

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

February 19, 2004

1:35 p.m.

TAPE(S) 04-12, 13

MEMBERS PRESENT

Senator Con Bunde, Chair
Senator Ralph Seekins, Vice Chair
Senator Gary Stevens
Senator Hollis French

MEMBERS ABSENT

Senator Bettye Davis

COMMITTEE CALENDAR

SENATE BILL NO. 311

"An Act providing for a special deposit for workers' compensation insurers; relating to the board of governors of the Alaska Insurance Guaranty Association relating to covered workers' compensation claims paid by the Alaska Insurance Guaranty Association; stating the intent of the legislature, and setting out limitations, concerning the interpretation, construction, and implementation of workers' compensation laws; relating to restructuring the Alaska workers' compensation system; eliminating the Alaska Workers' Compensation Board; establishing a division of workers' compensation within the Department of Labor and Workforce Development and assigning certain Alaska Workers' Compensation Board functions to the division and the Department of Labor and Workforce Development; establishing a Workers' Compensation Appeals Commission; assigning certain functions of the Alaska Workers' Compensation Board to the Workers' Compensation Appeals Commission; relating to agreements that discharge workers' compensation liability; providing for hearing officers in workers' compensation proceedings; relating to workers' compensation awards; relating to an employer's failure to insure and keep insured or provide security; providing for appeals from compensation orders; relating to workers' compensation proceedings; providing for supreme court jurisdiction of appeals from the Workers' Compensation Appeals Commission; providing for a maximum amount for the cost-of-living adjustment for workers' compensation benefits; providing for administrative penalties for employers uninsured or without adequate security for workers'

compensation; relating to assigned risk pools and insurers; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 278

"An Act relating to fees for the inspection of recreational devices, for certificates of fitness for electrical wiring and plumbing, for filing voluntary flexible work hour plans, and for licenses for boiler operators; and providing for an effective date."

MOVED CSSB 278(L&C) OUT OF COMMITTEE

SENATE BILL NO. 263

"An Act extending the termination date of the Alaska Commission on Aging and making technical revisions to citations related to the commission."

MOVED SB 263 OUT OF COMMITTEE

SENATE BILL NO. 306

"An Act relating to the practice of naturopathic medicine; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 311

SHORT TITLE: INSURANCE & WORKERS' COMPENSATION SYSTEM

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/09/04	(S)	READ THE FIRST TIME - REFERRALS
02/09/04	(S)	L&C, FIN
02/10/04	(S)	L&C AT 1:30 PM BELTZ 211
02/10/04	(S)	Heard & Held
02/10/04	(S)	MINUTE(L&C)
02/19/04	(S)	L&C AT 1:30 PM BELTZ 211

BILL: SB 278

SHORT TITLE: LABOR & WORKFORCE DEVELOPMENT FEES

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/23/04	(S)	READ THE FIRST TIME - REFERRALS
01/23/04	(S)	L&C, FIN
02/12/04	(S)	L&C AT 1:30 PM BELTZ 211

02/12/04 (S) Heard & Held
02/12/04 (S) MINUTE(L&C)
02/19/04 (S) L&C AT 1:30 PM BELTZ 211

BILL: SB 263

SHORT TITLE: EXTEND ALASKA COMMISSION ON AGING

SPONSOR(s): SENATOR(s) DAVIS

01/14/04 (S) READ THE FIRST TIME - REFERRALS
01/14/04 (S) L&C, FIN
02/19/04 (S) L&C AT 1:30 PM BELTZ 211

BILL: SB 306

SHORT TITLE: NATUROPATHIC MEDICINE

SPONSOR(s): SENATOR(s) SEEKINS

02/06/04 (S) READ THE FIRST TIME - REFERRALS
02/06/04 (S) L&C, FIN
02/19/04 (S) L&C AT 1:30 PM BELTZ 211

WITNESS REGISTER

Ms. Linda Hall, Director
Division of Insurance
Department of Community and Economic Development (DCED)
PO Box 110800
Juneau, AK 99811-0800
POSITION STATEMENT: Supports SB 311.

Mr. Chuck Lundeen, Chief Counsel
Liberty Northwest Insurance Corp.
Portland, Oregon
POSITION STATEMENT: Supports SB 311.

Ms. Kristin Knudsen, Assistant Attorney General
Department of Law
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Commented on SB 311.

Mr. John Giuchici
IBEW Local 1547
Fairbanks AK
POSITION STATEMENT: Opposes SB 311.

Ms. Sylvia Carlson
Anchorage AK

POSITION STATEMENT: Commented on SB 311.

Ms. Trena Heikes
Anchorage AK

POSITION STATEMENT: Supports SB 311.

Mr. Doug Wooliver
Administrative Attorney
Alaska Court System
Juneau AK

POSITION STATEMENT: Commented on SB 311.

Mr. Don Etheridge
American Federation of Labor - Congress of Industrial
Organizations
710 West 9th Street
Juneau, Alaska 99801

POSITION STATEMENT: Commented on SB 311.

Mr. Grey Mitchell, Director
Division of Labor Standards and Safety
Department of Labor & Workforce
Development
PO Box 21149
Juneau, AK 99802-1149

POSITION STATEMENT: Commented on SB 278.

Mr. Richard Benavides
Staff to Senator Bettye Davis
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Commented on SB 263 for the sponsor.

Mr. Steven Ashland, Director
Division of Senior and Disability Services
Department of Health &
Social Services
PO Box 110601
Juneau, AK 99801-0601

POSITION STATEMENT: Supports SB 263.

Ms. Marie Darlin
AARP
Juneau AK

POSITION STATEMENT: Supports SB 263.

Ms. Pat Davidson, Auditor

Division of Legislative Audit
Legislative Affairs Agency
PO Box 113300
Juneau AK 99811-3300
POSITION STATEMENT: Commented on SB 263.

Ms. Nancy Burke, Program Officer
Alaska Mental Health Trust Authority
Department of Revenue
PO Box 110400
Juneau, AK 99811-0400
POSITION STATEMENT: Supports SB 263.

Mr. Brian Hove
Staff to Senator Seekins
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Commented on SB 306 for the sponsor.

Dr. Scott Luper
Fairbanks AK
POSITION STATEMENT: Supports SB 306.

Dr. Clyde Jensen
No address provided
POSITION STATEMENT: Supports SB 306.

Dr. Dan Young
Eagle River AK
POSITION STATEMENT: Supports SB 306.

ACTION NARRATIVE

TAPE 04-12, SIDE A

^#SB311

SB 311-INSURANCE & WORKERS' COMPENSATION SYSTEM

CHAIR CON BUNDE called the Senate Labor and Commerce Standing Committee meeting to order at 1:35 p.m. Present were Senators Gary Stevens, Ralph Seekins, Hollis French and Chair Con Bunde. Senator Bettye Davis was excused. The first order of business to come before the committee was SB 311.

MS. LINDA HALL, Director, Division of Insurance, Department of Community & Economic Development (DCED), opened her comments by reiterating that the purpose of the bill is to create a stable environment that is sustainable and will allow affordable,

available workers' compensation insurance for employers. In a previous meeting, she was asked how Oregon workers' compensation reforms would work in Alaska and she had discussed this with the director of the Division of Workers Compensation, Mr. Paul Lisankie.

In the 15 years from 1986 until 2002, Oregon went from the sixth highest premium in the country to 35th. Just by reference, in 2000, Alaska was the 28th, I could say highest or lowest, whichever the case may be. In 2002, we have gone up to 14th highest premium and I would guess with our 2004 rate increases, we're probably higher than that.

Oregon did some reforms that I think would have potential to look at the cost of claims in Alaska. Some of those dealt with requiring safety and loss prevention programs. That would certainly contribute to a decrease in the number of claims. There are requirements that employers with 11 or more employees have a safety and health committee. Oregon statute allows the use of managed care organizations. They have expanded their administrative dispute resolution process; they've created an ombudsman for small business; they've also defined the definition of 'compensability.' In Oregon, the injury must be the major contributing cause for the treatment to be a covered compensable claim.

They've created some incentive programs for employers to hire injured workers and to get injured workers back more quickly. They have requirements that insurance carriers provide loss-prevention plans to employers and that even small employers, if they're in the top percent of lost workday rates, are required to have a safety committee. So, the emphasis is on prevention and cost containment. They have also looked at managed care; they've looked at mandated bill reviews and case management provisions. I think each of these provisions should be explored for Alaska. I don't know that in the remaining months of this legislative session there's actually time to do that, but I think there's potential to look at other options that may affect how we handle claims and what claims cost in Alaska.

With that, I would like to go back to SB 311, which is what we're hearing today. Kristin Knudsen from the Attorney General's Office has prepared remarks on the workers' comp section of the bill.

CHAIR BUNDE said his layman's reading of the Oregon report made it obvious that Alaska would want any claims to be based on an injury that was principally caused by the work.

MR. CHUCK LUNDEEN, Chief Counsel, Liberty Northwest Insurance Corporation, said his company is an independent operating subsidiary of Liberty Mutual Insurance and has operated in the Northwest for the past 20 years. It is a multi-line insurer with workers' compensation insurance as the primary line and does over \$400 million of premium in Montana, Idaho, Oregon and now Alaska, which totals about \$23 million total. Liberty Northwest currently processes over 20 percent of Alaska's assigned risk pool claims and wants to "become a larger player in the Alaska market...."

MR. LUNDEEN supported SB 311. He noted that the director's role takes over some of the board's duties and other duties are shifted to the new Workers' Compensation Appeals Commission. The proposed changes will produce a faster, more cost-efficient means to resolve disputed claims. He recalled that the workers' compensation system, unlike the tort system, is supposed to be no-fault. Before Oregon reformed its system, there was a lot of litigation, which takes a long time to work through the system. The same thing is happening in Alaska. SB 311 shortens the time by eliminating the appeal process to the Alaska Superior Court where cases now could go to one of 30 sitting Superior Court judges for a complete de novo [a brand new look] review. It also mandates an experienced professional group of hearing officers who will have to be Alaska Bar members with significant workers' compensation experience. Both changes will produce better quality decisions. Additionally, he noted, these officials, as Bar members, would be subject to the ethical rules of professional attorney conduct.

MR. LUNDEEN said this bill contains very clear legislative intent language that all participants in the dispute resolution system should receive impartial, fair treatment. Another feature of the bill states that the decisions of the Workers' Compensation Appeal Commission will have precedential value whereas decisions currently don't and may or may not be published. This will help system participants to know ahead of time which way the commission has ruled on benefit and

compensability issues. Plans can be made accordingly, settlements will occur with more frequency and maybe some cases would not go as far down the road. Appeals to the Supreme Court would be allowed for rules, errors of law or for lack of substantial evidence. He felt that greater predictability makes a healthier insurance environment.

SENATOR GARY STEVENS asked if cost-containment and prevention programs need legislation to be enacted.

MS. HALL responded that some statutory changes are needed. However, insurance companies provide loss control programs and help with inspections.

CHAIR BUNDE recognized the \$380,000 fiscal note remarking that the commissioners would be substantially compensated and asked her to comment on that.

MS. HALL said Ms. Knudsen would address that question in her presentation.

MS. KRISTIN KNUDSEN, Assistant Attorney General, said she had been an assistant attorney general for 15 years and had approximately 20 years of experience with workers' compensation in the State of Alaska in addition to years of workers' compensation experience elsewhere. She has worked for a labor law firm, on the Alaska board as a hearing officer and on an appeals board in Oregon. She has also been a hearing officer with a union law firm. Since February 1989, she has been working almost exclusively on workers' compensation issues in the Attorney General's office.

She provided the committee with a flow chart that illustrated how SB 311 changes the system in a very fundamental way. Currently, it is called the unified board system, which she likened to an old-fashioned public utility in that the board does everything, has no executive director or separation of functions. All actions having to do with investigation, enforcement, hearings and decisions are done by that board.

MS. KNUDSEN said the board originally had three people who could take care of everything, but after the pipeline arrived, it became completely overwhelmed and decided to develop panels so that the whole board did not have to sit at each hearing. A hearing officer from within the Division of Workers' Compensation would sit with each panel. As it became difficult to get all the panel members together, the board decided to go

to a quorum system and the Workers' Compensation Board was then changed to six labor members, six management members and the hearing officers. A quorum of at least two people and no more than three was needed to have a hearing. If a worker appeared in front of a panel without a labor member on it, he had no right to ask for one. The same thing went for an employer who had a quorum without a management member.

What you do have a right to, though, and this has also created some logistical problems, is that you do have a right to, in any subsequent hearings on that same case - there will still be a quorum and the original panel - they will try and get the same people on your case all the way up.

In the current system, what you've got is the board, whether it's through a panel of the board or the board itself, doing everything. There's no division director in the statute. The board is the one that investigates; the board is the one that charges uninsured employers and files notices of accusations. The board is the one that decides whether or not the person has been uninsured and then assesses the penalty.

What we are proposing... is a system that is more like the systems that you get in the rest of the United States. I would say having done, now, a state-by-state analysis of all the processes throughout the rest of the United States, we are unique. This system moves us to a system more like the United States. You have a hearing division, if you will, you have a completely separate function of adjudication and you have a very strong executive that goes out there, investigates and enforces the law and you have a separate adjudication. What this is really like is essentially... the people who create the law and determine whether or not there is probable cause to pull you over and who will pull you over, shouldn't be the same people who are deciding whether or not you violated the law. It's as basic a concept as that.

So, what we've done here in this bill is we've created this commission. Now, for administration purposes, it still resides in the Department of Labor, but the commissioner of [the Department of] Labor is not a member of the commission. It's kind of just there for

budgetary purposes and everything, whereas the commissioner of [the Department of] Labor now has a director of Workers' Compensation, who is going to be accountable for the performance parts of the enforcement parts and the administration parts of the law. It's essentially kind of separating, if you will, the policeman from the judge. That, we think, will result in a stronger and much more agile enforcement of the law, as well as an essential element of fairness in the application and development and interpretation of the law.

Now, when I say an agile enforcement, what I'm talking about here what this bill does is, it does create a very strong director. They're going to have powers to act more quickly; they're going to be able to - there are new civil penalties to encourage them to be able to go out and get stop work orders on uninsured employers and not just get stop work orders, but be able to assess them a civil penalty, if they are uninsured. They are going to be able to look much more closely and quickly at things like self insurance certificates or other aspects of the law where it's an enforcement type of an issue.... We'll have a more accountable kind of a way of counting just exactly what is going on in this division, what is happening, what kind of product are you producing in terms of the people's business and the enforcement of these laws.

We've also sped up some of that enforcement. For example, on a penalty, the director can declare a default after seven days. If they haven't paid that penalty within seven days, they can declare a default and go to the Superior Court for enforcement through writ of execution.

MS. KNUDSEN explained that the administration wanted an accountable director and more vigorous enforcement of the law, but it was also looking for cohesion in development of the interpretation of it. Currently, each panel considers an individual case and those decisions are not binding on other panels. Instead, parties have to wait for someone to take the issue up to the Supreme Court. The board doesn't do it, and that means the action falls on the employees and employers who have enough interest vested in an issue to get it to the Supreme Court and for the Supreme Court to recognize exactly what the

issue is in terms of the workers' compensation system as a whole.

The commission would take appeals from the hearing officer decisions and those appeals would interpret the law and those decisions would be binding in subsequent adjudications. Instead of waiting three or four years for an answer to a question, a person would get an answer within a half year, a significant advantage to this system. Most states have some form of appeals commission and this concept with the power to give binding guidance to the hearing officers below is not particularly novel.

SENATOR RALPH SEEKINS asked if she meant that getting through the Supreme Court would take six months or just getting through the adjudication.

MS. KNUDSEN replied that she meant the commission would have an answer in approximately six months. Currently, Superior Court decisions are not binding on anybody other than the parties in that case. SB 311 provides a mechanism for a system-wide interpretation of the law to occur on a quicker basis than is currently the standard.

One of the other issues is that we wanted also to make sure that people understood that there was access into this system. One of the common complaints that's often heard is that people don't have access to appeals all the way up. In other words, the board makes an astonishing effort, they bend over backwards to provide access to unrepresented employees during the course of the initial hearing at the board level. Going up on appeal, however, is another issue. And, it's an issue not just for the unrepresented worker, it also represents a significant cost to employers and the cost of appeal is something they have to consider. In a particular case, the money involved may not be worth the cost of appeal, although the principle may. This is not necessarily a decision that is easily made, to go all the way to the Supreme Court on a particular principle.

What this does is give a less expensive alternative to go to get a system-wide interpretation and make specific provision for unrepresented employees. The director may file an appeal on behalf of an unrepresented employee where there's a unsettled issue

of law.... So this gives something that increases access to the commission level. In addition, the director has powers to intervene at the commission level in cases that are very important, for example, to the administration of the system, where there may be severe impacts on how things are done, say, within reporting requirements or numbers of filings or service issues or things like that that may have some importance to the director directly.

So, in one way what this bill does, is it tries to give a voice in adjudication to people who don't have a voice now - in this appeal process.

Now, the bill does represent something that is very important, because workers' compensation is really an incredible industry in this state. When you think about it, it was responsible for \$210 million of transfers of payments to or on behalf of Alaskans last year. Of that, the state, and by the state I mean the state just for its executive employees, pays \$1.2 million to \$1.5 million a month in workers' compensation. That's a lot of money and the cost of workers' compensation just isn't in the benefits. In other words, for the state, it's the people of the state, it's in the cost of other programs that can't be delivered because there's money going to workers' compensation. But, it's really also the cost of the premiums - you have to add that in, too. It's a very large industry. There's lots of money that moves through this industry and as a result, the administration views this as having something that really needs to come into a more stable kind of an environment and a more stable and accountable kind of system than what we have now.

Because the bill does give the director the power to raise these administrative questions, then you have also got some consideration being given to, if you will, the systemic balance in costs that will be looked at, which now really doesn't occur. There's very rarely at this stage, in this current system... occasion when the board, itself, even though it's technically a named party on appeal... participates in the appeals. The idea was here to give more opportunity for that to happen sooner.

What the administration is trying to do here is bring the State of Alaska into the same process format as the rest of the United States, and because there will be a familiar forum for the resolution of disputes and a more rapid resolution of unsettled areas of the law, that there will be developed more certainty in the system and it will be the kind of environment that insurance companies are used to working in. This will increase the global participation in the market, we hope; but at the same time, not really impacting, we hope, benefits that are delivered to Alaskan injured workers.

The administration did not want to look at having to address some of the kinds of reforms that have occurred in other states, for example, California, which notably just capped medical benefits at 125% of Medicaid. Other states have also capped benefits or indexed them in that way. We first want to give this system a chance to right itself and develop some kind of cohesion without having to go to the idea of having to look at any kind of benefits reduction to Alaskan workers.

CHAIR BUNDE said the hearing officers would be substantially compensated and asked if it was on par with the expertise expected of them.

MS. KNUDSEN replied yes. She explained that there are two levels, hearing officers and commission officers.

Hearing officers in this system are being asked to have a higher level of expertise than is currently the class specification. The range 24 class of hearing examiners of that ilk that we have now is what we're trying to push these hearing officers into. We're also looking at having a statutory level of expertise of being admitted to the Alaska Bar and those kinds of things. The commissioners - we're asking even more of. We're asking for even a higher level of expertise....

SENATOR SEEKINS said it looks like some hearing officers are being reclassified as administrative law judges and asked if they would be separate from the pool of hearing officers.

MS. KUNDSSEN replied that they are separate in the current bill, but in earlier versions, provisions were made for a "flip over,"

which means the hearing officers would go into the pool. It was decided that the legal provisions for the flip over were so complex that the anticipation was that the officers would be on the same level as the pool.

SENATOR HOLLIS FRENCH said he understood that the thrust of the bill is to reduce the cost of dispute resolution, but not to reduce benefits.

MS. KNUDSEN replied that it seeks to reduce the overall time-span of litigation and, hopefully, reduce the number of cases by having more settled questions to work from.

SENATOR FRENCH followed up asking what it costs now to conduct the panel system up to the Supreme Court and what percentage of a workers' compensation premium that represents.

MS. KNUDSEN replied that she could get him information on the cost of appeals to the State of Alaska, but she didn't have experience with the insurance premiums.

SENATOR FRENCH said he just wanted to know how much money was at stake. He asked who would the hearing officers in SB 311 report to.

MS. KNUDSEN replied the chief commissioner would act as the executive of the staff.

SENATOR FRENCH asked if the pool is the same thing as the appeals commission.

MS. KNUDSEN replied yes.

SENATOR FRENCH asked how the commissioners would be selected.

MS. KUNDSSEN replied the commissioners are appointed by the governor and confirmed by a majority of the Legislature in joint session. That is also the way the present board members are selected.

SENATOR FRENCH mused:

It seems we are reinventing the wheel. It seems as if one of the benefits of this appeals commission is that it is going to have binding precedent on the parties below through the power of their opinions that they release. But that does happen now in the Supreme

Court. It's not as if the panels can ignore controlling Supreme Court precedent before them.... They have a fairly big body of law that governs where they are going. Maybe you can help me understand why this is such a good idea by telling me what sorts of areas of law it is that are the most unsettled and that you think the panel members now need guidance on.

MS. KNUDSEN replied:

The Supreme Court cases do take a long time to get an announcement and while that's happening, issues have come up that need to be resolved... for example of something off the bat, interpretation of what constitutes personal attendance. It's an issue that there are differing opinions on and it hasn't been announced by the Supreme Court - an interpretation, for example, of what constitutes good faith in the context of a mental stress claim. As you may or may not be aware, one of the 1988 amendments provided that mental stress that is the result of discipline or evaluations or promotions, demotions, transfers or other employer action taken in good faith are not covered under the act. So, the issue of good faith in that context is something that hasn't been addressed at the Supreme Court level. There are other kinds of issues along that line. The Workers' Compensation Act is enormous and it has enormous impact as I just told you. There's hundreds of millions of dollars in it every year. It does have enormous impacts. This process, we hope, would compress the time for obtaining some of the answers to these kinds of questions. I will tell you also, frankly, Senator French, it may not be economical for some of these small unanswered questions to go all the way to the Supreme Court from either parties' point of view. Hopefully, they would be much more economical for obtaining commission guidance.

MR. JOHN GIUCHICI, IBEW Local 1547, said he also represented himself as a current Workers' Compensation Board member. He thought Ms. Knudsen had a lot of good ideas. [END OF SIDE A]

TAPE 04-12, SIDE B

MR. GUICHICI explained that in 1988 and again in 2000, Workers' Compensation ad hoc committees, composed of 50 percent

management and 50 percent labor, reviewed these bills beforehand and came up with unanimous joint support, but that didn't happen this time. However, the ad hoc committee has now been resurrected and it is going to meet on Monday in Anchorage to go over this legislation point by point.

MR. GUICHICI thought the board should be preserved because it structurally guarantees that labor and management participate in the process.

Having board members from the workplace participating in the decision-making process provides a reality check for the whole system. We should not remove from the decision-making process the only people who are enmeshed in the workplace. The board does have a 45-year track record and it has worked very well.

A politically appointed appeals commission tribunal may not provide the balance or fairness or consistency, which a lot of people are advocating right now. Even if one administration appoints a very highly qualified appeals commission tribunal, without regard to partisan politics or financial influence, there's no guarantee that the next administration would do the same. Predictably, the commission rulings would change like a weathervane with every administration. Present board members do provide institutional balance. They are guaranteed to have different institutional perspectives coming from both labor and management. A unified review of all cases consistent rule of law is provided by the Alaska Supreme Court, which is very stable and fairly well protected from the winds of political change.

Another point that I'd like to make is that the hearing officers should not be removed from classified service. If the hearing officers are made exempt or partially exempt, they will have reason to fear for their livelihood, promotions, etc., if they rule against a powerful or politically connected party. At present, people who actually hear the evidence and observe the witnesses decide what the facts in the case are, if the courts greatly defer to the board's evaluation of the evidence. This provides a guarantee of some degree of fairness if parties really have been heard and the people who heard the evidence actually decide the case. In the proposed legislation, cases

would be heard and decided by a single hearing officer and it allows review of the decisions by an appeals commission tribunal. This means that the tribunal does not have to give any weight to the fact-finding of the person who actually heard the case. I believe this undercuts the fairness of the process. [Indisc.] with the exception that anyone who has political connections with the appointed appeals commission tribunal may be able to get a decision overturned by a phone call. [Indisc.] undercuts the actual fairness and accurateness of the process by allowing people who did not hear or see the witnesses to substitute their judgment for the judgment of the person who actually did hear it and see it.

MR. GIUCHICI said this would also be a very expensive change and thought that it wouldn't be fair to the injured worker or the citizens of Alaska.

MS. SYLVIA CARLSON, Anchorage resident, said she is currently a claimant in the Amchitka case that has been before the Workers' Compensation Board for many years. These cases began when workers were knowingly exposed to ionizing radiation during the U.S. Atomic Energy Commission's detonations of nuclear devices over 30 years ago. Her husband was 32 years old when he was exposed and died when he was 40. Four years ago, Congress enacted a provision that compensated workers of nuclear weapons production sites throughout the country. The Department of Energy (DOE) is required to assist eligible applicants in filing state workers' compensation claims. Qualified applicants may have their medical records and supporting documentation reviewed by a panel of three independent physicians. The panel applies a federally adopted standard and issues a determination on whether or not the illness or death was caused by exposure at the workplace. It also assists applicants by instructing contractors not to contest the state workers' compensation claims that arise from a favorable physician panel determination and may also reimburse or indemnify contractors to the full extent of the claims.

She received a positive determination from DOE in April, but DOE was unable to assist her further by instructing the contractor not to contest her claim or to reimburse it for reasons that she still doesn't understand. Her claim under the Workers' Compensation system is currently being contested by the contractor, [indisc.] Centennial, and two insurance companies, Travelers Insurance Company and the Alaska Insurance Guaranty

Association. Contractors appealed to the Alaska Superior Court to stay the case and review it. The stay was denied and the review has not been addressed, yet. Another decision was made yesterday and she felt it, too, would be appealed to the Alaska Superior Court. She felt that the board would take 90 to 120 days to decide the merits of her case.

If SB 311 becomes law by the end of this legislative session, its effect on my case could be very detrimental in that assuming the board finds in her favor, will their decision be appealed to the Superior Court or to the new Appeals Commission? Will my case have to wait until members of the new commission are appointed and ready to hear cases? If so, how long will the startup process take...?

There are over 90 former Amchitka workers and their survivors with cases waiting to be heard. On average, the Amchitka claimants are in their 70s and 80s. Many are very sick with cancer right now. It seems to me it would be unreasonable to ask them to wait yet again while the system is being revamped. I'm asking that this committee consider the effects the new law will have on the Amchitka cases. Perhaps the changes can be made gradually rather than immediately.

MS. CARLSON recommended a mandatory mediation process before the case reaches the appeals stage.

CHAIR BUNDE responded that he was waiting for the director of the Division of Insurance to get back to him with information on how the pending Amchitka claims would be transitioned if this legislation would be adopted.

MS. TRENA HEIKES, defense attorney, said she had been practicing in workers' compensation since 1985. She reported that general views of SB 311 from others in the field are favorable, because it raises the bar in experience requirements for hearing officers. Currently, they don't even need a license to practice or even a law degree. She explained that workers' compensation is a "statutory creature" and is very complex and convoluted; it is not taught in law school. She repeated that this issue is well-received by attorneys on both sides of the table.

The appeals commission is well-received, too, because the bar is being raised on experience for the administrative tribunals. Currently, appeals are handled at the Superior Court level and

from there, go to the Alaska Supreme Court. She didn't know of any judges currently on the bench who had any experience in workers' compensation. That whole appeal level slows the process down. This bill streamlines that process and puts the initial appellate level before attorneys who have experience in workers' compensation.

The only negative that we can see, and I think it's been expressed before, is what we see as a politicalization, if you will, of the appeals commission by a direct appointment by the governor. Workers' comp, at least the board, is an adjudicatory body and as such it needs to maintain a separateness from the Legislative branch and the administrative branch as best it can, understanding that it is under the administrative branch....

Instead, what I think is being discussed is perhaps a modification where you have the equivalent of selection through the process that we select our district and superior court judges, which is some sort of a commission setup comprised of attorneys and lay members who interview prospective candidates for the appeals commission position and select through the interviewing process three names for each position and submits those to the governor. That's the equivalent of what we now do for our district and superior court judges. There's also a Bar poll, but I don't think that would be something that you would need for workers' compensation. But that is one way to depoliticize that selection process.

MR. DOUG WOOLIVER, Administrative Attorney, Alaska Court System, said the Court doesn't take a position on the merits of the bill, but he wanted to explain the impact that one provision would have. It is the provision that allows appeals from the new appeals commission to go directly to the Supreme Court bypassing the Superior Court.

In the past number of years, the court system as a whole has seen about 36 workers' comp cases a year on appeals from the agency to the Superior Court. About 75 percent of those are resolved at the Superior Court level. About 25 percent of those, or about 9 cases per year, are appealed on further to the Supreme Court.

The court doesn't believe that by changing the commission process, they are likely to reduce very much of that total number of 36 cases a year. We believe that for a couple of reasons. One, you're always going to have a certain level of appeals anyway. Right now the board averages 275 final resolutions each year and we get about 13 percent of those....

There are different types of appeals. You get a merit appeal simply because regardless of how good the new expert panel is, they are just like Superior Court judges.... There will always be a novel legal issue that is raised each year. Those will continue to come to the Supreme Court. Additionally, even though this body seeks to be independent, it's still under the administrative proceeding. Some people simply don't trust administrative proceedings; they don't trust the final outcome. It's a small percentage of people, but we're only talking about 36 cases a year.

MR. WOOLIVER said that some people want their day in court and a certain percentage are tenacious and would appeal regardless. "So, the difference will be that rather than having 75 percent of them resolved in Superior Court, we will see all 36 of them at the Supreme Court."

He said that an important feature of the current system is the attempt at balancing the interests of labor and the interests of management on the panels. Nothing in the current bill attempts to strike a balance between those two, sometimes competing, interests. The court's concern is there might be more appeals if one side or the other feels the commission benefits the other guy. The fiscal note does not assume that increase. There will be a savings from the 25 percent of Superior Court cases that are appealed to the Supreme Court, because the Superior Court will be cut out.

He is concerned about the other 75 percent of the cases that get resolved at the Superior Court level, because the Superior Court is a committee of one while the Supreme Court is a committee of five. Opinions are drafted, circulated, amended by other members and recirculated until there is a consensus. "You will save time in 25 percent of the cases, but add on time to the other 75 percent."

MR. WOOLIVER explained that the fiscal note adds staff at the Supreme Court level to more quickly resolve those cases and to offset the inevitable impact additional cases at the Supreme Court level will have on all of the other matters before the court.

SENATOR FRENCH commented:

I would just remark in your committee of one at Superior Court level, you left out the all-important law clerk, who actually writes that opinion and just gets the judge to sign off on it, but I agree that they are hard-working and they get the job done.

SENATOR GARY STEVENS said the proposal seems to professionalize the commission by bringing in more attorneys and asked:

Wouldn't the fact that precedence is being set and a record established, wouldn't that ease the number of cases that are appealed to the Supreme Court in the proposed structure or do you think they would not be of any assistance at all?

MR. WOOLIVER replied that he just didn't think changing the professional level of the board would reduce the caseload. Judges have said their view is not that they are seeing cases because they are incompetently decided. "They are seeing cases for the reasons that I've explained."

MR. DON ETHERIDGE, American Federation of Labor-Congress of Industrial Organizations (AFL-CIO), asked the committee to hold SB 311 so that the ad hoc committee could have a chance to look at its Monday meeting. He was incensed that labor and management had been entirely left out of discussions on this issue so far. He was also alarmed about the speed with which this bill is being heard.

SENATOR FRENCH asked how long he anticipated the ad hoc committee would take to come to a position on the bill.

MR. ETHERIDGE replied that it is meeting on Monday and he had no idea how long it would take them to look at it.

CHAIR BUNDE said he hoped the committee would expedite its review of the bill and said he would hold it for the time being.

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^#SB278

SB 278-LABOR & WORKFORCE DEVELOPMENT FEES

CHAIR CON BUNDE announced CSSB 278(L&C), version D, to be up for consideration.

MR. GREY MITCHELL, Director, Division of Labor Standards and Safety, Department of Labor and Workforce Development (DOLWD), said the CS doesn't impact his office. The word "agreement" was added on page 2, line 9, and he doesn't have a problem with that.

SENATOR RALPH SEEKINS moved to pass CSSB 278(L&C), version D, from committee with individual recommendations and attached fiscal note. Senators French, Seekins, Stevens and Chair Bunde voted yea; and CSSB 278(L&C) was moved from committee.

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^#SB263

SB 263-EXTEND ALASKA COMMISSION ON AGING

CHAIR CON BUNDE announced SB 263 to be up for consideration. He recognized that the following people from the Commission on Aging were present in the audience: Steven Ashman, Frank Appel, Doris Bacus, Ella Craig, Jesse Gardner, Betty Keegan, Banarsi Lal and Priscilla Thorsness.

MR. RICHARD BENAVIDES, staff to Senator Bettye Davis, sponsor of SB 263, said this legislation would extend the Alaska Commission on Aging until June 30, 2008 and would make changes to statute that reflect the transfer of the commission from the Department of Administration to the Department of Health and Social Services.

The changes basically have the effect of making the actual commission more of a planning and advocacy organization while allowing the department to actually be the reviewer and decision maker on the actual grants. The Senator believes that these changes are for the good and believes that the Alaska Commission on Aging has continued to help older Alaskans lead dignified, independent and useful lives.

MR. STEVEN ASHLAND, Director, Division of Senior and Disability Services, Department of Health and Social Services (DHSS) supported reauthorization of the Commission on Aging, which has

put together some very good programs for seniors and elders throughout the entire State of Alaska.

MS. MARIE DARLIN, AARP Capitol City Task Force, fully supported extension of the Commission on Aging.

MS. PAT DAVIDSON, Legislative Auditor, said the audit recommends a four-year extension of the commission. Other than overwhelming support for the commission, the reasonableness of the granting process was noted, but it wanted more services and more funding.

CHAIR BUNDE asked if a move to HESS would help grant monitoring opportunities.

MS. DAVIDSON replied that she believed so.

I believe you're going to have a little bit more professional eye towards just overall grant management. This is an issue that came up during our statewide single audit. Because of that, this will be one of those recommendations that we continue on until it has been resolved.

MS. NANCY BURKE, Program Officer, Alaska Mental Health Trust, supported SB 263. She said:

The Alaska Commission on Aging is a critical part of the trust budgeting finance and advocacy procedures. We value and require their support in watching out for the most vulnerable Alaskans, which they do.

SENATOR SEEKINS moved to pass SB 263, version A, out of committee with individual recommendations and attached fiscal note. Senators Stevens, Seekins, French and Chair Bunde voted yea; and SB 263 moved from committee.

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^#SB306

SB 306-NATUROPATHIC MEDICINE

CHAIR CON BUNDE announced SB 306 to be up for consideration.

MR. BRIAN HOVE, staff to Senator Seekins, sponsor of SB 306, said it updates current law relating to naturopathic medicine and, as a result, Alaskans' accessibility to safe, comprehensive, high-quality health care will be significantly enhanced.

The key elements of this legislation include:

1. Safeguarding Alaskans' use of naturopathic medicine by insuring that the highest quality of care possible from licensed, well-trained and professional naturopathic physicians.
2. Mandating continuing education requirements so that practitioners are subject to a state and national examination process.
3. Establishment of scope of practice to include the use of natural substances, homeopathic medicine, dietary, nutritional and health counseling, minor surgery and all necessary diagnostic and imaging studies.
4. Providing prescriptive writing authority to those naturopathic physicians earning licenses.
5. Establishment of a qualified trade association of naturopathic physicians to work with the Division of Occupational Licensing towards the implementation of regulations requiring specific state and federal examinations and licensure requirements.

He explained that naturopathic physicians go through four years of undergraduate pre-professional training followed by an intensive four-year natural program emphasizing both academic and clinical studies. The practice of naturopathic medicine was first licensed in Alaska 17 years ago and the proposed legislation updates the statute where needed. Similar legislation exists in 14 other states.

CHAIR BUNDE said that complaints about a regular M.D. get taken up with the State Medical Board and asked if naturopathic physicians follow that same route if a complaint was filed.

MR. HOVE replied that he thought that complaints would be circulated through the Division of Occupational Licensing.

CHAIR BUNDE asked if the Division of Occupational Licensing would act like the Medical Board.

DR. SCOTT LUPER, Fairbanks naturopath, stated support for SB 263. [END OF TAPE]

TAPE 04-13, SIDE A

DR. LUPER said he has had a lot of experience with naturopathic education and has practiced in Fairbanks for the past 3.5 years. The central issue of SB 306 is whether naturopathic physicians have enough education to have prescription rights and do minor surgery. He referred the committee to a Journal of American Medical Association (JAMA) article that said naturopathic physicians are trained as primary care providers (family doctors).

Naturopathic doctors are trained to take a history, do physical exams, order the appropriate tests or diagnostic images and come up with a diagnosis and a treatment. Naturopathic physicians are also trained to refer when necessary. We're trained in all the basic things that family doctors are trained to do including minor surgery, including the use of pharmaceuticals.... Their [naturopathic] clinical education, which is entirely outpatient-based, is designed to prepare them to be primary care providers.

Another handout from Dr. LUPER showed that the number of course hours required by the three leading naturopathic and the three leading allopathic colleges are comparable and run around 4,000 hours. Another article averaged the pharmacological training of 126 allopathic, naturopathic and osteopathic schools across the country and indicated that they all provide about 100 hours of instruction.

Instructors at the naturopathic colleges are comparable in training and experience to the instructors at the allopathic colleges. When he was in school, his instructor also taught at the local medical school. Clerkship hours, for hands-on training, are comparable for both naturopathic and allopathic colleges at about 3,000 hours. The last thing he pointed out was a comparison of the pharmacology catalogues from the College of Naturopathic Medicine and Stanford University, which indicated that they basically have the same courses and cover the same material.

CHAIR BUNDE asked why naturopaths would not have their disciplinary problems addressed by the Medical Board if doctors and naturopaths have similar training and now begin to do similar duties.

DR. LUPER said that is a good question and explained that the original intention was to create a naturopathic board. However, the Legislature as well as the governor's office are reluctant

to create new bureaucrats. Director, Rick Urion, of the Division of Occupational Licensing, said that the division already functions in an oversight capacity for the naturopathic profession, as well as others. "If there is a complaint, they hear the complaint."

CHAIR BUNDE interrupted to say that the division hears complaints from barbers and hairdressers. "You're talking about medicine. Why wouldn't you want this to be under the State Medical Board?"

SENATOR RALPH SEEKINS remembered that originally a separate board was discussed, but the department recommended that oversight be contained within the administration at this time. "It's not that these folks were trying to avoid any kind of oversight of professional practices."

CHAIR BUNDE said he wasn't indicating that at all; rather let doctors be judged by doctors.

DR. LUPER agreed and said that Mr. Urion suggested creating an advisory board. The complaints would go to the advisory board first, and it would let the division know if a particular complaint is valid. "It takes the people who would have been on the board and takes them out of state government and puts them in the private sector to act as an advisory board."

SENATOR HOLLIS FRENCH asked why naturopaths would not fall under the purview of the State Medical Board.

DR. LUPER replied:

I think it's because the State Medical Board doesn't have the expertise and knowledge to know what's appropriate in the practice of naturopathic medicine. Naturopathic doctors will do things which are outside the educational scope and experience of M.D.s - for example, the use of herbs or the use of homeopathics, the use of physical therapy modalities, those kinds of things.

SENATOR FRENCH asked if that problem would be solved if naturopaths had better representation on the board, itself.

DR. LUPER said the M.D.s would have to be asked if they would want naturopaths on the Medical Board. He concluded saying that his real passion is for giving quality care to his patients. He

spoke about one of his patients who needed an anti-hypertensive medication right away and while Dr. Luper has the training to write it, he can't legally do that in Alaska.

In Fairbanks, where I practice, it's difficult for him to get an appointment with another doctor. It's three weeks out. And, I know exactly what he needs. I've been trained in knowing what he needs. In Arizona I can write the prescription, because I have a DEA license that allows you to write prescriptions, already. But only in Alaska am I prevented from doing what is best and appropriate for my patients.

So what did he do? He went to another doctor; he spent the money. The doctor took his case and said, 'Oh yeah, Doctor Luper is right; that's exactly what you need.' He complained. It's stories like his that drive me to sit across from you. I don't have any monetary gain in this. I'm a busy doctor. I'm seeing as many patients as I can see, but I want to provide the best care I can to my patients. Right now one of my hands is tied behind my back. I don't use drugs very much, I don't need to. But every once in a while, in cases like that, it's in the best interests of public health, I think, to do that.

DR. CLYDE JENSEN, Juneau, said he is frequently called upon to speak at hearings comparing educational programs because of his leadership experiences at naturopathic, osteopathic and allopathic colleges. He has a doctorate in pharmacology and has been a faculty member and chief executive officer at osteopathic, allopathic and naturopathic medical schools. The requirements to get into these medical schools are all the same, the basic sciences are taught at the same level of intensity and for the same number of hours. Clinical education of naturopaths differs in some instances from training for physicians. Naturopaths receive stronger training in areas of nutrition, botanical medicine, physical medicine (with the exception of osteopaths), preventive medicine and referrals. Medical and allopathic schools have an advantage over naturopathic schools in that much of their training takes place in inpatient facilities. Naturopathic physicians typically don't have hospital privileges. They don't have the opportunity to do residencies or other types of post-graduate medical education because there is no federal reimbursement for those types of programs for naturopathic physicians.

In summary, I have learned naturopathic medical students have some areas of training that are superior to, and other areas of training that are not as strong as, conventional medicine, but most areas of training I've learned were quite comparable.

CHAIR BUNDE thanked him for his comments.

DR. DAN YOUNG, Eagle River, said that Dr. Jensen's resume' is very unique and comprehensive. Dr. Young reviewed his own credentials, which were quite extensive, as well. He said that Alaska is the only state that does not allow naturopaths a full scope of practice. The main issues are inclusion of minor surgery and prescriptive rights. He noted several letters of support from medical doctors, nurse practitioners, physicians' assistants and dentists and the letters keep coming in. The goal is complementary medicine so patients get the best care possible. He wanted the committee to understand that some M.D.s attend naturopathic medical schools, under an advanced standing, to learn naturopathic therapies.

We are the foremost experts in drug and nutrient interactions. My wife [another naturopathic doctor] specifically who does women's health, is really limited because when she needs to do conjugated estrogen for one of her patients, she cannot write for that and that is absolutely absurd. We are very well trained in these cutting edge therapies and it serves Alaskans for us to be able to do this.

DR. YOUNG pointed out that naturopaths have been licensed for 17 years in Alaska and have been regulated by the Division of Occupational Licensing. There have been very few disciplinary actions. And, of the 601 practicing naturopaths in Portland, Oregon, two have committed improprieties, a very low percentage.

So, we practice safe medicine, our patients like us, we have very low malpractice rates and we are very good at what we do. We are trained to refer to those people who do the thing that we don't do, just like any primary care would do.

CHAIR BUNDE thanked him for his comments and said the committee would take this bill up again, but time had run out. He adjourned the meeting at 3:33 p.m.

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