

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

February 27, 2015

3:17 p.m.

MEMBERS PRESENT

Representative Kurt Olson, Chair
Representative Shelley Hughes, Vice Chair
Representative Jim Colver
Representative Cathy Tilton
Representative Andy Josephson
Representative Sam Kito

MEMBERS ABSENT

Representative Gabrielle LeDoux
Representative Mike Chenault (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 32

"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. 116

"An Act extending the termination date of the Alcoholic Beverage Control Board; and providing for an effective date."

- MOVED HB 116 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 32

SHORT TITLE: WORKERS COMP: CONTROLLED SUBSTANCES TESTS

SPONSOR(S): REPRESENTATIVE(S) OLSON

01/21/15	(H)	PREFILE RELEASED 1/9/15
01/21/15	(H)	READ THE FIRST TIME - REFERRALS
01/21/15	(H)	L&C, JUD
02/27/15	(H)	L&C AT 3:15 PM BARNES 124

BILL: HB 116

SHORT TITLE: EXTEND ALCOHOLIC BEVERAGE CONTROL BOARD

SPONSOR(S): LABOR & COMMERCE

02/18/15 (H) READ THE FIRST TIME - REFERRALS
02/18/15 (H) L&C, FIN
02/27/15 (H) L&C AT 3:15 PM BARNES 124

WITNESS REGISTER

KONRAD JACKSON, Staff
Representative Kurt Olson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 32 on behalf of the prime sponsor, Representative Kurt Olson.

MICHAEL MONAGLE, Director
Central Office
Division of Workers' Compensation
Department of Labor & Workforce Development (DLWD)
Juneau, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HB 32.

AESHA PALLESEN, Assistant Attorney General
Labor & State Affairs Section
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HB 32.

SCOTT JORDAN, Director
Division of Risk Management
Department of Administration (DOA)
Juneau, Alaska

POSITION STATEMENT: Answered questions during the discussion of HB 32.

LORI WING-HEIER, Director
Division of Insurance (DOI)
Anchorage Office
Department of Commerce, Community & Economic Development (DCCED)
Anchorage, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HB 32.

LAURA STIDOLPH, Staff
Representative Kurt Olson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 116 on behalf of the House Labor & Commerce Standing Committee, Representative Kurt Olson, Chair.

KRIS CURTIS, Legislative Auditor
Legislative Audit Division
Legislative Agencies and Offices
Juneau, Alaska

POSITION STATEMENT: Presented auditor findings and recommendations and answered questions during the discussion of HB 116.

CYNTHIA FRANKLIN, Executive Director
Alcoholic Beverage Control Board ("ABC Board")
Department of Commerce, Community & Economic Development
Anchorage, Alaska

POSITION STATEMENT: During discussion of HB 116, answered questions.

ACTION NARRATIVE

[3:17:34 PM](#)

CHAIR KURT OLSON called the House Labor and Commerce Standing Committee meeting to order at 3:17 p.m. Representatives Colver, Tilton, Josephson, Kito, Hughes, and Olson were present at the call to order.

HB 32-WORKERS COMP: CONTROLLED SUBSTANCES TESTS

[3:18:32 PM](#)

CHAIR OLSON announced that the first order of business would be HOUSE BILL NO. 32, "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."

[3:19:03 PM](#)

KONRAD JACKSON, Staff, Representative Kurt Olson, Alaska State Legislature, on behalf of the prime sponsor, Representative Kurt Olson, stated that HB 32 is intended to address opioid use, which is one of the factors leading to the high cost of workers' compensation insurance in Alaska. The sponsor introduced a similar bill last legislature on the same topic. This bill would allow for drug testing for workers' compensation patient opioid use under very specific circumstances by limiting prescriptions for opioids to a 30-day supply. He said the bill's focus is aimed to help reduce the high cost of workers' compensation in Alaska by addressing the epidemic use of opioid use and abuse of prescription drugs by workers' compensation patients.

MR. JACKSON gave a brief section-by-section analysis of HB 32, relating that Section 1 would authorize drug testing of injured workers if the employees have been prescribed a controlled substance for over 90 days. He said a negative test could result in denial of future payments for the controlled substance by the employer, although negative or positive test results may not result in any adverse employment action. He directed attention to the "may" language, which is permissive since it does not mandate a test after 90 days.

MR. JACKSON stated that Section 2 requires the Workers' Compensation Board to adopt regulations pertaining to the provisions in Section 3 of HB 32.

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MR. JACKSON stated Section 3 will limit prescriptions of controlled substances listed in schedule IA, IIIA, or VA in AS 11.71 to a 30-day supply; however, an employer or insurer may use an employee's negative test result under AS 23.10 to claim that the employee may not be eligible for future payments for schedule IA controlled substance prescription. Again, this bill is designed to limit and discourage use of long-term opioids by restricting prescriptions to controlled substances to 30 days, he said. He reported statistics that show one in four prescriptions is being used by someone who has not been prescribed the medication that employers are paying for, either directly or through insurer premiums.

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MR. JACKSON emphasized that the drugs in question are not mild drugs, but are opioids, which are a synthetic version of opium-

derived drugs as defined in AS 11. Higher usage and dosage of opioids over long periods of time can lead to addiction, increased disability or work loss, and potentially even death. He reported that deaths from overdoses have grown dramatically and in many states have now exceeded deaths from automobile crashes. He concluded by stating that prescription drug abuse has been declared an epidemic by the Centers for Disease Control (CDC).

[3:23:45 PM](#)

CHAIR OLSON asked whether patients can obtain a new prescription so long as they see their doctor.

MR. JACKSON answered yes. The bill proposes reducing a 90-day prescription of controlled substances to 30 days. Patients can obtain refills by visiting their physicians, who can prescribe an additional 30-day refill, if deemed necessary. The overall goal is to reduce workers' compensation costs, but also to get workers healthy and back to work as quickly as possible, and proper pain management is a key component.

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REPRESENTATIVE HUGHES asked for further clarification if the drug test is negative and the opioids are not in the patient's system, whether it is possible that these drugs might be diverted and are being illegally sold. She further asked whether the statistics for overdoses are for patients being prescribed the drugs or by people illegally buying diverted prescription drugs.

MR. JACKSON replied that a negative test may result in denial of a prescription refill for controlled substances, noting these costs are being passed on to the insurer or the employer. Thus if the patients do not need the medication, their employers need to stop paying for it. He clarified that this bill does not accuse workers' compensation patients of selling their prescription drugs, in fact, patients may simply be putting their prescriptions in the medicine cabinet. This bill allows the drug testing to occur to ensure that patients are taking their medications. If patients have been consciously attempting to wean themselves off their pain medication, and some have done so, they must do so in conjunction with their doctors. He reiterated that this bill does not intend to harm the injured worker. He directed attention to some of the reports in

members' packets that provide information on drug overdoses, although he did not specifically recall the figures.

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CHAIR OLSON said that he has heard that one-third of Alaskan workers are subject to random UAs (urine analysis) with more stringent actions allowed for positive tests. For example, North Slope workers will lose their jobs if they have a negative test. Employees of many industries, including ones related to transportation, maritime, and the military currently subject to drug testing, he reported.

[3:28:28 PM](#)

REPRESENTATIVE HUGHES said it is a good bill and she supports it. She emphasized the importance of reducing workers' compensation costs in Alaska. She asked whether any employers are subject to rules regarding administering random UAs, for example, whether employees are forewarned.

MR. JACKSON answered that this bill specifically addresses Title 23, which relates to workers' compensation and does not apply to other workers. He clarified that this bill applies to injured workers who have been taking prescriptions opioids for more than 90 days. However, this bill would not apply to patients taking prescription drugs for opioids for less than 90 days; instead, the trigger for drug testing of workers' compensation patients is for patients have been taking prescription opioids for 90 days or longer. He stated that the details for testing will be laid out in regulation upon passage of HB 32.

[3:30:44 PM](#)

REPRESENTATIVE COLVER asked who can order the tests, whether it is the employer or the workers' compensation carrier.

MR. JACKSON answered that it is not spelled out in the bill, but it will be established in regulation. He directed attention to Section 1, which allows the employer, or essentially the claims manager to order the testing. He deferred to Mr. Monagle to further address this during his testimony.

[3:31:49 PM](#)

REPRESENTATIVE KITO said this is the first time he has seen the bill. He expressed concern that the state would establish

different classes of care for people. He offered if the state believes that it needs to assure that there isn't abuse of scheduled drugs, the statutes should apply to everyone, not just those receiving workers' compensation. However, if there is further concern about keep people from illegally selling narcotics, it is already illegal to do so. He suggested that there should be other ways to investigating whether that activity is taking place. He did not think that doctors could provide evidence to an investigator as to whether a patient is potentially selling narcotics.

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REPRESENTATIVE KITO asked how long it takes for prescription drugs listed in schedule IA to clear a patient's bloodstream. He wondered when workers' compensation patients will have clear urine analysis tests. He further asked for the percentage of cases that this would apply to in Alaska, for example, if the state has 100 workers' compensation cases, how many cases would involve prescriptions for narcotics beyond 30 days. He asked whether the doctor will need to refill the prescriptions after 30 days for patients who have prescriptions for narcotics.

MR. JACKSON answered he is absolutely correct that it is illegal for anyone to resell prescriptions that are not prescribed to them. Thus only pharmacies can sell prescription drugs. In terms of the length of time for opioids to leave a person's system, he surmised that it would depend on the body mass and the drug; however, he was not certain. He deferred to Mr. Monagle, but also offered to research the matter.

[3:35:42 PM](#)

REPRESENTATIVE KITO felt it was important to know what workers' compensation patients were being testing for and if a prescription drug clears in one day or seven days would mean different things.

MR. JACKSON provided some statistics for Alaska, noting that in 2011, prescription drugs comprised almost 20 percent of the medical costs of workers' compensation claims. Over 90 percent of the time, injured workers missing one or more weeks had prescriptions covered by workers' compensation, of which, 60 to 90 percent received opioids or narcotics.

[3:36:42 PM](#)

REPRESENTATIVE KITO asked for further clarification if he was indicating 60 percent of 90 percent of the 20 percent of medical costs were for workers' compensation claims.

MR. JACKSON answered yes.

[3:37:09 PM](#)

CHAIR OLSON asked whether that amounted to 11 percent of injured workers.

MR. JACKSON deferred to Chair Olson on the math.

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MR. JACKSON, referring to the 30-day renewal, stated that the sponsor's hope was to encourage a stronger and more robust communication between doctors and injured workers, which will allow for 30-day refills of prescriptions for opioids, which could encourage a conversation between doctors and patients that could mean patients don't need prescriptions for additional drugs.

[3:38:11 PM](#)

REPRESENTATIVE JOSEPHSON asked for clarification on the statistics.

MR. JACKSON responded that 20 percent of the medical costs in workers' compensation claims were for prescription drugs in 2011. Ninety percent of the injured workers who missed a week or more received workers' compensation prescriptions, with 60-90 percent of them receiving opioids.

[3:39:25 PM](#)

REPRESENTATIVE JOSEPHSON said that the statistics tell him that injured workers are prescribed lots of drugs. He contemplated how best to use that information and whether this bill represents the right means to reduce costs.

CHAIR OLSON added that HB 32 will provide one tool to do so. Ultimately, he hoped that the best practices for pain management will be completed in the next year or two. Although he is not a doctor, it seemed to him that prescribing drugs to injured workers that were intended as end of life drugs for cancer patients without first trying other options can create some

problems. For example, after several months of being on opioids, injured workers are much less likely to return to their jobs. He offered to provide statistics, but reiterated that the longer injured workers are on drugs like oxycodone, the less likely they are to return to work.

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REPRESENTATIVE JOSEPHSON asked whether any study or data supported that legislation of this type in other states has achieved results, in other words if premium costs were then reduced.

MR. JACKSON related that Florida, Washington, Colorado and Texas have initiated reforms and Texas and Washington have also seen significant reductions in deaths from opioid use. Other states, including Florida have restricted physicians from dispensing and all of those measures have contributed to a reduction in deaths and abuse of prescription opioids. He did not have the statistics on hand, he said.

[3:42:42 PM](#)

CHAIR OLSON recalled that the committee has a relatively recent national study from the Workers' Compensation Research Institute it can distribute to members.

[3:43:55 PM](#)

REPRESENTATIVE TILTON related her understanding that long-term use leads to addiction. She asked whether workers' compensation covers rehabilitation.

MR. JACKSON deferred to Mr. Monagle to respond. He referred to a study in members' packets by the Lockton Companies entitled, "Opioids Wreak Havoc on Workers' Compensation Costs" that highlighted the addiction and other problems observed throughout the country. He added that members' packets also include some charts that show the number of deaths attributed to overdoses.

[3:45:19 PM](#)

REPRESENTATIVE TILTON asked whether any information is available on prescription paid medicines prescribed in workers' compensation claims that have been seized in investigations.

MR. JACKSON answered that he was unsure whether the Department of Public Safety (DPS) tracks the source, but he offered to check. He stated the DPS provided information in members' packets on hydrocodone seized in 2011-2013.

REPRESENTATIVE TILTON suggested it may be difficult to track that type of information, but it could be useful information.

CHAIR OLSON offered to request any information that is available from the department.

[3:46:54 PM](#)

REPRESENTATIVE KITO pointed to the earlier statistics. He said he was surprised only 20 percent of workers' compensation claims involve prescriptions, but it seemed as though about 1 or 1.2 people per hundred were using opioids. He asked for further clarification on whether there are any anticipated cost savings by implementing this bill.

MR. JACKSON answered that not have the figures, which were calculated by the National Council on Compensation Insurance (NCCI). He anticipated that it may take time to quantify costs and savings that may be realized from passage of HB 32. He offered to try to obtain the information.

[3:48:24 PM](#)

REPRESENTATIVE KITO asked for further clarification on whether the information would be nationwide or applicable to Alaska.

MR. JACKSON answered that the estimated savings would be specific to Alaska, assuming that this bill passes.

[3:48:46 PM](#)

REPRESENTATIVE KITO expressed an interest in identifying a ballpark figure of cost savings. He reiterated his interest in how much money Alaska insurers stand to save on workers' compensation costs. He suggested that if the state hopes to save money it would be good to identify any savings.

MR. JACKSON emphasized that he agreed it is important to determine savings, plus, another benefit in passing the bill could be the number of people that may never abuse narcotics or have prescription drugs diverted and found by children.

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CHAIR OLSON stated that approximately half the states have enacted similar legislation. He offered to obtain the information on the number of states that have implemented measures of this type. He offered his belief that other states have seen significant savings.

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REPRESENTATIVE HUGHES offered her belief that it is important to have a foundation on this issue. She asked for further clarification, in terms of protection of privacy, of how employers become aware of their employees being on workers' compensation.

MR. JACKSON deferred to Mr. Monagle to respond.

REPRESENTATIVE HUGHES asked for further clarification on the information that employers are provided.

[3:52:33 PM](#)

REPRESENTATIVE JOSEPHSON agreed this could be in the workers' best interests; however, he imagined that injured workers will be taking painkillers and not be getting a flu shot. He looked forward to a discussion on the nature of employer being privy to this type of medical information.

[3:53:51 PM](#)

MICHAEL MONAGLE, Director, Central Office, Division of Workers' Compensation, Department of Labor & Workforce Development (DLWD), said as he consider the bill, he does not look at it in terms of cost savings to employers, but in terms of returning someone back to work and preventing people from destroying their lives by long-term opioid use. He recalled an instance in which an injured worker reached a point of medical recovery, but due to extensive use of opioids for several years, the worker had developed such cognitive and other impairments that the doctor classified the worker as permanently disabled. He said that it was those types of concerns that this legislation will address. The 90 days is identified by medical studies as the threshold when the physical problems begin to develop. He said that the curve for employees who return to work drops off sharply after 90 days on prescription pain killers. He explained that under the bill, injured employees under workers' compensation claims

would obtain a 30-day supply of medication, followed by a consultation with their physician who can determine the effectiveness and necessity of prescribing an additional 30-days prescription for opioids. In many cases there isn't any functional improvement and the patients become addicted to opioids and continue to use them. Nationwide, the emphasis is to work to wean patients off opioids after 90 days in the hopes that patients can discontinue these drugs and learn how to deal with their pain management in more constructive ways.

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REPRESENTATIVE JOSEPHSON asked for further clarification on how employee privacy and the employer's right to know would work.

MR. MONAGLE said that typically what was meant in referring to the term "employer" in workers' compensation matters is the employer, the insurance company, or the claims administrator. Unless the entities are self-insured, most employers do not interact with an injured worker; instead that contact is done by the insurance company or the contracted claims administrator. The claims administrator or claims adjustor provides regular contact with the injured worker, who reviews the medical bills, authorizes payment of medical bills, and issues disability checks to the injured worker. He reiterated that the employer, the insurance company, or the claims administrator are the ones who will have access to the information on the prescription drugs since they are the ones who have access to the frequency that the injured worker is using prescription drugs. He suggested the claims administrator would initiate any check on the prescription, not the employer.

3:58:03 PM

REPRESENTATIVE JOSEPHSON asked whether the claims adjustors confer to inquiries by small employers and if these adjustors use some discretion.

MR. MONAGLE answered that workers' compensation was excluded from HIPAA [Health Insurance Portability and Accountability Act of 1996] law so the health care concerns between a provider and the patient does not apply in workers' compensation cases. Second, the provision of the Workers' Compensation Act says that parties to workers' compensation cases are entitled to any of the information about that case, which includes the employer, the injured worker and their representatives, such as the claims

administrator or legal counsel. Thus any of the parties would have access to the information, he said.

3:59:26 PM

REPRESENTATIVE JOSEPHSON asked whether any current statutes requires drug testing other than for those employees operating heavy equipment or for commercial carriers.

MR. MONAGLE answered that AS 23.10.600-699 outlines employer drug testing. First, drug testing is a voluntary system so it is not mandatory for any employer to test. Drug testing is not administered by the state, but is left open to private action. He suggested that if employees feel their rights have been violated, their recourse is civil. It goes on to say that an employer must meet certain requirements in order to put in a policy for drug testing, for example, providing employees a 30-day notice prior to implementing a plan, as well as advising them of the conditions of testing, including the substances that will be tested. These statutes also provide remedies for those whose confidentiality has been violated or who suffer a false positive test that occurred through negligence on the part of the employer or the person doing the testing for the employer.

4:01:41 PM

AESHA PALLESEN, Assistant Attorney General, Labor & State Affairs Section, Civil Division (Anchorage), Department of Law (DOL), agreed that provisions are generally set out in AS 23.10 for drug testing and that Section 1 of this bill would add a section to that drug testing regime for a negative drug testing in workers' compensation cases.

4:02:19 PM

REPRESENTATIVE KITO recalled Mr. Monagle mentioned a patient who was on opioids for a long period of time; however, he offered his belief that this bill would not do anything about that and would only allow an action to be taken if someone had not been taking prescribed opioids.

REPRESENTATIVE KITO expressed concern about what would be accomplished by the bill if the only denial is in regards to those who are not taking their prescribed medication.

CHAIR OLSON stated that part of the bill was aimed at having workers' compensation injured employees see their doctor monthly

and not refilling potent drugs via the pharmacy. He said that this action may result in additional costs, but it may also result in ultimate savings; however, the ultimate goal is to assist in getting injured workers back to work.

[4:05:06 PM](#)

SCOTT JORDAN, Director, Division of Risk Management, Department of Administration (DOA), in response to a question on privacy issues, stated that Health Insurance Portability and Accountability Act (HIPAA) does not apply to workers' compensation cases so the state, which is self-insured, can share these records. He reported that he obtains a quarterly report of the workers' compensation individuals on opioid drugs.

[4:06:05 PM](#)

CHAIR OLSON asked for further clarification on how many injured employees are taking scheduled drugs.

MR. JORDAN answered that 67 employees of 900 open claims, or less than 1 percent are prescribed opioids. He characterized it as a low amount.

[4:06:31 PM](#)

REPRESENTATIVE JOSEPHSON asked for further clarification that these are injured Alaska state employees.

MR. JORDAN answered yes.

[4:07:09 PM](#)

LORI WING-HEIER, Director, Division of Insurance (DOI), Anchorage Office, Department of Commerce, Community & Economic Development (DCCED), stated that from the DOI's perspective, after all is said and done, the data comes to the division and the DOI sets the rates for employers, including rates for the State of Alaska. These rates have gone up, and while they have stabilized somewhat in the past year, the rates are still very high. The division was proud that the state fell off the number one spot in the nation; however, these rates still represent a very high cost to employers across the state. Any impact to bring down the cost of workers' compensation will be considered, and this is one approach to do so. As a former risk manager, she can attest to the fact that the cost of rehabilitation is an expensive part of most workers' compensation claims when it

involves pulling someone back from being on an opioid for a long period time. She reported that it increases the cost of the claim, which goes back into the workers' compensation rate and is shared by all employers.

[4:08:52 PM](#)

REPRESENTATIVE JOSEPHSON related his understanding that there would normally be some type of tracking by the prescriber. He asked whether that information would be shared to ensure that a drug contract was followed. He asked whether that information would make its way back to the adjuster.

MS. WING-HEIER answered that the adjuster will have a record of prescriptions being prescribed to the injured employee. However, this bill would require the employees to touch base with the physician every 30 days. In fact, it isn't meant to try to take the painkiller or narcotic away, but just requires patients to touch bases with their physicians to help prevent overprescribing.

REPRESENTATIVE JOSEPHSON referred to Section 1 of the bill related to testing. He asked whether there is some redundancy if the prescriber already doing some testing. He recalled that in his experience as an attorney, that evidence he saw during trial and drug contracts. He asked whether an insurance adjuster will know those facts.

MS. WING-HEIER answered that the adjuster will know the prescriptions were issued, but she was unsure whether the adjuster will know if any prescriptions were not being used and of the patient might be stockpiling the medication.

[4:10:59 PM](#)

REPRESENTATIVE JOSEPHSON asked whether costs can be reported for the 67 of 900 injured employees. He recalled that 20 percent of the cost is for prescription drugs so he wondered how much money is being spent.

MS. WING-HEIER said she has cumulative data for the state, but not the State of Alaska data. She deferred to Mr. Jordan. She did not have the itemized costs for the 67 injured state workers.

[4:12:17 PM](#)

REPRESENTATIVE KITO offered that not all of the 67 total scheduled drug use cases will have prescriptions for controlled scheduled drugs over 90 days or that all of them will be violation cases. Thus it seemed as though out of 67, a very small number might be subject to this law. He asked whether she had any idea of the number of cases this would affect.

MS. WING-HEIER answered that she does not have the specific information related to the state's plan; however, she agreed not every case would be for injured workers with prescriptions for controlled substances for over 30 days. She was unsure of whether the 67 of 900 were for prescriptions of over 90 days or if that was the current total for the state's claim record. She offered to provide some state statistical data for all employers.

[4:13:51 PM](#)

REPRESENTATIVE KITO asked for further clarification on whether this applies to all employers. He expressed an interest in seeing the data for all employers.

MS. WING-HEIER offered to provide it.

[4:14:31 PM](#)

REPRESENTATIVE JOSEPHSON related his understanding that the state does not write workers' compensation checks to insurers since the state is self-insured.

MR. JORDAN agreed that is correct. In further response to Representative Josephson, he clarified that the division does not pay a premium and he was unsure of the source of the \$1,400 premium since the state is self-insured.

CHAIR OLSON answered that the \$1,400 refers to the monthly major medical health insurance cost for state employees. This bill would not affect those premiums since it isn't related to workers' compensation.

[4:15:25 PM](#)

CHAIR OLSON opened public testimony on HB 32 and held public testimony open.

[HB 32 was held over.]

HB 116-EXTEND ALCOHOLIC BEVERAGE CONTROL BOARD

[4:16:37 PM](#)

CHAIR OLSON announced that final order of business would be HOUSE BILL NO. 116, "An Act extending the termination date of the Alcoholic Beverage Control Board; and providing for an effective date."

[4:17:00 PM](#)

LAURA STIDOLPH, Staff, Representative Kurt Olson, Alaska State Legislature, on behalf of the House Labor & Commerce Standing Committee, Representative Kurt Olson, Chair, presented HB 116. This bill would extend the sunset date for the Alcoholic Beverage Control (ABC Board) to June 30, 2018. Each year the Division of Legislative Audit reviews state boards and commissions to determine whether they should be reestablished per AS 24.44. The Division of Legislative Audit reviewed the activities of the Alcoholic Beverage Control Board ("ABC Board"). The purpose of the legislative audit was to determine whether there is a demonstrated public need for the ABC Board's continued existence and whether it has been serving the public's interest effectively.

MS. STIDOLPH reported that the board has resolved all issues found in prior audits with two being resolved and one being partially resolved. She directed attention to the five findings and recommendations in the most recent audit. First, the legislative auditors recommended including having the board's director ensure that all board meetings are properly published on the state's online public notice system. Second, the legislative auditors recommended that the board should notify local governing bodies of applications for new and transfer licenses within 10 days of receipt. Third, the legislative auditors recommended that the board should issue catering permits in accordance with statutory requirements. Fourth, the legislative auditors recommended that the board should issue recreational site licenses in accordance with statutes; and finally, the legislative auditors recommended that the board should implement a process to monitor and track all complaints to ensure they are resolved in a timely manner.

MS. STIDOLPH reported that the Division of Legislative Audit recommended that the ABC Board be extended three years to June 30, 2018. The legislative auditors serve public's interest by effectively licensing and regulating the manufacture, barter,

possession and sale of alcoholic beverages in Alaska. In closing, she related the auditors found that the ABC Board serves an important role in guarding the health and safety of Alaskans by protecting the general public through the issuance, renewal, revocation, and suspension of alcoholic beverage licenses. The continuation of this board is very important, she relayed.

[4:19:54 PM](#)

KRIS CURTIS, Legislative Auditor, Legislative Audit Division, Legislative Agencies and Offices, reported that the division conducted a sunset review of the ABC Board and concluded it was serving the public interests; however, the division noted several operational improvements were needed in the licensing and general administration of the board. She said that the board is set to sunset in June 2015 and the legislative audit recommended a conditional five-year extension. At the time the audit was completed in May 2014, the outcome of the marijuana initiative was not yet known, so the audit suggested a three-year extension, just in case the marijuana initiative passed, since the initiative will significantly expand the board's duties.

[4:20:45 PM](#)

MS. CURTIS referring to page 9 of the legislative audit, reviewed the recommendations. She directed attention to Recommendation 1, which recommended that the board's director ensure that all board meetings are properly published on the state's online public notice system. Three of the 25 meetings held were not publically noticed, she said. Second, referring to page 10 of the audit, she said that the division's auditors recommended [Recommendation 2] that the board should notify any local governing bodies of applications for new and transfer licenses within 10 days of receipt as required by statutes. The auditors found the board did not notify local governing bodies within the required timeframe for two of the ten licenses tested. She advised that these errors were caused by board staff not adhering to their policies and procedures.

[4:21:21 PM](#)

MS. CURTIS directed attention to audit Recommendation 3, that the board should issue catering permits in accordance with statutory requirements. The auditors reviewed four licensees who had received more than six consecutive catering permits. Of

those, three of the four were non-compliant, which each represent a statutory violation since the permits were issued with the intention of serving alcohol on a licensed premises during the regular operation of the business rather than for a short-term social gathering or similar event. The board issued the permits to ensure that the businesses could continue to operate.

[4:21:56 PM](#)

MS. CURTIS referred to page 11 to audit Recommendation 4, which recommended that the board issue recreational site licenses in accordance with statutory requirements. She reported that 15 of 32 recreational site licenses active during the audit period, or 40 percent of the businesses, did not meet the criteria for a recreational site license. She explained that the ineligible businesses included a sports center and pub, an exercise gym, gift shop, bowling alleys, theatres, and pool halls. These business types did not meet the definition of a recreational site nor were the operations limited to a season. The issuance of these licenses expanded the number of establishments licensed to sell alcohol over the number allowed for in statute. She stated that inquiries with board members revealed that improper issuance of these recreational site licenses was caused by an historic misunderstanding of what qualifies as a recreational event.

[4:22:55 PM](#)

MS. CURTIS referred to page 12 to the final audit recommendation, Recommendation 5, that the board implement a process to monitor and track all complaints and to ensure that they are resolved in a timely manner. Although the board had a process in place³ to receive complaints, complaints were only tracked if they resulted in an inspection or investigation. If the complaint was deemed invalid, it was not documented; furthermore, the basis for a decision not to investigate was not documented or maintained. She stated that the board director did not consider tracking all complaints as necessary since there was not any statutory mandate to do so. She concluded that the department and the board agreed with all of the audit recommendations and submitted a corrective action plan.

[4:23:35 PM](#)

REPRESENTATIVE JOSEPHSON, in terms of the misunderstanding on Recommendation 4, asked whether the board currently agrees on the foregoing interpretation of the statute.

MS. CURTIS answered that the division believes so. The board and department's response to the audit indicated that the board had operated under guidance from the assistant attorney general, but the board has since reconsidered its process, including taking public testimony, and the board has gone back to a stricter interpretation of statute.

[4:24:34 PM](#)

REPRESENTATIVE JOSEPHSON referred to a proposed rewrite of Title [4] and to the stakeholders who are working on it. He asked whether this should give the committee some pause and if it will lead to a shorter extension given the ABC Board's shared staff with the proposed marijuana board.

MS. CURTIS answered that the recommendation for extension took into consideration the results of the audit, including the findings and recommendations. When the sunset audit was completed for the ABC Board, the division did not have any idea if the marijuana initiative would pass. She acknowledged that the proposed marijuana board envisioned sharing staff with the ABC Board; however, she did not see a sunset provision for proposed marijuana board. She suggested that if the two separate boards plan on sharing staff, it is possible the extension date could put the sunset dates of each board out of synch with one another, which could result in inefficient use of audit resources.

CHAIR OLSON commented that as the bill establishing a marijuana board continues to move forward through the legislative process, that he will work to ensure that it shares the same sunset date as the ABC Board. He also noted that some of the Department of Commerce, Community & Economic Development's occupational licensing staff was often shared by boards.

MS. CURTIS agreed.

[4:26:55 PM](#)

REPRESENTATIVE HUGHES had questions on some of the proposed changes to the Title 4 [alcoholic beverage] revisions. She suggested that three years still works for a proposed sunset. She asked whether Ms. Curtis had any comments.

MS. CURTIS answered that at the time the field work was done, which was in late spring, the division was aware of the stakeholders group, but could not predict any outcome at that point.

[4:27:34 PM](#)

REPRESENTATIVE KITO referred to audit Recommendation 2, in which two meetings did not have the appropriate notice. He asked whether there is any cause for the state to find out if decisions were made without adequate local involvement.

MS. CURTIS answered that the division did not find any complaints made by the local governing body or any outcome resulting from the lack of timely noticing.

[4:28:36 PM](#)

REPRESENTATIVE KITO related her understanding that the several violations occurred with Recommendations 3 and 4. He asked whether the violations were corrected and if the permits been removed, where appropriate.

MS. CURTIS answered that the audit team does not know that; however, it will be a good question for the department.

[4:29:00 PM](#)

CYNTHIA FRANKLIN, Executive Director, Alcoholic Beverage Control Board ("ABC Board"), Department of Commerce, Community & Economic Development (DCCED) introduced herself.

[4:29:26 PM](#)

REPRESENTATIVE KITO asked for further clarification on the sunset audit Recommendations 3 and 4, and if the changes have been implemented and improper permits have been withdrawn.

MS. FRANKLIN answered that with respect to Recommendation 3, the catering permits were for individual events that had been held prior to the audit, that catering events are held for specific events, and represent short-term permission in which sellers serve alcohol. She elaborated that what happened with the catering permits predated her tenure with the board as of last September. She related her understanding that there was a practice during the liquor license transfers such that the new

licensees had the expectation of approval. During this timeframe catering permits were issued that allowed the establishment to continue to sell or serve alcohol. In particular, this occurred with respect to stock transfers, in which ownership of the organization changed but the day-to-day operations were not changing. She said the agency was issuing catering permit to allow for "non-interruption" of service in the license; however, it was determined to violate the permit statute. She reported that the practice had already been discontinued by September 2014, and the ABC Board does have safeguards in place to check all catering permits to ensure that the activity is not happening. She said that involves some coordination between the licensing and enforcement sections, which was not previously occurring. She stated that this practice has ceased.

[4:31:43 PM](#)

MS. FRANKLIN said it is a little more complicated in terms of the recreational site licenses. She explained that liquor licenses were issued to businesses that did not technically qualify for recreational site licenses. For example, a recreational site license was issued to the Alaska Club South location. However, the facility is a gym that operates every day and does not qualify for an event. Since they have a liquor license, the ABC Board will not be able to review the license until renewal. However, the board is very aware it overstepped its bounds in issuing that and several other recreational site licenses. She anticipated that the issue will be addressed when these licenses come up for renewal.

[4:32:46 PM](#)

REPRESENTATIVE KITO asked whether provisions allow for transition of facilities. He related his understanding that gaps could exist when transferring ownership and there is a gap; however, he asked whether another method for issuing transitional licenses exists.

MS. FRANKLIN answered not really. She characterized this as being "chicken and egg" problem in terms of stock transfers, depending on the individual transfer. For example, in Anchorage, a beverage license dispensary license was sold by the Sourdough Mining Company to the Texas Roadhouse with the intention that Sourdough Mining Company would come in and acquire a restaurant eating place license that would allow it to continue selling beer and wine with meals. However, this effort

requires engaging in careful planning, and had he applied ahead of time, nothing would have prevented approval or a smooth transition when he sold his beverage dispensary license. Due to the way the business transition occurred, the beverage dispensary license was sold, followed by an application being submitted for a restaurant eating place license. It led to an interruption in alcohol service at Sourdough Mining Company, she said; however, if the person seeking transfers could have planned better.

[4:35:02 PM](#)

MS. FRANKLIN stated that the ABC Board works to accommodate its licensees. In this instance the statutes did not authorize the board to issue catering permits to Sourdough Mining Company so it could continue to serve alcohol to its customers while the business obtained its other license. Although the board works to assist its licensees, in some instances it is out of the board's control if licensees wait too long to apply.

[4:35:44 PM](#)

REPRESENTATIVE KITO, referencing audit Recommendation 4, expressed concern that some facilities may be operating illegally if they received their permits in error. He expressed further concern that some operators should have sought an alcoholic beverage license, but now have recreational site licenses, especially since these establishments may not have been granted a license.

MS. FRANKLIN responded that she did not believe these facilities are operating in violation of the law since the operators legally obtained their licenses from the ABC Board. She agreed with the audit finding that the definition of recreational site license had been stretched beyond its original intent. However, those decisions were apparently made upon advice of legal counsel. She did not think anyone could argue that those licensed establishments were operating in violation of the state law, in particular, since they obtained their licenses lawfully with local approval and other approval that must occur before the licenses are issued. Further, after the licenses were issued, the ABC Board received an opinion from the auditing agency that the licenses "stretched the boundaries" of the statutory definition of what would have been allowed, but she did not believe that statement would invalidate the licenses.

[4:37:52 PM](#)

MS. FRANKLIN understood his concern and said the board will take up those individually as they come up for renewal. In addition, this agency also changed departments during the audit period and the assistant attorney general changed, as well. Thus, the ABC Board has a fresh outlook on this statute. She said she has faith that the licenses in question will ultimately be strictly reviewed during the renewal process, which occurs every other year.

[4:38:51 PM](#)

REPRESENTATIVE COLVER directed attention to the fiscal note. He said that the FY 16 budget is \$3.35 million, with a fund source of \$1.575 million in general fund monies and approximately \$1.8 million in program receipts. He said he was interested in the program receipts from the industry and how much goes to the general treasury. He acknowledged that a number of alcohol taxes also generate revenue and he was also interested in the tax collections.

MS. FRANKLIN answered that she doesn't have the tax receipts on hand. She agreed that the receipts for fees for alcohol licensing are reflected in the fiscal note, which includes money for agency as expanded. In November, with passage of ballot measure 2, the agency scope has expanded to include marijuana. What is not reflected in the fiscal note would be the receipts from the proposed licensees since the ABC Board is not sure how many licenses will be issued or the amount of the potential receipts. Thus more funds are reflected in the budget for the first year of marijuana licensing, but it isn't possible to project receipts until the licenses issued, which is a first year problem for the agency.

[4:41:48 PM](#)

REPRESENTATIVE COLVER said he did not have access to last year's information so he cannot compare the board's budget. He surmised that the \$1.575 million is being charged off to new regulations. He asked whether Ms. Franklin could provide the committee with how much of the funding is to regulate the new industry and the agency budget.

MS. FRANKLIN answered that the ABC Board FY 15 budget was \$1.75 million and the FY 16 budget for regulating the new substance includes a large one-time appropriation for a database to replace the current paper-based agency. Thus far she has

received a substantial number of questions and demand for data. The fiscal note includes \$500,000 for a database. She explained that the budget doesn't double since it does not double the agency, but proposes to add six employees through an FY 15 supplemental budget and FY 16 budget request. She stated that the agency budget would expand from 10 to 16 statewide positions to regulate the substances. She clarified that it appears to mirror the budget since it has a one-time expense for the database.

[4:44:10 PM](#)

REPRESENTATIVE COLVER referred to the fiscal note for FY 17-FY 19 seems to show the same increment, which doesn't reflect a one-time database upgrade. He suggested that he may wish to tweak the out years.

MS. FRANKLIN agreed.

[4:44:44 PM](#)

REPRESENTATIVE HUGHES referred to the proposed Title 4 revisions and asked for further clarification on how the three-year extensions might impact the ABC Board.

[4:45:21 PM](#)

MS. FRANKLIN offered her belief that the three-year extension is a good plan. She explained that the Title 4 revisions will be introduced by Senator Micciche [by the Senate Rules Committee]. She reported that the group has finished its work. In response to earlier questions, she stated that no work went beyond the auditor's findings regarding these specific issues, in particular, the permit issues. She suggested that the board needs to stick to the strict statutory interpretations. She emphasized the stakeholders' intention that the board strictly follow the statutes when issuing the two types of permits. She stated that the revisions to Title 4 are very expensive but since the two-board one agency set up is reflected in SB 60 [and HB 123], she thought a three-year timeline will be appropriate.

[4:47:00 PM](#)

REPRESENTATIVE JOSEPHSON asked for further clarification on whether the stakeholders group was a balanced membership and for the groups that were represented.

MS. FRANKLIN answered that the Title 4 stakeholder group was balanced with multiple representatives from public health sector, including that many of the subcommittee chairs were from the health sector. She reported that L. Diane Casto, [Behavioral Health], Department of Health & Social Services chaired the underage drinking subcommittee and Jess Jessee, Executive Director, Alaska Mental Health Trust, chaired the licensing subcommittee. Bob Klein, Chair, ABC Boar, and [Aleesha Towns-Bain] of the Rasmuson Foundation served on the steering committee. She said that the stakeholders consisted of representatives from every sector of liquor industry, including manufacturers, breweries, retail package stores, bar and restaurant eating places. In addition, the group consisted of numerous municipal members providing local government representation. She stated that the group issued a report ["entitled Alaska Title 4 Review for the Alaska Alcoholic Beverage Control Board dated November 2014]. She offered to share the report with the committee, which also lists the [70] participants, as well as a PowerPoint that shows the composition of each subcommittee. She stated that the Title 4 group has done substantial work since May 2012, noting that as some members dropped off, others joined. She characterized the entire process as being a fairly incredible process.

[4:49:27 PM](#)

CHAIR OLSON, after first determining no one wished to testify, closed public testimony on HB 116.

[4:49:48 PM](#)

REPRESENTATIVE JOSEPHSON remarked that it is evident that the Alcoholic Beverage Control Board (ABC Board) will exist. He said he has heard that Ms. Franklin is doing a great job. He recommended the committee move the bill out of committee.

[4:50:14 PM](#)

REPRESENTATIVE HUGHES moved to report HB 116 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 116 was reported from the House Labor and Commerce Standing Committee.

[4:50:38 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:50 p.m.