

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

February 1, 2018

1:01 p.m.

MEMBERS PRESENT

Senator Mia Costello, Chair
Senator Kevin Meyer
Senator Gary Stevens
Senator Berta Gardner
Senator Peter Micciche

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 112

"An Act relating to the controlled substance prescription database; relating to disability; excluding independent contractors from workers' compensation coverage; employer-required drug testing; relating to the office of administrative hearings; and providing for an effective date." relating to the Alaska Workers' Compensation Board; relating to the payment of workers' compensation or benefits; relating to compensable injuries; relating to rehabilitation and reemployment of injured workers; relating to reemployment vouchers; relating to the treatment or care of employees; relating to use of evidence-based treatment guidelines; relating to prescribing or dispensing a controlled substance to an employee for a compensable injury; relating to workers' compensation prehearings; relating to the filing of claims for workers' compensation benefits or petitions for other relief; relating to the burden of proof and credibility of witnesses in workers' compensation matters; relating to attorney fees; relating to the filing of a verified annual report; relating to permanent total disability; relating to temporary total

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 112

SHORT TITLE: WORKERS COMPENSATION;DRUG DATABASE & TEST
SPONSOR(s): SENATOR(s) GIESSEL

04/12/17	(S)	READ THE FIRST TIME - REFERRALS
04/12/17	(S)	L&C, FIN
01/22/18	(S)	SPONSOR SUBSTITUTE INTRODUCED-REFERRALS
01/22/18	(S)	L&C, FIN
02/01/18	(S)	L&C AT 1:00 PM BUTROVICH 205

WITNESS REGISTER

SENATOR CATHY GIESSEL
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of SB 112.

KARI NORE, Staff
Senator Giessel
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided a sectional analysis for SB 112,
version R:

BEN MULLIGAN Vice President
Alaska State Chamber of Commerce
Juneau, Alaska

POSITION STATEMENT: Testified in support of SB 112.

SUSAN REILLY
Alaska Alliance For Retired Americans and
International Association of Machinists (IAM) Local Lodge 601
Fairbanks, Alaska

POSITION STATEMENT: Voiced concern SB 112.

SINCLAIR WILT, Vice President
Westward Seafoods and Alyeska Seafoods
Dutch Harbor, Alaska

POSITION STATEMENT: Testified in support of SB 112.

GARY STRANNIGAN, Lobbyist
Liberty Mutual Insurance
Seattle, Washington

POSITION STATEMENT: Testified in support of SB 112.

CHUCK BRADY, President
Workers' Compensation Committee of Alaska

POSITION STATEMENT: Testified in support of SB 112.

DENA LYTHGOE, Commercial Insurance Broker and Partner
Risk Consulting
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 112.

VINCE BELTRAMI, President
Alaska AFC-CIO
Anchorage, Alaska

POSITION STATEMENT: Voiced concern with SB 112 as currently drafted.

MICHAEL FERRIS, representing self
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 112.

MICHAEL JENSEN, representing self
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 112 as currently drafted.

CHARLES MCKEE, representing self
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 112.

LEE GOODMAN, representing self
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 112.

SHELBY NUENKE-DAVISOR, representing self
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 112.

CLARK D. WILLIAMS, representing self
Fairbanks, Alaska

POSITION STATEMENT: Testified on SB 112 and offered suggestions for the workers' compensation system.

JUSTIN MACK, representing self
Anchorage, Alaska

POSITION STATEMENT: Voiced concern with SB 112.

ERIC CROFT, representing self
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 112.

JOE KALAMARIDES, representing self

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 112.

DAVE JONES, Assistant Superintendent

Kenai Peninsula School District

Kenai, Alaska

POSITION STATEMENT: Testified in support of SB 112.

ELLIOT DENNIS, representing self

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 112.

GINA WANNER, Program Manager for Eberly Vivian Incorporated and

representing Alaska Airlines

Kent, Washington

POSITION STATEMENT: Testified in support of SB 112.

ERIC MCDONALD, representing self

Kenai, Alaska

POSITION STATEMENT: Testified in opposition to SB 112.

BARBARA WILLIAMS, representing self

Wasilla, Alaska

POSITION STATEMENT: Testified in opposition to SB 112.

FRANCES SEATER, representing self

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 112.

GREG WEAVER, representing self

Wasilla, Alaska

POSITION STATEMENT: Testified in opposition to SB 112.

DARETHA TOLBERT, representing self

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 112.

KEN KASSLER, representing self

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 112.

HEATHER JOHNSON, representing self

Wasilla, Alaska

POSITION STATEMENT: Testified in opposition to SB 112.

ACTION NARRATIVE

[1:01:52 PM](#)

CHAIR MIA COSTELLO called the Senate Labor and Commerce Standing Committee meeting to order at 1:01 p.m. Present at the call to order were Senators Stevens, Gardner, and Chair Costello. Senators Meyer and Micciche arrived shortly.

SB 112-WORKERS COMPENSATION;DRUG DATABASE & TEST

[1:02:28 PM](#)

CHAIR COSTELLO announced the consideration of SSSB 112. She stated that the intention was to hear the introduction and take public testimony.

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SENATOR CATHY GIESSEL, Alaska State Legislature, Juneau, Alaska, sponsor of SB 112 said she appreciates that this is the committee on the economy because that is what the legislation is about. She opined that the bill addresses the questions the committee entertained at the start of the session regarding how to create more jobs, how to train for more jobs, how to boost the economy, and how to innovate. This legislation will leave more resources in the hands of entities that create jobs, hire Alaskan workers, and train Alaskan workers. It will boost the economy by having a healthy workforce and it innovates by recognizing the need for constant change, making adjustments, renewing, and transforming.

[1:04:17 PM](#)

SENATOR MEYER joined the committee.

SENATOR GIESSEL said the history of caring for and protecting workers began in Ancient Greece, Rome, and China. FDR made huge changes through the Federal Employers' Liability Act in the early 1900s. She said the goal today for workers and employers is that nobody gets hurt on the job. She said this issue is both important and urgent. It is urgent for schools that are having to spend money on workers' compensation issues when money needs to be spent on teachers and classrooms. It is urgent because high workers' compensation costs are taking resources that local governments could use to hire more police, clear roads more quickly, and fund schools. She pointed out that the State of Alaska is an employer and consequently its citizens are impacted by the workers' compensation system that allows money to be spent on things that are not focused on the injured worker and getting him/her back on the job. She said we need to move past

the dichotomy that there is a conflict between the worker and the employer because they need each other.

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SENATOR MICCICHE joined the committee.

SENATOR GIESSEL stated that the purpose of SB 112 is to make sure that workers who are injured on the job get healthy and return to work as quickly as possible. The current system isn't doing that. Rather, injured workers are caught in endless treatments and money is diverted to middlemen and lawyers. An example is the Vocational Rehabilitation and Reemployment Program. A study done several years ago found that only 8 percent of injured workers that chose to enter a reemployment training program completed the program; 92 percent didn't feel it was worth finishing and cashed out for between \$50,000 and \$70,000. Injured workers did not get new skills. She noted that there was no data showing whether the 8 percent that finished the program pursued a new career in the field they had been trained.

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She displayed a graph from the Department of Labor and Workforce Development (DOLWD) that shows what the state has spent on rehabilitation from 2006 through 2016. The annual average payments are about \$13 million even though just 8 percent of injured workers in Alaska finish the program. She reported that in 2014 the average medical claim in Alaska was \$62,000. In 2015 it dropped to \$49,000. The 10-year average in Alaska has been \$49,000 whereas the U.S. average is just \$28,500. She said that Alaska has some of the highest medical costs in the country which is both unaffordable and unsustainable.

She directed attention to a graph from the Montana Department of Labor and noted that state ranks 11th in the U.S. for the cost of health care. She pointed out that in 2014 the average medical claim in Montana was about \$44,000 compared to the average 2014 cost in Alaska of \$62,000. At that time Alaska ranked 2nd in the country and is now ranked 5th for cost per medical claim. Another chart from the Alaska DOLWD shows the average medical cost per claim from 2010 through 2015. She explained that the chart calls out the work of a committee under workers' compensation called the Medical Services Review Committee. They looked at the reimbursement for medical claims and in 2015 started price setting. They told providers they wouldn't pay \$3,000 for an MRI, they'd pay \$1,200. They wouldn't pay \$10,000 for a laminectomy, they'd pay \$6,000. She said that's price setting

and she applauds it. She looks forward to seeing the effect of the Medical Services Review Committee's work in terms of bringing down overall medical costs.

SENATOR GIESSEL displayed a DOLWD chart of total compensation payments for medical services for 2006 through 2016. It shows that medical payments totaled \$140 million in 2016. She asked the committee to consider what cutting that number in half would mean in terms of funding more schools and hiring more teachers and police. She emphasized that addressing this is not just important but urgent.

She pointed out that a lot of time and money is spent on conflicts and courtroom time, not care for injured workers. She displayed a chart from DOLWD of legal payments over a ten-year period. It shows that legal payments have trended upward since 2006. Interestingly, the number of workers' compensation injuries have trended down over this same timeframe. She displayed a DOLWD chart of the total compensation payments from 2006 through 2016. It shows that in 2016, \$270 million was spent on workers' compensation payments. She asked the committee to consider what cutting that number in half would mean in terms of filling the fiscal gap. She pointed to a chart from the Montana Department of Labor & Industry that depicts the percent of premium median by state and by the structure of the workers' compensation insurance market in 2016. Alaska tied with Connecticut at 5th highest; only California, New Jersey, and New York were higher.

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SENATOR GIESSEL directed attention to excerpts from the January 2015 report from the Alaska Health Care Commission that has since been defunded. One of the subjects the commission looked at was how to enact changes in the Alaska Workers' Compensation Act to contain medical costs and improve quality of care outcomes. She highlighted that two of the four elements the commission recommended are contained in SB 112. [These are (a) evidence-based guidelines and (c) restrict reimbursement for opioid prescriptions.] She held up a 2004 document from the Worker Compensation Committee of Alaska (WCCA) that identifies key reforms to workers' compensation. Those elements are contained in SB 112. She noted that one of the Alaska Council of School Administrators 2018 joint position statements includes the following:

- The state should continue efforts to control the cost of workers' compensation claims, including

adoption of medical treatment guidelines, improved management of claims and an improved reemployment benefits process.

She said these three elements are contained in SB 112.

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SENATOR GIESSEL said a key feature in SB 112 is to focus on the injured worker using evidence-based treatment guidelines from the American Society of Occupational and Environmental Medicine. These are listed on the federal website for health care research and quality national guideline clearinghouse. These guidelines use the National Academies of Sciences, Engineering, and Medicine recommendations and are identified for used in workers' compensation. This national guideline has a dedicated research team at the University of Utah.

SENATOR GIESSEL advised that the University of Utah is continually reviewing the latest medical research and updating the treatment guidelines for occupational and environmental medicine. Eight states and the U.S. Department of Defense use these guidelines for workers' compensation cases. She disputed the claim that evidence-based treatment guidelines are too restrictive and argued that they facilitate and inform the treating clinician to give the best care. She displayed an algorithm for low back pain and explained that it calls out red flags for the clinician to consider and emergency procedures that might be needed. She highlighted that Kaiser Permanente has integrated these guidelines into their care for employees and beneficiaries in northern California. In the first year the medical treatment savings totaled \$250 million. Texas uses these guidelines and has seen that employees get back to work faster and fully recovered and fewer cases are controverted.

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SENATOR GARDNER asked if the presentation speaks to version R; she was trying to match the language that's referenced with the different sections.

SENATOR GIESSEL said her aide would go through the sectional after the presentation and correct any incorrect sectional references if needed. She noted that the packet also had a quick reference chart for the key topics in version R.

CHAIR COSTELLO clarified for the public that the committee was considering version R; a committee substitute had not been

introduced. The sponsor has indicated that she will alert the committee to changes she suggests going forward.

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SENATOR STEVENS asked who the \$250 million savings was attributed to.

SENATOR GIESSEL said it was Kaiser Permanente, a large managed care group in California that integrated that ACOEM guidelines that appear in SB 112. She clarified that the presentation covered the key elements in the bill; the forthcoming sectional summary would show where each appears.

SENATOR GIESSEL returned to the example of treatment guidelines for low back pain. She explained that the clinician can research related terms and look at workflows and diagnostic criteria. The site also covers questions and options for the clinician to consider should the patient fail to recover. She reiterated that the dedicated research team at the University of Utah updates this information and protocols quarterly. Every two years they look to see that each body unit has been updated and that the document is usable. Emerging evidence is updated immediately.

SB 112 also addresses prescribing controlled substances which is identified in the guidelines. Part of the requirement is that the clinician must notify the employer that the injured worker is on an opioid if they return to work on light duty. The clinician also must document why the opioid was prescribed. The injured worker may also select a pain management specialist to manage their care. She noted that the best-practice guidelines for opioids are very conservative. In 2015 the American College of Environmental Medicine (ACOEM) recommended no more than 50 morphine milligram equivalents for dosing of opioids. A year later the Centers for Disease Control (CDC) adopted that same guideline for opioids.

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SENATOR GIESSEL said the second major piece of SB 112 focuses on making reemployment benefits work. She reminded members that just 8 percent of injured workers who choose to go into a reemployment program finish and 92 percent cash the benefit out. SB 112 proposes moving the reemployment benefit to a voucher. The injured worker chooses the retraining program and the employer either pays for it directly to the education program or reimburses the injured worker who submits an invoice. A vocational rehabilitation specialist would be available for guidance. She said a criticism of the bill is that it fails to

provide a stipend during the voucher process and she invites an amendment to fill that gap.

She discussed the following disability levels addressed in SB 112:

- Temporary total disability benefits (TTDs) are capped at 104 weeks (2 years). Exceptions and an appeal process are available.
- Permanent partial impairment benefits (PPIs) end when the worker returns to work for the same employer and at a wage that is greater or equal to that at the time of the injury.
- Permanent total disability (PTD) ends when retirement or Social Security benefits start. (TTD benefits continue)

She discussed the following elements in SB 112 that focus on curing the injured employee:

- The employee chooses their doctor and may change to a specialist in another specialty if appropriate. Sec 26.
- Recurring injuries are covered.
- The bill provides protections for ongoing medical treatment with medications. Sec. 26.
- Durable medical equipment is provided, but vendors must be accredited through the Centers for Medicare and Medicaid Services to assure quality. Sec. 26 and 33.

[1:33:22 PM](#)

CHAIR COSTELLO asked if the bill sections in the PowerPoint were accurate.

SENATOR GIESSEL said her aide would check.

She clarified that the bill does not terminate appropriate medical treatment after 2 years when it is still needed. She continued to point out that Alaska is the only state that does not cap attorney's fees in workers' compensation. Other states limit attorney fees to 12-20 percent of the total settlement and the fee is part of the settlement. Alaska has no cap and adds the fee on top of the settlement. SB 112 would cap attorney's fees at 25 percent to 35 percent of the settlement depending to the level of adjudication of the case. She said another large feature of the bill moves the adjudication of cases from the Workers' Compensation Board to the Office of Administrative Hearings. This will give a prescribed timeline for the dispute to be heard. Transparent timelines help the worker know when the

case will be settled. The bill also allows for telephonic hearings.

SENATOR GIESSEL reviewed the differences between a hearing officer and an administrative law judge. She reported that there are about 20,000 workplace injuries each year and about 1,200 go through the hearing process. The bill provides that the burden of proof is the clear and convincing standard, the accident must be 50 percent of the cause of the injury, and the evidence must be medically objective. Medical records are admitted and quoted, evidence from both clinicians is given equal weight, and lay testimony is allowed but not to decide factual disputes.

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SENATOR GIESSEL said Alaska is the only state that requires a second independent medical examination (IME) if the worker's physician and the employer's physician disagree on the findings. She said the second IME is time consuming and expensive and the board often throws out the second IME. SB 112 eliminates the second independent medical examination as part of the process.

She addressed criticisms of the bill calling them unfounded. Section 26 clarifies that the bill does not strip workers of their choice of physician. Section 31 clarifies that the Medical Services Review Committee has the same function. Section 26 lays out continuing care for long-term injuries. Unnecessary litigation is prevented through a defined timeline. Alaska Native traditional knowledge would be allowed to treat work injuries if it falls within the medical guidelines. Another criticism is that the bill does nothing for the family of a single worker killed on the job. She pointed out that that's not the intent of the bill.

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SENATOR GIESSEL advised that Section 73 strictly defines an independent contractor to address the ongoing problem of employers who try to avoid the requirement to carry workers' compensation insurance by calling their employees independent contractors.

She summarized that SB 112 is focused on redirecting workers' compensation to focus on the worker, not compensation for middlemen and lawyers. Her goal is to ensure that communities, local governments, schools, state government, private sector, and small employers can continue to have healthy employees that can do the job. She said the bill enjoys wide support from air

carriers, the fishing industry, school administrators, and employers.

CHAIR COSTELLO asked Ms. Nore to walk through a sectional analysis.

[1:47:15 PM](#)

KARI NORE, Staff, Senator Giessel, Alaska State Legislature, Juneau, Alaska, provided the following sectional analysis for SB 112, version R:

She advised that members of the medical community recommend removing Sections 1 and 2 from the bill to ensure that the guidelines for the prescription drug monitoring system are followed.

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At ease

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CHAIR COSTELLO reconvened the meeting.

MS. NORE continued the sectional analysis for SB 112.

Section 3: Amends AS 23.05.067(e) to state that the legislature may appropriate annual service fees and penalties collected to the office of administrative hearings.

Section 4: Amends AS 23.10.620 by adding a new subsection to allow an employer to require an employee to undergo drug testing if the employee has been prescribed a controlled substance under AS 23.30.096.

Section 5: Amends AS 23.30.001 regarding legislative intent relating to workers' compensation.

Section 6: Amends AS 23.30.005(a) relating to the composition of the Alaska Workers' Compensation Board.

MS. NORE advised that the Department of Labor and Workforce Development (DOLWD) recommended removing Section 6.

Section 7: Amends AS 23.30.005(b) to provide that the commissioner may designate hearing officers to serve as chairs of panels for hearing settlement agreements under AS 23.30.012 or claims arising under AS

23.30.015 or 23.30.247 and that the hearings may be telephonic and do not need to be in the judicial district where the injury occurred.

Section 8: Amends AS 23.30.005(c) to remove requirement that the governor appoint members of hearing panels.

Section 9: Amends AS 23.30.005(e) to provide that a member of one judicial district may serve on any hearing panel.

Section 10: Amends AS 23.30.005(g) to require that claims and petitions be heard by the office of administrative hearings on a rotating basis under AS 44.62.

Section 11: Amends AS 23.30.005(h) to require the department to adopt regulations, except on matters over which AS 44.62 controls. Makes conforming changes relating to the role of the office of administrative hearings.

Sections 12-16: Make conforming changes relating to the role of the office of administrative hearings.

Section 17: Repeals and reenacts AS 23.30.010(a) to provide that a compensable injury must be established using relevant objective medical evidence and must be the major contributing cause of any resulting condition, disability, or need for medical treatment. Provides that subjective complaints must be confirmed by physical examination or diagnostic testing.

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Section 18: Amends AS 23.10.010 by adding new subsections relating to proving an injury arising out of and in the course of employment.

Sections 19-23: Make conforming changes relating to the role of the office of administrative hearings.

Section 24: Repeals and reenacts AS 23.30.041 relating to rehabilitation and reemployment benefits of injured workers and establishes a reemployment voucher program.

Section 25: Makes conforming changes relating to the role of the office of administrative hearings.

Section 26: Amends AS 23.30.095(a) to require that the employer furnish medical treatment in accordance with evidence-based treatment guidelines. Allows employer or insurer to request a third party to conduct a utilization review for treatment recommended outside of the evidence-based treatment guidelines. Provides that if medical treatment is recommended two years after the date of injury, the employee may not be afforded the presumption of compensability but that the injured will have a right to review by the office of administrative hearings. Allows the employer to designate a different attending physician. Restricts medical treatment allowed after an additional two years of continued treatment to certain devices, prescriptions, and services.

Sections 27-32: Make conforming changes relating to the role of the office of administrative hearings, eliminates board authority to adopt treatment frequency standards, allows suspension of compensation for refusal of appropriate diagnostic tests, requires, in certain circumstances, submission to examination by a mental health provider, and requires palliative care after medical stability to be consistent with evidence-based treatment guidelines.

Section 33: Amends AS 23.30.095 by adding new subsections relating to payment for durable medical equipment, prosthetics, orthotics or supplies and prescription drugs.

Section 34: Amends AS 23.30 by adding AS 23.30.096 relating to prescribing or dispensing controlled substances to employees.

Section 35: Amends AS 23.30.097(d) to state that payment for medical treatment is not due immediately or on demand, it is due within 30 days after the employer receives the provider's bill and a completed report.

[1:53:03 PM](#)

Section 36: Amends AS 23.30.097(g) to add that an employer shall reimburse an employee's prescription

charges within 30 days after the employer receives the employee's request for reimbursement.

Sections 37-39: Make conforming changes relating to the role of the office of administrative hearings, replaces the term disability, and removes exceptions for disclosure of a record to certain physicians and to the board or commissioner.

Section 40: Amends AS 23.30.108 relating to prehearings, discovery, and protective orders to require those requests and hearings be conducted by the office of administrative hearings.

Section 41: Amends AS 23.30.110(a) to require that claims or petitions for relief on all matters, except those under AS 23.30.012 and 23.30.247, be filed with the office of administrative hearings.

Sections 42-47: Make conforming changes relating to the role of the office of administrative hearings.

Section 48: Amends AS 23.30.120(a) to require that an employee establish a preliminary link between employment and resulting condition, disability, or need for medical treatment through objective relevant medical evidence before being afforded the presumptions listed in that subsection.

Section 49: Makes conforming changes relating to the role of the office of administrative hearings.

Section 50: Amends AS 23.30.120 by adding new subsections relating to establishing the preliminary link and presumption under AS 23.30.120(a).

Section 51: Makes conforming changes relating to the role of the office of administrative hearings.

Section 52: Amends AS 23.30.122 by adding new subsections relating to medical expert and lay testimony.

Sections 53-62: Make conforming changes relating to the role of the office of administrative hearings.

Section 63: Repeals and reenacts AS 23.30.145 governing the award and payment of attorney fees.

Section 64: Makes conforming changes relating to the role of the office of administrative hearings.

Section 65: Amends AS 23.30.155(j) to allow 20 percent of unpaid installments to be withheld when the only benefit remaining is a lump-sum payment of permanent partial impairment benefits or upon approval of the office of administrative hearings.

Section 66: Amends AS 23.30.155(m) to repeal the \$1,000 civil penalty when an annual report is incomplete when filed.

Sections 67-68: Make conforming changes relating to the role of the office of administrative hearings.

Section 69: Amends AS 23.30.180 to provide that permanent total disability claims will be paid until the employee begins receiving social security, pension, or other retirement benefits.

[1:56:09 PM](#)

Section 70: Amends AS 23.30.185 to provide that temporary total disability claims may not be paid for more than an aggregate total of 104 weeks for each claim.

Section 71: Amends AS 23.30.190 by adding a new subsection to provide that an employee who returns to work for the same employer in a position that pays a wage equal to or greater than that paid at the time of injury is not eligible to receive permanent partial impairment benefits.

Sections 72-74: Make conforming changes relating to the role of the office of administrative hearings.

Section 75: Amends AS 23.30.230(a) to provide a definition of "independent contractor."

Section 76-77: Make conforming changes relating to the role of the office of administrative hearings.

Sections 78-80: Amend the definitions of "arising out of and in the course of employment" and "attending physician" and adds the definition of "office of administrative hearings."

Section 81: Amends AS 44.64.030(a) to add AS 23.30 to list of statutes that the office of administrative hearings has jurisdiction over.

Section 82: Repeals AS 23.30.005(f) (relating to a quorum for a hearing panel), 23.30.095(b) (relating to the designation of a physician), 23.30.095(i) (making interference with selection of a physician or improper influence of a medical opinion a misdemeanor), 23.30.095(k) (relating to a second independent medical evaluation), 23.30.110(g) (relating to submission to a physical examination), 23.30.135(a) (relating to procedure before the board), 23.30.155(h) (relating to the board's authority), 23.30.224(b), (e), and (f) (relating to coordination of benefits and employer's liability for payment under AS 23.30.041(k) (also repealed)).

Section 83: Adds an applicability provision that states that secs. 6-82 of the Act apply to claims for injuries filed on or after the effective dates of those sections.

Section 84: Adds a transition provision relating to the transition of claims from the Alaska Workers' Compensation Board to the office of administrative hearings.

Section 85: Adds a transition provision allowing the Department of Labor and Workforce Development and the office of administrative hearings to adopt regulations necessary to implement the changes made by the Act.

Section 86: Provides for an immediate effective date for sec. 85.

Section 87: Section 1 of this Act takes effect of the effective date of Sec. 38, ch. 2, SSSLA 2017.

MS. NORE advised that Section 87 would be removed per the removal of Sections 1 and 2 of the bill.

[1:59:07 PM](#)

SENATOR STEVENS asked if the intention was to remove Sections 1, 2, and 6.

MS. NORE said that's correct.

CHAIR COSTELLO said she had several questions and would prefer that Ms. Nore follow up with written answers to provide more time for public testimony.

SENATOR GARDNER said she would write her questions and submit them to the chair, but she did want to know the ultimate effect of the multiple repeals in Section 82.

MS. NORE referenced a chart that lists the repealers and noted that two in Section 82 are unintended and will be removed. She explained the following repealers:

- AS 23.30.005(f) relating to a quorum for a hearing panel is removed because hearings will be moved to the Office of Administrative Hearings.
- AS 23.30095(b) relating to the designation of a physician should not have been repealed.
- AS 23.30.095(i) relating to interference with the selection of a physician or improper influencing of a medical opinion also should not have been repealed.
- AS 23.30.095(k) relating to the second independent medical evaluation is the SIME referenced earlier.
- AS 23.30.110(g) relating to the submission of a physical exam is part of the second independent medical exam.
- AS 23.30.135(a) removes overly broad language regarding the board procedure and moving hearings to the Office of Administrative Hearings.
- AS 23.30.155(h) relating to the board's authority also has to do with the second independent medical exam.
- AS 23.30.224(b), (e), and (f) relating to the coordination of benefits and employers' liability for payment under AS 23.30.041 is being repealed because it referred to AS 23.30.041, the repeal and reenact reemployment benefit section. AS 23.30.041(k) in previous statutes would not exist in this bill so those sections must be repealed.

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SENATOR STEVENS offered his perspective that the first legislature in 1959 got wrapped around the axle on workers'

compensation and it's been an issue since then. He said he appreciates the opportunity to think about it.

CHAIR COSTELLO opened public testimony on SB 112 and asked each testifier to limit their comments to two minutes.

[2:04:01 PM](#)

BEN MULLIGAN, Vice President, Alaska State Chamber of Commerce, Juneau, Alaska, said the Alaska Chamber is a nonprofit that was founded in 1953 to promote a positive business environment in Alaska. It is a voice for small and large businesses and their member companies employ over 100,000 Alaskans. He stated that workers' compensation reform has been a priority of the Alaska Chamber for over a decade. While the Alaska Chamber supports the entire bill, the primary factors are to reduce medical costs and improve medical outcomes. Implementing the evidence-based guidelines is important in reaching those goals. It will help the worker return to work faster and healthier and reduce employer costs. Moving some of the dispute process to the Office of Administrative Hearings and capping attorney fees are also important elements. Hearings conducted by administrative law judges will be more impartial than the current system. Moving to a voucher system for reemployment benefits will ensure that the money is paying for retraining instead of being cashed out. He concluded saying the Alaska Chamber supports the sponsor's efforts to reform workers' compensation. It's important to Alaskans.

[2:07:42 PM](#)

SUSAN REILLY, representing the Alaska Alliance for Retired Americans and the 700 members of the International Association of Machinists (IAM) Local Lodge 601, Fairbanks, Alaska, voiced concern with SB 112. She reminded members that the initial intent of workers' compensation was based on a grand bargain between workers and employers. That bargain was that an injured worker would be made whole and allowed to return to work in return for not suing the employer. She said her concern is that there has been no worker involvement in the growth and development of SB 112. "You need to get the working people of the state also involved in the conversation, hopefully those who have been through the workers' comp process," she said. Until that happens the members of local 601 and the Alliance for Retired Americans (who are concerned about what happens to injured workers at retirement) are unlikely to support SB 112.

[2:09:25 PM](#)

SINCLAIR WILT, Vice President, Westward Seafoods and Alyeska Seafoods, Dutch Harbor, Alaska, testified in support of SB 112. He advised that during the peak season these processors employ more than 1,000 employees. He stated support for evidence-based treatment for injured employees, a voucher system for vocational rehabilitation, and limiting attorney fees.

2:11:22 PM

GARY STRANNIGAN, Lobbyist, Liberty Mutual Insurance, Seattle, Washington, thanked the committee for hearing the bill and commended Senator Giessel for the work she's done on SB 112. He expressed hope that the measure would be enacted so that workers and employers could begin to realize its benefits.

2:12:35 PM

CHUCK BRADY, President, Workers' Compensation Committee of Alaska and Workers Compensation Manager for the Arctic Slope Regional Corporation, testified in support of SB 112 on behalf of WCCA. He thanked Senator Giessel for taking on workers' compensation. He said he's been in this business long enough to recall that workers' compensation used to be a very small item on the profit and loss statement. It has since ballooned to a very large item on the P&L and is a huge issue for employers trying to stay profitable. It's such a large expense that for many small employers it can be the difference between being able to stay in business or not able to stay in business. He pointed out that the bill doesn't take anything away from workers and employers, it contains costs. In 2000 Alaska was ranked 24th or 25th in the country for costs for insuring for workers' compensation. In four years Alaska ranked number one, all because of medical costs. He stated support for implementing the evidence-based treatment guidelines, the voucher system for vocational rehabilitation, and capping attorney fees. He urged the committee to move SB 112 from committee.

2:15:38 PM

DENA LYTHGOE, Commercial Insurance Broker and Partner, Risk Consulting, Anchorage, Alaska, stated support for SB 112. She said she daily has conversations with a wide range of clients who have the common concern about the cost of workers' compensation and how to fix the issue. She explained that workers' compensation is one of every employer's largest expenses and the riskier the job the higher the rate per 100 in payroll. She described the experience modification each employer is assigned and provided an example to illustrate how an injured worker claim can result in an employer's premiums doubling for three years. At the end of the three years that employer told

her he was thinking about closing his doors. That would result in 9-11 employees losing their job, an out of work employer, and all the pass-through purchasing from other Alaska business would cease. She said SB 112 addresses ways to reduce claim costs through evidence-based treatment guidelines, attorney fee reductions, and a voucher system. Such measures will help businesses succeed and hire more Alaskans.

[2:19:17 PM](#)

VINCE BELTRAMI, President, Alaska AFC-CIO, Anchorage, Alaska, said he serves on the Workers' Compensation Medical Review Committee that has addressed many things to contain medical costs and charges in a way that includes all stakeholders. He opined that their efforts have bent the cost-curve a little. He agreed that aspects of workers' compensation need to be addressed, but he was very disappointed with SB 112. It radically redefines the basic arrangement that guides the system by tilting the balance in favor of employers and against workers while creating legal uncertainty and potential constitutional issues for the state. He agreed with Ms. Reilly that the workers' compensation system is intended to be a grand compromise. He characterized the proposed legislation as unbalanced, potentially legally vulnerable, incomplete, unclear, and arbitrary. He stated that the 50,000 AFL-CIO workers he represents in Alaska are opposed to SB 112 in its current form, but he looks forward to working on ways to improve the system.

[2:22:35 PM](#)

MICHAEL FERRIS, representing self, Anchorage, Alaska, said he has a small business called Alaska Enterprise Solutions. He has 10 employees and is thankful he has never had an injury or claim. It would be financially devastating if the workers' compensation premiums increased dramatically. He said he strongly supports SB 112 and like most Alaskans would like to see the current system reformed. He cited high attorney fees that aren't capped, the high cost of a second independent medical opinion, and the benefit cash out option as problematic. He said he looks forward to the common-sense savings in SB 112 becoming the new standard for workers' compensation in Alaska.

[2:24:43 PM](#)

MICHAEL JENSEN, representing self, Anchorage, Alaska, said he has been representing injured workers in Alaska for 34 years. He listed the broad variety of injuries he has represented and said that as currently drafted none of those workers would be able to successfully pursue a disputed claim because the standard of proof is so difficult to overcome. If they were able to

establish a claim the medical treatment would be limited to two years. An additional two years of treatment would only be available if they could prove by clear and convincing evidence that their condition warranted continued medical care. That standard is equivalent to a criminal standard beyond a reasonable doubt. If the insurance company has a doctor who disagrees with the treating physician, the worker would never be able to overcome that burden. He disagreed with the sponsor's example of attorney fees on a \$3 million settlement and pointed out that defense legal fees account for two-thirds of the \$15,000 spent annually on legal fees for workers' compensation. He maintained that it's difficult to find attorneys to represent claimants because the fees don't adequately compensate in most cases. He urged the committee to hold the bill.

[2:28:01 PM](#)

SENATOR GARDNER asked if he could provide a reference for the attorney fee schedule.

MR. JENSEN explained that under the current system attorney's fees are calculated at 10 percent of what is awarded to the injured worker. The attorney does not get paid unless he/she is successful in getting the benefits to the injured worker. The statutory minimum is 10 percent. If that does not meet the work the claimant's attorney incurred in prosecuting the claim, the attorney is free to request an hourly rate. The Alaska Workers' Compensation Board must approve the rate. The board consists of members from industry and labor whereas SB 112 shifts the decision making to government bureaucrats.

[2:29:24 PM](#)

CHARLES MCKEE, representing self, Anchorage, Alaska, testified on SB 112 and voiced concern that the State of Alaska subjugated his claim with his Social Security account.

CHAIR COSTELLO asked if he supports the bill.

MR. MCKEE answered "No."

[2:32:51 PM](#)

LEE GOODMAN, representing self, Anchorage, Alaska, said he's had a license to practice law for close to 30 years and recently started a small practice representing injured workers in workers' compensation claims. He said he would like clarification on the employer's right to choose an attending physician. The sponsor indicated that is an error in the reading of the bill, but he heard the aide say that again when she went

through the sectional analysis. Two other points he wanted to discuss were the burden of proof and attorney fees.

He pointed out that the clear and convincing standard seems to conflict with the presumption of compensability. He questioned how there can be a presumption that the worker is covered under workers' compensation and then say the insurance company doctor has greater weight than the treating physician. Regarding attorney fees he said the fees owing to claimants' attorneys are not huge right now, and under the bill attorneys wouldn't be able to make a living practicing claimant's law. He listed the wide range of injured workers he has represented and said the thing they have in common is that their benefits were controverted, usually owing to a negative IME report from the employer's physician that conflicts with the treating physician. He maintained that none of his clients are trying to game the system; they want to return to work. Further, he doesn't know any claimant attorneys who take cases they don't believe in.

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At ease

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CHAIR COSTELLO reconvened the meeting and suggested people submit their comments in writing if they feel they need more time to make their points.

[2:38:42 PM](#)

SHELBY NUENKE-DAVISON, representing self, Anchorage, Alaska, said she has been a workers' compensation defense attorney for many years. She applauded the sponsor for taking workers' compensation on in a very innovative way. She said the idea of workers' compensation was for an employee and employer to agree that the employee wouldn't sue, and their work-related injuries would be paid without having to go to court. However, the bargain has gone against the employer. The board and courts broadly interpret "a substantial factor" and even preexisting conditions and aggravated symptomatology are deemed work related. Benefits are paid on cases that wouldn't stand up in court. She said she applauds the substantial cause and clear and convincing standard. Oregon has taken this approach. Employees still have the presumption of compensability that has to be rebutted by the employer. She said she applauds using the clear and convincing evidence standard at the third stage of the analysis and moving the hearings to an administrative law judge. She said she would submit additional comments in writing.

[2:41:07 PM](#)

CLARK D. WILLIAMS, representing self, Fairbanks, Alaska, said he's read the workers' compensation statutes and the law as written does not resemble the way the law is practiced. For example, the minimum necessary has been interpreted as anything and everything. He said it's been his experience that workers' compensation has become a tool of retaliation by some employers, which is a clear abuse of civil rights. He said insurance company doctors are unimpeachable and their decisions are not reviewed by the board. Further, no state or federal agency reviews abuses of the workers' compensation process. He shared that he withdrew his workers' compensation claim under physical duress after spending \$5,000 on attorney fees. His medical IME was sent via email from an account that was hacked. Workers' Compensation did not investigate and did not take responsibility. He maintained that he was abused by the system. He suggested the committee take time to talk to workers because the bill doesn't address that. He further suggested the need to conduct exit interviews of injured workers, actuarial review of accident victims' mortality rates from suicide to criminal assault, and non-related stress injuries. He said he'd like to see a federal review of the system.

[2:44:28 PM](#)

JUSTIN MACK, representing self, Anchorage, Alaska, said he's a firefighter in Anchorage and is testifying to express concern with SB 112. He said he believes there is room to improve the workers' compensation process, but SB 112 is not a solution that benefits all parties. He opined that SB 112 creates a reduced benefit for Alaskans and shifts an imbalanced burden of proof to the injured worker. The bill changes the hearing process from a three-member panel that includes labor and industry to a one-person panel with narrow parameters in which to hear a case. SB 112 also limits compensation to the injured worker's counsel by assigning attorney's fees to a percentage of the awarded benefit rather than the actual cost, which makes it difficult for injured Alaskans to get legal counsel. He concluded that the system could be improved in a way that benefits the state and its workers, but SB 112 doesn't do that.

[2:47:01 PM](#)

ERIC CROFT, representing self, Anchorage, Alaska, stated that workers' compensation rates in Alaska have been going down for over a decade. He related a story about a client who was shot at work to illustrate how provisions in SB 112 would work against her. Section 70 limits temporary total disability (TTD) to two years and she was recovering for a lot longer than that. He

noted that the sponsor said there are exceptions, but the plain language says more than 104 weeks is barred. Second, medical care becomes much more difficult after two years and she was in mid recovery at that time. Section 26 says a person can get up to an additional two years of medical treatment upon clear and convincing evidence, but it's limited to certain devices, prescriptions, and services. If it's not listed in that section, it's not covered. Under SB 112 his client would not have gotten the additional surgeries she needed to restore a semblance of her prior lifestyle. Section 26 also provides that the employer or insurer may designate a different attending physician. He said there are many more, but those three provisions would have been catastrophic for his client. He said he would send written comments and urged the committee to hold SB 112.

[2:50:37 PM](#)

JOE KALAMARIDES, representing self, Anchorage, Alaska, said he's practiced law for many years and has watched the worker's compensation process since the 1970s. What used to happen when change was requested was that the unions and the Workers' Compensation Commission would get together and come up with a compromise if necessary. He said he didn't see any opportunity for compromise in SB 112. In fact, testimony from the unions indicates that they weren't asked to give any input until today. He noted that changes that were made to the process in 2005 were still being argued in court to try to figure out what they meant.

He said he had three specific points to make and would submit additional written comments. First, he questioned the purpose of referring cases to an administrative law judge when the current panel is well-balanced and working. It has representation from management, labor, and a workers' compensation hearing officer who is a member of the bar association. By comparison, administrative law judges cover a lot of different subjects, don't have the background to look at workers' compensation cases, and are already overworked. He said the second point related to the treating physician and he would leave that discussion to Mr. Croft. He also pointed out that the burden of proof is problematic because it's very difficult to prove the major contributing cause, particularly for older workers. The bill appears to shift the grand compromise referenced earlier that protects both the employer and employee in favor of the employer. It may be a problem to sort that out in court, he said.

[2:54:57 PM](#)

DAVE JONES, Assistant Superintendent, Kenai Peninsula School District, Kenai, Alaska, said he was testifying in support of SB 112 and wanted to thank the sponsor and her staff for bringing the bill forward. He said that when workplace injuries occur, the employer's objective is to provide medical treatment, so the employee can be healed and return to work in an expedient and cost-efficient manner. He opined that the current system is neither expedient nor cost-efficient. SB 112 will help correct that. He opined that using the evidence-based treatment guidelines in conjunction with the predetermined medical fee schedules will lead to lower medical costs. The bill will free dollars currently being spent on higher than needed medical and legal fees, so they can be used in the classroom where they belong.

[2:56:42 PM](#)

ELLIOT DENNIS, representing self, Anchorage, Alaska, said he has been practicing law for over 40 years and has represented both injured workers and insurance companies. He characterized SB 112 as very bad for injured workers. Because many of the points had been covered, he said he would endorse the statements of Eric Croft, Joe Kalamarides, Vince Beltrami, and Michael Jensen. However, one point that hasn't been made is what happens when the injured worker is cut off and is shifted to Medicare or doesn't receive treatment at all. Sometimes they end up homeless. He said he has dealt with multiple individuals who were hurt on the job and all they wanted was to get fixed and back to work. The insurance companies bring doctors from out of state to give an independent medical examination. His clients have said the exam takes about 15 minutes and their claim is denied. The IME reports frequently are the same from client to client. He said the system needs fixing, but SB 112 does not do that. He suggested that the employees and employers get together and hammer out changes that are needed and will actually reduce costs.

[2:59:56 PM](#)

GINA WANNER, Program Manager, Eberle Vivian Incorporated said her firm handles the self-insured program for Alaska Airlines and she was speaking in support of SB 112. She noted that Alaska Airline sent a separate endorsement for SB 112. She opined that many of the sections in the bill are paramount, but of primary importance are the clear and convincing evidence standard, the evidenced-based treatment, and the voucher system. Other jurisdictions use the proposed standard of proof and showing a substantial cause being more than 50 percent of the cause has become a standard measure of determining compensability. Using

the evidence-based medicine guidelines is also the wave of the future, she said. Importantly, it's a benefit to both the employer and the worker because it defines care and provides known parameters for all parties. She said her company's experience is that people do not proceed through the reemployment process successfully, so the voucher system is more equitable and appropriately timed. The current system inserts the vocational process much too early. On behalf of Alaska Airlines and Eberle Vivian, she asked the committee to support SB 112.

[3:02:53 PM](#)

ERIC MCDONALD, representing self, Kenai, Alaska, said he was hurt on the job several years ago and sustained permanent injuries. From that perspective he was speaking in complete opposition to SB 112. He said he believes that most injured workers are like him; they just want to get better. He shared that he has gone through four independent medical examinations and he views that as an unnecessary cost. He urged people to be leery of some of the things that have been stated about the bill. He pointed out that the bill doesn't focus on the worker, it's weighted in favor of the insurance company and profit. He urged the committee to hold SB 112.

[3:07:33 PM](#)

BARBARA WILLIAMS, representing self, Wasilla, Alaska, said she has assisted injured workers for 20 years and has observed that these important stakeholders are often left out of the process when changes are made to the system. She emphasized that the proposed changes will hurt injured workers, making medical care unavailable and most importantly, taking away legal counsel when benefits are denied. Cost containment is important but not at the cost of worker's compensation and workers generally.

MS. WILLIAMS said attorney compensation across the country has been going down for the past five years. She wondered whether capping fees would apply only to attorneys who represent workers and if defense costs were included in the litigation numbers from DOLWD. She noted that attorneys working for employers can collect fees from the inception of the claim, whereas injured worker's attorneys are paid after claims are contested and only for indemnity. Also, defense attorneys who work for insurers get dollar-for-dollar billing, can negotiate fees with employers, and have more contributions than the cost of workers' compensation litigation compared to plaintiff attorneys.

She stated that in California and other states lay advocates are trained and paid to represent injured workers, whereas in Alaska lay people who assist injured workers receive little compensation. Currently the state does not have enough legal assistance for workers and employers equally. She asked if the cost of independent medical evaluators who work for employers are included in the cost analysis.

MS. WILLIAMS said workers' compensation boards have long allowed employers to spend what they want for employer medical evaluations while medical providers for injured workers have been subject to a strict and sometimes unenforceable fee schedule. Currently 47 SIME physicians are not subject to a fee schedule. Injured workers cannot hire expert physicians due to cost and because of the way the regulation has been interpreted, it's not really an option. She questioned whether those costs were considered in the cost containment effort. Workers have great difficulty getting legal counsel in part because plaintiff attorneys are subject to capped fees while employers are held to an entirely different standard. There are no attorneys that provide legal services to providers when they have disputed claims.

MS. WILLIAMS said rehabilitation and the voucher system looks great for workers, but it is not. Current rehabilitation of workers and the program needs a lot of attention. Workers have not seen increases in rehabilitation costs in the past 17 years and they lose important retraining benefits if they cannot get back to the job they had at the time of injury. Taking back the stipend benefits at the time of retraining means injured workers cannot support themselves and their families. They have no financial security while they go to school, which severely limits their options.

MS. WILLIAMS said there needs to be a better working relationship between the board and the rehabilitation specialist. Also, referring unfair and frivolous controversions to the Division of Insurance for process investigation doesn't fix the problem. For the past 18 years, since the audit of the Worker's Compensation Program in 2000, there have been no referrals to the Division of Insurance. Further, there is zero oversight on self-insured programs and there is no one to complain to if someone is not getting essential benefits.

CHAIR COSTELLO asked Ms. Williams to submit her comments in writing.

[3:14:58 PM](#)

FRANCES SEATER, representing self, Anchorage, Alaska, advised that she treats injured workers and was testifying to encourage the committee to reject SB 112. She said providers take a risk accepting workers' compensation cases because those are often referred to non-plaintiff care physicians for IMEs and second IMEs out-of-state. Too often the results are discouraging. This interferes with the continued care of injured workers and makes it increasingly difficult for the point of care physician to continue medically-based treatment plans. She expressed concern that the disputed claims process was too complex, and that SB 112 would cause a broken system to become more broken. She maintained that limiting medical care to two years was disrespectful to point of care physicians, that a new clear and convincing standard was not needed, and that allowing insurers to pick the doctor further stacks the deck against the worker. She reiterated her suggestion to reject SB 112.

[3:17:44 PM](#)

GREG WEAVER, representing self, Wasilla, Alaska, testified in opposition to SB 112. He related that he was hurt on the job about 4.5 years ago and his employer was self-insured. He was assigned a nurse case manager and things went downhill. His case was controverted and after he lost all benefits he subsequently lost his family, home, and vehicles. He said he believes that the workers' compensation deck is stacked completely against the worker. He concluded saying that "There are a lot of us at Bean's Cafe, there are a lot of us who have fallen through the net because there is no safety net for us."

[3:22:30 PM](#)

DARETHA TOLBERT, representing self, Anchorage, Alaska, said she is in the same boat as the previous testifier. Until four years ago she worked and was self-sufficient. She drew workers' compensation benefits for just four weeks when she was controverted. She was sent back and controverted again and now she's being sent out of state. She emphasized that this is not cost-effective and urged the committee to hold SB 112 because it does not benefit the injured worker.

[3:24:38 PM](#)

KEN KESSLER, representing self, Anchorage, Alaska said he has a few concerns relating to the independent medical examination. "I can clearly prove that the IME providers have been paid off or they have lied. As well as SIME providers, the same thing." He asked if there was any kind of background check for these providers to ensure they're ethical. He said he was forced into

training before he had surgery. Since the surgery both his providers and the insurance providers state that he can return to work, but he's not entitled to retraining because it is only offered once. He agreed with the last two testifiers that SB 112 was detrimental and should not pass.

[3:27:06 PM](#)

HEATHER JOHNSON, representing self, Wasilla, Alaska, stated that she was absolutely opposed to SB 112. She said the sponsor's intention is good, but she is only getting input from one side and is missing the larger picture. She maintained that there was corruption in the workers' compensation system and suggested that insurance companies should be required to provide all the medical records. That would reduce SIME costs.

[3:29:06 PM](#)

CHAIR COSTELLO closed public testimony on SB 112 and held the bill in committee.

[3:29:28 PM](#)

There being no further business to come before the committee, Chair Costello adjourned the Senate Labor and Commerce Standing Committee meeting at 3:29 p.m.