

ALASKA STATE LEGISLATURE
SENATE LABOR & COMMERCE COMMITTEE

March 26, 2002
1:35 p.m.

MEMBERS PRESENT

Senator Ben Stevens, Chair
Senator Alan Austerman
Senator John Torgerson
Senator Bettye Davis

MEMBERS ABSENT

Senator Loren Leman

COMMITTEE CALENDAR

SENATE BILL NO. 220

"An Act relating to the scope of practice authorized under a license to practice hairdressing."

MOVED CSSB 220(L&C) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 56(FIN)

"An Act relating to minimum wages; and providing for an effective date."

MOVED CSHB 56(FIN) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 320(TRA)

"An Act prohibiting discrimination in insurance rates based on credit rating or credit scoring; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

SB 220 - See Labor and Commerce minutes dated 3/14/02.

HB 56 - No previous action to consider.

SB 320 - See Transportation minutes dated 2/28/02 and Labor and Commerce minutes dated 3/5/02.

WITNESS REGISTER

Ms. Linda Sylvester
Staff to Representative Kott
State Capitol Bldg.
Juneau AK 99811

POSITION STATEMENT: Commented on HB 56 for sponsor.

Commission Ed Flanagan
Department of Labor and Workforce Development
PO Box 21149
Juneau AK 99802

POSITION STATEMENT: Supported HB 56.

Mr. Chip Wagoner
Alaska Catholic Conference
3294 Pioneer Avenue
Juneau AK 99801

POSITION STATEMENT: Supported HB 56.

Mr. John Wilson
Outback Steakhouse/Restaurant Industry
No address provided

POSITION STATEMENT: Opposed HB 56.

Ms. Annette Deal
Staff to Senator John Cowdery
State Capitol Bldg.
Juneau AK 99811

POSITION STATEMENT: Commented on SB 320 for the sponsor.

Mr. Mark Niehaus, General Manager
Progressive Insurance
11010 White Rock Rd.
Rancho Cordova AK 95670

POSITION STATEMENT: Opposed SB 320.

Mr. Steve Cleary
Alaska Public Interest Research Group (AKPIRG)
PO Box 101093
Anchorage AK 99510

POSITION STATEMENT: Supported SB 320.

MR. James Jenks, Legislative Counsel
U.S.A.A. Western States
No address provided

POSITION STATEMENT: Opposed SB 320.

Mr. Glenn Clary
2150 Glacier

Anchorage AK 99508

POSITION STATEMENT: Supported SB 320.

Ms. Suzanne Kelly

PO Box 91091

Anchorage AK 99509

POSITION STATEMENT: Supported SB 320.

Ms. Sarah McNair-Grove

Property Actuary

Division of Insurance

Department of Community and Economic Development

PO Box 110805

Juneau AK 99811

POSITION STATEMENT: Supported SB 320.

ACTION NARRATIVE

TAPE 02-15, SIDE A

Number 001

#SB220

SB 220-SCOPE OF PRACTICE OF HAIRDRESSING

CHAIRMAN BEN STEVENS called the Senate Labor & Commerce Committee meeting to order at 1:35 p.m. and announced SB 220 to be up for consideration. He said there was a committee substitute that addressed the issues that were brought up in the first hearing.

SENATOR TORGERSON moved to adopt the CS to SB 220. There were no objections and it was so ordered.

SENATOR AUSTERMAN moved to pass CSSB 220(L&C) from committee with individual recommendations. There were no objections and it was so ordered.

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#HB56

HB 56-MINIMUM WAGE

CHAIRMAN STEVENS announced HB 56 to be up for consideration.

MS. LINDA SYLVESTER, Aide to Representative Kott, sponsor of HB 56, said it increases the minimum wage to a level that will help insure a minimum standard of living for Alaska's lowest paid workers. It is an exact duplicate of the initiative petition language.

What it basically does is effective January 1, 2003, an employer shall pay each employee not less than \$7.15

per hour for work in a pay period as well as each year, not later than September 30, the minimum wage shall be adjusted for inflation at 100% of the CPI at Anchorage. It also includes that if the federal minimum wage increases and Alaska's minimum wage loses ground against that, it will always be \$1 higher than the federal minimum wage.

SENATOR TORGERSON said he knew that some other wages were tied to the minimum wage such as busing contracts and asked what impacts this would have.

COMMISSIONER ED FLANAGAN, Department of Labor and Workforce Development, replied that there was discussion of that in the House and a fiscal note was provided to House Finance. That is the only wage that is specifically tied to the minimum wage. There is reference in admin regs to make people salaried if they become a supervisor in a fast food restaurant, for example, instead of paying them by the hour and they have to be paid at least two and half times the minimum wage.

SENATOR TORGERSON asked if the \$7 included the \$1 addition over the feds.

COMMISSIONER FLANAGAN replied:

The way it's written now the \$7.15 would be the minimum on January 1. As there are annual adjustments, it would either be the percent to keep up with inflation or if the feds happen to make an increase, that dollar over would end up being a greater amount. That would be the only time that would enter in. Right now our law is \$.50 over and it has been since 1959. So, this would create second time. It's an either or, whichever is greater.

He said the department wholeheartedly supports the bill.

MR. CHIP WAGONER, Alaska Catholic Conference, said that the Conference is the public policy arm of the Roman Catholic church in the state of Alaska. At the September 21, 2001 meeting, the Conference unanimously adopted a resolution in support of the minimum wage increase and the automatic adjustment provision. He said the Church supported a minimum wage as early as 1919, nearly two decades before the federal Fair Labor Standards Act was adopted. He said the reason for their position is based on their social teaching.

The first is that we give a preferential option to the poor and vulnerable. The test in the eyes of the church

of any civilization of a society and of an economy is how the poor and vulnerable are treated...

A second catholic social teaching that applies to the minimum wage is the concept of what work is. Work is more than a job. Work in catholic social thought is a way to participate with God's creation, a way to contribute to the common good, a way to promote human dignity and a way for people to meet their needs and their community obligations. The church's teachings promote the concept of what is called a living wage, a wage which is adequate for workers to provide for themselves and their families in dignity. This concept has actually been adopted in over 80 communities throughout the United States.

Now, a minimum wage that you are debating here increased to \$7.15 is not in Alaska a living wage. In fact, if a person worked 40 hours a week, 52 weeks per year, at \$7.15, she would earn \$14,872, which is below the poverty threshold for a family of two. So although an increase in the minimum wage is, as I said, a step in the right direction, it's a long way before we reach the living wage concept.

What the minimum wage does is not only helps to provide for people in need, but it gives them a greater sense of self esteem and self worth. Who benefits from a minimum wage increase? These figures are federal figures, but an increase in the minimum wage disproportionately benefits women, minorities and the nation's poor. In 1998, the Economic Policy Institute study found that households in the bottom 20% of the income spectrum, who receive only 5% of the total family income, received 35% of the total benefits of the last increase in the minimum wage at the federal level. Of those affected by the last federal minimum wage increase, 72% were adults and over and more than half of the teenagers earning minimum wage when that increased were in households that received below average incomes. Over 60% of the workers benefiting from the increase were women. African Americans represented 11.7% of the total workforce that benefited, but were 18% of the workers that were actually benefited by the increase. Hispanic workers represented 11.3% of the workforce, but were 14.4% of the workers affected by the increase.

Another issue that has come up is - are jobs lost as when employers have to lay off people in order to pay for those who are still with them. The answer to that question is no. Again, the EPI study failed to find any systematic significant job loss associated with the federal 1996 - '97 minimum wage increase. In fact, economists Dave Card and Adam Kruger, were studying an analysis of the minimum wage increase in New Jersey on fast food workers in the early 90s and they found that employment actually increased.

Also, Robert Solo, the MIT Nobel Laureate, wrote in 1995, that the main thing about the research is that the evidence of job loss is weak and the fact that the evidence is weak suggests that the impact to jobs is small.

Lastly, the issue of school bus drivers has come up. To my knowledge it's the only occupation that is actually tied to the minimum wage increase to a minimum wage statute. I think we need to recognize that we're talking about two different public policies. The first public policy with regards to this issue is providing for the least amount of [indisc] increase in the minimum wage. That's policy number one. The second policy is the policy as it relates to school bus drivers.

1:45 p.m.

MR. WAGONER said he researched the passage of that bill in 1990 and the reason school bus drivers are tied to double the minimum wage is not to give them an increase in wages, but to establish a floor for proficiency for school bus drivers because of their concern about safety.

MR. JOHN WILSON, Outback Steakhouse Restaurant, said that raising the minimum wage in the restaurant industry would create a 26.5% increase in wages for anyone in the restaurant industry. "There is not a business owner that I know of who can absorb an increase like that without raising prices of their services or their products... In the end it's the consumer who gets hurt."

He said that 80% of restaurant workers' wages are for tips and they already make \$15 - \$20 per hour depending on the type of restaurant they are working in.

SENATOR DAVIS asked what figures he based the 26.5% increase.

MR. WILSON replied that minimum wage of \$5.65 right now and going to \$7.15 per hour is a 26.5% increase.

SENATOR DAVIS asked if his restaurant paid the \$15 - \$20.

MR. WILSON replied yes.

SENATOR TORGERSON asked if he would rather have this issue decided on the ballot, as the petition had been certified, and it would be on the November ballot.

MR. WILSON replied that he would rather see it on the ballot.

SENATOR DAVIS moved to pass HB 56 from committee with individual recommendations. There were no objections and it was so ordered.
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#SB320

SB 320-MOTOR VEHICLE INSURANCE & REPAIRS

CHAIRMAN STEVENS announced SB 320 to be up for consideration.

MS. ANNETTE DEAL, staff to Senator Cowdery, sponsor of SB 320, said this legislation has everything to do with how auto and home premium rates are determined for insurance purposes.

The idea of the industry is to remove driver behavior, or base very little percentage on it, meaning your tickets and your accidents, and replace it with economic considerations meaning your credit score. This credit score is a glimpse in time, but it is a seven-year glimpse in time, because your credit score takes into account bankruptcies, judgments, late payments and all of those factors remain on your credit for a seven-year period, possibly even 10 years where in the past driving records have used... In this scenario people with bad credit who are good drivers are subsidizing people with good credit who are risky drivers.

She told the story of a Fairbanks woman who is a victim of identity theft whose premiums have skyrocketed and there's basically nothing she can do about it. People who are hurt by this are people with a few glitches on their credit who have a good driving record. The insurance industry will argue that driving records are inaccurate, but the DMV says they are very accurate and they have never heard that they are inaccurate. Credit reports on the other hand can be anywhere from 10 - 60% inaccurate. Fixing a credit report can take forever.

MS. DEAL said that insurance companies tell you that there is a

correlation between good credit and fewer accidents, but she could probably prove to them through some sort of study that people who eat pickles are in more accidents. They also say they are able to write more aggressively in urban markets and that's great except if you consider that about 50% of Alaska is rural.

MR. MARK NIEHAUS, General Manager, Progressive Insurance, said they are the fourth largest writer of auto insurance in the country and have used credit as an element of their rating for over 10 years. Currently, they use credit in 45 of the 48 states in which they write business. "Credit is allowable and we have been using it actively in those states."

He said they have about \$45 billion of earned premium data using credit. They have used credit in Alaska successfully for the last six years. They had an extensive filing and review process with the Alaska Division of Insurance where they closely examined their proposal and approved it because they deemed credit to be correlated with risk of loss, which, it is. About two thirds of their customers get a lower rate because of credit and they would get rate increases if they couldn't use credit. Some of the increases would be very significant like about 30 - 40%. There had been voluminous studies on credit as a predictor of future loss and the Alaska Division of Insurance has looked at this as well.

The beauty of credit as a rating factor is that it's not correlated with other factors and that's why insurance companies want to use it. It's not correlated with age, sex, or marital status. "So, it's powerful and it's an independent predictor of future losses."

Many independents reviews have been done of this practice including the NAIC and they have concluded that credit is predictive of loss. They could not afford to give lower rates if it weren't justified. "We would go out of business."

They use of credit for prescreening is specifically allowed by the Fair Credit Reporting Act, which has a lot of disclosing requirements and prohibitions on using things like age, sex, religion, race and significant penalties for noncompliance. "There is already a lot of protection out there today in terms of the FCRA around use of credit."

Briefly, he said the process is objective and is an electronic check taking about 30 seconds. They pull raw data from credit vendors and calculate a score using their algorithm. There are no privacy issues, because the credit data is not displayed in the office of the independent agent who is doing the quote. They give disclosure to the customer and ask permission as required by the FCRA before they even order their credit report. In the event

that the rate comes out higher than the best rate, customers are given an 800 number and get a free copy of their credit report. If there are any errors, they are able to correct them and the policy will be reissued at the revised rate. He added that they get very few of those.

Progressive provides reason codes, listing three things a customer can do to improve their credit score. Things that are on a credit score include bankruptcies, judgments, tax liens, information on number of loans, credit limits, late payments, number of inquiries. Things not in a credit report are income, race, gender, wealth, nationality, etc. The use of credit does allow folks who otherwise wouldn't qualify to qualify for their preferred rates.

MR. NIEHAUS said they have a major problem with this bill. It is a very broad restriction and no other state has a bill that is so broad and would completely disallow the use of credit for either rating or underwriting.

It's going to create an unlevel playing field, frankly, and disadvantage independent agents and independent agency companies and the reason for that is direct writers are specifically allowed to use credit.

He said there's no question that good drivers would be forced to subsidize bad drivers. Good drivers defined as those people less likely to have a claim would under this bill have to pay significantly more insurance because of people who are more likely to have a claim because of lack of responsibility.

MR. NIEHAUS said this is a powerful tool that would stifle competition. His company is more willing to do business in Alaska, because they can write more business and offer lower rates and that helps them grow.

2:10 p.m.

The AARP wrote a letter saying they support the bill, because they believe that retirees are being adversely affected by the use of credit scoring insurance. He looked at the Progressive credit scores by age, because one of the things they were saying is that older folks have worse credit and are therefore being hurt by credit scoring. He found exactly the opposite to be true and showed them a graph illustrating that as you get older, your average credit score gets better. He did not think the AARP letter was based on any data.

He also looked at people without credit called no hits. Overall nationwide that number is 4.8% of their business and he looked at it for people over 60 and the number is 5.2% showing that there

is no significant difference in older versus younger folks. "So, my conclusion is that older folks actually benefit today from the use of credit."

He offered to share data on low income, consumers, urban residents, etc. He summarized, "I think this bill is damaging for Alaska consumers. It's going to cause higher rates and lessen competition and it's going to force people that have responsibility in terms of paying their bills and in terms of their driving and record and behavior, it's going to force them to pay more to subsidize those people that are less responsible that don't pay their bills and have more accidents."

SENATOR AUSTERMAN asked him to clarify what states have laws that don't allow them to use credit.

MR. NIEHAUS replied there are three states - California, Hawaii and Georgia that don't use credit. In Hawaii, there is a statutory prohibition on use of credit for rating, although it doesn't deal with underwriting and there is a lawsuit on that issue. California has no statutory prohibition on it. It's not used in auto insurance. It's used in homeowners insurance and other commercial insurance. It's not used in auto insurance because of propositions one and three, which allows the insurance commissioner to decide what rating factors will be used and the commissioner chose not to allow credit as a rating factor. He wasn't sure about Georgia's position.

SENATOR AUSTERMAN said he had a question about the credibility of credit reports, because he was involved in a situation where he spent eight months getting his credit report straightened out. He asked Mr. Niehaus to explain in a little more detail how they get the credit report.

MR. NIEHAUS said they gather the raw data from the credit providers. There are three primary vendors of credit information and Progressive uses a company called Trans Union. They get the raw data and have a mathematical formula that calculates the score.

He had some data on accuracy. In 2000 his company ordered 11 million credit reports and the number of errors and corrections was quite small, 21 changes for that year. In 2001, out of 7 million credit reports ordered in the first half of the year they had 7 changes. Another study they had from Arthur Anderson said that 2% of 15,703 credit reports were disputed and 25% of 12,023 reports reviewed were disputed and 3% of reports reviewed resulted in a reversal. There was a total of 36 changes out of 15,703. He thought the data was getting better and better every day as people become more and more aware of a credit score.

SENATOR AUSTERMAN said he knows that their scoring system takes in risk factor as well as credit and asked him to explain how they weigh the risk versus credit.

MR. NIEHAUS replied:

We basically have a matrix where we're looking at risk factors and we have seven different categories of risk factors meaning going from the person with no prior insurance and a lot of points and a younger driver to the other extreme of an older driver who's clean and prior insurance, etc. And then we also have credit scores. So, it's an array of rates. In terms of the effect of credit score, I can't give you a percentage affect. It does qualify as I mentioned, people who otherwise would not get good rates. They can get an attractive rate. For example, somebody with no prior insurance and a couple of points can actually get - normally that person would be considered a non standard risk, but assuming they have good credit, that person could qualify for - we have five tiers - they would qualify for the preferred tier, which is the second best tier that we have. In terms of premium difference, you're looking at probably 40%.

SENATOR AUSTERMAN asked if they determined rates by using 50% risk and 50% credit.

MR. NIEHAUS said he didn't think there was a mathematical answer to that.

SENATOR TORGERSON asked how long credit scoring had been used in the industry.

MR. NIEHAUS answered that it probably dates back to the 70s. His company has been using it for about 10 years and in this state for about six.

CHAIRMAN STEVENS asked if his algorithms were approved by the Division of Insurance.

MR. NIEHAUS replied yes.

TAPE 02-15, SIDE B

CHAIRMAN STEVENS asked if the variations within the rates approved by the Division of Insurance as well.

MR. NIEHAUS replied yes.

MR. STEVE CLEARY, Alaska Public Interest Research Group (AKPIRG), supported SB 320 and agreed especially with Ms. Deal's testimony. He said credit scoring is bad for consumers because they don't know how the score is figured and factors that shouldn't make the a person's credit score bad can make it bad in a way that shouldn't happen, like divorce, unemployment and large medical bills. Figures from their national office show that up to 37% of credit reports are wrong and this can adversely affect their score.

CHAIRMAN STEVENS asked him to send that information to the committee.

MR. JAMES JENKS, Legislative Counsel, U.S.A.A. in the western United States, said they are an insurance and financial services company serving military families all over the world. He said they use credit reports, but very sparingly. They use them for an initial rating for a new policy, but don't use them for review of their cancellations. "After the first year of experience with us, our rates for the person going forward are based upon our experience with them."

They also recognize that other companies use credit to underwrite or establish the rate in different ways. The factors used in establishing rates and underwriting goes to the very nature of the competitive market place and Alaska is becoming increasing competitive. So, if someone does not like the rate they get from one company, they are free to shop around.

MR. JENKS concluded that they oppose the bill and feel that an insurer should be able to use valid underwriting and rating criteria if they can be demonstrated to have a valid relationship to the loss.

MR. GLENN CLARY, Anchorage resident, supported SB 320. There are two other areas that they could amend that would help Alaskans even more. Insurance companies operating in Alaska sell auto policies because residents are required by state law to have it, but the insurance companies have total control. Only after you have signed up and paid your premium do they send you a copy of the policy. Without previous disclosure of the terms of the policy, the customer finds they have abdicated constitutional rights and handed over to the insurance companies total control of their medical pay out through their use of independent medical examinations (IME).

He said what matters to the insurance company is that they get the customer to the arbitration table. He suggested requiring insurance companies to allow their customers the option to choose between arbitration and a jury trial and requiring insurance companies to hire local doctors to do IMEs, which will establish

some accountability within a local community and prevent the insurance company from hiring "prostitute" doctors.

MS. SUZANNE KELLY said she was representing herself and her family and that she is self-employed. Her insurance rates went up because of her credit. She has bought a house, refinanced and had babies; she uses her line of credit for her business and has expanded her business. "Basically, my credit scores went down very low. So, that made my insurance rates go up very high."

She got different quotes and found that if she used her husband's social security number, they would pay low rates. She thought it was very discriminatory and summarized saying that she supported SB 320. She said they don't know how much a credit score weighs from company to company.

MS. SARAH MCNAIR-GROVE, Property Casualty Actuary, supported their efforts to provide some kind of regulation on the use of credit scoring by insurance companies in Alaska.

How far to go, including whether it should be totally banned or whether there should just be some parameters around it, we believe is a policy call that is best made by you, but we support your efforts in discussing this issue. The division is responsible to review auto insurance rates and approve them only if they are not excessive, not inadequate and not unfairly discriminatory. Those are the statutory standards, which we use to review a rate filing.

Credit information and credit scoring was first approved for use in Alaska approximately four and a half years ago. Extensive documentation and information was required from the insurance company to support its use and I believe Progressive has already testified to that. Despite the fact that it defies common sense, the correlation between credit scores and loss experience is high.

Approximately seven insurance companies have approved auto filings that include the use of credit scoring in Alaska. Since December 2000, the division has received approximately 11 auto and four homeowner's rate filings requesting to use credit information. Six of the auto filings were not approved as filed, either because the insurer totally withdrew them or because they withdrew the credit-scoring piece of the filing. Two of the filings were approved. The remaining auto filings are either still under review or disapproved. Of the four

homeowners' filings, three of those also removed the credit scoring information. The remaining homeowners' filing is still under review. In addition to the rating process, an insurer can use credit scoring as an underwriting tool.

Unlike grading of insurance applicants based on risk factors, the Division of Insurance does not have prior approval authority over an insurer's use of credit information in the underwriting process. The underwriting process is where the insurer will look at the applicant and decide whether or not they want to provide coverage to the insured.

As the use of credit scoring has increased, the division has received consumer complaints regarding its use. Most of these calls were from consumers who just wanted to know whether this was something that insurers were legally entitled to do in Alaska. They claimed that their premiums doubled or tripled because of the use of credit information. When we explained to them that, yes, it was something insurers could do in Alaska, that didn't make them happy, but they went off and found other insurers that were willing to provide them coverage at lower rates.

In particular, one consumer who did file a formal complaint with the division had a premium increase from \$1,500 to \$4,300 and were told this was based on their credit information. They checked their credit information with the credit agency and it appeared to be good. They went back to the insurer and the insurer told them that their credit score was poor, because they had too many requests for credit ratings, one outstanding bad debt, which the insured was in the process of disputing and too much credit card activity. The consumer said that they paid all of their credit cards in full each month and they also went and found another insurer that would provide them coverage.

We recently have attended National Association of Insurance Commissioners meetings and there were several discussions on the use of credit information at these meetings. There are some trickle down affects and some unintended consequences of the use of credit information in insurance rates. One producer related several problems dealing with real estate purchases where the insured qualifies to buy a half million

dollar home, but the insurance credit score wasn't good enough for them to get coverage with an A-rated or a financially sound company. Their insurance would be provided by a B-rated company. The lender was unhappy with that and they were unable to close. So, then you've got the consumer unhappy, because they can't close on the loan; the real estate companies can't close the deal and the lenders aren't providing money. So these are the unintended consequences of its use.

Another consumer from Michigan said that they had followed their insurance commissioner's advice to shop around and get additional quotes and find the best deal. After they did this, they called the commissioner back and said, "I followed your advice, but now I can't get any coverage because I've been told there's been too many hits on my credit information. This has been a question that we have asked insurers when we have looked at these filings - do you count these kinds of hits and we have been told no. So, there's anecdotal evidence that at least in theory and practice if this consumer is correct and that's the reason why he couldn't get insurance, but there may be some mismatch between those items.

SENATOR TORGERSON asked how many auto companies had they approved use of credit information for.

MS. GROVE replied that they have currently approved filings for seven insurance companies to use credit information in their rate making process. "There are other insurers that use it as an underwriting tool, which we don't have prior approval for."

CHAIRMAN STEVENS asked if they had approved of seven - one homeowners.

MS. GROVE replied she thought it was one homeowner's filing. They have received four filings since 2000 and three of those withdrew credit information and she is still looking at one.

CHAIRMAN STEVENS asked if the three voluntarily withdrew the credit information.

MS. GROVE indicated that was correct.

CHAIRMAN STEVENS thanked everyone for their comments and adjourned the meeting at 2:45 p.m.