

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

January 26, 2018

3:08 p.m.

MEMBERS PRESENT

Representative Sam Kito, Chair
Representative Adam Wool, Vice Chair
Representative Andy Josephson
Representative Louise Stutes
Representative Chris Birch
Representative Gary Knopp
Representative Colleen Sullivan-Leonard

MEMBERS ABSENT

Representative Mike Chenault (alternate)
Representative Bryce Edgmon (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 180

"An Act relating to money transmission and currency exchange businesses; relating to transmitting value that substitutes for money; relating to licensing requirements and registration through the Nationwide Multistate Licensing System and Registry; relating to surety bonding requirements; authorizing certain licensees to contract to use subdelegates for reloading funds on certain stored-value cards; relating to record retention, reporting requirements, and enforcement provisions; relating to exemptions; relating to money services Internet activities; relating to transmitting value and currency; and providing for an effective date."

- MOVED HB 180 OUT OF COMMITTEE

HOUSE BILL NO. 274

"An Act extending the termination date of the Board of Psychologist and Psychological Associate Examiners; and providing for an effective date."

- MOVED HB 274 OUT OF COMMITTEE

HOUSE BILL NO. 273

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

- MOVED HB 273 OUT OF COMMITTEE

HOUSE BILL NO. 275

"An Act extending the termination date of the Board of Massage Therapists; and providing for an effective date."

- MOVED HB 275 OUT OF COMMITTEE

HOUSE BILL NO. 240

"An Act relating to the registration and duties of pharmacy benefits managers; relating to procedures, guidelines, and enforcement mechanisms for pharmacy audits; relating to the cost of multi-source generic drugs and insurance reimbursement procedures; relating to the duties of the director of the division of insurance; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 180

SHORT TITLE: MONEY SERVICES BUSINESS: REQS; LICENSING;

SPONSOR(S): REPRESENTATIVE(S) FANSLER

03/14/17	(H)	READ THE FIRST TIME - REFERRALS
03/14/17	(H)	L&C, JUD
05/08/17	(H)	L&C AT 3:15 PM BARNES 124
05/08/17	(H)	Heard & Held
05/08/17	(H)	MINUTE(L&C)
05/17/17	(H)	L&C AT 3:15 PM BARNES 124
05/17/17	(H)	-- MEETING CANCELED --
01/22/18	(H)	L&C AT 3:15 PM BARNES 124
01/22/18	(H)	Scheduled but Not Heard
01/26/18	(H)	L&C AT 3:15 PM BARNES 124

BILL: HB 274

SHORT TITLE: EXTEND: BD OF PSYCHOLOGISTS/PSYCH ASSOC.

SPONSOR(S): REPRESENTATIVE(S) KITO

01/12/18	(H)	PREFILE RELEASED 1/12/18
01/16/18	(H)	READ THE FIRST TIME - REFERRALS
01/16/18	(H)	L&C, FIN
01/22/18	(H)	L&C AT 3:15 PM BARNES 124
01/22/18	(H)	Heard & Held
01/22/18	(H)	MINUTE(L&C)
01/26/18	(H)	L&C AT 3:15 PM BARNES 124

BILL: HB 273

SHORT TITLE: EXTEND: MARIJUANA CONTROL BOARD

SPONSOR(s): REPRESENTATIVE(s) KITO

01/12/18	(H)	PREFILE RELEASED 1/12/18
01/16/18	(H)	READ THE FIRST TIME - REFERRALS
01/16/18	(H)	L&C, FIN
01/22/18	(H)	L&C AT 3:15 PM BARNES 124
01/22/18	(H)	Heard & Held
01/22/18	(H)	MINUTE(L&C)
01/26/18	(H)	L&C AT 3:15 PM BARNES 124

BILL: HB 275

SHORT TITLE: EXTEND: BOARD OF MASSAGE THERAPISTS

SPONSOR(s): REPRESENTATIVE(s) KITO

01/12/18	(H)	PREFILE RELEASED 1/12/18
01/16/18	(H)	READ THE FIRST TIME - REFERRALS
01/16/18	(H)	L&C, FIN
01/22/18	(H)	L&C AT 3:15 PM BARNES 124
01/22/18	(H)	Heard & Held
01/22/18	(H)	MINUTE(L&C)
01/26/18	(H)	L&C AT 3:15 PM BARNES 124

BILL: HB 240

SHORT TITLE: PHARMACY BENEFITS MANAGERS

SPONSOR(s): REPRESENTATIVE(s) GUTTENBERG

04/28/17	(H)	READ THE FIRST TIME - REFERRALS
04/28/17	(H)	L&C, FIN
05/17/17	(H)	L&C AT 3:15 PM BARNES 124
05/17/17	(H)	-- MEETING CANCELED --
01/26/18	(H)	L&C AT 3:15 PM BARNES 124

WITNESS REGISTER

MARY SCHLOSSER, Staff
Representative Zach Fansler
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 180 on behalf Representative Fansler, prime sponsor.

FRED PARADY, Deputy Commissioner
Office of the Commissioner
Department of Commerce, Community, and Economic Development

Juneau, Alaska.

POSITION STATEMENT: Testified during the hearing on HB 180.

CAITLYN ELLIS, Staff
Representative Sam Kito
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 274 on behalf of Representative Kito, prime sponsor.

ALLEN LEVY, Chair
Board of Psychologists and Psychological Associate Examiners
Anchorage, Alaska

POSITION STATEMENT: Addressed the question regarding feedback on how the board was working, during the hearing on HB 180.

CRYSTAL KOENEMAN, Staff
Representative Sam Kito
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 273 on behalf of Representative Kito, prime sponsor.

SARA CHAMBERS, Deputy Director
Division of Corporations, Business and Professional Licensing
Department of Commerce, Community & Economic Development (DCCED)
Juneau, Alaska

POSITION STATEMENT: answered questions during the hearing on HB 275.

REPRESENTATIVE GUTTENBERG
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As prime sponsor, introduced HB 240.

SETH WHITTEN, Staff
Representative David Guttenberg
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 240 on behalf of Representative Guttenberg, prime sponsor.

JANE CONWAY, Staff
Senator Giessel
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented the PowerPoint presentation regarding HB 240.

BARRY CHRISTENSEN, Co-Owner
Island Pharmacy;
Legislative Committee for the Alaska Pharmacists Association
Ketchikan, Alaska

POSITION STATEMENT: Testified in support of HB 240.

SCOTT WATTS, Pharmacist
Ron's Apothecary
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 240.

GERALD BROWN, Owner
Medical Center Pharmacy
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 240.

MICHELE MICHAUD, Chief Health Official
Central Office
Division of Retirement and Benefits (DRB)
Department of Administration (DOA)
Juneau, Alaska

POSITION STATEMENT: Responded to testimony and answered questions during the hearing on HB 240.

EMILY RICCI
Health Care Policy Administrator
Central Office
Division of Retirement and Benefits (DRB)
Department of Administration (DOA)
Juneau, Alaska

POSITION STATEMENT: Responded to testimony and answered questions during the hearing on HB 240.

ACTION NARRATIVE

[3:16:20 PM](#)

CHAIR SAM KITO called the House Labor and Commerce Standing Committee meeting to order at 3:08 p.m. Representatives Kito, Sullivan-Leonard, Stutes, Josephson, Wool, and Knopp were present at the call to order. Representative Birch arrived as the meeting was in progress.

HB 180-MONEY SERVICES BUSINESS: REQS; LICENSING;

3:17:20 PM

CHAIR KITO announced that the first order of business would be HOUSE BILL NO. 180, "An Act relating to money transmission and currency exchange businesses; relating to transmitting value that substitutes for money; relating to licensing requirements and registration through the Nationwide Multistate Licensing System and Registry; relating to surety bonding requirements; authorizing certain licensees to contract to use subdelegates for reloading funds on certain stored-value cards; relating to record retention, reporting requirements, and enforcement provisions; relating to exemptions; relating to money services Internet activities; relating to transmitting value and currency; and providing for an effective date."

3:17:50 PM

MARY SCHLOSSER, Staff, Representative Zach Fansler, Alaska State Legislature, presented HB 180 on behalf of Representative Fansler, prime sponsor. She stated that HB 180 would update the Alaska Money Services Act, passed in 2007. Due to technological advances over the previous eleven years, current statutes were outdated. The Act provided a legal framework for currency exchange and money transmission functions. It would update licensing and record keeping as well as deter illegal behavior. Additionally, it would support Alaska businesses by removing the 50 percent outside firm discount and encourage small businesses by replacing the \$25 thousand net worth requirement with a surety bond. It would broaden the definition of money services to include virtual currency such as Bitcoin. The Act would update enforcement provisions and require background checks for all control persons, as well as increase records retention from three to five years for greater transparency. Finally, the Act would require the use of the Nationwide Multistate Licensing System (NMLS) currently used by over 90 percent of money services businesses in other states.

3:22:04 PM

FRED PARADY, Deputy Commissioner, Department of Commerce, Community, and Economic Development, described the proposed legislation. He began that the primary thing HB 180 would do is modernize the statute, adopted in 2007 and which technology has rendered obsolete. This has left the industry and consumers without clearly defined regulatory requirements, and the

department without the mechanisms it needs to protect Alaska consumers.

MR. PARADY continued that the proposed legislation would seek to encompass current technology; changes in terminology; the use of alternative payment systems to conduct business; and allow some room within the statute for the evolution of money services transactions. Of interest to rural Alaska, HB 180 would allow the limited use of a subdelegate to load a prepaid card and the locations available for consumers to receive that service would be increased across rural Alaska.

MR. PARADY added that HB 180 would conform to the Nationwide Multistate Licensing System [NMLS] and registry, currently used by over 90 percent of the licensees transacting business in other states. The NMLS standardizes annual reporting dates and the 5-year reporting term.

MR. PARADY underlined that the proposed bill would remove an unfair financial and licensing advantage to out-of-state entities which had been allowed to come in with a 50 percent discount on their licensing fee which has proven to be unfair. However, the proposed bill would remove the \$25,000 net worth requirement for a business to maintain. It would also increase the surety bond requirement from [a] half million dollars to a million dollars. A surety bond required would range from \$25,000 to \$1 million, and the criteria defining that requirement would be set in regulation. HB 180 would increase that surety bond maximum amount and would also establish a bond requirement for currency exchange licensees.

MR. PARADY stated that HB 180 would add a background check component for all control persons and would expand the number of people who have to submit to that background check to ensure compliance with federal registries regarding terrorism and money laundering. It would add a requirement for an annual assessment for each licensee.

MR. PARADY offered that the department could provide consumers a list of money services businesses, their authorized delegates, and consumer contact information for consumer complaints. Additionally, HB 180 would allow for suspension orders and other orders that fall short of cease and desist orders. Additionally, the proposed bill would expand a list of exemptions, namely attorneys and insurance companies for whom money transmission is ancillary to their core business activity.

[3:28:22 PM](#)

CHAIR KITO opened public testimony on HB 180. After ascertaining that no one wished to testify, he closed public testimony.

[3:28:35 PM](#)

REPRESENTATIVE WOOL moved to report HB 180 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 180 was reported from the House Labor and Commerce Standing Committee.

[3:28:52 PM](#)

The committee took an at-ease from 3:29 p.m. to 3:32 p.m.

HB 274-EXTEND: BD OF PSYCHOLOGISTS/PSYCH ASSOC.

[3:32:43 PM](#)

CHAIR KITO announced that the next order of business would be HOUSE BILL NO. 274, "An Act extending the termination date of the Board of Psychologist and Psychological Associate Examiners; and providing for an effective date."

[3:33:08 PM](#)

CAITLYN ELLIS, Staff, Representative Sam Kito, Alaska State Legislature, presented HB 274 on behalf of Representative Kito, prime sponsor. She stated that the board had a "clean audit" and that the bill would extend the board to the maximum of eight years.

[3:33:35 PM](#)

REPRESENTATIVE BIRCH asked whether the Board of Psychologists and Psychological Association Examiners reached out to membership for comments on the board's work.

MS. ELLIS provided that the Board of Massage Therapists had created an informal questionnaire. She deferred to Allen Levy.

[3:35:15 PM](#)

REPRESENTATIVE BIRCH clarified that he was referring to an informal poll.

[3:35:47 PM](#)

ALLEN LEVY, Chair, Board of Psychologists and Psychological Associate Examiners, indicated that the board did have mechanisms in place for representatives of the membership to speak at meetings. The agenda was published in advance of every meeting which included comment from the licensees. They offered up to two hours of continuing education credit for attending board meetings.

REPRESENTATIVE BIRCH thanked Mr. Levy for his service on the board.

[3:37:49 PM](#)

CHAIR KITO opened public testimony on HB 274. After ascertaining that no one wished to testify, he closed public testimony.

[3:38:44 PM](#)

REPRESENTATIVE WOOL moved to report HB 274 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 274 was reported from the House Labor and Commerce Standing Committee.

[3:39:06 PM](#)

The committee took an at-ease from 3:39 p.m. to 3:42 p.m.

HB 273-EXTEND: MARIJUANA CONTROL BOARD

[3:42:00 PM](#)

CHAIR KITO announced that the next order of business would be HOUSE BILL NO. 273, "An Act extending the termination date of the Marijuana Control Board; and providing for an effective date."

[3:42:18 PM](#)

CRYSTAL KOENEMAN, Staff, Representative Sam Kito, Alaska State Legislature, presented HB 273 on behalf of Representative Kito, prime sponsor. She remarked that the board was unavailable as they were in a board meeting. Representative Knopp had posed a question regarding the public safety member of the board. She

informed that Travis Welch from Barrow, Alaska, had been newly appointed to the board following the resignation of a member.

[3:44:02 PM](#)

REPRESENTATIVE SULLIVAN-LEONARD asked if there were pro or con comments regarding the board.

MS. KOENEMAN noted that Brandon Emmett from industry had testified in the previous meeting. She underlined that she had not had any negative feedback regarding the board extension.

REPRESENTATIVE KNOPP spoke to the creation of the board in 2014, when he was assembly member. He remarked that at the time he had questioned why anyone would want to get involved in the industry given the way in which it was being regulated and stated that he was very impressed by how the board had come together. He expressed his support for the board.

[3:46:02 PM](#)

REPRESENTATIVE WOOL queried and whether there was a structured plan to deal with prioritizing enforcement due to limited resources. He also asked about the personal views of the board chair regarding the regulation of marijuana.

MS. KOENEMAN spoke to prioritization of enforcement and said she would present the members with more detailed information later. She addressed the question regarding the new member and explained that the new member still needed to be confirmed by the legislature.

[3:48:57 PM](#)

CHAIR KITO opened public testimony on HB 273. After ascertaining that no one wished to testify, he closed public testimony.

[3:49:24 PM](#)

REPRESENTATIVE WOOL moved to report HB 273 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 273 was reported from the House Labor and Commerce Standing Committee.

[3:49:46 PM](#)

The committee took an at-ease from 3:49 p.m. to 3:53 p.m.

HB 275-EXTEND: BOARD OF MASSAGE THERAPISTS

[3:53:04 PM](#)

CHAIR KITO announced that the next order of business would be HOUSE BILL NO. 275 "An Act extending the termination date of the Board of Massage Therapists; and providing for an effective date."

[3:53:23 PM](#)

MS. KOENEMAN, Staff, Representative Kito, explained that HB 275 extended the massage therapist board by four years. She added that as a newly licensed program, there would be growing pains and that the board was actively working to improve the industry to better protect Alaskans.

[3:54:21 PM](#)

REPRESENTATIVE JOSEPHSON asked for the total fee massage therapists would pay.

MS. KOENEMAN deferred to Sarah Chambers.

[3:55:03 PM](#)

SARA CHAMBERS, Deputy Director, Division of Corporations, Business and Professional Licensing, Department of Commerce, Community & Economic Development (DCCED), replied that there was a \$200 initial application fee for a new licensee and a \$290 biennial fee for a total of \$490 for two years. Additionally, there was a \$60 fingerprint charge, which was a pass-through amount. Those renewing would pay \$290 for a two-year renewal.

REPRESENTATIVE JOSEPHSON asked whether the fees were set by the board or by the division.

MS. CHAMBERS replied that fees were set by the division in consultation with the board as set forth in AS 08.01.065. The fees had initially been set higher, and since there were more licensees it had been lowered. The division would continue to examine the fees annually and adjust accordingly.

REPRESENTATIVE JOSEPHSON spoke to a discussion with staff regarding a number of letters requesting the board be dissolved. He expressed a concern that there was not the buy-in that had been hoped for. He asked Ms. Chambers for her impression of the amount of dissention.

MS. CHAMBERS answered that she worked closely with the board and had not heard of much dissention until recently when the board faced the new question of education and qualifications. With 1,400 licensees, there had not been a majority of people questioning the board's fitness.

REPRESENTATIVE JOSEPHSON mentioned a bill from former Representative Westlake regarding background checks and asked whether Ms. Chambers felt Alaska background checks were adequate.

MS. CHAMBERS replied that this was the only licensing program which required a background check upon every renewal or every two years. No other of the 43 programs required that. One of the missing pieces in public protection was the licensure of massage establishments which the board supported and Representative Kito had a bill which addressed that.

[4:01:35 PM](#)

CHAIR KITO clarified that HB 145 [subsequently withdrawn by sponsor] would be heard in committee as well as HB 110, which was his bill and he hoped to keep those separate from the sunset audit.

[4:02:00 PM](#)

REPRESENTATIVE WOOL asked whether, should the board be dissolved, the department's work would cause an increase in fees.

MS. CHAMBERS replied that the only cost of the board was travel and board meeting expenses. She estimated that should the board sunset, at least one additional staff member would need to be hired.

REPRESENTATIVE WOOL queried which was the preponderant issue in the letters of dissent.

MS. CHAMBERS explained that being a newly licensed industry, the board was working hard. They had found expectations for speedy

licensure were not being met. The issues were that licensing took too long and there were too many hoops to go through. The board was currently analyzing its systems and licenses to meet public safety concerns as efficiently as possible.

[4:05:12 PM](#)

CHAIR KITO clarified the two major issues were the cost of the board, which was decreasing due to an increase in licensed individuals, and the delay in the licensure process.

REPRESENTATIVE WOOL asked whether the background checks were responsible for the delays.

MS. CHAMBERS elucidated that the Department of Public Safety (DPS) handled the background checks and had to work with the Federal Bureau of Investigations (FBI). There was a delay due to the volume in tracking the fingerprints. The board had to evaluate each license and had to give thoughtful evaluation if they get back a negative report. Additionally, there was often an appeal of the board's decision, and that could take time.

[4:08:07 PM](#)

REPRESENTATIVE JOSEPHSON mentioned a letter from a licensee stating that the initial license had cost \$610 and cost \$410 every two years. He asked for confirmation.

MS. CHAMBERS agreed that the initial fees had been slightly higher in 2016. The license fee of around \$600 was correct. The department had since adjusted that downward. She added that more recent licensees had paid \$290 plus the \$60 fingerprinting fee.

REPRESENTATIVE BIRCH asked about the enforcement responsibilities of the board.

MS. CHAMBERS replied that all of the licensing programs had enforcement provisions.

REPRESENTATIVE BIRCH asked about the review process.

MS. CHAMBERS answered that there were accrediting agencies that were recognized by the board as well as other criteria that had to be met. That was one of the more recent issues that the board had faced.

REPRESENTATIVE BIRCH declared his appreciation of the insight on the polling and questionnaires carried out by the board.

[4:12:29 PM](#)

REPRESENTATIVE KNOPP mentioned that the board was licensing individual massage therapists and asked about the licensure of institutions. He asked whether the owner of the establishment would have to be a licensed therapist.

MS. CHAMBERS replied there were currently no statutes governing massage establishments.

[4:13:16 PM](#)

REPRESENTATIVE WOOL surmised that if someone were engaged in illegal activity, they probably would not go through the process of applying for a license. He asked whether it had ever happened that someone had applied and had been discovered to have engaged in illegal activity.

MS. CHAMBERS replied in the affirmative, specifying that with the initial licensing push there had been some applicants who did not meet standards. She believed that the rationale behind continuing with background checks and fingerprinting was to ensure that all applicants were "on the up and up."

[4:14:38 PM](#)

CHAIR KITO opened public testimony on HB 275. After ascertaining that no one wished to testify, he closed public testimony.

[4:15:11 PM](#)

REPRESENTATIVE KNOPP declared that he would support the bill to extend the board. He stated he felt HB 275 did not go far enough as it did not license the massage establishments. He would work with the chair on some additional language.

CHAIR KITO added that he was interested in addressing the issue of fingerprinting frequency and of licensure of massage establishments.

[4:17:35 PM](#)

REPRESENTATIVE WOOL moved to report HB 275 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 275 was reported from the House Labor and Commerce Standing Committee.

[4:17:59 PM](#)

The committee took an at-ease from 4:18 p.m. to 4:23 p.m.

HB 240-PHARMACY BENEFITS MANAGERS

[Contains discussion of SB 38.]

[4:23:40 PM](#)

CHAIR KITO announced that the final order of business would be HOUSE BILL NO. 240 "An Act relating to the registration and duties of pharmacy benefits managers; relating to procedures, guidelines, and enforcement mechanisms for pharmacy audits; relating to the cost of multi-source generic drugs and insurance reimbursement procedures; relating to the duties of the director of the division of insurance; and providing for an effective date."

[4:24:03 PM](#)

REPRESENTATIVE GUTTENBERG, Alaska State Legislature, as prime sponsor, introduced HB 240. He indicated that the issue was that Pharmacy Benefit Managers (PBM) could audit pharmacies and there was no process for adjudication. The bill would set up a process of mediation, overseen by a third party, the Director of Insurance, to hear the disagreement and determine a correct course of action. Part of the larger picture concerned transparency in how prices were established and charged. He said he felt the bill would create a process for adjudication and lead to a better understanding of the process.

[4:26:09 PM](#)

SETH WHITTEN, Staff, Representative David Guttenberg, Alaska State Legislature, presented HB 240 on behalf of Representative Guttenberg, prime sponsor. He paraphrased the sectional analysis, [included in members' packets], which read as follows:

Sec. 21.27.901. Registry of pharmacy benefit managers; scope of business practice. Requires that pharmacy benefits managers register as third-party

administrators under 21.27 .630 and describes the parameters under which they may contract with an insurer or network pharmacies, set the cost of multisource generic drugs and allows for appeals.

Sec. 21.27.905. Renewal of registration. Establishes a bi-annual renewal of a registration fee for a pharmacy benefits manager as set by the director.

Sec. 21.27.910. Pharmacy audit procedural requirements. Describes the procedural and time requirements required of the pharmacy benefits manager and defines who conduct an audit and what records can may be provided by the pharmacy.

Sec. 21.27.915. Overpayment or underpayment. Indicates that a pharmacy benefits manager shall base a finding of overpayment or underpayment on the actual payment and not a projection of patients served by similar circumstances. It also designates the dispensing fee limitations.

Sec. 21.27.920. Recoupment. Establishes how a pharmacy benefits manager shall base the recoupment of overpayments from a pharmacy.

Sec. 21.27.925. Pharmacy audit reports. Establishes time frames as to when preliminary and final audit reports shall be delivered to a pharmacy and the response time for any discrepancies found in the audits.

Sec. 21.27.930. Pharmacy audit appeal; future repayment. A written appeals process shall be established by a pharmacy benefits manager. It also states that future repayment of disputed funds or other penalties imposed on a pharmacy shall occur only when all appeals have been exhausted.

Sec. 21.27.935. Fraudulent activity. Defines what may not be considered fraud by the pharmacy benefits manager.

Sec. 21.27.940. Pharmacy audits; restrictions. Adopts restrictions on the requirements of the entire Section 1 when applied to an audit in which intentional or suspected fraud is demonstrated in a review of the claims data. In addition, the requirements do not apply to any claims paid for under the medical assistance program found in AS 47 .07.

Sec. 21.27.945. Drug pricing list; procedural requirements. The methodology and sources used to determine the drug pricing list will be provided to each network pharmacy at the beginning of their contract term and updated accordingly by the pharmacy

benefits manager. Basic contact information shall also be provided.

Sec. 21.27.950. Multi-source generic drug appeal. Establishes a process by which a network pharmacy may appeal the reimbursement for a multi-source generic drug and procedures if their appeal is denied. It also sets the limitations on the pharmacy benefits manager and the insurance division director as to how many days they have to resolve an appeal or a request for review.

Sec. 21.27 .955. Definitions. Defines all selective wording as used in Section 1.

Bill section 2. Adds a new section on Applicability as it applies to audits of pharmacies as conducted by pharmacy benefits managers.

Bill section 3. Adds a new section as to Transitional Provisions for adopting Regulations.

Bill section 4. Adds a new section stating the Revisor's Instructions.

Bill section 5. Effective date clause for Bill section 3.

Bill section 6. Effective date clause for this Act except as provided.

[4:27:55 PM](#)

REPRESENTATIVE SULLIVAN-LEONARD thought the PBMs were brought forward around 2000. She asked about the necessity of the PBM process.

REPRESENTATIVE GUTTENBERG remarked that PBMs came in a bit earlier and allowed insurers to bulk buy drugs and negotiate better prices. He said he felt PBMs had evolved into a business model that increased costs. He underlined that he thought it was still a justifiable process for negotiating better prices, but with the many layers in the current system, it added costs.

[4:30:02 PM](#)

CHAIR KITO remarked that there would probably be considerable discussion regarding PBMs.

REPRESENTATIVE GUTTENBERG suggested viewing the presentation by Jane Conway on HB 280, and its companion legislation [SB 38], entitled "Pharmacy Benefit Managers and the need for fair and reasonable standards over the practice of auditing pharmacies."

[4:30:41 PM](#)

JANE CONWAY, Staff, Senator Giessel, Alaska State Legislature, presented the PowerPoint presentation [included in member packets] regarding HB 240.

MS. CONWAY outlined in slide 2, "PBM 101 - What's a PBM?" that PBMs are multibillion dollar middlemen. They had started in 1970 as claims processors and had since become intertwined in almost every aspect of the pharmaceutical/pharmacy supply chain. PBMs are virtually unregulated at either the state or federal levels - including in Alaska. Additionally, they represent some of the most profitable companies in the nation.

[4:33:12 PM](#)

MS. CONWAY pointed to CSV Caremark, which was the state's PBM, which showed 2017 revenue of \$177.5 billion, and had moved from number 14 to number seven in the Fortune 500 list. Express Scripts currently ranked number 22, generating \$100 billion in 2017. Many PBMs were in the Fortune 500 list.

[4:34:03 PM](#)

MS. CONWAY spoke to AlaskaCare, which provides healthcare benefits and prescription drug benefits for State of Alaska employees. She mentioned a request for proposal (RFP) for PBM which was around the corner.

[4:34:52 PM](#)

MS. CONWAY moved to slide 5 and described what PBMs were designed to do. They were put in place to reduce administrative costs for insurers, to validate patient eligibility, administer plan benefits, negotiate costs between pharmacies and health plans, and to audit pharmacies for fraud.

[4:35:19 PM](#)

MS. CONWAY moved to slide 6, "PBM's Impact on Pharmacy & Patient." PBMs develop pharmacy provider networks. Pharmacies must accept a PBM contract. Contracts truly are "take it or leave it," with no room for negotiations. PBMs influence which drugs are ultimately dispensed regardless of what a physician prescribes, via a list of approved drugs known as formularies. PBMs collect money from drug manufacturers for putting their drugs on a given formulary. PBMs restrict pharmacies on how

many pills they can dispense at a given time based on plan design.

[4:36:37 PM](#)

MS. CONWAY addressed slide 7, which continued to present the impacts of PBMs. PBMs dictate how much pharmacies will be paid for the drugs they dispense regardless of the pharmacies' acquisition costs. PBMs have free reign to dictate what pharmacies are permitted to do in a given network thereby driving patients to particular pharmacy options. PBMs operate their own mail-order pharmacies and can incentivize or mandate that beneficiaries obtain their medications only through the mail-order option. PBMs audit pharmacies and in most cases, there are no defined rules or regulations over what can be considered a recoupable offense.

[4:37:32 PM](#)

MS. CONWAY moved to slide 8, showing a diagram of the payment route between the payer, the PBM, and the pharmacy. The payer, or insurer, pays the PBM \$100 for the prescription. The PBM goes to the pharmaceutical manufacturer and negotiates the price for the given drug. In the end, the pharmacy ends up paying out of pocket for a drug for which it thought it would get a higher price.

[4:39:17 PM](#)

MS. CONWAY progressed to slides 9 through 11, "HB240/SB 38 - What Does a Fair Audit Bill Do?" The proposed legislation would bring fairness to the unregulated and expanding practice of pharmacy audits. It would not allow audits during the first seven calendar days of each month because of the high patient volume, unless the pharmacy and auditor agree otherwise. The bill is designed to prevent the targeting of minor clerical or administrative errors where no fraud, patient harm, or financial loss has occurred. The bill would establish submission of data/medical record standards to allow for clarification where discrepancies are identified and establish a reasonable time frame for the announcement of an audit to allow proper retrieval of records under review.

MS. CONWAY added that it would establish an audit appeals process for pharmacies; establish guidelines for PBMs to follow regarding patient confidentiality; and prohibit extrapolation in assessing fees/penalties. Alaska pharmacists would not be

penalized for providing mail-order service to their customers. Local mail-order service keeps Alaska dollars in Alaska. The proposed legislation would not prevent the recouping of funds where fraud, waste, and abuse exist.

MS. CONWAY remarked that 37 states had enacted fair audit legislation and that 32 states had enacted Maximum Allowable Cost (MAC) transparency legislation. The bill would include registration of PBMs with the State of Alaska Division of Insurance, would set-up guidelines for generic drug MAC pricing by PBMs, and would establish a mechanism for a pharmacy to appeal MAC pricing. She added that there were two states that had passed this legislation and been subsequently sued by PBMs. In both cases, the courts had ruled for the state.

[4:41:48 PM](#)

MS. CONWAY pointed to slides 12 and 13 showing maps of the U.S. indicating which states have passed similar legislation. She deferred to the invited testimony for first-hand accounts of pharmacists dealing with the PBMs directly.

[4:43:26 PM](#)

MS. CONWAY progressed to slide 19, "Maximum Allowable Cost (MAC) - 101: What is MAC?" A "maximum allowable cost" or MAC list refers to a payer- or PBM-generated list of products that includes the upper limit or maximum amount that a plan will pay for generic drugs and brand-name drugs that have generic versions available, called "multi-source brands". Essentially no two MAC lists are alike and each PBM has free reign to pick and choose products for their MAC lists. A formulary is a list of drugs that are covered for a particular insurance plan. Generally, it has no pricing attached to it. However, some drugs are chosen based on the cost of the medication. A formulary will usually contain both brand and generic drugs. A MAC list is a listing of specific prices for each generically available drug. Usually a specific insurance plan has a specific MAC listing issued by the PBM. However, a PBM may have several different MAC lists depending on the plan. For example, one plan may have a different MAC list even though they utilize the same PBM.

[4:44:34 PM](#)

REPRESENTATIVE SULLIVAN-LEONARD queried whether PBM auditors are required to have a degree in pharmacy.

[4:44:58 PM](#)

MR. WHITTEN responded that one of the requirements in the bill was that the auditors be pharmacists.

REPRESENTATIVE SULLIVAN-LEONARD surmised that presently the individuals carrying out audits could be pharmacists or have business degrees.

MR. WHITTEN clarified that those carrying out audits were not required to be pharmacists.

[4:45:52 PM](#)

MS. CONWAY continued to slide 20, "PBM Use of MAC as Revenue Stream:" Essentially, the PBMs reimburse low and charge high with their MAC price lists, pocketing the significant spread between the two prices. Most plan sponsors are unaware that multiple MAC lists are being used and have no real concept of how much revenue the PBM retains. She reiterated that the PBM negotiated with the plan sponsors and with the manufacturers at two different prices. The spread between the two prices was the revenue generator for the PBM.

[4:47:22 PM](#)

REPRESENTATIVE WOOL pointed out that with a middleman business there had to be a spread, otherwise they would be doing it for free. He did not dispute that the spread may be too wide but understood why it was there.

MS. CONWAY conceded that there was no doubt the PBMs provide a service; however, they did so at the expense of local pharmacies which struggle under the current system.

[4:48:39 PM](#)

MS. CONWAY moved to slide 21, which continued "MAC 101." When the PBMs fail to update MAC lists in a timely manner, pharmacies are forced to dispense at a loss, sometimes as high as \$100 or more, or not dispense at all. The MAC lists can be updated daily so real-time prices are often obsolete and less than what the pharmacist expected. When prices increase, PBMs often wait weeks or even months before updating MAC lists and rarely, if ever, reimburse pharmacies retroactively, yet the PBMs act swiftly to update MAC lists when drug costs decrease. This

significantly jeopardizes financial viability of community pharmacies. In fact, 84 percent of pharmacists said the acquisition price spiking and lagging reimbursement trend has a "very significant" impact on their ability to remain in business and to continue serving patients.

[4:50:24 PM](#)

MS. CONWAY continued to slide 23. MAC legislation is designed to reasonably address the above concerns by providing clarity to plan sponsors and pharmacies regarding how MAC pricing is determined. The legislation would update and establish an appeals process in which a dispensing provider can contest a listed MAC price. Further, it would provide standardization for how products are selected for inclusion on a MAC list. The MAC process provides no transparency for plan sponsors or contracted retail network pharmacies.

MS. CONWAY added that retail pharmacies are not informed about how products are added or removed from a MAC list or the methodology that determines how reimbursement is ultimately calculated. However, pharmacies must contract with PBMs to provide services and participate in plans without having this critical information. In other words, pharmacies are required to sign contracts not knowing how they will be paid. It is equivalent to agreeing to the services of a home builder, not knowing how you will be paid or what materials will be utilized in the home's construction.

[4:51:18 PM](#)

MS. CONWAY moved to slide 24, "SB 38: What Does A MAC Transparency Bill Do?" A MAC Transparency Bill sets reasonable standards on MAC and requires regular reporting of MACs to a pharmacy in a useable format. In addition, the proposed legislation provides for a defined MAC appeals process. It neither mandates that a PBM reimburse a pharmacy at a higher amount nor represents an administrative burden on the PBM. The proposed bill does not mandate that a PBM approve a pharmacy's MAC appeal, and it will not result in increased costs to the healthcare system.

[4:53:35 PM](#)

CHAIR KITO opened invited testimony.

[4:53:46 PM](#)

BARRY CHRISTENSEN, Co-Owner, Island Pharmacy, Legislative Committee for the Alaska Pharmacists Association, testified that the bill was a number one legislative priority for the membership as many were hurting from the practices outlined in the presentation. He recounted his family's personal story as local pharmacists. The pharmacists are not asking for more than what over thirty other states have done. The MAC pricing feature is something other states have on their books. He declared that the committee would hear testimony saying that PBMs should not be regulated because they are not insurance companies. He said he felt this was "like saying an orange is not a fruit, it's a citrus fruit." He underscored that PBMs are not currently registered by the Board of Pharmacy and are not licensed or registered by the state. There was nothing in the bill that says MAC pricing goes away. The pharmacies are simply looking for greater transparency.

[4:57:14 PM](#)

REPRESENTATIVE SULLIVAN-LEONARD asked whether it was a requirement that all pharmacies use a PBM.

MR. CHRISTENSEN replied that the pharmacies did not need a middleman, but that given the insurance model which uses PBMs, they could not bill the insurance without them.

[4:58:20 PM](#)

REPRESENTATIVE WOOL referenced an example in the presentation of a pharmacy sending four appeals to three different PBMs. He asked whether there was a PBM for each insurance company or payment policy.

MR. CHRISTENSEN replied that he knew of over 100 PBMs in the state, each with different policies, MAC pricing, and contracts. One of the things the proposed legislation was seeking was standardization.

REPRESENTATIVE WOOL asked about the frequency of audits.

MR. CHRISTENSEN stated that a pharmacy could be audited three or four times a month, possibly more.

[5:01:33 PM](#)

SCOTT WATTS, Pharmacist, Ron's Apothecary, remarked that he owns two pharmacies in Juneau and stated the proposed bill was essential for retail pharmacies looking for a fair playing field. He spoke to MAC pricing, stating that recently in the state MAC prices were drastically reduced but the prices hadn't changed. The pharmacies had no recourse and sending several hundred appeals had not resulted in reimbursement. All but two appeals had come back stating that the price remained the same. He referenced a recent conversation with a PBM which had responded that it does not give information out except to pharmacies "with laws on the books." That currently meant that no one in Alaska would receive that information.

MR. WATTS relayed that on January 10, [2018], pharmacies had received notification that PBMs had adjusted MAC pricing. The explanation had been that lower rates were the result of the MAC team's best understanding of marketplace conditions. He felt that they misunderstood the market conditions and had lowered rates to below market prices. The PBM had responded that it does not do any retroactive reimbursement. The pharmacies had not seen a complete correction on those MAC prices.

MR. WATTS added that the situation in cities was bad but that rural Alaska pharmacies may not be able to survive.

[5:06:11 PM](#)

REPRESENTATIVE BIRCH referenced a December Forbes article, regarding CVS turning industry "on its head" by acquiring AETNA for \$69 billion and remarked it was like "Jonah ate the whale." He asked Mr. Watts his perspective.

MR. WATTS replied that the takeover made him very nervous.

REPRESENTATIVE BIRCH asked whether the PBM was a subsidiary of the insurer.

MR. WATTS clarified that the PBM is that with which pharmacies contracted; the insurer is who had the contract with the employer, which is where the lack of transparency could occur.

[5:08:21 PM](#)

CHAIR KITO clarified that the MAC was the cost set by PBMs and the reimbursable cost was set by the insurers. He asked for confirmation.

MR. WATTS replied that he believed that was correct. The MAC was set by the PBM and what the employer was paying was set by the insurer.

REPRESENTATIVE WOOL asked whether the PBMs supplied the drugs or merely worked out the payment.

MR. WATTS declared that the PBMs did not supply the drugs. Drugs were obtained and paid for separately through wholesalers.

REPRESENTATIVE WOOL addressed comments that smaller pharmacies have a harder time than the bigger chain pharmacies and asked whether that was due to price structures or because corporate pharmacies were treated differently.

MR. WATTS replied that larger stores can make up some of the difference, but he was uncertain about different treatment.

[5:11:01 PM](#)

GERALD BROWN, Owner, Medical Center Pharmacy, testified in support of HB 240. He explained that the proposed bill was attempting to ensure that pharmacists were treated fairly and to establish a code of conduct for PBMs, which were not registered with the state, and which were operating without regulations. The MAC portion of the bill was very dear to the pharmacies. He added that there were no issues with auditing for fraud, but when an auditor can take up to two or three hours of time even when the pharmacy is busy and request information going back up to ten years, it almost required them to hire another pharmacist just to make up the time that auditors took. He said he felt the auditors made their own rules of conduct. He expressed concern that there may be a harassment issue at stake.

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MR. BROWN continued that the MAC [pricing] was arbitrary; it was not well established; and pharmacies did not know where the costs came from. Regarding PBMs he stated, "My experience ... has been they're paying anywhere from 10 cents on the dollar of what I purchase the medication for, up to 50 cents on the dollar." Over the previous month, he had seen 225 prescriptions that were negative revenue claims. He added, "Over \$33 thousand in the last year, comprising around 2,200 prescriptions - 60 percent of which were from CVS Caremark prescriptions - and 68 percent of those were Alaska retirees." He added that 68 percent of the time when he submits a claim, it is from an

Alaska retiree or state beneficiary, and he would get a negative revenue. The fees did not match the pharmacy business model. The 25-cent to 1-dollar dispensing fee did not cover the 50 cents for the vial, 50 cents for the label, plus fees for transmission.

MR. BROWN referred to a question regarding how the larger chains were affected. He thought the larger pharmacies were losing \$80 thousand to \$100 thousand a month in negative revenue.

MR. BROWN related that as of the August 1, [2017], he had seen a mushrooming of negative reimbursements for over \$14 thousand in negative revenue. With a dispensing fee of 25 cents to 1 dollar, it was hard for a small business to make up the cost. He said he would send the MAC appeals showing the review and response he received to the committee.

[5:19:25 PM](#)

MR. BROWN added that shipping costs were not the same as those for pharmacies across the nation. There was no transparency in what the rebates were. The state of Alaska never saw it. The PBM may be receiving a 30-percent to 60-percent rebate, but no one sees it, and yet that rebate and the end cost of the prescription determine what goes on the formulary.

REPRESENTATIVE WOOL asked whether his health care provider would determine which PBM would be utilized.

MR. BROWN responded in the affirmative.

REPRESENTATIVE WOOL offered that it would be more worthwhile "buying a box of band aids and taking the prescription to Fred Meyer."

MR. BROWN agreed and explained that it would be less expensive to give clients back their prescription and give them twenty dollars. He gave an example of an Alaska retiree's prescription with a purchase price of \$546, for which he had been reimbursed \$134, for a \$414 loss. He reiterated that pharmacists were looking for appealable MAC prices.

[5:24:09 PM](#)

MICHELE MICHAUD, Chief Health Official, Central Office, Division of Retirement and Benefits (DRB), Department of Administration (DOA), mentioned testimony stating that AlaskaCare covers state

employees. She clarified it only covers a subset as well as retirees, and that union health trusts cover some. There are other public employers that utilize PBMs. The division contracted with AETNA and CVS is the contractor for their PBM services.

[5:24:45 PM](#)

EMILY RICCI, Health Care Policy Administrator, Central Office, Division of Retirement and Benefits (DRB), Department of Administration (DOA), stated that in general, AlaskaCare covers employee and retiree health plans. It had, in the previous year, spent \$236 million on pharmacy benefits between the two plans. The division relies heavily on its contractors, whether third-party administrators such as AETNA or a PBM. The services are periodically put out for a competitive bid, and in 2014 AETNA and its subcontractor, CVS, became the third-party administrator and the PBM for the state's healthcare plans. She specified that the division has been working with local and independent pharmacies as well as with CVS Caremark to understand how to address those price discrepancies. She spoke to the complexity of layers in the system. AlaskaCare is a self-insured health plan, meaning that it pays out all of the claims. The division relies on contractors to administer and pay out those claims, but the contract is with the PBM. She added that there were other layers within the system as well, including wholesale distributors and pharmacy services administration organizations. The division was hearing feedback from independent pharmacies regarding pricing, but it did not have all of the input on either side to determine in aggregate some of the pricing and relied on contractors to determine pricing.

[5:27:31 PM](#)

CHAIR KITO asked whether Ms. Ricci was aware that all three pharmacists had testified that costs had exceeded their reimbursement for providing pharmaceuticals and whether she recognized the scope of the issue.

MS. RICCI answered in the affirmative, adding that the division has been working to raise the pharmacists' concerns with CVS Caremark. It was understood that MAC pricing was adjusted from January 1, [2018], and the division was working to understand which factors had driven the adjustments and what kind of reconciliation process would occur.

CHAIR KITO asked whether she continued to support the fact they were not being reimbursed for costs that did not meet their expenses for pharmaceuticals which had been previously denied.

MS. RICCI responded that every time that the division had been informed of the reimbursement issues from the pharmacists, the comments were forwarded to CVS Caremark.

CHAIR KITO remarked that it seemed like quite a large issue.

5:28:58 PM

REPRESENTATIVE STUTES asked how long the division had been aware of the issue.

MS. RICCI relayed that the division was first informed of the problem at the end of November [2017]. The division had then worked to review its claims data to determine whether the division was experiencing pricing discrepancies over the same time period. She described the division's contracts with the PBM wherein it could see what the division was being charged for medication, but the division was not informed of the details of the contracts between the PBM and the pharmacies.

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REPRESENTATIVE BIRCH suggested it would be helpful to hear from the PBMs. He mentioned three Sam's Club stores in the state that had closed. He said he thought this was partly due to dynamic issues happening in the retail world rolling down into retail sales in the pharmacy world. He asked how much of the problem was a big box store against a local store scenario and wondered what the responsibility of the state was.

5:31:25 PM

REPRESENTATIVE SULLIVAN-LEONARD spoke to the challenges of the pharmacies and queried whether the issue could be rectified without the proposed regulation.

MS. RICCI said she did not know what the answer was. She underlined that the division was looking at AlaskaCare plans. There was a concern that the current structure did not evaluate the value of the independent pharmacies highly enough. She spoke to discussion of a pilot project. The division recognized the added value of local, independent pharmacies. It also had a fiduciary responsibility to the health plan and needed to make

sure that if it were paying more for services, it would get increased value.

REPRESENTATIVE SULLIVAN-LEONARD asked whether Ms. Ricci thought a pilot program would work.

MS. RICCI answered that the division had no position on the bill but that she felt the pilot program was worth exploring whether the legislation passed.

[5:34:04 PM](#)

REPRESENTATIVE WOOL mentioned the fact that pharmacists buy a lot of drugs. Most people pay with insurance and pay for a rate negotiated by the PBMs. The pharmacists were saying that the rate of reimbursement changes after the drugs have been dispensed. He said he was surprised that the division had only heard of the issue in December as he had been hearing about it for years.

MS. RICCI clarified that the division had been aware of the legislation regarding MAC pricing as it was the second session in which it was heard. The division had been made aware of significant decrease in MAC pricing that had been brought to the division's attention in a short period of time. Regarding the specifics of how MAC prices were established, she deferred to the representative of CVS Caremark. She underlined that the contracts that the division negotiated are available online, so the structure is visible. Generally, the plan negotiates a percentage off for generic drugs dispensed at retail and dispensed at mail-order, in 30-day and 90-day supplies.

REPRESENTATIVE WOOL asked whether the rates negotiated with the PBM fluctuated at the sponsor end, or only at the retail end.

[5:37:33 PM](#)

MS. MICHAUD specified that the contracts that the state holds with AETNA and its PBM, CVS, were based on an aggregate pricing scheme and not on individual drug cost; therefore, it did not see the same fluctuations that the pharmacies did.

[5:38:08 PM](#)

REPRESENTATIVE BIRCH brought up that at times medical services providers require a pretreatment authorization. This meant that there were no surprises. He thought that having a set cost only

to discover a month later that only half of that amount would be paid for "would be a tough way to run a business."

MS. MICHAUD clarified that pharmacy benefits reimbursement was typically set at point of sale. Pharmacies may buy drugs in advance without knowing what the price will be at the point of sale. She offered her understand that pharmacists should be able to look up what the reimbursement would be at the point of sale. She added that it was not months down the road but potentially months from when they purchase the drug.

CHAIR KITO stated that since CVS was not online and that there were people online to testify, he would hold over the bill but hear more public testimony on Friday, February 2.

[5:41:11 PM](#)

REPRESENTATIVE GUTTENBERG concluded that the issue was complex and many times counterintuitive. He expressed hope that the committee would take the time to figure it out as the state needed to get a handle on it.

[HB 240 was held over.]

[5:41:48 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce meeting was adjourned at 5:41 p.m.