

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

March 30, 2016

3:23 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. 214

"An Act repealing the Workers' Compensation Appeals Commission; relating to decisions and orders of the Alaska Workers' Compensation Board; relating to superior court jurisdiction over appeals from Alaska Workers' Compensation Board decisions and orders; repealing Rules 201.1, 401.1, and 501.1, Alaska Rules of Appellate Procedure, and amending Rules 202(a), 204(a) - (c), 210(e), 508(g), 601(b), 602, and 603, Alaska Rules of Appellate Procedure; and providing for an effective date."

- MOVED CSHB 214(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 372

"An Act relating to insurance; relating to expenses for insurance examinations; relating to regulations for insurance utilization review, benefits determination, health care insurance grievance resolution procedures, independent review of adverse determinations or final adverse determinations, independent review organizations, and continuing education providers; relating to required provisions for health care insurance contracts and policies, including health care provider choice; establishing civil penalties for insurers for failure to provide requested records; amending the definition of 'wet marine and transportation' insurance; amending provisions on limited licenses to include crop insurance; relating to third-party administrator notification requirements; relating to

certification filing by reinsurance intermediary brokers; relating to rate filings, delivery of insurance policies or endorsements; relating to refunds of variable life insurance policies and variable annuities; establishing limitations on issuance of long-term care insurance; relating to requirements for group health insurance policies; amending the definition of 'group health insurance'; relating to motor vehicle service contracts; relating to notice requirements for meetings of stockholders or members of a domestic insurer; establishing a definition of 'bona fide association'; relating to requirements and penalties for committing a fraudulent or criminal insurance act; updating criteria for examinations; relating to rate filing deviations; establishing civil penalties for certain wilful violations; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 281

"An Act relating to real estate broker licensure; relating to the real estate commission; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 290

"An Act extending the termination date of the Real Estate Commission; and providing for an effective date."

- MOVED HB 290 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 214

SHORT TITLE: REPEAL WORKERS' COMP APPEALS COMMISSION

SPONSOR(S): REPRESENTATIVE(S) OLSON

01/19/16	(H)	PREFILE RELEASED 1/8/16
01/19/16	(H)	READ THE FIRST TIME - REFERRALS
01/19/16	(H)	L&C, JUD
03/14/16	(H)	L&C AT 3:15 PM BARNES 124
03/14/16	(H)	Heard & Held
03/14/16	(H)	MINUTE(L&C)
03/18/16	(H)	L&C AT 3:15 PM BARNES 124
03/18/16	(H)	Scheduled but Not Heard
03/28/16	(H)	L&C AT 3:15 PM BARNES 124
03/28/16	(H)	Scheduled but Not Heard
03/30/16	(H)	L&C AT 3:15 PM BARNES 124

BILL: HB 372

SHORT TITLE: OMNIBUS INSURANCE

SPONSOR(S): LABOR & COMMERCE

03/21/16	(H)	READ THE FIRST TIME - REFERRALS
03/21/16	(H)	L&C
03/28/16	(H)	L&C AT 3:15 PM BARNES 124
03/28/16	(H)	Heard & Held
03/28/16	(H)	MINUTE(L&C)
03/30/16	(H)	L&C AT 3:15 PM BARNES 124

BILL: HB 281

SHORT TITLE: REAL ESTATE BROKER LICENSURE REQS

SPONSOR(S): MUNOZ

01/29/16	(H)	READ THE FIRST TIME - REFERRALS
01/29/16	(H)	L&C
03/30/16	(H)	L&C AT 3:15 PM BARNES 124

BILL: HB 290

SHORT TITLE: EXTENDING THE REAL ESTATE COMMISSION

SPONSOR(S): LABOR & COMMERCE

02/01/16	(H)	READ THE FIRST TIME - REFERRALS
02/01/16	(H)	L&C, FIN
03/30/16	(H)	L&C AT 3:15 PM BARNES 124

WITNESS REGISTER

LAURA STIDOLPH, Staff
Representative Kurt Olson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: On behalf of Representative Olson, sponsor, presented changes in the committee substitute (CS) for HB 214, Version P.

NANCY MEADE, General Counsel
Office of the Administrative Director
Alaska Court System
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 214.

ANNA LATHAM, Legislative Liaison
Office of the Commissioner

Department of Labor & Workforce Development
Juneau, Alaska

POSITION STATEMENT: Answered a questions during the hearing on
HB 214.

MARIE MARKS, Director
Central Office
Division of Workers' Compensation
Department of Labor & Workforce Development
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing of HB
214.

ANDREW HEMENWAY, Chair
Workers' Compensation Appeals Commission
Division of Workers' Compensation
Anchorage Office
Department of Labor & Workforce Development
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing of HB
214.

TERRY HARVEY, Staff
Representative Cathy Munoz
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Speaking on behalf of Representative Munoz,
sponsor of HB 281, introduced the bill and answered questions.

NANCY BLATCHLEY DAVIS, Chair
Alaska Real Estate Commission
Sitka, Alaska

POSITION STATEMENT: Testified during the hearing of HB 281.

KRIS CURTIS, Legislative Auditor
Legislative Audit Division
Legislative Agencies and Offices
Juneau, Alaska

POSITION STATEMENT: Answered a question during the hearing on
HB 281.

TRACI BARICKMAN, Real Estate Broker
Sutton, Alaska

POSITION STATEMENT: Testified in support of HB 281.

LAURA STIDOLPH, Staff
Representative Kurt Olson

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: On behalf of Representative Olson, chair of the House Labor and Commerce Standing Committee, sponsor, introduced HB 290.

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

POSITION STATEMENT: Answered questions during the hearing on HB 290.

KRIS CURTIS, Legislative Auditor
Legislative Audit Division
Legislative Agencies and Offices
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 290.

ERROL CHAMPION, Chair
Industry Issue Key Work Group
Alaska Association of REALTORS
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing of HB 290.

ACTION NARRATIVE

[3:23:23 PM](#)

CHAIR KURT OLSON called the House Labor and Commerce Standing Committee meeting to order at 3:23 p.m. Representatives Olson, Tilton, Kito, Josephson, Hughes, LeDoux, and Colver were present at the call to order.

HB 214-REPEAL WORKERS' COMP APPEALS COMMISSION

[3:23:31 PM](#)

CHAIR OLSON announced that the first order of business would be HOUSE BILL NO. 214, "An Act repealing the Workers' Compensation Appeals Commission; relating to decisions and orders of the Alaska Workers' Compensation Board; relating to superior court jurisdiction over appeals from Alaska Workers' Compensation Board decisions and orders; repealing Rules 201.1, 401.1, and

501.1, Alaska Rules of Appellate Procedure, and amending Rules 202(a), 204(a) - (c), 210(e), 508(g), 601(b), 602, and 603, Alaska Rules of Appellate Procedure; and providing for an effective date."

[3:24:09 PM4](#)

LAURA STIDOLPH, staff to Representative Kurt Olson, Alaska State Legislature, speaking on behalf of Representative Olson, sponsor of HB 214, introduced the proposed committee substitute for HB 214, [labeled 29-LS0854\P], noting that the bill is at the request of the commissioner of the Department of Labor & Workforce Development. At the previous hearing on 3/14/16, the Alaska Court System requested changes bringing back the original language from the Workers' Compensation Act - enacted prior to the establishment of the Worker's Compensation Appeals Commission in 2005 - and adding language related to the transfer of files to the Alaska Court System.

[3:25:06 PM](#)

REPRESENTATIVE HUGHES moved to adopt the proposed committee substitute (CS) for HB 214, labeled 29-LS0854\P, Wallace, 3/21/16, as the working document.

[3:25:21 PM](#)

CHAIR OLSON objected for discussion purposes.

MS. STIDOLPH paraphrased the following summary of changes for HB 214, page 3, lines 6-31, and page 4, lines 1-11 [original punctuation provided]:

Section 5. AS 23.30

Page 3, Lines 6-31 and Page 4, Lines 1-11

Delete all the material and insert original language from the Workers' Compensation Act (AS 23.30.125) from 2004 prior to the establishment of the WCAC.

MS. STIDOLPH said the proposed change to Section 5 was at the request of the Alaska Court System to return power back to the superior court. She continued to page 5, lines 24-26, and paraphrased from the following summary of changes [original punctuation provided]:

Section 12. Transitional Provisions

Page 5, Lines 24-26 (a)

Delete all material after "shall" and insert "be transferred to the superior court in the judicial district where the original claim was filed, under AS 22.10.020 and Rules 604(b) and 609, Alaska Rules of Appellate Procedure.

Page 5, Line 30

After "June 1, 2016" insert "within 30 days after the date that the board decision becomes final."

Page 6, Lines 1-17

Delete all material in (c) and (d) and replace with new language.

REPRESENTATIVE COLVER asked for the time period available for a party to appeal after a decision is made.

MS. STIDOLPH said on or [before December 1, 2016], a party seeking review may file an appeal or petition for review with the supreme court as stated in [Section 12, subsection (c)].

[3:29:40 PM](#)

REPRESENTATIVE COLVER asked for clarification that an appeal of a decision by the Workers' Compensation Board (board) would be filed within 30 days.

[3:29:52 PM](#)

MS. STIDOLPH said, "It's ... thirty days after the date that the board decision becomes final." She continued to page 6, line 22, and paraphrased the summary of changes, as follows: [original punctuation provided]

Section 13. Terms of Commissioners

Page 6, Line 22

Remove "February 20, 2017" and insert "December 31, 2016."

Section 14. Conditional Effect

Page 6, Line 25

Insert "CONDITIONAL EFFECT. This Act takes effect only if secs. 8 and 10 of this Act receive the two-thirds majority vote of each house required

by art. IV, sec. 15, Constitution of the State of Alaska.

REPRESENTATIVE LEDOUX questioned whether HB 214 exactly returns legislation to the language before changes were made in 2005.

MS. STIDOLPH said yes.

[3:31:13 PM](#)

CHAIR OLSON removed his objection. There being no further objection, Version P was before the committee.

REPRESENTATIVE HUGHES asked why the act takes effect June 1, 2016.

MS. STIDOLPH was unsure.

[3:32:08 PM](#)

NANCY MEADE, General Counsel, Administrative Staff, Office of the Administrative Director, Alaska Court System, informed the committee the bill reverts the appeals procedure to that in 2005, and the Alaska Court System sought the same wording as existed in 2005, so that all case precedents would remain applicable, and to streamline case decision-making. In addition, the transitional provisions ensure that the files transferred from the Department of Labor & Workforce Development (DLWD) are in the proper format.

[3:34:05 PM](#)

ANNA LATHAM, Legislative Liaison, Office of the Commissioner, DLWD, in response to Representative Hughes' question, responded that DLWD requested the effective date to be June 1, 2016, so that the Workers' Compensation Appeals Commission (commission) would have until November 1, to finalize cases.

REPRESENTATIVE JOSEPHSON questioned whether an aggrieved party would have until November to file an appeal to the commission, or if they could wait and appeal to the superior court.

MS. MEADE stated that after June 1, an appeal of a final decision of the commission would be submitted to the superior court; furthermore, anything pending with the commission in November will be transferred to the court. In response to an

earlier question from Representative Colver, she pointed out that proposed Section 5, page 3, lines 6-10, clarifies that the decision of the commission becomes final on its 31st day, after which an appeal can be accepted. In response to Representative Josephson, she said the commission will not accept new appeals after June 1.

REPRESENTATIVE COLVER assumed filed decisions are written orders.

MS. MEADE said yes.

REPRESENTATIVE COLVER suggested that during the 31 days there is an opportunity for a party to ask for partial reconsideration before the order is final.

[3:38:31 PM](#)

MARIE MARKS, Director, Central Office, Division of Workers' Compensation, DLWD, answered that a decision by the Workers' Compensation Board is issued in a written format and becomes effective when signed and served on all parties. At that time, a prospective appellant has 14 days to ask the board for reconsideration, and 30 days to appeal its decision to a higher power. If the board takes no action, the power to reconsider ends, and she opined that in the proposed version, "if you don't reach that 30-day window by June first, you need to go ahead and seek appeal with the superior court. So, it's June first, and you have to reach your 30-day window before June first, that's my understanding of the working draft."

REPRESENTATIVE COLVER questioned if a party asked for reconsideration within the 14-day period, whether that would stay the 30-day period for appeal.

MS. MARKS said no, the periods proceed at the same time. In further response to Representative Colver, she said the board must take action on reconsideration within the 14-day period by contacting the parties, and if no action is taken, that is a denial of reconsideration.

REPRESENTATIVE COLVER observed that the board process is unchanged, except that the appeal would go to the superior court.

MS. MARKS agreed. She added that every decision issued informs the parties of their right to ask for reconsideration or

modification; the only change made by the proposed legislation is that the appeal would go to the superior court rather than the commission.

[3:42:56 PM](#)

REPRESENTATIVE LEDOUX inquired as to how many cases would be caught in the transition brought about by the legislation.

MS. MEADE was assured there would be about six cases or less pending before the commission, but not resolved.

REPRESENTATIVE LEDOUX posited if a case is not resolved, the parties must submit new briefs.

MS. MEADE acknowledged there may be some delay during the transition process; however, parties would not have to re-brief because the commission will provide documents in the proper form. She said she anticipates working with DLWD to minimize delay.

REPRESENTATIVE COLVER inquired as to whether there still is a hearing officer who hears the initial request for benefits or compensation.

MS. MARKS explained that a board decision is made by a board panel consisting of two or three members: one chair, who is a staff attorney; one labor representative; and one industry representative.

[3:46:52 PM](#)

REPRESENTATIVE COLVER related his experience that attorney fees were a time-consuming issue.

MS. MARKS said the fees awarded at the board level follow a statute that provides for actual attorney fees when restrictions are met.

MS. MEADE directed attention to the bill on page 4, lines 9-11, which read:

(g) A court may not make an award of costs and attorney fees against an injured worker unless the court finds that the worker's position on judicial review was frivolous or unreasonable or the judicial review was sought in bad faith

MS. MEADE said subsection (g) is the statutory guidance given to the courts on how to award attorney fees. Generally on appeal, the court has different provisions than at the board level.

MS. MARKS restated that with exceptions, at the board level attorney fees are full, actual, and reasonable.

MS. MEADE recalled there was much litigation about attorney fees in workers' compensation cases at the superior court level, and prior case decisions will be effective.

REPRESENTATIVE COLVER stated that subsection (g) was also a protection for the worker.

MS. MEADE indicated yes.

REPRESENTATIVE COLVER gave an example of a case in which the injured worker prevailed and asked, "and then the insurance company, the workers' comp carrier, then would be liable to cover the injured worker's fees, right?"

MS. MARKS advised that the board will award reasonable fees to be paid to the employee's attorney on the issue(s) on which they prevail, and those fees are a compensation benefit, so the entity that pays compensation benefits would be responsible.

REPRESENTATIVE COLVER asked for an indication of whether attorney fees are a big issue.

[3:51:36 PM](#)

ANDY HEMENWAY, Chair, Workers' Compensation Appeals Commission, Anchorage Office, Division of Workers' Compensation, DLWD, advised that for cases that were appealed from the commission to the supreme court, attorney fees are a common - but not the most common - subject for litigation beyond the appeals commission. The experience at the appeals commission is that it is not a major subject in terms of the amount of fees.

REPRESENTATIVE LEDOUX asked whether attorneys are granted full reasonable fees before the appeals commission.

MR. HEMENWAY said the same standards apply before the commission, as apply before the board.

REPRESENTATIVE LEDOUX asked about attorney fees garnered for cases before the superior court.

MS. MEADE will provide an answer to the committee.

CHAIR OLSON said the issue can be addressed in the next committee of referral, the House Judiciary Standing Committee.

REPRESENTATIVE HUGHES asked what differs between the language in HB 214, and the related statute prior to the changes made in 2005.

MS. MEADE said Section 5, subsection (a) provides timelines that are slightly different, but clearer. On page 3, lines 11-31 are copied from the 2005 law; on page 4, lines 5-11 are subsections which did not appear in the 2005 law, and that were added by DLWD.

[3:57:51 PM](#)

CHAIR OLSON opened public testimony on HB 214; after ascertaining no one wished to testify, public testimony was closed.

[3:58:42 PM](#)

REPRESENTATIVE HUGHES moved to report the committee substitute (CS) for HB 214, Version 29-LS0854\P, Wallace, 3/21/16, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 214(L&C) was reported out of the House Labor and Commerce Standing Committee.

[3:59:04 PM](#)

The committee took an at ease from 3:59 p.m. to 4:01 p.m.

HB 372-OMNIBUS INSURANCE

[4:01:22 PM](#)

CAIR OLSON announced that the next order of business would be HOUSE BILL NO. 372, "An Act relating to insurance; relating to expenses for insurance examinations; relating to regulations for insurance utilization review, benefits determination, health care insurance grievance resolution procedures, independent review of adverse determinations or final adverse determinations, independent review organizations, and continuing

education providers; relating to required provisions for health care insurance contracts and policies, including health care provider choice; establishing civil penalties for insurers for failure to provide requested records; amending the definition of 'wet marine and transportation' insurance; amending provisions on limited licenses to include crop insurance; relating to third-party administrator notification requirements; relating to certification filing by reinsurance intermediary brokers; relating to rate filings, delivery of insurance policies or endorsements; relating to refunds of variable life insurance policies and variable annuities; establishing limitations on issuance of long-term care insurance; relating to requirements for group health insurance policies; amending the definition of 'group health insurance'; relating to motor vehicle service contracts; relating to notice requirements for meetings of stockholders or members of a domestic insurer; establishing a definition of 'bona fide association'; relating to requirements and penalties for committing a fraudulent or criminal insurance act; updating criteria for examinations; relating to rate filing deviations; establishing civil penalties for certain wilful violations; and providing for an effective date."

CHAIR OLSEN advised a committee substitute was forthcoming.

[HB 372 was held over.]

HB 281-REAL ESTATE BROKER LICENSURE REQS

[4:01:40 PM](#)

CHAIR OLSON announced that the next order of business would be HOUSE BILL NO. 281, "An Act relating to real estate broker licensure; relating to the real estate commission; and providing for an effective date."

[4:02:30 PM](#)

TERRY HARVEY, staff to Representative Cathy Munoz, Alaska State Legislature, speaking on behalf of Representative Munoz, sponsor of HB 281, provided background information on the real estate industry in Alaska. The real estate business was an industry consisting of small local individuals who financed property through banks or local investors. Over time, the real estate business has become increasingly complex involving contracts, documents, orders, sales, trust accounts, and foreclosures. The bill addresses education requirements and experience requirements for a licensee seeking to apply for a broker

license. There is one broker per real estate firm, whose duties include oversight of monetary transactions, fees, trust fund transactions, and the ultimate responsibility for all of the licensees associated with that firm. The proposed bill would require additional education credits and real estate experience of an applicant, and was brought to the legislature by the Alaska Real Estate Commission and the Alaska Association of REALTORS. Mr. Harvey said the intent of the bill is to better serve consumers, ensure high quality transactions, avoid litigation, and improve standards in Alaska. If passed, in order to apply for a broker license, a real estate licensee or associate broker would have to complete 30 hours of education, and have 48 months of experience. He said the industry supports the bill.

[4:06:47 PM](#)

REPRESENTATIVE COLVER asked if the continuing education requirement follows a two-year license renewal cycle.

MR. HARVEY explained the bill does not change rules on continuing education, but adds hours to the education requirement to apply for a broker license.

REPRESENTATIVE COLVER expressed his concern about continuing education that is not relevant specifically to Alaska; he suggested adding a local element to the curriculum, such as weatherization. He urged the sponsor to contact real estate professionals regarding directing a portion of the education to Alaska issues and laws.

REPRESENTATIVE LEDOUX observed that a bill that increases regulation on an industry is suspect. She pointed out that the bill would benefit current real estate brokers and make it more difficult for others to become brokers; in fact, it would take four years of practice to become a broker, and she questioned the bill's value to public safety.

REPRESENTATIVE COLVER agreed that professional licensing creates protection for an industry, and he cautioned against exclusionary exceptions. He asked for additional background on why the legislation is necessary.

REPRESENTATIVE HUGHES expressed interest in hearing about problems that the bill would address.

[4:15:07 PM](#)

MR. HARVEY noted that testimony is available from those with experiences in the real estate industry which would provide the reasoning behind HB 281, such as the growth of the industry in Alaska, the responsibilities of a real estate broker, the lack of standards in Alaska, and examples of situations.

[The committee treated the hearing on HB 281 as open for public testimony.]

[4:16:33 PM](#)

NANCY BLATCHLEY DAVIS, chair, Alaska Real Estate Commission (AREC), informed the committee the issue was brought forward not by AREC, but by 25 various licensees who felt brokers were not sufficiently knowledgeable to protect the public. She said Alaska ranks in the bottom four of broker licensing requirements, and AREC seeks not to limit the number of brokers, but to protect the public. Ms. Davis said AREC sees cases of public harm that could have prevented with more education. Her experience was that she needed a mentor to assist with her upgrade to broker.

REPRESENTATIVE LEDOUX restated her interest in examples [of problems].

MS. DAVIS said she could not provide an example because there are no issues in Sitka, but offered to provide information from AREC.

REPRESENTATIVE JOSEPHSON asked whether broker applicants are normally real estate licensees.

MS. DAVIS said yes, if upgrading to an associate broker or broker, licensees have been working for two years. In further response to Representative Josephson, she said currently, licensees can work for two years, upgrade to a broker and open their own business. She said the licensees who approached AREC felt there was not sufficient experience required to protect the public.

REPRESENTATIVE LEDOUX asked for examples [of problems] including the length of time and experience of those involved.

[4:21:54 PM](#)

KRIS CURTIS, Legislative Auditor, Legislative Audit Division, Legislative Agencies and Offices, said an audit of the activities of the Alaska Real Estate Commission did not identify a specific need to change the requirements for licensees, or identify a risk area. The audit would have shown if there was a problem reported in meeting minutes, and AREC did not respond.

[4:22:54 PM](#)

TRACI BARICKMAN, Real Estate Licensee, said she was representing herself as a real estate professional and as an educator. She said she has been licensed for over 23 years - 16 years as a broker - and has supervised thousands of transactions and hundreds of licensees. She also serves as a commissioner of the Alaska Real Estate Commission, has served as an educator in real estate for 18 years, is a subject matter expert for real estate industry testing materials, both on the state and on the national level, and therefore her experience gives her insight into the conduct of licensees. Ms. Barickman said real estate is not a "buyer beware" field, and restraint of trade does not outweigh consumer protection. A broker license in Alaska can be obtained with only 85 hours of education and 2 years of experience, which is much less than in other states. She said she supports HB 281 to protect the public, and related her recent experience with brokers who could not resolve a dispute due to lack of an understanding of contract law, experience, and problem-solving skills, and clients "stood to lose" \$10,000 and a \$600,000 contract. Ms. Barickman said in today's climate she would not like to be in a position supervising those with minimal education. Protecting Alaskans' homes and financial future is the responsibility of educators, commissioners, and legislators.

[4:26:40 PM](#)

REPRESENTATIVE COLVER inquired as to whether there is an Alaska-based continuing education curricula available.

MS. BARICKMAN said broker upgrade curriculum covers general real estate knowledge in depth, including financial investments; however, a big part is Alaska law, disclosures, and trust accounts specific to Alaska.

REPRESENTATIVE COLVER asked whether there is a continuing education requirement to renew licenses.

MS. BARICKMAN said yes, adding that all licensees are required to have a minimum of 20 hours of continuing education every 2 years, and of that, 8 hours is mandated by AREC to be Alaska-specific, and 12 hours is elective. In further response to Representative Colver, she confirmed that the continuing education requirement is in regulation.

[4:30:30 PM](#)

CHAIR OLSON announced public testimony would remain open.

[HB 281 was held over.]

HB 290-EXTENDING THE REAL ESTATE COMMISSION

[4:30:35 PM](#)

CHAIR OLSON announced that the final order of business would be HOUSE BILL NO. 290, "An Act extending the termination date of the Real Estate Commission; and providing for an effective date."

[4:31:02 PM](#)

LAURA STIDOLPH, staff to Representative Kurt Olson, Alaska State Legislature, on behalf of Representative Olson, chair of the House Labor and Commerce Standing Committee, sponsor of HB 290, informed the committee the bill extends the termination date of the Real Estate Commission (commission) to 6/30/18. Each year the Legislative Audit Division, Legislative Agencies and Offices, reviews state boards and commissions to determine whether they should be reestablished. She directed attention to a document provided in the committee packet entitled, "A Sunset Review of the Department of Commerce, Community & Economic Development, Real Estate Commission," dated 7/24/15, and said in the opinion of the auditors, the commission serves the public interest by licensing real estate brokers, associate brokers, and salespeople. In addition, the auditors made a recommendation that the legislature amend the Real Estate Surety Fund statutes to provide more complete, effective, and efficient consumer protection to claimants. Ms. Stidolph recalled legislation in 2008 that required salespersons and brokers to acquire error and omissions (E&O) insurance if a master policy held by the commission is in effect. Therefore, since the commission has been unable to obtain a master E&O policy, companion proposed legislation seeks to repeal that provision and establish a two-year sunset date. She advised that the

auditors' other recommendations have been resolved, and urged support for HB 290.

[4:34:25 PM](#)

REPRESENTATIVE JOSEPHSON asked why licensees cannot get E&O insurance.

MS. STIDOLPH explained that licensees can get E&O insurance, but they are not required to by statute if the commission cannot obtain a master policy. The intent is to repeal and sunset the requirement related to the commission, thus over the next two years, licensees will be required to obtain E&O insurance to protect consumers.

REPRESENTATIVE JOSEPHSON surmised that wise licensees get E&O insurance, but not through a master policy held by the commission.

MS. STIDOLPH advised that those who cannot get E&O insurance are in a [high-] risk pool, and were supposed to be covered through the master policy. In further response to Representative Josephson, she said she was unsure how a licensee qualifies as high-risk.

CHAIR OLSON recalled that the real estate [commission] intended to create a group of real estate licensees and brokers in the state for the purposes of insurance, but "then there was little or no follow-through on it, which is why we're where we're at now"

[4:38:39 PM](#)

LORI WING-HEIER, Director, Division of Insurance, Anchorage Office, Department of Commerce, Community & Economic Development, advised that the related regulations set an unrealistic limit of \$300 on the amount of the premium [of E&O insurance]. In addition, at this time, the Division of Insurance has incomplete underwriting data for a master policy, a pool, or for a request for proposal (RFP).

REPRESENTATIVE COLVER noted that there are many obstacles to creating a pool for E&O insurance without a business history.

CHAIR OLSON recalled that the real estate industry proposed a bill based on the model of a national program. Regarding insurance legislation, he advised using only model laws

sponsored by the National Association of Insurance Commissioners or the National Conference of Insurance Legislators.

REPRESENTATIVE COLVER stated his preference would be for individual licensees to disclose whether they carry E&O insurance. Further, state regulations of this type cause opposition, especially without compelling case histories to warrant legislation.

MS. STIDOLPH advised that the real estate industry indicated that many licensees and brokers carry E&O insurance, except for the small pool who are unable to obtain coverage; the master policy would protect the consumer and allow affected businesses to operate.

[4:46:31 PM](#)

REPRESENTATIVE JOSEPHSON asked whether licensees and brokers fail to get coverage because there is a complaint, or because of the cost. He stressed that businesses should be fully insured, and that this a serious problem.

MS. STIDOLPH stated that data is unavailable as to which brokers and licensees have insurance coverage.

CHAIR OLSON added that the lack of E&O coverage and malpractice insurance is not limited to the real estate industry.

REPRESENTATIVE COLVER asked whether E&O coverage could be established in a manner similar to workers' compensation.

MS. WING-HEIER advised an assigned-risk pool is put to bid every four years through the National Council on Compensation Insurance; the division rates proposals that are submitted to the state and assigns a percentage of the worker's compensation business.

REPRESENTATIVE COLVER observed that E&O coverage is more like a bank loan and is based on professional expertise, experience, and credit, versus "a straight occupational percentage."

[4:50:20 PM](#)

MS. WING-HEIER advised that E&O coverage is based on a number of underwriting factors related to each individual's experience, which is the data the division is lacking.

REPRESENTATIVE LEDOUX recalled previous testimony that other businesses - such as doctors and lawyers - do not have E&O coverage, and questioned why the legislation is focused on the real estate industry.

MS. STIDOLPH noted that [House Bill 357, passed in the Twenty-Fifth Alaska State Legislature (2008)] had two parts: 1.) the realty recovery fund was turned into the realty surety fund, which shifted responsibility from the Real Estate Commission to the court system to recover funds; 2.) licensees were required to have E&O insurance.

CHAIR OLSON, in response to Representative LeDoux, explained the legislation was sought by the industry, and became statute in 2008, but is not working. He described some of the ongoing problems for the industry and for some consumers.

REPRESENTATIVE LEDOUX questioned whether the Legislative Audit Division would normally delve into the topic of education requirements for a certain profession.

[4:54:40 PM](#)

KRIS CURTIS, Legislative Auditor, Legislative Audit Division, Legislative Agencies and Offices, responded that the audit division performs sunset reviews following the legislative oversight process. She said the division would not look at the education requirements of an occupation, but at the ability of a commission to protect the public interest and regulate its industry. The audit concluded that the Real Estate Commission is serving the public interest generally, and did not recommend termination; however, the audit did recommend a six-year extension if the commission can obtain E&O insurance by January [2016], and a four-year extension if not. Ms. Curtis pointed out the E&O requirement became effective in 2010, but regulations were not effective until October 2014, thus this is an extensive lag in response to the legislation. Although there were many reasons given for the delay, the audit concluded the reasons were inadequate.

REPRESENTATIVE LEDOUX remarked:

I was just trying to figure out whether I should be reading anything into the fact that legislative audit hadn't recommended an increase of educational requirements or an increase of the amount of time that

somebody has to serve as a licensee before they became a broker. ... And it sounds like you're saying "no."

4:58:08 PM

MS. CURTIS directed attention to page 5 of the aforementioned audit that was provided in the committee packet, and said [House Bill 357 in 2008] changed a consumer protection that was in place. In the past, the division's sunset audits had been critical of the real estate recovery fund, which limited claims awards by the Real Estate Commission to \$15,000, and in 2007, the division recommended improving the surety fund. In 2008, the law was changed - which made it harder for consumers to collect on a claim - because they had to gain a costly ruling through the court system; however, the bill also required insurance to better protect the public. Ms. Curtis advised that in the matter of providing insurance, the commission has failed to serve the public interest. Another finding of the audit was that the investigations conducted by the Division of Corporations, Business and Professional Licensing, Department of Commerce, Community & Economic Development were not done in a timely manner; there were long delays and some cases were closed without sufficient reason. Therefore, two recommendations were made: 1.) procure E&O insurance; 2.) improve the timeliness of the investigations. Ms. Curtis restated the division's recommendation of a shorter extension, and asked the commission to demonstrate its ability to obtain E&O insurance.

REPRESENTATIVE JOSEPHSON asked for the source of the monies in the real estate recovery fund.

MS. CURTIS directed attention to page 15 of the audit, and said the fund comes from a fee per licensee, which is currently set at \$30, and changes biannually according to the balance in the fund. In fiscal years 2011 (FY 11) and FY 12, no claims were paid.

5:03:38 PM

REPRESENTATIVE COLVER asked how difficult it is for small brokers to obtain E&O insurance.

5:04:05 PM

ERROL CHAMPION, chair, Industry Issue Key Work Group, Alaska Association of REALTORS, said licensees are independent contractors, so there are differing operating policies in how

each office conducts business. A licensee may elect to stay a licensee, or to advance to the position of associate broker and then to a broker, and only one broker is allowed per office. Mr. Champion said because of the independent contractor status, brokers should have E&O insurance as there are no performance reviews, and the right to terminate someone's employment is stipulated by the Real Estate Commission. He opined those who do not have E&O insurance generally work alone in a small community, and it is difficult to qualify for insurance, but most large brokerage houses have insurance.

[5:06:44 PM](#)

REPRESENTATIVE HUGHES moved to report HB 290 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 290 was reported out of the House Labor and Commerce Standing Committee.

[5:07:06 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:07 p.m.