

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

March 10, 2005

1:35 p.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

Senator Ben Stevens  
Senator Bettye Davis

**COMMITTEE CALENDAR**

CS FOR HOUSE BILL NO. 15(L&C) am  
"An Act relating to outdoor recreation lodge alcoholic beverage licenses; relating to transfer of certain beverage dispensary licenses issued before June 6, 1985; and providing for an effective date."

MOVED CSHB 15(L&C) am OUT OF COMMITTEE

HOUSE BILL NO. 90  
"An Act requiring warrants drawn by the Department of Administration against the state treasury to be negotiable instruments."

MOVED HB 90 OUT OF COMMITTEE

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 15

SHORT TITLE: LIQUOR LICENSES: OUTDOOR REC. LODGE/BARS

SPONSOR(S): REPRESENTATIVE(S) MEYER

01/10/05	(H)	PREFILE RELEASED 12/30/04
01/10/05	(H)	READ THE FIRST TIME - REFERRALS
01/10/05	(H)	L&C, FIN
01/24/05	(H)	L&C AT 3:15 PM CAPITOL 17
01/24/05	(H)	Heard & Held
01/24/05	(H)	MINUTE(L&C)
01/31/05	(H)	L&C AT 3:15 PM CAPITOL 17
01/31/05	(H)	Moved CSHB 15(L&C) Out of Committee
01/31/05	(H)	MINUTE(L&C)
02/02/05	(H)	L&C RPT CS(L&C) NT 5DP 1NR

02/02/05 (H) DP: LYNN, KOTT, LEDOUX, ROKEBERG,  
ANDERSON;  
02/02/05 (H) NR: GUTTENBERG  
02/04/05 (H) CORRECTED CS(L&C) NT RECEIVED  
02/07/05 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
02/07/05 (H) Moved CSHB 15(L&C) Out of Committee  
02/07/05 (H) MINUTE(FIN)  
02/09/05 (H) FIN RPT CS(L&C) NT 4DP 4NR  
02/09/05 (H) DP: FOSTER, HAWKER, MEYER, CHENAULT;  
02/09/05 (H) NR: MOSES, HOLM, KELLY, STOLTZE  
02/22/05 (H) TRANSMITTED TO (S)  
02/22/05 (H) VERSION: CSHB 15(L&C) AM  
02/23/05 (S) READ THE FIRST TIME - REFERRALS  
02/23/05 (S) L&C, FIN  
03/03/05 (S) L&C AT 1:30 PM BELTZ 211  
03/03/05 (S) Heard & Held  
03/03/05 (S) MINUTE(L&C)  
03/10/05 (S) L&C AT 1:30 PM BELTZ 211

BILL: HB 90

SHORT TITLE: STATE TREASURY WARRANTS

SPONSOR(S): STATE AFFAIRS

01/21/05 (H) READ THE FIRST TIME - REFERRALS  
01/21/05 (H) L&C, STA  
02/02/05 (H) L&C AT 3:15 PM CAPITOL 17  
02/02/05 (H) Moved Out of Committee  
02/02/05 (H) MINUTE(L&C)  
02/04/05 (H) L&C RPT 5DP  
02/04/05 (H) DP: LYNN, KOTT, LEDOUX, GUTTENBERG,  
ANDERSON  
02/08/05 (H) RULES TO CALENDAR PENDING REPORT  
02/08/05 (H) STA AT 8:00 AM CAPITOL 106  
02/08/05 (H) Moved Out of Committee  
02/08/05 (H) MINUTE(STA)  
02/09/05 (H) STA RPT 7DP  
02/09/05 (H) DP: GARDNER, LYNN, GATTO, GRUENBERG,  
RAMRAS, ELKINS, SEATON  
02/09/05 (H) TRANSMITTED TO (S)  
02/09/05 (H) VERSION: HB 90  
02/10/05 (S) READ THE FIRST TIME - REFERRALS  
02/10/05 (S) L&C, STA  
02/10/05 (S) L&C RPT RECD W/CS AWAIT TRANSMITTAL NXT  
03/03/05 (S) L&C AT 1:30 PM BELTZ 211  
03/03/05 (S) Heard & Held  
03/03/05 (S) MINUTE(L&C)  
03/10/05 (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
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

**WITNESS REGISTER**

MIKE PALOWSKI

Staff to Representative Meyer

Alaska State Capitol

Juneau, AK 99801-1182

**POSITION STATEMENT:** Commented on HB 15 for sponsor.

REPRESENTATIVE PAUL SEATON

Alaska State Capitol

Juneau, AK 99801-1182

**POSITION STATEMENT:** Commented on HB 90.

PAUL LISANKIE, Director

Division of Workers' Compensation

Department of Labor & Workforce

Development

PO Box 21149

Juneau, AK 99802-1149

**POSITION STATEMENT:** Supports SB 130.

NORM WOOTON, Executive Director

Kodiak Chamber of Commerce

Kodiak AK

**POSITION STATEMENT:** Supports SB 130.

MIKE MARTIN, President

Brechan Enterprises Construction Company

Kodiak AK

**POSITION STATEMENT:** Commented on SB 130.

WAYNE STEVENS, President

Alaska State Chamber of Commerce

217 Second St., Ste 201

Juneau AK

**POSITION STATEMENT:** Commented on SB 130.

DOUG WOLLIVER, Attorney  
Alaska Court System  
303 K St.  
Anchorage, AK 99501-2084

**POSITION STATEMENT:** No position on SB 130.

DR. JOHN DUDDY, President  
Alaska Physicians and Surgeons  
No address provided

**POSITION STATEMENT:** Opposes SB 130.

ALAYNE LARSON  
Community Builders  
Kodiak AK

**POSITION STATEMENT:** Commented on SB 130.

JOEL SIGMAN  
Mat-Su Valley AK

**POSITION STATEMENT:** Commented on SB 130.

DR. BILL PFIEFER, Vice President  
Alaska Chiropractic Association  
No address provided

**POSITION STATEMENT:** Commented on SB 130.

MICHAEL CUNNINGHAM, Chief Financial Officer  
Chugach Electric Association  
No address provided

**POSITION STATEMENT:** No position on SB 130.

#### **ACTION NARRATIVE**

**CHAIR CON BUNDE** called the Senate Labor and Commerce Standing Committee meeting to order at [1:35:51 PM](#). Present were Senators Seekins, Ellis and Chair Con Bunde.

^#HB15

**CSHB 15(L&C) am -LIQUOR LICENSES: OUTDOOR REC. LODGE/BARS**

CHAIR CON BUNDE announced HB 15 to be up for consideration.

MIKE PALOWSKI, staff to Representative Kevin Meyer, sponsor, said he would answer questions. There were no questions and public testimony was closed.

SENATOR RALPH SEEKINS moved to pass CSHB 15(L&C) am from committee with individual recommendations and attached fiscal notes. Senators Ellis, Seekins and Chair Bunde voted yea; and CSHB 15(L&C) am moved from committee.

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^#HB90

**HB 90-STATE TREASURY WARRANTS**

CHAIR CON BUNDE announced HB 90 to be up for consideration.

REPRESENTATIVE PAUL SEATON, sponsor, was available to answer questions. There were none and public testimony was closed.

SENATOR ELLIS moved HB 90 from committee with individual recommendations and accompanying fiscal notes. Senators Seekins, Ellis and Chair Bunde voted yea; and HB 90 moved from committee.

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^#SB130

**SB 130-WORKERS' COMPENSATION**

CHAIR CON BUNDE announced SB 130 to be up for consideration.

The following is a verbatim transcript of testimony on SB 130.

PAUL LISANKIE, Director of the Division of Workers' Compensation, Department of Labor and Workforce Development (DOLWD): I have been asked to continue our presentation of our bill to the committee and pick up where Commissioner O' Cleary left of in his overview the other day.

CHAIR BUNDE: That would be fine.

MR. LISANKIE: What I would like to do Mr. Chairman is to work through some of the major sections of the bill not necessarily in numerical order but in substantive order and I can cross reference them to sectional cites so that you can read along if you wish. I know that here have been some questions about some of the sections that we have discussed in the first hearing.

CHAIR BUNDE yes, do the referencing, please, and we can follow.

MR. LISANKIE: There are a number of major areas that are addressed by this bill and the motivations are as explained to you by Commissioner O'Claray. The first section that I would like to address to the committee is one that that I have put

under the heading "Protecting Workers and their Jobs from Uninsured Employers." Now this is a subject that will sound familiar to members of the committee because we did discuss it somewhat last session, we continued to be concerned by employers who do not follow the letter of the law and continue to operate not withstanding their failure to insure their liabilities for workers' compensation benefits. Of course, we worry about that because it jeopardizes the economic and physical health of the injured worker and it jeopardizes the economic health of the law-abiding employers who are trying to do business with substantially increasing overhead costs and who are undercut by people who are breaking the law who hurt them directly as well.

[1:41:16 PM](#)

MR. LISANKIE: In section 21 of this bill, there is a proposal to allow the division director to immediately shut down an employer upon completion of an investigation confirming that there is a lack of the required insurance. This is something that we think is important because, you might have heard me testify last section, one of the problems that we run up against is that it is difficult to detect uninsured employers to begin with, it takes allot of effort. All too often when our investigator finds one, before the current law, all we can really do is bring them before the workers compensation board for a hearing to attempt to shut them down with a stop work order. And while that usually works fine, if they continue to abuse their right to work under the law, what also happens is they run out and get insurance as they get caught - sometimes up to and including almost the day of the hearing. So, then we don't have any tool in our arsenal to assert against them and they may have been operating risking their employers and unfairly competing for a significant period of time, although we do try and have the hearings as soon as we possibly can.

So, this first provision would require us to get an investigator on sight and complete an investigation. If they are convinced that there is reason to believe that there is no insurance, then they will be able to call me and we can have a very quick telephonic hearing and, if I conclude that their investigation is correct, we will close them down, that it.

CHAIR BUNDE: Let me ask about that investigation, you said 'on site.' Wouldn't it be pretty straight-forward to electronically check? We only have two insurance companies - to see that they are indeed covered.

[1:44:05 PM](#)

MR. LISANKIE: Mr. Chairman, its relatively straight forward but even with the electronic system that we recently installed, there are gaps, for legitimate reasons when coverage is bound and when it actually shows up in our system. So, we certainly try to do that first. And there is in the law a presumption that not having the proof of coverage on file raises a rebuttable presumption of failure to cover. We do occasionally run into situations where, when we get the person's input, they point out, or their insurance broker points out, that they are within the law and we track it back and it turns out that its paperwork.

SENATOR SEEKINS: Without having to look at the statute, what is the evidence of compliance that is required by AS.43.31.085.

MR. LISANKIE: Evidence of compliance used to be a piece of paper that indicated that you where insured. Now, it's an electronic document that is filed by your insurer that is sent to us and gets entered into our computer system that indicates that your company is properly covered for a period of time for workers' compensation liability in the State of Alaska by X-company.

SENATOR SEEKINS: If I could Mr. Chairman, then you could foresee here a glitch somewhere in the system shutting the person down and then the burden of proof is on them. Are you proposing any other process to be able to show that they do have insurance?

MR. LISANKIE: The process is designed so that they would have an opportunity to be heard because we are reluctant to take that rebuttable presumption and shut somebody down based up it. So, to answer your question directly, that is why we would have a follow up investigation - get in contact with the people who are under suspicion, give them an opportunity to give us any proof that they have to direct us to an insurance agent that they believe that they talked to, or a business manager, or anything. We are not looking to jeopardize people's rights to make a living on something that could be just a paperwork glitch.

SENATOR SEEKINS: The bill that we passed last year on workers' comp said that a subcontractor, if they don't have insurance, the contractor is required to carry that coverage. Or if the contractor doesn't have insurance, then the owner would be required to carry that coverage. How would you anticipate looking at a subcontractor violation? Would you go right on upstream and ask for coverage from the other people.

MR. LISANKIE: I don't think that we have actually done that yet, but since you have asked me to envision it, I think that we would. It would just be prudent to check up and see that the next level did have the insurance, which the bill requires. But I think that we would be inclined to still go after the subcontractor. Last year's bill was meant to be a safety net. I don't think that it's meant to be a substitute for people doing their legal requirements.

SENATOR SEEKINS: I understand that, too, but I guess I am wondering in that scenario if I said, 'Well, under the law, if I don't carry it, the contractor is required to carry it and that's my substantial proof of coverage.'

MR. LISANKIE: I would construe it a little differently. I would consider that that would not prove that the subcontractor had the required coverage. It would prove that their employees are not in extreme danger of not having their benefits paid. I would agree with that. I could see that offered as a reason if the - I mean we would talk to the contractor and see if they wanted to keep working and we would probably take that into account. I certainly would.

[1:47:55 PM](#)

SENATOR SEEKINS: I am not trying to impose a new form, I am just trying to see if one exists.

MR. LISANKIE: There is also a provision in section 21 that addresses the lack of a hammer that I mentioned and the hammer now is actually a bigger hammer than we talked about last session. For a failure, for a proved failure, to insure, we can go to the workers' compensation board with a full hearing because we don't feel that there is this - you know, once we have taken care of the absence of insurance quickly. We don't think it's as important to move quickly on the fine part, so we would like to have that continue to go through the board. And for demonstrated failure to have the required insurance an employer would have to be subject to a fine of up to \$1000 a day per employee that was not covered and you can do the math. That would be a very substantial sum. It is an up to amount and it would be in the province of the board to take into consideration things that were mitigating factors and things that were aggravating factors. But it could be a very high penalty. Last year, the last numbers that I have seen, our single investigator, even with some of the problems that you have heard about with our computer system, was able to detect and stop 158 employers that were uninsured and then at least went and got

insurance after they were caught. Those employers had approximately 2,300 workers. So, if we had a fine in place like we were talking about here, that would be a lot of potential liability to be assessed - and convince them that they should never do that again.

There is also a section in the bill that I will address in a moment that actually establishes a fund to receive those fines and uses those fines to pay for the benefits of injured workers who were working for an uninsured employer at the time that they were injured and weren't able to get their benefits directly from them.

CHAIR BUNDE: Of that 158 employers last year, were there penalties that were imposed or were these cured by simply going and getting insurance and so they could? Did the vast majority get to go bare and keep the money?

[1:50:57 PM](#)

MR. LISANKIE: Correct, there are some states that address the problem by saying that the fine would be assessed in light of what their premium might have been and then the fine is some multiple of their basic premium, but this is a little more broad application.

CHAIR BUNDE: To clarify that, it says that employer X has been working for a month, he's got ten people employed, and you find that they don't have insurance, he would be liable for up to \$1000 per day for that 30 day times each employee. That might be a disincentive.

MR. LISANKIE: It would be a considerable disincentive to any business I am aware of.

[1:52:03 PM](#)

MR. LISANKIE: The second area of the bill that I would like to talk about is one that characterizes quicker and more efficient resolution disputed benefit claims. You heard the Commissioner talk about some of our problems in that regard, Senator Seekins, you raised some questions from people that you have heard about stipulations on the process. One of the areas that will actually make legal something that has happening right now under our regulations, but some people think that the regulation may not be sufficient. Attorney's fees in Workers' Compensation, even though they are usually paid by an insurer in addition to benefits, they are not taken out of benefits. They have to be

approved by the Workers' Compensation Board before they can be legally seen. It's actually a criminal offence to do otherwise.

We have a regulation that is based on some concerns over the years that there was a need to have a way to get an attorney to give you a consultation, even if they didn't take on your case, just give you some advice, even if the advice was, 'I can't take your case,' or 'I don't think that you have such a good case.' So, we have a regulation that allows a one-time consultation fee of up to \$300 to be paid by an injured worker and received by the attorney.

MR. LISANKIE: There are some attorneys that thanked us for the regulation, but looked at the statute and said they don't want to put themselves in that kind of jeopardy with a potential criminal act. So, in section 42 of the bill, it would specifically legalize the receipt of a one-time consultation fee of up to \$300. The hope is that it will make it just a little bit easier for people to at least get an initial complication and guidance even if they continue to have problems getting someone that will actually take on their case.

MR. LISANKIE: Another significant change is that section 9 will provide that the Department of Labor and Workforce Development may contract with a non-profit organization or organizations to provide some information and legal assistance to injured workers that are unable to obtain private counsel. One of the things that we continue to hear is that there is a limited number of private counsel that are willing and able to represent people in workers' compensation matters. We have heard this for a considerable period of time long before I ever came to the division. People have been talking about it during the 20 years that I have been working in the field. This is kind of an offer; it's kind of an approach to attempt to get a non-profit organization that has some understanding of say, disability law but, perhaps hasn't focused on workers' compensation at this point, to get them into a contractual relationship with the department for a period of time and see if we can kind of prime them and get in this area of assistance. And then they would be eligible to get attorneys fee awards if they were successful in helping people before the board in the same way that a private attorney would and, hopefully, the attorneys fees would take the place of further funding as it went forward.

This is, I know, kind of a stretch beyond what we have done over the many years of workers' compensation. We have always left it to the private sector to represent people, but we continue to

hear that a significant number of people feel, and commonly testify before a committee such as this, that they are unable to get an attorney that is willing to take on their case. And while the division gives them as much advice and assistance as we can, obviously we can't represent them. This is an attempt to try to encroach on that divide, to try and narrow the problems that they have as far as not being able to get help with what their claims should be understood by an attorney.

CHAIR BUNDE: And then these organizations would then provide legal representation?

MR. LISANKIE: That is the hope.

CHAIR BUNDE: Obviously they would be legally able to provide that, I mean, they would be members of the bar.

MR. LISANKIE: Yes, the contract would have to delineate the requirements and that would certainly be one of them, if they are going to represent someone they are going to have to be admitted to the bar.

CHAIR BUNDE: If they can't find an attorney, if there is a non-profit group that is perhaps able to employ an attorney on a broader scope then we could bring them in.

[1:56:58 PM](#)

SENATOR SEEKINS: Mr. Lisankie, let me go back just for a moment to section 42 if I can and ask a question here. This one time fee of \$300, is that one time per insured or one time per attorney?

MR. LISANKIE: I believe it would be one time per attorney. It's your money; as the injured worker, it would be coming out of your pocket if you had enough money to pursue a number of consultations. My interpretation of this is yes, you could do that and the attorney would not have to keep track of whether someone has already utilized this safety valve.

SENATOR SEEKINS: So, each attorney could take at least \$300 from the insured for any attorney that they choose to talk to - one time.

MR. LISANKIE: Any injured worker could go to any attorney, and if the attorney wanted to charge a consultation fee up to \$300, they could do so.

SENATOR SEEKINS: Is there any mechanism for the insured to recover that \$300?

MR. LISANKIE: Yes, if it develops into a disputed claim and there is some success, I would say yes, that an employee, even if they did it on their own they could ultimately seek recovery of that as a cost of their claim, and I would anticipate that the board would recognize that as a cost of pursuing their claim and reimburse them for it - order reimbursement for it. Obviously, the board doesn't pay for anything.

[1:58:58 PM](#)

MR. LISANKIE: There is also a section, section 11, which I put an asterix next to because I think it goes to part of the question about what Senator Seekins asked the other day about his concerns about the ability of injured workers and their employers and insurers to decide that they no longer want to dispute something and they want to stipulate their way out of it.

What section 11 talks about is that it would allow an injured worker who is represented by an attorney who is licensed in Alaska to settle their claims, and that would be either a partial or complete settlement of the disputed claim, without review of the Workers' Compensation Board.

That would do two things, one it would marginally speed up the process in that there is a certain degree of delay associated with having people who have already resolved their disputes have to wait until the workers board can actually review the terms of their proposed resolution. It would also allow us to focus the resources that we have in the division to either do additional hearings to get other disputes heard quicker and to focus their continuing review responsibility on proposed settlements from injured workers who have some additional need for the board to review their situation such as they are a minor or they are mentally incompetent, or they are unrepresented by counsel. So it would be an opportunity for the board to focus on folks who don't have an attorney by freeing folks who do have an attorney to resolve their disputes without further review by the board. That's also going some degree towards addressing the concerns that were expressed by Senator Seekins because if you can settle a full claim, you can certainly file, what it would otherwise be referred to as, a partial settlement, but a stipulation, a stipulation of somebody's entitlement to something, you could agree to it. You could file it with the board and it would not have to be further reviewed.

2:02:12 PM

That would apply across the spectrum of any dispute. It wouldn't be limited to the one section that I specifically mentioned to the committee last time, which was a specific section that allows stipulation to entitlement to reemployment benefits. That is something that has been developed due to specific complaints that we have received from parties saying that if they want to stipulate, an injured worker needs reemployment, why do we not accept that stipulation and just get on with the process and our response in this bill is 'why indeed.' So we do have a specific section that talks about reemployment benefits and that is in section 14, but this section 11 could arguable apply to any other type of stipulation or dispute.

SENATOR SEEKINS: I guess I have had a hard time reading into the fact, in mid-section 11, that says that, 'If you and I want to stipulate to the extent of my injury or the type of my injury rather than going through the medical examination process and confirmation of that et cetera,' that we are allowed to do that. I am just thinking about certain steps in the process where you may not want to stipulate to complete dismissal but to elements of the process. It's my understanding, and maybe I am wrong, that right now, at least it's viewed that that's a prohibited activity. Maybe I'm wrong.

MR. LISANKIE: If I understand your question correctly, I don't think that you are wrong. The division and the board takes the view that anything that can be read as a partial settlement of any dispute does have to be reviewed and many things can be viewed as a partial settlement that the parties might look at as just stipulation of status. If it can be viewed as affecting somebody's right to benefit, and arguably anything can, the current language is broad enough that I think that the board is within its rights to look at it the way they do under the current law, even though it slows things down.

SENATOR SEEKINS: I have no doubt that they are within their right. I am just wondering if - there comes a point where we are trying to do two things and one of them is reach a final determination as quickly as possible to keep uncertainty in the process even from developing. And I'm just thinking that there may be intermediate steps in the process that we go to a lot of trouble to verify even though both parties should have the right, as they do in any other legal activity, to stipulate the certain portions of that activity. But it seems like it is precluded here and that seems like it protracts the timeframe

and maybe even unnecessarily. I don't know if these are subject to some kind of review, but even most stipulations are at least reviewed - even in a court of law - to a certain degree. 'Did you agree to that, Mr. Steng? Did you agree to that Mr. Segan? Yes, we both did.' and 'Did you do it willingly? Yes, no problem. Okay, we stipulate to that.'

But, it seems to me that if the process is inherently clumsy and unnecessarily clumsy, then we should try and accommodate a streamlining of it as long as we aren't sacrificing anybody's rights against their will. Maybe I am shooting in the dark, but it's just my opinion.

[2:05:11 PM](#)

MR. LISANKIE: The final point that I would like to make under this heading is that, while it is common practice already, the division uses Workers' Compensation hearing officers to chair hearings of disputed claims. We don't actually have that in the statute. It's simply the commissioner of the department or their representative and so it's just the kind of adjustment for what is actually being done and to give us the authority to do it in case anybody actually complains about it.

Section seven does require the use of hearing officers and it's anticipated, I think everyone knows, that since passage of some legislation last session having to do with a central panel hearing process, all hearing offices will be required to adhere to certain ethical standards that are being reviewed and produced as we speak by the administrative law judge. This would add to the board an obligation to develop its own internal regulation for any conflict of interest of the board members. And that would be something that would be developed internally by the department and approved by the board members themselves as required the current statutes.

MR. LISANKIE: The third heading that I have generated is "Fair Benefits at Reasonable Employer Cost."

[2:06:34 PM](#)

The first is section 32, and this will sound kind of reminiscent for people who have been following this process for the last year - since last session, anyway. It's a reprise of the cap on non-resident compensation rates. Currently there is a cost of living adjustment in the Workers' Compensation Act and it only applies outside the state. So, people who are injured within the State of Alaska get a unified rate. It's based on a blended assessment of the cost of living in Anchorage, Fairbanks, and

Juneau - Juneau being the highest and Fairbanks and Anchorage being fairly close together now. So there is a unified Alaskan rate. So, no matter where you reside in Alaska, no matter how expensive or inexpensive, you get the same rate. However, if you are a non-resident worker at the time of your injury working in Alaska or if you move out after you get injured and you go to someplace that has a arguable higher cost of living, my division is tasked by the current statute to do a cost of living analysis and allow you to receive a higher compensation than you could have anywhere in state. I don't really think that it's appropriate to pay people who are non-injured workers more than we pay our own injured workers. So, section 32 would preclude that and cap the rate that can be paid to a non-resident at the rate that would be paid someone who was residing in Alaska.

There is a provision in section 36 that talks about coordinating private disability and Workers' Compensation benefits so that the combined benefits do not exceed workers' take home pay. If you have any specific questions about this proposal, I have someone sitting with me who has helped me develop that, Assistant Attorney General Kraly helped draft that, but it is essentially what it says, that there are under limited circumstances, some employees who get a private disability payment which is not being considered when we do our workers compensation payout. For some limited number of people, they do sometimes get more than they would have if they had been working which is kind of viewed as not such a good ideas for a number of obvious and not so obvious reasons when the whole intent of Workers' Compensation is that you get a significant portion, but not all of your take home pay - so that you don't have a disincentive to return to work. And so that's the motivation for this provision.

[2:09:22 PM](#)

MR. LISANKIE: We have also heard some concerns about potential fraud in our system by any number of people. People talk about fraud from a variety of perspectives and some people envision it as someone making a claim that they don't deserve; other people envision it as an employer lying about the classification of their worker so they get a lower premium; a provider that may or may not really be giving health care treatments that they are getting money for. So, there is a provision in section 40 that talks about broadening and strengthening anti-fraud provisions under the workers' compensation provision under the Workers' Compensation Act. It's quite extensive and goes through great detail to show that there isn't anybody who can derive a benefit or a payment in the name of Workers' Compensation and not be

violating the fraud provisions so that we do have a right to enforce that right in the Workers' Compensation Act.

MR. LISANKIE: I was asked by someone whether or not we were going to run out and hire a whole bunch of investigators and the answer is no, not at this time. I have talked to Director Hall at the Division of Insurance and she has a number of investigators on her staff and we are going to try and coordinate with the limited resources that we have right now and her resources - with not having a specific authority to go after fraudulent situations and see if that doesn't fix it. If it turns out that we feel that we are missing a lot of fraud because we don't have sufficient investigation staff then, I suppose that I would probably be back in front of the committee trying to explain why it wasn't there. But, we just kind of concerned about the overall cost of the proposal and we would like to try and make it work within the resources that we currently have - with closer coordination between my division and the insurance division. Most of the situations that can develop in the name of fraud, because they are trying to take advantage of an insurance company, they also represent an insurance fraud that is investigatable by the Division of Insurance.

[2:11:38 PM](#)

Similarly, there are improvements in section 41 to the criminal anti-fraud provisions under the Workers Compensation Act. We have been asked over the years why we don't have a very long track record of successful prosecutions and people have offered a variety of reasons. A lot of time, what it boils down to is that the higher standards that are applicable to criminal activity as they are viewed by the district attorneys who know what it is that they address or not address come down to that the criminal provisions in our act are inadequate.

So in section 41 we propose to change some of that language to meet some of the concerns that have been stressed by the law enforcement community so that if we feel that we do an investigation of someone that they are likely to agree that this is something that can be prosecuted as opposed to just being concerned that we have done good work but we haven't given them the tools that they need to get a jury to convict someone.

[2:12:45 PM](#)

SENATOR SEEKINS: On the first part on page 30 you are looking at the hearing, that hearing you would have to find by a preponderance of evidence if I take a look at page 32, there is

a reference to credible evidence. What standard of proof are we looking at?

MR. LISANKIE: I am sorry, Senator, are you looking at the second one?

SENATOR SEEKINS: Page 30 line 3, 'The director determines this is credible evidence.' Are we saying here that credible evidence is for notification?

MR. LISANKIE: Yes.

SENATOR SEEKINS: There is a higher standard of proof to be determined whether or not the act actually took place?

MR. LISANKIE: That is correct.

SENATOR SEEKINS: I just wanted to make sure.

[2:14:09 PM](#)

MR. LISANKIE: There is one provision in the legislation that I would like to highlight and this is something that's been kind of a grey area for us - that we would like to address, and that's why its in section 38. As the committee members are probably aware, there are certain people that run a business that don't have to cover themselves and they can opt to cover themselves if they wish to, partners for example, sole proprietors. We have seen in the last few years, since Alaska has changed its laws to have more limited liability, we have seen questions raised about where does a member of a limited liability company stand in relation to their legal obligations and whether they can or must get workers' compensation coverage. There has been a bit of a divide on that question and there wasn't any clear guidance.

So what the bill proposes to do in section 38 is to confirm that a member of the limited liability company need not have workers compensation coverage to start with, but if the limited liability company has an insurance policy for its employees and they wish to add the company members to the covered people under that insurance policy, they may certainly do so. So, it gives the limited liability company a clear statement of where its members stand initially and gives them the clear option that they can insure those members, if they so choose, and properly inform an insurance company that binds their coverage. That is just something, as I said, that was a grey area that was kind of perplexing to people about what their liabilities and

responsibilities were. So, that is what we would help resolve that system.

MR. LISANKIE: Finally under this heading, we had recommendations from a variety of attorneys representing people in the workers' compensation system, again, looking at ways that we can speed up the system. And they wondered why we didn't have a release of medical records of some sort that would be signed with the initial injury report, because there are sometimes delays associated with getting proof of medical treatment; and until you get that proof, then the insurer has no obligation or any knowledge that they need to make a payment. So what this would do is require the division to redo our injury report so that there is a limited release of medical records right from the get go - that applies to treatment for the injuries that just happened.

2:16:54 PM

It's not a broad release because we recognize that there are some people that, due to confidentiality concerns, are concerned about not signing a release for everything. That raises some other problems that we can discuss at a different point, but at least at this point we would have a requirement that, from the beginning, bills and records for medical treatment that happened with the particular injury would be immediately available to the insurer and their adjuster. And if they weren't submitted by the injured worker, they could be obtained by the adjuster and will get things flowing faster.

MR. LISANKIE: You can understand why attorneys on both sides of the bar raised that particular issue - something that could be an unnecessary delay and we are not interested in doing that. We are really trying to focus on things that can speed things up, even if it's just incrementally - because they all add up as you go through this whole process. We would maintain, in section 27, the confidentiality of medical and rehabilitation records that are held by the division or the new appeals commission. And, in section 28, it would ban the division from assembling or providing individual records for commercial purposes. We've got a number of folks that ask us to give them information. We are getting more and more information into our system that we request because we are trying to get electronically filed and now we are getting this intercession where people recognize that there is more and more information about employers, employees anybody you can think of. They asked us to stratify this data and give them some kind of report that they can use for a commercial purpose.

MR. LISANKIE: We want to still be able to give information to people that need it so they can get good health care, so that they can get paid for providing that health care, so that an insurance company or an employer or an employee can get information they need to settle, or resolve, or if necessary, have a hearing on a disputed claim. We're trying to restrict the scope of information that we give out for purely commercial purposes.

This is another section I would like to address - is improving return-to-work benefits while reducing the cost of doing that. In section 35 we are proposing to gradually phase out the second injury fund. The second injury fund is perceived as archaic in the modern employment system by many observes. The last time I looked, there were 17 states that had revoked their second injury funds in the '90 and 2000 era. The way that the second injury fund is filled is through a six percent contribution rate currently based on all time loss benefits that are paid by an insurer. So, it's an additional six percent on top of what they pay in benefits.

To try and get more bang for that buck and reduce the cost, what we propose to do now is phase it out incrementally. The people that already established the insurance companies, that already have a right to get the reimbursement under that fund, would continue to get those amounts reimbursed, but they would not be able to make new claims going forward. As the old claims are gradually paid off, the contribution rate would ramp down. There is in our statutes a ramp that says that if the balance in the fund is a certain amount at 6%, if it goes up, its 5%. We would hope that it would go down to 5%, then 4%, then down to zero and eventually when the commissioner of labor officially notifies the Lieutenant Governor that all of the obligations were the fees, then the fund would be no longer in existence.

We are interested in reducing delays in determining reemployment eligibility. In Section 14, it specifically allows injured workers and their employers and insurers to stipulate to the injured workers eligibility for reemployment benefits. That will simplify the determination of eligibility for those benefits and we think it will have a significant monetary effect on the overall cost of the system, although it is difficult to quantify.

I will give you a snap-shot of what we did in 2003. There were just over 1,000 requests for eligibility evaluations that were

filed with the division in 2003. As of the end of January of 2005, about 50 percent of those requests had been finally ruled upon. By my math, on average, if it was in the middle of 2003 and it went to January, it would have been about 18 months. So some would have been a shorter period, some would have been a little longer, but we are taking a long time to get eligibility evaluation done in the first place. On average, it's 160 days. So, our hope is that if some proportion of these become stipulations, then that will be 160 days on average for each of them, and that will save the need to pay 401K benefits, which is a time-loss benefit that is paid for people who are waiting for that evaluation concluded.

2:22:37 PM

The next section is Section 16 and it talks about redefining the trigger for when you are eligible for reemployment benefits. Part of that process right now is to establish that you have physical capacities that are less than the demands of certain jobs. A big part of the delay that we are seeing is trying to get someone, typically a doctor, to opine as to whether someone is going to have his physical capacities diminished to the point where they can't meet the requirements of certain jobs. There is an awful lot of people who don't request the benefit within the anticipated 90-day period, because they have not had the opportunity to have a doctor opine about whether they really need it. That adds a lot of delays, because among other things, after they finally find out that they think that they may have triggered their entitlement, then they have to ask to be excused for not asking on time. So, the trigger has been redefined in terms of how long somebody has been taking off work. If they are off work for 45 days, it triggers a requirement for our reemployment benefits administrator to give these people information about their potential entitlement to reemployment benefits. But, the direct response that we hear is that people don't have adequate knowledge of what their entitlements are.

After 60 days, either the injured worker or the insurer could ask for an evaluation of their entitlement and then after 90 days off work, our reemployment benefits administrator would be required to send it out for an evaluation and nothing further is said. We are just trying to get something that is just an easily defined trigger and I can understand that some folks would prefer that we continue to use the current system. And my response to their concerns is that it is just slowing things down so much that it is really inconsistent with our goals of getting people all of their benefits - but particularly their reemployment benefits, vocational rehabilitation.

The 1988 Act was predicated on the understanding that of all the benefits, retraining benefits were most critical to get going quickly. Because studies have shown that that particular type of benefit was unlikely to yield a good result unless it got there quickly. So you see in section 41 of our current act, all of these short time frames - 90 days to ask, 14 days to make an assignment, 30 days to get the evaluation completed - and I am talking about 160 days to get the average report back. What we are trying to do is make this system a system that is understandable, that people understand when their rights are triggered and they can ask for the right if they want it, which is a big point. The legislature has gone out of its collective way to listen and respond to people who said that reemployment benefits, vocation rehabilitation, should be elective, a voluntary system in which an employee doesn't have to do retraining benefits unless he or she wants to do it.

2:26:30 PM

CHAIR BUNDE: On that point, I have received an inquiry from a Robert Sullivan. I have given you the letter and you get an opportunity to respond to that if you would. Give me a response please. There are some concerns on this issue.

MR. LISANKIE: I know Mr. Sullivan, Mr. Chairman, that he provides services under the Workers' Compensation Act, I would be glad to do that. What we have seen happen and you have heard other people talk about this as well - right now there is a certain way of determining entitlements to these reemployment benefits that I just discussed. Currently, you can choose to take that benefit and embark on it. It's typically some type of retraining and for a period of years, oftentimes, you are entitled to get some cash benefits to tide you over while you are doing a retraining. There are many people that choose not to take that retraining, but based on the possibility that they could be found qualified for whatever they had been found qualified, and they could actually go through it if they wanted to even though they don't want to. They will enter into a settlement that could be a considerable amount of money.

What we are trying to do in section 16 is to have people still have their right to this benefit, but to try and save some money by saying, all right, now you have been found eligible for this benefit, it is a voluntary benefit, you have two choices, but the choices are slightly different. The first choice continues to be take advantage of these benefits and we hope that we will do everything that we can to help you. The second choice is, if

you do not want for any reason to take these benefits, you are qualified, but you may have other things to do, you may want to retire, there may be another job that doesn't rule you out from this benefit that you are intending to go back to. There is any number of things. You can no longer hold out the possibility of getting that benefit as a reason to get a large settlement. You either take the benefits or you elect to take a smaller case payment which is being described as a job dislocation benefit, which can be used for any purpose and that is tied to the impairment rating that you get from your injury to your person. That ranges from \$5,000 to \$13,500. There will be no strings attached to that, so the injured worker can use it for whatever they want to do. But within 15 days of having been found eligible, they will either be getting into the program and using the benefits that we will still extend to them - they will not be diminished in any way - or they will take this lesser amount, which is much less than what the typical settlement is. We think that that is a fair way of moving the system along and reducing costs without cutting the actual benefit. The benefit would be unchanged if you choose to take advantage of it.

2:29:58 PM

I just want to touch very briefly - there are several provisions in the beginning of the act that have to do with changing the way that insurance is done for workers' compensation in the state. Director Hall has already testified about it some. If you have any specific questions, there are people here from the Division of Insurance that could address them. The point that I would like to make is that the further improvement - last session we were here trying to bail out the Guaranty Association as you recall Mr. Chairman and members of the committee, and we were successful in doing that. But there are people in the industry that said that we would have been even better off if there were bonds in place to collateralize some of the liabilities of the insurance companies so that if one of them went out of business, these bonds could be picked up and then the cash represented by those securities could be sent by the Division of Insurance to the Guaranty Fund to actually pay some of the benefits rather than shifting all the costs to the companies that didn't go under. So there is a specific provision that I like from my perspective, because it is one more way of getting additional funds to the Guaranty Association to pay the benefits to the injured workers on behalf of the employers that legitimately insure themselves, but have the misfortune to have their insurance company go under and so I certainly support that. I am not at all an expert in insurance and I cannot tell you the fine points about how that operates,

but we do have experts if the committee has any questions. That leaves two sections.

2:31:22 PM

MR. LISANKIE: There are two sections that have some degree of commentary. The first one I'd like to address is increasing the speed, efficiency and predictability in Workers' Compensation appeals and what would be done is to replace an appeal from the superior court with an appeal to an appeals commission, which is within the Department of Labor. This provision is designed to bypass the superior court for a number of reasons and is not an add-on to the additional system. It would actually take the first level of appeal, which right now is the superior court and replace it with the appeals commission. It would maintain the next step of appeal, which is guaranteed to everyone as an Alaskan citizen, which is to have recourse to the Alaska Supreme Court. And it's always the Alaska Supreme Court that tells all of us whether we've done the right thing or the wrong thing. The motivation behind this is that the superior court is made up of numerous individual judges. They are not necessarily experienced in any particular matter of the law, including Workers' Compensation. Their decisions do not establish binding legal precedent. The appeals commission would be offered to have a single site as where you would go to have your appeals heard by people who have experience in workers' compensation. It would establish legal precedence that could be overturned by the Supreme Court, but otherwise would be in place and could be relied upon by people who are in a similar situation in other claims. Right now there is no way of establishing a definitive legal interpretation short of going to the Supreme Court and it takes a good number of years.

This is a way of getting the Workers' Compensation Board, which will continue to be made up of numerous panels doing hearings. That is not being changed, unlike some of the suggestions last session. But you will be able to go to the appeals commission and ask them on the executive branch side to give you a final definitive statement of what the Workers' Compensation Board thinks about what the workers' compensation law may need, for example.

2:34:25 PM

MR. LISANKIE: Other people can rely on that in doing their business and paying benefits and knowing what they're entitled to receive. And that will remain in place during those years where there is not a Supreme Court decision. If someone does go to the Supreme Court and the Supreme Court confirms it, then

fine, if they overturn it then that's fine, too. At least, in the interim everybody is operating under the same rule for a period of years that they can't do right now.

Section 31 would allow me, the division director, to file an appeal with the commission if there was an unsettled question of law and if a party was not represented by legal counsel. So, this is also another way to try and address the concerns we have about the difficulty of someone who's unrepresented making a legal case. The court system is well aware that it is very difficult for the average person to make a legal case. This would give the director an opportunity to try and weigh in. If there was [indisc.]question of law because we simply don't have the resources to do that in every instance.

The appeals process would be somewhat speeded up in that the commissioner will be required to issue his decision within 90 days of record closure, which is on average - we think it would take probably six months to complete this kind of process as opposed to 8 to 18 months in the superior court system. There are two specific concerns that you heard testimony about last session and I'm sure that some of those people still have the same concerns and so they've been specifically addressed. First is that board level determination hearing panels would continue, as they are now, to take testimony and their determinations about the credibility of the witness that testified to them, their testimony credibility, would be binding on the commission. And to reflect that there are people who are concerned that you can't really judge credibility of somebody's testimony unless you look them in the eye. And also concerns about possible constitutional issues that could be raised based on certain Alaska Supreme Court decisions that find people have a right, if there's credibility involved, to have an in-person hearing.

The second is by constructing the commission out of one person with legal background and then commission members who are volunteers who are paid a sum for each day that they participate. That is to address two concerns. One is the expense. There are concerns about if there are three attorneys or some odd number of attorneys, that the expense would really ramp up. This is an attempt to address those concerns and also there was a concern that if appeals were heard solely by people who were lawyers, that you would lose some degree of the human element or empathy or something that is over my head, since I'm an attorney.

[2:36:55 PM](#)

SENATOR SEEKINS: In the four members - two for employees, two for employers - is there anything in the statute that would preclude those public members from being attorneys?

MR. LISANKIE: Not that I know of. I would suspect from the amount of money that they wouldn't be paid that they would probably have to be retired attorneys.

SENATOR SEEKINS: I could see where some employers would continue to pay their employees. Some person being a member of the administration or a labor union may be paid to be there by the union at the same time. It wouldn't necessarily mean that \$200 dollars a day is their entire compensation because I wouldn't anticipate that they'd be that busy to be paid that as a salary.

[2:38:25 PM](#) - [2:44:15 PM](#) - Recess

MR. LISANKIE: What I would like to do is offer a clarification; I think I made a misstatement in regard to Section 36 coordination of benefits. It was pointed out to me by the drafter that I said private disability insurance would be weighed against workers' compensation benefits, and it's actually benefits that are received through the PERS system or from another employer-funded disability system that does not take an offset on its own. So the disability that's paid by an employer if they take the offset, then there is no double offsets. An employee gets the net. But I said private and it's not correct. The last section I'd like to address is maintaining medical benefits while reducing costs. One of the elements of that is to have a rollback of the allowable maximum amounts under the board's medical fee schedule to a fee schedule that was approved initially December 15<sup>th</sup>, 1999, and applied to bills that were rendered in the year 2000. Those rates would remain in place while the committee that the commissioner discussed the other day would be making its study of the Workers' Compensation health care delivery system and the way the bills and costs would be reimbursed, which would have to be completed no later than March 1, 2007.

I would continue protection for injured workers that exist within the statute now and would not be taken away, which is specifically injured workers may not be required to pay any fee or charge for healthcare services that is provided under the Workers' Compensation Act. And that is a question I've heard from some people already - if there is a difference between what's billed and what's payable, would the employee be required

to pay and the answer is they are not allowed to be made to pay now and that will be continued.

2:47:16 PM

CHAIR BUNDE: If I wanted to be treated under Medicare, I could not pay the doctor more, even if I chose to. They can't accept it. Is that the same case here? That if there was a cap and I had the means that I could pay above that cap to pay the doctor's normal rate, would I be allowed to do that?

MR. LISANKIE: That's a good question. I believe the actual verbiage may not be required. There was a proposal in Section 24 to have the board apply the Occupation medicine practice guidelines of the American College of Occupational Environmental Medicine (ACOEM) to determine reasonable and necessary medical care under the act. ACOEM for sure is the non-profit organization that has put these guidelines together and they have a mission statement that I know we don't have enough time to get into all the specifics but, they propose the purpose of the guidelines are to optimize the livelihood that injured workers are able to return to health and function as rapidly and safely as possible. That is their mission statement. Those guidelines would be presumed to be reasonable treatment, but you could depart from those guidelines based upon a preponderance of the scientific evidence.

2:49:05 PM

SENATOR SEEKINS: Describe to me how a person would rebut by a preponderance of scientific evidence. How would that be done?

MR. LISANKIE: I guess it would typically be done either informally or formally, with someone proposing studies or someone making the point that the individual situation that's encountered by that injured worker falls outside the expected range of the guidelines.

SENATOR SEEKINS: How would that rebuttal be mounted? Would it be mounted by the injured workers' attorney or by the injured worker or by him retaining expert medical opinion to rebut the guidelines that are provided?

MR. LISANKIE: I think it would be like the other types of potential disputes that the Workers' Compensation Board sometimes hears now. Therefore, it could be something that would begin informally and might end informally with a practitioner or the representative and talking through what the situation is. But it could, under certain circumstances, end up all the way in

a hearing with lawyers and advocates putting on additional information based on scientific studies. It could be the full range, some of them would be easy and some of them would not.

[2:50:44 PM](#)

SENATOR SEEKINS: The last sentence of that section says we could be looking at standards based on other scientific evidence based medical treatment guidelines generally recognized by the national medical community adopted by the board by regulation. Are there other generally recognized medical community guidelines other than this one from the American College of Occupational Environmental Medicine?

MR. LISANKIE: There is at least a couple. I know there is at least one that I have a copy of in my office that I was sent. So there is at least one fairly comprehensive one and I believe, based on what I've heard from the drafter the ACOEM guidelines that there is at least one other one. And then I heard from Mr. Jordan in his testimony - he said that there are a variety of guidelines that have been published by a member of the specialty fields and I'm not as aware of those.

[2:52:07 PM](#)

MR. LISANKIE: There is a provision of Section 24 that tried to take advantage of any savings that would be available through the utilization of generic drugs in place of name brands by requiring that generics be used unless a name brand is medically necessary. Also Section 24 tried to take advantage of any potential cost reductions by requiring the Department of Labor and Workforce Development to adopt a preferred drug list or something like that, which was recently developed by the Department of Health and Social Services. The Department of Labor and Workforce Development would also be called upon to set procedures for establishing the need to depart from that formulary list. And then a final provision I'd like to address today is under Section 25.

[2:52:47 PM](#)

MR. LISANKIE: We propose to remove roadblocks to potential cost savings by allowing employers to develop preferred provider lists and to negotiate fee rates with preferred providers. Currently, there are statutory prohibitions against interference with anything that can be described as interference with the choice of physician. So this would be a specific authorization for an employer or an insurer to try to develop a preferred provider list and try to negotiate lower rates. However, the injured worker would not be required to use or restricted

exclusively to the use of people on that list. So, the employer and insurer could try to develop such a list and they could give it to the injured worker. But they would also have to tell the injured worker and specifically inform them that they do not have to utilize any healthcare provider on the preferred list, and that they can continue to choose a provider who is not on that list. Which may or may not make it easy to get a preferred provider list done up if you can't guarantee that anybody will use it. So I thank the committee very much for their attention and if there are questions that I can try and address I'd be glad to, and if not I will certainly pursue them and give you answers in writing.

[2:54:27 PM](#)

SENATOR SEEKINS: Looking at page 20, line 3, paragraph 1, we're scheduling, we're specifying a schedule there from a public bulletin dated December 15, 1999. Just for information purposes, do you have any idea of what the difference between that and the schedule is and what that schedule would be today, in terms of percentage difference?

MR. LISANKIE: I believe that we have a chart that was included in your packets and I may not be able to lay my hands on it right away, but the point I'd like to make is, there were certain services under the codes that were analyzed for what percentage difference between the 2000 rate, or the rate that was effective December 15, 1999, and the highest allowable currently under the fee schedule from December of 2004. I'm sure that the Senator appreciates, but I just want to make clear, that the way the board sets those rates is to have a company do a statistical analysis of all the bills that are rendered for a certain procedure. So, all it does is say the highest that could be paid in full as of 1999 would be a certain amount. And that presupposes based on statistics that eight out of ten providers charge less, because it's defined in terms of the 90th percentile. So, if there is a change for 2004, presuming it is higher, it's still possible for someone that is charging less than the highest amount in the beginning of 2000 may or may not be above that now. But the simple answer to your simple question is that each one of those codes potentially could be a different percentage simply because it's based on bills.

[2:56:46 PM](#)

CHAIR BUNDE: I believe Jane forwarded a question about the codes in trying to get some more information and when we get that, I'll share it with the committee and it would be interesting to note in dollar amounts compared to other states what this cap

creates. If it's limited to December 1999 rates in Alaska, how does that compare with Washington state rates today? Something like that.

2:57:40 PM

NORM WOOTON, Executive Director, Kodiak Chamber of Commerce: Workman's comp is an issue that, according to my members, it's close to putting many of them out of business. The rates continue to rise and I'm not sure how much longer they can afford to do it. Just an anecdotal comment, we run a litter patrol here in Kodiak through the auspices of the Chamber of Commerce. We hire four teenagers and have an adult supervisor and next year my workman's comp bill is going to be \$2,100 for that three months to keep those four teenagers working and so anything that you can do to alleviate that and to provide some relief to employers, strictly small businessmen, would be much appreciated and good for the economy of Kodiak as well as the rest of Alaska.

2:58:43 PM

MIKE MARTIN, President, Brechan Enterprises Construction Company, (Kodiak, Alaska since 1954): We have currently about 95 employees signed through the operators, laborers, teamsters, and carpenters unions. From 2004 to 2005 we've had an increase of \$277,000 or a 63 percent increase from 2004 just on workman's comp. How it works in the construction business, we have approximately \$20 million dollars worth for work this year that didn't take into consideration that type of increase. So, I have no way to recoup or to bid that type of increase into the work. Secondly, an issue in workman's comp, we had an employee, actually one of my favorite employees, 40 years old had a heart attack on the job, had nothing to do with work-related. He showed up in the morning and about 15 minutes later, not because of any incident, had a heart attack, had everything to do with the fact he was a heavy smoker, overweight. Yet, that cost me \$250,000 through insurance, which was a part of the increase.

The last issue I want to talk about is frivolous actions and injuries that take place. It is very prevalent unfortunately with some of the new people coming into this industry. They know they are going to be laid off and next thing you know they have a back injury. Very difficult to prove contrary to that and there are many things that are taking place in this industry right now along with the fact we have only one carrier, which is Alaska National and no other opportunity to have anybody else to carry this type of insurance. I've been listening to your discussion for the last hour and a half and you're talking about

the employees and I'm very glad the fact you are very interested in helping those folks out, but I can tell you right now if you don't do some help for the employers, those employees aren't going to have jobs from companies like us that have been around a long time. There are going to be companies that are billion-dollar companies that are self-insured and who can afford this type of insurance and the small business people and companies are no longer going to be around here if you folks don't figure out some way to help us out with these burdens we're facing here.

[3:01:32 PM](#)

WAYNE STEVENS, President, Alaska State Chamber of Commerce: Certain workers' compensation structures and current escalating rates are an ever-increasing burden on Alaska's businesses. State Chamber strongly urges the Legislature and administration to provide the environment for stable, fair, and competitive market place for both the insurer and the insured. The State Chamber encourages the Legislature to diligently work towards a solution for the workers' compensation insurance crisis and make meaningful insurance and regulatory reform during the first session of the 24<sup>th</sup> Legislature. State Chambers workers' compensation premium in 2003 for four employees was \$1,554. For this year it's \$2,774, which is an increase of roughly 78 percent, and that's with no claims history. We support efforts to make substantive reform to workers' compensation. We recognize that there is no single answer to solve the problem. We encourage all parties involved to make concessions to make this work. That includes the medical profession, the legal profession, the insurance industry, workers, and businesses. We need to provide an adequate safety net for workers hurt while on the job, but as Mr. Martin pointed out, let's not put the healthy worker out of work when the businesses they are employed by can no longer afford the premiums for workers' compensation insurance. Thank you.

DOUG WOLLIVER, administrative attorney for the Alaska Court System: As you know the court's decades old practice is not to take a position on legislation, we don't take a position on the merits of this one either. In fact, having listened to this now for the second year, I'm glad we don't have to. It seems like it's a nearly impossible problem to solve. My only purpose in testifying is to discuss that one section of the bill, which is Section 31 that would bypass the superior court and send appeals from the agency directly to the Supreme Court. For the past several years, I think my testimony last year was we averaged 36 cases a year to the superior court. Taking into account 2004

numbers it's now 34 cases a year. 75 percent of those cases don't go on to the Supreme Court. We average now an average of about 8.3 cases a year actually get appealed to the Supreme Court. The court doesn't believe that the passage of this bill is going to dramatically change the number of cases that come to the court system, and there are a variety of reasons for that. One, we already only receive a fairly small percentage of the decisions and orders issued by the workers' comp board. We don't think that small percentage is likely to drop, one because out of all of the workers' comp claims that are filed every year, out of the tens of thousands, there are always going to be some that even after the thorough process of review, there are going to be cases that are close calls where either side can disagree, where reasonable minds might disagree, where one side or the other is going to want to appeal the agency decision. We have appeals from our very best superior court judges; we'll have appeals from even a very competent workers' comp commission. Second reason is, every year or so there are at least a couple of novel legal issues, those will always go to the court system for final resolution. Additionally there are some people who simply don't trust the administrative agency process. We see this in all different types of administrative agencies in all different types of cases. In order to get to the court you have to exhaust your administrative remedies, in this case it would be through an appeal through the commission but those folks want their day in court and the only way to get your day in court is to appeal to the court system. Finally, there are always a handful of people every year that are simply tenacious litigants who are going to keep fighting until they win, even if their claim isn't particularly reasonable. We expect roughly the same number of cases that we have always seen. The only difference will be that they will come to the Supreme Court directly as opposed to coming to the superior court first. As I mentioned right now, the superior court takes off about 75 percent of those cases. One of the stated goals of many provisions in this bill including this one, is to help streamline the process and to get a final resolution of these cases as quickly as possible. One of the courts' concerns about this particular provision is that it will be working against that goal. We've heard testimony, and I've done some checking too on our own statistics, that most of the superior court cases take somewhere between 8 and 18 months to resolve. Our total taking into account all of our administrative appeals, which come to the superior court, we get about three hundred a year, I'd like to say only about 34 are workers' comp, but we get a lot of administrative appeals a year and they average about nine months to be resolved by superior court. I just went back through the

cases that went to the Supreme Court last year, the workers' comp appeals that went to the Supreme Court in 2004.

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They took an average of 20 months to be resolved. So what you're going to be doing in many of these cases is moving from a forum that takes 8-18 months to a forum that takes 20 months. You'll save time on some of those cases, any case that would have been appealed to the Supreme Court anyway, that 25 percent of the cases, you will save time on by simply cutting out the middle step, which is the superior court. But you will add time to the vast majority of those cases. So I'm not sure that we're meeting that particular aspect of the goal of the bill, which is to speed things up. That's the basis for our fiscal note. Our fiscal note is an attempt to add staff to Supreme Court that can specifically focus on these cases and these cases only as a way to not only offset the amount of time typical cases take in the Supreme Court but also to make sure that these cases don't have a significant impact on the amount of time it takes for the court to resolve all of the other cases that it has before it each year. And there are several reasons why the Supreme Court takes longer, very legitimate reasons.

3:08:29 PM

The superior court judge is, as I like to say, is a committee of one. You could probably move bills pretty quickly, Mr. Chairman, if you were the only one that had to decide them. But the Supreme Court is a deliberative body. There are five members. It takes longer by design. And so the point of the fiscal note is to try to reduce that amount of time to meet the goal of the bill, which is to move these cases as quickly as possible, although I don't know if we could ever, if the Supreme Court is ever going to move as fast as the superior court. They can at least work in that direction. That's my testimony, I'd be happy to take any questions.

3:09:01 PM

CHAIR BUNDE: Doug, one of the problems is that the superior court isn't precedent setting. Is there any way without setting the entire American system and jurisprudence on it's head to make that precedence setting, would that solve that, is there some way you could solve that problem?

DOUG WOLLIVER: Mr. Chairman, I don't know the answer to that. I don't think that you could, and I'm not sure that you would want to. One of the concerns that the sponsors have is that there is a whole variety of different judges involved in these cases. You

could have one - generally a precedent setting body is a single group of judges and there's consistency the same group is setting what the court of appeals or the Supreme Court. It's hard to have 34 different independent judges each setting precedent, which may consist of each other. Additionally, with respect to the precedent setting, if the commission is setting precedent, the problem of a lack of a court of appeals setting precedent is probably significantly less than it is now.

[3:10:06 PM](#)

SENATOR SEEKINS: Without speaking for the courts, do you think we are approaching a time where we need a civil court of appeals?

DOUG WOLLIVER: We are. In fact, it probably won't be too many years before the Supreme Court is asking for an intermediate civil court of appeals, although I can tell you the impetus for that is not likely to be the small number of workers' comp cases, it would be the family law cases that are currently an ever increasing percentage of the Supreme Court's case load.

SENATOR SEEKINS: In my overview of the courts and of the Judiciary Committee, it appears that is fast approaching in the analysis that I've gotten from the court systems and from members of the court that we may be very close to the point where we need to establish a civil court of appeals, which could be a precedent setting court.

[3:11:00 PM](#)

MR. WOLLIVER: In many states where the workers' comp does bypass their trial court, it's because they have an intermediate court of appeals that, or civil appeals, that does set precedent.

SENATOR SEEKINS: Mr. Wolliver, if I'm not mistaken, the criminal appeals court is three members?

MR. WOLLIVER: Yes it is.

SENATOR SEEKINS: But by adding three members to the court, on civil court of appeals, they could handle a broader spectrum of cases. If you had to say that compared to members that were paid fulltime as hearing officers in the system now, any idea where that would flush out in terms of expense?

MR. WOLLIVER: In a word, no.

[3:12:18 PM](#)

DR. JOHN DUDDY, orthopedic surgeon, president of Alaska Physicians and Surgeons, member, Board of Counselors for the American Academy of Orthopedic Surgeons: I implore you not to support SB 130. As an orthopedic surgeon, and a business owner, I understand that the workman's comp system is in need of repair, but the current bill before you is not the solution. This current bill is taking a sledge hammer when a surgical scalpel was needed. As you may already be aware, the physician community participated in the ad hoc committee appointed by the Governor. We agreed with their recommendations. As you previously heard on Tuesday, those recommendations have been totally disregarded. The bill in its current form will throw the baby out with the bathwater. The three components to this bill have already been previously discussed. The first component, which would be new to the workers' comp system, is the generic drug list. I suspect the adoption of a Medicaid-like generic drug list would be supported by the medical community. The next two aspects of SB 130, a rollback to the fee schedules of December 1999 and implementation of practice guidelines, I fear may have serious ramifications for the access of care for Alaska injured workers. The physician community in conjunction with the ad hoc committee, requested a list of procedural codes in November 2004 to help the committee's identification of over used services. We were never able to obtain this data. This data would have helped identify potential abuses in the system and would have been able to be helped curb specific excesses. Since the ad hoc committee's recommendations were never brought forth, specific recommendations couldn't be made. Instead the Governor's office has recommended implementing broad based guidelines utilizing the American College of Occupational and Environmental Medicine practice guidelines. My colleagues in orthopedic surgery across the nation tell me that these guidelines simply don't work. They don't take into account patient code morbidities, such as their overall state of health or other factors. When these cookie cutter approaches to medicine are implemented such as in California, they hurt the injured worker. In summary, I'm very concerned that the end result if this bill is passed will result in diminished access of care for the injured Alaskan worker. Thank you.

[3:15:16 PM](#)

CHAIR BUNDE: It's very clear we understand the opposition to the limit on payment and the guidelines escalating medical costs and I'm interested in those codes as well, but other than that, would you have - your organization have - other suggestions about how we might deal with these escalating medical costs?

DR. DUDDY: Has anyone considered a price freeze?

CHAIR BUNDE: I'm sorry?

DR. DUDDY: Has anyone considered just a price freeze?

CHAIR BUNDE: A price freeze at current levels?

DR. DUDDY: Yes.

CHAIR BUNDE: I think it's been discussed among some committee members, yes.

DR. DUDDY: I mean that would be the simplest approach. The bigger issue is not the change in fee schedules. That's the issue for a lot of physicians, but the biggest concern are the guidelines. The guidelines is going to make it so difficult to practice medicine. They don't take into consideration, and I've read the American College of Occupational Health guidelines. They just don't take into account every aspect that I see as an orthopedic surgeon. The perfect example of it is a colleague of mine in California had a patient with an ankle fracture. This guy weighed 400 pounds. The guidelines say they specify the amount of time necessary or expected for recovery and they specify the weight bearing status. In other words, the patient can't be weight bearing and it says that you can only have crutches. So when this injured worker applied for a wheelchair, it was turned down. A 400-pound guy couldn't wear crutches and he ended up falling and breaking his wrist. Cookie cutter approaches to medicine don't work.

CHAIR BUNDE: Thank you. We appreciate the additional information.

[3:17:21 PM](#)

ALAYNE LARSON: I've been in Kodiak for 25 years. I have a construction company. I build apartment buildings for my own personal use and I keep them for my own personal inventory. I'm not like Mike Brechan that builds for profit and has a much bigger business than me. But on a smaller scale, I'm here to tell you that workman's comp is such an issue for me every year when I go for my insurance renewals, if I'm not doing a big enough payroll, I can't get insurance. If I'm not doing \$200,000 worth of payroll, which is small in comparison to what Brechan's got to pay, and I'm not near in the same boat, but it's still affects me in the same sort of way. I can't even get workman's comp and I get thrown into pool, which then I have to pay 33

percent premium for being a special high-risk person. I've been in business 25 years and every year when insurance time rolls around, it's just an absolute horror show. If I'm not doing a big enough payroll, again, I get thrown into pool and every year I wonder if I'm even going to be insured with my liability and my workman's comp. I've never had claims, my risk ratios are great, so I know you have, I've sat here for an hour and a half along with Mr. Martin listening to your issues, but I'm here to tell you the sun is gone out of being in business 25 years, I'm a pretty good member of the community and we just did a project, \$1,400,000, the little town of Kodiak last year, which is a sizeable project. But it gets every year, you get to wonder if it's your last year being in business with the workman's comp skyrocketing. So thank you for hearing me, Juneau, Elaine Larson, Kodiak, Alaska.

CHAIR BUNDE: Ok, and thank you and trust me that we share your concerns that the problem will have fallouts for everyone if it's not solved.

[3:19:31 PM](#)

JOEL SIGMAN: I'm an injured worker. I'd like to know who does workman's comp actually work for because in my book, it's not the injured worker, it's the insurance companies and the doctors. And whoever else, I don't know, you guys tell me, but I've been living a nightmare. The insurance companies, I don't think there should be a workman's comp board, I think the insurance companies should have to cover their responsibilities. People shouldn't have to sell everything they've worked for all their life to be able to get help, and have to go on welfare because they cannot take and get anywhere. I've been struggling for eight years now and I've lost dang near everything I've owned, I had to get rid of it to get any help. I've been denied. I got dyslexia that I asked them to take and read me the things in the workman's comp board and they got all their attorneys there and everything, well, they refused to read them to me. They just tell me well either you sign it or you're cut off and you lose all your benefits and they would not read me anything. I asked them well, who do I go to see to get help so you can guide me in the right direction? And well we can't give you any advice. I mean, what is the point of having a workman's comp board if they ain't there for the people that's been hurt? These businesses and the insurance companies are making a killing and the injured worker is a dead man walking. He's no longer, my life is no longer my life, everybody else runs my life anymore. I can't do what I used to do. My family has done without. It's the workman's comp thing is a nightmare and I've gone to

attorneys and when I tell them well who the insurance companies are well, oh no we won't have nothing to do with that. We won't take it. So where do I go? I can't read and write. I don't know how to go about it and I've really been discriminated against all the way through this. I'm kind of against this thing you guys got going here because there's a lot of contradictions and stuff that ain't right to me and it looks like what it's basically for is to protect the employer and the insurance company and as far as the injured person, he's totally handicapped for life. He ain't worth nothing. My whole life's been shot down the drain. My family has gone through a nightmare. And there are a lot of other people out there, there are people out there, I've been denied, denied, denied and so have they. There are people who lost their houses, they've lost everything they've ever worked for. They've lost their families and then they take their lives because they ain't got nothing else left. There is a whole bunch of stuff that needs to be figured out to where the worker gets compensated instead of feeling like a number like you're in prison because when you get hurt, you're no longer a person, you're a number as far as the workman's comp board goes. So I always thought of myself more than a number. I've had a lot of people thought I've been a hard worker that would always hire me back and now I can't go to work. So what am I supposed to do? Everything they got going, social security, welfare and all this, they're trying to cut that out. I get \$17 a month for food for three people. Well, that's going to get me a long ways. I mean, nobody knows what workman's comp is all about until they wind up getting hurt and losing everything they got and see just how corrupt the system actually is. There's a whole lot more I got to say but you probably ain't got all day to listen to it but I really feel like I've been discriminated against, and my family has been having to suffer for the workman's comp and the insurance companies and the employers mistakes. I guess that's all I can say right now because I know you guys kind of on a time schedule but I'm really disappointed in the system and the way it works.

CHAIR BUNDE: Thank you Mr. Sigman for sharing your experience with us. We are certainly trying to make it better for everyone and you sharing your experience will help.

MR. SIGMAN: If the insurance company would pay for what they're supposed to, everybody wouldn't have to go on welfare, which would save the state a lot more money too. I don't see what, like I said, I'd like to know who the workman's comp board does work for.

[3:25:04 PM](#)

DR. BILL PFIEFER, Vice President, Alaska Chiropractic Society, and the American Chiropractic Association of Alaska delegate: SB 130 and the Governor's transmittal letter indicate that the ACOEM guidelines are to be used as a benchmark for medical treatment. You should have in front of you two studies that I forwarded to Senator Bunde's office. They are both analysis of those ACOEM guidelines that conclude and advise against using these guidelines without any substantial change. The mandated use of these guidelines is not based on solid scientific investigation or a consensus of those likely to be affected by its implementation. They point out that these guidelines do not currently represent an unbiased and comprehensive means of evaluating care rendered to injured workers and should be substantially modified or rejected. So given that I've got one minute, that concludes that, and I've asked you to review those documents and the Alaskan Chiropractic Society and the American Chiropractic Association stand ready to help you in any way that we can. I also have testimony that we submitted to the ad hoc committee that I'd be glad to make available to your committee or any other Senators or legislators.

CHAIR BUNDE: If you'd forward that to the committee, I'll see the committee members get a copy.

[3:26:42 PM](#)

MICHAEL CUNNINGHAM, chief financial officer, Chugach Electric Association: We have two primary workers comp classifications, clerical and electric light or power company. In both of these classifications over the last three years, we've seen rate increases between 78 and 86 percent in computing our manual rates. Obviously we've had to quit our workman's comp coverage, such as increasing our self-insured retention, things of that nature, to make the premiums more palatable. At this point, we're still evaluating the bill, and we do thank you for the opportunity to enter this testimony. Thank you.

[3:27:48 PM](#)

CHAIR BUNDE: That brings us to the allotted time and apologies to anyone who didn't get a chance to testify. This bill is still a work in progress. Obviously we're still just getting started in mark up. We will address the bill next Tuesday at 1:30 and that will be the sole focus of our attention at this point.

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There being nothing else to come before the committee, Chair Bunde adjourned the meeting at [3:28:20 PM](#).

