

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

February 9, 2005

3:21 p.m.

MEMBERS PRESENT

Representative Tom Anderson, Chair
Representative Pete Kott
Representative Gabrielle LeDoux
Representative Bob Lynn
Representative Norman Rokeberg
Representative Harry Crawford
Representative David Guttenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 31

"An Act relating to the presumption of coverage for a workers' compensation claim for disability as a result of certain diseases for certain occupations."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 31

SHORT TITLE: WORKERS' COMP: ILLNESS PRESUMPTION

SPONSOR(S): REPRESENTATIVE(S) ANDERSON

01/10/05	(H)	PREFILE RELEASED 12/30/04
01/10/05	(H)	READ THE FIRST TIME - REFERRALS
01/10/05	(H)	L&C, HES, FIN
02/09/05	(H)	L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

JON BITTNER, Staff
Representative Anderson
Alaskan State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 31 on behalf of the sponsor,
Representative Anderson.

MIKE DAVIDSON, Firefighter
Anchorage Fire Department
Anchorage, Alaska
POSITION STATEMENT: Testified in favor of HB 31.

MIKE DRYGAS, President
Alaska Professional Firefighter Association
Fairbanks, Alaska
POSITION STATEMENT: Testified in favor of HB 31.

DAVE BODDY, Firefighter
Juneau/Douglas Fire Department
Juneau, Alaska
POSITION STATEMENT: Testified in favor of HB 31.

SUSAN DANIELS, Vice President
Workers Compensation
Northern Adjusters
Anchorage, Alaska
POSITION STATEMENT: Testified against HB 31.

BRAD THOMPSON, Director
Division of Risk Management
Department of Administration
Alaska State Government
Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 31.

ACTION NARRATIVE

CHAIR TOM ANDERSON called the House Labor and Commerce Standing Committee meeting to order at [3:21:33 PM](#). Representatives Crawford, Ledoux, Kott, and Anderson were present at the call to order. Representatives Rokeberg, Lynn, and Guttenberg arrived as the meeting was in progress.

HB 31-WORKERS' COMP: ILLNESS PRESUMPTION

CHAIR ANDERSON announced that the only order of business would be "HOUSE BILL NO. 31 "An Act relating to the presumption of coverage for a workers' compensation claim for disability as a result of certain diseases for certain occupations."

JON BITTNER, Staff to Representative Anderson, Alaskan State Legislature, announced that House Bill 31 is a presumption of illness bill that addresses some concerns that first responders and firefighters face on a regular basis. He began with an outline of the bill.

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MR. BITTNER first described subsection a, which defines presumptive of illness as being the presumption of epidemiological link of an Emergency Medical Service (EMS) career and environment to eventual disease outbreak within individuals. Statistically, it has been proven that EMS workers have a higher incidence of certain types of cancers and other maladies than the general public as a result of their work environment. Subsection b is specific to firemen and the smoke they inhale. Subsection c deals with all the first responders and blood born pathogens. Subsection d deals with the exceptions this presumption. Subsection e deals with compliance rules and exceptions.

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MIKE DAVIDSON- Firefighter, Anchorage Fire Department, stated that this bill is important because it offers some [epidemiological] presumptions as to how certain illnesses have arisen. There is statistical evidence to show that certain illnesses are directly attributable to work environment and fire suppression activities. One of the problems with the current insurance environment is in regard to causation. Often, insurance companies ask what fire or activity caused the cancer or malady, which is like asking a smoker what cigarette caused his lung cancer. This link cannot be made and is illogical. He stated that the group he represents is trying to create reasonable and smart legislation that rightly recognizes that there is clear and direct evidence illustrating the linkage between firefighting to illnesses that many of us suffer from. He pointed out that the number one goal for the future is to have no illness being suffered as a direct result of the occupation.

CHAIR ANDERSON asked Mr. Davidson, with respect to all firemen associations, if there was support.

MR. DAVIDSON answered that assuredly there was support.

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REPRESENTATIVE CRAWFORD first stated that he was very much in favor of this bill, and then inquired as to the proposed wording changes.

MR. DAVIDSON answered that there was some concern, but asserted that the bill is not intended to modify current workers' compensation. The bill is designed to provide presumption for certain illnesses or diseases that are contracted by employees in certain occupations. He then stated that it seemed pretty clear in the current language and he wanted to make the intent perfectly clear what their intent is and what it is not.

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MR. DAVIDSON finished by stating that though he was aware of concerns and needed language changes, he had nothing to submit at this time.

REPRESENTATIVE CRAWFORD pointed out that it would be nice to make those changes before the bill moves out of committee.

MR. DAVIDSON pointed out that one of the changes he wanted to see was located on page 1, line 9, where the word "preponderance" is used to describe medical evidence. He stated that he wanted this changed to "clear and convincing", which better defines what is necessary to rebut an insurance claim refusal. He pointed out that, notwithstanding AS 23.30.120, that firefighters are not advocating any modification of this statute. However firefighters are trying to indicate that there are clear links to illnesses being suffered by EMS personnel and this occupation.

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REPRESENTATIVE CRAWFORD indicated that the conceptual amendment would create 'intent' language, which would supplement the existing language. He then stated that this is something that the committee could do if it agreed.

CHAIR ANDERSON stated that while he understood what Representative Crawford was saying, he clarified that intent language should target first responders and their specific [epidemiological] concerns, and not change workers compensation laws.

MR. DAVIDSON responded by stating that he understood what Chair Anderson was saying and that the reason he said what he said was that he did not want to suggest something that he was not fully sure about inserting the phrase. Conceptually, however, this is, he said, language that is needed by the bill to address the concerns of the EMS industry of Alaska.

CHAIR ANDERSON iterated that although he is the sponsor of the bill, he did so at the behest of the Firefighters Association of Alaska. He then stated that if the association has not been able to review the language, then the best thing to do is to do this via the committee process. He announced that there are three other committees poised to hear the bill and asked whether Mr. Davidson would mind going through this process without the additional language at this point.

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REPRESENTATIVE GUTTENBERG referring to page 2, paragraphs (2) and (3), asked what happens after 60 months, the time given in the bill that will cover individuals and allow them to still evoke their experience with EMS as an epidemiological link to any illness that might occur. He then asked what happened to the individual whose disease manifests past this specified time parameter.

MR. DAVIDSON asserted that this bill qualifies you for a presumption, and shifts the burden to the employer to prove that the illness has a causative agent that is beyond the impact of the individual's time in the EMS. After 60 months separation, they lose the benefit of presumption, however, and the burden shifts back to the employee.

REPRESENTATIVE GUTTENBERG, referring to paragraph (3) on page 2, asked, in lieu of the 10 years of service that is required for the presumption to take place, an individual takes a fall and is not able get the required ten years for coverage.

MR. DAVIDSON answered that it was written this way because the research did not indicate that any of the illnesses occurred until ten years of service were put in by the EMS personnel. Certainly there are cancers that can be prolific after much less time. Such cancers manifest themselves after exposure to greater than normal levels of radiation for which presumptive language isn't necessary since this kind of epidemiological event and its etiological root is quite evident. Right now, he said, the committee is talking about long-term exposure to multiple events.

REPRESENTATIVE GUTTENBERG asked what the exposure rate is over various time frames.

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MR. DAVIDSON asserted that an individual does not qualify for this if he does not have 10 years in the service. He continued to say that although this presumptive clause, you can still file a claim. If a manifestation of cancer or other life-threatening event occurs and a physician can vouch for the condition and possible etiology, the individual can file a claim. Studies have implicated long-term exposure, but short-term exposure simply does not come up in the literature.

CHAIR ANDERSON announced that he thought this was a good question, and he pointed out that it showed prudence on the part of the sponsoring group to cover itself when it came to people's ability to obtain health coverage for any disease that may arise after a year or two of leaving the EMS occupational industry.

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REPRESENTATIVE ROKEBERG relayed a concern he received from a person on the ad hoc committee who complained about the underwriting that certain employers have done in favor of workers' compensation coverage instead of self-insured coverage. He then stated that his biggest concern is the language in subsection (c), starting on line 22. He explained that it seems to be nonexclusive for the firefighters and is seemingly open to anyone that works in the medical field. He added that by reading it this way, the bill's scope is enormous.

CHAIR ANDERSON asked if this was inadvertent or purposeful.

MR. DAVIDSON responded that his group did not want to exclude professional groups that are also part of the emergency response team. Firefighters are part of this team and the report on cancer is specific to their particular work environment.

MR. DAVIDSON continued by stating that other emergency response professions, such as paramedics, EMT's, and police officers, are just as likely to have a hostile work environment. He concluded by stating that he disagreed with Representative Rokeberg and felt that other EMS occupations are clearly covered by the bill and were in mind when the bill was written.

REPRESENTATIVE ROKEBERG stated that this could mean that tens of thousands of individuals would possibly be covered by this bill and this bill could have huge ramifications for the state. He pointed out that every medical provider in one form or another could qualify for this etiological presumption.

CHAIR ANDERSON said that the committee needed to be careful and assess this point.

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REPRESENTATIVE LEDOUX stated that she was confused about Subsection (b), and asked if it meant that the terms of the presumption gives you three months for every year of service, topping off at 60 months of presumption coverage.

MR. DAVIDSON stated that the reason this was included in the bill was to give an epidemiological presumption, not to guarantee health coverage itself. He reiterated there is not enough evidence to show that short-term employment would warrant 60 months of coverage. Those working for a shorter duration will have to go through the traditional route of workers compensation since there was no evidence for giving a presumption for disease manifestation.

REPRESENTATIVE LEDOUX inquired at what point disease manifestation evident in the person is used for equating the medial problem with time worked.

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MR. DAVIDSON stated that the best way to look at this would be the example of benzene exposure, which is a highly carcinogenic compound, and fire suppression activities, which also contributes highly carcinogenic elements to the individual's body over time. There is not an exact level of exposure that is linked to cancer; it is specific to the individual and the level of exposure over time. He announced that he had seen correlative studies that showed that specific cancers were evidenced at specific doses of benzene compounds. The same applies to the daily fire suppression activities which correlated to specific types of cancer. The research also showed that firefighters in general have greater rates of cancer than the general populace. This all leads to occupational exposure. He then said that there was no evidence to show that short-term occupational exposure had the same effects.

MR. DAVIDSON stated again that the provisions in the bill do not diminish the prospect of coverage. The bill stipulates that having a short time of employment or the exhaustion of the maximum presumptive time allotment (60 months), does not disallow the individual the right to file a claim. The

individual has to have a physician provide evidence for the epidemiological and etiological link to the disease manifestation. The former employer still has the option to discount this opinion by obtaining an opinion from another physician.

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MIKE DRYGAS, President, Alaska Professional Firefighter Association, referring to the previous speaker, said that its good public policy to protect the state's firefighters. The bill provides medical coverage for diseases that result in terminal illnesses, and it ensures that the coverage covers treatment during the time of need. Moreover, the bill ensures that there will not be a battle between the patient and the insurance companies regarding responsibility for treatment costs.

MR. DRYGAS stressed that firefighting is not a sanitary job and the environment of an emergency cannot be controlled for. However, he noted that firefighters today are much more careful than they were 10 years earlier, and that safety is now a prime concern. He then related the nature of some of the events that firefighters go through while wearing a tank of air and working in the midst of a fire. This included toxic chemicals, smoke, and vapors. He added that a firefighter cannot know or prepare for the chemicals that may be in the room.

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MR. DRYGAS stated that this heavy risk for firefighters has been handed down as a sort of unspoken secret with firefighters; lifetimes for firemen are short. He pointed out that this trend is especially common with the old timers, referred to as smoke-eaters, who have been known to die within months of retiring. He echoed earlier testimony on research that showed that specific cancers of the body are specific to the industry itself with incidence and prevalence. He ended by stating that the Alaskan Firefighter Association tried to package this as workman compensation package rather than a fringe package, and then stated that these benefits are rightly deserved by firefighters.

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CHAIR ANDERSON highlighted the unique situation of Alaska. He stated that in Alaska, the access that people have to modern fire departments can be challenging. Referring to the forest

fires that hit central Alaska every summer, he said that this extra exposure was an extenuating hardship and asked if these areas of Alaska were superior in harm to health and well being than the exposure received by those who fight only urban fires. He then asked if this was another reason for the bill.

MR. DRYGAS agreed that there are some unique factors and that there are many cases where municipal firefighters are used for wild land fires, but this is really not unusual.

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DAVE BODDY, Firefighter, introduced himself as a second-generation firefighter who is quite involved with issues concerning Southeast Alaskan firefighters. He highlighted the fact that this bill would provide health coverage for Alaskans who become ill are covered and while fighting the illness, they don't have to worry about how their families will be provided for once they have died. He agreed that this is good public policy. He stressed that although firefighting is inherently safer now than years back, there are still things in the firefighting environment for which there is no control over, and there are chemicals that cannot be avoided.

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SUSAN DANIELS, Vice President, Workers' Compensation, Northern Adjusters, announced that she would offer a view that is from a claims perspective. She expressed concern about specific language, on page 2, lines 22-24, which she interpreted to mean that anyone working in a medical field who is exposed to human blood on the job can file a claim. She related that a study done by the State of Michigan concluded that lung cancers, skin cancers, and lymphomas, did not have a significantly high prevalence within the EMS industry, and that the correlation only occurs with a 30-year exposure time. She then expressed concern over the implication that volunteer firefighters who she said do not maintain good physical health and are more often than not, very obese and have a smoking history, both of which are contributing factor to disease manifestation. She stated that many parts of the bill are broad reaching and arbitrary. She concluded that she could not give support to the bill and would oppose it until changes in the language were made.

CHAIR ANDERSON directed attention to subsection (c), and inquired as to how it could be worked such that firemen, EMS

responders, and law enforcement are all included in the presumption.

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MS. DANIELS explained that the presumption currently works is that when contact with tainted body fluids occurs, a notice of injury should be filed by the worker through workers' compensation, AS 23.30.120 of the law covering this action. If the injury is filed within 30 days, the individual is automatically given presumption for the injury and are covered. She stated that if documentation and a report are made, the exposure and resulting condition is covered by existing law and workers' compensation. She said that she was not sure if an alternative needed to be added to what she felt was an adequate provision.

CHAIR ANDERSON then said that he wanted to have Mr. Davidson back up to answer these questions.

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MR. DAVIDSON argued that certainly, obvious exposure routes are routinely covered. However, he expressed that exposure sometimes occurs in less than obvious routes. He mentioned that although he wears respirators, gloves, and skin protection, he often discovers blood on his clothing and skin. He stated a reasonable assumption that as many times he had found this unknown exposure, there were also times that he did not. He stated the problem is that that these exposure events happen when EMS are in the midst of saving lives, not in between jobs.

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CHAIR ANDERSON asked if HB 31 could be made more specific to contain certain people like peace officers.

MR. DAVIDSON pointed out that one of the primary reasons his group is pursuing this, is that unlike other medical occupations, EMS personnel do not prescreen their patients and cannot always be aware of exactly what they are going up against. Although he indicated that it might be advisable to consider modification to the bill, he was not sure what term would be exclusive and still include all of the people that they are trying to cover without being too inclusive.

CHAIR ANDERSON asked Representative Rokeberg if he was comfortable with terminology that was inclusive of law enforcement and public health people or the opposite, where it was excluded and only EMS personnel were included.

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REPRESENTATIVE ROKEBERG said that it clearly needed to be narrowed and then characterized it as answered as a policy call for the committee which needs to decide how wide the presumption needs to be.

CHAIR ANDERSON, speaking as the sponsor, announced that his prime agenda for the bill, since he was the sponsor, is to cover firefighters, EMTs, and emergency medical staff, and peace officers, which would include corrections officers.

REPRESENTATIVE ROKEBERG added that specificity is critical.

CHAIR ANDERSON recalled that approximately two years ago, in House Bill 91, the 20-year medical retirement bill, peace officers were included.

MR. DAVIDSON suggested that substituting the phrase "for an employee" found on page 2, line 22, with "firefighter, emergency medical services worker or peace officer would be good".

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REPRESENTATIVE GUTTENBERG stated that the inclusion of these various occupations could be construed by level of exposure and who, in the public health sector, has what in terms of possible exposure or endangerment from work environments.

CHAIR ANDERSON asked if there are any people here from the Department of Health and Human Services.

REPRESENTATIVE LYNN remarked that its one thing to work in a hospital and then it is quite another thing to work in the environment of a first responder.

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CHAIR ANDERSON asked if "first responder" was the appropriate definition.

MR. DAVIDSON answered that he could not find another occupation that did not fall under the term 'first responder' and that firefighter, EMS, and peace officer seemed be classified appropriately under this term.

CHAIR ANDERSON announced that there was a letter written to himself from Barbara Craver, Legislative Counsel, from the Division of Legal and Research Services, who said:

In regard to the presumption established for workers exposed to human blood or body fluids I did not limit that to 'first responders'. We do not have any current definition in the statutes for first responders, or any other term that covers all the occupations you has listed, [such as] firefighters, airport police, corrections officers, trooper and other first responders.

CHAIR ANDERSON continued by stating that he thought that the committee was fine in passing the amendment changing the term to firefighter and emergency medical personnel, or a peace officer would be fine

BRAD THOMPSON, Director, Division of Risk Management, Department of Administration, announced that the State of Alaska is an authorized self-insured employer, so it pays its claims out of its own pocket. He, too, expressed concern with the expansive language, which would cover anyone in the medical occupation. He indicated further concern because there is no qualifying time period for employment and eventual exposure. Unlike the prior rules, the conditional clause stipulated that one only receives the provisional coverage if one meets the 10-year employment limit. He said that it was very difficult to be able to predict how many claims the state would have. However, he indicated that the claims that have been received were expensive and associated with chronic disease.

CHAIR ANDERSON stated [paraphrasing a letter from Barbara Craven dated December 15, 2004] that because contagious human diseases transmitted through exposure to human blood and body fluids were covered for firefighters in states like Washington and Idaho, she decided to take the more general approach and apply it to anyone whose occupation involves exposure to human blood or body fluids. He then capitulated that Mr. Thompson is requesting a time limit and wants to keep people from taking benefits due to exposure on the first day of the job.

MR. THOMPSON answered that the language is quite expansive.

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CHAIR ANDERSON said he wanted to hold the bill and revisit it after a week. He also indicated that he would keep public testimony open in order to take comments once changes have been made to the definition. He said that he did not think that he could please everyone, especially those in the insurance industry, however, in reference to the coverage, he did believe that by looking at similar legislation found in other states, a compromise could be created that would cover firefighters and peace officers.

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REPRESENTATIVE LEDOUX asked what would happen in the current statute if an incident is reported within 30 days, and then asked who was obligated to submit this report.

MS. DANIELS answered that once the employer knows about the incident, the employer has to file within 10 days. The employee has 30 days to report the injury to the employer.

REPRESENTATIVE LEDOUX posed a situation in which the employer forgets to file the workers' compensation claim. In such a situation, she said, the employee would then face the possibility of losing the claim. She asked if this were the case. She surmised that this would forgo any coverage by the presumptive insurance clause that currently exists.

MS. DANIELS answered that if the employee did report his claim diligently and on time, the employer then could still report the claim past the 10-day limitation set upon them.

REPRESENTATIVE ROKEBERG announced that he was baffled with the state risk management, and asked if the state was required to follow the same statute guidelines if they are self employed or is this done voluntarily.

MR. THOMPSON answered that the state would comply with the statute. He continued by stating that all employers have to comply with the ramifications of the statute and any changes that may result after today's changes.

REPRESENTATIVE ROKEBERG then recalled that Mr. Thompson had said that the division routinely looked at other methodologies for

making more presumptive claims for benefits for these types of workers. He stated that they were benefits that were not workers' compensation, but other health insurance or other compensation packages.

MR. THOMPSON related his understanding that there is an effort to provide compensation through an additional insurance product that goes beyond the workers' compensation that is received as a result of incurring the known and recognized disease incidents and illnesses that occur routinely over the course of one's working life. This new product is created by an enhancement of presumption of what is termed 'life illnesses' and is done through reform or extension of coverage of the workers compensation program or through a pension or benefit scheme.

REPRESENTATIVE ROKEBERG stated that if one is self-ensured, most of the pools are all supplied by the self-ensured or some governmental entity. He then indicated that some are financially more sound than others. He asked about some forms of cancers that are routinely compensated through normal insurance, and then there is the other benefits that would accrue through other workers compensation schemes.

MR. THOMPSON explained that the consideration is to expand an additional presumption for the "lifetime illness", and perhaps this could already be covered by the medical benefit provided by the employer or some other self-purchase policy.

REPRESENTATIVE ROKEBERG stated that traditionally, the medical cost is picked up by the health insurance plan or other additional training or other benefits under workman's compensation.

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MR. THOMPSON stated that the division provides workers' compensation to the state, but he is not familiar with the Public Employee Retirement System (PERS) medical bill.

REPRESENTATIVE ROKEBERG asked why there are multiple forms of social benefits here and why the private insurance companies do not pay for the claim.

MR. THOMPSON said that he was not the one to answer that question.

REPRESENTATIVE ROKEBERG, referring to the language change from "preponderance of evidence" to "clear and convincing evidence", asked if there are any current standards in workers' compensations claim determination that require this level of evidence.

MR. THOMPSON related his understanding that the act does establish an ability of the employer to raise substantial evidence that when examined alone would eliminate or establish another cause for the said condition. He went on to say that a presumption is implied and it is up to the employer to provide evidence that suggests the contrary. If the evidence is convincing enough, the presumption is thrown out and the evidence is weighed at that point, and the burden of proof shifts to the employee. He ended by stating that this bill is going to reform the presentation of the presumptions beyond what is being discussed here.

REPRESENTATIVE ROKEBERG suggested that this might be better answered by Ms. Daniels. He asked if the proposed language change would affect the current practices.

REPRESENTATIVE CRAWFORD interjected that "preponderance" is 50 plus one. If there was any factor that tipped the balance of the scales then it is a preponderance. He went on to define the term 'substantial' as one that means 'clear and convincing'.

REPRESENTATIVE ROKEBERG answered that these are legal terms of art and depending on how they are applied, they can be clear or unclear.

MS. DANIELS stated that coming to an understanding concerning this language would warrant consideration since there is a Supreme Court case involving precedence and the phrase "clear and convincing".

REPRESENTATIVE CRAWFORD explained, referring to his own experience with his wife who contracted hepatitis C as a scrub nurse, that the presentation of the disease did occur within the 30-day allotment provided by workers' compensation. However, it had been HIV, the disease would not have manifested within the timelines stipulated by the workers' compensation statutes. He concluded by stating that the committee needed to be more careful with the issue so people are not left without medical coverage.

REPRESENTATIVE LYNN resolved that the bill needs to be tightened, because [social services] "can't cover the universe". He then recalled his experience as a soldier in Vietnam and said that although he did not remember being showered with Agent Orange, a presumption exists that says since he was in the war environment, any chronic disease suffered in the future can be linked to this experience. However, he personally could not presume to think that his diabetes was caused by the defoliant. He concluded by stating that this is a good bill, but it should be tightened up to help all those concerned.

[HB 31 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at [4:27:49 PM](#).