

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

February 20, 2017

3:19 p.m.

**MEMBERS PRESENT**

Representative Sam Kito, Chair  
Representative Adam Wool, Vice Chair  
Representative Andy Josephson  
Representative Louise Stutes  
Representative Chris Birch  
Representative Gary Knopp  
Representative Colleen Sullivan-Leonard

**MEMBERS ABSENT**

Representative Mike Chenault (alternate)  
Representative Bryce Edgmon (alternate)

**COMMITTEE CALENDAR**

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."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 79

SHORT TITLE: OMNIBUS WORKERS' COMPENSATION

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/25/17	(H)	READ THE FIRST TIME - REFERRALS
01/25/17	(H)	L&C, JUD, FIN
02/20/17	(H)	L&C AT 3:15 PM BARNES 124

**WITNESS REGISTER**

HEIDI DRYGAS, Commissioner  
Department of Labor & Workforce Development (DOLWD)  
Juneau, Alaska

**POSITION STATEMENT:** Presented HB 79 on behalf of the governor.

MARIE MARX, Director  
Division of Workers' Compensation  
Department of Labor & Workforce Development (DOLWD)  
Juneau, Alaska

**POSITION STATEMENT:** Gave an overview of the sectional analysis for HB 79.

AVES THOMPSON, Executive Director  
Alaska Trucking Association  
Anchorage, Alaska

**POSITION STATEMENT:** Testified on HB 79.

SHELLY ERICKSON  
Homer, Alaska

**POSITION STATEMENT:** Testified on HB 79.

SCOTT JORDAN, Director  
Division of Risk Management  
Department of Administration  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions regarding HB 79.

**ACTION NARRATIVE**

[3:19:19 PM](#)

**CHAIR SAM KITO** called the House Labor and Commerce Standing Committee meeting to order at 3:19 p.m. Representatives Wool, Josephson, Stutes, Birch, Knopp, Sullivan-Leonard, and Kito were present at the call to order.

[Contains mention of SB 29 and HB 69.]

**HB 79-OMNIBUS WORKERS' COMPENSATION**

[3:19:50 PM](#)

CHAIR KITO announced that the only order of business would be 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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HEIDI DRYGAS, Commissioner, Department of Labor & Workforce Development (DLWD), presented HB 79 on behalf of the governor and thanked the committee for hearing HB 79. She remarked:

This bill will speed up resolution of disputes,  
improve delivery of benefits to injured employees,

deter workers' compensation fraud, reduce administrative costs, and provide adequate funding for the administration of the workers' compensation system. The legislature has consistently endeavored to create a workers' compensation system that delivers benefits quickly, efficiently, fairly, and predictably to injured workers at a reasonable cost to employers, as mandated by statute.

The system has not been significantly reformed in more than 10 years. The improvements in this bill address rising costs, recent legal developments, and new approaches to improve the system's efficiency and fairness. This bill focuses on efficiencies. The department recognizes that benefit issues such as reemployment benefits and medical costs do need attention. The department is committed to addressing those issues in another legislative session.

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MARIE MARX, Director, Division of Workers' Compensation, Department of Labor & Workforce Development (DLWD), gave an overview of the sectional analysis for HB 79. She remarked:

The division administers the Alaska Workers' Compensation Act. I want to begin with the intent of the Act set out in statute, which is also the division's mission. As the commissioner stated, it is to ensure the quick, efficient, fair, and predictable delivery of benefits to injured workers at a reasonable cost to employers. Balancing these pillars guides the division's administration.

MS. MARX stated that HB 79 would address all the statutory pillars, with focus on fairness, quickness, and efficiency in the workers' compensation process. It would speed up dispute resolution in various ways and simplify and quicken the hearing process by letting the board schedule a hearing shortly after a claim is filed, instead of waiting for an employee to request a hearing. Further, HB 79 would end the practice of permitting non-attorneys, who are not bound by the rules of ethical and professional conduct, from representing parties before the Alaska Workers' Compensation Board.

MS. MARX clarified that a parent, guardian, or other court-appointed representative would still be permitted to represent a

party in board proceedings. The board would continue to consider a company, employer, or medical provider to be self-represented when acting through an authorized employee, a member, partner, or a corporate executive officer. Ms. Marx offered clarification, as follows:

This change does not affect a party's ability to be represented by an attorney, including an attorney's ability to employ the services of paralegals and delegating functions to them. That's governed by the Alaska Rules of Professional Conduct. ... We permit that, we will continue to permit that. However, other non-attorneys may not represent a party in matters before the board.

MS. MARX said HB 79 would streamline settlement agreements by eliminating a requirement that the board approve attorney fees as part of a settlement agreement when fees are the only issue in the settlement that would require board approval. Further, under HB 79, the process of imposing civil penalties against uninsured employers would be streamlined by allowing the Division of Workers' Compensation to assess the penalty directly rather than petitioning the board to set the penalty.

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REPRESENTATIVE BIRCH offered his understanding that the Alaska Chamber of Commerce had some concerns about the current structure of workers' compensation. He asked to what extent the proposed changes have been reviewed, considered, and evaluated by employers.

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MS. DRYGAS stated that leading up to HB 79, numerous listening sessions across the state took place in order for [the department] to learn how to improve the system. She explained that the department has received constant input throughout the process of developing HB 79. She expressed that there is a balance between the rights of injured workers and employers' rights to reasonable and fair costs. She informed the committee that the department has had numerous conversations about ways to improve the process with insurance companies, businesses, and complainants' attorneys. She stated that these conversations and the expertise within the departments have culminated in the proposed bill. She mentioned that there are still ongoing conversations.

REPRESENTATIVE BIRCH commented that he wants to make sure that businesses have a seat at the table and it's not a one-sided program.

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MS. MARX continued her overview of HB 79. She added that with the streamlined process of opposing civil penalties, an employer who disputes the assessed penalty would still be permitted to challenge the assessment before the board. She stated that the bill would improve the delivery of medical care by requiring an employer to preauthorize or deny medical treatment upon a medical provider's written request within 60 days. She stated that the timeframe was established to avoid litigation and confusion about preauthorization. One interpretation of current statute is that an employer's only duty is to pay a medical bill within 30 days. A Supreme Court decision has ruled that paying a medical bill is not "the extent of an employer's duty," although the decision didn't detail other aspects of the duty. She remarked that a doctor doesn't necessarily want to move forward with an expensive surgery before being sure he/she will be paid; an injured worker doesn't want to move forward with an expensive surgery not knowing who's going to pay for it.

MS. MARX noted that currently medical benefits are paid every 14 days with a 7-day grace period. The proposed bill would simplify this by clarifying that medical benefits would be paid every 21 days with no grace period. The bill would not change medical bills being paid within 30 days. She emphasized the division's commitment to addressing the issue of misclassification. She explained that not doing so is a disservice to workers, who can be severely injured or die as a result of fraudulent misclassification, and companies, which can be put out of business as a result of uninsured losses.

MS. MARX stated that HB 79 would not prevent true independent contractors from existing and flourishing. She explained that the narrow application proposed under HB 79 would address independent contractor status only in regard to workers' compensation. She added, "We must keep workers safe and law-abiding employers should not have to pay the price for misclassification."

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MS. MARX stated that in order to strengthen fraud provisions of the Act, HB 79 would define when an employer's misclassification amounts to fraud. She stated that the proposed legislation would: impose an affirmative duty on employees receiving benefits to report work and receipt of other types of wage-loss replacement benefits; expand personal liability for workers' compensation benefits; and expand civil penalties to more types of businesses for failure to insure.

MS. MARX explained that HB 79 would close a loophole: the Workers' Compensation Act did not include [limited liability companies] (LLCs) in the corporations that would be liable for not carrying insurance. This would allow corporations to be liable for uninsured compensation. She stated that HB 79 would define "independent contractor" instead of relying on a convoluted multi-factor test defining "employee." The bill would grant the division the ability to claim a lien on behalf of the Benefits Guaranty Fund, which is the fund for injured workers. She noted that currently an injured worker could file a lien immediately on a claim, but the Benefits Guaranty Fund cannot. She stated that the bill would secure compensation benefits paid by the fund and assess civil penalties.

MS. MARX said HB 79 would expand the division's ability to assess a civil penalty to include employers who are underinsured because they have misclassified workers. Currently, the division can assess a penalty when an employer fails to carry insurance at all, but there is no recourse to bring employers who are underinsuring into compliance. She remarked:

The bill changes the calculation and maximum civil penalty for a failure to insure for workers' compensation liability. Right now the maximum penalty is \$1,000 for each uninsured employee workday and this has led to two unintended consequences: ... first, it's resulted in astronomically high penalties that do not withstand review on appeal, and that increases the litigation costs ... and employer defaults; and second, uninsured employers that do not maintain accurate records ... are actually frequently penalized less severely than an employer who keeps records as required by law ... just because of the difficulty of establishing the number of uninsured employee workdays ... without those records. So the bill corrects those issues.

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REPRESENTATIVE KNOPP asked for an explanation of underinsured employees.

MS. MARX responded that there are various ways employers can fraudulently underinsure or misclassify [employees] to avoid payment of workers' compensation payments. She noted that employers might pay an employee "under the table" or tell the insurance company an employee is clerical when he/she is a roofer, in order to pay a lower premium. Employers could tell an insurance company that employees are leased from a separate company - also owned in full by the employer - that has no injury history and is in a low-risk industry. The bill would ensure a level playing field so workers are properly classified.

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REPRESENTATIVE JOSEPHSON asked how the premium for the maximum civil penalty would be calculated under HB 79. He asked how the penalty would deter employers from fraudulently claiming employees are independent contractors.

MS. MARX answered that the penalty would amount to three times the premium that would have been paid had the employer maintained insurance as required by law. The division would investigate and would have to find substantial evidence that the workers were fraudulently misclassified. The division would then calculate the penalty amount as the amount an employer would have paid had all employees been properly classified and insured.

REPRESENTATIVE JOSEPHSON asked for clarification whether the penalty amount would be based on the number of months [the employer] failed to pay the correct premium.

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MS. MARX responded that is correct. Under HB 79, the premium would be based on the length of time the employer failed to carry appropriate insurance. She explained that the penalty calculation in HB 79 would require the employer's overall payroll data to be calculated as if the employer had properly classified its employees at the Division of Insurance's assigned risk rates for the nature of the employer's business. The new penalty would result in a reasonable deterrent that takes into account the employer's business size, the nature and risk of the employer's business, and the financial gain the employer

realized by operating without paying - in full or in part - for workers' compensation insurance.

MS. MARX continued by saying HB 79 would also clarify that civil penalties may not be suspended. She offered her understanding that currently the Alaska Workers' Compensation Board often suspends penalties, in full or in part, in response to the astronomically high penalties that have been occurring; however, this practice has resulted in penalties without sideboards. The new calculation under HB 79 would put sideboards on these assessments by tying the penalty to an employer's size, the type of business, and the financial gain that the employer realized by not having workers' compensation insurance. The bill would allow an employer to enter into a payment plan to pay the civil penalty in installments, which would ensure an employer is not put out of business by a civil penalty assessment, though HB 79 would require interest be paid on these plans at the state rate for judgments.

MS. MARX listed ways HB 79 would reduce administrative costs: the bill would allow employers to pay benefits electronically, which would deliver benefits to workers faster while saving costs; the bill would allow the Division of Workers' Compensation to prescribe the filing format of reports of injury and compensation payments - currently, certain reports require a stamped envelope; and the bill would allow the division to keep up with technological changes, including electronic filing of records.

MS. MARX explained that the bill would eliminate a requirement for corporate executive officers and LLC members with at least 10 percent ownership to seek the division's approval before opting out of workers' compensation coverage for themselves: they are not employees of the business and therefore do not need workers' compensation coverage. She stated that the current application process [to opt out of coverage] is lengthy and takes the department an enormous amount of time to review, but [ownership] is easily verifiable through other means.

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MS. MARX noted that HB 79 would reduce administrative costs by adding some medical publications to a list the DLWD may incorporate into its fee schedule and regulations, including future amended versions. The bill would provide a penalty for insurers and employers that fail to submit proof of coverage in a timely manner. She stated that there is currently no deadline

for reporting insurance renewals to the division and HB 79 would reduce the division's wasted efforts investigating insured employers that neglected to report their insurance coverage. The proposed legislation would phase out the Second Injury Fund, saving the department administrative costs and reducing costs for employers who are required to contribute to the fund. She explained that the fund's current purpose is to encourage employers to hire or retain individuals with disabilities; however the fund is no longer necessary with the passage of the Americans with Disability Act and other laws that bar employment discrimination. She remarked:

Under the bill, the fund would not accept new claims and ... would be phased out as current claims are paid. So employers' required contributions to the fund would gradually drop to zero as the claims are paid. So far, about half the states, 19 of them, have phased out these types of funds. Finally, HB 79 ensures adequate funding for the ... administration of the Workers' Compensation Safety Administrative Account, we call this WCSAA.

MS. MARX informed the committee that the WCSAA balance is rapidly declining. In 2005, the Alaska Legislature established programs such as the Workers' Compensation Fraud Unit and the Medical Services Review Committee, which are funded by WSCAA. She explained that there was no increase in the WSCAA service fee rate to account for the costs needed to operate these programs. She stated that the bill would allow the department to receive a greater percentage of the annual service fees that insurers pay. She noted that more money would not be collected from insurers, but a greater percentage of the money collected, which would otherwise go to the general fund, would be allocated to the division.

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REPRESENTATIVE BIRCH asked what the percentage change would generate in funding.

MS. MARX responded that based on fiscal year 2016 (FY 16), a .67 percent change would equate to 1.8 million dollars annually.

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REPRESENTATIVE JOSEPHSON asked if the amount employers pay to provide workers' compensation would drop as the pool of people paying for workers' compensation grows.

MS. MARX responded that she doesn't have official data. Nevertheless, she stated that Representative Josephson's assumption is correct: When more people purchase workers' compensation [insurance] and cover their employees, the risk is spread out; workers' compensation is an allocation of risk spread throughout all employers.

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REPRESENTATIVE KNOPP asked if the savings of up to two million dollars by 2023 shown on the fiscal notes is from sharing the costs between more employers.

MS. MARX answered no. She responded that the administrative savings would result from switching to electronic filing. She stated that the cost of providing more coverage and sharing the burden is negligible. The Division of Workers' Compensation does not pay the cost of the second injury fund; rather the division collects the funds from employers and insurance companies and reimburses them. The fiscal note shows the money categorized differently over the years. She explained that the division would have no fiscal impact under HB 79 other than, hopefully, down the road, the department would save administrative expenses. She remarked:

Most Second Injury Fund claims are permanent total disability, which means we generally pay it for the life of the claimant. So if we start phasing it out now, ... down the road we hope to save those administration expenses.

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MS. DRYGAS stated that the administrative services director could better speak to the details of the fiscal notes.

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CHAIR KITO opened public testimony on HB 79.

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AVES THOMPSON, Executive Director, Alaska Trucking Association, testified on HB 79. He stated that the association represents the interests of nearly 200 member companies statewide. He commented that freight movement is a large portion of Alaska's economy and affects all Alaskans. He expressed that the association has concerns regarding the changes to AS 23.30.230(a)(11) proposed in HB 79, which would determine whether a person is an independent contractor for the purposes of workers' compensation coverage. He remarked:

The independent contractor or owner/operator business model has played an important role in the trucking industry for decades. Owner/operators serve a valued function within the trucking industry. They are small business owners who rely on their prudent decision making and hard work to earn a living and build a business. They offer professionally staffed hauling and delivery capabilities to motor carriers. Their revenues and profits are directly tied to their level of effort and business judgements, that is: choosing the right truck - such as the make, model, and condition - for their operations; deciding how to best finance that truck; select[ing] repair and maintenance vendors; and deciding whether to hire drivers or substitute drivers. Those initial decisions are only the tip of the iceberg.

Ongoing business decisions must be made regarding fueling times; vendor software use, including routing programs; insurance coverages; and a wide variety of other needed products and services. One of the most critical decisions that an owner/operator makes is their selection of a motor carrier partner. They must select a carrier whose operations and procedures fit the contractor's business plan. Then, as the business grows, the owner/operator must decide the utility of acquiring additional trucks and hiring more drivers and decide whether to partner with multiple carriers. Motor carriers can rely on the owner/operators' independent motivation and business skills without having to apply the constant and detailed control necessary with carrier/employee drivers.

The basic bargain the owner/operator strikes with each of its motor carrier customers turns on the potential for mutual profit. If the owner/operator works hard and makes smart decisions, he or she profits. The

motor carrier profits by professional, timely, and efficient delivery of freight by this self-motivated independent contractor. The motor carrier can ... conserve its management resources for other key tasks, such as business generation, customer service, and financial management. Owner/operators are an effective method for the industry to quickly respond to changing customer or market demands by allowing expansion and contraction of the workforce.

MR. THOMPSON noted that equipment and driver leasing in the trucking business is heavily regulated by both federal statute in 49 U.S. § Code 14102, and U.S. Department of Transportation (DOT) regulation in 49 CFR Part 376.

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MR. THOMPSON stated that the proposed changes to the workers' compensation statute essentially preclude the use of owner/operators in the trucking business in a number of ways. First, the determining factors proposed under HB 79, paragraph (11), subparagraph (A), on page 16 would rule out an owner/operator who works primarily for one motor carrier. Second, paragraph (11), subparagraph (E), would leave an open interpretation of the direction of the motor carrier to the contractor or owner/operator. He said the bill does not demonstrate that directions are often given to an owner/operator as a result of customer demands or legal requirements. Third, paragraph (11), subparagraph (F), would prohibit a motor carrier from hiring an owner/operator to haul a load of freight. He recommended that the bill should provide an exemption in AS 23.30.230(a) that would exempt truck drivers from the provisions of HB 79. This exemption would establish the truck driver owner/operator business model in Alaska law. He also recommended the adoption of a distinct truck driver/independent contractor/owner/operator definition and set of tests. He stated that the association has provided language to the commissioner of DLWD to accomplish the recommendations, and has provided other proposed changes to the language in HB 79 that would address the association's other concerns. He remarked, "We are happy to work with the proposers of the changes to assist in clarifying the issues."

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SHELLY ERICKSON testified on HB 79. She stated that the small business she owns received a claim against its workers' compensation policy. She remarked:

It has been frustrating that the State of Alaska laws in this area appear to be in favor of the employee no matter what the situation, and I believe that these issues need to be addressed also when you're dealing with fraud.

MS. ERICKSON expressed that laws are needed to protect small businesses from the abuse of employees that don't follow the safety policies or [use safety] gear as instructed. She analyzed that current law assumes the business is irresponsible. She suggested that all newly hired employees need to release their workers' compensation records, because specialized businesses need to know beforehand whether an employee "should not have been there in the first place." She stated her belief that current law assumes boat owners negligent even if a deckhand was in the wrong. She stated that the biggest expense of her small business's workers' compensation insurance rate is fraud. She offered her opinion that there need to be fair consequences to employers and employees; right now it is a one-sided system working against the employers. She expressed that currently people are desperate in their private lives and are looking for ways to get money by getting around the law, including through fraudulent workers' compensation cases. She remarked, "If the law cannot be written so these issues can be fixed within the ... insurance industry, then the state needs to provide a place for the abuse that is happening within the law to be addressed and make it fair for both sides."

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REPRESENTATIVE BIRCH thanked Ms. Erickson for her testimony. He stated that he has heard similar concerns. He asked whether her suggested modifications to HB 79 have been addressed with any local or elected officials.

MS. ERICKSON responded that she has not been able to get very far. She stated that her insurance agency has also come up against a wall when addressing employee fraud. She offered her understanding that no one is willing to deal with it. She stated that she has sent a letter regarding SB 29, HB 69, and [HB 79], but her efforts to talk to individuals about the issue have been unsuccessful. She opined that this is because nobody thinks an employee could be fraudulent.

REPRESENTATIVE BIRCH asked Mr. Scott Jordan if there is a mechanism that effectively deals with fraud in small businesses. He noted that there are a lot of independent business owners in the state that are unable to join the conversation in the middle of the work week. He asked Mr. Jordan how he draws in commentary from small business owners to make sure the community and government are responsive.

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SCOTT JORDAN, Director, Division of Risk Management, Department of Administration, responded that he might not be the best person to answer the question. He explained that [the division] serves as a self-insurer for workers' compensation for State of Alaska employees.

REPRESENTATIVE BIRCH commented that there is a reasonable framework in place to deal with worker's compensation. He acknowledged that Mr. Jordan deals mostly with State of Alaska employees, but asked for a larger context for small businesses and trade associations. He asked what the magnitude is of the state's risk: How many employees are involved and what benefit costs are associated with workers' compensation?

MR. JORDAN answered that there are approximately 17,000 full-time employees, excluding University of Alaska employees, railroad employees, and some smaller corporations' employees. He stated that the division pays out \$26 - \$30 million per year in benefits; of that, 65 percent is medical, the rest is time-loss benefits.

REPRESENTATIVE BIRCH asked how many of the 17,000 employees that represents.

MR. JORDAN answered it's about 1,200 employees per year. For the last 15 years, about 1,200 employees have turned in workers' compensation claims.

REPRESENTATIVE BIRCH asked how that compares to the [private] industry.

MR. JORDAN stated that he can't answer that.

[4:03:21 PM](#)

CHAIR KITO asked Ms. Marx how the independent contractor language identified in HB 79 on page 17, beginning on line 9 was developed.

MS. MARX stated that it has been an ongoing process. She noted that there is a misclassification work-group to combat the fraud issue, as many states have done, which brings in all types of state agencies to work together. She remarked, "I'd say the last 10 years, this has been a hot issue nationwide." Most states have tried to get away from convoluted multi-factor balancing tests and get to a clearer definition of independent contractor. She explained that the division has looked at all 50 states' tests, all of which are a little different. She stated that the Internal Revenue Service (IRS) has a 20-factor balancing test, which is not the same as the language in HB 79. The IRS's goal is to collect tax payments, whereas the Division of Workers' Compensation's goal is narrower: to prevent workplace injuries and protect employers from uninsured losses. She said the department and drafters of HB 79 considered language from all states and came up with a list of things that help identify what is a separate business.

CHAIR KITO asked if applying this language would determine whether the individual or the employer would be responsible for getting a workers' compensation policy.

MS. MARX answered yes. The definition sets forth what is an independent contractor. She explained that independent contractors are not employees and workers' compensation only applies to employees. She noted that most individuals are considered either an employee or an independent contractor, although individuals could be considered volunteers or trespassers. If an individual is considered an independent contractor, he/she would not have to carry workers' compensation coverage for himself/herself. She stated that the department encourages people to get coverage because uninsured losses can financially devastate an employer.

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REPRESENTATIVE BIRCH asked if the Alaska Trucking Association was involved in the department's outreach.

MS. MARX responded that the process has been going on for years; during that time, comments were provided at listening sessions, at board meetings, and through personal phone calls. She stated that a bill with similar language last year was passed by the

House, and the department received a lot of feedback in that process. She noted that the department has met with the Alaska Trucking Association and other groups and is refining the definition based on comments and feedback received. She remarked, "We do not want to prevent true independent contractors from operating. We want them to operate. We just want to make sure that those employers who are following the law operate on the same level playing field as those that do not."

REPRESENTATIVE BIRCH encouraged Ms. Marx to reach out to the organizations and businesses that have a lot of independent contractors because those organizations and businesses will be impacted the most. He reflected on Mr. Jordan's previous statement that 1,200 out of 17,000 employees - 7 percent - have filed claims amounting to \$26 - \$30 million per year. He asked how that compares to the broad employee base, and he expressed that 7 percent seems large to him.

MS. MARX responded that among the hundreds of thousands of employees in Alaska, about 20,000 workplace injuries are reported: of those, 1,200 end up having claims filed and disputed.

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REPRESENTATIVE BIRCH asked if the aforementioned 1,200 claims come from state employees alone or from the entire workforce in Alaska.

MS. MARX commented that the terms are confusing. She explained that insurance companies consider injuries claims; however, when she refers to the 1,200 claims, she means an application for benefits because something was unpaid. She offered her understanding that Mr. Jordan was referring to an injury where [the Division of Risk Management] pays benefits, not an injury with disputed benefits.

REPRESENTATIVE BIRCH asked for an "apples-to-apples" comparison of State of Alaska's employee injuries and its safety in the work environment. He noted that there is a proliferation of chiropractors in Anchorage. He stated his desire to understand whether the State of Alaska provides a safe workplace for its employees. He reiterated that 7 percent of employees seems large. He asked to see how the State of Alaska compares to the state-wide industry as a whole.

MS. MARX stated that injury claim statistics would come from the Division of Risk Management; the Research & Analysis [section] within DLWD keeps track of the comparison data and injury data in conjunction with the U.S. Department of Labor Statistic Bureau. She explained that the Department of Workers' Compensation administers reports of injuries and claims.

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REPRESENTATIVE KNOPP commented that the legislation would mostly affect the private sector.

MS. MARX agreed.

REPRESENTATIVE KNOPP suggested that statute should define the minimum requirement for any employee injury to be reported.

MS. MARX responded that the statute requires all injuries to be reported. She conveyed that an injured worker got a small cut on his thumb, put a Band-Aid on it, and went on his way. Later, the wound became infected and needed significant medical care. Because of such circumstances, all injuries - whether or not they require medical care - need to be reported. She concluded that this leads to the high number of reports of injury.

REPRESENTATIVE KNOPP expressed that HB 79 would have a lot of effect on labor. He explained that if a leased truck was getting \$130 per hour and switched to a prevailing wage, then the owner/operator would no longer have to pay himself the prevailing wage rate or carry workers' compensation for himself, which could increase the expenses to \$170 per hour. He offered his understanding that those in the trucking industry share this concern. He stated that there may be unforeseen consequences of defining the employee/employer relationship. He asked if the practice of using professional term employees (PTE) is still in the marketplace today.

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MS. DRYGAS stated she is not familiar with PTEs. She addressed Mr. Thompson's concerns by stating that the department is hearing from the industry. She expressed that tackling worker misclassification is very difficult. She remarked, "It's important, it's necessary, but we want to make sure we ... are casting the net ... only as wide as ... is necessary." She noted that the department has talked to Mr. Thompson and reviewed his proposals, and the department has met with [the National Federation of Independent Business] (NFIB) and a

homebuilders' association and is addressing their concerns. She acknowledged that there is more refinement to do.

[4:18:01 PM](#)

REPRESENTATIVE JOSEPHSON commented that HB 79 only addresses one sliver of the problem of misclassification. He told that a legislator cut her hand and needed stitches. He asked that the data requested from the Division of Risk Management has clear definitions. He offered his understanding that the legislator didn't have a loss of time. He commented that state workers' are not clumsier, but they may take comfort in being more organized and knowing that a report of injury would not cause any tension in the workplace.

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MS. MARX stated that she doesn't know how to address Representative Josephson's comments, but she offered that the bill would aim to make the process more efficient for injured workers' and employers. She noted that HB 79 would fix longstanding problems and gaps which would benefit injured workers' and employers.

[4:19:49 PM](#)

MS. DRYGAS added her opinion that [state employees have] less fear of retaliation. She acknowledged that retaliation does happen, although it is unlawful under the Workers' Compensation Act. She offered her belief that when a profession is organized there is less fear of losing jobs because of protections within the profession's collective bargaining agreement. She stated that she does not have statistics to show that.

[4:20:16 PM](#)

CHAIR KITO announced that HB 79 was held over.

[4:20:25 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:20 p.m.