

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

February 14, 2017

1:34 p.m.

MEMBERS PRESENT

Senator Mia Costello, Chair
Senator Shelley Hughes, Vice Chair
Senator Kevin Meyer
Senator Gary Stevens
Senator Berta Gardner

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 15

"An Act relating to possession of an electronic smoking product or a product containing nicotine by a minor and to selling or giving an electronic smoking product to a minor; relating to business license endorsements to sell cigarettes, cigars, tobacco, products containing tobacco, electronic smoking products, or products containing nicotine; and relating to citations for certain offenses concerning tobacco or nicotine products."

- HEARD & HELD

SENATE BILL NO. 29

"An Act repealing the Workers' Compensation Appeals Commission; relating to decisions and orders of the Workers' Compensation Appeals Commission; relating to superior court jurisdiction over appeals from Alaska Workers' Compensation Board decisions; repealing Rules 201.1, 401.1, and 501.1, Alaska Rules of Appellate Procedure, and amending Rules 202(a), 204(a) - (c), 210(e), 601(b), and 603(a), Alaska Rules of Appellate Procedure; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 40

"An Act relating to workers' compensation; repealing the second injury fund upon satisfaction of claims; relating to service fees and civil penalties for the workers' safety programs and the workers' compensation program; relating to the liability of specified officers and members of specified business entities for payment of workers' compensation benefits and civil penalties; relating to civil penalties for underinsuring or failing to insure or provide security for workers' compensation liability; relating to preauthorization and timely payment for medical treatment and services provided to injured employees; relating to incorporation of reference materials in workers' compensation regulations; relating to proceedings before the Workers' Compensation Board; providing for methods of payment for workers' compensation benefits; relating to the workers' compensation benefits guaranty fund authority to claim a lien; excluding independent contractors from workers' compensation coverage; establishing the circumstances under which certain nonemployee executive corporate officers and members of limited liability companies may obtain workers' compensation coverage; relating to the duties of injured employees to report income or work; relating to misclassification of employees and deceptive leasing; defining 'employee'; relating to the Workers' Compensation Board's approval of attorney fees in a settlement agreement; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 15

SHORT TITLE: E-CIGS: SALE TO AND POSSESSION BY MINOR
SPONSOR(s): STEVENS

01/13/17	(S)	PREFILE RELEASED 1/13/17
01/18/17	(S)	READ THE FIRST TIME - REFERRALS
01/18/17	(S)	L&C, JUD
02/14/17	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 29

SHORT TITLE: REPEAL WORKERS' COMP APPEALS COMMISSION
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/20/17	(S)	READ THE FIRST TIME - REFERRALS
01/20/17	(S)	L&C, JUD, FIN
02/14/17	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

TIM LAMKIN, Staff
Senator Gary Stevens
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Introduced SB 15 on behalf of the sponsor.

ELIZA MUSE, Public Health Specialist II
Division of Public Health
Department of Health and Social Services (DHSS)
Anchorage, Alaska

POSITION STATEMENT: Responded to questions related to SB 15.

JOE DARNELL, Investigator IV
Division of Behavioral Health
Tobacco Youth Education & Enforcement Program
Department of Health and Social Services (DHSS)
Anchorage, Alaska

POSITION STATEMENT: Responded to questions related to SB 15.

ALYSSA KEILL, representing herself
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of SB 15.

KATIE STEFFENS, representing herself
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 15.

MARGE STONEKING, Executive Director
American Lung Association of Alaska
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 15.

LARRY TAYLOR
American Lung Association of Alaska
Ketchikan, Alaska

POSITION STATEMENT: Testified in support of SB 15.

HEIDI DRYGAS, Commissioner
Department of Labor and Workforce Development (DOLWD)
Juneau, Alaska

POSITION STATEMENT: Introduced SB 29 on behalf of the administration.

MARIE MARX, Director
Workers Compensation Division
Department of Labor and Workforce Development (DOLWD)

POSITION STATEMENT: Delivered a sectional analysis for SB 29.

NANCY MEADE, General Council
Administrative Staff
Alaska Court System
Anchorage, Alaska

POSITION STATEMENT: Answered questions related to SB 29.

ANDREW HEMENWAY, former commissioner
Workers' Compensation Appeals Commission
Anchorage, Alaska

POSITION STATEMENT: Testified on SB 29.

ACTION NARRATIVE

[1:34:35 PM](#)

CHAIR MIA COSTELLO called the Senate Labor and Commerce Standing Committee meeting to order at 1:34 p.m. Present at the call to order were Senators Gardner, Meyer, Stevens, Hughes, and Chair Costello.

SB 15-E-CIGS: SALE TO AND POSSESSION BY MINOR

[1:35:39 PM](#)

CHAIR COSTELLO announced the consideration of SB 15, and noted that the committee heard similar legislation last year.

[1:36:05 PM](#)

TIM LAMKIN, Staff, Senator Gary Stevens, introduced SB 15 on behalf of the sponsor. He gave a slide to show the origins of e-cigarettes as well as the styles, brands, flavorings, and components. He said the bill is about protecting youth from the burgeoning fad of smoking electronic cigarettes, also called vaping. There are over 500 varieties of this product on the market in the U.S. and they are replacing traditional cigarettes. They are sleek, clean, discrete, and generally not expensive. Because this industry is relatively new, there is little conclusive evidence as to their long-term effect on health. However, he said, it shouldn't take a scientific study to imagine that regularly inhaling a chemical substance would not be good for a young person's mind and body. He acknowledged that some people have found e-cigarettes to be a Godsend in helping them quit smoking traditional cigarettes.

MR. LAMKIN said some people maintain that e-cigarettes do not contain nicotine. While that may or may not be true, the Food

and Drug Administration (FDA) has said these products should be treated as a tobacco product. He concluded that SB 15 will close a loophole and prohibit possession and sale of electronic smoking devices, including component liquid or vapor products to minors, whether they contain tobacco or nicotine or not. He noted that the sponsor is working on a committee substitute (CS).

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CHAIR COSTELLO asked Mr. Lamkin to walk through the sectional analysis.

MR. LAMKIN read the following sectional analysis for SB 15:

Section 1: AS 11.76.105(a) Adds to existing law that, as with prohibiting minors from possessing cigarettes or tobacco, to also prohibit possession of electronic cigarettes and any component thereof.

Section 2: AS 11.76.105(c) Extends an existing exception for possession by minor of a tobacco product, to include e-cigarettes possession, provided the minor is using an e-cigarette for an approved medical purpose, such as smoking cessation, and is provided by a parent or prescribed by a doctor.

Section 3: AS 11.76.106(a) Adds to existing law that, as with controlling access to and sale of tobacco products to minors (that is, behind the counter), that e-cigarettes access also be controlled and restricted in a like manner.

Section 4: AS 11.76.106(b) Extends an existing exception to clerk, controlled access to tobacco or e-cigarette products sold through a vending machine, which are covered in the next section.

Section 5: AS 11.76.107(a) Adds to existing law that, as with tobacco product vending machines, vending machines dispensing electronic cigarette or nicotine products must also be supervised.

Section 6: AS 11.76.109(a) Adds to existing law prohibiting the sale of nicotine products and electronic cigarettes, or any related component thereof, to a minor under 19 years old.

Section 7: AS 11.76.109(b) Extends an existing exception for minor possession of a nicotine product, to include e-cigarettes possession, provided the minor is using an e cigarette for an approved medical purpose, such as smoking cessation, and is provided by a parent or prescribed by a doctor.

Section 8: AS 11.76.109(e) Extends the existing fine of at least \$300 for selling nicotine products to minors, to include selling e-cigarette products having the same fine.

Section 9: AS 11.76.109(f) adds a new subsection that is consistent with existing law regarding placement of vending machines dispensing tobacco products; that the same requirements are applied to vending machines dispensing e-cigarette or nicotine products.

Section 10: AS 11.81.900(b) Establishes a definition for electronic smoking product," summarized as follows:

(67) (a) a device designed to aerosolize and inhale nicotine, a synthetic of nicotine, or another substance that "may have an adverse effect" on the person inhaling from the device; [basically, the hardware] and

(b) the accompanying compounds, oils, vapor fluids, chemicals, or agents intended to be aerosolized and inhaled in conjunction with the device.

Section 11: AS 43.50.070(a) Adds enforcement provision for the state to suspend, revoke, or refuse to renew a business for violating provisions relating to selling e-cigarette products to minors.

Section 12: AS 43.50.105(b) is amended for conformity, changing "tobacco" endorsement to "business license" endorsement, for purposes of shipping or transport of cigarettes. It also sets up conformity for the following Section 8 of the bill, relating to a required business license endorsement for selling e-cigarette or nicotine products.

Section 13: AS 43.70.075(a) amends existing law requiring a special business license endorsement in order to lawfully sell tobacco products, by including the same license endorsement requirements for lawfully selling e-cigarette or nicotine products.

Section 14: AS 43.70.075(d) amends existing law relating to selling tobacco to minors, by adding the same penalty provisions, including graduated fines, for selling e-cigarette or nicotine products to minors.

Section 15: AS 43.70.075(f) amends existing law requiring signage when selling tobacco products, to also require signage for selling E-cigarette or nicotine products. The signage must read. The sale of electronic smoking products or products containing nicotine to a person under the age of 19 without a prescription is illegal."

Section 16: AS 43.70.075(i) amends existing enforcement provisions that, as with tobacco sales, to allow the State to seize and destroy a vendor's inventory of e-cigarettes or nicotine products in the event violating the law prohibiting sales of those products to minors.

Section 17: AS 43.70.075(l) is amended for conformity that, as with tobacco sales, to allow one business license endorsement to serve as an umbrella if a vendor has multiple locations they are selling E-cigarette or nicotine products, and to shut down only the offending vending machine or outlet location in the event of a violation.

Sections 18-23: AS 43.70.075(m), (r), (t), (v), (w), and (x) are amended for conformity that, as with tobacco sales, to allow an evidentiary and administrative hearing, appeal process, and penalties in the event of violations of these statutes, involving the sale of e-cigarette or nicotine products to minors.

Section 24: AS 43.70.075(y) is added for conformity, linking the definitions of "electronic smoking products," and distinguishing between traditional cigarette (tobacco) products and other modern nicotine alternatives.

Section 25: AS 43.70.105(b) is amended for conformity that, as with tobacco products, a vendor must have the appropriate business license endorsement in order to lawfully sell E-cigarette or nicotine products.

Section 26: AS 44.29.092 is amended for conformity that, as with tobacco sales, providing the Dept. of Health and Social Services the authority to issue citations for violating state law regarding minors buying, selling or possessing E-cigarette or nicotine products.

Section 27: Is the applicability and effective date, applying to offenses committed only after the effective date of the bill, which would be 90 days after the bill is enacted.

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CHAIR COSTELLO asked if the Department of Health and Social Services' (DHSS) Youth Behavioral Risk Survey has a question about youth use of e-cigarettes.

ELIZA MUSE, Public Health Specialist II, Division of Public Health, Department of Health and Social Services (DHSS), advised that the Youth Behavioral Risk Survey has been asking about the use of electronic cigarettes since 2015. Results from that survey indicate that 36 percent of Alaska high school students have tried electronic cigarettes and 18 percent currently use them.

SENATOR MEYER questioned the statement that "not all of these products contain nicotine."

MR. LAMKIN replied many vendors honestly believe their product does not contain nicotine, even though that has not been proven. "Labeling is not regulated or not thoroughly regulated and there

are perhaps some questionable practices going on as to that labeling and marketing," he said.

SENATOR MEYER asked how many states have passed similar legislation.

MR. LAMKIN said he didn't know the number but a substantial number of states have severely limited access to these products, typically related to nicotine content. He noted that the state of Kentucky was the first to impose such a ban.

SENATOR MEYER asked why the e-cigarette bill didn't pass last year.

MR. LAMKIN replied it was held up in the Senate Judiciary Committee for some reason.

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SENATOR GARDNER highlighted the American Lung Association report that said cigarettes contain 600 ingredients that convert to 7,000 different chemicals when burned, 69 of which are deemed carcinogenic and others poisonous. She asked if nicotine is the concern or the fact that it is addictive.

MR. LAMKIN replied it is probably a matter of opinion but regardless, they are not good for youth.

SENATOR GARDNER asked under what conditions a physician might write a prescription for e-cigarettes, and if the prohibition against possession applies if the product is provided by a parent. If a parent gives it to their minor child does he/she have to keep it at home?

MR. LAMKIN replied the bill provides an option for parents to give the product to their minor child.

SENATOR GARDNER asked why a physician might prescribe e-cigarettes.

MR. LAMKIN surmised that it might be used for someone who had become addicted to nicotine at a young age.

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SENATOR HUGHES asked what the U.S. surgeon general is doing to obtain hard data on these products, what the plan is to correct inaccurate labeling, and if there is a difference in definition between tobacco and nicotine.

MR. LAMKIN said this is a relatively new product in the U.S. so there isn't much data available. It is also a rapidly growing market with such a variety of products that regulators can't keep up. He deferred to the state's chief medical officer to discuss what is being done to study the long-term effects these products may or may not have on the human body.

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At ease

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CHAIR COSTELLO reconvened the meeting.

SENATOR HUGHES asked if within a year there might be more conclusive evidence as to what the best practices should be, and if the FDA has approved a smoking cessation device that uses electronic cigarettes.

MR. LAMKIN said the FDA stepped up last summer and defined electronic products as tobacco products. He opined that the primary reason for that is that they have at least a trace amount of addictive nicotine. He said he wasn't speaking for the FDA, but that agency is actively working on regulations and ways to address this industry. He added that to his knowledge, the FDA has not defined e-products as a cessation product.

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SENATOR HUGHES related that doctors in a medical clinic in her district have reported watching teenagers regularly going to a nearby tobacco/smoke shop. She asked if the sponsor had considered banning minors from entering tobacco/smoke shops.

MR. LAMKIN replied they are working in that direction, but a business may conduct more activity than is indicated on the business license that is filed with the state. This makes it difficult to enforce these laws. He directed attention to a memo in the packets from DHSS Investigator Joe Darnell regarding compliance checks. Minors were successful 26 percent of the time when they attempted to buy electronic products, whereas they were successful 9 percent of the time when they tried to buy tobacco products. "In a nutshell, it's three times easier to get the e-products than to get a tobacco product."

CHAIR COSTELLO asked Mr. Darnell to discuss the memo he sent.

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JOE DARNELL, Investigator IV, Division of Behavioral Health, Tobacco Youth Education & Enforcement Program, Department of Health and Social Services (DHSS), stated that the state is required to enforce underage tobacco laws. Federal block grant money for substance abuse is tied to that, and the state anticipates that vaping and electronic nicotine delivery systems (ENDS) will be added to the federal regulations. In preparation, last summer DHSS checked vape shops, tobacco shops, and convenience stores that sell e-cigarettes. The statewide sell rates were 26 percent for vaping, 9 percent for e-cigarettes, and 5.4 percent for traditional tobacco products. In Anchorage, the sell rate of e-liquid to minors was 50 percent compared to a 2.3 percent sell rate for traditional tobacco products.

CHAIR COSTELLO asked what the bill contains regarding marketing to youth.

MR. LAMKIN said the only marketing provision is conforming language requiring a vendor who is selling e-products to post a warning sign near the checkout counter.

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CHAIR COSTELLO opened public testimony on SB 15.

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ALYSSA KEILL, representing herself, Fairbanks, Alaska, testified in support of SB 15. She is a youth swim coach who finds e-products scary. Little is known about them, yet they are marketed as safe and harmless. She pointed out that young brains continue to develop into the 20s and the introduction of any addictive drug will change the brain's wiring and potentially affect other body systems. If poor air quality in a swimming pool building can cause problems for kids' respiratory systems, she can't imagine supporting easy access to a smoking device that could keep youth from reaching their goals. She said these products are marketed to youth and she believes that selling them to youth even though they might not contain nicotine, would still convey the message that smoking is acceptable.

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KATIE STEFFENS, representing herself, Anchorage, Alaska, testified in support of SB 15. She said e-products are increasingly popular and are being tailored to kids. She opined that SB 15 will help decrease the use rates of teens in the Anchorage community. She emphasized that more regulation is needed. She maintained that the fact that 36 percent of Alaskan

youth have tried these products is reason enough to pass the bill.

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MARGE STONEKING, Executive Director, American Lung Association of Alaska, testified in support of SB 15. She said this bill and the regulation of underage sales is an important component of keeping tobacco and e-cigarettes out of the hands of kids. She reported that the program that Joe Darnell runs on behalf of the state has been one of the most effective nationwide in regulating the use of tobacco by minors. Prior to having a strong program, about 30 percent of tobacco retailers sold to minors. Now the noncompliance rate is under 10 percent.

She agreed with earlier testimony that retailers are selling e-cigarettes to youth at a 30-50 percent rate. She also made the following points: e-vapor has many of the same nitrosamines that are found in tobacco smoke; the particulates are potentially more harmful than tobacco because they are finer; there is little proof that electronic vapor products contain no nicotine; the devices are potentially dangerous and may explode when the batteries are changed; and the flavorings and base fluids are not approved for inhalation.

MS. STONEKING said e-products were brought to the U.S. about 10 years ago and may have been created as a cessation device. However, the tobacco industry fought to have e-products regulated as a tobacco product rather than a cessation device for medical purposes. That is how these products have been regulated and the nicotine is derived from tobacco plants.

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LARRY TAYLOR, American Lung Association of Alaska, Ketchikan, Alaska, testified in support of SB 15. He focused on the substances in e-cigarettes other than tobacco or nicotine and addressed earlier questions. Regarding use as a cessation device, he said a U.S. Surgeon General report notes "that experienced users learn to use e-cigarettes in a way that increases their exposure to nicotine." Regarding the time before results are available about the substances contained in e-cigarettes, he advised that there were 500 brands and 700 flavors of e-cigarettes on the market at the time of the 2016 announcement allowing FDA oversight. Businesses have an additional two years to apply to stay in the market, so the FDA won't have a chance to examine all the chemicals until after that two-year period.

CHAIR COSTELLO asked Mr. Taylor to submit his testimony in writing.

MR. TAYLOR agreed. Addressing the question about non-nicotine products in e-cigarettes, he said the organic solvents include propylene glycol, benzene, and toluene. He related that he studied organic compounds for 17 years when he worked for the Municipality of Anchorage as the environmental engineer. He explained that benzene and toluene, both of which are solvents, can convert to other organic compounds when they are heated.

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CHAIR COSTELLO closed public testimony on SB 15 and held the bill in committee awaiting a committee substitute.

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At ease.

SB 29-REPEAL WORKERS' COMP APPEALS COMMISSION

[2:24:34 PM](#)

CHAIR COSTELLO reconvened the meeting and announced the consideration of SB 29. She welcomed Commissioner Drygas and Director Marx.

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HEIDI DRYGAS, Commissioner, Department of Labor and Workforce Development (DOLWD), stated that SB 29 will repeal the Workers' Compensation Appeals Commission and return the appeals process to the courts. She explained that the commission was created to streamline the appeals process and provide expertise in handling workers' compensation cases. However, since the commission was created in 2005, 50 percent of its decisions have been reversed by the Alaska Supreme Court. The commission is essentially an appellate court, but it is not composed of a panel of lawyers. Rather, the lay commissioners have no legal training, so it falls to the commission chair to resolve the legal issues and write the commission's decisions. This means the commission's decisions are the work of just one person, not the work of a panel with legal expertise in workers' compensation. This is a further departure from the intent of the original legislation, she said.

COMMISSIONER DRYGAS informed the committee that eliminating the Workers' Compensation Appeals Commission is anticipated to save the department over \$220,000 for the remainder of FY18, and over \$440,000 in subsequent years. She emphasized that the impact on

the public would be minimal. The Court System, which regularly hears administrative appeals, would see an increase of about 20-30 cases a year. She understands that the Court System can absorb volume, which is reflected in the zero fiscal note.

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MARIE MARX, Director, Workers' Compensation Division, Department of Labor and Workforce Development (DOLWD) walked through the following sectional analysis for SB 29:

Section 1 amends AS 23.30.005, by adding a new subsection, clarifying that unless reversed or modified by a court, decisions of the former commission have the force of legal precedent. It also specifies that the Workers' Compensation Board will be the entity responsible for making sure those decisions are available to the public.

Section 2 amends AS 23.30.107(b), by removing reference to the appeals commission in existing statutes.

Section 3 amends AS 23.30.108(d), by removing reference to the appeals commission in existing statutes.

Section 4 amends AS 23.30.108(e), by removing reference to the appeals commission in existing statutes.

Section 5 amends AS 23.30, by adding a new section, clarifying when a board order becomes effective and is final, when it may be stayed, and clarifying when the board's findings are conclusive and binding on a reviewing court, and when the director may intervene in an appeal or petition for review.

Section 6 amends AS 23.30.155, by adding a new subsection changing a statutory reference from the appeals commission to the superior court.

Section 7 amends AS 39.50.200(b)(31), by removing reference to the appeals commission.

Section 8 amends the uncodified law of the State of Alaska, by amending Rule 204(c)(2) Alaska Rules of

Appellate Procedure, to address bonds for appeal purposes.

Section 9 repeals Rules 201.1, 401.1, and 501.1, Alaska Rules of Appellate Procedure.

Section 10 repeals AS 23.20.007, 23.30.008, 23.30.009, 23.30.009, 23.30.125, 23.30.127, 23.30.128, 23.30.129, 23.30.155(f), 23.30.395(10); AS 39.25.110(40); AS 44.64.020(a)(12), and 44.64.020(a)(13). These are statutes that deal with commission proceedings, that reference the commission, that deal with commission appointments, and appeals to the commission.

Section 11 amends the uncodified law of the State of Alaska, by adding a new section relating to indirect court rule amendments.

Section 12 amends the uncodified law of the State of Alaska, by adding conditional effect language that the Act takes effect only if secs. 8, 9 and 11 receive the two-thirds majority vote of each house required by art. IV, sec. 15 of the Alaska Constitution.

Section 13 amends the uncodified law of the State of Alaska, by adding a new section relating to applicability of amendments to proceedings pending before the Commission.

Section 14 amends the uncodified law of the State of Alaska, by adding transitional language clarifying proceedings seeking review of a board decision and order that have not yet been filed before the Commission, must be filed in the superior court on or after June 1, 2017 Any appeals not completed by the appeals commission on or before December 1, 2017 will be transferred to the superior court on December 2, 2017, and clarifying procedures for requests for reconsideration during the transition period.

Section 15 amends the uncodified law of the State of Alaska, by adding transitional language.

Section 16 clarifies when the Act takes effect.

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CHAIR COSTELLO reminded the committee that this was introduced on the Senate floor as an amendment in a budget process and some members felt it needed a full vetting. She asked Ms. Marx if she had any concern with the measure.

MS. MARX answered she has no concerns. The idea in 2005 was that the commission would make the appeals process run better, but that has not been the case.

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SENATOR STEVENS questioned whether this would impose a burden on the Court System and potentially slow the progress of these cases. He also asked what these appeals would look like under the Court System. "We're not talking about a jury trial; we're talking about a judgement by a judge. Can you help me understand that?"

CHAIR COSTELLO suggested Nancy Meade with the Court System respond to the question after the committee finishes questioning Director Marx and Commissioner Drygas.

MS. MARX directed attention to the document in the packet that explains the number of cases appealed to the commission and how many are appealed to the Alaska Supreme Court. She also pointed out that the Court System was handling more appeals cases prior to the creation of the commission. The average number of appeals now is about 33 and the expectation is that those would be absorbed by the Court System throughout all jurisdictions. Addressing the question about timeliness, she said the proposal is to return to the court process because the appeals commission process has not improved the appeals procedure.

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COMMISSIONER DRYGAS added that when a case is appealed from a panel of the Workers' Compensation Board it will go to the superior court that will act as the appellate court, just as the appeals commission currently acts as the appellate court for the Workers' Compensation Board.

SENATOR HUGHES asked if the only reason the appeals commission didn't work is because the commissioners didn't have the necessary legal expertise.

COMMISSIONER DRYGAS replied it was a multiple system failure, but the biggest problem is that the appeals commission is made up of lay commissioners rather than a panel of attorneys, which is the typical makeup for the appellate process. Because the

appeals commission doesn't have a panel of attorneys, there hasn't been enough vetting of the facts in these cases. The result is that the Alaska Supreme Court has overturned about 50 percent of the decisions the appeals commission has made.

The other problem with the current system is that it has a double administrative layer. The departmental administrative process made up of a panel of three works well, she said, but after that the litigant should have the opportunity to have their case heard in court rather than going to another administrative level. "It's clunky and didn't work the way I think it was intended to work," she said.

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SENATOR GARDNER asked if it would have worked better, but been more expensive, if all the appeals commission members were attorneys.

COMMISSIONER DRYGAS said possibly, but only so many attorneys practice workers' compensation in Alaska and it would be very difficult to seat a panel that didn't have conflicts.

SENATOR MEYER asked if two positions would be eliminated if the bill were to pass.

COMMISSIONER DRYGAS answered yes.

CHAIR COSTELLO asked Ms. Meade to respond to Senator Steven's question about how this proposal would impact the Court System.

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NANCY MEADE, General Council, Administrative Staff, Alaska Court System, stated that the Court System will be able to absorb the impact of SB 29, but she appreciates the question because the court is doing more now with less. She said the average number of cases over the past 10 years appears to be about 33. Should the bill become law, the cases that went from the board to the commission would go from the board to the superior court. Those cases will be divided among the 42 superior court judges, depending on the venue of the injured worker. Because Anchorage is the population center, most of the cases will be filed there and divided among the 11 civil superior court judges that preside in the municipality.

She described workers' compensation cases as difficult, time-consuming, and fact laden. Oftentimes the litigant is self-represented, which is difficult and more time-consuming for the

Court System. That is some of the reason that these cases went from the court to the appeals commission in 2005, as well as the argument that some of the superior court judge decisions were inconsistent. Nevertheless, since the appeals commission has not improved on the time to get cases resolved or accuracy of the decisions, the Court System is prepared to take these cases back without any additional funding to handle the additional workload.

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SENATOR STEVENS asked if the \$220,000 savings reflected in the Department of Labor and Workforce Development fiscal note will be absorbed by the Court System.

MS. MEADE opined that there wouldn't be additional cost because the additional work would be spread around. For example, if the clerk's office in Fairbanks gets 7-8 new administrative appeals next year, they would be able to handle that in the normal course of business.

SENATOR STEVENS asked if there is a way to move these cases through the system more quickly.

MS. MEADE said she didn't have an answer, but superior court judges do handle administrative agency appeals. A process and court rules are already in place, so a superior court judge would be the logical place if these cases were to come to the Court System.

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SENATOR HUGHES asked if eliminating one administrative layer make things easier for the court.

MS. MEADE replied it probably won't make much difference.

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ANDREW HEMENWAY, former appeals commissioner, Anchorage, Alaska, said he was asked to be available for questions.

CHAIR COSTELLO asked his view of the bill.

MR. HEMENWAY stated that when he was leaving the appeals commission he told Commissioner Drygas that it is difficult for a single person to deal with the legal issues that come up in a workers' compensation appeal. However, going to the superior court would also be just one judge deciding the cases, and that judge won't have any particular expertise in workers'

compensation laws. He offered his personal view that it's difficult for one person, but it's better to have one person with expertise in that area of law working on these cases. He said his personal policy preference would be to use a couple of administrative law judges from the Office of Administrative Hearings to work with the chair of the appeals commission. There would be three, legally-trained people looking at each case which would address the concern he expressed about having just one judge rule on these hotly contested and difficult legal issues. He noted that a concern about using superior court judges was that the decisions could be inconsistent. As chair of the appeals commission he didn't hear that complaint. He concluded that there are policy arguments pro and con for abolishing the appeals commission and it's up to the legislature to decide.

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CHAIR COSTELLO closed public testimony on SB 29 and held the bill for further consideration.

[2:50:30 PM](#)

At ease

[2:50:35 PM](#)

CHAIR COSTELLO reconvened the meeting and announced the committee would not hear SB 40 today.

[2:52:09 PM](#)

There being no further business to come before the committee, Chair Costello adjourned the Senate Labor and Commerce Standing Committee meeting at 2:52 p.m.