

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 18, 2014

1:36 p.m.

MEMBERS PRESENT

Senator John Coghill, Chair
Senator Fred Dyson
Senator Bill Wielechowski

MEMBERS ABSENT

Senator Lesil McGuire, Vice Chair
Senator Donald Olson

COMMITTEE CALENDAR

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 370(L&C)

"An Act relating to employer-required drug testing; requiring the Alaska Workers' Compensation Board to adopt regulations relating to the prescription of controlled substances to employees; and relating to the prescription of controlled substances to employees."

- HEARD & HELD

HOUSE BILL NO. 45

"An Act relating to harassment, intimidation, or bullying by students attending a public school in the state."

- PENDING WAIVER OF UNIFORM RULE 23

PREVIOUS COMMITTEE ACTION

BILL: HB 370

SHORT TITLE: WORKERS COMP: CONTROLLED SUBSTANCES

SPONSOR(S): LABOR & COMMERCE

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|----------|-----|---------------------------------|
| 03/03/14 | (H) | READ THE FIRST TIME - REFERRALS |
| 03/03/14 | (H) | L&C, JUD |
| 03/19/14 | (H) | L&C AT 3:15 PM BARNES 124 |
| 03/19/14 | (H) | Heard & Held |
| 03/19/14 | (H) | MINUTE(L&C) |
| 03/26/14 | (H) | L&C AT 3:15 PM BARNES 124 |
| 03/26/14 | (H) | Heard & Held |
| 03/26/14 | (H) | MINUTE(L&C) |

04/04/14 (H) L&C AT 3:15 PM BARNES 124
 04/04/14 (H) Moved CSHB 370(L&C) Out of Committee
 04/04/14 (H) MINUTE(L&C)
 04/07/14 (H) L&C RPT CS(L&C) NT 1DP 4NR 1AM
 04/07/14 (H) DP: OLSON
 04/07/14 (H) NR: CHENAULT, HERRON, REINBOLD, SADDLER
 04/07/14 (H) AM: JOSEPHSON
 04/07/14 (H) L&C AT 3:15 PM BARNES 124
 04/07/14 (H) <Bill Hearing Canceled>
 04/11/14 (H) JUD AT 1:00 PM CAPITOL 120
 04/11/14 (H) <Bill Hearing Canceled>
 04/14/14 (H) JUD AT 1:00 PM CAPITOL 120
 04/14/14 (H) Moved CSHB 370(L&C) Out of Committee
 04/14/14 (H) MINUTE(JUD)
 04/15/14 (H) JUD RPT CS(L&C) NT 1DP 4NR
 04/15/14 (H) DP: KELLER
 04/15/14 (H) NR: PRUITT, LEDOUX, GRUENBERG, LYNN
 04/16/14 (H) TRANSMITTED TO (S)
 04/16/14 (H) VERSION: CSHB 370(L&C)
 04/17/14 (S) READ THE FIRST TIME - REFERRALS
 04/17/14 (S) JUD
 04/18/14 (S) JUD AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

ANNA LATHAM, Staff
 Representative Kurt Olson
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Introduced HB 370 on behalf of the sponsor.

MIKE MONAGLE, Director
 Division of Workers' Compensation
 Department of Labor and Workforce Development (DOLWD)
 Juneau, Alaska

POSITION STATEMENT: Answered questions and provided information related to HB 370.

DON ETHERIDGE
 Alaska State AFL-CIO
 Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 370.

BARBARA HUFF TUCKNESS, Director
 Governmental and Legislative Affairs
 Teamsters Local 959
 Anchorage, Alaska

POSITION STATEMENT: Offered supporting comments for HB 370.

ACTION NARRATIVE

[1:36:48 PM](#)

CHAIR JOHN COGHILL called the Senate Judiciary Standing Committee meeting to order at 1:36 p.m. Present at the call to order were Senators Dyson, Wielechowski, and Chair Coghill.

HB 370-WORKERS COMP: CONTROLLED SUBSTANCES

[1:38:01 PM](#)

CHAIR COGHILL announced the consideration of HB 370. "An Act relating to employer-required drug testing; requiring the Alaska Workers' Compensation Board to adopt regulations relating to the prescription of controlled substances to employees; and relating to the prescription of controlled substances to employees." [CSHB 370(L&C) was before the committee.]

[1:38:08 PM](#)

ANNA LATHAM, Staff, Representative Kurt Olson, Alaska State Legislature, Juneau, Alaska, sponsor of HB 370, explained that the purpose of the legislation was to address the overuse and abuse of opiates and the escalating cost of prescription drugs in workers' compensation.

She discussed the following sectional analysis:

Section 1. Amends AS 23.10.620; An employer may require an employee to be drug tested for a controlled substance prescribed to the employee, if the employee has been prescribed a controlled substance listed in schedule IA for more than 90 days as the result of a workers' compensation claim. A negative test result may result in the denial of future payments for the controlled substance by the employer.

Section 2. Amends AS 23.30.005; The Workers' Compensation Board shall adopt regulations relating to the prescription of controlled substances to implement AS 23.30095 (p) and (q).

Section 3. Amends AS 23.30.095; A physician may not prescribe more than a 30 day supply of a controlled substance listed in schedule IA under AS 11.71.140, or a controlled opium, substances in schedule IIIA under 11.71.160, or schedule VA under AS 11.71.180. An

employer may not be liable for future payments of schedule IA controlled substances prescribed to an employee if the employee receives a negative drug test result.

[1:41:38 PM](#)

SENATOR DYSON referenced subsection (g) in Section 1 and asked what a negative test shows and means.

MS. LATHAM acknowledged that it was counterintuitive to look for a negative result and explained that it shows that the employee isn't taking the prescription. Presumably they don't need it for pain management, which is a good indication that the employee is on the way to returning to work. She noted that the House Labor and Commerce Committee added some sideboards to protect employees.

SENATOR DYSON commented that the bill was looking for somebody who wasn't taking the prescription because it had been over prescribed. The implication is that they're selling the drug or making it available to somebody else.

MS. LATHAM agreed.

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SENATOR WIELECHOWSKI asked if the workers' compensation law says that employers are to be notified of treatment that employees are receiving.

MS. LATHAM replied an adjuster would commonly handle the claim, not the employer.

SENATOR WIELECHOWSKI pointed out that the language on page 1, lines 7-8 says "an employer may require an employee to undergo drug testing." He asked if it was her understanding that it is probably a violation of HIPAA for employers to be aware that employees on workers' compensation are receiving controlled substances.

MS. LATHAM replied workers' compensation is exempt from HIPAA requirements.

SENATOR WIELECHOWSKI asked if adjusters typically share medical treatments with an employer.

MS. LATHAM deferred to Mr. Monagle.

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MIKE MONAGLE, Director, Division of Workers' Compensation, Department of Labor and Workforce Development (DOLWD), Juneau, Alaska, explained that employers generally don't stay briefed on a particular claim, but employers that are self-insured tend to pay closer attention. He noted that workers' compensation law broadly defines employer to include their insurance company or claims administrator.

SENATOR WIELECHOWSKI questioned giving employers the authority to require a drug test when employers generally don't know what's going on in a workers' compensation case. He asked if that was a fair statement.

MR. MONAGLE answered yes and restated the statutory definition of employer under workers' compensation law.

CHAIR COGHILL asked if that might be characterized as the employer's delegation responsibility.

MR. MONAGLE agreed that the insurer has authority to investigate and adjust claims. He said that about 20 percent of employers are self-insured and they tend to have risk managers.

SENATOR WIELECHOWSKI asked if an employer can only require a test for the specific drug that was prescribed.

MS. LATHAM answered yes; that sideboard was added in the House Labor and Commerce committee substitute (CS).

[1:48:30 PM](#)

SENATOR WIELECHOWSKI commented that the provision was an odd policy approach because it seems to encourage a person to keep taking prescription drugs even when they're no longer needed. The employee who stops taking the drug because he/she is feeling better is cut off from their workers' compensation benefit if they're tested and the results show they're not taking the drug.

MS. LATHAM clarified that the employer would not be obligated to pay for future prescriptions if the test was negative and the prescription was in excess of 90 days. If the employee was still in pain, he/she would have to contact their provider who would be able to write another prescription.

SENATOR WIELECHOWSKI asked what happens in the situation where pain comes and goes. The person gets a 30 supply and takes it for 10 days. They stop taking it and the employer tests them on

day 15 and they don't have the OxyContin in their system. The employee is cut off from the drug and then starts feeling pain again.

MS. LATHAM offered her understanding that the entire claim would not be controverted, just payment for the prescription.

CHAIR COGHILL noted that Mr. Monagle agreed.

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SENATOR DYSON asked who had opposed this legislation.

MS. LATHAM said the minority voiced concerns when the bill was on the House floor.

SENATOR DYSON asked if the sponsor worked with doctors in the pain management business.

MS. LATHAM said she hadn't worked with doctors on the legislation and hadn't received letters of support or opposition.

SENATOR DYSON asked if she solicited information.

MS. LATHAM replied there were hearings in House Labor and Commerce and there was the ability to comment at that time.

SENATOR DYSON expressed concern with the response, commenting on doctors that overprescribe and the street value of prescription drugs. He observed that the bill tries to keep workers' compensation from paying for drugs that aren't indicated by diagnosis.

CHAIR COGHILL summarized that workers' compensation doesn't want to pay for a drug if an employee isn't using it, but if the employee is using the drug workers' compensation will continue to pay for it. He commented that the doctor may have a problem if he/she is writing prescriptions and they're not being used as prescribed.

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MR. MONAGLE said the bill does two things. First, it says the employer may test for those long-term users of opiates. Second, it makes the employee get back in touch with their doctor and limits the prescription to 30 days. He said he views the bill as helping foster communication between the injured worker and

their doctor so they can stop taking the drug and return to work.

CHAIR COGHILL asked if this was based on model legislation.

MS. LATHAM affirmed that the bill was based on model legislation that other states are implementing.

[1:58:04 PM](#)

SENATOR DYSON expressed disappointment that the sponsor didn't seek comment from the medical community because he didn't see how they could object to the bill. He recapped Mr. Monagle's testimony that the bill allows the employer to require the test after 90 days, which isn't allowed under existing statute.

CHAIR COGHILL noted that Mr. Monagle nodded in agreement.

SENATOR WIELECHOWSKI asked Ms. Latham what type of drug testing she envisioned.

MS. LATHAM replied the test would be a urinalysis.

SENATOR WIELECHOWSKI noted that one website says that opiates stay in the blood system for up to 12 hours.

MS. LATHAM noted that information in the packets indicates that the timeframe is between 12 and 24 hours.

SENATOR WIELECHOWSKI asked if this law would cut off forever a person who tests negative because they didn't take their prescription opiate for 13 hours.

MS. LATHAM replied the person would need to make contact with their doctor who would determine whether or not those pain medications were still needed. She noted that the documentation in the packet shows that Oxycodone stays in the system for 2-4 days, morphine 48-72 hours, and codeine 48 hours.

SENATOR WIELECHOWSKI requested a list of all the schedule IA drugs and how long they stay in the bloodstream, because his online search indicates that opiates stay in the system for up to 12 hours.

MS. LATHAM acknowledged that the documentation she provided provides different time constraints.

SENATOR WIELECHOWSKI read the following language found in subsection (q) on page 2, lines 11-14:

(q) An employer or insurer may not be liable for future payments for a controlled substance listed in schedule IA under AS 11.71.140 prescribed to an employee under this section if the employee receives a negative test result under AS 23.10.620(g).

He pointed out that under that language, insurance companies and employers are not liable if an employee, who has chronic pain as a result of their job, receives a negative result on an employer-required drug test. This goes too far, he said.

MR. MONAGLE clarified that under the Workers' Compensation Act, an employer cannot stop benefit payments to an injured worker unless they controvert. That is a written notification to the employee that the employer is stopping a particular benefit. The employer is subject to penalties and interest if the benefit is found at hearing to have been unfairly or frivolously denied. He offered his opinion that the Workers' Compensation Board would likely say it was an unfair or frivolous controversion if the employee tested negative after they stopped taking the drug for a few days because they felt fine. He further opined that he didn't believe that employers would be willy-nilly in denying benefits and that the bill would foster conversation and further evaluation. He said that studies show that 70 percent of injured workers are prescribed opiates for pain medication, but continuing to take high doses of opiates over the long term is not the answer for chronic pain issues.

SENATOR WIELECHOWSKI said that as a former workers' compensation hearing officer who has done several hundred of these cases, he respectfully disagrees with Mr. Monagle's analysis of the law. He said it's very clear that this bill may result in the denial of future payments when a drug test is negative. Once there is a doctor's analysis that the test result is negative, the employer doesn't have to worry about a claim that it was a frivolous controversion. He asked Mr. Monagle if he disagreed.

MR. MONAGLE answered no.

SENATOR WIELECHOWSKI said the language in subsection (q) on page 2, lines 11-14, is very clear. It significantly changes the law and treats every injured worker as though they're a criminal and every doctor as though they're illegally prescribing opiates. He described the law as a huge net that will catch a few bad actors

and a lot more innocent people who are in pain because they were giving their lives to their employer. He stressed that this was the wrong policy call.

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SENATOR DYSON disagreed. He maintained that the law was permissive and that the employee could continue to get the prescription if their doctor said it was necessary. This protects the employer in the scenario that Senator Wielechowski described.

CHAIR COGHILL noted that Ms. Latham indicated she agreed.

2:08:05 PM

DON ETHERIDGE, Alaska State AFL-CIO, Juneau, Alaska, said the union had concerns with HB 370 initially, but is now able to support the legislation because of the sideboards added in the House Labor and Commerce Committee. The current bill doesn't assume that employees who test negative are selling their prescription drug. Also, the entire claim can't be controverted if the test result is negative, just the payment for the drug that the employee isn't taking.

CHAIR COGHILL asked if his expectation was that a negative test would send the employee back to their doctor; it would not controvert the entire claim.

MR. ETHERIDGE answered yes.

BARBARA HUFF TUCKNESS, Director, Governmental and Legislative Affairs, Teamsters Local 959, Anchorage, Alaska, stated that she would like to go on record as not opposed to the current version of HB 370. Although labor hasn't embraced the bill, she said the sideboards provide a positive opportunity to get injured workers to continue to work with their physician. She offered her understanding that the employer would be the insurance carrier who would be involved in monitoring the ongoing injury and ensuring that the injured worker moves forward in a more controlled manner than may happen now. To the extent that the bill helps get an injured worker back on the job, Local 959 is supportive, she said.

2:13:54 PM

CHAIR COGHILL asked if there was relief to the injured worker against an overly aggressive insurance company that repeatedly denied claims.

MS. LATHAM deferred the question to Mr. Monagle.

MR. MONAGLE said insurance companies respond on a case-by-case basis and some do better than others. If a worker finds their insurance company is non-responsive, they can file a performance complaint with the Division of Insurance. The remedy for an injured worker whose benefits have been cut off by their insurance company is to file a claim and ask for a hearing before the Workers' Compensation Board.

CHAIR COGHILL asked if the injured worker could get their benefit reinstated if their doctor notified the insurance company that they needed to continue the prescription drug.

MS. LATHAM offered her understanding that the doctor would be able to work with the injured employee before the claim was controverted.

MR. MONAGLE said he believes that in most cases the employer would make a reasonable payment for the prescription if the injured employee returned to the doctor and the doctor notified the employer that he/she was writing another prescription for the pain medication. Case law indicates that there could be consequences for an employer who continues to resist or deny benefits when a doctor says they're needed, he said.

SENATOR WIELECHOWSKI continued to maintain that this law doesn't say that. The language on page 1, lines 11-13, gives an employer the option of denying future payments when it says:

A negative test result under this subsection for a controlled substance prescribed to the employee may result in the denial of future payments by the employer or insurer for the controlled substance prescribed to the employee but may not result in any other adverse employment action.

The language in subsection (q) on page 2, lines 11-14, says the following for an employer or insurer who chooses to exercise that option:

(q) An employer or insurer may not be liable for future payments for a controlled substance listed in schedule IA under AS 11.71.140 prescribed to an employee under this section if the employee receives a negative test result under AS 23.10.620(g).

SENATOR WIELECHOWSKI said he believes it's very clear, but if he's wrong he'd like it stated on the record.

[2:19:42 PM](#)

MS. LATHAM agreed it was an employer option.

SENATOR WIELECHOWSKI stressed that a doctor is not involved once an employee receives a negative result on a drug test. Under current workers' compensation law, an injured employee is allowed to receive pain killing prescription drugs for the rest of his life. This bill for ever takes the employer off the hook for paying for these prescription drugs if the injured employee doesn't take the prescription for a few days.

SENATOR DYSON agreed that the bill leaves a clear option for the employer who is looking for an opportunity to get out of the obligation of paying. He conceded that Senator Wielechowski's point was legitimate.

CHAIR COGHILL said it's also a legitimate point that schedule IA drugs are not intended to be used to mitigate chronic pain.

MS. LATHAM pointed out that an employer who was no longer liable for future payments for a schedule IA drug could still be liable for future payments for other pain relievers that would be effective in treating pain.

SENATOR WIELECHOWSKI said it would be helpful to hear from a doctor about how they prescribe drugs for chronic pain. He also asked how often an employer could test an employee.

MS. LATHAM said that wasn't defined in the bill.

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CHAIR COGHILL recessed the meeting to a call of the chair.

[5:48:38 PM](#)

CHAIR COGHILL reconvened the meeting and announced the committee would stay in recess until 9:00 a.m. Saturday morning 4/19/14. [The committee did not reconvene therefore, HB 370 was held in committee.]