

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

May 12, 2003

1:12 p.m.

**MEMBERS PRESENT**

Senator Ralph Seekins, Chair  
Senator Scott Ogan, Vice Chair  
Senator Gene Therriault  
Senator Johnny Ellis  
Senator Hollis French

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

CS FOR HOUSE BILL NO. 102(STA)

"An Act relating to concealed deadly weapons."

HEARD AND HELD

SENATE BILL NO. 198

"An Act relating to recovery of civil damages by a peace officer or firefighter; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 13

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

MOVED CSSB 13(JUD) OUT OF COMMITTEE

**PREVIOUS ACTION**

HB 102 - No previous action to record.

SB 198 - See State Affairs minutes dated 5/8/03.

SB 13 - See Labor and Commerce minutes dated 4/8/03, 4/22/03 and 5/1/03.

**WITNESS REGISTER**

Mr. Mark Enoft  
Staff to Representative Eric Croft  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Presented HB 102 for the sponsor

Mr. Brian Hove  
Staff to Senator Ralph Seekins  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Presented SB 198 for the sponsor

Officer Mike Couturier  
Anchorage Police Department  
4501 S. Bragaw  
Anchorage, AK 99508

**POSITION STATEMENT:** Supports SB 198

Mr. Will Aitchison  
Anchorage Police Department Employees Association  
Anchorage, AK

**POSITION STATEMENT:** Supports SB 198

Ms. Annette Skibinski  
Staff to Senator John Cowdery  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Presented SB 13 for the sponsors

Senator Kim Elton  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Co-sponsor of SB 13

Mr. Jesse Kiehl  
Staff to Senator Elton  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Answered questions about SB 13

Mr. Steve Conn  
Director  
Alaska Public Interest Research Group  
PO Box 1690  
Seward, AK 99664

**POSITION STATEMENT:** Commented on SB 13

Mr. Michael Lessmeier  
State Farm Insurance  
Juneau, AK 99801

**POSITION STATEMENT:** Commented that SB 13 has potential

Ms. Russina Sgoureira  
Progressive Insurance  
No address provided

**POSITION STATEMENT:** Company believes progress was made when responding to the use of credit scoring

Mr. John George  
National Assn. of Independent Insurers  
Juneau, AK 99801

**POSITION STATEMENT:** Supports moving SB 13 from committee if further negotiations take place

Ms. Linda Hall  
Director  
Division of Insurance  
Department of Community & Economic Development  
PO Box 110800  
Juneau, AK 99811-0800

**POSITION STATEMENT:** Supports CSSB 13(JUD) but expressed concern about the use of credit scoring during the policy renewal process

**ACTION NARRATIVE**

**TAPE 03-44, SIDE A**

**CHAIR RALPH SEEKINS** called the Senate Judiciary Standing Committee meeting to order at 1:12 p.m. Senators Therriault and Ogan and Chair Seekins were present. The first order of business to come before the committee was HB 102.

**CSHB 102(STA)-CONCEALED DEADLY WEAPONS**

MR. MARK ENOFT, staff to Representative Croft, sponsor of HB 102, informed members that their packets contain a side-by-side chart that compares HB 102 to Alaska's current concealed carry law. HB 102 eliminates the distinction between a concealed weapon and an open carry weapon. Under current Alaska law, no permit is required for open carry weapons. HB 102 removes the permit requirement to carry a concealed weapon but does not change any other substantive requirements of the current law, such as who can possess a concealed weapon and where a concealed weapon can be carried. HB 102 eliminates some confusion about who must tell a police officer when and where a concealed weapon is carried. Under current law, a permit holder must notify a

peace officer that he or she is carrying a concealed weapon when contacted by a peace officer. However, a person carrying a concealed weapon on his or her own property, or for the purpose of hunting, personal protection or another lawful activity, is not required to notify a peace officer. HB 102 will require everyone who is carrying a concealed weapon to notify a peace officer. That change will make the law easier for the public to understand and will provide a certain amount of confidence to peace officers.

CHAIR SEEKINS clarified that CSHB 102(STA) will not repeal or eliminate Alaska's concealed carry weapon program because to get reciprocity in another state, a person would need an Alaska permit.

MR. ENOFT agreed and said that having a permit makes it easier to purchase a weapon because the permit holder has already undergone a criminal background check.

CHAIR SEEKINS noted the buyer can bypass the required waiting period because the background check was already completed.

[SENATOR FRENCH arrived.]

CHAIR SEEKINS noted that Mr. Judy of the NRA was available to answer questions and that no one else had signed up to testify.

SENATOR THERRIAULT asked which version the committee was discussing.

MR. ENOFT informed members that \Q was the most updated version of HB 102.

SENATOR THERRIAULT moved CSHB 102(STA), version Q, from committee with its accompanying fiscal notes.

SENATOR FRENCH objected to the motion and expressed concern that the committee spent only five minutes discussing this legislation and the subject deserves more time.

CHAIR SEEKINS said he read and likes the bill and assumes other members have read the bill. He noted that no one signed up to testify. He believes it would be an honor for Alaska to be the second state that trusts its law-abiding citizens to carry concealed weapons. He asked Senator French if he has specific questions.

SENATOR THERRIAULT asked if this is the first hearing on CSHB 102(STA).

CHAIR SEEKINS said it is the first hearing in the Senate.

SENATOR THERRIAULT withdrew his motion to move CSHB 102(STA) from committee to accommodate Senator French's concern.

SENATOR FRENCH said he asked his staff to contact various members of the peace officers association to find out where the law enforcement community stands on this legislation.

SENATOR OGAN commented that he has ridden with both Anchorage Police Department officers and the Alaska State Troopers and both told him, "the bad guys are all packing, you know, give the good guys a chance to pack." He said he has not talked to them about this particular bill, but they have acknowledged that, "all of the bad guys have got guns and they have the good guys outgunned in the field." He said for that reason he supports the legislation.

CHAIR SEEKINS said CSHB 102(STA) has been properly noticed and that the police groups across the state have been watching both concealed carry weapons bills before the Legislature. He said since no one signed up to testify against the bill today, he is assuming no one opposes it.

SENATOR THERRIAULT asked Mr. Enoft if he received feedback from law enforcement agencies in the state.

MR. ENOFT told members that Representative Croft submitted the bill to Commissioner Tandeske of the Department of Public Safety and to Chief Monegan of the Anchorage Police Department. Commissioner Tandeske said he had not formulated an opinion on the legislation and that this issue was not one he was willing to fight. The Anchorage Police Department has not responded.

SENATOR FRENCH asked that CSHB 102(STA) be held in committee until the next day to await responses from the Anchorage Police Department.

CHAIR SEEKINS announced that CSHB 102(STA) would be held in committee.

**SB 198-DAMAGES RECOVERED BY POLICE/FIREFIGHTER**

MR. BRIAN HOVE, staff to Senator Ralph Seekins, sponsor of SB 198, gave the following explanation of the bill.

SB 198 revises the common law known as the 'Firefighter's Rule'. This rule precludes firefighters and peace officers from recovering civil damages for injuries caused by any negligent act inflicted while on duty. The 'Firefighter's Rule' does not distinguish between negligent acts requiring the firefighters' or peace officers' response from negligent acts that are unrelated to the reason the firefighter or peace officer was required to respond.

For example, as currently employed, the 'Firefighters Rule' precludes a police officer from suing for damages for injuries suffered as a result of being struck by a drunk driver during the course of transporting a prisoner to the courthouse. This, despite the fact that the negligent act, in this case the drunk driving, is unrelated to the duty the officer was performing at the time. SB 198 corrects this incongruity. Yet, on the other hand, this bill does nothing to change the case where the police officer is injured during the course of a pursuit of the drunk driver. This is considered a foreseeable risk associated with the profession and, accordingly, well within that which the 'Firefighter's Rule' should cover.

Therefore, SB 198 makes a distinction between negligence that is related to the reason the firefighter or peace officer is responding and negligence that is unrelated to the reason the firefighter or peace officer is responding. In a nutshell, that's what this bill accomplishes.

SENATOR FRENCH asked if other states have similar laws.

MR. HOVE said some do, and testifiers were available to speak to which states do.

SENATOR OGAN read from page 2 of a handout entitled Peace Officer's Civil Liability and Internal Affairs Newsletter about the independent causation section of the Firefighters' Rule:

Thus, while a peace officer may not recover civil damages for injuries caused by the danger that

necessitates the officer's presence, the officer may recover civil damages where the cause of the officer's injury is unrelated to, that is, independent of, the reason for the officer's presence at the location where the injury occurred....

The Firefighter's Rule does not bar all lawsuits against persons who intentionally or negligently injure peace officers.

He questioned why SB 198 is necessary if, according to the experts, there is recourse in the Firefighter's Rule.

CHAIR SEEKINS said the Alaska court has ruled the exact opposite. He noted that Officer Couturier could provide an example.

OFFICER MIKE COUTURIER, Vice President of the Anchorage Police Department Employees' Association, told members he would be covering the police officers' view of this legislation and that Mr. Aitchison would address any legal questions. He said while an Anchorage police officer was going from one call of service to another in late winter of 2001, he was hit at an intersection by an intoxicated driver who was driving well over the speed limit. The police officer's neck was broken and he sustained numerous other injuries that required ten months of recovery. Although the police officer worked with both insurance companies, those situations end up costing the taxpayers and the municipality. The officer received some compensation but not nearly the same amount another citizen would have requested in a civil suit. He said the Firefighter's Rule hinders police officers from civil litigation against a person who has done harm through negligence or an intentional act, even when that act has nothing to do with a call for service. The Anchorage Police Department Employees' Association would like to see SB 198 enacted as it partially restores police officers' and all first responders' abilities as citizens to hold negligent or intentionally harmful persons accountable for their acts. He said first responders accept certain job risks but feel they should have the same rights as any other citizen to seek restitution for damages if something happens to them that is totally unrelated to their jobs. He said these cases are not common and, to some degree, SB 198 might save municipalities medical costs, property damage costs and wages.

MR. WILL AITCHISON, attorney for the Anchorage Police Department Employees' Association, said he has tracked the evolution of the

Firefighters' Rule for over 15 years. It is a rule of common law that was not created by legislatures but has been adopted on a state-by-state basis. Not all states have addressed the issue of whether the Firefighters' Rule should be adopted; about 35 states have. The trend now is clearly away from adopting the Firefighters' Rule. In the last ten years, states such as New York, Florida, New Jersey and Minnesota have statutorily repealed or substantially modified the Firefighters' Rule. Courts in other states, such as Oregon and Colorado, have refused to adopt it.

MR. AITCHISON said last year, the Alaska Supreme Court, when ruling on a case that involved the police chief of Dillingham, adopted the Firefighters' Rule for the first time. The problem with the Alaska Supreme Court's decision is that it does not identify what version of the Firefighters' Rule it adopted and as many as eight different versions of the rule exist. SB 198 fixes the Firefighters' Rule into law with the version in existence in California. It is the majority statement of the rule where it exists: it bars lawsuits when the underlying negligence is the reason the first responder was called to the scene; it does not bar lawsuits when the underlying negligence is from something else. He explained that the description of the Firefighters' Rule that Senator Ogan read would not be applicable in the Illinois or Missouri version of the law. He repeated it is unclear from the Alaska Supreme Court decision which version it adopted.

SENATOR THERRIAULT asked if a person who is injured while responding to an accident, when responding is part of their job duty, would be covered by workers' compensation.

MR. AITCHISON said that is correct.

SENATOR THERRIAULT commented that workers' compensation would cover lost wages and medical costs. He asked if the insurance company has the right to go after the drunk driver to recoup the costs.

MR. AITCHISON said no; according to his understanding of the law, the insurance company or municipality only has the same rights that the police officer or firefighter has to pursue that claim. That is why employers and employees are standing together against the Firefighters' Rule. That rule transfers the risk of negligent behavior from the person who acts negligently to the public and to the injured party.

CHAIR SEEKINS closed public testimony on SB 198.

SENATOR OGAN said after hearing the testimony, his concerns about the measure have been mitigated.

SENATOR THERRIAULT asked Chair Seekins if the insurance company can "go after the bad actor."

CHAIR SEEKINS said from his research, he believes it is very difficult to do so, if not impossible. He said this legislation could have a very positive fiscal note because municipalities would be able to recover costs. He pointed out that he looked into codifying this common law because he believes it is good public policy to define how that common law is to be interpreted in this state. This would allow the employer and employee to subrogate against the person who caused the damage.

SENATOR FRENCH said he believes this legislation is a fair idea for peace officers and the people currently bearing the cost of these accidents. He said he is intrigued by Senator Therriault's inquiry about the interplay between the insurance industry and who is bearing the cost now. He asked that he be given the opportunity to read the Alaska Supreme Court opinion on *Moody v. Great Western* before action is taken on the bill.

SENATOR THERRIAULT asked for an explanation of the language on line 6, page 1, "or the personal representative of the peace officer".

CHAIR SEEKINS said a personal representative would be involved only when a peace officer died.

SENATOR THERRIAULT said if he was hit by a drunk driver while driving to work, and his insurance covered his medical bills and lost wages, his insurance company would then go after the drunk driver to get paid. He asked if a peace officer would be treated differently under the Alaska Supreme Court's interpretation and whether an insurance company would be barred from subrogating against the drunk driver's insurance company.

MR. AITCHISON said the problem with an insurance company recovering for damages is that the right to subrogation only exists when the injured person had the right to recover lost wages and medical expenses. The insurance company would have no better claim than the police officer or firefighter. Therefore, if the claim is barred by the Firefighters' Rule, the insurance company would have no right to proceed.

CHAIR SEEKINS noted that Senator Ellis had joined the meeting.

SENATOR THERRIAULT asked if firefighters or peace officers are singled out for special treatment that is detrimental to them.

MR. AITCHISON said they are. They have fewer rights to bring these sorts of claims than any other class of employees.

CHAIR SEEKINS informed members that he would ask counsel to research the question of subrogation and would schedule the bill at a later date.

### **SB 13-INSURANCE DISCRIMINATION BY CREDIT RATING**

MS. ANNETTE SKIBINSKI, staff to Senator Cowdery, co-sponsor of SB 13, told members this legislation originally banned insurance companies from using credit histories to determine insurance rates when underwriting policies. It has evolved, after hours of work, into a seven-page bill that:

- allows credit information to be used for underwriting and rate setting for personal insurance, not for commercial insurance, on new policies only
- allows the insurance industry 60 days to cancel an insurance policy for bad credit or a poor driving record
- bans the use of credit information from being used to determine rates or underwriting when a policy is renewed

She repeated that the use of credit scoring is allowed for new policies only but it cannot be the sole factor used to rate or underwrite a policy. It must be combined with other substantive factors, such as the customer's driving record, payment history, and claims submitted. It will allow the Division of Insurance to look at the data models used by insurance companies for scoring to make sure that customers are not discriminated against. The data models are protected as trade secrets and are not available to the public. The Division of Insurance will provide the public with a general description of the scoring models to foster consumer awareness.

MS. SKIBINSKI said that some of the factors that an insurance company cannot consider when underwriting new policies are medical collections, adverse credit, lack of credit, absence of credit, and particular types of credit cards. An insurance company must inform a customer if it takes an adverse action against that customer and it must provide information on how to

correct the problem. In addition, the bill requires the establishment of a dispute resolution process. She said the bill is a compromise between Senator Cowdery, the insurance industry, and the Division of Insurance.

SENATOR THERRIAULT moved to adopt Version S as the working document of the committee.

CHAIR SEEKINS announced that without objection, the motion carried.

SENATOR THERRIAULT asked if a person has been a good customer and qualifies for a policy, an insurance company cannot use credit scoring when that policy comes up for renewal.

MS. SKIBINSKI said that is correct, however, the insurance company always has the right to cancel a policy for other reasons, such as claims, accidents, non-payment, or a DUI.

SENATOR OGAN noted that insurance companies give students with good grades a reduced rate based on the philosophy that those students use good judgment. He asked if using credit history when setting rates is based on the same reasoning. He pointed out that some people have credit problems because of illness or circumstances beyond their control.

MS. SKIBINSKI said she assumes the philosophy behind good credit is the same as good grades yet sometimes life events are beyond one's control. She said that Senator Cowdery has received over 1,000 e-mails from people who have been affected. Some of those people never had any traffic violations but had credit problems due to divorce or for other reasons and their rates jumped 400 percent.

SENATOR THERRIAULT asked how different types of credit cards are viewed negatively.

MS. SKIBINSKI said the perfect credit model would be of a person who owned a home, had one or two car payments, and had a VISA or Mastercard, which was used to 30 percent maximum. She said some cards, such as an American Express card with no limit, are considered to be risky. Entertainment cards, such as a Discover card or Nordstrom credit card, are also considered risky. She said that information is confidential so it has been difficult to get from insurance companies.

SENATOR COWDERY said during the interim he found out that a person may have a credit card limit of \$10,000 but spent and paid an average of \$2,000 each month. However, during one month, the person spent \$2,800. The credit report does not show the available credit limit of \$10,000; it appears that the high spending month was the limit. Also, three basic credit agencies do credit reports and there is a good chance that each of those agencies give the same person a different rating. He said the process is very subjective, which is why the bill allows the Director of the Division of Insurance to review the data models.

CHAIR SEEKINS asked whether the model would work against a person who uses a credit card to pay all bills, for the purpose of gaining mileage, but pays those bills in a timely fashion.

**TAPE 03-44, SIDE B**

MS. SKIBINSKI said that some banks and finance companies view paying one's card off every month negatively. She said that was not addressed in the legislation. She then added that, regarding Senator Cowdery's statement about a person's full line of credit, the bill says a person's total line of credit cannot be considered, but the debt ratio can be considered.

CHAIR SEEKINS asked if a person pays off a \$2,000 bill each month even though that person's credit limit is \$10,000, that person's debt ratio would be 2:10.

MS. SKIBINSKI said she does not believe so; she believes that person would show up as having paid.

CHAIR SEEKINS said he needed to have an American Express card to get a COSTCO card and asked whether that would work against him.

SENATOR KIM ELTON, co-sponsor of SB 13, said that unfortunately many of the committee members' questions cannot be answered. He explained that this bill opens up a "black box" known as the credit score, but the formula is unknown because it is a trade secret. The good thing about SB 13 is that it mandates that the credit scoring formula be filed with the Division of Insurance to enable division employees to find answers to the questions and to determine whether any discrimination is taking place.

SENATOR FRENCH thanked Senators Cowdery, Elton and staff for introducing this legislation. He said he was interested in an outright ban because he believes one could make the case that it was the advent of credit scoring that caused the insurance

industry to begin to lose money in Alaska. The industry has complained that it began losing money three years ago, a year or two after it began to use credit scoring.

SENATOR ELTON said it would be unfair to characterize the bill as one that everyone is happy with. He and Senator Cowdery have had extensive discussions with members of the insurance industry. He said all sides have been uncomfortable with some of the compromises made.

SENATOR THERRIAULT asked where the provision that requires insurance companies to provide data models to the Division of Insurance is located in the bill.

MR. JESSE KIEHL, staff to Senator Elton, referred to Section 3 on page 6, line 25. It requires insurers to file their credit scoring models and any computer algorithms or methods used to incorporate credit history with the Division of Insurance.

CHAIR SEEKINS referred to page 7, line 11, which says, "the Director of Insurance shall make available to the public a general description of insurance scoring models" and asked if that description will be of each company's model or a general description of the elements of all models.

MR. KIEHL said that was another issue of compromise. The Division of Insurance has a two-part mission statement: to ensure a healthy industry and to protect consumers. This provision would satisfy both in that it would permit the division to educate consumers about how their credit history impacts and affects their insurance. At the same time, it would protect the industry's substantial investment in these credit scoring models.

CHAIR SEEKINS took public testimony.

**2:10 p.m.**

MR. STEVE CONN, Director of the Alaska Public Interest Research Group (AkPIRG), told members he would leave it to them to decide whether this legislation protects the consumer. He said the issue of whether using credit scores as an analytical device to adequately predict a person's driving record or potential to file claims is secondary because the credit data that flows into the three credit reporting agencies is filled with errors. He referred to a study done by Fair Isaac Corporation, the developer of reporting software, that pointed out that reports

from the three agencies show extreme variations in the credit scores; the average variation was 43 percent. That kind of variation could affect a person's mortgage rates or insurance premium drastically. He said there is no way to tell whether credit scores are good devices to use because they are flawed and unpredictable. Legislators must determine to what degree this device will impact Alaskans prematurely. He is happy to hear that a credit score will not be used to establish a relationship, but it will affect new customers. He is also glad to see that the bill contains a dispute resolution provision but it seems to diminish the role and autonomy of local insurance agents with whom people have been dealing for decades. The agent will become less relevant in addressing problems, and the customer will have to use an abstract dispute settlement process. He said the fundamental issue is that until the data introduced into credit reporting systems is capable of handling corrections and certainty, Alaskan consumers should be protected from the use of credit scores as much as possible.

MR. MICHAEL LESSMEIER, representing State Farm Insurance, told members that Ms. Skibinksi described the history of SB 13 well. A tremendous amount of time was spent to reach a compromise to allow the use of what the industry believes is a valuable tool to predict loss and to provide consumer protections that address the kinds of concerns raised by Mr. Conn. He said that SB 13 is not a perfect bill but it is a very good start. In response to one of Mr. Conn's concerns, he said the bill contains a provision for a person who is denied insurance at the outset or whose policy is cancelled within the 60-day window that requires the insurer to re-underwrite that customer if the customer certifies that his or her credit history is disputed and initiates the dispute process. The bill contains other provisions to address disputed credit information and is very consumer-protection oriented.

MR. LESSMEIER said that State Farm Insurance still takes issue with whether this tool should be used to re-underwrite or re-write [page 3, line 4, (d)(1)]. As written, an insurer could not fail to renew a policy based on a consumer's credit history or insurance score. He believes the industry is okay with failing to renew on that basis, but it would like to preserve the ability to re-underwrite or re-rate. That affects consumers in several ways. For example, for a consumer who has had an accident, an insurer would prefer to use the best tools it has for predicting future loss to determine whether that consumer should be in a standard or preferred company and what the appropriate rate should be. When that flexibility is removed, an

insurer cannot use the predictive power of the tool. He said State Farm could not give a good credit discount to a consumer under this bill. State Farm was not able to work that out in the discussions about this bill.

MR. LESSMEIER said State Farm is also concerned about the language on page 3, lines 10 through 12, which pertains to the absence of credit history. State Farm had previously used a qualifier, "unless otherwise approved by the Director of the Division of Insurance," to deal with the absence of credit in the rating aspect, as well as the use of particular types of credit cards. He said that is a strong predictive factor in both a positive and negative way. State Farm's final concern is with the effective dates of the bill. He said the Division of Insurance played an important role in the compromise that was reached. One compromise required that insurers file scoring models. State Farm has never opposed that filing as long as the information is kept confidential. However, the bill requires filing by June 1, 2003, which is unrealistic. He believes the intent during the discussions was that the guarantee of confidentiality would go into effect immediately so that various insurers could file as soon as able but it wasn't to require them to do so by June 1.

**2:20 p.m.**

CHAIR SEEKINS said he could not predict that an exclusive marketing deal between Costco and American Express would negatively affect his insurance rate.

MR. LESSMEIER said he does not believe it did.

CHAIR SEEKINS said he hopes not, but heard testimony that led him to believe it did and he cannot peek into the "black box." He said he knows of exclusive marketing deals that, if they affect insurance rates in Alaska, would not be fair.

MR. LESSMEIER said he believes the Director of the Division of Insurance would have the opportunity to look at and prohibit that.

CHAIR SEEKINS said that Alaska has a mandatory auto insurance law so the Legislature has an affirmative responsibility to make sure that people are not unnecessarily discriminated against. He said having been in the car business, [Ford] rates people on the predictability to pay and is sometimes wrong. He expressed concern that a person could be forced to drive uninsured because

the state took a position that allows the use of credit scoring that affects that person very negatively.

MR. LESSMEIER said he understands that concern and said the insurance industry opposed the adoption of the mandatory insurance law in Alaska 20 years ago, one reason being that people who cannot afford to buy insurance will not do so. The insurance industry was then challenged with creating a system in which people could protect themselves from uninsured motorists. Another challenge has been to make insurance products affordable. State Farm believes it can predict loss by using credit scoring as a tool. That tool helps State Farm to achieve fairness in the system. He said that for every person that may have to pay more because of credit scoring, many others pay less.

CHAIR SEEKINS said he is looking for what is fair and affordable for everyone.

MS. RUSSINA SGOUREVA, Progressive Insurance, said she was available to answer questions and that she worked with other industry members to help draft this legislation. Although the bill contains provisions that will require Progressive to modify its current marketing in Alaska, it believes that all involved made progress when responding to the use of credit scoring in Alaska.

MR. JOHN GEORGE, representing National Association of Independent Insurers (NAII), said that NAII was also involved in the negotiations and made some concessions. He said that NAII does not object to moving the bill out of committee with the understanding that further negotiations will take place. He stated the insurance industry would only use credit scoring if it believed that it truly was predictive. It wants to charge an appropriate rate to all customers.

SENATOR FRENCH asked Mr. George what sections of the bill he believes will be renegotiated after it moves from committee.

MR. GEORGE said the biggest issues that remain are re-rating and re-underwriting using credit scoring, the use of specific types of credit cards and the lack of a credit card. He said the lack of a credit card is a more important predictor than which credit card a person has. He added that obtaining a credit score within 60 days of writing a policy might be problematic for some of the direct writers who review someone's credit and then mail a

solicitation. He said the issues are not critical but are the fine details of a negotiation.

CHAIR SEEKINS asked Mr. George if he is speaking for the industry when he said he would prefer that the committee take action on the bill in its current form at this time.

MR. GEORGE said he believes everyone he has spoken to would like to see legislation this year. He stated:

I think the sponsors would like to see a bill, the insurance industry would like to see a bill. We may not agree on what that bill is but I think it's important that we move forward and if it takes moving it out of this committee to make sure that a bill happens this year, then I think we could support that. If we can fix it here and take another two days and it moves and can still pass, that would be fine too.

SENATOR COWDERY asked what specific credit card is bad for a credit score.

MR. GEORGE said he cannot answer that. The more important issue would be whether or not a person has a credit card. He said he does not believe there is any dispute with the mainstream credit cards, such as Mastercard, Visa, or American Express. He said he has not heard that having a store-brand credit card is a major problem.

SENATOR THERRIAULT said that although an American Express card has no limit, it is more difficult to get. He questioned what a specific type of card might say about a person.

MR. GEORGE said that question would be more appropriate for Isaac Corporation. He said he asked about a Nordstrom credit card and was told the issue is how a person manages the credit.

CHAIR SEEKINS said that some credit cards are fully collateralized, which is an indication of a bad credit risk to begin with. He said it is not the card that is raising the risk, it is the reason a person has to have that type of card.

SENATOR OGAN asked if Chair Seekins was referring to a debit card.

CHAIR SEEKINS said he was referring to a card that is backed by collateral. He noted that many people use credit cards as a

matter of convenience, rather than because they need the credit. With no one else wishing to testify, he closed public testimony and announced a three-minute at-ease. Upon reconvening, he asked Ms. Hall to testify.

MS. LINDA HALL, Director of the Division of Insurance, echoed many of the previous speakers' statements, one being that a tremendous amount of work has gone into the compromise committee substitute. She said all involved parties left the Senate Labor and Commerce Committee meeting with Senator Seekins' concurrence that the participants would work on a compromise bill. She said the bill contains some very good language.

MS. HALL said when she testified at the Senate Labor and Commerce Committee hearing, she asked for five things, the first being the filing of the underwriting rating models. This committee substitute allows the division to look at the scoring model to make sure it is not unfairly discriminatory and that it meets the guidelines set out in the legislation. Her second request was for more consumer protections. She thinks the committee substitute provides a tremendous amount of consumer protection. She would categorize the list of prohibitions in this legislation as among the most stringent in the country. The consumer protections in the bill address many of the issues that have come before committee members. This legislation also contains a dispute resolution process that is more readily accessible than merely filing a dispute resolution under the Fair Credit Reporting Act, which places some burdens on the carriers to help the consumer by requiring that clear reasons be given for an adverse action. Her fourth request was that credit scoring not be used as a sole determining factor; other substantive factors need to be considered. That language is used by many other states.

MS. HALL said she is still somewhat uncomfortable with the language on page 3, line 5. Her concern is that if a policy is not underwritten or rated at renewal, there is the potential to not allow a person's rates to increase or to be put in a different tier. If that provision is adopted, there is the potential to use a whole new set of underwriting criteria for renewals, which the division will not have access to. Those are not currently filed. She said all parties involved in this compromise bill have had lengthy discussions and made concessions.

SENATOR FRENCH asked Ms. Hall to articulate what criteria might be used during the renewal process that might not be good.

MS. HALL said she does not want to say they would not be good; they would be the same criteria used now. Those criteria might be use of prior insurance, use of the limits purchased that she hopes has to do with one's driving record; and various types of underwriting and rating factors. She said the division currently has rating factors on file but it does not have underwriting factors on file. In the insurance industry today, underwriting and rating have become blended. Underwriting factors tend to be utilized to place consumers in tiers. Historically, insurance companies had multiple companies: a preferred company, a middle-ground company, and a non-standard company. Company placement is considered to be an underwriting factor. However, as technology advances, computers do more underwriting and less human involvement occurs. Various factors affect the tiers as they are put together. That is one reason the division has emphasized the need to be able to look at both underwriting and rating factors in this bill.

SENATOR THERRIAULT asked if the division supports the compromise bill before the committee.

MS. HALL said it does.

CHAIR SEEKINS called for discussion among members.

**TAPE 03-45, SIDE A**

SENATOR FRENCH said he believes the bill is a step in the right direction and is better than the protections that exist now, which are none. He said he intends to watch this legislation as it moves through the other body as he thinks the real battleground will be the maintenance of the ban on credit scoring at renewal.

SENATOR ELLIS gave a "thumbs up" to Senators Cowdery and Elton for the work they did on this legislation.

CHAIR SEEKINS said he is glad the Division of Insurance will be actively involved in monitoring what happens as this legislation goes forward. He said he hopes that other substantive factors, meaning at least 25 percent or more, will come into play. He is also eager that people be educated on what factors affect their insurance rates.

SENATOR ELLIS moved and asked unanimous consent that CSSB 13(JUD) move to the next committee of referral with its accompanying fiscal notes.

CHAIR SEEKINS noted that without objection, the motion carried. There being no further business to come before the committee, he adjourned the meeting at 2:51 p.m.