

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

March 31, 2004

3:27 p.m.

MEMBERS PRESENT

Representative Tom Anderson, Chair
Representative Carl Gatto, Vice Chair
Representative Nancy Dahlstrom
Representative Bob Lynn
Representative Norman Rokeberg
Representative Harry Crawford
Representative David Guttenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 391

"An Act relating to employers and to victims of crime."

- HEARD AND HELD

HOUSE BILL NO. 502

"An Act relating to dispensing opticians and dispensing optician apprentices."

- HEARD AND HELD

HOUSE BILL NO. 311

"An Act requiring a subcontractor to obtain workers' compensation insurance covering the subcontractor and the subcontractor's employees and establishing responsibility of a contractor for obtaining workers' compensation coverage for the subcontractor and the subcontractor's employees if the subcontractor fails to obtain workers' compensation coverage; and providing for an effective date."

- MOVED HB 311 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 391

SHORT TITLE: EMPLOYER MUST LET CRIME VICTIM OFF WORK

SPONSOR(S): REPRESENTATIVE(S) HEINZE

01/20/04 (H) READ THE FIRST TIME - REFERRALS
01/20/04 (H) L&C, JUD
03/24/04 (H) L&C AT 3:15 PM CAPITOL 17
03/24/04 (H) Scheduled But Not Heard
03/31/04 (H) L&C AT 3:15 PM CAPITOL 17

BILL: HB 502

SHORT TITLE: DISPENSING OPTICIANS: BOARD & REGULATION
SPONSOR(S): REPRESENTATIVE(S) HOLM

02/16/04 (H) READ THE FIRST TIME - REFERRALS
02/16/04 (H) L&C, HES
03/31/04 (H) L&C AT 3:15 PM CAPITOL 17

BILL: HB 311

SHORT TITLE: EMPLOYER RESPONSIBILITY FOR WORKERS' COMP
SPONSOR(S): LABOR & COMMERCE

05/08/03 (H) READ THE FIRST TIME - REFERRALS
05/08/03 (H) L&C
03/31/04 (H) L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

JOHN BITTNER, Staff
to Representative Cheryll Heinze
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HB 391 on behalf of
Representative Heinze, sponsor of the bill.

REPRESENTATIVE JIM HOLM
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Testified as the sponsor of HB 502.

FRANK ROZAK, Secretary-Treasurer
National Association of Optometrists and Opticians,
Marblehead, Ohio
POSITION STATEMENT: Testified that his association concurred
with some of the provisions of HB 502, but disagreed with
several sections and made suggestions for improvement.

LARRY HARPER, Member
Board of Dispensing Opticians;

Vice-Chairman
American Board of Opticianry (ABO);
Board Member
Contact Lens Society of America (CLSA)
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 502.

ROBIN WARD, Contractor;
Legislative Chair
Alaska State Homebuilders Association
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 311 and answered questions.

PAUL LISANKIE, Director
Division of Workers' Compensation
Department of Labor & Workforce Development
Juneau, Alaska
POSITION STATEMENT: Answered questions about HB 311.

ACTION NARRATIVE

TAPE 04-36, SIDE A

Number 0001

CHAIR TOM ANDERSON called the House Labor and Commerce Standing Committee meeting to order at 3:27 p.m. Representatives Anderson, Gatto, Dahlstrom, Lynn, Rokeberg, and Crawford were present at the call to order. Representative Guttenberg arrived as the meeting was in progress.

HB 391-EMPLOYER MUST LET CRIME VICTIM OFF WORK

Number 0108

JOHN BITTNER, Staff to Representative Cheryll Heinze, Alaska State Legislature, presented HB 391 on behalf of Representative Heinze, sponsor of the bill. He explained that HB 391 gives statutory penalties for employers who prevent their employees, who have been victims of felonious crimes, from leaving work to attend the court proceeding for which they are involved. It does have exemptions for small businesses, he added.

CHAIR ANDERSON asked Mr. Bittner to provide an example of what this bill might do.

MR. BITTNER replied that the employer cannot prevent an employer from attending a criminal proceeding relating to the crime at which the victim has a right to be present, unless it would cause the employer undue hardship to the business or they fall into the small business category.

CHAIR ANDERSON gave an example of a person who wants to be present at his sister's DUI hearing. He suggested that this bill does not apply in that case.

MR. BITTNER replied that the only exceptions would be if the victim was a minor or mentally impaired, then a person who is not the victim could attend the court proceeding.

CHAIR ANDERSON said that it applies just to victims themselves.

Number 0344

REPRESENTATIVE DAHLSTROM asked Mr. Bittner to talk more about the employee being penalized by not being paid for the time off.

MR. BITTNER stated that they would not receive pay, just the time off.

REPRESENTATIVE GATTO asked about page 2, line 8 of HB 391, "has suffered personal injury". He wondered if mental injury would also apply.

MR. BITTNER said it would depend on whether or not it was a felony, and he offered to find out more information about it.

CHAIR ANDERSON said he thought that personal injury meant just that.

REPRESENTATIVE DAHLSTROM asked Mr. Bittner to point out where the bill addresses the responsibility that the employer has to share with the employer, proof that they need to attend the court hearings.

MR. BITTNER replied that in the case of this bill, a subpoena would not be necessary.

REPRESENTATIVE DAHLSTROM asked if the House Judiciary Standing Committee would be the appropriate place to address that issue. She said that she could see it as a problem if left wide open for that "one bad apple in the bushel" to abuse the situation.

MR. BITTNER said he would be happy to have language drafted that would cover that issue.

CHAIR ANDERSON referred to page 2, subsection (c), where it defines "penalize" as it applies to affecting the employment status, wages, and benefits payable to the victim, which includes demotion, dismissal and loss of pay or benefits. He asked if Mr. Bittner interprets that as, "I'm not going to terminate you, or dismiss you, or suspend you, but I am going - if you're going to take two weeks off as a victim of a felony - I am going to take all of your leave time."

MR. BITTNER said he is not sure if leave falls under benefits.

CHAIR ANDERSON gave an example where this might happen to a small employer.

REPRESENTATIVE DAHLSTROM asked if there is a precedent in law already about such a situation. She said she thinks the requirements in the bill regarding the employer are good but that those regarding the employee need to be tightened up.

Number 0794

REPRESENTATIVE LYNN asked if there is a limitation for the length of the trial.

MR. BITTNER replied that there is, and he referred to page 1, line 11, "an employer may limit the amount of leave an employee may take if the employer would suffer undue hardship to the employer's business or operations."

REPRESENTATIVE LYNN remarked that that could be a very debatable point.

MR. BITTNER agreed that it could. It would have to be decided in court, he added. He said it was too difficult to include undue hardship in the bill in a "broad blanket sense".

CHAIR ANDERSON gave an example of undue hardship where a person is working in an auto mechanics shop with only two mechanics in the peak season.

Number 0875

REPRESENTATIVE LYNN said it would be difficult to challenge an employer on this issue.

REPRESENTATIVE GATTO said that typically, even when an employee is discharged, they still get their insurance coverage until the end of the month.

REPRESENTATIVE DAHLSTROM responded, "Not always."

REPRESENTATIVE GATTO said all of the employees he has worked for have allowed that. He opined that a person's insurance coverage would still be in effect if they had to attend a court proceeding and that it is not the intent of the bill to take a person's benefits away. He wondered if the bill needs to address some of the benefit issues.

MR. BITTNER said that Representative Gatto's question falls under the pay and benefits question mentioned earlier. He stated that he would get a legal opinion on that issue.

Number 0993

CHAIR ANDERSON stated his intent to bring [HB 391] back at a later date with the answers to these questions included in it.

REPRESENTATIVE DAHLSTROM noted that in the case of jury duty, the employee has to give the employer proof of the jury duty notice, for a leave request.

REPRESENTATIVE ROKEBERG asked why the size of the business is limited to six or more employees.

MR. BITTNER replied that it was felt that for a business any smaller than that, the loss of one employee would cause an undue hardship.

REPRESENTATIVE ROKEBERG asked why the number six was used.

MR. BITTNER responded that that was a number determined by the Legislative Legal and Research Services and Representative Heinze's office.

REPRESENTATIVE ROKEBERG, looking at the Legislative Research Report, pointed out that it indicates that the Arizona statute defines [and applies to] an employer with 50 or more workers. He noted that 50 or more workers is a typical federal, standard size of a large business versus a small business with less than 50 workers. He inquired of Mr. Bittner whether that number was considered.

MR. BITTNER replied that while the language in the Arizona statute is similar to the bill, [Representative Heinze's office] felt that the actual, practical business concerns between Arizona and Alaska are somewhat different. Alaska has more rural areas and smaller businesses than Arizona does, he explained.

REPRESENTATIVE ROKEBERG asked if there is a rational basis for the "six figure" other than what has been said.

MR. BITTNER answered, "Other than trying to protect the largest number of victims and the largest number of small businesses. That was the happy medium we were going for and that is what we felt this number would do."

Number 1116

CHAIR ANDERSON asked what the [Alaska State Chamber of Commerce] thinks of this bill.

MR. BITTNER said that it had not weighed in yet.

REPRESENTATIVE ROKEBERG referred to page 2, [line 9], and questioned the meaning of "who is a victim by reason of the person's relationship to a minor, incompetent, or incapacitated person who has suffered personal injury or death from a felony". He asked if the person is a victim because the injury or death was to a family member and was caused by a felony. He wondered if the intention in the drafting is that the personal injury was also caused by a felony.

MR. BITTNER said yes.

CHAIR ANDERSON responded that it would drastically reduce the number of employees who would apply for leave because the bill addresses felonious cases only.

Number 1229

REPRESENTATIVE ROKEBERG remarked that what the bill does is takes the current statute that sets up a recourse for a victim who has requested to participate in [court] proceedings or who has been subpoenaed for the purpose for giving testimony, and expands it to include the victim's right to no retaliation from an employer for taking the needed time off of work. He asked if that is the intention of the bill.

MR. BITTNER answered that that is part of the intention and the other part is that the bill insures that the victim can attend the whole proceeding, not just the part that they are required or subpoenaed to attend.

REPRESENTATIVE ROKEBERG, referring to page 1, line 10, "the victim has the right to be present", asked if that right is found in the constitution and in Alaska's statutes.

MR. BITTNER replied yes. The current statute AS12.61.010 says that the victim has the right to be present during any proceeding in the prosecution and sentencing of the defendant, if the defendant has the right to be present, including being present during testimony, even if they are going to be giving testimony at a later date. "The problem with that is that the coverage for employers of victims only applies to a certain small aspect of this," he said. "There is no statutory language that gives teeth to the earlier statute," he explained.

REPRESENTATIVE ROKEBERG said he is confused about whether it covers both criminal and civil actions.

Number 1361

MR. BITTNER replied that it covers all felonious personal injury.

REPRESENTATIVE ROKEBERG said that the victim would be the subject of a felonious injury. It says "court proceedings" so there could be an issue if the victim was a witness, whether he or she could participate in the court proceedings.

MR. BITTNER replied that Alaska is one of the few states that allows for that.

REPRESENTATIVE ROKEBERG said, "So they can sit in the courtroom and watch the trial even though they're going to testify?"

MR. BITTNER said yes.

REPRESENTATIVE ROKEBERG asked Mr. Bittner if his testimony stated that [HB 391] is a follow-up civil cause of action for personal injury.

MR. BITTNER said he does not understand the question.

REPRESENTATIVE ROKEBERG clarified that if it was a civil action they would be a party to the case and would want to be in attendance.

MR. BITTNER replied that he does believe that they would be covered under this law.

Number 1428

CHAIR ANDERSON explained that what Representative Rokeberg is saying is in a case where someone is robbed and had their arm broken, the defendant would be charged for a felony by the state and then the victim would sue for injury, so it would become a trial where it has dual purposes.

REPRESENTATIVE ROKEBERG replied that is right. It would be a civil case rather than a criminal case, he added.

REPRESENTATIVE GUTTENBERG discussed insurance coverage and explained how it is based on how many hours are worked in a month. In a situation where the victim is required to miss work, he wondered if there is anything in the bill that could address this issue.

CHAIR ANDERSON said that Mr. Bittner plans to check on this issue. He summarized the issues that still needed to be addressed regarding HB 391: leave time, insurance, benefits, the number six for business size, and support by other groups such as the Chamber of Commerce.

REPRESENTATIVE GUTTENBERG suggested that the various types of leave that an employer could require needs to be checked out, also.

CHAIR ANDERSON asked Mr. Bittner to bring the bill back at a future date with those questions answered.

[HB 391 was held over.]

HB 502-DISPENSING OPTICIANS: BOARD & REGULATION

CHAIR ANDERSON announced that the next order of business would be HOUSE BILL NO. 502, "An Act relating to dispensing opticians and dispensing optician apprentices."

Number 1575

REPRESENTATIVE JIM HOLM, as the sponsor, introduced HB 502. He testified:

At the request of the Opticians Association of Alaska I brought forth House Bill 502. House Bill 502 clarifies the education and training requirements to become an optician in Alaska and it allows qualified opticians from other states to practice here.

It sets out the requirements to fit and sell contact lenses and this bill also transfers the optician's apprenticeship program to the U.S. Department of Labor. Currently, the amount of training does not meet the threshold for the Department of Labor and so, the state of Alaska needs to be put on a par with other states and require a higher amount of training than they do presently.

The current statute is unclear and inadequate. House Bill 502 puts specific qualifications on the amount of hours that an optician must have to qualify for both spectacles and contact lenses. ... This legislation raises the amount of hours that are required to at least 4,000 hours of training to dispense eyeglasses, and at least 2,000 more hours to dispense contact lenses.

The distinction clarifies language and requires an appropriate amount of training for the opticians in Alaska to effectively serve the public.

This morning I received an email I wanted to share with you, which I thought was quite interesting. The person [Robin Marquiss, licensed optician] told me that [original punctuation provided], "The requirements for licensed opticians need to be increased. In the state of Alaska, a hairdresser is licensed after working 2000 hours or attending 1650 hours of a training school. Are we sending the message that someone flying our airplanes or driving our highways with the incorrect eyeglasses is less a threat to the public than a bad haircut????"

I think the point is made that we need [to] maybe change what we currently have as a requirement. I believe it's 1,850 hours. In your packet you should have the ... legislative audit [done by Pat Davidson,

CPA, 10/02/03] [which] recommends ... allowing the sunset of the board of opticians [Board of Dispensing Opticians], but it makes a clear distinction between the amount of training required to dispense eyeglasses and contact lenses.

In addition, in your packet are some requirements from other states. ... When they talk about three years - and you assume that somebody works 40 hours a week for a year - they work at least 2,000 hours a year. You're looking at 6,000 hours of requirement of apprenticeship in order to be a licensed optician in other states. Not all of them are the same ... most of them are three years or thereabouts.

Number 1760

REPRESENTATIVE GATTO referred to page 2, line 29, "Licensure by credentials. A person with a valid license as a dispensing optician from another state, territory, etc." He expressed concern that Alaska might accept reciprocity from a state with a low level of required hours.

REPRESENTATIVE HOLM replied that he could not speak to this but he suspected there would be forthcoming testimony that could.

Number 1837

FRANK ROZAK, Secretary-Treasurer, the National Association of Optometrists and Opticians, a trade group with several of its members with stores in Alaska, including Sears Optical, Lens Crafters, U.S. Vision, testified:

We concur with the primary recommendation of the Legislative Budget and Audit Committee report, dated October 2, 2003, to replace licensure with a registration program. Why is that? In addition to the reasons that they've outlined, and as a national trade association, I can tell you that there are only 22 states which require licensure for opticians; 28 do not, despite repeated efforts to convince legislatures to do so.

The Departments of Health in Colorado, Kansas, and Minnesota, in formal, written reports, advised against the need to license opticians. They found no public health or protection benefits; they found an adequate,

existing training, and numerous means for customer redress of problems, and an economic disadvantage for customers. That's a summary of those reports.

I was interested in the earlier conversation about the legislation dealing with employees, and employers, and court dates, and all the rest. On page 20 of the legislative audit report it shows as of 2003, a total of 107 dispensing opticians. Ladies and gentlemen, if one of our licensed dispensing opticians had to go to court for a couple of days, much less a couple of weeks, we would be out of business, because there is a huge manpower shortage in the state of Alaska for licensed dispensing opticians.

Couple that with the board's recent new regulation dealing with supervision - which, as I understand it, contravenes the definition of supervision which the legislature passed in 2002 - it makes it even more restrictive. So who is the beneficiary? What happens to the vision care consumer who orders a pair of glasses, or wants to order a pair of glasses and cannot, because the licensed dispensing optician is not there because he or she is in court? Unfortunately, we have a huge manpower problem for opticians in the state of Alaska. I suspect part of it is related to the rules, regulations dealing with entry into the occupation and profession.

Number 1955

MR. ROZAK continued:

The House Bill 502 seems to ignore the Legislative Audit and Budget Committee's report, and candidly, in my judgment, heads down a totally opposite road. It provides for more regulation rather than less.

Just quickly, I want to address the issue of contact lenses. On February 4th, legislation which was passed in the U.S. Congress, House Resolution 3140, entitled the ... [Fairness to Contact Lens Consumers Act], provided that a consumer, after a final fitting of their contact lenses, shall be entitled to a copy of their prescription. If any of us can believe it, there are a number of states which prohibited the

consumer from getting a copy of his or her contact lenses prescription, even after they paid for it.

It also allows non-licensed sellers, referring to mail order contact lenses firms and Internet providers who are not regulated or licensed in any jurisdiction, to sell contact lenses. While this bill would require 2,000 hours of training - and that's in Section 3, [subsection] (a), [paragraph] (2), at line 16 - for the same persons to be able to sell contact lenses in Alaska, and that would be after passing a written exam.

Essentially, what we are doing is we are allowing another competitor, a mail order contact lenses firm or an internet provider, who's not licensed or regulated at all, to sell contact lenses to Alaskan consumers, but Alaska opticians and Alaskan optical firms would have to have employees meeting a 2,000 hour requirement plus passing a written exam. That is not a fair, nor level, playing field.

Number 2045

MR. ROZAK stated he believes HB 502 would contribute to the current shortage of qualified [opticians] and provide less competition to the current license holders. In order to meet the needs of the average Alaskan family and be open on Saturdays, holidays, and evenings, a licensed optician should be on the premises of the business. However, without enough opticians, such hours can't be provided. This isn't in the best interest of the public, he stated.

REPRESENTATIVE CRAWFORD asked Mr. Rozak how many optician apprentices and trainees there are in Alaska.

MR. ROZAK, in response to Representative Crawford, related that the Legislative Audit of the Board of Dispensing Opticians specifies there are 191 optician apprentices and trainees in Alaska. Mr. Rozak identified the key issue as the definition of "supervision." He explained that if the [Board of Dispensing Opticians'] definition was consonant with the legislature's definition, which is based on the 2002 statutes, it would be [acceptable]. However, the board's definition of "supervision" essentially provides for on-site supervision. Therefore, if the licensed optician isn't there, the apprentice is unable to participate in any of the tasks related to opticianry.

MR. ROZAK reiterated that requiring apprentices to be supervised by licensed dispensing opticians is the root problem, since it limits the scope of work an apprentice can do.

REPRESENTATIVE CRAWFORD expressed that he was confused and asked, "If the licensed optician is not there, and you were just saying that you are out of business if you don't have one, how are these people not getting the training that they need, if those opticians are actually there when your business is operating?"

Number 2168

MR. ROZAK replied:

When the opticians are there, then the apprentice can engage in those tasks and functions which the licensed optician says that person ... can engage in. On the other hand, if the licensed optician is sick, then that licensed apprentice can't do anything that's related to the dispensing of eyeglasses or contact lenses unless the licensed optician is present. It is a very difficult situation when a licensed optician in one store gets sick. We try to have some extra opticians that are on call or come from another store that has higher volume in order so that we can stay open.

REPRESENTATIVE CRAWFORD commented, "You have almost twice as many apprentices coming on as you have licensed opticians today. I don't know what your projected demand would be, but it sounds like your apprentices are going to be taking care of the demand in the future."

MR. ROZAK responded:

The problem is that there are a lot of apprentices - despite intensive training efforts by the licensed dispensing opticians, and candidly by the various companies - who choose not to ever take the exam to become licensed dispensing opticians, or have tried and have failed for whatever reason, and have become discouraged [and], therefore, remain as apprentices ad infinitum.

We would like to open up several more stores, but given the fact that there is a crunch in terms of licensed dispensing opticians, ... we can't do it. We would be unable to be open all store hours. ... There are times during the day when customers cannot get eyeglasses because the licensed optician is not there and the apprentice is not permitted to engage in optical dispensing unless the apprentice [optician] is there.

Number 2275

In fiscal year 2000, a total of two opticians were licensed. In fiscal year 2001, three; again three in fiscal year 2002, and only four in fiscal year 2003, despite the fact that there was an increase in the number of apprentices during those years. It demonstrates that apprentices don't necessarily become licensed. That's the problem that we are [experiencing], and we suspect others are, too.

REPRESENTATIVE CRAWFORD asked Mr. Rozak what the average wage for a dispensing optician and an apprentice would be.

MR. ROZAK estimated that the average wage of an optician would be in the \$15 to \$20 range and for apprentices would be paid significantly less.

REPRESENTATIVE CRAWFORD expressed amazement at the small numbers of apprentices that actually became licensed. He noted his experience with ironworkers. [Tape ends mid-sentence.]

TAPE 04-36, SIDE B

Number 2401

REPRESENTATIVE CRAWFORD continued discussing the ironworker's apprenticeship and said, "We end up graduating more than half of those at the end of their four years - they'll become journeymen ironworkers."

MR. ROZAK admitted, "There's something terribly wrong when you have 40 apprentices in the year 2000 and only two of them become licensed. I suspect part of the problem is training, but ... also ... the nature of the examinations and the perhaps the scoring of those examinations. I don't know whether the examinations are constructed and are valid."

REPRESENTATIVE CRAWFORD stated, "I feel like there's something else underlying here that we're not seeing."

Number 2305

MR. ROZAK replied:

Someone other than myself said that sometimes regulatory boards are guilty, sort of being like the fox guarding the chicken coup. It certainly would not surprise anybody that a particular occupation or profession that controls a licensing board would want to have lesser numbers of people licensed rather than more, because it, in essence, creates competition for those who've already got the license.

Number 2289

REPRESENTATIVE GUTTENBERG asked if there was a sliding scale of responsibility that corresponded with the number of hours worked in an apprenticeship program.

MR. ROZAK, drawing on his experience, explained that in the first weeks of an apprenticeship, individuals are performing basic tasks such as answering the phone and making appointments. However, those individuals who have completed 75 percent of the apprenticeship and who the licensed optician believes to be capable of performing nearly all the tasks related to dispensing and selling eyeglasses, are restricted from doing such tasks if the licensed optician isn't present.

REPRESENTATIVE GUTTENBERG asked what the National Association of Optometrists and Opticians does to help apprentices pass the examination.

MR. ROZAK replied that that is the individual responsibility of each of the association's members. He stated, "As an association, we do not have an education program, other than for continuing education. We do not have an apprenticeship program, per se."

Number 2218

REPRESENTATIVE DAHLSTROM asked what state Mr. Rozak is from, if that state was one of the 22 states that did require licensure of opticians, what position he holds in his association, and if he finds anything in the bill that is relevant.

MR. ROZAK answered that he believes [the legislation] is relevant. He informed the committee that he is from the State of Ohio, which licenses opticians. He also informed the committee that he serves as the secretary-treasurer of the National Association of Optometrists and Opticians. Mr. Rozak mentioned that in his "prior life" he was the vice president of government relations for Cole National Corporation, which operated the optical departments at [Sears, Roebuck and Co.], Pearle Vision, and Target [Corporation] Optical Stores.

MR. ROZAK, turning to the legislation, opined that replacing the current board-operated apprenticeship program with the United States Department of Labor apprenticeship program is "a good move." Furthermore, the licensure by credentials in Section 4 will hopefully add new dispensing opticians. Also, prohibiting unlicensed persons from selling contact lenses of any type is appropriate because doing so is dangerous. Mr. Rozak highlighted that, irrespective of the number of hours [of apprenticeship], one still has to pass an examination, which he indicated should be the determinant of competency.

Number 2072

MR. ROZAK stated he does not believe there is any empirical evidence to justify increasing the number of training hours from 1,800 [to 4,000 hours] for apprentices. He said that passing the examination "should be the crucible in order to determine competency."

REPRESENTATIVE LYNN asked Mr. Rozak to outline the basic training for an apprentice and how their work is portioned out.

MR. ROZAK clarified that the person who grinds the lenses or makes the contact lenses isn't licensed under this regulatory scheme. Mr. Rozak opined that the most important lesson for an apprentice or licensed optician is the ability to interpret a prescription. However, the fitting is artistic and "in part function".

Number 1918

LARRY HARPER, Member, Board of Dispensing Opticians, Vice-Chairman, American Board of Opticianry (ABO); Board Member, Contact Lens Society of America (CLSA), testified. He noted that he is also past President of the Opticians Association of Alaska; past President of the Opticians Association of America,

and served on the Board of National Contact Lens Examiners (NCLE) for approximately nine years, a board that certifies contact lens fitters throughout the United States. He stated:

My involvement in my profession started in 1973 with the passage of this licensing statute and, while I cannot claim to be the father of this legislation, I was certainly in the delivery room when it got here. I come here to testify today on behalf of [HB] 502 because I think it does a lot of things that will help to clear up the statute, help to put it in agreement with other statutes, namely the optometry statute. It makes clear some of the changes that were made two years ago.

Number 1849

There's enough questions that have been brought up that really should be ... answered. ... The document that I think Mr. Rozak is reading from is not up to date, because in 2002, two years ago, this legislature changed the requirements for optician's apprentices. They also created a new category called an optician's assistant. Now Mr. Rozak's client stores, and every vendor of optical goods and services, has the right to put as many of these optician's assistants into function as sales associates or opticians delegated by authority, and have no restriction on their supervision, whatsoever.

If you read the statute carefully, it says the definition of supervision, as it applies to apprentices. What we are looking at in an apprenticeship is a training supervision situation for someone who wants to become a career optician. Quite frankly, we found several years ago when my friend Jim Rothmeyer and I were both appointed to this board, that the setup that was ongoing as far as the apprenticeship was absolutely horrendous ... The training was absolutely horrible. We started to work within the confines of the board; found that that was not going to be the vehicle that we needed. We went to the [U.S.] Department of Labor who has a whole division and personnel setup to help people in professions and trades in this type of situation.

MR. HARPER compared the previous, "horrible" apprenticeship program with the current one that involves a distance-learning program that's available statewide, with the practitioners assuming the responsibility of supervision while training apprentices. He noted, "Supervision has the same meaning as in AS 08.71.240, and ... it has to do with admitted direction and control as deemed necessary. There is nothing to do with direct, on-premises, supervision.

MR. HARPER replied to the previous question about increasing levels of responsibility, stating that the longer the apprenticeship continues, the more responsibilities the apprentice takes on. He cited government and trade association studies as containing information that supports increasing the hours of training for apprentices. He indicated that 1,800 hours is insufficient time to cover the necessary information in an apprenticeship program, and noted that the Commission of Opticianry (COA) accreditation [lists] government-approved schools that require an associate degree program that is two years in duration.

Number 1650

MR. HARPER testified:

Why take a program that has worked so very well for 31 years, even though it's got some inequities and problems with it, and dismantle it, in order to get what? Quite frankly, the wage difference from someone who knows what they are doing and who is well trained in full scope opticianry, yes, is going to knock down that horrendously high wage of \$15 to \$20 a hour in the state of Alaska.

Take the licensing away and they'll probably be making \$10 an hour or \$12 an hour. If you were a practitioner in the state of Alaska right now, you can fill your whole establishment up with those level knowledge people. There's not a thing stopping you doing that. The legislature lowered the hours; they lowered the requirements for supervision, so that we would not interfere with a person's right to do business in whatever modality they saw fit. This was brought on, basically, by a burning desire on the part of optometry to get licensed opticians - I shouldn't say out of their offices - but not make it a requirement in their offices.

Since then, the requirement has been 1,800 hours; it has been to pass a distance learning program course for spectacles and for contact lenses, and to establish yourself with the examination criteria from the American Board of Opticianry or the National Contact Lense Examiners, if you so desire to become licensed in contact lenses.

From that standpoint, I think we've got the mechanism for producing the types of opticians that I think we want helping our general eye care population.

Number 1548

REPRESENTATIVE DAHLSTROM asked where Mr. Harper lived and if he was familiar with the legislative audit. She referred the committee to page 6, where reference was made to the Board of Dispensing Opticians' deficit of \$22,000, and she asked Mr. Harper how this deficit arose, and what had to happen to eliminate that debt.

MR. HARPER, in response, stated his home is in Anchorage and he was familiar with the legislative audit. He spoke to the deficit:

Right now, ... in fiscal year 04, we have a \$22,000 deficit. This started back in fiscal year 98. When I was first appointed to the board, I was told that we had a revenue problem. I went back and started investigating what caused the revenue problem. I have a lot of evidence - this is not the format to - but I would be more than happy, believe me, more than happy to share it with you.

We have a lot of hours that were attributable to our personnel costs, that really simply, can't be justified. I've got time sheets; I've got comparisons to the optometry board. Quite frankly, oftentimes we want to compare boards of like size. We have 107 licensed dispensing opticians - optometry is about the same number, might be 110, might be 115, but they're real close.

For example in 98, the first year we noticed that there was a huge problem; our personnel costs for running our board were \$17,300. Optometry's that same

year were \$7,300. That's a \$10,000 difference. Optometry holds two meetings a year. We hold one; don't send anybody on travel; we don't eat lobster for lunch when we do meet. We're sitting here saving paperclips and staples and we couldn't figure out what was going on with all these personnel costs.

Number 1485

MR. HARPER continued:

Fiscal year 99, \$20,500 in personnel costs compared to the Board of Optometry, which was \$9,500. So, ... there's an \$11,000 difference. Interestingly enough, we were told that our apprenticeship program used up a lot of hours. So I went back to find out, well, what's the breakdown. I was told that in fiscal year 99, ... the license examiner spent 168.75 hours on apprentices. In fiscal year 2000 she spent 168.75 hours on apprenticeships. Now, the chances of those two figures coming out identical one fiscal year apart, doing very different tasks, to the decimal point, uh, something's funny.

I believe that this deficit ... was construed and created, not by our doing, not by the board's doing. I think the way to handle it at this point, is that what's done is done. We need to pay it off. We need to pay it off through our license renewals, which are now approaching \$600 every two years, which ... on the salaries that we're talking about, is a pretty good chunk of change for a license renewal. We don't want it to go higher.

If 502 is enacted, 95 percent of the division's responsibility for maintaining the statute will go away. What will happen is if, when someone wants to apply for licensure with the state of Alaska, they will send in an application that will have a checklist and it's all been done by the Department of Labor. They've got an issuance of completion of apprenticeship from the Department of Labor. They're going to have their ABO certificate, their NCLE certificate, if they're applying for a contact lense license, they're going to have all the documentation of their hours and everything and the state goes boom, boom, boom. They get a fee for doing that, so even

that is not going to be part of the fiscal note as far as the ongoing maintenance of the board. That fee covers those activities. So our license renewal fee really will be going almost 100 percent paying down this deficit.

Quite frankly, if everything is put in order, then we won't have the expenses that we've had. ... I was talking recently with our current license examiner, which I never cease to miss an opportunity to praise; she's just a model of efficiency. She expects to spend less than 3 percent of her time now on our board, working to maintain that license.

[The gavel was passed to Vice-Chair Gatto]

Number 1245

REPRESENTATIVE DAHLSTROM said to Mr. Harper, "You made a statement of 'lots of evidence of' - and then stopped yourself. Could you fill that in with one word?" She also noted he had used the phrase, "This is not the forum to discuss".

MR. HARPER commented that it seemed as though they were changing license examiners every other year and as soon as they understood their job they were changed.

REPRESENTATIVE DAHLSTROM repeated her question.

MR. HARPER stated, "Padding the timesheet."

REPRESENTATIVE DAHLSTROM asked where Mr. Harper thought the correct forum to deal with this was.

MR. HARPER stated he would be happy to show her the evidence he has. He noted it would take time to go over the evidence and he agreed to present a copy to Representative Dahlstrom.

REPRESENTATIVE DAHLSTROM stated he had insinuated improper actions and asked if he thought there should be an investigation conducted by someone outside the Board of Dispensing Opticians.

MR. HARPER said he could not speak to an investigation. He said:

I just wanted to know why and what we can do to bring that workload down so that we can afford this -

whatever level of service we agree is appropriate - for this board. There were archive projects going on. There were things that we didn't ask for. And the other thing, I know that you folks have a budgeting program. Well, we have our one meeting a year for the state board that's also called our budgeting meeting. That's when we get a bill from the state that says, "This is what you spent last year. Figure out how to pay for it." Our budgeting process involves "now that you've seen what you owe, do you want to send anybody to any meetings? Is there anything special that you need or want?" And the answer is, "No, no, no, we don't want to spend any more money." So we got hit really hard during the lawsuit that was mentioned by Mr. Rozak.

Many state's attorney generals got involved in it with Johnson & Johnson and the American Optometric Association supervision and so on and so forth. ... We paid an incredible amount of money to the Department of Law in 2002 and in 2003 and I can give you the exact figures where it was averaging around \$2,000 a year. Contractual expenses went up to ... \$9,000 and \$9,300 those two years so we got clobbered again, just about the time we were starting to make headway paying down our deficit.

Number 1072

REPRESENTATIVE DAHLSTROM said, "You referred to 'she' several times. Is 'she' no longer with your agency or with your organization, whoever that may be?"

MR. HARPER replied that she is no longer with their organization.

REPRESENTATIVE DAHLSTROM asked, "Is your understanding that 'padding time sheets' is an illegal activity? It's a yes/no."

MR. HARPER replied:

What I would say is that I don't know that it belongs on our board's tab. I don't know where it belongs, but I don't feel that the Board of Dispensing Opticians was where that hour entry should have been made.

REPRESENTATIVE DAHLSTROM repeated her last question.

MR. HARPER replied, "I don't know whether it is or not. I can't render an opinion on that."

VICE CHAIR GATTO recommended that Mr. Harper make an appointment with Representative Dahlstrom to discuss this issue.

[Gavel is returned to Chair Anderson]

Number 1003

REPRESENTATIVE ROKEBERG asked Mr. Harper to explain to the committee why he is recommending changing the hours from 1,800 to as much as 6,000.

MR. HARPER replied that in 2002 it was 6,000 hours and had been since 1973. He felt it was extraordinary when the hours were reduced to 1,800, a number that does not allow, in his opinion, time to construct an adequate apprenticeship program. He spoke about the Department of Labor's [U.S.] national guideline of, 3,000 hours for a basic optician's format. He felt this was weak because it did not address training for contact lenses or additional training in anatomy and physiology. The cumulative opinion of his board is that 6,000 hours is adequate for training in full scope opticianry.

Number 0863

REPRESENTATIVE ROKEBERG requested that Mr. Harper respond to the recommendation of the audit regarding termination of the board. He also asked what the equivalent of licensure by credential would be - what the interpretation of the board is with regards to the equivalent training acceptable from another state.

MR. HARPER replied that it had been the board's continuing policy to issue licensure by credential. They looked at different state's requirements which generally were 6,000 hours, or more. He pointed out that Texas, a voluntary registration state, requires four years of training for a total of 8,000 hours.

REPRESENTATIVE ROKEBERG asked if the increase in hours would be an impediment to licensure for people coming into the state.

MR. HARPER pointed out that it would not be, and added that in Alaska it's not required to have a licensed optician on duty.

The proposed regulations address the supervision of an apprentice in the profession. He noted that the number of apprentices is 199, but he said he believes this to be very inaccurate since it included assistants. He hoped that when the apprentices reregister with the U.S. Department of Labor, the listing would be more accurate.

REPRESENTATIVE ROKEBERG reiterated his question regarding termination of the Board of Dispensing Opticians.

Number 0664

MR. HARPER replied that he thought this statute functioned best with a board since it created a higher responsibility for board members to manage the licensing issues. He predicted that this bill would result in many regulatory changes as a result of termination of the board.

CHAIR ANDERSON announced that HB 502 would be held over in the House Labor and Commerce Standing Committee.

HB 311-EMPLOYER RESPONSIBILITY FOR WORKERS' COMP

CHAIR ANDERSON announced that the final order of business would be HOUSE BILL NO. 311, "An Act requiring a subcontractor to obtain workers' compensation insurance covering the subcontractor and the subcontractor's employees and establishing responsibility of a contractor for obtaining workers' compensation coverage for the subcontractor and the subcontractor's employees if the subcontractor fails to obtain workers' compensation coverage; and providing for an effective date."

Number 0560

REPRESENTATIVE CRAWFORD introduced HB 311 on behalf of the Labor and Commerce Committee and testified that HB 311 ends the exemptions for sole proprietors or owner/operators, requiring them to have workers' compensation insurance. In the past liability had been shifted to the general contractor with the workers' compensation carrier billing the general contractor for the unpaid premiums.

REPRESENTATIVE Holm summarized, "What this bill does is it makes sure that all sole proprietors and independent contractors not only have workers' compensation for themselves, but for their employees. Nobody gets out of that requirement."

CHAIR ANDERSON gave an example of a contractor hiring a subcontractor who was not covered by workers' compensation, and though the subcontractor was not injured, an audit by [the Division of] Workers' Compensation resulted in the Division charging a fee to the general contractor to cover the subcontractor. He said, "So, basically, this is making sure that the contractor doesn't have to pay that, if the subcontractor purposefully didn't have workers' compensation."

REPRESENTATIVE CRAWFORD replied, "If I understand this correctly, it makes the general contractor pay attention to whether their subcontractors are covered, so that everybody pays their workers' compensation bill. It doesn't allow anybody to escape A lot of people have been working and haven't been paying their workers' compensation premiums. We all see the problems with workers' compensation. The costs are going up."

CHAIR ANDERSON noted that there was a Chamber of Commerce representative and Home Builders Association representative in the audience. He said he believes this proposed bill could allow the contractor to say, "Hey, ... you're not coming on and I'm not going to hire you until you get workers' compensation so I don't get dinged at the end of the year when there's an audit." He stated, "So, that's a good thing - it's helping both sides."

Number 0252

REPRESENTATIVE CRAWFORD put forward a specific example:

A number of years ago we build this big cow barn out at the Palmer Fairgrounds. It was a company that got the contract to do that called Century Construction (ph). ... They hired a subcontractor that I worked for to erect the steel. They also had a bunch of people - they called them subcontractors, independent subcontractors - to do a lot of the welding and miscellaneous steel. ... All these guys were employees. The Labor Department would have ruled them an employee, the courts would have ruled them an employee, because they showed up in the morning at the time the general contractor said. They did their work under the supervision of a foreman for the general contractor.

They [Century Construction] were trying to save on the costs by not carrying worker's compensation on these so-called subcontractors. Each and every employee they had out there weren't employees of Century Construction; they were sole proprietors. One of those guys did get hurt and it was a bad injury that cost a lot of money, and it ended up that Century Construction folded up and left the state.

I don't want to see that sort of thing happen here again, where Alaskan workers are being taken advantage of by fly-by-night contractors that are trying to skirt the system so that they can undercut legitimate contractors that live and work here year in and year out.

Number 0048

ROBIN WARD, Contractor and Legislative Chair for the Alaska State Home Builders Association, testified that about five years ago she belonged to a task force composed of stakeholders from all over the insurance and construction industries. This taskforce tried to solve the problem of workers' compensation for sole proprietors. She stated she will not hire a sole proprietor on her job sites because of the exposure. She stated she hires sole proprietors as employees to make sure they are covered under her policy. She noted that she recently discovered two electricians on one of her job sites who did not have workers' compensation because they'd chosen to "opt out" under the licensing law.

TAPE 04-37, SIDE A

Number 0001

MS. WARD testified:

There is an insurance policy that is available for a sole proprietor to [for] special insurance, that no matter how much they make, they're cap and their insurance premium is capped at \$20,000 per year. So, it is available, [it is] not inexpensive, but it certainly is something that they can roll into their costs. It would create a level playing field for all of the sole proprietors and the prime contractors, along with protecting people who are actually working on the jobsite. The Alaska State Home Builders Association does support this legislation.

CHAIR ANDERSON requested clarification on the insurance policy available to sole proprietors.

MS. WARD said, "It is a special premium for [a] sole proprietor that is a capped premium. It's the same premium. It is capped at \$20,000 of the income based on your classification. So, it's the same to everyone. You can decide how much money you want to make, but it would be a set premium, a cost of doing business every year."

Number 0144

REPRESENTATIVE CRAWFORD commented:

You know, \$20,000 makes a lot of people gasp. To give you an idea of what it costs for an ironworker to erect iron, what the workers' compensation cost is there, it will run from \$80 per \$100 of payroll up to maybe \$118 for every \$100 of payroll. So, \$20,000 would be really, really cheap insurance for the ironworking industry.

CHAIR ANDERSON asked if it was mandated that the sole proprietor get this insurance or could the sole proprietor negotiate with the contractor for coverage.

REPRESENTATIVE CRAWFORD replied that he could negotiate with the contractor.

MS. WARD clarified:

No, it's \$20,000 in income. That's not the cost of the premium. ... Your premium is based on what your classification is; it's capped on the income of \$20,000. Even if you made \$80,000 that year in gross income, your premium would only be based on a \$20,000 income. It [the premium] could be anywhere from a couple hundred dollars a month - normally most of them run in most classifications like tile layers or flooring, carpentry, that sort of thing, are probably going to run between \$300 and \$3500 per year.

REPRESENTATIVE ROKEBERG asked Ms. Ward to refresh the committee's memory as to why this bill didn't pass previously.

MS. WARD believed the failure to pass was primarily due to legislative time constraints but also recalled one Senator who had concerns because he had a constituent who was a sole proprietor. She stated, "The task force went through every option we could think of. This is the only option that really takes care of this issue."

REPRESENTATIVE ROKEBERG asked if the possibilities for some kind of waiver or "opt out" provision, possibly a statutory "opt out" for a sole proprietor where they could choose the "opt out" and not be subject to a claim against the general contractor, if these possibilities had been exhausted.

MS. WARD replied:

It still would be subject to a claim against the general [contractor]. We worked with the Division of Workers' Compensation; we looked at the laws very carefully. ... The workers' compensation law really sways to the benefit of an employee and even with every type of legislative "opt out" waiver, we could not find a way that it would address this issue by just making sure they had some kind of a policy.

CHAIR ANDERSON noted he had asked the Chamber of Commerce representative and the AFL-CIO [American Federation of Labor and Congress of Industrial Organizations] representatives if they wanted to testify and both declined at this time to do so.

REPRESENTATIVE ROKEBERG asked Mr. Lisankie what he thought the proper public policy should be. He asked, "Should we not allow actual small business operators to not be covered and then not have the right to seek a claim under a general's [general contractor's] policy, if there's a contractual agreement to that affect? Would that be against what we think the public policy should be for workers' compensation?"

Number 0538

PAUL LISANKIE, Director, Division of Workers' Compensation, Department of Labor & Workforce Development, responded:

It appears that there are kind of competing policy elements in the workers' compensation Act [Workmen's Compensation Acts] right now. It would appear to me that you could address it either way. If it's a problem, and people are saying that it's a problem, it

starts by letting people "opt out". This [HB 311] addresses it in the way of saying ... no, they cannot "opt out" while they're engaged as a subcontractor. My assumption, just listening to the conversation, is as long as that sole proprietor is just working on a project for a homeowner, or something like that, where there is no general/subcontractor relationship; they could continue to "opt out".

REPRESENTATIVE ROKEBERG said, "It's kind of hard to turn on and off a premium they have to pay periodically if you're going to have coverage. Or, can you buy job specific policies?"

MR.LISANKIE replied he did not know the answer to that question but he would inquire at the Division of Insurance.

REPRESENTATIVE ROKEBERG stated he understood and approved of the concept of the bill, but he wondered if he, as a sole proprietor for 30 years who had never had this type of insurance, could "opt out" without affecting the bill's intent. He continued:

If you were a subcontractor in a home building situation and you weren't covered by a policy now, you currently, under the statute, could make a claim against the general's policy, if there's injury. ... The subs would go bare and they'd make claims against the general. It would seem to me if they had a clear contractual obligation for the sub to "opt out", and he couldn't make a claim under the statute.

Number 0775

REPRESENTATIVE GUTTENBERG stated a concern:

If a subcontractor could be covered under the contractor's clause, that's one thing. But the contractor not being responsible for the subcontractor's workers' behaviors, you might have a high-risk claim pool and you might not want to do that. The general contractor, whose employees are responsible to him, might have a very good workers' compensation history and not want to be affiliated with a subcontractor who has a really bad history of accidents.

REPRESENTATIVE ROKEBERG asked if the general contractor could not hire a subcontractor and require him by contract to have a policy.

MR. LISANKIE replied:

If I understood Ms. Ward's testimony, her personal preference is to do just that. But, if I understand correctly the history of this, that there's the mere possibility that someone could choose to make a claim against the general that is motivating the insurance industry ... to audit and pass that cost along to the general contractor, just on the theory that they might do it. ... The objective is to just take the guesswork out of the system, strip the sole proprietor of the opportunity to "opt out", at least when they're being a subcontractor ...

My understanding is that there would be additional people who are covered, so, from our perspective, it would be one less person to worry about.

REPRESENTATIVE ROKEBERG stated his concern about the definition of a subcontractor and noted that there is a licensure provision for specialty contractors who typically are subcontractors. He asked Ms. Ward if she could clearly define a subcontractor, in particular a subcontractor with a license.

Number 1161

MS. WARD replied, "Yes, that's exactly it. We don't hire anyone who isn't a specialty contractor and on their license they have "opted out" of workers' compensation." ...

CHAIR ANDERSON noted that there's another House bill delineating some aspects of specialty contract services.

REPRESENTATIVE ROKEBERG wondered if HB 311 had general applicability outside of the building trades.

MS. WARD replied that this issue is most prevalent in residential home construction.

CHAIR ANDERSON asked Ms. Ward if she thought there was a need for an amendment.

MS. WARD replied, "Absolutely, we'll certainly look at that."

REPRESENTATIVE CRAWFORD stated that when there's a subcontractor in the building trades or for a trucking company, this bill would change the relationship to the general contractor. But that when someone is acting as a sole proprietor, such as Representative Rokeberg had mentioned, they would not be required to get worker's compensation insurance. He continued:

I think that as long as you leave an "opt out" provision, then we haven't fixed the problem. That's what this bill is about. The very guts of the bill is to do away with an "opt out" provision for independent subcontractors and sole proprietors...

CHAIR ANDERSON stated he relies on that judgment and asked Ms. Ward if she could rely on this interpretation.

MS. WARD testified:

Yes, because it's our understanding and [has] always been our understanding, that this only pertains to a licensed specialty contractor who works for a general contractor. If a sole proprietor wants to work for homeowners or has negotiated with a prime contractor to pay this for them, they are allowed to do this. This is only to protect the situation where a licensed specialty contractor works for a general licensed contractor.

Number 1196

REPRESENTATIVE ROKEBERG noted that they could make a conceptual amendment to require that the subcontractor additionally be a specialty contractor, however, he said this would narrow the applicability of the statute.

MS. WARD responded:

I'm not in favor of narrowing the scope that it says absolutely that it is a licensed specialty contractor because I think, and one of the problems that we're having right now, is more and more of our specialty contractors aren't getting licensed and they are working unlicensed. We're trying to encourage people to be licensed and have their bond and their workers' compensation.

Number 1250

REPRESENTATIVE LYNN moved to report HB 311 out of committee with individual recommendations and the accompanying fiscal notes. Hearing no objections, HB 311 was reported from 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 5:20 p.m.