

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

April 5, 2005

8:40 a.m.

MEMBERS PRESENT

Senator Ralph Seekins, Chair
Senator Charlie Huggins, Vice Chair
Senator Gene Therriault
Senator Hollis French
Senator Gretchen Guess

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 130

"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; 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

SENATE BILL NO. 137

"An Act providing that an institution providing accommodations exempt from the provisions of the Uniform Residential Landlord and Tenant Act may evict tenants without resorting to court proceedings under AS 09.45.060 - 09.45.160."

MOVED SB 137 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 130

SHORT TITLE: WORKERS' COMPENSATION

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

BILL: SB 137

SHORT TITLE: EVICTING INSTITUTIONAL PROPERTY USERS
SPONSOR(S): SENATOR(S) SEEKINS

03/08/05 (S) READ THE FIRST TIME - REFERRALS
03/08/05 (S) L&C, JUD
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) Moved SB 137 Out of Committee
03/24/05 (S) MINUTE (L&C)
03/29/05 (S) L&C RPT 3DP
03/29/05 (S) DP: BUNDE, DAVIS, STEVENS B
04/05/05 (S) JUD AT 8:30 AM BUTROVICH 205

WITNESS REGISTER

Mr. Joseph Michele
Staff to Senator Seekins
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Introduced SB 137

Mr. Paul Lisanki, Director
Division of Worker's Compensation
Department of Labor & Workforce Development
PO Box 21149
Juneau, AK 99802-1149

POSITION STATEMENT: Commented on SB 130

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at [8:40:22 AM](#). Present were Senators Charlie Huggins, Gene Therriault, Gretchen Guess, and Chair Ralph Seekins.

SB 137-EVICTING INSTITUTIONAL PROPERTY USERS

[8:40:53 AM](#)

MR. JOSEPH MICHELE, staff to Senator Seekins, introduced SB 137. The University of Alaska asked the Legislature to carry SB 137. A few disruptive students have used the court system to stall impending evictions. The bill is meant to fix a discrepancy between legislative intent of the Uniform Landlord Tenant Act and the recent lower court decision regarding the removal of individuals residing in a residence that is owned by an institution described under AS 34.03.330.

[8:43:17 AM](#)

The University of Alaska has put into place a three-strike policy with a review process and a peer process.

CHAIR RALPH SEEKINS closed public testimony.

SENATOR GENE THERRIAULT asked whether the action was just adding educational institutions to the list contained in AS 34.03.330.

[8:45:08 AM](#)

MR. MICHELE answered higher educational establishments are included in AS 34.03.330. SB 137 stems from lower court hearings.

CHAIR SEEKINS commented exempt institutions would not have to go to court to evict a person.

[8:45:58 AM](#)

MR. MICHAEL HOSTINA, associate general counselor, University of Alaska, commented SB 137 is clarifying the eviction statutes, which have been interpreted by the courts to require an eviction action even for the exempt institutions. SB 137 doesn't modify the landlord/tenant law; it modifies the procedures governing evictions.

SENATOR THERRIAULT moved SB 137 from committee with individual recommendations and attached fiscal note(s). There being no objection, the motion carried.

CHAIR SEEKINS announced a brief recess at [8:47:00 AM](#).

CHAIR SEEKINS reconvened the meeting at [8:48:42 AM](#).

SB 130-WORKERS' COMPENSATION

[8:49:15 AM](#)

MR. PAUL LISANKI, director, Division of Worker's Compensation, Department of Labor and Workforce Development (DOLWD), presented a summary of the committee substitute (CS). The reforms contained in SB 130 are aimed at lessening the threat to jobs and workers benefits that are being caused by insurance premiums increasing at intolerable rates. The reforms address five major areas.

[8:50:51 AM](#)

Protecting Workers' Benefits and Jobs:

Section 21 would empower the division director to shut down an employer upon completion of an investigation that confirms the employer does not have the required worker's compensation liability insurance. Section 21 would also empower the Board to fine employers up to \$1,000 per employee per day. The intent is to take away the opportunity for employers to operate without the required insurance.

[8:52:44 AM](#)

A brief inadvertent problem would be viewed as a lesser infraction than an employer with repeated infractions.

CHAIR SEEKINS queried whether cancellation without notification from an insurer would be vigorously pursued.

MR. LISANKI confirmed. Section 22 would establish a benefits guarantee fund to receive the fines. The fund would use the fines to pay benefits to the injured workers whose employers were uninsured at the time of injury.

[8:54:48 AM](#)

Section 2 and Section 3 address the insurance provisions. Section 2 would protect the benefits payments from an insurer's insolvency by requiring in-state deposits to back the insurer's loss reserves. Section 3 would release the deposits to the Alaska Insurance Guaranty Association.

CHAIR SEEKINS asked Mr. Lisanki whether this would reduce the number of insurers offering worker's compensation coverage.

MR. LISANKI answered he did not know. He would defer the question to the Division of Insurance.

[8:56:51 AM](#)

Quicker and More Efficient Resolution of Disputed Benefits Claims:

Section 41 would legalize a private attorneys' receipt of a one-time consultation fee up to \$300 to advise injured workers on benefits matters. The Worker's Compensation Act makes it a crime to receive an attorney's fee without a Board approval in advance.

SENATOR GENE THERRIAULT asked whether this was for the payment out of pocket.

MR. LISANKI said yes. If the attorney takes the case s/he will attempt to seek reimbursement from the insurance company as a litigation cost.

[9:01:15 AM](#)

Section 9 would allow the DOLWD to contract with non-profit organizations to provide information and legal assistance to injured workers unable to obtain private council. This would permit the Workers' Compensation Board to delegate authority to the division director. It allows the DOLWD to contract with a non-profit organization to represent those who cannot obtain an attorney.

CHAIR SEEKINS asked whether Alaska Legal Services Corporation would be an example.

MR. LISANKI said he was not sure it would be asset based. This would be to address the issue that there are a limited number of private attorneys who are willing to provide the service.

[9:05:15 AM](#)

Section 10 would allow injured workers represented by Alaska licensed attorneys to settle their claims without review by the Worker's Compensation Board. It would allow the Board more time to focus on people who are minors, incompetent, or not represented by counsel and would speed the system up.

Section 7 requires the use of hearing officers and adoption of conflict of interest regulations. A panel hears the dispute. For over 20 years, the DOLWD and the Division of Worker's Compensation have used hearing officers on the panel. This would propose to legalize what is already happening.

[9:07:54 AM](#)

Fair Benefits at Reasonable Employer Cost:

Section 30 would cap non-resident compensation rates. Currently non-resident injured workers who live in a higher cost of living climate receive the higher compensation. Section 34 would coordinate payments of the workers' compensation benefits, and disability benefits under a plan to which an employer also contributed. This would ensure the combined payments do not exceed the injured worker's take home pay.

[9:10:47 AM](#)

SENATOR GRETCHEN GUESS asked how Section 34 is done currently.

MR. LISANKI answered it currently isn't done. The DOLWD has to figure out the proper worker's compensation benefits. Section 34 would give the employer the opportunity to reveal other payments that are paid to the worker.

CHAIR SEEKINS asked for an example.

MR. LISANKI preferred not to give an example. Section 34 would not be aimed at a policy bought by an individual worker. A private policy establishes what a person would get in the event they receive worker's compensation benefits. Also they do not pay more than 70 percent of the take home pay. Certain employers are paying into other funds; PERS for example, and the worker can get an occupational disability benefit. There is no offset at this time.

[9:13:29 AM](#)

SENATOR THERRIAULT said under the PERS system a person can select disability coverage, but the employee covers the cost.

MR. LISANKI said this addresses the employer-defined occupational disability policy.

SENATOR GUESS asked the definition of "spendable weekly wage."

MR. LISANKI answered it was the net after withholding taxes. The intent is to pay a fair and reasonable amount but less than what they would receive if they were working.

[9:16:00 AM](#)

Section 38 and Section 39 are both designed to strengthen anti-fraud provisions. There have been complaints that people are not being prosecuted effectively. Section 40 also follows in the anti-fraud provisions. It would adopt the Ad Hoc Committee recommendations authorizing courts to award punitive damages,

compensatory damages, and attorney's fees for violations of fraud provisions.

[9:18:21 AM](#)

SENATOR GUESS asked Mr. Lisanki to speak about the problem of fraud.

MR. LISANKI responded the Workers Compensation Division does not have the authority to investigate fraud. The Division of Insurance performs fraud investigation.

[9:20:07 AM](#)

SENATOR GUESS referred to Page 24, line 8, and asked Mr. Lisanki to comment on how the DOLWD decides whether to investigate fraud.

MR. LISANKI said they would have to install regulations. A discretionary call would have to be made regarding which cases they would pursue depending on resources.

CHAIR SEEKINS commented among the business community worker's compensation fraud is common. It is a two-fold problem. Insurance companies do not aggressively pursue claims of fraud they just increase rates. There aren't enough teeth in the statutes to effectively prosecute people.

[9:22:54 AM](#)

MR. LISANKI said there should not be anybody getting away with fraud.

[9:24:39 AM](#)

SENATOR GUESS commented fraud investigation should not be limited to one type of business.

MR. LISANKI continued Section 36 clears up a gray area. Limited Liability Company members need not have workers' compensation coverage but would allow the Company to add them to its insurance policy if desired.

[9:26:25 AM](#)

Section 26 would speed processing of medical bills by requiring the injury report to include release of medical records for treatment of injury. It would require the division to re-work medical reports. Attorneys who represent both sides of the dispute recommended this.

Section 27 would maintain confidentiality of worker's medical and rehabilitation records held by the Board.

Section 28 is a new provision, which would ban the Division of Worker's Compensation from assembling or providing individual records for commercial purposes. The Division of Worker's Compensation is asking people to file online so as to speed up the process. However, they are getting requests from other people to provide information that may be used for other purposes. People have legitimate privacy concerns.

[9:30:37 AM](#)

Improving Return-to-Work Benefits While Reducing Costs:

Section 33 would provide for a phase-out of the limited, archaic Second Injury Fund.

CHAIR SEEKINS asked Mr. Lisanki to describe the function of the Second Injury Fund.

MR. LISANKI explained the Second Injury Fund was developed when it was common and legal to discriminate against people. They are mostly claims with people who are permanently disabled. If an employer hires a person under one of the listed limitations and the person receives another injury, after paying two years, the Second Injury Fund kicks in. Currently there are about 130 claims.

[9:34:11 AM](#)

MR. LISANKI continued it is based on six percent of all the dollars paid for time lost benefits. It ends up being about \$4 million a year to keep the system going. The hope is by phasing it out, they would continue paying the claims off but not have any new ones. Gradually the balance of the fund will grow so the savings will be passed to employers.

[9:35:55 AM](#)

SENATOR GUESS inquired the result for the employer when the Second Injury Fund gets phased out.

MR. LISANKI answered the insurance company would continue to have full liability.

[9:37:17 AM](#)

Section 13 is an improvement that came from the Senate Labor & Commerce Standing Committee (L&C). It would require improved reporting of reemployment benefits, including plan status and tracking of injured workers' employment status at intervals

following retraining plan completion, in order to provide more accurate and detailed information about the functioning and effectiveness of the reemployment benefits system. The data would be better and it would be easier to assess the effectiveness of the system.

SENATOR GUESS referred to Page 8, line 22 and wondered why the L&C committee singled out "successfully completed reemployment plan." She commented it is sometimes just as interesting to look at the unsuccessful plans.

MR. LISANKI said he felt there was enough breadth in the previous sections and the Division of Worker's Compensation would look at the entire picture.

[9:39:47 AM](#)

Section 14 would attempt to reduce delays in determining reemployment benefits eligibility, and resulting costs, by allowing workers and employers to stipulate to eligibility. This would allow workers and employers to agree to disagree and move forward.

[9:41:29 AM](#)

CHAIR SEEKINS commented he is not familiar with any other dispute that says you can't stipulate.

MR. LISANKI agreed. He said there is certain stipulations that the Board requires that it see and accept.

CHAIR SEEKINS expressed concern that employees would be forced into stipulation.

MR. LISANKI responded he does not see that as a legitimate concern.

[9:43:59 AM](#)

MR. LISANKI pointed out the reemployment benefits are entirely voluntary at the option of the injured worker.

Senator French joined the committee at [9:44:43 AM](#).

CHAIR SEEKINS recalled there were rehabilitation specialists that opposed the stipulation.

[9:46:02 AM](#)

Section 16 is designated to encourage utilization of reemployment benefits, and reduce costs, by requiring the worker

to either choose to begin the current retraining process within 15 day of eligibility determination or choose to accept cash job dislocation benefits.

[9:47:46 AM](#)

MR. LISANKI mentioned a possible amendment to Section 17, which would keep the sequence of SB 130 the same. The amendment would change the word "plan" in several places and replace it with the words "reemployment process." This is designed to ratify what is already being done.

[9:52:58 AM](#)

Since 1988 the worker's compensation system in Alaska has switched from one that paid permanent partial disability benefits to one that pays permanent partial impairment benefits.

CHAIR SEEKINS advised Mr. Lisanki the proposed amendment would be considered later on in the bill hearing.

CHAIR SEEKINS announced a brief recess at [9:58:21 AM](#).

CHAIR SEEKINS reconvened the meeting at [10:07:39 AM](#).

Maintaining Medical Benefits While Reducing Costs:

Section 25 would reduce health care costs incrementally by resetting the current maximum reimbursement rates for health care services at the maximum level applied to bills for services rendered in 2004.

[10:09:43 AM](#)

Section 23 would maintain maximum reimbursement rates until completion of an appointed medical review committee's comprehensive examination of the workers' compensation health care delivery system.

[10:10:29 AM](#)

SENATOR GUESS clarified Section 23 in combination with Section 51 gives the comprehensive package.

CHAIR SEEKINS referred to line 6 and asked the reason for out of state assistance.

MR. LISANKI answered that language has been in statute since 1988. Often consultants do not have an office in Alaska.

CHAIR SEEKINS expressed a preference to spend state money in state.

[10:13:01 AM](#)

SENATOR GUESS suggested since the intent is to look at the entire delivery system, the DOLWF may want to add the word "delivery" to Section 51, line 12.

MR. LISANKI agreed that was a reasonable consideration.

SENATOR THERRIAULT referred to Section 25 and wondered whether an employee has any sense of the cost of the medical care received, and whether other states impose limits on the amount of medical care offered to the employee.

MR. LISANKI said a variety of states have tried to put treatment guidelines into place. Implementation varies. It is a topic of worker's compensation reform.

[10:16:19 AM](#)

SENATOR GUESS asked the consequences if an employee doesn't choose a physician on the preferred physician list.

MR. LISANKI responded there were no consequences.

[10:17:17 AM](#)

Section 24 seeks to promote injured workers' safe and efficient return to health and function.

[10:19:15 AM](#)

SENATOR HOLLIS FRENCH asked whether a rebutted presumption was challengeable.

MR. LISANKI responded there was no specific language to address that. He would expect everything is challengeable.

[10:20:30 AM](#)

Section 24 would require the Board to adopt similar guidelines for injuries not covered by ACOEM guidelines.

[10:22:49 AM](#)

MR. LISANKI continued some guidelines would be continually updated. Section 24 would also take advantage of generic drug cost savings and adopt a preferred drug list.

[10:24:20 AM](#)

Section 25 would allow employers to develop a preferred providers list and negotiate fee rates.

CHAIR SEEKINS advised committee members of his intent to take testimony from people who are working to improve SB 130. There being no further business to come before the committee, Chair Seekins adjourned the meeting at [10:31:05 AM](#).