

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

May 12, 2003

3:20 p.m.

**MEMBERS PRESENT**

Representative Tom Anderson, Chair  
Representative Bob Lynn, Vice Chair  
Representative Nancy Dahlstrom  
Representative Carl Gatto  
Representative Norman Rokeberg  
Representative Harry Crawford  
Representative David Guttenberg

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 210

"An Act regarding the computation of overtime compensation by employers before June 2, 1999; and providing for an effective date."

- MOVED SB 210 OUT OF COMMITTEE

HOUSE BILL NO. 285

"An Act adopting the Uniform Electronic Transactions Act; repealing certain statutes relating to electronic records and electronic signatures; amending Rule 402, Alaska Rules of Evidence; and providing for an effective date."

- MOVED HB 285 OUT OF COMMITTEE

HOUSE BILL NO. 277

"An Act relating to the powers of the Regulatory Commission of Alaska in regard to intrastate pipeline transportation services and pipeline facilities, to the rate of interest for funds to be paid by pipeline shippers or carriers at the end of a suspension of tariff filing, and to the prospective application of increased standards on regulated pipeline utilities; allowing the commission to accept rates set in conformity with a settlement agreement between the state and one or more pipeline carriers and to enforce the terms of a settlement agreement in

regard to intrastate rates; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

**PREVIOUS ACTION**

BILL: SB 210

SHORT TITLE:WAGE AND HOUR OVERTIME COMPUTATION

SPONSOR(S): LABOR & COMMERCE

Jrn-Date	Jrn-Page		Action
05/01/03	1075	(S)	READ THE FIRST TIME - REFERRALS
05/01/03	1076	(S)	L&C
05/06/03		(S)	L&C AT 1:30 PM BELTZ 211
05/06/03		(S)	Moved Out of Committee
05/06/03		(S)	MINUTE(L&C)
05/07/03	1202	(S)	L&C RPT 4DP 1NR
05/07/03	1203	(S)	DP: BUNDE, DAVIS, SEEKINS, STEVENS G;
05/07/03	1203	(S)	NR: FRENCH
05/07/03	1203	(S)	FN1: ZERO(LWF)
05/08/03	1253	(S)	RULES TO CALENDAR 5/8/2003
05/08/03	1253	(S)	READ THE SECOND TIME
05/08/03	1253	(S)	ADVANCED TO THIRD READING 5/9 CALENDAR
05/09/03	1283	(S)	READ THE THIRD TIME SB 210
05/09/03	1284	(S)	PASSED Y20 N-
05/09/03	1287	(S)	EFFECTIVE DATE(S) SAME AS PASSAGE
05/09/03	1287	(S)	TRANSMITTED TO (H)
05/09/03	1287	(S)	VERSION: SB 210
05/10/03	1530	(H)	READ THE FIRST TIME - REFERRALS
05/10/03	1530	(H)	L&C
05/12/03		(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 285

SHORT TITLE:ELECTRONIC TRANSACTIONS & SIGNATURES

SPONSOR(S): REPRESENTATIVE(S)MCGUIRE

Jrn-Date	Jrn-Page		Action
04/25/03	1127	(H)	READ THE FIRST TIME - REFERRALS
04/25/03	1127	(H)	L&C, JUD
05/07/03		(H)	L&C AT 3:15 PM CAPITOL 17

05/07/03	(H)	Scheduled But Not Heard
05/09/03	(H)	L&C AT 3:15 PM CAPITOL 17
05/09/03	(H)	Scheduled But Not Heard
05/12/03	(H)	L&C AT 3:15 PM CAPITOL 17

#### **WITNESS REGISTER**

JANE ALBERTS, Staff  
to Senator Con Bunde  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Presented SB 210 on behalf of its sponsor,  
Senator Bunde.

GREG O'CLARAY, Commissioner  
Department of Labor & Workforce Development (DLWD)  
Juneau, Alaska

POSITION STATEMENT: Testified in favor of SB 210.

JOHN SHIVELY, Vice President  
Government and Community Relations  
Holland America  
Anchorage, Alaska

POSITION STATEMENT: Urged the committee to pass SB 210.

DON ETHERIDGE  
AFL-CIO - Alaska  
Juneau, Alaska

POSITION STATEMENT: Testified in favor of SB 210.

DAVE OESTING, Attorney at Law  
Davis, Wright and Tremaine  
Anchorage, Alaska

POSITION STATEMENT: During hearing on SB 210, answered  
questions.

HEATH HILYARD, Staff  
to Representative Lesil McGuire  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Presented HB 285 on behalf of the sponsor.

SHARON YOUNG, State Recorder  
Division of Support Services  
Department of Natural Resources  
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 285.

DAVID JONES, Assistant Attorney General  
Governmental Affairs Section  
Civil Division (Anchorage)  
Department of Law  
Anchorage, Alaska

POSITION STATEMENT: During hearing on HB 285, answered questions.

SCOTT CLARK, Notary Clerk  
Office of the Lieutenant Governor  
Juneau, Alaska

POSITION STATEMENT: Testified on behalf of the lieutenant governor in favor of HB 285.

#### **ACTION NARRATIVE**

#### **TAPE 03-51, SIDE A**

Number 0001

**CHAIR TOM ANDERSON** called the House Labor and Commerce Standing Committee meeting to order at 3:20 p.m. Representatives Anderson, Lynn, Dahlstrom, Gatto, and Guttenberg were present at the call to order. Representatives Rokeberg and Crawford arrived as the meeting was in progress.

#### SB 210-WAGE AND HOUR OVERTIME COMPUTATION

CHAIR ANDERSON announced that the first order of business would be SENATE BILL NO. 210, "An Act regarding the computation of overtime compensation by employers before June 2, 1999; and providing for an effective date."

Number 0162

JANE ALBERTS, Staff to Senator Con Bunde, Alaska State Legislature, presented SB 210 on behalf of its sponsor, Senator Bunde. Ms. Alberts paraphrased from the sponsor statement, which reads as follows [original punctuation provided]:

This legislation is designed to protect Alaska employers who properly calculated overtime wages for their employees prior to the effective date of Ch.43, SLA 99(HB201), and correct an erroneous judicial interpretation of Alaska's Wage and Hour Act.

In 1999 the Alaska Legislature passed HB 201 dealing with the issue of wage "pyramiding" (paying overtime wages more than once for the same hour of overtime work). Unfortunately, a last minute amendment deleted the Act's retroactive effective date (April 1, 1997). Though future claims were clearly precluded, those claims existing on or before the effective date of HB 201 remained active. As a result several employers were sued for calculating overtime wages exactly how the Alaska Department of Labor had instructed them to do it. Every other business in the state used the same method.

This measure, once and for all, brings certainty to the interpretation of computing overtime under Alaska's Wage & Hour Act. These changes are consistent with both concerns and policy goals expressed by the Legislature in the enactment of Chapter 43, SLA 99 and official State Department of Labor practice going back to pre-statehood.

CHAIR ANDERSON informed the committee that per Mason's Manual, these court cases can't be spoken of directly. Therefore, he instructed the committee not to ask questions on those court cases.

REPRESENTATIVE GATTO inquired as to how much money is involved in these pending cases.

MS. ALBERTS answered that although she didn't believe it had been determined, it could potentially be a large sum of money. In fact, she believes that these could potentially become class action suits.

Number 0383

GREG O'CLARAY, Commissioner, Department of Labor & Workforce Development (DLWD), testified in favor of SB 210. He related that in his nearly 40 years of representing workers, negotiating labor contracts, and interpreting the law with respect to employment, he has never seen a decision as odd as this. [The judicial interpretation] requires an employer to pay the employee twice for the same hour [when there are overtime hours]. He related his understanding that potential exposure to the companies in the pending cases could amount to several hundreds of thousands of dollars. He urged the committee to pass this legislation along.

REPRESENTATIVE GATTO surmised that in some cases some of the overtime would be time and a half, but as the employee accumulated over 40 hours the pay would be double time. Therefore, if an employee was paid six hours of overtime on Monday, the employee would be pushed over the 40-hour limit and thus requiring one hour of double time rather than time and a half. He asked if the aforementioned has ever intervened in any of these cases.

COMMISSIONER O'CLARAY remarked that it's worse. If an employee works six hours of overtime on Monday in a five-day workweek and the employee works eight hours a day for the remaining four days, the employee would be paid six hours of overtime on Monday and under this court ruling at the end of the week the employee would be time and a half again. Therefore, the six hours of overtime would be paid triple time, although the statute only requires time and a half after eight hours [in a day] and after 40 hours [in a week]. Through this judicial interpretation the employers were being hit twice for the same number of hours. In further response to Representative Gatto, Commissioner O'Claray said [this legislation] doesn't deal with double time.

Number 0587

JOHN SHIVELY, Vice President, Government and Community Relations, Holland America, informed the committee that Holland America is one of the companies that was sued [as a result of this judicial interpretation]. Mr. Shively reviewed the long and tortured legal history of the case against Holland America. The original claim was \$21 and Holland America paid it. However, the [Alaska] Supreme Court ruled that it could be turned into a class action suit, which is the case now. A class action suit could expose Holland America to millions. Mr. Shively related that Holland America doesn't believe there is any legal impediment to making the law passed in 1999 retroactive, which legislative legal counsel agrees. Therefore, Mr. Shively requested that SB 210 be passed on.

CHAIR ANDERSON commented on the absurdity that this could happen.

Number 0615

MR. SHIVELY noted that in the other case the judge came to the opposite conclusion.

REPRESENTATIVE GATTO asked if the statute specifies that an employer "shall" pay time and a half overtime for hours in excess of eight hours a day and overtime in excess of over 40 hours a week. He asked if that was the difficulty.

MR. SHIVELY said that it was a wording problem that was open to some judicial interpretation, but never any administrative determination. "It's the way wage and hour laws have been interpreted by the state since statehood, before statehood, and by every other state in the union," he said.

REPRESENTATIVE GATTO said that is a very compelling argument if the language was such that it used "and".

MR. SHIVELY reiterated that a different judge came to the opposite conclusion when reviewing the same language. Furthermore, when the legislature discovered this, the legislature went back and made the language very specific. He said that [this legislation] merely places the retroactive clause back in.

REPRESENTATIVE GUTTENBERG surmised that other types of overtime problems are sunsetted out or not applicable to this [legislation].

Number 0830

DAVE OESTING, Attorney at Law, Davis, Wright and Tremaine, informed the committee that the separator in the statute was "or" not "and", which gave rise to the confused interpretation.

Number 0875

DON ETHERIDGE, AFL-CIO - Alaska, announced that he is present to relate the AFL-CIO's support of SB 210 as it did of the original legislation in 1998. The AFL-CIO doesn't believe that employees should take advantage of loopholes any more than employers.

Number 0988

REPRESENTATIVE ROKEBERG turned attention to the April 22, 2003, memorandum from Barbara Craver, Attorney, Legislative Legal and Research Services. He asked if there is Alaska case law regarding whether a retrospective activity could be undertaken if there wasn't a final judgment as it relates to the due process rights.

MR. OESTING said there is only one such case, a land regulation property tax dispute in Homer, and it would be favorable to the position Ms. Craver takes. He related that Ms. Craver's position is that the legislature may retroactively legislate this matter because there is no absolute vested right until the final judgment occurs, which isn't the case in this situation.

REPRESENTATIVE ROKEBERG inquired as to the equal protection arguments with regard to a compelling state interest.

MR. OESTING opined that the equal protection arguments wouldn't be applicable in this situation because there is no irrational decision made by the state in an area in which the state is legally competent to regulate. In this situation, there was a derelict decision that came to a strange conclusion and retroactively was amplified into a potential class action. No one heretofore has sought or been granted the type of protection that this plaintiff was awarded by the trial court in its initial determination in the case.

REPRESENTATIVE ROKEBERG asked if it could be determined that the judge had found that the legislature had made a mistake.

MR. OESTING agreed that the above could be said, but other judges have come to the opposite conclusion on this case.

Number 1069

REPRESENTATIVE ROKEBERG pointed out that the legislature drafts the statute and when the judges interpreted it there were conflicting interpretations. He inquired as to why HB 201 had to be introduced to correct language if the statute wasn't defective.

MR. OESTING agreed that the fault would initially lie with the legislature which wrote the statute in an ambiguous manner [that resulted in] two courts arriving at different conclusions.

REPRESENTATIVE ROKEBERG turned attention to the impairment of property rights for retroactivities.

MR. OESTING said that the above is a due process concern. When a legal provision becomes, as a matter of law, a term of every contract, it brings with it the ability to be removed or altered to any contract in which it is included so long as the rights under that legal provision haven't been reduced to a final judgment. The aforementioned is the situation in this case and

is one of the main thrusts of arguments with regard to defamation of property due process. It has been addressed in exactly the same context in three to four cases, including in the 9th Circuit by the Fair Labor & Standards Act, which is the federal counterpart to Alaska Wage & Hour Act. Consistently, the conclusion has been that absent a final nonappealable judgment that statutory formulation can be revoked even if expressly revoked because of an ambiguity in the original statute.

CHAIR ANDERSON, upon determining no one else wished to testify, closed public testimony.

Number 1205

REPRESENTATIVE DAHLSTROM moved to report SB 210 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, it was so ordered.

#### HB 285-ELECTRONIC TRANSACTIONS & SIGNATURES

CHAIR ANDERSON announced that the final order of business would be HOUSE BILL NO. 285, "An Act adopting the Uniform Electronic Transactions Act; repealing certain statutes relating to electronic records and electronic signatures; amending Rule 402, Alaska Rules of Evidence; and providing for an effective date."

Number 1241

HEATH HILYARD, Staff to Representative Lesil McGuire, Alaska State Legislature, presented HB 285 on behalf of the sponsor. Mr. Hilyard provided the following testimony:

The fundamental purpose of adopting UETA [Uniform Electronic Transactions Act], as it's commonly referred to, is to remove perceived barriers to electronic commerce. UETA is a procedural statute and does not mandate either electronic signatures or records but provides a means to effectuate transactions when they're used. The primary objective is to establish the legal equivalence of electronic records and signatures with the paper writings and manually signed signatures. In a position paper prepared by the National Conference of Commissioners on Uniform State Laws, they offer several compelling reasons why states should adopt UETA. Among these being, UETA defines and validates electronic

signatures. An electronic signature is defined as an electronic sound, symbol, or process attached to a logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record. UETA removes writing and signature requirements which create barriers to electronic transactions; UETA ensures that contracts and transactions are not denied enforcement because electronic media are used. UETA ensures that courts accept electronic records into evidence [and] protects against errors by providing appropriate standards for the use of technology to assure party identification. UETA avoids having the selection of medium govern the outcome of any disputes or disagreements. And it assures that parties have the freedom to select the media for their transactions by agreement. Lastly, UETA authorizes state governmental agencies to create, communicate, receive, and store records electronically and encourage state government, governmental entities, to move to electronic media.

Number 1361

SHARON YOUNG, State Recorder, Division of Support Services, Department of Natural Resources (DNR), testified in support of HB 285. As Mr. Hilyard noted, such legislation has been presented in a number of legislatures across the country. She recalled that 40 states have adopted UETA. This legislation is important to the land recording system in Alaska because it would provide a uniform framework for dealing with electronic reporting in the future. She opined that enactment of this type of provision will benefit commerce in those states that enact this type of provision. Other agencies would also benefit from this legislation. Government work and services are increasingly being performed electronically. The UETA is the means by which consistent procedures for these transactions can be developed and assured. A high percentage of mortgage transactions in Alaska involve out-of-state lenders, she noted.

MS. YOUNG pointed out that UETA gives states the option of determining whether to adopt and implement electronic filing systems or electronic reporting systems. Such optional provisions are located in Sections 140-160 of this legislation. Together, Sections 140-160, provide broader authorization for a state to develop electronic systems and processes in interactions with nongovernmental entities and persons. Historically, land recording systems have evolved around written

records and processes based on paper documents. However, this legislation would mean that those papers would be equal to electronic media. She opined that this will be the future for recording systems.

Number 1534

CHAIR ANDERSON highlighted the lack of a fiscal note with HB 285. He surmised that the lack of a fiscal note is because it is difficult to extrapolate the potential benefits [that would save money].

MS. YOUNG reiterated that HB 285 doesn't require anything different than what is being done today; it doesn't require electronic recording. Therefore, no fiscal note was created. The legislation merely provides a framework if [the agency] moves to that in the future.

Number 1645

REPRESENTATIVE CRAWFORD inquired as to how this would work if [an individual] wanted to "side step" a local title company and refinance property with an out-of-state company. Specifically, he asked how the closing would occur and ensure that the correct parties are involved.

MS. YOUNG said that [the department] doesn't have all those procedures defined. In fact, UETA recommends that these states develop standards and uniform approaches to provide "interoperability" so that the electronic recording systems in one state are compatible with those in another. Ms. Young mentioned that a number of national organizations are supportive and involved with UETA, including the Property Records Industry Association. The aforementioned association is a private and public organization, which is currently developing standards. Ms. Young emphasized that UETA is available for any agency to use with transactions between parties; the electronic filing and recording aspect of UETA is a small portion of this legislation.

REPRESENTATIVE CRAWFORD surmised then that there is no real national standard. In the case of electronic signatures on state forms, he inquired as to how one would verify those.

MS. YOUNG opined that part of the standards would address electronic notaries. She assured Representative Crawford that there would be assurances for authentication of an individual before a notary or certification authority.

REPRESENTATIVE CRAWFORD said that he wanted to pass the legislation, but it seems that the cart is being placed before the horse by making it legal to do electronic recording and filing without having the standards in place.

Number 1858

MS. YOUNG informed the committee that there is already a federal electronic signatures law in place, E-Sign [Electronic Signatures in Global and National Commerce Act]. In fact, there was an electronic signature law in Alaska before E-Sign was adopted. If UETA is adopted in its entirety, it provides a broader authorization for dealing with electronic transactions and would actually prevail over the federal law.

REPRESENTATIVE CRAWFORD inquired as to how the federal law works.

Number 1975

REPRESENTATIVE GATTO referred to a document from the National Conference of Commissioners on Uniform State Laws dated 11/20/01 in the committee packet. He said this document relates that 46 states have adopted UETA.

MS. YOUNG said that she was only aware of 40 states that have adopted UETA. However, she said that the National Conference of Commissioners on Uniform State Laws would be reliable because the organization actually develops the uniform laws.

Number 2037

DAVID JONES, Assistant Attorney General, Governmental Affairs Section, Civil Division (Anchorage), Department of Law, turned to Representative Crawford's earlier question. Mr. Jones reiterated Ms. Young's testimony that HB 285 is designed to set up a framework for the enforcement of electronic transactions and not to specify requirements regarding those transactions. He explained that UETA doesn't require people to engage in electronic transactions rather UETA is designed as enforcement for those who have chosen to use electronic transactions. Those using electronic transactions are in the best position to judge what level of security or assurance they need from the others involved in the transactions. Mr. Jones pointed out that there are various levels of securities available to those using electronic transactions, such as the use of a pin number as a

signature or the public key infrastructure. He noted that the public key infrastructure has a cost to it, and therefore it would be cheaper to use a pin number. This legislation wouldn't make the aforementioned choices, rather those choices would be left to the individuals involved in the transactions. This legislation merely specifies that the state will recognize the enforceability of electronic transactions.

REPRESENTATIVE CRAWFORD reiterated his question regarding how electronic transactions would work.

CHAIR ANDERSON drew attention to a memorandum from USKH [Unwin Scheben Korynta Heuttl, Inc.] which provided an example of how the production process of designing a project is completely electronic, except for the requirement of a "wet" signature on the final drawings.

MR. JONES said that he has performed electronic transactions in ordering services and goods over the Internet. This legislation would merely make those transactions enforceable when one doesn't get what he/she ordered.

Number 2214

REPRESENTATIVE GUTTENBERG remarked that if this legislation does merely establish a framework, then he is concerned with regard to the organization that does it and the problems that already exist with electronic matters, such as the readability between PCs and Macintosh computers.

MR. JONES specified that this legislation is a framework to allow people to answer those questions and create specific requirements just as is currently done with paper transactions. In further response to Representative Guttenberg, Mr. Jones highlighted that the federal E-Sign law specifies that no state law can favor a particular technology over another, otherwise it will be preempted by the federal law. Since UETA doesn't specifically favor a particular technology, it has been given the express exemption from preemption under the federal law. Mr. Jones pointed out that if the state were to choose a particular technology the law could become obsolete due to the speed at which technology is changing.

Number 2355

SCOTT CLARK, Notary Clerk, Office of the Lieutenant Governor, testified on behalf of the lieutenant governor in favor of HB

285. Mr. Clark stated that Alaska does have an electronic signature law, although it is restricted to a specific type of technology. He related his observation that the aforementioned has limited the advancement of the electronic transaction process. Therefore, UETA would step backwards and create a broad framework with regard to the legal definition of an electronic signature.

**TAPE 03-51 SIDE B**

MR. CLARK echoed earlier testimony regarding the importance of not penning the state into a corner by adopting [legislation that specifies a particular technology to be used for electronic transactions].

REPRESENTATIVE GATTO asked of notaries could lose their livelihood [with the adoption of this legislation].

MR. CLARK answered that it wouldn't be likely because there are aspects of notarization that an electronic signature will never be able to replace. For example, notaries check for the willingness and competency of the signer. He said he wasn't sure how technology would replace the aforementioned human interaction. Mr. Clark commented that UETA would provide the framework by which the state could look at what an electronic notarization would look like. He reiterated earlier testimony that HB 285 wouldn't mandate an electronic notarization. In fact, current notary law requires a handwritten signature. He mentioned that the notary laws will need to be updated in order to accommodate this electronic notarization/signature.

CHAIR ANDERSON, upon determining no one else wished to testify, closed public testimony.

Number 2278

REPRESENTATIVE LYNN moved to report HB 285 out of committee with individual recommendations and the accompanying zero fiscal note.

REPRESENTATIVE CRAWFORD remarked that he is at a complete loss. He said that he didn't receive much clarification with regard to how this would work. He related that although he isn't going to object to HB 285 moving out of committee, he might not vote for it on the House floor if he doesn't receive some answers. He mentioned that perhaps the local title companies would have some input on this.

REPRESENTATIVE LYNN noted that for real estate transactions, one can do many things by e-mail and fax, but hardcopies [handwritten signatures] have to follow at some point.

REPRESENTATIVE CRAWFORD asked if Representative Lynn was sure that was the case because he understood electronic signatures to hail the end of [the need for handwritten signatures].

REPRESENTATIVE GUTTENBERG said that he wasn't going to oppose the legislation moving from committee, but he suggested that there needs to be a model or direction for this.

Number 2123

MR. HILYARD informed the committee that the House Finance Committee is hearing legislation today that will promote a pilot program for electronic procurement. Although this pilot program wouldn't necessarily require UETA or advanced electronic signature technology, UETA or advanced electronic signature technology would potentially make this pilot program more effective. He noted that the State of Virginia has a thorough electronic procurement process and is moving toward using many of the on-line technologies to effectuate state business. With respect to electronic signatures, Mr. Hilyard related his understanding that the legislature will have the ability to specify when electronic signatures can be used and when they can't. He offered to do further research and provide the committee with information regarding what the state of Washington, Virginia, and Texas are doing since implementation of electronic procurement. Mr. Hilyard remarked that [passage of the legislation] will allow [the state] to more effectively leverage technology for streamlining state government.

CHAIR ANDERSON interjected the possibility of an [electronic] permanent fund dividend application or voter registration.

MR. HILYARD highlighted that income taxes can be electronically filed. However, one can't completely file a permanent fund dividend electronically.

REPRESENTATIVE CRAWFORD commented that he understands the move toward electronic business, but he merely wants to know more about it.

CHAIR ANDERSON, upon hearing no objection, announced that HB 285 was reported from the House Labor and Commerce Standing Committee.

**ADJOURNMENT**

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