

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

February 25, 2002

3:20 p.m.

MEMBERS PRESENT

Representative Lisa Murkowski, Chair
Representative Andrew Halcro, Vice Chair
Representative Kevin Meyer
Representative Pete Kott
Representative Harry Crawford
Representative Joe Hayes

MEMBERS ABSENT

Representative Norman Rokeberg

COMMITTEE CALENDAR

HOUSE BILL NO. 333

"An Act extending the termination date of the Regulatory Commission of Alaska; and providing for an effective date."

- MOVED HB 333 OUT OF COMMITTEE AGAIN
WITH A LETTER OF INTENT

HOUSE BILL NO. 393

"An Act relating to unfair and deceptive trade practices and to the sale of business opportunities; amending Rules 4 and 73, Alaska Rules of Civil Procedure; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 215

"An Act relating to the use of pharmaceutical agents in the practice of optometry; and providing for an effective date."

- MOVED CSHB 215(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 318

"An Act relating to a health insurance uniform prescription drug information card; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS ACTION

BILL: HB 333

SHORT TITLE:EXTENDING THE REGULATORY COM. OF ALASKA

SPONSOR(S): FINANCE

Jrn-Date	Jrn-Page		Action
01/16/02	1981	(H)	READ THE FIRST TIME - REFERRALS
01/16/02	1981	(H)	L&C, FIN
02/13/02		(H)	L&C AT 3:15 PM CAPITOL 17
02/13/02		(H)	Scheduled But Not Heard
02/20/02		(H)	L&C AT 3:15 PM CAPITOL 17
02/20/02		(H)	Moved Out of Committee MINUTE(L&C)
02/25/02		(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 393

SHORT TITLE:SALES OF BUSINESS OPPORTUNITIES

SPONSOR(S): REPRESENTATIVE(S) STEVENS

Jrn-Date	Jrn-Page		Action
02/08/02	2182	(H)	READ THE FIRST TIME - REFERRALS
02/08/02	2182	(H)	L&C, JUD
02/25/02		(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 215

SHORT TITLE:OPTOMETRISTS AND PHARMACEUTICALS

SPONSOR(S): LABOR & COMMERCE BY REQUEST

Jrn-Date	Jrn-Page		Action
03/26/01	0730	(H)	READ THE FIRST TIME - REFERRALS
03/26/01	0730	(H)	HES, L&C
04/24/01		(H)	HES AT 3:00 PM CAPITOL 106
04/24/01		(H)	Moved Out of Committee
04/24/01		(H)	MINUTE(HES)
04/25/01	1197	(H)	HES RPT 3DNP 4NR
04/25/01	1197	(H)	DNP: COGHILL, WILSON, CISSNA;
04/25/01	1197	(H)	NR: KOHRING, JOULE, STEVENS, DYSON
04/25/01	1197	(H)	FN1: ZERO(CED)
02/22/02		(H)	L&C AT 3:15 PM CAPITOL 17
02/22/02		(H)	Heard & Held MINUTE(L&C)
02/25/02		(H)	L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

REPRESENTATIVE GARY STEVENS

Alaska State Legislature
Capitol Building, Room 428
Juneau, Alaska 99801

POSITION STATEMENT: Testified as the sponsor of HB 393.

JULIA COSTER, Assistant Attorney General

Fair Business Practices Section
Civil Division (Anchorage)
Department of Law

1031 West 4th Avenue, Suite 200
Anchorage, Alaska 99501-1994

POSITION STATEMENT: Answered questions regarding HB 393.

JOHN W. HESSE, II, Senior Attorney and Director

Government Relations
Direct Selling Association (DSA)

1275 Pennsylvania Avenue, NW, Number 800
Washington, DC 20004-2411

POSITION STATEMENT: Testified that DSA is in support of Alaska's regulating business opportunities, but the question is how to do so.

PAM LaBOLLE, President

Alaska State Chamber of Commerce
217 2nd Street, Suite 201
Juneau, Alaska 99801

POSITION STATEMENT: Testified in support of HB 393.

DOUG LETCH, Staff

to Representative Gary Stevens
Alaska State Legislature
Capitol Building, Room 428
Juneau, Alaska 99801

POSITION STATEMENT: Answered questions on HB 393 on behalf of Representative Stevens, sponsor.

CATHERINE REARDON, Director

Division of Occupational Licensing,
Department of Community and Economic Development
PO Box 110806

Juneau, Alaska 99811-0806

POSITION STATEMENT: Answered questions relating to HB 215.

ACTION NARRATIVE

TAPE 02-24, SIDE A

[Due to a taping malfunction, the first 2.5 minutes of this meeting are not available on tape; instead, the first portion of Side A is from the end of the meeting. Therefore, the first part of the committee meeting was reconstructed from log notes.]

CHAIR LISA MURKOWSKI called the House Labor and Commerce Standing Committee meeting to order at 3:20 p.m. Representatives Hayes, Meyer, Halcro, and Murkowski were present at the call to order. Representatives Kott and Crawford arrived as the meeting was in progress.

HB 333-EXTENDING THE REGULATORY COM. OF ALASKA

CHAIR MURKOWSKI announced the first order of business, HOUSE BILL NO. 333, "An Act extending the termination date of the Regulatory Commission of Alaska; and providing for an effective date."

CHAIR MURKOWSKI informed the committee that there had been a letter of intent drafted to accompany HB 333, which was moved from committee on February 20 [2002]. The letter of intent indicates the House Labor and Commerce Standing Committee and the Senate Labor and Commerce Standing Committee will conduct annual oversight hearings of the Regulatory Commission of Alaska (RCA). The purpose of these hearings is to discuss investigations and complaint follow-up, case backlogs, and other matters of public inquiry regarding the RCA's activities.

[Recording begins here]

TAPE 02-24, SIDE A
Number 051

REPRESENTATIVE HALCRO moved that the committee rescind its action on HB 333 [in moving the bill out of committee on 2/20/02]. There being no objection, HB 333 was before the committee.

Number 060

REPRESENTATIVE HALCRO moved to adopt the letter of intent and to report HB 333 out of committee with individual recommendations and the accompanying fiscal notes.

CHAIR MURKOWSKI asked whether there was any objection; she specifically asked Representative Kott, who hadn't been present at the February 20 meeting.

REPRESENTATIVE KOTT answered that he does have some concerns regarding the way the RCA has been doing business over the last three or four years. He explained that when the RCA was structured, one of the main concerns was "would we become proficient and efficient." He said from what he has heard from a number of utilities across the state, the main objective has not been met. He told members:

I think we need to revisit with the RCA membership and find out what the problem is, and take some corrective action before this continues to escalate into a problem that amounts to about the same size as the one we dealt with when we did the reorganization. I hate to get into micromanaging these folks, but [from] some of the discussions that I've had, we may not have any option.

REPRESENTATIVE KOTT concluded by saying he had no objection to advancing the bill.

Number 096

CHAIR MURKOWSKI announced that there being no objection, HB 333 was moved [again] from the House Labor and Commerce Standing Committee with the attached letter of intent.

HB 393-SALES OF BUSINESS OPPORTUNITIES

CHAIR MURKOWSKI announced the next order of business, HOUSE BILL NO. 393, "An Act relating to unfair and deceptive trade practices and to the sale of business opportunities; amending Rules 4 and 73, Alaska Rules of Civil Procedure; and providing for an effective date."

Number 127

REPRESENTATIVE GARY STEVENS, Alaska State Legislature, testified as the sponsor of HB 393. He explained that HB 393 addresses business opportunities, commonly referred to as "biz opps," which are work-at-home schemes. Unfortunately, some people believe these [schemes], and thus are ripped off. This is a consumer-protection issue that would be best prevented.

Representative Stevens referred to a Red Book Magazine article entitled "So you want to work at home?" This article reviews the scams related to work-at-home schemes, he noted.

REPRESENTATIVE STEVENS explained that HB 393 creates a new, comprehensive statute that regulates the sale of business opportunities - prepackaged small business deals that target Alaska. About half of the states are attempting to regulate these business opportunities. [HB 393] requires that these businesses register with the state, which these business won't want to do [otherwise] because it allows the state to know who and where the business is. This legislation also requires that the business disclose information to the buyers, and an escrow account must be used in order to assure delivery of the products. Furthermore, it requires a 30-day right of cancellation for the buyer. With these measures, violators will be subject to civil and criminal penalties. Representative Stevens related his belief that a legitimate business won't object to these requirements.

Number 198

CHAIR MURKOWSKI asked whether specific incidents in Alaska had precipitated HB 393.

REPRESENTATIVE STEVENS replied yes and deferred to the Department of Law for examples. He mentioned that there are exemptions for businesses such as Amway or Avon. Furthermore, this legislation won't impact those legitimate businesses.

REPRESENTATIVE CRAWFORD asked what this \$75,000 surety bond would cost the individual or company.

REPRESENTATIVE STEVENS deferred to the Department of Law.

Number 210

JULIA COSTER, Assistant Attorney General, Fair Business Practices Section, Civil Division (Anchorage), Department of Law, testified via teleconference. She began by providing the committee with examples of complaints. She then explained that HB 393 is a comprehensive regulatory scheme that requires the following: the seller of the business opportunity must register with the state through the Department of Law, which is similar to the statute relating to telemarketers and charitable organizations; must disclose certain information through the registration form; and must provide to the potential provider -

ten days in advance of the contract closure - a disclosure statement that includes all the terms and conditions of the contract.

MS. COSTER continued explaining HB 393. It requires that the seller post a bond in the amount of \$75,000. It also requires a 30-day right of cancellation of the contract. If the seller requires more than 20 percent down, then the seller has to establish an escrow account; thus anything over the 20 percent is placed in the escrow account until the buyer provides notice that he/she has received the products.

MS. COSTER concluded by announcing [the department's] strong support of HB 393, which it views as discouraging fraudulent sellers from trying to do business in the state while also providing an important enforcement tool.

Number 312

CHAIR MURKOWSKI noted that the committee packet includes a letter [an e-mail from John Hesse dated February 13, 2002] from the Direct Selling Association (DSA). She asked Ms. Coster to address that.

MS. COSTER related her understanding that DSA supports HB 393. However, HB 393 says that businesses costing less than \$200 to purchase are exempt from this legislation. The suggestion of DSA is to increase that exemption to \$500, which is the limit in many states; she mentioned the FTC [Federal Trade Commission] franchise rule. Ms. Coster urged the committee to maintain the \$200 limit, however.

MS. COSTER explained that many states with a \$200 limit were contacted regarding the \$200-versus-\$500 limit; those states recommended maintaining the \$200 limit because without it, the state wouldn't have the necessary enforcement authority to go after those businesses under \$500 - quite a few businesses. Many states have experienced that businesses are priced just below \$500, in order to avoid the \$500 limit. Ms. Coster again urged the committee to maintain the \$200 limit.

MS. COSTER also pointed out that DSA represents direct sellers, as opposed to direct business opportunities. She specified that DSA represents businesses such as Amway and Mary Kay cosmetics, which wouldn't need to be concerned with the requirements of this legislation due to the exemption under Section 5.

Number 361

CHAIR MURKOWSKI asked what is done now in regard to enforcement.

MS. COSTER answered that currently the Consumer Protection Act prohibits unfair and deceptive trade practices. If a business has represented that it would provide goods or services, but hasn't done so - and if there is a pattern of that - then it would be considered an unfair deceptive trade practice. However, many are "fly-by-night" operations. It is more difficult to obtain refunds after the fact than to stop these businesses from selling their product in the state in the first place. If they fail to register, when their advertisement is in the newspaper [the department] can tell the business to cease and desist, and can obtain an injunction to stop the business from advertising. Without the registration requirements [in HB 393], however, the [department] has to wait until the business engages in a conduct in which [the product] hasn't been provided. Going in after the fact is not effective.

Number 382

CHAIR MURKOWSKI asked to whom this applies. If there were an advertisement in USA Today, for example, the business wouldn't fall under the requirements for the offer. However, since an Alaskan could purchase the newspaper and see the advertisement and could have the product shipped to Alaska, then that business would fall under HB 393.

MS. COSTER replied in the affirmative. She pointed out that proposed AS 45.66.070(3) [page 4, lines 23-24] says it applies to a buyer domiciled in Alaska [if] the business opportunity is or will be operated in Alaska. Ms. Coster clarified that [subsection (3) also] says the buyer has to be domiciled in Alaska.

Number 402

CHAIR MURKOWSKI turned to the fiscal note, which seems to anticipate ten to twelve business opportunities registering with the state. She asked who these will be.

MS. COSTER expressed interest in finding out who these will be as well. She noted that there are legitimate business opportunities, which will probably register. She reported that most states have found there are far more business opportunities out there than do register. Most states have ten to twenty

business opportunities that register a year. The fact that there are business opportunities operating without registering provides [the department] the ability to pursue them through enforcement.

Number 416

CHAIR MURKOWSKI expressed concern with the exemption for Amway, Mary Kay, and Avon, which she understood Ms. Coster to indicate would fall under AS 45.66.220(5). However, Chair Murkowski related her belief that the purpose of Amway is to resell the product.

MS. COSTER related her understanding that many of the Direct Selling Association's businesses such as Amway work so that there isn't a large upfront investment by the person who does the selling, which is different from many business opportunities. Direct sellers generally require the purchase of a demonstration kit with samples for sales demonstration. Furthermore, the seller of Amway [products] generally purchases the product inventory at wholesale and resells it for a retail price. Therefore, Amway is exempt as it relates to AS 45.66.220(5).

MS. COSTER remarked that no business, whether a direct seller or not, is allowed to make misrepresentations in regard to earnings, the type of products being sold, and so forth. Those sorts of things would be covered under the Consumer Protection Act. This legislation also includes prohibitions relating to misrepresentations regarding earnings.

CHAIR MURKOWSKI discussed an Avon advertisement in the paper that guaranteed a certain amount of earnings. She asked if Avon would not [fall under this] by guaranteeing a certain amount of earnings.

MS. COSTER said she hesitated to make any comments since she hadn't seen the advertisement.

Number 464

CHAIR MURKOWSKI directed attention to page 8 regarding the cancellation of the contract. She said she understood that section to essentially allow a buyer to cancel the contract at any time for the reasons outlined in the section, one of which is if any untrue, misleading, incomplete, or deceptive

statements are made. She asked whether [cancellation] relates to the sale of the business opportunity or the product itself.

MS. COSTER answered that it would be difficult to distinguish between the two. She said she didn't know that it was restricted in any way.

Number 490

REPRESENTATIVE HALCRO referred to page 9, lines 1-6, regarding notice of cancellation. He asked if the buyer is entitled to all payments once notice of cancellation is given.

MS. COSTER answered that it would be a complete refund of all monies.

Number 500

REPRESENTATIVE MEYER inquired as to how many states have a law such as HB 393. He also asked about Internet advertisements.

MS. COSTER replied that 22-23 states have such a law. Internet advertisements would be treated like any other advertisement. If the advertisement makes claims that can't be substantiated, it would constitute an unfair deceptive trade practice under state and federal law. However, there could be a question in regard to jurisdiction; thus she indicated that a purchase would probably have to be made in order to establish jurisdiction.

REPRESENTATIVE MEYER turned to the fiscal note and related his understanding that this [would be] a class C felony. He asked if it costs less to prepare for a class A misdemeanor versus a class C felony. In that case, he asked, wouldn't it be better to pursue these violations as a class A misdemeanor?

MS. COSTER explained that the fiscal note is in regard to the cost to the department regarding the civil enforcement aspect. This legislation makes a violation of the statute a violation of the Consumer Protection Act, which provides some civil enforcement. There are also some costs associated with the requirements for registration forms and their processing. In regard to the criminal aspect, she deferred to someone from the criminal section.

REPRESENTATIVE MEYER said he would hold the question for the bill's hearing in the House Judiciary Standing Committee.

Number 542

CHAIR MURKOWSKI returned to the notice of cancellation and pointed out that the cancellation is effective - if it's done by mail - when deposited in the mail. However, page 9, subsection (e), requires that the seller refund the buyer within 15 days of the notice of cancellation. She expressed concern with regard to the timing.

MS. COSTER replied that a buyer who receives a refund a few days late probably won't be too upset. She explained that basically [subsection (e)] establishes a timing mechanism so that the buyer and the department have some parameters. Usually, a grace period would be allowed.

CHAIR MURKOWSKI restated Representative Crawford's earlier question regarding the cost of a surety bond in the amount of \$75,000.

MS. COSTER answered that on average, it would cost approximately \$20 for every thousand dollars of bond being posted. Therefore, a \$75,000 bond for a person with good credit would probably cost about \$1,500.

Number 570

JOHN W. HESSE, II, Senior Attorney and Director, Government Relations, Direct Selling Association (DSA), testified via teleconference. Mr. Hesse informed the committee that the direct selling industry is a global industry that generates more than \$83 billion in worldwide sales. Sales totaled \$25.57 billion in the United States last year. He estimated that there are approximately 30,000 salespeople in Alaska; on average, each will generate about \$2,000 in sales. Therefore, the market in Alaska probably amounts to about \$18 million.

MR. HESSE explained that the association's issue with HB 393 is a technical legal issue. The association has supported regulation of business opportunities for 20-30 years.

TAPE 02-24, SIDE B
Number 001

MR. HESSE agreed that 23 other states regulate business opportunities. However, 27 states don't regulate business opportunities, and [those states] primarily rely on the leadership of the FTC. Mr. Hesse emphasized his belief that

there can be clear distinctions made between business opportunities and direct selling businesses. These statutes provide a mechanism to make that distinction. However, the \$200 threshold is problematic.

MR. HESSE informed the committee that the association has experienced confusion with the threshold. Therefore, the association supports a higher threshold because the North American Association of Securities Administrators (NAASA) Model Act of 1984 and the Commissioners on Uniform State Law contained a \$500 threshold, which is a larger figure when indexed backwards for inflation. Most states with a lower threshold will say that it should be higher [when reviewing the figures in terms of 2002 dollars].

MR. HESSE echoed Ms. Coster's testimony that comparatively it costs little money to join a direct selling business, and thus that distinction can be drawn. He informed the committee that the association's sellers are mostly women - 73 percent in 2001 - who have other, significant family responsibilities. Mr. Hesse said, "Our goal really is to make sure that there are not barriers erected that limit the opportunities that ... are available to these folks through direct selling."

MR. HESSE specified that the association would like the threshold to be raised to \$500. The association also wants that threshold to be moved to the definition of a business opportunity, because it's much more difficult to change the definition section rather than the exemption section of statute. In conclusion, Mr. Hesse reiterated that 27 other states don't regulate this area, and of the 23 states that do, only 3 have a threshold as low as \$200. Although preferring that the threshold be changed to \$500, the association is willing to work with the department to develop a number between \$200 and \$500; however, Mr. Hesse conveyed his understanding that the department has been unwilling to engage in such a discussion.

Number 061

CHAIR MURKOWSKI surmised that the association's preference is that Alaska not adopt legislation to regulate these business opportunities, and that the FTC can perform the oversight. However, she'd understood the department to say it is difficult to get the operators of these scam businesses. Therefore, she asked how beneficial it would be to rely on the federal regulations.

MR. HESSE answered that the association is neutral regarding whether Alaska should adopt statutes to regulate business opportunities. He expressed the need to contact the 27 states that don't regulate business opportunities and ask why they don't. The question is not really whether Alaska regulates business opportunities, but rather how it is done, because [direct sellers] don't want to be included with some of the "fly-by-night" operations. Therefore, the association would be supportive of Alaska's regulating this area.

Number 105

PAM LaBOLLE, President, Alaska State Chamber of Commerce, testified in support of HB 393, which provides protection from fraudulent schemes. Ms. LaBolle expressed concern with regard to the threshold at which business opportunities have to register. She related her understanding that the fee for registration would be around \$150; however, she'd misunderstood that the bond would cost \$50 rather than \$1,500. Therefore, she questioned why would anyone spend \$200 for a business opportunity. She suggested a higher threshold would be more appropriate.

MS. LaBOLLE expressed confusion with regard to the surety bond and pondered whether the registration and the surety bond would be a one-time fee under which there could be several business opportunities. She related her understanding that 2 states have the \$200 threshold, 7 states have a threshold between \$250 and \$300, and 14 states have a threshold higher than \$300. Ms. LaBolle said there is no desire to place a chilling effect on any legitimate business opportunities. She added that the standard should be higher than what it will cost in the regulatory effort.

Number 163

DOUG LETCH, Staff to Representative Gary Stevens, Alaska State Legislature, came forward to answer questions on behalf of Representative Stevens, sponsor. He related his belief that the \$250 threshold may be a more acceptable amount for those in the business community. He related that Representative Stevens is comfortable with a \$250 threshold. He noted that two states with a \$250 threshold had started at the \$500 threshold but reduced it.

CHAIR MURKOWSKI highlighted the dilemma: there are small, legitimate operators such as Amway [distributors] who won't go

the extra mile to obtain a surety bond and thus will be operating in violation. However, these aren't the offenders [HB 393] intends to address. Chair Murkowski voiced her desire that HB 393 not have a chilling effect on the legitimate operators.

MR. LETCH offered his belief that the exemption in HB 393 covers legitimate businesses such as Amway, Avon, and Mary Kay.

CHAIR MURKOWSKI asked why there [would be concern] over the amount of the threshold if the exemption covers them. The exemption on page 12, line 28, refers to sales-demonstration equipment and has nothing to do with a dollar amount.

MS. COSTER pointed out that a number of exemptions are listed; one refers to business opportunities for which the buyer pays less than \$200. Such transactions won't be covered by HB 393. Another exemption, under Section 3, paragraph (5), refers to the sale of a product not for resale. This exemption sets no price limit, but serves an entirely different purpose. Part of this exemption refers to product inventory that is sold to the buyer at a wholesale price. She related that this exemption addresses direct [sellers] such as Amway in that Amway [distributors] purchase products at wholesale and sell them at retail.

Number 240

CHAIR MURKOWSKI asked, then, why Mr. Hesse wants a higher threshold, when typically [those businesses would] be exempt under Section 3, paragraph (5).

MR. HESSE explained that basically [DSA] doesn't want to meet the legal definition of a business opportunity. Therefore, the association desires that a business opportunity be defined with a dollar threshold so that the majority of the membership doesn't meet the definition.

CHAIR MURKOWSKI related her understanding that the desire is to further define business opportunity in order to not include those with an initial fee in excess of \$500. However, she asked, why would it be necessary to change it in the exemption section?

MR. HESSE answered that if the threshold were increased, then it could be deleted from the exemption section. Mr. Hesse specified that the association wishes to have a very precise definition of business opportunity that excludes his members.

Number 275

REPRESENTATIVE HAYES surmised, then, that the definition from DSA [included in the letter dated February 21, 2002, from Alticor Inc.] would have to be incorporated into HB 393 in order to satisfy this issue.

CHAIR MURKOWSKI agreed, specifying her understanding that DSA wants the definition of a business opportunity to include a higher threshold.

Number 285

MR. LETCH related his understanding that DSA wouldn't represent a business opportunity necessarily, because those selling Amway, for instance, wouldn't purchase inventory until sales have been made. He asked if that was correct.

MR. HESSE clarified that it has to do with the amount the [buyer] purchases. There are members of the sales force who purchase significant amounts of inventory for resale. Therefore, the question becomes whether the aforementioned can be defined as a business opportunity. The desire is to ensure that those purchasing low-cost consumables have enough room to make their inventory purchases without falling under the definition of a business opportunity.

Number 312

CHAIR MURKOWSKI asked Ms. Coster where the problems are occurring. Are people being scammed for lesser items or more expensive items?

MS. COSTER replied that the problems span from \$35 to \$469 to tens of thousands of dollars. Many cases fall under the \$500 level, which is why there is the desire to keep the threshold as low as possible.

Number 333

MR. HESSE remarked that the question is in regard to the level of dollar protection that should be afforded the consumer in terms of the consumers' risk of loss versus the cost to operate a legitimate business. Based on DSA's experience, the \$200 threshold is too low.

Number 359

CHAIR MURKOWSKI stated that she isn't entirely satisfied with the definition of a business opportunity, and therefore she expressed the need to meet with the sponsor and the Department of Law in order to put to rest the concerns of these legitimate smaller operators. She remarked that she didn't want to discourage the relatively small, legitimate operators.

CHAIR MURKOWSKI announced that HB 393 would be held over.

HB 215-OPTOMETRISTS AND PHARMACEUTICALS

Number 373

CHAIR MURKOWSKI announced the final order of business, HOUSE BILL NO. 215, "An Act relating to the use of pharmaceutical agents in the practice of optometry; and providing for an effective date." [HB 215 was sponsored by the House Labor and Commerce Standing Committee by request. Version L, 22-LS0538\L, Lauterbach, 1/31/02, had been adopted as a work draft on 2/22/02.]

Number 381

REPRESENTATIVE KOTT moved to adopt Amendment 1, labeled 22-LS0538\L.1, Lauterbach, 2/25/02, which read:

Page 3, following line 22:

Insert a new bill section to read;

"* **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to read:

EXISTING ENDORSEMENTS. Notwithstanding AS 08.72.175, as amended by sec. 1 of this Act, and AS 08.72.272, as amended by secs. 2 and 3 of this Act, an endorsement issued before the effective date of this Act does not authorize a licensee to prescribe or use a pharmaceutical agent by systemic administration until the licensee applies to the Board of Examiners in Optometry for authorization to prescribe or use a pharmaceutical agent by systemic administration and the board finds either

(1) the person's initial license to practice optometry was issued after December 31, 1999; or

(2) the person has attended and passed a course covering systemic administration of pharmaceutical agents that was offered by an

accredited college of optometry and approved by the Board of Examiners in Optometry."

Renumber the following bill section accordingly.

CHAIR MURKOWSKI asked whether there was any objection. There being no objection, Amendment 1 was adopted.

CHAIR MURKOWSKI said Amendment 1 addresses the concern of endorsement without the training from the governor's veto letter [dated May 10, 2000, regarding the veto by Governor Knowles of SB 78]. She asked about the subject of "additional training". She explained that the committee had heard that the optometrists felt additional training wasn't required because of their schooling and hours in pharmacology. She asked Ms. Reardon to address this issue.

Number 408

CATHERINE REARDON, Director, Division of Occupational Licensing, Department of Community and Economic Development, referred to page 3, Section 4, of Version L. She said the transitional provision of uncodified law seems to say, "In order to get this endorsement for systemic drugs, one has to have either graduated or gotten an initial license after 1999 or had a course." She said she assumes that the purpose of the transitional provision is because newer graduates will have received this type of training in their schooling, while there are earlier graduates of optometry school who may not have received this training. She noted that the committee may have addressed the issue of "additional training" in the transitional provision, but couldn't say for certain that this would satisfy the governor's concern.

MS. REARDON addressed another concern in the governor's veto letter, that existing endorsements would unintentionally be upgraded. She referred to page 3, lines 18-19 [Version L], which read, "the person's initial license to practice optometry was issued after December 31, 1999". She asked if that means one's initial license anywhere, or in Alaska.

CHAIR MURKOWSKI responded, "Their initial license to practice optometry."

Number 437

MS. REARDON said she doesn't know whether, after 1999, this type of course has been in the curriculum of all the schools. She asked why Section 4 is a transitional provision instead of a regular piece of the legislation.

CHAIR MURKOWSKI said she was now confused with Amendment 1. She remarked, "So, we have a transitional provision in Section 4, and then the new Section 5 is the existing endorsements."

Number 444

MS. REARDON said that is correct. She offered that Amendment 1 deals with existing [endorsements], and said she is confused why Section 4 is described as uncodified law rather than regular law. She mentioned that it looks as though two of the topics in the governor's veto letter were addressed.

Number 456

REPRESENTATIVE KOTT said he thinks the main issue in HB 215 addresses qualifications. When one asks if ophthalmologists are more qualified than optometrists, the answer is usually a resounding yes. He offered that the issue is whether or not the optometrists are qualified [to prescribe oral or systemic drugs], which he thinks they are.

REPRESENTATIVE KOTT told members he was disturbed by a comment made last week by a gentleman who'd testified, suggesting the rural community, especially the Native community, is opposed to [HB 215]. He explained that this gentleman "assumed a position himself with the local ANB [Alaska Native Brotherhood] chapter", which Representative Kott called the local camps. Representative Kott indicated he himself had talked to six individuals in the "Grand Camp," which the local camp responds to - the executive committee on the Grand Camp makes a recommendation on behalf of the ANB community; Representative Kott reported that "those discussions never took place." He therefore offered his belief that the testifier was - in accordance with what he himself knows about the parameters of the organizational structure - completely out of place. Representative Kott indicated he was also told that the Alaska Federation of Natives (AFN) has not taken a position on HB 215.

Number 477

REPRESENTATIVE KOTT said he thinks [HB 215] is an important piece of legislation for the rural communities. He explained

that [HB 215] bridges the gap between urban and rural [communities]. He offered that people should have the opportunity to visit the optometrist if there isn't an ophthalmologist in the community.

Number 479

REPRESENTATIVE MEYER said he thinks optometrists aren't trying to take over the ophthalmologists' jobs, but rather are asking for the ability to prescribe drugs. He said the optometrists aren't asking to do any surgical type of work. He said to his understanding, the optometrists are just trying to prescribe drugs that are necessary and needed in case of an emergency - and in rural Alaska this situation could come up frequently.

Number 486

REPRESENTATIVE HALCRO, referring to a handout in the packet, addressed the issue of various state actions on similar legislation. He remarked, "When you look at all of these states that have defeated initiatives having to do with widening the scope of optometry, ... it seems to me it's pretty significant. I'm just wondering why these various states defeated these initiatives." He offered that possibly the initiatives were defeated because of the questions relating to qualifications to be able to dispense some of [the drugs], or that the ophthalmologists didn't have a very effective lobbyist in these states.

Number 497

REPRESENTATIVE KOTT mentioned that because of its rural communities, Alaska is a little different from some states that have defeated similar legislation. He said if Alaska had an ophthalmologist in every major city with the ability to get to that major city within an hour of driving, he would probably defeat the initiative. He added, "We don't have that luxury."

Number 510

CHAIR MURKOWSKI acknowledged a nationwide movement to expand the scope of optometric practice to include laser surgery. She told members, "I, for one, am absolutely, positively, dead-set against that." She offered that if some initiatives in other states have expanded to include laser surgery, as Oklahoma has done, then the states were right in rejecting that expansion and practice.

CHAIR MURKOWSKI said her concern with [HB 215] has been that it is "the camel's nose under the tent" in terms of the practice and whether the next step is laser [surgery]. She said [the committee] has seen in writing that this has been attempted in other states. She added, "We did have the testimony of Jeff Gonnason saying, 'They tried it. They saw it wasn't going to work here, so they've disbanded it.'" Chair Murkowski said she is not entirely convinced "that they're not going to come back and try to do it again, but there is a point there where you say no." She added, "You want to cut somebody's eyeball open, you go all the way through to medical school."

Number 525

REPRESENTATIVE CRAWFORD said right now, he thinks Alaska has about five times as many optometrists as ophthalmologists. His concern is that if Alaska continues to broaden the scope of what optometrists are allowed to do, it will probably shrink the market for ophthalmologists even more. He said this may be one unintended consequence of [HB 215].

Number 532

REPRESENTATIVE HAYES asked what the comment of the state medical board is [on HB 215]. He said he'd thought the board was going to work together with the ophthalmologists and the eye doctors to come up with some resolution.

CHAIR MURKOWSKI replied, "They met. They talked about possibly having a subcommittee. No one can quite recall if anyone was put on that subcommittee or whether it worked." She said as she understands it, the state medical board didn't come to a resolution.

CHAIR MURKOWSKI asked Ms. Reardon if it is fair to say the state medical board objects to HB 215 as it currently is.

MS. REARDON said yes.

CHAIR MURKOWSKI said as far as [the committee] knows, there's no ongoing effort for the ophthalmologists and the optometrists to further work things out.

Number 547

MS. REARDON said there isn't an effort with enough momentum that is going to bring answers in a timeframe that she thinks will be helpful to this legislative session.

REPRESENTATIVE HALCRO offered that it seems a good deal of the motivation behind HB 215 is to make services available in rural Alaska, where there aren't many ophthalmologists. He asked if it is possible and makes sense to maybe limit the authority [optometrists] have - in dispensing and in doing certain activities - to communities under a certain population. He asked, "If the intent truly is because Alaska is so geographically diverse, and we have several small communities without ophthalmologists, and this just makes it easier and more cost-effective, should we limit it to those communities?" He said this would prevent someone in Anchorage from dispensing services that rightfully an ophthalmologist does, since there are plenty of [ophthalmologists] in Anchorage.

Number 558

MS. REARDON said she thinks there have been several different arguments put forward by supporters HB 215. She mentioned that there has been some reference to rural services, but she wasn't sure that was the sole purpose of HB 215. She added, "I don't think that's one of the variations that's been discussed by the optometry board or the medical board, perhaps because if it's safe, ... there isn't a reason to prevent it in the urban areas, and if it's not safe - if it actually is risky - perhaps maybe we shouldn't inflict that upon the rural areas." She mentioned that there are licensing laws with population indexes because sometimes there has to be that decision in rural areas. She asked if lesser public protection is better because there will be more access. She referred to a list of communities and the mailing addresses of the optometrists. She said, "They're not widely dispersed in what you think of as rural Alaska."

[Tape flips back to beginning of Side A]

TAPE 02-24, SIDE A
Number 001

MS. REARDON said, "From my perspective, you don't see a lot of people in Fort Yukon or anything like that."

REPRESENTATIVE KOTT offered that market conditions in urban areas would probably dictate who a person is going visit to get something taken care of. He said when given the choice, he

would visit the doctor who is more qualified, because he is going to pay the same amount for the deductible, and he wants the best health care. He implied that most people would do the same. Therefore, he said he doesn't think it's necessary to restrict it based on population base. Representative Kott mentioned that similar legislation had overwhelming support a couple of years ago, with - to his recollection - only four votes in both houses against it. He said he thought it was a good idea back then, and still thinks it's a fairly good idea.

Number 019

REPRESENTATIVE KOTT moved to report CSHB 215 [version 22-LS0538\L, Lauterbach, 1/31/02, as amended] out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 215(L&C) was moved out of the House Labor and Commerce Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:00 p.m.