

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

April 2, 2018

9:09 a.m.

MEMBERS PRESENT

Senator Mia Costello, Chair
Senator Kevin Meyer, Vice Chair
Senator Berta Gardner
Senator Peter Micciche

MEMBERS ABSENT

Senator Gary Stevens

COMMITTEE CALENDAR

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 112

"An Act relating to the controlled substance prescription database; relating to disability; excluding independent contractors from workers' compensation coverage; employer-required drug testing; relating to the office of administrative hearings; and providing for an effective date." relating to the Alaska Workers' Compensation Board; relating to the payment of workers' compensation or benefits; relating to compensable injuries; relating to rehabilitation and reemployment of injured workers; relating to reemployment vouchers; relating to the treatment or care of employees; relating to use of evidence-based treatment guidelines; relating to prescribing or dispensing a controlled substance to an employee for a compensable injury; relating to workers' compensation prehearings; relating to the filing of claims for workers' compensation benefits or petitions for other relief; relating to the burden of proof and credibility of witnesses in workers' compensation matters; relating to attorney fees; relating to the filing of a verified annual report; relating to permanent total disability; relating to temporary total

- MOVED CSSSSB 112(L&C) OUT OF COMMITTEE

SENATE BILL NO. 38

"An Act relating to the registration and duties of pharmacy benefits managers; relating to procedures, guidelines, and enforcement mechanisms for pharmacy audits; relating to the cost

of multi-source generic drugs and insurance reimbursement procedures; relating to the duties of the director of the division of insurance; and providing for an effective date."

- MOVED CSSB 38(L&C) OUT OF COMMITTEE

SENATE BILL NO. 205

"An Act relating to the Regulatory Commission of Alaska; and relating to telecommunications regulations, exemptions, charges, and rates."

- HEARD & HELD

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 79(FIN)

"An Act relating to workers' compensation; relating to the second injury fund; relating companies may obtain workers' compensation coverage; relating to the duties of injured to service fees and civil penalties for the workers' safety programs and the workers' employees to report income or work; relating to misclassification of employees and compensation program; relating to the liability of business entities and certain persons deceptive leasing; defining 'employee'; relating to the Alaska Workers' Compensation for payment of workers' compensation benefits and civil penalties; relating to civil Board's approval of attorney fees in a settlement agreement; and providing for an penalties for underinsuring or failing to insure or provide security for workers' effective date." 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 Alaska Workers' Compensation Board; relating to the authorization of the workers' compensation benefits guaranty fund 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

- MOVED CSHB 79(FIN) OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 170(JUD)

"An Act relating to securities, registration, exempt securities, exempt transactions, broker-dealers, agents, investment advice, investment advisers, investment adviser representatives, federal covered securities, federal covered investment advisers, viatical settlement interests, small intrastate security offerings, Canadian broker-dealers, and Canadian agents;

relating to protecting older and vulnerable adults from financial exploitation; relating to administrative, civil, and criminal enforcement provisions, including restitution and civil penalties for violations; relating to an investor training fund; establishing increased civil penalties for harming older persons and vulnerable adults; relating to corporations organized under the Alaska Native Claims Settlement Act; amending Rules 4, 5, 54, 65, and 90, Alaska Rules of Civil Procedure, and Rule 602, Alaska Rules of Appellate Procedure; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 112

SHORT TITLE: WORKERS COMPENSATION;DRUG DATABASE & TEST

SPONSOR(s): SENATOR(s) GIESSEL

04/12/17	(S)	READ THE FIRST TIME - REFERRALS
04/12/17	(S)	L&C, FIN
01/22/18	(S)	SPONSOR SUBSTITUTE INTRODUCED-REFERRALS
01/22/18	(S)	L&C, FIN
02/01/18	(S)	L&C AT 1:00 PM BUTROVICH 205
02/01/18	(S)	Heard & Held
02/01/18	(S)	MINUTE(L&C)
03/08/18	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
03/08/18	(S)	Heard & Held
03/08/18	(S)	MINUTE(L&C)
04/02/18	(S)	L&C AT 9:00 AM BELTZ 105 (TSBldg)

BILL: SB 38

SHORT TITLE: PHARMACY BENEFITS MANAGERS

SPONSOR(s): SENATOR(s) GIESSEL BY REQUEST

01/25/17	(S)	READ THE FIRST TIME - REFERRALS
01/25/17	(S)	L&C, FIN
03/28/17	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
03/28/17	(S)	Heard & Held
03/28/17	(S)	MINUTE(L&C)
03/19/18	(S)	L&C AT 6:00 PM BELTZ 105 (TSBldg)
03/19/18	(S)	Heard & Held
03/19/18	(S)	MINUTE(L&C)
04/02/18	(S)	L&C AT 9:00 AM BELTZ 105 (TSBldg)

BILL: SB 205

SHORT TITLE: TELECOMMUNICATIONS REGULATION/EXEMPTIONS
SPONSOR(s): MEYER

02/19/18 (S) READ THE FIRST TIME - REFERRALS
02/19/18 (S) L&C
02/27/18 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
02/27/18 (S) Heard & Held
02/27/18 (S) MINUTE(L&C)
03/08/18 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
03/08/18 (S) Heard & Held
03/08/18 (S) MINUTE(L&C)
04/02/18 (S) L&C AT 9:00 AM BELTZ 105 (TSBldg)

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
03/20/17 (H) Heard & Held
03/20/17 (H) MINUTE(L&C)
03/22/17 (H) L&C AT 3:15 PM BARNES 124
03/22/17 (H) Moved CSHB 79(L&C) Out of Committee
03/22/17 (H) MINUTE(L&C)
03/24/17 (H) L&C RPT CS(L&C) NT 3DP 1DNP 1NR 2AM
03/24/17 (H) DP: JOSEPHSON, STUTES, KITO
03/24/17 (H) DNP: KNOPP
03/24/17 (H) NR: WOOL
03/24/17 (H) AM: SULLIVAN-LEONARD, BIRCH
03/31/17 (H) JUD AT 1:00 PM GRUENBERG 120
03/31/17 (H) Heard & Held
03/31/17 (H) MINUTE(JUD)

04/05/17 (H) JUD AT 1:00 PM GRUENBERG 120
 04/05/17 (H) Heard & Held
 04/05/17 (H) MINUTE(JUD)
 04/13/17 (H) JUD AT 5:30 PM GRUENBERG 120
 04/13/17 (H) Moved CSHB 79(JUD) Out of Committee
 04/13/17 (H) MINUTE(JUD)
 04/14/17 (H) JUD RPT CS(JUD) NT 2DP 5NR
 04/14/17 (H) DP: LEDOUX, CLAMAN
 04/14/17 (H) NR: EASTMAN, KOPP, KREISS-TOMKINS,
 FANSLER, REINBOLD
 02/05/18 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 02/05/18 (H) Heard & Held
 02/05/18 (H) MINUTE(FIN)
 02/15/18 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 02/15/18 (H) Heard & Held
 02/15/18 (H) MINUTE(FIN)
 02/19/18 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 02/19/18 (H) Moved CSHB 79(FIN) Out of Committee
 02/19/18 (H) MINUTE(FIN)
 02/21/18 (H) FIN RPT CS(FIN) NT 3DP 2DNP 3NR 2AM
 02/21/18 (H) DP: GUTTENBERG, SEATON, FOSTER
 02/21/18 (H) DNP: WILSON, TILTON
 02/21/18 (H) NR: ORTIZ, THOMPSON, GRENN
 02/21/18 (H) AM: KAWASAKI, PRUITT
 03/12/18 (H) TRANSMITTED TO (S)
 03/12/18 (H) VERSION: CSHB 79(FIN)
 03/14/18 (S) READ THE FIRST TIME - REFERRALS
 03/14/18 (S) L&C, FIN
 04/02/18 (S) L&C AT 9:00 AM BELTZ 105 (TSBldg)

WITNESS REGISTER

NATASHA MCCLENAHAN, Staff
 Senator Mia Costello
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Presented the committee substitute for SB 112 and the committee substitute SB 38.

SENATOR CATHY GIESSEL
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Sponsor of SB 112

RICHARD HOLT, Chair
 Board of Pharmacy
 Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 38.

EDRA MORLEDGE, Staff
Senator Kevin Meyer
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented the committee substitute for SB 205.

CHRISTINE O'CONNOR, Executive Director
Alaska Telecom Association
Anchorage, Alaska

POSITION STATEMENT: Provided information on SB 205.

EMILY NAUMAN, Deputy Director
Legislative Legal Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Provided information on SB 205.

DAVID PARISH, Common Carrier Specialist IV
Regulatory Commission of Alaska
Anchorage, Alaska

POSITION STATEMENT: Provided information on SB 205.

STEPHEN MCALPINE, Chair
Regulatory Commission of Alaska
Anchorage, Alaska

POSITION STATEMENT: Provided information on SB 205.

KRISTIN SCHUBERT, Manager
Commission Section
Regulatory Commission of Alaska
Anchorage, Alaska

POSITION STATEMENT: Provided information on SB 205.

JAMES JACKSON, Legal Counsel
GCI
Anchorage, Alaska

POSITION STATEMENT: Provided information on SB 205.

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

POSITION STATEMENT: Provided introductory comments on HB 79.

MARIE MARX, Director

Division of Workers' Compensation
Department of Labor and Workforce Development (DOLWD)
Juneau, Alaska

POSITION STATEMENT: Presented HB 79.

BRONSON FRYE, Painters Union Local 1959
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 79.

LAURA BONNER, representing self
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 79.

DON ETHERIDGE, Lobbyist
Alaska AFL-CIO
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 79.

CHRIS DIMOND, Organizer
Pacific Northwest Regional Council of Carpenters
Juneau, Alaska

POSITION STATEMENT: Testified in support HB 79.

ACTION NARRATIVE

[9:09:21 AM](#)

CHAIR MIA COSTELLO called the Senate Labor and Commerce Standing Committee meeting to order at 9:09 a.m. Present at the call to order were Senators Gardner, Meyer, Micciche, and Chair Costello.

SB 112-WORKERS COMPENSATION;DRUG DATABASE & TEST

[9:10:30 AM](#)

CHAIR COSTELLO announced the consideration of SB 112 and noted the proposed committee substitute (CS).

[9:10:54 AM](#)

NATASHA MCCLENAHAN, Staff, Senator Mia Costello, Alaska State Legislature, Juneau, Alaska, reviewed the following changes from version L to S of SB 112:

- Retains language that repeals and reenacts AS 23.30.145 governing the award and payment of attorney fees.

- Retains language amending AS 23.30.230(a) to provide a definition of "independent contractor."
- Retains an applicability provision that states secs. 1-2 of the Act apply to claims for injuries filed on or after the effective dates of those sections.
- Establishes the Workers' Compensation Working Group in the Department of Commerce Community and Economic Development, division of insurance, to review the State's Worker's compensation system and provide recommendations to the Legislature for reforming the system. The workgroup shall provide a report to the Legislature by December 1, 2018.
- Removes all other sections in Version L

[9:12:22 AM](#)

SENATOR MEYER moved to adopt the work draft CS for SSSB 112, 30-LS0318\S, as the working document.

CHAIR COSTELLO found no objection and version S was adopted. She said the bill retains two of the elements that came in the second version as introduced by the sponsor. She worked with parties involved in this issue and realized that it would be best to create a working group, so the parties can work out differences. The report to the legislature would be due December 1, 2018 and then the working group would disband on the last day of January 2019.

[9:13:41 AM](#)

SENATOR GARDNER said she believes that attorneys for the employers or insurance companies are often on retainer. The cost or time to pursue a case is of no direct consequence to the employer's attorney, but the injured worker's attorney is very much impacted by the provision that limits what they can earn. Section 1 would make it more difficult for injured workers to get representation.

CHAIR COSTELLO said the next committee of referral can work with the working group to resolve any issues it sees. She noted that the bill goes to Senate Finance next.

[9:15:00 AM](#)

SENATOR GARDNER said she sees this as a Labor and Commerce issue.

[9:15:12 AM](#)

SENATOR MEYER said his question is more finance related, but the fiscal note adds 24 full-time employees for the Department of Administration that come from the Workers' Compensation Division. He asked if there will be a corresponding decrease from the Workers' Compensation Division.

MS. MCCLENAHAN said that section that spurred that fiscal note was removed from the current version of the bill.

SENATOR MEYER said then this is not the correct fiscal note for the committee substitute.

MCCLENAHAN agreed.

SENATOR MEYER asked the sponsor of SB 112 to comment.

[9:16:35 AM](#)

SENATOR CATHY GIESSEL, Alaska State Legislature, Juneau, Alaska, sponsor of SB 112, said she has no comment on the committee substitute. She defers to the will of the committee.

SENATOR MEYER said this appears to be a compromise.

[9:17:11 AM](#)

SENATOR MEYER moved to report [the CS for SSSB 112], version S, from committee with individual recommendations and forthcoming fiscal note(s).

[9:17:32 AM](#)

SENATOR GARDNER objected.

CHAIR COSTELLO asked for a roll call vote.

[9:17:59 AM](#)

A roll call vote was taken. Senators Micciche, Meyer, Costello voted in favor of the motion and Senator Gardner voted against it. Therefore, the motion to report CSSSSB 112(L&C) from committee passed with a 3:1 vote.

SB 38-PHARMACY BENEFITS MANAGERS

[9:18:15 AM](#)

CHAIR COSTELLO announced the consideration of SB 38 and noted the proposed committee substitute (CS).

[9:18:29 AM](#)

SENATOR MEYER moved to adopt the work draft CS for SB 38, 30-LS0190\D, as the working document.

CHAIR COSTELLO objected for an explanation.

[9:18:49 AM](#)

NATASHA MCCLENAHAN, Staff, Senator Mia Costello, Alaska State Legislature, Juneau, Alaska, presented the following changes from version A to version D for SB 38.

- Page 6, Lines 22-25: Changes language in relation to pharmacies' appeals of pharmacy benefits manager's reimbursements for multi-source generic drugs below pharmacy acquisition cost in which a pharmacy benefits manager may grant a network pharmacy's appeal.
- Removes unrequired language that referenced a definition for the board of pharmacy.
- Page 9, Line 6 updates language to correctly reference AS 21.97.900(27).
- Updates the effective date provision to reflect July 1, 2019.

[9:19:33 AM](#)

CHAIR COSTELLO removed her objection and version D was adopted.

SENATOR MICCICHE asked Mr. Holt to speak to the changes.

[9:20:33 AM](#)

RICHARD HOLT, Chair, Board of Pharmacy, Anchorage, Alaska, stated support for SB 38 on behalf of the Board of Pharmacy.

SENATOR MICCICHE asked if the board specifically supports the committee substitute, version D.

MR. HOLT confirmed the board approves of the changes in version D.

[9:21:18 AM](#)

At ease

[9:21:54 AM](#)

CHAIR COSTELLO reconvened the meeting.

[9:22:04 AM](#)

SENATOR MEYER moved to report the CS for SB 38, version D, from committee with individual recommendations and attached fiscal note(s).

[9:22:19 AM](#)

CHAIR COSTELLO announced that without objection, CSSB 38(L&C) moves from the Senate Labor and Commerce Standing Committee

[9:22:33 AM](#)

At ease

SB 205-TELECOMMUNICATIONS REGULATION/EXEMPTIONS

[9:28:21 AM](#)

CHAIR COSTELLO reconvened the meeting and announced the consideration of SB 205. She noted the proposed committee substitute (CS).

[9:28:56 AM](#)

SENATOR MEYER moved to adopt the work draft CS for SB 205, 30-LS1431\U, as the working document.

CHAIR COSTELLO objected for an explanation.

[9:29:20 AM](#)

EDRA MORLEDGE, Staff, Senator Kevin Meyer, Alaska State Legislature, Juneau, Alaska, said there are four primary changes:

- Requires telecommunications utilities to continue to pay an annual Regulatory Cost Charge to the Regulatory Commission of Alaska.
- Requires the Regulatory Commission of Alaska to provide in their annual report to the Legislature details pertaining to how much activity is spent on each area of telecommunication regulatory oversight.
- Removes exemption for AS 42.05.145.
- Removes transition language that is no longer applicable.

[9:30:20 AM](#)

CHAIR COSTELLO removed her objection and version U was adopted.

SENATOR GARDNER asked Ms. Morledge to repeat the third change.

MS. MORLEDGE said it removes the exemption for AS 42.05.145, the exemption for telecommunications regulation policy and restrictions on regulation of telephone directories.

SENATOR MICCICHE asked what the new report might be because that cost will be passed on to rate payers.

CHAIR COSTELLO said she'd like to defer the question until after the sectional.

[9:31:46 AM](#)

MS. MORLEDGE read the following sectional analysis for SB 205, version U.

Section 1 - Municipal powers and duties. AS 29.35.070 Public Utilities. Section 7 repeals AS 42.05.810, therefore it is removed from reference in this section of the statute.

Section 2 - Alaska Public Utilities Regulatory Act. AS 42.05.141 Adds two new subsections (e) and (f) to the general powers and duties of the RCA. These subsections state that the Commission may not designate a local exchange carrier or an interexchange carrier as the carrier of last resort, and that the Commission may designate an eligible telecommunications carrier consistent with the federal code that allows for federal subsidies under the Universal Service Fund.

A carrier of last resort is a telecommunications company that commits (or is required by law) to provide service to any customer in a service area that requests it, even if serving that customer would not be economically viable at prevailing rates.

The **Universal Service Fund** is a system of telecommunications subsidies and fees managed by the U.S. Federal Communications Commission intended to promote universal access to telecommunications services at reasonable and affordable rates for all consumers.

Section 3 - Annual Report - This section requires the RCA to submit an annual report to the Legislature detailing the activity and costs related to regulating each type of telecommunications carrier.

Section 4 - Amends AS 42.05.254(a) from the previous Committee Substitute that eliminated the Regulatory Cost Charge. This section maintains the current RCC funding mechanism of calculating and assessing the charge and applies it to all telecommunications companies.

Sections 5 & 6 both relate to implementing the Regulatory Cost Charge for all telecommunications companies.

Section 7 - Alaska Public Utilities Regulatory Act. AS 42.05.711 Exemptions. This section exempts telecommunications carriers from the Act except for the following provisions:

- AS 42.05.141(f) - New section in the bill (Section 2 above)
- AS 42.05.221 - Requiring a Certificate of Public Convenience and Necessity • AS 42.05.231 - Provision for applying for the certificate
- AS 42.05.241 - Conditions of issuing/denial of a certificate • AS 42.05.251 - Allow public utilities to obtain a permit for the use of streets in municipalities
- AS 42.05.254 - Regulatory cost charge
- AS 42.05.261 - Prohibits a public utility from discontinuing or abandoning service for which a certificate has been issued
- AS 42.05.271 - Allows the RCA to amend, modify, suspend or revoke a certificate
- AS 42.05.281 - Prohibiting a sale, lease, transfer or inheritance of certificate without RCA permission
- AS 42.05.296 - Requirements for providing telephone services for certain impaired subscribers
- AS 42.05.306 - Allows discounted rates for customers receiving benefits from a social services assistance program administered by the state or federal government
- AS 42.05.631 - Allows a public utility to exercise the power of eminent domain

- AS 42.05.641 - Extends RCA's jurisdiction to public utilities operating in a municipality
- AS 42.05.830 - Requires the RCA to establish exchange access charges to be paid by long distance carriers to compensate local exchange carriers for the cost of originating and terminating long distance services
- AS 42.05.850 - Relating to the administration of access charges by an exchange carrier association
- AS 42.05.840 - Allows the RCA to establish a universal service fund
- AS 42.05.860 - Prohibits a carrier from restricting the resale of telecommunications services

Section 8 - AS 42.05.820 No Municipal Regulation. In addition to a long distance telephone company, this section amends AS 42.05.820 to add 'local exchange carrier' that is exempted in whole or in part from this chapter from being regulated by a municipality.

Section 9 - AS 42.05.890 Definitions. This section defines "local exchange carrier," "long distance telephone company," and "long distance telephone service."

Section 10 - Related to implementing Section 4, the Regulatory Cost Charge.

Section 11 - Repealers. This section repeals the following provisions, as the changing nature of the industry and market conditions have rendered them obsolete:

- AS 42.05.325 - Registration and regulation of alternate operator services - also unnecessary at this point
- AS 42.05.800 - Findings
- AS 42.05.810 - Competition - unnecessary in today's market, which experts can speak on.

MS. MORLEDGE noted that Ms. O'Connor could answer detailed questions.

[9:37:50 AM](#)

CHAIR COSTELLO listed the individuals available to answer questions.

SENATOR GARDNER asked what kind of change Section 4 describes.

[9:39:05 AM](#)

CHRISTINE O'CONNOR, Executive Director, Alaska Telecom Association, Anchorage, Alaska, said that change is spreading the cost across a broader section. About half of the telecoms in Alaska don't pay the RCC [Regulatory Cost Charge] because they have become exempt. The committee substitute would cause all telecoms to resume paying the regulatory cost charge. That provides a broader base to support the Regulatory Commission of Alaska (RCA).

SENATOR GARDNER said she didn't know if that was good or bad. Noting that Section 7 has a description of the services for which the utility that provides telecommunications services is not exempt, she asked what is being exempted. She asked for an answer in common language, not numbers. All the sections apply to telecommunications services and now a bunch are being exempted. She asked what they are.

CHAIR COSTELLO asked the drafter to comment on which sections the exemptions are for.

[9:41:09 AM](#)

EMILY NAUMAN, Deputy Director, Legislative Legal Services, Legislative Affairs Agency, Juneau, Alaska, said she would submit her answer in writing because the answer isn't as straightforward as it might seem. The challenge is that she wouldn't want to misstate what statutes apply. All the statutes other than the ones listed in the RCA statutes will apply with the exception that some of those statutes are specific to certain types of utilities or certain types of behavior that a telecommunications company might never engage in.

SENATOR GARDNER rephrased the question. She asked if there is any impact on consumers in exempting any of those provisions or are they no longer relevant to the industry.

MS. NAUMAN suggested the RCA would be better able to answer that question.

[9:42:32 AM](#)

DAVID PARISH, Common Carrier Specialist IV, Regulatory Commission of Alaska, Anchorage, Alaska, said the RCA would no

longer be able to assign COLRs [Carrier of Last Resort]. The primary impacts for consumers would be the RCA would lose current jurisdiction over interconnection agreements, so disputes between carriers would no longer come to the RCA. Also, the RCA would have no exercise of economic jurisdiction over rate making for the carriers across the state that have no competition. That is for both left market and interexchange markets. He did not know if there would be negative effects immediately, but should a carrier want to raise rates in a monopoly market, there would be no obligation for the increase to be vetted and approved by the commission.

[9:44:27 AM](#)

SENATOR MEYER commented that this bill pertains only to landlines.

MR. PARISH agreed.

SENATOR MEYER asked the percent of people who have landlines.

MR. PARISH estimated that it was below 50 percent. There is a steady decline with residential use. Businesses tend to keep their landlines longer, but the erosion is steady.

[9:46:06 AM](#)

STEPHEN MCALPINE, Chair, Regulatory Commission of Alaska, Anchorage, Alaska, said when the power goes down and the cell towers are no longer operable, someone without a landline can come to his house and make a call. He has two landlines.

SENATOR MEYER asked if the CS addresses the concerns Mr. McAlpine raised at a previous meeting.

MR. MCALPINE said, as Mr. Parish indicated, there are two overriding issues. The bill is getting better, but this is the type of bill that ought to be developed over time. The RCA has had to deal with carriers that decide to stop service. He asked where customers go to complain about that. That is what is happening in the MatSu. Some of the customers have been cut off because they have been losing the better system that MTA [Matanuska Telephone Association] has decided not to provide. Because MTA is deregulated, consumers do not have the ability to come to the RCA's consumer protection arm. They are going to the FCC [Federal Communications Commission]. He cannot say anything further because it is on the RCA's public meeting agenda on Wednesday. Carriers of last resort are receiving tens of millions in subsidies in competitive markets. He would like that

to go to high-cost areas or to development of other kinds of telecommunications that could better serve the rural areas of Alaska. The second concern is the failure to agree on interconnection. In case of a dispute between two carriers, current statute provides that the utility would apply to the commission to arbitrate.

MR. MCALPINE said he didn't know when those changes were developed. This bill appeared without any prior notice and as they work through it, there are multiple concerns and problems. Many have been addressed, but he would like to see a good bill come out at the end of the pipe rather than the one currently before the committee.

SENATOR MEYER asked if the added year-end report was a concern for the RCA.

MR. MCALPINE said the RCA does calculate time dedicated to different activities. He isn't sure what "should provide the legislature with detailed activity" means exactly. It could require more staff time, but they could do it.

SENATOR GARDNER asked the impact of the provision in Section 8 that adds a local exchange carrier to the exemption from municipal regulation.

MR. PARISH said this already exists for long distance carriers. His understanding is that it means a municipality cannot step in and start regulating since the RCA, under this bill, would not have jurisdiction.

[9:53:49 AM](#)

MS. O'CONNOR agreed with Mr. Parrish. She went on to address issues raised earlier. The latest national figures indicate just 42 percent of households have landlines, but those are still important and they are not in any way proposing to eliminate landlines or to degrade that service. Local rates are capped federally. If they wish to raise rates, which is not happening today, they would be limited by the federal rate ceiling. Regarding Chair McAlpine's comments about the COLR, she said that obligation continues under the certificate process. It is one of the listings not being exempted. The commission is currently looking into one situation. This bill doesn't change that. Regarding the funds companies are receiving to provide service, there is a docket in which the RCA is actively pursuing how to change that. The chair and commissioners have stated their goal is to reform that and industry is actively

participating and has submitted draft regulations, comments, and proposals to implement those changes.

MS. O'CONNOR clarified that the bill requires that the annual report be formatted to show the detail of the telecom activities. It is intended to use the data already collected. The RCA annual report format changes and some years it is difficult to see how much activity is attributed to each form of telecommunications. They were not suggesting any additional data be collected, just that the presentation provide a similar detail as was provided in the FY2017 report.

[9:59:05 AM](#)

SENATOR MICCICHE said the fiscal note still says the regulatory cost charge (RCC) would be removed for telecommunications services, so that needs updating. Looking at the last line of the fiscal note, he asked that if in the future the RCC funding mechanism is removed from telecommunications, if that would reduce the workload of the RCA. He asked what is the likelihood that the RCC would be passed on to other regulated utility sectors.

MR. PARRISH said he assumed that the question is referencing if RCCs are eliminated for telecommunication companies. He asked if that was correct.

SENATOR MICCICHE said they haven't had an updated fiscal note. Before the bill was amended, it eliminated the RCC for telecommunications services and the fiscal note said it could be shifted to the other regulated utilities, which has been a concern of his. He asked if the RCA doesn't regulate telecommunications, wouldn't that reduce the RCA work load and avoid a cost shift to the other regulated utilities.

[10:01:10 AM](#)

KRISTIN SCHUBERT, Manager, Commission Section, Regulatory Commission of Alaska, Anchorage, Alaska, said in regard to shifting RCCs to other regulated utilities, they are still going to be doing work on telecoms, and so that burden is going to be shifted to the other utilities because the RCCs are calculated using labor ratios. Since they cannot charge telecoms RCCs, that burden gets put on the other utilities, so their charges will increase.

SENATOR MICCICHE said since that has been removed in Section 4 now, it maintains the current RCC funding mechanism. Nothing will change, but he should be on the lookout for a change in the

future that could unfairly distribute that cost to other utilities.

MS. SCHUBERT answered yes.

MR. PARRISH said this was something the commission addressed at the public meeting. The current draft is fairer. One of the interesting things is that when other utility sectors become deregulated, the commission generally does no work for them. With telecommunications it's a strange beast because they have lots of delegated authority from the FCC to provide ongoing regulation even of deregulated carriers. Bringing back a requirement for otherwise economically deregulated entities that they do perform regulatory work for to pay some of those costs would be an improvement over the current landscape.

MS. O'CONNOR said their legal expert can speak to the concerns about interconnection disputes.

[10:04:21 AM](#)

JAMES JACKSON, Legal Counsel, GCI, Anchorage, Alaska, said he is not sure what raised the concern from Mr. Parrish and Mr. McAlpine regarding joint use and interconnection. The statute is confusing on this issue. The sections on joint use and interconnection are AS 42.05.311 and AS 42.05.321. "It's true that those are not listed as sections which will still apply to us," he said. That is because the statute is somewhat strange. It is stated within those sections that they still apply to utilities that are exempt under AS 42.05.711. Specifically, AS 42.05.321 which is entitled Failure to Agree upon Joint Use or Interconnection, gives the commission the authority to resolve those disputes. Subsection (d) of AS 42.05.321 says this section and AS 42.05.311 apply to all utilities, whether or not they are exempt from other regulation under AS 42.05.711. Since the exemption this bill grants is under AS 42.05.711, the section on joint use will still apply.

[10:07:01 AM](#)

CHAIR COSTELLO stated her intention to hold SB 205 for further consideration.

[10:07:16 AM](#)

At ease

HB 79-OMNIBUS WORKERS' COMPENSATION

[10:07:22 AM](#)

CHAIR COSTELLO reconvened the meeting and announced the consideration of HB 79. [CSHB 79(FIN) was before the committee and this is the first hearing.]

10:10:40 AM

HEIDI DRYGAS, Commissioner, Department of Labor and Workforce Development (DOLWD), Juneau, Alaska, said HB 79 improves the department's ability to administer the Workers' Compensation Division. Last year they presented companion bill SB 40 to the committee. Since then HB 79 made its way through the House and has seen changes and improvements. It is an efficiencies bill. It modernizes the system, which has not been significantly reformed in more than 10 years. It speeds up the resolution of disputes, improves the delivery of benefits to injured employees, deters workers' compensation fraud, reduces administrative costs, and provides adequate funding for the administration of the workers' compensation system. HB 79 was well vetted and passed in the House with support from the minority and majority.

10:11:55 AM

MARIE MARX, Director, Division of Workers' Compensation, Department of Labor and Workforce Development (DOLWD), Juneau, Alaska, said she always starts with the department's mission when she presents on workers' compensation. It is to ensure the quick, efficient, fair, and predictable delivery of benefits to injured workers at a reasonable cost to employers. She directed attention to the slide showing the other pillars that guide the division's administration of Alaska's Workers' Compensation Act. The governor's bill focuses on the fairness, quickness, and efficiency of the workers' compensation process.

MS. MARX said she would present the bill by topic instead of numerical order. Each section is listed by topic and she would refer to page numbers as they work through HB 79, version N.

MS. MARX first addressed the topic of speeding up dispute resolution. She said HB 79 simplifies and quickens the hearing process by letting the board schedule a hearing shortly after a claim is filed instead of waiting until one of the parties requests a hearing, which can be many years down the road.

MS. MARX said it changes who may represent a claimant in a workers' compensation hearing. Now a non-attorney may represent parties. The bill proposes that anyone authorized by regulation of the board may represent parties. They have had instances where non-attorneys who were not bound by ethical and

professional rules represented someone, such as a brother or spouse, before the board. Often, that person's assistance is not helpful but delays outcomes for injured workers. At first the bill said non-attorneys may not represent parties, but through the hearing process, this was changed.

She said HB 79 streamlines settlement agreements by eliminating a requirement that the board approve attorney fees if fees are the only issue that requires board approval. It also streamlines the process of imposing civil penalties against an uninsured employer by allowing the division to assess the penalty directly rather than petitioning the board to set the penalty. An employer may appeal the penalty before the board.

MS. MARX addressed the second topic of improving the delivery of medical care. She said currently no language addresses if and when a provider's written request for medical care, usually for surgery, must be preauthorized. The bill requires an insurance company or self-insured employer to preauthorize or deny medical treatment within 60 days of a medical provider's written request. This gap has led to a lot of litigation and delayed the delivery of care to injured workers. The bill does not change the requirement that medical bills must still be paid within 30 days.

[10:16:21 AM](#)

SENATOR GARDNER said 60 days seems like a long time to wait for surgery. She asked why 60 days was selected.

MS. MARX said the only duty the employer has now is to pay a medical bill within 30 days of receiving it. By the time the medical bill is received by the self-insured employer or insurance company, the care has already happened. They have already had the opportunity for one of their doctors to evaluate the injured worker. It is different for preauthorization of surgery, which is generally very expensive surgery. Sixty days would give time the employer or insurance company time to refer to the worker to a physician of their choice and get the medical records from the doctors. At times it's difficult to get medical records within 45 days. Now the injured worker needs surgery and the doctor won't move forward without the certainty of being paid. The worker doesn't want to be on the hook either. Sixty days was a compromise to balance the injured worker's need for care and efficiency and reasonable cost for the employer.

[10:18:24 AM](#)

MS. MARX addressed the issue of misclassification before moving on. She said not tackling misclassification is a great disservice to workers and law-abiding businesses. When workers are fraudulently misclassified, workers die or are severely injured and huge uninsured losses can put a company out of business. They must keep workers safe and law-abiding employers should not have to pay the price for misclassification.

She then took up the third topic, strengthen fraud provisions. She said HB 79 strengthens fraud provisions by defining misclassification and when it amounts to fraud.

She said there is no affirmative duty to report work or wage-loss benefits. If asked, workers cannot misrepresent that, but there is not an affirmative duty to tell an insurance company or self-insured company that they are receiving benefits. HB 79 does impose an affirmative duty on the injured worker to report their injury.

MS. MARX said currently a loophole exists where LLCs [limited liability companies] escape liabilities for benefits and civil penalties because the act was created when corporations were in existence. The bill will make LLCs that operate without insurance just as liable as corporate officers for uninsured injuries and penalties.

She said the bill defines independent contractor, which is the biggest change since the committee heard SB 40. This definition is the result of working with many stakeholder groups who initially vehemently opposed the original definition. This definition is a result of collaboration between stakeholders and the department. The definition will accomplish the mission of preventing fraud and misclassification while also ensuring that bona fide independent contractors continue to operate and flourish.

She said HB 79 allows the Benefits Guaranty Fund, which is the injured workers fund, to file a lien for compensation and civil penalties. The Benefits Guaranty Fund pays a claim when an employer does not carry insurance. Then the fund has to be reimbursed by the uninsured employer. By the time that happens, the assets are gone. An injured worker already has the right to file a lien.

[10:22:07 AM](#)

MS. MARX said HB 79 expands the division's ability to assess a civil penalty to include employers who are underinsured because

they have misclassified workers in a variety of ways. Now the division only has the ability to assess a penalty for failing to carry any insurance. The bill changes the calculation and the maximum civil penalty. The maximum penalty now is \$1,000 for each uninsured employee workday, which has resulted in astronomically high penalties that employers cannot pay. The calculation of these penalties doesn't survive appeal and has led to a lot of litigation. The employers who do not keep records on the number of employees they have are rewarded.

She said the maximum penalty in HB 79 is three times the premium an employer should have paid. HB 79 a simpler calculation because it only requires the employer's overall payroll data. The new penalty will result in a reasonable deterrent that takes into account the employer's size, the nature of the business, and the financial gain the employer realized by not paying the full workers' compensation insurance. She provided an example. Their hope is that if penalties are more in line with reality, the division will be able to collect more. These penalty amounts go to the injured worker fund. With HB 79, penalties may not be suspended in full or in part. Right now, the board has suspended penalties, which is arbitrary. The board can always reduce or reverse a penalty. HB 79 allows employers to establish a payment plan, so they won't go out of business.

[10:25:27 AM](#)

MS. MARX addressed the fourth topic, reducing administrative costs. She said current law says the employer must pay by check. Times have changed, so the bill does not prescribe a specific method of payment. Currently, the division may not require electronic filing. The bill says the division may prescribe the filing format. The division has moved almost completely to electronic filing except for a few things that must be done by paper. The bill will modernize that.

She said there is a corporate executive officer workers' compensation coverage opt out, which involves a lot of paperwork that must be submitted. The bill streamlines that. If someone has at least 10 percent ownership, that is enough to say that person is not an employee and does not need workers' compensation insurance. The division has a great database that makes verifying that easy.

[10:26:58 AM](#)

SENATOR MICCICHE asked if simplifying the corporate opt out would result in a significant change in the numbers opting out or would it be close to what it is now.

MS. MARX said it's difficult to tell how many officers would then be considered non-employees. Now there are many corporate officers who have no ownership in the business and are added. Corporations change that makeup of their officers every few months. She guessed the bill would make sure that those who legitimately have an interest in the company would be exempted.

SENATOR MICCICHE said it's more black and white criteria. He asked if there was another reason a corporate executive could opt out.

MS. MARX agreed that it is very black and white, which was the intent. She answered no to the second question. She added that HB 79 is not a bill that deals with substantive benefits. It is an efficiencies bill that seeks to make things clearer for the public.

[10:29:02 AM](#)

MS. MARX continued to review administrative efficiencies. She said the Medical Services Review Committee looks at different publications to come up with a medical fee schedule. More publications are added to that list.

MS. MARX said there is currently no consequence if insurers do not meet the deadline to tell them when an employer has coverage or not. By granting a 30-day deadline (instead of ten) with a penalty, they hope that will reduce wasted effort for investigating failure-to-insure cases. The bill also phases out the Second Injury Fund, which reduces costs for the department and employers. The fund's purpose is to encourage employers to hire or retain disabled individuals, but the purpose is moot with the Americans with Disabilities Act and other laws that bar employment discrimination. As claims are paid out, the employers' contribution will drop to zero. These claims are for permanent disability. The fiscal note estimates the average age of claimants will be 80 and two to three will be phased out each year.

[10:32:10 AM](#)

MS. MARX addressed the final topic, ensure adequate funding for the Workers' Safety and Compensation Administration Account (WSCAA) in Section 1. She said the WSCAA balance is rapidly declining. In 2005, the Alaska Legislature added programs funded by WSCAA, but no increase in the WSCAA service fee rate was made for the increased costs to operate these programs. The bill does not increase the service fees companies pay, but more of the fee

will be allocated to the department. That is a difference of \$1.8 million. If the change is not implemented, WSCAA will have a shortfall in 2020.

[10:33:49 AM](#)

CHAIR COSTELLO opened public testimony on HB 79.

[10:34:13 AM](#)

BRONSON FRYE, Painters Union Local 1959, Anchorage, Alaska, testified in support of HB 79. He said he was just appointed to the Workers' Compensation Board. Unscrupulous contractors are requiring as a condition of employment that their workers get business licenses and work as independent subcontractors. These are not legitimate independent subcontractors. An entire crew of workers working on a singular job on a singular project are all classified as independent subcontractors. He gave the example of the drywall workers for the Dena'ina Center. Because workers' compensation premiums are so high in the inherently dangerous construction industry, they can account for up to 30 percent of labor cost. If an employer misclassifies workers, he can lower labor costs and have a competitive advantage in the bidding process against honest, law-abiding employers. This is a fairness-in-contracting issue. Also, liability for injury at work is shifted to the worker with independent contractor misuse. Workers' compensation exists for a reason. HB 79 has a multifactor test to determine a true independent contractor. It will reduce workers' compensation fraud, create fairness in contracting in the construction industry, and protect workers.

[10:37:58 AM](#)

LAURA BONNER, representing self, Anchorage, Alaska, testified in support of HB 79. She said her husband suffered a debilitating injury years ago. HB 79 allows better and quicker access to medical care and quicker resolution of disputes. This is important to the injured worker and their families who are dealing with the stress of the injury. She expressed pleasure with the language defining an independent contractor and strengthening the fraud provisions. She has served on the Workers' Safety Advisory Council because safety and injured workers have been a concern of hers. She urged the committee to pass HB 79 from committee. It is better than the bill passed earlier today.

[10:40:25 AM](#)

DON ETHERIDGE, Lobbyist, Alaska AFL-CIO, Juneau, Alaska, testified in support of HB 79. He said any efficiencies should be made. Alaska AFL-CIO was involved in the working group to

define independent contractors and is happy with the result. He related how difficult it can be for injured workers to receive their compensation checks by mail. The bill makes improvements.

[10:42:33 AM](#)

CHRIS DIMOND, Organizer, Pacific Northwest Regional Council of Carpenters, Juneau, Alaska, testified in support HB 79. He said making government more efficient is always a move in the right direction. The definition of independent contractor is a long overdue reform. He related cases in Juneau of fraud. HB 79 protects workers' rights and safety. It will keep contractors working more fairly.

[10:44:39 AM](#)

CHAIR COSTELLO closed public testimony on HB 79.

SENATOR MEYER asked about the change on slide 4 of the presentation that states HB 79 will allow persons authorized by regulation of the board to represent parties. He asked if the bill would prevent an injured person using his cousin to represent him.

MS. MARX said the bill would allow the board to develop, through the regulatory process, a list of the parties who can represent parties before the board. The board serves two functions, to make regulation and to hear claims. The hearing panel is in the best position to know the type of individual who is able to represent injured workers. Through the public process, there will be a list created. She noted that she served as a hearing officer for six years. She gave anecdotal experience to illustrate problems that can arise.

SENATOR MEYER asked if the names on the list would be primarily attorneys.

MS. MARX said the 18-member Workers' Compensation Board would come up with the list. She envisions that besides Alaska attorneys, the list could contain perhaps outside counsel, retired attorneys, paralegals, medical billing specialists, and others. The list would be appropriate to create through regulation rather than statute.

SENATOR MEYER asked if she anticipated a long list.

MS. MARX said yes and very specific and detailed to provide clarity.

CHAIR COSTELLO said that Senator Meyer made a good point. They are hoping for common sense and flexibility with this list.

COMMISSIONER DRYGAS said the initial draft said no non-attorneys for a lot of reasons. This is a compromise where it would make sense for non-attorneys to represent.

SENATOR MEYER said he wanted to ensure that the injured worker has choices.

[10:51:47 AM](#)

SENATOR GARDNER asked if the department has the resources to look into possible cases of fraud when they hear stories like the ones Mr. Dimond referenced.

COMMISSIONER DRYGAS said yes and no. The fraud unit will investigate if they hear something. Right now, the test of being an independent contractor versus an employee is cumbersome, which is why they are changing it in law. The department is cash-strapped currently. Next year, FY2020, WISCA funding will be depleted.

[10:53:26 AM](#)

SENATOR MICCICHE said he had the same concern as Senator Meyer. Another concern is with Section 7 that redefines LLC. He questioned whether a Workers' Compensation bill was the right place to do that.

MS. MARX clarified it does not redefine an LLC. Right now, there is a loophole. Under the current Workers' Compensation Act, employers must have workers' compensation for employees. If they don't, the employer and those in charge of the business are responsible for uninsured claims. LLCs do not have the same liability. Those LLC members who run the corporation, even if it is one member, completely escape the liability that corporations have for uninsured injuries. This levels the playing field for all members. There is a need to close the loophole of companies to escape liability.

SENATOR MICCICHE said he understands the intent but would rather it be dealt with in a section of law that defines what an LLC can do with that limit of liability rather than eliminating the loophole in this bill. He said it needs to be dealt with more comprehensively.

COMMISSIONER DRYGAS said it's there to maintain consistency in the statute. The corporate section is already in the statute,

which is why they addressed the LLC there. She acknowledged that one could argue both sides.

10:58:23 AM

SENATOR MEYER moved to report HB 79, version N, from committee with individual recommendations and attached fiscal note(s).

10:58:45 AM

CHAIR COSTELLO announced that without objection, CSHB 79(FIN) moved from the Senate Labor and Commerce Standing Committee.

10:59:01 AM

There being no further business to come before the committee, Chair Costello adjourned the Senate Labor and Commerce Standing Committee meeting at 10:59 a.m.