

ALASKA STATE LEGISLATURE
SENATE LABOR & COMMERCE COMMITTEE

February 28, 2002
1:37 p.m.

MEMBERS PRESENT

Senator Ben Stevens, Chair
Senator Alan Austerman
Senator Loren Lemam
Senator John Torgerson
Senator Bettye Davis

MEMBERS ABSENT

All Members Present

COMMITTEE CALENDAR

SENATE BILL NO. 274

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

MOVED CSSB 274(L&C) OUT OF COMMITTEE

SB 31 - PENALTIES: OSHA VIOLATIONS CAUSING DEATH

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

SB 274 - See Labor and Commerce minutes dated 2/12/02.

SB 31 - No previous action to record.

WITNESS REGISTER

Senator Olson
State Capitol Bldg.
Juneau AK 99811

POSITION STATEMENT: Sponsor of SB 274.

Ms. Anne Henry, Legislative Liaison
Division of Mental Health and Developmental Disabilities
Department of Health &
Social Services
PO Box 110601

Juneau, AK 99801-0601

POSITION STATEMENT: Supported SB 274.

Ms. Catherine Reardon, Director
Division of Occupational Licensing
Department of Community and Economic Development
P.O. Box 110806
Juneau AK 99811

POSITION STATEMENT: Commented on SB 274.

Dr. Robert D. Schultz, M.D.
P.O. Box 240368
Douglas AK 99825

POSITION STATEMENT: Supported SB 274.

Dr. Nick Kletti, Medical Director
Alaska Psychiatric Institute (API)
Ph: 269-715

POSITION STATEMENT: Supported SB 274.

Ms. Susan Humphrey Barnett, Assistant Administrator
Providence Health System

POSITION STATEMENT: Supported SB 274.

Mr. Karl Sanford, Assistant Administrator
Fairbanks Memorial Hospital
1650 Cowles St.
Fairbanks AK 99701

POSITION STATEMENT: Supported SB 274.

Mr. Rich Mastriano, Director
Division of Labor Standards and Safety
Department of Labor & Workforce
Development
PO Box 107021

Anchorage, AK 99510-7021

POSITION STATEMENT: Supported CSSB 31(L&C).

Mr. Dick Cattanaeu, Executive Director
Associated General Contractors

POSITION STATEMENT: Opposed SB 31.

ACTION NARRATIVE

TAPE 02-9, SIDE A

Number 001

#SB274

SB 274-PHYSICIANS' LOCUM TENENS PERMITS

CHAIRMAN BEN STEVENS called the Senate Labor & Commerce Committee meeting to order at 1:37 p.m. and announced SB 274 to be up for consideration.

SENATOR OLSON, sponsor of SB 274, said he would address version F. Section 1 that says a Member of the State Medical Board or its designee may grant a temporary permit to practice medicine to a visiting physician or osteopath for two new situations. Subsection (a)(2) allows for the temporary hire of a physician or osteopath by a licensed doctor for the purpose of valuation for permanent employment. Subsection (a)(3) allows a hospital or mental health facility to temporarily fill a staff vacancy through a locum tenens permit while seeking permanent employment of a licensed physician or osteopath.

Section 2 changes the initial duration of a permit from 60 days to 90 consecutive days. It can be extended for an additional 60 days if the permittee completes an application for licensure and pays the associated fee. An individual's exercise of a locum tenens permit is limited in the aggregate to 240 days in any 24 consecutive months.

Section 3 allows the board to further extend a permit if there is a medical necessity to protect public health and safety.

SENATOR TORGERSON asked if the Medical Board supported this.

SENATOR OLSON said talks with Jim Jordan, Executive Director, Alaska State Medical Association, HESS, API, and the State Medical Board have resulted in a consensus on section 2.

SENATOR TORGERSON moved to adopt the CS to SB 274, Lauterbach. There were no objections and it was so ordered.

MS. ANNE HENRY, Division of Mental Health, supported SB 274 and said she would answer questions.

MS. CATHERINE REARDON, Director, Division of Occupational Licensing, said her division staffs the Medical Board. She said the different parties were able to get together and almost reach consensus on this issue. The only item in dispute at this point is section 3. The Medical Board does not want section 3 in the law, but the other parties do want it. It gives the Medical Board the ability to extend locum tenens licenses beyond the 90 days (plus 60 more days, if you apply for a permit), if the Board or its designee determines that the extension is necessary in order to provide essential medical services for the protection of public health and safety. The Board maintained their objection to

section 3 because they are uncomfortable with open-ended amounts of time in which people can continue working under a locums and section 3 leaves it up to the Board's discretion, but they don't want it. This is simply a difference in philosophy between the different parties.

DR. ROBERT SCHULTZ said he has been a psychiatrist practicing in Alaska for 16 years and has had plenty of opportunity to come up against the circumstances of understaffed mental health centers and understaffing at API. He felt very strongly that improving their staffing would greatly help the state.

He has often seen people who couldn't get into the understaffed hospitals end up getting hospitalized and getting an outpatient visit as an inpatient, which costs the state a great deal of money. Also, people having access to staff in a timely fashion means their medications get adjusted and rearranged so that they don't need hospitalization. He supported SB 274.

MR. NICK KLETTI, Medical Director, API, supported SB 274, including section 3. He said:

We are in the fortunate position currently of having a full-time medical staff - all of our doctors here being full-time employees, but API traditionally has gone through some periods where it's been difficult to recruit doctors who come up to Alaska first of all and, secondly, to work with a population that is hospitalized here...It is greatly to the hospital's advantage to have full-time psychiatrists or a physician and not to have locum tenens. In fact, it's looked at by regulatory agencies as also greatly desirable to have full-time physicians. Unfortunately, we're put in the position where often when there are vacancies, which many rural states have, because it's difficult to attract physicians to rural states. Of either providing less than optimal care using temporary physicians or having no care at all for those patients and given that choice, I would rather go with a locum tenens physician - even in an on-going fashion - even if the license has to be renewed because of patient care concerns in an on-going way without limitation. With Occupational Licensing overseeing that and of course all the credentialing matters a hospital would have to go through to make sure a physician is doing her job properly and safely. But I am in very strong support of this bill. I think this will greatly help Alaskans and the health care here.

MS. SUSAN HUMPHRY BARNETT, Assistant Administrator, Providence Health System, supported CSSB 274. She said Providence Health System runs a community mental health center on Kodiak Island. They have had fairly continuous coverage, but it is very difficult to recruit psychiatrists in rural Alaska and there are times when there is no recourse, but to use locum tenens. She understands that the Medical Board opposes section 3, but it really needs to be there, because if you can't recruit a permanent person, you at least have coverage for people who really need this type of care. Other specialties have recruiting difficulties - for instance the Anchorage area has a shortage of internal medicine physicians and pediatric surgeons and neurologists. She concluded saying they very strongly support the committee substitute.

MR. KARL SANDFORD, Assistant Administrator, Fairbanks Memorial Hospital, supported the CSSB 274, particularly section 3. He said it costs a lot of money to bring a locum tenens physician to Alaska and it is not in our best interest overall to have that turn over every one or two months. "Therefore, I would like to have the opportunity, if need be, to extend a locum tenens position if possible."

MR. SANFORD said there is a national shortage in many areas of physicians and expecting it to be resolved in a two to three month period is unreasonable.

CHAIRMAN STEVENS asked Ms. Reardon to explain what was meant by the Board's designee in section 3.

MS. REARDON explained that the Board they could designate someone to serve this function. Generally, the physician they designate is the executive administrator of the Medical Board, but they might decide to designate a single board member.

CHAIRMAN STEVENS asked if the board wanted to testify or was she delivering their position.

MS. REARDON said she was delivering their position.

SENATOR LEMAN moved to pass CSSB 274(L&C) from committee with individual recommendations. There were no objections and it was so ordered.

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#SB 31

SB 31-PENALTIES: OSHA VIOLATIONS CAUSING DEATH

CHAIRMAN STEVENS announced SB 31 to be up for consideration.

MR. RICH MASTRIANO, Director, Division of Labor Standards and Safety, supported CSSB 31.

SENATOR LEMAN moved to adopt the committee substitute to SB 31, Lauterbach\C as the working document.

SENATOR TORGERSON objected to hear the changes.

MR. MASTRIANO replied that the changes in section 1 are that the original bill did not have total civil penalties of \$25,000 for any violation and \$50,000 for a willful or repeat violation. Changes in Section 1(4) say, "not subject to reduction by negotiation or settlement unless expressly approved in writing by the Commissioner of Labor and Workforce Development and the Attorney General."

SENATOR LEMAN asked who wanted this CS.

CHAIRMAN STEVENS replied that this came from the department.

SENATOR TORGERSON asked why they subjected violations in the committee substitute to AS 18.60.010 - .105 and not (a)(b) and (c), which is in the original version.

MR. MASTRIANO responded that those subsection describe what serious, willful and repeat violations are. "Basically, the existing law allows for a mandatory reduction in those penalties under (h)..."

CHAIRMAN STEVENS said there were three components to section 1 in the original bill, but in the committee substitute there are four components. He asked which section was added.

MR. MASTRIANO replied that on page 2, they added, "(1) inclusive of all final civil penalties under this section for all violations connected with the death of the employee;". There would be a total of \$25,000 inclusive of all civil penalties.

CHAIRMAN STEVENS asked what the existing statute was on that now.

MR. MASTRIANO replied that now for a serious violation - up to \$7,000, which can be reduced for size, good faith and history of the employer.

CHAIRMAN STEVENS remarked that it says \$7,000 per day.

MR. MASTRIANO said that was for failure to correct a problem, but ordinarily it is corrected within that time frame, unless they ask for an extension on abatement.

CHAIRMAN STEVENS asked why the department wanted to change the

current statute and was it similar to OSHA regulation now.

MR. MASTRIANO replied that it is similar to OSHA regulation. The department is mandated to reduce the penalty by size and history - and if it's willful, they don't give a good faith reduction. Their proposed CS would eliminate the department from automatically reducing the penalties, leaving it to the commissioner and the attorney general. This is more stringent than OSHA requirements.

MR. MASTRIANO said they are required to adopt a number of guidelines by reference. "If we change anything, we have to change it and be more stringent than the OSHA requirement."

CHAIRMAN STEVENS asked how many cases per year did this apply to.

MR. MASTRIANO said that last year there were 18 fatalities in various industries, but he added that they don't cover the fishing industry (U.S. Department of Labor covers the fishing industry). They cover shore-based processing, construction industries and general industry.

CHAIRMAN STEVENS asked who determines that the employer willfully violated the standards.

MR. MASTRIANO said the OSHA enforcement officer who works for the state will write a citation and at that point there is an investigation. Currently, when a citation is given to an employer with less than 25 employees, for instance, that citation is automatically reduced by 60% (from a serious maximum of \$7,000). If this is his first violation, he will get a good faith reduction of up to 20%, which results in an 80% total reduction. If he has no previous history with the department, he gets an additional 10%. So a \$7,000 fine can be reduced by 90%. It can be reduced even further in a settlement. "A fatality could be reduced to \$750."

CHAIRMAN STEVENS asked if this would have any impact on the settlement of the individual's estate.

MR. MASTRIANO replied no.

SENATOR AUSTERMAN asked of the 18 deaths were the total that applied to this bill.

MR. MASTRIANO said there were a total of 23, but for willful or violations of the standards that caused the death there were 18 total.

SENATOR AUSTERMAN asked if these standards were stronger than federal law.

MR. MASTRIANO replied they would be, because the federal law mandates that they reduce the penalty.

SENATOR AUSTERMAN asked him to explain why the department wants stricter regulations than OSHA.

MR. MASTRIANO replied:

I think when someone loses their life in a work related accident and it's a result of a willful or serious violation on the part of the employer, to reduce that penalty for the employer failing to comply with the law to \$750 or \$1,500 - what value do you place on a worker? We think that there should be something that gets the employer's attention.

SENATOR AUSTERMAN commented, "Irregardless of how they do it in the rest of the United States."

CHAIRMAN STEVENS asked what percent of states under OSHA have more stringent requirements than OSHA.

MR. MASTRIANO replied that this bill is modeled after Minnesota where it's been in effect for two years. That is the only state he is aware of having a more stringent requirement.

MR. DICK CATTANAEU, Executive Director, Associated General Contractors, opposed SB 31. They did not understand why the bill was needed.

I am not aware of any companies that are serial murderers - that have repeated incidents of killing people and that's what it's saying. We need to penalize the company so they don't do it again...A fatality on a job is extremely harmful to a company. And it's not just the \$750 you may get fined or the \$7,000. There are going to be other OSHA fines associated with that and workers' compensation claims and some civil suites as well. You can't put a price on a person's life and we're not trying to do that. We just don't see a need for this. We're concerned about the bill when it says, "not less than."

SENATOR LEMAN asked if he had seen the committee substitute or did he not like either bill.

MR. CATTANAEU said they didn't like either version even after meeting with the department this summer and having the reason explained to them. He reiterated that he was worried about language saying "not less than" and the idea that companies are

repeat offenders. He said this statute includes airplane accidents and things like that.

SENATOR TORGERSON said he agreed with him on his fundamental figures. He asked if he would be okay with increasing the \$7,000 to another number, not putting the minimum in and leaving it subject to (h), which says the commissioner shall give due consideration to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer and the history of previous violations.

MR. CATTANAEU replied that he agreed that \$7,000 was insufficient, but by itself, it wouldn't stop someone. He reiterated, if someone dies on the job, there would be other violations.

CHAIRMAN STEVENS asked if he was aware of any other states working on this issue.

MR. CATTANAEU said that he didn't know of any others than Minnesota.

SENATOR DAVIS asked if Minnesota was the only state that had adopted this.

MR. MASTRIANO replied yes and added that there is one employer this last year that has killed more than one person. The way the committee substitute is written right now, the total fine for a fatality would be the \$25,000 or the \$50,000, if it were willful.

SENATOR LEMAN moved to withdraw his motion to adopt the committee substitute. There were no objections and it was so ordered.

CHAIRMAN STEVENS announced that they would hold the bill for further work and adjourned the meeting at 2:15 p.m.

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