

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

February 26, 2004
1:37 p.m.

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. 324

"An Act relating to floral business telephone listings and to acts involving those listings that are considered unlawful trade practices."

SCHEDULED BUT NOT HEARD

SENATE BILL NO. 315

"An Act relating to the administration of commercial fishing entry permit buy-back programs."

MOVED SB 315 OUT OF COMMITTEE

SENATE BILL NO. 306

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

MOVED SB 306 OUT OF COMMITTEE

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. 27

"An Act relating to pesticide use; relating to program receipts collected by the Department of Environmental Conservation for registrations and licenses relating to pesticides; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 315

SHORT TITLE: ENTRY PERMIT BUY-BACK PROGRAM

SPONSOR(s): SENATOR(s) STEVENS B BY REQUEST OF SALMON INDUSTRY TASK FORCE

02/11/04	(S)	READ THE FIRST TIME - REFERRALS
02/11/04	(S)	L&C, FIN
02/24/04	(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
02/19/04 (S) Heard & Held
02/19/04 (S) MINUTE(L&C)

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
02/19/04 (S) Heard & Held
02/19/04 (S) MINUTE(L&C)

BILL: SB 27

SHORT TITLE: TRACKING OF PESTICIDE USE
SPONSOR(s): SENATOR(s) ELLIS

01/21/03 (S) PREFILE RELEASED 1/17/03
01/21/03 (S) READ THE FIRST TIME - REFERRALS
01/21/03 (S) L&C, RES, FIN

WITNESS REGISTER

Ms. Cheryl Sutton
Staff to Senator Ben Stevens
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Present to answer questions on SB 315.

Mr. Brian Hove
Staff to Senator Ralph Seekins
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Present to answer questions on SB 306.

Mr. Wayne Aderhold
Homer AK

POSITION STATEMENT: Supports SB 306.

Mr. Michael Yourkowski
Homer AK

POSITION STATEMENT: Supports SB 306.

Ms. Shevaun Meggitt Tonseth
Anchorage AK

POSITION STATEMENT: Supports SB 306.

Dr. David Newirth, ND
Anchorage AK

POSITION STATEMENT: Supports SB 306.

Dr. Kayce Rose, ND
Anchorage AK

POSITION STATEMENT: Supports SB 306.

Dr. Madeleine Morrison-Young, ND
Anchorage AK

POSITION STATEMENT: Supports SB 306.

Ms. Pamela Hansen
Kenai AK

POSITION STATEMENT: Supports SB 306.

Ms. Jane Simons
Kasilof AK

POSITION STATEMENT: Supports SB 306.

Dr. Torrey Smith, ND
Anchorage AK

POSITION STATEMENT: Supports SB 306.

Ms. Linda Hall, Director
Division of Insurance
Department of Community & Economic Development
PO Box 110800
Juneau, AK 99811-0800

POSITION STATEMENT: Supports SB 311.

Mr. Paul Lisankie, Director
Division of Workers' Compensation
Department of Labor & Workforce
Development

PO Box 21149
Juneau, AK 99802-1149

POSITION STATEMENT: Commented on SB 311.

Mr. Jim Robison
Eagle River AK 99577

POSITION STATEMENT: Commented on SB 311.

Ms. Pam LaBolle, President
Alaska State Chamber of Commerce
217 2nd St.
Juneau AK 99801

POSITION STATEMENT: Supports SB 311.

Ms. Patricia Wilson
Harbor Adjustment Services
Anchorage AK

POSITION STATEMENT: Supports SB 311.

Ms. Susan Daniels, Vice President
Workers' Compensation
Northern Adjusters
Anchorage AK

POSITION STATEMENT: Supports SB 311.

Mr. Mike Klawitter, Director
Risk Management
Anchorage School District
Anchorage AK

POSITION STATEMENT: Supports SB 311.

Ms. Constance Livsey
Anchorage AK

POSITION STATEMENT: Supports SB 311.

Senator Johnny Ellis
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of SB 27.

Ms. Geran Tarr
Chief of Staff for Senator Ellis
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Commented on SB 27 for sponsor.

Ms. Kristin Ryan, Director
Division of Environmental Health
Department of Environmental Conservation
410 Willoughby
Juneau, AK 99801-1795

POSITION STATEMENT: Commented on SB 27.

Mr. Clay Frick
Port Alexander AK
POSITION STATEMENT: Supports SB 27.

Ms. Marie Lavigne, Executive Director
Alaska Public Health Association
Anchorage AK
POSITION STATEMENT: Supports SB 27.

Mr. Walt Parker
Anchorage AK
POSITION STATEMENT: Supports SB 27.

Ms. Michelle Wilson
Alaska Community Action on Toxics
Anchorage AK
POSITION STATEMENT: Supports SB 27.

Mr. Ken Perry
Paratex Pied Piper
2440 E 88th Ave., Suite A
Anchorage AK 99507
POSITION STATEMENT: Opposes SB 27.

Dr. Adam Grove, ND
Anchorage AK
POSITION STATEMENT: Supports SB 27.

ACTION NARRATIVE

TAPE 04-15, SIDE A
#SB315

SB 315-ENTRY PERMIT BUY-BACK PROGRAM

CHAIR CON BUNDE called the Senate Labor and Commerce Standing Committee meeting to order at 1:37 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 315.

MS. CHERYL SUTTON, Staff to Senator Ben Stevens, sponsor of SB 315, was present to answer questions, but there were none.

SENATOR RALPH SEEKINS moved to pass SB 315, version D, from committee with individual recommendations and zero fiscal note.

Senators Stevens, French, Seekins and Chair Bunde voted yea; and SB 315 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, was present to answer questions.

CHAIR BUNDE said he had asked if naturopathic colleges are associated with traditional colleges and had found that they aren't. He asked if Mr. Hove knew of any major universities that offered a degree in naturopathy.

MR. HOVE replied that he wasn't aware of any.

CHAIR BUNDE said the Alaska State Medical Association suggests that if SB 306 is enacted, it should be amended to keep existing law pertaining to naturopaths in place and add a subsection that would hold naturopaths to the same standard of care as licensed physicians. He asked if anyone wanted to comment on that.

SENATOR SEEKINS asked what the Medical Association defines as "same standard of care". He forged ahead saying that SB 306 allows naturopaths to practice up to the level of their education and only prescribe drugs if they have been granted a Drug Enforcement Association License and perform only minor surgery.

If it means that naturopaths will have to be held to the same standard as the doctor in the performance of those duties, I don't see where anyone would object to that.... They are under a greater restriction here than a nurse practitioner or a physician's assistant and have equivalent or better educational background to support that....

I think all performing people in the area of medical practice should be held to the same level of performance or standard or performance equivalent to the levels of authority that we're allowing them under state law, if that's the answer to the question. I have no problem with that.

CHAIR BUNDE said he had no problem with that either and added that the Medical Association also wanted to keep the existing law pertaining to naturopaths in place without prescription rights, if applicable.

MR. WAYNE ADERHOLD, Homer resident, supported SB 306.

Naturopathic physicians have a right to practice commensurate with their training and to provide even more comprehensive primary care to their patients in Alaska and I have a right to receive that care in my home state....

MR. ADERHOLD said he uses naturopathic services for 95 percent of his health care needs and related how he was successfully treated for melanoma through surgery and non-toxic adjunct therapy from a naturopathic team in Arizona, spending only \$20,000 out of pocket. Although he felt that the State of Alaska is somewhat progressive in allowing naturopaths to practice, it isn't as progressive as Arizona.

Naturopathic health care is supported by informed consumers throughout this state [Alaska], because it is effective both medically and financially. Consumers of naturopathic services are required to take an active part in decision-making and responsibility for their own health. Naturopathic physicians are true followers of the tenant, first do not harm, which might be your standard care.

MR. ADERHOLD also supported regulations established by the naturopathic board and informed the committee, "Malpractice rates on naturopathic physicians are miniscule compared to those on other physicians."

CHAIR BUNDE asked Mr. Aderhold, in the course of his melanoma treatment, if he needed a drug that a naturopathic doctor could have prescribed, but was not able to because of existing law.

MR. ADERHOLD replied that because he received his initial treatment in Arizona, where naturopaths can write prescriptions for regulated drugs, he was able to receive the one he needed. He received mostly unregulated drugs.

MR. MICHAEL YOURKOWSKI, Homer resident, said he is a patient of Dr. Patrick Huffman, ND, in Homer and his wife is a nurse practitioner who works in association with him. "Together they

provide complementary medicine that patients really benefit from."

He stressed the importance of the licensing board and the legitimacy it would provide for people who practice naturopathy in Alaska. He claimed his wife is a nurse practitioner and has the right to prescribe medicine while her naturopathic associate, who has more education, cannot.

MS. SHEVAUN TONSETH, Anchorage resident, said she fully trusts her naturopathic doctor, Dr. Kayce Rose, and prefers to go to her for all of her primary care instead of going to her and another doctor. "I feel she should be able to prescribe or do minor surgeries to what her training is...."

DR. DAVID NEWIRTH, ND, Anchorage, supported SB 306, "Based on the fact that we do have the training we're asking to be able to practice to that level."

CHAIR BUNDE asked him to comment on the Medical Association's request that naturopaths be held to the same standard of care and whether there is a different standard of care at this point.

DR. NEWIRTH replied that he didn't really know the particulars, but he didn't see that there should be any difference in the standard of care.

DR. KAYCE ROSE, ND, said she thought that the standard of care is what is really at stake in SB 306.

To be able to insure that our patients are able to receive the care that is most efficacious, most appropriate, for whatever they are experiencing at the time is contingent on our ability to be able to prescribe medicine when appropriate. Our education allows us to be the most well-trained physicians for primary care out there because we have such a broad spectrum of opportunities of types of therapies that we do offer.

DR. ROSE said her patients might have to spend health care dollars twice to get the same type of care. She related an actual experience in which one of her patients had dangerously high blood sugar and couldn't wait the three months to see an endocrinologist who could prescribe the appropriate medication and couldn't afford going to a more emergent type of health care facility.

DR. ROSE said that naturopathic colleges are not extensions of traditional medical schools, but they are accredited universities and are held to the same standards as any other university.

DR. MADELEINE MORRISON-YOUNG, ND, said she has practiced in Eagle River for seven years. She supported all the previous testimony and said her education included training in antibiotics and hormones.

To be a primary care physician and doing gynecology every day and giving people pap smears, but being unable to prescribe them their birth control pills, has been a real struggle in my practice for not only obviously myself, because it's frustrating, but financially for my patients. Sending them off with their annuals and their pap results to another practitioner so that they can get a simple birth control prescription is frustrating.

DR. YOUNG said that naturopaths have been using bio-identical, naturally compounded hormones for years and consider themselves specialists in the area. She supported SB 306.

MS. PAMELA HANSEN, Kenai resident, supported SB 306 saying that she, her husband and her mother use naturopathic health care. She would like their doctor to be able to provide them all the care they need, i.e. full prescriptive rights and the right to do minor surgery. The state she originally came from gave these full rights to naturopaths in 1962 and she was amazed to find that Alaska didn't.

MS. JANE SIMONS, Kasilof resident, testified as a mother and a senior. She has an adult disabled son who is 24 years old and she said they are both receiving Medicaid. She is forced to use a medical doctor who accepts Medicare and Medicaid, because she cannot afford to pay for health care out-of-pocket. "The care that works for us is naturopathic care."

DR. TORREY SMITH, ND, said he has practiced in Anchorage since 1992 and supported SB 306. He wanted the freedom to use the skills he has and feels are most appropriate for his patients. He also wants to be able to give patients the choices they would like to have and need in dealing with their health care issues.

CHAIR BUNDE noted that he hadn't heard a single person testify against this bill, but he still was searching for the answer to the question of the same standard of care that the Medical Association has asked about. He would let the bill move from committee today with the proviso that he could amend it if it was necessary.

SENATOR SEEKINS moved to pass SB 306 from committee with individual recommendations and attached fiscal note. Senators French, Seekins, Stevens and Bunde voted yea; and SB 306 moved from committee.

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#SB311

SB 311-INSURANCE & WORKERS' COMPENSATION SYSTEM

CHAIR CON BUNDE announced SB 311 to be up for consideration.

MS. LINDA HALL, Director, Division of Insurance, Department of Community & Economic Development (DCED), said she would answer questions that had been asked in the last couple of days and that first, Director Lisankie, Division of Workers' Compensation, would explain the transition process for people currently in the system. She would address Chair Bunde's question about the cost of attorney fees and litigation in relation to premium and then she would comment on the appointment process.

MR. PAUL LISANKIE, Director, Division of Workers' Compensation, Department of Labor and Workforce Development (DOLWD), addressed the question about a woman who gets workers' compensation based on her spouse's work experience with atomic testing in Amchitka in the 1970s. She was having a hearing before the board in March and wanted to know how SB 311 would affect her claim because its effective date is July 1, 2004 and provides that anything being heard before the board as of that date would continue to be heard until 45 days afterwards. He did not believe her claim would be affected.

If she wished to appeal, she would appeal to the Superior Court. The only thing I would add is...if there was someone else who had a claim based on the Amchitka testing and if their hearing wasn't concluded under the current law before July 1, then they would be susceptible to the changes just like anybody else would. There is nothing specific to an Amchitka claim that would affect it.

SENATOR HOLLIS FRENCH asked if the Amchitka claim person would operate under the old system for 45 days or to the end of her claim.

MR. LISANKIE clarified:

The 45 days is just a closeout period after the effective date so that anything that was heard by the effective date by the existing board would be determined by the existing board. They would have 45 days after the effective date to wrap up any decision they hadn't gotten out by then. So, it would continue in the current system. It would not change.

SENATOR FRENCH pointed out if further fact finding or another hearing was necessary, she might not have a board to appear in front of if the commission had started functioning.

MR. LISANKIE responded that his answer would only apply to her current claim. If a hearing took place after the effective date, the new provisions would apply.

SENATOR FRENCH said this woman does not have a new claim; it's just taking a long time to resolve.

MR. LISANKIE said he understood Senator French's question now and answered:

I believe you're correct that the hearing that took place would be resolved in the current system, but if for some reason another hearing was to be scheduled after the effective date, then it would be under the new system.

CHAIR BUNDE reminded the committee that he had a question about the appointment process and asked if the commissioners would be appointed and confirmed.

MS. HALL replied:

Generally, the appointment process in this bill is exactly the same as the current appointment process is for the board. They would be nominated by the governor and confirmed by the Senate.... The change is these would now become fulltime positions, but there's still an executive position for a limited term. They're not

court positions; they're administrative law judge positions, which normally aren't vetted through a third party screening process. One of the things we've talked about after the question came up is there are...not large numbers of workers' compensation attorneys. So, it's a fairly small pool and experience and reputations are not as well-known as other types of attorneys tend to be.... So, we have a concern that a judicial council would even have sufficient numbers of people to interview and make recommendations. Generally, my comment on that is that nothing would prohibit a governor from seeking, informally, recommendations from various organizations and I would anticipate that that would occur. It does, typically, today in board positions.

CHAIR BUNDE said the ad hoc group wanted to have input and he asked how long this bill had been in the public domain and if any attempt had been made to share it with that group.

MS. HALL replied that the ad hoc committee was not consulted in the process of this particular bill.

The bill genesis came from primarily me - not that piece of it. But, primarily the pieces I have proposed in legislation and administratively are dramatically increasing the cost of workers' compensation for employers. I've made a proposal, as you're all aware, because we've heard it in this committee, to increase assessments for the Guaranty Fund. Effective January 1, the rate approval done by the Division of Insurance averaged 22 percent. We have an increasing cost of claims and, as I put forth legislation that I know has an impact on the availability of workers' compensation the goal was to find a way to, frankly, put a light at the end of the tunnel, to attempt to find ways to start to get some control over the claim costs. I will talk about litigation also and to find ways to do that without reducing benefits to workers. I think that was an important element of what we looked at. This was, I think, in our minds a systemic change to streamline and bring predictability into the appeals process, not to change benefits.

I think there are very important issues and we discussed them a little bit when we discussed the Oregon system. I think there are issues that need to

be addressed that could affect benefits, that could affect reemployment benefits, various things, that I think are very appropriate for a group of labor and management to get together and discuss and to work on and have input.... I think, if that sheds any light, the short answer was no, we didn't take it to them.

SENATOR RALPH SEEKINS said he felt it incumbent upon legislators, since they have made this the exclusive remedy, to make sure that worker's compensation claims are resolved fairly and in a timely fashion. At the same time, they should make sure the compensation is adequate and fair to the injured worker. He asked her if this legislation meets those hurdles and what are the major benefits to the state and the workers that she has laid out in the bill.

MS. HALL replied:

To me the major benefit is a more efficient, more predictable system - that as cases are heard by hearing officers or the appeals commission, there is a precedent set that can then allow other injured workers or employers who take exception to a ruling - maybe to a decision of an insurance company, to wherever that dispute comes from - that allows that to be adjudicated more quickly and more efficiently. But, we have a precedent so that we have something to evaluate. Do I have a claim? Has this case been heard and a definitive type of answer given as to whether this is compensable or not, whether these are appropriate benefits. That is the advantage I see to the system. [END OF SIDE A]

TAPE 04-15, SIDE B

MS. HALL continued:

In 2002, for example, we had \$202 million of workers' compensation premium; \$11 million of that was expended in attorney fees, approximately 5 percent; \$1.2 million in actual litigation costs, about .6 percent. I did that for five years. The percentages of attorney fees ranged from a high in 1998 of 7.8 percent of actual premium dollar to a low in 2002 of 5 percent. So, they have been going down - not steadily; there are jagged peaks. Litigation costs have gone from a high of 1.7 percent of earned premium to - 2002 was .6

percent, a little bit higher than the 2001 .5 percent.... Attorney fees range from 5 to 7 percent of the cost of premium.

CHAIR BUNDE asked what the total premium is.

MS. HALL answered the total premium was \$202 million in 2002. In 1998, it was \$132 million.

CHAIR BUNDE announced that it was not his intention to move the bill today in order to have further input.

MR. JIM ROBISON, Alaska resident for 58 years, said he is a 55-year member of Laborers Local 331, a former president of the AFL-CIO, a former workers' compensation board member and a former commissioner of the Department of Labor. He said:

I've been involved with workers' compensation a long time. The Workers' Compensation Act has been a political football ever since Governor J.P. Strong spoke to the 1915 Territorial Legislature about the need to cover the injured worker. In 1981, in order to get rid of the politics as much as possible, the Alaska AFL-CIO and the Associated General Contractors of Alaska agreed to a workers' compensation ad hoc committee to review the Workers' Compensation Act to see if any changes were needed and it jointly lobbied the governor and the Legislature on any agreed-upon legislation to improve the act.

We convene this committee as needed. In the past 23 years, we have had the support of the governors and the Legislature in our efforts. At the present time, the ad hoc committee represents the employer and is comprised of Vic Kattenaugh, Judith Peterson, April Wiley, Laura Jackson and John Garrett. And for labor, the representatives are Kevin Dougherty, myself, Dave Ford, John Giuchici and Barbara Huff-Tuckness. This committee will meet on March 2 to review and consider SB 311 and I'll convey the timeframes you have outlined so that we can jointly give our views on this bill.

Mr. Chairman, I'm not here representing the ad hoc committee, I'm only representing myself, but this is an important bill and I thank you for holding it in

committee to receive the input from the ad hoc committee.

SENATOR SEEKINS wondered why the scope of people who want to comment on this bill had not been broadened beyond the Association of General Contractors to the rest of the employers in the State of Alaska.

MR. ROBISON explained that the Chamber of Commerce was asked by the employer group to become involved, but it didn't want to and he didn't know why.

MS. PAM LABOLLE, President, Alaska State Chamber of Commerce, supported SB 311. Members feel that elements in it favor improvement of the system.

MS. PATRICIA WILSON, Harbor Adjustment Services, supported SB 311 and echoed previous comments about how it would increase the efficiency and predictability of the workers' compensation system. The current system is frustrating for both the injured workers and the people who handle their claims.

MS. SUSAN DANIELS, Vice President, Workers' Compensation, Northern Adjusters, said it inherited the 700 Fremont insolvency claims in July 2003 and they are in all different stages of this process. She supported SB 311 and said:

I think the underlying premise is important to recognize that the legislative intent and the workers' comp laws don't seem to be our major stumbling block, but rather the adjudication process, the delays, the lack of a simple speedy remedy for the injured workers and people involved in the decision making on these cases. It's become very complicated and the law, in terms of paying or denying claims, is very inconsistent. So, many times adjusters were faced with the decision of whether a claim is covered or not based on a substantial amount of grey area - end up having to refer a lot more cases to defense attorneys for a legal opinion, which is not only increasing the cost of the attorney fee end, but, short of that, more claims are being paid than perhaps the legislative intent of the law intended to be covered.

MR. MIKE KLAWITTER, Director, Risk Management, Anchorage School District, said his district has about 6,500 employees and is one of the largest self-insurers in the state. He thought SB 311 is

a positive step for workers' compensation in Alaska for the reasons already stated, particularly efficiency and consistency.

MS. CONSTANCE LIVSEY, Anchorage attorney, said the bulk of her practice is representing employers before the Workers' Compensation Board. She supported SB 311 and wanted to clarify two aspects of it.

First, this bill does not in any way remove or alter the presumption of compensability in favor of injured workers. That presumption, for those of you who like to thumb through the legislation, is found in AS 23.30.120. The bill does not alter that in any way. This is purely a matter of procedure and not a matter of substance. The bill is also not the product of collaboration between the administration and WCCA [Workers' Compensation Committee of Alaska]. We were not involved in the drafting of the bill and, in fact, WCCA first got a copy of the bill after it was generally available on the street sometime in late January.

Let me speak to a couple aspects of the bill that I believe will significantly improve the adjudication process for the contested or litigated workers comp claims. The two-tier system proposed in the bill to create both a hearing officer level and a commissioner level would significantly accelerate the adjudication process. In fact, that two-tier system is far more common around the country than the system we now have. The proposed structure, I believe, would elevate the qualifications of the decision-makers and that's significant because workers' compensation is a very arcane area of the law. It's a unique set of laws; it's a unique body of procedure. It's not something you wake up in the morning knowing how to do.

If we have decisions made by experienced practitioners, I'm convinced you'll have a process that is fairer, that is faster and that offers more certainty. Surely, that benefits all parties. As it stands now, one board panel can reach a conclusion different from that reached by another board panel. One superior court judge can reach a conclusion that is different than that reached by another superior court judge. And so, as Ms. Daniels testified, you end up with a great deal of inconsistencies that cost

litigation. That benefits no one.... The superior court appeals process is lengthy. It commonly takes a year or a year and a half to get the matter briefed and decided. You can get, as I mentioned, inconsistent rulings that have no binding precedential value on other cases. And quite frankly, the superior court judges are primarily trial court judges, not appeal judges. I don't get the impression that they have any significant experience in workers' compensation matters and it simply is a disfavored area of their workload.

Finally, a superior court decision carries no weight at [indisc]. It's an odd rule and one with which people may not be generally familiar, but in an appeal from the administrative agency decision, the Alaska Supreme Court gives no deferential value to the superior court's decision. In other words, they simply directly review the decision of the board. Simply put then, the entire year, year and a half, worth of superior court process lends nothing to the ultimate decision. For all of those reasons and several others I probably don't have time for today, I urge a vote in favor of this bill.

CHAIR BUNDE asked for any other comments and upon hearing none, set the bill aside.

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#SB27

SB 27-TRACKING OF PESTICIDE USE

CHAIR CON BUNDE announced SB 27 to be up for consideration.

SENATOR JOHNNY ELLIS, sponsor, said:

Large amounts of pesticides are used every year in urban and rural Alaska, including around schools, our parks, agricultural lands, grocery stores, public buildings, homes, gardens and just about everywhere you can imagine. Pesticides are linked to a variety of health problems including cancer, developmental disorders, reproductive failure, birth defects, allergies and asthma.... Despite these known risks, we have no accurate information on which pesticides are used, where and in what amounts. In order to make informed and effective good public policy decisions to

protect water quality, public health and subsistence foods, Alaskans need that reliable kind of information on pesticide use.

In 2001, there were 4,571 pesticide labels - individual pesticide products that were registered and approved for sale in our state. In 2004, that number is up to approximately 5,500. Alaska is the only state that does not collect registration fees on pesticides registered for sale and use in our state.... The word chump has come up in some of the conversations here that we're the only state that does not charge Dow Chemical and Monsanto, outside multi-national corporations, that are manufacturers of these pesticides sold in our state. Every other state charges a reasonable fee and that's what this bill proposes to do, as well.

What will the bill specifically do? It would require those who use pesticides for commercial and contract purposes to provide notice regarding the application of pesticides to the DEC [Department of Environmental Conservation]. That would be an easy thing. They already collect this information. In their yellow page ads, those distributors and applicators here in the State of Alaska use e-mail. It would be a matter of e-mailing DEC this information that's already collected.

The Department of Environmental Conservation is required to make the reporting process for those convenient. So, that's a consideration for business - to make it as easy as possible to make the information available to the public through the website and to researchers and public officials in a timely manner.

In the reports we have a protection for business to protect the privacy of the applicators and their clients.

The bill establishes a seven-member pesticide advisory board; the bill requires a registration fee to be collected as noted and helps with the information collected to be used. We're looking for good science and good data. The information would be used in those areas that I mentioned before - water quality, public health and subsistence. Because pesticides are designed to be toxic chemicals that kill living

organisms and are widely used in our communities, the public has a right to know, in my opinion, about the pesticides used around us.

I note there is broad support across the state for this legislation.... I'll lend on a personal note - you know, I've known a lot of folks who have suffered from breast cancer and asthma, immune system shutdowns, various ailments and their doctors invariably ask them about their exposure to these kinds of chemicals. The fact is in Alaska, we don't require this information, we don't keep track of it, we don't look at it and use it as part of our making of public policy.

CHAIR BUNDE asked how the notification would take place.

SENATOR ELLIS replied that he envisions the information would be provided to the DEC electronically where it would be compiled and then accessed by the public. He is not looking for the DEC to mail out notices of impending pesticide use. "It would be a passive kind of system."

CHAIR BUNDE rephrased his answer saying, "It would be incumbent upon the public to access the information?"

SENATOR ELLIS indicated yes.

CHAIR BUNDE supposed that it wouldn't affect his neighbor who is using "Round-Up," but that the "Round-Up" would cost more to pay for the fee. Senator Ellis indicated this was correct.

SENATOR ELLIS said, since every other state is charging the manufacturers a reasonable fee for each of the chemicals, theoretically Alaska consumers are bearing the cost of those registration fees.

CHAIR BUNDE asked if he was aware of any other regulations in municipalities affecting registration of pesticides. "Is there any duplication going on here?"

MS. GERAN TARR, Chief of Staff for Senator Ellis, wanted to clarify the notice of commercial pesticide spraying, a separate component from the tracking mechanism. Section 4 of SB 27 is modeled after the Municipality of Anchorage's successful program. She explained that paper notification must be given to areas contiguous to the sprayed areas. People must be able to

see that notification at their home or place of business and make an educated decision about whether or not they want to be in that area while the application was taking place or whether, because of health issues or small children, they would want to leave and come back later.

SENATOR BUNDE said there are always residue issues and asked if the notices had to be up only during the actual application or was there a time period after that.

MS. TARR replied that the bill says at least 48 hours before the spraying and not more than 72 hours. "We want it close enough to the application time that it's reasonable and timely, but not so far before...."

CHAIR BUNDE asked, "But not after the spray." She indicated that is correct. He said that the program had gone very smoothly in Anchorage and asked if the bill has a reporting mechanism for poisoning or pollution from pesticides.

MS. TARR replied that issue isn't a component of this legislation. Currently, if exposure to a pesticide takes place, the DEC or someone in the public health sector would be notified. The Environmental Protection Agency (EPA) used to have an office that collated data on pesticide poisoning, but it was disbanded because of budget constraints.

SENATOR ELLIS said:

We're trying to be as circumspect and limited in requirements for DEC. We think if we charge this reasonable fee and they compile the information, at least it's available for people to be aware of it and access it if they need it, if their health requires it, but not to create new bureaucracies or a lot of requirements.

MS. TARR said that section 5 asks applicators to report to the DEC and pointed out that the applicators are already keeping track of this information.

SENATOR SEEKINS asked what a broadcast chemical is.

MS. TARR said that is an older term that was used for what is now called "pesticides."

SENATOR SEEKINS asked why there isn't a definition in the bill.

MS. TARR explained that a lot of pesticide applications in the past were done aerially, so the idea was that they were broadcast chemicals. More recently, new categories of chemicals have been created, like insecticides, fungicides, pesticides.

SENATOR SEEKINS asked what the difference was between custom, commercial or contract applicator.

MS. TARR replied that language was suggested by the drafters and encompasses all the people who apply pesticides in a commercial capacity statewide.

SENATOR SEEKINS asked if any of those terms include farmers.

MS. TARR replied that farmers would be required to report only if they hire a commercial applicator to do their application. Non-commercial persons buying a chemical over-the-counter have no reporting requirement.

SENATOR SEEKINS asked specifically if that included share-cropping, where two people agree to split the crop in exchange for one doing the application.

MS. TARR answered, "If they haven't hired a commercial company to do the application, it doesn't include them."

SENATOR SEEKINS asked if commercial application companies are required to have any type of license to apply pesticides.

MS. TARR replied that currently they are and the program is partly funded with federal money that is administered through the cooperative extension agencies. Section 3 of SB 27 talks about regulations for licensing of the applicators. Alaska charges a registration fee, so the state match for the federal funds is actually paid for by the applicators.

SENATOR SEEKINS asked what language on line 15, page 4, meant - "The department may conduct a statistically valid household pesticide use survey to acquire data that would complement information received."

MS. TARR replied that one component of this bill is the creation of a pesticide advisory board that is voluntary. Members are not eligible for per diem or travel benefits. Part of the board's mission is to come up with a way to address the issue of household use. Opponents of this bill maintain that the majority

of pesticide applications in the state are actually done by private individuals in their home, which Senator Ellis does not dispute. In the interests of respecting a private citizen's privacy, a component for household use is not in the bill. Instead the department is directed to come up with a survey that could be done on a statewide basis about what products are used in homes and other relevant information.

SENATOR SEEKINS asked, since they don't intend to regulate household pesticide use, why would that data need to be gathered.

SENATOR ELLIS stepped in and said the department might think it is useful information to get a picture of what is going on in the state, but he didn't have any intention of going there in the future. He hoped the pesticides weren't contributing to health problems in Alaska, but if they are, people should know about it.

SENATOR SEEKINS asked if the \$150 fee is being charged so the state will know which products and how much of them are being used in the state.

MS. TARR explained that manufacturers of the products have to register their products in each state before they can be sold. This is the level at which the fee will be collected. Over-the-counter products are not tracked in SB 27 beyond what is registered for sale in the state. The \$150 fee is collected because that would pay for the program. All other states currently charge fees. If retail level sales were to be tracked, some other tracking mechanism would have to be developed.

CHAIR BUNDE added that DEC could probably answer some of these questions.

SENATOR FRENCH said he has received a lot of positive feedback from his constituents on this. He asked how much revenue this program would bring in and how much would it cost.

MS. TARR replied that the registration fees would bring in about \$495,000 per year based on a drop-off rate of 40 percent. She explained when other states have adopted a registration fee, some companies decide not to register all of their products for sale, because their inventories indicate how much product has been shipped, what's selling and what's not. In 2008 the licensing fee, which is charged on a tri-annual basis, brings a bump in revenue. Operating costs are significantly less than the

revenue generated, which could be used to fund other programs in a time of fiscal need.

SENATOR GARY STEVENS said he could see what SB 27 is trying to do and that the board has an important function, but he was concerned that its structure insured that its members would only be from the Anchorage Bowl. A lot of other people are impacted, however, in fisheries, for instance. People from Kodiak would be precluded from serving because it would cost them substantial monies to travel to the meetings. He asked why transportation costs are not being covered.

SENATOR ELLIS replied that he is mindful of trying to control costs and that video and teleconferencing are used all the time. "I have no pride of authorship about the composition of the board - [we're] totally open to your suggestions.... I just think it's the kiss of death to have this cost very much money or to require a general fund obligation...."

SENATOR STEVENS said he could not dispel the feeling that people from the Aleutian area might be precluded from serving on this board.

MS. KRISTIN RYAN, Director, Division of Environmental Health, Department of Environmental Health (DEC), said the pesticide program resides in her division. She presented a brief overview of the existing program:

A pesticide is any substance or a mixture of substances intended for preventing, destroying, repelling or mitigating any pests. So, that goes from anything from an insect to animals to bacteria and viruses. Pesticides have been regulated in the U.S. since at least 100 years through various government agencies. In 1947, Congress passed the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) as the primary federal law for pesticide management in the U.S. The federal law includes a registration and reregistration of all pesticides sold in the U.S. [END OF TAPE].

TAPE 04-16, SIDE A

MS. RYAN continued:

...the amount, the frequency and the timing of its use and the storage and disposal practices. According to

EPA [Environmental Protection Agency], its evaluation during this registration process is meant to determine and put stipulations on its use so that it will not have any adverse affect on humans or environments or non-targeted species.

The EPA requires restrictions to be placed on the labeling of a pesticide. No pesticide is allowed to be used without following the label requirements. That breaks not only state law, but federal law. EPA does an extensive evaluation of its use to insure that it won't harm species it's not intended to if used properly. EPA, in turn, enters into cooperative agreements with states, which they have done with the State of Alaska, to implement some aspects of the federal program. The State of Alaska trains and certifies pesticide applicators in cooperation with the Cooperative Extension Service. [Indisc.] implements a field-based outreach program that focuses primarily on agricultural worker protection, groundwater protection and endangered species protection. We do inspections of records of certified applicators to insure that they are maintaining the records we require in our regulations currently.

We also, in addition to the federal program, have a state registration system where we, in turn, register pesticides that EPA has already deemed appropriate. As you've already heard from Senator Ellis' staff that there is a large percentage and it has been increasing every year. We're a little over 5,500 this year for pesticides registered for use in Alaska. We receive approximately 400 new registrations a year and we deny, I would say, on the average of 10 a year based on concerns that it's inappropriate to use in our climate. We also stick an additional percentage of those pesticides approved by EPA on a restricted use list, meaning that they are only allowed to be used by certified applicators.

Recently, we passed some regulations that do require schools to publicly notify and post warnings before pesticides are used in the state. So, they do already have the requirement to notify the public before they spray pesticides.

One final thing, just to clarify, the way I read the legislation, we would only be requiring commercial applicators to comply with certain aspects of this legislation, but if you determine a commercial applicator as someone who is certified by the state, and we have approximately 994 certified recipients right now, but some recipients receive multiple certifications. So, that doesn't mean there's 994 people. They would all be required to report their usage of the chemicals. Oftentimes, farmers are required to become certified due to other rules related to pesticide usage.

CHAIR BUNDE asked how far from a school notification has to be posted currently or does it just have to be announced.

MS. RYAN replied that she wasn't sure of the actual distance, but regulation says a sign is required to be posted indicating a pesticide treated area and to keep out.

CHAIR BUNDE said she could get back to him on the distance.

MR. CLAY FRICK, Port Alexander, said he is a commercial troller and supports SB 27.

I feel our commercial fishing industry would be best served by having such legislation. As you know, commercial fishing is the largest private sector employer in the state and all we can do to promote our fisheries, it will be so much better for it.

MR. FRICK said he thought consumers are becoming more aware of the quality of wild raised salmon coming from a pristine environment over farmed salmon. He noted that this legislation also gained a seal of approval from the Marine Stewardship Council as an important item to promote the sale of Alaska's salmon. "The chemicals that we use in our environment have been proved to be toxic to fish...."

He pointed out that the organic market is booming and toxins in the environment are a growing concern. Growers in California, like the Great Tree and Fruit League and the Western Growers Association, have endorsed a similar law in California. It basically quantifies and verifies what sort of chemicals are being spread in the environment.

MS. MARIE LAVIGNE, Executive Director, Alaska Public Health Association, supported SB 27. The association champions a community's right to know in an effort to reduce the risk of exposure to toxic substances and to best protect the public's health.

We firmly believe the right to know about chemicals in one's community, workplace or near one's child's school is not only an important right in our democracy, but a vital component of public health....

Hazard reduction activities and right to know programs are an essential means of protecting individuals and communities from harm due to the release of hazardous chemicals. At this time, Alaskans lack access to records to safeguard their own exposure to pesticides.

She said a recent survey indicates that 93 percent of voters favor disclosure of pesticide use.

MR. WALT PARKER, Anchorage resident, said he is a survivor of the federal herbicide and pesticide efforts of territorial days. He reported that he has worked with the Arctic Council for the last 10 years on a variety of programs dealing with contaminants. The council has a pretty good handle on the Arctic part of the issue, but not on the Alaskan part. It's important to have a firm database in Alaska against which to measure airborne pollutants and other things arriving by various means. He felt that SB 27 provides the foundation for what Alaska needs to participate with the federal agencies as Northeast Asia replaces Europe and North America as the industrial center of the world in the next 20 years.

MS. MICHELLE WILSON, Alaska Community Action on Toxics, said it is a non-profit, statewide membership organization dedicated to insuring the health of Alaskan communities. "We believe everyone has a right to clean air and clean water and foods free from toxic contamination...."

She said she strongly supports SB 27, especially the section requiring modest label registration fees based on national averages and steps to improving public notification of pesticide use. She added that pregnant women, nursing mothers, children, elders and especially those with heart conditions, chronic illnesses and asthma are very susceptible to adverse health effects from pesticide exposure.

We feel despite the risks of pesticide exposure, that Alaskans are not being given adequate or timely notification of these applications. SB 27 is an important first step to assuring public right to know about quantities, types and locations of pesticides in our workplaces, our parks, our public lands and buildings. Current onsite notification is absent or not enforced. Notification law allows for the public or workers in jobs to evaluate their own risks and take precautions when necessary.

She recommended amending section 4 (2) to extend notification from 48 to 72 hours after a pesticide application, an idea that was unanimously adopted by the Anchorage School Board in 2000. After spraying is when the public is especially vulnerable to the risk of inhalation residue from pesticides.

MS. WILSON said further that after this bill was written the State of Alaska changed regulations to allow aerial spraying of toxic chemicals for forestry purposes, contrary to over 330 comments ranging from local governments and native councils to Alaska shellfish and salmon industry representatives and other agencies. Upon receiving a permit from DEC, the only notification for aerial spraying consists of a public notice in the newspaper. "For the hunter, the berry picker and the fishermen, there is no notice that an area will be sprayed by chemicals."

In conclusion, she said that the program would be self-supporting.

MR. KEN PERRY, Anchorage resident, said he would submit written testimony on why he opposes SB 27.

DR. ADAM GROVE, ND, supported SB 27 saying that he would forward a couple of editorials he wrote for the newspaper describing the ill effects of pesticides. He thought getting information out to the public was a good first step, as well as the Pesticide Advisory Board.

CHAIR BUNDE thanked him for his comments and said SB 27 would be set aside for a future meeting. There being no further business to come before the committee, he adjourned the meeting at 3:30 p.m.