

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

June 23, 2004

12:00 p.m.

MEMBERS PRESENT

Representative Tom Anderson, Chair
Representative Carl Gatto, Vice Chair
Representative Nancy Dahlstrom
Representative Bob Lynn
Representative Norman Rokeberg
Representative Harry Crawford
Representative David Guttenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 1001

"An Act relating to taxes on cigarettes and tobacco products, to tax stamps on cigarettes, to forfeiture of cigarettes and of property used in the manufacture, transportation, possession, or sale of unstamped cigarettes, to accounting for and use of part of the proceeds of the additional cigarette tax, and to licenses and licensees under the Cigarette Tax Act; relating to unfair cigarette sales; and providing for an effective date."

- MOVED HB 1001 OUT OF COMMITTEE

HOUSE BILL NO. 1002

"An Act providing for a special deposit for workers' compensation insurers; relating to assigned risk pools and workers' compensation insurers; relating to the board of governors of the Alaska Insurance Guaranty Association; stating the intent of the legislature, and setting out limitations, concerning the interpretation, construction, and implementation of workers' compensation laws; relating to restructuring the Alaska workers' compensation system; eliminating the Alaska Workers' Compensation Board; establishing a division of workers' compensation within the Department of Labor and Workforce Development and assigning certain Alaska Workers' Compensation Board functions to the division and the Department of Labor and Workforce Development; establishing a Workers' Compensation Appeals Commission; assigning certain functions of the Alaska

Workers' Compensation Board to the Workers' Compensation Appeals Commission and the office of administrative hearings; relating to agreements that discharge workers' compensation liability; providing for administrative law judges in workers' compensation proceedings; relating to workers' compensation awards; relating to an employer's failure to insure and keep insured or provide security; providing for appeals from compensation orders; relating to workers' compensation proceedings; providing for supreme court jurisdiction of appeals from the Workers' Compensation Appeals Commission; providing for a maximum amount for the cost-of-living adjustment for workers' compensation benefits; providing for administrative penalties for employers uninsured or without adequate security for workers' compensation; relating to fraudulent acts or false or misleading statements in worker's compensation; and providing for an effective date."

- FAILED TO MOVE HB 1002 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB1001

SHORT TITLE: TOBACCO TAX; LICENSING; PENALTIES

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

06/22/04	(H)	READ THE FIRST TIME - REFERRALS
06/22/04	(H)	L&C, FIN
06/23/04	(H)	L&C AT 11:15 AM CAPITOL 120
06/23/04	(H)	FIN AT 1:30 PM HOUSE FINANCE 519

BILL: HB1002

SHORT TITLE: INSURANCE & WORKERS' COMPENSATION SYSTEM

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

06/22/04	(H)	READ THE FIRST TIME - REFERRALS
06/22/04	(H)	L&C
06/23/04	(H)	L&C AT 11:15 AM CAPITOL 120

WITNESS REGISTER

JOHANNA BALES, Excise Audit Manager
Tax Division
Department of Revenue
Anchorage, Alaska
POSITION STATEMENT: Presented HB 1001.

PAT LUBY, Advocacy Director

AARP - Alaska
Anchorage, Alaska
POSITION STATEMENT: Testified in support of the tobacco tax measure.

KATTARYNA STILES
Alaskans for Tobacco Free Kids
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 1001.

JENNIFER APP
American Heart Association
(No address provided)
POSITION STATEMENT: Testified in support of HB 1001.

CAROL EDWARDS, Oncology Nurse;
Member, Board of Directors
Alaska Nurses Association
Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 1001.

DOUG WOOLIVER, Administrative Attorney
Alaska Court System
Anchorage, Alaska
POSITION STATEMENT: Testified that the Alaska Court System is neutral on HB 1002.

GREG O'CLARAY, Commissioner
Department of Labor & Workforce Development (DLWD)
Juneau, Alaska
POSITION STATEMENT: Discussed HB 1002.

LINDA HALL, Director
Division of Insurance
Department of Community & Economic Development (DCED)
Anchorage, Alaska
POSITION STATEMENT: During discussion of HB 1002, answered questions.

MARTIN PIHL, Chairman
Alaska Timber Insurance Exchange
Ketchikan, Alaska
POSITION STATEMENT: Testified in support of HB 1002 and offered amendments.

LORI WING, President
Alaska Independent Insurance Agents & Brokers

Anchorage, Alaska

POSITION STATEMENT: Expressed hope that HB 1002 would be passed out of committee.

LON TROTTER, Director

Risk Management

Arctic Slope Regional Corporation

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 1002.

BARBARA WILLIAMS

Alaska Injured Workers Alliance (AIWA)

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 1002.

KEVIN DOUGHERTY

Alaska State District Council of Laborers

Eagle River, Alaska

POSITION STATEMENT: During discussion of HB 1002, discussed workers' compensation.

ACTION NARRATIVE

TAPE 04-55, SIDE A

Number 0001

CHAIR TOM ANDERSON called the House Labor and Commerce Standing Committee meeting to order at 12:00 p.m. Representatives Anderson, Gatto, Dahlstrom, Lynn, Rokeberg, Crawford, and Guttenberg were present at the call to order.

HB1001-TOBACCO TAX; LICENSING; PENALTIES

CHAIR ANDERSON announced that the first order of business would be HOUSE BILL NO. 1001, "An Act relating to taxes on cigarettes and tobacco products, to tax stamps on cigarettes, to forfeiture of cigarettes and of property used in the manufacture, transportation, possession, or sale of unstamped cigarettes, to accounting for and use of part of the proceeds of the additional cigarette tax, and to licenses and licensees under the Cigarette Tax Act; relating to unfair cigarette sales; and providing for an effective date."

Number 0079

JOHANNA BALES, Excise Audit Manager, Tax Division, Department of Revenue, explained that HB 1001 is basically the House Labor and

Commerce Standing Committee version [CSHB 538(L&C)] adopted by this committee at the end of last session plus one additional provision that was proposed by Senator Bunde to the Senate's companion legislation. Ms. Bales explained that HB 1001 outlines the intent by the legislature to provide funding for tobacco control programs and directs the legislature to deposit 8.9 percent of the cigarette tax proceeds, approximately \$4 million each year, to the tobacco use, education, and cessation fund. Furthermore, this legislation allows individuals to personally transport up to 400 cigarettes without incurring any cigarette tax. The aforementioned conforms with federal law. This legislation changes the threshold from a class C felony for [the theft of] 1,000 or more cigarettes to 5,000 or more cigarettes, which was an amendment discussed in the House Special Committee on Ways and Means. Raising the threshold makes it consistent with the threshold for class C felony theft, which requires a value of \$500. Under HB 1001, the tax due on 5,000 cigarettes would be \$500. Furthermore, this legislation increases the tax on cigarettes by \$1 per pack per 20 cigarettes. There is no phase-in. This legislation also increases the tax on other tobacco products from 75 percent to 100 percent of the wholesale cost. This legislation levies a tax on individuals who import other tobacco products for personal consumption. The aforementioned was the amendment offered by Senator Bunde, and the amendment is supported by the in-state distributors and retailers who have systematically lost business to out-of-state companies. The Department of Revenue believes the aforementioned provision is important, she related.

MS. BALES highlighted that the legislation still contains the provision allowing licensees with a physical location in the state and a good payment record for the last five year with the Department of Revenue to reduce their bonding requirement when the tax rate increases. Therefore, the additional bonding won't become a burden. Moreover, the legislation allows the state to seize assets and includes forfeiture and seizure provisions. Ms. Bales noted that HB 1001 includes all of the amendments adopted by the House Special Committee on Ways and Means. Those amendments from the original legislation require that the seizure provisions only apply to class C felony violations. She further explained that this legislation makes changes to the Unfair Cigarette Sales Act. This legislation requires that a floor stock tax be paid in six sequential monthly payments beginning with the effective date of the legislation, which is September 1, 2004.

Number 0497

MS. BALE, in response to Representative Gatto, explained that the OTP [other tobacco products] amendment requires those who import other tobacco products besides cigarettes, for personal consumption, to obtain a license for a \$25 fee. The aforementioned fee is required of those who import cigarettes for personal consumption. She noted that now there are manufacturers making "machine-made cigars," which meet the definition of a cigar and thus aren't taxed as a cigarette. However, these "machine-made cigars" are advertised as a substitute for cigarettes and are significantly less expensive. She noted that cigarette-making kits are also prevalent and are a cheap alternative that avoids taxes. Without the OTP amendment, people can utilize cheap substitutes without any price increase. She emphasized that the in-state retailers support the OTP amendment because their business has been impacted without such an amendment.

REPRESENTATIVE GATTO inquired as to when a cigarette isn't a cigarette. He posed a situation in which there is only 20 percent tobacco in a single cigarette, and asked if the tax would only [apply] to the 20 percent tobacco product. Would it still be considered a cigarette, he asked.

MS. BALES specified that Alaska law, federal law, and most other states define cigarettes as tobacco, regardless of the amount, rolled in paper. Therefore, the distinction with cigars is that they are rolled in tobacco leaf. With regard to there being only a percentage of tobacco in the product, the tax would be assessed regardless of the percentage of tobacco. Ms. Bales specified that any product containing tobacco is taxed and if it's tobacco wrapped in paper, it's taxed as a cigarette.

Number 0823

REPRESENTATIVE CRAWFORD requested review of the bonding requirements.

MS. BALES explained that currently before a distributor or a licensee can purchase tax stamps from the department, that distributor or licensee has to post a bond when the taxes are paid on a deferred basis. If the taxes are paid in cash, no bond is necessary. The bond amounts to 200 percent of the distributor's or licensee's monthly purchases, which covers their outstanding tax liability until the first payment is made. The provision in HB 1001 allows the distributor or licensee to only pay 100 percent. Basically, the state will float a one-

month credit if cigarette tax stamps are purchased on a deferred payment basis. She highlighted that this option would only be available to those licensees with a physical presence in the state and with a good payment history of at least five years with the Department of Revenue. Such an option relieves the bonding requirements on the licensee and/or distributor for which the bond cost in this industry is fairly high. Those without a physical presence in the state or a good payment history must purchase cigarette tax stamps with cash or a bond in the amount of 200 percent must be posted. She specified that an out-of-state licensee, regardless of his or her payment history, would have to post a bond in the amount of 200 percent.

REPRESENTATIVE ROKEBERG asked if the provisions in HB 1001 are consistent with HCS CSSB 368(FIN).

MS. BALES clarified that HB 1001 is CSHB 538(L&C) plus the amendment Senator Bunde made to SB 368. Therefore, all of the amendments offered within this committee and the House Special Committee on Ways and Means to [HB 538] are included in HB 1001. In further response to Representative Rokeberg, Ms. Bales related her belief that the bonding provisions in HCS CSSB 368(FIN) are similar to those in [CSHB 538(L&C)].

Number 1070

PAT LUBY, Advocacy Director, AARP - Alaska, noted the dedication of the World War II Memorial and the celebration of the sixtieth anniversary of D-Day. He noted that at that time no one connected smoking with cancer and respiratory disease. Although many were lost in World War II, many more were lost after the war, simply because of smoking. Mr. Luby highlighted that AARP members are grandparents and if increasing the tax keeps any grandchildren from smoking, AARP is in favor of it. He stressed that AARP is entirely in support of the tobacco tax measure. He referred to the governor's transmittal letter during the regular session, which clearly states that a higher tobacco tax will help prevent youth from beginning to smoke while also helping current smokers stop. The governor's transmittal letter is of concern in regard to the data that suggests Alaska Natives, particularly Alaska Native high school youth, smoke at a much higher rate than the non-Native population. Therefore, Mr. Luby strongly recommended that some of the new revenue coming to state government from the tax increase be used to target cessation efforts for Native smokers, particularly Native youth.

MR. LUBY informed the committee that in March 2004 there was a report from the Medicare trustees who indicated that health care costs for Medicare were much higher than expected. He pointed out that Medicare would be in a better financial state if many of the current retirees hadn't been smokers earlier in their lives. Therefore, Mr. Luby opined that increasing the tobacco tax in Alaska would produce an immediate beneficial health consequence as well as long-term beneficial consequences for the financial situation of Medicare and Medicaid. Mr. Luby recalled Senator Bunde's statement last week that a \$1.00 increase will result in "sticker shock" and youth and adults deciding not to smoke because of the cost. Although the House Finance Committee recommended a phased approach, AARP believes it should be an immediate increase. In conclusion, Mr. Luby recommended the committee support HB 1001.

Number 1234

REPRESENTATIVE LYNN inquired as to the percent decrease one would expect as the result of a \$1.00 tax.

MR. LUBY deferred to the department.

REPRESENTATIVE LYNN inquired as to the point at which an increase in the tax would reach diminishing returns.

MR. LUBY reiterated the "sticker shock" notion. He related that research throughout the world has proven that the best way to stop people from smoking is to make it too expensive to start or continue.

REPRESENTATIVE LYNN surmised that this is taxing behavior.

REPRESENTATIVE ROKEBERG pointed out that the last time the legislature raised tobacco taxes it did so by \$.71. He asked if Mr. Luby believes that \$.60 would create "sticker shock."

MR. LUBY said that a \$1.00 is noticeable, and he opined will be most helpful in keeping youth from starting to smoke. In response to Chair Anderson, Mr. Luby confirmed that AARP supports any [tobacco] tax and the higher, the better.

Number 1345

KATTARYNA STILES, Alaskans for Tobacco Free Kids (ATFK), began by explaining that ATFK is a coalition of the Alaska Native Health Board (ANHB), the American Heart Association, the

American Cancer Society, and the American Lung Association of Alaska. She related that ATRK supports HB 1001, which is first and foremost a health issue. By raising the tobacco tax by \$1.00, nearly 3,000 lives of youth will be saved and over 9,000 youth will never start smoking. With regard to the rate of price increase in accordance with the reduction in smoking, Ms. Stiles related that studies show nationwide that for every 10 percent increase there is about a 6.5 percent decrease in the number of youth who smoke. Since the tobacco tax was last raised, there was a 50 percent reduction in youth smoking. With this proposed increase, she anticipated a 15 percent reduction. Ms. Stiles encouraged the committee to pass a \$1.00 increase in the tobacco tax in order to obtain the maximum impact on the health of today's youth. She related her data supporting the notion that increasing the tobacco tax is a health issue.

Number 1546

REPRESENTATIVE GATTO surmised that one would want youth to be tobacco free in order to be healthier. However, there are plenty of ways to have healthier youth, such as [eliminating] drugs, alcohol, abuse, and obesity. He asked if Ms. Stiles is involved in any groups addressing the aforementioned areas.

MS. STILES specified that her work is only related to tobacco use, although the organizations she represents do perform work in those areas mentioned. The collected coalition is working on tobacco because it is the number one killer of Alaskans. In further response to Representative Gatto, Ms. Stiles said that it's legal to smoke at age 19.

REPRESENTATIVE GATTO surmised then that if smoking under age 19 is illegal, then there should be better enforcement rather than taxing.

MS. STILES said that she believes the state's enforcement efforts have been successful and improving. However, youth continue to obtain cigarettes.

Number 1633

REPRESENTATIVE ROKEBERG inquired as to whether [Ms. Stile's] organization was involved with the Ketchikan Daily News advertisement this spring, which lobbied Representative Williams to release legislation from the House Finance Committee.

MS. STILES said that "our organizations" were involved with a list of signatures from within the Ketchikan area. In further response to Representative Rokeberg, Ms. Stiles confirmed that no funds for that advertisement came from Alaska's Tobacco Cessation and Education Fund. She specified that ANHB doesn't receive any funds from the state. She explained that the Alaska Tobacco Control Alliance is an organization in which everyone involved in tobacco control across the state is involved. The Alaska Tobacco Control Alliance doesn't have a formal governance structure and isn't a 501(c)(3). However, she noted that individual organizations that are part of the Alaska Tobacco Control Alliance do hire lobbyists. "No state funds through tobacco cessation and education funds are used for those lobbyists," she said.

Number 1730

JENNIFER APP, American Heart Association, related that the American Heart Association strongly supports the proposed \$1.00 per pack cigarette tax as well as the 33 percent increase in tax on other tobacco products. She informed the committee that smoking is the number one preventable cause of cardiovascular disease in Alaska. Furthermore, smoking is the leading cause of preventable death in the state. Currently, smoking is responsible for one of every five deaths in Alaska. Ms. App expressed concern with statements from the House leadership that the House may adjourn without voting on this important public health measure. This would be a disappointment because 67 percent of Alaskans support the \$1.00 per pack increase as do 70 percent of registered Republicans. Ms. App related that the American Heart Association doesn't accept state funding and none of the groups in ATFK use any state funding for lobbying purposes. The Master Settlement Agreement (MSA) funds aren't used by any of the organizations for lobbying activities. In response to earlier comments regarding a point of diminishing returns, Ms. App said that no state has reached a point of diminishing returns in relation to the amount of the tax. In fact, with New Jersey's tax of \$2.05 and Rhode Island's proposed \$2.45 tax there has been no diminishing returns. Therefore, nationwide statistics don't indicate that a \$2.00 tax would result in diminishing returns. However, she did agree that there may be a point of diminishing returns. Ms. App concluded by reiterating the American Heart Association's strong support of HB 1001, which is an excellent public health measure.

CHAIR ANDERSON reminded Ms. App of the efforts the committee took on this topic during the regular session and highlighted the fact that the committee is hearing HB 1001.

Number 1879

REPRESENTATIVE GUTTENBERG commented that motives of the cessation groups are clear and what he considered to be a fairly high calling. Representative Guttenberg noted his appreciation for the work of the cessation groups.

MS. APP thanked the committee for hearing the legislation and for the action the committee took on the legislation during the regular session. She acknowledged this committee's commitment to this important issue. She clarified that [her comments directed toward the leadership] were merely to relate the need for HB 1001 to have a vote on the floor.

Number 1952

CAROL EDWARDS, Oncology Nurse; Member, Board of Directors, Alaska Nurses Association, related that she has taken care of many who have died from cancer-related tobacco illness. Ms. Edwards related that the Board of Directors of the Alaska Nurses Association strongly supports the \$1.00 immediate increase in the tobacco tax. She noted that she was recently appointed to the state's workforce in order to develop a comprehensive cancer plan for Alaska. As the chair of the prevention and early detection committee, she has read many statistics on tobacco and cancer. One of the issues that the committee has brought forward is the need for the tobacco tax to cover the costs of tobacco-related illnesses in Alaska. To accomplish the aforementioned would require a \$6.00 per pack tax. She expressed concern that a graduated tax would never be able to come close to covering the costs of tobacco-related illnesses in Alaska. Ms. Edwards urged the committee to think of the lives that would be saved.

REPRESENTATIVE GATTO recalled the testimony that one in five dies of tobacco-related illnesses. He asked if there is a way to verify the number of tobacco-related deaths.

MS. EDWARDS related her belief that if there is a malignancy present, she believes the death is listed under that registry. Whether the death would be listed under other related diseases, she said she didn't know.

REPRESENTATIVE GATTO asked if the cause of death is listed under each [registry under which it fits].

MS. EDWARDS said that she wasn't sure, although she believes the cause of death listed is the primary cause at the time of death. She suggested checking with a coroner, indicating that it may vary with the physician or coroner.

Number 2152

REPRESENTATIVE LYNN asked if smoking is an addiction.

MS. EDWARDS replied yes. In further response to Representative Lynn, Ms. Edwards related her belief that an addiction can be stopped with taxes. She related her own experience in which she quit smoking once it became too expensive. Furthermore, statistics illustrate that taxes do decrease smoking.

CHAIR ANDERSON closed public testimony.

Number 2198

REPRESENTATIVE ROKEBERG moved to adopt CSHB 1001 [HCS CSSB 368(FIN), Version 23-GS2116\W] as the working document.

CHAIR ANDERSON objected for discussion purposes.

REPRESENTATIVE ROKEBERG pointed out that CSHB 1001 is the legislation that moved out of the Finance Committees in May. He noted that the committee packet should include a side-by-side comparison between HB 1001 and CSHB 1001 [HCS CSSB 368(FIN), Version W]. He mentioned the need to amend CSHB 1001 in order to change the effective date.

MS. BALES pointed out that in CSHB 1001 [HCS CSSB 368(FIN)] there is not an increase in the tax on other tobacco products, and therefore the tax on other tobacco products would stay at 75 percent of the wholesale cost. Furthermore, CSHB 1001 [HCS CSSB 368(FIN)] doesn't include the amendment to tax individual importation of other tobacco products, which is included in HB 1001.

REPRESENTATIVE ROKEBERG highlighted that CSHB 1001 [HCS CSSB 368(FIN)] had a provision, AS 43.50.200, "Nonparticipating manufacturers equity excise tax", which was deleted in HB 1001. He inquired as to why that was deleted.

MS. BALES explained that CSHB 1001 [HCS CSSB 368(FIN)] placed an additional \$.25 per package tax on cigarettes manufactured by manufacturers that didn't sign the Master Settlement Agreement.

TAPE 04-55, SIDE B

MS. BALES related that less than .5 percent of nonparticipating manufacturers (NPM) product is in the state. She said she wasn't sure how helpful this additional tax would be, although it's estimated that perhaps there would be an additional \$36,000-\$40,000 in tax revenue by imposing this additional \$.25 per pack tax on NPM product. It would cost an additional \$2,000-\$3,000 per year to have a different tax stamp manufactured to sell to retailers or distributors who sell NPM product. The aforementioned coupled with concerns over the constitutionality of this additional tax is why it wasn't included in HB 1001.

Number 2319

REPRESENTATIVE ROKEBERG noted that NPM product in the national marketplace is a large and growing area. The reasoning behind including the additional tax is the anticipation that the NPM segment of the market will be expanding quite rapidly because these companies don't have to pay the MSA surcharge.

MS. BALES agreed that nonparticipating manufacturers don't have to pay the MSA surcharge, but pointed out that they must put a similar amount in an escrow fund in the state each year. Therefore, an additional \$.25 per pack tax as well as requiring an escrow account is where the concern over the constitutional challenge stems. In response to Chair Anderson, Ms. Bales highlighted that under CSHB 1001 [HCS CSSB 368(FIN)] the tax is phased in such that this year the tax would be \$.60 and in two years an additional \$.20 would be added and in another year there would be an additional \$.20 increase bringing the total tax to \$1.00 per pack in fiscal year 2007. Under CSHB 1001 [HCS CSSB 368(FIN)] there is no increase in the tax on other tobacco products and no provision for taxing individuals who bring other tobacco products into the state for personal consumption.

REPRESENTATIVE ROKEBERG pointed out that [HB 1001] includes a provision allowing the department to immediately adopt regulations, which he suggested would be good to include in CSHB 1001. He also mentioned that there are transitional tax provisions for the floor stock in HB 1001.

MS. BALES confirmed that under HB 1001 there would be a floor stock tax in order to alleviate the amount of stock piling that distributors and retailers could do at the old rate. Under CSHB 1001, there is no floor stock tax and thus any retailer and distributor could stock pile cigarettes and basically delay the effective date of any revenue increases. She informed the committee that in 1997 there was no floor stock tax on the effective date of the increase and several of the retailers increased the price immediately. The aforementioned resulted in the state revenue going into the pockets of retailers and distributors. She highlighted that the Department of Revenue is charged with protecting state revenues, which will be protected with a floor stock tax.

CHAIR ANDERSON recalled that under HB 1001, the Department of Public Safety (DPS) enforces this while under CSHB 1001 the state would provide enforcement.

MS. BALES said that is a minor change by which it says the DPS is responsible to post notice of seized property rather than the Department of Law.

Number 2104

REPRESENTATIVE ROKEBERG referred to AS 43.53.050, an indirect court rule amendment. He asked if that provision was included due to the phased approach.

MS. BALES explained that when the tax rate increased in 1997, the entire increase was placed into the school tax fund, which is a dedicated fund. However, session law at the time specified that if there was ever a constitutional challenge to placing that increase in the school tax fund, the [AS 43.53.050] provisions would apply and the entire tax increase would be placed into the general fund. The CSHB 1001 [HCS CSSB 368(FIN)] changed the session law of 1997 to reflect the new tax increase rates. In further response to Representative Rokeberg, the language wasn't included in HB 1001 because there hasn't been a challenge in seven years and the [governor/department] doesn't believe there will be a challenge to the 1997 increase. She pointed out that under HB 1001 the entire amount of the increase would be placed in the general fund. Ms. Bales pointed out that CSHB 1001 [HCS CSSB 368(FIN)] includes [HB 468] regarding tobacco appeals bonds in its entirety. The language referring to tobacco appeals bonds specifies that if a tobacco company is sued for harm that its product has caused, the court can't require the company to post more than \$100 million bond to

appeal. The aforementioned came about after court cases in Florida and Illinois. In fact, in Illinois there was a \$12 billion judgment against the tobacco industry, which appealed and thus was concerned about posting the bond.

CHAIR ANDERSON interjected that such language would place Alaska in the group of about a third of the states that have the same range or lower than that proposed in CSHB 1001.

MR. BALES acknowledged that some are concerned that by limiting the amount of appeal bonds in one industry, other industries might want to be included.

CHAIR ANDERSON removed his objection.

Number 1946

REPRESENTATIVE CRAWFORD objected for purposes of discussion. He related that he didn't like the appeals bond provision. Representative Crawford said that he wants to see the legislation move out of committee today and if CSHB 1001 is what's forwarded, he would vote to do so although he disagrees with it.

A roll call vote was taken. Representatives Lynn, Rokeberg, and Anderson voted in favor of adopting CSHB 1001 [HCS CSSB 368(FIN)]. Representatives Crawford, Guttenberg, Gatto, and Dahlstrom voted against it. Therefore, CSHB 1001 failed to be adopted by a vote of 3-4 and thus HB 1001 is before the committee.

Number 1843

REPRESENTATIVE ROKEBERG mentioned that he had an amendment which would prohibit a municipal government or borough from levying further taxes on tobacco, and therefore the state would be left as the sole taxing source. Representative Rokeberg suggested that there should be some discussion regarding whether another governmental agency/entity could impose a tax in addition to the state tax. He noted that Juneau, Fairbanks, and Anchorage have additional taxes on tobacco products, which would result in tax rates within the state.

The committee took an at-ease from 1:05 p.m. to 1:01 p.m.

CHAIR ANDERSON noted that the committee was receiving a third fiscal note from the Department of Health and Social Services.

He noted that Representative Rokeberg has decided to withhold his amendment.

Number 1765

REPRESENTATIVE CRAWFORD moved to report HB 1001 out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE LYNN objected.

A roll call vote was taken. Representatives Rokeberg, Crawford, Guttenberg, Gatto, Dahlstrom, and Anderson voted in favor of reporting HB 1001 from the House Labor and Commerce Standing Committee. Representative Lynn voted against it. Therefore, HB 1001 was reported out of the House Labor and Commerce Standing Committee by a vote of 6-1.

The committee took an at-ease from 1:05 p.m. to 1:14 p.m.

HB1002-INSURANCE & WORKERS' COMPENSATION SYSTEM

CHAIR ANDERSON announced that the final order of business would be HOUSE BILL NO. 1002, "An Act providing for a special deposit for workers' compensation insurers; relating to assigned risk pools and workers' compensation insurers; relating to the board of governors of the Alaska Insurance Guaranty Association; stating the intent of the legislature, and setting out limitations, concerning the interpretation, construction, and implementation of workers' compensation laws; relating to restructuring the Alaska workers' compensation system; eliminating the Alaska Workers' Compensation Board; establishing a division of workers' compensation within the Department of Labor and Workforce Development and assigning certain Alaska Workers' Compensation Board functions to the division and the Department of Labor and Workforce Development; establishing a Workers' Compensation Appeals Commission; assigning certain functions of the Alaska Workers' Compensation Board to the Workers' Compensation Appeals Commission and the office of administrative hearings; relating to agreements that discharge workers' compensation liability; providing for administrative law judges in workers' compensation proceedings; relating to workers' compensation awards; relating to an employer's failure to insure and keep insured or provide security; providing for appeals from compensation orders; relating to workers' compensation proceedings; providing for supreme court jurisdiction of appeals from the Workers' Compensation Appeals

Commission; providing for a maximum amount for the cost-of-living adjustment for workers' compensation benefits; providing for administrative penalties for employers uninsured or without adequate security for workers' compensation; relating to fraudulent acts or false or misleading statements in worker's compensation; and providing for an effective date."

Number 1685

DOUG WOOLIVER, Administrative Attorney, Alaska Court System, related that his testimony on this matter during the regular session would stand, which is that the Alaska Court System is neutral.

Number 1609

GREG O'CLARAY, Commissioner, Department of Labor & Workforce Development (DLWD), explained that HB 1002 attempts to empower the lay board concept of the Alaska Workers' Compensation Commission. He further explained that unlike SB 311, HB 1002 substitutes administrative law judges for the multiple panels. The administrative law judges will hear the initial controverted claims without the three-person panel. If the matter is appealed, the claim will go before the three-member panel comprised of the professional attorney who is a professional expert on workers' compensation as well as two members of the four-member lay group. The structure is for a commission of five in which two members are designated from employee representatives and two from employer representatives. One of each of the two representatives will sit on the three-person panel to adjudicate appeals from the administrative law judge decision. If the parties aren't in agreement, they can appeal to the Supreme Court.

COMMISSIONER O'CLARAY noted that HB 1002 also includes authorities for addressing workers' compensation fraud. He mentioned that there are other small tweaks in the legislation. Commissioner O'Claray highlighted that during the last several months, there have been discussions with representatives of organized labor. The department hasn't been able to reach agreement on all of [organized labor's] concerns. He related his understanding that organized labor believes that this workers' compensation issue should be addressed in the interim when there isn't a time crunch. However, the administration will continue to pursue this issue because he predicted that at some point the state will face a major issue with workers' compensation. The matter should be addressed sooner rather than

later in order to avoid a situation in which the real costs have to be addressed. "This administration is not interested in depriving injured workers of the payments and compensation they deserve under the law," he emphasized.

Number 1379

REPRESENTATIVE DAHLSTROM referred to a chart entitled, "Current NCCI Voluntary Market Approved Rate/Loss Cost Changes". She pointed out that Nevada, which has one of the highest growth rates in the country, has a decline of 12.3 percent [in workers' compensation]. She inquired as to the reason for that.

COMMISSIONER O'CLARAY specified that this chart was prepared by NCCI in order to show what happened as of last year in regard to rates. If this chart was prepared in 1988 or 1989, it would've shown a decline for Alaska.

Number 1282

LINDA HALL, Director, Division of Insurance, Department of Community & Economic Development (DCED), informed the committee that the chart only reflects the rates of 39 states because only 39 states use NCCI as their rate modeling organization. She noted that Nevada has been reviewed and it was discovered that there were some anomalies that will have no impact on what Alaska will do because they were changes that the state could incorporate. As workers' compensation reforms are enacted, changes in rates are occurring.

REPRESENTATIVE GUTTENBERG pointed out that this legislation basically deals with restructuring the appeals process. He asked if there has been any review of restructuring the [point at which] claims are denied. "Is there any way that claims could be accepted and not denied that would significantly reduce the number of appeals that go forward," he asked.

COMMISSIONER O'CLARAY reminded the committee that out of the approximately 25,000 claims that are filed, about 100 move into the controverted area. Of those 100 appeals, some 30 or so go to the superior court under the current system. The current system in place is a no fault system, and therefore the question is regarding "where do we get the disputes?" He indicated [that the problem] is that attorneys become involved. If an employer dealt with an employee through workers' compensation, many of the litigation costs would be eliminated, he opined. However, because it's such a complicated body of law, both sides need to

be represented by legal counsel at some point. The aforementioned is why the change to make a swifter decision [and simpler process] is being made. The delay in reaching judgment with these cases create difficult times for employees. This legislation attempts to review the litigation costs in order to avoid cutting benefits or costs of medical reimbursement for the services provided to injured workers.

Number 1010

REPRESENTATIVE GUTTENBERG recalled working on a workers' compensation case in which the claim denial of a welder with heavy metal poisoning was a considerable [problem]. He then turned to Section 12 of HB 1002, which defines two members [of the commission] as representative employees. How will that be defined, he asked.

COMMISSIONER O'CLARAY interpreted this provision to mean that the employee representatives would have to be individuals who have spent the majority of their time representing employees. In fact, he opined, these individuals should currently represent employees. In further response to Representative Guttenberg, Commissioner O'Claray opined that it would have to be someone from organized labor.

Number 0885

REPRESENTATIVE CRAWFORD recalled his own experience as an injured worker when the insurance carrier did all it could to stall the process to the point at which he would accept whatever settlement was offered. Representative Crawford said that he didn't know how reducing the number of panels hearing these cases would actually expedite the process.

COMMISSIONER O'CLARAY explained that under the current system the logistics of setting up hearings is difficult and often just two people will hear the case, the hearing officer and a representative from management or labor. However, under this proposed legislation the administrative judges will primarily work on these cases and won't have to deal with the logistics of the cases. Therefore, he opined that the system would be reactive and more nimble in terms of time. The appellate group will be restricted to 90 days to make a decision.

Number 0748

REPRESENTATIVE ROKEBERG remarked that in the global framework of the cost of workers' compensation the focus on the "lawyerization" of workers' compensation in order to avoid impacts to benefits of workers is only a portion of the total. Although Representative Rokeberg noted his agreement with the goal of not impacting the employee in regard to the services delivered to the employee, he questioned how everything couldn't be reviewed in order to work down the premium costs by controlling the costs of the benefits.

COMMISSIONER O'CLARAY answered that initially the entire spectrum was reviewed. However, the administration felt that it didn't want to be seen as attacking injured employees. He related that out of the \$210 million spent in 2002, almost \$131 million went to medical providers, which is a little over 50 percent of the entire cost of workers' compensation in 2002. Just under \$80 million went into the pockets of injured workers for wage replacement or other benefits and \$11 million went to litigation costs. If this legislation doesn't pass, he opined that [the administration] will be forced to look at the entire spectrum and it'll be harder because of the potential problem of increasing rates. He further opined that without passage of this legislation, he will have to review how to administer the program in order to decrease costs.

REPRESENTATIVE GUTTENBERG returned to the matter of administrative law judges to whom this legislation provides much power. He pointed out the language on page 38, line 15-18. He asked if administrative law judges are responsible for any type of judicial review or qualifications beyond three years of experience with workers' compensation.

COMMISSIONER O'CLARAY answered, "I don't see anything other than their qualification requirements here. I think the suggestion earlier on the [SB] 311 commission was that they come through the judicial council, in terms of appointments instead of the governor appointing them. There's clearly a constitutional problem there with the judicial council under the separation of powers under the constitution." He related that the current workers' compensation hearing officers who are admitted to the bar will be in these positions.

Number 0311

MARTIN PIHL, Chairman, Alaska Timber Insurance Exchange, informed the committee that the Alaska Timber Insurance Exchange was formed in 1980 as a reciprocal owned by its policyholders.

He noted that the organization has specialized in logging and higher risk insurance. The Alaska Timber Insurance Exchange has been successful in promoting work place safety because the companies get close to their insurance program. Over the last 10 years the aforementioned has resulted in a return of profit as a dividend to the policyholder, which has been 67 percent of the premium returned. However, last year the organization's profit was wiped out by assessments against the organization that occur as a result of the assigned risk pool. Over the last seven years, the assigned risk pool has experienced losses in the amount of \$60 million, of which \$2.9 million is the Alaska Timber Insurance Exchange's portion. "We can't continue to absorb these assessments; our own solvency will be at stake," he stated.

MR. PIHL pointed out that the losses continue into 2004 and there have been increases in rates. Frankly, the aforementioned is the result of mismanagement of the system and lack of control by the Division of Insurance. However, he emphasized that one shouldn't blame the current director because the situation has developed over a number of years. "A former director of insurance suppressed rates, there's just no doubt about it and it's led to this crisis in the assigned risk pool," he remarked. Furthermore, heavy discounts by insurance companies led to insolvencies that are assessed back to the surviving insurance companies. He related that rates have been so inadequate that insurance companies are forced to turn down applications and send them to the assigned risk pool, which has grown by three-fold. With regard to the 21 percent rate increase, Mr. Pihl urged the committee to view it in perspective because the rates today are back to about the 1993 level in spite of years of increases in costs.

TAPE 04-56, SIDE A

MR. PIHL noted his appreciation of some of the changes, such as the lost cost development system provided by HB 540. The steps of collateralizing assigned risk pool loss reserves and a mandate that the assigned risk pool be managed to at least break even on a three-year basis were in HB 357 until stripped out on the last day of session. The aforementioned will cost the state millions. He urged the committee to do collateralization, which other states require. By not collateralizing, the state is accepting a third or fourth mortgage position. Mr. Pihl highlighted that the items [stripped from HB 357] are included in HB 1002, which he appreciated. However, he suggested the "quota share fix." He reminded the committee that last year the

insolvency of Freemont cost everyone a lot of money because under current rules the cost of insolvency is assessed back to surviving companies. He opined that when an insolvency occurs, that company's assigned risk pool losses should travel as part of its bankruptcy to the guaranty fund. He noted that the insolvent company's own direct writing reserves go to the guaranty fund, although that's not the case for the assigned risk pool losses. In several discussions with the director of the Division of Insurance, she seems to agree that the aforementioned is unfair. However, she doesn't seem inclined to do anything about it. Therefore, Mr. Pihl related that he has amendment language on the aforementioned matter. Mr. Pihl concluded by noting that the Alaska Timber Insurance Exchange supports the changes [included in HB 1002].

MR. PIHL, in response to Representative Rokeberg, explained that the Alaska Timber Insurance Exchange is a reciprocal insurance company that's owned by the policyholders, who put up capital and deposit premiums. In return, any profit is distributed in the form of a dividend. Mr. Pihl confirmed that the Alaska Timber Insurance Exchange falls under all the regulations of the state as would another insurance underwriter.

Number 0432

LORI WING, President, Alaska Independent Insurance Agents & Brokers, informed the committee that collectively the association represents employers from Ketchikan to Barrow and the clients of the organization are governmental entities, privately held and publicly traded corporations, limited liability companies (LLC), and joint ventures. Furthermore, the employers are for profit and not-for-profit, large and small. Over the past few years these employers have experienced significant increased cost in the workers' compensation program. However, these increases don't correspond to any increase in workplace hazard or change in the types of reported injuries or diseases. In fact, employers have successfully reduced the frequency of work place injuries by almost 40 percent since 1990. Still, workers' compensation costs have risen faster than medical inflation. In the past year alone, the rates in Alaska have changed dramatically. For instance, clerical rates are up 40 percent this year and hospital employee rates are up 54 percent. She highlighted that sometimes these increases occur during jobs that are already bid or are in progress. Therefore, there's no way for the contractor to recover these additional costs. She reviewed various companies in which the [workers' compensation] rates have increased. Although one can't

guarantee this legislation would result in a decrease in rates, one can guarantee that without it rates will continue to increase. The increase in workers' compensation [rates] nationwide is a problem. She highlighted that workers' compensation is not a negotiated benefit. Ms. Wing concluded by expressing hope that HB 1002 will be passed out of committee.

LON TROTTER, Director, Risk Management, Arctic Slope Regional Corporation, testified in support of HB 1002 as a first step in streamlining the workers' compensation process.

Number 0740

BARBARA WILLIAMS, Alaska Injured Workers Alliance (AIWA), explained that AIWA represents union and non-union members alike. She related that AIWA doesn't support HB 1002 because five new positions total are created to perform all of the work of 19 designees in the court system. The aforementioned leaves labor and management out of the hearing process and places them in the appellate process, although their expertise is dealing with workers rather than judicial processes. Therefore, the cost of appeals is driven up to 60 [percent] rather than 30 and there's no anticipated cap. She suggested that injured workers are going to have to do more litigation to receive benefits. She noted that in most cases, the injured worker is going through litigation without assistance from an attorney. Furthermore, there's no education program or continuing education charges for those being placed [on the commission].

MS. WILLIAMS highlighted that the fiscal note specifies that the costs for this legislation exceed \$1.2 million and the figures don't quite add up. She reminded the committee that Ms. Johnson, a representative for the state risk manager, related that the [division] anticipates eventually capping the costs but savings can't be insured through administrative figures. Ms. Williams informed the committee that she's in a unique position because she is one of the few workers in the state who has had her insurance company fined for deliberately not paying bills 22 consecutive times. "There's no adequate oversight of the insurance process, the self-insured employers are grossly unregulated," she related. Shuffling these benefit programs and rearranging the administrative and adjudicative process is a disturbance to injured workers, industry, labor, and management. She highlighted that the attorneys for injured workers are \$.50 on the dollar, which is the lowest paid in the nation. If the process is changed and complicated, there's no incentive for injured workers' attorneys to work for injured workers.

However, there is no review of capping the defense costs, although \$702,000 of the guaranty fund has been used for the cost of defense of the insurance companies. Ms. Williams opined that HB 1002 isn't going to help injured workers at all. In fact the legislation doesn't address many items, such as injured workers with catastrophic injuries who are stuck in the system for 10 years plus before their claims are litigated.

Number 0914

KEVIN DOUGHERTY, Alaska State District Council of Laborers, began by saying that there's no question that workers' compensation is important for injured workers, widows, and surviving families. Workers' compensation is also very important to employers and insurance companies. Over the past 24 years, work has been done with the aforementioned communities in order to develop a fair balance. He turned to the issue of worker safety, which this legislation doesn't address. He mentioned incentives for worker safety and deterring poor safety records through experience modification, et cetera. Mr. Dougherty remarked that the increase in rates has nothing to do with the Alaska Workers' Compensation Board, which has wonderful business and labor representatives. He said the problem really begins with Freemont and the other 41 insurers that have gone bankrupt. Therefore, the aforementioned needs to be regulated and stopped. In response to Chair Anderson, Mr. Dougherty agreed to work on this matter in the interim.

CHAIR ANDERSON closed public testimony.

Number 1156

REPRESENTATIVE CRAWFORD moved to report HB 1002 out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE DAHLSTROM objected.

A roll call vote was taken. Representative Rokeberg voted in favor of reporting HB 1002 from the House Labor and Commerce Standing Committee. Representatives Dahlstrom, Lynn, Crawford, Guttenberg, Gatto, and Anderson voted against it. Therefore, HB 1002 failed to be reported out of the House Labor and Commerce Standing Committee by a vote of 1-6.

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 2:05 p.m.