

ALASKA AFL-CIO

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March 19, 2018

Senator Mia Costello
Chair, Senate Labor & Commerce Committee
State Capitol Room 504
Juneau, AK 99801

RE: Strongly OPPOSE SSSB 112

Dear Senator Costello,

Back in February I testified in your committee in strong opposition to SB112, the Worker's Compensation "reform bill." During the bill's introduction the sponsor indicated that this bill was developed with the input of all stakeholders. However, the one stakeholder group that was not solicited for input were injured workers or the organizations, like ours, who advocate for injured workers. Not surprisingly the bill would be a boon to worker's comp insurers and employers. The only losers would, of course, be the workers who have the misfortune of being injured on the job.

On March 8th, the bill sponsor introduced a sponsor substitute to make the bill more palatable to those of us who represent injured workers. And on this count, **the bill still falls woefully short. Following are just some of the problems with SSSB 112:**

1. **Major contributing cause and clear and convincing evidence:** These sections change the presumptions and establish a higher bar than in regular civil cases (normally preponderance of the evidence). This version of the bill still removes the presumption of compensability after two years of medical treatment. And under this version, to get the presumption of compensability in the first place during enforcement proceedings, the employee has to show the preliminary link between the work injury and the need for treatment.
2. **Attorneys' fees:** This is still an asymmetrical cap since the insurers' attorneys don't have limits. In addition, this has been the source of legal battles in other states given how it could, in practice, limit access to the process and representation.

3. **Physician choice issue:** Although the recent work draft is ambiguous on physician choice, we believe they sloppily tried to remove the employer/insurer right to physician designation but still left one reference to it.

Specifically, the previous sec. 26 included the employer/insurer's right to designate an attending physician: "Any time after acceptance of liability by an employer or insurer, the employer or insurer may designate a different attending physician. Designation by the employer or insurer of an attending physician does not constitute the employer's or insurer's right to an employer independent medical examination under (e) of this section."

Version L deletes the first sentence on physician designation but keeps the second sentence, which still references employer designation.

4. **Repeal SIME:** Repeals the option for the Board to require a second independent medical examination in the case of disputes between the attending physician and employer's independent medical examination.
5. **Evidence-based guidelines and objective medical evidence required:** This could make it more difficult for providers to treat patients fully and could ultimately limit treatment for "subjective" pain, which obviously still affects one's ability to perform work. We agree that these requirements are heavier burdens for providers to meet and some providers would prefer to avoid these requirements.
6. **Testimony:** This version still states that a worker's treating physician's testimony can't be given more weight and limits the role of lay testimony.
7. **Standards of proof:** These are still unfairly tilted against Alaska worker's in this draft. In fact injured workers are subjected to a stricter standard of proof than criminal defendants. This would undoubtedly result in insurance carriers controverting complex injuries.
8. **Cost shifting:** The bill would shift the cost of injuries from corporations and other employers to the public payor, namely the state of Alaska, a poor public policy outcome.

This is not an exhaustive list of our issues with the bill, just a quick cursory response. Needless to say, from our perspective, the bill is still terrible, and would have adverse impacts on the very people the worker's compensation program is supposed to help.

Instead of this poorly thought out bill the Alaska AFL-CIO would suggest that reestablishing a Worker's Comp ad hoc committee truly made up of all stakeholders would be a better approach to coming up with reasonable improvements and efficiencies to Alaska's Worker's Compensation system.

Sincerely,



Vince Beltrami
President