

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

April 8, 2010

2:08 p.m.

MEMBERS PRESENT

Senator Joe Paskvan, Chair
Senator Joe Thomas, Vice Chair
Senator Bettye Davis
Senator Kevin Meyer
Senator Con Bunde

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 110(HSS)

"An Act relating to the practice and licensing of psychologists."

- MOVED CSHB 110(HSS) OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 314(FIN)

"An Act relating to fees and charges for medical treatment or services, civil damages, and penalties as they relate to workers' compensation; and providing for an effective date."

- MOVED CSHB 314(FIN) OUT OF COMMITTEE

HOUSE BILL NO. 245

"An Act relating to licensure as an optometrist; establishing a retired status optometrist license; and providing for an effective date."

- MOVED HB 245 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 110

SHORT TITLE: PSYCHOLOGISTS' LICENSING & PRACTICE

SPONSOR(S): REPRESENTATIVE(S) HERRON

02/04/09	(H)	READ THE FIRST TIME - REFERRALS
02/04/09	(H)	HSS, L&C

03/19/09 (H) HSS AT 3:00 PM CAPITOL 106
 03/19/09 (H) Heard & Held
 03/19/09 (H) MINUTE(HSS)
 01/28/10 (H) HSS AT 3:00 PM CAPITOL 106
 01/28/10 (H) Moved CSHB 110(HSS) Out of Committee
 01/28/10 (H) MINUTE(HSS)
 01/29/10 (H) HSS RPT CS(HSS) 6DP 1NR
 01/29/10 (H) DP: HOLMES, T.WILSON, SEATON, LYNN,
 CISSNA, HERRON
 01/29/10 (H) NR: KELLER
 02/17/10 (H) L&C AT 3:15 PM BARNES 124
 02/17/10 (H) Moved CSHB 110(HSS) Out of Committee
 02/17/10 (H) MINUTE(L&C)
 02/19/10 (H) L&C RPT CS(HSS) 2DP 3NR
 02/19/10 (H) DP: HOLMES, T.WILSON
 02/19/10 (H) NR: BUCH, NEUMAN, OLSON
 02/24/10 (H) TRANSMITTED TO (S)
 02/24/10 (H) VERSION: CSHB 110(HSS)
 02/26/10 (S) READ THE FIRST TIME - REFERRALS
 02/26/10 (S) EDC, L&C
 03/19/10 (S) EDC AT 8:00 AM BELTZ 105 (TSBldg)
 03/19/10 (S) -- MEETING CANCELED --
 03/26/10 (S) EDC RPT 4DP 2NR
 03/26/10 (S) DP: MEYER, THOMAS, HUGGINS, DAVIS
 03/26/10 (S) NR: OLSON, STEVENS
 03/26/10 (S) EDC AT 8:00 AM BELTZ 105 (TSBldg)
 03/26/10 (S) Moved CSHB 110(HSS) Out of Committee
 03/26/10 (S) MINUTE(EDC)
 04/08/10 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)

BILL: HB 314

SHORT TITLE: WORKERS' COMPENSATION

SPONSOR(S): LABOR & COMMERCE

01/27/10 (H) READ THE FIRST TIME - REFERRALS
 01/27/10 (H) L&C, JUD
 02/03/10 (H) L&C AT 3:15 PM BARNES 124
 02/03/10 (H) Moved Out of Committee
 02/03/10 (H) MINUTE(L&C)
 02/05/10 (H) L&C RPT 2DP 3NR
 02/05/10 (H) DP: BUCH, OLSON
 02/05/10 (H) NR: LYNN, HOLMES, T.WILSON
 02/05/10 (H) FIN REFERRAL ADDED AFTER JUD
 02/18/10 (H) JUD AT 1:00 PM CAPITOL 120
 02/18/10 (H) -- MEETING CANCELED --
 02/24/10 (H) JUD AT 1:00 PM CAPITOL 120
 02/24/10 (H) Heard & Held

02/24/10 (H) MINUTE(JUD)
 02/25/10 (H) JUD AT 1:00 PM CAPITOL 120
 02/25/10 (H) Moved CSHB 314(JUD) Out of Committee
 02/25/10 (H) MINUTE(JUD)
 02/26/10 (H) JUD RPT CS(JUD) NT 4NR
 02/26/10 (H) NR: LYNN, HERRON, HOLMES, RAMRAS
 03/22/10 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 03/22/10 (H) Moved CSHB 314(FIN) Out of Committee
 03/22/10 (H) MINUTE(FIN)
 03/23/10 (H) FIN RPT CS(FIN) NT 6DP 3NR
 03/23/10 (H) DP: GARA, THOMAS, N.FOSTER, KELLY,
 FAIRCLOUGH, STOLTZE
 03/23/10 (H) NR: DOOGAN, AUSTERMAN, SALMON
 03/31/10 (H) TRANSMITTED TO (S)
 03/31/10 (H) VERSION: CSHB 314(FIN)
 04/01/10 (S) READ THE FIRST TIME - REFERRALS
 04/01/10 (S) L&C, FIN
 04/08/10 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)

BILL: HB 245

SHORT TITLE: LICENSING FOR OPTOMETRY

SPONSOR(S): THOMAS

04/18/09 (H) READ THE FIRST TIME - REFERRALS
 04/18/09 (H) L&C, FIN
 02/26/10 (H) L&C AT 3:15 PM BARNES 124
 02/26/10 (H) Moved Out of Committee
 02/26/10 (H) MINUTE(L&C)
 03/01/10 (H) L&C RPT 3DP 3NR
 03/01/10 (H) DP: LYNN, NEUMAN, OLSON
 03/01/10 (H) NR: BUCH, CHENAULT, T.WILSON
 03/16/10 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 03/16/10 (H) Moved Out of Committee
 03/16/10 (H) MINUTE(FIN)
 03/17/10 (H) FIN RPT 9DP 1NR
 03/17/10 (H) DP: THOMAS, AUSTERMAN, GARA, DOOGAN,
 JOULE, KELLY, N.FOSTER, FAIRCLOUGH,
 STOLTZE
 03/17/10 (H) NR: HAWKER
 03/22/10 (H) TRANSMITTED TO (S)
 03/22/10 (H) VERSION: HB 245
 03/23/10 (S) READ THE FIRST TIME - REFERRALS
 03/23/10 (S) L&C
 04/08/10 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

LIZ CLEMENT

Staff to Representative Bob Herron
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Presented HB 110 for the sponsor.

PHILLIP BAKER, Legislative Chair
Alaska Psychological Association

POSITION STATEMENT: Supported HB 110.

DR. JOHN DE RUYTER, member
Board of Psychologists and Psychological Associate Examiners

POSITION STATEMENT: Supported HB 110.

CAM CARLSON, public member
Board of Psychologists and Psychological Associate Examiners

POSITION STATEMENT: Supported HB 110.

REPRESENTATIVE KURT OLSON

Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Sponsor of HB 314.

CONRAD JACKSON

Staff to Representative Olson
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Commented on HB 314 for the sponsor.

LINDA HALL, Director
Division of Insurance
Department of Commerce, Community and Economic Development
(DCCED)

POSITION STATEMENT: Commented on HB 314.

FRED BROWN, Executive Director
Health Care Cost Management Corporation of Alaska
Fairbanks, AK

POSITION STATEMENT: Had concerns with HB 314.

SUSAN MCCLAIN, Director
Criminal Division
Department of Law (DOL)

POSITION STATEMENT: Supported HB 314.

MICHAEL JENSEN

Law Offices of Michael Jensen

Anchorage, AK

POSITION STATEMENT: Opposed HB 314.

STEVEN CONSTANTINO, private attorney

Anchorage, AK

POSITION STATEMENT: Had concerns with HB 314.

TRINA HIEKUS, Director

Division of Workers' Compensation

Department of Labor and Workforce Development (DOLWD)

POSITION STATEMENT: Generally agreed with the previous Deputy Attorney General who supported HB 314.

KACI SHROEDER

Staff to Representative Thomas

Alaska State Legislature

Juneau, AK

POSITION STATEMENT: Presented HB 245 for the sponsor.

JILL MATHESON, Chair

Alaska Board of Optometry

POSITION STATEMENT: Supported HB 245.

ACTION NARRATIVE

[2:08:10 PM](#)

CHAIR JOE PASKVAN called the Senate Labor and Commerce Standing Committee meeting to order at 2:08 p.m. Present at the call to order were Senators Davis, Meyer, and Paskvan.

HB 110-PSYCHOLOGISTS' LICENSING & PRACTICE

[2:09:08 PM](#)

CHAIR PASKVAN announced HB 110 to be up for consideration [CSHB 110(HSS) was before the committee].

[2:09:21 PM](#)

LIZ CLEMENT, staff to Representative Bob Herron, sponsor of HB 110, said this bill does two things; it creates a more efficient licensure system without sacrificing professional standards or quality and it also clarifies who is regulated by the board.

When current law was written, Ms. Clement explained, the Alaska Board of Psychologists and Psychological Associate Examiners offered a qualifying exam to be licensed by the board every six months. However, they now offer it every three months. Statute still states that if you take and do not pass the qualifying

exam the first time, you need to wait six months before taking it again. The board feels there is no reason to force people to wait that long if they are ready to take it again sooner.

MS. CLEMENT said that existing exemptions would remain for supervised psychology students, interns and residents, and a board approved program of study for qualified members of other professions such as licensed professional counselors, clinical social workers and marital and family therapists who do work that professions train and qualify them to do and also for physicians who are engaged in the normal practice and scope of work for which they are licensed.

Two other groups that are currently exempt but with very vague language are clarified; the first being school psychologists who work under the supervision of their employing school districts and U.S. government employees who practice psychology while in the discharge of their official duties. The only people subject to board regulation and the only people this bill would affect, therefore, are those who represent themselves to a trusting public as a psychologist or a psychological associate.

MS. CLEMENT said passage of HB 110 would not limit the work of any other mental health service providers in Alaska be they secular, spiritual, professional or voluntary. It has two zero fiscal notes.

[2:12:30 PM](#)

PHILLIP BAKER, Legislative Chair, Alaska Psychological Association, supported HB 110. It closes a loophole created in the original legislation in 1964 allowing anyone to hang out a shingle and call themselves a psychologist.

[2:13:54 PM](#)

DR. JOHN DE RUYTER, member, Board of Psychologists and Psychological Associate Examiners, said he supported HB 110 for the reasons stated by Ms. Clement.

[2:15:15 PM](#)

CAM CARLSON, public member, Board of Psychologists and Psychological Associate Examiners, supported HB 110. It gets to the heart of what the board is for - protecting the public.

[2:16:55 PM](#)

CHAIR PASKVAN closed public testimony.

SENATOR DAVIS moved to report CSHB 110(HSS) from committee with individual recommendations and attached zero fiscal notes. There were no objections and it was so ordered.

[2:17:35 PM](#)

CHAIR PASKVAN announced an at ease from 2:17 to 2:19 p.m.

HB 314-WORKERS' COMPENSATION

[2:19:22 PM](#)

CHAIR PASKVAN called the meeting back to order and announced HB 314 to be up for consideration [CSHB 314(FIN) was before the committee].

SENATOR BUNDE joined the committee.

[2:19:59 PM](#)

REPRESENTATIVE KURT OLSON, sponsor of HB 314, said this bill represents the recommendations of the Workers' Compensation Legislative Task Force and the Medical Service Review Committee. Getting to this point has been a four-year process and involved a significant amount of support from the Department of Labor and Workforce Development (DOLWD).

[2:21:49 PM](#)

CONRAD JACKSON, staff to Representative Olson, said he hoped to relay to them the details and importance of this bill. He explained that last year the cap on medical services fees was extended, but it expires at the end of this year. He said this bill updates the fee schedule in a way that stakeholders are happy with. {

[2:23:25 PM](#)

LINDA HALL, Director, Division of Insurance, Department of Commerce, Community and Economic Development (DCCED), reviewed that the fee schedule was inadvertently left out of the revisions that were made in 2005 to the Workers' Compensation Act. But the expectation was that by the end of 2007 there would be a new fee schedule. That did not occur and as a result, the fees were frozen until August 2007. Subsequently they have done two "CPI-type" increases, but the fee schedule has remained the same and it expires on December 31, 2010, which means there would be no caps on fees at all for providers.

She included charts that were self explanatory, but she wanted to show that Alaska already has the highest percentage of medical costs. They showed that the cost of the Workers'

Compensation system in most states is 58 percent and in Alaska it is 72 percent. In other words 72 cents of every dollar that goes for system costs is in medical care.

[2:25:10 PM](#)

SENATOR THOMAS joined the committee.

She said her concern with that is as the cost of medical care goes up the subsequent cost of claims go up and that drives the compensation premiums. Chart 3 showed the average cost of a claim country wide versus Alaska. Average country wide cost of a claim is \$26,000 and in Alaska the average cost is \$40,000. The last chart showed that Alaska ranks number one on the premium rate ranking chart - not a place she wants to be.

The reason she brought these charts to their attention was to stress the importance of having a fee schedule that is sustainable. This bill will replace the current fee schedule with an up-to-date methodology. To date 2,000 procedure codes are missing because the schedule has not been updated. Those missing codes are paid at 100 percent. So, those will be subject to billable charges in the 90th percentile. She said this is not a fix or going to lower premiums, but it gives the state a complete medical fee schedule with all the terminology and the procedure codes. The schedule will be developed by a vendor, and Engenics as that is the only one she is aware of.

MS. HALL said the other section of the bill updates the fraud prosecution language. Workers' Compensation fraud adds to the cost of the system. The investigative and prosecution authority was added to the workers' comp code in 2005, but recent experience has shown that the language is insufficient to actually prosecute. So this bill also contains language to allow prosecution of workers' comp fraud where it exists.

Section 1 of HB 314 is the actual fee schedule language. It provides a base fee schedule that is still based on usual, customary and reasonable charges. It requires that that fee schedule be based on statistically credible profile bill charges. These charges are actually based on Alaska charges. The only vendor they are aware of is called Engenics and they currently provide fee schedules for many of the health insurers. They use Alaska data and base it on geographical areas; today there are three different geographical areas that reflect cost differences. The fee schedule is based at the 90th percentile of those charges.

[2:28:35 PM](#)

She said the bill also requires for the first time inclusions of procedure codes for medical supplies including emergency transportation, an area where a real cost increase is being seen in both health care and workers' compensation.

MS. HALL stated that Section 2 clarifies that a crime of knowingly making false benefit statements, assisting in making false submissions, misclassifying employees is prosecuted under AS 11 (criminal code). The prior language had a mixture of civil and criminal liability in the same paragraph which was what caused one of the problems with prosecution. The civil liability remains and was clarified in the Judiciary CS. It provides the civil action; there can be an award of three times the compensatory damages and reasonable attorney fees. One section is criminal and one section is civil she summarized.

SENATOR BUNDE asked if the workers' comp premiums in Alaska are approximately double what they are in the Lower 48.

[2:31:19 PM](#)

MS. HALL replied that she thought he was referring to a Division of Insurance study comparing costs for specific procedures between Washington and Alaska, and they found some vastly varying charges. Those same types of things are found in workers' compensation, but the premium chart indicates other pieces to the system cost. So Alaska's premiums are not double exactly, but the index rate indicates it is four times as much as North Dakota, for instance.

[2:32:13 PM](#)

SENATOR BUNDE asked if travel cost is a major factor in a state as large as Alaska.

MS. HALL answered that the transportation costs she was referring to can be just within Alaska or out of state depending on the nature of an injury. They are seeing increases even in land transportation. But in general, emergency transportation is increasing.

SENATOR BUNDE suggested that perhaps because of Alaska's geography, travel is a factor.

MS. HALL responded that she really didn't know that.

SENATOR MEYER asked if this statute was last changed in 2005.

MS. HALL answered yes.

SENATOR MEYER asked if they did that because workers' comp costs were high and businesses were complaining. He also asked if anything had been done to reduce workers' comp costs.

MS. HALL replied back in 2005 some changes were made that were intended to have some effect on system cost over time. That was when the Appeals Commission was created in lieu of going to Superior Court as the beginning step of appealing a Workers' Compensation Board decision. The impetus for much of that is the cost of the system. She approved significant premium increases based on what she saw in loss ratios. At the time that work was started she saw a loss ratio in excess of 150 percent, at times. She approved fairly significant premium increases to accommodate that. She explained that they have seen a tremendous decrease in claims and a much greater emphasis on safety in the work place, which is what they wanted to see. This has helped lower claims cost, and rates have decreased over the last three years. She couldn't anticipate that would continue, but it has resulted in a safer environment which has allowed the system to absorb the increases in the cost per claim by the fact that there are fewer claims. At some point that will balance out.

[2:36:46 PM](#)

SENATOR MEYER asked if she supported this bill.

MS. HALL answered yes.

SENATOR THOMAS commented that a lot of work has been done on safety programs and that Alyeska had zero accidents for the last million man hours. He asked if rates had been reduced or flattened out.

MS. HALL answered that rates have decreased. They went from an overall 22 percent increase and double-digit increases for two years after that, but for the last three years the rates have decreased. Today the comp rates on average are probably equivalent to where they were in the early 1990s. They are still high as can be seen from her information. Alaska also has the highest health insurance premiums in the country. The cost of health care drives both.

SENATOR THOMAS said part of his question was the correlation between various things, and he asked if she had a chart showing the cost of health care versus the number of accidents per classification of worker.

MS. HALL answered that her statistical agent, the National Council on Compensation, keeps an incredible amount of data. They make the original rate filing and it takes a variety of things into consideration and is based on actuarial analysis. She offered to provide that kind of detail that correlates with age of work force, average salaries, and how that inter relates with workers comp claims. It's all reviewed very carefully, because it impacts every employer in the state. It is the only insurance rate for which they have public rate hearings.

[2:43:16 PM](#)

FRED BROWN, Executive Director, Health Care Cost Management Corporation of Alaska, Fairbanks, said he was not concerned about the medical fee schedule language, but he was concerned with the proposed fraud language because it expands the language. He thought the consequence would be further cost shifting. He thought that costs could be better contained by reducing the complexity of the system; his organization had specific ideas on this topic and he looked forward to working with Ms. Hall and the legislature on specific remedies.

[2:44:39 PM](#)

MR. BROWN said before becoming the executive director in February 2009 he was a hearing officer for the Alaska Workers' Compensation Board since 1984. He said that Mano Fry, a long-time president of the Alaska AFL-CIO, is the co-founder of his organization and helped them develop their current mission statement, which is to ensure that workers and their families have access to value and quality based health care benefits and service. His organization covers about 26 member funds most of which are in Alaska, some are in the Pacific Northwest. They represent about 10 percent of the population in Alaska. Most of their members are union related health care buyers and pay the highest rates in the nation. Typically their trust funds are the first to pay medical bills in the case of an on-the-job injury and, accordingly, they hold a subrogation interest hoping to be reimbursed later by the injured employee's workers' compensation insurance carrier.

He said each time a change is implemented in Alaska's workers' compensation law, the system becomes more complex, expenses increase and the process of adjudication is slowed. These changes add to the delay before their trust funds are reimbursed their subrogation claims. Also, workers' compensation insurers gain additional leverage in negotiating a settlement with injured workers and then the percentage of reimbursement paid to

their trust fund is reduced. This is why he is particularly concerned about the provision in HB 314 which threatens additional criminal penalties on injured workers who file claims. He said he personally believes the proposed changes in HB 314 make the system more complex. Instead they should focus on making the system less complex and remove all medical codes to the fee schedule.

[2:47:08 PM](#)

CHAIR PASKVAN said AS 11.46.120-150 are being replaced with simply AS 11 and asked what his concern was specifically with that change.

MR. BROWN replied that previously the focus was solely on matters having to do with theft by deception. Now the CS incorporates all of Title 11, which is all of criminal law. If you focus on Chapter 46 of Title 11 there are 50 ways you can be prosecuted. Of that list of 50, only one is theft by deception. His concern is that by opening it up to all of Title 11 there are any number of ways by which one can "hammer" upon an injured worker for not filing a claim form correctly and reducing a settlement which would otherwise be owed not only to the injured worker but to their trust funds through the subrogation process.

[2:48:39 PM](#)

SENATOR BUNDE asked if it is necessary to separate the criminal from the civil. Is there a lot of fraud?

MS. HALL answered that she didn't have the fraud statistics, and thought the Department of Labor and Workforce Development (DOLWD), would have those, but all suspected fraud that occurs with a benefit claim to an insurance company is originally reported to the Division of Insurance by statute. They in turn refer those to the Division of Workers' Compensation Investigative team. She thought there was an average of 5-8 referrals per year.

SENATOR BUNDE said he was pleased to hear we didn't have a high rate.

[2:51:13 PM](#)

SUSAN MCCLAIN, Director, Criminal Division, Department of Law (DOL), said she also supervises the Office of Special Prosecutions which is the office that handles criminal prosecutions under Workers' Compensation fraud. She was mystified by Mr. Brown's concern. She explained for someone to be prosecuted - an employer a medical provider or an employee

who is making dishonest statements - they have to prove beyond a reasonable doubt that what they did was fraudulent either knowingly or intentionally. They weren't talking about simply not filling out forms correctly, but about their burden of proving beyond a reasonable doubt that someone tried to take money one way or another that they were not entitled to.

The former statute limited prosecutions to the crime of theft by deception, but not everything people do that is dishonest falls within the definition of theft by deception. It might be another Title 46 crime, like falsification of business records by a doctor or theft by failure to make disposition of funds, if it was an employer who took money but didn't contribute as an employer should to the fund. It limits them into a situation where if you can't prove the elements of theft by deception, then you can't file a charge.

MS. MCCLAIN explained further that under Title 11.46 when the state charges theft, it isn't necessary for them to specify a theory of theft - even though they usually do. But often there is more than one theory and it's not necessary to be limited to one.

[2:54:07 PM](#)

The other problem with that statute is that the dishonest conduct may fall within a different criminal statute in theft for which the mental state was "knowingly." The purpose of the criminal statute is to address those people who are not being honest on purpose.

[2:55:30 PM](#)

CHAIR PASKVAN asked if she supported this bill as written.

MS. MCCLAIN answered absolutely.

SENATOR BUNDE asked if probable cause before bringing action still applied in this section of law in regards to the concern about using the law to harass people who made a claim - whether they are workers or business owners.

MS. MCCLAIN answered yes, and the standard is proof beyond a reasonable doubt. "It's not a goal of criminal prosecution to harass people."

SENATOR BUNDE asked if the threshold for criminal prosecution is higher than for civil.

MS. MCCLAIN answered yes.

2:56:50 PM

MICHAEL JENSEN, Law Offices of Michael Jensen, Anchorage, said he had practiced in Alaska for 25 years representing injured Alaska workers exclusively. Prior to that he was a prosecutor in the Army for three years. In his role as representing Alaskan workers he had first a concern regarding Section 1 because it will affect a worker's ability to get medical care. One way they have seen to save money is simply to slash the amount of treatment that a worker can obtain. Medicare uses the same approach that this act envisioned, and it has saved money by not allowing doctors to recoup even the basic cost of their overhead. And when a person over 65 wants to find a doctor in Alaska they simply can't. Section 1, in its zeal to save money, may have the unintended effect of making it more difficult for workers to obtain medical care.

He said it was stated that the Medical Services Review Committee supported this bill, but he had a copy of a February 2, 2010 letter sent by three doctors to the legislature stating that it is unfortunate that none of the committee's recommendations were included in it. The Alaska State Medical Association on February 1, 2010 also wrote to the legislature stating that they opposed the adoption of HB 314. Not everyone was happy with it. In fact, in HB 346 the Department of Labor and Workforce Development (DOLWD) seeks to abolish the Medical Services Review Committee.

MR. JENSEN focused on Sections 2 and 3 saying that he didn't think they should be part of a fee schedule bill. Those sections should be referred to Judiciary so that the consequences of the changes could be more fully studied. There is no cost for the new anticipated prosecutions through the DOL; and in particular Section (a)(4) is vague. He couldn't comprehend who it applies to and it was adding 49 potential offenses to the current offense of theft by deception. Do doctors and therapists risk prosecution or civil action if they make the mistake of believing their patients and encourage them to file for benefits? Do employers risk prosecution or civil action if they encourage one of their employees to file for workers' compensation benefits if the employer feels the worker suffered an injury at work? Do lawyers who believe their clients and pursue the claim on their behalf risk prosecution or civil action?

3:03:09 PM

STEVEN CONSTANTINO, private practitioner representing injured workers in workers' compensation cases, said he is former hearing officer on Alaska worker's Compensation Board. He didn't agree with Mr. Jensen on the first section. He noted this change just takes them back to the old system where they actually had an Alaskan schedule of fees based on Alaska charges, and he wanted the public to have access to the fee schedule once it is created. In the past this information was treated as proprietary and special coding companies bought it. Insurance companies submitted their bills to the coding company, but injured workers didn't have access to the fee schedule.

His primary concern related to section 2(a)(4) - the same as Mr. Jensen - that changes theft by deception to the entirety of Title 11. He thought the existing language vague and he didn't understand what it meant.

He agreed with Ms. Hall's statement that Alaska's fraud rate is very low. Everyone agrees that fraud is reprehensible and should be prohibited, but the legislature needs to know that the current fraud statutes are being used as a way to intimidate workers from pursuing legitimate claims. He was acutely concerned for the unrepresented workers that account one-third of the litigants in the workers' compensation system. He knew from personal and anecdotal experience from his colleagues that fraud is being alleged to basically intimidate injured workers from bringing legitimate claims. He encouraged them to move very cautiously in amending the fraud provisions. And he echoed Mr. Jensen's comments that Section (4) could be applied to doctors and other medical providers acting in good faith who are taking their patients at face value.

MR. CONSTANTINO was also concerned that they have a standard now called theft by deception and theft has been a concept in the common law for a thousand years. They know what it means. When it gets opened up to Title 11 crimes like unsworn falsification, he didn't know how upholding what his client tells him is the truth will be viewed. He urged that the criminal provisions go through the Judiciary Committee where the expertise exists to analyze them.

SENATOR DAVIS wanted a response from the department.

[3:10:46 PM](#)

TRINA HIEKUS, Director, Division of Workers' Compensation, Department of Labor and Workforce Development (DOLWD), said by way of background she had spent 25 years on the other side of

the table from Mr. Jensen representing insurance carriers and employers in workers' compensation cases and, in fact, had tried cases in front of Fred brown.

SENATOR DAVIS said she was interested in her thoughts on whether doctors might inadvertently face criminal charges.

MS. HIEKUS said she also spent two years as a public defender and didn't think a prosecutor would take something on with that weak of an evidentiary stream if the physician stated that he had no knowledge that the claim itself or the injury report was fabricated. It would be pretty difficult to prove beyond a reasonable doubt.

SENATOR DAVIS asked if she had heard anything in the previous testimonies that she didn't agree with.

[3:12:19 PM](#)

MS. HIEKUS pointed out that before she took this job in December 2008 the division had never prosecuted anyone under AS 23.32.250(a), which has existed since 2005. Last spring they met with a special prosecutor in the Attorney General's (AG) Office to get someone designated to take their cases.

She explained that in 2005 a special investigations unit was created that was charged with reviewing cases and forwarding them on to the AG's office for prosecution. They have received cases from the Division of Insurance and from employers and their carriers. The prosecuting attorney's concern was that it was difficult, if not impossible, to prosecute under the current statute because it has two different intents. She explained that every crime has to have an *intent* as an element. Now, when a person *knowingly* does something - that is the intent element. But at the end of the statute as it currently reads they are guilty of theft by deception, which is a completely different intent. It means someone actually intended the consequences of an action. This is a much more difficult standard to meet than to show *knowingly*, and that is the problem they wanted to clean up with this revision.

When it was presented to the Department of Law, she said, they recognized a civil liability in the same criminal statute, and the department wanted that pulled out. They created AS 23.30.250(c). They also questioned limiting a crime to just theft by deception when there are a number of other crimes that could fit this conduct - be it by an employer an employee or an insurance company.

CHAIR PASKVAN asked how many cases would arise in a year that might be subject to Section 2 criminal prosecution.

MS. HIEKUS replied the head of the unit is a former police officer who does a thorough investigation and if it meets her standard, they would forward on probably about 5-10 cases per year.

CHAIR PASKVAN said the legislature would want information in the future on this.

SENATOR BUNDE asked if she generally agreed with the previous Deputy Attorney General who supported this bill.

MS. HIEKUS answered yes.

[3:17:15 PM](#)

CHAIR PASKVAN closed public testimony.

[3:17:24 PM](#)

SENATOR BUNDE moved to report CSHB 314(FIN) from committee with individual recommendations and attached fiscal note(s). There were no objections and it was so ordered.

HB 245-LICENSING FOR OPTOMETRY

[3:18:14 PM](#)

CHAIR PASKVAN announced HB 245 to be up for consideration.

[3:19:23 PM](#)

KACI SHROEDER, staff to Representative Thomas, reviewed that HB 245 was brought forth on behalf of the Board of Optometry. Basically right now Alaska has three levels of licensures for optometrists: low, medium and high. The Board of Optometry would like to get rid of the two lower levels and just have everyone licensed at the highest level. Students graduating from optometry school right now are already graduating with the credentials to practice at the highest level, and most optometrists in Alaska already have upgraded themselves to be able to practice at the highest level. For those few optometrists who do not have the credentials and do not want to upgrade themselves, they would be issued a restricted license so they would still be able to practice but only at the level that is commensurate with their education level.

She said HB 245 also allows for a retired license; she pointed out that most states in the nation have moved to this form of licensure and this would bring Alaska in line with other states.

[3:19:57 PM](#)

SENATOR MEYER asked if someone is retired could they come out of retirement and practice again but have to take a certain amount of courses.

SENATOR BUNDE also interjected that he had heard interesting debates on this issue and asked if there is general agreement between both sides at this point.

MS. SCHROEDER replied yes.

[3:20:39 PM](#)

JILL MATHESON, Chair, Alaska Board of Optometry, in response to Senator Meyer's question, said the Board has not come up with any regulations specifically about what those requirements would be, but that would be one of the regulations they would look at if this bill passes.

SENATOR MEYER said his concern is that if someone comes out of retirement to practice that they might not be as current as someone else.

MS. MATHESON said that would be their concern as well, so they would have some sort of regulation addressing that.

CHAIR PASKVAN asked if there is any serious opposition.

MS. MATHESON answered no.

CHAIR PASKVAN asked if this bill adequately protects the public interest.

MS. MATHESON answered yes.

[3:22:18 PM](#)

CHAIR PASKVAN closed public

SENATOR MEYER moved to report HB 245 from committee with individual recommendations and attached fiscal note(s). There were no objections and it was so ordered.

[3:22:43 PM](#)

Finding no other business to come before the committee, Chair Paskvan adjourned the meeting at 3:22 p.m.