

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 16, 2020

1:32 p.m.

MEMBERS PRESENT

Senator John Coghill, Chair
Senator Peter Micciche, Vice Chair
Senator Shelley Hughes
Senator Jesse Kiehl

MEMBERS ABSENT

Senator Lora Reinbold

COMMITTEE CALENDAR

SENATE BILL NO. 76

"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), 602(c) and (h), and 603(a), Alaska Rules of Appellate Procedure; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 8

"An Act restricting the release of certain records of convictions; amending Rule 37.6, Alaska Rules of Administration; and providing for an effective date."

- HEARD & HELD

SENATE JOINT RESOLUTION NO. 13

Proposing an amendment to the Constitution of the State of Alaska relating to abortion.

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 76

SHORT TITLE: REPEAL WORKERS' COMP APPEALS COMMISSION

SPONSOR(s): SENATOR(s) WIELECHOWSKI

03/06/19 (S) READ THE FIRST TIME - REFERRALS
03/06/19 (S) L&C, JUD, FIN
01/28/20 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
01/28/20 (S) Heard & Held
01/28/20 (S) MINUTE(L&C)
01/30/20 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
01/30/20 (S) Heard & Held
01/30/20 (S) MINUTE(L&C)
02/11/20 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
02/11/20 (S) Moved CSSB 76(L&C) Out of Committee
02/11/20 (S) MINUTE(L&C)
02/12/20 (S) L&C RPT CS 3DP SAME TITLE
02/12/20 (S) DP: BISHOP, STEVENS, REVAK
03/13/20 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/13/20 (S) Scheduled but Not Heard
03/16/20 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 8

SHORT TITLE: ACCESS TO MARIJUANA CONVICTION RECORDS

SPONSOR(s): SENATOR(s) BEGICH

01/16/19 (S) PREFILE RELEASED 1/7/19
01/16/19 (S) READ THE FIRST TIME - REFERRALS
01/16/19 (S) JUD
01/25/19 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
01/25/19 (S) Heard & Held
01/25/19 (S) MINUTE(JUD)
03/04/20 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/04/20 (S) Heard & Held
03/04/20 (S) MINUTE(JUD)
03/06/20 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/06/20 (S) Scheduled but Not Heard
03/16/20 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SJR 13

SHORT TITLE: CONST. AM: PROHIBIT ABORTION/FUNDING

SPONSOR(s): SENATOR(s) HUGHES

01/21/20 (S) READ THE FIRST TIME - REFERRALS
01/21/20 (S) HSS, JUD, FIN
02/26/20 (S) HSS AT 1:30 PM BUTROVICH 205
02/26/20 (S) Heard & Held
02/26/20 (S) MINUTE(HSS)
03/06/20 (S) HSS AT 1:30 PM BUTROVICH 205

03/06/20 (S) Moved SJR 13 Out of Committee
03/06/20 (S) MINUTE(HSS)
03/09/20 (S) HSS RPT 3DP
03/09/20 (S) DP: WILSON, SHOWER, GIESSEL
03/09/20 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/09/20 (S) Heard & Held
03/09/20 (S) MINUTE(JUD)
03/11/20 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/11/20 (S) Heard & Held
03/11/20 (S) MINUTE(JUD)
03/13/20 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/13/20 (S) Heard & Held
03/13/20 (S) MINUTE(JUD)
03/16/20 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

SENATOR WIELECHOWSKI
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as sponsor of SB 76.

NATE GRAHAM, Staff
Senator Bill Wielechowski
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented a sectional analysis for SB 76 on behalf of the sponsor.

MARTHA TANSIK, Attorney
Barlow Anderson, LLC
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 76.

ANDY HEMENWAY, representing self
Juneau, Alaska

POSITION STATEMENT: Testified in opposition to SB 76.

ERIC CROFT, Attorney
Croft Law Office
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 76.

MICHAEL BUDZINSKI, Attorney
Meschke Paddock Budzinski
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 76.

LAURA BONNER, representing self
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 76.

SENATOR TOM BEGICH
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as sponsor of SB 8.

ALEX JORGENSEN, Staff,
Senator Tom Begich
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Reviewed the changes in Version S of SB 8.

LACEY WILCOX, President
Alaska Marijuana Industry Association
Juneau, Alaska

POSITION STATEMENT: Testified in support of SB 8.

KAREN LEWIS, Pro Life Alaska
Wasilla, Alaska

POSITION STATEMENT: Testified in support of SJR 13.

CATHY LAW, representing self
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SJR 13.

SERENA O'HARA-JOLLEY, representing self
Fairbanks, Alaska

POSITION STATEMENT: Testified in opposition to SJR 13.

MARCI HAWKINS, representing self
Sutton, Alaska

POSITION STATEMENT: Testified in opposition to SJR 13.

WENDY PERKINS, representing self
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SJR 13.

CHERYL KAJDAN, representing self
Palmer, Alaska

POSITION STATEMENT: Testified in support of SJR 13.

ACTION NARRATIVE

[1:32:21 PM](#)

CHAIR JOHN COGHILL called the Senate Judiciary Standing Committee meeting to order at 1:32 p.m. Present at the call to order were Senators Hughes, Kiehl, and Chair Coghill. Senator Micciche joined the meeting shortly thereafter.

SB 76-REPEAL WORKERS' COMP APPEALS COMMISSION

[1:32:59 PM](#)

CHAIR COGHILL announced that the first order of business would be SENATE BILL NO. 76, "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), 602(c) and (h), and 603(a), Alaska Rules of Appellate Procedure; and providing for an effective date." [CSSB 76(L&C) was before the committee].

[1:34:01 PM](#)

SENATOR WIELECHOWSKI, Alaska State Legislature, Juneau, Alaska, speaking as sponsor, stated that SB 76 would save the state \$425,000 per year. He explained that if a worker in this state is injured on the job, the person files a workers' compensation claim. He said the number of claims has diminished over time. In 2018, there were 17,694 reports of injury or occupational illness as compared to 2008 when there were 23,000 reports of injury. Disputes come before the Workers' Compensation Board ("Board") which consists of a hearing officer, typically an attorney, and two representatives, one from organized labor and one from management. Those members are selected by the governor and confirmed by the legislature. Of the 17,694 claims in 2018, the board held 231 hearings. An appeal of a Board decision would go to the Workers' Compensation Appeals Commission ("Commission"). The Board's hearings are down from 255 in 2017, he said.

He reviewed statistics for the number of cases that were appealed to the Commission: in 2019, 19 cases; in 2018, 14 cases; in 2017, 10 cases; which is part of the reason to seek to abolish the Commission. It costs \$425,000 annually to pay for the 10-19 cases the Commission hears. He offered his view that these cases can be absorbed by the superior court. Before 2005, the superior court handled workers' compensation appeals. This bill would send any Workers' Compensation Board appeals to

superior court. Decisions by the Commission are not appealed to superior court, which is an uncommon situation, he said.

SENATOR WIELECHOWSKI said the argument for creating the Workers' Compensation Appeals Commission was that the public would benefit from having a commission with specific expertise in workers' compensation. He argued that these cases are no more complex than family law, mental health issues, or other legal issues that the superior court regularly handles. He opined that the specific expertise claim has not borne out because roughly 50 percent of the Commission's cases that are appealed to the Alaska Supreme Court are reversed. In 2005, at the time the Commission was created, testimony indicated that about 25 percent of the workers' compensation cases decided by the superior court were appealed to the Alaska Supreme Court. He reviewed the percentages of Commission cases that were ultimately appealed to the Alaska Supreme Court: 79 percent in 2018, 80 percent in 2017, and 50 percent in 2016. Another argument in favor of creating the Workers' Compensation Appeals Commission was that cases would be decided more quickly. Per the legislative minutes, a typical case in 2005 took 8 to 18 months to be resolved in superior court. In 2018, the Commission's report indicated that the average case was taking a little over one year.

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SENATOR WIELECHOWSKI reported that similar bills have been introduced, such as the bill that passed the House five years ago, but did not pass the Senate.

[1:40:36 PM](#)

SENATOR WIELECHOWSKI reviewed slide 2, Senate Bill 76.

Repeals the Alaska Workers' Compensation Appeals Commission.

Returns jurisdiction over Workers' Compensation appeal to the Superior Court.

Saves \$425,900 per year

Helps fill the Workers' Compensation budget deficit and make Alaska Workers' Compensation system more solvent.

[1:40:58 PM](#)

SENATOR WIELECHOWSKI reviewed slide 3, a flowchart describing the process, that a worker files a workers' compensation claim to the Workers' Compensation Board (Board), and the process when a party appeals the Board's decision under the current system and under SB 76. Under the current system, Board appeals are heard by the Workers' Compensation Appeals Commission. Previously, Workers' Compensation Board appeals were heard by superior court and if either party appealed the Commission's decision, the case would go before the Alaska Supreme Court. SB 76 would revert to the prior system and abolish the Commission.

[1:42:09 PM](#)

SENATOR WIELECHOWSKI reviewed slide 4, SB 76 Will Save \$425,900 Per Year.

Currently the Commission has 2 full-time employees and pays for commissioners' travel and per diem.

The Court System has submitted a zero fiscal note.

He said that the court system can absorb the case load at no additional cost.

[1:42:25 PM](#)

SENATOR WIELECHOWSKI reviewed slide 5, a bar chart illustrating the number of cases filed and published decisions of the Commission between 2005 and 2019.

The Workers' Compensation Appeals Commission Workload has declined from 49 cases filed and 42 published decisions in 2007 to 22 cases filed and 18 decisions issued in 2019.

He said the number of Workers' Compensation Appeals Commission published decisions have ranged between 10 and 20 cases per year.

[1:43:25 PM](#)

SENATOR WIELECHOWSKI reviewed slide 6, related to the House Department of Labor and Workforce Development Finance Subcommittee, February 25, 2015:

"The Workers' Compensation Appeals Commission is an ineffective division... The Commission during the calendar year of 2013 closed 30 cases for a closure rate of 67 percent with an average time from filing to closure of seven months. This closure rate and average

time for closure is not demonstrably better than the process was before the establishment of the commission."

House Department of Labor and Workforce Development
Finance Subcommittee, February 25, 2015.

[1:44:10 PM](#)

SENATOR WIELECHOWSKI turned to slide 7, the Workers' Compensation Appeals Commission Has Not Closed Cases Faster than the Courts:

The Superior Court took "8 to 18 months" to decide Workers' Compensation Appeals.

It was estimated that the Commission could decide cases in 6 months.

Instead, in 2018 it averaged 371 days (12.2 months) to decide cases.

Sources: Testimony of Paul Lisankie, Director, Division of Workers' Compensation, Senate Labor and Commerce Committee, Marc 10, 2005.

Alaska Workers' Compensation Appeals Commission Annual Report for Calendar Year 2018, March 11, 2019

[1:44:35 PM](#)

SENATOR WIELECHOWSKI reviewed slide 8, SB 76 Will Reduce Appeals to the Supreme Court:

When the superior court handled appeals approximately 25 [percent] of their decisions were appealed to the Supreme Court.

Since the Commission was created in 2005, 45 [percent] of its decisions have been appealed to the Supreme Court.

Since 2011, 71% of Commission decisions have been appealed.

Sources: Testimony of Doug Wooliver administrative attorney, Alaska Court System, Senate Labor and Commerce Committee, March 10, 2005.

Legislative Research Services Report 19-175.

1:44:40 PM

SENATOR MICCICHE pointed out one slide showed the average, but it was not "apples to apples." He asked if he had any idea of the average number of cases for superior court.

SENATOR WIELECHOWSKI answered that this reflects Doug Wooliver's testimony but he could produce the exact testimony. The superior court was taking 8 to 18 months, but Mr. Wooliver did not give an average.

SENATOR MICCICHE suggested that it is likely better than 12.2 months.

SENATOR WIELECHOWSKI responded that the Commission's average is 371 days per its report.

SENATOR COGHILL observed that 6 to 12 months is still better than the superior court's timeframe of 8 to 18 months.

SENATOR WIELECHOWSKI agreed that the point was fair.

SENATOR MICCICHE requested the figures since the superior court is likely more efficient.

SENATOR WIELECHOWSKI agreed to provide them.

SENATOR COGHILL said helping workers is important and he has supported the Commission through the years. Nevertheless, he is open to the discussion, especially if it will save money.

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SENATOR WIELECHOWSKI compared the number of cases appealed to the Alaska Supreme Court. At the time the Commission was created in 2005, about 25 percent of the superior court decisions were appealed. Since the Commission has been created, roughly 45 percent of its cases are appealed. Also, that number has increased to 70 percent since 2011.

CHAIR COGHILL pointed out that it is not possible to project the actual number of cases that would be appealed to the superior court. The Commission has been effective because it has whittled down to the smaller, tougher cases that will get appealed to the Alaska Supreme Court.

SENATOR WIELECHOWSKI offered to provide a breakdown of the number of cases appealed to the Alaska Supreme Court.

[1:48:44 PM](#)

SENATOR WIELECHOWSKI turned to slide 9, which consisted of a bar graph illustrating Workers' Compensation Tax Income is Declining:

- Alaska Workers' Compensation and Safety Program Faces a Growing Budget Deficit - SB 76 Will Help Fill It
- Workers' Compensation and Safety are funded by a tax on Workers' Compensation payments
- These programs cost \$9.1 million annually and are projected to remain flat
- Saving \$425,900 will help close the growing budget gap.

Sources: Legislative Finance Division
Department of Revenue , Revenue sources Book, Fall 2019

SENATOR WIELECHOWSKI stated that in FY 2019, the program cost \$9.1 million and the workers' compensation tax that was collected to fund the Workers' Compensation Safety program was \$8 million. The difference was made up by the general fund.

CHAIR COGHILL recalled that the funds would not actually be saved but would be turned over to the safety program.

SENATOR WIELECHOWSKI responded that the tax that is collected on workers' compensation policies helps to fund the whole system. If there isn't enough money in the system, the gap is made up of general funds. Saving \$425,900 would help close the amount needed from the general fund.

CHAIR COGHILL asked if the goal was to save money for the safety program rather than making the system more efficient. He related his understanding that the safety program needed money, but he did not know that the bill would save any money.

SENATOR WIELECHOWSKI said the projected cost in FY 2021 is flat at \$9.1 million and it has been flat for several years. However, the income is less because of fewer cases and the state has to make up the \$2.5 million gap. If the system costs are \$425,900

less, it reduces the amount of general fund dollars that are needed.

[1:50:56 PM](#)

SENATOR MICCICHE summarized the explanation and asked if this would fill the gap or create a surplus.

SENATOR WIELECHOWSKI explained that there would still be a deficit, but it would be less if \$425,900 was deducted from the overall \$9.1 million program cost. He said the state must make up the difference somehow and one option would be to raise the employer tax.

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SENATOR WIELECHOWSKI reviewed slide 10, Bottom Line:

SB 76 saves \$425,900 annually

Preserves parties' right to have their cases heard in a timely manner

Will reduce appeals to the Supreme Court

Makes Alaska Workers' Compensation system more solvent

[1:52:27 PM](#)

NATE GRAHAM, Staff, Senator Bill Wielechowski, Alaska State Legislature, Juneau, Alaska, presented the sectional analysis for SB 76 on behalf of the sponsor. He read:

Section 1 establishes that the Workers' Compensation Board (Board) shall maintain records of the repealed Workers' Compensation Appeals Commission (Commission). It also establishes that Commission decisions remain as legal precedent unless overturned or modified by the courts.

Section 2 removes references to the Commission.

Section 3 removes a reference to the Commission.

Section 4 removes a reference to the Commission.

Section 5 creates a new AS 23.30.126 governing appeals of Workers' Compensation Board decisions.

Subsection (a) establishes that Board decisions and orders become effective when filed, that these decisions and orders can be modified or reconsidered, and that a party may appeal a decision or order to the superior court.

Subsection (b) establishes that Board decisions and orders are not automatically stayed pending judicial review and establishes the criteria for when a court may issue a stay.

Subsection (c) establishes that factual findings made by the Board shall be conclusive if supported by substantial evidence and that AS 44.62.570 governing administrative appeals shall apply to the appeals of Board decisions.

Subsection (d) allows the director of the Division of Workers' Compensation to intervene in appeals and to file appeals if a party is not represented by an attorney and the case presents an unsettled question of law.

[1:53:57 PM](#)

Section 6 is a conforming amendment to reflect the changes made by Section 5.

Section 7 removes a reference to the Commission.

Section 8 repeals the court rules related to the Commission.

Section 9 repeals the statutes related to the Commission.

Section 10 contains indirect court rule amendments to reflect the changes made by Section 5.

Section 11 establishes which procedures apply to appeals pending before the Commission between June 1 and December 1, 2020.

Subsection (a) establishes that the Commission shall continue to handle cases through December 1, 2019 and that the Commission shall continue all cases pending on December 1, 2020

Subsection (b) establishes that the new procedure in Section 5 does not apply to cases before December 1, 2020.

Subsection (c) establishes that the old statutes apply for appeals of final decisions made by the commission and issued by December 1st.

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Section 12 establishes transitional provisions.

Subsection (a) establishes that starting June 1, 2020 all new appeals of Board decisions shall be filed with the Superior Court under Section 5.

Subsection (b) establishes that appeals of Commission rulings issued by December 1, 2020 shall be filed with the Supreme Court.

Subsection (c) ends the Commission's ability to order reconsideration of cases on December 2, 2020. All outstanding requests for reconsideration pending on that date would be automatically rejected, and any party whose request was denied may appeal their case to the Supreme Court.

Subsection (d) requires the Commission to transfer the files for all pending cases to the Superior Court on December 2, 2020 and to provide the parties 30 days' notice of the transfer of jurisdiction. If the court finds that the records do not meet the requirements of the Rules of Appellate Procedure, it may order the Commission to make necessary changes and resubmit them.

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Section 13 ends the terms of all Commission members on December 31, 2020.

Section 14 makes this act only take effect if the court rule changes in Sections 8 and 10 are adopted.

Section 15 provides a June 1, 2020 effective date.

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SENATOR MICCICHE said the question of whether or not this bill would save money should be settled. He calculated program costs

of \$9.1 million and subtracting \$425,000 results in program costs of \$8.675 million. Since the state currently takes in \$6.4 million, there is actually a savings since \$425,000 less would be needed from the general fund to fill the gap.

SENATOR WIELECHOWSKI agreed and acknowledged that there may be a separate account where that money is kept. He offered to follow up with more specifics on where that money comes from.

[1:58:03 PM](#)

CHAIR COGHILL pointed out that adding 232 cases to the superior court means that the time is shifted. The question is what value is received and if there would there be fewer appeals. He said what would be left is the precedent the Commission sets going forward would be lost.

SENATOR WIELECHOWSKI said his fundamental argument is that the 10 to 20 cases appealed to the Commission were previously handled by the superior court. These cases could be handled by superior court in a reasonable amount of time and result in a savings of \$425,900.

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CHAIR COGHILL opened public testimony on SB 76.

[2:00:22 PM](#)

MARTHA TANSIK, Attorney, Barlow Anderson, LLC, Anchorage, Alaska, said most of her practice is workers' compensation defense. She has been on the receiving end of recent precedent changing decisions so she is not under any illusion that this is a perfect system. Still, she said she was speaking in opposition to SB 76. From her perspective, the concerns about returning first layer appeals to the superior court relate to subject matter complexity, lack of superior court resources, and failure to meet the intent of the Workers' Compensation Act. She said workers' compensation is a nuanced and complex area of law. The statutes have been modified extensively by case law over time, especially since 2005 when the legislature created the current system. She emphasized the importance of having individuals familiar with the Workers' Compensation Act and cases adjudicating the appeal. That familiarity ultimately reduces the likelihood of appeal to the Alaska Supreme Court and increases the likelihood of a consistent body of law. Without that precedential value, there is little incentive to accept the ruling of the superior court. It is easier to anticipate that a change to the superior court, however excellent the practicing judges, would likely result in increased litigation costs and an

overall lack of predictability for practitioners, employers, and employees.

MS. TANSIK said that there is no indication that any other court or judge will be correct any more than the Commission. She offered her view that the increased number of appeals has to do with a major shift in the law that has occurred since 2005. She said it is like comparing apples to oranges when considering the pre and post 2005 appeals when navigating the new set of laws and causation. She also pointed out that the length of time that cases are open is often caused by pro se litigants who want extremely long extensions, not the inability of the Commission to move cases forward. For example, in one case an employee has asked for nearly a year-long extension, which skews the statistics.

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MS. TANSIK turned to the second issue, which relates to a lack of resources at the superior court. The court is stretched thin, even more so than in 2017. Just last week, she set two trials at the superior court and both judges were quite concerned about being called to cover criminal and children in need of aid (CINA) cases, which both have constitutional timeline mandates. One judge was scheduling four months out and the other had his calendar from January through March 2021 completely booked for civil cases. Those delays are not beneficial for injured workers seeking relief, nor for employers and insurers seeking resolution in a timely fashion. She related her understanding that it takes significantly longer for the superior court judges to issue their decisions, which she believes is six months, while the appeals commission has 30 days. In terms of efficiency, the Commission is much faster, she said. The only likely outcome is delay. She expressed concern that workers' compensation cases would be pushed down so superior court judges could address criminal trials. She opined that it is a bit of a fallacy to think that these cases could be incorporated into the court system without the need for additional funds since the system is short staffed and would likely need additional judges to accommodate SB 76.

She said the third point is that nothing in the repeal truly supports the intent of the Workers' Compensation Act, which is quick, efficient, fair and predictable delivery of benefits at a reasonable cost. She related her understanding that one compromise put forth would be to have a subject matter expert designated to the Office of Administrative Hearings, one who could have precedential value. That person might be able to hear

issues in a timely fashion and provide decisions that would allow for the parties to establish predictable delivery benefits. She related her understanding that it would cost a quarter to a third of the budget, which might free up the remainder of the funds for the other purposes mentioned today. She urged members to leave the Commission in place, but if that could not occur, to consider the Office of Administrative Hearings solution to more closely track the legislative intent.

[2:05:36 PM](#)

ANDY HEMENWAY, representing self, Juneau, Alaska, stated that he previously served as an administrative law judge with the Office of Administrative Hearings. During 2015 and 2016, he served as chair of the Workers' Compensation Appeals Commission. He said there has been reference to several policy matters, including the importance of having precedent-setting decisions from the Commission as compared to decisions from the superior court, which are not binding except to the parties of the case. He said that is one important value that would be lost if the cases go to the superior court. He noted that members have heard testimony in prior committees about the value of the Commission for self-represented or pro se litigants. The commission staff provides excellent help to guide them through the process. With due respect, he said that he did not believe the court system could provide the same level of service to self-represented litigants.

MR. HEMENWAY responded to the timeliness issue. He recalled Mr. Wooliver's testimony indicated that the court takes 8 to 18 months to issue decisions, but he did not specifically track timeframes for workers' compensation cases. The superior court has other cases to prioritize. There may be some need to keep the Commission in terms of timeliness, but it would be hard to quantify.

[2:07:59 PM](#)

MR. HEMENWAY turned to the cost of the Commission. He suggested using the actual Commission cost, which is \$323,000. He characterized it as a rather small amount in actual dollars, but also as a percentage of the funding for the Workers' Compensation and Safety program budget. Of the \$9.1 million total cost of the system, just \$323,000 is being expended on the Commission.

He suggested that the sponsor's report of an 80 percent appeal rate of Commission decisions to the Alaska Supreme Court is a misconception because it includes unpublished orders related to

attorney fees, case dismissals, and extensions of time. Actually, in the last five years appeals to the Alaska Supreme Court of published or final Commission decisions has been less than 50 percent. Of those cases, 57 percent were affirmed by the Alaska Supreme Court and 28 percent were reversed.

Further, in terms of cost, the two appeals courts were spending \$7 million as compared to \$323,000 that the Commission spends. A case by case comparison shows there is not much difference in cost. The 666 cases in the Court of Appeals and Alaska Supreme Court cost about \$10,000 per case, whereas the cost per case for the Commission is about \$13,000 per case. That's not a big difference. He said the published decisions per year per judge is 14 for the Court of Appeals and 18 published decisions for the Alaska Supreme Court, which is comparable to the Commission's published decisions.

[2:12:34 PM](#)

ERIC CROFT, Attorney, Croft Law Firm, Anchorage, Alaska, said he submitted written testimony, but would make a few comments in support of SB 76. He offered his view that the Commission has not provided legal clarity. He cited two cases in which the Alaska Supreme Court could not figure out what the Commission meant, but more importantly the Commission in two different opinions used two completely different standards to grant or reject a stay, effectively contradicting itself.

MR. CROFT said it is not necessary to find fault with the Commission to find that the caseload does not justify the level of expenditure. As Mr. Hemenway testified, the Commission issues 14 decisions per year, which is low compared to criminal Court of Appeals. He said the caseload doesn't justify the expenditure.

[2:15:21 PM](#)

CHAIR COGHILL encouraged members to send in written testimony to senate.judiciary@akleg.gov.

[2:15:34 PM](#)

MICHAEL BUDZINSKI, Attorney, Meschke Paddock Budzinski, Anchorage, Alaska, spoke in opposition to SB 76. He said he has practiced workers' compensation law, representing employers, for 36 years. He agreed with Ms. Tansik's reasoning to maintain the Commission.

MR. BUDZINSKI said the Commission has the most experience, with its members having a combined total of 60-80 years of experience

in workers' compensation matters. He compared this to current superior court judges, which he reviewed. He noted that none have practiced in workers' compensation, so they have no practical experience to bring to the appeals. Even if the Alaska Supreme Court disagrees with the outcome, the Commission offers very rational, well-reasoned decisions. He offered his view that the Alaska Supreme Court has its own policy agenda, but it is valuable to see the rationale that the Commission provides. He offered his view that no superior court judge would be qualified to do so. He said that the superior court has large gaps in its knowledge of the workers' compensation system. In his own experience, he has found in arguing cases before the superior court, attorneys must literally explain the workers' compensation system before getting to the merits of a case. The Commission is familiar with workers' compensation terms and is efficient. It is valuable for the Commission to have a three-member panel to discuss matters and arrive at the best decision. The superior court judges cannot get that feedback since no one has that experience. He said he cannot speak to the fiscal concerns, but in terms of the quality of the system, it does not make sense to substitute a panel with substantial experience to one that has none.

[2:19:27 PM](#)

SENATOR KIEHL asked if he said that the Alaska Supreme Court has an agenda regardless of the hearing on workers' compensation issues and, if so, what that might be.

MR. BUDZINSKI said that in his experience the Alaska Supreme Court inserts a policy aspect to decisions. Some cases present matters of policy that must be decided when interpreting the law. The Commission looks more closely to the law to apply the rules that it perceives. The Alaska Supreme Court is much more open to base a decision, in part, on policy considerations compared to the Commission. He said that could be the reason for reversals.

[2:21:09 PM](#)

LAURA BONNER, representing self, Anchorage, Alaska, related that her husband was injured on the job in the 1980s and she supports SB 76. She cited a document on BASIS that indicated that the Commission was found to be "an ineffective division" and according to the fiscal note it would save the state money to do away with the Commission.

[2:22:54 PM](#)

CHAIR COGHILL closed public testimony on SB 76.

[2:23:13 PM](#)

SENATOR WIELECHOWSKI disagreed with the statement that the Commission costs \$323,000 rather than \$425,900, but it would still be worth saving the funds. The Department of Labor & Workforce Development fiscal note dated January 24, 2020 indicates it would save \$425,900. He also argued that workers' compensation cases are no more complex than family, criminal, or trust law.

He reviewed the document in members' packets from Legislative Research Services that reviewed Commission cases that were appealed to the Alaska Supreme Court: in 2011, all 13 published decisions were appealed; in 2012, 15 of sixteen decisions were appealed; in 2013, 11 of 17 cases were appealed; and in 2014, 12 of 15 decisions were appealed. He reported that in the last seven to nine years, 71 percent of the cases were appealed to the Alaska Supreme Court. He argued that it does not provide stability, predictability, timeliness or save in litigation costs when 71 percent of its cases are appealed.

SENATOR WIELECHOWSKI said the superior court handles pro se cases all the time. He suggested that most cases that go before the Commission are ones represented by counsel. He pointed out that litigation is expensive. He countered the comment on unpublished decisions by stating that every judge handles them. According to the Legislative Research Agency, between 2005 to 2108, 115 of 253 published decisions were appealed to the Alaska Supreme Court. Further, even 43 percent would not be a good reversal rate, he said. The Commission functions as an appellate court and the members are good people, but two of three commissioners have zero legal training whereas 100 percent of superior court judges have legal training, he said.

SENATOR WIELECHOWSKI mentioned that this commission overwhelmingly rules in favor of insurance companies at the expense of injured workers, which is documented in Mr. Croft's letter.

[2:30:13 PM](#)

CHAIR COGHILL stated that he would hold SB 76 in committee.

SB 8-ACCESS TO MARIJUANA CONVICTION RECORDS

[2:30:33 PM](#)

CHAIR COGHILL announced that the next order of business would be SENATE BILL NO. 8, "An Act restricting the release of certain

records of convictions; amending Rule 37.6, Alaska Rules of Administration; and providing for an effective date."

CHAIR COGHILL suggested that testifiers could submit their testimony to senate.judiciary@akleg.gov. He solicited a motion.

[2:32:27 PM](#)

SENATOR MICCICHE moved to adopt the proposed committee substitute (CS) for SB 8, work order 31-LS0208\S, as the working document.

CHAIR COGHILL objected for discussion purposes.

CHAIR COGHILL asked the sponsor to review the explanation of changes.

[2:33:10 PM](#)

SENATOR TOM BEGICH, Alaska State Legislature, Juneau, Alaska, stated that the changes in version S were ones that the committee agreed to.

[2:33:45 PM](#)

ALEX JORGENSEN, Staff, Senator Tom Begich, Alaska State Legislature, Juneau, Alaska, reviewed the changes between Version A and Version S:

Explanation of Changes for Senate Bill 8 (31-LS0208)
Version A to Version S:

- Page 1, lines 1-2: Removes reference to Rule 37.6 Alaska Rules of Administration in the title. This is to conform with the removal of section 4 in Version A, the Indirect Court Rule change.
- Page 1, lines 1-2: Removes reference to Rule 37.6 Alaska Rules of Administration in the title. This is to conform with the removal of section 4 in Version A, the Indirect Court Rule change.
- Page 1, line 9: Before "criminal history background": delete the word "a" and insert "certain types of"

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At-ease.

[2:35:05 PM](#)

CHAIR COGHILL reconvened the meeting.

MR. JORGENSEN continued to review the changes in version S.

- Page 1, lines 9-10: Delete "make it more likely" and insert "increase the likelihood"
- Page 1, line 10: Delete "only" and insert "those"
- Page 1, line 11: Amends AS 12.62.160(b)(8) (Release and use of criminal justice information). The new Section 2 of the bill is conforming language to include changes made to new background check policy changed by SB 8.
- Page 1, line 12: Delete "Notwithstanding (b)(8) of this section, an agency may not release records of a criminal case" and insert "An agency may not release criminal history record information"
- Page 2, line 3: Insert new subclause that reads "(2) was 21 years of age or older at the time of commission of the offence;" and renumber subclauses accordingly
- Page 2, line 3: Add the word "criminal" before the word "charges"
- Page 2, lines 6-12: Delete all material and insert:
Sec. 22.35.040. Records concerning criminal cases for marijuana possession. The Alaska Court System may not publish on a publicly available Internet website the court records of a criminal case in which the defendant
(1) was convicted under AS 11.71.060, or a municipal ordinance with similar elements, for possession of less than one ounce of a schedule VIA controlled substance;
(2) was 21 years of age or older at the time of commission of the offense; and
(3) was not convicted of any other criminal charges in that case.
- Page 2, line 13-23: Delete all material
- Page 2, line 24: Change effective date to January 1, 2021

[2:38:03 PM](#)

CHAIR COGHILL removed his objection. There being no further objection, version S was adopted.

[2:38:10 PM](#)

SENATOR MICCICHE questioned whether the page number references were correct.

SENATOR BEGICH explained that the page numbers refer to version A. For example, the last change shown on page 2, line 24 of version A can be found on page 3, line 18 of version S.

SENATOR BEGICH explained that SB 8, version S, helps to ensure that the language in the bill is compatible and consistent with the language the Department of Public Safety and the court system use.

[2:41:30 PM](#)

CHAIR COGHILL opened public testimony on SB 8.

[2:41:46 PM](#)

LACEY WILCOX, President, Alaska Marijuana Industry Association, Juneau, Alaska, said that the association is supportive of the language in version S. Under SB 8, Alaskans with prior convictions for conduct that is legal today will have a better chance of securing housing, employment and educational opportunities. The association understands that the bill would make these offenses confidential and does not expunge the record. This is a step in the right direction, she said.

[2:43:07 PM](#)

SENATOR HUGHES said her concern is that employers may wish to know who tends to not follow the law. Marijuana was illegal at the time of the offense, even though it is currently legal. She asked if employers can obtain that information. She said she wants people to get housing and work, but this information may be important to some employers.

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SENATOR BEGICH said several things in the bill are designed to address people applying for jobs, including ones in public safety. He acknowledged that there are some areas where employers could gain access to the information. He deferred to the Department of Public Safety to elaborate on its policy.

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CHAIR COGHILL held SB 8 in committee with public testimony open.

SJR 13-CONST. AM: PROHIBIT ABORTION/FUNDING

[2:46:01 PM](#)

CHAIR COGHILL announced that the final order of business would be SENATE JOINT RESOLUTION NO. 13, Proposing an amendment to the Constitution of the State of Alaska relating to abortion.

CHAIR COGHILL announced that public testimony was opened at the last hearing.

[2:46:48 PM](#)

KAREN LEWIS, Pro Life Alaska, Wasilla, Alaska, spoke in support of SJR 13. She stated that Thomas Jefferson said that the care of human life and happiness and not their destruction is the first and only legitimate object of good government. She quoted the Declaration of Independence and the Bible to illustrate her point. She related her daughter's decision to continue with an unwed pregnancy and posited that young women can have children and attend school at the same time.

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CATHY LAW, representing self, Anchorage, Alaska, spoke in support of SJR 13, which would add language to the Constitution of the State of Alaska that says, "To protect human life, nothing in this constitution may be construed to secure or protect a right to an abortion or require the State to fund an abortion." The resolution would ensure that there is no right to an abortion in the Constitution of the State of Alaska. It would allow Alaskans to establish laws on abortion that reflect Alaskans' values. She offered her view that the Alaska Supreme Court decisions invented the right. It was illegal in Alaska from statehood until the Court decided otherwise.

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SERENA O'HARA-JOLLEY, representing self, Fairbanks, Alaska, spoke in opposition to SJR 13. She said that Alaskans value their independence and individual choices. An overwhelming number of Alaskans support the right to access safe and legal abortions. She found amending the Constitution of the State of Alaska to change the right to privacy unacceptable. Legislators took an oath to uphold the Constitution of the State of Alaska, but not to amend it to suit their moral values., she said.

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MARCI HAWKINS, representing self, Sutton, Alaska, said she opposes SJR 13. She expressed concern that this would lead to

criminalizing abortion. She supports women being able to make their own medical decisions.

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WENDY PERKINS, representing self, Anchorage, Alaska, spoke in support of SJR 13. She argued against using a privacy argument regarding abortion. She does not want one branch of government to be too strong. She said that it is dangerous for the judicial branch to interpret the right to privacy to extend to abortion.

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CHERYL KAJDAN, representing self, Palmer, Alaska, spoke in support of SJR 13. She said that as a nation, the U.S. fights for life, liberty, and the pursuit of happiness. The changes in peoples' moral stances have degraded general civil behavior. Dr. Mildred Jefferson, cofounder of the national Right to Life, warned people that abortions would be used to target the African American community. She also warned that abortion access for poor women would be used to justify keeping abortion legal. She gave statistics to support her view. She asked members to allow Alaskans to have a voice on this issue, not the Alaska Supreme Court.

CHAIR COGHILL held SJR 13 in committee with public testimony open.

[3:00:57 PM](#)

There being no further business to come before the committee, Chair Coghill adjourned the Senate Judiciary Standing Committee meeting at 3:00 p.m.