

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

April 3, 2013

5:03 p.m.

MEMBERS PRESENT

Senator Mike Dunleavy, Chair
Senator Peter Micciche, Vice Chair
Senator Donald Olson

MEMBERS ABSENT

Senator Bert Stedman
Senator Johnny Ellis

COMMITTEE CALENDAR

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 84(FIN)

"An Act relating to applying military education, training, and service credit to occupational licensing and certain postsecondary education and employment training requirements; providing for a temporary occupational license for qualified military service members; and providing for an effective date."

- MOVED CSHB 84(FIN) OUT OF COMMITTEE

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 8

"An Act establishing procedures and guidelines for auditing pharmacy records; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 25

"An Act relating to electronic filing of certain information with the Department of Labor and Workforce Development; relating to surcharges, rate increase reduction, prohibition on the relief of certain charges, the unemployment trust fund account, and the offset of certain unemployment compensation debt under the Alaska Employment Security Act; relating to the definition of 'covered unemployment compensation debt' in the Alaska Employment Security Act; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 79

"An Act establishing the Sport Fishing Guide Services Board and licensing requirements for sport fishing guide-outfitters, sport fishing outfitters, sport fishing assistant guides, and sport fishing transporters; making conforming amendments; allowing the Department of Fish and Game to collect information on guiding services; providing for an effective date by repealing the effective date of sec. 32, ch. 58, SLA 2010; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

CS FOR HOUSE BILL NO. 50(FIN)

"An Act authorizing the Alaska Housing Finance Corporation to allow certain commercial uses in a multi-unit residential housing development owned or financed by the corporation and limiting the Alcoholic Beverage Control Board's issuance of certain licenses to premises in the residential housing development."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 84

SHORT TITLE: MILITARY TRAINING CREDIT/TEMP. LICENSE

SPONSOR(S): REPRESENTATIVE(S) SADDLER

01/24/13	(H)	READ THE FIRST TIME - REFERRALS
01/24/13	(H)	L&C, FIN
03/04/13	(H)	L&C AT 3:15 PM CAPITOL 106
03/04/13	(H)	Scheduled But Not Heard
03/05/13	(H)	L&C AT 8:00 AM BARNES 124
03/05/13	(H)	Moved Out of Committee
03/05/13	(H)	MINUTE(L&C)
03/07/13	(H)	L&C RPT 5DP 1AM
03/07/13	(H)	DP: CHENAULT, HERRON, REINBOLD, MILLETT, OLSON
03/07/13	(H)	AM: JOSEPHSON
03/20/13	(H)	FIN AT 1:30 PM HOUSE FINANCE 519
03/20/13	(H)	Heard & Held
03/20/13	(H)	MINUTE(FIN)
03/22/13	(H)	FIN AT 1:30 PM HOUSE FINANCE 519
03/22/13	(H)	Moved CSHB 84(FIN) Out of Committee
03/22/13	(H)	MINUTE(FIN)
03/25/13	(H)	FIN RPT CS(FIN) 8DP

03/25/13 (H) DP: GUTTENBERG, GARA, HOLMES, MUNOZ,
EDGMON, T.WILSON, COSTELLO, AUSTERMAN
03/27/13 (H) TRANSMITTED TO (S)
03/27/13 (H) VERSION: CSHB 84(FIN)
03/28/13 (S) READ THE FIRST TIME - REFERRALS
03/28/13 (S) L&C, FIN
04/02/13 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
04/02/13 (S) -- Public Testimony --
04/03/13 (S) L&C AT 5:00 PM BELTZ 105 (TSBldg)

BILL: SB 8

SHORT TITLE: PHARMACY AUDITS

SPONSOR(s): SENATOR(s) EGAN

01/16/13 (S) PREFILE RELEASED 1/7/13
01/16/13 (S) READ THE FIRST TIME - REFERRALS
01/16/13 (S) L&C, STA
01/24/13 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
01/24/13 (S) <Bill Hearing Postponed>
02/22/13 (S) SPONSOR SUBSTITUTE INTRODUCED-REFERRALS
02/22/13 (S) L&C, STA
03/28/13 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
03/28/13 (S) -- Public Testimony --
04/01/13 (S) L&C AT 4:30 PM BELTZ 105 (TSBldg)
04/01/13 (S) Scheduled But Not Heard
04/02/13 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
04/02/13 (S) -- Public Testimony --
04/03/13 (S) L&C AT 5:00 PM BELTZ 105 (TSBldg)

BILL: SB 25

SHORT TITLE: UNEMPLOYMENT; ELEC. FILING OF LABOR INFO

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/18/13 (S) READ THE FIRST TIME - REFERRALS
01/18/13 (S) L&C, FIN
04/02/13 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
04/02/13 (S) -- Public Testimony --
04/03/13 (S) L&C AT 5:00 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

REPRESENTATIVE DAN SADDLER

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 84.

MARC SAN SOUCI, Northwest Regional Liaison

U.S. Department of Defense (DOD)
Tacoma, Washington

POSITION STATEMENT: Provided supporting information related to SB 84.

BRYNN KEITH, Acting Deputy Commissioner
Department of Labor and Workforce Development (DOLWD)
Juneau, Alaska

POSITION STATEMENT: Provided information related to SB 25.

PAUL DICK, Director
Division of Employment Security
Department of Labor and Workforce Development (DOLWD)
Juneau, Alaska

POSITION STATEMENT: Provided information related to SB 25.

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

POSITION STATEMENT: Voiced concern with provisions in SB 25 and testified in opposition to SB 8.

PAUL GROSSI, Lobbyist
Alaska State Pipe Trades UA Local 375 and
Ironworkers Management Progressive Action Cooperative
Juneau, Alaska

POSITION STATEMENT: Raised concerns about Section 5 of SB 25.

ANDY ROGERS, Deputy Director
Alaska State Chamber of Commerce
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 25.

SENATOR DENNIS EGAN
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of SSSB 8.

DANA OWEN, Staff
Senator Dennis Egan
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented SSSB 8 on behalf of the sponsor.

CINDY LAUBACHER, Senior Director
State Affairs

Express Scripts
Roseville, California

POSITION STATEMENT: Testified in opposition to SB 8.

BARRY CHRISTENSEN
Alaska Pharmacist Association
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 8.

FRED BROWN, Esq., Executive Director
Health Care Cost Management Corporation of Alaska, Inc.
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 8.

PATRICIA CENTER, Professional Practice Director
Alaska Nurses Association (ANA)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 8.

MARK SELBY, Pharmacist
CBS Caremark

POSITION STATEMENT: Testified in opposition to SB 8.

MATT DIORETO
National Community Pharmacists Association

POSITION STATEMENT: Testified in support of SB 8.

JULIE MCDONALD, Pharmacist
Whale Tail Pharmacy
Craig, Alaska

POSITION STATEMENT: Testified in support of SB 8.

TOM HODEL
Soldotna Professional Pharmacy
Soldotna, Alaska

POSITION STATEMENT: Testified in support of SB 8.

DURK WHITE, Pharmacist
Sitka, Alaska

POSITION STATEMENT: Testified in support of SB 8.

ACTION NARRATIVE

[5:03:12 PM](#)

CHAIR MIKE DUNLEAVY called the Senate Labor and Commerce Standing Committee meeting to order at 5:03 p.m. Present at the call to order were Senators Olson, Micciche, and Chair Dunleavy.

HB 84-MILITARY TRAINING CREDIT/TEMP. LICENSE

[5:03:36 PM](#)

CHAIR DUNLEAVY announced the consideration of HB 84 sponsored by Representative Dan Saddler. "An Act relating to applying military education, training, and service credit to occupational licensing and certain postsecondary education and employment training requirements; providing for a temporary occupational license for qualified military service members; and providing for an effective date." [CSHB 84(FIN) was before the committee.] He noted that this was a companion to SB 4 which the committee heard previously.

[5:04:10 PM](#)

REPRESENTATIVE DAN SADDLER, sponsor of HB 84, stated that the goal of HB 84 is to help separating service members transition quickly and effectively into the civilian workforce. About 1,200 service members separate from service in Alaska each year, and they leave with world-class training, education, and experience. These assets shouldn't be disregarded. He said this bill asks the Division of Professional Licensing, the University of Alaska, and the Department of Labor and Workforce Development (DOLWD) to evaluate military education and training and assign civilian credit where appropriate. There is no intention to compromise current professional and occupational licensing standards. Accelerating the licensing process in this manner will help veterans get jobs and advance their civilian careers. As of July 2012, 19 states have passed similar legislation and 30 states are considering it. He asked the committee for its support.

[5:05:53 PM](#)

SENATOR MICCICHE asked for an explanation of temporary licenses.

REPRESENTATIVE SADDLER explained that 13 different boards offer temporary licenses. He listed audiologists, speech language pathologists, hair dressers and barbers, dental examiners, guardians and conservators, nursing home administrators, veterinary examiners, and chiropractic examiners. The decision to offer two 6-month extensions as opposed to one yearlong extension came at the suggestion of the Division of Corporations, Business and Professional Licensing.

SENATOR MICCICHE inquired if the goal is permanent licensure.

REPRESENTATIVE SADDLER answered yes.

[5:07:18 PM](#)

MARK SAN SOUCI, Regional Liaison, Military Families for the Northwest and Deputy Assistant Secretary of Defense for Military Family and Community Policy, U.S. Department of Defense (DOD), reminded the committee that last Tuesday he testified on the companion bill, SB 4. He said the Department of Defense supports HB 84 which will help alleviate the high unemployment rate among veterans. The DOD appreciates the consideration given to the 1,200 military that separated from service and returned to Alaska, many in Anchorage and Fairbanks. He highlighted that in the last 2 years, 28 states have enacted new laws to help veterans receive academic credit and/or occupational licensing. Thus far in 2013 at least 7 states have enacted similar legislation. He reemphasized that the bill does not ask for direct licensure if the education or training is not equivalent. In cases that the regulatory agency or board determines partial credit, it will still save the veteran time and money. The bill only seeks credit where credit is due.

MR. SAN SOUCI referenced Senator Olson's question last week about occupations that are not medically related, and suggested that the Department of Commerce, Community and Economic Development was best equipped to answer the question.

CHAIR DUNLEAVY found no further questions or public testimony.

SENATOR MICCICHE thanked the sponsor for revising the effective date so the bill has no fiscal impact.

CHAIR DUNLEAVY closed public testimony and solicited a motion.

[5:11:43 PM](#)

SENATOR MICCICHE moved to report HB 84, labeled 28-LS0357\U, from committee with individual recommendations and attached fiscal note(s).

CHAIR DUNLEAVY announced that without objection CSHB 84(FIN) moved from the Senate Labor and Commerce Standing Committee.

[5:11:56 PM](#)

At ease

SB 25-UNEMPLOYMENT; ELEC.FILING OF LABOR INFO

[5:15:50 PM](#)

CHAIR DUNLEAVY reconvened the meeting and announced the consideration of SB 25, "An Act relating to electronic filing of certain information with the Department of Labor and Workforce Development; relating to surcharges, rate increase reduction, prohibition on the relief of certain charges, the unemployment trust fund account, and the offset of certain unemployment compensation debt under the Alaska Employment Security Act; relating to the definition of 'covered unemployment compensation debt' in the Alaska Employment Security Act; and providing for an effective date." He noted this was the first hearing on the bill which was requested by the Governor.

5:16:47 PM

BRYNN KEITH, Acting Deputy Commissioner, Department of Labor and Workforce Development (DOLWD), Juneau, Alaska, said SB 25 does four things: 1) it allows for the electronic filing of reports and documents; 2) it improves the ability to recoup fraudulent unemployment insurance payments, 3) it adopts minor changes to bring state law into compliance with federal law governing the unemployment insurance program; and 4) it changes how the unemployment insurance tax rates are set in order to keep more money in the hands of Alaska employers and employees while protecting the integrity of the unemployment insurance trust fund.

5:18:00 PM

PAUL DICK, Director, Division of Employment Security, Department of Labor and Workforce Development (DOLWD), provided the following sectional analysis of SB 25:

Section 1 adds a new section, AS 23.05.055, authorizing the commissioner to allow the use of electronic filing methods in place of paper filing.

Section 2 adds a new section, AS 23.20.021, authorizing the legislature to appropriate money into the unemployment trust fund account.

Sections 3 adds a new section, AS 23.20.279, that brings the state into conformity with federal law, Public Law 112-40, by prohibiting the relief of charges to employers when an erroneous payment of unemployment insurance benefits is made due to an established pattern of the employer, or an agent of the employer, for failing to respond timely or adequately to a documented request for information relating to a claim for unemployment compensation. This section defines "erroneous payment" as a payment made that would not have otherwise been

paid, but was due to the failure of the employer to respond timely or adequately. This section also defines "pattern of failing" as two or more times or two percent or more of all requests, whichever is greater, during the prior year.

MR. DICK emphasized the serious impacts of not being in conformity with federal law. Because the state is in compliance, Alaska employers receive a 90 percent credit on Federal Unemployment Tax Act (FUTA) tax contributions for each employee. If the state were to fall out of compliance it would mean a substantial burden on employers in addition to the loss of administrative funding, which is \$21 million this year.

SENATOR MICCICHE asked when the state would be out of compliance.

MR. DICK replied the federal requirements must be in place by October 21, 2013. He continued the sectional analysis.

Section 4 repeals and reenacts AS 23.20.290(f), replacing a table method for determining unemployment insurance trust fund solvency adjustments with a more precise calculation method. It also eliminates a restriction on how far the fund solvency adjustment surcharge can fall in a single year. Surcharges are currently calculated to tenths of a percent and the bill would provide for surcharges to be calculated to hundredths of a percent. Currently, the statutes allow the solvency adjustment to only increase or decrease a maximum of .3 per year. This removes the .3 limitation on decreases in solvency adjustments. In decreasing situations this will provide more tax relief to employers.

Section 5 adds a new section, AS 23.20.291, authorizing the commissioner to eliminate or reduce increases in unemployment insurance tax rates when the "average high cost multiple," a measure of solvency calculated by the U.S. Department of Labor, Employment and Training Administration, is 0.8 or greater. There is also a requirement to consult with the department's actuarial staff. This provides unemployment insurance tax relief to employers during economic downturns.

Section 6 amends section AS 23.20.390(f) to bring the state into conformity with federal law, Public Law 112-40, by removing the department's authority to waive the collection of a penalty established due to misrepresentation and requires that a minimum of 30 percent of the unemployment insurance penalties collected

due to misrepresentation be deposited into the state's unemployment trust fund account.

Section 7 adds a new section, AS 23.20.486, to authorize the department to offset unemployment compensation debt against a claimant's federal income tax refund. This section would allow the state to participate in the federal treasury offset program. This would allow the state to offset unemployment insurance debts against federal income tax return refunds. The offsets are projected to bring in \$500,000.

Section 8 amends AS 23.20.520 by adding a new paragraph to define "covered unemployment compensation debt" in accordance with the federal statutory definition.

Sections 9 amends state uncodified law by specifying that AS 23.20.279, section 3, applies to overpaid benefits established after October 21, 2013.

Section 10 specifies that the department will adopt necessary regulations to implement changes. Regulations will not be effective prior to July 1, 2013.

Section 11 establishes that Section 10 takes effect immediately.

Section 12 establishes the effective date for the remaining sections of the Act as July 1, 2013.

[5:23:18 PM](#)

SENATOR MICCICHE asked if it would be possible to go below the previous year's unemployment insurance tax rate.

MR. DICK said no because this only applies to an increase in a given year.

[5:24:21 PM](#)

CHAIR DUNLEAVY opened public testimony.

[5:24:31 PM](#)

BARBARA HUFF TUCKNESS, Director, Governmental and Legislative Affairs, Teamsters Local 959, said Local 959 represents about 7,000 members statewide who are affected by SB 25. Local 959 is also an employer of 35 people, and in 2012 paid about \$37,000 into the unemployment insurance trust fund. Those employees paid a little over \$8,300. She noted that Alaska is one of three states in which employees and employers both pay into the trust fund.

MS. HUFF TUCKNESS said she sent a letter to Commissioner Blumer on February 12, 2013 to voice concerns about the bill, specifically Section 5. She read the question she posed and the answer she received as follows:

Q - If the rate increases are suspended, as referenced in Section 5 of the bill, and the average high cost multiple falls below the trigger, won't employers and employees be required to pay more than what they would have had the earlier rate increase been suspended?

A - If rate increases are suspended, employers and employees would be required to pay slightly more in subsequent years than they would have if the increased had not been suspended in the earlier years. Over the long term, however, the amount paid by the employers and employees would be about the same, or slightly less, than if increases were never suspended.

MS. HUFF TUCKNESS questioned the wisdom of changing the system if employers and employees end up paying the suspended increase anyway. The current system is tried and true and has been working, as opposed to the 30-35 unemployment trust funds in the Lower 48 that have gone through insolvency and had to borrow money from the federal government to fund those plans. The state ultimately is required to pay back the loan.

MS. HUFF TUCKNESS said, other than Section 5, the provisions of the bill are positive changes that are for the good of everybody and the betterment of the fund.

5:30:10 PM

PAUL GROSSI, Lobbyist, Alaska State Pipe Trades UA Local 375, and Ironworkers Management Progressive Action Cooperative, stated support on behalf of the union for SB 25 except for Section 5. That is the section that allows the commissioner to eliminate or reduce the increases in unemployment insurance tax rates. Since the formula was implemented in 1980, the Alaska trust fund has never been insolvent. He said he didn't want to sound like the sky is falling, but if the increases have been suspended for a period of time and there is a downturn in the economy, there could be insufficient funds to make up for the increased claims. That is a slight problem for the claimants because the benefits may be delayed, but the federal government will step in and make the claimants whole. The employer is then responsible for making the fund solvent.

The question is whether the risk is worthwhile if the funds have to be reimbursed anyway, and the current formula is proven. If the department is concerned about overfunding, he suggested tweaking the formula as opposed to throwing it out.

He reiterated support for the bill with the exception of Section 5.

[5:34:02 PM](#)

ANDY ROGERS, Deputy Director, Alaska State Chamber of Commerce ("Alaska Chamber"), testified in support of SB 25. He said this is a membership organization comprised of private sector businesses. Each year the membership discusses the challenges facing businesses and selects positions for the staff to advocate for. This issue got members attention. The Alaska Chamber asked Deputy Commissioner Keith to address the membership and give a sectional analysis of the bill and responded to questions. The membership reviewed Section 5 and supports giving the commissioner the option of providing relief to Alaskan businesses when the fund is solvent and there are economic reasons to do so. Section 2 provides some protections because the legislature can make an appropriation to make the fund whole.

The Alaska Chamber believes that a majority of the bill provides good clean up provisions and he applauds the administration for doing good business on behalf of the state and looking for areas to optimize and seek efficiencies in the way it conducts business. That's what [SB 25] does.

SENATOR MICCICHE commented that he agrees with Mr. Grossi that the sky probably isn't falling, but the concerns about Section 5 are legitimate. He asked Ms. Keith and Mr. Dick if Section 5 needed some adjustment or if they felt it would remain solvent under relatively challenging conditions.

MS. KEITH said the department believes that Section 5, as currently written, maintains the solvency of the fund while allowing businesses and employers to keep a little more money in their pocket and churning through the economy and creating jobs. It strikes a good balance and is a good move forward for employers and employees.

SENATOR MICCICHE asked the typical increase from year to year over the past 10 years.

MR. DICK said he didn't have the information, but the rate goes up and down and that's what it's done over the history of the trust fund as the economic times and benefit requirements have changed.

SENATOR MICCICHE asked if the trust fund would be managed for a relatively smooth ride as opposed to a roller coaster.

MR. DICK emphasized that this legislation does not change the formula. He reiterated that over the history of the fund there haven't been dramatic increases or decreases.

[5:41:40 PM](#)

SENATOR MICCICHE requested the 10-year trend.

MR. DICK acknowledged the request.

CHAIR DUNLEAVY stated he would hold SB 25 in committee.

[5:42:37 PM](#)

At ease

SB 8-PHARMACY AUDITS

[5:42:43 PM](#)

CHAIR DUNLEAVY announced the consideration of SSSB 8, sponsored by Senator Dennis Egan. "An Act establishing procedures and guidelines for auditing pharmacy records; and providing for an effective date." He noted this was the first hearing on the bill.

[5:44:55 PM](#)

SENATOR DENNIS EGAN, sponsor of SSSB 8, stated that a very similar version of this bill unanimously passed the Senate last year. Because of time constraints, it didn't make it through the process. He clarified that the bill does not stop the auditing of pharmacies; it seeks to make the audits fair. SSSB 8 incorporates the result of discussions between pharmacy benefits managers and pharmacists that took place earlier this year, although not every issue was resolved. The bill also incorporates requests of the administration.

[5:46:16 PM](#)

DANA OWEN, Staff, Senator Dennis Egan, sponsor of SSSB 8, introduced SSSB 8 reading the following into the record:

Passage of SSSB 8 will establish procedures and guidelines for auditing pharmacy records, so that all

pharmacies are held to fair standards. It has been introduced at the request of the Alaska Pharmacists Association.

Pharmacists acknowledge that audits are a good tool to protect the public and detect fraud or abuse, but sometimes audits are unreasonable and used in a way that deprives them of fair reimbursement for their services. For example, there may be times when pharmacists give someone the right drug in the right dose, but because of a clerical or typographical error in billing, they may not get paid what they are due. Where there are disagreements between an auditor and a pharmacy, the measure would allow for an appeal in the case.

In response to their history of pharmacy audit abuses, 22 states have now enacted reforms similar to those proposed in SSSB 8. More are considering such measures.

This legislation would help protect all pharmacies in Alaska, but would especially help small business pharmacies who, because of their smaller pool of assets, often face dire consequences from an unreasonable audit.

SSSB 8 would set requirements for auditing pharmacy records by an insurer, a managed care company, a third-party payor, or a pharmacy benefits manager. Supporters of this measure include the Alaska Pharmacists Association and the National Community Pharmacists Association. [The bill has since received support from the Alaska Nurse's Association and the Alaska Nurse Practitioners Association.]

[5:49:06 PM](#)

MR. OWEN delivered a PowerPoint presentation about pharmacy benefit managers (PBMs) and the need for fair and reasonable standards over the practice of auditing pharmacies. He explained that PBMs are designed to reduce administrative costs for insurers, validate patient eligibility, administer plan benefits and negotiate costs between pharmacies and health plans. Employers/insurers sign contracts with PBMs to manage the pharmacy benefit provided to employees. PBMs then "contract" with pharmacies, set pharmacy reimbursement rates, create a list

of approved drugs (formulary), and reimburse pharmacies for dispensed drugs.

He explained how the PBM works. Step 1 an insurer hires the PBM to manage drug costs. The PBM acts as a go-between for both insurers and manufacturers and insurers and pharmacies. Step 2 the PBM negotiates prices with manufacturers. The manufacturers agree to prices and pay rebates to the PBM for preferred placement on the insurer's formulary. The PBM splits the rebate with the insurer. Step 3 the pharmacy negotiates how much the pharmacy will have to pay the manufacturers and wholesalers to get the drugs. Step 4 the PBM negotiates the insurer reimbursement for drugs and dispensing fees with pharmacies. This determines how much pharmacies will earn for dispensing the drugs.

MR. OWEN reviewed the Alaska pharmacy infrastructure. The state has 40 independent pharmacies and 59 chain pharmacies or 94 total pharmacies. There are 56 independent pharmacists and 217 chain pharmacists for a total 273 community pharmacists. The total pharmacy employment is 11,469.

He discussed what Alaskan pharmacists are up against. Today 95 percent of consumers with pharmaceutical drug benefits receive these benefits through a PBM. Before the merger of two of the largest PBMs in 2012 - Express Scripts and Medco - the vast majority of benefits were managed by Express Scripts, CVS/Caremark, and Medco Health Solutions. In 2011 Morgan Stanley reported that nine out of ten top employer health plans were managed by one of the "big three" PBM. In 2012 revenue for the merged Express Scripts and Medco Health Solutions was more than \$116 billion. Total revenue for CVS/Caremark was more than \$107 billion. This shows what small community pharmacies face when they deal with a pharmacy benefits manager.

MR. OWENS said not all PBMs operate fairly. Examples of PBM tactics include: non-transparent, "take it or leave it" contracting; self-owned, beneficiary mandated mail-order operations; restricting beneficiary access to certain pharmacies; and predatory, unregulated auditing of pharmacies.

SSSB 8 focuses on pharmacy auditing. It is appropriate to audit pharmacies; however, PBMs that compete in the same market for the same consumers cannot ethically audit their competitors. This refers mostly to mail-order pharmacies. Auditors are required to be objective. Judgment should not be based on the interest of the auditor or the interests of others. PBMs by

nature of their business, cannot maintain objectivity when they are auditing their competition.

Audits can be important mechanisms for monitoring pharmacies and ensuring safe practices. Audits should: detect fraud, unlawful billing practices and abuse; be standardized and conducted in a way that does not interfere with the health care services being provided by pharmacists; be adequately noticed (minimum of two weeks); use the same standards to audit similarly situated pharmacies; be conducted by or in consultation with a licensed pharmacist when decisions may involve clinical or professional judgment; limit examination of claims to those within two years of submission; and base the findings of over/under payment on the actual amount.

[5:54:38 PM](#)

SENATOR MICCICHE asked why it's a fact that PBMs by the nature of their business, cannot maintain objectivity when they are auditing their competition.

MR. OWEN explained that it's a conflict of interest if a PBM is auditing a pharmacy and it also operates a mail-order pharmacy that is in direct competition with that pharmacy.

SENATOR MICCICHE acknowledged that it may be difficult to maintain objectivity, but wondered if there was some process issue that makes it impossible to be objective.

MR. OWEN replied it wasn't a process issue, it was about conflict of interest.

[5:56:00 PM](#)

At ease

[5:56:00 PM](#)

VICE-CHAIR MICCICHE reconvened the meeting.

MR. OWEN reviewed what pharmacy audits should do.

Audits should: detect fraud, unlawful billing practices and abuse; be standardized and conducted in a way that does not interfere with the health care services being provided by pharmacists; and be adequately noticed with a minimum of two weeks. The same standards should be used to audit similarly situated pharmacies, and they should be conducted by or in consultation with a licensed pharmacist when decisions may involve clinical or professional judgment. Audits should limit

examination of claims to those within two years of submission, and they should base findings of over/under payment on the actual amount.

MR. OWEN reviewed what should not occur in an audit.

Audits should not: be held during the first five days of any month; be conducted within 90 days of a prior audit that found no fault; penalize a pharmacy because a prescription is mailed or delivered at the request of a patient; target simple administrative errors where no harm occurred and there was no financial loss or ill intent intended; or extrapolate costs using a probability equation.

[5:57:54 PM](#)

MR. OWEN stated that Alaskans should have confidence in how pharmacies are monitored. They should be monitored to ensure patient safety and uncover abuse or fraud. A monitoring goal should not be to increase the bottom line of PBMs.

He provided an example of what SB 8 is attempting to prevent. Tom Hodel, owner of Soldotna Professional Pharmacy reported the following:

In August 2011, two auditors arrived at our store. I spent the entire day answering their questions, pulling files, and finding documentation. They were not very knowledgeable in pharmacy practices, so it took quite a long time.

I was very pleased when I read the first few pages of the final report. Out of over \$103,000 in claims reviewed, we had only \$89 in errors. However, when I got to the last page - using the "one-sided confidence extrapolation method" (their name for this - they said I owed over \$7,300! I called the auditors to no avail.

Being told to repay over \$7,000 is just not right!

MR. OWEN offered to answer questions.

[5:59:05 PM](#)

At ease

[5:59:12 PM](#)

VICE-CHAIR MICCICHE reconvened the meeting and requested a sectional analysis.

MR. OWEN provided a sectional analysis. Section 1 adds a new Sec. 08.80.477 regarding pharmacy audits that has 19 paragraphs. Paragraph (1) says the auditor shall provide the pharmacy or pharmacist with notice of the audit of at least two weeks. Paragraph (2) says that the audit may not be scheduled during the first five business days of a month because of high volume of prescriptions that are filled during that time. Paragraph (3) says audits may not be conducted within 90 days of an audit in which no errors were found. Paragraph (4) says the audit of a claim must occur within two years after the date the claim was submitted. Paragraph (5) provides that audits that involve clinical or professional judgment shall be conducted by or in consultation with a licensed pharmacist. Paragraph (6) says the auditor shall use similar standards and parameters for each audit. Paragraph (7) says the auditor may not use extrapolation to establish penalties. Paragraph (8) says that a finding of under or overpayment may not be based on a projection. Paragraph (9) places limits on the cases when dispensing fees may be recovered. Paragraph (10) says the auditor may not assess a penalty solely because a prescription is mailed at the request of a patient as part of a routine business practice of the pharmacy. Paragraph (11) says a pharmacy may not be subject to recoupment for a clerical or record-keeping error unless the error results in actual financial harm to a party. Paragraph (12) says the preliminary audit report shall be delivered to the pharmacy within 120 days after the audit is completed. Paragraph (13) says no interest may accrue to either party during the audit period. Paragraph (14) allows a pharmacy at least 30 days following the preliminary audit report to address discrepancies. Paragraph (15) says there must be an established written appeal process by which a pharmacy may appeal an unfavorable audit. Paragraph (16) says the pharmacy shall receive the final audit report within 90 days after the receipt of the pharmacy's response to the preliminary report. Paragraph (17) says the auditor may not be compensated based on a percentage of what is recovered. Paragraph (18) says the auditor shall provide a copy of the final report to an affected health benefit plan sponsor if requested by the plan sponsor. Paragraph (19) says patient information accessed during an audit shall be kept confidential.

Section 2 is the applicability section. The Act applies to pharmacy audits conducted on or after the effective date.

Section 3 is the effective date of January 1, 2014.

VICE-CHAIR MICCICHE opened public testimony.

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CINDY LAUBACHER, Express Scripts, reviewed the five areas of concern she outlined in the written testimony she submitted on March 26, 2013.

Section 1(a). The provisions of the bill should be limited to on-site audits.

Section 1(a)(3). This language prohibits an audit within 90 days of an error-free audit. This limits the auditor's ability to identify and stop fraud waste, and abuse.

Section 1(a)(10). This prohibits recovering payments to pharmacies for prescriptions that are mailed or delivered as a routing business practice. Because Alaska has unique circumstances, mail order prescriptions are allowed under certain circumstances, but not as a normal business practice.

Section 1(a)(17). This paragraph prohibits plan sponsors from paying for audits based on a percentage of the amount recovered. The amount of compensation is determined by clients. Express Scripts does not pay auditors on a percentage basis. She requested the committee consider the alternative language that was offered in her letter.

Section 1(a)(19). This paragraph relates to fraud.

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BARRY CHRISTENSEN, Pharmacist, Alaska Pharmacist Association (APA), stated that [SSSB 8] represents a modified version of a bill that died last year. Over the summer the APA met in good faith with opponents to reach this compromise legislation. He offered his belief that the bill represents the bottom line of what Alaska pharmacists feel is needed to bring fairness to the unregulated and expanding practice of pharmacy audits. This legislation has the support from small mom and pop pharmacies, larger chain pharmacies, and the Alaska State Board of Pharmacy.

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FRED BROWN, Esq., Executive Director, Health Care Cost Management, Inc., noted that he submitted written testimony on March 28, 2013. He reported that HCCMCA membership is comprised of more than 35 health benefit plans in Alaska and the Pacific Northwest. These organizations are mostly state, borough, municipal, and school district sponsored plans. The Taft Hartley health benefit trust also participates in the organization. The

member funds represent 72,000 employees and 171,000 covered lives. More than 40 percent of the participants live and work in Alaska. Most of these funds contract with pharmacy benefits managers (PBMs) as a means to help control rising drug costs.

He said HCCMCA supports the sponsor's goal of achieving reasonable audit standards, but thus far has not been invited to the discussion concerning how to accommodate the concerns of the various parties. He described the current draft as out of balance, and referred the committee to his letter that details HCCMCA's full opposition to the bill.

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BARBARA HUFF TUCKNESS, Director, Governmental and Legislative Affairs, Teamsters 959, stated that the administrator of the Alaska Teamster Health Plan submitted a letter opposing SB 8. She expressed appreciation for being invited to participate in the discussions that led to changes in the bill, and hope that additional changes would be made that would allow their PBMs to reduce costs. In the past year, the Teamster's health plan experienced a 30 percent increase in cost. The cost of health benefits was \$42 million, 12 percent of which was prescription drugs. The concern regarding audits is that the PBMs need to be allowed to do the jobs they are hired to do, although there should be fair practices. She highlighted that the Teamsters have hired PBMs since 1980 and have never had a complaint from a pharmacist. the Teamsters can't support SB 8 in its current form because it doesn't allow PBMs to operate effectively and efficiently in Alaska.

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PATRICIA CENTER, Professional Practice Director, Alaska Nurses Association (ANA), said she is also a member of the Alaska Nurse Practitioner Association (ANPA). She noted the packets should include letters of support from the ANA president and the president of the Alaska Nurse Practitioner's Association. { She said it appears that pharmacists are under assault from a number of sides, and the audits are an additional threat to local pharmacies. SB 8 does a good job of establishing basic rules of engagement between auditors and pharmacies.

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MARK SELBY, Pharmacist, CBS Caremark, expressed concern with five sections of the bill. In Section 1(a), audits should be limited to on-site. In Section 1(a)(3), the prohibition against conducting an audit within 90 days of an error free audit ties their hands on researching errors. The third concern relates to

Section 1(a)(10) regarding mail orders for retail pharmacies. Mail order pharmacies are a different class of pharmacy and they shouldn't be encouraged to flock to Alaska. The fourth concern relates to auditor compensation in Section 1(a)(17). Auditors should not be paid on a bounty. The fifth concern relates to a quick review. He directed attention to the letter from CVS Caremark in the packets.

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MATT DIORETO, National Community Pharmacists Association (NCPA), testified in support of SB 8. He said the NCPA has been working on this legislation with pharmacists of Alaska for about two years. He reported that 23 states have enacted similar legislation and about 3 states have bills in committee. He addressed some of the concerns from the opposition. First is the claim that the bill will increase costs, but pharmacists do not set reimbursement. Nothing in the bill has to do with the cost of medication or services. He noted that this was the first time NCPA has worked in a state where a union plan has opposed this type of legislation because of cost. He offered to provide a recent document from the Center for Medicare and Medicaid Services that said the growing practice of post audit claim challenges from pharmacies was distorting plan payments, compromising plan data integrity, and impairing their ability to oversee the programs. He asked the committee to take favorable action on the bill.

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JULIE MCDONALD, Pharmacist, Whale Tail Pharmacy, Craig, Alaska, stated support for SB 8. She said she and other pharmacists don't oppose audits themselves, but they want them done fairly and in a manner that does not infringe on their ability to provide direct patient care. She has observed contracts where the audit section completely complies with the provisions in SB 8. Therefore, the proposed regulations and standards are not unreasonable for insurance companies. This is not the case with nationwide insurance companies, particularly those that own their own pharmacies, which makes SB 8 necessary. What will occur is the information on how audits will be handled will be put in provider manuals rather than the contract itself. This provider manual can be amended at any time without the consent of the pharmacy. Another common issue is the audit terms will be placed in the contract, but when a pharmacy tries to amend the terms, the insurance company will not respond. She cited examples.

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VICE-CHAIR MICCICHE reconvened the meeting.

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TOM HODEL, owner, Soldotna Professional Pharmacy, testified in support of SB 8. He said pharmacies are not attempting to do away with audits, because they are a necessary mechanism to protect against fraud and abuse. They are asking for fairness in the process. He discussed the audit that Mr. Owen described earlier.

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DURK WHITE, Pharmacist, Sitka, Alaska, testified in support of SB 8. He said he and his wife operate two pharmacies and employ 38 people. He said the provision about mail order prescriptions was initially a sticking point because of the unique circumstances in rural Alaska. He described several situations that mail order pharmacies can't cover. Referring to the claims of abuse of prescriptions, he questioned how some PBMs could determine a prescription is invalid due to a clerical error and they'll recoup the money if the prescription is totally valid under the rules and regulations of the Board of Pharmacy.

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VICE-CHAIR MICCICHE closed public testimony and held SB 8 in committee.

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There being no further business to come before the committee, Vice-Chair Micciche adjourned the Senate Labor and Commerce Standing Committee meeting at 6:41 p.m.