

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

February 24, 2017

3:18 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

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

COMMITTEE CALENDAR

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."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 38

SHORT TITLE: WORKERS' COMPENSATION: DEATH BENEFITS

SPONSOR(S): REPRESENTATIVE(S) JOSEPHSON

01/18/17	(H)	PREFILE RELEASED 1/13/17
01/18/17	(H)	READ THE FIRST TIME - REFERRALS
01/18/17	(H)	L&C, FIN
02/24/17	(H)	L&C AT 3:15 PM BARNES 124

WITNESS REGISTER

KEVIN DOUGHERTY, General Counsel
Alaska Laborers
Eagle River, Alaska

POSITION STATEMENT: Testified in support of HB 38.

MARIANNE BURKE
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 38.

RONALD ROSS
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 38.

DON ETHERIDGE, Lobbyist
Alaska American Federation of Labor and Congress of Industrial
Organizations (AFL-CIO)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 38.

ACTION NARRATIVE

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CHAIR SAM KITO called the House Labor and Commerce Standing Committee meeting to order at 3:18 p.m. Representatives Sullivan-Leonard, Stutes, Josephson, Wool, Birch, and Kito were present at the call to order.

HB 38-WORKERS' COMPENSATION: DEATH BENEFITS

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CHAIR KITO announced that the only order of business would be 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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REPRESENTATIVE JOSEPHSON, as prime sponsor of HB 38, stated that as a legislator he hears many legislative ideas and culls them based on merit. He noted that he found merit in the issue proposed in HB 38 and brought it forward in the Twenty-Ninth Alaska State Legislature. He explained that bill addresses two concerns: First, that the estate of someone single and childless who dies in a workplace currently has no remedy under the law; and second, that the value in Alaska's Permanent Partial Impairment (PPI) rating is declining.

REPRESENTATIVE JOSEPHSON explained that under current law, the estate of a single person who dies at work can receive up to \$10,000 for funeral expenses. After such a death, work safety investigators would ascertain whether negligence or unsafe practices were involved. Other than the funeral expenses, there is no remedy for the death of a single, childless individual. He mentioned that a recent finding showed that substantial penalties can create an incentive to have a safer workplace.

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REPRESENTATIVE JOSEPHSON noted that workers' compensation provides the only remedy employees can receive if they are injured or die while working; the estate cannot sue for wrongful death. He concluded that such restrictions create a situation where individuals who haven't married and or had children don't get the same respect and treatment under the law that a person who has dependents would receive.

REPRESENTATIVE JOSEPHSON asked whether, in the event of a death, workers' compensation is about helping the injured worker and his/her dependents or just the dependents. He demonstrated that some states award payment to the estate of a single, childless, deceased worker. He characterized that a progressive workplace would be sympathetic to a person who mourns the loss of a loved one. He offered an example that under current law, parents of a single, childless, deceased worker would only receive funeral expenses in the event of an object falling and killing their child; he explained that if the same injury happened to a non-worker, such as a customer in a restaurant, then many remedies to recover and claim negligence would be available to the estate. He noted that many states have expanded payments to the estates of single, childless workers. He stated that the National Conference of State Legislatures (NCSL) and the Council of State Governments (CSG) corroborate the supporting documents [included in the committee packet].

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REPRESENTATIVE JOSEPHSON explained that when an [employee] is injured, he/she receives a percent of what his/her wage would have been: Payments received by [the estate of a deceased] worker with children and/or a spouse can accumulate to over half a million dollars. He remarked, "The system is generous if there are significant injuries." He expressed that HB 38 would require a payment of damages reflective of the harm caused in a circumstance where a worker dies. He drew attention to Section 4 of HB 38, which makes no change to the first subsections and paragraphs of AS 23.20.215 but outlines what death benefits get paid to dependents; the benefit can exceed half a million dollars. He explained that [paragraph] 4 of AS 23.20.215 outlines that the benefit is only \$20,000 for workers without dependents; HB 38 would increase that benefit to \$255,854.

REPRESENTATIVE JOSEPHSON expressed that in order to cover a single, childless person, there must be a formula that relates to situations listed in [paragraph] 4. He explained that the formula in HB 38 would grant half of the PPI value described in Section 2 as payment to the estate of a single person who dies and has no direct family dependents. He remarked, "If you think that that expands workers' compensation beyond its bounds, recall that other states say, 'No, we're going to do that.' So we would not be an outlier in that respect."

REPRESENTATIVE JOSEPHSON offered his opinion that a wrongful death suit should be allowed under AS 23.30.055 as an alternative to the benefit payment. The proposed bill would no longer preclude the estate of a single, childless person from filing a wrongful death lawsuit; although the estate would still bear the burden of demonstrating evidence. He added, "You'd still have to show that it was the boss's fault, not the decedent's."

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REPRESENTATIVE JOSEPHSON moved onto the second concern addressed in HB 38. He stated that in 2000, Alaska set the PPI whole-body rating at \$177,000; it has not been adjusted since then. He expressed that the proposed bill would, along with offering a remedy for workers, tie the PPI whole-body rating to a consumer price index and set it to "where it should have been." He noted that the Department of Commerce, Community & Economic Development (DCCED) has voiced its concern about the effect of HB 38 on state workers.

REPRESENTATIVE JOSEPHSON asked, "What is the alternative to increasing the PPI?" He proposed that if the legislature set the PPI at an appropriate level in 2000 at \$177,000, then \$255,000 would be appropriate today. He mentioned a document [included in the committee packet] that shows Alaska ranked 33rd in the country on the PPI "care index": For the same type of injury, Pennsylvania would pay \$389,000 while Alaska would pay \$71,000.

REPRESENTATIVE JOSEPHSON concluded that there are two issues addressed by HB 38: First, current law treats people who aren't married as second class citizens and values their lives economically different; and second, the PPI rating hasn't been changed for 17 years.

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REPRESENTATIVE BIRCH asked if Representative Josephson works in this area.

REPRESENTATIVE JOSEPHSON answered no.

REPRESENTATIVE BIRCH noted that people are concerned about the rising costs of delivering workers' compensation. He reported that workers' compensation is intended to be a mechanism to restore a worker back to health and into the workforce; however, he expressed that HB 38 seems like a life insurance issue. He asked, "When does this migrate over into a life insurance policy . . . , as opposed to if somebody wants life insurance they go buy it, as opposed to restoring a worker back to health and putting them back on the job and putting them back in the workforce?"

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REPRESENTATIVE JOSEPHSON responded that other states do what HB 38 proposes. He drew attention to language on page 3 of HB 38, lines 12-17, which provides a benefit of \$20,000 for deceased workers with dependents who "aren't even their own children." He presumed that in a trial, the estate would have to prove an individual's dependence on the deceased. He argued that if the committee doesn't feel it is appropriate to expand workers' compensation as provided in HB 38, then such individuals should be offered an opportunity to sue the employer. He observed, "People shouldn't have to go to work and die." He acknowledged that accidents happen, but current law treats people differently. He characterized that not having a spouse or child

is penalized in current law. He expressed that current law is an economic insult to those without familial dependents.

REPRESENTATIVE JOSEPHSON explained that HB 38 would not cost much; of all the deaths in 2015, only two would have been impacted by HB 38. He noted that the estates of the two deceased workers only had funeral expenses covered and the employers had no retribution. He mentioned that workers' compensation is being reformed currently through other legislation.

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REPRESENTATIVE JOSEPHSON, in response to a question, clarified that HB 38 would apply to more than just state employees.

REPRESENTATIVE BIRCH asked how the half million cost figure would be paid.

REPRESENTATIVE JOSEPHSON offered his interpretation that the estimation of costs in the fiscal note provided by the Division of Risk Management showed what could happen to the state's bottom line in the event of a worker's death. He stated, "You have to have some number to pay for the death benefit." He presumed that the division multiplied the whole-body rate of \$255,000 by the average number of deaths annually to reach \$515,000. He acknowledged that HB 38 could have a financial impact on the state. He offered his view that the committee should give people like Marianne [Burke] a chance to prove wrongful death in court if the committee determines that financial impact of HB 38 is too extreme given the state's financial situation.

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REPRESENTATIVE BIRCH asked how HB 38 would impact the workers' compensation rate. He mentioned that there has been unconstrained growth in workers' compensation. He asked how HB 38 would affect the state and the rest of the economy.

REPRESENTATIVE JOSEPHSON directed attention to a report of similar legislation [included in the committee packet], which read as follows:

In a report to the Oregon Legislature in 2009, the Workers' Compensation Management-Labor Advisory Committee estimated such a change in benefits would

not "materially affect" workers' compensation premium rates, due to the small number of compensable deaths each year.

REPRESENTATIVE JOSEPHSON added that the change mentioned was to the extension of coverage to single, deceased workers. He commented that HB 38 might impact rates "on the margins"; however, Alaska has averaged 15-17 workplace deaths over the years and is already insuring 12-15 of those deaths each year: HB 38 would cover the 2-3 workers who die each year who do not get the same treatment.

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REPRESENTATIVE SULLIVAN-LEONARD asked if there is a delineation between someone who dies as a result of an injury at a job site and someone who dies as the result of a heart attack at his/her desk.

REPRESENTATIVE JOSEPHSON offered his understanding that there would be no death benefit in the second circumstance. He remarked, "I think that there's got to be some showing of causality If you're sitting at a desk, and you die, and nothing fell on you, I think there's no remedy there." He offered his understanding that if someone died at worksite as a result of a faulty ladder, then the estate might be able to sue the ladder manufacturer: The estate could not sue the employer unless the employer failed to pay the appropriate benefit.

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REPRESENTATIVE WOOL asked whether HB 38 would raise the whole-body compensation rate from \$177,000 to \$255,000. He said that the rate is not necessarily a death benefit; it is more along the lines of assisting a worker who is impaired beyond being able to work.

REPRESENTATIVE JOSEPHSON agreed. He explained that the whole-body compensation rate is the economic value the system places on a human being and is the base rate from which other impairments are divided.

REPRESENTATIVE WOOL offered his understanding that the compensation rate is offered to support an injured worker and his/her dependents. He expressed that if an employee with no dependents dies, then HB 38 would cut the compensation rate in

half; however, there would be no survivability or medical costs, et cetera, because the compensation is to the estate.

REPRESENTATIVE JOSEPHSON responded, "Precisely right." He noted that under the proposed bill, the estate would get about \$122,000.

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REPRESENTATIVE WOOL suggested that the reason [the benefit] is currently only \$10,000 is that there are no costs for a deceased person without a spouse or child. He asked whether HB 38 would allow the [parents] of an employee with no dependents to receive money for purpose of compensation for the death of their child.

REPRESENTATIVE JOSEPHSON answered yes.

REPRESENTATIVE WOOL commented that in order to receive the workers' compensation death reimbursement, a death in the workplace would have to be the result of someone's negligence. He assessed that anyone who receives the award agrees not to sue; he asked if HB 38 seeks to change that.

REPRESENTATIVE JOSEPHSON answered no. He expressed that if the committee doesn't want to expand workers' compensation to cover single, childless people, then the committee could allow for wrongful death action. He noted that HB 38 aims to offer an award, but there could be other options of remedies, such as: allowing the estate to sue for wrongful death or setting up a trust fund. He noted that separate from the expansion of workers' compensation, another aspect of the bill would increase the PPI.

REPRESENTATIVE WOOL asked how many other states offer such a benefit. He asked whether it is currently possible to sue after a death in the workplace.

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REPRESENTATIVE JOSEPHSON stated his understanding that although workers' compensation litigation does occur, the program was designed to provide a remedy for employees while limiting litigation. He said, "What you hear about is people, generally, who aren't working and die ... [in] car accidents, plane crashes. They're not working, they're a customer." He mentioned that circumstances that would be affected by HB 38 are not heard about as frequently; although there was coverage of

the death of Abigail Caudle. He explained that Abigail's mother, Marianne Burke, has taken a claim to the Workers' Compensation Board and will be taking the case to the Alaska Supreme Court. He read from page 6 of the Alaska Workers' Compensation Appeals Commission Decision No. 215, which read as follows [original punctuation provided]:

There are three primary reasons why an award of benefits should be made, according to Ms. Burke. First, she asserts, the absence of a financial award devalues the life of a loved one, depriving their family of a sense of justice. Second, she argues, the absence of a financial consequence to the employer removes an incentive to keep the workplace and work practices safe. Third, Ms. Burke argues, to deny any compensation to the family is counter to the fundamental constitutional promises of equal protection under the law and due process of law, in that it treats a person without financial dependents unfairly as compared with others, and denies their estate the right to sue the employer for damages resulting from the employer's negligence.

These policy arguments must be directed to the legislature, as they no doubt will in connection with currently pending legislation introduced following Ms. Caudle's death.

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CHAIR KITO opened public testimony on HB 38.

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KEVIN DOUGHERTY, General Counsel, Alaska Laborers, testified in support of HB 38. He stated that he had read about Abigail Caudle's case and he expressed the case "should prompt us to take the bill seriously and move it forward." He asked the committee for support for the families of those killed on the job in Alaska. He noted that he is glad not many people are killed on the job in Alaska and the number of such deaths is declining; currently it is between 20-30 deaths each year. He acknowledged that public policy requires balancing different interests and economic considerations. He said:

Representative Birch asked a question that can be precisely answered in terms of what is the cost of this bill in relation to ... having a fair-minded ...

civil respect for families of people that get killed on the job. Thankfully the answer is: we're talking less than one percent.

MR. DOUGHERTY commented that the Alaska Division of Insurance communicates with the National Counsel of Compensation Insurance (NCCI) and determines a precise financial analysis of every proposed bill. He remarked, "I can bet my life on it, it will be a lot less than one percent." He stated that the death benefit is a minimal piece of the equation: there are only a few deaths and 30,000 injuries each year.

MR. DOUGHERTY mentioned that he submitted documents [included in the committee packet] about some workplace deaths in Alaska where the deceased workers' families received zero or \$20,000. He asked, "Is that ... an indignant position for the state to take?" He offered his opinion that in 1915, when workers' compensation laws went into effect, Alaska [territorial law] appropriately balanced the relationship between money and human life. He remarked, "If we take that really direct, practical, respectful perspective, I think we can say this bill is worth it." He added that economics are important and fortunately workers' compensation [costs] have decreased in the last 12 years. He expressed that he would appreciate having "the legislature do it right, 'cause we did not do it rightly for the people the last session the bill was up."

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MARIANNE BURKE testified in support of HB 38. She described that her daughter, Abigail Caudle, was killed June 20, 2011, while working overtime. She recounted:

She was put on lighting, she used her tester twice, which showed green. She had gotten down because the journeyman told her to go turn the light switch off - they didn't even turn the circuit breaker off. She turned the light switch off, came back, tried the tester for at least the second or third time - it was green, and that's when she inadvertently hit live wire. She got locked up, twisted as she fell down the ladder. ... The paramedics came; she was alive at first; ... they used the defibrillator; ... she eventually faded. ... To hear in the police report she was in seizure during that time. Details have been really, really difficult for me as you can imagine. I heard from the owner that night that when

the accident happened that the people were actually in the other room - the journeymen - they weren't even right there with her. I've heard from journeymen that a journeyman is always responsible for an apprentice, and she was a new apprentice.

MS. BURKE remarked that accidents similar to Abigail's - involving taking down and putting up lighting - are common and represent most of the deaths of [working] electricians. She explained that Abigail likely hit 440 voltage because of a "live neutral." She asked the committee to imagine how traumatic Abigail's death has been for their family. She expressed that Abigail's sister just had a baby two weeks ago, and she now doesn't have a sister. Abigail's brothers no longer have an older sister to look up to. She commented, "I don't have my daughter to talk to, and to come over and visit me, and to be there at holidays." She asked the committee members to imagine going into a hospital, lifting the white sheet off of their son or daughter, and finding that he/she has died.

MS. BURKE noted that the state has awarded nothing to the family. She stated that the insurance company, not the employer, paid \$10,000 to the funeral home and a "measly" \$11,000 fine from Occupational Safety and Health Administration (OSHA). She offered her understanding that after three years, OSHA's "books are wiped clean" and in the event of a future, identical accident, the employer would be treated as though it were the first incident. She stated that OSHA gave five citations, of which, four contributed to Abigail's death; she described the conditions as "gross negligence." She said no lawyers were willing to represent the family's case. She remarked, "They said to me we've gone through this up to the ... Supreme Court, and we cannot get justice."

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MS. BURKE aired that she cannot sue through civil court. She declared:

Where do I get justice? Where would you go to get justice? If this was you, and you were trying to get justice for your daughter or son killed in the workplace, single with no dependents, and nothing was given for their life, and the employer had no consequence whatsoever, what would you do? Well, I'm giving my life to get justice for her.

MS. BURKE added that the employer's attorneys argue that workers' compensation gives an exclusive remedy for death in the workplace. She related that there has been no remedy. She stated that the attorneys say, "We're providing provision for you." She related that there is no provision. She stated that she has submitted her arguments to the committee in response to the attorneys' claims. She offered her belief that there is a scheme hidden behind the legal terms that doesn't make sense. She expressed that she must try to get justice. She asked the committee to listen to their hearts and to value human life. She remarked:

If we don't value human life, look what happens in the workplace. If there's no liability to the employer, nothing is paid out for the people that are single, without any dependents, and so little is paid for the ones that are killed, even with dependents, then you get the owners thinking to themselves, "Well, do I need to pay that extra money for the safety equipment? Well, no there's nothing that really happens to me, so, I guess I don't."

MS. BURKE concluded that "it all comes down to money, unfortunately." She asked the committee to give value to human life in Alaska. She analyzed that penalties would force employers to keep safety standards. She stated that a previous safety commissioner told her that he was willing to testify about the poor safety conditions in the state. She offered her understanding that Alaska has more accidents than other states.

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REPRESENTATIVE BIRCH stated he is sorry for Ms. Burke's loss, which he characterized as "a tragedy that should befall no parent." He asked how health and insurance programs work under the [International Brotherhood of Electrical Workers] (IBEW). He stated that most employees sign up for health and life insurance on the first day at a new job. He asked if insurance is typically provided by the union or the employer. He asked whether [insurance] was available to Abigail.

MS. BURKE stated that although Abigail had tried, she was not with the union. She offered her understanding that the union takes better care of their people than Raven Electric, Inc., Abigail's employer, does. She mentioned hearing from other individuals who had claimed that Raven Electric, Inc. was considered a poor employer and they had hoped that the accident

would bring [the poor working conditions] to light. She analyzed that unsafe practices of a poor employer have no consequences; consequences might prevent further accidents.

REPRESENTATIVE BIRCH asked whether Abigail had an opportunity to have a benefit program. He stated that he is not interested in disparaging any employer.

MS. BURKE responded that she does not know. She offered her opinion that providing life insurance to workers in dangerous jobs should be mandatory for [employers] or, alternatively, that workers' compensation should cover death benefits. She stated that she is sorry to disparage Raven Electric, Inc., but she is upset at the lack of consequences and the poor supervision that led to Abigail's death. She remarked, "I know there's good people over there and they were very, very sorry about the death, so I don't mean to bring the whole company down."

CHAIR KITO thanked Ms. Burke for her testimony and expressed condolences on behalf of the committee.

[4:14:45 PM](#)

RONALD ROSS testified in support of HB 38. He informed the committee that his granddaughter, Abigail Caudle, was killed. He remarked:

I am appalled, really, ... that a company like [Raven Electric, Inc.] - and I don't know all the answers ... I've been an employer around and I know ... I never had a death thing in my thing - but some young girl going up the ladder and touch a live wire - and I'm a contractor - I mean, I think they'd hang me by my feet out in the courtyard. I mean, this is ridiculous. ... You guys get away with ten grand ... I think your laws stink, I'm sorry. But this is just ... outrageous that a person - a young employee - and the journeyman's on the ground having tea with the boys ... and she's up there grabbing a live wire and lose her life. She pays half the rent of Betty Caudle and she supplies the food and the stuff there with Betty at her apartment and she gets nothing. Nothing goes to her. What's going on with this state? I just can't believe it.

[4:17:00 PM](#)

DON ETHERIDGE, Lobbyist, Alaska American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), testified in support of HB 38. He explained that if someone dies on the job and the death was not job related, then the individual's estate would get nothing. He mentioned that he saw such an example in Juneau when a foreman had a heart attack, his family claimed it was stress related, and the family was denied any worker's compensation. He explained that some units of AFL-CIO provide life insurance, but the majority do not. He commented that when he first started he had young children and couldn't afford life insurance in addition to daily living expenses. He remarked, "Not everybody can afford it, sir." He mentioned that he got life insurance when he could afford it. He urged, "We got to have something for the families that are left behind."

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CHAIR KITO announced that HB 38 was held over.

[4:19:03 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:19 p.m.