

ALASKA STATE LEGISLATURE
SENATE LABOR & COMMERCE COMMITTEE

March 8, 2001
1:35 p.m.

MEMBERS PRESENT

Senator Randy Phillips, Chair
Senator Alan Austerman
Senator Loren Leman
Senator John Torgerson
Senator Bettye Davis

MEMBERS ABSENT

All Members Present

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 6(L&C)

"An Act relating to required notice of eviction to mobile home park dwellers and tenants before redevelopment of the park."

MOVED CSSB 6(L&C) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 37(JUD)

"An Act relating to collective negotiation by physicians with health benefit plans, to health benefit plan contracts with individual competing physicians, and to the application of state antitrust laws to agreements involving providers and groups of providers affected by collective negotiations."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

SB 6 - See Labor and Commerce Committee minutes dated 3/1/01.

SB 37 - See Judiciary minutes dated 1/22/01 and 2/21/01.
See Labor and Commerce minutes dated 3/1/01.

WITNESS REGISTER

Senator Johnny Ellis
State Capitol Bldg.
Juneau AK 99811

POSITION STATEMENT: Sponsor of SB 6.

Senator Pete Kelly
State Capitol Bldg.
Juneau AK 99811

POSITION STATEMENT: Sponsor of SB 37.

Mr. Ed Sniffen, Assistant Attorney General
Department of Law
1031 W 4th Ave., #200
Anchorage AK 99501

POSITION STATEMENT: Commented on SB 37.

Ms. Karen Decker-Brown
2200 Shore Dr.
Anchorage AK 99515

POSITION STATEMENT: Opposed SB 37.

Ms. Laura Sarcone
Alaska Nurses Association (ANA)
Alaska Nurse Practitioner Association (ANPA)
Alaska Chapter of the American College of
Nurse Midwives (AK-ACNM)
1444 Hillcrest Dr.
Anchorage AK 99503

POSITION STATEMENT: Commented on SB 37.

Mr. Mike Haugen, Executive Director
Alaska Physicians and Surgeons
4120 Laurel St #206
Anchorage AK 99503

POSITION STATEMENT: Supported SB 37.

Mr. Bob Lohr, Director
Division of Insurance
Department of Community and Economic Development
3601 C Street, Ste. 1324
Anchorage AK 99503

POSITION STATEMENT: Commented on SB 37.

ACTION NARRATIVE

TAPE 01-9, SIDE A

Number 001
#SB6

SB 6-MOBILE HOME PARK EVICTION NOTICE

CHAIRMAN RANDY PHILLIPS called the Senate Labor & Commerce Committee meeting to order at 1:35 p.m. and announced SB 6 to be up

for consideration.

SENATOR ELLIS, sponsor of SB 6, said he thought there was good committee discussion on pooling resources so mobile home park residents could relocate when needed. The drafter recommended that even though it's a good idea, to not put it in statute, however, because it is already legal. There is a proposal, version 0, before the committee to move the dates forward, making them a little more reasonable for those involved.

SENATOR DAVIS moved to adopt the committee substitute to SB 6, version 0. There were no objections and it was so ordered.

SENATOR ELLIS commented that even though he thought he would be making enemies with the mobile park owners, they have agreed that this is a good and fair idea. "It doesn't seem that there is any opposition to this helping hand to folks who are caught in a very tough situation and could become burdens on the social service system if we don't help them out a little bit here."

SENATOR TORGERSON asked if there was a land designation for mobile home parks or is the land zoned commercial and they put a park on it.

SENATOR ELLIS couldn't answer that, but said he would find out.

SENATOR TORGERSON thought the intent was clearly to have mobile home owners move out in the summer time with at least 365 days notice. He asked what date that notice would start from.

SENATOR ELLIS said he would get an explicit answer for that, because everyone should know the rules.

SENATOR LEMAN said he didn't exactly understand the reasons for not providing the flexibility for pooling. He thought they should be able to explicitly say, "or provide the ability for a pooling of resources..." He said he intended to work on it further in the Finance Committee.

SENATOR ELLIS thought it would be worth another try to put explicit language in the statute for pooling.

SENATOR LEMAN moved to pass CSSB 6 (L&C) from committee with individual recommendations. There were no objections and it was so ordered.

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#SB37

SB 37-PHYSICIAN NEGOTIATIONS WITH HEALTH INSURE

CHAIRMAN PHILLIPS announced SB 37 to be up for consideration. He said he had information from the Department of Law and had talked to the Division of Insurance for their recommendations.

SENATOR KELLY, sponsor of SB 37, said that he was awaiting the work of the committee.

MR. ED SNIFFEN, Department of Law, testified that if the bill was to take on a form similar to statutes in Washington, it would satisfy their anti-trust concerns. He explained that the most important feature in the Washington law that is not present in SB 37, is that it doesn't allow for negotiation of anything that would constitute a violation of state or federal anti-trust laws.

In Washington, any discussion about price or price related terms is not allowed under any circumstance. With respect to other terms, the way that system works is a health care year or a health insurer, and there is some question as to whether those terms are adequately defined, they would petition the Washington Department of Health to engage in the conduct or activities that they would propose. The Department of Health could do a couple things. They could ask for an informal opinion from the Attorney General on whether or not the negotiations would pose an anti-trust problem or they could proceed with reviewing the application on their own. And during that process, they can request information and hold hearings and do other things to insure that the process is fair.

One of the things about the Washington law that we don't see in SB 37, which I think would be helpful in getting around the state action review, is the Department of Health in Washington has the authority to actually control certain terms of the contracts. They can establish rules that govern provisions of any negotiated contract, so they can insure that it was fair and included the terms the Department thought were necessary. It's that level of state involvement that gets us around the state action doctrine.

MR. SNIFFEN said the regulations Washington has are also fairly detailed, but not as detailed as we would like. He recommended Alaska have more detailed information from physicians before negotiations started. SB 37 requires a brief report of what they intend to do and the Department would like information about the geographic areas, the specialties involved and other things.

He said the restriction in Washington's bill is similar to SB 37 on the percentage of physicians that can be represented. There is a 30 percent number in current SB 37, which they would like to see closer to 20 percent to insure that the market imbalance isn't shifted too far in favor of one group. Also, the time allowed for review by the attorney general of 30 days doesn't seem realistic considering the information the Department would have to look at and he suggested 90 days.

Number 1000

SENATOR KELLY responded that the problem he sees is that he is not necessarily trying to get around anti-trust provisions. He is trying to get at what the State Action Doctrine was created for. It excepted the federal anti-trust laws for some situations that needed to have state oversight so that the individuals could get around federal anti-trust laws. "The problem with the Washington bill is that it takes essentially the federal statutes and incorporates it into law. You have little or no relief to physicians who simply want to get together on a voluntary basis and not be able to boycott or have retaliatory actions, but to be able to discuss things on a voluntary basis with insurance companies without being sued for a violation of the anti-trust laws."

SENATOR KELLY said the Washington laws really didn't provide a state action doctrine as envisioned by Parker v. Brown, the Supreme Court decision that allowed it.

MS. KAREN DECKER-BROWN said she is in the final phase of a nurse practitioner program and is concerned how it would impact her practice once she seeks employment. She has heard from patients who would like to continue using nurse practitioners, but some physicians are not hiring anyone but doctors.

MS. DECKER-BROWN said because Alaska doesn't have HMOs, she sees 5 - 10 doctors arriving instate per week to set up shop in Alaska, because of their dissatisfaction with the whole HMO picture.

MS. LAURA SARCONE, ANA, ANPA AND AK-ACNM, said she submitted amendments that would replace section 23.50.020 (n), page 6, lines 28 - 31 and page 7, lines 1 - 2. She is waiting to hear if that amendment is included. If it is, they feel their scope of practice issues have been addressed at this point. If that's not the case, they would have to revisit the issue. She added that she would follow the bill closely since there are other areas of interest to her organization.

CHAIRMAN PHILLIPS said that Senator Kelly indicated the legislative drafters were working on the amendment now.

CHAIRMAN PHILLIPS asked if she would still oppose the bill if the amendment is adopted.

MS. SARCONE said they would follow the bill closely because there are other areas in the bill that could affect their interests.

MR. MIKE HAUGEN, Executive Director, Alaska Physicians and Surgeons, said he wanted to respond to Mr. Sniffen's package.

I have reviewed the Washington Administrative Codes specifically on their bill. I need to do a little bit of explaining. First of all, in the Washington model of this bill, what they've done as far as we're concerned is nothing more than incorporate what is called a messenger model of communication guidelines promulgated by the Federal Trade Commission into their bill. The messenger model communications are not negotiations. Under the FTC guidelines, all the messenger is allowed to do is pass information between the providers, the doctors and the health insurers. No negotiation is allowed to happen. I specifically referenced the Washington Administrative Code 246.25.040, which states that the messenger or the third party communicator cannot provide any recommendations as to whether or not they should accept or reject the health care offer. They only deliver the offer to providers and communicate to providers an evaluation of the positive or negative aspects of it. I think part of the reason the Washington model is made unworkable is simply because it's not real negotiation. It's nothing more than the federal rules we currently operated under without a state action doctrine bill.

Secondly, as far as Washington state's provisions that they are not allowed fee negotiations - while we feel it is critical that the fee negotiations be included simply because it's been the FTC's interpretation that even non-fee related items in contracts can affect the price - So whether or not we're talking about fee related issues, if the doctors overstep the bounds of the state action doctrine law, they will be subject to an anti-trust violation.

As far as Mr. Sniffen's comments about having the Department of Law or Health, in the case of Washington, control terms and contracts, that's something we would have to look at down the road, but on its face, we don't have a problem with that in that the bill currently gives the Department of Law the ability to make regulations anyway and spell out in detail what they would be.

As far as providing more detailed information, defining geographic areas and extending the time period from 30 to 90 days, again, those can all be worked out at a later date with the Department of Law. Some of them may be good recommendations.

The bottom line as far as the Washington state law goes, we think it's unworkable and that's why Texas abandoned that approach, particularly the public comment sections. We feel the Department of Law represents the people of Alaska and that is more than adequate in representing their interests.

Number 1640

CHAIRMAN PHILLIPS asked why only one physician group had applied in Texas since 1999.

MR. HAUGEN replied that he knew there was a fight over the implementing regulations. He was told the Attorney General in Texas wrote the rules such that it became incredibly burdensome on the physician's groups to make the bill work. Legislators got upset with the AG's office and they are trying to clarify in another bill what the intent was.

CHAIRMAN PHILLIPS asked if this bill could run into the same stonewall.

MR. HAUGEN answered that it may, but they feel they have to keep the ball moving forward. They hope the legislature makes the intent of the bill as clear as possible to the Attorney General's office.

CHAIRMAN PHILLIPS asked him to comment on the Texas legislation that will make negotiation mandatory.

MR. HAUGEN answered that he wasn't aware of that, but that was not their intent.

CHAIRMAN PHILLIPS asked how this would benefit the public and the doctors as a matter of public policy.

MR. HAUGEN replied that it would benefit the doctors, because right now there is an enormous amount of paranoia among them with anything related to contracts. They see great inefficiencies in the current system and they are precluded and are scared to talk to each other or carriers about those inefficiencies. As far as benefiting the public goes, it would increase competition in Alaska, which would benefit consumers by creating a large panel for a carrier instantly that currently doesn't have much a presence in the market. He thought current players opposed this bill, because they didn't want to see increased competition.

SENATOR DAVIS asked how many patients approached him saying that they thought this would protect their rights and it was something they needed.

SENATOR KELLY answered that is a technical bill and most people, when they go to the doctor, are sick and aren't thinking about legislation and regulations that encircle the health care industry. "I do know when you have large entities who control large portions of the market like these few insurance companies do, they have the money and the lives to provide; therefore, they have power. They can dictate very much to the doctors how they operate when dealing with their patients. That isn't necessarily healthy..."

SENATOR DAVIS said she agreed with him about them not wanting to change the anti-trust laws, but if there were some real concerns about price fixing or being salaried, someone should be saying that other than the doctors, themselves. Everything she saw came from a physician's standpoint. She asked why he thought this bill would allow doctors to share information back and forth and set rates based upon what they feel. It might turn out like the group in Texas that has a law allowing them to do it, but they still don't trust each other.

SENATOR KELLY responded that in Texas, he didn't think it was a matter of not trusting each other, but the regulations hadn't been straightened out yet. He explained that the group in Fairbanks thought they were obeying the law, because they were having discussions among themselves about contract negotiations. They were threatened with legal action just from engaging in conversation. "This bill says they can engage in that conversation on a voluntary basis. If the insurance companies don't want to negotiate with them, they don't have to."

MR. HAUGEN said he thought Senator Kelly was correct.

SENATOR KELLY added that a physician may have a procedure that he would recommend for a patient, but he would have to get permission under some contracts to give that treatment to the patient. If the insurance company said no, they weren't going to pay for it, that would be end of it. They can even have gag orders in the contracts that would restrict the doctors from mentioning things to their patients. Physicians want the freedom to discuss with, not only other doctors, but with their patients. It gives the physicians more power to speak up for their patients.

MS. KAREN DECKER-BROWN asked what Senator Kelly's personal interest in sponsoring this bill is. She asked if any of his family members are employed by physicians.

CHAIRMAN PHILLIPS responded that Senator Kelly was representing his

constituents.

SENATOR KELLY responded that, "It is truly irrelevant what my family is doing. My wife is a receptionist for a clinic. She has been for a year."

MS. DECKER-BROWN said that he would be impacted by this bill since his wife was being paid by those physicians.

SENATOR KELLY said that the outcome of the bill would not affect her.

MR. SNIFFEN responded to the Mr. Haugen's comments on the Washington legislation. He said he didn't think it was a messenger model, but was kind of a hybrid, which provides the kind of oversight that is necessary that the U.S. Supreme Court thinks is necessary to invoke the state action doctrine.

MR. BOB LOHR, Director, Division of Insurance, said the thrust of the proposed approach is consistent with the Washington state model that is suggested by the Department of Law, but their focus is on fee provisions, specifically eliminating the authority to negotiate fees. He explained that is what most of the proposed amendments would do. Their primary concern is the cost impact of this agreement and they take a different view of the impacts than the physicians' representatives have. If this were designed to increase availability of health coverage in Alaska, that would be good, but the Division of Insurance hadn't heard health care insurers lining up to say given the opportunity to negotiate with a group of physicians, they would like to come to the state. They would like to hear that from those groups, if that were truly the case.

TAPE 01-9, SIDE B

CHAIRMAN PHILLIPS asked if there were further questions and there were none. He adjourned the meeting at 2:22 p.m.

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