

# MUNICIPALITY OF ANCHORAGE



*Mayor Dan Sullivan*

February 22, 2012

Dear Chairman and Members of the Senate Labor & Commerce Committee:

My name is Glenn C. Smith. I am the Risk Manager for the Municipality of Anchorage and have been for (15), fifteen years. I appreciate the opportunity to address you, regarding SB 116 and urge you to oppose the bill.

I'm sure it has been brought to your attention in the past that the Municipality of Anchorage, has (8) eight separate bargaining units, and (1), exempt unit. Section 2 of SB 116 creates two separate workers' compensation systems: one operated by the State and the other by collective bargaining. My major concern is that the latter does not allow an employer due process and, as would apply to the Municipality, potentially creates eight separate collective bargaining systems and one State system all simultaneously operating within the Municipality.

I take no issue with Section 1 of the bill, as it codifies what the Division of Workers' Compensation has been doing effectively for well over ten years.

The problem is Section 2, which creates a new workers' compensation system through the collective bargaining process. That section is vague and appears, on its face to be a good idea. Looking below the surface, however, the system strips the parties of their rights to conduct discovery and to select their own physicians. More importantly from my perspective is that it denies the employer its right to obtain an Independent Medical Evaluation (IME) to determine whether an injury is work related or, if work related, whether disability, permanent impairment, medical, vocational or other benefits are warranted under the Alaska Workers' Compensation Act. Thereby destroying the employer's right to due process. Although not clear on the face of the bill, this fact has been admitted to by the former hearing officer of the Alaska Workers' Compensation Board diligently pressing for its passage.

The law is clear that without medical evidence to support a denial of benefits, an employer cannot deny benefits without operating in bad faith. See *Harp v. ARCO Alaska, Inc.* 831 P.2d 352 (Alaska 1992). Thus, if an employer denies a claim without supporting medical evidence, they face a 25% penalty on all benefits denied and the adjuster faces a possible loss of their license. AS 23.30.155(e) and (o). Under the SB 116 system, it would be impossible for an employer to develop contrary medical evidence to dispute a claim, and thus they would lose any mechanism for developing scientific evidence to test the validity of the employee's claim. The employer under this system is utterly defenseless.

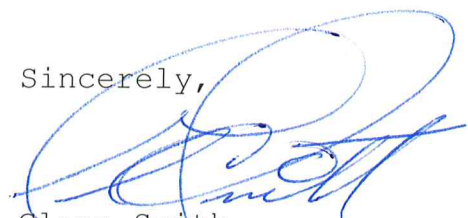
Additionally, under SB116 the employee can only select a doctor from a list developed by a trust. Currently, under AS 23.30.097 an employer or group of employers may establish a list of preferred physicians to provide medical treatment and other services to the employer's employees. To date, not one employer or group of employers have succeeded in establishing such a list. Physicians are simply not interested in compromising their independence. There is no reason to believe the trust envisioned under SB116 will not meet a similar fate.

Likewise vocational counselors under SB 116 would be limited by a trust. Currently there are numerous vocational counselors available to an employee.

There is a similarity between the current system and that purposed by SB 116, and that is who pays for them. Insurers and Self-insured's would pay the increased costs of the Workers' Compensation system at a time of increasing retentions and limited market share.

A parallel system, devoid of the constitutional due process protection available under our current system with added costs to the employer who funds the system either through insurance or Self-insurance, would limit market participation and not provide an even playing field. As applied to the Municipality of Anchorage, SB 116 could result in eight different collective bargaining systems, one for each union and the State system we currently have for exempt employees. I urge you to oppose such a system and vote "no" on SB 116.

Sincerely,



Glenn Smith  
Municipality of Anchorage Risk Manager