

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

March 20, 2017

3:17 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 JOINT RESOLUTION NO. 14

Urging the Federal Communications Commission to increase the Rural Health Care Program budget sufficiently to adjust for inflation, advances in technology and the services available with increased broadband, and the increase in demand for broadband-based services and provide for any unused funds to be carried forward to future funding years, ensuring that rural communities in the state continue to have access to affordable broadband telehealth services.

- MOVED HJR 14 OUT OF COMMITTEE

HOUSE BILL NO. 157

"An Act relating to the Alaska Life and Health Insurance Guaranty Association; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 119

"An Act relating to the dividends from the Alaska Industrial Development and Export Authority; relating to the meaning of 'mark-to-market fair value,' 'net income,' 'project or development,' and 'unrestricted net income' for purposes of the Alaska Industrial Development and Export Authority; and providing for an effective date."

- HEARD & HELD

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: HJR 14

SHORT TITLE: FCC: INCREASE RURAL HEALTH CARE BUDGET

SPONSOR(S): REPRESENTATIVE(S) EDGMON

03/06/17	(H)	READ THE FIRST TIME - REFERRALS
03/06/17	(H)	L&C
03/15/17	(H)	L&C AT 3:15 PM BARNES 124
03/15/17	(H)	-- MEETING CANCELED --
03/17/17	(H)	L&C AT 3:15 PM CAPITOL 106
03/17/17	(H)	Heard & Held
03/17/17	(H)	MINUTE(L&C)
03/20/17	(H)	L&C AT 3:15 PM BARNES 124

BILL: HB 157

SHORT TITLE: LIFE & HEALTH INSURANCE GUARANTY ASSN.
SPONSOR(s): LABOR & COMMERCE BY REQUEST

03/06/17 (H) READ THE FIRST TIME - REFERRALS
03/06/17 (H) L&C
03/13/17 (H) L&C AT 3:15 PM BARNES 124
03/13/17 (H) -- MEETING CANCELED --
03/15/17 (H) L&C AT 3:15 PM BARNES 124
03/15/17 (H) -- MEETING CANCELED --
03/20/17 (H) L&C AT 3:15 PM BARNES 124

BILL: HB 119

SHORT TITLE: AIDEA:DIVIDEND TO STATE;INCOME;VALUATION
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/13/17 (H) READ THE FIRST TIME - REFERRALS
02/13/17 (H) L&C, FIN
03/13/17 (H) L&C AT 3:15 PM BARNES 124
03/13/17 (H) -- MEETING CANCELED --
03/20/17 (H) L&C AT 3:15 PM BARNES 124

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
02/20/17 (H) Heard & Held
02/20/17 (H) MINUTE(L&C)
03/01/17 (H) L&C AT 3:15 PM BARNES 124
03/01/17 (H) <Bill Hearing Canceled>
03/06/17 (H) L&C AT 3:15 PM BARNES 124
03/06/17 (H) Heard & Held
03/06/17 (H) MINUTE(L&C)
03/08/17 (H) L&C AT 3:15 PM BARNES 124
03/08/17 (H) <Bill Hearing Canceled>
03/15/17 (H) L&C AT 3:15 PM BARNES 124
03/15/17 (H) -- MEETING CANCELED --
03/17/17 (H) L&C AT 3:15 PM CAPITOL 106
03/17/17 (H) <Bill Hearing Canceled>
03/20/17 (H) L&C AT 3:15 PM BARNES 124

WITNESS REGISTER

TIM CLARK, Staff
Representative Bryce Edgmon

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing of HJR 14, reminded the committee of its previous discussion.

RACHEL GEARHART
Clinical Director
Juneau Alliance for Mental Health, Inc.,
Alaska Chapter National Association of Social Workers
Juneau, Alaska

POSITION STATEMENT: During the hearing of HJR 14, offered support for the legislation.

JENNIFER HARRISON
Eastern Aleutian Tribes
Sand Point, Alaska

POSITION STATEMENT: During the hearing of HJR 19, offered support for the legislation.

BIANCA CARPENETTI, Staff
Representative Sam Kito
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 157 on behalf of the House Labor and Commerce Standing Committee, Representative Kito, chair.

LORI WING-HEIR, Director
Division of Insurance
Department of Commerce, Community & Economic Development (DCCED)
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 157, provided a summary of the sectional analysis.

DONALD THOMAS, Administrator, and Counsel
Alaska Life and Health Insurance Guaranty Association
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 157, discussed the Alaska Life and Health Insurance Guaranty Association.

GENE THERRIAULT
Alaska Industrial Development and Export Authority (AIDEA)
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 119, offered a PowerPoint presentation titled, Alaska's Development Finance Authority.

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

POSITION STATEMENT: During the hearing of CSHB 79, offered a sectional analysis of Version O.

CHARLIE YOUNG
Fairbanks, Alaska

POSITION STATEMENT: During the hearing of CSHB 70, offered support for the legislation.

WALTER ROBINSON
Nenana, Alaska

POSITION STATEMENT: During the hearing of CSHB 79, offered support for the legislation.

DOUG TANSY, President
Fairbanks Central Labor Council
Fairbanks, Alaska

POSITION STATEMENT: During the hearing of CSHB 79, offered support for the legislation.

ERNIE EADS
Thorne Bay, Alaska

POSITION STATEMENT: During the hearing of CSHB 79, testified.

AVES THOMPSON, Executive Director
Alaska Trucking Association (ATA)
Anchorage, Alaska

POSITION STATEMENT: During the hearing of CSHB 79, testified.

CHRIS NETTELS, President
Geotech Alaska
Anchorage, Alaska

POSITION STATEMENT: During the hearing of CSHB 70, offered opposition to the legislation.

MIKE McGUIRE
Anchorage, Alaska

POSITION STATEMENT: During the hearing of CSHB 79, offered support for the legislation.

BRONSON FRYE
Anchorage, Alaska

POSITION STATEMENT: During the hearing of CSHB 79, offered support for the legislation.

BRANDON McGUIRE, Representative
UA Local 367 Plumbers & Steamfitters
Anchorage, Alaska

POSITION STATEMENT: During the hearing of CSHB 79, offered support for the legislation.

PAT FALON
Anchorage, Alaska

POSITION STATEMENT: During the hearing of CSHB 79, offered support for the legislation.

RODNEY HESSON, President
Juneau Building Trades
Juneau, Alaska

POSITION STATEMENT: During the hearing of CSHB 79, offered support for the legislation.

ACTION NARRATIVE

[3:17:44 PM](#)

CHAIR SAM KITO called the House Labor and Commerce Standing Committee meeting to order at 3:17 p.m. Representatives Kito, Birch, Knopp, Sullivan-Leonard, Stutes, and Wool were present at the call to order. Representative Josephson arrived as the meeting was in progress.

HJR 14-FCC: INCREASE RURAL HEALTH CARE BUDGET

[3:18:21 PM](#)

CHAIR KITO announced that the first order of business would be HOUSE JOINT RESOLUTION NO. 14, Urging the Federal Communications Commission to increase the Rural Health Care Program budget sufficiently to adjust for inflation, advances in technology and the services available with increased broadband, and the increase in demand for broadband-based services and provide for any unused funds to be carried forward to future funding years, ensuring that rural communities in the state continue to have access to affordable broadband telehealth services.

[3:18:44 PM](#)

TIM CLARK, Staff, Representative Bryce Edgmon, Alaska State Legislature, advised that HJR 14 requests that the FCC raise the budget for the Rural Health Care Universal Services Support

Program. The budget has been capped at \$400 million for 20 years now, but with the increase in the exploitation of broadband, increase of technologies available, and the increase on the state side with using telemedicine to make more healthcare services available at the local level, has brought the healthcare providers close to reaching that \$400 million annual cap, and the time has come to raise that budget.

[3:20:02 PM](#)

CHAIR KITO asked whether the \$400 million is nationwide.

MR. CLARK answered in the affirmative.

[Public testimony on HJR 14 had remained open from the last hearing.]

[3:20:33 PM](#)

RACHEL GEARHART, Clinical Director, Juneau Alliance for Mental Health, Inc., Alaska Chapter National Association of Social Workers, advised that she is the Clinical Director for Juneau Alliance for Mental Health, Inc., (JAMHI) which is Juneau's community behavioral health center for adults, and it constantly sees roughly 400 outpatients for mental health services at any given time. The catchment area includes the small communities of Gustavus, Tenakee Springs, and Elfin Cove, and it works with USAK to offer tele-behavioral services to those communities, and it also partners with the Sitka Hospital using equipment to provide medical services to folks in those communities. Additionally, the Juneau Alliance for Mental Health is working with the Rural Veterans Health Access Program (RVHAP) utilizing federal Health Resources and Services Administration (HRSA) funds to create access to veterans across the state. Using this tele-behavioral health equipment is extremely vital for JAMHI to reach the many veterans spread across the state, and they are sometimes either unwilling or unable to come into more populated communities and access services. Particularly important for Juneau Alliance for Mental Health (JAMHI) is that its services are known throughout the state, and it has been able to serve people discharged from the Alaska Psychiatric Institute after going home to their communities. However, she said, patients may be related to everyone at their home community clinic so they can receive counseling from an agency in another community, with no connection to anyone working in the clinic, using their smart phone, or iPad. Personally, she said, as a citizen of

Juneau and a member of the mental health field, she strongly encouraged the committee to pass this important legislation.

[3:23:28 PM](#)

JENNIFER HARRISON, Eastern Aleutian Tribes, reiterated the testimony of the previous speaker and said its Rural Health Care Universal. Service Support Program enables the provision of healthcare providers in the most remote communities of Alaska offering telehealth services that dramatically improve (coughing). Due to telehealth behavior services they are able to provide psychiatric services to villages with less than 100 people. Psychiatrists are rare in Alaska and child psychiatrists are even more rare, she stressed, but Eastern Aleutian Tribes successfully have a contract with Orion Health to provide child psychiatric services to Alaska's smallest villages. She reiterated the importance of this program and offered support.

CHAIR KITO, after ascertaining no one wished to testify, closed public testimony on HJR 14.

[3:25:00 PM](#)

REPRESENTATIVE WOOL moved to report HJR 14, Version 30-LS0422\J, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HJR 14 passed from the House Labor and Commerce Standing Committee.

[3:25:23 PM](#)

The committee took an at-ease from 3:25 p.m. to 3:30 p.m.

HB 157-LIFE & HEALTH INSURANCE GUARANTY ASSN.

[3:30:05 PM](#)

CHAIR KITO announced that the next order of business would be HOUSE BILL NO. 157,"An Act relating to the Alaska Life and Health Insurance Guaranty Association; and providing for an effective date."

[3:30:27 PM](#)

BIANCA CARPENETTI, Staff, Representative Sam Kito, Alaska State Legislature, advised that HB 157 is a House Labor and Commerce Standing Committee bill by request of the Department of

Commerce, Community & Economic Development (DCCED). On 1/20/17, the department presented the concept of the bill for the committee and the committee authorized the chair to draft legislation on behalf of the committee addressing the issues raised by the department. The legislation updates the Alaska Life and Health Insurance Guaranty Act and conforms to the National Association of Insurance Commissioners, Life, and Health Insurance Guaranty Association Model Act. It includes the definition of an insured member of the association and the Hospital and Medicare Service Corporations, which are entities of active insurance companies. These changes update the Act and improve uniformity nationwide in the administration of Life and Health Guaranty Associations. The bill has a zero-fiscal note from the Division of Insurance, she said.

[3:32:02 PM](#)

LORI WING-HEIR, Director, Division of Insurance, Department of Commerce, Community & Economic Development (DCCED), advised that HB 157 is an amendment to the Alaska Life and Health Insurance Guaranty Association. The sectional analysis summary is mainly conformance to the National Association of Insurance Commissioners Model Law (NAIC), and Alaska statutes with 16 typographical errors within the statutes.

[3:32:55 PM](#)

MS. WING-HEIR began paraphrasing the sectional analysis.

[3:33:08 PM](#)

The committee took an at-ease from 3:33 p.m. to 3:34 p.m.

[3:34:49 PM](#)

MS. WING-HEIR paraphrased the sectional analysis as follows [original punctuation provided]:

Sec. 1 AS 21.79.020(a) is amended to clarify that the chapter applies to a nonresident who is not eligible for coverage by a guaranty association in another state due to the fact that the insurer was not licensed at the time specified in the guaranty association law of that state.

Sec. 2 AS 21.79.020(b) is amended to have AS 21.79 apply to a subscriber's contract issued by a hospital

or medical service corporation authorized under AS 21.87. The amendment also defines the terms "annuity policy or contract" and "certificate under a direct group life health, annuity, or supplemental policy or contract".

3:35:09 PM

MS. WING-HEIR advised that the hospital or medical service corporation in Alaska is Premera Blue Cross, and as was discussed in January, it is the intent of the department to bring Premera in to make an assessment in the event of a large insolvency. The second portion of Sec. 2, creates consistencies to a draft modeling in NAIC-Model.

MS. WING-HEIR advised that Sec. 3 lists exclusions to what is not covered in this particular Guaranty Association, because there is wording in Alaska statutes to make sure to not pick up federal preemptions, or structured settlements or annuities that have been sold to a third-party.

MS. WING-HEIR continued paraphrasing as follows [original punctuation provided]:

Sec. 3 AS 21.79.020(c) is amended to make AS 21.79 inapplicable to:

1. a policy or contract providing a hospital, medical, prescription drug, or other health care benefit in accordance with 42 U.S.C. 1395w-21 - 1395w-154 or federal regulations adopted under those sections; (Medicare Choice Program and Voluntary Prescription Drug Benefit Program)

2. a person who acquires rights to receive payments through a structured settlement factoring transaction as defined in 26 U.S.C. 5891(c)(3)(A), regardless of whether the transaction occurred before or after such section became effective.

3. structured settlement annuity benefits to which a payee or beneficiary has transferred the payee or beneficiary's rights in a structured settlement factoring transaction as defined in 26 U.S.C. 5891(c)(3)(A), regardless of whether the transaction occurred before or after 26 U.S.C. 5891(c)(3)(A) became effective.

- Subsection (c) is also amended to add clarifying language consistent with the National Association of Insurance Commissioners (NAIC) Life and Health Insurance Guaranty Association Model Act (MDL 520) (NAIC Model).

Sec. 4 AS 21.79.020(d) Non-substantive changes are made for either consistency with the NAIC Model or drafting conventions.

Sec. 5 AS 21.79.020(e) Non-substantive changes made are for either consistency with the NAIC Model or drafting conventions, and a citation correction is made in paragraph (9).

Sec. 6 AS 21.79.025(a)

- AS 21.79.025(a)(2)(B)(ii) is amended to clarify that the benefits for which the association may become liable may not exceed \$300,000 for long-term care insurance as defined under AS 21.53.200.

- AS 21.79.025(a)(3) is amended to change "contract holder" to "contract owner" to be consistent with the NAIC Model, to clarify that the contract refers to an unallocated annuity contract issued to or in conjunction with a government lottery if the owner is a resident, and to clarify that the association is not liable to cover more than \$5 million in benefits regardless of the number of policies and contracts held by the owner.

- AS 21.79.025(a)(4) is amended to increase the coverage limit for net cash surrender and net cash withdrawal values of annuities from \$100,000 to \$250,000 for individuals participating in a governmental retirement benefit plans established under 26 U.S.C. 401, 26 U.S.C. 403(b) or 26 U.S.C. 457 and covered by an unallocated annuity contract

- AS 21.79.025(a)(5) is amended to increase the coverage limit for net cash surrender and net cash withdrawal values, if any, from \$100,000 to \$250,000 to each payee of a structured settlement annuity, or beneficiary of the payee if the payee is deceased, in the aggregate.

Sec. 7 AS 21.79.025(d)(2) is amended to correct a typographical error.

Sec. 8 AS 21.79.060(a)(2) is amended to allow the association to provide loans to assure payment of the contractual obligations of the impaired insurer until those obligations are guaranteed, reinsured, or assumed.

Sec. 9 AS 21.79.060(d) AS 21.79.060(d)(1) is amended to better track the NAIC Model organization and language by combining existing paragraphs 1 - 3 under AS 21.79.060(d). Tracking NAIC models and language promotes national uniformity and state-based regulation, and ease of interpretation, compliance, administration, enforcement, and amendment.

- AS 21.79.060(d)(1), consistent with the addition of loans under AS 21.79.060(a)(2) under Section 8 of the bill above, is amended to authorize the association to utilize loans necessary to discharge the association's duties under AS 21.79.060.

- AS 21.79.060(d)(2) is amended to better track the NAIC Model organization and language by placing existing subsections (e) - (j) in this paragraph.

Sec. 10 AS 21.79.060(l) is amended to require the association to provide a report to the liquidator regarding the premium collected by the association if requested by the liquidator of an insolvent insurer.

Sec. 11 AS 21.79.060(n) is amended to authorize the association to impose a permanent policy or contract lien under a guarantee, assumption, or reinsurance agreement if the policy or contract lien is approved by a court and the association finds that the amount that may be assessed under AS 21.79 is less than the amount needed to assure full and prompt performance of the association's duties under the chapter.

Sec. 12 AS 21.79.060(o) is amended to use updated language consistent with the NAIC Model and to change a subsection citation to conform to amendments being made to the section.

Sec. 13 AS 21.79.060(p) is amended to change a subsection citation to conform to amendments being made to the section.

Sec. 14 AS 21.79.060(t) is amended to use updated language consistent with the NAIC Model.

Sec. 15 AS 21.79.060(aa) AS 21.79.060 is amended to add a new subsection (aa) to better track the NAIC Model language and organization by incorporating into the new section the provisions in existing AS 21.79.060(u) - (x).

Sec. 16 AS 21.79.070(a) is amended to require that any assessment of association members by the association board must be adopted by a resolution of the board.

Sec. 17 AS 21.79.070(c) amended to increase the amount of a non- pro rata assessment of members by the association board from \$250 per calendar year to \$500 per calendar year.

Sec. 18 AS 21.79.080(c) is amended to require the association board to adopt a plan of operation that includes

(1) procedures for removing a member of the board for cause, including procedures for removing a member of the board who becomes an impair or insolvent insurer, and

(2) policies and procedures for addressing conflicts of interest.

Sec. 19 AS 21.79.090(c) is amended to

(1) clarify that only a final action of the board may be appealed to the director of the division of insurance, and

(2) increase the time by which an appeal may be taken from 30 days to 60 days after the date the notice of the board's action is mailed.

Sec. 20 AS 21.79.090(d) is amended to clarify that the liquidator, rehabilitator, or conservator of an insolvent insurer may notify all interested persons of the effect of AS 21.79.

Sec. 21 AS 21.79.110(b) is amended to remove the requirement that records of meetings of the association may only be made public after an insurer is no longer impaired or insolvent.

Sec. 22 AS 21.79.140 is amended to

(1) clarify that a cause of action may not arise for an action or omission of the association and its agents and employees, members of the Board of Governors, member insurers, and agents and employees of member insurers, and the director of the division of insurance and the director's representatives in performing their duties under AS 21.79, and

(2) extend the immunity to such entities' participation in an organization of one or more state associations of similar purposes and to that organization and its agents or employees.

Sec. 23 AS 21.79.150 is amended to extend the time a proceeding involving an insolvent insurer may be stayed from 60 days to 180 days after the date of a final order of liquidation, rehabilitation, or conservation in order to allow the association additional time to exercise a power or duty authorized under AS 21.79.

Sec. 24 AS 21.79.900(5) amends the term "called" to

(1) mean a notice has been mailed (formerly issued) by the association to member insurers requiring that an authorized assessment be paid within the time set out in the notice, and

(2) include in the definition of "called" that an authorized assessment becomes called when notice IS mailed by the association to member insurers.

Sec. 25 AS 21.79.900(6) amends the term "contractual obligation" to clarify that the term only applies to an obligation under a policy, contract, or certificate under a group policy or contract, or portion of one for which coverage is provided under AS 21.79.020(a), (b), (d), and (e).

Sec. 26 AS 21.79.900(7) amends the term "covered policy" to mean a policy or contract or a portion of a

policy or contract for which coverage is provided under AS 21.79.020(a), (b), (d) and (e).

Sec. 27 AS 21.79.900(10) amends the term "member insurer" to include a hospital or medical service corporation licensed under AS 21.87.

Sec. 28 AS 21.79.900(13) amends the term "plan sponsor" to clarify that the term applies to groups of representatives of parties similar to two or more employers or jointly by one or more employers and one or more employee organizations, an association, committee, or joint board of trustees who establish or maintain the benefit plan.

Sec. 29 AS 21.79.900(14) amends the term "premium" to clarify that assessable premium may not be reduced on account of AS 21.79.020(c)(4) relating to interest limitations and AS 21.79.025(a)(2) - (5), (b), and (d) relating to limitations with respect to one individual, one participant, and one contract owner. The term "premium" does not include

(1) premiums in excess of \$5 million on an unallocated annuity contract not issued under a government retirement benefit plan or its trustee established under 26 U.S.C. 401, 26 U.S.C. 403(b), or 26 U.S.C. 457; or

(2) with respect to multiple nongroup policies of life insurance owned by one owner, whether the policy holder is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, premiums in excess of \$5 million with respect to those policies or contracts, regardless of the number of policies or contracts held by the owner.

Sec. 30 AS 21.79.900(16) amends the term "resident" to delete language considered unnecessary under state drafting conventions.

Sec. 31 AS 21.79.900(19) amends the term "supplemental contract" to mean a written agreement entered into for the distribution of proceeds under life, health, or annuity policy or contract benefits.

Sec. 32 AS 21.79.900 is amended to add new paragraphs to define the terms "benefit plan", "election date",

and "extra contractual claim". The section is also amended to define "published monthly average", a term previously defined under AS 21.79.020(f).

Sec. 33 AS 21.87.340 is amended to add AS 21.79 to the list of statutory provisions which apply to hospital and medical service corporations.

Sec. 34 Repeals the following provisions

- AS 21.79.020(f) defining "published monthly average" as the term definition is placed under AS 21.79.900.

- AS 21.060(c) is repealed as the provision no longer is in the NAIC Model.

- AS 21.79.060(e) - (j) are repealed as these provisions have been relocated to AS 21.79.060(d).

- AS 21.79.060(u) - (x) are repealed as these provisions have been relocated to AS21.79.060(aa).

- AS 21.79.110(e) is repealed as unnecessary because the state has adopted Section 602 of the NAIC Insurers Receivership Model Act (MDL 555)(AS 21.78.325).

Sec. 35 Provides for an uncodified new section outlining the timing of when the director may adopt regulations.

Sec. 36 Provides that section 36 of the Act takes effect immediately under AS 01.10.070(c).

Sec. 37 Provides that except as provided in section 37 of the Act, the Act takes effect July 1, 2017.

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REPRESENTATIVE BIRCH requested a "two-minute elevator speech as to what this actually does."

MS. WING-HEIER responded there are two Guaranty Associations in Alaska: property and casualty, which include workers'

compensation, and life and health which does life and health annuities. In the event an entity is a member insurer in the State of Alaska, and holds a Certificate of Authority to Conduct Business, it is automatically a member insurer. There is life and there is health (coughing) within the association there are two categories of insurers. In the event the company becomes insolvent and cannot pay claims to its policyholders, the association steps in, makes assessments to its member insurers, and pays out the claims. She noted that this has happened in both the property and casualty, and the life and health associations.

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REPRESENTATIVE BIRCH said he noticed some of the benefit obligations went from \$100,000 to \$250,000, a two and one-half times multiplier on a benefit. This implies, he said, there is an additional cost to someone because if the benefit is going up, the premium would go up for someone. He asked what type of budget this operates under, how many insurers there are, how many are insured, and whether this involves 10 percent of the state's population.

MS. WING-HEIER answered that there are approximately 670-member insurers in the association. She noted that assessments are not made unless there is an insolvency or liquidation for which claims must be paid. The limits were raised because it had been \$100,000 for as long as the association had existed, and due to trending and the need for the policies to perform, the limits needed to be raised, and the higher limits are being paid in other states. She explained that on those two or three categories, the limits were raised from \$100,000 to \$250,000. She said that \$300,000 was inserted in long-term care because the statute was unclear, and the division wanted to be certain long-term care policies were capped at \$300,000.

REPRESENTATIVE BIRCH asked what the current operating budget is.

MS. WING-HEIER replied that the association operates on a budget, not the division. She reiterated that in the event there is a need, the association accesses the member insurer up to 2 percent of the premiums of that insurer. Quite honestly, she said, the association may put the responsibility back on policyholders depending upon who they are, or they may just pay it directly.

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DONALD THOMAS, Administrator and Counsel, Alaska Life and Health Insurance Guaranty Association, advised he has been the administrator and counsel for Alaska Life and Health Insurance Guaranty Association since 1996.

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REPRESENTATIVE BIRCH noted the jump in benefits, and said that since the state has no liability, his primary interest is the impact it may have on potential constituents. He asked that with 670 insurers, what type of an annual budget he has and how it is managed and maintained.

MR. THOMAS responded that the administrative budget is approximately \$160,000, just to participate primarily with the national organization. The budget is funded through the Class A assessments which have been capped at \$250,000 since the 1990 inception of the Act. Given the number of members under that cap, he said he is currently asking that the amount be increased to \$500,000. The Alaska Life and Health Insurance Guaranty Association tries to avoid extra expenses and it tries to perform a Class A assessment every couple of years, rather than the expense of every year. The other side of the equation is that because Alaska has no domestic life or health insurer, every time a member insurer is declared insolvent, there is an insolvency affecting Alaska policyholders, a member insurer participates on a multi-state basis. The association works within a taskforce among the various states to determine how the states will collectively address the insolvency. Actuaries' determine the share of that cost for each state and the association receives a bill, the association accesses its members up to statutory limits. The association does not carry cash on hand, he advised, and it collects that money once the insolvency had been declared, under the statute, it sends out a 30-day notice to member insurers to pay the association, and that money is then sent to the proper location to affect the plans of the multi-state response to the insolvency. He related that that is one of the real reasons HB 157 [should become law] so Alaska can attain functional consistency with the other states of which it is always involved. He advised that 44 states have already adopted the amendments to the National Association of Insurance Commissioners Model Law (NAIC) which was substantially amended in 2009. Alaska is one of two states west of Ohio that has yet to adopt these amendments, which is a primary reason the Board of Governors of the Alaska Life and

Health Insurance Guaranty Association supports passage of HB 157, he said.

[3:50:28 PM](#)

REPRESENTATIVE KNOPP offered surprise that not many companies suffer insolvency and that this bill is truly about consumer protection. He asked whether the director had received any type of opposition or comment from Premera Blue Cross, Blue Shield on this legislation.

MS. WING-HEIER responded that the only comment she received was from National Blue Cross, Blue Shield Association out of Washington, D.C., was to remind her that the National Association of Insurance Commissioners and the National Coalition of Insurance Legislators are working on model legislation to address long-term care, which would bring life insurers and health insurers together to address long-term care. "Currently, long-term care Penn Treaty is a long-term care insurer insolvency is just health insurers," she said. There are two accounts in the association, she reiterated, life and health, and currently Penn Treaty will be paid out of health. This model legislation is addressed because long-term care is huge nationwide, it would allow for insolvencies to call from both sets of insurers and not just in Alaska; it would have to adopt that legislation if it ever comes into fruition. She reiterated that the National Blue Cross, Blue Shield Association out of Washington, D.C., reminded her of the potential model act, and that it hoped "we would support it because there is such a large player in the medical field here and it would be -- (indisc.) long term care, not Penn Treaty, but if there were another one going forward that they would be expected to pay a pretty big part of the assessment. And, they would hope we would support bringing in the life insurers in that model legislation and into Alaska."

REPRESENTATIVE KNOPP surmised there was no strong opposition to HB 157.

[3:53:47 PM](#)

CHAIR KITO advised that public testimony would be left open.

HB 119-AIDEA:DIVIDEND TO STATE;INCOME;VALUATION

[3:54:07 PM](#)

CHAIR KITO announced that the next order of business would be HOUSE BILL NO. 119, "An Act relating to the dividends from the Alaska Industrial Development and Export Authority; relating to the meaning of 'mark-to-market fair value,' 'net income,' 'project or development,' and 'unrestricted net income' for purposes of the Alaska Industrial Development and Export Authority; and providing for an effective date."

[3:54:26 PM](#)

The committee took an at-ease from 3:54 p.m. to 3:55 p.m.

[3:55:51 PM](#)

GENE THERRIAULT, Alaska Industrial Development and Export Authority (AIDEA), advised that the PowerPoint presentation titled, "Alaska's Development Finance Authority" discusses problems corrected by this legislation in the calculation of the Alaska Industrial Development and Export Authority (AIDEA) dividend. He turned to slide 2, and explained that AIDEA is a completely owned entity of the State of Alaska that helps with economic investment in the state. It was capitalized in the 1980s with approximately \$350 million worth of money, and AIDEA has since paid back approximately \$392 million to the state treasury, he said.

[3:57:21 PM](#)

MR. THERRIAULT turned to slide 3, and explained that HB 119 would update statutes dictating how the dividend is calculated, or the number taken into the dividend calculation to determine the size of the check written to the state's general fund each year.

MR. THERRIAULT turned to slide 4, and noted that this slide references the calculation of the dividend, and AIDEA wants the dividend to be based upon real transactions that either provides or deducts a dollar from the AIDEA treasury. Also, he explained, depreciation on assets is taken into account and AIDEA would like to continue having those come into account (coughing) taking into the dividend. Except, he noted, new issues are being triggered by federal accounting rules which cause these "mark-to-market adjustments" which, he described, are paper adjustments that must be done in order to get the audited financial statement. Alaska Industrial Development and Export Authority (AIDEA), he said, will still do all of those

things in order to receive its audited financial statement, but the legislators "get to then tell AIDEA" which of those papers adjustments it backs out to get back to pure cash and then put that number into the dividend calculation.

[3:58:48 PM](#)

MR. THERRIAULT turned to slide 5, and advised that the slide is a summation of the existing dividend language. AIDEA is listed on the second block of text, "you are supposed to take" a number into the dividend calculation and share 25 percent to 50 percent of the net income with the state general fund on a yearly basis. The difficulty is, he explained, in that last block of text the definition of net income refers to the net income as shown in the audited financial statement under general accepted accounting principles. He pointed out that, that is now the area where the uncertainty comes into the calculation due to a number of paper adjustments that must be made in order to get that audited financial statement.

MR. THERRIAULT turned to slide 6-7, and offered that the first problem AIDEA is trying to correct is called the "market value adjustments." Under the "Gap Rules," a snapshot must be taken and "book what your market value is on certain items that are in your portfolio." When those paper adjustments are made it has an impact on the calculation of the AIDEA dividend. Sometimes it over-inflates the dividend and suggests that AIDEA should pay a larger dividend on cash it did not actually make, and sometimes it under reports net income and suggests AIDEA should pay a lower dividend than the cash it actually has to make that calculation ensure that money. He reiterated that AIDEA is trying to clean up the statutes so there is clear direction to back out those paper adjustments and get back to cash on hand before it calculates the dividend. He explained that slide 7 depicts a snapshot of the front sheet from a personal income tax, and for instance, the person has \$100,000 of real wages, an investment account, rental property, and a 401K, which calculates to \$109,000. The person would write a check to the federal government for a percentage of that real cash income that person achieved within the year.

[4:01:45 PM](#)

MR. THERRIAULT turned to slides 9-10, and said, however, if that person had to follow all of the new Governmental Accounting Standards Board (GASB) rules as AIDEA must in order to get its audited financial statement, the person would have to "book

these following adjustments." He turned to slide 10, line 11, "GASB 31" and explained the rule has been in place for some time which causes AIDEA to basically book at the end of the fiscal year, take a snapshot of securities it has within its overall investment portfolio, and if the securities have appreciated even though the enterprise has not sold them and captured that cash, it has to book that increase in estimated value as if in fact it achieved the cash and had sold those securities at the end of the fiscal year. He said that line 11 suggests that if a person had a portfolio of \$250,000 and the market is up by 10 percent, that would cause a person to book an extra \$25,000 of income even though they did not sell those securities and did not really achieve that income.

[4:02:50 PM](#)

MR. THERRIAULT referred to slide 10, line 16, "GASB rule 68" and advised that is an adjustment for retirement or 401K. In the event a person has investments in a 401K and the market is up, even though the person had not sold those investments and actually captured that, the person would book that as if it were true income. The analogy for the state is "every year AIDEA, as a state enterprise, has an estimation of their share of the unfunded obligation for retirement." The enterprise then pays a portion of money for their share, but it generally is less than that snapshot of their share of the unfunded obligation for the state. He advised that AIDEA would like to book those things that actually are an increase or decrement to true income, but back out the paper adjustments so it does not artificially over-inflate or under-inflate the number taken into the dividend calculation.

MR. THERRIAULT referred to slide 10, line 20a, "GASB rule 75," and advised that it is an adjustment for post-employment benefits, and for the state it would be an estimation of future health care benefits owed for state employees. For the individual, it would cause them to actually estimate the value of their medical coverage in the future and actually capture that as if it were cash the person could count on right on, and actually put it on their tax form.

[4:04:41 PM](#)

MR. THERRIAULT turned to slide 11, and said that basically, AIDEA is asking with the passage of this legislation the paper adjustments ...

[4:04:54 PM](#)

REPRESENTATIVE BIRCH referred to slide 10, and opined that the "mark to market" in the banking industry was when the market was going down, not up. Basically, he said, in the event a person has major losses that are not yet realized and have an obligation, the person may be in a position to make a payment, but might not want to make a payment because they need to offset those losses at some point.

MR. THERRIAULT answered that these adjustments are both on the upside and downside, and the soon to be discussed slides will show that the swings have been on both the upside of true net income and to the downside. Alaska Industrial Development and Export Authority (AIDEA) is trying to back them out on both sides, get back to true net income, and then take that number into the dividend calculation.

MR. THERRIAULT turned to slide 11, and explained that with regard to the "fixed to the mark-to-market adjustments," AIDEA would like to back out those paper adjustments, get back to the true \$109,000 of real income this individual made, and that is what they would write their check to the United States government, or AIDEA would write its check to the state general fund treasury to share a portion of the true net income it made in a calendar year.

[4:06:39 PM](#)

MR. THERRIAULT turned to slides 12-13, and explained that the graph on slide 12 is AIDEA's net income over the years and it moves up and down depending upon the economy and AIDEA's investments. There is some volatility in the actual cash AIDEA takes into the dividend calculation. Except, he said, slide 13 has graphed "GASB rule 31," which has been in place for a number of years, against the true net income. He referred to the gold/yellow line and said it has periodically spiked the net income up in some years and has depressed it artificially down in other years. Early on, he pointed out, the ups and downs were not as pronounced, but in the most recent years the "zigs and zags" up above and below the (coughing) line are getting a bit more pronounced. He reiterated that AIDEA would like to back those paper adjustments out, get to the green line, and pay the dividend on that amount.

[4:07:45 PM](#)

MR. THERRIAULT turned to slide 14-15, and advised that the second problem is the "dividend penalty" which results in times when AIDEA receives money to investigate a project from an outside source and invests that money when looking at a project. Although, periodically, AIDEA may determine that a project would not go forward, and on those occasions, the money from an outside source, not from within AIDEA's investment portfolio, must be written off. On those occasions, it would be taken as a deduction against net income in that particular year. In the event AIDEA had to show that in the dividend calculation, it would artificially suppress the dividend in that year, and Alaska Industrial Development and Export Authority (AIDEA) believes it is not fair to the state treasury and; therefore, would like to also back out those periodic, infrequent, adjustments. He reiterated that problem 2 is a source of outside money being written off, and if in that year AIDEA was going to pay a dividend of 50 percent of its net income, that means it is taking away fifty cents of a dollar that would have been shared with the state treasury, thereby, making it a dividend penalty. Previously, he noted, when AIDEA started getting money from outside sources to investigate projects, the legislature advised "as that money comes into AIDEA and gets shown as an increase in net income to bring the money on the books, that AIDEA was to ignore that money coming onto the books because if it didn't, it would artificially spike net income in that year, and then when we got to the end of year we would be trying to then share back a 50 percent of the money that was brought to us from an outside entity." He related that the legislature previously said, "No, that's not what we intend." If the state legislature gives AIDEA \$1 million for a project, it does not expect AIDEA to share one-half of that money back with the state at the end of the year. The legislature gave the money to AIDEA for a specific project, so AIDEA should bring it onto the books, and shouldn't artificially inflate income in the year that you bring it onto the books.

MR. THERRIAULT stated that the legislature did not anticipate periodically having investigated a project. Then AIDEA might have turned a portion of that \$1 million into an asset, and now it is carrying that work product on the books. In the event the project did not go forward, ultimately, AIDEA must write that asset off the books. In the event AIDEA did not also have the right to exclude it when it comes off the books, the state would pay a penalty for having investigated that project.

[4:10:55 PM](#)

MR. THERRIAULT turned to slide 16, and explained that the slide takes the previous "mark-to-market adjustment" graph and added on the dividend penalty. The numbers AIDEA used on slide 16, as an example, are the funds given to AIDEA to investigate the Amber Road. That project is currently going forward, and AIDEA was given approximately \$9.3 million to investigate the Amber Road project. In the event AIDEA invested all of that money doing work, such as an environment impact statement (EIS), applications for permits, and turned that money all into assets, except that ultimately the project did not go forward, AIDEA would be carrying \$9.3 million worth of investment on its books in assets and at some point, would have to write that value off of its books. In the event this all happened in one year and AIDEA was anticipating (coughing) 50 percent of its net income to the state treasury, that deduction of the \$9.3 million would artificially suppress AIDEA's dividend in that particular year by \$407 million. He advised that AIDEA was previously told that when it receives money from an outside source to investigate a project, AIDEA should disregard it and not over-inflate the dividend in that year. The Alaska Industrial Development and Export Authority (AIDEA) is basically asking that periodically, if a dollar from such a source is ever written off the books that AIDEA does not artificially suppress the AIDEA dividend in that year.

[4:13:10 PM](#)

MR. THERRIAULT turned to slides 17-18, and reiterated that those are the two issues AIDEA is trying to correct with this legislation as it wants to remove those mark-to-market valuation paper adjustments. Alaska Industrial Development and Export Authority (AIDEA) will continue to "do all of those things" to get its audited financial statement, but the legislature "gets to tell AIDEA" what number to take into the dividend calculation. Due to the dividend penalty, AIDEA is trying to "levelize" the two sides of a dollar coming from an outside source, wherein the money is eventually written off, and to not artificially suppress the dividend in those years.

[4:14:04 PM](#)

REPRESENTATIVE KNOPP offered that he understands the intent of this legislation, but Mr. Therriault was asking the legislature to exempt it from the GASB rules, which makes it a policy call. He related that his discomfort is not complying, because every municipality in the state is complying and following the standards.

MR. THERRIAULT responded that AIDEA would continue to follow all of the GASB rules to receive its audited financial statement, except there are these rules that push the net income number around. He asked whether the committee directs AIDEA to take the number incorporating all of those artificial ups and downs into the dividend calculation, or whether it directs AIDEA to back out the paper adjustments and take the true net income number into the dividend calculation before it calculates the check to the state treasury.

CHAIR KITO opened public testimony on HB 119, and hearing no one that wanted to testify, left public testimony open.

[4:16:46 PM](#)

MR. THERRIAULT referred to page 2 of the color-coded copy of HB 119, and explained it is where the adjustment to the definition on net income takes place. In response to Representative Knopp's question, he referred to page 2, line 3, the red box around the word "excluding," and explained that word is already in the statutory definition. He said he believes that highlights that previous policymakers realized there were some things that should be backed out of the income number before calculating the dividend. However, he noted, the last time the adjustment was made, some of these new federal rules were not anticipated as to how they would push around the adjusted number. Both in the definition of net income - top portion of page 2, and unrestricted net income - bottom of page 2, the word "excluding" already exists in the statute.

MR. THERRIAULT explained that at the beginning page 2, line 6, the added blue language makes adjustments for sources of non-AIDEA revolving loan funds, and in the event those monies are ever written off there will not be a dividend penalty. He explained, that is where that problem is inserted into the exclusions.

MR. THERRIAULT noted that the pink language is the mark-to-market fair market valuation based accounting entries issues. In the event there are unsold marketable securities and the market is up, suggesting a paper gain, AIDEA asks to exclude those paper gains or losses prior to beginning the dividend calculation. He referred to the green highlighted language, and explained they are the items adjusted for future retirement obligations paper adjustments.

[HB 119 was held over.]

HB 79-OMNIBUS WORKERS' COMPENSATION

[4:19:37 PM](#)

CHAIR KITO announced that the final 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."

[4:20:00 PM](#)

REPRESENTATIVE JOSEPHSON moved to adopt CSHB 79, Version 30-GH1789\0 as the working document. There being no objection, Version 0 was before the committee.

[4:20:23 PM](#)

REPRESENTATIVE BIRCH referred to the Alaska Truckers Association (ATA) proposed amendments and asked whether they found their way into Version 0.

CHAIR KITO advised that the department will explain the changes in Version 0 and will address Representative Birch's question.

[4:20:54 PM](#)

MARIE MARX, Director, Division of Workers' Compensation, Department of Labor & Workforce Development (DLWD), explained that the changes are from Version D to Version O, and most of it is clean up. Ms. Marx paraphrased from a document entitled, "Summary of Changes ver D to ver O 3.14.17," included in the committee packet as follows:

Page 2 and 21-22, Secs. 2, 4, 40, 45, and 46: Deletes sections 2, 4, 40, 45 and 46 relating to second injury fund transition. This allows the legislature to amend the statutes to repeal the second injury fund after it has been notified that all second injury fund claims have been satisfied, rather than having the repeal occur automatically.

[4:22:03 PM](#)

The committee took a brief at ease.

[4:22:30 PM](#)

MS. MARX explained that beginning on CSHB 79, page 2, Version O, sections are deleted relating to the second injury fund repeal: Sections 2, 4, 40, 45 in the previous Version D are not in Version O. She reiterated that these sections dealt with second injury fund statutes that would have automatically been repealed when the bill passed. She explained that the Alaska Legislative Council indicated that it was in the best interests of the legislature, to let the legislature decide to repeal once all claims had been paid. She explained that Version O did not change that, and on July 1, 2018, acceptance of new claims for the second injury fund would end. She further explained that the existing liability would be paid off over time and the fund balance would continue until those claims were paid off. Down the road, after all claims had been paid, the balance would go to the general fund. She noted that most of the claims are permanent total disability and paid through the life of the claimant. It is all tied to the "first amendment" allowing the legislature to amend the statutes that repeal the second injury fund, rather than the appeal occurring automatically.

[4:24:22 PM](#)

MS. MARX continued paraphrasing as follows:

Page 11, Line 4, Sec. 21: Technical correction changing "payment or compensation" to "payment of compensation."

Page 11, Lines 25-26, Sec. 22: Inserts "When the employer files a notice of controversion" to the sentence, "The Division shall notify the employee if an employer controverts the employee's right to compensation."

Page 12, Lines 13-14, Sec, 23: Deletes "to the person owed or to be reimbursed." Lines 28-31 describe more specifically to whom the additional amount should be paid. Stating it twice in the same subsection may open it to inconsistent interpretations.

[4:25:41 PM](#)

MS. MARX, in response to Representative Birch's question, advised that one of the stakeholder groups raised the issue in Version D, referring to business licenses, permits, and certifications. She opined that after further discussion and reflection, it was decided that the idea is better captured in the current language, which is that an independent contractor is a business that has all of the business, trade, or professional, licenses required by law. She explained that change was made after a discussion with the stakeholder groups.

MS. MARX, in response to Representative Birch, agreed that it was the entire section.

MS. MARX continued paraphrasing as follows:

Page 14, Lines 17-18, Sec. 26: Technical correction reorganizing sentence so "AS 23.30.082" appears after "fund" instead of "guaranty."

Page 16, Lines 14-16, Sec. 28: Deletes "has a license, permit, or certification" and inserts, "has all business, trade, or professional licenses."

Page 19, Line 26, Sec. 33: Technical correction deleting "the."

Page 20, Line 7, Sec. 34 and Page 20, Line 28, Sec. 35: Technical correction deleting "and" and inserting a comma.

Page 21, Line 18, Sec. 39: Technical correction changing AS 23.30.080(8) to AS 23.30.080(g).

Page 21, Line 19, Sec. 39: Technical correction changing AS 23.30.080(n)-(k) to AS 23.30.080(h)-(k).

Page 21, Line 26, Sec. 39: Inserts "AS 23.30.10(d), as repealed and reenacted by sec. 17 of this Act." This clarifies the new provision relating to representation applies to new claims filed on or after the effective date of the bill.

[4:27:26 PM](#)

MS. MARX advised that stakeholder groups raised the issue about the representation provision because the previous version of the bill would not permit non-attorneys from representing parties before the board because non-attorneys are not bound by ethical and professional rules. The question was raised as to whether that applies to current ongoing claims, and she clarified that it would apply only to new claims filed after the effective date of this Act. She continued paraphrasing from the above-mentioned document as follows:

Pages 21, Line 31-Page 22, Line 5, Sec. 39: Inserts a new subsection (c) providing the new executive officer and business entity member provisions apply to an insurance policy or contract entered into or renewed on or after the effective date of sec. 29, which August 1, 2018.

MS. MARX explained that another concern raised by stakeholder groups was with regard to rules relating to executive officers as employees. Currently, the insurance policies may, or may not, cover the executive officers and the concern was raised whether the executive officers would be employees under HB 79. Stakeholder groups also expressed concern for how insurance policies would be affected if executive officers suddenly became employees when they were not, or became "not employees" when they previously were. She expressed that in order to be certain there was not a lot of litigation or ambiguity created over "what insurance policy these new rules regarding employee status apply to, we made it very clear that, and we checked with the

Division of Insurance to make sure there was no concerns there, but to make sure that the rules regarding who was an employee and therefore who needs to be covered under their insurance policy applies at a delayed effective date." She noted that the bill would only apply to new policies and renewals -- not existing ones. The division will give insurance companies one year to update their forms, make sure they get the word out to their new policyholders that says "you may not have needed coverage before, but you need it now. Or, they may tell these executive officers, you had to have coverage before, you do not need it now. And, let them opt in if they want to opt in."

MS. MARX continued paraphrasing as follows:

Page 22, Lines 8-11, Sec. 40: Deletes "The balance of the second injury fund created by former AS 23.30.040 shall be transferred to the general fund on the effective date of this section" and inserts, "Subject to appropriation, the balance of the second injury fund created under AS 23.30.040 lapses into the general fund when all liability for accepted claims under AS 23.30.205 to the second injury fund and claims ordered to be paid from that fund have been satisfied."

Page 22, Line 18, Sec. 43: Provides Sec. 30 takes effect July 1, 2018.

[4:30:57 PM](#)

MS. MARX referred to page 22, line [19], and said the effective date of July 1, 2018 is for second injury fund questionnaires. She explained that the rest of the statutes were repealed. Except, the only statute tied to this Act that will continue to have an effective date and go into effect at the same time, is the second injury questionnaire an employer gives to an employee for second injury fund claim purposes. She reiterated that on July 1, 2018, no new claims will be accepted.

MS. MARX continued paraphrasing as follows:

Page 22, Line 20, Sec. 44: Provides Sec. 29 takes effect August 1, 2018.

[4:32:29 PM](#)

REPRESENTATIVE JOSEPHSON surmised that an element of the second injury fund was designed to incentivize employment of people who were previously injured. He asked why it is acceptable to end the second injury fund.

MS. MARX responded that when second injury funds were created, that prior to offering an individual a job, it was permissible to ask whether the individual had a disability. Subsequent to the passage of the Americans with Disabilities Act (ADA), that question became unlawful. Therefore, she said, the incentive to hire people with pre-existing disabilities no longer exists, although they can be asked whether they have any limitations that would keep them from performing the essential functions of the job without accommodations. The purpose of the fund is served by the ADA, and the second injury fund does not now have an ongoing purpose, she explained.

[4:34:39 PM](#)

CHAIR KITO opened public testimony on HB 79.

[4:35:04 PM](#)

CHARLIE YOUNG advised that he is a member of the International Union of Painters and Allied Trades, a 28-year painter and drywall finisher, and a life-long Alaskan. He said he supports CSHB 79, and specifically the section pertaining to misclassified workers and employees who call themselves independent contractors. He said he has never seen the abuse of misclassification so high as currently, and has always worked for painting contractors who played by the rules, paid wages, taxes, and the insurance an employee deserves. When a contractor hires individuals as independent contractors, the contractor is able to avoid paying payroll taxes, workers' compensation insurance, and unemployment insurance on each worker; therefore, the contractor can complete the job for much less money. When projects are bid with this type of practice used, the cheating contractors have the distinct advantage over contractors who follow all of the rules. More often these cheating contractors are winning the bids on projects as he watches the amount of work for himself become less and less every year. He asked the committee to please support CSHB 70 for the honest contractors and employees working in the building trades across this great state.

[4:37:01 PM](#)

WALTER ROBINSON advised that he is with the International Brotherhood of Electrical Workers Local 1547, and supports CSHB 79 because this bill addresses several problems, and helps streamline the process for the timelines in which an employee receives wage replacement and treatment for an injury. He said he has personally witnessed the stress and hardship workplace injuries put on the family dealing with the current lengthy process, and this bill creates a more efficient process for both the employer and employee. This legislation also addresses the large problem of the misclassification of an employee as an independent contractor and closes the loophole for unethical employers.

[4:38:54 PM](#)

DOUG TANSY, President, Fairbanks Central Labor Council, advised he is testifying in support of CSHB 79 because it protects workers and employers who comply with the workers compensation laws by clearly defining which workers are legally independent contractors. He commented that employers misclassify workers as independent contractors for financial reasons, while workers are denied their rights under minimum wage, overtime, and other workplace protection such as, increased tax burdens, no overtime pay, and the workers are often ineligible for unemployment insurance and disability compensation. Misclassification also causes federal, state, and local government to suffer revenue losses as employers circumvent their tax obligations. Generally, he said, the workers must "pick up the tab for that" so the cost is shifted from unscrupulous employers to the worker. He asked that the committee pass this legislation.

[4:40:35 PM](#)

ERNIE EADS advised that he owns a small sawmill and is testifying as to the misclassification of independent contractors. He said he is the product of laws not being enforced or being unenforceable, including workers' compensation "in a big way," and he has a 35-year history of owning above-board businesses, including sawmills. Due to the failed logging and lumber business in the late 1980s in Oregon, he clearly understands the wrath of the Internal Revenue Service (IRS), Oregon Department of Revenue, and workers' compensation. He then discussed the timber industry in the State of Alaska and the effects of unethical employers. In approximately 2000-2001, he said he began asking the Division of Workers' Compensation to come to Prince of Wales Island and assist those who were trying to legally operate a business in Alaska. He was advised that

the Division of Workers' Compensation had not been allotted travel dollars and was shorthanded, yet the employees were suffering. He said he was responsible in providing a decent living and protection for his employees and their families for a long time.

[4:49:49 PM](#)

AVES THOMPSON, Executive Director, Alaska Trucking Association (ATA), said that during his testimony before this committee on February 20, 2017, the Alaska Trucking Association (ATA) was generally in support of the legislation. However, there were concerns about specific provisions dealing with the definition of independent contractors, or "owner/operators." The Alaska Trucking Association (ATA) has been working with the Department of Labor & Workforce Development (DLWD) to resolve these issues, and he apologized to many individuals for the miscommunication of ATA which had occurred.

MR. THOMPSON advised that ATA maintains its objections to the following: page 16, lines 1-6, concerning direction and control, and he noted that ATA has proposed language to clarify what constitutes control; page 16, lines 7-9, responsibility for expenses, and ATA has proposed language to clarify that responsibility; page 16, lines 17-27, tax payments responsibility, and ATA has proposed language clarifying that the independent contractor is responsible pursuant to the contract; page 17, lines 1-3, business location, and ATA has proposed language clarifying the definition of a business location; and page 17, lines 4-6, advertising (coughing), and ATA has proposed language clarifying this responsibility. He advised that more detail can be found within the package he forwarded to the committee earlier last week. The proposed amendments are not set in stone, he described, and ATA is willing and able to continue discussions on compromise positions. He said that while ATA is supportive of the bill, it maintains its objections and hopes to find a workable solution. The ATA has received assurances from the DLWD that it is willing to work with ATA in the next committee of referral to resolve its concerns. It is ATA's intent is to help develop definitions that can be used within the Divisions of Workers' Compensation, Wage and Hour, and Unemployment Insurance.

[4:52:44 PM](#)

CHAIR KITO commented that the committee is trying to figure out how to move the bills in the House Labor and Commerce Standing

Committee from committee and make their way to the Senate. The intent, he said, is to keep this bill moving and not hold it over the summer.

4:53:35 PM

MR. THOMPSON stressed that ATA does not intend to slow down the bill because DLWD agreed to work with ATA in the next committee of referral. He said, ATA has no objection to moving the bill out of the House Labor and Commerce Standing Committee.

4:54:15 PM

CHRIS NETTELS, President, Geotech Alaska, advised that he is testifying on behalf of his company and the National Federation of Independent Businesses (NFIB). Currently, NFIB cannot support this legislation, specifically the definition of contract worker and employee. He opined that as an employer it is too detailed for the purposes of geophysical and geological consulting, and he is afraid some these requirements could negatively impact the ability to hire consultants and/or professional contractors. In particular, he said that he reviewed the Alaska Trucking Association (ATA) proposed changes and language, and said there is the danger of unintended consequences in the language. He referred to the testimonies which said, "these criminals and these crooks are doing this and that, and hiring people and calling them contractors," and he asked what rules these people are breaking. He said they are breaking federal IRS rules, and those federal IRS rules have "common law rules" based on three parts: behavioral, financial, and type of relationship. Currently, the way the language is written in this legislation, the regulations are all over the place. He asked to put the regulations in the same sort of categories as the IRS regulations.

MR. NETTELS referenced the IRS' policy as to how to decide whether someone is a contractor or employee, and he explained as follows:

Behavioral. Does the company control or have the right to control what the worker does and how the worker does his or her job? I believe there is language like that in this house bill right now.

Financial. Are the business aspects of the worker's job controlled by the payer? These include things like how the worker is paid, whether expenses are

reimbursed, who provides tools, supplies, et cetera. Again, I believe that language is in this bill.

Type of relationship. Are there written contracts or employee type benefits, i.e., pension plan, insurance, vacation pay, et cetera? Will the relationship continue? And, is the work performed the key aspect of the business? Again, I think there is similar language in this bill. They at least ... be organized the same categories for people that are trying to make this decision for not only the purposes of the IRS, but now, if we are going to have this bill for the purpose of this bill.

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MR. NETTELS expressed irritation and asked why there is an exclusion for the real estate folks if the real estate folks can meet these requirements. There are some problems about this bill he said he just does not understand, and thinks that "we're trying to make a lot more specific with the high danger of creating problems for the sorts of folks in his same business.

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MIKE McGUIRE said he has been in the trades since the late 1970s, and his father was a sub-contractor/independent contractor who paid taxes, hired employees, and paid benefits. He advised that the legislature is allowing the impossibility for honest contractors to compete with "these people." He stated that in the construction trade misclassification has been bad. He referenced a press release from DLWD which disclosed details of the death of a worker who did not have the required protections of a normal job. He remarked, "You people are not protecting the worker, and the other businessmen and ultimately this will lead to the loss of protection of the property owner." He referred to the construction trade and the mess with the independent contractor owner/operator and said, "I don't see why they don't have to pay the taxes like everybody else."

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BRONSON FRYE advised that he is with the Painters Union Local 1959, and noted that, unfortunately, a business model had taken root in this state in the construction industry whereby certain employers are requiring, as a condition of employment, that their workers get business licenses and self-perform as "so-

called owner/operators or independent sub-contractors." In doing so, it creates an unfair playing field in the bidding process due to the cost factor. Essentially, he explained, all of the factors are approximately the same for everyone with the only exception being the cost of labor, and the person who can cut their labor costs down the most, will typically be the low bidder and will ultimately be awarded the contract for the work. When a company misclassifies its employees as independent sub-contractors rather than employees, it avoids paying workers' compensation premiums, payroll taxes, unemployment, social security, and so forth. Thereby, he pointed out, cutting up to 30 percent of their labor costs off of the top with a tremendous and thoroughly unfair advantage over honest, law abiding employers whose workforce is made up of properly classified and insured employees. This legislation creates a clear definition of an independent contractor and misclassification with no ambiguity, allowing everyone bidding the project through a fair and equitable system. He referred to previous testimony regarding the IRS and said if the IRS rules were sufficient, then "we wouldn't have a problem." He remarked that any rule or law is only as good as the ability of the governing body to enforce it, so obviously the IRS rules are not sufficient, which is why it is important to pass CSHB 79.

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REPRESENTATIVE BIRCH noted that he does not perform mechanic work on his own vehicle, and a mechanic shop advises as to the amount of time the work would take, and he pays that amount. Except, what if the person performing the work finishes it in two hours, he asked whether there is an opportunity to reward the person who completes a job more expeditiously. He said he understands there is a "per hour rate," but does that stymie competition by limiting the hourly rate, and if an independent contractor can do it twice as fast, maybe they actually end up getting paid more.

MR. FRYE responded that the reward comes in securing the contract for the work, and if a construction company has a crew of employees that works more efficiently and bids the project fairly, it is rewarded by securing the contract. He reminded the committee that currently there is a system where people employing an unscrupulous business model are rewarded by cutting their labor costs and misclassifying all of their workers. He stressed that everyone can remain competitive in an industry and still have that industry operate in a fair manner.

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BRANDON MCGUIRE, Representative, UA Local 367 Plumbers & Steamfitters, said he is speaking on behalf of the membership of the UA Local 367 Plumbers & Steamfitters. It supports CSHB 79 because it impacts contractors looking to skirt the edges of ethics by calling a clear employee an independent contractor. Across the country this has been a way for contractors to take advantage of workers and this bill lessens the current penalty burden on the contractor. He said that dropping the penalty amount has a great impact when considering (coughing) current penalties can be an astronomical amount, and when contested, the penalties do not withstand review on appeal. This bill sets three times what workers' compensation insurance would have cost, and this amount would not just be determined by the amount of money, but also by considering the employer's size, nature of the employer's business, and financial gain the employer realized by failing to make the proper payments. He said this directly impacts the membership of the UA because its contractors are bound by the bidding process that is supposed to be fair. He advised that when it comes to bidding, the real difference in bids is almost always the manpower, which typically accounts for 40 percent or more of the costs on a job, and cutting labor costs makes the bidding process completely unfair. Often, that cost difference means the difference between being awarded the contract, and not being awarded the contract. In the end, he said it is the worker who suffers because most of these young kids do not have a clue about workers' compensation, "they just want to show up and do a good day's work and get paid for it." Overall, he remarked that CSHB 79 is fairer to all parties involved because it lessens the penalty on constructors while at the time strengthening the enforcement of the penalty to a degree in which it can actually be assessed as a damage to a contractor who is gambling on workers not being injured.

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PAT FALON said he represents himself, and described that CSHB 79 is pro-business, and it updates workers' compensation laws. Many Alaskans are true independent contractors, except more outside businesses are coming to Alaska and breaking the laws and misclassifying workers. Defining independent contractor is a common-sense reform that will reduce the influence of misclassification, and this legislation contains other provisions modernizing workers' compensation as well. He said that he appreciates Governor Bill Walker for introducing this

legislation thereby supporting Alaskan businesses and Alaskan workers, and asked that the committee pass the legislation out of committee.

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RODNEY HESSON, President, Juneau Building Trades, offered support for CSHB 79, and in particular for the section defining the terms independent contractor and misclassification. He noted the committee understands previous testimonies as to the unfair bidding process by misclassification. Basically, he noted, the bill clearly defines independent contractor and misclassification which will help put an end to the unsafe practice of workers not being covered, and makes the employer vulnerable to lawsuits for a possible catastrophic injury. Overall, he noted, the bill is good and will protect and provide coverage for more Alaskan workers in the coming years.

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REPRESENTATIVE BIRCH said he met with folks from the Alaska Surgery Center with concerns regarding Sec. 17, and asked how Sec. 17 was addressed in Version 0.

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MS. MARX referred to Version 0, Sec. 15, page 8, beginning line 10, and advised it discusses the question at issue. The concern raised by stakeholder groups was actually on page 9, lines 15-16, where the section references an Ambulatory Surgical Center Payment System produced by federal Centers for Medicare and Medicaid Services. The amendments, she explained, are adding onto the list of reference material that arose from HB 316 [passed in the Twenty-Eighth Alaska State Legislature], which changed the methodology, the way in which Alaska's medical fee schedule is calculated. House Bill 316 used reference material already out there from the American Medical Association as a base. For example, page 8, line 14, references the Current Procedural Terminology Codes produced by the American Medical Association and relative values set by the Centers for Medicaid and Medicare Services of which there are many. That legislation re-established the Medical Services Review Committee (MSRC) and told it to look at the fee schedule every year and update it. The American Medical Association updates the list of materials every year, the Centers for Medicaid and Medicare Services come up with its values every year and usually January 1 is the effective date.

MS. MARX advised that the division preferred automatically incorporating them as each amended version came up, "just to say, okay we're using the new version January 1, 2018, the new version January 2019." The division was told it had to have legislative permission to incorporate future amended versions through that process, so the legislature granted permission for the numbers in the section (1) through (9), and after using the fee schedule for one year realized some were left off the list. She explained that the decision as to whether to use these materials or how they are used has been set by the legislature, and that is how the MSRC makes the recommendations. It then takes the recommendation to the Workers' Compensation Board and if the board and the MSRC are in agreement, they go through the regulatory process and are adopted. Again, she said, every year there will be a January 1 fee schedule in effect every year. In response to the stakeholder's concerns, she advised that this is just a list of reference material the MSRC and board may incorporate by reference for future amended versions as they become available from "these entities."

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REPRESENTATIVE BIRCH surmised that this is not necessarily a prescription of what has to be used, it is basically only a reference.

MS. MARX responded, "Absolutely," and affirmed that that is stated on page 8, lines 10-11, "the department may incorporate future amended versions of a document or reference material incorporated by reference."

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CHAIR KITO, in response to Representative Knopp, advised that when the bill is next before the committee there will opportunities for discussion and having the department available.

REPRESENTATIVE KNOPP requested that someone from the Division of Wage & Hour attend the next meeting.

MS. MARX asked for a little more information so the folks could be prepared to answer questions.

REPRESENTATIVE KNOPP said he would have his office call Ms. Marx regarding the information he is requesting. Representative

Knopp then referred to Chair Kato's desire to move the bill out of committee for the sake of getting it moving, and said that this is the committee to fix these bills, it still warrants a lot of discussion, and he is not eager to move the bill until the discussions are finalized. He said, for the record, this is the place to fix the bill, and to not pass it on to the next committee to fix the bill.

[HB 79 was held over.]

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ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:18 p.m.