

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

March 21, 2005

3:37 p.m.

MEMBERS PRESENT

Representative Tom Anderson, Chair
Representative Pete Kott
Representative Gabrielle LeDoux
Representative Bob Lynn
Representative Harry Crawford
Representative David Guttenberg

MEMBERS ABSENT

Representative Norman Rokeberg

COMMITTEE CALENDAR

HOUSE BILL NO. 203

"An Act relating to a motor vehicle dealer's selling certain motor vehicles as new model motor vehicles or as new model motor vehicles having a manufacturer's warranty."

- HEARD AND HELD

HOUSE BILL NO. 216

"An Act relating to insurance rate-making and form filing."

- HEARD AND HELD

HOUSE BILL NO. 180

"An Act relating to a special deposit for workers' compensation and employers' liability insurers; relating to assigned risk pools; relating to workers' compensation insurers; stating the intent of the legislature, and setting out limitations, concerning the interpretation, construction, and implementation of workers' compensation laws; relating to the Alaska Workers' Compensation Board; establishing a division of workers' compensation within the Department of Labor and Workforce Development, assigning certain Alaska Workers' Compensation Board functions to the division and the department, and authorizing the board to delegate administrative and enforcement duties to the division; establishing a Workers' Compensation Appeals Commission; providing for workers' compensation hearing officers in workers' compensation proceedings; relating to workers' compensation medical benefits and to charges for and

payment of fees for the medical benefits; relating to agreements that discharge workers' compensation liability; relating to workers' compensation awards; relating to reemployment benefits and job dislocation benefits; relating to coordination of workers' compensation and certain disability benefits; relating to division of workers' compensation records; relating to release of treatment records; relating to an employer's failure to insure and keep insured or provide security; providing for appeals from compensation orders; relating to workers' compensation proceedings; providing for supreme court jurisdiction of appeals from the Workers' Compensation Appeals Commission; providing for a maximum amount for the cost-of-living adjustment for workers' compensation benefits; relating to attorney fees; providing for the department to enter into contracts with nonprofit organizations to provide information services and legal representation to injured employees; providing for administrative penalties for employers uninsured or without adequate security for workers' compensation; relating to fraudulent acts or false or misleading statements in workers' compensation and penalties for the acts or statements; providing for members of a limited liability company to be included as an employee for purposes of workers' compensation; establishing a workers' compensation benefits guaranty fund; relating to the second injury fund; making conforming amendments; providing for a study and report by the medical services review committee; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 203

SHORT TITLE: MOTOR VEHICLE DEALER SALES

SPONSOR(S): REPRESENTATIVE(S) ANDERSON

03/04/05	(H)	READ THE FIRST TIME - REFERRALS
03/04/05	(H)	L&C, FIN
03/18/05	(H)	L&C AT 3:15 PM CAPITOL 17
03/18/05	(H)	<Bill Hearing Postponed to Mon. 3/21/05>
03/21/05	(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 216

SHORT TITLE: PROPERTY/CASUALTY INSURANCE REGULATION

SPONSOR(S): LABOR & COMMERCE

03/09/05	(H)	READ THE FIRST TIME - REFERRALS
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03/09/05 (H) L&C, FIN
03/18/05 (H) L&C AT 3:15 PM CAPITOL 17
03/18/05 (H) <Bill Hearing Postponed to Mon.
3/21/05>
03/21/05 (H) L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

JON BITTNER, Staff
to Representative Anderson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 203 on behalf of
Representative Anderson, sponsor.

STEVEN ALLWINE
Alaska Auto Dealers Association
Juneau, Alaska

POSITION STATEMENT: Presented information and answered
questions regarding HB 203. Testified in support of HB 203.

JOSH APPLEBEE, Staff
to Representative Anderson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 216 on behalf of
Representative Anderson, sponsor.

JOHN GEORGE
Property and Casualty Insurance Association of America
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 216.

SARAH MCNAIR-GROVE, Property and Casualty Actuary
Division of Insurance
Department of Commerce, Community, & Economic Development
(DCCED)
Juneau, Alaska

POSITION STATEMENT: Answered questions regarding HB 216.

ACTION NARRATIVE

CHAIR TOM ANDERSON called the House Labor and Commerce Standing
Committee meeting to order at 3:37:06 PM. Representatives
Guttenberg, Crawford, and Anderson were present at the call to

order. Representatives Kott, Lynn, and LeDoux arrived as the meeting was in progress.

CHAIR ANDERSON noted that the teleconference equipment was not operational, and therefore HB 180 would not be heard at this meeting.

HB 203-MOTOR VEHICLE DEALER SALES

CHAIR ANDERSON announced that the first order of business would be HOUSE BILL NO. 203, "An Act relating to a motor vehicle dealer's selling certain motor vehicles as new model motor vehicles or as new model motor vehicles having a manufacturer's warranty."

JON BITTNER, Staff to Representative Anderson, Alaska State Legislature, presented HB 203 on behalf of Representative Anderson, sponsor. He explained:

House Bill 203 revisits statutory language proposed in the previous legislature in House Bill 272. House Bill 272 was an extensive bill that dealt with many aspects of motor vehicle sales. The language in HB 203 was removed from House Bill 272 after it became obvious there was a need for further discussion with the affected parties. The sponsor of HB 203 as well as the sponsor of the Senate companion bill, SB 138, are currently working on hammering out a compromise regarding the exact language of this bill with the interested parties.

MR. BITTNER continued:

You'll notice that the sponsor statement in the sectional analysis of your bill packets refer to a committee substitute to HB 203; I apologize for any confusion this may have caused. The Senate introduced a committee substitute to the companion bill last week in [Senate Labor and Commerce Standing Committee], and I was working off of that version. Later there was concern about the new language and it was decided that we should wait until the various parties involved come to a consensus before we introduce a committee substitute. ...

What the sponsor is trying to achieve here is amiable and equitable compromise between new and used car

dealerships that affects the highest amount of consumer protection as well as allowing a reasonable amount of flexibility to dealers so that they are not unnecessarily burdened. House Bill 203 will amend AS 08.66.015 to modify the circumstances under which car dealers can sell motor vehicles as new or current models. Our goal here is to determine a standard for what defines a new motor vehicle so that cars which have been previously owned will not be sold to consumers as a new vehicle. The sponsor feels that both the consumers' and the dealers' needs can be addressed in a future version of HB 203 and look forward to being able to return to this committee with a product that is both affective and fair.

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REPRESENTATIVE GUTTENBERG pointed out that the sponsor statement says that a new vehicle must retain a manufacturer's certificate of origin and the manufacturer's warranty, and the dealer must have the current sales and service agreement with the manufacture of the vehicle. He asked if all dealers are going to be able to get a manufacturer's sales and service agreement.

MR. BITTNER replied that other witnesses present who will be able to answer that question.

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STEVEN ALLWINE, Alaska Auto Dealers Association, noted that he is also a local automobile dealer. He stated:

This [bill] is not as much about new car dealers as used car dealers; this is about people who, in a lot of respects, might create a situation where a consumer doesn't know if they are buying a new car or a used car, and whether in fact there is a warranty or there is no warranty on that vehicle. There are ways that you can circumvent the system and purchase a vehicle that is new and then subsequently manufacture a used car. ... If you have a situation where you have a connection with a rental car company, you can go in to that rental car company, make an arrangement, extract their inventory that they have ordered from the factory under some very specific incentives, and in fact come up with a price differential that is different than a new car dealer will.

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MR. ALLWINE continued:

This also works if you go across country because manufacturers place incentives in different markets to varying degrees. So you, in a given situation, can go to the East Coast and buy a car from a dealer and bring it to this part of the world and effectively have purchased that car for less money than the dealer in the State of Alaska ... would purchase the car for. ... The kink is in those situations, that vehicle may no longer be a new car. It may not have warranty or the warranty may have already started and expired. In certain situations, if you buy what they call a gray market vehicle, that vehicle potentially could have no warranty on it.

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MR. ALLWINE stated:

So the issue isn't always whether it's used car dealers or new car dealers; the issue is what does a customer perceive when they walk in and look at a car. And if you walk in and look at a car, even if it's on a used car dealer's lot, and that car is a current model, 2005, and it has 2,200 miles on it, I don't care what the salesman tells you, you're perception is going to be that that's a new vehicle. And that may be a problem to the consumer in the long run. And new car dealers, unfortunately, are the people who have to handle those problems when they come up.

The current statute that's on the books now needs to be changed for one very important reasons: the statute was done in 1993 and it was to preclude brokers from creating the image that they were new car dealers and holding their vehicles out as new cars. We have found over time that what has happened is the statute was written wrong and so essentially, [as a Chrysler dealer] if I take in a 2005 Ford right now, I am out of compliance.

MR. ALLWINE urged the committee to review the committee substitute from the Senate, and to address this issue.

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REPRESENTATIVE GUTTENBERG commented that rather than going state by state, a better recourse would be to simply go to the manufacturer.

MR. ALLWINE noted that he sits on the Dodge Dealer Council for the Western Business Center which has approached manufacturers with this request, but the manufacturer's say that they cannot do that right now.

REPRESENTATIVE LYNN asked if this topic had anything to do with "the old Canadian car issue."

MR. ALLWINE replied that it does not. He said, "It has to do with automobile retailers circumventing the law, going into a gray area, and creating a vehicle that in the normal consumer's mind would represent a new car, when in reality it may not be."

REPRESENTATIVE LYNN asked if this had anything to do with gray market cars coming from Europe.

MR. ALLWINE replied that it can, but "we have the ability under the current statute to do it within the country; we don't have to go ... other places to do it."

3:48:44 PM

REPRESENTATIVE CRAWFORD commented that because of the change of the value of the U.S. dollar to the Canadian dollar, "some of that has corrected itself over the last couple of years."

MR. ALLWINE responded, "That is correct but that also works the other way because this issue has come up where dealers in the southern states were marketing into Mexico." He noted that the statute still needs to be corrected, however.

REPRESENTATIVE GUTTENBERG asked if there are any new car dealers that don't offer the manufacturer's warranty.

MR. ALLWINE replied that if an individual buys a car through a new car dealer, the manufacturer's warranty will be on that new car because the manufacturer is required to warranty the vehicle. He continued, "There are given circumstances if you are a subsequent owner where in reality that warranty may cease to exist."

REPRESENTATIVE GUTTENBERG remarked that he bought a new car this year, but the warranty was not with the same company that is the manufacturer.

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MR. ALLWINE commented that this was a service contract. He explained that when an individual purchases a new vehicle from a new car dealer, the warranty is from the manufacturer. Any subsequent coverages that the individual purchases are service contract coverages. He continued, "That's part of the issue we have here; it is conceivable that you can walk into a ... retailer's lot, look at a vehicle with [2,000-3,000] miles on it that's 60 or 90 days old, and it does not have a manufacturer's warranty. But you think that that's a new vehicle." He reiterated that a new car should have a manufacturer's warranty, and if it doesn't have one, it's not a new vehicle.

CHAIR ANDERSON stated that HB 203 would be held over.

HB 216-PROPERTY/CASUALTY INSURANCE REGULATION

[3:52:55 PM](#)

CHAIR ANDERSON announced that the next order of business would be HOUSE BILL NO. 216, "An Act relating to insurance rate-making and form filing."

JOSH APPLEBEE, Staff to Representative Anderson, Alaska State Legislature, presented HB 216 on behalf of Representative Anderson, sponsor. He stated that HB 216 is the result of discussion between agents, companies, and legislators. He indicated that they would be offering summations of the bill as are related to their own interests. The bill, he said is end product of several meetings and a model created by National Conference of Insurance Legislators (ENCOIL) was used for many aspects of the bill, though many aspects were not used. HB 216, he said, would be consistent with ENCOIL's end goal of modernizing state insurance regulation. This bill will create a more dynamic, more competitive insurance market in Alaska, and will benefit local consumers.

CHAIR ANDERSON stated that when the Governor was running for election this was his focus as well.

REPRESENTATIVE ROKEBERG asked if this was the same bill that was heard in the last legislature.

CHAIR ANDERSON answered that it was not.

REPRESENTATIVE CRAWFORD stated that the title is really broad and asked if the committee could narrow it down so that it is more specific.

REPRESENTATIVE GUTTENBERG stated that with all due respect, he wanted to know if this was done by legal research.

MR. APPLEBEE stated that this was done by a lawyer outside the legislature.

REPRESENTATIVE GUTTENBERG indicated that there is no reference here and then indicated that it is always nice to know who this person might be, since the document is obviously one that took a lot of effort.

REPRESENTATIVE ROKEBERG agreed that in proper legislative manner, it should be disclosed in the document.

CHAIR ANDERSON agreed that he would do this in the future.

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JOHN GEORGE, Property and Casualty Insurance Association of America, stated that there are things that need to be modernized, and then stated that he speaks for the entire insurance industry when says that they have been working on this legislation for at least 9 months. The end result was to produce modernized, improved regulation and build markets. He pointed out that a current problem he saw was that there were only 3 or 4 major companies operating in the state of Alaska, and that if one or more companies left the state, it would really jeopardize the market. He stated that they encourage more competition and split up the businesses. He ended by stating that the sectional analysis was done by an analyst from the Property Casualty Association of America. He hesitated and said that there is a little concern that it is very technical and explaining this will be a difficult thing to do but the concept is fairly easy to grasp.

MR. GEORGE, referring to a statement being handed out by Josh Applebee, stated that it was similar to the one read by the

sponsor at the beginning and it does express his groups concerns.

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MR. GEORGE indicated that they had been working diligently with the Division of Insurance and they had a CS almost ready but it was not ready today. He ended by stating that he would get to the technical stuff later on.

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MR. GEORGE stated that a good deal of the problems with this bill is in the drafting of the bill. He said that insurance is not an easy thing to draft and that he was encouraged that they did a great job getting this out. The result was one that will improve competition, builds new markets, and gives the division adequate regulatory authority to increase efficiency and it eliminates the redundant work. It also requires insurers to certify compliance and allows the division to concentrate on things that are more important. It follows the ENCOIL model created by the National Conference of Insurance Legislative group. He indicated that the law that they follow is the same law that was put into place in 1973, and it does not fit with modern times. It is time for modernization.

CHAIR ANDERSON asked if he could simplify the technical aspects of the bill and write it up for the committee.

REPRESENTATIVE ROKEBERG asked if he could explain flex rating and why it is beneficial to consumers. He then asked if you have decreased rates and if you have to have prior approval to lower rates with this type of rating.

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MR. GEORGE answered that flex ratings allow rates to increase or decrease in a narrow band. Within this narrow band, the rate that has been filed goes up and down based on market conditions. He stated that if an agent wants to outside this band, he or she would have to offer a new filing and go through the approval process again. This process, he said, does allow the rates to decrease. He then revealed that rate regulation came about because of the vigorous competition in the early days of underwriting and the fact that this led to insolvency in many instances due to inadequate rates, which could not cover the losses. This fact, he said, is overlooked, when price gouging

and rate hikes are blamed for market behavior. He then stated that the current market is vastly competitive, especially with the internet being the prime source for insurance information.

REPRESENTATIVE ROKEBERG affirmed that under current law you have to have prior approval to lower the rates.

MR. GEORGE answered that yes, any change requires prior approval which can take 60 to 90 days.

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REPRESENTATIVE ROKEBERG stated that his review of the file did not show what flex rating is and did not graphically show how it works so that people outside the committee (on the floor of the legislature) would more easily grasp the concept. He then asked if there were any illustrations that could be supplied to do this.

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REPRESENTATIVE LYNN asked why a lower limit would exist.

MR. GEORGE answered that you come up with 'the' rate based on several factors and statistics. If these variables change then the rate goes up or down. A minor change that stays within the narrow rate band would take administrative action to correct. However, if it is a drastic change, one that pushes the rate outside the rate band, then the agent would have to take another look and determine why the change was occurring and a review and an additional rate filing must take place.

REPRESENTATIVE LYNN indicated that being concerned with low rates is hard to be concerned with, since most people are more worried about higher rates.

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MR. GEORGE asserted that the problem with low rates is primarily due to the rate of competition between the various companies. When they charge a rate that is too low, they cannot deal with a sudden loss brought on by a big claim.

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REPRESENTATIVE LEDOUX asked if there was some other way that the insurance commissioner can determine solvency of a company rather than having a regulation on rates.

[4:09:18 PM](#)

MR. GEORGE answered that yes, there were things in place that would be determining factors. The amount they charge, investments, loss history and other things are important factors in determining solvency. These are questions that need to be directed towards the Division of Insurance.

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REPRESENTATIVE GUTTENBERG, referring to line 9 on page 1, asked why the section on inland marine risk separate from the rest of the bill.

SARAH MCNAIR-GROVE, Property and Casualty Actuary, Division of Insurance, Department of Commerce, Community, & Economic Development (DCCED), asserted that inland marine industry is separated out because the risks can vary quite a bit and there is no averaging here since it's not homogenous. The nature of the industry- taking cargo from one point to another has its own type of risks and for this reason they are separated and treated differently. She then defined inland marine by saying that it refers to certain transportation risks taking cargo from one point to another, from harbor to inland destinations.

CHAIR ANDERSON indicated that he wanted to hold the bill. He then asked Ms. McNair-Grove to begin her analysis of the bill.

MS. MCNAIR-GROVE began her analysis by first stating they have come up with something good, having gone through several meetings with industry. She stated that the rating standards have stayed the same, as well as the consumer protections that are in our current law. The big change is the process in which they put rates into effect and in place for the consumer.

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REPRESENTATIVE ROKEBERG asked what types of insurance coverage are we talking about here.

MS. MCNAIR-GROVE answered that the bill deals primarily with property and casualty rates, which include personal and commercial auto, homeowners, umbrella, workers compensation, and

finally fire and property coverage. This is all found in Chapter 39 of the insurance statute code. This new bill changes the way that policies are expressed in forms.

MR. GEORGE stated that there are some flexibilities here and this is not subject to flex ratings.

REPRESENTATIVE ROKEBERG asked what other reforms were in the bill.

[4:14:23 PM](#)

MS. MCNAIR-GROVE announced that there are three different process by which ratings are gained. One includes prior approval, which deal with high risk, workers compensation, assigned risk, and medical malpractice. The second process is the flex rating. This is plus or minus 10 percent accumulative over the past year. If the claim is within that range, the company still has to file but can implement it on the day that the Division of Insurance receives the filing. It still goes through a review.

REPRESENTATIVE CRAWFORD, referring to the flex rating and the 10 percent range within, asked if one could can stack the 10 percent changes inside of one year, and if there was a limit to how many you could claim.

MS. MCNAIR-GROVE answered affirmatively that yes, it is stacked here. In a one-year period, if the cumulative rate effect is +/- 10 percent then you can do the flex rating. However, if the cumulative rate effect falls outside this range, then it falls under a third filing process. This third filing process is called the "file in use". This consists of a 15-30 day review period and it is not disapproved of in that time, it is passed and becomes effective.

REPRESENTATIVE LEDOUX asked if the applicants generally are making the rates go up or down.

MS. MCNAIR-GROVE in the past couple of months we have been in hard market, and that has made the rates go up but generally you see both.

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REPRESENTATIVE ROKEBERG stated that he did not understand whether it is ten percent of the base or is a cumulative thing.

MS. MCNAIR-GROVE stated it is plus or minus ten percent of the insurers existing rates.

REPRESENTATIVE ROKEBERG, referring to the stacking of the timeframe, asked how this was limited and to what type of time frame was it limited.

[4:18:00 PM](#)

MS. MCNAIR-GROVE, referring to page four, line 27, Section 21.39.210, she reads from the following:

Sec.21.39.210. Flex-rating. (a) Except for workers' compensation, medical malpractice, and assigned risk plan rates, an insurer's rate level increase or decrease may take effect without prior approval if the cumulative rate level change for all coverage's combined, calculated from the effective date to 12 months before the effective date, is not greater than 10 percent.

MS. MCNAIR-GROVE explained that one would look at the effective date of the filing, and the previous filings made in the previous 12 months and if the combination of these is not greater than +/- 10 percent, then it falls under the flex rating.

CHAIR ANDERSON interjected and asked if this is this going to change in the upcoming CS.

MS. MCNAIR-GROVE answered that it would not be changed.

REPRESENTATIVE ROKEBERG asked if this is typical of other states in the nation and similar to what ENCOIL was recommending.

MS. MCNAIR-GROVE answered that it varies by state by percent, where some states are at +/- 5 percent and others are as high as +/- 15 percent. I can get this information for you as well.

REPRESENTATIVE ROKEBERG stated that this would be helpful, since that seems to be a really big band. It would be very interesting to know what the typical rate changes have been, and how much time it takes to get a rate approved in the state of Alaska.

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REPRESENTATIVE GUTTENBERG stated that this very much like a urban legends that if you receive a form from the insurance company in the mail, you can scratch off or change a number or phrase and when you send this back, it becomes an effective change on the policy. He then asked what the legalities of this would be.

MS. MCNAIR-GROVE answered that she was not aware of this but the statute says that proper forms that have been approved by the Division of Insurance must be used and that any policy change not done on this forms is not legal and not supposed to be recognized.

REPRESENTATIVE LEDOUX since there is obviously more than one company, she asked what is the rational behind having to go the regulatory people, and getting rate hikes approved. She likened it to going to the store and buying apples.

MS. MCNAIR-GROVE stated that insurance is a promise and that is different from other market items. She then indicated that you are buying something today that will cover something in the future. She explained that you have to estimate the costs since you cannot always predict what the cost of an accident will be.

She then said that one of the historical reasons for rate reviews are historical cases involving antitrust law reviews and company insolvencies. This was one of the mechanisms that are used to make sure that the insurance company is there for you when you need them.

REPRESENTATIVE LEDOUX asked what the rational was behind capping the rate and then asked why the free market doesn't govern this.

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MS. MCNAIR-GROVE stated that there should free competition in the market and that the market should be able to run itself. However, she indicated that nominal competition cannot always be present here in Alaska and create the amount of competition that is needed for price control.

[HB 216 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at [4:24:39 PM](#).