

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

March 25, 2015

3:18 p.m.

MEMBERS PRESENT

Representative Kurt Olson, Chair
Representative Shelley Hughes, Vice Chair
Representative Jim Colver
Representative Gabrielle LeDoux
Representative Cathy Tilton
Representative Andy Josephson
Representative Sam Kito

MEMBERS ABSENT

Representative Mike Chenault (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 114

"An Act relating to the calculation and payment of workers' compensation benefits in the case of permanent partial impairment; relating to the calculation and payment of workers' compensation death benefits payable to a child of an employee where there is no surviving spouse; relating to the calculation and payment of workers' compensation death benefits for an employee without a surviving spouse or child; relating to notice of workers' compensation death benefits; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 164

"An Act relating to insurance; relating to risk based capital for domestic insurers and fraternal benefit societies, including provisions related to insurers subject to risk based capital and action level event requirements; relating to review by the director of insurance of an insurer's risk based capital plan; relating to confidentiality and sharing of certain information submitted to the director of insurance for evaluating insurance holding companies, risk based capital, risk management, and own risk and solvency assessments; clarifying provisions related to risk based capital plans; relating to exemptions by the director of insurance for certain domestic and casualty insurers from risk based capital requirements; relating to insurance holding

companies, including filing requirements, divestiture, content of statements, and hearings; relating to registration requirements; relating to transactions within an insurance holding company system or transactions involving a domestic insurer; relating to management and examination of domestic insurers that are part of an insurance holding company system; adding provisions relating to participation by the director of insurance in a supervisory college; relating to civil and criminal penalties for violations of provisions related to insurance holding companies; relating to provisions for risk management and own risk and solvency assessments; relating to operating requirements for controlling insurance producers; relating to producer-controlled insurers; adding and amending definitions related to insurers; and providing for an effective date."

- MOVED HB 164 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 114

SHORT TITLE: WORKERS' COMPENSATION: DEATH BENEFITS

SPONSOR(S): REPRESENTATIVE(S) JOSEPHSON

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|----------|-----|---------------------------------|
| 02/18/15 | (H) | READ THE FIRST TIME - REFERRALS |
| 02/18/15 | (H) | L&C, FIN |
| 03/25/15 | (H) | L&C AT 3:15 PM BARNES 124 |

BILL: HB 164

SHORT TITLE: INSURANCE; RISK MG'T; HOLDING COMPANIES

SPONSOR(S): LABOR & COMMERCE

| | | |
|----------|-----|--|
| 03/23/15 | (H) | READ THE FIRST TIME - REFERRALS |
| 03/23/15 | (H) | L&C |
| 03/23/15 | (H) | L&C WAIVED PUBLIC HEARING NOTICE, RULE 23(A) |
| 03/25/15 | (H) | L&C AT 3:15 PM BARNES 124 |

WITNESS REGISTER

LEASA DAVIS, Risk Manger
Division of Risk Management
Department of Administration (DOA)
Juneau, Alaska

POSITION STATEMENT: Testified and answered questions on HB 114.

LORI WING-HEIER, Director

Division of Insurance
Department of Commerce, Community, & Economic Development (DCCED)
Anchorage, Alaska, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HB 114.

MICHAEL MONAGLE, Director
Central Office
Division of Workers' Compensation
Department of Labor & Workforce Development (DLWD)
Juneau, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HB 114.

MARIANNE BURKE
Anchorage, Alaska

POSITION STATEMENT: Testified during the discussion of HB 114.

LORI WING-HEIER, Director
Division of Insurance
Department of Commerce, Community, & Economic Development (DCCED)
Anchorage, Alaska, Alaska

POSITION STATEMENT: Presented a PowerPoint and answered questions discussion of HB 164.

ACTION NARRATIVE

[3:18:16 PM](#)

CHAIR KURT OLSON called the House Labor and Commerce Standing Committee meeting to order at 3:18 p.m. Representatives Tilton, Kito, Colver, LeDoux, Josephson, and Olson were present at the call to order. Representative Hughes arrived as the meeting was in progress.

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HB 114-WORKERS' COMPENSATION: DEATH BENEFITS

[3:18:40 PM](#)

CHAIR OLSON announced that the first order of business would be

HOUSE BILL NO. 114, "An Act relating to the calculation and payment of workers' compensation benefits in the case of permanent partial impairment; relating to the calculation and payment of workers' compensation death benefits payable to a child of an employee where there is no surviving spouse; relating to the calculation and payment of workers' compensation death benefits for an employee without a surviving spouse or child; relating to notice of workers' compensation death benefits; and providing for an effective date."

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REPRESENTATIVE JOSEPHSON, speaking as sponsor of HB 114, stated that the first thing HB 114 does is to increase the PPI [permanent partial impairment] amount, which has not been changed since 2000. The second part would offer a remedy for the estates of workers who have been killed or died at the workplace.

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REPRESENTATIVE JOSEPHSON said this bill was about a policy call under the Alaska Supreme Court decision related to AS 23.30, Ranney v. Whitewater Engineering, 122 P.3d 214 (Alaska 2005). In the foregoing case, Ms. Ranney, was unmarried with a long-time live-in boyfriend, Gary Stone and argued that she should receive death benefits when Mr. Stone died. The Alaska Supreme Court unanimously ruled that she should not receive them. It held that the legislature had undertaken some "line drawing" in the workers' compensation code. It noted that legislators frequently engage in line drawing. He suggested that the legislature needs to redraw some of the lines.

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REPRESENTATIVE JOSEPHSON stated that HB 114 would ask the legislature to reconsider redrawing some of the lines. He related that numerous single childless people live in Alaska. He further stated that if a single person dies at the workplace with no obvious third-party liability, for example, if the person falls off a ladder and dies, the remedy would be in Title

[AS] 23. Although he said he was not a personal injury lawyer, he suggested if the ladder had a bad rung and the person fell, the state might sue the manufacturer of the ladder. Typically, workplace deaths are due to a generally unsafe workplace or employee negligence and in instances in which an employee dies and is childless, AS 23 provides the estate with \$10,000 for funeral expenses and nothing more.

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REPRESENTATIVE JOSEPHSON offered that the employer might be subject to some occupational safety violations when a death occurs, but there wouldn't be any incentive to improve workplace safety. In the specific case that led to him filing this bill, an OSHA [Occupational Safety and Health Administration] investigation occurred. Overall, current law lacks any remedy for single people who die in the workplace, and often people postpone marriage or having children. He offered his view that this issue needs reform. In instances in which nothing malfunctions in the workplace or was tortuously manufactured, such as a badly designed product that exploded, Alaska does not allow the estate to sue for wrongful death nor is there any remedy other than the \$10,000 funerary expenses previously mentioned.

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REPRESENTATIVE JOSEPHSON referred to Section 1, which was an uncodified provision that requests the Act be called the Abigail Caudle Act, to reference an employee who was killed in the workplace in 2011. At the time, Ms. Caudle was working for an electrical contractor at a midtown Anchorage branch of Alaska USA and she suffered an electric accident, fell, and died as a result of those injuries.

REPRESENTATIVE JOSEPHSON stated that Section 2 would increase the permanent partial impairment (PPI) rating, noting that the PPI amount has not been increased from a whole body figure of \$177,000. This language would increase the rating to \$255,584 to reflect today's figures. He said that a doctor could find a

person suffered a partial permanent injury and if so, the system has scales for this depending on the loss.

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REPRESENTATIVE JOSEPHSON said that Section 3 would provide notice of death benefits so it is very clear to the estate of the deceased what the remedies are, including that the estate can hire an attorney, seek grief counseling, and other things an employer should provide.

REPRESENTATIVE JOSEPHSON referred to Section 4, noting that current law provides for funeral expenses. He provided details of the progression of spendable weekly wages a widow, widower, child, or children will receive ranging from zero to 100 percent, depending on the number of surviving family members. In response to Representative LeDoux he agreed this was current statute. He continued, noting that an only child without a surviving spouse would receive 100 percent of the benefits.

REPRESENTATIVE JOSEPHSON expressed concern that a teenager may receive only a few months of financial assistance and funeral expenses if his/her parent died in the workplace, since the support would end at either age 18 or 19 - he wasn't certain of the age limit; however, under the bill payments would continue for five years. He characterized current law as constituting a lack of generosity in the system. He reviewed paragraph (3) of existing law, pertaining to a surviving spouse who remarries and benefits are ceased after two years. Paragraph (4) [on page 3, lines 12-17] would increase the amount from the \$20,000 allowed for people dependent on the person who died in the workplace, such as an elderly parent or siblings, to the whole body amount of \$177,000 or potentially \$255,000 if the PPI is increased under the bill.

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REPRESENTATIVE LEDOUX related her understanding that under current law if the decedent was supporting relatives, they could receive \$20,000, but a child over 18 years of age would not

receive anything unless they supported a grandchild, who could receive benefits.

REPRESENTATIVE JOSEPHSON answered yes. He referred to the language in [paragraph] (4), stating that a son who was 18 and a half years old could receive an additional 6 months in benefits, but the person's grandchild, as a dependent could receive more as a percentage of the deceased's spendable weekly wages. In response to Representative LeDoux, he answered that existing law limited the support to \$20,000. He surmised the theory was that the nuclear family gets less important outside the ring of [the immediate family such as] parents or children.

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REPRESENTATIVE LEDOUX expressed concern since many parents currently support their children through college.

REPRESENTATIVE JOSEPHSON said this bill would allow for an extension. He referred to [page 3, line 25] to proposed Section 5, which would extend the death benefits paid to a child to age 24 to allow death benefits to continue and not stop at age 19, and it would continue as a fraction of the spendable weekly allowance, presumably to get the child of the deceased through college.

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REPRESENTATIVE JOSEPHSON directed attention to a final scenario, which brings Ms. Burke to Juneau. He indicated the deceased worker was single without any dependents. This bill proposes the estate would receive half of the whole body allowance in death benefits, which is approximately half of the \$177,000 [PPI] under current law or \$88,000. He directed attention to the fiscal note impact due to changes in the PPI, he said. He acknowledged that Chair Olson has his own bill related to PPI, which has not been increased since 2000 and should be adjusted to reflect the 2015 value.

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CHAIR OLSON commented that the fiscal note was significant.

REPRESENTATIVE JOSEPHSON said he also had questions about the fiscal note.

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REPRESENTATIVE JOSEPHSON referred to [paragraph] (6), and questioned differentiating between the estate of the single person with or without children. He suggested that the figures used were half the amount available under the modified [paragraph] (4), or half of \$177,000. Proposed Section 5 would adjust the amount based on the Consumer Price Index (CPI). He offered his belief that the benefits of passing HB 114 is that that it improve workplace safety, although it would be difficult to quantify; and it would reflect the PPI; and fundamentally would confirm that just because a person is single and dies in the workplace doesn't mean the individual's estate is not due any settlement.

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CHAIR OLSON asked whether the fiscal note applies only to state employees.

LEASA DAVIS, Division of Risk Management, Department of Administration (DOA) answered yes; stating that the fiscal note was based on the AWCB [Alaska Workers' Compensation Board] data for the past five years. She related her calculation, based on the PPI [permanent partial impairment ratings] benefit payout multiplied by 45,000. She said she reviewed the claim history and reported that one person died in the line of duty without leaving a family or dependents and the death benefit amount was averaged over five years.

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CHAIR OLSON asked whether the private sector would have more fatalities than the state.

MS. DAVIS answered that more fatalities happen with certain industries, such as high risk occupations, including public safety or those individuals who fly as part of their job duties.

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REPRESENTATIVE LEDOUX asked for further clarification on the fiscal note. She asked whether these changes would cost the state \$291 million.

MS. DAVIS explained that she inadvertently listed whole numbers of \$291,632 for six months and \$583,263 for a full year. She apologized for the error.

[3:43:31 PM](#)

REPRESENTATIVE KITO directed attention to the fourth paragraph of the fiscal note analysis that indicated the bill could result in a yearly average increase of \$23,585.40. He questioned this figure since there has only been one instance in the past five years. He asked for further clarification on the basis for the \$291,000 and \$500,000 projections.

MS. DAVIS explained the formula she used to arrive at the fiscal note figures. The fiscal note was based on the annual PPI [permanent partial impairment] payout over five years multiplied by the increase of the percentage of 44 percent. She also reviewed the six percent second injury fund amount and records to discover only one individual died due to an on the job fatality without any dependents. She averaged the foregoing death benefits over five years.

[3:45:06 PM](#)

REPRESENTATIVE KITO asked whether most of the increased costs in the fiscal note were due to the consumer price index (CPI) increase.

MS. DAVIS answered that she did not include the CPI since the state is entering a deflationary period so the future figures are unknown. She explained that the bulk of costs are due to

the actual PPI rate increase itself since the department sees a large number of PPI ratings for state employees.

REPRESENTATIVE KITO related his understanding that it was based on the historic catch up costs.

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REPRESENTATIVE COLVER related his understanding that the state entity is self-insured. He asked whether there was any type of reinsurance or umbrella policy for these kinds of claims.

MS. DAVIS answered no. She stated that the state was completely self-insured.

REPRESENTATIVE COLVER suggested that in his experience most government entities have another level of insurance as well as reinsurance.

CHAIR OLSON suggested that he was referring to liability insurance, and this bill relates to workers' compensation, which has an exclusive remedy.

REPRESENTATIVE COLVER said he was seeking a way to reduce the state's exposure.

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LORI WING-HEIER, Director, Division of Insurance, Department of Commerce, Community & Economic Development (DCCED), said that according to the National Council on Compensation Insurance - a statistical rating organization that sets rates in Alaska - the bill could possibly have a 4 percent impact on rates.

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MS. WING-HEIER, in response to Representative Colver, agreed self-insured entities frequently have a stop-loss or excess workers' compensation policy, typically in excess of \$500,000 or \$1 million, which is common for large employers. Further, larger employers often do not have policies because of the high

cost. If entities don't purchase the insurance, the division refers to the amount as the "burn layer." Basically, if entities do not exceed the costs very often, it is frequently better to save the [insurance fees] and use the money for claims expenses. She offered her belief that was what the state decided to do.

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CHAIR OLSON commented that if HB 114 were to pass, the bulk of the claims would fall under private policyholders rather than on the state.

MS. WING-HEIER added that most large employers may have small claims of \$20,000 to \$100,000 with an occasional large claim due to a significant injury or fatality.

[3:49:13 PM](#)

REPRESENTATIVE COLVER asked for the average fatality rate.

MS. WING-HEIER deferred to the Division of Workers' Compensation to respond.

[3:49:53 PM](#)

MICHAEL MONAGLE, Director, Central Office, Division of Workers' Compensation, Department of Labor & Workforce Development (DLWD), responded to an earlier question, noting that a child dependent was a child up to age of 19, with an additional four more years if they were attending college. In addition, he read a portion of the definition of "child" in existing law [under AS 23.30.395 (8)] as follows, "... are wholly dependent upon the deceased employee" Thus the death benefits can continue beyond the age of 19 if the child is dependent on the deceased employee. He clarified that the benefit was not limited to grandchildren, grandparents, or parents.

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REPRESENTATIVE LEDOUX related a scenario in which the decedent died while a child was a sophomore in high school, went to college, but decides to go to medical school. She asked whether the workers' compensation would cover it.

MR. MONAGLE answered no, since it says the first four years of college and the statute doesn't anticipate graduate school. He read additional language for the definition of "child" which read, "... are wholly dependent upon the deceased employee and incapable of self-support by reason of mental or physical disability, [and persons of any age while they are attending the first four years of vocational school, trade school, or college, and persons of any age while they are attending high school;"]]. In response to Representative Josephson, he offered the citation for the definition as AS 23.30.395 (7).

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REPRESENTATIVE HUGHES asked for more of a foundation since she was not familiar with workers' compensation. She recalled that the rates for the private sector might increase by 4 percent. She suggested that was an automatic payment, but she understood that the surviving family members often file lawsuits.

MR. MONAGLE answered that it depends. He informed members that workers' compensation is an exclusive liability, in fact, you cannot bring a separate action against employers even if they are negligent; however, there is a third-party exposure, for example, if a rung of a ladder or other machinery was defective. Since the exclusive liability does not extend to the third party, a lawsuit could be filed. However, workers' compensation law provides for an offset so the survivor would not receive the full death benefit plus the full third-party recovery since the employer would be allowed to reduce their benefit payments.

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REPRESENTATIVE JOSEPHSON asked whether the third-party recovery was from the second injury fund.

MR. MONAGLE answered no. He explained a separate provision in law allows an employer to offset any third-party recovery. He explained that the second injury fund was established through assessments against employer indemnity benefits. The second injury fund would be used in instances in which an employer hires a person with a qualifying preexisting condition and the employee has a subsequent workplace injury made worse by the pre-existing condition. If an employer hires an employee, knowing the employee has had a lot of back injuries, but the employee is subsequently injured, the fund will reimburse the employer for the indemnity benefit payments so long as it meets all the requirements for second injury fund reimbursement.

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MARIANNE BURKE began her testimony, as follows:

You have no idea what I've gone through to this point. This is bittersweet - to talk to you - I'm excited, but I'm saddened for the reason I stand before you. My daughter [Abigail Caudle] was killed in the workplace and no value at all - zero - was given for her life. When you talk about different money and stuff in the workplace environment - there was nothing given for her life, but the funeral costs. That's it - because she had no dependents. There is no liability to the employer. Nothing happened to the employers whatsoever because of "no fault" insurance. Nothing happens. If there is any payout, the insurance pays it - and I'll get to that in a minute. I just want to emphasize those two points before I start.

[3:57:07 PM](#)

MS. BURKE continued her testimony, as follows:

My daughter was the second child of four children, two boys and two girls. Her sister and she would play dolls growing up. She enjoyed soccer, basketball, babysitting, day care - she worked at Home Depot. She

volunteered at ChangePoint church doing lighting for all of their services for three years. She helped with the youth group at ChangePoint.

MS. BURKE paused to show photographs of her daughter.

MS. BURKE continued. She said:

My daughter was a new apprentice with Raven Electric so she was not with the unions. The private sector is not as "up" as the unions are sometimes. She was [indisc.] with a live wire. They were working on an open junction box in a bank remodel job taking down lights. The journeyman did not turn off the circuit breaker or lock and tag as he was supposed to. This was because he wasn't planning on doing that lighting that night. Usually he would bring temporary lights, but he wasn't planning on doing that work that night so they used the lights that were there and just turned off light switches. Abigail had an inadequate non-contact tester. It did not clamp onto the wire; it just went near the wire so it did not sense the live wire. She tried it twice. It showed green, safe or to go. And she touched the live wire; got locked up. Her coworkers tried to get her off the ladder. They couldn't. They finally kicked the ladder real hard and she fell off to the floor. She went into seizures. The others told that about 440 volts that went through her body. She [indisc.] defibrillator and she was taken to the hospital. She was 26 years old and she died on June 21, 2011. I cannot tell you how much we miss Abigail [indisc.]. Her sister does not have a sister anymore. Her brothers do not have a sister that they had anymore to talk with and be support with. Thank you.

[3:59:32 PM](#)

MS. BURKE said that about three months after her daughter's death she called numerous lawyers, but none would represent her since her daughter's death fell under workers' compensation.

She said the lawyers she contacted informed her they would not win the case and that similar cases had been taken to the Alaska Supreme Court and the plaintiff did not prevail. In fact, she couldn't even get any lawyer to take the case pro bono. Two years after her daughter's death she began fighting - by herself - for death benefits for her daughter. She could not sue the employer, she said, due to House Bill 323 that passed the legislature in 2004. Since her daughter's death was a work related death she also could not file a civil lawsuit or obtain any type of justice. Subsequently, the legislature considered House Bill 303, which would have allowed wrongful death cases to be filed civilly, but that bill did not pass, in part, since it was opposed by the business sector.

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MS. BURKE declared that workers' compensation laws give zero value to people like her daughter, a single worker without any dependents, except for funeral costs. Although the employer, [Raven Electric] received five citations from OSHA [the US Department of Labor, Occupational Safety and Health Administration], in which four violations were determined to contribute to her daughter's death, the company only paid \$11,000 to OSHA. In fact, OSHA advised her that after three years the employer's slate will be wiped clean. She was astonished at this outcome since her daughter's death constituted gross negligence by the employer. As the sponsor said earlier, the Abigail Caudle Act would update the value of an employee's life by increasing the PPI [permanent partial impairment] amount to \$256,000, noting the PPI has not been adjusted in 15 years.

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MS. BURKE stated that if the PPI figures were updated all of the people who are injured will receive compensation based on today's wages. Survivors of workers killed on the job would receive something, describing her feelings as hollow feelings since nothing was given for her daughter's life. She recommended the statute of limitations should be raised from one year to four years. She reported that California has a four-

year statute of limitation in wrongful deaths, and even though she recognizes that this bill pertains to workers' compensation, the statute of limitation still needs to be raised to four years. She explained that two years passes by quickly during a period of grief when losing a loved one and one year was simply insufficient.

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MS. BURKE said that this issue is a bipartisan issue and although she her political affiliation is Republican, a Democrat, Representative Josephson, stepped up to help her. She stressed that this issue adversely affects families. She urged the legislature to pass HB 114. Even though the bill may need additional work and businesses don't want to pay more for workers' compensation, perhaps businesses could elect to provide a life insurance policy for their employees or require them to obtain life insurance. Most importantly, under current law, employers can avoid purchasing safety equipment since they are not held accountable and lawsuits can't be filed against them. She felt it was crucial that the law recognizes that every person has value. She said one problem with workers' compensation was due to "no fault" insurance, which she characterized as being a nationwide problem.

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CHAIR OLSON stated that having an exclusive remedy means that workers' compensation will pay immediately, whether or not the claim is perceived as legitimate and it could be controverted if issues arise.

MS. BURKE offered his belief, shared by the workers' compensation staff she spoke to, that when a death occurs in the workplace it should cease to be a workers' compensation case. This was especially true in instances in which employers are negligent, which was the case in her daughter's death since the employees did not lock and tag, the employees did not communicate, and the employer failed to do a number of things it should have done. In fact, Abigail was a new apprentice, brand new, trusting her journeymen that she was safe, she said. Her

daughter's journeymen weren't even in the room when the electrical accident occurred. In closing she emphasized that when deaths occur, the matter should not fall under workers' compensation to allow for justice. She thanked members for allowing her to testify.

[HB 114 was held over.]

[4:06:23 PM](#)

The committee took a brief at-ease.

HB 164-INSURANCE; RISK MG'T; HOLDING COMPANIES

[4:07:16 PM](#)

CHAIR OLSON announced that the final order of business would be HOUSE BILL NO. 164, "An Act relating to insurance; relating to risk based capital for domestic insurers and fraternal benefit societies, including provisions related to insurers subject to risk based capital and action level event requirements; relating to review by the director of insurance of an insurer's risk based capital plan; relating to confidentiality and sharing of certain information submitted to the director of insurance for evaluating insurance holding companies, risk based capital, risk management, and own risk and solvency assessments; clarifying provisions related to risk based capital plans; relating to exemptions by the director of insurance for certain domestic and casualty insurers from risk based capital requirements; relating to insurance holding companies, including filing requirements, divestiture, content of statements, and hearings; relating to registration requirements; relating to transactions within an insurance holding company system or transactions involving a domestic insurer; relating to management and examination of domestic insurers that are part of an insurance holding company system; adding provisions relating to participation by the director of insurance in a supervisory college; relating to civil and criminal penalties for violations of provisions related to insurance holding companies; relating to provisions for risk management and own risk and solvency assessments; relating to operating requirements for controlling insurance

producers; relating to producer-controlled insurers; adding and amending definitions related to insurers; and providing for an effective date."

[4:07:50 PM](#)

The committee took an at-ease from 4:07 p.m. to 4:12 p.m.

[4:12:21 PM](#)

LORI WING-HEIER, Director, Division of Insurance, Department of Commerce, Community, & Economic Development (DCCED), began her PowerPoint on HB 164, related to insurance. She stated that the mission of the Division of Insurance is to regulate the insurance industry to protect Alaskan consumers [slide 1].

[4:13:48 PM](#)

MS. WING-HEIER stated that individual state governments are the primary regulators of insurance. In Alaska, the state regulates seven domestic insurance companies, including Alaska Vision, Sunderland Insurance Services, Inc., Alaska Timber Insurance Exchange that are domiciled in Alaska. The division regulates close to 1,100 foreign insurance companies.

CHAIR OLSON interjected that foreign insurance companies does not mean outside the country, but outside Alaska.

MS. WING-HEIER agreed. She named a few major foreign insurance companies, including State Farm, Geico, Safeco, Premera, and Aetna qualify but they are not domiciled in the state. She indicated it was due to the way these companies are incorporated. The ones [HB 164 would address] under discussion today are those domiciled within the state.

MS. WING-HEIER said that in 1945, Congress passed the McCarran-Ferguson Act (15 U.S.C. 1011 - 1015) which exempted: the business of insurance from most federal regulation, and to this date insurance has been regulated by states, and state-based regulation works [slide 3].

MS. WING-HEIER said that the act provided that, " ... [n]o Act of Congress shall be construed to invalidate, impair, or supersede any law by any State for the purpose of regulating the business of insurance" However, in 2010, Congress passed Dodd-Frank with a provision establishing the federal insurance office. Although it was currently set up as a non-regulatory agency, it is poised to step in and take over state-based regulation. She acknowledged that this wasn't something that is being addressed every day; however, the division is very much aware of its existence and the authorization it could hold over the states with federal regulation of insurance. Again, state-based regulation has been very successful for over 100 years.

[4:15:55 PM](#)

MS. WING-HEIER directed attention to slide 4, stating that during the 2007-2009 financial crisis which hit hard the financial services industry of which insurance is a part, the insurance industry was held as a shining example of what worked. The Independent Insurance Agents & Brokers of America (IIABA) agreed stating in a 2011 letter to the FIO: "Even during the most tumultuous of times, state insurance regulators ensure that insurers are solvent, that claims are paid, and that consumers are protected. The IIABA remains dedicated to preserving state insurance regulation." She said that this statement was powerful enough that the federal Government Accountability Office put it in its 2013 report to Congress.

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MS. WING-HEIER directed attention to slide 5, stating the National Association of Insurance Commissioners (NAIC) is the U.S. standard setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, of the protocols of the insurance companies, the producers, the brokers, and the adjustors. Through peer review, the division monitors companies, brokers, and ourselves, she said.

MS. WING HEIER acknowledged while much of the business of insurance is local in nature due to differences of risk and other factors particular to a local area, the elected or appointed state government officials who oversee the regulation of insurance companies and producers in their respective jurisdiction - the members of the NAIC recognize that there often is a need for national standards and uniformity.

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MS. WING-HEIER said the NAIC, working with regulators, promotes national standards, uniformity, reciprocity, and consistency at the national level through the development of model laws and regulations.

MS. WING-HEIER said much of the work of the NAIC is conducted through its committees, task forces, working groups, or subgroups. Alaska sits on two subcommittees: Property and Casualty Insurance, and Market Regulation and Consumer Affairs (C&D) committee, and 14 task forces, 3 liaison committees, including the American Indian and Alaska Native Liaison Committee, which she chairs; and numerous working groups. The committee level is where the discussion most likely begins in the consideration of a new model law.

MS. WING-HEIER said the NAIC members dedicate significant to educating consumers and the industry to support a model that has been adopted by the membership. Model laws are developed by drafting procedures that entail a rigorous process providing notice and opportunity for consumer groups and industry to comment. She said they take years to develop to the point at which they are presented to groups such as this committee.

MS. WING-HEIER said that both the parent committee, such as the Property and Casualty Committee, Finance Committee, or the Health Committee, with oversight for the subject area of a model law and the entire membership of the NAIC must adopt any proposed model law by a two-thirds majority vote. The state in most cases is not required to adopt the model law except in the circumstances such as the one today, which is the adoption of

the NAIC financial regulation standards & accreditation program [slide 6].

[4:20:07 PM](#)

MS. WING-HEIER said the mission of the NAIC's financial regulation standards & accreditation program is to establish and maintain state regulator standards to promote sound insurance company financial solvency regulation [slide 7]. Although it seems simple, but the state has seven domestic and 1,100 foreign insurance companies it monitors. The Department of Commerce, Community & Economic Development is a rather small department and with that many insurers, the state needs to be able to rely on its counterparts in other states to ensure that the insurance companies who are coming to Alaska to sell insurance to Alaskans meet a certain standard of financial solvency. In turn, other insurance commissioners or directors must be able to trust that insurance companies who are domiciled in Alaska doing business in the Lower 48 are also to financially solvent. Lastly, but equally important is consumer protection because an insurance company must be financially solvent to meet its contractual policy obligations to pay claims in the event of a loss to pay claims.

[4:21:39 PM](#)

MS. WING-HEIER directed attention to slide 8, and said that the accreditation program provides a process whereby solvency regulations of multi-state insurance companies can be enhanced and adequately monitored. As mentioned earlier, it is important for a small state that the insurance companies domiciled here or those operating here but domiciled in another state are being adequately regulated for financial solvency by the domiciliary state.

[4:22:16 PM](#)

MS. WING-HEIER said that Alaskan consumers could be negatively impacted as companies may decide not to operate in Alaska due to the duplicative examination costs incurred by operating in a non-accredited state. Thus, if Alaska loses its accreditation

and companies had to bear the expense of having every state conducting an examination of their financial records and could not accept theirs, they could elect to not to be domiciled in Alaska, which would reduce the number of insurers, a reduction in employment and in premium taxes paid to the state.

[4:23:04 PM](#)

CHAIR OLSON asked how much income the division generates each year.

MS. WING-HEIER answered that the division generates approximately \$55 million plus \$7 million in fees collected from producers in the insurance companies. In further response to a question, she said last year the division's budget was \$7.5 million and that the division is receipt-supported by the fees collected from insurance companies.

[4:23:48 PM](#)

MS. WING-HEIER stated the accreditation was for a five year period. One of the key components of the financial solvency regulation accreditation review will be a determination by the NAIC accreditation review team that the state has the necessary solvency laws and regulations to protect consumers and guarantee funds [slide 9]. She reported that the division was due for an interim audit in June 2015. She feared the division will not pass, which was why HB 164 is important.

[4:24:43 PM](#)

MS. WING-HEIER felt responsible for three provisions in HB 164 that should have been addressed two or three years ago, but she was not certain why the division did not request the changes. She referred to pages 2-8 to AS 21.14, related to risk based capital in the bill. Basically, this language would change the method of measuring the minimum amount of capital appropriate for an insurer to support its overall business operations in consideration of its size and risk profile. Capital provides a cushion to an insurer against insolvency and RBC will limit the amount of risk a company can take. Thus these provisions all

pertain to solvency. She said this should have been effective January 1, 2015. She acknowledged other provisions should have been effective on January 2014 and January 2016.

[4:25:38 PM](#)

REPRESENTATIVE LEDOUX related her understanding that in order to be accredited the legislature must pass HB 164.

MS. WING-HEIER answered yes.

[4:25:52 PM](#)

REPRESENTATIVE LEDOUX surmised that if the state is not accredited all sorts of problems happen.

MS. WING-HEIER answered yes.

CHAIR OLSON acknowledged that was the reason HB 164 is being fast-tracked.

[4:26:04 PM](#)

MS. WING-HEIER said the risk-based capital provides the cushion to protect solvency. The risk-based capital compares risk based on a ratio of the risk to capital. This means the division knows the company has enough capital for underwriting, other investments to ensure claims can be paid when Alaskan consumers submit the claims.

[4:26:36 PM](#)

MS. WING-HEIER directed attention to slide 11, to insurance holding companies, on pages 8-16 of the bill, which must be effective in 2016 in order for the state to pass accreditation. Referring back to the financial crisis in the Lower 48, many people probably heard of AIG [American International Group], which was a holding company. She said what brought down AIG was not its insurance operations, but aircraft leasing and other investments that AIG had made. The foregoing provisions would allow the state to review other operations insurance companies

have and not allow them to invest insurance dollars in other operations. She added that this language does require other reporting mechanisms, but that she essentially described what the holding company provisions of this bill would accomplish.

[4:27:42 PM](#)

CHAIR OLSON asked whether the financial crisis was also due to substandard mortgages.

MS. WING-HEIER answered yes.

[4:27:51 PM](#)

MS. WING-HEIER directed attention to slide 12, to Risk Management and Own Risk Solvency Assessment (ORSA). She described this as enterprise risk management that would require insurance companies to report to the state on confidential investments, as well as their risk management framework, to allow the state to see the how the companies are judging themselves. Although these provisions are not yet in the NAIC [National Association of Insurance Commissioners] model law, they have been proposed and the division anticipates these provisions will be adopted this fall.

[4:28:41 PM](#)

MS. WING-HEIER stated that the controlling insurance producer provisions should have been effective on January 1, 2014. Basically, these provisions would provide additional guidelines for businesses between the controlled insurers and controlling producers necessary for fiduciary and oversight reasons, for example, when an insurance producer owns the insurance company [slide 13].

[4:29:07 PM](#)

MS. WING-HEIER suggested that this bill needs to pass this year since the provisions must be in place by January 2016.

CHAIR OLSON commented that the director has only been on the job for a little over one year, approximately 15 months.

[4:30:01 PM](#)

REPRESENTATIVE LEDOUX directed attention to Section 1 of the bill and asked whether maritime policies were indemnity policies and if they will be included in the bill.

MS. WING-HEIER answered yes; for domestic companies, but generally speaking maritime insurance falls under surplus lines placement, typically offered through Lloyds of London.

[4:30:56 PM](#)

CHAIR OLSON commented that he did not believe any domestic insurer writes maritime coverages for at least 15 years.

REPRESENTATIVE LEDOUX asked whether Alaska National Insurance offers it.

CHAIR OLSON offered his belief the last one was Pacific Marine Underwriting Managers Ltd.

[4:31:16 PM](#)

MS. WING-HEIER said some incidental policies may be written, but it was not their main line of business for any of the foregoing companies.

CHAIR OLSON acknowledged that Alaska National Insurance writes some incidental coverage, and Longshoremen and Harbor Workers coverage, but he did not believe they offered offshore unless it would be workers' compensation for people working on the oil platforms.

MS. WING-HEIER suggested that Sunderland Insurance Services, Inc. may write some.

CHAIR OLSON said he stands corrected.

[4:31:45 PM](#)

REPRESENTATIVE HUGHES asked how much business insurance companies domiciled in Alaska provide outside Alaska.

MS. WING-HEIER answered that Sunderland Insurance Services does some, but Alaska National Insurance probably does the most and operates in Idaho, California, Louisiana, and are likely looking to expand. She suggested that the others are content to be in Alaska.

[4:32:44 PM](#)

REPRESENTATIVE HUGHES noted that obvious this is needed sooner rather than later. She asked whether anything in the bill that was not related for accreditation.

MS. WING-HEIER answered no; that the bill was limited strictly to accreditation and financial solvency for domestic insurance companies in Alaska.

[4:34:36 PM](#)

CHAIR OLSON, after first determining no one wished to testify, closed public testimony on HB 164.

[4:35:00 PM](#)

REPRESENTATIVE HUGHES moved to report HB 164 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 164 was reported from the House Labor and Commerce Standing Committee.

[4:36:00 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:36 p.m.