along with the assisted living bill (HB 377), adult licensing will be removed from DFYS. She further stated that if HB 377 fails to be passed, HB 412 contains provisions that would enable DFYS to continue adult licensing until an assisted living bill could pass.

MS. O'BRIEN said efficiency would be advanced by combining a

variety of regulations, thereby making it easier for those who work in a one person office in rural areas. She felt that consolidation would also make it easier for communication between private licensing agencies, of which the division works with approximately twelve.

MS. O'BRIEN pointed out another feature of the legislation as being a shared partnership with both parents and private agencies that would make it more clear to the parents that they have a shared responsibility with the state in monitoring the care of their children. She also indicated that private agencies have asked that liability protection be placed in the statute for them.

MS. O'BRIEN explained that the proposal does not constitute many changes in licensing. She reiterated that the thrust of the bill is to consolidate for purposes of efficiency by combining various processes into the bill. She continued testimony with a sectional analysis.

MS. O'BRIEN stated that Sections 1, 2 and 3 make no change at all except for numbering to make it compatible with child care laws, day care assistance programs, and child care grants. She explained that Section 4 makes a small change by allowing for a less onerous grievance procedure rather than a "full blown" administrative hearing. She said only the most serious enforcement steps taken will be an administrative hearing under the Administrative Procedures Act.

MS. O'BRIEN said that Section 5 is what licensing is all about. She said instead of the term "private institutions" a new title of Community Care Licensing would be used. She also said the section clarifies the role of licensing and their responsibility of informing parents of what their roles are. She said the provision includes voluntary licensure, which is done on a time available basis.

MS. O'BRIEN indicated that the ability to charge fees has been included in Section 6. She said she suspected that regulations would be promulgated that will provide for fees, but the department wanted it in statute as soon as possible.

TAPE 94-48. SIDE B

Number 000

*[Tape counter No. 108, Side B]

MS. O'BRIEN further indicated that the division has contracted with agencies to perform licensing evaluations. She explained that with a village of 400 people there would be no agency there to perform an evaluation. She further indicated that the division would be able to enter into agreements with individuals as well as agencies to perform the evaluations. Ms. O'Brien said a subsection would delegate powers to municipalities, and indicated that currently Anchorage is the only municipality with the power to adopt state standards.

MS. O'BRIEN continued on to say, "Section 7 has to do with applicability and exemptions. This is an important section, and I know it's a long section in the bill, but it pretty much reflects current practice with the exceptions that I'll point out. The four exceptions are... there was an exception for occasionally placing a child for foster care or adoption, and we've removed that exception. As far as we know, attorneys no longer are doing that without going through placement agencies. So, there will be no impact. We think this is good for children.

"The exemption for governmentally operated programs has been removed. Only one local government, as I mentioned, the municipality of Anchorage, actually regulates day care centers and they do not operate any programs. The age of a child has been changed from 16 years to 18 years of age, and as far as we can tell, there will be no known impact or no programs impacted by that change. And, probably the most important change, there was a clause in there that allowed you to operate for ninety days without a license, which undercut the whole idea of licensing. The idea of licensing is to get in there before children are in care, reduce risk, check things out, and then have children come into care. So, we think that's an important amendment."

MS. O'BRIEN indicated that she was not going to go through Sections 8, 9 and 10 because they are current to what is in statute now. She did mention that Section 10, regarding

orientation and training, was made applicable to all facilities and indicated that only parents are currently included in current statute provision. She further indicated that it is very important that people know what is confidential and what is not. She explained that there has been much conflicting advice from attorneys. She said for the most part licensing records are "open" but there are a few things that should be confidential. She explained that potential foster parents give the division very personal background information that should remain confidential.

MS. O'BRIEN further stated that Section 11 encourages parents to participate in monitoring child care facilities. She also mentioned that there is a lot of support across the state for there to be inspections before every license is issued. She said Section 11 requires that there be an on-site inspection before any license is issued.

MS. O'BRIEN said Section 12 addresses complaints and investigation enforcement. She asserted that a complainant would get a copy of the report upon request and that retaliatory action is prohibited. She said often an employee is afraid to report a violation of regulation. She explained that enforcement actions which are currently in the licensing manual would be included in the legislation.

Number 197

REP. TOOHEY referred to the \$65,000 for fiscal year (FY) 1995 and \$35,000 for FY 1996. She said every new facility would have to be inspected and indicated that the financial impact is not reflected in any of the other fiscal notes. She asked if it should be reflected.

MS. O'BRIEN said no. She explained that current practice is not being changed within the bill and that there would be no increased cost in inspections. She said currently a number of licensers are experiencing an overload. She said badly needed relief will be afforded when adult licensing is removed from the division. Also, the consolidation of procedures will provide more relief. She maintained that the division would not be doing more than they are now, so a fiscal note was not attached to the activity of licensing.

Number 242

REP. TOOHEY asked if a questionnaire is sent to those who apply for a license.

MS. O'BRIEN explained that a questionnaire is sent out to applicants for foster home.

REP. TOOHEY asked how many pages are in the questionnaire.

MS. O'BRIEN replied that the application is one page; however, there are different attachments depending on the type of facility. She indicated that the application with a background questionnaire for foster care is about six pages, which includes criminal history background information.

REP. TOOHEY asked if police records are requested to verify the criminal histories of applicants.

MS. O'BRIEN explained that in a child foster home licensing situation the division receives a signed application, a personal history background statement, and child protection background or a criminal history background. All applicants must get their fingerprints rolled. She indicated that the state pays for the criminal history background checks.

Number 293

CHAIR BUNDE asked if the fiscal note reflects new money or a transfer.

MS. O'BRIEN responded that the fiscal note would cover the transition and would allow the division to be more creative in working with the providers and developing revised regulations. She said approximately six regulations would be changed and a task force would be formed of those who would be affected. She then said the division would promulgate the regulations, draft them, go through the public hearing process, and then conduct regional training.

Number 348

CHAIR BUNDE indicated that there was teleconference testimony from Anchorage and Fairbanks. He then referred to the statutory ability to charge fees and urged Ms. O'Brien to exercise that right to offset the fiscal note.

Number 365

MS. O'BRIEN continued on with the sectional analysis. She stated that Section 13 addresses the licensing of adult facilities and said if HB 377 does not pass, the division would not put the section into effect.

MS. O'BRIEN further stated that the remaining sections address liability and definitions. She then indicated that the DHSS had brought forward four amendments and that Rep. Kott also had submitted amendments. She asked Chair Bunde if she should address those or wait until after further testimony.

Number 390

CHAIR BUNDE said teleconference testimony would be heard and asked for testimony from Anchorage.

Number 392

LARE, President of the Alaska Association for the Education of Young Children (AK-EYC) testified via teleconference in support of HB 412. She stated the AK-EYC supports HB 412, provided that the fiscal note of \$100,000 for a statewide task force for implementation and training is also passed. She said that early childhood professionals welcome regulation that reduces risks to young children in out-of-home care. She then referred to the ability to charge fees and said she suspected that many Alaskans feel that they have not paid their fair share for a number of years; however, she felt that the area of community care facilities is one of the most vulnerable populations. She also stated that the people who care for and educate those children are paid much less than parking lot attendants or garbage collectors. She said she was concerned that if a fee is charged it would be passed on to the parents.

REP. VEZEY referred to Lare's statement that child care workers are paid less than garbage collectors and asked her which job she thought was more difficult to perform.

MS. O'BRIEN asserted that caring for a young child for eight to ten hours a day was a far more difficult task. She said it may appear to be a lot of fun, and in many ways it is, but it takes an extraordinarily high skill level to care for someone else's child.

REP. VEZEY said, "My question then would be, why don't those people get jobs as garbage collectors instead of working in child care facilities?"

MS. O'BRIEN responded, "Well, I guess it's because that there are some among us who find that our real talents are working with the very young child and their families. That's why we went to college, that's why we have the degrees that we have, and we choose to stay in that position."

Number 508

CHAIR BUNDE asked for teleconference testimony from Fairbanks.

Number 509

NANCY JOHNSON, Staff Person, Division of Family and Youth Services, Department of Health and Social Services, testified via teleconference in support of HB 412. She stated that she has worked in the area of licensing for 23 years. She said the licensing that she performs represents a valuable preventive function. She indicated that often licensers have to perform several different kinds of licensing, especially in rural areas. She asserted that the legislation is designed to simplify regulations and implementation. She said the proposal also includes concepts that other states are using and indicated that Alaska belongs to many national associations for regulatory administrators and has participated in projects that have allowed key personnel to stay current with national trends and recommendations. She further stated that the

legislation would make it easier for licensing to work with community groups for recruiting and evaluating service providers.

CHAIR BUNDE asked Ms. Johnson, if HB 412 was passed, would she be personally involved in setting up the study groups?

MS. JOHNSON said she expected to be.

REP. TOOHEY referred to the \$45,000 budget for travel and asked Ms. O'Brien if perhaps the questionnaires could be sent to local public health nurses or community health aids so they would be responsible for the procedure rather than spending \$45,000 on travel.

MS. O'BRIEN indicated that the travel budget is specifically for the task force. She said if the travel budget is not supported, the participants will not be able to meet face to face. She said she is hoping that there will be much involvement from Bush communities and Native organizations and that the only way to address those concerns is to meet face to face.

REP. VEZEY referred to the statement made by Ms. O'Brien regarding Section 7 which changes the age of children from 16 to 18 years of age. He said he was unable to find that provision.

MS. O'BRIEN indicated that the language is actually in definitions under Section 17. She said the definition of a child would be up to age 18 and would affect the application of the statute.

REP. VEZEY asked what page the definitions section was on.

MS. O'BRIEN said page 19.

Number 637

REP. VEZEY asked why the definition of child was being changed from 16 to 18 years of age.

MS. O'BRIEN explained that the division licenses a number of

programs that serve children ages 16 and 17 and over 17 years of age in foster homes. She said it only makes sense to include that age range because the division is regulating facilities with those age ranges anyway.

REP. VEZEY said the language is really referring to unemancipated minors.

REP. TOOHEY asked if developmentally disabled persons were also included.

MS. O'BRIEN replied yes. She said, "...and since adult licensing has been in our division, we have found that children move from a child foster home then and it becomes an adult foster home. And, I suspect if the assisted living bill passes, we will continue to collaborate with them to make sure that there's a smooth transition there."

Number 668

CHAIR BUNDE asked for further testimony from Fairbanks.

Number 669

MARY MATTHEWS, Family Support Coordinator, Fairbanks Resource Agency, testified via teleconference in support of HB 412. She stated that she was pleased to see the clarification of immunity from liability for private agencies provided for in the proposal.

Number 684

CHAIR BUNDE asked for testimony from JODY ENGELMAN.

Number 685

JODY ENGELMAN, Executive Director, Juneau Youth Services, testified in Juneau in support HB 412. She stated that the legislation would provide consistency among the various types of regulations and would ease up the job of licensers by making definitions consistent. She also felt that the regulations that she was currently working under were very old fashioned and cannot address the current or future

concerns and changing services. She further stated that she supports the attached fiscal note, as it will enable the division to be in contact with families and their needs.

CHAIR BUNDE indicated that to address the amendments that have been put forth, HB 412 must be adopted by the committee as a working draft.

REP. VEZEY concurred.

CHAIR BUNDE then asked for a member to move Amendment 1 so the department could discuss it.

REP. TOOHEY said so moved.

REP. KOTT asked if the committee was addressing his amendment.

CHAIR BUNDE indicated that Amendment 1 was from the DHSS. He asked if Rep. Kott felt it would be more productive to address his amendments first.

REP. KOTT said the decision was up to Chair Bunde.

CHAIR BUNDE indicated that DHSS Amendment 1 had been moved and asked Ms. O'Brien to speak to the amendment.

Number 743

MS. O'BRIEN indicated that there are a number of child care facilities on military bases in Anchorage and in Fairbanks and also the Kodiak Island Coast Guard facility. She explained that in those facilities there are one or more staff persons that perform evaluations and provide training to those facilities. Ms. O'Brien maintained that they are better staffed than the state is. She said the division stopped regulating the facilities a number of years ago. She said the purpose of the amendment is to clarify that military bases and Coast Guard facilities are not included in regulations. However, she said a side agreement was made with the Coast Guard relative to small communities like Sitka and Cordova that have a number of homes that provide family child care and have been previously licensed by the

division. The division will continue to do the licensing for those areas.

Number 774

CHAIR BUNDE asked for discussion or questions.

REP. VEZEY said he doesn't have a problem with the amendment, but felt the wording was unclear. He said it is not the ownership of the property that the division is interested in, it's the guidelines that the federal agencies operate under that the division is trying to not "reregulate."

MS. O'BRIEN responded that the wording was given to her by Commander Gary Palmer. She said he recommended that the language be included and she did not object.

CHAIR BUNDE asked for further discussion or objections. Hearing none, Chair Bunde announced that DHSS Amendment 1 was adopted. He then brought DHSS Amendment 2 to the table.

REP. B. DAVIS made a motion to adopt DHSS Amendment 2.

CHAIR BUNDE asked Ms. O'Brien to speak to the amendment.

MS. O'BRIEN indicated that two mistakes were made in the drafting process and encouraged the committee to adopt the amendment to ensure that the relatives are exempted from becoming licensed. She further indicated that Rep. Kott had an amendment that would add a subsection 8, which the division would support because she felt the division amendment does not go far enough.

Number 823

CHAIR BUNDE asked for questions.

REP. KOTT said he would offer a friendly amendment to DHSS Amendment 2, which was his Amendment 1.

CHAIR BUNDE asked to see a copy of the amendment.

REP. KOTT stated that all members should have a copy and further explained that the amendment does go further in exempting relatives from being licensed. He said if a grandmother is caring for five grandchildren, she should be exempt. He also stated that great grand parents are included.

REP. TOOHEY asked if there is a limit on how many biological grandchildren a person can care for. She asked, if a woman is caring for four or more grandchildren, can she also care for four or more day care children?

MS. O'BRIEN explained that anyone can care for four children whether they are related or not without a license, as it is a total exemption. She asserted that the division does not want to license homes where there are relationships and said that is why the clause was added. She said, "Then you may care for up to eight children as a family child care home. And, those could all be related and shouldn't be licensed. But, in order for that to occur, Rep. Kott's amendment is also needed, amendment to my amendment."

Number 869

REP. TOOHEY asked if a person does not need a license to care for four children.

MS. O'BRIEN said, "Any related child or for four children related or not."

REP. TOOHEY said that a person could have eight children in the home without a license.

MS. O'BRIEN said, "You can have four children in the house, and you don't need a license. If there... you can have additional children. Four of them can't be related to you, but you could have as many related to you..."

REP. TOOHEY said, "And you don't need a license. I mean you can have eight children in the house, four of them can be your grandchildren and four you're caring for in the neighborhood. So, you have eight children of eight children. You do not need a license."

MS. O'BRIEN said, "You can take care of four children, without a license, who are not related to you and you're living there. And then, you can take care of additional (four) related children."

REP. TOOHEY said there is no limit.

REP. B. DAVIS said there used to be a limit.

MS. O'BRIEN said, "If all the children are related, then there's no limit. That's what there's no limit on."

REP. TOOHEY said, "But, if you take care of four children... you can take care of four unrelated children without a license. And, then you have four grandchildren who come and visit, and you're taking care of them also. That means you have eight children in the house. I mean, you're not saying that this person has to have a license to have eight children in the house."

CHAIR BUNDE indicated that the answer is no according to Commissioner Lowe.

Number 906

MS. O'BRIEN stated that it is confusing and read from current regulation: "A facility is exempt if they're regularly providing child care only to a child or children related to the resident care giver."

CHAIR BUNDE reiterated that a person can take care of a "flock" of children, but no more than four that are not related.

TAPE 94-49, SIDE A

Number 000

CHAIR BUNDE stated that DHSS Amendment 2 had been moved and that Rep. Kott submitted his Amendment 1 as a friendly amendment.

REP. G. DAVIS asked if the motion before the committee was to adopt Rep. Kott's amendment.

REP. KOTT said it would be DHSS Amendment 2 as amended.

CHAIR BUNDE indicated that it would be DHSS Amendment 2 as amended.

REP. TOOHEY asked if DHSS Amendment 2 had to be adopted first before making a friendly amendment.

CHAIR BUNDE replied no. He said, "We have an amendment to the amendment before us."

REP. TOOHEY said, "But we haven't adopted the second amendment have we?"

CHAIR BUNDE said, "No, but we have an amendment to the amendment and then we go to the main amendment. The amendment to the amendment and the main amendment will read as Rep. Kott's Amendment 1 currently reads. It inserts unrelated caregiver, plus the additional insertion that Rep. Kott has... a facility in which the caregiver is related, is a relative of all the children. And, it inserts after grandparents, great grandparents. Do we have some clarity here?"

REP. KOTT stated that maybe he should have addressed his amendments first.

CHAIR BUNDE said, "We have an amendment to the amendment which is Rep. Kott's Amendment 1. Do you understand that?"

REP. B. DAVIS said yes.

REP. KOTT moved the amendment.

CHAIR BUNDE asked for any objections.

REP. B. DAVIS said she would like to hear from the department as to whether they supported the amendment as amended.

MS. O'BRIEN said yes.

CHAIR BUNDE said, "So, now are there objections?"

REP. B. DAVIS said no.

CHAIR BUNDE said, "Hearing no objections, we've adopted the amendment to the amendment which brings us to Amendment 2 which is the very same amendment that we... to the amendment that we've just adopted, so are there any objections to Amendment 2?"

Number 114

REP. KOTT said, "I'll move Amendment 2."

CHAIR BUNDE said, "It was previously moved and so if there are just no objections..."

REP. TOOHEY said, "Excuse me, because we have amendments before us that are both labeled, we have two labeled..."

CHAIR BUNDE said, "We have Rep. Kott's Amendment 1, which is now Department Amendment 2. Who's on first What's on second? We are now moving on to Department Amendment 3. Rep. Kott, you have something to say on this?"

REP. KOTT said no.

Number 138

CHAIR BUNDE asked for a member to move DHSS Amendment 3.

REP. KOTT said so moved.

CHAIR BUNDE asked Ms. O'Brien to speak to the amendment.

MS. O'BRIEN indicated that before the bill was brought forward to the committee, the division had two teleconferences with various organizations, including Native organizations. She stated that the Native organizations were concerned as to how difficult it is to license in very small communities and pointed out the difficulties involved when a child must be removed from a home in an emergency

situation. She said Amendment 3 would address those concerns.

Number 186

CHAIR BUNDE asked for discussion or objections. Hearing none, Chair Bunde declared that DHSS Amendment 3 was adopted. He brought DHSS Amendment 4 to the table. He then said, "And, the reason I was thinking we needed to adopt a CS becomes more apparent with each amendment." He asked for a member to move the amendment.

REP. G. DAVIS said so moved.

CHAIR BUNDE asked Ms. O'Brien to address the amendment.

MS. O'BRIEN explained that in the teleconferences that she mentioned it was pointed out that some variances are allowed for only seven days. She said there would be a lot of extra paper work if a license had to be issued each time a variance was given. She asserted that the amendment is an efficiency amendment.

REP. TOOHEY said she was troubled with the proposal because "we can no longer rely on the good will of the village or a neighbor to take care of the child. We are regulating care... the thing just smacks of regulating care of our fellow man out of existence. Does this bother anybody else?"

Number 286

CHAIR BUNDE explained that the legislation addresses situations when an official comes and removes and then places the child. He said it does not address the neighbor or relative or grandparent who wants to care for the child. He said the legislation does not preclude voluntary action.

REP. TOOHEY said, "Yes, we are."

CHAIR BUNDE stated, "I don't think so. Only when an official comes in and says that child's in jeopardy, now I'm making him a ward of the state, basically. It's not saying

that neighbors and relatives can't say. 'Well, wait a minute, you need some help. Let me give you a hand.'"

REP. G. DAVIS indicated that almost any law is on request. People can commit crimes, but if nobody asks that a person be arrested, there will be no arrest unless there is a request for the state to step in.

Number 325

CHAIR BUNDE asked for further discussion. He then asked for objections on DHSS Amendment 4. Hearing none, Chair Bunde declared that DHSS Amendment 4 was so moved. He then brought Rep. Kott's Amendment 2 to the table. He asked Rep. Kott to speak to his amendment.

(Note: Rep. Kott's testimony pertaining to Amendment 2 is inaudible. Refer directly to Rep. Kott's Amendment 2, as submitted and on file, which refers to page 19, lines 22-23. The amendment suggest deleting the words "whose parents are not" and insert "who does not have a parent.")

Number 350

CHAIR BUNDE asked Ms. O'Brien to speak to the amendment.

MS. O'BRIEN stated that prior to the meeting she was able to look over all of Rep. Kott's amendments and said she felt comfortable with all of them.

CHAIR BUNDE asked if the committee understood the amendment. He asked if there were any objections. Hearing none, Chair Bunde stated that Rep. Kott's Amendment 2 was adopted. He then brought Rep. Kott's Amendment 3 to the table.

Number 374

REP. KOTT made a motion to adopt his Amendment 3. He said the amendment addresses page 20, line 19, and would delete the words "have been arrested" and would insert "are under arrest."

CHAIR BUNDE said that the amendment would provide that a

person's past would not be held against them. He asked for objections. Hearing none, Chair Bunde stated that Rep. Kott's Amendment 3 was adopted. He indicated that it was his intent to have the committee substitute (CS) before the committee before the legislation is passed out.

Seeing no further business before the committee, CHAIR BUNDE ADJOURNED the meeting at 4:30 p.m.

22 March 1994 House HESS Committee

TAPE 94-36, SIDE A
Number 001

CHAIRMAN RIEGER called the Senate Health, Education and Social Services (HESS) Committee to order at 5:05 p.m. He brought CSHB 412(HES) am (COMMUNITY CARE FACILITIES) before the committee as the first order of business. He explained the legislation is almost identical to SB 268 which was previously heard by the committee. The committee adopted a committee substitute which had language that exempts small private foster homes where there was placement of children for up to 45 days. The House version allows private placement of children without a time limitation.

There being no questions on CSHB 412(HES) am, CHAIRMAN RIEGER asked for the pleasure of the committee.

SENATOR MILLER moved that CSHB 412(HES) am be passed out of committee with individual recommendations. Hearing no objection, it was so ordered.
Number 032

4 May 1994 Senate Finance Committee

Co-chair Pearce invited Elmer Lindstrom, Special Assistant to the Commissioner, Department of Health & Social Services, to speak to HB 412.

*[Tape 94-89]

*[Tape counter No. 403, Side A]

ELMER LINDSTROM said that HB 412 was not substantially different than CSSB 268(JUD) which was previously moved from Senate Finance. The most significant change related to page 6 of the bill, exemptions from foster home licensor. The other difference was that the House Finance Committee reduced the fiscal note submitted by the Department to \$30.0. The Department preferred the larger, previously submitted fiscal note but would proceed with the \$30.0 note if so directed by the legislature.

Senator Rieger MOVED for passage of CSHB 412(HES) am from committee with individual recommendations. No objection being heard, the bill was REPORTED out with individual recommendations, and a fiscal note for the Department of Health & Social Services for \$30.0. Co-chair Pearce, and Senator Jacko signed "do pass." Co-chair Frank, Senators Rieger and Sharp signed "no recommendation."

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Mr. Gray said definitions of different kinds of care were scattered throughout the statutes. He said the effort was to have a broader and more consistent definition throughout all parts of the statutes that dealt with the programs and protection of the elderly.

PAT O'BRIEN, Social Services Program Director, Division of Family & Youth Services, Department of Health & Social Services, said she had been following HB 3 and HB 4 for four years. She said in order for the division to put regulations in place by March 15, 1995, a fiscal note was needed. She went on to say that if the vulnerable adults bill passed, there would be a collaboration with the Division of Senior Services to develop those regulations. In response to Mr. Gray's prior statement, she said a public home care provider was not currently defined in statute.

In answer to Senator Kerttula, Ms. O'Brien said that there was more detail than listed on the fiscal note. In order to implement this bill, regulations must be implemented. She said regulations would address due process. In addition, procedures must be revised in the workers' manuals and some changes in reporting must be made. She said the residential child care regulations were more than ten years old. There was a backlog of very important sets of regulations and prioritizing this bill in front of other regulations was not something the department wanted to do. She said the department would contract out the writing of the regulations. In her experience, she had found that regulations often take a year, and sometimes longer.

Senator Kerttula understood that there was not enough money to handle the many problems the Department of Health & Social Services faced, but it was discouraging to him that it would take a year to implement regulations.

Senator Rieger asked if the person who was the recipient of home care services under the circumstances of HB 3, ever was a ward of the state. Ms. O'Brien said that children would be the only case, or children in foster homes where respite care would be provided. Adults were never wards of the state.

Again, in answer to Senator Rieger, Ms. O'Brien said this was easiest to talk about in regard to a very elderly

person. The home care provider who went into the elderly person's home might be the only individual that the person sees and the two might develop a close bond. There had been cases of abuse where the elderly person felt dependent on the individual for emotional support. In that case, the elderly person would not be strong enough to take steps to protect him/herself. She said someone could report this matter to the department and in some cases, it would be necessary for the department to ask the individual to be removed.

In answer to another question by Senator Rieger, Ms. O'Brien said in licensing outside contractors, the Department of Law had advised the statement regarding removal in order to provide for due process. Senator Rieger voiced his concern that the state was creating another way to leave itself open to lawsuits where none existed before.

FRANK JAMISON, Older Alaskans Commission, Division of Senior Services, Department of Health & Social Services, said the Commission was in support of HB 3. She added that people hired to become home care providers would be required to have a criminal record check. The incident that instigated this bill was a person that had a record in California, and because no record check was done here, no one knew. She stated it was an important bill for vulnerable adults.

In answer to Co-chair Pearce, Mr. Gray said that he did not know how the testimony had gone in Senate Judiciary. He did know that due process was key to this situation.

Senator Kerttula made a statement that elderly adults could be very vulnerable and family may not be close by. He cited another situation where a parent had Alzheimer's and its problems.

Senator Kerttula MOVED for passage of HB 3 from committee with individual recommendations. No objection being heard, it was REPORTED OUT of committee with a "do pass," zero

fiscal notes for the Department of Health & Social Services-
Administration, and a fiscal note for the Department of
Health & Social Services-#2059 for \$15.0. Co-chairs Pearce
and Frank, Senators Rieger, Kerttula, and Jacko signed "do
pass."

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