

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

February 27, 2006

3:31 p.m.

MEMBERS PRESENT

Representative Pete Kott
Representative Gabrielle LeDoux
Representative Bob Lynn
Representative Norman Rokeberg
Representative Harry Crawford
Representative David Guttenberg

MEMBERS ABSENT

Representative Tom Anderson, Chair

COMMITTEE CALENDAR

HOUSE BILL NO. 409

"An Act relating to excluding qualified real estate licensees from workers' compensation coverage."

- MOVED CSHB 409(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 416

"An Act relating to the amount of the state business license fee."

- HEARD AND HELD

HOUSE BILL NO. 389

"An Act relating to tourist accommodations permits and to penalties for failing to comply with permitting requirements; removing a requirement that persons operating tourist accommodations post certain laws and regulations on the premises; and providing for an effective date."

- MOVED HB 389 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 409

SHORT TITLE: NO WORKERS' COMP. FOR REAL EST. LICENSEE

SPONSOR(S): REPRESENTATIVE(S) LYNN

01/30/06 (H) READ THE FIRST TIME - REFERRALS
01/30/06 (H) L&C, FIN
02/27/06 (H) L&C AT 3:15 PM CAPITOL 17

BILL: HB 416

SHORT TITLE: BUSINESS LICENSE FEE
SPONSOR(S): REPRESENTATIVE(S) RAMRAS

02/01/06 (H) READ THE FIRST TIME - REFERRALS
02/01/06 (H) EDT, L&C, FIN
02/13/06 (H) EDT AT 6:00 PM CAPITOL 106
02/13/06 (H) Moved CSHB 416(EDT) Out of Committee
02/13/06 (H) MINUTE(EDT)
02/15/06 (H) EDT RPT(EDT) NT 3DP 2NR
02/15/06 (H) DP: LYNN, CRAWFORD, RAMRAS;
02/15/06 (H) NR: COGHILL, NEUMAN
02/27/06 (H) L&C AT 3:15 PM CAPITOL 17

BILL: HB 389

SHORT TITLE: REGULATION OF TOURIST ACCOMMODATIONS
SPONSOR(S): REPRESENTATIVE(S) COGHILL

01/23/06 (H) READ THE FIRST TIME - REFERRALS
01/23/06 (H) EDT, L&C
02/13/06 (H) EDT AT 6:00 PM CAPITOL 106
02/13/06 (H) Moved Out of Committee
02/13/06 (H) MINUTE(EDT)
02/15/06 (H) EDT RPT 4DP 1NR
02/15/06 (H) DP: COGHILL, LYNN, CRAWFORD, RAMRAS;
02/15/06 (H) NR: NEUMAN
02/24/06 (H) L&C AT 3:15 PM CAPITOL 17
02/24/06 (H) -- Meeting Canceled --
02/27/06 (H) L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

PERRY UNDERWOOD, Director at Large
Alaska Association of Realtors
Anchorage, Alaska
POSITION STATEMENT: Testified in favor of HB 409.

DAVE FEEKEN, Legislative Chair
Alaska Association of Realtors
Kenai, Alaska
POSITION STATEMENT: Answered questions and testified in favor
of HB 409.

PAUL LISANKIE, Director
Central Office
Division of Workers' Compensation
Department of Labor & Workforce Development
POSITION STATEMENT: Testified during hearing on HB 419.

CHARLIE MILLER, Lobbyist
Alaska National Insurance
Anchorage, Alaska
POSITION STATEMENT: During hearing of HB 419, answered questions.

REPRESENTATIVE JAY RAMRAS
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Spoke as the sponsor of HB 419.

JIM POUND, Staff
to Representative Jay Ramras
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Answered questions during hearing on HB 416.

KAREN LIDSTER, Staff
to Representative John Coghill
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented opening statement for HB 389 on behalf of Representative Coghill, sponsor.

KRISTIN RYAN, Director
Division of Environmental Health
Department of Environmental Conservation
Anchorage, Alaska
POSITION STATEMENT: Answered questions during hearing on HB 389.

ACTION NARRATIVE

REPRESENTATIVE KOTT, ACTING CHAIR, called the House Labor and Commerce Standing Committee meeting to order at [3:31:44 PM](#). Representatives Lynn, LeDoux, Kott, Guttenberg, and Rokeberg were present at the call to order. Representative Crawford arrived as the meeting was in progress.

HB 409-NO WORKERS' COMP. FOR REAL EST. LICENSEE

3:32:57 PM

REPRESENTATIVE KOTT announced that the first order of business would be HOUSE BILL NO. 409, "An Act relating to excluding qualified real estate licensees from workers' compensation coverage."

REPRESENTATIVE LYNN noted that he is a licensed real estate broker, therefore he has a conflict of interest. He explained that HB 409 exempts real estate licensees from workers' compensation. All states require companies to purchase workers' compensation insurance for their employees. However, real estate agents are independent contractors, and are not considered employees. This means that the real estate licensee does not receive a salary or benefits, but rather receives payment for services directly related to [real estate] sales.

REPRESENTATIVE LYNN went on to say that the real estate licensee is required to sign an Independent Contractor Agreement with the broker, and then the agent is responsible for all business expenses, in addition to filing and paying federal income tax. The broker does not have control over how the real estate agent spends his or her time, as long as it remains within the boundaries of the law. He pointed out that the Internal Revenue Service (IRS) considers real estate licensees to be independent contractors, and said that the state should also. Representative Lynn noted that the commissioner of the Department of Labor & Workforce Development (DLWD) supports the bill.

3:35:40 PM

PERRY UNDERWOOD, Director at Large, Alaska Association of Realtors (AAR), expressed support for HB 409 and deferred questions to Dave Feeken, who is also representing the AAR.

DAVE FEEKEN, Legislative Chair, Alaska Association of Realtors (AAR), explained that the AAR has been working to resolve the "very unclear" relationship between a real estate broker and a licensee. The AAR has worked with [DLWD] in an attempt to clear up this issue. He opined that it may be better to, on page 2, line 15, replace the word "employed" with the word "contracted," as this better describes the relationship between licensees and brokers. He pointed out that [Greg O'Claray, Commissioner, DLWD] has written a letter in support of HB 409.

3:38:01 PM

REPRESENTATIVE LEDOUX opined that HB 409 was introduced to reduce the premium paid for workers' compensation insurance and asked whether this would change liability insurance rates, especially if an independent contractor is injured on the job due to negligence.

MR. FEEKEN answered that he is not sure about liability insurance, but stated that independent contractor agreements require the licensee to have general liability insurance with a limit of [\$500,000 to \$1 million].

REPRESENTATIVE LEDOUX restated her question regarding liability insurance rates.

MR. FEEKEN said that [the legislation] does not prevent real estate agents from purchasing liability insurance and opined that oftentimes individual real estate agents are able to receive a better rate than a larger company.

REPRESENTATIVE ROKEBERG explained that [HB 409] would not have any impact on liability insurance due to the nature of workers' compensation insurance. He stated his understanding that workers' compensation covers work-related injuries, while liability insurance covers the policy holder if he/she causes damage to another person's property.

REPRESENTATIVE LEDOUX expressed disagreement with this, and opined that if a worker is an independent contractor and is injured on the job, he/she has the right to sue the entity with whom he/she holds the contract agreement.

3:41:03 PM

REPRESENTATIVE ROKEBERG remarked that this is the case now.

REPRESENTATIVE LEDOUX replied that it is incorrect, and pointed out that if a person has workers' compensation insurance, they cannot sue.

REPRESENTATIVE ROKEBERG noted that the purpose of the legislation is to fix this issue.

REPRESENTATIVE CRAWFORD commented that HB 409 does not require the independent contractor to maintain workers' compensation insurance and said that if a person is injured on the job, they

are not able to access their health insurance. He gave an example of a person who is at the broker's office and develops carbon monoxide poisoning from a heater that had not been properly inspected and explained that the contractor would be able to sue in this case. He said "wouldn't it be better ... if you're going to take away the liability under workers' comp. ... but add the liability under negligence, to require the licensee's to now have workers' comp. insurance on themselves as independent contractors."

[3:43:38 PM](#)

REPRESENTATIVE LYNN said that he has worked in real estate for many years and has never had life insurance provided.

[3:44:12 PM](#)

PAUL LISANKIE, Director, Central Office, Division of Workers' Compensation, Department of Labor & Workforce Development, explained that HB 409 is intended to clear up the confusion regarding the relationship between realtors and their associates. He said that if a person is not an employee and is injured on the job due to negligence, they should be able to sue because the general understanding is that realtors are independent contractors. In regard to whether the cost for liability insurance will increase, he stated that he does not know.

REPRESENTATIVE KOTT asked if the suggested amendment which would replace "employed" with "working" is potentially problematic for the department.

MR. LISANKIE replied that he does not see a problem with this. He explained that regardless of which word is used, "qualified real estate professionals" would not receive workers' compensation. He added that the word "employed" is often used as a generic term meaning that the person is working and does not necessarily mean that the person is an employee.

[3:47:50 PM](#)

REPRESENTATIVE CRAWFORD asked whether, under current law, an independent contractor would be able to sue for negligence if the broker carries workers' compensation insurance on the licensee.

MR. LISANKIE replied that the simple answer is no, although a "creative" attorney may turn this around. He added that if a person is found to be an employee subject to workers' compensation, he/she cannot sue. In response to another question, he said that this bill would allow an independent contractor to sue if there was basis for recovery. He opined that a person would be able to purchase insurance that does not differentiate between work-related and non work-related injuries.

[3:51:04 PM](#)

REPRESENTATIVE GUTTENBERG asked for the history of workers' compensation claims.

MR. LISANKIE replied that he does not have reliable information on claims involving real estate agents. He stated that there have been cases in which a real estate agent has gone before the Workers' Compensation Board and argued whether he/she is an independent contractor or an employee.

REPRESENTATIVE LEDOUX commented that in the field of maritime law, seamen can elect whether they have workers' compensation or maritime insurance.

[3:54:19 PM](#)

CHARLIE MILLER, Lobbyist, Alaska National Insurance, in response to an earlier question, opined that the liability insurance rates would not increase unless they could show the loss, but suggested that the committee look into this.

[3:55:51 PM](#)

REPRESENTATIVE KOTT closed public testimony.

REPRESENTATIVE ROKEBERG noted a personal conflict of interest, as he is a licensed real estate broker, and opined that if there was a negative impact from liability insurance rates, the brokerage community would accept this compared to the current rate it's paying for workers' compensation. He went on to explain that larger "brokerage houses" are employing more people, and therefore they are required to carry workers' compensation insurance. He added that there are assistant brokers within the brokerage house who hire assistants and are also required to have workers' compensation insurance.

REPRESENTATIVE CRAWFORD opined that the intent of the legislation is to shift the cost of workers' compensation from the brokers to the independent contractors. He said that the brokers may not be as supportive of the legislation if they understood that they are creating more opportunity for the independent contractors to sue if they are injured on the job.

REPRESENTATIVE CRAWFORD then moved Conceptual Amendment 1, which would require licensees to carry personal workers' compensation insurance.

REPRESENTATIVE LYNN objected. He said that independent contractors are independent, and mandating that they have workers' compensation insurance would be a disservice. He expressed that he does not think this is required.

REPRESENTATIVE GUTTENBERG asked what is covered by the independent contractor's liability insurance.

REPRESENTATIVE ROKEBERG replied that brokerage houses usually have -- insurance, and liability insurance. He expressed his belief that independent contractors should have business liability and an "umbrella policy," but to mandate that would defeat the purpose of the legislation.

REPRESENTATIVE LEDOUX remarked that this is a cost-shifting measure and said that [Conceptual Amendment 1] would simply shift the cost of workers' compensation to the broker. He questioned the reasoning behind this.

REPRESENTATIVE CRAWFORD replied that when a person is injured on the job and goes to the hospital, the first question asked is whether the injury occurred on the job. He explained that when the injury occurs on the job, it cannot be charged to regular insurance, which [leads people to sue.]

REPRESENTATIVE ROKEBERG expressed disagreement with this view and said an independent contractor has the right to access his or her health insurance.

REPRESENTATIVE GUTTENBERG asked whether a licensee with no employees is currently required to have workers' compensation insurance.

REPRESENTATIVE ROKEBERG said no.

REPRESENTATIVE GUTTENBERG asked if a licensee would be able to purchase workers' compensation insurance if he/she wished.

REPRESENTATIVE KOTT replied yes.

[4:03:23 PM](#)

REPRESENTATIVE LEDOUX shared her experience of having a law firm and said that she does not have workers' compensation insurance. She asked if it is correct that if an accident happened while working, a person's health insurance would not cover it and opined that the real issue is whether another source will pay for the [medical bills].

[4:03:58 PM](#)

REPRESENTATIVE LYNN pointed out that there are other groups of [independent contractors] who are not required to have workers' compensation insurance.

[4:05:08 PM](#)

REPRESENTATIVE KOTT asked if there was further debate on Conceptual Amendment 1. Hearing none, a roll call vote was taken. Representatives Guttenberg and Crawford voted in favor of Conceptual Amendment 1. Representatives Rokeberg, Lynn, LeDoux, and Kott voted against it. Therefore, Conceptual Amendment 1 failed by a vote of 2-4.

REPRESENTATIVE ROKEBERG moved Conceptual Amendment 2, as follows:

Page 2, line 15,
Delete "employee"
Insert "working"

There being no objection, Conceptual Amendment 2 was adopted.

[4:05:43 PM](#)

REPRESENTATIVE ROKEBERG moved to report HB 409 [as amended] out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE CRAWFORD objected. He expressed concern that real estate brokers will no longer have the protection of the

employer/employee relationship [which results from] workers' compensation insurance.

REPRESENTATIVE LYNN opined that the majority of brokers are "pretty smart individuals" and understand the issues.

REPRESENTATIVE GUTTENBERG recommended that the sponsor of the bill have the Division of Insurance available to answer questions when the bill is heard in the next committee of referral.

REPRESENTATIVE CRAWFORD removed his objection.

[There being no further objection, CSHB 409(L&C) was reported from the House Labor and Commerce Standing Committee.]

HB 416-BUSINESS LICENSE FEE

[4:08:01 PM](#)

REPRESENTATIVE KOTT announced that the next order of business would be HOUSE BILL NO. 416, "An Act relating to the amount of the state business license fee."

[4:09:02 PM](#)

REPRESENTATIVE JAY RAMRAS, Alaska State Legislature, sponsor, began by noting that he has maintained a business license in state for 20 years. He pointed out that the increase in business license fees was an attempt to cover budget deficits; however, this increase has hurt small businesses. He opined that \$100 per year for a business license is "remarkably high." He noted that the federal government would like to cultivate Internet sales, and therefore does not tax them. He opined that changing the license fee back to \$25, or amending the bill to make the fee \$50, would encourage small businesses in the state.

[4:11:14 PM](#)

REPRESENTATIVE ROKEBERG noted that a previous effort was made to maintain a lower business license fee.

REPRESENTATIVE CRAWFORD commented that a "fee" is intended to cover the program operating costs; however, the current business license fee is much higher than the actual cost of the program. Therefore, he said, this should be considered a tax rather than

a fee. He expressed his support of decreasing the cost of a business license.

REPRESENTATIVE GUTTENBERG asked if the sponsor had considered a maximum [business license] fee for individuals operating multiple businesses.

REPRESENTATIVE RAMRAS replied that this was considered in a previous committee hearing. He also pointed out that [the business license fee] became a source of revenue two years ago, prior to which the revenue was the same as it would be, were HB 416 to pass. He opined that most business owners "grimace" when purchasing a license, adding that [the current business license fee] inhibits many small businesses from opening.

[4:14:19 PM](#)

REPRESENTATIVE KOTT asked if a \$50 fine [for operating without a license] is sufficient.

REPRESENTATIVE RAMRAS replied that, according to the Department of Commerce, Community, & Economic Development, a fine has never been collected for [operating without a license].

REPRESENTATIVE KOTT asked if there is a provision in the current statutes which would allow the department to levy a fine.

JIM POUND, Staff to Representative Jay Ramras, Alaska State Legislature, replied that currently, this is a misdemeanor, which is "more trouble than it's worth" to pursue. This legislation would make this an infraction, which is comparable to a traffic violation.

REPRESENTATIVE KOTT asked if the current statutory provision would be deleted. He pointed out that in Section 1 of Version F allows a fine of \$50; however, if the current statute says this is a misdemeanor, this should be changed.

[4:15:47 PM](#)

MR. POUND replied that according to the department, this is a misdemeanor. He mentioned that he has not reviewed the current statute.

[4:16:21 PM](#)

REPRESENTATIVE KOTT pointed out that HB 416 has a further referral to the House Finance Committee, and suggested that this be looked into prior to the next hearing.

The committee took an at-ease from 4:17 p.m. to 4:19 p.m.

4:19:14 PM

REPRESENTATIVE ROKEBERG commented that lost revenue must be compensated for in another area.

REPRESENTATIVE KOTT agreed. He also noted that a number of businesses are operating without a license, and if the \$50 fine was in place, this amount of revenue would compensate for the loss created by lowering the business license fee.

4:20:12 PM

REPRESENTATIVE LYNN remarked that he was "amazed" that the business owners who maintain a business license are "the dumb ones"; however, the business owners who do not maintain a license "skate" by. He expressed strong support for the bill, although it may be "unprecedented" to "roll back" a tax. However, he offered his belief that this should be done whenever possible.

REPRESENTATIVE KOTT said that, as a small business owner, he has a conflict of interest.

REPRESENTATIVE ROKEBERG objected. He stated that he also maintains a state business license, and therefore has a conflict of interest.

REPRESENTATIVE LEDOUX inquired as to how this would impact the individuals who recently paid \$200 for a business license. She asked if there is a refund provision in the bill.

REPRESENTATIVE RAMRAS replied that there is not.

REPRESENTATIVE ROKEBERG expressed the need for a transitional period.

REPRESENTATIVE KOTT commented that it's the "luck of the draw."

REPRESENTATIVE ROKEBERG said that he is "in the same predicament."

REPRESENTATIVE RAMRAS pointed out that he is also in this predicament.

REPRESENTATIVE KOTT said that a transitional period would be difficult for the division to manage.

REPRESENTATIVE ROKEBERG surmised that business licenses are given based on the calendar year rather than the fiscal year. He opined that this would "complicate matters" more, as this would affect multiple fiscal years. He opined that a possible solution would be a refund to be prorated based on a December 31, 2006 effective date.

REPRESENTATIVE LEDOUX suggested that a credit may be given, which may be applied to the next business license application.

REPRESENTATIVE ROKEBERG replied that this "would be one way to do it."

[4:24:19 PM](#)

REPRESENTATIVE KOTT closed public testimony.

REPRESENTATIVE ROKEBERG commented that the transition period needs to be addressed.

REPRESENTATIVE RAMRAS said that while an effective date was not considered, a December 31, 2006, effective date would be appropriate. He added that generating credits and rebates would place an added burden on the department, which is not the intent of the bill.

REPRESENTATIVE ROKEBERG inquired as to the business owners who have paid past this date.

REPRESENTATIVE RAMRAS said that, to his knowledge, it is only two years per license.

[4:26:33 PM](#)

REPRESENTATIVE ROKEBERG opined that this is a "tough luck amendment." He clarified that while the business owners would not have to pay [the higher license fee], they would not receive a refund of the fee which was already paid.

REPRESENTATIVE RAMRAS replied yes.

The committee took an at-ease from 4:27 p.m. to 4:29 p.m.

REPRESENTATIVE ROKEBERG requested that the bill be held in order to receive further information regarding the transitional language.

REPRESENTATIVE KOTT stated his intent to hold the bill until the next committee hearing.

HB 389-REGULATION OF TOURIST ACCOMMODATIONS
[Contains discussion of HB 360]

[4:29:48 PM](#)

REPRESENTATIVE KOTT announced that the final order of business would be HOUSE BILL NO. 389, "An Act relating to tourist accommodations permits and to penalties for failing to comply with permitting requirements; removing a requirement that persons operating tourist accommodations post certain laws and regulations on the premises; and providing for an effective date."

KAREN LIDSTER, Staff to Representative John Coghill, Alaska State Legislature, characterized HB 389 as "housekeeping" since it repeals the sections of statute that are no longer used, along with the related areas. She explained that the Department of Environmental Conservation has jurisdiction over trailer camp and public facility health and safety issues.

REPRESENTATIVE KOTT asked if this was the department's response to a memo from [Representative Coghill] to all state agencies regarding any statutes that should be repealed.

MS. LIDSTER said that it is and noted that the remaining regulations in AS 18.35 allow the department to maintain public health and safety.

[4:33:08 PM](#)

KRISTIN RYAN, Director, Division of Environmental Health, Department of Environmental Conservation, informed the committee that the division is responsible for regulating public accommodations. She stated that HB 389 repeals statutory authority that has not been utilized since the 1960s. The division does not permit public accommodations, therefore the statutory authority is not necessary. The division currently does complaint investigations and has sanitation regulations in

place, which, she noted, have been in place since 1982, and are in need of revision. This legislation, she said, is the beginning of that process. Once the statutory authority is "up-to-date", the division will approach setting appropriate sanitation standards. This legislation does not eliminate the division's ability to set these standards, and it will continue to do this in addition to investigating complaints. Ms. Ryan explained that the public health risks are low and the division staff is unable to do a more thorough investigation, adding that this is not needed. The current permit structure is not needed to adequately regulate these facilities.

REPRESENTATIVE ROKEBERG referred to [HB 360] sponsored by Representative Kevin Meyer, and asked if HB 389 is related in any way.

MS. RYAN explained that HB 360 requires the department to regulate small public water systems at any public accommodation. The division does not currently permit public accommodations. She explained that HB 389 would not change this, although HB 360 would require the division to regulate the drinking water.

MS. RYAN, in response to a question from Representative Rokeberg, stated that HB 389 would delete the requirement for a sanitation permit. The division would still regulate the larger facilities for water, wastewater, and food inspections. Currently, the division is not regulating smaller businesses that serve less than 25 people.

REPRESENTATIVE ROKEBERG asked how the division is aware of the smaller businesses that serve only 25 people if they do not issue permits.

MS. RYAN replied that the division frequently comes across facilities that fall under the regulatory requirements but are not, at which point the facility is notified of the requirements to which it needs to comply and is provided information on ways in which it can comply.

REPRESENTATIVE ROKEBERG asked if this was part of the reason permitting was put in regulation.

MS. RYAN replied that she does not know the reason this was originally put into statute and noted that usually a permit is for greater oversight over a particular industry, when it is necessary to maintain a minimum of yearly contact, including inspections. She opined that the permit structure was put in

place because there was a need to have a sanitation standard, and a permit in place for public accommodations.

[4:38:03 PM](#)

MS. RYAN, in response to questions from Representative Guttenberg, explained that the threshold for non-regulation varies depending on the area of regulation. She stated that for drinking water, the cutoff is 25 people; for food establishments it is 10 people; wastewater requires that a [water] system be installed by a certified engineer. She pointed out that HB 389 only applies to the sanitation permits. In response to further questions, she agreed that HB 389 is merely "clean-up", and the division will still be conducting investigations and setting sanitation standards.

REPRESENTATIVE GUTTENBERG asked if the division would maintain the authority to investigate a small bed and breakfast in response to complaints about bugs, vermin, or brown drinking water.

MS. RYAN replied that this is correct.

[4:40:46 PM](#)

REPRESENTATIVE KOTT closed public testimony.

[4:41:14 PM](#)

REPRESENTATIVE CRAWFORD moved to report HB 389 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 389 was reported out of 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 4:41 p.m.