

**ALASKA STATE LEGISLATURE**  
**FREE CONFERENCE COMMITTEE ON SB 130**

May 21, 2005

12:49 p.m.

**MEMBERS PRESENT**

Senator Gene Therriault, Chair  
Senator Charlie Huggins  
Senator Hollis French

Representative Norm Rokeberg, Vice-Chair  
Representative Tom Anderson  
Representative Eric Croft

**MEMBERS ABSENT**

All Members Present

**COMMITTEE CALENDAR**

CCS SB 130(FLD H)

"An Act relating to workers' compensation and to assigned risk pools; relating to the Alaska Insurance Guaranty Association; establishing the Task Force on Workers' Compensation; amending Rule 45, Alaska Rules of Civil Procedure; and providing for an effective date."

MOVED FCCS SB 130 OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: SB 130

SHORT TITLE: WORKERS' COMPENSATION/ INSURANCE

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

|          |     |                                 |
|----------|-----|---------------------------------|
| 03/03/05 | (S) | READ THE FIRST TIME - REFERRALS |
| 03/03/05 | (S) | L&C, FIN                        |
| 03/08/05 | (S) | L&C AT 1:30 PM BELTZ 211        |
| 03/08/05 | (S) | Heard & Held                    |
| 03/08/05 | (S) | MINUTE(L&C)                     |
| 03/10/05 | (S) | L&C AT 1:30 PM BELTZ 211        |
| 03/10/05 | (S) | Heard & Held                    |
| 03/10/05 | (S) | MINUTE(L&C)                     |
| 03/15/05 | (S) | L&C AT 1:30 PM BELTZ 211        |
| 03/15/05 | (S) | Heard & Held                    |
| 03/15/05 | (S) | MINUTE(L&C)                     |

03/17/05 (S) L&C AT 1:30 PM BELTZ 211  
 03/17/05 (S) Heard & Held  
 03/17/05 (S) MINUTE(L&C)  
 03/22/05 (S) L&C AT 1:30 PM BELTZ 211  
 03/22/05 (S) Heard & Held  
 03/22/05 (S) MINUTE(L&C)  
 03/24/05 (S) L&C AT 2:00 PM BELTZ 211  
 03/24/05 (S) Heard & Held  
 03/24/05 (S) MINUTE(L&C)  
 03/29/05 (S) L&C AT 1:30 PM BELTZ 211  
 03/29/05 (S) -- Meeting Canceled --  
 03/31/05 (S) L&C AT 1:30 PM BELTZ 211  
 03/31/05 (S) Moved CSSB 130(L&C) Out of Committee  
 03/31/05 (S) MINUTE(L&C)  
 04/01/05 (S) L&C RPT CS 2DP 1NR 2AM  
 NEW TITLE  
 04/01/05 (S) DP: BUNDE, STEVENS B  
 04/01/05 (S) REPRESENTATIVE ROKEBERG SENATOR SEEKINS  
 04/01/05 (S) AM: DAVIS, ELLIS  
 04/01/05 (S) JUD REFERRAL ADDED AFTER L&C  
 04/05/05 (S) JUD AT 8:30 AM BUTROVICH 205  
 04/05/05 (S) Heard & Held  
 04/05/05 (S) MINUTE(JUD)  
 04/06/05 (S) JUD AT 8:30 AM BUTROVICH 205  
 04/06/05 (S) Heard & Held  
 04/06/05 (S) MINUTE(JUD)  
 04/07/05 (S) JUD AT 8:30 AM BUTROVICH 205  
 04/07/05 (S) Heard & Held  
 04/07/05 (S) MINUTE(JUD)  
 04/08/05 (S) JUD RPT CS FORTHCOMING 1DP 4NR  
 04/08/05 (S) DP: SENATOR SEEKINS  
 04/08/05 (S) REPRESENTATIVE ROKEBERG FRENCH, GUESS,  
 THERRIAULT, HUGGINS  
 04/08/05 (H) JUD AT 8:00 AM CAPITOL 120  
 04/08/05 (S) Moved CSSB 130(JUD) Out of Committee  
 04/08/05 (S) MINUTE(JUD)  
 04/08/05 (S) FIN AT 9:00 AM SENATE FINANCE 532  
 04/08/05 (S) <Pending Referral>  
 04/11/05 (S) FIN RPT CS 5DP 1NR 1AM  
 NEW TITLE  
 04/11/05 (S) DP: GREEN, WILKEN, BUNDE, DYSON,  
 STEDMAN  
 04/11/05 (S) REPRESENTATIVE ROKEBERG HOFFMAN  
 04/11/05 (S) AM: OLSON  
 04/11/05 (S) JUD CS RCVD NEW TITLE  
 04/11/05 (S) FIN AT 9:00 AM SENATE FINANCE 532  
 04/11/05 (S) Moved CSSB 130(FIN) Out of Committee

04/11/05 (S) MINUTE(FIN)  
 04/14/05 (S) TRANSMITTED TO (H)  
 04/14/05 (S) VERSION: CSSB 130(FIN) AM  
 04/15/05 (H) READ THE FIRST TIME - REFERRALS  
 04/15/05 (H) L&C, JUD, FIN  
 04/15/05 (S) FIN AT 9:00 AM SENATE FINANCE 532  
 04/15/05 (S) Moved Out of Committee 4/11  
 04/15/05 (S) MINUTE(FIN)  
 05/04/05 (H) L&C RPT HCS(L&C) 2DP 3NR 2AM  
 (FORTHCOMING)  
 05/04/05 (H) DP: KOTT, LEDOUX;  
 05/04/05 (H) REPRESENTATIVE ROKEBERG, CRAWFORD,  
 LYNN, GUTTENBERG;  
 05/04/05 (H) AM: ROKEBERG, ANDERSON  
 05/04/05 (H) L&C AT 2:00 PM CAPITOL 17  
 05/04/05 (H) Moved HCS CSSB 130(L&C) Out of  
 Committee  
 05/04/05 (H) MINUTE(L&C)  
 05/05/05 (H) HCS(L&C) NT RECEIVED  
 05/05/05 (H) JUD AT 1:00 PM CAPITOL 120  
 05/05/05 (H) Failed To Move Out Of Committee  
 05/05/05 (H) MINUTE(JUD)  
 05/05/05 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
 05/05/05 (H) <Pending Referral>  
 05/06/05 (H) JUD RPT HCS(JUD) NT 3DP 3NR 1AM  
 05/06/05 (H) DP: KOTT, COGHILL, GARA;  
 05/06/05 (H) REPRESENTATIVE ROKEBERG, GRUENBERG,  
 DAHLSTROM, MCGUIRE;  
 05/06/05 (H) AM: ANDERSON  
 05/06/05 (H) FIN RPT HCS(JUD) NT 9NR  
 05/06/05 (H) REPRESENTATIVE ROKEBERG HAWKER, HOLM,  
 FOSTER, STOLTZE, REPRESENTATIVE CROFT,  
 WEYHRAUCH, JOULE, MOSES, MEYER  
 05/06/05 (H) JUD AT 1:00 PM CAPITOL 120  
 05/06/05 (H) Moved HCS CSSB 130(JUD) Out of  
 Committee  
 05/06/05 (H) MINUTE(JUD)  
 05/06/05 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
 05/06/05 (H) <Pending Referral>  
 05/08/05 (H) BEFORE THE HOUSE  
 05/08/05 (H) VERSION: HCS CSSB 130(JUD) AM H  
 05/09/05 (S) CONCURRENCE MESSAGE READ AND HELD  
 05/09/05 (S) CONFERENCE COMMITTEE APPOINTED  
 05/09/05 (S) B. STEVENS (CHAIR), SENATOR SEEKINS,  
 GUESS  
 05/09/05 (H) SPECIAL SESSION BILL - SEE H. JOURNAL  
 PAGE 1854

05/09/05 (H) RECEDE MESSAGE READ  
 05/09/05 (H) CONFERENCE COMMITTEE APPOINTED  
 05/09/05 (H) HARRIS, COGHILL, GUTTENBERG  
 05/09/05 (S) SPECIAL SESSION BILL - SEE S. JOURNAL  
 PAGE 1493  
 05/11/05 (H) 130 AT 7:00 PM BUTROVICH 205  
 05/11/05 (H) <Meeting Canceled>  
 05/12/05 (H) 130 AT 5:30 PM BUTROVICH 205  
 05/12/05 (H) -- Meeting Canceled --  
 05/13/05 (S) LIMITED POWERS FREE CONFERENCE GRANTED  
 05/13/05 (S) CC REPORT: CCS SB 130  
 05/13/05 (S) CC RPT ADPTD Y11 N6 E3 CCS SB 130  
 05/13/05 (H) LIMITED POWERS FREE CONFERENCE GRANTED  
 05/13/05 (H) CC REPORT READ  
 05/13/05 (H) 130 AT 9:00 AM BUTROVICH 205  
 05/13/05 (H) Moved CCS SB 130 Out of Committee  
 05/13/05 (H) MINUTE(130)  
 05/17/05 (H) CC REPORT FAILED Y20 N20  
 05/19/05 (S) FREE CONFERENCE COMMITTEE APPOINTED  
 05/19/05 (S) THERRIAULT (CHAIR), HUGGINS, FRENCH  
 05/20/05 (H) FREE CONFERENCE COMMITTEE APPOINTED  
 05/20/05 (H) ROKEBERG (CHAIR), ANDERSON, CROFT  
 05/20/05 (H) CC WITH LIMITED POWERS DISCHARGED  
 05/20/05 (H) 130 AT 3:00 PM BUTROVICH 205  
 05/20/05 (S) WORKERS' COMPENSATION/ INSURANCE  
 05/21/05 (H) 130 AT 12:00 AM BUTROVICH 205

**WITNESS REGISTER**

Ms. Kristin Knudsen  
 Assistant Attorney General  
 Department of Law  
 1031 W 4<sup>th</sup> Ave.  
 Anchorage, AK 99501-1994

**POSITION STATEMENT:** Answered questions related to SB 130

Mr. Paul Lisankie  
 Division of Workers' Compensation  
 Department of Labor & Workforce Development  
 PO Box 25512  
 Juneau, AK 99802-5512

**POSITION STATEMENT:** Answered questions related to SB 130

**ACTION NARRATIVE**

**CCS SB 130-WORKERS' COMPENSATION/INSURANCE**

**CHAIR GENE THERRIAULT** called the Free Conference Committee on SB 130 to order at 1:18:09 PM. Senators Therriault, French, and Huggins and Representatives Croft, Anderson and Rokeberg were present.

CHAIR THERRIAULT moved to adopt Amendment 10, labeled R.27, which reads as follows:

24-GS1112\R.27  
Bullock

**A M E N D M E N T 10**

OFFERED IN CONFERENCE  
TO: CCS SB 130

BY SENATOR THERRIAULT

Page 10, following line 7:

Insert a new bill section to read:

"\* **Sec. 9.** AS 23.30.010 is repealed and reenacted to read:

**Sec. 23.30.010. Coverage.** (a) Except as provided in (b) of this section, compensation or benefits are payable under this chapter for disability or death or the need for medical treatment of an employee if the disability or death of the employee or the employee's need for medical treatment arose out of and in the course of the employment. To establish a presumption under AS 23.30.120(a)(1) that the disability or death or the need for medical treatment arose out of and in the course of the employment, the employee must establish a causal link between the employment and the disability or death or the need for medical treatment. A presumption may be rebutted by a demonstration of substantial evidence that the death or disability or the need for medical treatment did not arise out of and in the course of the employment. When determining whether or not the death or disability or need for medical treatment arose out of and in the course of the employment, the board must evaluate the relative contribution of different causes of the disability or death or the need for medical treatment. Compensation or benefits under this chapter are payable for the disability or death or the need for medical treatment if, in relation to other causes, the employment is the substantial cause of the disability or death or need for medical treatment.

(b) Compensation and benefits under this chapter are not payable for mental injury caused by mental stress, unless it is established that (1) the work stress was extraordinary and unusual in comparison to pressures and tensions experienced by individuals in a comparable work environment; and (2) the work stress was the predominant cause of the mental injury. The amount of work stress shall be measured by actual events. A mental injury is not considered to arise out of and in the course of employment if it results from a disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or similar action taken in good faith by the employer."

Renumber the following bill sections accordingly.

Page 49, line 1:

Delete "sec. 65"

Insert "sec. 66"

Page 50, line 20:

Delete "sec. 53"

Insert "sec. 54"

Page 50, line 21:

Delete "sec. 53"

Insert "sec. 54"

Page 52, line 15:

Delete "sec. 34"

Insert "sec. 35"

Page 52, line 23:

Delete "sec. 65"

Insert "sec. 66"

Page 52, line 24:

Delete "sec. 76"

Insert "sec. 77"

Page 52, line 26:

Delete "Sections 34, 77, and 82(a)"

Insert "Sections 35, 78, and 83(a)"

Page 52, line 28:

Delete "Sections 1, 2, 53, and 83"

Insert "Sections 1, 2, 54, and 84"

Page 52, line 29:

Delete "secs. 85 and 86"

Insert "secs. 86 and 87"

REPRESENTATIVE CROFT objected.

CHAIR THERRIAULT asked Mr. Lisankie and Ms. Knudsen to come forward to answer questions.

REPRESENTATIVE ROKEBERG told members he planned to propose a follow-up amendment to remove some of the language omitted from Amendment 10.

CHAIR THERRIAULT said he would be moving a modification to Section 66 as Amendment 11.

REPRESENTATIVE CROFT asked for an explanation of Amendment 10.

[1:19:18 PM](#)

MS. KRISTIN KNUDSEN, Assistant Attorney General, Department of Law, told members that lines 4-13 on page 1 essentially encapsulates the current law with respect to how the operation of the presumption works. To establish the presumption under AS 23.30.120(a)(1) that an injury is compensable under the workers' compensation act, a work connection must be established. Once that presumption is established, the employer can rebut it with substantial evidence using one of two methods that are well established in law. The next sentence is new (lines 14-17) in the sense that it directs the board, when determining that the work is a substantial cause of the injury, to consider it in relation to all other causes. In other words, the board cannot look at the work in isolation to determine whether it was a substantial cause of the injury.

SENATOR FRENCH asked how the board makes that determination now.

MS. KNUDSEN said assuming the presumption has dropped out, the board looks at the work and asks: But for the work would the injury have occurred and was it so important in bringing about the harm that a reasonable man would regard it as a cause and assign responsibility to it? She explained that question is the substantial test that all lawyers in the state are familiar with. Amendment 10 does not alter that; it just says when

looking at whether a factor is substantial the board must also look at other factors.

REPRESENTATIVE ANDERSON said he sees Amendment 10 as a more palatable hybrid of where the committee wants to go. Lines 14-20 make the difference, that being if an issue arises about substantial cause, the decision reverts to the board because employers won't want to negotiate that issue with each other. He asked if the purpose of Amendment 10 is to provide more scrutiny on the question of who will pay.

MS. KNUDSEN said that is the second change. She explained the first change is not as big because when determining substantiality, the presumption has been overcome. An employer will bring forth evidence of other causes. That does not impact the bar for recovery. The second sentence pinpoints the more significant difference.

[1:25:50 PM](#)

REPRESENTATIVE ANDERSON asked if the standard were the current "a substantial" versus "the substantial," the current employer would have to pay 70 to 90 percent of the time. He pointed out the injury would be covered one way or the other - by Medicaid if nothing else; the debate is about who will pay.

SENATOR FRENCH interjected and asked about lost wages.

REPRESENTATIVE ANDERSON said he would get to that later and asked if Amendment 10 will afford more scrutiny of coverage.

MS. KNUDSEN said it does require the board to expand its scrutiny but the board is not prohibited from doing that now. Lines 14-17 do not represent anything other than a directive to the board that when determining "a substantial factor" or "the substantial factor," to review all factors.

REPRESENTATIVE CROFT asked about the statute of limitations for workers' compensation claims.

[1:28:03 PM](#)

MS. KNUDSEN said the statute of limitation runs 2 years after the date of injury but no longer than 4 years after the date of injury. If the injury is latent, the time period begins after discovery. In the case of death it is one year. She added the

statute does not begin to run until the person is aware of a connection between the disability and work.

REPRESENTATIVE CROFT said at its previous meeting the committee discussed cases where this could be unfair. He gave the example of a case where an employee could have been breathing the same toxins on many jobs and the responsibility could fall on the last employer whose employment contributed but who may not have been the major factor. He asked if Amendment 10 will create the same problem and whether many employees will "fall through the cracks."

MS. KNUDSEN said the crack here is much narrower than it would be using the major contributing factor standard. The Alaska Supreme Court has drawn a distinction between "a substantial cause" and "the substantial cause" but it has not indicated that "the substantial cause" is equivalent to "the major contributing factor."

[1:32:02 PM](#)

CHAIR THERRIAULT asked if Amendment 10 presents a much lower standard than "the major contributing cause" standard.

MS. KNUDSEN said in her estimation, the term "the substantial cause" speaks to the possibility of many causes and determining whatever constitutes substantial in the minds of reasonable men. The word "major" differs in that it implies that a comparison must be made to determine the highest cause.

REPRESENTATIVE ANDERSON asked if "the substantial" is the lower threshold or Amendment 10 would not be before the committee again.

MS. KNUDSEN said that is not to say it is the same as the current standard.

REPRESENTATIVE CROFT maintained that Amendment 10 clearly contemplates that one cause will be compared to another.

[1:33:20 PM](#)

MS. KNUDSEN said the first sentence clearly contemplates that substantiality would be determined in comparison to other causes if other causes exist. The supreme court originally determined substantial factor in Sharp versus the North Star Borough by examining two competing causes. In workers' compensation cases,

there has been a tendency to forget the comparative analysis of work relationship. Amendment 10 only tells the board to determine substantiality in relation to other causes.

REPRESENTATIVE CROFT asked if an employer cannot be "the" substantial cause under Amendment 10 if something else is more of a cause.

MS. KNUDSEN said that is correct.

1:35:19 PM

REPRESENTATIVE CROFT asked if, in a situation where someone worked with asbestos at one job for 12 years and at another for 5 years and started to feel sick, the board could determine that the 5 year employment wasn't the substantial cause but the employee would be prevented from suing the earlier employer because he should have known of the illness within two years [of leaving the first job].

MS. KNUDSEN said that would not be the case because Amendment 10 was drafted in the disjunctive. The board must look at the disability at the time the claim was filed or when medical treatment was occasioned by the employment. If a person had 8 years of exposure in a shipyard, continued to be employable and did not experience any symptoms, the subsequent employer would have a difficult time establishing that the latest employment was not the substantial factor in the need for medical treatment. She emphasized the determination is based on the need for medical treatment at the time. She thought Representative Croft's concern was geared more toward medical treatment needed later on. She explained the employer's burden is unchanged; the employer must eliminate the possibility of a work relationship to overcome the presumption.

MS. KNUDSEN said under current law, an employee must show some evidence of the relationship and the employer must show substantial evidence that excludes the employment as the legal cause of the injury. The burden is unchanged. The employer must eliminate the possibility of a work relationship or must point to the way to overcome the presumption.

REPRESENTATIVE CROFT said under current law, the employee must show some evidence and the employer must show by substantial evidence that the current employment has been excluded as the cause.

REPRESENTATIVE CROFT asked where that is located in the bill.

MS. KNUDSEN said it is in Alaska Supreme Court case law.

REPRESENTATIVE CROFT said the legislature is about to codify case law in statute but the bill does not speak to that at all.

[1:39:56 PM](#)

MS. KNUDSEN said the bill says that a causal link must be established - that wording is from the Steffe case.

REPRESENTATIVE CROFT said he looked at the case law and, in his mind, there is a big difference between establishing a causal link and submitting some evidence of a causal link.

MS. KNUDSEN said line 12 on page 1 says the presumption may be rebutted by a demonstration of substantial evidence that the death or disability did not arise out of and in the course of employment.

CHAIR THERRIAULT interjected to tell members he just received the corrected amendment, labeled R.28. It includes, on page 2, the deletion of the language in Section 66, regarding the stress issue and a separate tort claim. He then withdrew his motion to adopt Amendment 10 and moved to adopt Amendment 11.

REPRESENTATIVE CROFT objected to the adoption of Amendment 11.

[1:42:50 PM](#)

REPRESENTATIVE CROFT suggested adding on line 10 the phrase, "must establish some evidence of a causal link between the employment and the disability,". He noted the overall legal standard is substantial evidence and a lot of case law fleshes that out. He said the amendment accurately states that standard but it might not state the current law on the original burden of the employee. He cautioned that a full causal link could be misinterpreted using the current standard of "some evidence of."

REPRESENTATIVE ROKEBERG said for the employee, the "a preponderance of the evidence" standard would change to "substantial evidence."

CHAIR THERRIAULT told members the language in Amendment 11 came straight from the published court decision.

SENATOR FRENCH asked if he was referring to the language down to line 13 [page 1].

CHAIR THERRIAULT said he was.

[1:44:06 PM](#)

MS. KNUDSEN said the court described the standard in Steffe as "a causal link," meaning a link - not a whole case. The court has also described it as "a preliminary link" in the Smallwood case and as "some evidence of work connection" in another case.

REPRESENTATIVE CROFT asked if "some evidence of" is sometimes used.

MS. KNUDSEN said it is.

REPRESENTATIVE CROFT asked if "the preliminary" or "some evidence of" is not meant to harm those cases.

MS. KNUDSEN replied, "Exactly."

SENATOR FRENCH referred to Sec. 23.30.010(a) and said the language on lines 1-13 only codifies existing case law but the language on lines 14-20 take the existing coverage and squeeze it smaller.

MS. KNUDSEN said lines 14-17 would have no impact whatsoever. That language is not intended in anyway to restrict or change the current standard for work relationship.

[1:46:10 PM](#)

CHAIR THERRIAULT said it merely requires the board to take that action.

MS. KNUDSEN agreed and said the board should be doing that anyway.

SENATOR FRENCH asked if that subsection is only intended to codify existing case law.

MS. KNUDSEN acknowledged that the word "the" in the last sentence does constitute a change from current law.

SENATOR FRENCH asked if it makes the universe of claims smaller so that a certain number of claims covered under the old law will not be covered under the new law.

MS. KNUDSEN said it is hard to foresee how that would happen but it is possible.

[1:47:27 PM](#)

SENATOR FRENCH said if the language on line [19] was changed to "a" substantial cause instead of "the", the ball would be the same size as it was before.

MS. KNUDSEN said that is correct.

CHAIR THERRIault said dropping back from the "major contributing cause" standard to codifying the existing standard does change the current standard.

REPRESENTATIVE ROKEBERG said one concern has been that people will be left without coverage if the board finds they don't qualify for workers' compensation benefits, particularly if an employer's insurance carrier becomes insolvent or because an employee has a former non-work related injury. He asked if this language represents a protection for employees, whether the Last Injurious Exposure Doctrine will survive Amendment 11 and how that would fit into practice.

MS. KNUDSEN said this amendment does not affect the doctrine. Amendment 11 will provide an opportunity for employers to shift some times when they may have been a substantial factor to another employer who was the substantial factor. However, as to initial treatment of injuries that occur on the job, she finds it hard to imagine a case where a witnessed injury on the job is not provided with treatment, even with a preexisting injury.

[1:50:46 PM](#)

REPRESENTATIVE ROKEBERG said AS 23.30.155(d) clearly protects any worker so that the worker will get paid; the dispute is about who will pay. The current employer pays the bill, and then fault is determined through an adjudicative process. He expressed concern about the issue of substantial cause to address a situation in which the board could determine a current employer to be entirely responsible for an employee with an older injury who reinjured himself on a current job.

MS. KNUDSEN said this is phrased in the disjunctive - meaning it contains the word "or" - that situation could occur. She gave an example of a diabetic who stepped on a nail at work and needed immediate treatment. The work injury was the substantial factor in the need for immediate treatment so the absence from work would be covered. If later that worker needed to have an amputation because of the injury, the board would then look at the substantial factor.

REPRESENTATIVE CROFT asked if the cause could be the prior employment.

[1:54:00 PM](#)

MS. KNUDSEN said that is correct.

REPRESENTATIVE ROKEBERG asked how the statute of limitation would play in.

MS. KNUDSEN said it provides for latent injuries and for cases in which the employee didn't know the connection between the disability and the original injury.

REPRESENTATIVE CROFT thought Ms. Knudsen was being too modest about the cost savings because although litigation will cost, the fights between insurance companies will victimize the injured workers. He argued that when one cause is determined to be greater than the other, the other is not the substantial cause anymore. He questioned how a court could make any determination other than that the job with the longer exposure time is the greater factor. He noted the compensation system used to carry that risk, which will now be shifted to the employee. He asked her to elaborate on the disjunctive issue.

[1:57:17 PM](#)

MS. KNUDSEN said the language on page 1, lines 17-20, contemplates that the possibility of occasions where, for example, the disability concerns may not be work related but the need for medical treatment is. To qualify for benefits, the employment would only have to be the substantial cause of one of the conditions.

REPRESENTATIVE CROFT expressed concern that the word "if" means the employee cannot get benefits for any one of the three conditions unless the employer is determined to be the greater cause.

MS. KNUDSEN said that is the difference between (a) and (b).

A roll call vote was taken. Representatives Anderson and Rokeberg and Senators Huggins and Therriault were in favor; Representative Croft and Senator French were opposed.

CHAIR THERRIAULT announced that Amendment 11 was adopted and explained that the structural change in the new AS 23.30.010 and the deletion on page 2 of the amendment take care of the argument that an employee could take a separate tort action against the employer for those items exempted from the definition of injury.

REPRESENTATIVE ANDERSON asked Senator Seekins to address another concern he heard from the medical community about rate freezing.

SENATOR SEEKINS, District D, directed members to Section 75 of the bill on page 48 and read, "AS 23.30.097(a)(1) is repealed August 1, 2007". He then referred to page 25 and said that means the medical services review board is to look at the medical compensation process and the medical payment section freezes rates as of the December 1, 2004 bulletin. If, by the end of the 2007 session, the medical process has not been revised after the medical advisory board weighs in, this section will be repealed and the current method used by the board to calculate medical rates will kick in. He stated, "So there is a drop dead date. If we don't act to put something else in place, we go back to the old system."

[2:02:04 PM](#)

REPRESENTATIVE ANDERSON said this will give physicians the opportunity to help solve the workers' compensation problem but, if after 2 years the legislature can come to no agreement, the rates won't be frozen forever.

SENATOR SEEKINS said that is correct and noted the governor suggested freezing the rates at the 1999 level. He and many doctors and associations decided if the rates were going to be frozen, they should be frozen at the current rate. That will amount to a freeze for one year. If the legislature hasn't acted by the end of next session, this provision will revert to the old system.

REPRESENTATIVE CROFT asked what authority the government has to set those rates.

SENATOR SEEKINS said the board's authority is in statute now.

REPRESENTATIVE CROFT said the board sets rates in the sense that it prevents [the medical community] from charging more for workers' compensation cases but letting the board tell the medical community what it must charge is entering new territory.

[2:03:48 PM](#)

SENATOR SEEKINS disagreed and said it is not uncommon for government to set the rates when it pays.

SENATOR SEEKINS said it is not a new concept and that he is comfortable with it.

REPRESENTATIVE ROKEBERG asked if the division does an annual review of the rates paid now.

MR. PAUL LISANKIE, Director, Division of Workers' Compensation, Department of Labor and Workforce Development (DOLWD) said that is correct; the board was given statutory authority in 2000 to revisit the calculation of the fee cap at least once per year.

REPRESENTATIVE ROKEBERG recalled that previous to the statutory change, the board did so less frequently.

MR. LISANKIE acknowledged that prior to 2000, board review occurred less frequently.

SENATOR SEEKINS pointed out that the medical community was tremendously helpful in finding the right way to proceed with this process.

CHAIR THERRIAULT noted that he distributed a letter to members that led to Amendment 11.

[2:05:47 PM](#)

SENATOR FRENCH moved to change the reference to "the Alaska Chiropractic Association" to "the Alaska Chiropractic Society" [Amendment 12] on page 24, lines 17 and 18 to accurately reflect the name of that organization.

[2:06:44 PM](#)

CHAIR THERRIault announced that without objection, Amendment 12 was adopted.

REPRESENTATIVE ROKEBERG moved CCS SB 130 as amended and its adjusted fiscal notes from committee.

[2:07:11 PM](#)

SENATOR FRENCH objected because the bill still contains an appeals commission, which he sees as a bureaucratic construct that will not do what its proponents claim. His calculations show that the current system has been operational for 40 years. If approximately 30 decisions have been issued by the superior court each year, 1,200 decisions have been rendered and he has seen none that conflict. He said the superior court is resolving these claims quite well. He repeated that he sees no reason to create a new bureaucracy.

A roll call vote was taken. Senator Huggins, Senator Therriault, Representative Rokeberg and Representative Anderson were in favor; Senator French and Representative Croft were opposed.

CHAIR THERRIault announced that FCCS SB 130 moved out of committee. He then adjourned the meeting.