

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

April 26, 2002

3:25 p.m.

MEMBERS PRESENT

Representative Lisa Murkowski, Chair
Representative Kevin Meyer
Representative Norman Rokeberg
Representative Harry Crawford
Representative Joe Hayes

MEMBERS ABSENT

Representative Andrew Halcro, Vice Chair
Representative Pete Kott

COMMITTEE CALENDAR

SENATE BILL NO. 354

"An Act relating to the prices paid by milk processing plants to suppliers of fluid milk."

- MOVED SB 354 OUT OF COMMITTEE

CS FOR SENATE BILL NO. 274(L&C)

"An Act relating to issuance of a locum tenens permit for a physician or osteopath; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 512

"An Act relating to cigarette sales; and providing for an effective date."

- HEARD AND HELD

CONFIRMATION HEARINGS

Boards and Commissions

- SCHEDULED BUT NOT HEARD

PREVIOUS ACTION

BILL: SB 354

SHORT TITLE:PRICES PAID BY MILK PROCESSING PLANTS
 SPONSOR(S): HEALTH, EDUCATION & SOCIAL SERVICES

Jrn-Date	Jrn-Page		Action
03/27/02	2541	(S)	READ THE FIRST TIME - REFERRALS
03/27/02	2541	(S)	RES
04/03/02		(S)	RES AT 3:30 PM BUTROVICH 205
04/03/02		(S)	Moved Out of Committee
04/03/02		(S)	MINUTE(RES)
04/03/02		(S)	MINUTE(RES)
04/04/02	2631	(S)	RES RPT 3DP 1NR
04/04/02	2631	(S)	DP: TORGERSON, HALFORD, STEVENS;
04/04/02	2631	(S)	NR: WILKEN
04/04/02	2631	(S)	FN1: ZERO(DNR)
04/11/02		(S)	RLS AT 10:30 AM FAHRENKAMP 203
04/11/02		(S)	MINUTE(RLS)
04/12/02	2751	(S)	RULES TO CALENDAR 2OR 4/12/02
04/12/02	2752	(S)	READ THE SECOND TIME
04/12/02	2752	(S)	ADVANCED TO THIRD READING 4/15 CALENDAR
04/15/02	2776	(S)	READ THE THIRD TIME SB 354
04/15/02	2776	(S)	PASSED Y14 N4 E1 A1
04/15/02	2776	(S)	ELLIS NOTICE OF RECONSIDERATION
04/16/02	2794	(S)	RECONSIDERATION NOT TAKEN UP
04/16/02	2795	(S)	TRANSMITTED TO (H)
04/16/02	2795	(S)	VERSION: SB 354
04/17/02	2965	(H)	READ THE FIRST TIME - REFERRALS
04/17/02	2965	(H)	L&C
04/26/02		(H)	L&C AT 3:15 PM CAPITOL 17

BILL: SB 274

SHORT TITLE:PHYSICIANS' LOCUM TENENS PERMITS
 SPONSOR(S): SENATOR(S) OLSON

Jrn-Date	Jrn-Page		Action
02/01/02	2090	(S)	READ THE FIRST TIME - REFERRALS
02/01/02	2090	(S)	L&C
02/12/02		(S)	L&C AT 1:30 PM BELTZ 211
02/12/02		(S)	Heard & Held
02/12/02		(S)	MINUTE(L&C)
02/28/02		(S)	L&C AT 1:30 PM BELTZ 211

02/28/02		(S)	Moved CS(L&C) Out of Committee
02/28/02		(S)	MINUTE(L&C)
03/01/02	2338	(S)	L&C RPT CS 5DP SAME TITLE
03/01/02	2338	(S)	DP: STEVENS, AUSTERMAN, DAVIS, LEMAN, TORGERSON
03/01/02	2338	(S)	FN1: ZERO(CED)
04/10/02	2710	(S)	RULES TO CALENDAR 4/10/02
04/10/02	2712	(S)	READ THE SECOND TIME
04/10/02	2712	(S)	L&C CS ADOPTED UNAN CONSENT
04/10/02	2712	(S)	ADVANCED TO THIRD READING UNAN CONSENT
04/10/02	2712	(S)	READ THE THIRD TIME CSSB 274(L&C)
04/10/02	2713	(S)	PASSED Y19 N- E1
04/10/02	2713	(S)	EFFECTIVE DATE(S) SAME AS PASSAGE
04/10/02	2718	(S)	TRANSMITTED TO (H)
04/10/02	2718	(S)	VERSION: CSSB 274(L&C)
04/10/02		(S)	RLS AT 10:30 AM FAHRENKAMP 203
04/10/02		(S)	MINUTE(RLS)
04/11/02	2877	(H)	READ THE FIRST TIME - REFERRALS
04/11/02	2877	(H)	L&C
04/26/02		(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 512

SHORT TITLE: UNFAIR CIGARETTE SALES
SPONSOR(S): FINANCE

Jrn-Date	Jrn-Page		Action
03/26/02	2684	(H)	READ THE FIRST TIME - REFERRALS
03/26/02	2684	(H)	L&C, JUD, FIN
03/26/02	2684	(H)	REFERRED TO LABOR & COMMERCE
04/26/02		(H)	L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

JANEY WINEINGER, Staff
to Senator Lyda Green
Alaska State Legislature
Capitol Building, Room 125
Juneau, Alaska 99801

POSITION STATEMENT: Testified on behalf of the sponsor of SB 354, Senator Green.

PETE FELLMAN, Staff
to Representative John Harris
Alaska State Legislature
Capitol Building, Room 513
Juneau, Alaska 99801

POSITION STATEMENT: Answered questions relating to SB 354.

DONALD LINTELMAN
Northern Lights Dairy
HC 60 Box 3300
Delta Junction, Alaska 99737

POSITION STATEMENT: Testified, during discussion on SB 354, that he doesn't necessarily support that a dairy farmer should be compensated for the product that's higher in butterfat.

ROBERT WELLS, Director
Division of Agriculture
Department of Natural Resources
1800 Glenn Highway, Suite 12
Palmer, Alaska 99645-6736

POSITION STATEMENT: Indicated that Matanuska Maid was aware of SB 354.

DAVE GRAHAM, Staff
to Senator Donald Olson
Alaska State Legislature
Capitol Building, Room 510
Juneau, Alaska 99801

POSITION STATEMENT: Presented CSSB 274(L&C) on behalf of the sponsor, Senator Olson.

CATHERINE REARDON, Director
Division of Occupational Licensing
Department of Commerce & Economic Development
PO Box 110806
Juneau, Alaska 99811-0806

POSITION STATEMENT: Related the Alaska State Medical Board's concerns with CSSB 274(L&C) and answered questions.

ANNE HENRY, Special Projects Coordinator
Division of Mental Health & Developmental Disabilities
Department of Health & Social Services
PO Box 110620
Juneau, Alaska 99811-0620

POSITION STATEMENT: Urged the committee to maintain Section 3 of CSSB 274(L&C).

DR. HEAD, Chief of Staff
Norton Sound Health Corporation;
Alaska State Medical Board
550 West Seventh Ave., Suite 1500
Anchorage, AK 99501

POSITION STATEMENT: Related the Alaska State Medical Board's thoughts on CSSB 274(L&C).

JIM JORDAN, Executive Director
Alaska State Medical Association
4107 Laurel Street
Anchorage, Alaska 99508

POSITION STATEMENT: During discussion of CSSB 274(L&C), related ASMA's position.

DALE ANDERSON, Legislative Assistant
to the House Finance Committee
Alaska State Legislature
Capitol Building, Room
Juneau, Alaska 99801

POSITION STATEMENT: Presented HB 512 on behalf of the sponsor.

ACTION NARRATIVE

TAPE 02-66, SIDE A
Number 0001

CHAIR LISA MURKOWSKI called the House Labor and Commerce Standing Committee meeting to order at 3:25 p.m. Representatives Murkowski, Meyer, Rokeberg, and Crawford were present at the call to order. Representative Hayes arrived as the meeting was in progress.

SB 354-PRICES PAID BY MILK PROCESSING PLANTS

CHAR MURKOWSKI announced that the first order of business would be SENATE BILL NO. 354, "An Act relating to the prices paid by milk processing plants to suppliers of fluid milk."

Number 0079

JANEY WINEINGER, Staff to Senator Lyda Green, Alaska State Legislature, explained the current situation for dairy farmers in Alaska. If the fat content of a particular dairy farmer's

milk drops below the specified butterfat content, the dairy farmer is penalized in the dairy's payment. If the fat content of a particular dairy farmer's milk rises above the specified butter fat content, the dairy farmer is not paid for that increased butterfat. She informed the committee that in the Lower 48, federal and state laws have devised a system of milk marketing orders which guarantee the farmer gets a fair price for the milk produced. Senate Bill 354 merely injects that same fairness into the marketplace in Alaska by stipulating that if a milk processor opts to penalize a dairy farmer for low fat content, it also must reward those farmers with a high fat content. Ms. Wineinger deferred any questions to Pete Fellman.

Number 0187

PETE FELLMAN, Staff to Representative John Harris, Alaska State Legislature, added that this [proposed] statute isn't mandatory and would only come into play if [the processor chose to implement] a deduction.

CHAIR MURKOWSKI related her understanding that if a milk processing plant pays a reduced price for low fat milk, then the milk processing plant must pay a proportionately higher price for the higher fat milk. However, if a milk processing plant doesn't differentiate [in their prices] between high fat and low fat milk, then the plant wouldn't be required to compensate for milk with the higher fat content.

MR. FELLMAN agreed.

CHAIR MURKOWSKI pointed out that information in the bill packet specifies that currently Matanuska Maid Dairy penalizes milk by one-tenth of one percent [for each one-tenth of one percent in butterfat content below 3.2 percent]. Therefore, under SB 354 Matanuska Maid Dairy would have to pay one-tenth of one percent additional compensation over the set fee [for milk containing a butter fat higher than 3.2].

MR. FELLMAN said that was correct. In further response to Chair Murkowski, Mr. Fellman explained that in the Lower 48 there are milk marketing orders and federal standards. Individual producers come together and set the standard according to their area. Therefore, the producers negotiate with the processor in developing a standard and thus the standard can vary from region to region. Since the federal government has recognized value in protein, fat, and high quality milk, the federal government has seen fit to reward the dairy farmers with milk marketing orders

that recognize the dairy farmers' efforts to manage their milk in a better fashion. Mr. Fellman, in further response to Chair Murkowski, confirmed that the milk marketing orders do allow for additional compensation for milk with high butterfat content.

CHAIR MURKOWSKI pointed out that Matanuska Maid's butterfat plan has been in effect since October 1, 1985. Therefore, she questioned why, after 17 years, this legislation is being offered now.

MR. FELLMAN related that some dairy farmers received letters from Matanuska Maid saying that their prices were going to be reduced if their butterfat didn't increase. Although this butterfat plan has been in effect, he said he wasn't sure that the issue has come up in the past.

CHAIR MURKOWSKI surmised then that Matanuska Maid hasn't necessarily been penalizing the milk producers, although there is a butterfat plan in effect.

MR. FELLMAN said that he didn't know, although he did know that the processor has penalized dairy farmers for quality milk, milk with high bacteria counts. However, the processor pays for higher quality milk. Such a situation is acceptable to dairy farmers. The butterfat count is a similar situation, and therefore if there are going to be penalties for low butterfat counts, then there should be some compensation when high butterfat counts are produced.

Number 0681

REPRESENTATIVE ROKEBERG inquired as to the number of dairy farmers and processors in Alaska.

MR. FELLMAN answered that there are two processors: Northern Lights Dairy and Matanuska Maid. There are three dairies in the north and about five to six dairies in the Palmer area. In further response to Representative Rokeberg, Mr. Fellman stated that Matanuska Maid hasn't testified on SB 354, although Matanuska Maid is aware of this legislation.

REPRESENTATIVE ROKEBERG turned to the standard used at Matanuska Maid and inquired as to why the 3.25 butterfat threshold in the legislation was chosen.

MR. FELLMAN replied that the 3.25 butterfat content is the federal standard. In the Lower 48 the milk marketing order sets

the standard. However, the processors in the State of Alaska [currently] set the standard.

REPRESENTATIVE ROKEBERG inquired as to how often the milk is tested.

MR. FELLMAN responded that every tank of milk picked up from the farm is tested for butterfat and bacteria content. In further response to Representative Rokeberg, Mr. Fellman emphasized that the tests, which look at butterfat, protein, water, and solid non-fat, are very accurate.

CHAIR MURKOWSKI pointed out that failing to comply with this legislation falls under Title 45, the Unfair Trade Practices Act. She highlighted that failing to comply results in a penalty of not more than \$25,000 per violation, which she viewed as high. There is also a civil penalty of not more than \$5,000.

Number 1062

DONALD LINTELMAN, Northern Lights Dairy, testified via teleconference. Mr. Lintelman explained that so much [low butterfat milk was produced] that the Northern Lights Dairy couldn't produce whole milk due to the lack of cream. Therefore, the dairy began to penalize the farmers for [low butterfat contents]. The [low butterfat contents] continued for a number of months, which resulted in the dairy purchasing Jersey cows in order [to produce whole milk]. He noted that this year [the butterfat content] is higher because the farmers are feeding the cows more hay than grain. Mr. Lintelman informed the committee that the dairy is paying "\$19.00 a hundred" for this test. He explained that when there is extra cream, it has to be pasteurized, boxed, and frozen before being shipped to Matanuska Maid. The Northern Lights Dairy doesn't need milk with a butterfat higher than 3.25. If SB 354 is passed and pressure increases on the Northern Lights Dairy, then it may stop picking up milk from [farms that produce high butterfat] and thus their milk will have to be sent to Matanuska Maid.

CHAIR MURKOWSKI surmised that Mr. Lintelman doesn't necessarily support that a dairy farmer should be compensated for the product that's high in butterfat.

MR. LINTELMAN replied, "That is true." In further response to Chair Murkowski, Mr. Lintelman specified that in the past the Northern Lights Dairy has penalized farmers for a lower

butterfat content. However, penalties haven't been issued since the tests have shown the [butterfat content to be high enough] for the dairy to make whole milk.

CHAIR MURKOWSKI explained that under SB 354 so long as the milk processing plant isn't penalizing the dairy farmers for the lower butterfat content, the plant doesn't have to compensate the dairy farmers for the higher butterfat content.

MR. LINTELMAN stressed, "If we were going to penalize them, we'd have to go less than \$19 a hundred. We're paying \$19 a hundred for 3.25 [percent butterfat]." He said that the plant doesn't pay for butterfat contents higher than 3.25 because the milk samples vary from day to day. Mr. Lintelman stated that he didn't want to get into a hassle with this. Therefore, it might be better for Northern Lights Dairy to drop the two dairy farms and merely deal with its own milk. He related that he doesn't have the time or labor to deal with this.

MR. LINTELMAN, in further response to Chair Murkowski, specified that the milk at the Northern Lights Dairy is tested on average about twice a week.

Number 1338

REPRESENTATIVE MEYER related his understanding that different types of cows produce different quality milk.

MR. LINTELMAN agreed that the Jerseys and Brown Swiss may produce more cream than the Holstein. In further response to Representative Meyer, Mr. Lintelman informed the committee that in the Delta Junction area the dairy farmers mainly have Holstein cows.

Number 1366

ROBERT WELLS, Director, Division of Agriculture, Department of Natural Resources, testifying via teleconference, announced that he was available to answer questions. In response to Chair Murkowski, Mr. Wells explained that he doesn't have a direct connection with Matanuska Maid, which has a creamery corporation board of seven members that are appointed by the Board of Agriculture. However, Mr. Wells said he was sure that the chairman of [the creamery corporation] is aware of SB 354. Mr. Wells related that he had spoken with the chairman this morning and the chairman had said he had forwarded some correspondence [to the committee].

CHAIR MURKOWSKI remarked that she understood that Mr. Wells was affiliated with Matanuska Maid.

MR. WELLS explained that although Matanuska Maid is an asset of the Agricultural Revolving Loan Fund, the day-to-day decisions are made by Matanuska Maid's manager in Anchorage. The manager is responsible to the creamery corporation board.

CHAIR MURKOWSKI noted that the committee did receive information from Matanuska Maid regarding how the quality bonus programs work.

Number 1469

REPRESENTATIVE CRAWFORD inquired as to how the milk industry is fairing in Alaska. He also inquired as to whether SB 354 would endanger what's left of the milk industry.

MR. WELLS informed the committee that there has actually been a rebound in the milk industry in the last 12-18 months because of the disposals at Point McKenzie. The largest dairy is currently milking 300 cows and will soon be milking 350 cows. The average of the other dairies is between 60-140 cows. In the Matanuska Susitna Valley there are now eight operating dairies. Mr. Wells commented that it's a challenge for both the producers, dairy farmers, and processors because of the vertical integration and current marketplace as well as the competitive pricing. However, Alaskans do support Alaskan grown products because of the freshness and quality.

REPRESENTATIVE CRAWFORD expressed concern that if Alaska loses its milk industry, milk prices would increase due to the lack of competition. Therefore, Representative Crawford said that he didn't want to do anything to jeopardize Alaska's milk industry.

MR. WELLS remarked that Representative Crawford has a very legitimate concern, especially after the September 11, 2002, tragedy which illustrated how supply lines can be interrupted. He pointed out that at any given moment, there is only a few weeks worth of groceries in the state. Mr. Wells highlighted the unique situation of the Division of Agriculture in that it supports the dairy farmers while being involved in the ownership of Matanuska Maid. He expressed the need to be careful with any legislation that would impact pricing and place [Alaska's dairies] in a noncompetitive position.

Number 1630

CHAIR MURKOWSKI reiterated her understanding that Matanuska Maid's penalty with regard to milk with a butterfat content lower than 3.2 percent hasn't been enforced. She inquired as to Mr. Wells' knowledge of the situation.

MR. WELLS said that was his understanding as well. He characterized the letters sent to the dairy farmers as a warning that if the plant continued to receive milk [with a butterfat content less than 3.2 percent], action would have to be taken.

CHAIR MURKOWSKI turned to Mr. Lintelman's testimony regarding the fact that certain cows produce milk with low butterfat content.

MR. WELLS said that the predominant dairy breed is the Holstein, which doesn't produce as high a butterfat content as other breeds. However, with good feed rations and good care, the Holstein breed is able to provide the minimal butterfat content. Still, Mr. Wells recognized the situation in which the lack of butterfat can lead to a dairy's inability to produce whole milk.

MR. FELLMAN interjected that a Holstein is able to produce over 4 percent butterfat content. He informed the committee that as a cow goes into lactation, it generally produces a higher volume of milk with a lower volume of butterfat. As the cow's milk production decreases and lactation progresses, the volume of milk decreases while the butterfat content generally increases. He explained that dairy farmers in the Lower 48 under the milk marketing orders understand that they will receive less money for their milk by the hundred weight, but they will produce more milk per cow. Therefore, as the milk production decreases, the butterfat increases as does the milk price and thus balances out those cows that aren't producing during the peak of their lactation. At this point, the issue of pricing and fairness comes into play.

Number 1880

REPRESENTATIVE MEYER related his understanding that the Holstein breed produces higher volumes of milk, although there may be lower butterfat contents. He recalled the testimony that grain versus hay impacts the butterfat content of the milk. However, the cost of the food has to be factored in the equation. The additional cost of the food producing higher fat contents may

result in the higher milk price, he suspected. He asked if there are some federal subsidies to dairy farmers.

MR. FELLMAN addressed the issue of subsidies. He explained that in the Lower 48 there is the CCC tax, which is money that is taken out of the milk check and placed into a fund that is used for subsidies during feed shortages. He pointed out that most subsidies revolve around grain production. In the State of Alaska there is no subsidy for any milk.

REPRESENTATIVE MEYER inquired as to why there are no subsidies for milk in Alaska. He recalled hearing that some dairy farmers were being paid to not produce as much milk as normal.

MR. FELLMAN explained that although the State of Alaska isn't involved in any dairy subsidies, one can apply for insurance during a feed shortage. The aforementioned is a federal program. In order to qualify for that insurance, one must make a payment to the [Farm Service Agency] FSA. In further response to Representative Meyer, Mr. Fellman reiterated that the level of fat can be impacted by the type of grain or hay a cow is fed. However, at certain times of the year, a cow will produce higher or lower fat depending upon the cycle of lactation.

REPRESENTATIVE MEYER asked whether a bill such as SB 354 is necessary or will the market take care of it.

MR. FELLMAN noted that in most cases it costs more to produce higher fat milk, although there is currently no compensation for that higher fat milk. Mr. Fellman related his belief that if one can be penalized for low fat milk, one should be able to receive similar compensation for [high fat milk].

Number 2258

CHAIR MURKOWSKI, determining there was no one else who wished to testify, closed public testimony on SB 354.

REPRESENTATIVE MEYER remarked that with as few dairy farmers as Alaska has he didn't foresee too much impact regardless of whether SB 354 passes or not.

REPRESENTATIVE ROKEBERG expressed concern with the "proportionately higher price" definition. He pointed out that there isn't a cap on [the butterfat content] when it's on the high side and asked if there should be a cap.

TAPE 02-66, SIDE B

CHAIR MURKOWSKI agreed that the definition was odd. However, she expressed the need to keep in mind that this provision goes into effect only if the processing plant charges a penalty for the lower fat. Chair Murkowski pointed out that the testimony doesn't sound as if anyone is being assessed the penalties.

REPRESENTATIVE CRAWFORD related his understanding that the testimony sounded like these penalties were assessed 18 months ago [at the Northern Lights Dairy], and these penalties seemed to be a good incentive for the dairy farmers to increase the butterfat content. [Mr. Lintelman] says that he doesn't use the excess butterfat when the content is higher and thus he doesn't have any way in which to market that butterfat. Representative Crawford said he wished that Matanuska Maid would've weighed in on this matter so that the committee would know what it does with the excess butterfat milk.

MS. WINEINGER related her belief that Matanuska Maid operates completely differently than the Northern Lights Dairy. She explained that Matanuska Maid implements a penalty for [low] butterfat content and pays extra for [high] butterfat content because she believes that Matanuska Maid fully utilizes that butterfat whereas the Northern Lights Dairy doesn't have a need for that [high butterfat] cream.

CHAIR MURKOWSKI surmised that Ms. Wineinger was saying that were SB 354 adopted, it wouldn't have much impact on Matanuska Maid because this is already the current practice.

MS. WINEINGER deferred to Mr. Fellman.

MR. FELLMAN disagreed with [Ms. Wineinger's] statements. Mr. Fellman specified that although Matanuska Maid assesses penalties, to his knowledge Matanuska Maid hasn't taken any money from milk checks. However, Matanuska Maid has indicated the intention to deduct money from the milk checks if the milk fat doesn't increase. Mr. Fellman further specified that Matanuska Maid does not pay for the additional fat.

REPRESENTATIVE ROKEBERG noted his concern with Mr. Lintelman's comments that he would stop picking up milk from the local dairies if he is forced to pay for the high butterfat content. However, Representative Rokeberg said he understood the bill not

to make Mr. Lintelman have to [pay for the high butterfat content].

MR. FELLMAN reiterated that if there is no penalty assessed, then there is no requirement to pay extra.

Number 2081

REPRESENTATIVE MEYER moved to report SB 354 out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, SB 354 was reported from the House Labor and Commerce Standing Committee.

SB 274-PHYSICIANS' LOCUM TENENS PERMITS

CHAIR MURKOWSKI announced that the next order of business would be CS FOR SENATE BILL NO. 274(L&C), "An Act relating to issuance of a locum tenens permit for a physician or osteopath; and providing for an effective date."

Number 2022

DAVE GRAHAM, Staff to Senator Donald Olson, Alaska State Legislature, presented CSSB 274(L&C) on behalf of the sponsor, Senator Olson. Mr. Graham informed the committee that Senator Olson introduced SB 274 at the request of the Alaska State Medical Association (ASMA) in order to expand the locum tenens permit to allow [state licensed] physicians to bring in a physician to take over a practice while the state licensed physician is out. The ASMA would like to expand the definition such that physicians could be invited to observe and practice for short periods of time in order to determine whether the physician wanted to employ the invited physician. Testimony during the Senate Labor & Commerce Standing Committee revealed that hospitals would [like this expansion as well], particularly from state mental health institutions that are having difficulties filling slots with licensed physicians. The locum tenens is viewed as a way in which to be more flexible in staffing and attracting physicians to permanent employment. Mr. Graham pointed out that the main reason ASMA brings this legislation forward is because the physicians in the state are getting older and thus will ultimately need to be replaced. The average age of an Alaskan physician is 51. He related that Senator Olson views this legislation as benefiting the delivery of health services.

Number 1872

CATHERINE REARDON, Director, Division of Occupational Licensing, Department of Commerce & Economic Development (DCED), related that although the Alaska State Medical Board was able to obtain 75 percent consensus on SB 274, the board still has some concerns with the legislation. She indicated that two members of the board are on-line and can speak to the board's concerns. She informed the committee that the board would prefer that the legislation refer to 180 calendar days rather than 240 calendar days during which an individual could hold a locum tenens permit during any consecutive 24 months. Under CSSB 274(L&C) the locum tenens permits are initially valid for 90 days and under one circumstance can be extended another 60 days. Therefore, allowing one to hold a locum tenens permit for 180 days would allow one to hold two locum tenens permits or one with a 60-day extension. However, the current language of the bill allows two 90-day locum tenens permits of which one can be extended by 60 days. Ms. Reardon pointed out that the condition for extension is when one has submitted an application for permanent licensure; the board would like to encourage people to obtain the permanent licenses.

MS. REARDON informed the committee that the board also requests that Section 3 of CSSB 274(L&C) be deleted because the board doesn't believe there should be any situations in which locum tenens permits should be extended indefinitely or pass the limitations established in Section 2. Section 3 allows the board to extend a locum tenens permit beyond the specified time limits if it's determined that the extension is necessary "to provide essential medical services for the protection of public health and safety."

MS. REARDON directed attention to page 2, line 9, and noted the preference for the term "packet" rather than "form" because the board wants to ensure that all the necessary paperwork is completed. The board felt that the word "form" could be construed to mean the first ten pages of the packet. However, there is no intention to require a completed application, she said. She noted that the board is also concerned with the protection of public health and safety and thus wants to ensure that all physicians practicing in the state have been fully investigated. Hospitals and the [Department] of Health & Social Services are concerned with the public health and safety risk created by a vacancy in a needed area of service.

Number 1589

REPRESENTATIVE CRAWFORD inquired as to who these locum tenens physicians would be and their general qualifications.

MS. REARDON answered that some of the locum tenens physicians may be newer physicians while others may be long-time physicians who choose to move around the country serving in a temporary capacity. She related her belief that there are organizations that match physicians with positions that need to be filled.

Number 1589

REPRESENTATIVE CRAWFORD inquired as to how the pay of the locum tenens physicians compares to that of local physicians.

MS. REARDON said that she didn't have an answer. However, she related that hospitals and facilities have expressed a preference for permanent full-time physicians over juggling locum tenens. She further related that locum tenens physicians are usually more expensive [than permanent full-time physicians] because of the expense of getting the locum tenens physician to the area and housing him/her.

CHAIR MURKOWSKI directed attention to page 2, line 6, and related her belief that a permit "shall" be extended for 60 days with completion of the packet. She asked whether there would be any other reason that would result in not granting an extension. If there are grounds for the board not to extend the permit, Chair Murkowski wanted the board to have the authority not to extend the permit.

MS. REARDON agreed that the language reads as if the extension is automatic. Therefore, she surmised that the permit would be extended and any problems would be addressed with the person as a licensee. She suspected that the board could probably [impose] a summary suspension if the risk [the locum tenens physician] posed to public health and safety was sufficient to do so. For clear and immediate danger to public health and safety, statute specifies that licenses can be summarily suspended and the person must receive a hearing within seven days.

CHAIR MURKOWSKI related that changing the language from "shall" to "may" appears to provide the option of rejecting an applicant. However, she questioned whether the application process for a locum tenens physician is different than that for a licensee.

MS. REARDON asked to review the statute while testimony continued.

Number 1321

ANNE HENRY, Special Projects Coordinator, Division of Mental Health & Developmental Disabilities, Department of Health & Social Services (DHSS), informed the committee that the department worked with [the interested parties] in order to find some comfort with this legislation. However, the board still isn't comfortable with the legislation. Ms. Henry noted appreciation for the clarification in Section 1, which speaks to temporarily employed folks. Areas throughout the state have difficulties obtaining psychiatrists to come and work. Furthermore, there is great difficulty with recruiting in the Alaska Psychiatric Institute (API). Because of the turnover, the ability to [grant extensions] is a critical piece for the department. If there is a language change in Section 2, Ms. Henry expressed the need for the 60-day extension to continue.

CHAIR MURKOWSKI turned to Ms. Reardon's suggestion of reducing the validity of permits and extensions to 180 [calendar] days.

MS. HENRY related her belief that [the department] would be very upset with such a change. Ms. Henry then urged the committee to maintain Section 3 in the bill because the business of health is so unpredictable that [the department] would like for the board to have the discretion provided in Section 3.

Number 1154

DR. HEAD, Chief of Staff, Norton Sound Health Corporation; Alaska State Medical Board, testified via teleconference. He related that the state medical board has discussed this proposed law at length. He said he thought [CSSB 274(L&C)] embodies necessary modifications in the current locum tenens language. Furthermore, he liked that the legislation allows locum tenens for various reasons. Since the board is charged with protecting the public and the patients, that's why some of the modifications were [desired]. Dr. Head said he understood Ms. Henry's concern with regard to the requested change for permits and extensions for locum tenens physicians to only be valid 180 calendar days rather than 240 calendar days because of her wish to have coverage for facilities across the state. However, Dr. Head charged that the coverage can be maintained under the legislation while also protecting the public. He pointed out that if a locum tenens physician is in a location for 90 days

and there is the need for the locum tenens physician to fill the position for a longer period, then the physician would merely have to complete a full application for permanent licensure. Therefore, another 60-day extension could be granted and the locum tenens physician could go through the same scrutiny as every active full-time license holder in the state. Dr. Head said that the board believes that [coverage] can be accomplished by encouraging an active full-time license. The Norton Sound Health Corporation hires locum tenens physicians fairly frequently and each one of them has elected to obtain an active full license. Dr. Head expressed concern that if physicians are allowed to work indefinitely under locum tenens licenses, then the state may become a magnet attracting physicians seeking a lax system in which their past isn't completely scrutinized. Alaska doesn't want to become a location for questionable practitioners, he said. Dr. Head remarked that [the board] wants to maintain control in an effort to protect the public while being able to fulfill the needs of the state.

Number 0967

REPRESENTATIVE ROKEBERG related that he read Section 2 to allow an extension of up to 240 days. The new language would only seem to apply when one applies for permanent licensure. Therefore, he surmised that there must currently be a method to obtain an extension beyond the 60 days.

DR. HEAD agreed that the current law does allow for [a locum tenens permit to be held for up to] 240 days. However, the [board] is requesting that be changed to 180 days within a 24 consecutive month period, which allows for two 90-day periods. The language specified 180 days because [the board] was told that many locum tenens physicians do come up and cover clinics for three months each summer, and therefore 180 days in a two-year period allow that to continue under a locum tenens permit.

Number 0882

CHAIR MURKOWSKI turned to the existing statutes, which specify that a permit is valid for 60 consecutive days and if circumstances warrant an extension may be granted and extensions can't exceed 240 days. Therefore, she understood Dr. Head to be proposing a reduction in the extension to 180 days as well as not allowing for any extenuating circumstances beyond the 180 days. Such tightening moves in the opposite direction of the bill sponsor's [intent].

DR. HEAD agreed. Dr. Head pointed out that the current statute reads such that [locum tenens permits and extensions] could continue indefinitely if, as specified under Section 3, there is a determination [that the extension] is necessary for essential services for the protection of public health and safety. He emphasized that [the board] does want to take into account public health and safety, which is why there is the desire to maintain as much scrutiny as possible. Therefore, [the board] is saying that in order for a person to work longer than [180 days], the person should have to obtain an active full-time license and go through a background check. Therefore, those physicians that are afraid of the background check won't maintain a license in the state and will go elsewhere. Under the current statute, a physician practicing in an essential health care shortage area could practice indefinitely on a locum tenens physician license and never subject themselves to the scrutiny of their past practices.

REPRESENTATIVE ROKEBERG asked whether [in such a situation] the board would intercede.

DR. HEAD said that the board has no way of interceding. The board isn't given the right to investigate, to the degree such is done for active full-time licenses, a locum tenens physician's past unless he/she has applied for an active full-time license.

Number 0693

CHAIR MURKOWSKI inquired as to how long it takes to become licensed, the cost, and the difference between background checks for locum tenens versus [an active full-time physician].

MS. REARDON said that generally it takes about two months to submit all of the information for a complete application. Once everything is received and the applicant's answers and documents don't create cause for investigation, the executive administrator can issue a temporary license allowing the applicant to practice until the board meets and makes the final decision. However, the amount of time [to achieve a complete application] is dependent upon third parties, such as hospital verification, that the division nor the applicant can control.

CHAIR MURKOWSKI posed a situation in which a physician practicing under a locum tenens permit reaches 240 days and decides to stay. That locum tenens physician would need to submit an application for full licensure. In such a situation,

she asked whether the locum tenens physician could receive a permit to stay and practice until licensure is obtained or is there a window when this physician would be "out of luck."

MS. REARDON answered that there could be a window when the physician would be out of luck; it's dependent upon how long the locum tenens physician waited to start the permanent licensure process. The temporary licenses can only be issued if all the documents from the outside organizations are in; without those documents the locum tenens physician with 240 days would have to stop practicing until the documents come in.

CHAIR MURKOWSKI specified that she is trying to understand the reason for Section 3. She surmised that a locum tenens physician that is a general practitioner would have an avenue allowing practice between the extensions granted and her ability to obtain full licensure.

MS. REARDON replied no. In response to an earlier question regarding the fees, Ms. Reardon informed the committee that the locum tenens fee and application form is a \$150 nonrefundable application fee and \$200 permit fee. The permanent license has a fee of \$250 nonrefundable application fee and a \$590 license fee for a two-year license.

MS. REARDON then returned to an earlier question regarding the "shall" language on page 2, line 6. Ms. Reardon opined that changing "shall" to "may" would allow denial of the extension. The specific denial authority can be found in AS 08.64.240. References to license are treated as including permits. The aforementioned statute specifies the reasons for which an extension could be denied. Ms. Reardon surmised that the board would specify that under certain circumstances, the permit would be extended while under other circumstances the full board or individual board member would make the decision. She suggested that the language could read as follows: "shall be extended unless it is denied for one of the reasons in AS 08.64.240."

TAPE 02-67, SIDE A

Number 0001

JIM JORDAN, Executive Director, Alaska State Medical Association, testified via teleconference. He informed the committee that ASMA's main interest in SB 274 lies in Section 1, which expands the uses of locum tenens permits for the purpose of evaluation of a physician for full-time employment. This

legislation takes care of an unfair situation that currently exists. Currently, on a de facto basis large group practices are able to use locum tenens permittees as substitutes for one of the many physicians in the practice and review those physicians for potential employment. That option isn't available to the sole practitioner of a small practice.

CHAIR MURKOWSKI inquired as to ASMA's position on Section 3, which allows an indefinite extension when the board determines that it's medically necessary to protect public health and safety.

MR. JORDAN indicated that ASMA hasn't specifically reviewed [or taken a position on] Section 3. However, the obvious concern is that there are certain medical specialties that are difficult to find, such as pathologists and radiologists. He related his belief that it might be important to have continuity, especially in a situation in which it takes longer than 180 days to find a specialist, such as a pathologist, to hire permanently. Therefore, it may be more advantageous to have the consistency of the [locum tenens pathologist] while hiring for a permanent pathologist.

Number 0242

REPRESENTATIVE ROKEBERG pointed out that Section 1 deletes the 60-day validity. He said he wasn't sure that there shouldn't be a cap on the timeframe, and therefore he asked if Mr. Jordan had a suggestion.

MR. JORDAN related his understanding that Representative Rokeberg was asking whether the 60-day period should apply to the locum tenens employees that are present for the sake of being scrutinized for employment. Mr. Jordan said that 60 days should be a sufficient timeframe in which to evaluate for employment purposes. Mr. Jordan explained that under the current construction of SB 274 the locum tenens permit, whether for the purpose of substituting for an absent physician or for scrutinizing the physician for future employment, would last 90 days along with the other extensions specified.

REPRESENTATIVE ROKEBERG said that seems reasonable, although he said he wasn't sure the statute would read that way. Representative Rokeberg pointed out that the committee packet includes a letter from ASMA specifying that ASMA supports a locum tenens permit being extended beyond 240 days for the

purpose of substituting for a physician or a specific specialty that's otherwise unavailable in that location.

MR. JORDAN said, "I stand corrected."

REPRESENTATIVE ROKEBERG asked if the level of review should be raised [for an extension beyond 240 days].

MR. JORDAN responded that such would seem fair to him. In further response to Representative Rokeberg, Mr. Jordan confirmed that ASMA supports permits and extensions of 240 days rather than the board's suggested 180 days.

Number 0492

MS. REARDON returned to the earlier question regarding the difference between the application documents for locum tenens permittees and those seeking permanent licensure. The locum tenens application doesn't require the verification privileges from all the hospitals in which the applicant has held privileges in the five years preceding the application in Alaska. The American Medical Association (AMA) profile and the National Practitioner Database Report aren't required for the locum tenens application. However, the locum tenens applicants must have a clearance report from the Federation of State Medical Boards databank. The aforementioned are the most significant differences in the application. The type of verification of post graduate training is also different.

MS. REARDON noted that one must submit quite a few items for the locum tenens permit, such as verifications from all the states in which the individual was ever licensed. However, if an applicant didn't inform the division of one of the states in which the applicant was licensed, the division might be able to find out from the AMA profile. Furthermore, the Federation of State Medical Boards Disciplinary Database should show disciplinary action in other states.

CHAIR MURKOWSKI asked if any consideration had been given with regard to the possibility of doing additional background checks in order to accommodate the indefinite extensions.

MS. REARDON replied no and explained that it probably wasn't considered because one is fairly close [to having all the documents for a permanent position] when the locum tenens permit is obtained.

REPRESENTATIVE ROKEBERG inquired as to how the databanks are used.

MS. REARDON explained that [an applicant] completes and submits a request for physician profile form, which is ultimately sent to the division. In further response to Representative Rokeberg, Ms. Reardon specified that filing the form costs \$20 and is paid directly to ASMA. The National Practitioner Databank Report is requested by the division on-line.

REPRESENTATIVE ROKEBERG asked if [the National Practitioner Databank Report] could be added to Section 3. With regard to "the board or its designee" determining the extension, Representative Rokeberg asked who its designee would be.

MS. REARDON clarified that the board has an executive administrator, an employee of the Division of Occupational Licensing, who it generally designates. In some cases, the board has designated that an individual board member has designated an individual to do things.

REPRESENTATIVE ROKEBERG pointed out that Section 1(a) specifies, "A member of the board or its executive secretary may grant a temporary permit".

MS. REARDON said that the board has never designated someone beyond an individual board member or a division employee. Ms. Reardon confirmed that there is personnel in place to do the verifications.

REPRESENTATIVE ROKEBERG surmised that any adjustment to the fee schedule could be done by regulation.

MS. REARDON related that the concerns of the division aren't related to the fee schedules.

Number 0918

REPRESENTATIVE ROKEBERG directed attention to Section 1 and inquired as to why the 60-day language was deleted. He inquired as to the default.

MS. REARDON answered that the locum tenens permit is valid for 90 days. She explained that this was a reorganization of the language so that the purposes and the length could be separated. In further response to Representative Rokeberg, Ms. Reardon said that the 240-day timeframe is in current statute. She explained

that when there is a request for an extension, the extension is for the requested time up to 60 days.

REPRESENTATIVE ROKEBERG inquired as to the term of art that would be used were the committee to amend Section 3 to include the two other databanks.

MS. REARDON National Practitioner Databank and the American Medical Association of Osteopathic Association.

CHAIR MURKOWSKI expressed the desire to review the "shall" language in Section 2. Therefore, Chair Murkowski announced that CSSB 274(L&C) would be held.

REPRESENTATIVE ROKEBERG asked if Senator Olson would have any difficulties with the committee adding the two databanks in Section 3.

MR. GRAHAM answered that he didn't believe Senator Olson would have a problem.

[CSSB 274(L&C) was held over.]

HB 512-UNFAIR CIGARETTE SALES

CHAIR MURKOWSKI announced that the final order of business would be HOUSE BILL NO. 512, "An Act relating to cigarette sales; and providing for an effective date."

Number 1206

REPRESENTATIVE ROKEBERG moved to adopt CSHB 512, Version 22-LS1646\F, Ford, 4/26/02, as the working document. There being no objection, Version F was before the committee.

DALE ANDERSON, Legislative Assistant to the House Finance Committee, Alaska State Legislature, testified on behalf of the sponsor of HB 512, the House Finance Committee. Mr. Anderson provided the following testimony:

This CS came as a collaborative effort between industry and the Department of Revenue and ... our drafters. House Bill 512 was introduced to start a discussion on the effects on business practices that, to some, have been looked upon as unfair and predatory. House Bill 512 encourages fair and honest competition and safeguards the public against unfair,

dishonest, and fraudulent business practices existing in transactions involving the sale of cigarettes in the wholesale and retail trades in the state. The bill creates a general trade practice regulation prohibiting sales below cost. The law considers the practice of selling below cost to attract patronage in the form of deceptive advertising, which diverts businesses from dealers who maintain a fair pricing policy [and] ultimately [results] in lessened competition and market disruption. The basic purpose of [HB] 512 is to prevent predatory pricing and ensure that fair competition among both the retail and wholesale distributors of cigarettes in the state. It is difficult for us to sort out the intricacies of the tobacco business so we've asked several people that are on-line now to help us with the discussion.

Number 1309

CHAIR MURKOWSKI inquired as to what has brought about HB 512. Does Alaska have a problem with predatory pricing and cigarettes being used as a loss leader, she asked.

MR. ANDERSON said that is what has been told. The CS clarifies the intent of the statute. Furthermore, Section 1 [of Version F] broadens the language to refer to all sales [of cigarettes] by licensed sellers in the state. [The CS] also addresses enforcement issues that were of concern to the department. Mr. Anderson pointed out that [Version F] changes the percentage of sales from two percent to four percent. One of the large issues that is addressed by the fiscal note is the cost survey issues. With the changes encompassed in Version F, Mr. Anderson said he believes there will be significant changes in the fiscal note.

MR. ANDERSON, in response to Chair Murkowski, specified that Title 43 deals with business practices.

REPRESENTATIVE MEYER recalled that at one point retailers were paid to place [cigarettes] on prime shelf space. Representative Meyer asked if that is still the case and what this legislation attempts to balance.

MR. ANDERSON said he didn't know the answer and would defer to those on-line.

CHAIR MURKOWSKI announced that HB 512 would be held over.

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:25 p.m.