

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

February 7, 2012

1:31 p.m.

MEMBERS PRESENT

Senator Dennis Egan, Chair
Senator Joe Paskvan, Vice Chair
Senator Linda Menard
Senator Bettye Davis
Senator Cathy Giessel

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 146

"An Act establishing a snow classic as an authorized form of charitable gaming."

- HEARD & HELD

SENATE BILL NO. 175

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

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 146

SHORT TITLE: SNOW CLASSIC

SPONSOR(s): SENATOR(s) GIESSEL

01/17/12	(S)	PREFILE RELEASED 1/6/12
01/17/12	(S)	READ THE FIRST TIME - REFERRALS
01/17/12	(S)	L&C, FIN
02/07/12	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 175

SHORT TITLE: PRACTICE OF NATUROPATHY

SPONSOR(s): SENATOR(s) MCGUIRE

01/25/12	(S)	READ THE FIRST TIME - REFERRALS
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01/25/12 (S) L&C
02/07/12 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

LINDSAY WILLIAMS, Staff
Senator Cathy Giessel
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Commented on SB 146 for the sponsor.

REBECCA REICHLIN, Chair
Advisory Board
Four Valleys Community School
Girdwood, AK

POSITION STATEMENT: Said the board is in full support of SB 146.

DIANNA HIIBNER, Ski Area General Manager
Alyeska Resort
Girdwood, AK

POSITION STATEMENT: Fully supported SB 146.

LYNNE DORAN, Secretary
Advisory Board
Four Valleys Community School
Girdwood, AK

POSITION STATEMENT: Fully supported SB 146.

JEFF PRATHER, Supervisor
Tax-Gaming Group
Department of Revenue
Juneau, AK

POSITION STATEMENT: Answered questions regarding SB 146.

JERRY LUCKHAUPT, Assistant Reviser of Statutes
Legislative Legal
Legislative Affairs Agency
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Answered questions regarding SB 146.

SENATOR LESIL MCGUIRE
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Sponsor of SB 175.

GENEVIEVE WOJTUSIK, Staff

Senator Lesil McGuire
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Explained SB 175 for the sponsor.

CHRISTINE NIEMI, representing herself
Douglas, Alaska

POSITION STATEMENT: Supported SB 175.

C.W. JASPER, N.D.
Alaska Association of Naturopathic Physicians
Anchorage, AK

POSITION STATEMENT: Supported SB 175.

DON HABEGAR, Director
Division of Corporations, Businesses and Professional Licensing
Department of Commerce, Community and Economic Development
(DCCED)
Juneau, AK

POSITION STATEMENT: Did not support SB 175.

ACTION NARRATIVE

[1:31:42 PM](#)

CHAIR DENNIS EGAN called the Senate Labor and Commerce Standing Committee meeting to order at 1:34 p.m. Present at the call to order were Senators Paskvan, Giessel, Menard and Chair Egan. Senator Davis arrived soon thereafter.

SB 146-SNOW CLASSIC

[1:35:11 PM](#)

CHAIR EGAN announced consideration of SB 146.

[1:36:39 PM](#)

SENATOR DAVIS joined the committee.

[1:38:36 PM](#)

SENATOR GIESSEL, sponsor of SB 146, said that this measure would establish a snow classic like the Nenana Ice Classic only in reverse; instead of melting ice as a gaming activity this would measure snow fall at a specific location on Mount Alyeska and people would guess how much snow is there. This is in addition to charitable gaming, which would benefit the Four Valleys Community School.

At ease from 1:38:36 p.m. to 1:39:20 p.m.

1:40:55 PM

SENATOR GIESSEL explained that the Anchorage School District used to have a program called community schools that used school buildings in the evening and volunteer educators; it was a wonderful program. Now the community schools program continues to exist only in the community of Girdwood where Four Valleys Community School runs the education program. The Community of Girdwood has a lot of athletes, but they also have a lot of young people going to college and the proceeds of this classic would go to scholarships for them. The bill just inserts "snow classics" as an option for charitable gaming; language in Section 4 makes it very specific to Four Valleys Community School.

CHAIR EGAN objected for a sectional analysis.

1:41:59 PM

LINDSAY WILLIAMS, staff to Senator Giessel, explained that section 1 adds "snow classic" to the existing list of games of chance and skill that can be permitted by the Department of Revenue. Section 2 adds "snow classics" to the existing definition of activity for the purposes of AS 05.15.115(c), which limits how permittees can contract with operators. Section 3 adds "snow classic" to the existing list of activities that can be licensed under AS 05.15 Games of Chance and Contests of Skill. Section 4 defines and describes "snow classic."

1:42:59 PM

SENATOR PASKVAN asked if the Mount Alyeska Snow Classic currently exists and if so, for how long.

MS. WILLIAMS answered there currently isn't a Mount Alyeska Snow Classic; this legislation would start one.

SENATOR MENARD said this bill would just benefit the Four Valleys Community School and she wanted to allow other communities to do the same thing without passing another law.

MS. WILLIAMS replied that would be a policy call for the legislature to make. She said that Four Valleys Community Schools asked Senator Giessel to introduce this legislation. She added that a couple of games of chance are open to an unlimited number of participants; for example the Crane Classic, the Rain Classic and others.

SENATOR MENARD said she was struggling with the role of government getting involved in non-profits that benefit one group and not the other.

MS. WILLIAMS responded that the sponsor would be open to those discussions.

SENATOR GIESSEL said absolutely and that she also wanted to hear from the folks on line who administer the program about some possible constraints.

[1:47:05 PM](#)

At ease from 1:47:05 to 1:47:28 p.m.

[1:47:50 PM](#)

REBECCA REICHLIN, Chair, Advisory Board, Four Valleys Community School, Girdwood, said the board is in full support of SB 146. She explained that Four Valleys Community School had been the primary source of education, recreation and cultural opportunities for the community members of all ages in Girdwood, Indian and Bird Creek and Portage Valley since 1981. They serve approximately 6,800 participants and have 700 volunteers on an annual basis. As an organization they have had a long and stable history of providing quality programs for the community.

[1:50:30 PM](#)

She said she has worked with community schools in one form or another for 23 years. The program provides year-round recreation opportunities and is a model for programs like it. They provide cross country running, fall trail running, indoor soccer, downhill and Nordic skiing, gymnastics, outdoor soccer, softball, baseball, wrestling and more for youth and adults. They offer more than 250 classes annually; the adult programs range from recreating, to cooking, sewing and to fine arts and crafts.

Since 1984, Four Valleys has administered public funds awarded to it by the Girdwood Board of Supervisors. These monies all go to provide direct services for the community. To help with the funding, they have established collaborations and partnerships with local businesses and non-profits and private groups to provide the full spectrum of services the community seeks. They have lots of volunteers who contribute their time and support in a wide range of activities.

[1:52:20 PM](#)

MS. REICHLIN said even though they work very hard to make their funding work on an annual basis, they still need to request yearly grant funds from the Girdwood Board of Supervisors and have a previous history of utilizing gaming activities that the community supported to raise funds. Years ago they had a very successful Gold Rush Monte Carlo Night that raised substantial funds, but when the gaming regulations changed they weren't able to hold that event again. She said they have used pull tabs, bingo night and raffles; they also understand gaming regulations and reporting requirements.

She said SB 146 would allow Four Valleys Community School to control their own financial destiny. The Snow Classic would allow them to raise funds to support their mission, would allow them to utilize other resources beyond the community to support their services. It would eliminate dependence on property tax dollars through GVOS grants and would help the school to meet its goal of self-sufficiency. SB 146 does not require new gaming regulations, but expands on what is already enacted. It would enable Four Valleys Community School to help itself.

[1:53:59 PM](#)

DIANNA HIIBNER, Ski Area General Manager, Alyeska Resort, Girdwood, said she also represented Hotel Alyeska and the Alyeska Ski Area, and they all fully support SB 146. She said that Alyeska Resort has been involved with the concept of the Alyeska Snow Classic since the beginning and Four Valleys Community School is a great program that is fully supported by the community. She said snow is a big deal in Girdwood and they feel the Snow Classic could be a fun and popular event.

[1:55:48 PM](#)

LYNNE DORAN, Secretary, Advisory Board, Four Valleys Community School, said she had lived in Girdwood since 1995. Basically she wanted to let them know how the Classic would be structured. It would be a split-the-pot event similar to the Nenana Ice Classic. A measuring device would be put on Mount Alyeska separate from the resort and tickets would be sold for a specific period of time when people could guess how much snow had accumulated on the mountain at their location. Selling tickets would have a cut off time and there would be a wait and see approach to build up anticipation. They would have a big announcement of how much snow there was - again similar to the Nenana Ice Classic - and after tallying the ticket information they would announce the winners who would split the pot with Four Valleys Community School after administrative costs.

She said DOR's gaming supervisor could tell them why Four Valleys is specifically asking for the Alyeska Snow Classic and the steps an organization has to go through to be able to have a classic versus just running an event on their own.

SENATOR PASKVAN said the fiscal note indicates that the revenue is a maximum of \$1,000 and asked where the Tax Division got that figure.

[1:57:50 PM](#)

JEFF PRATHER, Gaming Supervisor, Department of Revenue, said the \$1,000 is an estimate of what the department would get if Four Valleys gets this permit and grossed \$100,000. The tax in gaming is 1 percent of the profit.

SENATOR MENARD asked if he anticipated they would make \$100,000 the first year.

MR. PRATHER replied that he had no idea what this event would bring in and used that as a way to prepare the fiscal note.

SENATOR MENARD asked if there is other history of when other classics started up, like the Nenana Ice Classic.

MR. PRATHER said he didn't know how the Nenana Ice Classic fiscal note was written. He added that classics typically do not bring in a lot of money.

SENATOR DAVIS said it would be good to hear the history about the Nenana Classic and commented that she didn't think this classic would make that much in the first year.

MR. PRATHER said he would get that information.

[2:01:13 PM](#)

SENATOR GIESSEL said it would be fun to find out about the Nenana Ice Classic and that it was started in 1917 by some railroad workers and there probably wasn't a gaming law then. She asked Mr. Prather to illuminate why this is so specific to Four Valleys. Why does gaming law specify who the operator of these various things can be in some cases?

MR. PRATHER answered that over time the legislature has chosen to allow certain activities for certain tax payers. These classics are generally limited to 1 to 6 permittees; three are open to everyone.

[2:02:11 PM](#)

SENATOR MENARD asked if classics are proprietary, because that is how the law was set up with the Gaming Board.

MR. PRATHER said that was correct.

CHAIR EGAN asked how many of these permits have been issued now.

MR. PRATHER answered 14.

SENATOR PASKVAN said it's his general understanding that this discussion arose out of the greater discussion about legalization of gambling in Alaska and the question is whether historical contests would be recognized or not. Hence his reluctance to raise the general concept of legalization of gambling, but he wanted to know how this fits into any historical context. The universe of permittees is very discrete now and this might use a different standard for legalizing gambling.

MR. PRATHER replied this is a guessing game and guessing games aren't allowed in the gaming statutes except for classics, which were established by the legislature and are under its purview. That is what he told Four Valleys when they asked.

SENATOR PASKVAN asked what the 14 classics are. He suspected they went back in the history of Alaska for quite some time.

MR. PRATHER replied that he would get the list for him.

SENATOR GIESSEL noted that the Cabbage Classic is limited to the Palmer Rotary, the Canned Salmon Classic is limited to the Petersburg Chamber, the Deep Freeze Classic is limited to the Delta Chamber, the Goose Classic is limited to the Creamer's Field in Fairbanks, the Snow Goose Classic on the Kenai River Flats and there are several ice classics in McGrath and Big Lake; and the Greater Juneau Chamber has the King Salmon Classic. Homer has the Mercury Classic. There is a pretty long list in statute.

[2:05:57 PM](#)

SENATOR MENARD said she wanted a number of snow classics, because Alaska gets a lot of snow as well as ice.

MR. PRATHER said three classics are generic for anyone to use: the Crane Classic, the Rain Classic and the Snow Machine Classic.

SENATOR MENARD asked if he thought it reasonable for anyone to apply for a snow classic.

MR. PRATHER answered that it has been done before, but it would have to be less specific.

SENATOR PASKVAN said the first sentence of section 3 seems to incorporate all the types of gambling activities including all the types of definitions of classics in saying that the activity may not be licensed unless it was in existence before January 1, 1959. He asked if that was the general beginning of the discussion of who may have been permitted under the statute as it currently reads.

[2:08:29 PM](#)

MR. PRATHER replied there must have been a classic available at that time. He assumed that the Nenana Ice Classic was out there prior to statehood.

SENATOR PASKVAN said two other sentences, one dealing with the Snow Machine Classic and the other with an Animal Classic, seem to address the need for long term duration. He didn't see any other criteria to allow something that hasn't existed for quite some time if not from the time of statehood in current AS 05.015.180(b).

MR. PRATHER said he was correct.

[2:09:53 PM](#)

JERRY LUCKHAUPT, Assistant Reviser of Statutes, Legislative Legal Department, Legislative Affairs Agency, Alaska State Legislature, said traditionally the legislature has been very proprietary in setting up these classics. A lot of people who sponsor them don't want a whole lot of competition. He was not saying that is occurring here, but this the traditional way for someone to request a new classic. When the Cabbage Classic was added a few years ago, that bill specifically provided that the Palmer Chamber of Commerce could be the only sponsor of it; and the contest is about the weighted of the big cabbage to the Palmer Fair each year. There are a lot of classics with reference to Senator Paskvan's question about section 3.

He said when the legislature started regulating gaming after statehood, gambling was outlawed (even in the territorial days). Gaming was allowed for charitable purposes. So, the legislature at that time said if didn't exist before 1959 you couldn't do it

except in certain enumerated circumstances. Since that time, a whole bunch of other classics have been added; about 10 of the 14 Mr. Prather mentioned were added in last 20-some years. He wasn't sure they were all still operating. For example, the King Salmon Classic in Juneau operated for a year or two in the 1990s and then gave up. It's still on the books and the Juneau Chamber is still the only one that can do it.

[2:12:38 PM](#)

MR. LUCKHAUPT said a lot of effort from volunteer help goes into putting these on and it takes a while for them to catch on with the public. People must be prepared to go through some lean years to make it work. He said the Nenana Ice Classic sustains itself now, but at least four or five other ice classics have been allowed over the years - and he hasn't heard anything about them. It's all up to the legislature as to whether they want it to be for a specific thing or not. Every area of the state has its own specific things and a lot of times classics are based upon a particular geological feature: the Mount Marathon Race Classic, for example, or the Goose Classic in Creamer's Field.

They had a little problem with the animal classics in reference to the other item in section 3. The State Fair had a wheel that turns with a hamster crawling into a hole and people bet on what color the hole will be. Someone raised the issue of gambling. People thought it had been going on since statehood, but there was no actual proof to use the 1959 exception. So, then the idea became they had records of it operating since 2002 and everybody loves to do it. That is why the specific exemption was crafted by the legislature.

MR. LUCKHAUPT described another game that is allowed because it had been used in another state where people would bet on where a cow in a field would leave his "road apple." They've done that in Palmer, too, he said.

[2:16:05 PM](#)

SENATOR MENARD said she appreciated him coming up before them. They are deliberating a long time because the state has so many non-profits and she didn't think 14 classics was a lot.

MR. LUCKHAUPT responded that it's totally within the legislature's discretion to do what it wants.

[2:17:46 PM](#)

SENATOR DAVIS complimented the Four Valleys Community School saying if any group could make this work that group could.

CHAIR EGAN held SB 146.

SB 175-PRACTICE OF NATUROPATHY

[2:18:41 PM](#)

CHAIR EGAN announced SB 175 to be up for consideration.

[2:18:45 PM](#)

SENATOR LESIL MCGUIRE, sponsor of SB 175, said this measure would correct an oversight in statute and regulation with respect to the practice of naturopathic medicine in the state. It would allow prescribing of naturopathic concentrates that are extracts of a plant, tree, tree root, moss, fungus or other natural substance that is not a controlled substance. It is part of the existing regulation in 12 AAC that naturopathic practitioners are specifically allowed to prescribe.

She said there are 43 naturopaths in the state: 16 in Anchorage, 2 in Eagle River, 2 in Palmer, 15 in Fairbanks, 1 in Seward, 2 in Kenai and Homer, 1 in Sitka and 4 in Juneau. They have been practicing under a licensing statute that was put into law in 1987. Alaska is one of 15 states that specifically license naturopathic doctors. Other states give a broader range of prescriptive authority; 11 of them give prescriptive authority for those substances that are not controlled and 4 of them actually give naturopaths prescriptive authority for substances that are controlled as well.

[2:22:32 PM](#)

Alaska is the one state that licenses naturopathic physicians but doesn't allow them to prescribe controlled substances. However, an exception was made in regulation and today they want to put that regulation into statute for clarity.

SENATOR MCGUIRE said the issue came up when some naturopathic physicians who had been prescribing these natural remedies for their patients had their prescriptions suddenly denied at the pharmacy. They were told it was at the direction of the licensing board that stated the Alaska statute was unclear.

She said her opinion is that nothing in this bill expands the authority of naturopathic physicians practicing in the state. In fact, they will continue to do everything they are doing, but it will be put into law. She said a proposed amendment by Senator Giessel provides further clarity by adding dietetic remedy, homeopathic remedy and hydrotherapy to the language.

SENATOR MCGUIRE said one example of a remedy is cayenne pepper that is used as a sore throat remedy when mixed with alcohol. The bottle is specifically labeled with requirements and a shelf life, and says it's licensed by the FDA.

GENEVIEVE WOJTUSIK, staff to Senator McGuire, explained that Section 1 describes what a naturopath is restricted from doing and Section 2 amends AS 08.45.050 to allow a person who practices naturopathy "to give, prescribe or recommend a medicine that is derived from or is a concentrate of or is an extract of a plant, tree, root, moss, fungus or other natural substance if the medicine is not a controlled substance."

Section 3 provides for an immediate effective date.

[2:27:01 PM](#)

CHAIR EGAN objected for public testimony.

[2:28:52 PM](#)

At ease from 2:28 to 2:31 p.m.

[2:31:15 PM](#)

CHRISTINE NIEMI, representing herself, Douglas, Alaska, said her primary choice for health care is a naturopathic doctor and that is why she is testifying today in support of SB 175. She said she understands that some therapies and natural herbal medicines have been denied to some patients. It is wrong to deny a profession the ability to provide services within the scope of their practice, their medical education and training. It is also wrong to deny services that are needed by their patients.

[2:33:16 PM](#)

C.W. JASPER, Alaska Association of Naturopathic Physicians, said that there are actually 16 states that license naturopathic doctors and of those, 11 give prescriptive authority and 5 allow controlled substances. The profession is growing tremendously.

He said he has been asked why he came here if these other states license naturopathic doctors and the reason is because he is a fourth generation Alaskan. His great grandfather came over the Chilkoot Pass in 1898 and his family held gold claims in Juneau. He said he practices here because it is his home.

MR. JASPER said his ability to practice here is dependent on legislative authority; and in 1986 a bill was passed with the

definition of the practice of naturopathy. The terminology was picked by Fred Zharoff.

[2:36:02 PM](#)

He said herbal remedies are the heart and soul of what they do. Cayenne pepper is a good example; taking it makes your nose run. So, medically speaking it is an expectorant. People ask why you can't just put ground-up pepper in capsules, but the problem is that as soon as the pepper is ground it begins to deteriorate to a point where it loses its potency. In prescription form cayenne pepper is called capsicum and it is prepared according to a national standard so people get a predictable result. When it's prepared in the medical form, it has the legend on it. It's not a prescription drug, but a prescription medicine that you need authority from the state to use.

MR. JASPER explained that in 1986 Senator Zharoff tried using the definition of "medicine" as proposed to prohibit naturopaths from using any prescription medicine. It was very broad and would include even capsicum tincture to which Mr. Jasper said he couldn't agree. So they came up with this version, prohibiting "prescription drugs," which they considered a much narrower definition. The definition of "drug" is a chemical substance and a chemical is something that is produced from a chemical process. So, naturopaths agreed that they would be prohibited from prescribing prescription drugs, but not prescription medicines. The medicines on this list, such as capsicum and valium, were the things they were being allowed to prescribe because they weren't prescription drugs (they were prescription medicines). The bill gave directions to the state to adopt regulations that would define the natural medicines naturopaths could use. So, they said okay and did it. Everybody agreed. So, this is the regulation they adopted 18 years ago and it's part of the administrative code now.

AS 08.45 says that "prescription drug" does not include a device or herbal or homeopathic remedy. The state acknowledged their understanding that herbal remedies would not be considered prescription drugs in its statute. Then they defined "herbal remedy" to be "medicines derived from or a concentrate or extract of a plant, tree, root, moss, fungus or other natural substances." Things were settled and Mr. Jasper said he took these regulations around and showed them to Anchorage pharmacists who understood and agreed.

[2:41:59 PM](#)

He said on the State of Alaska website to apply for a naturopathic license has a statement reminding people that statutes and regulations have the force of law. So even though it's been clear to everybody and they have practiced under this interpretation for 18 years, pharmacies are now saying they can't give these medicines to naturopaths anymore. Their solution is to ask the legislature to put this regulation [12 AAC 42.990] into statute.

[2:44:00 PM](#)

SENATOR PASKVAN asked the reason for the change by the licensing board.

MR. JASPER said he couldn't answer that because he didn't know the internal mechanics of why this is happening.

SENATOR PASKVAN said he wanted to know what happened if there wasn't a problem for 18 years.

SENATOR MENARD asked how much of a concern there is about using a syringe to administer the vitamin B12 or vitamin C.

MR. JASPER said he didn't know if that was a concern, but naturopaths give B12 shots and they need a device to do that. Syringes have a warning similar to the capsicum that says federal law prohibits purchasing them without a prescription or words to that effect; that is why the original regulation said the device would not be barred from use by naturopaths.

[2:46:03 PM](#)

SENATOR MENARD asked if pharmacists are refusing to let them buy the device as well.

MR. JASPER replied that he didn't know for sure but didn't think it was an issue; it's mainly being deprived of access to medicines.

SENATOR GIESSEL said that definition of naturopathy includes more aspects than simply the herbal remedy; it includes dietetics, homeopathic and hydrotherapies, and asked if he would be open, if necessary, to include the definition of those other modalities as well.

DR. JASPER said he wouldn't object to that and would leave it up to the legislature to determine whether that was necessary.

SENATOR GIESSEL said if this was the only definition in statute it may, by omission, fail to allow him to provide dietetic, homeopathic and hydrotherapeutic modalities.

CHAIR EGAN invited Mr. Habegar to answer Senator Paskvan's question and to provide additional information from the department.

[2:47:53 PM](#)

DON HABEGAR, Director, Division of Corporations, Businesses and Professional Licensing, Department of Commerce, Community and Economic Development (DCCED), said the question was what the division is doing differently and the answer is not a whole lot. He explained there is no board for naturopathy; it is a division-run licensing program. However, this issue has been before them for quite some time and there was a recent change. When the licensing law was being considered by the legislature it was his division's understanding and many in the health care profession that the language in statute AS 08.45.050 essentially barred naturopaths for prescribing items that are normally obtained through a pharmacy.

In 1996, a letter from then Director Reardon to a licensee stated the division's position as follows:

If a product requires a prescription, then it is a prescription drug and a naturopath may not give prescribe or recommend it under AS 08.45.050.

Another quote:

The definition of prescription drug in regulation 12 AAC 42.990 is consistent with my interpretation of the law.

Another quote:

It was not intended to allow naturopaths to prescribe drugs refined and manufactured from plants. Instead, it was recognition of naturopaths' use of herbs in their basic natural form.

MR. HABEGAR said the division is not changing an interpretation but is using a pathway that was set long ago. That same letter of 1996 recognized the possible need to clarify regulation.

[2:51:26 PM](#)

SENATOR PASKVAN said he understood the 1996 letter, but the question is if what was occurring in 2010 being prohibited in 2012.

MR. HABEGAR replied that the division is not changing any of its practices. One of the things that has transpired is that in 1996 a licensee asked the division if he/she could prescribe certain things. The letter he quoted was a response to that and the answer was no.

SENATOR PASKVAN asked if what was allowed in practice in 2010 prohibited in 2012: yes or no.

MR. HABEGAR replied no.

SENATOR PASKVAN asked if naturopaths could obtain this from pharmacies in 2010.

MR. HABEGAR answered from the division's perspective, no.

SENATOR PASKVAN asked if they had been obtaining these remedies or concentrates from pharmacies for many years.

MR. HABEGAR said he couldn't answer that; it was before his time with the division.

SENATOR PASKVAN asked what happened recently that caused him to enter an order to pharmacies to cease what appears to be a long-lasting practice.

MR. HABEGAR replied that the division brought an allegation against a licensee for prescribing and that brought the issue to a head. It clarified for the division what was happening in the practice.

[2:54:18 PM](#)

SENATOR GIESSEL said Mr. Habegar read the definition of "prescription drug," from a letter that cited 12 AAC 42.990, but the regulation was not completely stated. The last half of the definition says: "prescription drug does not include a device or herbal or homeopathic remedy or dietetic substance in a form that is not a controlled substance."

She referred back to other definitions in section .990; it defines dietetics, nutritional therapies, substances, vitamins, minerals et cetera. Number 3 says "herbal remedy" includes "medicines derived from a concentrate or extract of a plant,

root, moss et cetera" and number 4 says "homeopathic remedy" means "a remedy defined by the homeopathic pharmacopeia of the United State, December 1993 version," and "hydrotherapy" means "the use of water." It is pretty clear in this regulation that prescription drug is not a device, herbal substance (what Mr. Jasper just elucidated), a homeopathic remedy or dietetic substance. Senator Giessel opined that Director Reardon misapplied and misinterpreted those regulations and it's now being applied in a much more restrictive way not in accordance with what the regulations clearly say.

MR. HABEGAR replied that the Department of Law (DOL) has advised that that Director Reardon's wasn't a bad interpretation and he has continued down that pathway.

[2:56:58 PM](#)

SENATOR GIESSEL said because of that vague interpretation she wanted to amend this bill to make it much more precise in terms of including dietetic remedy, herbal remedy, homeopathic remedy and hydrotherapy as in the purview of the naturopath in statute.

[2:57:42 PM](#)

SENATOR PASKVAN said he is troubled in looking at 12 AAC 42.990 that the history section indicates it was effective in 1994 and amended in 2006, but the regulation was amended after the letter was written in 1996 and the practice still continued. He didn't know how the department could argue its position, because it seems grossly different from the history of that regulation.

MR. HABEGAR responded that when positions turn over with administrations there is often a great deal of trying to figure out historical context. In that light and having been advised, it seems to him that the division set a path that was consistent with what it considered was happening. They also determined to continue down that pathway.

CHAIR EGAN said he wanted a further explanation for the change, from a doctor.

[3:00:28 PM](#)

SENATOR GIESSEL moved to adopt Amendment 1.

27-LS1230\M.4
Martin

AMENDMENT 1

OFFERED IN THE SENATE
By SENATOR GIESSEL

Page 1, line 13, through page 2, line 2:

Delete all material and insert:

"* **Sec. 2.** AS 08.45.050 is amended by adding new subsections to read:

(b) Notwithstanding (a)(1)(A) of this section, a person who practices naturopathy may give, prescribe, or recommend in the practice a device or, in a form that is not a controlled substance, an herbal or homeopathic remedy, a dietetic remedy, or hydrotherapy.

(c) In this section,

(1) "dietetic remedy" means nutritional therapy, nutritional counseling, a nutritional substance, vitamins, minerals, or supplements to promote health and to diagnose, treat, or prevent disease, illness, or conditions;

(2) "herbal remedy" means a substance derived from or a concentrate or extract of a plant, tree, root, moss, or fungus;

(3) "homeopathic remedy" means a remedy defined in the current version of Homeopathic Pharmacopoeia of the United States;

(4) "hydrotherapy" means the use of water in all forms and temperatures to promote health and to diagnose, treat, and prevent disease, illness, and conditions."

CHAIR EGAN stopped the hearing saying the committee would continue public testimony on SB 175 at the next meeting.

[3:02:36 PM](#)

CHAIR EGAN adjourned the Senate Labor and Commerce Standing Committee meeting at 3:02 p.m.