

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

January 25, 2006

3:26 p.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 242

"An Act relating to the deposit of certain penalties collected under the unemployment insurance program; requiring an employing unit with a change in ownership, management, or control to notify the Department of Labor and Workforce Development of the ownership change; regarding the unemployment contribution rate of an employing unit; and defining 'business' for purposes of statutes setting unemployment contribution rates; establishing the crime of obtaining an unemployment rate by deception; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 274

"An Act relating to the practice of accounting; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 373

"An Act relating to the manufacture and transportation of alcoholic beverages; relating to forfeitures of property for violations of alcoholic beverage laws; and relating to violations of alcoholic beverage laws."

- MOVED HB 373 OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HB 242

SHORT TITLE: UNEMPLOYMENT INSURANCE FUND & TAXES

SPONSOR(s): REPRESENTATIVE(s) CRAWFORD

04/01/05 (H) READ THE FIRST TIME - REFERRALS  
04/01/05 (H) L&C, JUD, FIN  
01/25/06 (H) L&C AT 3:15 PM CAPITOL 17

BILL: HB 274

SHORT TITLE: PUBLIC ACCOUNTANTS

SPONSOR(s): REPRESENTATIVE(s) HAWKER

04/18/05 (H) READ THE FIRST TIME - REFERRALS  
04/18/05 (H) L&C, FIN  
01/11/06 (H) SPONSOR SUBSTITUTE INTRODUCED  
01/11/06 (H) READ THE FIRST TIME - REFERRALS  
01/11/06 (H) L&C, FIN  
01/25/06 (H) L&C AT 3:15 PM CAPITOL 17

BILL: HB 373

SHORT TITLE: ALCOHOL:TRANSPORT MANUFACTURE; FORFEITURE

SPONSOR(s): REPRESENTATIVE(s) MEYER

01/17/06 (H) READ THE FIRST TIME - REFERRALS  
01/17/06 (H) L&C, JUD  
01/25/06 (H) L&C AT 3:15 PM CAPITOL 17

**WITNESS REGISTER**

PAT SHIER, Acting Deputy Director/Employment Security Tax  
Division of Employment Security  
Department of Labor & Workforce Development (DLWD)  
Juneau, Alaska

POSITION STATEMENT: Related the need for HB 242 and answered  
questions.

REPRESENTATIVE MIKE HAWKER  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Spoke as the sponsor of SSHB 274.

LISA ROGERS, CPA  
Alaska Society of CPAs  
Anchorage, Alaska

POSITION STATEMENT: During hearing of SSHB 274, answered questions.

JEANETTE JAMES

Alaska Society of Independent Accountants (ASIA)  
North Pole, Alaska

POSITION STATEMENT: Expressed the need to be sure that SSHB 274 doesn't impact independent accountants.

BERNADETTE KOPPY, Vice President

Alaska Society of independent Accountants (ASIA)  
Fairbanks, Alaska

POSITION STATEMENT: Expressed concerns with SSHB 274 and what it may mean for independent accountants.

DON RULIEN, President

Alaska Society of Certified Public Accountants (ASCPA)  
Fairbanks, Alaska

POSITION STATEMENT: Testified that SSHB 274 doesn't take away any of the independent accountants' ability to continue their livelihood.

DAN KENNEDY, CPA

Wasilla, Alaska

POSITION STATEMENT: Testified in support of SSHB 274.

REPRESENTATIVE KEVIN MEYER

Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Spoke as the sponsor of HB 373.

MIKE PAWLOWSKI, Staff

to Representative Kevin Meyer

Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Provided a sectional analysis of HB 373 and answered questions.

ANNE CARPENETI, Assistant Attorney General

Legal Services Section - Juneau  
Criminal Division

Department of Law  
Juneau, Alaska

POSITION STATEMENT: During hearing of HB 373, answered questions.

ED HARRINGTON, Captain/Commander

Alaska Bureau of Alcohol & Drug Enforcement  
N Detachment  
Division of Alaska State Troopers  
Department of Public Safety  
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 373.

#### **ACTION NARRATIVE**

**CHAIR TOM ANDERSON** called the House Labor and Commerce Standing Committee meeting to order at [3:26:00 PM](#). Representatives Anderson, Kott, LeDoux, Rokeberg, Crawford, and Guttenberg were present at the call to order. Representative Lynn arrived as the meeting was in progress.

#### HB 242-UNEMPLOYMENT INSURANCE FUND & TAXES

CHAIR ANDERSON announced that the first order of business would be HOUSE BILL NO. 242, "An Act relating to the deposit of certain penalties collected under the unemployment insurance program; requiring an employing unit with a change in ownership, management, or control to notify the Department of Labor and Workforce Development of the ownership change; regarding the unemployment contribution rate of an employing unit; and defining 'business' for purposes of statutes setting unemployment contribution rates; establishing the crime of obtaining an unemployment rate by deception; and providing for an effective date."

[Due to technical difficulties the recording begins at this point.]

CHAIR ANDERSON, upon hearing no objection, announced that CSHB 242, Version 24-LS0821\F, Wayne, 1/20/06, is the working document.

[3:28:27 PM](#)

REPRESENTATIVE CRAWFORD, speaking as the sponsor of HB 242, clarified that HB 242 doesn't raise anyone's taxes. He characterized HB 242 as a "sunshine bill" in that it informs the state as to "who's doing the employing and gives them a better idea of how much UI [unemployment insurance] taxes they owe." This legislation needs to be passed or Alaska won't be able to access the federal funds for UI, he related.

3:29:30 PM

PAT SHIER, Acting Deputy Director/Employment Security Tax, Division of Employment Security, Department of Labor & Workforce Development (DLWD), explained that HB 242 is required by federal language that [requires] the placement of additional penalties in state statute. Such penalties would discourage the practice of willfully hiding facts that would win an employer an artificially low rate. The aforementioned occurs when an employer changes entity or when an employer, in an attempt to reduce their UI rate, "gobbles up" a company with a lower rate and presents themselves as if they were the low rate employer. Currently, Alaska has laws and regulations in place to detect the aforementioned. This legislation would simply adopt the federal requirements for those who willfully misstate the facts in an attempt to illegally obtain an artificially low rate.

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CHAIR ANDERSON pointed out that page 2, lines 9-10, refer to 42 U.S.C. 503(k), the SUTA [State Unemployment Tax Act] Dumping Prevention Act of 2004. He asked if HB 242 is essentially adopting the national standard.

MR. SHIER replied yes.

CHAIR ANDERSON, noting that he is the chair of the National Conference of State Legislatures' Committee on Labor & Workforce Development, related that the aforementioned committee has adopted the SUTA Dumping Prevention Act of 2004 and urged all states to do so.

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REPRESENTATIVE ROKEBERG asked if current Alaska Statute requires reporting between the business and DLWD when there is a change in ownership, management, or control.

MR. SHIER clarified that current statute isn't all-inclusive. Current statute requires reporting when there is a change in ownership or entity. However, nationally it has been discovered that there are business models based on simply changing the management of the company in order to [utilize another company's lower UI rate]. The language being proposed is based on the federal language and is designed to notify the department of the possibility of a company attempting to "hijack" a lower UI rate.

REPRESENTATIVE ROKEBERG characterized this federal law as onerous and anti-business if it requires that businesses report to the government when they alienate, transfer, or change management of the business. He expressed the need to see the federal statute that HB 242 mirrors.

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MR. SHIER explained that when the [federal] statute was passed, it contained requirements for businesses to report certain changes in management. The intent was to ensure that the DLWD had sufficient information to affect collection against those employers who decided they no longer had to pay taxes or wanted to leave the state. He explained that it's already a requirement to report a change in corporate officers. Therefore, HB 242 simply expands the requirement to include management. Mr. Shier opined that it's not unusual for DLWD to review who is really running a business and who is really responsible for the debts and filing the reports.

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MR. SHIER, in response to Representative Guttenberg, explained that notifying the department about a change in management or ownership ensures that the DLWD is assessing the proper individuals.

REPRESENTATIVE LEDOUX posed a situation in which an owner of a business has a general manager and later decides to hire another manager. She asked if, under current law or HB 242, the owners would have to notify DLWD of the newly hired manager.

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MR. SHIER answered that it's important to know the responsibilities of the general manager, which is why the statute specifies that [the department needs to be notified of those who are] given the authority to sign checks and file periodic reports. When an individual files a registration form with DLWD that allows the individual to specify the obligations of the manager. The aforementioned is well understood by the business community, and if not the department's staff help to sort it out. In further response to Representative LeDoux, Mr. Shier confirmed that [an owner would have to notify DLWD of management changes] if the owner had designated a responsible party other than himself/herself. If the owner retains that responsibility, the owner could change managers as often as

he/she wants. The aforementioned is the current reporting requirement and is what is included in HB 242. Mr. Shier clarified, "We are not changing our level of rigor, in terms of reporting; that will remain the same." However, the term "manager" is a new term that's required by the federal template. The department's interpretation of a "manager" is a "responsible party," he related.

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REPRESENTATIVE LEDOUX asked if the legislation reflects that interpretation in order to avoid confusion.

MR. SHIER said that he didn't see a definition of "management" [in HB 242]. However, he pointed out that the legislation, throughout, refers to an individual who "knowingly or recklessly" violates [the reporting requirement]. The burden of proof to show that an individual knowingly took the steps [violate the requirement] lays with the department. He opined that the burden of proof on the department is very high. Furthermore, he didn't believe the department, by adopting this language, is putting a large number of individuals in the state at great risk.

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REPRESENTATIVE ROKEBERG noted that the committee members should have a copy of the federal law. After reading it, he said that he couldn't see the necessity of Section 1 of HB 242 and the term "management." The term "management" in federal law relates to "the substantial common ownership or management or control in the unemployment experience attributed to the transfer of business shall also be transferred." Therefore, he surmised that it only comes into play if there's an experience level. However, HB 242 specifies that any time a business transfers its ownership or even a portion of it, it must make a report.

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MR. SHIER said that the federal law was primarily drafted to require reporting for changes in ownership and transfers of management in order to trap schemes in which individuals tried to capture another business to capture its lower rate.

REPRESENTATIVE ROKEBERG emphasized that he agreed with the aforementioned and characterized it as laudable public policy. However, he said he didn't believe the intent was to file a form

with DLWD every time management or a portion of it is transferred.

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CHAIR ANDERSON announced that he would like to hold HB 242 until Friday in order to have time to determine if HB 242 is commiserate with other state legislation.

[3:46:26 PM](#)

REPRESENTATIVE GUTTENBERG turned attention to Section 1 in which it refers to "employing unit's trade" and inquired as to what it means.

MR. SHIER explained that in Alaska there is a common misconception that when an employee is laid off, that act penalizes the employer immediately. However, Alaska is unique in that an employer's rate is based on fluctuations in the employer's payroll whether due to terminations for cause or to lay off. Therefore, a seasonal business may seek to bid on a construction project. The seasonal rate for that business may be 3.5-4.5 percent. That business may attempt to purchase a secretarial firm with stable payroll experience and a rate of perhaps 1.5 percent and transfer the construction payroll to the secretarial firm and adopt the lower rate. The business might then unfairly bid on a construction project with a 3 percent automatic advantage. Therefore, this reporting merely notifies the department of a change in entity, as is the case now. This reporting allows DLWD to be aware of the changes that may have happened as in the aforementioned example. The language in question makes it explicit that DLWD is reviewing this information for rating purposes and to notify the employer that if information is concealed in an attempt to obtain a lower rate than the business would otherwise qualify, there are penalties. The federal law requires this, he said.

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REPRESENTATIVE KOTT pointed out that the committee packet includes a letter dated December 7, 2006, from the U.S. Department of Labor. However, he said he didn't see a response letter.

MR. SHIER said that there have been a number of letters between DLWD and the U.S. Department of Labor. The letters all convey

the importance of Alaska moving in this direction and the dire consequences if the state does not.

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REPRESENTATIVE KOTT highlighted that the last paragraph of the aforementioned letter, which says: "Please provide this assurance before January 1, 2006, that Alaska will enact the required legislation expeditiously in the next legislative session." He asked if that assurance has been provided.

MR. SHIER related that Commissioner O'Claray did sign a letter assuring that legislation would be passed this [session] and the department would do what it could while acknowledging that the legislature passes legislation not the department.

REPRESENTATIVE KOTT expressed concern with the part of HB 242 that deals with the ex post facto law. He pointed out that those who fall within the scope of HB 242 could be subject to a class C felony upon its adoption. He inquired as to how that would work with the ex post facto law.

[3:52:43 PM](#)

MR. SHIER agreed that it's a concern and has been a matter under discussion with the US Department of Labor.

REPRESENTATIVE KOTT asked if there was any discussion regarding moving that date to the effective date.

MR. SHIER pointed out that Section 7 specifies the various sections of HB 242 that are to take effect on July 1, 2006, while Section 8 specifies that Sections 5 and 6 take effect immediately. However, "immediately" is subject to the laws in Alaska that impact how legislation takes effect, which he opined would satisfy the concern regarding reaching back in time and holding someone to the new requirement. Mr. Shier related his interpretation that any actions taken after the effective date of this legislation would come under this legislation whereas those actions prior to the enactment of HB 242 would be attempted or successful.

MR. SHIER noted that Alaska has been very aware as to the importance of individual rating, such that AS 23.21.080 requires separate reporting for that purpose. He recalled the 1960s when the trust fund went broke and the state had to borrow money from the federal trust fund and employers were saddled with regular

taxes plus the repayment of that debt and interest. The new rating scheme was designed to prevent that from ever happening again. That rating system, he highlighted, contemplated individual reporting. Therefore, Mr. Shier related the department's confidence that the statutes and regulations have identified these transfers fairly successfully and thus it seems that federal law is catching up with Alaska.

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REPRESENTATIVE LYNN opined that the [intent] of HB 242 seems good as it seems to simply protect against fraud.

MR. SHIER agreed, specifying that the language in HB 242 addresses those who knowingly attempt to circumvent existing statute.

REPRESENTATIVE LYNN expressed concern that the commissioner, in response to the letter from the U.S. Department of Labor, would pass legislation before the legislation is even assigned to a committee. Representative Lynn highlighted the separation of powers.

MR. SHIER clarified that the commissioner's response was that the department would do all that it can to bring the matter before the legislature and facilitate its passage.

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REPRESENTATIVE CRAWFORD said that he would work with Representative Rokeberg and the department to craft language to achieve a comfort level that moves the legislation on its way.

CHAIR ANDERSON announced that HB 242 would be held over.

HB 274-PUBLIC ACCOUNTANTS

[3:58:07 PM](#)

CHAIR ANDERSON announced that the next order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 274, "An Act relating to the practice of accounting; and providing for an effective date."

[3:58:53 PM](#)

REPRESENTATIVE MIKE HAWKER, Alaska State Legislature, sponsor of SSHB 274, explained that this legislation is the product of work that began in 2001 when the Alaska Society of CPAs [certified public accountants] and the Board of Public Accountancy identified the direction the state should take in regulating CPAs. He related that in the last 50 years the practice of public accountancy has evolved and thus the statutes regulating the profession should as well. Representative Hawker stated that the nationwide guiding principle of public accountancy is to promote uniformity and consistency among the states. Ultimately, public accountancy is consumer protection. The industry has a central think-tank body, the American Institute of CPAs (AICPA), that promulgates rules and national standards for accounting and reporting. One of the standards the AICPA has developed, in cooperation with the National Association of State Boards of Accountancy, is the Uniform Accountancy Act. The aforementioned Act is model legislation to promote uniformity amongst the states. Representative Hawker pointed out that much of SSHB 274 is simply about eliminating ambiguity and modernizing existing language. In fact, throughout the legislation the term "accountancy" is replaced with "accounting." This legislation also clarifies the distinction between "certificate" and "license" because a certificate means that the holder has met the qualifications, although it isn't a license to practice.

REPRESENTATIVE HAWKER recalled the debacle with Enron Corporation, and noted that since that states and the accountancy industry have been looking to increase and provide a stronger and more definitive regulation of CPAs who are performing audits. Therefore, the legislation proposes improvements to the quality control with accountants and moves toward the consistency embodied in the Uniform Accountancy Act such that the portability of licenses is increased. The ability of a CPA to work in another state is increasingly important in light of the fact that only one of the approximately eight international accountancy firms that were in the state in 1979 remain. Although there are some extremely competent accountants and firms in the state, as Alaska looks to the future with an expanding economy and possibly a gas line there is the need to facilitate the participation of nationally qualified [accountancy] firms. He reminded the committee that SSHB 274 is the work product of the Board of Accountancy, the Alaska Society of CPAs, and the accounting industry.

REPRESENTATIVE HAWKER then reviewed the process by which the sponsor substitute before the committee today was ultimately

developed. He related that as the legislation went through the process, some of the traditional accountants had concerns with regard to the aggressiveness of the original proposals embodied in HB 274. Although the sponsor substitute pulls back on some of the more aggressive stances of the original legislation, the sponsor substitute leaves the ability for the [Alaska Public Accountancy Board] to develop the regulations that would facilitate the next step of actually moving some of the statutory changes. He specified that the regulatory authority was left in the legislation, although the actual policy change was not in order that the accounting and business community can review and evaluate the proposed regulations.

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REPRESENTATIVE LYNN inquired as to the difference between a CPA, a public accountant, and a bookkeeper.

REPRESENTATIVE HAWKER deferred to Ms. Rogers.

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LISA ROGERS, CPA, Alaska Society of CPAs, explained that there used to be a license for what was referred to as a public accountant, which is no longer issued. In fact, it hasn't been issued for some time, and therefore she could make a distinction. There are certified public accountants (CPAs), which are the only individuals licensed to opine on financial statements, that is, perform an audit and certify that financial statements are fairly presented in accordance with generally accepted accounting principles. She noted that CPAs perform reviewed financial statements, which are a lesser level of assurance. Also CPAs perform compiled financial statements, which includes doing tax returns, expert witness work, and a variety of other services. With regard to a bookkeeper, Ms. Rogers stated that there is no statutory definition of such and thus anyone can call themselves a bookkeeper. In further response to Representative Lynn, Ms. Rogers said that nothing in SSHB 274 pits CPAs against bookkeepers, although she noted that there are concerns.

[4:17:16 PM](#)

JEANETTE JAMES, Alaska Society of Independent Accountants (ASIA), related that she isn't a CPA and what she mostly does at this time is training small businesses with regard to what information needs to be presented to the individuals doing their

CPA work. Ms. James expressed the need to be sure that this legislation doesn't impact those who refer to themselves as independent accountants. She mentioned that the lobbyist for ASIA is present with the changes in which [ASIA] is interested in being considered.

[4:19:19 PM](#)

REPRESENTATIVE GUTTENBERG inquired as to what Ms. James viewed SSHB 274 as achieving in so far as independent accountants are concerned.

MS. JAMES expressed concern with the change from the term "prepared" to the term "compiled" because the information given to an [independent accountant] is prepared by the client. Furthermore, the regulations that may be drafted are of concern. Ms. James concluded by stressing that independent accountants want to be able to stay in business.

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REPRESENTATIVE HAWKER highlighted the purpose section of the establishment of the Board of Public Accountancy, specifically AS 08.04.005(4): "the use of titles relating to the practice of public accountancy that are likely to mislead the public as to the status or competence of the persons using these titles should be prohibited." The aforementioned provides protection for the public. With regard to promulgating regulations, he emphasized that there is a lengthy public process requiring public disclosure and testimony. Furthermore, the Administrative Regulation Review Committee also has a role in protecting the public interest.

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CHAIR ANDERSON surmised that Ms. James was questioning whether SSHB 274 is legislation that would put independent accountants out of work.

MS. JAMES specified that she makes the changes at the end of the year and prints a financial statement at the end of the year, although she doesn't attest to its accuracy or audit it because it's based on the information provided by the client. If such an attestment/audit is necessary, she said that she sends her work to a CPA for completion. Ms. James, noting that she has worked in Washington and Oregon, recalled that in Washington one

can't be referred to as an accountant unless he/she is a CPA. She said she didn't want the aforementioned to happen in Alaska.

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REPRESENTATIVE HAWKER emphasized that there is no intent with SSHB 274 to interfere with the conduct of business of someone who is not a public accountant, outside of the existing statute that addresses the consumer protection aspects of regulating CPAs. Therefore, there are things that those who aren't CPAs can't do. "In the best of my absolute knowledge," he said, "we're not in any way changing that relationship with this legislation, from what it exists today."

4:25:00 PM

REPRESENTATIVE LEDOUX compared paragraph (4) of Section 2 with Section 7, and asked whether there is the possibility of the [Board of Public Accountancy] developing regulations that outlaw the use of the term accountant for anyone other than someone who is a CPA.

REPRESENTATIVE HAWKER indicated that although it would be a possibility, he didn't envision such a degree of transgression. Should the Board of Public Accountancy attempt to do something like that, the public process and regulatory review process would mitigate such. However, the CPA community does want to develop regulations regarding the attest functions, which is encompassed in Section 7. He said that SSHB 274 is tightening the regulations on CPAs. The provisions allowing regulatory development are effective immediately while the remainder of SSHB 274 isn't effective until 2008 in order to be cautious with any changes.

4:27:55 PM

REPRESENTATIVE LEDOUX asked if the Board of Public Accountancy has any members who are independent accountants.

MS. ROGERS said that the Board of Public Accountancy consists of seven members of which five are CPAs and two are public members. The two public members can't be CPAs nor can they work for CPAs.

REPRESENTATIVE LEDOUX said that the aforementioned makeup doesn't necessarily assure that [independent accountants] would have a seat on the Board of Public Accountancy.

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CHAIR ANDERSON, posing an analogous situation, pointed out that there isn't a physician's assistant on a governing board of physicians. He said he didn't know why a physician's assistant would sit on a governing board of physicians, which should be made up of physicians and perhaps individuals who aren't in the medical industry.

[4:30:01 PM](#)

REPRESENTATIVE HAWKER said that [the relationship between independent accountants or bookkeepers and CPAS] is symbiotic. Although he didn't believe that any members of ASIA have wanted to sit on the Board of Public Accountancy in recent years, he related his belief that an ASIA liaison attends the board meetings.

[4:31:07 PM](#)

REPRESENTATIVE ROKEBERG opined that Section 53, which relates to Section 50, allows the board to develop regulations prior to the effective date of the statute. He explained that he recommends such provisions because the legislature has found itself in situations in which the proper effective dates weren't in place and the implementing regulations had to wait until the statute was in effect. He reminded the committee that under Title 8, the law mandates that these entities establish regulations. Therefore, Sections 50 and 53 merely reiterate current statute and thus the Board of Public Accountancy already has the power to establish regulations and Ms. James' concerns are unrelated to SSHB 274. Although some have held up Section 7 as a provision that the Board of Public Accountancy could use to outlaw [independent accountants], Representative Rokeberg said he didn't believe that to be the case.

[4:34:19 PM](#)

BERNADETTE KOPPY, Vice President, Alaska Society of Independent Accountants (ASIA), began by informing the committee that she is an enrolled agent with the Department of Treasury and an accredited business accountant and tax advisor by the Accreditation Council for Accountancy and Taxation, which is an independent accreditation agency affiliated with the National Society of Accountants. She provided the following testimony:

On behalf of ASIA I would like to state the following. ASIA is a professional organization of independent accountants in private practice that was established in 1972 and affiliated with the National Society of Accountants. ASIA is dedicated to developing, improving, and extending the standards and practices of independent accountants across Alaska. We have a membership body composed of approximately 150 members that operate as independent accountants statewide .... Please note that in addition to the independent accountants that are represented by the ASIA membership, there are many other independent accountants that are not represented by this membership body.

To state what we do, the independent accountant offers and performs all of the same business services that a licensed CPA performs other than reporting on reviewed and audited financial statements. These attest functions are reserved for the licensed accountants. Within our ASIA membership alone we estimate that the independent accountant represents the accounting, payroll, and tax preparation needs in a cost effective manner of approximately 60,000 Alaskan individuals and small businesses across the state of Alaska. We are unable to estimate the constituency that is served by the independent accountants that are not within our membership body. Speaking on behalf of myself, I am an owner and practitioner of Interior Accountant Service, Inc., which has approximately 1,500 clients. I have been serving my clients from Fairbanks to Healy since 1975.

Regarding Amendment A, I compile financial statements for my clients on behalf of their banking and business needs. I do not prepare them, and subsequently I will not report on them stating as such. I also would not inaccurately state that I have prepared accompanying financial statements due to liability issues and concerns regarding coverage from errors and omissions insurance. Since Alaska law does not prohibit me, as an independent accountant, from performing compilation services to my fellow Alaskans and clients, it is accordingly in my clients' best interest for me to be able to complete their financial statement presentation in a professional manner, using statutory safe harbor language that references the compiled

financial statement. I am concerned that my clients' financial statements will be rejected by the banks and bonding companies if I cannot use the word compiled. If that happens, my practice is in jeopardy and my clients will be faced with higher costs.

Regarding Amendment B, in the interest of serving Alaskans and meeting their financial needs in a professional manner, without interruption, I ask that Section 7, page 3, lines 22-26, be deleted. It is my position that the attest function activities should be identified by law, not by regulation.

[4:37:47 PM](#)

REPRESENTATIVE ROKEBERG asked if independent accountants undertake any of the attest functions currently.

MS. KOPPY replied no.

[4:38:17 PM](#)

DON RULIEN, President, Alaska Society of Certified Public Accountants (ASCPA), informed the committee that he has been working with Ms. Rogers on these changes for almost two years. He stated that there was never any intent to eliminate the ability of noncertified accountants to prepare or compile financial information that doesn't require an attest function. In fact, Mr. Rulien opined that [those working on this matter] have tried to work with the members of ASIA and other independent groups to provide this information months in advance. He recalled that each time the information was shared, [ASIA] said it looked fine. No adverse reactions were ever relayed until January 6, 2006, when the [sponsor substitute] was ready to be introduced. Mr. Rulien said, "We think we haven't done anything to jeopardize their ability to prepare financial statements for banks, for any other entity that may require them of their clients." He said that [ASCPA] understands that there will always be a need for nonlicensed accountants to prepare financial statements. He opined that SSHB 274 doesn't take away any of the independent accountants' ability to continue their livelihood.

[4:41:11 PM](#)

DAN KENNEDY, CPA, informed the committee that he has been a licensed CPA in Alaska for 24 years. He urged the committee to

pass SSHB 274 as it is written. He noted that he is a former member of the Board of Public Accountancy and recalled that the main priority of it was to make Alaska's statutes consistent with at least 43 other states [that have adopted] the Uniform Accountancy Act. In regard to the concerns of ASIA, Mr. Kennedy related that every quarterly meeting of the board there was a representative from ASIA who was allowed to fully participate. He emphasized that there's no intention to prevent accountants from participating and making a livelihood.

MR. KENNEDY recalled his involvement with reaching a compromise on the language in SSHB 274. He related his belief that the experience requirement should've been one year rather than two years, which is what is included in SSHB 274. Alaska is the only jurisdiction that would require two years of experience. He noted that last year he spoke with over a thousand eighth graders to urge them to pursue careers in business, accounting, and specifically certified public accounting because there is so much work for both CPAs and independent accountants. He reiterated the need to make Alaska's statutes consistent with the rest of the nation [such that the statutes] are substantially equivalent to the Uniform Accountancy Act. Mr. Kennedy concluded by urging the committee to pass SSHB 274.

[4:44:52 PM](#)

CHAIR ANDERSON, upon determining no one else wished to testify, closed the public testimony. Chair Anderson said that he supports SSHB 274.

[4:45:47 PM](#)

REPRESENTATIVE HAWKER, in responding to the concerns mentioned, turned attention to the definition section located on pages 26-27, which he opined is the crux of the concerns today. In the CPA industry the term "compilation," which is a term of art, defines a specific scope of work that a CPA has performed to a set of financial statements. He explained that the compilation level is the lowest level of work, and basically puts the [financial records] into a set of financial statements. The concern expressed by ASIA, he surmised, is that they want to also be able to use the term compile. Representative Hawker specified, "We want to make certain that the independents, the nonaccountants, can do work -- they can put financial statements together, but that clearly, we don't use the same operative verb as is defined in the public accountancy world [and] that is 'compiled.'" He noted that the National Society of Accountants

(NSA) uses the term "prepared" rather than "complied" and thus the distinction between noncertified accountants and CPAs is maintained.

[4:50:24 PM](#)

MS. ROGERS referred to the October 8, 2005, document entitled, "Tax Accounting Guidelines for Small Business," which was published by the NSA. She quoted from the first section of the document as follows:

Tax accounting guidelines for small business (TAGSB) are designed to provide guidance to accountants for the preparation of financial statements presented in conformity with the principles of accounting used in the preparation of tax returns.

MS. ROGERS explained that the aforementioned are [guidelines] used by some non-CPAs to prepare financial statements. She then referred to the definitions sections of the aforementioned document, and quoted the following definition of compilation:

For purposes of these guidelines, the terms "compilation" and "preparation" are interchangeable. However, in many jurisdictions, local law places certain restrictions on the use of the term "compilation" and the accountant must follow the local law requirements.

[4:53:00 PM](#)

CHAIR ANDERSON surmised then that the distinction between "preparation" and "compilation" isn't an anomaly as it's referenced in the guidelines Ms. Rogers quoted above.

[4:53:39 PM](#)

REPRESENTATIVE LEDOUX asked then if under SSHB 274, independent accountants would no longer be able to use the term "compilation."

REPRESENTATIVE HAWKER replied no because it's associated with a nationally accepted standard of work performed by CPAs. The safe harbor language is for use by nonlicensees. The legislation creates a legal distinction to ensure that the work of licensees versus nonlicensees isn't confused.

[4:54:52 PM](#)

REPRESENTATIVE CRAWFORD asked then if a CPA would be required to "compile" forms. The aforementioned is of concern, particularly in light of the expense.

REPRESENTATIVE HAWKER directed attention to the safe harbor language that exists in current statute, which specifies that "a report doesn't include compilation of financial statement language that does not express or imply assurance or special knowledge or competence." He reiterated that the term "compiled" is a specific term and is defined as such.

[4:58:46 PM](#)

REPRESENTATIVE CRAWFORD pointed out that the term "compilation" will be defined in regulation. Therefore, he questioned whether the term of art would be used such that the Board of Public Accountancy could say that only CPAs can perform compilation. Representative Crawford expressed the need to see what the regulation is and then it can be placed in statute.

[5:00:29 PM](#)

REPRESENTATIVE HAWKER, in response to Representative Crawford, said that he didn't believe this is something about which anyone should be concerned. He informed the committee that he has a book defining the term "compilation." He reminded the committee that the notion is defining attest functions and the "compilation" function is a not an attest function. He then reminded the committee that the term "compilation" isn't new and has been defined by the national regulatory authority. Again, he reiterated that he didn't see any risk in a nonlicensed accountant to "put up a financial statement." Again, the desire is to ensure that nonlicensed accountants don't say that they "compile" because it's a specific report noted in national standards to be done only by CPAs.

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REPRESENTATIVE LEDOUX noted that her mother is a CPA. She then related her understanding that to "prepare" and to "compile" are the same [activities] and that independent accountants in Alaska have traditionally used the term "compile" to refer to their activities. Therefore, she questioned why CPAs feel that they should have a monopoly in regard to the use of the term "compile."

REPRESENTATIVE HAWKER reiterated that SSHB 274 is consumer protection legislation [and specifying the use of "compile"] ensures that consumers know what services one receives from what profession. He pointed out that existing statute specifies that those who aren't licensees cannot use language that expresses or implies assurance, special knowledge, or competence. Therefore, the use of the term "compiled" by a nonlicensee implies that the individual is a CPA with that level of competence. The language from the National Society of Accountants acknowledges the aforementioned and that the term "prepared" is acceptable terminology.

[5:06:17 PM](#)

CHAIR ANDERSON indicated his understanding that there is a difference between "compiled" and "prepared."

REPRESENTATIVE LEDOUX reiterated her understanding that the terms are the same, save that the term "compile" means that the work was performed by a CPA.

REPRESENTATIVE CRAWFORD inquired as to who decides what is a compilation versus a preparation.

REPRESENTATIVE HAWKER answered that it's what [SSHB 274] is defining in statute. Representative Hawker clarified that independent accountants don't have a universal body, and therefore he wanted to be sure that folks understood that ASIA is the Alaska entity of which some subscribe to the small business tax accounting guidelines mentioned earlier.

[5:08:53 PM](#)

REPRESENTATIVE ROKEBERG noted the difficulty he is having reading the existing law under the definitions section and understanding the double negative. He emphasized that the bright distinction isn't achieved with the proposed language either. He related his understanding that from the existing statute specified on page 27, lines 9-18, independent accountants believe they can perform compilations. However, the proposed language seems to imply that the disclaimer statements are optional. If compiling is currently performed and allowed by independent accountants, then that should be clarified, he stressed.

[5:11:04 PM](#)

CHAIR ANDERSON, acknowledging the various concerns stated, inquired as to how the sponsor wanted to quell those concerns.

[5:11:48 PM](#)

REPRESENTATIVE HAWKER, speaking on behalf of the Alaska Society of CPAs and the Board of Accountancy, stated that both organizations feel strongly that the proposed language is appropriate. The language in ASIA's proposed amendment would establish, in statute, opinion language on tax reports that has no promulgated authoritative basis, he said. Representative Hawker suggested that if ASIA wanted to bring forward language from an association of national accountants to be recognized in Alaska for independent accountants, then it should be brought forward in a stand-alone bill. Representative Hawker said that although he had hoped that SSHB 274 would've moved forward to the House Finance Committee, he suggested that if it doesn't there are enough accountants from [the Alaska Society of CPAs and the Board of Accountancy] to meet with individual legislators.

[5:13:35 PM](#)

MS. ROGERS related her belief that the language in SSHB 274 is appropriate. In fact, she said that until January 6th she had thought that ASIA was okay with the proposed language because it was taken from the Uniform Accountancy Act. She offered to meet with or leave information with members to explain the definition of compilation for CPAs versus that definition for non-CPAs. Two different parties, she explained, are using a word and defining it differently.

[5:14:32 PM](#)

REPRESENTATIVE GUTTENBERG recalled that SSHB 274 has been touted as consumer protection. However, he questioned whether there is any consumer protection if no non-CPAs are involved. He then turned attention to page 4 and the language referring to "quality review requirements," and inquired as to its definition and how it would impact independent accountants.

[5:16:53 PM](#)

REPRESENTATIVE HAWKER agreed that he would be happy to provide information on this matter on Friday.

REPRESENTATIVE ROKEBERG commented that a rewrite of an entire statute deserves a thorough review by the committee. He restated his earlier question regarding whether independent accountants are confusing the term "compilation" under existing law and have been doing compilations. Therefore, SSHB 274 would change the practice of independent accountants and the impact of such is unknown.

[5:18:12 PM](#)

REPRESENTATIVE LYNN suggested that it might be appropriate to include the definitions of both "compile" and "prepare."

REPRESENTATIVE HAWKER said that SSHB 274 does define "prepare." He said he wasn't sure that the term "compile" should be defined because it's subject to change as the AICPA, and the industry, evolves and changes its rules, which is why the state adopts the standards of the AICPA by reference.

REPRESENTATIVE LYNN, referring to the amount of debate on the definitions of these terms, expressed the need be as specific as possible.

[5:19:57 PM](#)

CHAIR ANDERSON indicated his agreement and announced that SSHB 274 would be held over.

HB 373-ALCOHOL:TRANSPORT MANUFACTURE; FORFEITURE

[5:20:30 PM](#)

CHAIR ANDERSON announced that the final order of business would be HOUSE BILL NO. 373, "An Act relating to the manufacture and transportation of alcoholic beverages; relating to forfeitures of property for violations of alcoholic beverage laws; and relating to violations of alcoholic beverage laws."

[5:20:53 PM](#)

REPRESENTATIVE KEVIN MEYER, Alaska State Legislature, speaking as the sponsor of HB 373, noted that many communities have adopted local options to control the importation of alcohol. In fact, in 2001 the U.S. Congress established the Alaska Rural Justice And Law Enforcement Commission ("commission") to study the challenges facing rural Alaska. This summer the commission released a draft interim report, which contains several

recommended changes to Alaska's statutes. Upon reviewing the recommendations, Representative Meyer said he focused on those that he viewed as good. Therefore, HB 373 proposes, upon the recommendation of the report, to change the forfeiture statutes to allow the state to seize alcohol that's transported in violation of the local option, to seize property purchased with the proceeds of alcohol sold in violation of the local option, and firearms carried or visible during the furtherance of the violation could also be seized. The legislation also changes the allowable quantities of alcohol such that a package store may not ship more than 10.5 liters of distilled spirits in a calendar month to an individual in a community with a local option. Representative Meyer opined, "This bill represents reasonable changes to the statute that will strengthen the hand of law enforcement and communities in their effort to fight against alcohol in their communities."

[5:24:08 PM](#)

MIKE PAWLOWSKI, Staff to Representative Kevin Meyer, Alaska State Legislature, explained that Section 1 reduces the amount of distilled spirits from 12 liters to 10.5 liters in terms of presumption of guilt in a violation of Title 4. Section 2 adds alcoholic beverages transported in violation of the common carrier provisions to what can be seized by the state, including items of value purchased from the proceeds of the sale of alcoholic beverages and firearms that are visible or were carried during the furtherance of a violation to the forfeiture provisions. Section 3 establishes a procedure that the Department of Public Safety must go through to determine whether the [seized] property can be kept. Section 4 is merely a conforming amendment. Section 5, he noted, adds a definition of "manufacture" because there was no definition in statute, although the manufacture of alcohol in a community that had adopted a local option is illegal.

[5:25:48 PM](#)

REPRESENTATIVE GUTTENBERG inquired as to the result of inserting the term "or" on page 2, lines 7 and 15.

MR. PAWLOWSKI deferred to the Department of Law (DOL).

[5:26:09 PM](#)

REPRESENTATIVE ROKEBERG inquired as to why seven jugs rather than eight jugs.

MR. PAWLOWSKI pointed out that the statute being adjusted is AS 04.11.150, which refers to package store licenses. Those statutes refer to 10.5 liters as the standard amount of alcohol that can be delivered. For the presumption of a violation, it was made consistent with what was allowed under the other statutes. In further response to Representative Rokeberg, Mr. Pawlowski related his understanding that when a person is involved in a criminal prosecution for a violation and the person is in possession of 14-15 jugs of alcohol, it's presumed that those were being offered for sale rather than for personal use.

[5:27:25 PM](#)

REPRESENTATIVE ROKEBERG turned attention to Section 3, which only allows 30 days for response from someone with an interest in an object being forfeited. He highlighted that most of the violations occur in rural Alaska where [30 days] would seem to be a tight time frame since folks may be out fishing or doing other activities/work that take them out of town.

MR. PAWLOWSKI deferred to DOL.

[5:28:04 PM](#)

REPRESENTATIVE LYNN noted his support of HB 373.

[5:28:32 PM](#)

REPRESENTATIVE CRAWFORD referred to the language on page 3, line 3: "or items of value purchased from the proceeds". The language "items of value" could refer to many different things, he noted. Therefore, he inquired as to whether one could lose his/her house if a mortgage payment was made with some of the proceeds [of an activity prohibited under AS 04.11.010 or a violation of a local option under AS 04.11.491].

MR. PAWLOWSKI related his understanding that the intent is to mirror the drug statutes as closely as possible, but he deferred to DOL for specifics.

[5:29:35 PM](#)

ANNE CARPENETI, Assistant Attorney General, Legal Services Section - Juneau, Criminal Division, Department of Law, related her belief that the insertion of "or" on page 2, lines 7 and 15

is a cleanup by Legislative Legal. With regard to the concern that someone with an interest in an object being forfeited only has 30 days [to make a claim], Ms. Carpeneti highlighted that the forfeiture occurs 30 days after the department has made reasonable efforts to [ascertain the identity and whereabouts of a person with an interest in the forfeited object].

[5:31:41 PM](#)

REPRESENTATIVE ROKEBERG surmised then that there is a 60-day window for someone with a title or claim on an item.

MS. CARPENETI replied yes, clarifying that it would be 30 days after the service of publication.

[5:32:06 PM](#)

REPRESENTATIVE LEDOUX referred to existing statute as specified on page 3, line 13 of HB 373. She asked if there is any language specifying that the notification has to be in a specific form such as certified mail.

MS. CARPENETI answered that she believes there is in the regular civil procedure rules, and she offered to get back with the committee in regard to the specifics.

[5:33:01 PM](#)

REPRESENTATIVE CRAWFORD returned attention to his question regarding the language, "or items of value purchased from the proceeds" located on page 3, line 3.

MS. CARPENETI related her understanding that in order to seize an item purchased by money received from bootlegging activities, a significant interest has to be shown. She opined that the [state] wouldn't seize a house unless the house was purchased only with money received from bootlegging activities.

[5:34:41 PM](#)

ED HARRINGTON, Captain/Commander, Alaska Bureau of Alcohol & Drug Enforcement, N Detachment, Division of Alaska State Troopers, Department of Public Safety (DPS), informed the committee that he was also a member of the subcommittee on the Alaska Rural Justice and Law Enforcement Commission. Mr. Harrington explained that DPS supports HB 373 because it enhances enforcement efforts related to the local option in

rural Alaska. With regard to forfeiture of property, Mr. Harrington opined that it's probably the single best deterrent of importers of alcohol in rural Alaska. For the most part, the property that is seized are conveyances such as snow machines, four wheelers, and boats. Generally, those properties are forfeited through the court and most commonly during sentencing. Mr. Harrington related that generally real property isn't forfeited, although that's not to say that it wouldn't/couldn't happen.

[5:36:54 PM](#)

REPRESENTATIVE CRAWFORD acknowledged Mr. Harrington's intent, but indicated concern that he doesn't know the intent of future DPS staff.

[5:37:16 PM](#)

REPRESENTATIVE ROKEBERG inquired as to why the [allowable quantities of alcohol] has been lowered and made consistent with the importation allowance.

MR. HARRINGTON explained that the current statute is somewhat confusing in that one can possess up to 12 liters if one sells alcohol, but only 10.5 if one is shipping. He pointed out that this is merely a reduction by 1.5 liters. Therefore, the change proposed in HB 373 simplifies the law by making 10.5 liters the "common denominator."

[5:39:02 PM](#)

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

[5:39:17 PM](#)

REPRESENTATIVE LYNN moved to report HB 373 out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, it was so ordered.

[5:39:54 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:40 p.m.