

HOUSE FINANCE COMMITTEE  
February 15, 2018  
1:44 p.m.

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CALL TO ORDER

Co-Chair Foster called the House Finance Committee meeting to order at 1:44 p.m.

MEMBERS PRESENT

Representative Neal Foster, Co-Chair  
Representative Paul Seaton, Co-Chair  
Representative Les Gara, Vice-Chair  
Representative Jason Grenn  
Representative David Guttenberg  
Representative Scott Kawasaki  
Representative Mark Neuman (Alternate)  
Representative Dan Ortiz  
Representative Lance Pruitt  
Representative Cathy Tilton  
Representative Tammie Wilson

MEMBERS ABSENT

Representative Steve Thompson

ALSO PRESENT

Jane Pierson, Staff, Representative Neal Foster; Marie Marx, Director, Division of Workers' Compensation, Department of Labor and Workforce Development; Representative Andy Josephson, Sponsor; Scott Jordan, Director, Division of Risk Management, Department of Administration.

PRESENT VIA TELECONFERENCE

Eric Croft, Attorney, Anchorage

SUMMARY

HB 38          WORKERS' COMPENSATION: DEATH BENEFITS

HB 38 was HEARD and HELD in committee for further consideration.

HB 79 OMNIBUS WORKERS' COMPENSATION

HB 79 was HEARD and HELD in committee for further consideration.

Co-Chair Foster reviewed the meeting agenda.

[1:44:43 PM](#)

#hb79

HOUSE BILL NO. 79

"An Act relating to workers' compensation; repealing the second injury fund upon satisfaction of claims; relating to service fees and civil penalties for the workers' safety programs and the workers' compensation program; relating to the liability of specified officers and members of specified business entities for payment of workers' compensation benefits and civil penalties; relating to civil penalties for underinsuring or failing to insure or provide security for workers' compensation liability; relating to preauthorization and timely payment for medical treatment and services provided to injured employees; relating to incorporation of reference materials in workers' compensation regulations; relating to proceedings before the Workers' Compensation Board; providing for methods of payment for workers' compensation benefits; relating to the workers' compensation benefits guaranty fund authority to claim a lien; excluding independent contractors from workers' compensation coverage; establishing the circumstances under which certain nonemployee executive corporate officers and members of limited liability companies may obtain workers' compensation coverage; relating to the duties of injured employees to report income or work; relating to misclassification of employees and deceptive leasing; defining 'employee'; relating to the Workers' Compensation Board's approval of attorney fees in a settlement agreement; and providing for an effective date."

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Co-Chair Seaton MOVED to ADOPT the proposed committee substitute for HB 79, Work Draft 30-GH1789\R (Wallace, 2/13/18).

Representative Wilson OBJECTED for discussion.

JANE PIERSON, STAFF, REPRESENTATIVE NEAL FOSTER, explained the changes in the work draft committee substitute (CS). She explained that most of the amendments in the CS were advanced by the Department of Labor and Workforce Development (DOL) and were technical in nature with one exception. She pointed to page 4, line 6 that included the language "is a business entity that is" that was a technical amendment. She moved to the next technical amendment on page 7, line 18 that deleted the following language "by expiration or cancellation of the employer's insurance" and inserted "with the insurance provisions of this chapter." She turned to the next technical change on page 9, line 13 to page 10, line 1 that added Sections 16, Section 17, and Section 18 to allow for electronic filing. She highlighted page 10, lines 11 through 14 that changed "who was permitted to represent a claimant at a workers' compensation hearing" to "any person authorized by regulation of the board" which was a substantive change. Current law specified a person could be represented by anyone with written permission. She elaborated that the House Judiciary Committee version "U" allowed for self-representation, or representation by an attorney licensed to practice law in the state, a parent, if the party is a minor, guardian, or court-appointed representative.

Ms. Pierson pointed to page 15, line 18 and noted that the word "in" was eliminated and changed to "under." On page 15, lines 19 through 28 was related to submitting claims to a second injury fund and was technically corrected. She referenced page 22, line 9 and related that AS 23.30.110(d) was changed from "appealed and reenacted" to "as amended." She noted that page 22, lines 14 through 16 contained a conforming amendment. She reviewed that on page 23, line 6, another conforming amendment changed 2017 to 2018 and on page 23, line 7 the final conforming amendment changed 2018 from 2019.

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Representative Kawasaki requested clarification regarding the substantive change relating to claimant representation

to anyone permitted by regulation of the board. He wondered what the regulation would be since it was not defined in the statute.

MARIE MARX, DIRECTOR, DIVISION OF LABOR AND WORKFORCE DEVELOPMENT, DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT, explained that the alternative representative list would be determined by the Alaska Workers' Compensation Board. She reminded committee members that the board had two functions: it had regulatory authority and served as adjudicators and held hearings. She believed the board was in the unique position to know the types of individuals that should represent the claimants. She furthered that the requirement provided the "flexibility" to modify the list. She characterized the provision as a "compromise" from the prior version's provision and existing statute.

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Representative Guttenberg asked for a review of what the bill would fix. Ms. Marx offered an overview of the workers' compensation process. She expounded that the injured worker filed a claim, which initiated a litigation process. The department and the board had found that when people were represented by "competent counsel" things moved quickly, efficiently and with beneficial outcomes for both parties. In addition, the department had staff that provided the self-represented worker assistance that guided them through the process and explained their rights and duties under the Alaska Worker's Compensation Act. She reported that the assistance helped the process work efficiently. Whereas, when people were represented by "parties that were not a parent of a minor or were court appointed" such as a spouse or friend the process was inefficient and the outcomes for injured workers were not beneficial to the worker or the employer and the cases tended to last longer. The "non-attorney" representative was not bound by ethical and professional rules and often lacked an understanding of the worker's compensation process. The changes were proposed to help injured workers come to a successful conclusion of their cases and help employers reduce litigation expenses.

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Representative Wilson asked if the same board that made the mediation decision would decide who could represent the

claimant. Ms. Marx replied that "since the board had regulatory authority" the board would establish rules on representation. The litigation rules would apply to hearings held by the board. She reported that a board hearing panel consisted of a full-time attorney appointed as the chair, one lay member from industry and one lay member from labor. Representative Wilson was concerned that the entity that made the decision decided who could represent a claimant and it "seemed like a conflict of interest." Ms. Marx replied that the board had regulatory authority prior to statehood and the three member panel existed since 1946. The board established the rules for the hearing process and administration of the Alaska Workers Compensation Act in conjunction with DOL. Representative Wilson maintained her belief regarding a conflict of interest. She thought that the claimant who was not able to have the representation she wanted would not trust the outcome. Ms. Marx emphasized that the regulation process included public comment. When a rule was proposed there was always an oral hearing and period for written comment. The rules were established by the board with input from the department and the public. She characterized the influence of public input on the regulatory process as "huge."

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Co-Chair Seaton wanted to ensure that a person could be self-represented. He pointed to the words on page 10, lines 11 and 12 "each party may present evidence." He asked if the board could prevent "the defendant" from self-representation. He wanted to ensure the language in the bill could not allow the board to preclude self-representation. Ms. Marx answered that the authority would be turned over to the board. She elucidated that 90 percent of the parties; claimants and employers, were self-represented. The rules would clarify who could represent an employer. She thought it would be helpful to know whether it included the insurance claim administrator and medical billing specialist versus the doctor. She communicated that there was a balance between delineation in statute or board regulation regarding claimant and employer representation. She remarked that a list in statute would be "long" and "inflexible." She voiced that the board had an interest in making sure the process ran efficiently and fairly. She declared that self-representation was a "fixture in our system." She could not imagine a situation where the board would preclude any party from self-representation at the

board level. She emphasized that anything was possible, but the scenario was improbable. She assured that as chair of the regulatory hearings she would ensure that the outcomes were in "alignment" with needs of the department and the law.

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Co-Chair Seaton stated that the prior wording specifically allowed self-representation and asked whether he was correct. Ms. Marx agreed. Co-Chair Seaton guessed that the language had been included to specify that self-representation could not be precluded. He wondered whether further clarity was necessary in the CS. Ms. Marx replied that the department would not oppose including more specific language that a person may be self-represented or otherwise represented as set by the board through regulation. She underscored that it was not the intent to keep people from being self-represented before the board and most parties were "unrepresented."

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Co-Chair Foster asked for committee adoption of the CS.

Representative Wilson voiced that she also wanted to ensure that people could be self-represented.

Representative Wilson WITHDREW her OBJECTION. There being NO further OBJECTION, it was so ordered.

Co-Chair Foster MOVED to ADOPT Amendment 1, 30-GH1789\R.1 (2/15/18) (copy on file).

Page 2, lines 4 - 5:

Delete "relating to reemployment benefits;"

Representative Wilson OBJECTED for discussion.

Co-Chair Foster explained the amendment. He reported that the amendment was proposed by the department and simply removed "relating to reemployment benefits" from the title of the bill since the item was no longer addressed in the bill.

Representative Wilson WITHDREW her OBJECTION. There being NO OBJECTION, it was so ordered.

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Representative Kawasaki wondered if the committee wanted to try to fix the CS. He MOVED to ADOPT Conceptual Amendment 2 with the inclusion of "self-represented or" before the existing language "represented by any person authorized by regulation of the board" on page 10, line 13.

There being NO OBJECTION, Conceptual Amendment 2 was ADOPTED.

Representative Wilson requested to hold the bill in committee for further review.

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AT EASE

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RECONVENED

Co-Chair Foster concurred with Representative Wilson and relayed that the committee would hold the bill.

Committee discussion ensued regarding the adequate amount of time to further review the bill.

HB 79 was HEARD and HELD in committee for further consideration.

Co-Chair Foster handed the gavel over to Co-Chair Seaton.

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AT EASE

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RECONVENED

Co-Chair Seaton communicated that HB 79 would be heard again the following Monday.

#hb38

HOUSE BILL NO. 38

"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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Co-Chair Seaton commented that the bill had one committee hearing during the prior session.

REPRESENTATIVE ANDY JOSEPHSON, SPONSOR, provided a refresher of the legislation. The bill had originated because he had learned that a woman was killed in an electrical accident at the workplace in Anchorage. She had no dependents and was unmarried therefore, the workers' compensation system only paid for her funeral expenses up to \$10 thousand. He indicated that it was against the law for her estate to sue for wrongful death. He also discovered that the formula for one-time payments for permanent, partial disability had not increased since 2000. He reported that he filed a similar bill in the 29th legislature. The current bill had two prior hearings in the House Labor and Commerce committee. He listed the provisions in the bill. He explained that the bill considered what the partial impairment rate should be in 2017 based on the established formula. He referenced legislative research (copy on file) ["Impact of Inflation on Statutory Compensation for Partial but Permanent Impairment under the Alaska Workers' Compensation Act" Legislative Research Services] that confirmed the multiplier, based on inflation, would be \$255.506 thousand by degree of impairment of a bodily part. He exemplified that the impairment of a shoulder would result in "x" dollars based on the formula. He noted that Alaska was somewhere in the range of 30 out of other states with a current payment of \$177 thousand. The provision included a Consumer Price Index (CPI) feature, which was common in other laws. He offered that Section 4 included a notice of death benefits that provided more time for the family or the estate of the deceased to understand their rights. Section 5 provided a death benefit for the parents or estate of the deceased.

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Representative Josephson provided an example. He hypothesized that if a customer and worker were in an elevator at a store and the elevator crashed killing both, the worker in Alaska was entitled to a \$10,000 funeral expense and the customer's estate would be able to sue for civil liability under Title 9. The bill provided a \$70 thousand benefit that was bestowed to the surviving parent(s) of the deceased or the estate if the parents were deceased. He emphasized that the amount was not chosen randomly. He accessed a research document that he had corroborated with the National Conference of State Legislatures (NCSL) work that showed in Minnesota the amount was \$60 thousand, in New York the amount was \$50 thousand, and in Louisiana the amount was \$75 thousand per parent. He offered that many states employed a formula that the number was derived from. Out of the states that provided a whole number Louisiana was the most generous and Alaska would fall in the 2nd or 3rd position at \$70,000. He believed that the merits were twofold. First, Alaska would provide a death benefit to the estate. Secondly, the provision acted as further incentive for the willingness of an employer to ensure the safety of their workers. He provided an example of a construction fatality last year in Anchorage. The worker had no dependents or spouse and noted that the incidents were not unusual. He furthered that in relation to the death of the electrical worker, Abigail Caudle, the Workers' Compensation Board issued a ruling that there was nothing that could be done for her mother and that the issue needed to be addressed via legislation. Ms. Caudle's mother, Marianne Burke understood that although she would not receive any compensation she wanted her daughter's tragic loss of life to mean something. He noted that she hired the law office of Eric Chancy Croft and the case was before the Alaska Supreme Court.

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Representative Neuman asked how a step child who had not been legally adopted would fit into the picture. Representative Josephson believed that the step-parent would have to prove dependency. He read a section in current law "if there was no widow or widower or child or children then for the support of father, mother, grandchildren, brothers, and sisters if dependent the deceased at the time of injury..." [not cited] and surmised that if an individual could prove dependency they would get a benefit depending on the factors in each case like the

age of the deceased, etc. He exemplified a grandparent who did not adopt the deceased grandchild, but dependency was proven; a death benefit would be paid.

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Representative Neuman asked for the definition of how a person would prove to be a dependent. He wondered if it would be beneficial to have language defining dependency included in the legislation. Representative Josephson replied that he did not want to complicate the issue in law. He explained that typically, in the absence of a rule, the court created a logical test that included 3 or 4 major elements and would consider elements like how long a dependent lived with the deceased and whether they were wholly reliant on the deceased. He stated the example was prevalent in case law. He thought defining dependency would become complicated and deduced that it existed in statute. He clarified that he was not changing the system that was already in statute. Representative Neuman thought it was important to hear about the sponsor's intent. He had personally dealt with the issue in the past, which was the reason for his familiarity with the subject. Representative Josephson referenced AS 23.30.215 relating to compensation for death. He shared that case law relating to the statute was included. He shared a case regarding "sole dependency not condition of award" and stated the case was Employers Liability Insurance Corporation versus Dole from 1966. He indicated that an attorney would examine the statute since it was still relevant law. He listed other cases regarding dependency cited in statute and noted that the Supreme Court had weighed in on prior cases relating to dependency.

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Representative Ortiz referenced testimony that Alaska ranked 30th out of other states. He asked what category he had been referencing. Representative Josephson replied that according to DOL statistics the amount the state paid for loss or injury to a body part placed Alaska in the 30th ranking among states. Representative Ortiz asked whether the state also ranked 30th for death benefits. Representative Josephson answered in the negative. He deduced that the state was "roughly on par with Minnesota and New York." He relayed how Hawaii calculated its death benefit. He reported that the formula was "25 percent of 312 times the effective maximum weekly death benefit rate

to the non-dependent parents." He offered that he was perplexed by the formula. He believed that "fundamentally, a life is a life." He wanted to dignify the lives of single individuals without dependents. He commented that the situation that Ms. Burke experienced by only receiving funerary expenses was "profoundly hurtful and offensive." He voiced that the issue was also what his bill "was about."

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Representative Neuman referred to Ms. Burke's court case mentioned earlier in the meeting. He wondered if passing legislation could change the statute and affect the court case. Representative Josephson believed the court would rule based on existing law. He deferred the question to the attorney representing the case.

ERIC CROFT, ATTORNEY, ANCHORAGE (via teleconference), indicated that he was an amicus for Ms. Burke and her case. He explained that she represented herself and appealed her case to the Alaska Supreme Court. She lost previous cases but one year ago the court issued an order and asked a question. He read from the court order, "Under what circumstances if any can the amount of benefits provided under the Alaska Workers' Compensation Act be so low as to deprive an injured worker or his beneficiaries of a substantial remedy such that the statute violates a workers' right to due process." He believed the court was struggling with the concept that no benefit was given to a category of workers. He delineated that when the Workers' Compensation Act was implemented many years ago most 26 year old persons were married. Currently, approximately 80 percent of 26 year olds in the workforce were unmarried. The problem exacerbated over time. He believed the courts were "troubled" with not providing benefits to the category of workers. He deduced that the courts were uncomfortable with the results but also uncomfortable with "doing the legislatures job" of "writing something into statute." He thought they would welcome a fix to a problem they were having difficulty solving.

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Co-Chair Seaton asked for clarification on Representative Neuman's question.

Representative Neuman clarified that he was interested in how the bill would impact the current court case.

Representative Josephson replied that the effective date of HB 38 would change to January 1, 2019. The current law would apply at the time of a ruling. He speculated that the court may deny Ms. Burke's claim if the legislature addressed the issue.

Representative Ortiz referenced a letter in members' packets from the National Federation of Independent Business (NFIB) [dated February 12, 2018] (copy on file) and noted that according to the federation the state remained the 5th highest at 145 percent of the median for the workers compensation program in costs to employers. He asked how much the bill would increase costs to employers. Representative Josephson replied that opposition to the bill was scarce. He pointed out the Division of Risk Management, Department of Administration (DOA) indicated that the workers would absorb some of the costs for the state. The formula would spread the cost of \$500 thousand among 20 thousand state workers. He agreed the state's workers compensation rates were higher because the state's medical costs were much higher.

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Representative Wilson MOVED to ADOPT Amendment 1, 30-LS0160\0.3 (Wallace, 4/20/17) (copy on file):

Page 1, line 1, following "Act":  
Insert "relating to the exclusiveness of liability of an employer in the case of permanent partial impairment or death;"

Page 1, following line 10:  
Insert a new bill section to read:  
"\* Sec. 2. AS 23.30.055 is repealed and reenacted to read:

Sec. 23.30.055. Exclusiveness of liability. (a) The liability of an employer prescribed in AS 23.30.045 is exclusive and in place of all other liability of the employer and any fellow employee to the employee, the employee's legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise

entitled to recover damages from the employer or fellow employee at law or in admiralty on account of the injury or death. The liability of the employer is exclusive even if the employee's claim is barred under AS 23.30.022.

(b) Notwithstanding (a) of this section, an injured employee, or the employee's legal representative in case death results from the injury, may elect to claim compensation under this chapter or to maintain an action against the employer at law or in admiralty for damages on account of the injury or death, if

(1) an employer fails to secure payment of compensation as required by this chapter; or

(2) the injury to the employee results in permanent partial impairment, permanent total disability, or death and was caused by gross negligence of the employer.

(c) In an action under (b) of this section, the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of the employment, or that the injury was due to the contributory negligence of the employee.

(d) In this section, "employer" includes, in addition to the meaning given in AS 23.30.395, a person who, under AS 23.30.045(a), is liable for or potentially liable for securing payment of compensation."

Renumber the following bill sections accordingly.

Vice-Chair Gara OBJECTED for discussion.

Representative Wilson explained the amendment. She emphasized that there was a difference between an accident and negligence; the employer had received violations. She recalled that the death of Abigail Caudle "probably did not have to happen." She reiterated that the survivors had no right to sue. She explained that her amendment would apply to page 1, lines 21 through 23 of the legislation and inserted the following language:

(2) the injury to the employee results in permanent partial impairment, permanent total disability, or death and was caused by gross negligence of the employer.

Representative Wilson elaborated that gross negligence was a much higher standard than just an accident. She opined that if a child was lost to an employer who received violations and ignored them causing the death of the child the survivors should have the option to sue. She believed that the law was unfair and that an accident and a preventable incident resulting in death were not on the same level.

Vice-Chair Gara wanted to understand the amendment. He provided his understanding of the workers' compensation system and characterized it as a no-fault system. The injured worker received less compensation than in a civil lawsuit but did not have to prove employer negligence. He asked how the amendment would change the balance. Representative Wilson understood that the amendment did not change the balance at all. She detailed that the employee or survivors could opt for the existing process but once they chose to engage in a civil lawsuit the court ruling stood even if the workers' compensation system would have awarded more. She emphasized that gross negligence had to be proven.

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Vice-Chair Gara stated that generally negligence did not have to be proven in the workers' compensation system and the worker received less compensation as a tradeoff. He emphasized that workers compensation was the only remedy. He did not understand what the amendment did. He wondered why gross negligence was being proposed for a no fault system. Representative Wilson agreed that currently the system was a no fault system. She explained that if the worker or survivor knew the injury or death was caused by gross negligence the amendment would provide the opportunity to engage in a lawsuit. The bill offered the option to choose civil law or the no fault system. She opined that gross negligence could be proven in many cases. It was her understanding that in the story brought by Representative Josephson the employer received many violations that were ignored and resulted in the death of the worker.

Co-Chair Seaton asked about gross negligence, which he believed was determined at the court level. He stated it was not determined prior to a court proceeding. He was trying to understand if he was missing something.

Representative Wilson replied that her intent was ensuring the spouse or family received "the full value of what they had" if a company could have possibly prevented a worker's death. She voiced that she was not an attorney and was dependent on legal advice.

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Representative Josephson believed that some employers and business owners may be concerned by the amendment. He stated the amendment would leave employers exposed to all Title 9 [Code of Civil Procedure] remedies. He was concerned about who would pay for the injured worker's medical care while the court case was proceeding that could take a year or more for a resolution.

MARIE MARX, DIRECTOR, DIVISION OF WORKERS' COMPENSATION, DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT, stated her understanding of the question related to the amendment's impact to the. She answered that it would allow the injured worker to recover in court for gross negligence which would provide full and just compensation. However, the workers' compensation system was a "social contract... founded on the bargain" of limited quick prompt benefits in exchange for forfeiting the right to sue their employer. She described the bargain as the "underpinning of our whole system." She shared that the system had been put in place during the Industrial Revolution to protect workers who often lost and received nothing in court and to protect employers from being put out of business from very large court awards. The amendment would implement a completely different system and remove the benefit of the bargain for employers. She emphasized that the employers benefit of the bargain would be reduced, which was a concern. She offered that most states allowed tort suits for "intentional conduct." The exemption did remove the party from the workers' compensation system. She could not find any states that allowed a worker to sue for gross negligence. She questioned how the lawsuit would work procedurally and administratively for the system.

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Representative Wilson understood the no-fault system. She stated that in both cases; a company that ensured worker's safety and a company where repeated violations were ignored, and a worker died, were treated the same in the

workers' compensation system. She asked if she was correct to state that in both cases the monetary compensation was the same. Ms. Marx answered in the affirmative. The Alaska Supreme Court had decided that to take oneself out of the workers' compensation system there had to be an intent to harm; gross negligence did not remove the employer from the system. Workers' Compensation was a no-fault system. The issues of work place safety were addressed through the Division of Occupational Safety and Health and may separately offer mechanisms to address workplace safety issues. She summarized that the workers' compensation system was a no-fault system unless there was clear intent to harm.

Representative Pruitt asked whether currently if an individual elected not to go through workers' compensation the person could sue. Ms. Marx answered in the negative. She clarified that currently "it was an exclusive remedy; both parties must proceed through the workers' compensation system unless the employer failed to carry workers' compensation, which was required by law.

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Representative Guttenberg asked how far the amendment would walk away from the exclusive remedy and the no-fault system. He wondered about degrading the system and the social compact if the amendment was adopted whereby, workers' compensation would not be the exclusive remedy any longer and everyone had to prove gross negligence. He imagined a scenario where an employer denied remedies for everything and the worker had to engage in lawsuits for everything; the exclusive remedy was gone, and the system was broken due to the amendment. He asked for comment. Ms. Marx answered that it may be because of the issues Representative Guttenberg mentioned that Alaska and other state's Supreme Courts had drawn a bright line between nonintentional conduct and intent to harm. She surmised that the reason may be that once the bargain was chipped away at the underpinning of the workers' compensation system began to erode. Allowing an employee to elect a remedy deprived the employer the benefit of the bargain; the employer was not sued in exchange for prompt benefits. Representative Guttenberg agreed that the employer did not get sued, but the employee was not made whole. Ms. Marx affirmed that his statement was the crux of the social contract.

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Co-Chair Seaton referenced Amendment 1. He provided a scenario of someone who received workers' compensation and subsequently sued and received a remedy from the court. He wondered if the individual would have to repay the workers' compensation system. Representative Wilson stated it was her understanding that a person could choose one or the other but not both and could not choose worker's compensation once the court proceedings began and could not sue once workers' compensation was chosen. She understood the system was a compromise. She was concerned that the current system did not seem fair in gross negligence cases. She WITHDREW Amendment 1.

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Vice-Chair Gara MOVED to ADOPT Amendment 2, 30-LS0160\R.2 (Wallace, 2/15/18) (copy on file):

Page 4, line 8:  
Delete "2018"  
Insert "2019"

Co-Chair Seaton explained the amendment. He indicated that the amendment changed the effective date of the bill because it was offered in the prior session.

There being NO OBJECTION, it was so ordered.

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Representative Neuman knew of companies that were financially stable and could be self-insured. He asked how the workers' compensation system addressed self-insured companies. Ms. Marx replied that the state was a self-insured employer. She explained that the Workers' Compensation Act applied to employers but in practice either the insurance company paid benefits or self-insured employers paid the benefits directly. The benefit due by an employer was paid by either the insurance company who represented the employer or the self-insured employer paid the benefit directly.

SCOTT JORDAN, DIRECTOR, DIVISION OF RISK MANAGEMENT, DEPARTMENT OF ADMINISTRATION, agreed with Ms. Marx's statements.

Representative Neuman related a story from personal experience of a constituent who worked for a self-insured employer and was injured and could not work for the rest of his life; his ability to get compensation was limited because the business was self-insured. He questioned his recollection. Mr. Jordan asked whether the individual was an employee of the company. Representative Neuman answered that the person was an employee. Ms. Marx answered that the limits on benefits and the restrictions on lawsuits were the same regardless of whether the employer was self-insured or was represented by its insurance company. She delineated that if Representative Neuman's constituent was an employee of a self-insured company the benefits would flow through the Worker's Compensation Act. She deduced that it sounded like the person may have been an independent contractor. Independent contractors were not eligible for workers' compensation benefits. Representative Neuman relayed that some employers were firing their employees and asking them to return as an independent contractor due to high insurance rates in Alaska.

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Co-Chair Seaton stated that a question that had arisen in the discussion was whether there was not an impetus for employers to have a safe work environment. He asked if everyone paid the same for the workers' compensation insurance. He wondered if some businesses had to pay higher workers' compensation rates if they had a claims history due to an unsafe work environment. Ms. Marx answered that "generally yes." She elaborated that workers' compensation premiums were approved by the Alaska Division of Insurance. The premiums began with a base rate and increased in terms of risk, employer experience, size of payroll, and other considerations. The amount could be increased or decreased and varied by employer.

Representative Wilson asked whether building code or other violations especially when an employee did sustain an injury impacted the workers' compensation rate. She had heard of cases where Occupational Safety and Health Administration (OSHA) cited employers for unsafe conditions.

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Ms. Marx deferred to the Division of Insurance that was responsible for setting the rates. She relayed that in addition, the National Council on Compensation Insurance proposed rates to the division and regulated disputes over rates. She understood that the experience of the employer, which included its injury history was taken into consideration. She deferred to the division for details.

HB 38 was HEARD and HELD in committee for further consideration.

Co-Chair Seaton reviewed the schedule for the following day.

#

ADJOURNMENT

[3:05:37 PM](#)

The meeting was adjourned at 3:05 p.m.