

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

February 17, 2004

1:34 p.m.

TAPE(S) 04-11

MEMBERS PRESENT

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

MEMBERS ABSENT

Senator Bettye Davis

COMMITTEE CALENDAR

SENATE BILL NO. 242

"An Act relating to gaming."

SCHEDULED BUT NOT HEARD

SENATE BILL NO. 286

"An Act relating to direct marketing fisheries businesses, to the fisheries business tax, and to liability for payment of taxes and assessments on the sale or transfer of fishery resources; and providing for an effective date."

MOVED CSSB 286(L&C) OUT OF COMMITTEE

SENATE BILL NO. 276

"An Act relating to the Alaska Insurance Guaranty Association; relating to the powers of the Alaska Industrial Development and Export Authority concerning the association; and providing for an effective date."

MOVED CSSB 276(L&C) OUT OF COMMITTEE

SENATE BILL NO. 299

"An Act relating to a charge for a bad check."

MOVED SB 299 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 286

SHORT TITLE: DIRECT MARKETING FISHERIES BUSINESS

SPONSOR(s): SENATOR(s) STEDMAN BY REQUEST OF SALMON INDUSTRY
TASK FORCE

01/30/04 (S) READ THE FIRST TIME - REFERRALS
01/30/04 (S) L&C FIN
02/12/04 (S) L&C AT 1:30 PM BELTZ 211
02/12/04 (S) Heard & Held
02/12/04 (S) MINUTE(L&C)
02/17/04 (S) L&C AT 1:30 PM BELTZ 211

BILL: SB 276

SHORT TITLE: ALASKA INSURANCE GUARANTY ASSOCIATION

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/23/04 (S) READ THE FIRST TIME - REFERRALS
01/23/04 (S) L&C, FIN
02/03/04 (S) L&C AT 1:30 PM BELTZ 211
02/03/04 (S) Heard & Held
02/03/04 (S) MINUTE(L&C)
02/10/04 (S) L&C AT 1:30 PM BELTZ 211
02/10/04 (S) Heard & Held
02/10/04 (S) MINUTE(L&C)
02/17/04 (S) L&C AT 1:30 PM BELTZ 211

BILL: SB 299

SHORT TITLE: BAD CHECK CHARGE

SPONSOR(s): LABOR & COMMERCE

02/06/04 (S) READ THE FIRST TIME - REFERRALS
02/06/04 (S) L&C, FIN
02/17/04 (S) L&C AT 1:30 PM BELTZ 211

WITNESS REGISTER

Mr. Ian Fisk

Staff to Senator Bert Stedman

Alaska State Capitol

Juneau, AK 99801-1182

POSITION STATEMENT: Commented on SB 286 for the sponsor.

Mr. Bruce Schactler, President

United Salmon Association (USA)

PO Box 762

Kodiak AK 99615

POSITION STATEMENT: Supports SB 286.

Mr. Kenny Oshbacker
USA member
Kodiak AK

POSITION STATEMENT: Supports SB 286.

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

POSITION STATEMENT: Supports SB 276.

Mr. Scott King
Cornerstone Credit Services
Anchorage AK

POSITION STATEMENT: Supports SB 299.

Mr. Ernest Madsen, Director
Williams Express
Anchorage AK

POSITION STATEMENT: Supports SB 299.

Mr. David Gardner, Vice President
Member and Employee Services
Golden Valley Electric Association
Fairbanks AK

POSITION STATEMENT: Supports SB 299.

Ms. Pam LaBolle, President
Alaska State Chamber of Commerce
217 Second Street
Juneau, Alaska 99801

POSITION STATEMENT: Supports SB 299.

Ms. Thyas Shaub
National Federation of Independent Businesses (NFIB)
217 Second St., Apt. 206
Juneau AK 99801

POSITION STATEMENT: Supports SB 299.

ACTION NARRATIVE

TAPE 04-11, SIDE A

^#SB286

SB 286-DIRECT MARKETING FISHERIES BUSINESS

CHAIR CON BUNDE called the Senate Labor and Commerce Standing Committee meeting to order at 1:34 p.m. Present were Senators Gary Stevens, Ralph Seekins, Hollis French and Con Bunde. Senator Bettye Davis was excused. The first order of business to come before the committee was CSSB 286(L&C).

MR. IAN FISK, Staff to Senator Bert Stedman, sponsor, offered to answer questions.

CHAIR BUNDE noted that a question from Jim Smith about shrimp processing had been addressed and was no longer a problem.

MR. BRUCE SCHAETLER, President, United Salmon Association (USA), supported SB 286. He said, "Everybody is all finally on the same sheet of music and it's taken a long time."

MR. KENNY OSHBACKER, USA member from Kodiak, said he is a direct marketer in the Lower 48 and supported SB 286.

SENATOR SEEKINS moved to pass CSSB 286(L&C) from committee with individual recommendations and attached fiscal note. Senators Stevens, French, Seekins and Bunde voted yea and CSSB 286(L&C) moved from committee.

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^#SB276

SB 276-ALASKA INSURANCE GUARANTY ASSOCIATION

CHAIR CON BUNDE announced SB 276 to be up for consideration and recapped that a CS had been discussed at the last meeting. An additional amendment had been proposed that would complete the changes in the CS.

SENATOR RALPH SEEKINS moved to adopt CSSB 276(L&C), version \H, as the working document.

CHAIR BUNDE explained that the CS was requested by the Department of Community and Economic Development (DCED) and reinserts (on page 4, line 24) its ability to seek loans from Alaska Industrial Development and Export Authority (AIDEA) should the guaranty fund need to be filled, again, temporarily.

SENATOR HOLLIS FRENCH maintained his objection to the adoption of the CS for the reasons he already stated at the last meeting [2/10/04].

CHAIR BUNDE asked for the roll to be taken. Senators Seekins, Stevens and Bunde voted yea; Senator French voted nay and CSSB 276(L&C), version \H, was adopted.

SENATOR SEEKINS moved to adopt amendment 1, version\H.1.

23-GS2105\H.1
Bullock
1/13/05

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR BUNDE

TO: CSSB 276(L&C), Draft Version "H"

Page 5, following line 30:

Insert a new bill section to read:

"* **Sec. 4.** AS 44.88.080 is amended by adding a new paragraph to read:

(27) to guarantee loans made to the Alaska Insurance Guaranty Association (AS 21.80.040), with these guarantees limited to loans necessary to make the association financially able to meet cash flow needs up to a maximum outstanding principal balance at any time of \$30,000,000."

Renumber the following bill section accordingly.

MS. LINDA HALL, Director, Division of Insurance, Department of Community & Economic Development (DCED) explained that the amendment adds the second piece of the AIDEA loan guarantee by taking language from the Alaska Insurance Guarantee Association (AIGA) statutes and puts it in with the AIDEA statutes, enabling it to provide the guarantee that is spoken to in the CS.

CHAIR BUNDE announced that amendment 1 was adopted without objection.

SENATOR FRENCH surmised that the bill now goes from being a series of assessments on the industry to what is essentially a funding mechanism through the earnings reserve of the Permanent Fund.

MS. HALL responded that was her understanding, as well.

SENATOR FRENCH asked if simply going from a 2 percent to a 4 percent assessment would be beneficial to the guaranty fund.

MS. HALL agreed that the assessment increase mechanism would be simpler, but objections to the resulting increased financial obligations had been raised.

SENATOR FRENCH noted that he heard objections to the assessment increase from the self-insured groups that had never paid into the fund and couldn't ever get a financial benefit from it, an obviously defensible position.

MS. HALL agreed with Senator French that the majority of objections she heard also came from self-insureds and joint insurance arrangements. She admitted that increased costs are probably distasteful for the employer community and policyholders at large, although she hadn't received a significant number of complaints from them.

SENATOR FRENCH noted that the original bill also had a 2 percent increase on other lines of insurance, but he hadn't heard many objections from that group. He asked if she had any input from them.

MS. HALL replied that she hadn't received a specific phone call, but had heard a couple of general complaints regarding that particular provision.

SENATOR FRENCH concluded saying he appreciated the work she had put into creating SB 276. "If there were compromises to be made, it would have been in that final self-insured group, the group that would derive no benefit from paying into the Workers Comp fund, but that's behind us...."

SENATOR SEEKINS asked if self-insureds could argue that they didn't receive any benefit and weren't involved in the bankruptcy of the companies and therefore shouldn't be held responsible with an additional assessment.

MS. HALL replied that that argument could be raised, but it was an oversimplification to think that Fremont's [Insurance Company] insolvency was caused only by reduced premiums. She sees the issue as a public policy call and pointed out that other states have had to decide how to deal with insolvent insurers, as well. The Fremont situation is an extreme case and

Alaska does not have the ability to fund the claims under current statutes.

SENATOR SEEKINS said:

I understand that. I just think that some of those same people who weren't involved in those companies [and] are in the fallout that came have exactly the same argument as those people who are self insured who have no input ever into the fund....

CHAIR BUNDE refrained:

I think my intent is to put a little reverse spin on that and say we're all potential beneficiaries so we perhaps all should be part of the solution.... Just for the record, I have heard Pam LaBolle testifying that Alaska's businesses are under a good deal of pressure and an additional assessment would be difficult for them to absorb - that there would be some negative consequences to businesses in Alaska having faced in the recent past an increase in assessment, so...

SENATOR SEEKINS noted that an assessment on employers eventually trickles down to being an assessment on employees. "It goes right to the pocketbooks of the people who are doing the work every day."

CHAIR BUNDE quipped, "Again, oversimplifying, I'm just cutting out the middle man."

CHAIR BUNDE closed public testimony on SB 276.

SENATOR SEEKINS moved to pass CSSB 276(L&C), version \H, from committee with individual recommendations, attached fiscal note and letter of intent.

SENATOR FRENCH objected saying he understands the point the chairman is trying to make, but it seems like the committee is adopting a course that will lead to non-passage of the bill, which is ultimately a bad idea. It discredits the work that Ms. Hall did in creating a feasible funding mechanism for covering the shortfall and raises the stakes on this issue to the point where many people will feel uncomfortable voting for it because of the fact that it goes to the earnings reserve of the Permanent Fund. It makes the argument for enshrining the

dividend in the constitution stronger, because the funding mechanism in SB 276 will be characterized by many as a raid on the Permanent Fund.

CHAIR BUNDE defended his philosophical stand on policy saying:

Just for the record, to point out that we are not broaching new ground here. The earnings of the Permanent Fund, and we definitely need to point out there is a big difference between the corpus and the earnings, you understand. The earnings are currently used on several levels. They are used to fund the application process at some \$5 million; they're used for the hold harmless for tens of millions of dollars for people who would lose their welfare when they get their dividend; they're used, of course, for inflation proofing; and, of course, used for the dividend. So, the Legislature currently has the power and does indeed appropriate monies from the earnings. If the worst-case scenario that you ascribe to occurs, well there's always a possibility of funding it out of the general fund.

SENATOR SEEKINS said, having been on the Board of Trustees of the Permanent Fund and understanding that the Legislature spent \$35 million last year for a hold harmless [agreement], public safety and other issues, he could equate the Permanent Fund to his family checkbook and would, therefore, not choose to inflation proof his savings account, if his kids were starving to death.

When I take a look at the challenge we are facing on some of the issues - fully funding education - I support that; the PERS and TRS downfall - I think we need to address that; these kinds of situations that were uncontrollable by the state, unforeseeable - I think these are areas where if it came down to it, I don't think it's competition for the dividend. I don't think that the competition is for the dividend at all when I look at we might be spending as much as \$575 million this next year to inflation proof a savings account when we can't educate our children. So, to me, I understand the funds are available for different things and in inflation proofing, we're actually inflation proofing appreciating assets, which normally is not done. So, the wisdom of the Legislature, I think has to take a look at a portion of this and it

does not jeopardize the dividend. I'm concerned that some members now who have supported constitutionalizing the dividend are concerned that this might speed the process.

SENATOR FRENCH refuted his argument saying:

The Permanent Fund is not your family checkbook. It's the checkbook of the people of the State of Alaska, if you will, and they have been pretty adamant about the methods in which they prefer to see it spent and I don't think this is one of them.

CHAIR BUNDE asked for the roll to be called. Senators Seekins, Stevens and Bunde voted yea; Senator French voted nay; and CSSB 276(L&C), version H, passed from committee.

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^#SB299

SB 299-BAD CHECK CHARGE

CHAIR CON BUNDE announced SB 299 to be up for consideration and that this issue was brought to his attention by the public. He explained that currently a fee of \$25 can be charged to a person for writing a bad check. The original enabling legislation said the fee is for the costs incurred in processing the bad check and doing whatever had to be done to recoup on it. Some people have said that the \$25 fee needs to be accounted for. A whole separate accounting system would need to be created - a challenge for a great many businesses.

CHAIR BUNDE suggested clarifying the statute by saying that separate accounting is not needed and that there is a cost for writing bad checks and the cost should be borne by the people who write them.

MR. SCOTT KING, Cornerstone Credit Services, Anchorage, supported SB 299. He said:

The reason we feel the legislation is necessary is because of a recent Superior Court decision in Fairbanks that would require a significant change in the way we do business in collecting bad checks. The decision, which copies, I think, I provided to everyone, would require that businesses document and account for all the costs incurred when we go to collect a bad check. The cost incurred could be up to

a maximum of \$25. Historically, this statute has been interpreted as allowing the maximum fee to be simply a \$25 fee to be collected upon and help repay for the costs incurred in taking a bad check as a business or a merchant. Those costs typically include bank fees to the merchant. When the merchant deposits the check, there's a fee associated with that - personnel costs and making phone calls, letters, accounting documentation, fees to pay collection agencies, such as myself, to collect on these bad checks. The effect of the decision would further require businesses to keep track of each expense incurred prior to them mailing out their notices. They would have to keep a line item incurring of costs until they reach the \$25, which will be extremely cumbersome and somewhat impractical.

SB 299 will make two simple changes to AS 09.68.115. And the first, and I believe the most important, change is to remove the language of 'for costs incurred' and the check fee and make it simply a check penalty or fee. The second is to raise the \$25 to \$30, bringing it more in line with other states as they have moved along.... The cost of business has obviously gone up in the last 18 years. To increase this to \$30 is something we thought was reasonable, but not too much. Some states are as high as \$40 and charging interest on the checks from the date the check is written, which might be a little excessive.

MR. KING said Cornerstone represents over 2,000 businesses throughout Alaska and is very supportive of this bill.

CHAIR BUNDE noted that he had approximately 15 additional letters of support.

MR. KING said he thought more letters would be forthcoming as businesses become aware of the legislation.

CHAIR BUNDE asked who would collect the \$30 fee.

MR. KING replied that the merchant is the entitled entity. Cornerstone collects on behalf of the merchant and is compensated by them.

SENATOR STEVENS asked Mr. King to estimate a range of costs that a company has to go through in a collection process.

MR. KING replied that the range of costs is dependent on the effort that is used to collect on the check. Certain immediate costs can be assumed for noticing and bank fees that range from \$2 or \$3 to \$25, depending on the bank, to the merchant who accepted the check in return for goods and had it bounced out of his account. Any mailing or phone calls would create personnel time. Expenses can get way beyond \$30 very quickly. Thirty dollars is a reasonable fee for what a merchant has already suffered from not receiving compensation for goods delivered. The problem is, if the merchant or his representative has to calculate costs on each check, as soon as the calculation is done, more than \$25 or \$30 worth of value has already added up in personnel costs. That is why he is suggesting setting a standard fee so the merchant isn't harmed.

SENATOR FRENCH asked for the spectrum between people who write a bad check by mistake and make good on the check the next day (low end) to people who just steal other people's checkbooks and write bad checks and have no intention of paying the debt (high end).

MR. KING said his experience indicates that 10 to 15 percent of bad checks will be collected with one notice or phone call; 30 to 40 percent of the checks will be paid with a reasonable amount of effort - multiple phone calls, letters etc.; and a high percentage of checks are never collected.

SENATOR FRENCH asked if the middle percentage would settle within 30 days.

MR. KING replied that typically payment takes up to 90 days.

SENATOR FRENCH asked at what point does the collector cut his losses.

MR. KING replied that he doesn't stop until the statute of limitations runs out.

MR. ERNEST MADSEN, Director, Williams Express Stores, supported SB 299. His businesses receive several thousand checks per day and most of them are good, but collecting on the ones that are bad is really difficult. He also thought the fee for bad check writing should go up to \$30.

CHAIR BUNDE asked how much bad checks cost his company.

MR. MADSEN replied that he didn't have an exact amount, but right off the bat, the commodity that was sold is lost as well as the amount that is spent on collections. He also pointed out that there is a cost for in-store devices to screen for people who write bad checks.

CHAIR BUNDE asked if he had an average purchase amount for his stores.

MR. MADSEN replied that the average check is around \$20 to \$25.

MR. DAVID GARDNER, Vice President, Member and Employee Services, Golden Valley Electric Association, supported SB 299. The Association does not feel its members should have to shoulder the burden of collecting bad checks written by the very few.

CHAIR BUNDE asked him if he had a monthly value for bad checks.

MR. GARDNER replied that the Association has a bad debt ratio of about .05 percent, but he didn't know what percentage was bad checks as opposed to default on payment. They quit keeping track of expenses once the \$25 threshold is reached.

MS. PAM LABOLLE, President, Alaska State Chamber of Commerce, supported SB 299. She related how recently the State Chamber received a bad check for about \$100 and worked with the bank to monitor the account daily for a month until the check was paid.

TAPE 04-11, SIDE B

MS. LABOLLE concluded that calculating costs for recovering on bad checks is a burden on businesses and that is why the Chamber supports the bill.

MS. THYES SHAUB, National Federation of Independent Businesses (NFIB), supported SB 299. She added that because of bad check writing, some businesses have decided not to accept checks, but to only accept cash or VISA cards. This is inconvenient for customers and detrimental to consumers who don't have credit cards. Ease of collecting on bad checks is a factor in whether businesses continue to accept them as a form of payment.

SENATOR FRENCH said he thinks SB 299 is a good bill, but he is a little concerned about raising the fee from \$25 to \$30. His reasoning is that 26 states charge \$25 or less currently and eliminating the accounting frees the collection agencies to know they are going to get the \$25 every single time. Keeping the fee

at \$25 would avoid "price creep" and be fair. He moved to change the fee back to \$25.

SENATOR STEVENS maintained that the potential loss to the merchant can be far beyond the \$30 and he sees no reason to change that.

SENATOR SEEKINS commented that if someone accidentally wrote a bad check, it just takes a phone call to get some kind of resolution; but he doesn't have that much sympathy for someone who writes bad checks deliberately.

CHAIR BUNDE asked for the roll to be called. Senators Stevens, Seekins and Chair Bunde voted nay; Senator French voted yea; and amendment 1 failed to be adopted.

SENATOR STEVENS moved to pass SB 299 from committee with the attached fiscal note and individual recommendations. Senators Seekins, Stevens, French and Chair Bunde voted yea; and SB 299 moved from committee. There being no further business to come before the committee, he adjourned the meeting at 2:30 p.m.

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