

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

March 8, 2005

1:36 p.m.

MEMBERS PRESENT

Senator Con Bunde, Chair
Senator Ralph Seekins, Vice Chair
Senator Ben Stevens
Senator Johnny Ellis

MEMBERS ABSENT

Senator Bettye Davis

COMMITTEE CALENDAR

HOUSE BILL NO. 102 am

"An Act relating to the licensure of foreign medical graduates and to applications for a license to practice medicine; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 124

"An Act relating to requirements to obtain and maintain a fisheries business license; relating to security required of fish processors and primary fish buyers; and providing for an effective date."

HEARD AND HELD

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

PREVIOUS COMMITTEE ACTION

BILL: HB 102

SHORT TITLE: MEDICAL LICENSE: APPLICATION/FOREIGN GRAD

SPONSOR(S): REPRESENTATIVE(S) STOLTZE

01/21/05	(H)	READ THE FIRST TIME - REFERRALS
01/21/05	(H)	L&C, FIN
02/04/05	(H)	L&C AT 3:15 PM CAPITOL 17
02/04/05	(H)	Moved Out of Committee
02/04/05	(H)	MINUTE(L&C)
02/09/05	(H)	L&C RPT 3DP 2NR
02/09/05	(H)	DP: KOTT, LEDOUX, ANDERSON;
02/09/05	(H)	NR: LYNN, GUTTENBERG
02/14/05	(H)	FIN AT 1:30 PM HOUSE FINANCE 519
02/14/05	(H)	Moved Out of Committee

02/14/05 (H) MINUTE(FIN)
02/16/05 (H) FIN RPT 10DP
02/16/05 (H) DP: WEYHRAUCH, HAWKER, JOULE, CROFT,
HOLM, KELLY, FOSTER, STOLTZE, MEYER,
02/16/05 (H) CHENAULT
02/24/05 (H) TRANSMITTED TO (S)
02/24/05 (H) VERSION: HB 102 AM
02/28/05 (S) READ THE FIRST TIME - REFERRALS
02/28/05 (S) L&C, FIN
03/08/05 (S) L&C AT 1:30 PM BELTZ 211

BILL: SB 124

SHORT TITLE: FISHERIES BUSINESS LICENSE; BOND

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

03/02/05 (S) READ THE FIRST TIME - REFERRALS
03/02/05 (S) L&C, FIN
03/08/05 (S) L&C AT 1:30 PM BELTZ 211

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

WITNESS REGISTER

Representative Bill Stoltz
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of HB 102.

Rick Urion, Director
Division of Occupational Licensing
Department of Community & Economic Development
PO Box 110800
Juneau, AK 99811-0800

POSITION STATEMENT: Supports HB 102.

Jim Jordan, Executive Director
Alaska Medical Association
4107 Laurel St.
Anchorage AK 99508

POSITION STATEMENT: Supports HB 102.

Chuck Harlamert
Juneau Section Chief
Department of Revenue
PO Box 110400
Juneau, AK 99811-0400
POSITION STATEMENT: Commented on SB 124.

Gray Mitchell, Director
Labor Standards and Safety
Department of Labor & Workforce
Development
PO Box 21149
Juneau, AK 99802-1149
POSITION STATEMENT: Supports SB 124.

Pat Shire, Deputy Director
Employment Security Division
Department of Labor & Workforce
Development
PO Box 21149
Juneau, AK 99802-1149
POSITION STATEMENT: Supports SB 124.

Commissioner Greg O'Claray
Department of Labor & Workforce
Development
PO Box 21149
Juneau, AK 99802-1149
POSITION STATEMENT: Supports SB 130.

Paul Lisankie, Director
Division of Workers' Compensation
Department of Labor & Workforce
Development
PO Box 21149
Juneau, AK 99802-1149
POSITION STATEMENT: Supports SB 130.

Linda Hall, Director
Division of Insurance
Department of Community & Economic Development
PO Box 110800
Juneau, AK 99811-0800
POSITION STATEMENT: Supports SB 130.

Jim Jordan, Executive Director
Alaska State Medical Association

POSITION STATEMENT: Opposes SB 130.

Laura Walden
Anchorage AK

POSITION STATEMENT: Commented on SB 130.

Janice Banks
Anchorage AK

POSITION STATEMENT: Commented on SB 130.

Barbara Williams
Alaska Injured Workers Alliance
Anchorage AK

POSITION STATEMENT: Commented on SB 130.

Mary Ellen Felix
Anchorage AK

POSITION STATEMENT: Commented on SB 130.

Kevin Dougherty
Ad Hoc Committee
Anchorage AK

POSITION STATEMENT: Commented on SB 130.

Judy Peterson
Ad Hoc Committee
Anchorage AK

POSITION STATEMENT: Commented on SB 130.

Bob Favretto
Alaska State Chamber of Commerce
Kenai Chamber of Commerce
Nikiski AK

POSITION STATEMENT: Supports SB 130.

Connie Livsey
Liberty Northwest Insurance Corporation.
No address provided

POSITION STATEMENT: Supports SB 130.

Steve Constantino
Anchorage AK

POSITION STATEMENT: Opposes SB 130.

ACTION NARRATIVE

CHAIR CON BUNDE called the Senate Labor and Commerce Standing Committee meeting to order at [1:36:41 PM](#). Present were Senators Seekins, Ben Stevens and Chair Con Bunde.

^#HB102

HB 102 AM-MEDICAL LICENSE: APPLICATION/FOREIGN GRAD

CHAIR CON BUNDE announced that the first order of business to come before the committee was HB 102 AM.

REPRESENTATIVE BILL STOLTZ, sponsor of HB 102 AM, said there is a chronic shortage of physicians in Alaska. An option to ease the shortage is to provide the State Medical Board discretion in defining the training and qualifications required for licensure of foreign medical school graduates.

[1:40:21 PM](#)

SENATOR ELLIS arrived.

RICK URION, Director, Division of Occupational Licensing, supported HB 102 AM. Licensing laws have absolutely no discretion. The bill would not open up the medical community to people who are not qualified.

[1:43:50 PM](#)

CHAIR BUNDE asked him to brief the committee on the application process for a foreign medical student.

MR. URION replied:

Therein lies the problem. There's a requirement in there for a two-year specialty residency that, I think, they have a hard time ever, ever coming to meet. You'll hear testimony from those of some very qualified people that we have not been able to bring to Alaska because they couldn't meet this criteria - but they are well-qualified to practice medicine and would be a credit to the community.

[1:44:40 PM](#)

JIM JORDAN, Executive Director, Alaska State Medical Association, strongly supported this bill. It allows the board to adopt by regulation alternative measures of competency. "We feel it is absolutely required."

The United States and the State of Alaska are facing an acute shortage of doctors. By the year 2020, there is expected to be a shortage of 90,000 to 200,000 physicians in this country.

A positive unintended consequence is that there are about eighty languages spoken in Anchorage and there is a great concern in medical circles of providing culturally competent care. By the ability to attract and have licensed very qualified graduates of foreign medical schools could provide an element of culturally competent care in Alaska. It would also provide an educational opportunity for those physicians to share their knowledge with the other practicing physicians in the state.

DR. GEORGE STEWART, Anchorage physician specializing in lung disease and critical care medicine, said he has practiced since 1971. He reiterated that there are severe shortages in the specialty medicine, like diabetes, neurology and rheumatology. It will get worse as the population grows and gets older. He related a personal story of how a foreign medical person couldn't get licensed in Alaska and other examples of foreign doctors not getting licensure. He said the intent is not to lower the standard for physician licensure, but to bring physicians who speak different languages to the profession as an asset. He emphasized that they are well-qualified people.

CHAIR BUNDE thanked everyone for their comments and set HB 102 AM aside until next week.

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^#SB124

SB 124-FISHERIES BUSINESS LICENSE; BOND

CHAIR BUNDE announced SB 124 to be up for consideration.

SENATOR SEEKINS moved to adopt CSSB 124, version G.

SENATOR ELLIS objected for an explanation.

CHUCK HARLAMERT, Juneau Section Chief, Department of Revenue, said the changes in the CS are technical corrections and eliminate redundant language.

SENATOR ELLIS removed his objection and CSSB 124(L&C), version 24-GS1013\G, was adopted.

MR. HARLAMERT explained that CSSB 124(L&C) seeks to improve the protections the state affords employees of fish processors and primary fish buyers and to impose some increase accountability for processors' taxes and assessments that support the industry. Section 1 adds seafood marketing assessments levied under AS 16.51, contributions imposed under AS 23.20 (Alaska Employment Security Act) and any administrative penalties assessed under AS 18.60.093 for a violation of a provision of AS 18.60.010 - 18.60.105 to the existing taxes in Title 43 that must be paid in order to obtain a license (OSHA fines levied by the (DOLWD)).

[1:56:27 PM](#)

Section 2 repeals and reenacts the bonding requirements. The basic now is a \$10,000 labor bond that is required of every processor or primary fish buyer who buys fish and/or has employees. The bond is used to protect employees and fishermen for unpaid claims. The changes proposed by the bill will restrict use of real property in lieu of a bond to taxpayers who do not have a history of non-payment of any of these obligations. A claim on the bond is sufficient to trigger an increase in the bond level. It also allows Department of Labor and Workforce Development to reach the bond without obtaining a formal judgment in a court.

[1:58:27 PM](#)

CHAIR BUNDE asked if the essence is that someone has an arrearage and a judgment against him, his bond goes up and he has to pay the state in order to keep doing business in Alaska.

MR. HARLAMERT replied the current rule is that basic bond level is \$10,000. If a claim is made against the bond and it's not enough to cover it, the bond is automatically increased to either \$50,000 or \$100,000. The requirement is that the bond actually be used to pay the judgment. The processor could pay directly and avoid that consequence.

What this bill does instead of requiring that the bond be actually used to pay that obligation, it simply requires that there be a judgment in excess of \$10,000. It considers that a sufficient [indisc.] of risk and increases the bond level accordingly.

[1:59:52 PM](#)

SENATOR ELLIS asked if the bill preserves the existing statutory priority for use of the bond to pay fishermen and employees first and does the CS modify that priority in any way.

MR. HARLAMERT replied that that priority is not modified and actually strengthened under this bill, because while the threshold is lowered for the DOLWD to go after the bond, if subsequent to that, a fisherman or an employee achieves a judgment against that bond and it is insufficient, the department is obligated to "cough up" whatever they have collected to cover that claim.

So, you could actually have a taxpayer, for example, who had say \$5,000 in ESU claims, take from the bond; they replace their bond. A fisherman comes along with a \$15,000 claim and under current law, they would be limited to \$10,000 bond for recovery. Under this bill, they could actually get the whole \$15,000.

[2:01:28 PM](#)

SENATOR BEN STEVENS asked if the \$5,000 comes from the Department of Labor.

MR. HARLAMERT replied:

Yes, under this bill, labor, in order to preserve the preference given to employees and fishermen over labor's claims against the bond, while at the same time allowing labor to get at that bond through a more efficient process, we've built in basically a kickback provision that says if necessary, labor has to repay that money - put it back in the pool to pay the claims of fishermen and employees in the event that their subsequent claims are not satisfied from the bond.

SENATOR BEN STEVENS said the confusing part is where he says it comes from labor to pay labor. "It comes to the department to pay labor."

CHAIR BUNDE pointed out a zero fiscal note.

[2:02:42 PM](#)

SENATOR BEN STEVENS asked on page 5, lines 3-11, if the commissioner finds the processor is not in compliance and he has the ability to raise the bond, does he still issue the bond.

MR. HARLAMERT replied:

We don't actually issue the bond. We require them of the processor. So, you actually do have dual protections for labor. We can pay out of the bond a

claim for ESC from labor at which point the processor has to immediately replenish that bond. If that doesn't happen and they are still delinquent with the Department of Labor, we can revoke their license for failure to be current on their ESC.... The bond could be in the form of a bond with an insurance company; it could be in the form of cash residing with us - but it is always provided by the taxpayer.

[2:05:13 PM](#)

SENATOR BEN STEVENS asked:

If we know there's an entity in violation... and we keep issuing the license and the bond - you know there are people that do that - does this help you in that in efforts to deter that, then?

MR. HARLAMERT replied:

It absolutely does. Presently there is no requirement for the processor to be current with their ESC and they can and do go unpaid and continue to be licensed by us under current law. We don't have a choice. If they meet our requirements, we license them. Whether they are being responsible with other agencies is irrelevant - under current law. Labor, under current law, has to obtain a court judgment to get at that bond and that would be the only instance in the current law where labor for an ESC claim would affect their license ability. In current law, what happens if they ever get a judgment and that judgment used up that bond and the taxpayer failed to replenish it immediately, we could revoke their license. But if they did replenish it immediately, we would have to maintain their license, yes.

GRAY MITCHELL, Director, Labor Standards and Safety, explained that the bill allows department to stop fish processing companies that are in violation of health and occupational standards and have been issued a penalty and failed to pay it. It is a penalty that has been affirmed through the Occupational Safety and Health Review Board or was not appealed. In the past, companies that did have fines on the books were given licenses and continued to operate and this caused huge problems. For instance, in Egegik, employees, fishermen and companies are owed hundreds of thousands of dollars because a company was basically on its last leg.

Had this bill been in place last year, they wouldn't have been able to get a license without paying these fines. Then they would be subject to some other issues on their bonding.

[2:10:11 PM](#)

CHAIR BUNDE asked how the worker who is having the problem is going to get \$5,000 from the Department of Labor and how does the department recoups its money.

MR. MITCHELL answered that was a general example and he didn't know where the \$5,000 came from.

But if a worker is owed \$5,000 and at the same time the Employment Security Tax people come in and they seize the \$10,000 processor bond for unpaid Unemployment Insurance Taxes, that worker could then get a judgment and within a certain timeframe be able to trump the Department of Labor's tax collection on that bond and the Department of Labor would essentially have to give \$5,000 of that back to Revenue and then Revenue would get that money to the worker.

CHAIR BUNDE said, "Assuming you're not getting blood out of a turnip, the department would go after the processor?"

MR. MITCHELL replied, "Right."

[2:11:24 PM](#)

PAT SHIRE, Deputy Director, Employment Security Division, DOLWD, supported SB 124. He remarked:

If the department can provide a mechanism to at least clean the slate before the next season, we're far, far ahead of where we were last year when we had fish sitting on docks and workers standing there with the dilemma of how we're going to make sure that these obligations are met....

[2:12:25 PM](#)

CHAIR BUNDE asked if this would prevent licensure of people who are not in compliance.

MR. SHIRE replied yes.

CHAIR BUNDE announced that CSSB 124(L&C) would be set aside for another hearing.

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^#SB130

SB 130-WORKERS' COMPENSATION

[2:14:03 PM](#) At ease [2:18:08 PM](#)

The following is a verbatim transcript of testimony on SB 130

COMMISSIONER GREG O'CLARAY, Department of Labor and Workforce Development(DOLWD): I'm pleased to present to you the Administration's 2005 Alaska's Workers' Compensation Reform Act. If I might, I have just a few visuals and I won't take too much time. I think it's important for us to put the issue before us into the proper context. Because you've attempted to deal with workers' compensation reform last session and in the special session.

I'd like to draw your attention to this graph. This is the size of the pie of the payout in the 2003 cost and benefits. Why this is important for the purpose of this discussion is because last year the administration made an attempt to draw attention to the workers' compensation system and the inherent problems of escalating rates that employers were having to pay. There was testimony given time after time from folks who had opposed our bill asking us why we weren't dealing with medical costs. As a matter of historic record, this issue was always brought to the forefront, but never dealt with on a comprehensive basis.

Now, let me tell you briefly why workers' compensation is important to employers and to workers, especially injured workers. The system was set up - it actual predates statehood and the Constitution of our United States. Workers' compensation is one of the oldest doctrines of law in the history of our civilization.

Workers doing the bidding of employers in order to earn a wage to support their families were guaranteed assistance if they became injured while they were on the job performing the work of the employer. No one will argue that the system in place has far-reaching effects on the workforce and on the employer force of our state. Of recent time, the cost of premiums being paid by the businesses in Alaska - now there's several different numbers you'll hear from various segments of society in Alaska identifying the size of the problem, but I would like to give

you a couple of figures to highlight why this is a concern to Governor Murkowski.

[2:20:41 PM](#)

There are over 100,000 businesses registered through business licenses in our state. Of those 100,000, there's some 70,000 that are deemed active by the Department of Commerce and in the research and analysis section from the Department of Labor, we use the solid figure of somewhat over 16,000 very active businesses. Of those businesses, a large majority are small businesses; they're not smokestack businesses or large groups such as the oil companies or these large processors that process our fish. They're small businesses of less than 100 people involved in many cases, only half a dozen.

Escalating rates to pay statutorily required costs of workers' compensation have gone into orbit over the last several years. Now, many factors actually influence that and I will put before you the experts that know more about the system than I will probably ever learn in my tenure here. The director of Workers' Compensation, Mr. Paul Lisankie, has a long history of knowledge and working with the workers' comp. system. The director of Insurance, Linda Hall, has far and wide experience within the insurance industry. Those two witnesses will detail for you and be able to respond to actual questions you may have. My general comments are to focus on the situation and why it is so important, and why the Governor chose to move quickly this year to put a bill in front of the Legislature that is both comprehensive and far-reaching and controversial - to the extent that those parties that are involved in the services rendered in making the workers' compensation system work - that's doctors, lawyers, hospitals, health care workers, insurance companies - all of those people involved in the delivery of services to injured workers and to employers who pay the bills in terms of their insurance premiums. All have an interest in what this bill accomplishes and how it goes about it.

Probably the hardest part of this legislation and the one that apparently you will hear the most about, the sector you will hear the most from, I believe, is the medical community and while some of the commissioner's comments, my comments, have been disingenuous with respect to how many automobiles somebody needs or doesn't need, I have to tell you that escalating costs in medical are a global problem. They're not just an Alaska problem.

[2:24:17 PM](#)

While we certainly used a particular procedure as an example that doubled in cost over the course of a two or three-year period, there may be justification for that. Certainly the cost of medical malpractice insurance has gone through the roof as well. You're probably going to be dealing with and you have dealt with other tort reforms. I won't dwell on that for the moment.

I'm sure that the medical community can justify most of those increases that they have had to put out on the street, but my problem as the commissioner of the Department of Labor and Workforce Development is that we are now seeing the effects of high premiums that are putting people on unemployment and that we cannot stand for.

[2:27:56 PM](#)

The Governor last year asked me to approach the traditional group that you've heard so much about - the Ad Hoc Committee on Workers' Comp - to ask them to reconvene and address some of the issues that were placed before you last year in the regular session and the special session. They did so and began working diligently some time in October. It was our intent that the product of their work would be introduced and supported by the administration. We had every intent of doing that until we received the product and until the urgency of the situation with respect to employers that were closing their doors or planning on closing their doors began to impact our workforce. That is when the Governor decided we needed to act now. We needed to go to the cost factors of the system to see if we couldn't roll back the cost of this system by some 10 percent or \$24 million.

Now, in order to carve \$24 million out of this particular pie, remember you're looking at a graph that shows 2003 costs. NCCI, which is the nationally recognized rating group that helps states figure out what premiums they should charge, have told us that next year in the 2004 period this particular piece of the pie will be 62%, not 52% - as of 3/8/05 as shown here in this chart.

Again, please don't take from my remarks that we're zeroing in on the medical community. Theirs is the largest percent, but they're not being the only problem here and shouldn't be the only ones who have to bleed financially to fix it.

Probably the hardest thing you will deal with in this session is balancing for changes in the system that will make it more efficient, that will put workers back to work sooner or settle

their claims to get them out of the system sooner so they can make informed decisions about their future employment.

The last thing would be what are you going to do with respect to rates. Our goal in the administration and the reason we submitted that bill that you're considering today, is to arrest the escalating rates by January 1, 2007. Because of the way rate-making occurs, it's pushed out beyond a year each time. Right now we're talking about 2006 rates.

Let me give just a couple of small examples on my graph that will probably get your attention. It certainly got mine. This is a small construction, a general contractor in the State of Alaska, operating around Sitka. In 2002 their rate was \$146,950, just under \$147,000. That's a premium rate. It jumped to \$289,162 in 2003 and in 2004, went to \$324,110. That's a pretty good bite for a small contractor. That's more than double.

There's another small business here in Juneau, Copy Express. Their rates were \$5,900 in 2002 and they went to \$10,232 in 2005 - again nearly double. That's in real dollars. Now they're not the only ones to get hit. Those folks in the health care industry were also nailed. Here's a prime example of what we're talking about.

[2:29:20 PM](#)

Central Peninsula General Hospital, health care, in 2001, their premium was under \$400,000. In 2005, it's nearly \$1 million. Do you know who pays that bill? Any of you who go to hospitals and seek care. You pay it, but they had to pay it up front, because that's their premium under the law. They have to pay for this coverage.

The last illustration I'll make is a public employer, the Kodiak Island Borough. In 2001, their rate was \$43,000. It dropped in 2002 and now it's \$45,000. We are told that any new employees hired by the Kodiak Island Borough are told they cannot work more than 30 hours a week and will not get benefits, health insurance or a pension because of that restriction. That's impacted workers. I will wind up by asking you to give consideration to this bill. Certainly to consideration of the adjustments that may be required to make the solution a reality and that is arresting escalating rates at their current rate by 2007, January 1. I'd be happy to answer any question by the committee.

[2:30:58 PM](#)

CHAIR BUNDE: Thank you. Referring back to your pie chart. It isn't your intent to just pick on the medical community, but is there anywhere else in that pie chart where you could find a reduction?

COMMISSIONER O'CLARAY: The lawyers.

CHAIR BUNDE: Where's Shakespeare? I know they make an easy target, but specifically, how would we address reductions in that arena?

[2:31:32 PM](#)

COMMISSIONER O'CLARAY: Remember the lawyers or the legal costs are really a small piece of the pie. Last year we were somewhat criticized because we were going after what amounts to about 4.9% of the pie and I think the criticism was correct. We were trying to avoid dealing with the medical costs last year which was the largest piece. Because we were going to try to do this one piece at a time and that was we were going to deal with litigation costs and the actual adjudicatory system last year. The reason why I think the legal costs can be cut, but not significantly enough to arrest rates. Every place in here can be trimmed except the basic benefits for average weekly wage restoration on injured workers.

The reason why streamlining the system makes sense for injured workers is because almost on a weekly basis, I get complaints in my office about the slowness of the system. Why does it take so long to get a controverted claim settled so I can either decide to go back to work, choose to take rehabilitation for a different type of job or settle my claim and retire - whatever the case is. So, I asked the staff of workers' comp to give me some idea of why it takes so long to settle some of these claims.

In our bill we ask that we do not use or put issues before the Superior Court on appeal. The reason we ask that is because in most cases that adds on anywhere from eight months to a year and a half additional time - because of their calendaring and the fact that those decisions rendered by the Superior Court do not make law. They don't make precedent.

We also found that meeting with the lawyers from both sides - the claimant lawyers and defense lawyers. They said, you know it would be a lot easier if you could get a medical release filed at the same time the action report comes in so that we could actually get the information from the doctor on the injured

worker. It would help us move along the process to get the pre-hearing so that they could define the issues over whatever the award may be. The lawyers actually brought that to us. They brought it to us on the basis that this would knock down on some of the litigation costs.

2:33:48 PM

The second thing they did, and this came from the defense lawyers, the insurance company lawyers, they said, 'We would much rather deal with a claimant that was professionally represented rather than a pro se client, because we burn up a lot of billable hours talking to an individual injured worker trying to educate them on the system and how it works. We prefer that you come up with some system where you could actually fund legal advice for injured workers to acquaint them with the system and how it works and can work in their behalf.' That came from the defense attorneys. So, I think they are trying to make some cuts. They were willing to come forward to do so. But the main piece of this pie is medical costs. Therefore, that's why we have a proviso in the bill that rolls back the rates of reimbursement in addition to adopting some standards of care.

2:34:55 PM

SENATOR SEEKINS: Commissioner, while I haven't been able to determine exactly what would be a fair rate, here's my question. Workers' Comp is a limitation. One of my employees is hurt, they have a single source remedy - that being workers comp. They can't sue you; they have to work within the system that's provided for them by the state. My concern is, in terms of rates, where do we come to a point where a doctor says, 'I will no longer service this client because the rate doesn't compensate me properly for the services that I render, and we trap someone in a sole source remedy with no place to go. That's my primary concern in how to set rates - as far as what's to be paid to a doctor for legitimate concerns. I'm not talking necessarily about trying to limit the number of redundant tests or other things that may be part of the process of trying to limit medical costs. Rates, themselves, could put that employee in a terrible box. I wonder if you could comment on that.

COMMISSIONER O'CLARAY: We share that concern. The Workers' Comp system cannot afford to have doctors, especially surgeons, basically withhold their services because they can't receive reimbursable payment that will continue to keep them in business. But, where is the balance?

Many states adopt a Medicare base plus, a multiplier as payment schedule. Many states also have applied standard of care. Frankly, you must have the standard of care to go along with the reimbursement rate. Otherwise, it would create an additional problem.

[2:37:24 PM](#)

SENATOR SEEKINS: So the next question I come to is one of process. Again, I don't know enough about the system here to be terribly educated on this, but it's my understanding that there may be because of the process pieces that we follow, we run into costs that we may not need to incur in terms of medical expense, such as requirement for certain exams, expert opinions, competing opinions that we could stipulate to rather than having to go through the process. It's my understanding, I've been told that we don't allow that kind of stipulation in the process. Is that true?

COMMISSIONER O'CLARAY: Mr. Chairman, Senator Seekins, I'll have to defer to my director of Workers' Comp., but I believe that is the case. It's also the case, I think, that the parties, that the lawyers raised with us, is the joint stipulation on facts is something that both sides were interested in doing. Stipulations act to cut down the process time, but let me turn to Mr. Lisankie, if I can, Mr. Chairman. Can you answer the senator's question?

PAUL LISANKIE: Yes, for the record, my name is Paul Lisankie, director of the Division of Workers' Compensation within the Department of Labor and Workforce Development. We, too, have heard some complaints by some of the folks that are engaged in trying to resolve difficulties in front of the Workers' Compensation Board that we are not accepting enough of stipulations. We're trying to work on that internally - to allow people that are willing to stipulate that they no longer have a dispute about something to just move on. If we sense there is a need for some additional legislation to make sure that happens, I'll certainly be back to the committee.

[2:39:30 PM](#)

SENATOR SEEKINS: Mr. Chairman, Mr. Lisankie, what I kept hearing was that maybe it's the regulation rather than the statute. That while both parties in many cases agree that they could stipulate, they're not allowed to by the system - either statutorily or by regulation. I'd be very interested in finding out how we could address that. Because if we were trying to

drive down costs legislatively, it seems to me that this could be an area that we should be addressing.

MR. LISANKIE: I agree with you, Senator. There is one particular part of the bill before you that expressly addresses one of the concerns that was brought forward to us that there was not an agreement that parties could stipulate to eligibility for your type of benefit and that's actually in there for just that very reason.

CHAIR BUNDE: Could you reference that section for us?

MR. LISANKIE: I can when I get my notes....

CHAIR BUNDE: Okay, that's fine. Senator Ellis had a question.

2:40:26 PM

SENATOR ELLIS: Thank you, Mr. Chairman. Commissioner, good afternoon. I wanted to go back to something you said there at the outset and as you surely know there are lots of upset and demoralized people who participated in the ad hoc process on the business and labor side and you mentioned that you were representing the Governor and the commitments and I wanted to get to the Governor sort of I guess - the word I'll use is - reverse the commitment, because you said you got the product of the ad hoc committee and that's when the governor reversed his commitment. What about that bill was so objectionable that leads us to discussion of this bill or your introduction and the bill before us today?

COMMISSIONER O'CLARAY: Mr. Chairman, Senator Ellis, first of all I would not characterize the Governor's instructions to me as reversing a commitment. Reasonable people will disagree, but I have to tell you that the reason why it became apparent that the Governor needed to take action this year was because of the potential for more businesses to close as a result of the escalating costs of Workers' Comp. We invited the ad hoc committee to participate in the Governor's bill, to endorse some of the things we did. They chose to put things off for their own reasons. We honored their autonomous stature by just asking to reconvene. We did not give them an agenda, although Mr. Lisankie or members of the Workers' Comp Division staff participated mostly as an observer, the agenda was set by them. I have to tell you that it surprised me that they didn't deal with the medical cost piece, because in a 1995 court, which by the way, was the last time I saw any activity by the ad hoc committee - was in 1995 - they sent a piece of correspondence basically to

whom it may concern, that said they encouraged folks to get busy and start working on the medical cost piece. Yet, they had not convened that committee since then to my knowledge. In fact, it didn't even convene last year when we introduced legislation. So, part of the problem I have, I think, with the characterization that the Governor retracted his word is not exactly true. Here is where I am, through the chair, senator. Senator Ellis, this problem is larger than any one's personal feelings including my own.

2:43:02 PM

This problem is going to become a crisis situation for our state if businesses continue to close their doors because of failure of leadership in the administration and in the Legislature to act this year to come up with a solution. It doesn't have to be the perfect solution, but it has to come up with a solution. We need to start turning this needle the other way.

CHAIR BUNDE: I do have a number of people who want to testify and I'd like to get to those that have time constraints, first. Is there anyone here in Juneau who would not be available to testify on Thursday that would like to testify now? That being the case, Commissioner, we appreciate your staying with us. I'm going to attempt to take some other testimony.

COMMISSIONER O'CLARAY: Mr. Chairman, if I might beg your indulgence, I'd like Linda Hall from the Division of Insurance to speak briefly on the rate-making problems. She knows this better than any of us. If you could give her a few minutes, she could focus you on the rate problem.

CHAIR BUNDE: I'm going to grab Mr. Jordan first, because he is not going to be in town on Thursday and then we'll talk with Linda.

2:44:35 PM

JIM JORDAN, Executive Director of the Alaska State Medical Association: We previously provided some written testimony. I plan on being very brief today. I guess our concern is that we, too, are part of the ad hoc process. We are part of the medical community stakeholders that have the vested interest in this particular bill and in the system. And I'd like to state that our primary concern is that there is access to care for the injured worker. It's not only access for the injured worker; it's access to care for all Alaskans. Earlier today I testified on another bill where I spoke of the concern of workforce issues involving physicians in this state.

At this point in time we're 25-30 percent short of physicians in this state with the specter - and I use that term purposefully - of increasing shortages not only here, but in the rest of the country. We're looking at potential shortages of 90 [90,000] to 200,000 physicians nationwide to a number of different reasons and factors. And that's a concern. It's a big concern.

The one thing I will say is that the Alaska State Medical Association has more questions than answers at this particular point in time. Involved with the ad hoc process, as you might guess - my constituency being physicians, are scientists. They are data driven and we specifically were asking for information in regards to data involving medical care. Not only just physicians but also hospitals - go down the list and work for the ad hoc process and we have not yet seen the data. We feel that is very important data to have available for analysis if we're going to talk about suggestions as to dealing with this very complex issue.

So I guess at our urging is that you take the time to study this issue. Have these questions answered and in the mean time we would like to see Section 4 and Section 5 of the bill removed.

Commissioner O'Claray spoke of guidelines and I'd like to show you the guidelines. These are the guidelines and I will admit, we have not done extensive analysis of these guidelines but, I can not believe that these guidelines would cover every potential circumstance from injured workers involving their treatment.

[2:48:36 PM](#)

The California Medical Association has done extensive analysis of these guidelines and they have recommended and included in the information that you've been provided, they've recommended that in California we adopted these same guidelines about a year ago. That additionally if there are going to be guidelines, that the guidelines also include the guidelines developed by - and I'm not going to read them you have them in your packet - that there's almost two pages of national specialty society practice guidelines.

And lastly, the California Medical Association also has indicated in their study that 80 percent of what physicians do are not covered in guidelines anyplace. So the question is, you know, what will these guidelines serve? What's the savings? What are we looking at here?

So with that, I will cease.

SENATOR BUNDE: However with your clientele, 62 percent of the problem - I would hope that you would accept that they somehow will have to be part of the solution as well.

[2:49:42 PM](#)

MR. JORDAN: I would hope so but, I will also mention, for the record, the Alaska State medical Association is not in a position where we can represent - such as a union - everyone of our members. That should be a decision that will be made by each individual physician that will be based upon what their current practice situation is. Their age - I mean there's a whole plethora of factors.

SENATOR BUNDE: Questions for Mr. Jordan? Thank you.

MR. JORDAN: Thank you for allowing me to state my questions quickly.

[2:50:11 PM](#)

SENATOR SEEKINS: What is the purpose for the guidelines? Is it to provide good medicine or is it cookbook medicine to be able to answer questions when you're on the stand and having an attorney asking, 'Why did you do that?'

MR. JORDAN: Practice guidelines are developed as an educational tool. They're guidelines, they are not necessarily meant to be - you know - this is the way it has to be done for every patient. As a matter of fact, you raised the issue and the question about does it raise the standard of care issues. It just very well might. So in a medical injury situation, you may be faced with saying well, you didn't follow this particular practice algorithm on page 237. And so it raises a whole - another host of legal issues.

CHAIR BUNDE: I have a number of people at the Anchorage LIO and we're running short on time so I would like to go to the Anchorage LIO and get as much testimony as we can. Linda, I'll ask your indulgence to talk to us on Thursday.

LINDA HALL, Director, Division of Insurance: [Indisc.]

SENATOR BUNDE: Okay we'll let you rest your voice and I'm sure we'll have an opportunity. I'm sorry. Two minutes? Two minutes?

[2:52:21 PM](#)

MS. HALL: The only piece I would like to address today are these charts that the commissioner showed. The insurance premiums are in my jurisdiction and I want to talk a little bit about part of the motivation for looking at the cost of the system. You've all heard me talk. You've heard me talk last year that in 2004 the average rate increase was 21 percent with 17 classifications in excess of 50 percent increases. This year we have an average rate increase of 12 percent with 49 classifications with premium increases in excess of 30 percent. Some of those overlap.

The ratemaking process - this is what we use. The cost of claims which come from the system are what drives insurance rates. Alaska experiences used when we talk about our overall rate increase that I just gave you - national experiences used from the rate classifications. Plus we use trend [indisc.] of a lot of things.

When we look at the increasing cost of premiums, I'm getting a huge number of phone calls from employers. 'Who approved these rates?' And frankly it's not my favorite thing to do to stand up in front of those groups and say, 'That would be me.' I'm getting a lot of calls from employers who are looking at closing their doors.

Something needs to happen and I think what the commissioner is saying is we need to look at all the pieces. Last year we tried a small piece, this year we've got another escalation in rates and I would urge you to look at the solutions in this bill.

[2:54:02 PM](#)

SENATOR BUNDE: We have basically one carrier covering and another who are doing business in Alaska. We have two, one who is not sure they want to be here. Is that correct?

MS. HALL: Actually, we have a large number of carriers; they just don't actively write. And they write national - we have three companies right now who actively are writing business. One has been here longer, has a larger market share. The statistics you see are somewhat skewed because their assigned risk business is rolled in that. We have two in addition to that who actually have been growing their marketshare. So we have I guess I would say, three active companies but we desperately need to keep them.

SENATOR BUNDE: Okay, thank you. I'll go back online and ask the people in Anchorage. We have five minutes left - we can probably have two people testify. I'll let you decide among yourselves up there who should go first.

2:55:13 PM

SENATOR SEEKINS: Mr. Chairman, if I could just for one second in the note we've got here from the Alaska State Medical Association and I think in Mr. Jordan's testimony he was talking about Sections 4 and 5 and I believe in the version that we have was looking at Section 24 and 25 - as far as the recommended guidelines and fees.

SENATOR ELLIS: This letter references the House bill.

SENATOR SEEKINS: For clarification on the points, I just wanted to make a...

CHAIR BUNDE: Again, going to Anchorage. Anchorage online?

2:55:50 PM

LAURA WALDEN: Yes. I've been before this Legislature many times to voice my opinion on workman's comp, which has not served the people of Alaska very well at all and the reason why I say that [is] I'm a good example. I got injured in '93 with a chemical injury. I have not been compensated for that; I have incurred medical problems due to that chemical injury. Everything that the data sheet gave, I now have four years five years later. But the medical community, if it's not visible, you're mentally ill. Or they put you on medication and pull you off cold turkey. If you weren't mentally ill you will be mental ill because you don't have the medication you need.

We do not get proper medical care when your adjusters and the insurance company interfere with the medical treatment of the injured worker. That insurance company or adjuster will call your doctor - your doctor will immediately bail from taking care of you. So where does that leave us? It leaves us with no care, no medical, no anything. No doctor will touch you in this town because they don't want to be a part of the long-term instrument of workman's comp.

I am a living example of workman's comp - of what it will do to you. You may be able to return to work if you're given the proper medical care up front instead of - they'll give it to you three or four months, controvert you, then you're without a doctor, medical care for a year, two years before you can get

any kind of medical care. So what has happened? Whatever problems you have has gotten worse instead of better because you didn't get the proper medical care because of the insurance companies interfering into the care of the injured worker. That has not been corrected at all or has even been spoke upon.

Then we incur more medical problems because you, as legislators, have not enforced anything in the federal guidelines or even in the policies and procedures. Half of the people don't even know what your policies and procedures say. So we're sitting passing laws that are not helping people in the state of Alaska. So I'm appealing to you is to look at the type of insurance company and the misconduct and the misbehavior of the insurance company interfering with the medical care of the injured worker. If we don't stop that, we can't move forward.

I am a living example of that. Open-heart surgery behind a chemical injury because I wasn't properly cared for - was turned down, called mentally ill, crazy - whole nine yards. And once that adjuster goes into that doctor's office, you can forget the medical care you were getting even if it was inadequate. So we need to look at the conduct of the insurance company as well as the workman's comp. And I'm not going to take up a lot of time because now I want the other person to testify today. Thank you.

CHAIR BUNDE: Thank you very much. As it is, we've run out of committee time and we will hold this bill for further consideration. Obviously apologize to the people.

I'm sorry, I though we had to leave at 3:00. No, we're good till 3:30 so we'll continue with the testimony. Continuing in Anchorage, Janice Banks.

[3:00:12 PM](#)

JANICE BANKS: Good evening sir, I'm an injured worker. I've been hurt - I got hurt in 1998. With workman's comp I have been to several doctors with my own doctors they had diagnosed me. And seems like workers comp they always want to controvert what your doctor tells you what is wrong with you. I just want to understand the process. I've been dealing with workers' comp for like eight years. I was hurt in 1998 and I'm still - they cut my check off in 2002. I haven't been paid - my family and I have been living in poverty because of this. Then I had to end up going to other agencies to provide for my family - because of what workman's comp did to me. To this day I don't know why they cut my checks - stopped my checks from coming to this day. So I would not only testify, but I would like for you guys to

somebody please help me to deal with my case and end it so I can go on and live again. Thank you.

CHAIR BUNDE: Noel McCloud.

LIO: Mr. Chairman she had to depart.

CHAIR BUNDE: Okay, Barbara Williams.

BARBARA WILLIAMS: Good afternoon. Thank you for this opportunity to speak to you today. We've been discussing workers' issues and assisting injured workers and their families since 1998. People who have worked all their lives are having life changing experiences in our Alaska Workers' Compensation System. In reality, there are some serious choices here before us in regard to our current Workers' Compensation system.

We've had many disadvantages already installed in the current statute and regulation. We're at an important crossroad and injured workers want the employer's insurance company and anyone else who is interested to know that they are looking for indemnity for their claim, not financial security for the rest of their lives. They would like to move on, but without access to information they will not be able to do so. We need to speak to the injured workers and address their needs. I can assure you that we won't bite, but we do need to listen. Injured workers often get frustrated when they cannot be heard. We need to provide adequate benefits and contain costs. We have to depart from the bad habit of talking around the injured workers and see to their needs.

[3:02:56 PM](#)

Here are some suggestions I think that might assist with those problems. We need to really look at the deficiencies and learn from them. Education should be required of all department staff as well as insurance adjusters. Once educated, continuing education should be made part of the curriculum. Review of the medical system as a whole, all the way down to the fee schedule and develop attainable requirements and enforce them. This would include drugs and other devices that injured workers need. Limiting health care and making drug lists are not the answer. We need competition and choice to keep the costs down. We already heard today from Jim Jordan of the [Alaska] State Medical Association that we're already experiencing a shortage of medical care providers. Starting this practice would monopolize and compromise services already available to injured workers that are somewhat compromised.

We agree doctors may need peer review; the Alaska Workers' Compensation Board currently makes decisions on complex medical issues without this expertise. We have second independent medical evaluators, but there is no one at the board level to decipher the information for their use or for the injured workers. We need good programs to police and enforce uninsured employers. At one point, around 1998, there was over 60 percent of all Alaskan employers that were not in compliance. We also need fair treatment of those same uninsured employers. Make it a steps process and shut down those who continually re-offend by being uninsured.

We need access to legal counsel. There are only eight attorneys assisting claimants and some are choosing not to represent injured workers in favorable profitable types of litigation. We need to police defense costs as well as injured workers' attorneys costs. Balance in legal fees will reduce costs.

Injured workers enjoy little or no protection of their privacy. Releases should relate to the injury and not be a quest to disclose all protected health information. The same information should not be used for commercial purposes or to confuse or intimidate injured workers at a most vulnerable time. Program requirements and benefits available should be clear and not based on complex legalese that most injured workers do not understand. That's also coupled with cultural biases, language biases, and not a lot of reasonable accommodation offered by these workers' compensation boards. All settlements should be reviewed by the board to ensure fairness and eliminate improprieties. And we've had some of that in the past and that's one of the things that it sparked - part of the need to police those kinds of settlements.

The Division of Workers' Compensation should also be required to work with the Division of Insurance to stop frivolous and unfair controversions. Since 1998 no new reports have gone to the Division of Insurance and at that time, only 11 went over. There should be a way to complain about unpaid bills and have an effective resolution process. The adjudicative process should be left alone at present. We need to restore balance to the adjudicative process and not make it more complex.

Working with non-profits to educate and assist injured workers is a good idea, but we have to eliminate hate and bias to ensure fairness in assistance. By working together we can accomplish far more than if we fight about these important issues. Injured

workers are counting on you, as their legislators, and us to help them make it through the Workers' Compensation process. Thank you for your time and attention to this real important matter.

CHAIR BUNDE: I neglected to ask you your affiliation.

MS. WILLIAMS: I'm Barbara Williams and I'm with the Alaska Injured Workers Alliance and we provide education and support services to workers all over the State of Alaska.

3:06:45 PM

MARY ELLEN FELIX: I was injured about 2 1/2 years ago on my job. From the beginning until now it has been one nightmare after the other. I've worked all my life and I was even unaware to fill out a form when I was injured. I've had three operations and still unable to move my left arm - and I just wanted to work. The insurance company that I work through continues to interfere with medical care, does not abide by the law - even if the law states that if your doctor refers you to another doctor within a certain period of time - by law they are required to. They don't abide by that and they've stopped me getting the care that was necessary.

If my doctor states that I can have a procedure done that might get me out of some of the chronic pain that I'm in, they say no. The most frustrating part of it is is had I been able to get the care when I was first injured - it is my understanding that had I had the surgery I needed four weeks after I got injured I would have been back to work in four months. Instead, I ended up hiring a lawyer and fighting for a year and a half just to win my case to get the medical care.

It seems like there is one hurdle after another. The insurance company continues - they will interfere with the most minute details if they are to - I was at the Mayo Clinic for an operation. Instead of giving me per diem, they told me they would make arrangements with the hotel I was staying at for meals. The meals at the hotel exceeded what they allowed. Therefore I was unable to eat for the whole time that I was down there and when I called and I asked them why they do not do what they say they will do - they'll say, 'We'll send you a check.' then they don't. Then I called and they say, 'Oh I just decided I'm not going to do that.'

Who are they answerable to? If this is just one case - and please understand, I just want to go back to work, but I want to

be able to use my arm and I would like to be productive in society again. The meager amount of money that I live on - no one in their right mind would want to stay on any kind of workman's comp benefit.

I'm not sure if all the insurance companies are the same as Alaska National, but who polices them? I was just offered another procedure to help me - Alaska National gets in it again and says no. If this is going to get me back to work, why are they allowed to continually say no? For myself and for every other person that is subjected to their whims, I ask for you to please help us because I do not know anyone who does not want to live a productive life. And that means support and work - support ourselves, support our families and work. Please help me get back to work.

3:11:15 PM

KEVIN DOUGHERTY: I also have with me Judy Peterson. I'm a co-chair of the ad hoc committee. Judy is also on the ad hoc committee with us. What I'd like to do is refer members of the committee - hopefully in your packet have a letter dated February 22 from the ad hoc committee. Is that hopefully available there in Juneau?

CHAIR BUNDE: Yes we have it.

MR. DOUGHERTY: There's not a whole lot more we need to say. We're open to questions.

For those that don't know, the ad hoc committee is comprised of people from a broad spectrum in the business community - many industries represented there - and also from the labor community. We have 12 people on the committee. This particular session - in the last year we have met probably well over 1,000 man-hours - probably over 2,000 man-hours by the 12-member committee. We spent a lot of time working at an ad hoc committee bill. Again I think the letter states the position we're at today. I won't reiterate that. Secondly, I will point out we will be meeting this Friday the 11th. At that time Dick Cattanaugh will be back in town. Dick is the president of the AHC.

We would like to proceed forward. We still have our hands extended out to the Governor's Office to work together to have a bill that would represent the best interests of the business community and working people. So we're going to keep working in that direction and we hope the Administration will do that

because, at this point, we do not support the Governor's bill. Judy, is there anything you'd like to add to that?

JUDY PETERSON: No, but I think Kevin's correct. We need to continue and there is work to be done and we will meet on Friday to discuss the version of the bill that's before us now.

[3:13:40 PM](#)

BOB FAVRETTO: I live in Nikiski, Alaska. I actually am wearing three hats today. I myself am a private business owner in the State of Alaska. I have businesses in Kenai, Soldotna, and Juneau. I'm the twice-past chair of the Kenai Chamber of Commerce and I'm also on the Alaska State Chamber of Commerce Board - in which one of our top priorities is workman's comp reform.

I'm here to give you some numbers and statistics on behalf of seven businesses - and I have polled many more. I went out and asked these businesses questions about issues that they have within the state - specifically workman's comp and insurance.

The first business is a hotel/restaurant property management business in Kenai. In the year 2000 - and this business throughout this period of time through 2004 - the last five years they've employed approximately 40 people. Their workman's comp in 2000 was just over \$16,000. Their workman's comp in '04 was just over \$36,000 - and it will continue to escalate in '05 as well.

The second business is a local machine shop that employs - in '00 employed 25 people and in '04 had 36 employees. In '00 their comp premiums were \$40,000, in '04 they were well over \$100,000.

The third business - and Scott sitting here with me - Scott Cunningham owns all the McDonald's franchises on the Kenai Peninsula. In '01 - his average employees range from 130 to 145 of which 60 to 65 percent of those employees are part-time so - I mention that so it doesn't skew the numbers when it comes to the comp premiums. He averages somewhere between 130 and 145 employees a year. In '01 his workman's comp premiums were \$24,000, his projected comp premiums in '05 are over \$130,000.

The next business queried was a seafood processor that's been here a long time. In '00 he had 233 employees probably 220 plus are part-time employees because it's a very seasonal industry. His premiums in 2000 were a little over \$31,000. In '04 he was

cut back to 136 employees and his premiums went to a little over \$78,000. In '05 his premium quotes will exceed \$148,000.

My businesses, the automobile businesses, in Kenai, Soldotna and Juneau - I employed 47 people in 2000 and my premiums in 2000 for the two stores then were a little over \$29,000. In '04 - one because of an acquisition of two additional businesses - I have 95 employees in the year 2004. My workman's comp premiums were in excess of \$220,000.

None of the businesses I spoke to had any catastrophic losses or serious work related injuries that would probably significantly help drive up the premiums. But as a businessman and the business people I'm here to speak on behalf of, I personally applaud the Governor and the Administration for getting at this today and not waiting until tomorrow. And I would just ask that you move this in a meaningful and an expeditious manner. Thank you.

[3:18:41 PM](#)

CHAIR BUNDE: Thank you. You answered my most pressing question which what was the loss rate when these premiums had such astronomical changes.

[3:19:02 PM](#)

CONNIE LIVSEY: I am an attorney of about 20 years duration here in Alaska practicing workers' compensation law and I'm presently employed as in-house litigation staff by Liberty Northwest Insurance Corporation.

I would like to testify in favor of SB 130 and its House counterpart. There are several aspects of this proposed legislation that I believe, based on my experience practicing in front of the board, would be very beneficial.

Commissioner O'Claray in his remarks spoke about the efforts last year to streamline the adjudication process and the creation of a workers' comp appeals commission - that's set out in, I believe, Section 10 of this bill - would be a very welcome change that would streamline the process quite a bit.

Presently the decisions of the Workers' Compensation Board are appealed to the Alaska Superior Court. It is a full-blown appeal with briefing and oral argument and quite commonly that process takes between nine months and a year and a half. I presently, personally, have two appeals in my collection of cases that have gone on considerably longer than that. A Superior Court decision

is then appealed to the Alaska Supreme Court and by case law, the Alaska Supreme Court gives no deference to the Superior Court's decision. So the party unhappy with the Superior Court outcome has every incentive to appeal.

The entire appeal process is expensive, it is very lengthy, it doesn't serve employees or employers well. And the creation of an appeals commission that would hear appeals instead of the Superior Court would probably shorten the entire process by at least a year and would significantly reduce the cost to both parties.

We also believe that Section 24 and the following section that speaks to adoption of the ACOEM medical treatment guidelines would be a very beneficial change in the law. Medical costs as Ms. Hall and Mr. O'Claray testified, are the most visible cost driver. They're the most expensive part of the workers' compensation process. They're also the aspect of compensation benefits that are accelerating in cost most visibly.

This is a hard problem to tackle. There is no easy answer. As Commissioner O'Claray indicated, some states have gone to a Medicare plus ten percent or Medicare plus 20 percent cost cap approach. That's pretty harsh on the physician community. The physicians I've spoken with are strongly opposed to that approach and we believe adoption of treatment guidelines is probably a wiser, fairer, and more targeted approach. This particular set of guidelines was written by occupational medicine physicians for other occupational medicine physicians. Yes it is something that can perhaps be criticized as a cookie cutter approach, but it is at least directed at occupational medicine. It is based on data and it is targeted at treatment norms rather than the sort of blunt instrument of payment caps.

Commissioner O'Claray in his remarks also spoke to - and so did Director Lisankie - a couple of aspects of the bill that would allow for parties to stipulate to certain things. One in particular - this is in Section 14 of the bill - allow parties to stipulate that an injured worker is eligible for re-employment benefits.

[3:23:49 PM](#)

In instances where the parties can agree that an injured worker meets the test to be eligible - I can think of no earthly reason why the parties shouldn't be allowed to stipulate. That would save probably a couple thousand dollars in rehab costs right off the bat. It would streamline the vocational re-training process

by likely two, three or four months and there simply is no good reason not to adopt that kind of change. Similarly, we discussed at the bar association workers' comp section meeting just last Friday, the cumbersome process that's presently in place when parties want to stipulate to the amount of attorney fees that should be paid by an insurance company to an injured workers' attorney.

[3:24:56 PM](#)

When the two attorneys can agree, it doesn't seem to be any good reason why there should be a cumbersome approval process before the board.

There are some other positive changes in this legislation - Section 16 of the bill would allow for some changes to the voc rehab process. Probably second to medical costs - I think employers think the voc rehab process contains too much delay and too much expense in exchange for the actual benefit to workers.

Significant sums of money are involved in the voc rehab process. This is a benefit that can easily cost \$60,000, \$70,000, \$80,000 per case. The statistics for the workers' comp board indicate that very few injured workers actually complete a retraining plan and go to work in their new field. For the money spent we've simply got to come up with a better approach to retraining and Section 16 of the bill offers one such approach.

We believe medical costs are the single biggest part of the workers' comp process that needs reform and it is admittedly going to cause some very difficult trade offs. In general, SB 130 may not be perfect but it offers some much needed reforms and we urge its passage. Thank you.

[3:26:36 PM](#)

STEVEN CONSTANTINO: I'm an attorney. I've been an attorney in Alaska for 24 years. I've served on the Alaska Workers' Compensation Board and for the past six years I've been representing injured workers.

I'm concerned about this legislation. First of all, I'm concerned that the Governor's invoked the stakeholder process - the ad hoc committee process, which has served this state well in the past - and then has decided to go off on his own tangent. I believe that management and labor have a significant role to play in reaching the consensus that is necessary for genuine reform.

I'm concerned that the Governor has taken a meat axe approach to medical costs and proposed rolling back medical reimbursements to 1999 levels. Clearly, injured workers are not going to have access to medical care at 1999 reimbursement levels. One thing that Mr. Jordan said that struck me was that there are more questions than answers in the data that is provided. I would like to echo that. A lot of decisions today is you're being asked to make decisions based upon data that nobody can verify. In the ad hoc process the insurers were asked to provide information that could be analyzed concerning where those costs in the medical system are coming from. And to date that's not been provided. That information is available. Medical billing is all by codes - we don't know where the costs are coming from. Are those costs reflective of better outcomes? Do we have healthier workers, more functional workers as a result of these increased costs?

Rolling back reimbursements to '99 levels is certain to cause constriction to access to care. I can't go in and buy a product in the supermarket at '99 prices. They just won't sell it to me. Physicians in the state are being asked to roll back their prices to treat injured workers. That simply is not going to work and there is simply no evidence in front of you for you to analyze where those costs are coming from. What is the role of new procedures, what is the role of enhanced diagnostic tools? We just don't know.

[3:29:44 PM](#)

I am concerned that at this moment, the Governor's bill is not scheduled for hearings in front of the Judiciary Committee. I believe it is a sweeping change of the law. It changes a 50 year adjudicatory process and yet the Senate apparently doesn't think that the committee that deals with the affect of legislation on the laws should be brought into this process.

The Governor has proposed his appeals commission again. The fiscal notes that are published are not very revealing although last year we learned that it was about \$1 million. In effect, the Governor proposes to make a new \$1 million bureaucracy to handle 36 cases a year. As the Court System testified last year, the Supreme Court is anticipating that every one of those 36 cases is now going to appear on its docket.

For the price of this new administrative agency, we could fund two new Superior Court positions for true judicial officers to handle comp appeals. I note that the decision making limitations

that are set out in the new statute would require - if you only allow 30-60 days for briefing in front of the new commission and oral argument - it's 7 months. You're asked to put up a new bureaucracy costing \$1 million to save, at most, one month from what both Commissioner O'Claray and Ms. Livsee just said was the expected turn around rate for an appellate decision. I believe that the new appellate commission will drive up the cost of litigation, will increase the amount of litigation and that's because unlike the jurisdiction that's exercised by the Superior Court or the Supreme Court, this new commission is going to have the power to review and reweigh evidence. It's a second bite at the apple. What losing party doesn't want to take a second bite at the apple? That's a seven month process to get your second bite. That's a delay that injured workers simply can't survive.

I'm concerned that we've changed rehabilitation from a voluntary system to a mandatory system under the new statute. And we have included in there - the Governor has a buyout provision. If you have a five percent permanent partial impairment rating, you can get \$8,000 for a claim that Ms. Livsee just told you is worth \$60[,000] \$70[,000], \$80,000. This comes along when the injured workers' claim is controverted. They don't have access to benefits and they are going sinking into debt. It's a buyout that in the long run is going to injure our state because those people are either going to not be employed, are going to be put on the social welfare system, or they're going to look for some other way to survive and get training.

I believe that the committee should return to the stakeholder process, should get the information that it needs to analyze the changes that are being recommended and that the Governor should go in front of the people next election year on this issue rather than asking the members of the committee and the Legislature to take the heat for it.

CHAIR BUNDE: We are obviously going to continue our work on this bill. It will be up again our next meeting, which is Thursday.
Adjournment at [3:34:11 PM](#).

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