

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

January 27, 2016

3:19 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

SENATE BILL NO. 47

"An Act relating to exemptions for cash surrender values, accrued dividends, and loan values of life insurance and annuity contracts."

- HEARD AND HELD

OVERVIEW: DIVISION OF WORKERS' COMPENSATION ~ DEPARTMENT OF LABOR & WORKFORCE DEVELOPMENT

- HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 47

SHORT TITLE: LIFE INSURANCE/ANNUITY EXEMPTIONS

SPONSOR(s): SENATOR(s) COGHILL

02/11/15	(S)	READ THE FIRST TIME - REFERRALS
02/11/15	(S)	L&C, JUD
02/26/15	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
02/26/15	(S)	Heard & Held
02/26/15	(S)	MINUTE (L&C)
03/03/15	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
03/03/15	(S)	Moved SB 47 Out of Committee
03/03/15	(S)	MINUTE (L&C)

03/04/15	(S)	L&C RPT 3DP
03/04/15	(S)	DP: GIESSEL, MEYER, STEVENS
03/16/15	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/16/15	(S)	Heard & Held
03/16/15	(S)	MINUTE (JUD)
03/25/15	(S)	JUD AT 1:30 PM BUTROVICH 205
03/25/15	(S)	Bills Previously Heard/Scheduled:
03/30/15	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/30/15	(S)	-- Rescheduled from 3/25/15 --
03/31/15	(S)	JUD RPT 3DP 1NR
03/31/15	(S)	DP: MCGUIRE, COSTELLO, COGHILL
03/31/15	(S)	NR: WIELECHOWSKI
04/09/15	(S)	TRANSMITTED TO (H)
04/09/15	(S)	VERSION: SB 47
04/10/15	(H)	READ THE FIRST TIME - REFERRALS
04/10/15	(H)	L&C
04/15/15	(H)	L&C AT 3:15 PM BARNES 124
04/15/15	(H)	Heard & Held
04/15/15	(H)	MINUTE (L&C)
01/27/16	(H)	L&C AT 3:15 PM BARNES 124

WITNESS REGISTER

SENATOR JOHN COGHILL
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Speaking as the sponsor, introduced SB 47.

RYNNIEVA MOSS, Staff
 Senator John Coghill
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Speaking on behalf of Senator Coghill, sponsor, provided testimony during the hearing on SB 47.

LUKE FANNING, Vice President
 First National Bank Alaska
 Juneau, Alaska

POSITION STATEMENT: Speaking on behalf of the Alaska Bankers Association, testified in opposition to SB 47, and answered questions.

TOM SULLIVAN, Vice President
 Northrim Bank
 Juneau, Alaska

POSITION STATEMENT: Speaking on behalf of the Alaska Bankers Association, testified in opposition to SB 47, and answered questions.

CHARLES MCKEE

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 47.

LINDA HULBERT

Fairbanks, Alaska

POSITION STATEMENT: Testified in favor of SB 47, and answered questions.

JOE THOMAS, Deputy Commissioner

Office of the Commissioner

Department of Labor & Workforce Development

Juneau, Alaska

POSITION STATEMENT: Introduced Marie Marx, Director, Division of Workers' Compensation, Department of Labor & Workforce Development.

MARIE MARX, Director

Central Office

Division of Workers' Compensation

Department of Labor & Workforce Development

Juneau, Alaska

POSITION STATEMENT: Provided a PowerPoint presentation entitled, "The State of the Alaska Workers' Compensation Division Overview," dated 1/27/16.

ACTION NARRATIVE

[3:19:51 PM](#)

CHAIR KURT OLSON called the House Labor and Commerce Standing Committee meeting to order at 3:19 p.m. Representatives Olson, LeDoux, Tilton, Hughes, Colver, Josephson, and Kito were present at the call to order.

SB 47-LIFE INSURANCE/ANNUITY EXEMPTIONS

[3:20:05 PM](#)

CHAIR OLSON announced that the first order of business would be SENATE BILL NO. 47, "An Act relating to exemptions for cash surrender values, accrued dividends, and loan values of life insurance and annuity contracts."

3:20:51 PM

SENATOR JOHN COGHILL, Alaska State Legislature, sponsor of SB 47, informed the committee the bill would remove an exemption in [AS 09.38.025(a)] of the Alaska Exemptions Act. Currently, there is a \$500,000 "cap" on liability for annuities and contracts for trust doctrine issues. He opined the exemption should be lifted for public employees, and lifting the exemption would be a way to protect money for people who create a business in Alaska, and who could have all of their assets attached, after the \$500,000 limit. Senator Coghill related that the banking industry questioned whether the bill would allow money to be moved fraudulently, and he advised the answer to this lingering question was forthcoming. He stressed that the purpose of the proposed legislation is to protect those who have savings that are unprotected beyond \$500,000. As "trust people" have cautioned, he acknowledged that money may be brought into the state and protected, but that is not the primary purpose of the bill. Senator Coghill told of his family's experience with a small business that grew and then was lost in one year due to market dynamics; SB 47 may have given his father the opportunity to save enough from his business losses for retirement. This experience showed Senator Coghill what can be worked for and lost. He said he does not support fraud in any way, and there are other protections in the law which address fraud. The proposed legislation creates an important civil liability protection for those who have earned it. Senator Coghill stated his understanding of trust law is that if a liability is created from an operation, the operation still has to pay its liability, but personal assets are protected up to \$500,000. He advised that questions from the banking industry have arisen recently, however, he remains satisfied with the trust bill as written two years ago.

CHAIR OLSON stated that the bill would not move today, so questions can be answered, and suggested that the bill should move to the House Judiciary Standing Committee.

SENATOR COGHILL asked that the House Labor and Commerce Standing Committee address any questions concerning the bill.

3:26:53 PM

RYNNIEVA MOSS, Staff, Senator John Coghill, Alaska State Legislature, speaking on behalf of Senator Coghill, sponsor of SB 47, said that last year the committee requested a summary of

the state's income from premium taxes. Provided in the committee packet was a memo dated 1/25/16, which included a [partial] history of premium tax revenues from 1997 - when the first trust bill was passed - through 2015. In fiscal year 1997 [FY 97], premium tax revenues were \$28.4 million, and the anticipated income from said revenues in FY 15 is \$62.7 million. Ms. Moss recalled last year's committee packet included copies of [AS 21.36.360 Fraudulent or Criminal Insurance Acts] [document not provided], and advised that the Department of Law verified that the bill covers not only insurance agents, but also people who purchase life insurance policies. She summarized as follows: several years ago Senator Coghill sponsored a bill that put a \$500,000 exemption on un-matured life insurance policies and annuities; SB 47 would lift the \$500,000 exemption, so that life insurance policies and annuities are treated in the same manner as Employee Retirement Income Security Act (ERISA) retirements. Ms. Moss further explained that small businesses do not have opportunities to invest in retirement systems, so they invest in life insurance and annuities as retirement plans, and thus the proposed legislation intends to treat un-matured life insurance and annuities as retirement plans for small businesses and others.

[3:29:20 PM](#)

REPRESENTATIVE COLVER surmised the bill only protects life insurance and annuities contracts from bankruptcy and other creditor actions. He asked whether there are federal or state protections for individual retirement accounts (IRAs), and other retirement accounts, against claims by creditors or bankruptcy.

[3:30:22 PM](#)

MS. MOSS said she has read that IRAs are very similar to ERISA plans.

REPRESENTATIVE HUGHES expressed her understanding that public employees do not have an exemption on a retirement account. She asked whether there are retirement accounts, such as a 401(k), that a private individual can get and thus have the same protection. In fact, a 401(k) could be equal to what public employees have. Further, she questioned whether 401(k) is only available in an employer/employee situation, or if they are available to someone who is self-employed, and if so, other investors already have an option without a limit. She said, "... a public employee, they can't put all, all of their assets

in, into their employee retirement plans, so it's not, I don't know that we're creating a level playing field."

MS. MOSS responded that anyone can contribute to a 401(k); however, 401(k) accounts are affected by stock market values.

[3:33:01 PM](#)

REPRESENTATIVE LEDOUX asked whether there is a limit to the amount of money one can save in a 401(k).

MS. MOSS said she was unsure. She agreed to provide additional information regarding 401(k) accounts.

[3:33:46 PM](#)

REPRESENTATIVE JOSEPHSON directed attention to a document found in the committee packet entitled, "SB 47 Life Insurance & Annuity Exemptions FACT SHEET." The seventh paragraph read as follows:

Banks have a right to a collateral agreement for a loan using a life insurance policy as collateral.

REPRESENTATIVE JOSEPHSON said if the above paragraph is correct, the exemption in the bill can be waived.

MS. MOSS confirmed that the exemption can be waived. Also, the bank can ask a person, who has a life insurance policy, to sign off that policy as collateral when applying for a loan.

REPRESENTATIVE JOSEPHSON questioned whether that would be the protection that the bank would need; the exemption would exist until the holder of the insurance policy waived it in order to obtain a loan.

MS. MOSS agreed.

[3:34:57 PM](#)

CHAIR OLSON added that the attachment would be limited to the amount of the loan.

MS. MOSS said correct, the collateral would be for the amount of the loan.

REPRESENTATIVE JOSEPHSON said he assumed the bank would recognize the cash value at the time of the transaction, and if so, the expected annuity of \$500,000, or death benefit, would not be an issue.

MS. MOSS said correct.

REPRESENTATIVE JOSEPHSON directed attention to a letter [letter not provided] found in the committee packet from Lori Wing-Heier, dated 3/17/15, which clarifies what is also found in AS 09.38.065: a criminal act would cause the exemption to be lost. However, the letter said the bill would not provide an exemption for civil acts. He posed an example of a criminal act that garnered a civil judgement for a large amount resulting from a jury verdict that held the driver's insurance policy holder liable. He asked, "There's no way to pierce that veil is there, under this bill?"

MS. MOSS said no, there "... might be a fix that needs to be made."

[3:37:17 PM](#)

REPRESENTATIVE KITO expressed his concern about activities and/or judgements that take place outside of the state, and whether the state can legally respond thereto. For example, if a person who has a policy from another state, and who has a judgement - criminal or civil - placed against them in another state, has the ability to access the funds that were placed in trust in Alaska.

MS. MOSS advised that the State of Alaska can enforce [a judgement] in Alaska, but does not have jurisdiction outside of the state.

REPRESENTATIVE KITO concluded that if a judgement takes place in another state, "there's not the ability to get the whole life insurance policy from Alaska."

MS. MOSS said she assumed that the party has the ability to file a claim in Alaska.

REPRESENTATIVE JOSEPHSON inquired as to other pending legislation that would reduce tax rates on insurance and annuity instruments.

MS. MOSS answered that SB 15 reduced tax rates from 1.0 percent to 0.8 percent, passed the legislature and was signed into law.

3:39:31 PM

CHAIR OLSON opened public testimony on SB 47.

3:39:42 PM

LUKE FANNING, Vice President, First National Bank Alaska, informed the committee he was speaking on behalf of the Alaska Bankers Association (ABA), which represents all seven of the national, state, and federal savings banks in Alaska. Member banks are responsible for 85 percent of the non-public commercial lending in Alaska, as well as 2,500 employees across 130 bank branches statewide. In the past, ABA has been in support of trust legislation including SB 15. As background, he pointed out that in the context of SB 47, the cash value of life insurance and annuities is a form of investment, and not a discussion of death benefits: an annuity is a series of payments made while the purchaser is alive, and the cash value of life insurance is the cash given to a policy owner for canceling their contract, prior to maturity. Alaska law provides exemptions intended to save debtors and their families from hardship; the fundamental policy behind these exemptions is to ensure that the debtor is not left destitute after the distribution of his/her assets. After the discharge of debts, exemptions are the principal means by which a bankruptcy proceeding allows a debtor to rehabilitate himself/herself and this/her family financially. For example, there are exemptions for retirement plans and interest; in fact, exemptions extend not only to public employees and members of unions, but to all individuals. Senate Bill 47 is really about the ability to exempt sums placed into life insurance and annuity accounts in excess of a cash value of \$500,000, in addition to existing exemptions provided by pensions, a 401(k), profit-sharing IRAs, and other accounts. Mr. Fanning said there are many forms of creditors including: vendors; suppliers; contractors; civil judgements; banks; state, municipal, and federal governments; and child support. The existing \$500,000 exemption that SB 47 removes makes Alaska a safe harbor for those who wish to invest and shield their assets from creditors in the event of default or bankruptcy. He said ABA opposes SB 47 because it seeks to generate insurance and investment business by weakening creditor protections. In fact, each dollar shielded from creditors is one dollar denied to legitimate claims by those harmed. Also, ABA does not regard the comparison to public pensions valid

because of the availability of 401(k), IRAs, and pension plans. Furthermore, the benefits of a public employee may be accrued over a long career. An important reason for ABA's concern is that the bill provides a weakening of creditor protections which may restrict the ability to lend money, and would harm trade creditors as it "calls into question the dependability of a personal guarantee." Since banks are successful at protecting their risks in the case of default, unsecured and trade creditors are in the weakest positions. At this time, Alaska businesses and individuals are going to need access to credit, and he cautioned against raising barriers to credit. He informed the committee there have been instances of fraud, and legal counsel has advised the banking industry that existing exemptions in statute are insufficient to protect creditors in the case of fraud due, in part, to time limits.

[3:46:42 PM](#)

MR. FANNING noted that banks have been asked to create a document designed to pierce the exemptions established in SB 47. He pointed out that said "creditor's document" would not supersede SB 47. In closing, Mr. Fanning restated that ABA is generally very supportive of bills that would bring business into Alaska; however, ABA is concerned that SB 47 provides protections of wealth by denying the legitimate claims of creditors.

REPRESENTATIVE LEDOUX questioned why banks cannot create a document that would waive any defense to execution of a life insurance policy, or annuity contract, shielded previously by AS 09.38.025(a).

MR. FANNING restated that legal counsel advised that a bank is unable to create a document that would supersede terms provided in statute, and he gave an example. This is the basis of ABA's belief that the proposed legislation does not provide adequate protection to creditors.

REPRESENTATIVE TILTON referred to previous testimony that loans are also based on personal assets, and asked whether a loan decision can also be based on "cross-collateralization" of assets.

[3:49:36 PM](#)

TOM SULLIVAN, Vice President, Northrim Bank, explained that when a bank underwrites a loan, a variety of factors work in concert:

the primary source of repayment is cash flow from the operation; the secondary factor is the financial strength of the guarantors; the tertiary factor is collateral as a source of repayment. He agreed that the bank looks at the entirety of a loan package, which can be affected by weakening in one area.

REPRESENTATIVE TILTON observed that litigation of a suspected fraudulent bankruptcy allows for a reversal within a time period of 24 months. She suggested that this is a protection for creditors.

MR. FANNING said a bank may be able to pursue its options within the time period; however, the bank still must prove fraudulent intent, which is a difficult hurdle.

REPRESENTATIVE LEDOUX asked whether a person can put an unlimited amount of money in a 401(k).

MR. FANNING advised that there are federal limitations as to the amount that can be contributed - as well as to the amount of favorable tax treatment - associated with retirement accounts including 401(k) or IRAs. In a similar manner, a public employee has limitations on how much can be earned from a pension in a single year; on the other hand, the proposed exemption can be for a one-time purchase of an annuity or an investment asset, which is fundamentally different than the accumulation of pension benefits over multiple years.

[3:52:46 PM](#)

REPRESENTATIVE HUGHES asked:

If the fraud protections were strengthened, would you be able to support this, or is it just the idea of the exemption itself problematic, in other regards, for someone who wouldn't be doing it fraudulently?

MR. FANNING said the bank would still have to prove fraud and intent.

REPRESENTATIVE HUGHES then asked, "Have you examined that, is there a way to strengthen those statutes in a way that, that this general concept might be acceptable to you?"

MR. FANNING said he was unable to answer her question.

MR. SULLIVAN added that Mr. Fanning and he are representing bankers; however, there are other creditors - such as small businesses - that would not have the means to prove intent and would simply write-off the debt.

REPRESENTATIVE LEDOUX inquired as to whether an addition to the bill which specifically directed that a bank would be able to require that an applicant - as a condition to getting a loan - waive his/her defenses, would be acceptable to the banking industry.

[3:55:31 PM](#)

MR. SULLIVAN said he was unsure, and added that the issue is: Does that provide enough protection to not be superseded by SB 47?

REPRESENTATIVE LEDOUX clarified that the suggested change would be in statute, and not just written in the loan agreement.

MR. SULLIVAN said he was unsure.

MR. FANNING pointed out that doing so may negate much of the purpose of the bill.

REPRESENTATIVE JOSEPHSON redirected attention to a document found in the committee packet entitled, "SB 47 Life Insurance & Annuity Exemptions FACT SHEET," [text previously provided]. He asked whether the banking industry agreed.

MR. FANNING responded:

Whether I agree with that sentence or not, we would - as a practical matter - heavily discount any protection afforded by that sentence because it provides us no real means of adequately securing our loans, especially in context of the exemption.

REPRESENTATIVE JOSEPHSON asked - from the sponsor's standpoint - even though retirement pensions are earned over time, what the difference is in terms of either the ability to capture one asset and not the other, because a policy decision has been made to protect one type of asset and not another.

MR. FANNING opined, as a matter of public policy, there are protections for retirement accounts, and other exclusions, so one is not left destitute; on the other hand, he cited an

example of one who was acquitted in a criminal trial, but who was found responsible in a civil trial, and by moving to Florida, was shielded from paying a legitimate claim. In further response to Representative Josephson, he agreed that it is plausible that financial advisors and attorneys may advise their clients of protections afforded under SB 47, which is one of ABA's concerns with the bill.

[4:01:26 PM](#)

REPRESENTATIVE JOSEPHSON suggested that the position of ABA should be that the present exemption of \$500,000 is "too much, also ... if you're upset about unlimited, you should logically be upset about half a million dollars."

MR. SULLIVAN pointed out that the limit in California is approximately \$20,000; however, the existing limit of \$500,000 has not created any problems in Alaska, and he restated ABA's and creditors' concerns about fraudulent transfers.

REPRESENTATIVE JOSEPHSON referred to an un-matured life insurance policy, or an annuity, and said, "What is being protected doesn't have any present value to the holder of the instrument ... I have whole life insurance, but it doesn't, it's not going to benefit me today, I don't think."

MR. FANNING responded that a life insurance policy has a cash value that would be paid for canceling the policy prior to maturity; in fact, many people pay into policies for years and the cash value could be greater than \$500,000.

REPRESENTATIVE LEDOUX pointed out that once cashed out, creditors could execute on the proceeds.

[4:05:44 PM](#)

MR. FANNING opined that one who wished to shield assets from his/her creditors would not cash out a policy.

REPRESENTATIVE LEDOUX asked, "... then how do you get any benefit out of it?"

MR. SULLIVAN explained that the core of ABA's concern is: cash, or an asset that was used to support a credit decision, is changed into another instrument to which creditors do not have access.

REPRESENTATIVE JOSEPHSON referred to [AS 09.38.065 Claims enforceable against exempt property] which read in part:

(2) a creditor may make a levy against exempt property to enforce a claim for

(A) the purchase price of the property or a loan made for the express purpose of enabling an individual to purchase the property ...

(B) labor or materials furnished to make, repair, improve, preserve, store, ...

REPRESENTATIVE JOSEPHSON surmised that many loans relate to property, buildings, and their related labor, and he asked whether the above existing exemption would "cover you, in most instances."

[4:08:12 PM](#)

MR. FANNING relayed that legal counsel for First National Bank Alaska and Northrim Bank opined that the protections afforded in [AS 09.38.065] are of minimal value to the banks because they would be superseded by SB 47.

REPRESENTATIVE JOSEPHSON said:

But, if this statute's on the books, and theirs is too, a court would have to make them meld, that I know for sure ... so, I'd like that addressed. So, that bill would not trump this, unless it has a repealer in it that says it does. That's my understanding.

REPRESENTATIVE KITO described a recently purchased whole life policy, with a cash value of \$500,000, and asked how much insurance it would buy the holder. He said he would hold his question for a later witness.

REPRESENTATIVE LEDOUX questioned whether, without SB 47, if a person bought a life insurance policy in a state with an unlimited exemption, ABA could execute on that out-of-state policy.

MR. SULLIVAN said he did not know the answer.

REPRESENTATIVE LEDOUX commented that if a policy can be purchased now out-of-state, creditors are subject to the same risks anyway, with respect to sophisticated borrowers, and she did not see that SB 47 posed any additional problems for Alaska.

4:11:1 PM

CHARLES MCKEE provided comments that were not on topic with the published agenda, and said he was unhappy with the bill.

4:14:48 PM

LINDA HULBERT informed the committee she has lived in the Interior since 1968, working 20 years in the field of education, and the last 27 years working as an insurance agent with offices in Fairbanks and Anchorage. She said SB 47 raises significant revenue for the state, provides incentives for individuals to save for the future, and said savings are from after-tax income in an annuity, as in life insurance. For most residents, an annuity brings in 2.7 percent of funds deposited, and for life insurance 2.7 percent is gained up to the first \$100,000 deposited per year, and 0.8 percent is gained per year on amounts over \$100,000. Ms. Hulbert advised that this is a significant source of revenue; in fact, since the enactment of the trust act with the exemption of \$500,000, state premium tax revenue has increased from \$28.4 million to \$62.7 million. Furthermore, 30 other states offer some form of asset protection for life insurance, and several states offer unlimited exemptions. Ms. Hulbert pointed out that the residency of the owner of the policy determines whether a policy is exempt or not, thus if an Alaska resident owns a policy and moves to another state, the rules governing the policy are subject to the rules of the new state of residence. She clarified that when a bank or lender take access to a life insurance policy, the bank or lender is listed with the insurance company as a collateral assignee, and the individual is unable to acquire the cash value of their policy without permission or notification to the collateral assignee. In addition, most banks contact insurance companies annually to verify that their position is still in effect until the collateral assignment is removed and the bank releases the collateral assignment. Ms. Hulbert continued to explain that if a person dies and there is an assignment, the assignee is paid first, and the balance is paid to the beneficiary of the contract. She said her experience is that a bank has the right to take first position on a whole life or term life insurance policy, as well as on an annuity.

4:21:10 PM

REPRESENTATIVE LEDOUX asked whether SB 47 "would work" for the insurance industry and the trust industry if a waiver is written

into the bill. The previous discussion related to policies that have been written before loans were executed; however, she surmised the banking industry is concerned about a loan evaluation that is based upon personal credit, and then subsequently, the debtor places his/her funds in a life insurance policy. She restated her question.

MS. HULBERT was unsure as she is not an attorney. Currently, if someone wants to hide an asset, he/she would choose to do that in another jurisdiction because Alaska has very strong fraudulent transfer rules. She opined that most of those using life insurance and annuity products are using them for legitimate planning purposes.

REPRESENTATIVE JOSEPHSON observed that creditors are right to be insecure because even though there may not be an ill motive to defraud, a debtor may fail to make payments and his/her assets are insulated from creditors.

MS. HULBERT restated that Representative Josephson's example is not part of her experience; in fact, fraudulent transfer for large sums of money "is something that can be done in other ways." If the cash value is pulled out of a life insurance policy, the life insurance policy ceases to exist, which is not its intent. She added that in Alaska, people put their time and money into their businesses because they cannot afford to invest in a 401(k), which requires an employer-sponsored plan. A business person is limited to how much they can save for retirement, which is the reason to create a mechanism whereby people can put money aside for retirement.

[4:27:00 PM](#)

CHAIR OLSON announced SB 47 was held over with public testimony open.

OVERVIEW: DIVISION of WORKERS' COMPENSATION, Department of Labor & Workforce Development

[4:27:07 PM](#)

CHAIR OLSON announced that the final order of business would be an overview of the Division of Workers' Compensation, Department of Labor & Workforce Development (DLWD).

[4:28:27 PM](#)

JOE THOMAS, Deputy Commissioner, Office of the Commissioner, DLWD, introduced Marie Marx, Director, Division of Worker's Compensation, DLWD.

[4:29:24 PM](#)

The committee took a brief at ease.

[4:29:49 PM](#)

MARIE MARX, Division Director, Central Office, Division of Workers' Compensation, DLWD, provided a PowerPoint presentation entitled, "The State of the Alaska Workers' Compensation Division Overview." She informed the committee the mission statement of the Division of Workers' Compensation is: Ensure the quick, efficient, fair and predictable delivery of indemnity, medical and vocational rehabilitation benefits to injured workers at a reasonable cost to employers [slide 2]. Ms. Marx said the division operates 13 programs statewide with offices located in Fairbanks, Anchorage, and Juneau [slide 3]. Programs range from the adjudication of workers' compensation claims to the investigation of cases such as failure to insure, and to administering funds such as the Benefit Guaranty Fund. One of the challenges to meeting the division's mission is rising workers' compensation premium costs; Alaska has one of the highest workers' compensation premium rates in the U.S. [slide 4]. Ms. Marx directed attention to slide 5, which illustrated that Alaska is now ranked fifth in premium rates, behind California, Connecticut, New Jersey, and New York. Further, Alaska has consistently been near the top since 2004 [slide 6]. She explained that medical, indemnity, legal, and reemployment costs are driving increases in premiums [slide 7].

[4:32:42 PM](#)

REPRESENTATIVE HUGHES returned attention to slide 6, and asked what occurred to drive Alaska's ranking from fifteenth to second in the years 2002 to 2004.

MS. MARX answered that other states began to implement cost containment measures.

REPRESENTATIVE HUGHES further questioned whether the ranking changed because of actions by other states, or if costs in Alaska went significantly up.

MS. MARX recalled in 2007 there was a "softening" of the market and a weakening of the economy.

CHAIR OLSON added that in some cases medical costs in Alaska are 200 percent to 300 percent higher than in other West Coast states; many employers and self-insurers, including the State of Alaska, are exploring medical tourism to save money.

REPRESENTATIVE HUGHES summarized that between 2002 and 2004, Alaska's ranking changed due not only to improvements in other states, but to increasing costs in Alaska.

MS. MARX agreed. She said she would provide data from 2000 to 2004, and pointed out that 20 years ago indemnity, or non-medical costs, were the greater part of total losses; however, at this time about 76 percent of workers' compensation costs is medical cost.

CHAIR OLSON has related information that he will share with the committee.

[4:37:01 PM](#)

MS. MARX presented slide 8, which illustrated that medical costs are 76 percent and indemnity costs are 24 percent of the total cost; other states have medical costs of 60 percent and indemnity costs of 40 percent of the total cost. In 2005, in response to rising premium costs, the legislature established the Medical Services Review Committee (MSRC) to assist and advise the Workers' Compensation Board and the department on matters involving medical and related services provided under the Alaska Workers' Compensation Act [slide 9].

CHAIR OLSON recalled that the collection of data was delayed.

MS. MARX provided the purpose and membership of MSRC [slides 9 and 10]. In 2014, the legislature prescribed the development of new fee schedules based on resource based relative value scale (RBRVS); tasked MSRC with developing and recommending conversion factors to the commissioner of DLWD for regulatory adoption; and provided for an annual review [slide 11]. To accomplish its task of developing conversion factors, MSRC collected data, selected a third party vendor to assist, analyzed data on conversion factors, obtained feedback on the proposed conversion factors from constituency groups, and submitted conversion factors to the commissioner for review and adoption [slide 12].

REPRESENTATIVE JOSEPHSON questioned whether the starting point for the maximum allowable reimbursement (MAR) rates was a review of the Centers for Medicare & Medicaid Services (CMS) RBRVS rates.

MS. MARX explained the goal was to convert from the existing schedule in 2010 to [new] values on a neutral basis, thus MSRC looked at CMS base amounts - not Medicaid or Medicare payment amounts - but CMS base amounts, which are used as a factor to determine the amount of a Medicaid or Medicare payment. She provided a hypothetical example: a CMS base amount of two multiplied by a conversion factor of \$10 equals a payment of \$20; in order to determine MAR rates in Alaska, MSRC begins with the CMS base amount of two and applies "our own state-specific conversion factors that are set out in regulation" In further response to Representative Josephson, Ms. Marx said 2010 was used because it was the fee schedule in place.

[4:42:01 PM](#)

REPRESENTATIVE JOSEPHSON observed that if there were no increases by regulation from 2010 to 2015, whatever the usual and customary rate was for a procedure in 2010 was the maximum payment for the same procedure in 2015.

CHAIR OLSON explained that for many states, the National Council of Compensation Insurance (NCCI) sets rates which are used as a base, and then adjusted on the basis of costs, losses, and other factors.

REPRESENTATIVE HUGHES asked whether the CMS base value is set nationally and is not specific to Alaska.

MS. MARX advised that the RBRVS amounts are set through a collaborative effort by CMS and the Specialty Society Relative Value Skill Update Committee of the American Medical Association (AMA). Ms. Marx continued, noting that MSRC finalized its proposed recommendations on 4/20/15; a report was reviewed by the commissioner of DLWD and public comment was heard; after changes, MSRC forwarded its final recommendations to the commissioner and the board for adoption by regulation; and regulations were drafted and submitted to the commissioner, the Department of Law, and the lieutenant governor for final adoption (slide 13). Turning to the impact of the new fee schedule, she said NCCI estimated that the proposed changes to the Alaska Medical Fee Schedule would result in a reduction of 3.8 percent, or savings of \$11 million, and when self-insured

employers are included, the savings are estimated to be \$15 million [slide 14]. Finally, slide 15 was a detailed summary of the estimated impact the aforementioned cost containment measure would have.

4:46:25 PM

REPRESENTATIVE JOSEPHSON directed attention to slide 15 and concluded that a physician should expect to receive 1.2 percent less than he/she would receive now.

MS. MARX explained that physician charges account for 50 percent of all medical costs, and the estimated 1.2 percent impact on medical costs that is indicated on the slide represents 1.2 percent of all physician billings. She said, "Whether that equates to a specific bill reduction, I don't know that we can make that statement, that correlation."

REPRESENTATIVE JOSEPHSON recalled his concerns about previous legislation related to MSRC. He remarked:

In terms of any concern I had about providers wanting to do this kind of work, and making the kind of living that they expect to make ... and therefore, if they want to do it and they're making the living they want presumably there's access to them. That those concerns are mostly assuaged here, that is, what you've done is you've bent the curve but ... it isn't like doctors aren't going to make a living doing this.

MS. MARX agreed; in fact, the goal of the committee was to make a small reduction, so it began at a neutral point and took a percentage of between 75 percent and 80 percent. The decrease was not large, to purposely lessen the severity of the impact to medical providers. Also, the data will be reviewed annually to determine if there is an impact to access to care. In response to Chair Olson, she said the committee included four members who were not in the medical field, the director, and the remainder were in the medical field.

4:50:16 PM

REPRESENTATIVE LEDOUX asked whether workers' compensation claimants have the option of going out-of-state for care.

MS. MARX responded that worker's compensation does not have a directed care system and thus employees choose their treating

physician, with some restrictions, but there are no restrictions on going out-of-state to access care. In further response to Representative LeDoux, she said claimants can choose their treating physician, inside or outside of Alaska, and as long as costs are documented and are less, they may be accompanied.

REPRESENTATIVE JOSEPHSON returned attention to slide 15, column (A). He gave an example of an air ambulance that transports a patient and is paid 16.5 percent less than before. He asked whether the division would alert insurance companies about the anticipated reduced payments for service.

MS. MARX assured the committee that all members of constituency groups were invited to provide public comment to MSRC on numerous occasions; she opined the division made a thorough and concerted effort to reach constituency groups through listening sessions and public meetings.

CHAIR OLSON observed that cost shifting is not illegal in Alaska thus flights that were charged to workers' compensation could be over \$100,000, whereas a Medicaid patient would be charged \$25,000. He recalled testimony from a representative of an air ambulance service that "somebody has to pay." Chair Olson characterized charges for medivacs from the North Slope as appalling.

REPRESENTATIVE LEDOUX inquired as to why the laws of supply and demand do not encourage competition from other air carriers.

REPRESENTATIVE HUGHES commented that Alaska Trauma, a medical organization, is trying to coordinate between 24 hospitals in order to save time and travel costs in the case of an accident. She encouraged the division to communicate with this organization.

MS. MARX summarized: Alaska is taking steps to address workers' compensation premium costs, although there is much work still to be done.

CHAIR OLSON has heard that NCCI will issue an interim rate adjustment.

MS. MARX offered to provide further information in that regard. In response to Representative Josephson, she explained that ASC stands for an ambulatory surgical center, which provides same day surgery services.

REPRESENTATIVE JOSEPHSON asked for the purpose of the emergency regulations issued by the board in December, 2015.

MS. MARX said the aforementioned regulatory process was complicated and involved MSRC, the division, and the board. Due to deadlines related to the regulations, emergency regulations were issued to ensure that the regulations were in effect by 12/1/15, to meet the legislative mandate, and prevent "a gap of a month, where there would be no fee schedule." The emergency regulations were made permanent by a vote of the board, and they have been approved by the commissioner.

[5:00:26 PM](#)

REPRESENTATIVE HUGHES asked how all health care costs in Alaska generally compare with those of other states, and how workers' compensation medical costs compare. She suggested that if overall costs were reduced, worker's compensation costs would be reduced as well. She expressed her understanding that Medicare and Medicaid rates are used to set the rates in each state, thus if Medicaid rates came down, all charges by providers would be affected. Representative Hughes asked Ms. Marx if any state has successfully lowered its Medicaid rates, and whether workers' compensation costs followed suit.

MS. MARX said she will provide the requested information.

[5:03:01 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:02 p.m.