

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

February 8, 2012

3:26 p.m.

MEMBERS PRESENT

Representative Kurt Olson, Chair
Representative Craig Johnson, Vice Chair
Representative Dan Saddler
Representative Steve Thompson
Representative Lindsey Holmes
Representative Bob Miller

MEMBERS ABSENT

Representative Mike Chenault

COMMITTEE CALENDAR

HOUSE BILL NO. 235

"An Act relating to certain vehicles, including trailers; and relating to motor vehicle dealer advertising, motor vehicle dealer sales of used motor vehicles, motor vehicle sales contracts, motor vehicle service contracts, and motor vehicle sales financing."

- MOVED HB 235 OUT OF COMMITTEE

HOUSE BILL NO. 266

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

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 235

SHORT TITLE: MOTOR VEHICLE TRANSACTIONS

SPONSOR(S): REPRESENTATIVE(S) THOMPSON

04/12/11	(H)	READ THE FIRST TIME - REFERRALS
04/12/11	(H)	TRA, L&C
01/26/12	(H)	TRA AT 1:00 PM CAPITOL 17
01/26/12	(H)	Moved Out of Committee
01/26/12	(H)	MINUTE(TRA)
01/27/12	(H)	TRA RPT 5DP

01/27/12 (H) DP: FEIGE, PRUITT, PETERSEN, GRUENBERG,
P.WILSON
02/08/12 (H) L&C AT 3:15 PM BARNES 124

BILL: HB 266

SHORT TITLE: PRACTICE OF NATUROPATHY

SPONSOR(S): REPRESENTATIVE(S) MUNOZ, TUCK, THOMPSON

01/17/12 (H) PREFILE RELEASED 1/13/12
01/17/12 (H) READ THE FIRST TIME - REFERRALS
01/17/12 (H) L&C
02/08/12 (H) L&C AT 3:15 PM BARNES 124

WITNESS REGISTER

REPRESENTATIVE STEVE THOMPSON

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented HB 235 as prime sponsor of the bill.

JANE PIERSON, Staff

Representative Steve Thompson

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Testified during the discussion of HB 235.

CLYDE (ED) SNIFFEN, JR.

Senior Assistant Attorney General

Commercial/Fair Business Section

Civil Division (Anchorage)

Department of Law (DOL)

Anchorage, Alaska

POSITION STATEMENT: Testified and answered questions on HB 235.

MARTEN MARTENSEN, President

Alaska Automobile Dealers Association (AADA)

Anchorage, Alaska

POSITION STATEMENT: Testified and answered questions on HB 235.

REPRESENTATIVE CATHY MUNOZ

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented HB 266, as prime sponsor of the bill.

C.W. JASPER, Naturopath (ND)

Alaska Association of Naturopathic Physicians
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 266.

GRACE DAVIS

Tenakee Hot Springs, Alaska

POSITION STATEMENT: Testified during the discussion of HB 266.

ACTION NARRATIVE

[3:26:38 PM](#)

CHAIR KURT OLSON called the House Labor and Commerce Standing Committee meeting to order at 3:26 p.m. Representatives Saddler, Thompson, Holmes, Miller, and Olson were present at the call to order. Representatives Johnson arrived as the meeting was in progress.

HB 235-MOTOR VEHICLE TRANSACTIONS

[3:27:24 PM](#)

CHAIR OLSON announced that the first order of business would be HOUSE BILL NO. 235, "An Act relating to certain vehicles, including trailers; and relating to motor vehicle dealer advertising, motor vehicle dealer sales of used motor vehicles, motor vehicle sales contracts, motor vehicle service contracts, and motor vehicle sales financing."

[3:28:32 PM](#)

REPRESENTATIVE STEVE THOMPSON, Alaska State Legislature, thanked members for the opportunity to present HB 235. This bill would update statutes AS 45.25.400 - AS 45.25.900, commonly known as the Alaska Auto Dealers Practices Act. The changes would clarify provisions concerning the advertising of new and used automobiles. These revisions should assist consumers in understanding auto comparison pricing and should eliminate ambiguities contained in the current statutes while assisting dealers in following state law. This bill was drafted in conjunction with the Commercial and Fair Business Section of the Department of Law. He said, "Additionally, this bill should take care of the contentious issues of the "doc" fees, making the issue mute."

[3:29:48 PM](#)

JANE PIERSON, Staff, Representative Steve Thompson, Alaska State Legislature, presented the sectional analysis for HB 235, as follows [original punctuation provided]:

Section 1. Clarifies the "MSRP" shown on the federal Monroney sticker is the manufacturer's suggested retail price, and not the dealer's advertised price. Also clarifies what items are included by the manufacturer in arriving at MSRP as shown on the Monroney sticker, and allows dealers to advertise a savings or discount from the MSRP.

Section 2. Requires that the dealer's advertised price must include all dealer fees and costs except fees paid to a governmental agency such as taxes and licensing fees.

Section 3. Removes disclosure requirement regarding use of MSRP in advertising, and removes subsection dealing with price advertising that is covered in Section 1 to amendment to AS 45.25.400(b).

Section 4. Requires dealers use nationally recognized valuation publications (such as Kelly Blue Book or N.A.D.A. Official Used Car Guide) as the retail value when advertising comparative pricing for used cars. HB 235 requires that this pricing information be provided to consumers upon request.

[3:31:08 PM](#)

MS. PIERSON continued the sectional analysis for HB 235 by reading the following [original punctuation provided]:

Section 5. Removes section now covered in Section 2 amendment to 45.25.440; allows dealer to make vehicle identification information available in the advertisement or at the dealership - this resolves the problem of impossible to read small print on television advertising; and renumbers sections of 45.25.460(a). (This renumbering requires the amendment in Section 8)

Section 6. Changes the word "verified" to "signed" so the information provided by an individual to a dealer need not be notarized.

Section 7. Allows a dealer to have a vehicle on the sales lot and show it to customers prior to having all required paper work, but prohibits sale of the vehicle until the dealer has all required paperwork in its possession.

Section 8. Conforms AS 45.25.520 with renumbering in Section 5.

Section 9. Clarifies that the sales contract will be void if the dealer or the financing institution changes terms of a separate agreement relative to financing.

[3:32:19 PM](#)

MS. PIERSON continued the sectional analysis for HB 235, by reading the following [original punctuation provided]:

Section 10. Provides for responsibility of a buyer to return a vehicle if financing is not approved and the responsibility of dealer to return a trade-in delivered to the dealer.

Section 11. Establishes responsibility of a buyer to return a vehicle if the financing is denied as a result of intentional misrepresentation in the credit application, including mileage fee if over 100 miles are put on the vehicle and responsibility for damage to the vehicle, parking tickets, towing fees, storage fees, impound fees, and other similar charges incurred by the buyer while the vehicle was in possession of buyer.

Section 12. Removes unnecessary and impractical obligation imposed on dealers relating to service contracts.

[3:33:09 PM](#)

MS. PIERSON continued the sectional analysis, by reading the following [original punctuation provided]:

Section 13. Provides that changes affect contracts entered into on or after the effective date of the act and provides definitions for terms used in several sections.

For Section 7 - Motor vehicle is defined in 45.25.590(3) "motor vehicle," notwithstanding the definition of "motor vehicle" in AS 45.25.990, means a vehicle, including a trailer, that is required to be registered under AS 28.10, but does not include a motorcycle.

For Section 12, Service contract is defined in 45.25.990 (18) "service contract" means an optional agreement that is separate from a contract for the sale of a motor vehicle and that covers certain repair or maintenance functions beyond coverage provided by a warranty.

For Section Sections 9, 10, 11, and 12, Motor vehicle is defined in 45.25.990 (12) "motor vehicle" means a motor vehicle that is required to be registered under AS 28.10, but does not include a motor home, a recreational vehicle, or a motorcycle; in this paragraph,

- (A) "all-terrain vehicle" has the meaning given in AS 45.27.390;
- (B) "recreational vehicle" includes an all-terrain vehicle and a snow machine;
- (C) "snow machine" has the meaning given in AS 45.27.390.

[3:33:44 PM](#)

REPRESENTATIVE SADDLER referred to page 5, line 23 of HB 235, which relates to entering into a contract. He asked whether the contract must be a written contract or if it could be a verbal contract by a dealer to hold a car until the financing could be arranged. He further asked what constitutes a contract in section.

MS. PIERSON offered her belief that the changes in proposed Section 7 refer to a contract to sell a motor vehicle so it would be the actual sale.

[3:34:23 PM](#)

REPRESENTATIVE SADDLER related a scenario in which a prospective buyer is interested in a car and asks the dealer to hold it while he consults with his wife. In the event that another prospective buyer expresses interest in the car, whether the

dealer is bound by contract to hold the car for the first customer.

MS. PIERSON offered her belief that the dealer did not have an agreement to sell a vehicle, but rather just to hold it.

[3:35:06 PM](#)

CHAIR OLSON asked whether the MSRP is a country wide pricing, except for transportation costs. He surmised that the MSRP for California would be differences due to its stringent pollution requirements.

MS. PIERSON identified that the MSRP is the manufacturer's sticker on the vehicle, and is defined by the federal Monroney statute. She explained that the dealer can adjust prices from the Monroney sticker, so it represents the manufacturer's price.

CHAIR OLSON offered that the MSRP would be the same as it is in Nevada, except for transportation costs. He asked for an explanation of how transportation costs are handled given that Alaska's transportation costs are much higher than anywhere else except for Hawaii.

MS. PIERSON related her understanding the prices are the same, but the auto dealers and department are on-line and could correct her if that is not so.

[3:36:18 PM](#)

REPRESENTATIVE HOLMES referred to Section 5, [to page 3, line 18] and wondered whether this means she does not need to listen to the numbers rattled off in a commercial.

MS. PIERSON answered yes.

[3:36:50 PM](#)

REPRESENTATIVE HOLMES asked for clarification on Section 12, as she was unsure if the purpose is to streamline this process.

MS. PIERSON deferred to one of the experts. She related her understanding that this means the service contract must be in writing and include all provisions.

[3:37:52 PM](#)

REPRESENTATIVE JOHNSON related his understanding some settlements that require disclosure of vehicle identification numbers (VIN) in advertising, if this bill changes that settlement, or if it is an antiquated settlement.

[3:38:42 PM](#)

REPRESENTATIVE SADDLER referred to Section 6, page 5, line 15, and asked if the disclosure of the vehicle's history and condition be true and whether the change in language from verify to signed change imply any change in the representation.

MS. PIERSON answered no. She explained that it just means it does not have to be notarized, since the notary is merely verifying the person is truly the person who is signing it.

[3:39:25 PM](#)

REPRESENTATIVE SADDLER related his understanding that it would not need to be notarized, but also does not say the information is true.

MS. PIERSON agreed with the function of a notary as limited to verifying the identity of the person signing the document.

[3:39:42 PM](#)

REPRESENTATIVE MILLER referred to page 6, line 31, and page 7, line 10, specifically to the word "intentional," and read, "if a buyer's final financing is not approved and the buyer has made an intentional representation ..." He asked who would make the determination on the length of time it would take and how this would be verified.

MS. PIERSON suggested it would be apparent. She related a scenario in which she was to state that she earns \$200,000 working for legislature. It would be apparent to everyone that her statement wasn't true. Additionally, it would be a misrepresentation on a financial document. She summarized the gist of this is to assure people are employed and that their income and credit ratings are reported accurately. She thought the language was fairly clear in terms of financial agreements.

REPRESENTATIVE MILLER agreed, but offered other examples might be somewhat subtle.

MS. PIERSON deferred to the Department of Law to better respond.

[3:41:28 PM](#)

REPRESENTATIVE JOHNSON referred to page 7, line 5 of proposed Section 11 to the business use mileage. He asked for the current business usage rate.

REPRESENTATIVE MILLER answered that he thought the rate was \$.54 or \$.59 statewide.

MS. PIERSON said she was unsure, but the figure is recognized by the Internal Revenue Service (IRS) so the rate would be a standard rate throughout the U.S.

[3:42:15 PM](#)

REPRESENTATIVE JOHNSON offered his belief that the business use mileage rate and the \$.45 a mile rates are in the bill as placeholders.

MS. PIERSON answered yes.

[3:42:38 PM](#)

CLYDE (ED) SNIFFEN, JR., Senior Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Anchorage), Department of Law (DOL), offered to answer questions raised thus far. He explained that his duties include enforcement of this act. He said he has worked with the auto dealers for the past 12 years on many of these issues and much of this bill is aimed at clarifying and cleaning up some areas and makes it much easier for consumers and auto dealers. He indicated he has no problems with the current language in the bill and the DOL supports the bill.

[3:44:08 PM](#)

MR. SNIFFEN referred to an earlier question with respect to whether a contract to sell and an oral representation constitutes an enforceable contract. He offered that it could be; however, in this bill the intent is that the statute must be complied with before a dealer can actually enter into a written contract with a consumer to sell a vehicle. He suggested that oral representations are more in the nature of offers to hold, which is not the intent of the language in this bill.

[3:44:56 PM](#)

MR. SNIFFEN referred to an earlier question on whether the MSRP is standard across the country. He related his understanding that the cost is standard in the U.S. He said at one time transportation costs were included in the MSRP. He was unsure whether the transportation charge differential has changed with respect to the costs for vehicles in Anchorage versus in Detroit. He suggested that some people in the industry could better answer the question.

MR. SNIFFEN referred to an earlier question, with respect to settlements and whether any recent settlements required disclosure of VINS, and if so, whether they were enforceable. He said the settlements he has been involved with pertained to a settlement on dock fees, which did not include disclosure of any VIN. The rule of law still stands and document preparation fees must be included and he was not aware of any private settlements.

[3:46:33 PM](#)

MR. SNIFFEN brought up an earlier question on whether the definition of "verified" versus "signed" and if that would mean the person had signed, but the information was not verified. He explained that this statute attempts to ensure that owners who trade in vehicles provide the accident and repair history. He further explained that the dealer cannot verify this information so requiring the owner to sign and verify gives the future purchaser a record. He reported that the DOL has not had any issues with this. He suggested this change just makes it easier for dealers so they would not need to provide a notary every time a person wants to sell a vehicle.

MR. SNIFFEN recalled an earlier question with respect to intentional misrepresentation, which he said would be a matter that would be decided by the courts. Thus if a dispute arose in which a person intentionally provided false information, the courts would decide. He agreed with Ms. Pierson's description of obviously false information. He agreed some gray areas could arise, such as employment projections. He reiterated the courts could decide any disputes; however, he did not think that the amount of money involved in these types of case would warrant this.

[3:48:57 PM](#)

REPRESENTATIVE JOHNSON referred to page 7, line 16, to Section 12 of the bill. He related that a service contract could be buried in a stack of documents the buyer must review and sign. He questioned whether it is conceivable for a dealer to add in a service contract with the car purchase agreement and not clearly mark it as a contract for a service contract.

MR. SNIFFEN agreed considerable paperwork is involved in these transactions and although the possibility exists the statute would require all the terms and conditions of the contract be presented to the consumer. He highlighted that if a consumer indicated he/she did not recall agreeing to a service contract, that it would be the responsibility and burden of the dealer to prove the consumer requested the service.

[3:51:05 PM](#)

REPRESENTATIVE JOHNSON read, "A motor vehicle service contract must be in writing and contain all essential provisions regarding the administration of the contract." He pointed out that this subsection previously included the language, "clearly and conspicuously marked." He asked whether retaining the language, "clearly and conspicuously marked" would constitute a service to the public or if it would be a hindrance to the dealership. He further asked if this provision would provide a safety net or if it was yet another obstacle to businesses.

MR. SNIFFEN suggested another provision in the Automobile Dealer's Act, which he did not have before him, requires that all disclosures must be done so in a clear and conspicuous manner. He clarified that the way service contracts work is not currently done through an application. He reiterated that provisions for disclosure must be done in a clear and conspicuous manner and to not do so would be in violation of the law.

REPRESENTATIVE JOHNSON responded that he wanted to raise the concern, that the response clarifies this for him.

[3:53:08 PM](#)

CHAIR OLSON expressed the same concern about the service contract being buried in the middle of the paperwork. He inquired as to whether any complaints of that nature have been filed.

MR. SNIFFEN answered no. He said he did not recall any complaints of that nature. He explained that normally those types of complaints would be a pattern or practice by a dealer.

[3:53:45 PM](#)

REPRESENTATIVE JOHNSON reported that the committee staff has located the specific reference to the statute, which read, "...separate agreement clearly and conspicuously informs the buyer...." He affirmed that his questions have been answered.

[3:54:46 PM](#)

MARTEN MARTENSEN, President, Alaska Automobile Dealers Association (AADA), stated that he hoped members would recognize the changes incorporated in HB 235 attempt to clean up the gray area and the auto dealers are not asking for any advantages. He pointed out that some of the current statutes are ambiguous and open to interpretation. The proposed changes would make it easier for auto dealers to operate and to work with the DOL in terms of what is allowable. He characterized HB 235 as a bill that would make things black and white. He said that he and his colleagues are here to ask members for their support.

[3:56:20 PM](#)

CHAIR OLSON offered his belief that most compelling testimony the committee has heard today is from Ed Sniffen. He emphasized when Mr. Sniffen says he supports this bill, and he has done so on two prior occasions, that it carries a tremendous amount of weight. He invited anyone in opposition to the bill to come forward.

[3:57:11 PM](#)

REPRESENTATIVE HOLMES asked for the purpose of the changes in Section 12.

MR. MARTENSEN explained that key word in this section is "application." He characterized dealers as the middle man and the paperwork is not considered an application, but is a contract.

[3:58:06 PM](#)

CHAIR OLSON, after first determining no one else wished to testify, closed public testimony on HB 235.

[3:58:43 PM](#)

REPRESENTATIVE JOHNSON moved to report [HB 235] out of committee with individual recommendations and the accompanying fiscal note

[3:59:26 PM](#)

REPRESENTATIVE JOHNSON restated his motion. He moved to report HB 235 out of committee with individual recommendations and the accompanying fiscal note. There being no objection, HB 235 was reported from the House Labor and Commerce Standing Committee.

[3:59:56 PM](#)

The committee took an at-ease from 3:59 p.m. to 4:05 p.m.

HB 266-PRACTICE OF NATUROPATHY

[4:05:11 PM](#)

CHAIR OLSON announced that the final order of business would be HOUSE BILL NO. 266, "An Act relating to the practice of naturopathy; and providing for an effective date."

[4:05:18 PM](#)

REPRESENTATIVE CATHY MUNOZ, Alaska State Legislature, introduced herself and thanked the committee for hearing this bill. She commended the committee staff, Konrad Jackson, for his excellent work.

The committee took a brief at-ease due to teleconference technical issue.

REPRESENTATIVE MUNOZ explained that HB 266 is designed to allow naturopathic doctors to continue to have the ability to provide natural medicines to those who rely on them for their wellbeing. She detailed the geographic location of the 43 Naturopaths (NDs) practicing in Alaska: 16 in Anchorage, 15 in Fairbanks, 2 in Eagle River, 2 in Palmer, 2 in the Kenai/Homer area, 1 in Seward, 4 in Juneau, and 1 in Sitka. She related that NDs have stated that the measure is needed because some pharmacies recently are refusing to supply natural and herbal medicines to NDs, as a result of instructions from the Division of Corporations, Business, and Professional Licensing (DCBPL). She explained that HB 266 would put in statute regulatory language that has been in effect for 18 years. She explained this would

allow NDs to provide their patients medicines. She said this is taken directly taken from regulation. She read, "...medicines derived from or a concentrate or extract of a plant, tree, root, moss, fungus, or other natural substance if the medicine is not a controlled substance." This is based on state regulation 12 AAC 42.990 (3). This measure is not intended to expand the scope of practice of NDs, but will protect what NDs currently provide to patients as prescribed by law, thus giving Alaskans the power to choose what health modalities work best for them. She indicated that she has worked with the sponsor of the companion bill, Senator Lesil McGuire, Senator Cathy Giessel, the DCBPL, the Division of Public Health, the Alaska State Medical Association (ASMA), and the naturopathic doctors (NDs) to craft something that fulfills the sole purpose of this bill. The purpose of HB 266 is to keep the naturopathic scope of practice the way it has been in Alaska for nearly two decades. She stated that she continues to work with the previously mentioned groups and plans to bring forth an amendment consistent with the Senate version of the bill. She asked Doctor (Dr.) Jasper to present an overview.

[4:09:45 PM](#)

CHAIR OLSON said he would accommodate one person who has traveled from Tenakee Springs, but the bill would not be opened up for public testimony today.

REPRESENTATIVE MUNOZ emphasized that this bill does not contain any expansion in practice. She informed members that a bill the committee considered last year was a much broader bill.

CHAIR OLSON related his understanding that the intent of HB 266 is not to broaden the scope of practice but to prevent the erosion of the practice of naturopathic medicine.

[4:10:51 PM](#)

C.W. JASPER, Naturopath (ND), Alaska Association of Naturopathic Physicians (AANP), offered to testify in support of HB 266. He thanked members for the opportunity to hear this bill. He stated that he holds ND license number two in Alaska. He said he has practiced in Alaska for 20 years. He began a PowerPoint presentation titled, "The History of Naturopathic Prescribing in Alaska." He reported that 16 states license, the District of Columbia, and two territories license Naturopathic Doctors (NDs). He highlighted that varying scopes of ND practice exists depending on the state. He acknowledged that the professional

scope of practice for NDs is decided by legislatures. He stated that 11 states give prescriptive authority in the statutes to NDs as opposed to Alaska, which has given prescriptive authority in regulation. He pointed out that five states grant authority in statute for NDs to prescribe controlled substances. He gave a brief personal history, including that he came home to Alaska in 1982, but he has roots in Alaska since his great-grandfather came over the Chilkoot Trail in 1898. His family has lived in Alaska since then, he said. He recalled questions by legislators at the time the enabling legislation was under consideration as to the reason he sought licensure in this state and why he would simply not practice in some other state.

[4:13:10 PM](#)

DR. JASPER responded that he answered that he is an Alaskan. He recalled former Senator Binkley questioned him during deliberations over the enabling legislation. Senator Binkley related that he must have known that naturopaths did not have the authority to practice naturopathic medicine in Alaska. He then provided his educational background, noting once he completed his naturopathic schooling that he applied to the medical board to take the medical exam and obtain licensure in Alaska. He highlighted that the medical board denied his since the board did not recognize naturopathic schools. At the time his attorney received a letter from one of the assistant attorney generals - Bruce Botelho - who had indicated he could practice in Alaska without a license since the state did not offer him an opportunity to take the exam, plus the state did not have a licensing procedure in place. He emphasized that he came to Alaska in 1982 in good faith. He informed members that the situation in Alaska dramatically changed when litigation against an ND, Pat Pettijohn, had charged him with practicing medicine without a license. Mr. Pettijohn lost the case and subsequently closed his practice. Additionally, several NDs were informed by the state of the necessity to either pass a bill allowing naturopathy, or to stop practicing in Alaska.

[4:15:02 PM](#)

DR. JASPER stated that naturopaths successfully passed a licensure bill in 1986. He described the difficulties the NDs encountered during the process, noting the late Senator Fred Zharoff had taken the draft language and modified the bill, which defined naturopathy to include the use of herbal remedies, along with a number of other therapies. Even so, the NDs agreed to the bill. He emphasized that herbal remedies are an

important part of the NDs practice. He pointed out AS 08.45.200 defines naturopathy, which includes the use of herbal remedies [slide 3-4]. He showed pictures of cayenne peppers, commonly found in grocery stores [slide 5-6]. He related that eating cayenne peppers has the effect of making one's nose run since it is an expectorant. He showed a photo of a bottle of medicinal quality cayenne pepper, which is also an expectorant used to treat chronic sinus problems or asthma. The liquid form, capsicum tincture is used since the medicinal qualities dissipate with ground cayenne pepper [slide 9-10]. He elaborated on the advantages of the tincture, including that a longer shelf life, a date of expiration, and using it has provided predictable results.

[4:18:28 PM](#)

DR. JASPER emphasized that capsicum tincture is a natural medicine that NDs are trained and qualified to use, but it is labeled as a prescription medicine. He explained that federal law prohibits dispensing without a prescription.

DR. JASPER related that language under consideration in the enabling legislation would have narrowed the definition of naturopathy under AS 08.45.050 to prohibit prescribing prescription medicine, but it did not pass. He expressed alarm over the proposed definition since it would not have allowed NDs to prescribe capsicum tincture or any other similar herbal medicines. He related that the ultimate compromise was that the language narrowed the restriction to prescription drugs, but allowed NDs to prescribe medicine. He identified drug as a chemical substance used in treating disease or illness [slide 14].

[4:20:22 PM](#)

DR. JASPER stated that the NDs agreed to the changes since it allowed them to dispense natural prescription medicines. He pointed to a list titled, "Rx Medicines" noting that capsicum tincture is on the list, along with other natural medicines [slide 15].

DR. JASPER referred to a slide of what NDs can and cannot prescribe, labeled "Rx Medicines" and "Rx Drugs." He offered that the enabling legislation authorized the department to adopt regulations under AS 08.45.100. He related that the department adopted 12.AAC 42.990, including a definition of prescription drug, which he read: "prescription drug" does not include a

device or herbal or homeopathic remedy or dietetic substance in a form that is not a controlled substance;" [slides 20-21].

DR. JASPER indicated the regulations under 12 AAC 42.990 (3), also included a definition for herbal remedy, which he read: "herbal remedy" includes medicines derived from or a concentrate or extract of a plant, tree, root, moss, fungus, or other natural substance; "herbal remedy" does not include a controlled substance;" [slide 22].

4:22:30 PM

DR. JASPER stressed that regulations have the force of law [slide 24]. He emphasized that NDs have relied on the regulations for 18 years and NDs and the state must abide by the law.

DR. JASPER summarized that the NDs have had the ability to prescribe herbal remedies, but not prescription drugs. He said that about a year ago the pharmacies have quit supplying the NDs with prescription medicines and substances, which has resulted in many patients being cut off from medicines normally provided by their NDs [slide 27]. He related his understanding that the pharmacies have indicated they are complying with instructions from the State of Alaska. He assured members that he personally visited pharmacies 18 years ago, at the time the regulations were adopted, and they all agreed that NDs could prescribe herbal remedies and medicines. These same pharmacies are now advising NDs they can no longer supply medicines.

4:24:44 PM

DR. JASPER reported some doctors will not write prescriptions for natural medicines they are not familiar with so some patients are deprived use of these medicines.

DR. JASPER reported the NDs seek remedies to re-establish the longstanding ability to prescribe medicines and herbal remedies. He said the NDs seek to take the existing regulatory language under 12 AAC 42.990 and place it into statute.

4:25:35 PM

REPRESENTATIVE SADDLER admitted confusion with respect to the definitions of medicine and drugs. He asked for definition of drugs.

DR. JASPER answered that each statute has its own definitions so a uniform definition is lacking. He highlighted that part of the statutory restriction was to explicitly restrict NDs from prescribing controlled substances. He pointed out that water is included in some definitions of drug so the legislature left drug undefined in the naturopathic statutes, with the understanding that the state would develop regulations that pertain to the practice of naturopathy. Drug wasn't actually defined in the ND's statutes; however, an herbal remedy was not considered a drug under AS 08.45.050.

[4:27:36 PM](#)

REPRESENTATIVE SADDLER asked for clarification on the federal definition of drug.

DR. JASPER answered that the federal definition includes any substance used for the diagnosis, treatment, or mitigation of disease or illness in human and animals, so injectable water is considered a drug under federal law. He related that intravenous therapy (IV) bags contain the federal legend. Thus even water becomes a drug in some instances because it is intended for diagnosis or treatment of human disease, illness, or condition. He indicated that federal definition is mirrored in the statutes. He acknowledged the legislature barred NDs from prescribing controlled substances; however, the legislature did not use the definition of drug since doing so would restrict use of medicines.

[4:29:06 PM](#)

REPRESENTATIVE JOHNSON inquired as to the category of penicillin since it is derived from fungi. He questioned whether an herbal remedy would include penicillin as defined by 12 AAC 42.990.

DR. JASPER said he has not written a prescription for penicillin in his 20 years of practice since it is not germane to his practice. He was unsure whether any NDs have ever written a prescription for penicillin, but he offered his belief that under the regulation they technically had the right to do so.

[4:30:33 PM](#)

REPRESENTATIVE JOHNSON questioned whether prescribing penicillin is germane to his practice.

DR. JASPER offered that the NDs should be viewed as a whole and not be based solely on his practice.

[4:31:15 PM](#)

REPRESENTATIVE JOHNSON asked whether NDs track what prescriptions by list.

DR. JASPER answered no.

[4:31:33 PM](#)

REPRESENTATIVE JOHNSON asked whether it would be possible to obtain a list of drugs prescribed by the 43 naturopathic doctors in the last year.

DR. JASPER answered that he did not have a list.

REPRESENTATIVE JOHNSON suggested that a list of what NDs currently prescribe would provide a baseline for the committee.

[4:32:17 PM](#)

CHAIR OLSON suggested that the committee work up a list of questions for the sponsor to answer. He referred to capsicum as a substance that his grandmother used. He inquired as to whether the restriction for capsicum is due to the medium since it is 180-proof alcohol.

DR. JASPER related other medicines can be purchased at health food stores that contain alcohol. He concluded that the alcohol is not the issue but it is the medicine being used and the intended use of the medicine, which ties into federal criteria.

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DR. JASPER asked to clarify that the NDs' position on prescriptions. He explained that the regulations have allowed certain things to be prescribed, but if any NDs in Alaska are prescribing drugs outside the list, the NDs as a whole would not support that activity. He emphasized that the AANP supports NDs practicing in accordance with law. He had no knowledge of any prescriptions written outside of the regulations; however, if there were any written the AANP and NDs would not endorse that practice.

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REPRESENTATIVE THOMPSON asked what drugs would be prohibited under HB 266.

DR. JASPER answered that he pulled a list of the 50 most commonly prescribed drugs from the Internet. He and several colleagues reviewed the list to see if any of the drugs would be authorized under HB 266. He answered that only one drug would be authorized, a drug called Niaspan, which is a time-released B vitamin. He said people can buy time-released Niaspan without a prescription; however, the form that has been approved by the Federal Drug Administration (FDA), which is made according to their standards is a prescription drug labeled for the treatment of high cholesterol. He pointed out that this form of B vitamin has the legend. Typically, medical insurance will provide reimbursements for the prescription Niaspan. Additionally, capsicum tinctures and other herbal remedies would be included in the definition.

REPRESENTATIVE JOHNSON offered his willingness to wait for the written questions and responses.

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REPRESENTATIVE HOLMES admitted she was confused. She was unsure of whether the distinction of placing the current regulatory language in statutes would remedy the issues for the NDs.

DR. JASPER agreed the issue is frustrating. He said that 18 years ago pharmacists recognized limited prescriptive authority, but now the same pharmacists insist the regulation does not apply. These pharmacists have advised that they use the statute for guidance on allowable prescriptions. He was unsure of how it could be that 18 years ago the regulations allowed NDs to write prescriptions for herbal medicines but now they cannot do so. The NDs are convinced that if the regulation is adopted in statute it will validate NDs prescriptions for herbal medicines.

REPRESENTATIVE HOLMES said that everyone is puzzled.

DR. JASPER agreed.

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REPRESENTATIVE MILLER referred to slide 9, titled "Now it is a Prescription Medicine." He pointed out the label also reads

poison. He concluded that the ND's regulations clearly do not authorize prescribing poison.

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DR. JASPER answered that the word poison has different meanings depending on whether the language is state or federal language. He said that health care is regulated by the state, but medicines and drugs are regulated by federal law. He explained that labels are prepared according to the federal standards. A federal FDA standard of poison exists and it defines certain medicines as poisons. He offered that what that means is consuming a large amount of a drug labeled poison would not be good, but the state views a poison in terms of dosage. He referred to 12 AAC 42.990, which defines poison to mean a substance given in a manner that has a likelihood of causing physical injury or death. He asserted that capsicum tincture is not a poison when prescribed in appropriate doses; however anyone drinking a whole bottle would become quite sick, which is why the federal label lists it as a poison.

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REPRESENTATIVE MILLER offered support for the concept of the bill, but he wanted to be sure safeguards exist. He inquired as to how to comport the prohibition of poison with dispensing medicine.

DR. JASPER recalled in 1986, that the sponsors crafted a bill based on language derived from other jurisdictions, primarily from Washington, which unfortunately had the most archaic language. He pointed out at the time only six states licensed NDs. Very shortly after that, Washington revised its statutes with modern terminology. He agreed from the outset Alaska's terminology was dated. He offered his belief that the term "poison" was used prior to the adoption of FDA guidelines on poisons. He offered his belief no other states use that terminology. He further recalled that the Oregon Supreme Court upheld that a poison is only a poison when it is administered in a dose that has a likelihood of causing physical injury or death. He said that NDs administer doses that are safe, based on their training and education, concluding the definition of poison is dose-dependent.

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REPRESENTATIVE MILLER pointed out that bleach does not have a safe dosage since it is poison.

DR. JASPER agreed.

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REPRESENTATIVE MILLER expressed concern and asked whether the language needs to be fixed.

DR. JASPER answered no, that the definition is consistent since any amount of the bleach would be harmful. He explained by relating that many drugs have limits between safe doses and toxic doses, which is one reason that labeling drugs as poison has fallen out of vogue. He offered that a person who ingests too much water will drown, yet water is not considered a poison unless the dose is too high. He characterized this as consistent for all medicines.

CHAIR OLSON offered his belief the questions being asked go beyond the expertise of anyone currently in the room. He offered to have the FDA participate in a future meeting to answer technical questions. He pointed out that none of the committee members are doctors.

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GRACE DAVIS said she was born in 1926 and is 85 years old. In 1913, her parents settled in Tenakee noting it was a community half-way between Juneau and Sitka. She later went to Fairbanks to attend college. She highlighted that not many doctors were in Alaska at the time, and of those, many would not take new patients. Thus over time she ended up seeing three different NDs, including one in Montana and two in Juneau. She pointed out that two doctors have summer homes in Tenakee, which has been very helpful to residents. She appreciated the work on this bill. She takes medications but she acknowledged that has not ever been very sick. She thanked members.

4:53:44 PM

CHAIR OLSON thanked Ms. Davis. He recognized that Representative Munoz has actively pursued this bill and he appreciated her efforts. He concluded by stating that a person could take a gallon of drinking water and if they poured it on a cruise ship it could cause the discharge to fail to meet federal

drinking water standards. He acknowledged one of the biggest challenges is to mesh the laws.

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REPRESENTATIVE JOHNSON asked what medicines she is taking that are prescribed by NDs, if not too personal a question.

MS. DAVIS answered that she takes medicine for thyroid medication and atenolol. She said she goes to the wellness center for her prescriptions.

REPRESENTATIVE MUNOZ, in response to a question on whether Ms. Davis's medicine was prescribed by MDs or NDs, answered that medical and naturopathic personnel work at the facility.

[HB 266 was held over.]

[4:58:19 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:57 p.m.