

**ALASKA STATE LEGISLATURE**  
**SENATE LABOR AND COMMERCE STANDING COMMITTEE**

January 25, 2008

3:07 p.m.

**MEMBERS PRESENT**

Senator Johnny Ellis, Chair  
Senator Bettye Davis  
Senator Lyman Hoffman  
Senator Con Bunde

**MEMBERS ABSENT**

Senator Gary Stevens, Vice Chair

**COMMITTEE CALENDAR**

SENATE BILL NO. 101

"An Act relating to private professional conservators and private and public guardians."

MOVED CSSB 101(L&C) OUT OF COMMITTEE

SENATE BILL NO. 147

"An Act clarifying when a project owner or general contractor is considered an employer for purposes of workers' compensation exclusive liability."

HEARD AND HELD

SENATE BILL NO. 107

"An Act relating to naturopaths and to naturopathic practice; establishing a Naturopathic Advisory Committee and an Alaska Naturopathic Formulary Council; amending the duties of the State Medical Board and the Board of Pharmacy relating to naturopathic practice; and providing for an effective date."

MOVED CSSB 107(L&C) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: SB 101

SHORT TITLE: GUARDIANSHIP AND CONSERVATORS

SPONSOR(S): LABOR & COMMERCE

02/28/07	(S)	READ THE FIRST TIME - REFERRALS
02/28/07	(S)	L&C, STA, FIN
03/08/07	(S)	L&C AT 1:30 PM BELTZ 211
03/08/07	(S)	Heard & Held

03/08/07 (S) MINUTE(L&C)  
 03/13/07 (S) L&C AT 1:30 PM BELTZ 211  
 03/13/07 (S) Moved CSSB 101(L&C) Out of Committee  
 03/13/07 (S) MINUTE(L&C)  
 03/14/07 (S) L&C RPT CS 3DP 1NR SAME TITLE  
 03/14/07 (S) DP: ELLIS, BUNDE, DAVIS  
 03/14/07 (S) NR: STEVENS  
 03/27/07 (S) STA AT 9:00 AM BELTZ 211  
 03/27/07 (S) Heard & Held  
 03/27/07 (S) MINUTE(STA)  
 03/29/07 (S) STA AT 9:00 AM BELTZ 211  
 03/29/07 (S) Moved CSSB 101(STA) Out of Committee  
 03/29/07 (S) MINUTE(STA)  
 03/30/07 (S) STA RPT CS 3DP 2NR SAME TITLE  
 03/30/07 (S) DP: MCGUIRE, GREEN, BUNDE  
 03/30/07 (S) NR: FRENCH, STEVENS  
 01/15/08 (S) RETURNED TO L&C COMMITTEE  
 01/24/08 (S) L&C AT 3:00 PM BELTZ 211  
 01/24/08 (S) -- Rescheduled to 01/25/08 --  
 01/25/08 (S) L&C AT 3:00 PM BELTZ 211

BILL: SB 147

SHORT TITLE: WORKERS' COMP EMPLOYER LIABILITY  
 SPONSOR(S): SENATOR(S) FRENCH

03/28/07 (S) READ THE FIRST TIME - REFERRALS  
 03/28/07 (S) L&C, FIN  
 01/17/08 (S) L&C AT 1:30 PM BELTZ 211  
 01/17/08 (S) -- MEETING CANCELED --  
 01/22/08 (S) L&C AT 1:30 PM BELTZ 211  
 01/22/08 (S) Heard & Held  
 01/22/08 (S) MINUTE(L&C)

BILL: SB 107

SHORT TITLE: NATUROPATHS  
 SPONSOR(S): SENATOR(S) DAVIS BY REQUEST

03/07/07 (S) READ THE FIRST TIME - REFERRALS  
 03/07/07 (S) L&C, HES, FIN  
 04/19/07 (S) L&C AT 1:30 PM BELTZ 211  
 04/19/07 (S) Heard & Held  
 04/19/07 (S) MINUTE(L&C)  
 01/15/08 (S) L&C AT 1:30 PM BELTZ 211  
 01/15/08 (S) -- MEETING CANCELED --  
 01/17/08 (S) L&C AT 1:30 PM BELTZ 211  
 01/17/08 (S) -- MEETING CANCELED --  
 01/22/08 (S) L&C AT 1:30 PM BELTZ 211

01/22/08 (S) Heard & Held  
01/22/08 (S) MINUTE(L&C)

**WITNESS REGISTER**

DANA OWEN

Staff to Senator Johnny Ellis  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Presented SB 101 for the sponsor.

DEBORAH BEHR, Chief Assistant Attorney General  
Legislation and Regulations Section  
Department of Law  
Juneau, AK

**POSITION STATEMENT:** Supported SB 101.

JOSH FINK, Director  
Office of Public Advocacy  
Anchorage, AK

**POSITION STATEMENT:** Explained SB 101.

MARIE DARLIN, Coordinator  
AARP Capital City Task Force  
AARP  
Juneau, AK

**POSITION STATEMENT:** Supported SB 101.

SENATOR HOLLIS FRENCH  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Sponsor of SB 147.

LINDA HALL, Director  
Division of Insurance  
Department of Commerce, Community & Economic Development  
Juneau, AK

**POSITION STATEMENT:** Commented on SB 147.

PAUL LISANKIE, Director  
Division of Worker's Compensation  
Alaska Department of Labor and Workforce Development  
Juneau, AK

**POSITION STATEMENT:** Commented on SB 147.

SUSAN ORLANSKY, Attorney  
Feldman Orlandsky & Sanders

Anchorage, AK

**POSITION STATEMENT:** Commented on SB 147.

JENNIFER STRICKLER, Chief

Professional Licensing

Division of Corporations, Business, and Professional Licensing,  
Department of Commerce, Community & Economic Development

Juneau, AK

**POSITION STATEMENT:** Commented on CSSB 107(L&C).

#### **ACTION NARRATIVE**

**CHAIR JOHNNY ELLIS** called the Senate Labor and Commerce Standing Committee meeting to order at [3:07:35 PM](#). Senators Ellis, Bunde, Davis, and Hoffman were present at the call to order.

#### **SB 101-GUARDIANSHIP AND CONSERVATORS**

CHAIR JOHNNY ELLIS announced SB 101 to be up for consideration. [CSSB 101(2<sup>d</sup> L&C) version V was before the committee.]

DANA OWEN, Staff to Senator Johnny Ellis, sponsor of SB 101, said SB 101 has a major change. The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, which is a model for a lot of states, was added. The idea is to set a uniform standard for dealing with cases that reach across state lines. In addition, he said Josh Fink, Director, Office of Public Advocacy, has asked for a few small changes. On page 9, sections 17 and 18 have been added; section 17 gives the court authority to make a finding of incapacity in absence of expert testimony in cases where the respondent stipulates to the incapacity. Section 18 mandates written findings in cases where the court deviates from the priority list of potential guardians. Section 20 has the same mandate for written findings in the case of conservators. Section 21 provides that records of cases involving public guardians are confidential except where they are relevant to an investigation of a public guardian who has provided guardianship or conservator services. There are various conforming amendments throughout the bill.

[3:10:41 PM](#)

DEBORAH BEHR, Chief Assistant Attorney General, Legislation and Regulations Section, Department of Law, Juneau, said she also is a uniform law commissioner for the state that brought the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act forward. It is good public policy for Alaska families. She said SB 101 is supported by the National College

of Probate Judges and the National Guardianship Foundation. The Department of Health and Social Services supported it as well.

MS. BEHR said that Alaska family are often transient and have family members in several parts of the US. So, for example, if she had a mother in Fairbanks, a brother in Virginia and a sister in California and mother visits sister in California and has a major event like a stroke and becomes incapacitated, the court has difficulty deciding which court should handle that case. In the time you are arguing over which court should handle it, it's expensive to families. This bill would set up a priority system among the states as to who should handle these cases so they can look at what is in the best interest of an incapacitated family member. So in the example, the family could go to the California court and say the sister is the best person to take care of her even though she was with the mother only a couple of months. The California court under this bill could easily work with the Alaska court and come up with a plan. SB 147 would also make it easier to transfer guardianship back up to Alaska. It's cheaper and less stress for families.

[3:13:26 PM](#)

JOSH FINK, Director, Office of Public Advocacy, said Mr. Owen went through the changes and he would give the rationale behind them. The issue in section 17 was that under current statute, they are required to provide psychological examination of any respondent where a petition is filed for a protective order. This language allows the respondent in instances where he or she doesn't object to an appointment to forego the need for a psychological evaluation, which can be very expensive. Rural parts of the state need to fly a psychologist out or fly the petitioner and a guardian in.

He explained that under current law sections 18 and 20 for guardianships and conservatorships have a priority as to who should be appointed a public guardian or conservator. The order starts with the person requested by the respondent, then the spouse, then the adult child or parent, then a relative, family friend, private guardian and then finally, as a last resort, the Office of Public Advocacy. This change simply asks that the court make written findings as to why someone was appointed. Sometimes, he explained, family members exploit the protected person or were part of the problem and yet after the appointment they are at his door trying to micromanage the ward's affairs. This gives his office a written record of why that person was not appointed. Making the court explain what it is doing is just good policy.

MR. FINK said that section 21 is new and exempts public guardian records from the Public Records Act, because they contain very personal information like mental health evaluations and personal family affairs. It's a grey area of the law right now, he explained, and he wasn't sure if someone asked to see one of those files that they could be shared or not.

He said section 23 on page 11 clarifies the statute to allow OPA to go forward on a practice they have been doing since 1986. He explained that he collects a monthly fee established in regulation of \$40 a month; and for some clients that is a hardship. OPA can defer the fees until the client comes into money. If a ward is transferred to a private guardian or family member or dies, the OPA typically collects the fees after burial expenses are paid and then have released the remaining funds to the family. The office already does this, but this language makes it clear.

[3:18:04 PM](#)

SENATOR BUNDE asked how a person can either agree or disagree to a process that judges them incompetent.

MR. FINK replied that there are two standards: guardianship is a higher level of incapacity than for conservatorship, which is just an inability to manage finances. The current practice is a court visitor goes out and collects whatever medical records are available and often they are able to get the doctor to be the expert. Often, particularly with conservatorships, the respondent will have no objection to the appointment. In some rural areas the judge has said a person is agreeing to the protective order, but under the law he has to have him evaluated. So, he has to be flown in with a caretaker or a psychologist has to be flown out. It is exceedingly expensive. If the ward was incapacitated such that consent was an issue, he couldn't stipulate. There would have to be a psychological evaluation. Competency means you have to understand the proceedings you are involved with and what you are doing, he added.

[3:20:03 PM](#)

MARIE DARLIN, Coordinator, AARP Capital City Task Force, AARP, said she had provided a letter of support to the committee. With the increasing senior population there will be a bigger need for this kind of service, she said. Incapacitated elders often have problems with those kinds of cases. AARP fully supported the idea behind the legislation.

[3:21:25 PM](#)

SENATOR DAVIS moved to adopt CSSB 101(2d L&C), version V. There were no objections and it was so ordered.

[3:22:02 PM](#)

SENATOR BUNDE moved to report CSSB 101(2d L&C) from committee with individual recommendations and attached fiscal note(s). There being no objection, the motion carried.

[3:23:05 PM](#)

**SB 147-WORKERS' COMP EMPLOYER LIABILITY**

CHAIR ELLIS announced SB 147 to be up for consideration.

SENATOR HOLLIS FRENCH, sponsor of SB 147, said this bill tries to fix a severe inequity that the addition of three words "or potentially liable" for securing payment or compensation to the workers' compensation statutes created when it last went through the legislature. This means that employers who are merely "potentially liable" for buying a workers' compensation policy, but who do not actually purchase a policy, can still get the benefit of the exclusiveness of remedy provisions in workers' compensation statutes.

[3:24:37 PM](#)

LINDA HALL, Director, Division of Insurance, Department of Community, Commerce and Economic Development, said she has talked with four attorneys and she is not quite sure she understands it.

[3:25:58 PM](#)

SENATOR BUNDE asked if Tesoro didn't have workers' compensation and hired a sub who did have workers' compensation and the sub's employee got hurt, was his compensation limited to workers' compensation. But if Tesoro purchased workers' compensation and the person gets hurt, is Tesoro immune from tort suits.

[3:27:46 PM](#)

MS. HALL said she couldn't answer the question.

PAUL LISANKIE, Director, Division of Worker's Compensation, Alaska Department of Labor and Workforce Development, said he is not an expert in tort legislation either, but he attempted to explain:

Under the 2004 law the project owner would be potentially liable for everybody below for their workers' compensation only if the people that had the primary responsibility failed to cover that responsibility. So they would only be responsible for that injured subcontractor if both the subcontractor employer and the intermediary general contractor, both of them, failed to cover the workers' compensation coverage. Then the project owner would be responsible for paying those workers' compensation benefits and in exchange, in a sense, they would not be liable for being sued for the damages. That was under '04. They weren't very likely to have to pay workers' compensation. I would certainly agree with that characterization, that the primary responsibility is with the subcontractor employer. And presumably most of them follow the law. If they fail, then it would move up one step to the general contractor for whom they are working and most of them follow the law and have workers' compensation liability coverage.

But in the event that both of those fail, then it would flow up to the project owner and under the laws that were changed in 2004, they would now have responsibility for workers' compensation payments that they didn't use to have.

But the change in '04 was they were added to the mix of people that had this very somewhat attenuated liability for the workers' compensation benefits to the lower employees. They didn't use to have that. It used to stop at the general contractor. They were the only intermediary other than the actual employer that was required to pay workers' compensation benefits. In '04 the project owners were added to be kind of suspenders on top of the belt on top of the belt. So it was like primary responsibility with the employer, secondary responsibility with the general contractor, and tertiary responsibility with the project owner.

In exchange, for that, if you think it's worth anything, you know, then they were exempt from being sued for that same injury - even if they were negligent.

So now what this bill before you is talking about is taking it back in the other direction and saying that

that is a too attenuated liability. It's extremely unlikely...that they will end up paying workers' compensation even if they have coverage.

So, as I understand it, it will be changed so that if for some reason they actually pay the benefits, that they will not be sued or they cannot be sued. But the mere fact that they might under some set of circumstances be liable will not longer shield them from a tort suit for their own negligence.

[3:32:03 PM](#)

SENATOR BUNDE asked if under current law the owner that doesn't have to buy workers' comp, and if it went to trial the most they would be liable for would be the workers' compensation benefits.

MR. LISANKIE replied with what he understood from discussions with Ms. Hall and others that a project owner is typically a company, and it has the responsibility to cover workers' compensation benefits for its employees; this would be an add on to that. The question is how much credit should be extended potentially to an employee - not their own - but of this other company that is working for them.

[3:33:38 PM](#)

SUSAN ORLANSKY, Attorney, Feldman Orlansky & Sanders, Anchorage, said Mr. Lisankie's understanding of the law comports with her understanding both of how it is working currently and how it would be changed under this bill.

SENATOR BUNDE asked if this bill passes, then the owner would not be forced to buy workers' compensation, but even if he bought it, an employee of a subcontractor who got hurt could sue the owner.

MS. ORLANSKY said she understands the way the bill would work is if an employee of a subcontractor were hurt and the subcontractor didn't carry workers' compensation insurance and the general contractor didn't either, if the project owner had workers' compensation or stepped up to the plate and provided the equivalent of workers' compensation benefits, then he would be exempt from a tort suit. If the cause of the accident was due to the project owner's negligence and he didn't have workers' compensation coverage, he could be subject to a tort lawsuit.

[3:36:03 PM](#)

SENATOR BUNDE said he agreed with Senator French about fairness. If this passes it would be unfair for owners of companies that would buy the insurance but still be subject to a personal injury suit. However, it may not be any fairer to leave it in place.

[3:38:41 PM](#)

SENATOR HOFFMAN said he still doesn't feel comfortable with the issue.

CHAIR ELLIS said he would like to expand the discussion to allow more members of the Senate to express themselves.

[3:39:28 PM](#)

SENATOR FRENCH added that there is a policy decision to be made here and he agreed with expanding the discussion. There is no perfect solution to every legal issue. However, he thought this bill restores a fundamental balance in the workers' compensation law.

CHAIR ELLIS said he would hold the bill for further consideration.

### **SB 107-NATUROPATHS**

CHAIR ELLIS announced SB 107 to be up for consideration. [Before the committee was CSSB 107(L&C) version E.] He said the CS had addressed the labor and commerce issues, but Senator Bunde had a concern about possibly adding another public member to the board.

JENNIFER STRICKLER, Chief, Professional Licensing, Division of Corporations, Business, and Professional Licensing, Department of Commerce, Community & Economic Development, said she would address the composition of the board. She said that licensing boards that have five members usually have just one public member. Currently 10 professional licensing boards have five members where only one is a public member. If the board grows, a public member is added.

CHAIR ELLIS said he thought the comfort level may increase with more public members. But adding two public members instead of the one would make the board even numbered, so ties could be a problem, but maybe they could operate on consensus.

[3:43:24 PM](#)

SENATOR BUNDE said he had received some communications from people supporting the bill that said the department of law could do any enforcement, but his experience is that they would have neither the time nor the people to do it. He thought that the public, particularly in the area of health, needs to be protected and he would be far more comfortable increasing the number of public members by two. The three naturopaths would dominate the board and make decisions in favor of naturopaths that may not necessarily go in favor of the general public. The committee was not given accurate information in the first place and he still has reservations about the bill.

SENATOR BUNDE moved a conceptual amendment (Amendment 1) to expand the public membership to include three public members, adding two from what it is in the CS.

[3:45:49 PM](#)

CHAIR ELLIS objected for purposes of discussion.

MS. STRICKLER didn't object to that, but wanted to state that currently there are only 44 naturopaths licensed by the state, 37 of them have Alaska addresses. This would be a large board regulating a very small group.

[3:46:21 PM](#)

SENATOR DAVIS offered that one could be taken away from the doctors and two could be public members; one of the public members could be an MD.

SENATOR BUNDE noted the fifth member was a pharmacist.

[3:46:58 PM](#)

SENATOR DAVIS asked Ms. Strickler what she thought about having the same number of doctors and public members.

MS. STRICKLER replied that she had no comment and she would enforce whatever they decided to do.

SENATOR DAVIS asked to make that a friendly amendment.

SENATOR BUNDE said he didn't object.

SENATOR BUNDE summarized that they would continue to have a five member board and two would be naturopaths, two would be from the public and one would be the pharmacist. He moved to amend the amendment saying if an MD chose to, he could be considered for appointment as one of the public members. There were no

objections. Without further objections conceptual Amendment 1 am was adopted.

3:48:28 PM

SENATOR HOFFMAN moved to report CSSB 107(L&C) from committee with individual recommendations and attached fiscal note(s). There being no objection, the motion carried.

There being no further business to come before the committee, Chair Ellis adjourned the meeting at 3:49:16 PM.