

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

May 4, 2005

5:15 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**

CS FOR SENATE BILL NO. 130(FIN) am  
"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; assigning certain Alaska Workers' Compensation Board functions to the division of workers' compensation in the Department of Labor and Workforce Development and to that department, and authorizing the board to delegate administrative and enforcement duties to the division; providing for workers' compensation hearing officers in workers' compensation proceedings; establishing a Workers' Compensation Appeals Commission; 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 with respect to workers' compensation; 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; making conforming amendments; providing for a study and report by the medical services review committee; establishing the Task Force on Workers' Compensation; and providing for an effective date."

- MOVED HCS CSSB 130(L&C) OUT OF COMMITTEE; ADOPTED A HOUSE CONCURRENT RESOLUTION ALLOWING THE TITLE CHANGE

HOUSE BILL NO. 295

"An Act adopting the Uniform Fraudulent Transfer Act and relating to fraudulent transfers of property."

- SCHEDULED BUT NOT HEARD

**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) NR: 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: SEEKINS  
04/08/05 (S) NR: 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) NR: HOFFMAN  
04/11/05 (S) AM: OLSON  
04/11/05 (S) JUD CS RECEIVED  
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 AT 2:00 PM CAPITOL 17

#### **WITNESS REGISTER**

GREG O'CLARAY, Commissioner  
Department of Labor & Workforce Development  
Juneau, Alaska  
POSITION STATEMENT:

RICHARD CATTANACH, Executive Director  
Associated General Contractors of Alaska (ACG);  
Management Co-Chair, Workers' Compensation Ad Hoc Committee  
(No address provided)  
POSITION STATEMENT:

PAUL LISANKIE, Director  
Division of Workers' Compensation  
Department of Labor & Workforce Development  
Juneau, Alaska  
POSITION STATEMENT: Reviewed the summary document comparing HCS  
CSSB 130, Version I, and CSSB 130(FIN)am.

TIM KELLY, Lobbyist  
Alaska State Medical Association  
Anchorage, Alaska  
POSITION STATEMENT: Provided comments on SB 130.

#### **ACTION NARRATIVE**

**CHAIR TOM ANDERSON** called the House Labor and Commerce Standing Committee meeting to order at [5:15:53 PM](#). Representatives Anderson, Kott, LeDoux, Rokeberg, Crawford, and Guttenberg were present at the call to order. Representative Lynn arrived as the meeting was in progress.

#### SB 130-WORKERS' COMPENSATION/ INSURANCE

CHAIR ANDERSON announced that the only order of business would be CS FOR SENATE BILL NO. 130(FIN)am [long title provided in committee calendar].

[5:16:45 PM](#)

REPRESENTATIVE KOTT moved to adopt HCS CSSB 130, Version GS1112\L, Bullock, 5/4/05, as the working document. There being no objection, Version L was before the committee.

GREG O'CLARAY, Commissioner, Department of Labor & Workforce Development (DLWD), suggested that since Version L is "hot off the presses" it should be addressed by a team of the individuals [involved] in its drafting. He further suggested that someone from the labor/management group of the ad hoc committee could address the legislation.

CHAIR ANDERSON agreed with Commissioner O'Claray's suggestion.

[5:19:16 PM](#)

REPRESENTATIVE KOTT pointed out that Version L includes several components that were provided as part of an ad hoc package. However, he opined that only two-thirds of the legislation relates to the earlier version.

[5:19:56 PM](#)

The committee to a brief at-ease.

[5:22:22 PM](#)

CHAIR ANDERSON pointed out that the committee should have a document entitled, "Summary Comparison of CSSB 130(FIN)am and Draft HCS 5/1/05". Although the HCS 5/1/05, Version I, isn't completely parallel with Version L, it's close enough to work for analysis purposes.

RICHARD CATTANACH, Executive Director, Associated General Contractors of Alaska (ACG); Management Co-Chair, Workers' Compensation Ad Hoc Committee, informed the committee that he prepared the summary document to which Chair Anderson referred. He noted that the summary document is a comparison of Version 24-GS1112\I, Bullock, 5/1/05, and CSSB 130(FIN)am.

REPRESENTATIVE KOTT interjected that [the majority of Version L] should be on track with Version I. He suggested that he and Representative LeDoux could help the committee with the portions of Version L that diverge from Version I.

PAUL LISANKIE, Director, Division of Workers' Compensation, Department of Labor & Workforce Development, explained that with

the summary document he noted the following: the corresponding sections between [Version I] and CSSB 130(FIN)am, the differences are highlighted in bold. Therefore, he suggested that he could review the areas where there are differences. The first section of the summary comparison addresses protecting workers' benefits and jobs. He noted that Section 2 of CSSB 130(FIN)am has been resolved now.

REPRESENTATIVE LEDOUX asked if the language in Section 2 of CSSB 130(FIN)am is already in the law.

MR. LISANKIE related his understanding that Version L has addressed the problems with [Section 2 of CSSB 130(FIN)am]. He added that there was going to be a new section that collateralized some additional loss reserves, which isn't in the draft CS. As Representative LeDoux alluded to, there is a provision in the current statute for deposits that are currently being made. The language in Version I referred to the wrong subsection, now that the change has been made to "(b)" it does track back to the statute.

[5:27:13 PM](#)

MR. LISANKIE pointed out that the [HCS, Version I] has increased the number of the task force members and added representatives of the Alaska Chiropractic Society and a rehabilitation specialist. The report back date has been pushed back to December 1, 2006. Furthermore, the provision specifies that legislative administrative support staff will be appointed. He related his understanding that the makeup of the task force has been slightly changed in Version L.

CHAIR ANDERSON inquired as to where the task force is discussed in Version L.

MR. LISANKIE specified that it's on page 34, Section 69.

[5:28:14 PM](#)

REPRESENTATIVE KOTT explained that there will be an amendment the intent of which is to identify the major issues for which a consultant could gather the research. He suspected it would be done over the summer months and the data would be provided to the membership of the task force in order that they could commence work September 1, 2005, and then report back to the legislature by the end of the year.

[5:30:59 PM](#)

REPRESENTATIVE LYNN inquired as to how often there are claims against chiropractors as opposed to medical doctors.

MR. LISANKIE said that although he didn't have hard numbers, chiropractors provide a considerable amount of care to injured workers in the state under the Workers' Compensation Act. Furthermore, chiropractors have been acknowledged as physicians in Alaska.

[5:31:59 PM](#)

REPRESENTATIVE ROKEBERG related his significant disappointment with regard to the lack of a small business representative on the task force. He opined that the task force is out of balance.

[5:32:30 PM](#)

MR. CATTANACH pointed out that with two people being appointed from the ad hoc committee for the management and labor slots, the current makeup of the entire ad hoc committee is that all five members are from small businesses. No large businesses are represented.

REPRESENTATIVE ROKEBERG said that he would like to see the names and affiliations of those members [of small businesses].

MR. CATTANACH noted that the University of Alaska is represented on the task force.

[5:33:28 PM](#)

MR. LISANKIE turned attention to page 2 of the summary document and highlighted that the Public Employees' Retirement System (PERS) is the same in that it allows the one-time payment of attorney fees. However, under [Version I] DLWD wouldn't have the authority to contract with a nonprofit organization in order to provide information and legal assistance to injured workers unable to obtain private counsel. Furthermore, there's not a broad permission of authority to the director of the Division of Workers' Compensation, although there are a substantial number of specific delegations that are included in [Version I]. There is no corresponding provision in Version L, he noted.

The committee took a brief at-ease.

5:36:08 PM

MR. LISANKIE, in response to Chair Anderson, clarified that under Version L, DLWD would not have authority to contract with a nonprofit organization to provide information and legal assistance to injured workers unable to obtain private counsel. Furthermore, there isn't a corresponding broad delegation of authority from the Workers' Compensation Board down to the division director, although there are a significant number of individual delegations in [Version L].

MR. CATTANACH explained that the ad hoc committee was unanimous in its belief that the department shouldn't provide legal assistance to injured workers. The purpose of the legislation was to speed up the process and reduce the costs. However, the ad hoc committee didn't see how attorneys could do either. The ad hoc committee didn't see a need for such, and therefore the provision was dropped.

5:38:00 PM

REPRESENTATIVE LEDOUX related her understanding that the working group intended for Section 8 of [CSSB 139(FIN)am] to be included, although she couldn't find it in [Version L].

5:38:48 PM

REPRESENTATIVE LEDOUX stated that the delegation of authority was accidentally left out. Therefore, she suggested that it should be reinserted.

MR. CATTANACH agreed, adding that the delegation of authority should be included because it speeds the process.

REPRESENTATIVE LEDOUX moved that the committee adopt Conceptual Amendment 1, which would reinsert Section 8 of [CSSB 130(FIN)am] into Version L.

REPRESENTATIVE CRAWFORD related his understanding, from Mr. Cattanach's testimony, that [the ad hoc committee] did not want the entire Section 8. Furthermore, he didn't believe that was what Representative LeDoux wanted either.

5:41:42 PM

REPRESENTATIVE LEDOUX clarified her earlier motion such that [Conceptual] Amendment 1 would insert "The board may, by regulation, delegate authority to the director to assist the board in administering and enforcing this chapter."

CHAIR ANDERSON objected. Upon gaining an understanding from Representative LeDoux as to where this language would be inserted and acknowledging that the representative of the ad hoc committee approved of this, Chair Anderson removed his objection.

There being no further objection, [Conceptual] Amendment 1 was adopted.

[5:43:22 PM](#)

MR. LISANKIE continued with his comparison using the summary document. He explained that under CSSB 130(FIN)am, Section 10 allows injured workers represented by Alaska-licensed attorneys to settle their claims without review by the Workers' Compensation Board, unless the injured worker is a minor, incompetent, [or unrepresented by counsel]. However, Section 7 of Version I adds to the disputes that may not be settled, even when represented by an attorney, for a dispute that calls for a waiver of medical benefits. He indicated that the aforementioned was maintained in Version L as well.

MR. CATTANACH concurred with the analysis and what's in Section 7 of Version L [page 4, lines 22-23].

CHAIR ANDERSON noted, for the record, that representatives of the ad hoc committee were indicating support of the aforementioned change.

[5:45:58 PM](#)

MR. LISANKIE pointed out that Section 4 of [Version I] echoes the requirement for the use of hearing officers and the adoption of conflict of interest regulations as specified in CSSB 130(FIN)am. However, [Section 4 of Version I] includes a provision that adds three workers' compensation hearing panels, which would increase the total to 10.

[5:47:19 PM](#)

MR. CATTANACH, in response to Chair Anderson, said that he wasn't aware of any change to [what was in Section 4 of Version I].

CHAIR ANDERSON opined that it looks as if [Section 4 of Version I is the same in Version L].

[5:47:55 PM](#)

REPRESENTATIVE KOTT explained that the number of boards was increased in order to reduce the backlog, which he likened to what the RCA experienced. He suggested that once the backlog is reduced, the task force could determine whether the number of boards should be decreased.

MR. CATTANACH concurred.

[5:48:56 PM](#)

MR. LISANKIE turned to the second page of the summary document, and drew attention to the heading "**FAIR BENEFITS AT REASONABLE EMPLOYER COST**". The first two sections specified are identical under both Version I and CSSB 130(FIN)am. The first significant benefit is related to the fact that Section 37 of CSSB 130(FIN)am requires a coordination of payments between workers' compensation benefits and disability benefits that are provided under a plan to which an employer has also contributed. The aforementioned is done so that the combined benefit doesn't exceed the injured workers take-home pay. Version I didn't maintain that provision.

[5:49:47 PM](#)

CHAIR ANDERSON highlighted that on page 25 of Version L, Section 48, states: "(c) The **department** [BOARD] shall provide by regulation for the determination and comparison of living costs for this state and the other areas in which recipients reside and for the [ANNUAL] redetermination and comparison of these costs **every three years.**"

MR. CATTANACH noted that he concurred [with the above provision].

[5:50:20 PM](#)

MR. LISANKIE moved on to page 3 of the summary document, and informed the committee that CSSB 130(FIN)am had a provision that

incrementally reduced benefit costs by redefining compensable injuries and restricting the compensability of certain injuries that were the result of aggravations, accelerations, or combinations of a preexisting condition. The aforementioned was attempted through the use of a "major contributing cause" standard. Version I deleted the aforementioned changes.

MR. CATTANACH confirmed that the aforementioned is not in Version L.

[5:51:25 PM](#)

MR. LISANKIE moved on to the anti-fraud provision, which only changes the definitions of "person" and "compensation" to follow the language proposed by the ad hoc committee.

CHAIR ANDERSON clarified that Section 56 of Version L seems to mirror Section 56 of Version I.

[5:52:25 PM](#)

REPRESENTATIVE CRAWFORD pointed out that there was a "part (c)" that was part of the ad hoc bill that's no longer included. He asked if that was of concern.

MR. CATTANACH said that he was concerned with that. He explained that "part (c)" addressed civil damages. [Version L] requires that the department hire two fraud investigators and also requires the Department of Law to have one attorney assigned, at least on a half-time basis. Mr. Cattnach informed the committee that civil damages were desired because the administration doesn't prosecute these and it was felt that with civil damages the injured worker might pursue a case on his/her own. "But I think we should try this," he said.

[5:53:25 PM](#)

REPRESENTATIVE KOTT agreed with Mr. Cattnach's thoughts. He related his understanding that there is one [investigator] in the department and since he/she didn't have any investigative authority, it was granted and a second [investigator] was added.

[5:54:27 PM](#)

MR. LISANKIE pointed out that [Version I] still has a Section 57 [part (c)]. Unlike CSSB 130(FIN)am, [Version I] does authorize courts in a civil proceeding to award compensatory damages,

punitive damages, as well as attorneys fees for violations of fraud.

CHAIR ANDERSON pointed out that Section 57 of Version L is different than that specified in Section 57 of Version I.

MR. CATTANACH interjected that the subject [of Section 57 in Version L] is the same [as that in Section 57 of Version I], but the language [in Version L] is substantially refined.

CHAIR ANDERSON read Section 57 in Version I and Version L.

[5:56:17 PM](#)

MR. CATTANACH said that Section 57 in Version L would be fine.

REPRESENTATIVE GUTTENBERG asked if Section 56 pertains to insurance companies.

REPRESENTATIVE LEDOUX opined that the language "any entity" would include insurance companies.

REPRESENTATIVE GUTTENBERG asked if that would also include the insurance company's employees and representatives.

[5:57:46 PM](#)

MR. LISANKIE returned the committee's attention to page 3 of the summary document, which highlights four sections of CSSB 130(FIN)am and Version I that refer to limited liability company members, release of medical records, confidentiality, and banning the division from assembling or providing individual records for commercial purposes. He noted that these four sections are practically identical. However, Section 34 of Version I referred to "individually identifiable" information about employees and employers that are not public record subject to disclosure under the Public Record Act. The aforementioned is an addition to CSSB 130(FIN)am.

[5:58:43 PM](#)

MR. LISANKIE continued with page 4 of the summary document, which addressed improving return-to-work benefits. He explained that CSSB 130(FIN)am allowed reductions in delays in determining certain reemployment benefits eligibility and costs by workers and employers to stipulate to the injured workers' eligibility

to that benefit. He related that the aforementioned was deleted from Version I.

MR. CATTANACH confirmed that the aforementioned provision [isn't included] in Version L.

[5:59:56 PM](#)

MR. LISANKIE explained that since [Section 3 of CSSB 130(FIN)am] was deleted in Version I, it also deletes the portion of that provision calling for simplified standards for determining entitlement to evaluation. He pointed out that Section 15 of CSSB 130(FIN)am was not included in Version I.

CHAIR ANDERSON noted that [Section 15 of CSSB 130(FIN)am] was not included in Version L either.

MR. CATTANACH agreed that the aforementioned section isn't in Version L, but added that he didn't know why it was eliminated.

[6:01:30 PM](#)

REPRESENTATIVE LYNN inquired as to the problem if an employer and an employee both stipulate.

MR. CATTANACH agreed, and then added that [Section 15 of CSSB 130(FIN)am] may have been deleted because it was a subject that the ad hoc committee hadn't considered. However, he opined that the aforementioned doesn't mean it's bad.

[6:02:21 PM](#)

MR. LISANKIE continued by highlighting that Section 17 of CSSB 130(FIN)am and Section 15 of Version I are the same. He then pointed out that Version I does not include a corresponding provision to Section 13 of CSSB 130(FIN)am.

[6:03:12 PM](#)

MR. LISANKIE moved on to pages 5-6, which addresses the Workers' Compensation Appeals Commission that was included in CSSB 130(FIN)am. Version I doesn't include any of the sections having to do with the aforementioned commission. In response to Chair Anderson, Mr. Lisankie explained that under CSSB 130(FIN)am the appeals commission would be established. Therefore, the commission was substituted for the Superior Court. Version L has deleted the appeals commission, but the

ability to appeal to the Superior Court and the Supreme Court, if one so chooses, would remain.

CHAIR ANDERSON mentioned that the governor's representatives have stated that the aforementioned impedes an expeditious process.

[6:04:59 PM](#)

MR. LISANKIE turned the committee's attention to page 7 of the summary document and the heading, "**MAINTAINING MEDICAL BENEFITS WHILE REDUCING COSTS**". He highlighted that Section 51 of CSSB 130(FIN)am repealed all the provisions in Section 27 if no action was taken by June 30, 2007. There is no Section 27 in [Version I] so there is no need for Section 51. However, Section 32 of CSSB 130(FIN)am would cap fees for health care providers at the current levels established in the Workers' Compensation Board medical fee schedule dated 12/1/04.

[6:06:11 PM](#)

CHAIR ANDERSON inquired as to how far Section 32 of Version L would reach in regard to a physician's ability to charge.

[6:06:40 PM](#)

TIM KELLY, Lobbyist, Alaska State Medical Association, related his understanding that Section 32 would freeze medical fees at current rates. He pointed out that a later section repeals the freeze in June of 2007. He further related his understanding that Section 32 is a point of discussion that can be worked out depending upon other sections of SB 130.

[6:08:59 PM](#)

REPRESENTATIVE LYNN expressed concern with freezing prices, and therefore he inquired as to what happens with the pent up demand once the freeze is lifted. He stressed that there are many factors that contribute to increased medical cost.

CHAIR ANDERSON highlighted that the next committee of referral for SB 130 is the House Judiciary Standing Committee. He related his belief that those effected by this legislation can bring forward comments in the House Judiciary Standing Committee.

REPRESENTATIVE CRAWFORD also expressed concern with regard to freezing medical costs and the pent up demand.

[6:11:07 PM](#)

MR. LISANKIE continued with his comparison on page 7 of the summary document. He pointed out that CSSB 130(FIN)am had the commissioner of DLWD appoint a medical review committee. However, Version I specifies that the AWCB will appoint the medical review committee and the makeup of the AWCB, and Version L eliminates language in current statute indicating that the AWCB can contract with organizations to assist it.

REPRESENTATIVE ROKEBERG questioned whether the aforementioned is like having the fox guard the henhouse.

[6:12:39 PM](#)

MR. LISANKIE turned attention to Section 71 of Version I, which changes the date that the report must be given from the first week of the Twenty-Fifth Legislative Session to May 15, 2006.

CHAIR ANDERSON informed the committee that the aforementioned is now encompassed in Section 74 in Version L.

MR. CATTANACH opined that [May 15, 2006] isn't soon enough.

[6:13:56 PM](#)

REPRESENTATIVE KOTT commented that much of this is going to be contingent on a couple of amendments that address the task force and reporting. Representative Kott said that he wouldn't be adverse to the reporting date being earlier. The main charge of the medical review panel was to establish guidelines and then report those to the task force. Therefore, there would also need to be amendments to require the medical review panel's report to be submitted earlier, such as September 15 [2006].

[6:15:25 PM](#)

MR. LISANKIE, still referring to page 7 of the summary document, turned to Section 24 of CSSB 130(FIN)am, which proposed to incrementally restrict compensable palliative care under certain limitations. However, that section was not included in Version I.

MR. CATTANACH noted that he concurred with the deletion.

MR. LISANKIE continued with page 8 of the summary document. Section 26 of CSSB 130(FIN)am proposed that the state adopt the American College of Occupational Environmental Medicine (ACOEM) treatment guidelines and to provide that injuries not covered by that would then have other guidelines determined and adopted by the Workers' Compensation Board. Version I doesn't include that provision.

[6:16:49 PM](#)

REPRESENTATIVE GUTTENBERG inquired as to the guidelines that are used in its place.

MR. CATTANACH explained that the idea is to have some treatment guidelines. However, he informed the committee of a Rand study that found that in California, the only state that has adopted ACOEM guidelines, ACOEM guidelines worked for just under 50 percent of the workers' compensation injuries. Therefore, the ad hoc committee felt that a full set of guidelines should be defined, Mr. Cattanach related.

[6:18:06 PM](#)

REPRESENTATIVE ROKEBERG asked if the 50 percent to which the Rand study referred was in reference to the caseload or the diagnostics.

MR. CATTANACH said that he could provide the committee a copy of the Rand study. He noted that the study reviewed a number of treatment guidelines and weighed them in terms of effectiveness.

[6:18:51 PM](#)

MR. LISANKIE concluded with page 9 of the summary document, which documents provisions that were not in CSSB 130(FIN)am, but were added to Version I.

[6:19:32 PM](#)

MR. CATTANACH pointed out that Section 6 of Version I came out of the ad hoc process and was intended to speed the process. Hearings on things that are perfunctory and pro forma take time, and therefore it was agreed that some of these could be agreed on beforehand and the hearing officer could hear them. He then turned to Section 24 of Version I and related that the ad hoc committee was concerned with regard to employers without

insurance. The desire was to speed the process by which the [employer without insurance] is stopped and made to obtain insurance. Therefore, Section 24 allows the director to make the decision to move along the process.

[6:20:41 PM](#)

REPRESENTATIVE KOTT interjected that under both cases one still has to go through a hearing. Those cases that are more administrative are brought to the attention of the director before the board, and therefore [Section 24] would speed up the process.

[6:21:35 PM](#)

REPRESENTATIVE CRAWFORD informed the committee that he would like to add [to Section 24 in Version L] the following language: "An employer who fails to properly classify an employee for the purposes of obtaining workers' compensation insurance or to furnish to the division". He explained that he wanted to add that language because those who are knowingly misclassifying employees in order to obtain cheaper workers' compensation rates are robbing the system. Therefore, the director should have the ability to do something about that. Such an amendment would save a lot of money.

[6:23:21 PM](#)

REPRESENTATIVE CRAWFORD moved that the committee adopt Conceptual Amendment 2, which read:

Page 12, following line 5:

Insert a new bill section to read:

**\*Sec. 24.** AS 23.30.075 is amended by adding a new subsection to read:

(c) An employer who fails to properly classify an employee for the purpose of obtaining workers' compensation insurance or to furnish proof to the division of the employer's financial ability to pay compensation directly fails to comply with the requirements in (a) of this section."

[6:24:05 PM](#)

MR. CATTANACH opined that workers' compensation is very complex and an employer may unintentionally misclassify an employee. The problem, he further opined, is with intent. However, Mr.

Cattanach said that at this time he doesn't have a problem with Conceptual Amendment 2.

The committee took an at-ease from 6:25 p.m. to 6:27 p.m.

[6:27:48 PM](#)

REPRESENTATIVE CRAWFORD explained that Conceptual Amendment 2 allows the director, if he so chooses, the power to use the provision suggested. He opined that it would only be used in an egregious case.

[6:28:53 PM](#)

CHAIR ANDERSON objected for discussion purposes.

MR. CATTANACH turned to Section 56 paragraph (3) of Version L, which he believes covers [what Representative Crawford is attempting to address].

REPRESENTATIVE KOTT agreed with Mr. Cattanach, and added that Conceptual Amendment 2 isn't necessary.

[6:31:01 PM](#)

REPRESENTATIVE CRAWFORD highlighted that once employees are misclassified, the employer is only ever required to makeup the premiums when someone is hurt. Therefore, he said he wanted the director to have the ability to stop such practices. Although Representative Crawford characterized the language in Section 56 paragraph (3) to be great language, he emphasized that thus far it hasn't been enforced.

[6:32:27 PM](#)

REPRESENTATIVE GUTTENBERG suggested that inserting language that relates that the employer has "frequently, often, consistently" misclassified employees in order to get at flagrant violators. Therefore, Representative Guttenberg moved that the committee adopt the following amendment to Conceptual Amendment 2, such that subsection (c) would read:

(c) An employer who flagrantly fails to properly classify an employee for the purpose of obtaining workers' compensation insurance or to furnish proof to the division of the employer's financial ability to

pay compensation directly fails to comply with the requirements in (a) of this section.

There being no objection, the amendment to Conceptual Amendment 2 was adopted.

[6:33:07 PM](#)

REPRESENTATIVE LEDOUX opined that the difference between Sections 24 and 56 is that Section 56 allows for civil remedies while Section 24 allows for the director to shut down the employer who is misclassifying employees. Furthermore, Section 56 refers to "knowingly misclassifies employees".

[6:34:06 PM](#)

REPRESENTATIVE GUTTENBERG opined that employers have been consistently misclassifying employees and have paid decreased [workers' compensation] rates, which results in an uneven playing field for contactors.

REPRESENTATIVE CRAWFORD moved that the committee adopt an amendment to Conceptual Amendment 2 such that subsection (c) would delete "flagrantly" and insert "knowingly" in its place. There being no objection, the amendment to Conceptual Amendment 2 was adopted.

CHAIR ANDERSON maintained his objection to Conceptual Amendment 2, as amended.

REPRESENTATIVE ROKEBERG related his belief that the statutory provisions specify that misclassification is illegal, although he indicated that there is an enforcement issue. However, he pointed out that the legislation calls for two investigators and an attorney.

REPRESENTATIVE CRAWFORD related his understanding that the language in Section 56 refers to fraud related to unfair billings rather than "shutting people down on the job." All the proposed Conceptual Amendment 2 would do is allow the director the ability to shut down an employer found to be knowingly misclassifying employees.

[6:36:14 PM](#)

MR. CATTANACH deferred to the committee's wishes.

A roll call vote was taken. Representatives Lynn, LeDoux, Guttenberg, and Crawford voted in favor of Conceptual Amendment 2, as amended. Representatives Rokeberg, Kott, and Anderson voted against it. Therefore, Conceptual Amendment 2, as amended, was adopted by a vote of 4-3.

[6:37:20 PM](#)

REPRESENTATIVE ROKEBERG directed the committee's attention to Section 23 of Version L, which references [AS 23.30.075(a)]. He opined that it doesn't accomplish what was desired with Conceptual Amendment 2, [as amended], and doesn't provide any sanction.

CHAIR ANDERSON suggested that the aforementioned could be addressed as the legislation moves to the House Judiciary Standing Committee.

MR. LISANKIE then continued with Section 31 in Version I, and it was determined that it still remains in Version L.

[6:39:04 PM](#)

REPRESENTATIVE KOTT moved that the committee adopt Conceptual Amendment 3, which would delete Section 31 of Version L. He explained that the provision is convoluted, and furthermore the entity which will pay isn't defined.

There being no objection, Conceptual Amendment 3 was adopted.

[6:40:10 PM](#)

MR. LISANKIE moved on to Section 41 of Version I, which establishes penalties for late payment for compensation due without a board order and specifies that it will be paid to the person who should've been paid in the first place.

MR. CATTANACH said that he didn't have any problem with that.

MR. LISANKIE explained that under Section 42 of Version I is the parallel provision for the payment of compensation for compensation due under a board order.

[6:40:50 PM](#)

MR. LISANKIE moved on to Section 49 of Version I, which indicates that an employer need not make retroactive

compensation rate adjustments if the annual recalculation of the state average weekly wage that DLWD is required to do by December of each year is instead done between January 1 and April 1 of the following year.

[6:41:13 PM](#)

MR. CATTANACH explained that the aforementioned is an issue because, for a variety of reasons, the recalculation of the state average weekly wage isn't [provided by December 1]. However, the employer is still required to make the payments effective January 1. Therefore, the employer continues to make the payments and when the state issues the new wages, the employer has to issue small checks. The aforementioned results in a costly system to the employers through no fault of their own. Section 49 allows for the reality of the first quarter such that the employer doesn't have to makeup payments if the state takes that long, but any time after the first quarter the employer will have to makeup the difference.

[6:42:21 PM](#)

MR. LISANKIE turned attention to Section 51, which includes a phase out of the second injury fund.

CHAIR ANDERSON noted that it seems to be consistent with [Section 51] of Version L.

[6:43:09 PM](#)

REPRESENTATIVE CRAWFORD related his preference for the second injury fund, and therefore he preferred to delete Section 51.

[6:43:48 PM](#)

MR. CATTANACH explained that the ad hoc committee recommended phasing out the second injury fund because in order to qualify for the second injury fund, the employer has to knowingly hire someone who was previously injured. If that person reinjures the original injury, the second injury fund takes over after one year of payments. However, due to federal law an [employer] can't ask [a prospective employee] whether he/she has been previously injured because it's viewed as screening employees. Therefore, very few new cases are going into the second injury fund. Mr. Cattanach emphasized that although the idea for a second injury fund is good, what is currently in place isn't

working. He noted that he had spoken with Representative Kott about reviewing the entire issue of reemployment.

MR. CATTANACH opined that eliminating the second injury fund admits that it isn't working.

REPRESENTATIVE CRAWFORD agreed to continue to work on that issue.

[6:45:37 PM](#)

REPRESENTATIVE GUTTENBERG inquired as to how often [employees] who have applied for the second injury fund have received funds from it. He related his impression that it's difficult to get to the second injury fund.

MR. LISANKIE agreed with that impression. He informed the committee that currently about 130 individuals are being reimbursed from the second injury fund. However, he noted that those would be over a significant number of years because these are usually the most serious cases.

[6:46:54 PM](#)

MR. LISANKIE continued his review of page 9 of the summary document. He turned to Section 52 of Version I, which addresses how certain compensation rates will be calculated for certain groups of workers. He specified that the groups of workers addressed are as follows: workers paid by the hour/day/output; workers in exclusively seasonal or temporary employment; workers who are minors, apprentices, and trainees in a formalized training program.

MR. CATTANACH informed the committee that [Section 52 of Version I] is a proposal of the ad hoc committee and was part of its legislation, although it wasn't included in CSSB 130(FIN)am.

REPRESENTATIVE GUTTENBERG requested that the model of how those compensation rates are calculated be provided at some point.

[6:48:24 PM](#)

REPRESENTATIVE ROKEBERG, turning attention to the notes on the analysis for [Section 52], said that it appears that the Alaska Supreme Court overturned an earlier 1995 statutory change and recently affirmed that. Therefore, he surmised that [Section

52] is a reaction to the final judgment by the Alaska Supreme Court.

MR. LISANKIE explained that there was a version of how compensation rates should be calculated for state workers, and that was overturned by the Alaska Supreme Court. In 1995, the legislature adopted what are essentially the current provisions in statute. Those provisions were taken from a model act that was published a number of years ago. Subsequently, the Alaska Supreme Court said that the legislature's adoption of the model act was appropriate and correct. Therefore, Mr. Lisankie said that [Section 52] is a departure from what the Supreme Court said is acceptable.

[6:50:12 PM](#)

MR. LISANKIE reminded the committee that Sections 60 and 64 address requiring the division to have the following: two full-time investigators investigating fraud, sufficient staff support, a publicized toll free report number, as well as not less than one-half of an attorney position.

MR. CATTANACH concurred [with Sections 60 and 64].

[6:51:34 PM](#)

REPRESENTATIVE KOTT moved that the committee adopt Conceptual Amendment 4, which read [original punctuation provided]:

Page 34, Line 6;  
Delete, "and insurance"

Page 34, Lines 8-9;  
Delete, "an analysis and assessment of proposals for workers' compensation and workers' compensation liability insurance reform in Alaska;  
(3)"

Page 34, Line 10;  
Delete, "benefits and"  
Insert, "medical"

Page 34, Line 13;  
Delete, "(4) a review of compliance with current Alaska workers' compensation laws;"  
Insert, "(3) a review of the ACOM guidelines and effect in other states;"

Page 34, Line 14;  
Delete, "(5)"  
Insert, "(4)"

Page 34, Line 16;  
Insert, "(6) review of current Alaska, and other states', vocational rehabilitation and return to work programs."

Page 34, Line 16;  
Delete, "(6)"  
Insert, "(7)"

CHAIR ANDERSON objected for discussion purposes.

REPRESENTATIVE KOTT explained that Conceptual Amendment 4 would establish some clear guidelines with regard to what the task force is to review.

[6:52:11 PM](#)

MR. CATTANACH said that the ad hoc committee concurs with Conceptual Amendment 4, but suggested that the inserted language on page 34, line 13, should refer to medical treatment guidelines not just ACOM guidelines.

REPRESENTATIVE KOTT said that was an oversight.

[6:52:56 PM](#)

REPRESENTATIVE ROKEBERG offered an amendment to Conceptual Amendment 4, such that the language being inserted on page 34, line 13, would say "a review of medical guidelines including the ACOM guidelines ...;"

There being no objection, the aforementioned amendment to Conceptual Amendment 4 was adopted. Therefore, Conceptual Amendment 4, as amended, was before the committee.

CHAIR ANDERSON removed his objection to Conceptual Amendment 4, as amended.

There being no further objection, Conceptual Amendment 4, as amended, was adopted.

[6:53:58 PM](#)

REPRESENTATIVE KOTT moved that the committee adopt Conceptual Amendment 5, which read [original punctuation provided]:

Page 35, Line 12;

Insert, "(4) The Task Force on Workers' Compensation shall contract with a consultant specializing in workers' compensation issues for the purpose of researching information and conducting a comparative analysis from other states on topics listed in section (a). Such information shall be presented to the Task Force on or before September 1, 2005.

Re-number subsections accordingly

REPRESENTATIVE KOTT explained that the consultant would analyze the statement of work specified on [page 34 of Version L] and thus the task force would have the information available. Therefore, the process could be sped up such that the task force would be able to report back to the legislature by the end of December. He suggested that much information will be submitted.

There being no objection, Conceptual Amendment 5 was adopted.

REPRESENTATIVE KOTT moved that the committee adopt Conceptual Amendment 6, which read as follows:

Page 36, line 31:

Delete "May 15, 2006"

Insert "September 30, 2005"

REPRESENTATIVE KOTT explained that with the adoption of Conceptual Amendment 6 the information from [the medical services review committee] would be provided around the same time the consultant would be expected to provide his/her information.

There being no objection, Conceptual Amendment 6 was adopted.

CHAIR ANDERSON closed public testimony.

[6:57:21 PM](#)

REPRESENTATIVE ROKEBERG reiterated his concern with regard to the composition of the task force and the date of its report, which is December 1, 2006. Therefore, he offered to work with the drafter and the House Judiciary Standing Committee on those

matters. He opined that it's inappropriate to wait until the session is over to make a report to the legislature.

[6:58:14 PM](#)

MR. CATTANACH suggested that due to the change encompassed in Conceptual Amendment 6, the same date needs to be changed on page 37, lines 4-5, in order to be consistent.

REPRESENTATIVE KOTT moved that the committee adopt Conceptual Amendment 7, which read as follows:

Page 37, lines 4-5:  
Delete "May 15, 2006"  
Insert "September 30, 2005"

REPRESENTATIVE LEDOUX objected for discussion purposes. She pointed out that the date on page 37, lines 4-5, refers to the medical services review committee that has to provide a report to the task force.

[6:59:53 PM](#)

REPRESENTATIVE KOTT withdrew Conceptual Amendment 7.

[7:00:21 PM](#)

REPRESENTATIVE KOTT turned to Representative Rokeberg's concern and offered New Conceptual Amendment 7, as follows:

Page 35, line 14:  
Delete "December 1"  
Insert "prior to the first day of the convening of the Twenty-Fifth Legislature"

REPRESENTATIVE KOTT explained that the task force would have its work completed by the end of [2005] and then submit a report to the legislature.

There being no objection, New Conceptual Amendment 7 was adopted.

[7:02:06 PM](#)

REPRESENTATIVE KOTT moved that the committee adopt Conceptual Amendment 8, as follows:

Page 35, line 15  
Delete "2007"  
Insert "2006"

REPRESENTATIVE CRAWFORD objected for discussion purposes. He questioned whether any legislation [addressing this] would be prepared in that first month of the Twenty-Fifth Legislature. Therefore, he suggested maintaining the task force until the end of the legislature.

REPRESENTATIVE KOTT opined that the report would be available before the legislature convenes, and therefore the task force members could be available for questions in that first month of session.

REPRESENTATIVE CRAWFORD withdrew his objection.

There being no further objection, Conceptual Amendment 8 was adopted.

[There was discussion regarding whether the date on the next page, page 37, was changed. The discussion indicated that it was changed, although the motion to do so was withdrawn.]

[7:05:06 PM](#)

MR. CATTANACH pointed out that [Version L] seems to have dropped a provision addressing [AS 23.30.041(c)] that was included in [Version I and CSSB 130(FIN)am]. The aforementioned provision allows an employer and an employee to stipulate to an employee's eligibility for reemployment benefit. The aforementioned speeds up the qualification time of an injured worker by allowing the employer to say that there is no question that the worker will qualify and start the process.

[7:06:30 PM](#)

MR. LISANKIE clarified that the aforementioned statute was interpreted to not be in statute and thus was included in CSSB 130(FIN)am, but not maintained in Version L.

REPRESENTATIVE KOTT pointed out that it was Section 13 of CSSB 130(FIN)am.

The committee took a brief at-ease from 7:07 p.m. to 7:08 p.m.

[7:08:58 PM](#)

REPRESENTATIVE ROKEBERG [moved that the committee adopt] Conceptual Amendment 9, as follows:

Page 7, after line 30:

Insert the following new section;

"\* **Sec. 13.** AS 23.30.041(c) is repealed and reenacted to read:

(c) An employee and an employer may stipulate to the employee's eligibility for reemployment benefits at any time. If an employee suffers a compensable injury and, as a result of the injury, the employee is totally unable, for 45 consecutive days, to return to the employee's employment at the time of injury, the administrator shall notify the employee of the employee's rights under this section within 14 days after the 45th day. If the employee is totally unable to return to the employee's employment for 60 consecutive days as a result of the injury, the employee or employer may request an eligibility evaluation. The administrator may approve the request if the employee's injury may permanently preclude the employee's return to the employee's occupation at the time of the injury. If the employee is totally unable to return to the employee's employment at the time of the injury for 90 consecutive days as a result of the injury, the administrator shall, without a request, order an eligibility evaluation unless a stipulation of eligibility was submitted. If the administrator approves a request or orders an evaluation, the administrator shall, on a rotating and geographic basis, select a rehabilitation specialist from the list maintained under (b)(6) of this section to perform the eligibility evaluation. If the person that employs a rehabilitation specialist selected by the administrator to perform an eligibility evaluation under this subsection is performing any other work on the same workers' compensation claim involving the injured employee, the administrator shall select a different rehabilitation specialist."

There being no objection, Conceptual Amendment 9 was adopted.

[7:11:57 PM](#)

REPRESENTATIVE CRAWFORD remarked that he has lots of trepidation about forwarding this legislation, although he characterized it as a much better bill. He noted his appreciation to everyone who has worked on this and expressed his hope that the ultimate legislation looks like Version L.

[7:13:13 PM](#)

REPRESENTATIVE CRAWFORD moved to report HCS CSSB 130, Version 24-GS1112\L, Bullock, 5/4/05, as amended, out of committee with individual recommendations, the accompanying fiscal notes, and [HCR 19] allowing the title change. There being no objection, HCS CSSB 130(L&C) was reported from the House Labor and Commerce Standing Committee.

#### **ADJOURNMENT**

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at [7:14:30 PM](#).