

**ALASKA STATE LEGISLATURE**  
**HOUSE LABOR AND COMMERCE STANDING COMMITTEE**

April 1, 2005

3:41 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. 211

"An Act extending the termination date of the Board of Dental Examiners; and relating to dentists and dental hygienists."

- MOVED HB 211 OUT OF COMMITTEE

HOUSE BILL NO. 216

"An Act relating to insurance rate-making and form filing."

- MOVED CSHB 216 OUT OF COMMITTEE

HOUSE BILL NO. 180

"An Act relating to a special deposit for workers' compensation and employers' liability insurers; relating to assigned risk pools; relating to workers' compensation insurers; stating the intent of the legislature, and setting out limitations, concerning the interpretation, construction, and implementation of workers' compensation laws; relating to the Alaska Workers' Compensation Board; establishing a division of workers' compensation within the Department of Labor and Workforce Development, assigning certain Alaska Workers' Compensation Board functions to the division and the department, and authorizing the board to delegate administrative and enforcement duties to the division; establishing a Workers' Compensation Appeals Commission; providing for workers' compensation hearing officers in workers' compensation proceedings; relating to

workers' compensation medical benefits and to charges for and payment of fees for the medical benefits; relating to agreements that discharge workers' compensation liability; relating to workers' compensation awards; relating to reemployment benefits and job dislocation benefits; relating to coordination of workers' compensation and certain disability benefits; relating to division of workers' compensation records; relating to release of treatment records; 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; relating to attorney fees; providing for the department to enter into contracts with nonprofit organizations to provide information services and legal representation to injured employees; providing for administrative penalties for employers uninsured or without adequate security for workers' compensation; relating to fraudulent acts or false or misleading statements in workers' compensation and penalties for the acts or statements; providing for members of a limited liability company to be included as an employee for purposes of workers' compensation; establishing a workers' compensation benefits guaranty fund; relating to the second injury fund; making conforming amendments; providing for a study and report by the medical services review committee; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 227

"An Act relating to the Alaska Small Loans Act; and providing for an effective date."

- BILL HEARING POSTPONED

**PREVIOUS COMMITTEE ACTION**

BILL: HB 211

SHORT TITLE: DENTISTS; HYGIENISTS; BD OF DENTAL EXAM.

SPONSOR(S): REPRESENTATIVE(S) KELLY

03/07/05	(H)	READ THE FIRST TIME - REFERRALS
03/07/05	(H)	L&C, FIN
04/01/05	(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 216

SHORT TITLE: INSURANCE RATES, FORMS, AND FILING  
SPONSOR(S): LABOR & COMMERCE

03/09/05	(H)	READ THE FIRST TIME - REFERRALS
03/09/05	(H)	L&C, FIN
03/18/05	(H)	L&C AT 3:15 PM CAPITOL 17
03/18/05	(H)	<Bill Hearing Postponed to Mon. 3/21/05>
03/21/05	(H)	L&C AT 3:15 PM CAPITOL 17
03/21/05	(H)	Heard & Held
03/21/05	(H)	MINUTE(L&C)
04/01/05	(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 180

SHORT TITLE: WORKERS' COMPENSATION  
SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/25/05	(H)	READ THE FIRST TIME - REFERRALS
02/25/05	(H)	L&C, JUD, FIN
03/09/05	(H)	L&C AT 3:15 PM CAPITOL 17
03/09/05	(H)	Heard & Held
03/09/05	(H)	MINUTE(L&C)
03/16/05	(H)	L&C AT 3:15 PM CAPITOL 17
03/16/05	(H)	Scheduled But Not Heard
03/21/05	(H)	L&C AT 3:15 PM CAPITOL 17
03/21/05	(H)	Scheduled But Not Heard
03/22/05	(H)	L&C AT 1:00 PM CAPITOL 17
03/22/05	(H)	Heard & Held
03/22/05	(H)	MINUTE(L&C)
03/30/05	(H)	L&C AT 3:15 PM CAPITOL 17
03/30/05	(H)	Heard & Held
03/30/05	(H)	MINUTE(L&C)
04/01/05	(H)	L&C AT 3:15 PM CAPITOL 17

**WITNESS REGISTER**

HEATH HILYARD, Staff  
Representative Mike Kelly  
Alaska State Legislature  
POSITION STATEMENT: Testified in support of HB 211

JIM TOWLE, Executive Director  
Alaska Dental Society  
POSITION STATEMENT: Testified in support of HB 211

PAUL LISANKIE, Director  
Division of Workers' Compensation

Department of Labor and Workforce Development  
POSITION STATEMENT: Testified in support of HB 180.

LINDA HALL, Director  
Division of Insurance  
Department of Commerce, Community, and Economic Development  
POSITION STATEMENT: Testified in support of HB 180.

### **ACTION NARRATIVE**

**CHAIR TOM ANDERSON** called the House Labor and Commerce Standing Committee meeting to order at [3:41:02 PM](#).

HB 211-DENTISTS; HYGIENISTS; BD OF DENTAL EXAM.

CHAIR ANDERSON announced that the first order of business would be HOUSE BILL NO. 211, "An Act extending the termination date of the Board of Dental Examiners; and relating to dentists and dental hygienists."

HEATH HILYARD, Staff of Representative Mike Kelly, Alaska State Legislature, stated that this bill is basically an extension of the Board of Dental Examiners to 2011. Mr. Hilyard related that some of the provisions in this legislation are the result of a Legislative Audit Division audit and others are the result of a 2004 meeting in which the Division of Occupational Licensing, the Board of Dental Examiners, and the Alaska Dental Society. He emphasized that first and foremost, the legislation implements continuing education requirements for dental hygienists, modifies the inspection period for radiological equipment used in dentistry, and clarifies the qualifications for licensure and specialty licensure in the state. Mr. Hilyard informed the committee that at this time the sponsor and the Alaska Dental Society have no knowledge of anyone opposing the proposed changes.

[3:44:36 PM](#)

JIM TOWLE, Executive Director, Alaska Dental Society, informed the committee that the Alaska Dental Hygiene Association was part of the meetings and negotiations referred to earlier.

[3:45:19 PM](#)

REPRESENTATIVE ROKEBERG requested that Mr. Towle describe the changes to statute encompassed in HB 211.

[3:45:34 PM](#)

MR. TOWLE stated that his understanding that the change from 14 weekly hours to 700 hours a year, which equate to roughly the same amount of time, makes sure that clinicians are not taking long breaks in the treatment of patients. Therefore, their clinical skills remain up to the same level as they were when obtaining a license. The continuing education provision is what is required of dentists and is applied to dental hygienists in HB 211.

[3:46:48 PM](#)

REPRESENTATIVE GUTTENBERG referring to page 2, line 5, [paragraph] 6, asked if the Board of Alaskan Dentists, the American Dental Association, Academy of General Dentistry, and the American Dental Hygienists Association have uniform standards or do they compete with one another.

[3:47:20 PM](#)

MR. TOWLE answered that the American Dental Association and the Academy of General Dentistry have comparable standards. Since this legislation is focused on hygienists, deference was given to the American Hygiene Association because this is changing licensure by credentials in AS 08.32, which governs hygiene. Therefore, hygienists would have the same standards as dentists.

[3:48:15 PM](#)

REPRESENTATIVE GUTTENBERG asked if there are similar organizations to those already listed that have different standards.

[3:48:56 PM](#)

MR. TOWLE answered, "Not that are national in scope."

[3:49:25 PM](#)

REPRESENTATIVE GUTTENBERG asked, referring to page [4], line 5, and subparagraph (H), whether a person can be convicted of a crime that's a serious felony that could be outside of the aforementioned definition.

[3:50:20 PM](#)

MR. TOWLE indicated that the thinking and rationale was if one is convicted of a traffic offense, for example, it shouldn't preclude one from the practice of dentistry.

[3:51:07 PM](#)

CHAIR ANDERSON asked if a driving under the influence offense would result in a dentist's license being pulled based on subparagraph (H).

[3:51:18 PM](#)

MR. TOWLE said he couldn't answer that question. He didn't believe that currently the license could be revoked in such a situation. However, he opined that there might be some question as whether the individual has a drinking problem that would impair his or her ability to practice dentistry.

[3:51:59 PM](#)

REPRESENTATIVE CRAWFORD asked posed a scenario in which someone had been convicted of fraud in billing practices and had unlawfully billed Medicaid, and asked if that would impact the ability to practice dentistry.

[3:52:21 PM](#)

MR. TOWLE answered that it wouldn't compromise the individual's clinical practices. Being convicted of Medicaid fraud and the state took action, the Dental Society [doesn't hold the view] that an individual in such a situation should lose his or her ability to be a dentist. He suggested that perhaps that's something the Division of Occupational Licensing should address.

[3:53:07 PM](#)

REPRESENTATIVE ROKEBERG interjected that the aforementioned is covered in subparagraph (F).

[3:53:57 PM](#)

PAT DAVIDSON, Legislator Auditor, Legislative Audit Division, Alaska State Legislature, answered that she had not studied the issue presently being discussed. However, as a result of the audit, the division recommends a six-year extension due to the fact that the division found the board is operating in the public's interest. The audit makes no recommendations for

improvements. Additionally, since an abnormally high amount of boards and commissions are facing sunset this year, the division is recommending longer extensions to smooth this out in order to avoid consideration of so many boards in a given year.

[3:55:12 PM](#)

REPRESENTATIVE GUTTENBERG, referring to page 2, asked if the decision to change the dental radiological equipment inspection rate from five to six years was a recommendation of the audit.

[3:55:27 PM](#)

MS. DAVIDSON answered that only the extension date was a result of the audit.

[3:56:10 PM](#)

MR. HILYARD stated that his understanding that the change was [the result] of the meeting [of the Alaska Dental Society], and was a function of convenience for the period of inspection.

[3:56:41 PM](#)

MR. TOWLE explained that the existing inspection system is working. When this [language] was originally created, the intent was to mandate an inspection once every five years. The key change [desired by the Alaska Dental Society] is the changing of the ["fourth" to "fifth"] so that the office is inspected within five calendar years after the year of inspection.

[3:59:02 PM](#)

REPRESENTATIVE GUTTENBERG said that this cleared things up.

[3:59:29 PM](#)

REPRESENTATIVE ROKEBERG moved to report HB 211 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, it was so ordered.

HB 216-PROPERTY/CASUALTY INSURANCE REGULATION

CHAIR ANDERSON announced that the next order of business would be HOUSE BILL NO. 216, "An Act relating to insurance rate-making and form filing."

The committee took an at-ease from 4:01:24 to 4:01:54.

[REPRESENTATIVE ROKEBERG moved to adopt version CS HB 216 version 24-LS0349\Y, Bullock, 3/31/05.]

CHAIR ANDERSON announced that the Version Y was before the committee.

4:02:18 PM

LINDA HALL, Director, Division of Insurance, stated that the CS has some changes and that she would like to talk about the process that led to the CS and the original bill. She said that the end goal was to come up with more efficient means of rate and form review to enhance market place and make it more attractive to other companies. She revealed that the changes made by the CS were met through the same process of meetings and online discussions with the industry and Division members.

MS. HALL stated that the major changes are found in a chart that the committee has. Predominately things that were redundant were changed. None of these changes were substantive. Self-certification language was probably the most substantive in nature. It is now clear that we want clear complete and accurate filings. She indicated that she is fully in support of the bill and thinks that it is an improvement of the regulatory environment as it maintains consumer protections and allows for flexibility that we did not have before. She then directed the committee's attention to a letter that was filed with the committee that answered some of the questions that Representative Rokeberg has concerning the bill. There is also a chart of bills that other states have adopted file and use systems, and it also gives information concerning about filings over the years and what did and did not qualify for filing under the flex rating system. It also included information concerning the number of days that it took to post a file.

4:06:01 PM

REPRESENTATIVE GUTTENBERG referring to page 4 section 8, suggested that if someone raised their rates and then repeated the process 12 months later. He asked if this were something that was approved of by the Division.

4:06:43 PM

MS. HALL stipulated that she would have to look at those. She stated that this would send up flags but that this situation could be allowed given certain circumstances. She said that it would get some scrutiny.

REPRESENTATIVE GUTTENBERG asked that if a company protested and said that they fulfilled the requirements of the statute, would the bill allow one to pursue this.

[4:07:38 PM](#)

MS. HALL indicated that it would have to be done with jurisprudence and there has to be substantial proof that they are in violation of the statute.

[4:08:01 PM](#)

REPRESENTATIVE GUTTENBERG asked how long it would take to examine the documents and mitigate the violation.

[4:08:17 PM](#)

MS. HALL answered that different filings have different number of days. The thing that slows filings down is when things get bogged down due to back and forth exchanges that need to be thoroughly addressed. Typically it takes three or four days depending on the complexity.

[4:08:57 PM](#)

REPRESENTATIVE ROKEBERG stated that in one example, the recent 77 rate filings that were received and most of them took an average time of 40 days to be dealt with by the Division. He then stated that 24 of these 77 rate filings took from 50 days to around 100 days. This time period consisted of two months to do almost a third of the work. It is obvious that the flex rate would allow the industry market the ability to adapt and change without having to go through the approval process. He then asked if her division still controlled the oversight and if they still took corrective action on any problem that might occur in the self-governing flex rate system.

[4:09:53 PM](#)

MS. HALL answered that this was indeed the case.

[4:10:02 PM](#)

REPRESENTATIVE ROKEBERG indicated that one of the concerns was that with the granting of the flex rate system, the department would be diminished in their authority and oversight. He then asked if the rate examples in the letter were actual examples from the state.

[4:10:27 PM](#)

MS. HALL said that they were real examples, minus their identity. She then went on to say that these are typical rate filings.

[4:10:39 PM](#)

REPRESENTATIVE ROKEBERG pointed out, in reference to the examples that there were numerous times that the rates do go down. He then said that rates really do go down, as evidenced by a 20 point rate band.

[4:11:04 PM](#)

MS. HALL said that part of the responsibility of the division was to look at not only inadequate rates that can lead to insolvency but to also look at excessive rates and decide if they can be lower. She believes that the intent of the bill is to speed up the process and make it more responsiveness to the market. It allows an immediate response to conditions. Insurers will know that they can now file a rate decrease and increase with ease. This bill allows the rate to go both ways.

[4:12:10 PM](#)

REPRESENTATIVE ROKEBERG agreed and said this was a very positive thing for the state. He then reemphasized that the Division still maintains the rate setting requirements of new producers.

[4:12:36 PM](#)

MR. HALL said that this was correct.

[4:12:44 PM](#)

CHAIR ANDERSON asked how would you categorize the support for this bill by industry.

[4:13:05 PM](#)

MS. HALL indicated that in her two-year experience that the agent community approached her about the idea so that it would enhance the market and make it more responsive. She stated that industry had worked hard to modernize the way that business is conducted in Alaska. One of the things I hear regularly is that at some companies, the agents have to schedule computer time, and if you miss the appointment, the agent has to wait another 6 months to input their data. There is a stability here and that if all standards of the title the division knows its rate will be effective and the division can plan for its effective use, regardless if it is up or down.

[4:14:51 PM](#)

CHAIR ANDERSON stated that ENCOIL is very supportive of modernization.

[4:15:07 PM](#)

MS. HALL stated that ENCOIL supports this bill and the National Agent Association encourages support for this concept.

CHAIR ANDERSON asked for a motion to move the bill.

[4:15:21 PM](#)

REPRESENTATIVE ROKEBERG stated that this is one of the rare moments that we can actually keep our campaign promises to deregulating government. This is really a good thing and positive.

[4:16:29 PM](#)

REPRESENTATIVE ROKEBERG moved to report CSHB 216 [version 24-LS0349\Y, Bullock, 3/31/05] out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 216(L&C) was reported from the House Labor and Commerce Standing Committee.

#### HB 180-WORKERS' COMPENSATION

CHAIR ANDERSON announced that the final order of business would be HB 180. He stated that this bill was created by the Governor's people and it has been heard and testified on many people, from industry, insurance, medical groups, individuals, and workers' compensation groups. He revealed that people have

ranged in their responses to the bill from various extremes, which included suggestions to 'kill the bill', 'hold the bill', and 'move it' and make it a work in progress. He then stated that they needed to begin going through the bill section by section.

[4:18:09 PM](#)

CHAIR ANDERSON obviated the fact that they had already allowed several days of public testimony and if they were going to get through the bill, they would have to start going through the bill section by section. He acknowledged the fact that there is an ad hoc committee, but this group has not brought anything to the table at this point. Mentioning that he did not believe that the Governor had created a perfect bill, he then said if the committee waited until this ad hoc group brought something to the table after speaking to the Governor, thus, deferring committee opinion until such time, the committee, he feels, would not be doing their job.

CHAIR ANDERSON then announced that he first wanted to go through the ad hoc bill, but had not had it formally drafted. The substance of it is known, but at this point he indicated that he would like to guide the committee through the Governors bill and talk about each section. He hoped that the easiest way to deal with this problem would be to go through the bill section by section, and make it a point to listen to each committee member and their comments, as they apply their own background and industries.

[4:19:36 PM](#)

REPRESENTATIVE LEDOUX stated that the committee had already heard the commissioner of insurance talk about the previous bill and how she had been working with stakeholders and how, at the end, there was a really good bill. She indicated that she understood that the Governor was working with the stakeholders and thought that the committee should give it a couple of days and see if they have crafted a good bill and see what they have come up with.

[4:20:11 PM](#)

CHAIR ANDERSON explained that this was an interesting idea but that there was two months of conversation that had already taken place between the two parties and that it needed to move faster than this.

4:20:18 PM

REPRESENTATIVE ROKEBERG indicated that in his meeting with the leadership group that meets with the Governor, it was made clear to him that progress was being made with the discussions, though he could not say if any agreement was forthcoming. He then said that there were several points that needed to be made here concerning the discussions. First, there is no expectation that complete agreement will be made. There will be, on the one hand, sections that may be agreed on conceptually.

REPRESENTATIVE ROKEBERG then stated that second, the people that make up the ad hoc committee will not be available soon since they will be moving on to their various endeavors. He pointed out that waiting for these individuals to finish their work is unrealistic given the time that it takes and has taken.

REPRESENTATIVE ROKEBERG followed this by stating that third, it is the duty and obligation of the committee and the legislature need to write the bill. He said that they should not have to wait for the ad hoc committee to reconvene to make a decision. The committee has a bill before it and if people have objections to sections of the bill they need to come forward and object and put this on public record. They need to be recognized for their views and the committee needs to move forward.

4:21:58 PM

REPRESENTATIVE LYNN said that he wanted to make the observation that the chairman had said that people who are in the committee have their associations with industry, but he wanted to clarify this by suggesting that the only association that the Representative should have is with the constituents.

4:22:25 PM

CHAIR ANDERSON clarified that this comment referred to our individual philosophies. The chair then asked Representative Rokeberg what his opinion was concerning this type of sectional analysis.

4:23:01 PM

REPRESENTATIVE ROKEBERG answered that this was acceptable and that the Department of Labor and Workforce Development has provided a sectional. He then asked that another copy be given

to him, since he could not find the analysis in the huge amount of paperwork that has accumulated since the bill was introduced.

[4:23:18 PM](#)

CHAIR ANDERSON then said that the committee aide would make sure that he got another copy this meeting, specifically the three page document that provided an overview of the original bill. He then addressed the committee and said that he wanted to make sure that the committee understood that it was important to voice their concerns, even if they do not like any section. He emphatically stated that it was important to get their opinions on the record, rather than waiting.

REPRESENTATIVE ROKEBERG said that the problems are that fact that given the amount of testimony given already on the record, and the opinions of people that clearly show that we need to create a bill [that is acceptable to all parties].

[4:24:15 PM](#)

REPRESENTATIVE CRAWFORD mentioned that he did have a sectional analysis of HB 180 and he wanted to make sure that everyone was on the same page.

CHAIR ANDERSON asked that a brief at ease be taken so that the committee could put their packets together in a more convenient manner.

[At ease between [4:24:42 PM](#) and [4:27:11 PM](#).]

[4:27:13 PM](#)

CHAIR ANDERSON announced that the version of the analysis that needed to be used was the document that was entitled "Summary of HB 180 Prepared for House Labor and Commerce Committee", prepared by the Department of Labor and Workforce Development, and dated March 14, 2005.

[4:27:35 PM](#)

REPRESENTATIVE GUTTENBERG asked that he receive a flow chart from the Department and asked that this be used as well in the discussion.

[4:29:00 PM](#)

REPRESENTATIVE LEDOUX said that she wanted to make sure that the committee were dealing with bill numbered 24-GH1112\A.

CHAIR ANDERSON again stipulated that he wanted to committee to seriously go through the bill section by section and give their feedback judiciously and without hesitancy. He indicated that they were not going to rush through this and that he wanted to hear people's points of views and hear the adamant objections that the committee members have given to the bill thus far.

[4:29:44 PM](#)

PAUL LISANKIE, Director, Division of Workers' Compensation, Department of Labor & Workforce Development, pointed out for the committee that there are 6 pages of text that are summaries of the changes created by the Department. [These changes fall under 6 categories that address concerns held by several parties to the bill. These 6 pages are interspersed between the pages holding the Bill Sections in question.]

[Brief at-ease from 4:30:37 to 4:31:01]

[4:31:01 PM](#)

MR. LISANKIE stated again that there are 6 pages of summary pages in total. Each page is, in and of itself, a chapter [This Chapter addresses a theme important to the discussion of the bill. This chapter heading is followed by the bill section pages that are relevant to the particular chapter subject.] He gave an example using page one, and he said that first section being discussed under that chapter heading was Section 21 and that particular page of the bill is the next page in the sectional analysis. He then apologized for the package disorganization and said that he was trying to create something that made sectional analysis easier.

[4:32:20 PM](#)

CHAIR ANDERSON said that he could see how this was being put together and said that it would make the task at hand much easier.

[4:32:39 PM](#)

MR. LISANKIE introduced the Sectional Analysis by stating that the first chapter dealt with protecting workers' benefits and jobs and that he would begin by looking at Section 21. This

section of the bill is important change which would empower the division director that confirmed that the employer failed to have the legally required workers' compensation insurance. The is a way to do this now but it takes a longer time. In the interim, a person can be injured while this investigation takes place. He then said that step one of this process requires the employer to prove they have insurance. There will an informal inquiry and the employer is given one more chance to show that they have insurance. One way, he said, this could happen would be to have their insurance broker call the board and show proof that insurance policies were written and are current. He then said that they are not interested in shutting a business down if they simply have a paperwork problem. The whole intent is to give them an opportunity to show that they have the insurance.

[4:35:30 PM](#)

CHAIR ANDERSON reiterated that the previous discussion was regarding Section 21 of HB 180, found on page 16.

[4:35:43 PM](#)

REPRESENTATIVE CRAWFORD said that this was one of our (his party) concerns. He explained that many times a company will have workers' compensation insurance but it will only be for a general labor, rather than pipe fitting or iron workers, since they are higher rates. This is a problem, since this is not proper insurance. However, what we believe is fraud, can be seen also as a company taking insurance for what they require [and not what the company might need]. One of our biggest concerns was whether you could just shut these individuals down.

[4:36:57 PM](#)

MR. LISANKIE believed that the fraud of willingly misclassifying your workforce would require a more in-depth inquiry.

MR. LISANKIE then restated the view by saying that this bill refers to a basic investigation [of whether someone has or does not have insurance] and that the willful act of misclassifying your workforce is beyond the scope of this [proposed] immediate shutdown.

[4:37:42 PM](#)

CHAIR ANDERSON then asked for an example.

[4:37:46 PM](#)

MR. LISANKIE stated that if one of his investigators got a tip and went to investigate a possible situation where someone flat out does not have insurance, they do a inquiry and if they do not have insurance and cannot provide proof that they do, then they are shut down immediately.

[4:38:20 PM](#)

CHAIR ANDERSON furthers this example by stating that a mom and pop burger joint is investigated and shown to be without insurance, they are shut down. He then asked for confirmation of his understanding.

[4:38:30 PM](#)

MR. LISANKIE replied that this was correct. However, in referring to Representative Crawford's question, he said that there was no doubt that a construction company trying to save money on your insurance bill by willfully misclassifying their workforce was not legal and would be dealt with by governing statutes not covered in section 21.

[4:38:59 PM](#)

REPRESENTATIVE CRAWFORD continued his question by stating that his membership with the construction industry, the AGC, and the workers involved in construction, has given him some concern and that he was worried about under insured workplaces and employers within his industry misclassifying their workforce.

REPRESENTATIVE ROKEBERG asked why this was not in the ad hoc bill if he was concerned about this issue.

REPRESENTATIVE CRAWFORD stated that there is an ad hoc bill, it was turned into the governor, but it has not been put forward.

CHAIR ANDERSON explained that Representative Rokeberg recognizes that Representative Crawford supports the ad hoc bill but he is not asking where the bill is but instead, was wondering where Representative Crawford's concern is verbalized in the bill.

[4:39:55 PM](#)

REPRESENTATIVE CRAWFORD firmly stated that he believed that the committee was talking about the House Bill [and the sectional

analysis] not the ad hoc bill. He then stated for Representative Rokeberg, that his concern about House Bill 180, was that the issue of the classification of workers be addressed.

[4:40:27 PM](#)

CHAIR ANDERSON then said that the real issue behind his concern and Representative Rokeberg's concern was that he had introduced himself as "we" instead of using a singular "I or myself" and this prompted a concern about appropriate language. He then stated that in the beginning he had asked that the Representatives not hide behind affiliation but represent their own views and concerns. Furthermore, the people in this committee are all different individuals and have their own viewpoints.

[4:40:37 PM](#)

REPRESENTATIVE CRAWFORD finally stated that his individual concern is that this bill is deficient because it does not address this problem.

[4:41:08 PM](#)

REPRESENTATIVE KOTT interjects that Representative Crawford's comments were certainly valid, and that further, when a workers' compensation claim has been filed and that individual has been misclassified, the question is whether the benefits of that individual would be disturbed.

[4:41:35 PM](#)

MR. LISANKIE stated that there would be detrimental effect on premiums and that they would get their full benefits. He then stated that they are not basing their benefits on premiums that were set up legally or illegally, or somewhere in between.

[4:42:14 PM](#)

REPRESENTATIVE CRAWFORD asked what happens today when someone is not paying the correct premium. He suggested that what he would like to make sure that each of the people that are employing people in an industry pay the proper premium upfront. That way everyone in that industry pays a lower rate. This cannot happen now, since while the honest employers are paying the higher rate (approximately 88 dollars to every hundred paid out), the

dishonest employers are paying the low rate (approximately 24 dollars to every hundred dollars) by misclassifying his workers.

[4:43:32 PM](#)

CHAIR ANDERSON stated that he thoroughly understood where the Representative was coming from and then, talking to Mr. Lisankie, said that he understood the Representative's concern, but that Section 21 was addressing something different.

[4:43:53 PM](#)

MR. LISANKIE stated that no, he did want to assure the Representative that Section 21 addressed his concern, because it simply wasn't about that concern.

[4:44:15 PM](#)

MR. LISANKIE indicated that what really haunts me is a person like Mr. Flock who gets hurt and because of the system, and his particular situation, there is no available insurance and there is no one that can help him.

[4:44:21 PM](#)

CHAIR ANDERSON said that that his unfortunate situation is due to the exact situation we are dealing with right now. He suggested that if someone had checked his [Mr. Flock's] employer's lack of insurance and the computer records, this could have been stopped before he found himself without any assistance.

[4:44:35 PM](#)

MR. LISANKIE responded hesitantly that it might be the case, but that this kind of thing does not get reported all the time.

[4:44:42 PM](#)

REPRESENTATIVE CRAWFORD pointed out that his concern was that the act of misclassification in insurance be an infringement, and that it be covered, so that they get shut down immediately.

[4:45:03 PM](#)

CHAIR ANDERSON asked if there were language that could be put in that would cover this.

[4:45:12 PM](#)

MR. LISANKIE stated that he would rather prefer to defer to Ms. Hall, who is at the meeting.

[4:45:55 PM](#)

REPRESENTATIVE ROKEBERG stated that he agreed with the Chair, that this is another topic.

REPRESENTATIVE CRAWFORD said that he believed that this issue is best addressed in this section of the bill.

REPRESENTATIVE ROKEBERG answered that what he believed that the committee should look at this as if there is anything wrong with the existing language. If we to make any progress at all then the committee say that [Section 21] is good but that it does not go far enough. He then said that they should then work on identifying an amendment that is satisfying.

REPRESENTATIVE CRAWFORD said that he could not have said it better himself.

REPRESENTATIVE LYNN said that he thought that this was what was being sought after before.

REPRESENTATIVE GUTTENBERG then stated that the real question that should be asked is if this issue is being addressed anywhere in the bill.

[4:46:35 PM](#)

MR. LISANKIE made it clear that it is currently illegal to misclassify employees; this is in Section 250 of the Statute. The question is how to enforce this. Section 21 was designed with total non-compliance in mind and shutting down people who simply do not have the insurance. The issue of how workers are classified is a more complicated one and one not easily dealt with using the proposed rule changes in Section 21.

[4:48:05 PM](#)

CHAIR ANDERSON said that he cannot be more succinct in saying that Section 21 does not cover this type of infringement.

[4:48:16 PM](#)

REPRESENTATIVE CRAWFORD indicated that he did indeed answer it perfectly. However, the way this is written it doesn't cover and I want to make sure it is covered. He then said that he wants the same ability to shut someone down that has misclassified his employees. It may be more complicated, but this power needs to be in his arsenal.

4:49:16 PM

LINDA HALL, Director, Division of Insurance, Department of Commerce, Community and Economic Development, stated that under current law it is considered premium fraud under insurance regulations and illegal under the workers' compensation regulations. The investigators who look into fraud do not have this type of power [to shut businesses down]. She indicated that her group has more investigators in the field than Mr. Lisankie and the Division of Workers' Compensation. She pointed out that they can pursue criminal charges against someone that willfully misclassifies their workers, but currently, her group cannot shut their businesses down. She added that this is a penalty phase that could be added if the committee decided that it was appropriate.

4:50:19 PM

REPRESENTATIVE CRAWFORD exhibited an example of a man they had tried to shut down this year, or at least charged the appropriate rates for his work crew, who had a man actually die on the job. It was not brought out until later that according to his job classification, he was classified as a general laborer when he was actually working as an ironworker. This is why, he said, I want to be able to shut these people down and provide a healthier and safer place to work.

4:51:25 PM

CHAIR ANDERSON announced that though he agreed wholeheartedly about this issue, the debate is taking time away from the long analysis, and he hoped that people were not being purposely dilatory. He then indicated that he would be looking into the issue and try to figure out a way to get it into an amendment. However, he said, Mr. Lisankie has said many times, that this particular section does not apply to the issue being debate. He ended by stating that the committee had spent 15 minutes on a fairly simple section and that the committee needed to move on.

REPRESENTATIVE GUTTENBERG pointed out that he and others to the left of the chair have been patiently waiting to talk. He explained that when saying "we" he himself meant that it referred to "us" and our responsibility to the people and the contractors here in this state to make sure that some "mom and pop burger joint" from Phoenix Arizona doesn't bid on a bridge job, get the job, and then get insurance rates that cover only burger workers, all the while "pops ironworkers" fails to get the job and would have had to have paid the nominal fee associated with insuring ironworkers.

REPRESENTATIVE GUTTENBERG then said that a group that has committed misclassification on their insurance premiums is still eligible for compensation. He then asked what would happen to the worker who files for a claim and the state replies that they are not an ironworker but work as a burger worker instead. For the person that is injured, the process must be seamless [and have their interests in mind, not just penalization of the employer through the employee].

[4:53:19 PM](#)

MS. HALL pointed out that the insurance policy is not classification specific. Workers' compensation insurance stipulates that it will cover benefits that are required by the statutes. If the employee is injured, he will receive benefits regardless if the employer has misclassified himself. She then said [she indicates that she is editorializing] that situations like what the Representatives are talking about do occur. She indicated that many people have talked to her about it. Giving an example of a truck driver classified as an office worker, she said that he still is eligible for benefits. The board will retroactively charge the employer directly for the infringement and the employee's benefit coverage is not impacted.

[4:54:51 PM](#)

REPRESENTATIVE GUTTENBERG asked if there was anything in here that would say that an insurer has to notify the Division if there is significant change [in a policy holders account]. He further explained that what he is worried about is a situation where an employer is approached by the Division about their workers' compensation insurance and after they show proof, they then cancel the insurance.

[4:55:57 PM](#)

MR. LISANKIE answered that the insurance company is required to give cancellation notice of businesses to the Division. The cancellation does not go into affect until after a number of days has past.

[4:56:19 PM](#)

REPRESENTATIVE LEDOUX indicated that from her experience in insurance law, if one gets an insurance policy fraudulently the insurance company can generally void coverage. She then asked if there was something like this that pertains to workers' compensation.

[4:56:46 PM](#)

MS. HALL answered that she did not know if this is unequivocal. Normally, to cancel a policy for insurance fraud, you have to give notice. She then said that she knew of only one type of insurance policy that can retroactively cancelled and that would be marine coverage where there is a requirement for survey which is not completed or is falsified and that being fraudulent, the insurance companies can retroactively cancel policies. However, there still needs to be notification.

[4:57:44 PM](#)

REPRESENTATIVE LEDOUX concurred that in the maritime industry, which she has dealt with before as a lawyer, she knew that even a negligent misrepresentation will vitiate coverage. She indicated that this is the difference with maritime law. On land, she said, a willful case of misrepresentation can even result in retroactive cancellation. She then asked what would happen if someone were going out of business and couldn't pay their premium.

[4:58:33 PM](#)

MS. HALL answered that she has never seen this before and would do more research. She said that it [going out of business] doesn't negate the employer's liability to have insurance. She then said that the insurance company provides coverage for this event and the employer still has the requirement. She then said that she would do more research on this topic.

[4:59:11 PM](#)

REPRESENTATIVE GUTTENBERG commented that this situation had occurred to someone that had contacted him in his office and that this person, through negligence on his part, [he got caught in something] lost his insurance.

MS. HALL then asked if this was workers' compensation, since maritime policy is different from land policy, as Representative Ledoux pointed out.

REPRESENTATIVE GUTTENBERG then said that there was fraud involved and a worker was just caught in the middle.

[4:59:43 PM](#)

CHAIR ANDERSON said that he believed that he had been pretty liberal about giving time and analysis to these discussions concerning misrepresentation and misclassification of employees and that this topic of Representative Crawford's is something that needs to be looked at. It has been indicated by both Ms. Hall and Mr. Lisankie that this section is not something that is germane to this discussion topic. He stated firmly that he wanted to revisit this issue and see if they could fit it in some other place.

[5:00:09 PM](#)

REPRESENTATIVE CRAWFORD firmly stated that he was very frustrated at the Chair for not characterizing the bill fairly. He said that the Chair continued stating that "this doesn't apply", and this is not the case, he said. This bill does not address the issue which in his mind is applicable to the bill.

CHAIR ANDERSON then interjected and asked the Representative how many more times he wanted it be said that "it does not address what [he is] talking about".

REPRESENTATIVE CRAWFORD insisted that this Section 21 was the section in which it should apply. This section is deficient. He indicated that there is no ambiguity here and that he believed that he and the rest of group present were discussing something that was germane to discussion.

CHAIR ANDERSON asked that the Representative supply the committee with language immediately that would be sufficient in his eyes to amend the deficiency.

[5:01:32 PM](#)

REPRESENTATIVE LYNN indicated that he had talked with Representative Crawford on the issue and had a conceptual amendment that he wanted to read to the committee:

If an employer is determined to roughly misclassify an employee, the director may issue an immediate stop order to the employer.

CHAIR ANDERSON announced that he would work with Mr. Lisankie on this paragraph.

CHAIR ANDERSON then stated that it seemed that Representative Lynn understood where Representative Crawford was coming from and that this would be used to craft an amendment.

5:02:26 PM

REPRESENTATIVE CRAWFORD then adds that it should also include something that empowers the board to fine the employers of uninsured or misclassified employers up to a 1000 dollars day per employee.

REPRESENTATIVE CRAWFORD then stated that for the record, he is not intending on holding up the process here or the committee, but as he insisted earlier, this is a crucial part of what he was trying to convey today. This issue is the same issue that has been on my mind and there has been no deviation from it.

5:03:11 PM

REPRESENTATIVE LYNN withdraw the amendment, although he feels it was not properly introduced into the committee discussion. He then said that he could offer it later at another hearing.

CHAIR ANDERSON announced that this suggested conceptual amendment sounded good and asked Representative Lynn to work on this following the meeting and work on the verbiage and then craft the amendment.

REPRESENTATIVE LYNN said he would look at it this weekend.

REPRESENTATIVE CRAWFORD asked the Chair to allow him a drafter [from legal services] to make sure it's done correctly.

CHAIR ANDERSON chided the Representative and said that this was something that needed to have been done weeks earlier, when the

bill was first heard and during the subsequent weeks of public testimony.

REPRESENTATIVE CRAWFORD indicated that he had not received the documents that they were reviewing until today.

CHAIR ANDERSON said that all the members of the committee received the bill packet six weeks prior to this discussion and if there was anything that you found needed to be added, this needed to be done earlier, and not now when the committee is summing up the bill and you are not willing to give it to the committee now, but instead are asking to give it later. This, he said, may be delaying the bill.

[5:04:31 PM](#)

REPRESENTATIVE LYNN explained to the chair that the whole purpose behind having a committee is to have all the people focus their ideas where we hear various points of view and opinions.

[5:05:11 PM](#)

CHAIR ANDERSON stated for clarification that there has been three public testimonies. This is no longer opinion time. We now have the Division Director here giving step-by-step summation of the bill being moved out. He then adds that this is probably something that your staff should have done weeks ago.

[5:05:25 PM](#)

REPRESENTATIVE ROKEBERG said that frankly, if someone were wanting to deal with this, and they had burning issues with the proposed bill, they should have added it to the ad hoc bill. He then announced that as far as he knew, this subject was never even brought up to the legislature by the ad hoc committee. He said that he really wanted to understand it and if there is a real desire to be cooperative and move legislation then this issue should have been dealt with then.

[5:06:09 PM](#)

REPRESENTATIVE CRAWFORD indicated that he brought this up in last years deliberations. He then said that he wanted to ask if the language used in the presented bill being discussed now would give him the power [allow him to shut down businesses and employers who do not abide by the insurance rules]. If not,

then he said he was ready to do an amendment, however, he was not ready to do it right then since he would to do this correctly. He then said to the chair that since it was his committee he could forge ahead if that was his desire.

REPRESENTATIVE CRAWFORD ended by stating that the chair asked for the committee's concerns and this was his concern.

5:07:04 PM

CHAIR ANDERSON said he did appreciate his concern and it sounds like the whole committee supports what Representative Crawford is saying. From a standpoint of time though, he wished that his ideas could be put forth into an amendment that could be given to the committee today, rather than wait for a bill drafter to come back in three days.

5:07:25 PM

REPRESENTATIVE ROKEBERG asked that the committee please move along since it was obvious to him that there was no way they were going to be able to get through the entire summary.

5:07:40 PM

CHAIR ANDERSON said that he agreed. He then asked to move on to the second part of Section 21 that deals with the 1000 dollar a day fine.

5:08:01 PM

MR. LISANKIE said that this is an adjunct tool for us to detect when an employer drops and begins insurance only when they have been detected. This fine gets their attention when this occurs. Right now, all the Division can do is issue an order to the Board of insurance to submit a stop order to make them cease operating. The time it takes to get a hearing allows the employer to obtain ["temporary"] insurance which effectively makes the stop order obsolete. The bill now allows the Board to say that though they have insurance at the time of the hearing, they did not have it for a period of time before the hearing. The Board and Division can now announce to the employer that they are facing a fine of up to \$1000 a day.

CHAIR ANDERSON asked if this was acceptable to the committee and if anyone had any concerns about the section.

5:09:01 PM

REPRESENTATIVE ROKEBERG said that he would like to know if members of the committee or members of organized labor have any problems with the way Section 21 is written. He then said that he really appreciated what Representative Crawford has said and understand what he is trying to do, which is add more to cover a perceived deficiency. However, to make progress, is to understand why one would have a problem with the language. He then indicated that he understood why Representative Crawford felt the way he did about adding to the section. However, he stipulated that consensus would never be made until progress is made in understanding if this change is agreeable with everyone.

5:09:57 PM

CHAIR ANDERSON asked if anyone has a problem with Section 21 and if they did to speak now and immediately tell him where and what needed to be changed. He then iterated that they had spent 45 minutes on one section.

5:10:04 PM

REPRESENTATIVE GUTTENBERG expressed major concern the way the meeting and questioning have been dealt with and said that "[he] likes to ask questions" and that "this was where we were supposed to be asking questions".

CHAIR ANDERSON said that was correct, insofar as we are talking about Section 21.

REPRESENTATIVE GUTTENBERG then asked how this proposal compares to the current statute.

5:10:48 PM

MR. LISANKIE stated that there is no penalty phase in the current statute for not having insurance. The only fine is one that is criminal and this is a lot more difficult to get accomplished.

5:11:31 PM

REPRESENTATIVE CRAWFORD stated again for the record that Section 21 is wrong because it doesn't address misclassification. She then said that this is tantamount to not having insurance and it's cheating the honest employers.

5:12:00 PM

REPRESENTATIVE ROKEBERG asked Mr. Lisankie if he had read the ad hoc committee bill and did they speak about the issue that Representative Crawford is speaking about concerning Section 21.

MR. LISANKIE indicated that thought he had read the bill, and upon reflection, he could say that it was very close but not the exact same wording.

5:13:12 PM

REPRESENTATIVE LEDOUX stated that it if this is a good suggestion then it doesn't matter if its in the ad hoc suggestions or not.

5:13:40 PM

MR. LISANKIE stated that Section 22 is a corollary that is designed to receive those fines that we have the power to enforce against employers that were underinsured or uninsured.

MR. LISANKIE then stated that these funds would be redirected to newly created "benefits guarantee fund" that would be permitted to use the fines that were paid into the fund to pay the actual claims that came from injured employees whose employers were uninsured or failed to pay. He then said that in no way would there be a free ride. If pressing them is next to impossible, like was the case with Mr. Flock, then there must be a way to get payment. The fund will circumvent the lack of payment by the employer and get the employee the help with injuries that they need. The fund would then continue to take money from the employer to replenish the fund

5:15:38 PM

REPRESENTATIVE GUTTENBERG said that outside of HB 180 would this fund be outside the "budget sweep" [as provided for in the Alaska State Constitution, Article IX] at the end of the year, or would this be like the Constitutional Budget Reserve Fund (CBRF) sweep where they bring in all funds that are out there.

MR. LISANKIE stated that it does not lapse.

5:16:20 PM

REPRESENTATIVE LEDOUX stated that this is not guaranteed to the worker who is working for an employer who is working for an uninsured employer, but instead it is only there if there is enough money in the fund to do this.

MR. LISANKIE stated that statement is correct.

REPRESENTATIVE LEDOUX followed this up by asking how much Section 22 of HB 180 would have enabled your group to collect for the fund.

MR. LISANKIE stated that they did take a look at it to see how many uninsured employers were detected and how many people worked for them and then if you do the math, you can figure out what the amount would be. He then said he would have to get back to the committee on the number- though he could say that the year before, they caught 2200 businesses without proper insurance. The fine amount of \$1000 is meant to be a sliding scale.

[5:18:49 PM](#)

REPRESENTATIVE LEDOUX asked if there would be enough collected through fines to accomplish the intended goal.

MR. LISANKIE stated that the division is not interested in having a huge guaranteed fund. The goal, he said, is to have no uninsured employers.

[5:19:46 PM](#)

REPRESENTATIVE ROKEBERG said that he does have some reservations about the establishment of this fund. He expounded by stating that the mere existence of the fund is wrong in that it leaves it open for demand that will result in it reaching for another source to fund it in future legislations. He gives one such example with the Fremont Case.

[5:21:11 PM](#)

REPRESENTATIVE CRAWFORD said that one of the practices that happen with small contractors is that they hire extra help and these people are told to get their own business licenses which requires them to pay their own insurance, which they don't. When they get hurt, they turn to the company which denies them since they are a "supposed" independent contractor.

[5:22:21 PM](#)

MR. LISANKIE the supposed independent contractor who gets hurt and is found to be an actual employee would have rights to recover benefits and help from the employer who gave them this poor advice. If the company did not have insurance they would be an injured worker who didn't have recourse against the company.

[5:23:22 PM](#)

REPRESENTATIVE CRAWFORD gave an example of Century Construction and their workers. He said that this situation happened to them and the company reacted by going out of the state and declared themselves insolvent. The workers were left with no insurance. The other example was if the workers were determined not to be employees but they were still hurt.

[5:24:01 PM](#)

MR. LISANKIE said that if the company said that they were an employee they would to workers' compensation, but if they were determined to be a independent contractor they would have to provide their own insurance or they have no recourse.

[5:24:48 PM](#)

REPRESENTATIVE ROKEBERG indicated that he had a real problem with the section, especially page 18, line 4, where it says that legal expenses are going to be paid as well. He said that he had a problem here where the fund is being used to pay lawyers in addition to paying medical expenses and retraining costs, since there is so little money in the fund.

MR. LISANKIE expressed confirmation on the part of the Representative and said that the drafting was done with the intention of administrating to a claim and not for outside legal expenses.

[5:26:16 PM](#)

REPRESENTATIVE LEDOUX asked what would happen if these were only legal expenses with respect to the funds legal expenses. She pointed out that in subparagraph (F), there is a person hired to adjust claims against the fund. She then said that if a claim is contriverted, then if there is a lawyer hired at the end of the day, the insured pays those fees for that attorney. If this

were changed to a situation where the fund didn't pay the attorney fees, she asked what would happen to that injured persons right to hire an attorney for their claim.

[5:27:35 PM](#)

MR. LISANKIE said that he understood her point but there is only so much good you can do here when you have a limited amount of money. He then indicated that he didn't believe it was intended by the drafters that it was there was an expectation to pay the benefits that they would ordinarily not receive.

REPRESENTATIVE LEDOUX said that she sees that the problems are that some claims are contriverted correctly and others not. There would be no recourse for these people, if you don't allow any attorney fees.

MR. LISANKIE then said that the expectation on anyone sitting as a purser to the fund paying out anything other than what they thought was a legitimate amount. If that person disagreed with this decision, they would not be given funds to fight this decision with money from the same fund.

REPRESENTATIVE LEDOUX indicated that that the problem with this is that workers' compensation law makes it a crime for an attorney to take funds from a private claim. They have to get their money from a fund.

MR. LISANKIE said that it is illegal to take money to represent someone without prior approval from the board, so it's not illegal to pay if the board says its okay.

[5:30:37 PM](#)

REPRESENTATIVE KOTT, referring to page 18, which refers to monies being deposited into the Guaranteed Fund, and asked if the amount is insufficient to cover the claims drawn against the Guaranteed Fund, would there be a chance that the Division might come to the legislature at a later date to ask for more funds to assist in paying those unpaid claims.

MR. LISANKIE said that this is not what he envisioned when he was assisting in the writing of this draft.

REPRESENTATIVE KOTT then asked what other appropriations might there be.

MR. LISANKIE indicated that he did not know. He then pointed out that sub-section E does point out that if the fund runs out of sufficient funds to cover claims, the fund shall be replenished before the claims are settled.

REPRESENTATIVE KOTT then said that by going to the legislature to do this, the monies would be appropriated and the fund replenished. However, he indicated, this is precisely what I am getting at, which is if a future legislature would be asked for money to replenish the fund. More specifically, what types of funds would be appropriated to the Guaranteed Fund and if the Legislature is, from time to time, to be asked to give money to this fund, then this particular nuance needs to be written into the bill.

[5:33:26 PM](#)

REPRESENTATIVE ROKEBERG stated that in regards to Representative Ledoux's point, if subsection (c) and (d) are the qualifying sections that define how anyone makes a claim on the fund, he stated that the fund itself can assert the same defense itself as an insured employer. He then asked how the claimant have access to the same legal counsel if this is the case. He indicated that the fund did not look like it was going to have a lot of money. He then pointed out for the committee that if these are the elements that qualify/not qualify someone for the fund, and you then assert some of these issues against the claimant, he then asked how it is possible to have legal counsel given to the claimant as well.

[HB 180 was held over.]

#### **ADJOURNMENT**

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at [5:35:15 PM](#).