

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

May 6, 2003

1:35 p.m.

MEMBERS PRESENT

Senator Con Bunde, Chair
Senator Ralph Seekins, Vice Chair
Senator Gary Stevens
Senator Bettye Davis
Senator Hollis French

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 102

"An Act increasing the amount of revenue received by the state from charitable gaming activities; and providing for an effective date."

MOVED CSSB 102(L&C) OUT OF COMMITTEE

SENATE BILL NO. 192

"An Act relating to teachers and training programs in the Department of Labor and Workforce Development, to the placement in the exempt service of certified teachers employed by the Department of Labor and Workforce Development, to their eligibility to participate in the Teachers' Retirement System of Alaska, and to the functions of the Alaska Workforce Investment Board regarding the Kotzebue Technical Center and the Alaska Vocational Technical Center; and providing for an effective date."

MOVED CSSB 192(L&C) OUT OF COMMITTEE

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

SENATE BILL NO. 154

"An Act relating to a student loan repayment program for nurses, and amending the duties of the Board of Nursing that relate to this program; and providing for an effective date."

MOVED SB 154 OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 51(HES)

"An Act requiring pharmacists to include generic drug information on containers in which brand-name prescription drug orders are dispensed."

MOVED CSHB 51(HES) OUT OF COMMITTEE

SENATE BILL NO. 32

"An Act relating to insurance for and work on certain motor vehicle repairs; and providing for an effective date."

HEARD AND HELD

PREVIOUS ACTION

SB 102 - See Labor and Commerce minutes dated 3/13/03, 4/24/03 and 4/29/03.

SB 192 - No previous action to consider.

SB 210 - No previous action to consider.

SB 154 - See HESS minutes dated 4/9/03.

HB 51 - See HESS minutes dated 4/7/03.

SB 32 - No previous action to record.

WITNESS REGISTER

Commissioner Greg O'Claray
Department of Labor & Workforce
Development
PO Box 21149
Juneau, AK 99802-1149

POSITION STATEMENT: Commented on SB 192 and supported SCR 210.

Mr. Fred Esposito, Director
Alaska Vocational Technical Education Center (AVTEC)
Seward AK

POSITION STATEMENT: Supported SB 192.

Mr. Dave DeRuwe, Vice President
Alaska Vocational Technical Education Center (AVTEC)
Teacher's Association
PO Box 62
Seward AK 99664
POSITION STATEMENT: Supported SB 192.

Mr. John Alcantra, Director
Government Relations
National Education Association of Alaska
114 Second Street
Juneau AK 99801
POSITION STATEMENT: Supported SB 192.

Ms. Jane Alberts
Staff to Senator Bunde
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Commented on SB 210.

Mr. John Shively, Vice President
Government and Community Relations
Holland American Line
POSITION STATEMENT: Supported SB 210.

Mr. Don Etheridge
AFL-CIO
710 West 9th Street
Juneau AK 99801
POSITION STATEMENT: Supported SB 210.

Ms. Cathy Giessel
Alaska Nurse Practitioners Association
12701 Ridgewood
Anchorage AK 99516
POSITION STATEMENT: Supported SB 154.

Ms. Camille Soleil, Executive Director
Alaska Nurses Association
2207 E. Tudor Rd.
Anchorage AK 99507
POSITION STATEMENT: Supported SB 154.

Ms. Laraine Derr
Alaska State Hospital & Nursing Home Assn.
426 Main St.

Juneau, AK 99801

POSITION STATEMENT: Supported SB 154.

Ms. Diane Barrans, Executive Director
Postsecondary Education Commission
Department of Education &
Early Development
801 W 10th St.

Juneau, AK 99801-1894

POSITION STATEMENT: Supported SB 210.

Ms. Rhonda Richtsmeier, Deputy Chief
Public Health Nursing
Department of Health &
Social Services
PO Box 110601

Juneau, AK 99801-0601

POSITION STATEMENT: Supported SB 210.

Representative Paul Seaton

Alaska State Capitol

Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of HB 51.

Ms. Annette Skibinski
Staff to Senator Cowdery

Alaska State Capitol

Juneau, AK 99801-1182

POSITION STATEMENT: Commented on SB 32 for the sponsor, Senator Cowdery.

Ms. Sandy Bass Cors, Executive Director
Coalition for Auto Repairing Quality (CARE)
No address provided

POSITION STATEMENT: Opposed SB 32.

Mr. Jack Gillis

Executive Director, Certified Auto Parts Association (CAPA)

Director, Public Affairs, Consumer Federation of America

No address provided

POSITION STATEMENT: Opposed SB 32.

Ms. Eileen A. Sottile, Director
Keystone Government Relations
Co-chair, ABPA Government Affairs Committee
9970 N.W. 89th Court
Medley FL 33178

POSITION STATEMENT: Opposed SB 32.

Mr. Ken Miller
No address provided

POSITION STATEMENT: Supported SB 32.

Mr. John Conley
Service Auto Parts
3806 Tongass Ave.
Ketchikan AK

POSITION STATEMENT: Opposed SB 32.

Mr. George Gilbert
Ford Motor Company
No address provided

POSITION STATEMENT: Supported SB 32.

Mr. Kyle Krug
Toyota
Juneau AK

POSITION STATEMENT: Supported SB 32.

Mr. Jim Kiley
Alliance of Automobile Manufacturers
No address provided

POSITION STATEMENT: Supported SB 32.

Mr. Bill Holden
General Motors
Detroit MI

POSITION STATEMENT: Commented SB 32.

ACTION NARRATIVE

TAPE 03-29, SIDE A

SB 102-CHARITABLE GAMING REVENUE/TAXES

CHAIR CON BUNDE called the Senate Labor and Commerce Standing Committee meeting to order at 1:35 p.m. Present were SENATORS STEVENS, DAVIS, SEEKINS and FRENCH. The Chair announced SB 102 to be up for consideration.

SENATOR SEEKINS moved to adopt CSSB 102(L&C), Version Q.

CHAIR BUNDE explained the committee substitute (CS) would allow for a 15% tax on the ideal net, remove the bond for distributors

and remove the prohibition of municipalities having a sales tax on pulltabs. There were no objections to its adoption and it was so ordered.

SENATOR FRENCH asked if the payout [to the winners] would be impacted.

CHAIR BUNDE replied it will not have any impact on the payout amount.

SENATOR SEEKINS moved to pass CSSB 102(L&C) from committee with individual recommendations and attached fiscal notes. SENATORS STEVENS, SEEKINS and BUNDE voted yea; SENATORS DAVIS and FRENCH voted nay; and CSSB 102(L&C) passed from committee.

SENATOR SEEKINS announced that he was looking forward to putting the comprehensive package together for consideration in the next calendar year.

SENATOR FRENCH said that his "no" vote is based on the idea that he doesn't feel like he has a good enough grip on this subject to make a good decision on it until next year.

SENATOR SEEKINS said that he was looking for a 1% increase in the state's portion of the take as an interim move.

CHAIR BUNDE said he would be happy to appoint Senator Davis to the subcommittee [along with Senators Seekins and French].

SB 192-DOLWD TEACHERS AND TRAINING PROGRAMS

CHAIR BUNDE announced SB 192 to be up for consideration.

SENATOR GARY STEVENS, sponsor of SB 192, said that the Governor proposed to transfer the Alaska Vocational Tech Center (AVTEC) from the Department of Education to the Department of Labor and Workforce Development (DOLWD) for the purpose of giving the Department of Labor the authority to employ teachers and allow them to remain members of the Teacher's Retirement System (TRS) rather than having to be transferred to the Public Employees Retirement System (PERS). It would also allow future teachers to become TRS members. If this bill does not pass, the current teachers at AVTEC would be transferred into the PERS system and out of the TRS system. That wouldn't be fair to employees who were originally hired with the understanding they would be in TRS. It would also have a negative impact on AVTEC when it recruits new teachers. It is advantageous to be able to offer

TRS retirement as an incentive to get teachers into any educational institution. Also, SB 192 would clarify that AVTEC and Kotzebue Technical Center will continue to be under the oversight, planning and coordination responsibilities of the Alaska Workforce Investment Board (AWIB) through the Department of Labor and Workforce Development.

SENATOR STEVENS moved to adopt the CS to SB 192(L&C), Version D, as the working document. There were no objections and it was so ordered.

CHAIR BUNDE clarified that the teachers who have transferred from one department to another would have the same job assignments.

SENATOR STEVENS agreed and said the bill has a zero fiscal note.

SENATOR SEEKINS said he was wondering about the board's structure.

COMMISSIONER GREG O'CLARAY, Department of Labor and Workforce Development, said the legislature wanted to see vocational training strengthened in Alaska and that's what this bill will do by moving AVTEC from one department to another. It freezes the teachers' benefit structure in place, which must be done by July 1. The Governor believes there are too many boards that aren't being efficient in terms of delivering federal training dollars to employers who are training personnel. The department is very supportive of this bill.

CHAIR BUNDE said it would be nice to know if SB 192 will have a negative fiscal note.

COMMISSIONER O'CLARAY said DOLWD would save over \$300,000.

SENATOR FRENCH asked why this legislation is necessary and what would prevent him from hiring a teacher who is currently covered by TRS to work in the Department of Labor.

COMMISSIONER O'CLARAY replied that nothing would prevent DOLWD from hiring the teachers, but as state employees they would fall under PERS because of the way the statute is structured.

MR. FRED ESPOSITO, Director of AVTEC, testified that many professionals at the institute are mid-career and have invested a lot of service into the TRS system and should be held

harmless. The TRS system is an added benefit that AVTEC can use to recruit instructional staff.

SENATOR STEVENS asked him to comment on the negative results for teachers if SB 192 doesn't pass by the end of the session.

MR. ESPOSITO confirmed [the results will be negative].

MR. DAVE DERUWE, Vice President, AVTEC Teacher's Association, supported SB 192. The Association realizes this change was an unintended consequence of the move to the Department of Labor. Most of the teachers have put in long years working under the TRS system and are not interested in changing to the PERS system.

MR. JOHN ALCANTRA, Government Relations Director, National Education Association of Alaska, supported SB 192 for the reasons mentioned.

SENATOR SEEKINS moved to pass CSSB 192(L&C), Version D, from committee with the promised fiscal note from the Department of Labor with individual recommendations.

SENATORS DAVIS, FRENCH, SEEKINS, STEVENS and BUNDE voted yea and CSSB 192(L&C) passed from committee.

SB 210-WAGE AND HOUR OVERTIME COMPUTATION

CHAIR BUNDE announced SB 210 to be up for consideration.

MS. JANE ALBERTS, committee aide to the Senate Labor and Commerce Committee, said SB 210 closes a loophole in statute regarding the payment of overtime wages. She explained:

In 1999, the legislature passed a law to correct an erroneous court interpretation of a statute that authorized the pyramiding of overtime hours, which is the payment of overtime wages both daily and weekly for the same hour of work.

In 1999, at the last minute on the floor the retroactive date in that bill was taken out, which left a loophole for the years 1997 to 1999, thereby leaving employers vulnerable to pyramiding lawsuits. The bill made clear the future claims would be forwarded, but it did not address the two lawsuits

filed in 1997 that are still active cases at this time.

In those cases, the employers computed the overtime in accordance with the Alaska Department of Labor methodology. The purpose of this bill is to close this loophole, [and to] make clear the interpretation on computing overtime wages under Alaska's Wage and Hour Act that prohibits the use of pyramiding in overtime pay....

COMMISSIONER GREG O'CLARAY, Department of Labor and Workforce Development, said in his 38 years of representing laborers he had never seen an interpretation of the Wage and Hour Act like this particular court's interpretation. He told members:

Under the Alaska State law, if you work more than eight hours in a day or 40 hours in a week, you are entitled to overtime and time and a half times the basic straight time rate. If a worker worked 10 hours on Monday and then a series of four-eights, he got two hours of overtime for his two extra hours on Monday and then nothing further for the week, but this particular court interpreted that to mean he got paid for overtime again, because he worked 42 hours in a week - unheard of anywhere in the country that I can see. This particular bill will correct that problem. It will also wipe out the continuing liability of those two companies. The Department of Labor supports the bill, supports the concept of cleaning up this particular misinterpretation of the law....

MR. JOHN SHIVELY, Vice President, Government and Community Relations, Holland America Line, said a lawsuit against Holland America [filed by an employee] prompted this legislation. The case started in a superior court, went to district court, and then back to a superior court, which ruled the employee was entitled to double accounting of his overtime, or pyramiding. Holland America paid the claim because it was only \$21, but the plaintiff appealed and it went to the Supreme Court, which remanded it and allowed a class action suit. So, Holland America is potentially faced with millions of dollars in liability if Judge Weeks' decision is found to be correct. A counter decision by Judge Collins found the Wage and Hour Law interpretation to be exactly as Commissioner O'Claray said it should be.

MR. SHIVELY said this legislation is retroactive. It puts the finishing touch on a piece of legislation that passed in 1999 that had a retroactive provision that was taken out at the last minute. He thought this is a reasonable bill; legal research had been done on the issue of retroactivity and that is within the purview of the legislature. No constitutional right is being violated and there has been no final judicial decision.

CHAIR BUNDE informed members that he also asked Legislative Legal and Research Services counsel to provide an opinion, which says that retroactivity is constitutional.

SENATOR FRENCH asked if it is true that there was no decision made on the pyramiding aspect of Judge Weeks' ruling.

MR. SHIVELY replied that is correct.

SENATOR FRENCH asked if any other state has ruled that pyramiding is the way to calculate overtime.

MR. SHIVELY answered that he had not done that kind of research, but the commissioner had indicated that he was unaware of it anywhere.

MR. DON ETHERIDGE, AFL-CIO, supported SB 210. The AFL-CIO worked in 1999 to create the current statute and believes that the commissioner's interpretation is correct.

SENATOR SEEKINS moved to pass SB 210, Version A, from committee with individual recommendations and attached zero fiscal note.

SENATORS FRENCH, DAVIS, STEVENS, SEEKINS and BUNDE voted yea; and SB 210 moved from committee.

2:03 - 2:04 - at ease

SB 154-NURSE EDUC LOAN REPAYMENT PROGRAM

CHAIR BUNDE announced SB 154 to be up for consideration.

SENATOR FRENCH, sponsor, told members:

SB 154 addresses one big issue, which is the shortage of nurses in the State of Alaska. According to the Alaska Community Health and Emergency Management Services, about 30 communities in Alaska are designated as federal health professional shortage

areas. Another study by the Alaska Colleagues in Caring showed a vacancy rate for RNs across the state of 11.5% in 2002 and in other parts of the state as a 20.8% vacancy rate. The rate of turnovers in RNs in Alaska is 24% and probably most interestingly, in the year 2001, about 18% of RNs working in Alaska were non-residents, i.e. traveling nurses and about 52% of the RNs were over 45 years old.

The need for nurses is going to double by the year 2010. We've got about 4,500 nurses employed in the state right now; the number is going to go to 8,500. In the face of that growing problem, we looked at ways to increase the number of nurses in the state so that our citizens would have adequate health care should they need it. We mulled over a bunch of different possibilities and arrived at this one after discussions with a variety of interested groups. The idea is to pay money each year to nurses employed in the state in qualifying positions and correct qualifying education, to pay them up to 20% of their student loan or \$2,000, whichever is less. The idea is to string those payments out over a period of five years so as to keep folks who come here who may see this as an incentive to move to the state, who come here and take up jobs and get them to spend a long enough time here so that they'll grow to love it like most of the rest of us have and keep them here when their five-year period is up.

The idea is, frankly, workforce development and to use a little bit of government stimulus to increase the number of nurses working here in the state. The University of Alaska has recently gotten money to double the size of its nursing program. Nevertheless, that program is going to graduate, even once it's fully up and running, about 220 nurses a year, which is nowhere near the number the state needs to maintain an adequate nursing population....

SENATOR STEVENS asked if the goal is to attract people from other states.

SENATOR FRENCH answered that is correct and, according to the Department of Labor and Workforce Development, the nursing shortage is nationwide. Alaska must compete for RNs or educate

its own nurses to keep up with demand caused by an aging society and the aging of RNs.

SENATOR STEVENS asked what percentage is traveling nurses.

SENATOR FRENCH replied 17.7% of the RNs working in Alaska are non-residents.

MS. CATHY GIESSEL, Alaska Nurse Practitioners Association, said that Senator French did a great job of portraying the problem and that they support SB 154. She asked the committee to remember that when there aren't enough nurses to fill the jobs, less qualified personnel fill them and in many cases those employees give medications. She said she gets recruiting calls from the Lower 48 and noted, "I believe this bill would be a wonderful recruitment device."

MS. GIESSEL said that Florida, South Dakota and Virginia have loan repayment program offers for nurses.

CHAIR BUNDE noted that in two years this bill, if passed, would cost the state about \$3 million and, in five years, would cost over \$5 million.

MS. CAMILLE SOLEIL, Executive Director, Alaska Nurses Association, agreed with previous testimonies and supported SB 154. She really likes the discretion given to the Board of Nursing that allows it to target the funds toward the areas of need and set up appropriate criteria. It doesn't guarantee the right to the loan forgiveness. The average graduating nurse is looking at \$20,000 to \$40,000 in student loans that need to be repaid. Nurses like to retire between the ages of 55 and 60, especially out of acute care where they are needed the most.

CHAIR BUNDE noted the discretionary part of any potential state subsidy soon disappears in the public's mind. When the longevity bonus first passed, it was said in the record that in 15 or 20 years, if the state can't afford it, it can just cut it out.

MS. LARAINÉ DERR, President, Alaska State Hospital and Nursing Home Association, said she has talked to the legislature in previous years about the impending nursing shortage crisis. She is in the process of doing a survey and has results from seven of 17 hospitals. Last year they spent \$16 million on traveling nurses. That money doesn't necessarily stay in the state. She said the University is doubling the number of nurses it graduates by 2006 and industry is donating more than \$2.3

million over the next three years, however there is a problem in finding the faculty, as there is a shortage there as well.

SENATOR STEVENS said the loans would repay not only Alaska student loans, but out-of-state loans as well.

MS. DERR replied that is correct.

SENATOR FRENCH said he contemplated setting the forgiveness provision up for Alaska residents who, for example, went outside to school and came back, but that wouldn't supply enough nurses to fill the vacancies.

CHAIR BUNDE asked how he defines a resident.

SENATOR FRENCH replied that tying eligibility to the Permanent Fund is a possibility. He added that the size of the loan could be lowered to reduce the impact to the state.

SENATOR SEEKINS asked how the University plans to double the output of nurses with a zero budget increase.

SENATOR FRENCH replied that the University got more money this year [for that program].

SENATOR SEEKINS said that issue is before the Finance Committee and cannot be counted on.

TAPE 03-29, SIDE B

SENATOR SEEKINS asked if the money to be provided to the University program is matching money or what.

MS. DERR replied that the University is going to match the \$2.3 million. She explained that the University of Utah has been providing distance delivered nursing education here and through the process of getting more nurses, she realized that Alaska was paying money to Utah to educate our students. That is why they came up with the money and the University matched it. Utah has agreed that it will no longer be providing nursing education in the state when the University of Alaska takes it over.

CHAIR BUNDE said he wished the university would use some of the \$5 million they use on intercollegiate athletics for nursing.

SENATOR STEVENS said he likes this bill because it is similar to one that he has been working on about forgiveness of teachers'

loans. He said all the money in the fund is subject to appropriation by the legislature each year.

MS. DIANE BARRANS, Executive Director, Alaska Postsecondary Education Commission (ACPE), supported SB 154. The Commission would administer the benefits as they are paid out to individuals who qualify under the criteria set by the Board of Nursing. Also, she suggested the legislature might look toward the Alaska Student Loan Corporation dividend for the funding, although the fiscal note calls for an appropriation from the general fund each year.

CHAIR BUNDE asked what the fiscal note would be for the bill that Senator Stevens is working on.

MS. BARRANS replied that those costs are somewhat comparable to this bill.

CHAIR BUNDE asked if she worked with the Legislature a few years ago when the Washington, Alaska, Montana, Idaho Medical Education Program (WAMI), that subsidizes doctors, was restructured so those students had to repay some of their subsidy if they didn't come back to Alaska and work.

MS. BARRANS replied that she did.

CHAIR BUNDE asked her how effective that has been in bringing students back to Alaska to practice.

MS. BARRANS replied at this point none of those students have reached the point in their careers yet where they would be returning to the state. She suggested, to prevent putting the legislature in a position of being morally obligated to forgive loans, that ACPE solicit for participants, identify the amount of debt that would be repaid as a benefit, and reserve at the time they begin their service in Alaska the amount that would be paid to them. That way, they would not be saying to those participants the state can pay for their first year but not their second year, etc. In the years when no funding is available, they would shut off enrollment so no one would be enrolled for benefits that were, at best, speculative. Numbers would be revisited on an annual basis.

CHAIR BUNDE said some places have provided substantial bonuses to attract people to come to work in an area of shortage, but after acquiring the bonuses they moved elsewhere. He asked if a

nurse had to work here for five years, whether he or she would be free to move after that.

MS. BARRANS said that is correct.

CHAIR BUNDE asked if this bill would reimburse any originator.

MS. BARRANS replied any commercial lender.

CHAIR BUNDE asked how limiting this bill to only borrowers of Alaska loans would impact the fiscal note.

MS. BARRANS guessed that it would potentially cut the fiscal note in half.

MS. RHONDA RICHTSMEIER, Deputy Chief, Public Health Nursing, agreed with the nursing shortage estimates: in 2000, 30 states had significant nursing shortages and in 2020, 46 states are anticipated to have shortages. She said the reasons are multi-pronged. There is an aging population with more chronic disease and 71 percent of nurses in Alaska are 41 to 71 years of age; 25 percent of those are going to retire in the next 5 to 10 years.

MS. RICHTSMEIER said fewer students are graduating from nursing schools. It is difficult to get people interested in nursing because a lot of alternative careers offer higher salaries. In addition, there aren't enough nursing instructors. Since 1995, there has been a 31% reduction in the number of students graduating from colleges of nursing. She believes there needs to be a multi-pronged approach to this multi-pronged problem. They need to address salary to bring new people into the profession and keep them in the profession.

SENATOR DAVIS asked her to comment on the cost of training nurses instate and out-of-state.

MS. RICHTSMEIER responded that she could only speak recently for instate and that UAA's four-year program costs around \$20,000 just for tuition and books.

SENATOR SEEKINS asked if the administration supports the bill as well.

MS. RICHTSMEIER said she understood that to be the case.

SENATOR DAVIS moved to pass SB 154 from committee with individual recommendations and the attached fiscal note.

SENATORS FRENCH, STEVENS and DAVIS vote yea; SENATORS SEEKINS and BUNDE voted nay; and SB 154 passed from committee.

HB 51-LABELING OF PRESCRIBED DRUGS

CHAIR BUNDE announced HB 51 to be up for consideration.

REPRESENTATIVE PAUL SEATON, sponsor, said HB 51 is a health and safety bill that requires the generic drug name be placed on all brand name prescription labels. There have been a lot of cases of senior citizens overdosing because they get one prescription filled with only the generic name and another labeled with the name brand, thus ending up with two bottles of the same medication from the same doctor that both say take three times a day. He noted members' packets contain many letters of support.

CHAIR BUNDE asked what financial impact would this have on pharmacies.

REPRESENTATIVE SEATON answered that there would be minimal impacts as most pharmacies have software that is capable of doing the labeling. It would take realigning the fields on the computer. The bill specifies that the names be in the same area.

CHAIR BUNDE asked how citizens could educate themselves about the generic name and use it for comparison purposes. He asked if the pharmacists would point it out to the customer.

REPRESENTATIVE SEATON said that right now a consumer has no way of knowing the difference between two bottles. He presumed that pharmacists would do that. He thought the naming would be pretty obvious. The Alaska Pharmaceutical Corporation does not oppose this bill.

SENATOR FRENCH asked if other states were adopting laws like this one.

REPRESENTATIVE SEATON answered yes and said it was recommended by the FDA.

SENATOR STEVENS moved to pass CSHB 51(HES) from committee with individual recommendations and zero fiscal note. SENATORS STEVENS, DAVIS, FRENCH, SEEKINS and BUNDE voted yea; and CSHB 51(HES) moved from committee.

SB 32-INSURANCE FOR MOTOR VEHICLE REPAIRS

CHAIR BUNDE announced SB 32 to be up for consideration. He announced an at-ease from 2:47 to 2:53 p.m.

MS. ANNETTE SKIBINSKI, staff to Senator Cowdery, sponsor, said SB 32 deals with two different types of automobile repair parts, original and aftermarket. Senator Cowdery believes that consumers are often unaware of the crash or collision parts that are being used to repair their vehicles. He believes that customers have a reasonable expectation to have their vehicles repaired after an accident to the same condition they were when they purchased them and they should have a choice on whether original parts or other parts that are certified or not certified are used. The insurance that car owners rely on to cover the parts should not dictate what they can or can't have.

MR. KEN MILLER, owner of an auto body shop in Anchorage, provided two Ford fenders that look almost identical, but were very different in quality; one was certified and the other was aftermarket and obviously was not as strong.

MS. SANDY BASS CORS, Coalition for Auto Repairing Quality, representing NAPA, Car Quest, Chets, Jiffy Lube and Midas, opposed SB 32. She explained that aftermarket parts are manufactured by the same companies that manufacturer car dealer parts. The only difference is the price and the better aftermarket warranty. Aftermarket parts cost up to 50% less than the car dealer parts and most come with lifetime or long-term warranties, which car dealer parts do not. The description in SB 32 that an aftermarket part must meet the equivalent or better standard is based on the wrong premise.

She did not think that any car part manufacturer would purposely manufacture inferior aftermarket parts. SB 32 is also in violation of the Magnus-Moss Warranty Act, a federal law that prohibits a warranty from being tied to repairs. Motorists are intimidated when they read that using aftermarket parts can invalidate the remainder of their vehicle's warranty.

MS. CORS said that SB 32 is also dangerously close to interfering with first amendment rights by stating an insurer may not require directly or indirectly that a shop install aftermarket parts. A few years ago, the state of Montana lost a court case on constitutional grounds because of first amendment rights based on what an insurer could recommend and on interference with interstate commerce laws. By mandating that motorists must give consent only for the use of aftermarket parts, but not the use of car dealer parts, SB 32 discriminates

against certain Alaska industries and intimidates motorists by planting doubt in their minds about the high quality of aftermarket parts. Aftermarket shops do business in low and fixed income neighborhoods because people depend on them for the high quality and the lower pricing. After a warranty has expired on a part, the aftermarket gets 80% of repeat business because of the high quality.

MS. CORS said that car dealers and manufacturers have had a long history of trying to dismantle the aftermarket part industry and restrict the use of those parts. They do not believe this issue is about the quality of parts, but about car dealers and manufacturers getting a higher profit margin through legislation. Car dealer parts cost up to 50% more, so this will be at the expense of the working people. A recent GAO study concluded that there were so few problems with aftermarket parts that no further action was necessary.

MS. CORS said that Ms. Skibinski mentioned that when a car is in a crash, it should be restored to its pre-crash value. MS. CORS believes that a car cannot be restored to its pre-crash value or condition by virtue of having been in a crash. People buying a used car request information on whether a car has been in a crash, not whether it has aftermarket parts.

MR. JACK GILLIS, Executive Director, CAPA, and Director, Public Affairs, Consumer Federation of America, the nation's largest consumer advocacy organization, said he is also the author of The Car Book, a consumer guide to buying cars. NAPA is a non-profit organization, which certifies the quality of parts used for auto body repair. He pointed out:

First of all, this bill protects the car company parts monopoly. Alaskans need more, not less choices. They need less expensive, not more expensive car parts. Alaskans need their cars fixed by insurance companies after accidents, not totaled by them because they cost too much to repair. This bill would encourage competition rather than protect car company parts monopolies....

SENATOR COWDERY asked him if he felt it is reasonable for a customer to expect that his or her car should be repaired to its pre-crash condition, not the condition when it was purchased - and carry all the same warranties.

MR. GILLIS agreed 100%.

MS. EILEEN SOTTILE, Director, Keystone Government Relations, said she also represented the Automotive Body Parts Association (ABPA). Both oppose SB 32, because they feel that written consent is discriminatory and would take money out of the pockets of their employees and place it into the car companies' pockets. The warranties for aftermarket parts are actually better than car companies' warranties. In terms of safety, the Institute for Highway Safety has conducted a crash test of a Toyota Camry hood, which demonstrated clearly that the aftermarket hood performed the same way as the car company hood. Keystone, the largest distributor of aftermarket parts in the country, has never recorded an injury caused by the use of its parts and the National Highway Traffic and Safety Administration has reported consistently that cosmetic non-structural automotive parts have no safety ramifications.

In terms of quality, the Collision Industry Conference has tested the quality of their parts against car company parts over the past years and has found that in some cases, the aftermarket parts score better in terms of fit and accessibility and in other cases they tie. The parts manufacturers they use are the same as those used by the car companies.

MS. SOTTILE said their concerns about competition are great, because the car companies already have 79% of market share and the aftermarket share is 15%; the salvage industry has 6%. She said if car company parts are solely used to repair a vehicle, a \$22,000 1999-Toyota Camry can cost \$101,000. She compared the cost of a Camry rear bumper from the car company at \$159 to Keystone's price of \$61.75; a Tacoma grill would be \$220 and a Keystone grill would cost \$91.45. She said the car company fender that was in the committee room cost \$192.10 and the Keystone fender cost \$94.00. A Ford Taurus headlight assembly cost \$176.80 and the Keystone price was \$94.47.

She said making a consumer consent to using an aftermarket part and not a car company part gives the consumer the impression that not only are the parts possibly inferior, but unsafe as well. Eighty-seven percent of the time, if an insurance company is paying the bill for the repair, customers will most likely not choose the aftermarket part because they are not paying for the repairs. She stated, "This bill is highly discriminatory and it will deliver a monopoly right to the feet of the car companies."

MR. MILLER said he provided the fenders in the committee room so that members could see for themselves that there is quite a bit of difference between the two. He didn't think they would want the aftermarket parts on their trucks. It is about 4.5 ounces lighter, has no rust prevention, and the spot welds were not even touching and would pop right off.

TAPE 03-30, SIDE A

MR. MILLER said his main concern is the sheet metal fenders, doors, bumpers and that type of thing - and how they relate to safety.

SENATOR COWDERY asked him if he is a car dealer.

MR. MILLER replied that he is an independent and doesn't represent anyone but himself.

MR. JOHN CONLEY, Service Auto Parts, said he is a NAPA auto parts dealer. He also served nine years on the Borough Assembly of Ketchikan and a couple terms as vice-mayor. He spoke against SB 32. He said legislation like SB 32 is being introduced all across the nation right now and, as an auto parts person who incorporated in the State of Alaska in 1966, he feels threatened. SB 32 defines what aftermarket means in section (a) and that concerns him. It says:

In this section, an aftermarket crash part means a motor vehicle replacement part that is not supplied or manufactured at the direction of the original equipment manufacturer and that is generally installed as a result of a crash or a collision.

He said that includes a lot of things: screws, belts, light bulbs, etc. Many of the parts that his firm sells meet or exceed the original equipment manufacturer specifications and he offers a better warranty than the original.

He said Section 1 troubles him, as well, and he provided the committee with a copy of the Magnus Moss Warranty Act. He asked the sponsor to work with him and others on different language to protect consumers and businesses.

He added if this bill passes and he went to the Chevy dealership, which doesn't have a body shop, and said he only wanted OEM parts, the vehicle could not be legally repaired in Alaska because some functions that happen at the plant are not

duplicated in the field, such as painting of the vehicle. Body shops do not use the same process or materials. This bill would require a person to go to a metropolitan area to have a car repaired.

MR. CONLEY said he had copies of similar legislation enacted in other states that the committee could use to improve the bill.

CHAIR BUNDE asked if it is true that the same company manufactures dealer parts and aftermarket parts and, if so, whether "less expensive" parts are made.

MR. CONLEY replied that is a big issue with a lot of different components. He said he doesn't sell sheet metal, but sells chassis and brake parts. Dana Automotive, one of the largest REM suppliers in the world, manufactures his chassis components. A company called Brake Parts, Inc., which many REMs use, manufactures the brake components. He commented:

A whole lot of what we sell is made for REMs and we're very proud of our quality. To make the statement that all parts are of equal quality at REM, I would have to be honest and say that's not true.

SENATOR STEVENS said he wanted to learn more about Mr. Conley's statement that consumers would have to take a car to a metropolitan area for repairs.

MR. CONLEY said he would get together with him afterwards.

MR. GEORGE GILBERT, Ford Motor Company, clarified that they are talking about exterior crash parts like fenders and hoods, not about shocks or filters. This bill is about giving the consumer a choice. The reason for this type of legislation is that in most cases, the consumer doesn't have a choice when insurance companies pay the bill. This is what led to the national class action lawsuit against State Farm Insurance who was using these parts and not informing the consumer that the parts were different than the OE parts.

MR. KYLE KRUG said he came mainly to answer questions, but also wanted to ask if Jim Kiley with the Alliance of Automobile Manufacturers could provide testimony.

MR. JIM KILEY, Alliance of Automobile Manufacturers, said that SB 32 contains many concepts that benefit consumers and promote a fair playing field. Consumers should be informed about the

repair options available to them. However, he pointed out that AS 25.45.95(a) contains language the Alliance cannot support. It would require consumer consent to a certain time period, three years. The Alliance believes the consumer should have the right to consent to using the parts for the life of the vehicle. He thanked Senator Cowdery for his actions and said the Alliance would work with the committee to craft legislation that protects consumers and provides them with choices.

MR. BILL HOLDEN said:

The reason all the studies are around on aftermarket parts not being of equal quality to the OEM is why they are around to begin with. Also, they have degenerated because of consumers complaining about the use of these parts. So, they may comment at certain times or lead people to believe that what is being said or the studies are exactly what's being proved. The bottom line is that since the early '80s when these parts came on the market, they were looked at as a way for the insurance companies to save costs in repairing vehicles. In the late '80s, the six major insurance companies formed [indisc.], which is then a company that would start telling people that the part that was being put on their car were not aftermarket; they were being certified parts that were being put on the car...

When you buy a Fram oil filter, the Fram oil filter is engineered and designed by people at Fram. They spend time, they spend money, they go through the engineering process, they don't do a copy of the DAC filter. So, there's some credibility to some of the aftermarket car parts we're talking about.

When I've talked to aftermarket parts people, and the testimony you've heard, you never hear things like reengineering and stuff; it's reverse engineering that you hear. That does not pass the test of quality and durability and some of the things that go in to the OEM parts.

The last part I want to touch on is there is no OEM manufacturer, and I'm talking to the Ford people, the Toyota and the Honda people on a daily basis. None of us know a single manufacturer that makes a fender or a

hood and then turns around and sells it as anything other than OEM. That's just not true....

MR. HOLDEN said that no one makes a hood and then has the money to go make another dye and make the same hood. He stated, "The dye is too expensive."

MR. HOLDEN explained:

They'll make a certain number of hoods for production and off the same line at almost the same time, they're producing hoods that are then going to be used for their parts operation. That's what General Motors does and, as far as I know, that is what other manufacturers do.

He also noted when people talk about the price of one hood versus the other, General Motors competes with the other big companies and the best way to lose a customer is to go to the dealership, get the car repaired and have the guy at the dealership tell you:

The hood is \$200, but if you bought the aftermarket, it's \$25. That aggravates consumers. Consumers don't want to be taken and for the most part when things like that happen, people tend not to buy your brand.

CHAIR BUNDE said the committee needs to be more educated about this topic and held the bill for further work.

CHAIR BUNDE adjourned the meeting at 3:35 p.m.