

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

March 17, 2005

1:35 p.m.

MEMBERS PRESENT

Senator Con Bunde, Chair
Senator Ralph Seekins, Vice Chair
Senator Johnny Ellis
Senator Bettye Davis

MEMBERS ABSENT

Senator Ben Stevens

COMMITTEE CALENDAR

HOUSE BILL NO. 102 am

"An Act relating to the licensure of foreign medical graduates and to applications for a license to practice medicine; and providing for an effective date."

MOVED HB 102 am OUT OF COMMITTEE

SENATE BILL NO. 124

"An Act relating to requirements to obtain and maintain a fisheries business license; relating to security required of fish processors and primary fish buyers; and providing for an effective date."

MOVED CSSB 124(L&C) OUT OF COMMITTEE

SENATE BILL NO. 131

"An Act amending the Alaska Wage and Hour Act as it relates to the employment of a person acting in a supervisory capacity; providing definitions for persons employed in administrative, executive, and professional capacities, for persons working in the capacity of an outside salesman, and for persons working in the capacity of a salesman employed on a straight commission basis."

HEARD AND HELD

SENATE BILL NO. 138

"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

SENATE BILL NO. 130

"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; assigning certain Alaska Workers' Compensation Board functions to the division of workers' compensation in the Department of Labor and Workforce Development and to that 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."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 102

SHORT TITLE: MEDICAL LICENSE: APPLICATION/FOREIGN GRAD

SPONSOR(S): REPRESENTATIVE(S) STOLTZE

01/21/05	(H)	READ THE FIRST TIME - REFERRALS
01/21/05	(H)	L&C, FIN
02/04/05	(H)	L&C AT 3:15 PM CAPITOL 17
02/04/05	(H)	Moved Out of Committee
02/04/05	(H)	MINUTE(L&C)
02/09/05	(H)	L&C RPT 3DP 2NR
02/09/05	(H)	DP: KOTT, LEDOUX, ANDERSON;
02/09/05	(H)	NR: LYNN, GUTTENBERG
02/14/05	(H)	FIN AT 1:30 PM HOUSE FINANCE 519
02/14/05	(H)	Moved Out of Committee
02/14/05	(H)	MINUTE(FIN)
02/16/05	(H)	FIN RPT 10DP
02/16/05	(H)	DP: WEYHRAUCH, HAWKER, JOULE, CROFT, HOLM, KELLY, FOSTER, STOLTZE, MEYER,
02/16/05	(H)	CHENAULT
02/24/05	(H)	TRANSMITTED TO (S)
02/24/05	(H)	VERSION: HB 102 AM
02/28/05	(S)	READ THE FIRST TIME - REFERRALS
02/28/05	(S)	L&C, FIN
03/08/05	(S)	L&C AT 1:30 PM BELTZ 211
03/08/05	(S)	Heard & Held
03/08/05	(S)	MINUTE(L&C)
03/17/05	(S)	L&C AT 1:30 PM BELTZ 211

BILL: SB 124

SHORT TITLE: FISHERIES BUSINESS LICENSE; BOND

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

03/02/05	(S)	READ THE FIRST TIME - REFERRALS
03/02/05	(S)	L&C, FIN
03/08/05	(S)	L&C AT 1:30 PM BELTZ 211
03/08/05	(S)	Heard & Held
03/08/05	(S)	MINUTE(L&C)
03/17/05	(S)	L&C AT 1:30 PM BELTZ 211

BILL: SB 131

SHORT TITLE: WAGE & HOUR ACT: EXEC/PROF/ADMIN/SALES
SPONSOR(s): LABOR & COMMERCE

03/04/05 (S) READ THE FIRST TIME - REFERRALS
03/04/05 (S) L&C, FIN
03/17/05 (S) L&C AT 1:30 PM BELTZ 211

BILL: SB 138

SHORT TITLE: MOTOR VEHICLE DEALER SALES
SPONSOR(s): LABOR & COMMERCE

03/08/05 (S) READ THE FIRST TIME - REFERRALS
03/08/05 (S) L&C, FIN
03/17/05 (S) L&C AT 1:30 PM BELTZ 211

BILL: SB 130

SHORT TITLE: WORKERS' COMPENSATION
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

03/03/05 (S) READ THE FIRST TIME - REFERRALS
03/03/05 (S) L&C, FIN
03/08/05 (S) L&C AT 1:30 PM BELTZ 211
03/08/05 (S) Heard & Held
03/08/05 (S) MINUTE(L&C)
03/10/05 (S) L&C AT 1:30 PM BELTZ 211
03/10/05 (S) Heard & Held
03/10/05 (S) MINUTE(L&C)
03/15/05 (S) L&C AT 1:30 PM BELTZ 211
03/15/05 (S) Heard & Held
03/15/05 (S) MINUTE(L&C)
03/17/05 (S) L&C AT 1:30 PM BELTZ 211

WITNESS REGISTER

BEN MULLIGAN
Staff to Representative Stoltze
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Commented on HB 102.

CHUCK HARLAMERT, Juneau Section Chief
Department of Revenue
PO Box 110400
Juneau, AK 99811-0400
POSITION STATEMENT: Commented on SB 124.

JOHN SEDOR

Anchorage Society for Human Resource Management
Anchorage AK

POSITION STATEMENT: Supports SB 131.

KAREN ROGINA

Alaska Hospitality Alliance
Alaska Hotel and Lodging Association
Alaska Restaurant and Beverage Association
No address provided

POSITION STATEMENT: Supports SB 131.

GREY MITCHELL, Director
Division of Labor Standards and Safety
Department of Labor & Workforce
Development

PO Box 21149

Juneau, AK 99802-1149

POSITION STATEMENT: Supports SB 131.

BOSCO BALDWIN, Vice President
Human Resources and Logistics
Alaska Commercial Company
No address provided

POSITION STATEMENT: Supports SB 131.

JACK AMON

Alaska Restaurant and Beverage Association (ARBA)
Marks Brothers Café and Catering
Anchorage AK

POSITION STATEMENT: Supports SB 131.

BARBARA HUFF-TUCKNESS, Director
Governmental and Legislative Affairs
Teamsters Local 959

520 E 34th Ave.

Anchorage AK 99503

POSITION STATEMENT: Opposes SB 131.

ED SNIFFEN

Department of Law

PO Box 110300

Juneau, AK 99811-0300

POSITION STATEMENT: Commented on SB 138.

STEVE ALLWINE

Alaska Automobile Dealers Association
Juneau AK

POSITION STATEMENT: Supports CSSB 138(L&C).

MR. ARPINO, Affordable Used Cars
Fairbanks AK

POSITION STATEMENT: Supported CSSB 138(L&C).

ART HOUSER
Alaska Park And Sell
Fairbanks AK

POSITION STATEMENT: Commented on CSSB 138(L&C).

RICK MORRISON
Auto Dealers Association
Anchorage AK

POSITION STATEMENT: Supports CSSB 138(L&C).

WAYNE BANNOCK
Division of Motor Vehicles
Department of Public Safety
PO Box 111200
Juneau, AK 99811-1200

POSITION STATEMENT: Had concerns with CSSB 138(L&C).

MIKE JENSEN, Attorney
Anchorage AK

POSITION STATEMENT: Commented on SB 130.

MARK KLINE
Fairbanks AK

POSITION STATEMENT: Opposes SB 130.

LANCE BUSH
Anchorage AK

POSITION STATEMENT: Opposes SB 130.

ACTION NARRATIVE

CHAIR CON BUNDE called the Senate Labor and Commerce Standing Committee meeting to order at [1:35:38 PM](#). Present were Senators Seekins, Ellis and Chair Con Bunde.

^#HB102

HB 102 AM-MEDICAL LICENSE: APPLICATION/FOREIGN GRAD

CHAIR CON BUNDE announced HB 102 AM to be up for consideration.

BEN MULLIGAN, staff to Representative Stoltze, briefly recapped the main points of the bill saying that allowing licensure for foreign medical school graduates to practice in Alaska will allow the state to fill some needed positions.

Also, we're not looking to lower standards in any way, shape or form. We're going to maintain the same standards we have for doctors right now.

[1:37:16 PM](#)

SENATOR SEEKINS moved to pass HB 102 AM from committee with individual recommendations and attached fiscal note. Senators Seekins, Ellis and Chair Bunde voted yea; and HB 102 AM moved from committee.

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^#SB124

SB 124-FISHERIES BUSINESS LICENSE; BOND

CHAIR CON BUNDE announced SB 124 to be up for consideration.

SENATOR SEEKINS moved to adopt CSSB 124(L&C), version Y. There were no objections and it was so ordered.

CHUCK HARLAMERT, Juneau Section Chief, Department of Revenue, explained that the CS adds to the list of obligations that a processor must be current on in order to obtain a license. A new section 2 on page 3, line 24, covers the security that needs to be provided for estimated tax. He explained that fish processors don't have to pay their tax until March 31 of the year following the year they incurred it. In exchange for that privilege, they have to provide security of some sort to guarantee that it will be paid.

The processors that operate between January 1 and March 31 end up in a position of having to supply security to cover two years-worth of tax and this can present difficulties. This amendment allows them to use the same security simultaneously for the taxes in both periods.

[1:40:41 PM](#)

SENATOR DAVIS arrived.

[1:41:00 PM](#)

A third change on page 6, line 13, says, "The commissioner shall waive the filing of a performance bond under this section...." The original bill used the term "may", which left discretion

with the commissioner on whether or not to accept real property. That is thought to be a restriction above and beyond current rules.

CHAIR BUNDE thanked him for his comments and established that there was no further discussion.

[1:42:55 PM](#)

SENATOR SEEKINS moved CSSB 124(L&C), version Y, from committee with individual recommendations and attached fiscal note. Senators Davis, Ellis, Seekins and Chair Bunde voted yea; and CSSB 124(L&C) moved from committee.

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^#SB131

SB 131-WAGE & HOUR ACT: EXEC/PROF/ADMIN/SALES

CHAIR CON BUNDE announced SB 131 to be up for consideration.

SENATOR SEEKINS moved to adopt CSSB 131(L&C), version G. Senator Ellis objected for an explanation.

JOHN SEDOR, Anchorage Society for Human Resource Management, said the changes were proposed by the Department of Labor and Workforce Development.

GREY MITCHELL, Director, Division of Labor Standards and Safety, Department of Labor and Workforce Development (DOLWD), explained the differences in the CS. Two sections were left off the particular exemption that exists currently in the definitions of what a professional employee is. Those are on page 3, lines 17 - 22, and essentially include teachers and people who are working as teachers in schools and other educational establishments and computer-related occupations that have been exempt from overtime under the professional exemption for a while.

CHAIR BUNDE asked if that language was left out inadvertently.

[1:48:25 PM](#)

MR. MITCHELL replied yes. He further elucidated that language on page 3, line 26, related to the question of whether someone who spent most of their time sweeping the floor, but spent a little time making sales, would qualify as an outside salesperson. That would be confusing without the primary duty language. It was not the intent of the sponsor to include them if it isn't their primary duty. On page 4, line 6, the primary duty element was also added for straight-commission sales workers.

[1:50:51 PM](#)

SENATOR ELLIS asked about section 1 that deletes the exemption for supervisory work from AS 23.100.60(a).

CHAIR BUNDE clarified that the CS doesn't change section 1. The only changes are in section 3.

MR. SEDOR explained how it applies to all salaried employees over time, but does not impact anyone earning an hourly wage.

[1:54:14 PM](#)

He said the federal Fair Labor Standards Act (FLSA) looks at whether an employee is exempt because of his primary duties or not. The State Department of Labor and Workforce Development used that regulation, which had two tests - the primary duties component and the 80/20 component.

[1:54:59 PM](#)

The 80/20 component is a time-based analysis of a person's daily duties and was originally put in to address lower-end employees. So, it applied to people who were making \$159 - \$249 per week. That original 80/20 test has not been applicable in Alaska for a long time, because even minimum wage is above that.

And yet under the state system, it still does apply. So, in essence, what you have if you're a business owner in the State of Alaska or an employee, what you have is ambiguity and you have confusion, because you have the same words - administrative, professional, executive - and yet you have two different tests. One a duties test and one a time-based test. The problem with a time-based test, among others, is that the way a business is organized. It does not provide for the oversight necessary to ensure that the 80/20 is being met and what the 80/20 is is that you cannot spend more than 20 percent of your time doing non-exempt duties.

If you have an employee who you have hired in your organizational system to be a manager, an administrator, an executive - you are not overseeing him by definitions. So, for instance, there's a national non-profit that has an Alaska chapter, also, that had a director of marketing. That director of marketing oversaw seven stores.... By definition, that individual didn't have somebody sitting in the car

next to him or following him around to each store detailing and overseeing to determine what they were doing each and every day. So, when a dispute arose on other aspects of their employment, that individual, that director says, 'I've been working more than 20percent of my time on non-exempt duties' - whether it's making a pot of coffee, whether it's unlocking a door, whatever it is they may say. That is a difficult thing for an employer to address in a situation where the person is not in a position where they get the oversight.

[1:59:05 PM](#)

The FLSA applies to everyone in the country and the committee should consider why Alaska has two separate systems for overtime and require employers to apply two different systems to each of their exempt employees. One thing that might be Alaskan is the rate of pay, which historically has been higher. That is addressed in the bill by requiring two times the minimum wage. This has never been the case before. Currently, a bill last year made some changes, but historically there has been no requirement other than when making a 60/40 test, a separate issue.

Alaska has not had any wage requirements. So, you could previously had paid somebody - or even currently - paid somebody minimum wage and still qualify them for the exemption. But, what this bill does is say no, 'If you're going to meet one of these exemptions, you are going to pay a level of pay that would be higher than what the federal minimums are.' - which the federal minimums right now are \$455 per week. Two times minimum wage in Alaska would be more than that.

SB 131 doesn't push into the new frontiers in the state in general. Thirty-two of the 51 jurisdictions in the country follow lock-step with the FLSA. Eight other jurisdictions follow a short test with the primary duties component that tracks closely. "Alaska is only one of seven jurisdictions that still uses the old test - the long test - the 80/20 test."

[2:02:21 PM](#)

This bill puts Alaska on the same track as the federal system for clarity.

[2:03:42 PM](#)

CHAIR BUNDE asked if this only applies to a wage segment that doesn't exist.

MR. SEDOR replied that in Alaska, the 80/20 test is used for anybody. "You could be paying somebody \$100,000 a year and they have to pass the 80/20 test...."

[2:05:19 PM](#)

CHAIR BUNDE asked if there are existing lawsuits that would be addressed by this legislation.

MR. SEDOR replied that wage and hour litigation is on-going throughout the state, including issues pertaining to exemption status.

[2:05:47 PM](#)

SENATOR SEEKINS asked under current law, if he were an employee in supervisory status, would there be a requirement for him to time clock by task so his employer could prove that he didn't have to pay him overtime.

MR. SEDOR replied, "Correct."

[2:08:36 PM](#)

KAREN ROGINA, Alaska Hospitality Alliance, said she represents the Alaska Hotel and Lodging Association and the Alaska Restaurant and Beverage Association, said:

This bill transcends all industries and addresses the need of employers to be able to employ salaried workers in the correct manner, because it eliminates the time-based 80/20 rule and allows for primary duties.

It will impact employers of all exempt workers. The good news is that it benefits both employers and employees. On the employer side, it takes away the exposure that an employer has today when employing any salaried worker since they aren't keeping track of how that person is spending their time every hour. Today, they can't say for sure if that person is eligible to be exempt.

The reason this benefits employees is because today a lot of employers chose not to have any salaried employees at all. They will employ managers as hourly workers because they are afraid of the exposure from that employee coming back later.

This bill takes the employee out of a class that would have otherwise provided them with the opportunity to have benefits; denies employees benefits, because an employer can segregate employees as exempt employees or salaried profession, executive staff and gives them other benefits that they wouldn't have to give to their entire staff. By allowing this bill to have a segregated group, like an executive staff, professional exempt salaried workers, since this group is now all hourly, they're not getting the benefits they would otherwise be afforded by their employer.

[2:12:32 PM](#)

SENATOR ELLIS asked if the bill provides an opportunity for an employer to provide benefits for professional employees as opposed to a salaried worker and is it still up to the employer in the hiring negotiating process to determine that.

MS. ROGINA answered by giving an example of a hotel that has 100 employees and five executive staff. The owners would like to reward the executive staff with health insurance, but if they are all hourly, which many of them are, that group can't be segregated for benefits.

Since they are hourly, they would have to give it to their other 100 employees and they can't afford to do that. As a result, all of their employees are hourly and none of them get health insurance....

[2:14:50 PM](#)

SENATOR ELLIS asked if a manager pitches in when a housekeeper doesn't show and that amounted to 20percent of their time, would an employer be obligated to pay overtime for those duties. "Isn't that the situation that gave rise to the bill?"

MS. ROGINA replied that type of situation occurred and when the employee left, he presented a log of extra things he did while managing. The owner didn't clock those things and had no control over the things the manager did.

SENATOR ELLIS asked how that situation would be handled if this becomes law. Would "pitching in" just be part of professional supervisory duties?

MS. ROGINA replied that a manager would have management skills enough to hire the right staff so they don't have to do extras. They could still fill in, but not on a regular basis.

2:17:58 PM

SENATOR ELLIS asked if there is any interplay between the union versus non-union situation using the hotel example again.

MS. ROGINA replied that this bill addresses the private sector, because unions have their own contracts that deal with hourly workers.

SENATOR ELLIS asked if she means union versus non-union in the private sector.

MS. ROGINA responded, "Right."

2:19:16 PM

BOSCO BALDWIN, Vice President, Human Resources and Logistics, Alaska Commercial Company, agreed with previous testimony in support of SB 131. He disagreed, however, with the statement that companies don't get sued for someone working four or five hours doing non-exempt work in a workweek.

That's simply not true. I think you can find lots of case law up here that will absolutely show that that's the case. If you think about that. If you have someone who upon termination - and this happens all the time - someone who writes, documents in their own book - whether they create it after the fact or not, that becomes fact. Unless the employer, on a daily basis, is sitting there watching what this employee is doing on his tasks. If you take four hours a day times whatever their rate of pay is times 52 weeks and then you put in punitive damages over the course of time, you're talking about a pretty hefty bill that an employer would be faced to pay. What actually ends up happening is employers are forced to settle these cases, because it's cheaper to settle and give somebody money than to take it to court. It would cost you \$50,000 just to get to the point where you're walking into a courtroom.

The way the law is set up today, in our case, with Alaska Commercial Company, we span the whole state.... Our home offices are based out of Anchorage.... We have 25 stores. We can't be everywhere at one time. That puts us at a pretty unfair advantage when you think about it - when we are forced...to be able to identify what each of our management employees are

doing on a day to day basis - making sure that 80percent of the time they are actually performing what their job description says.

He related how a former employee sued his company as an example of what can happen.

2:25:16 PM

JACK AMON, representing the Alaska Restaurant and Beverage Association (ARBA) and the Marks Brothers Café and Catering, supported SB 131 and previous testimony in its favor. He said:

The changes made in the duties test for exempt employees is a great stride forward in modernizing Alaska's labor laws to more accurately reflect the current work place.

Only two of his 12 employees at the restaurant would qualify as exempt employees in the new statute - his chef de' cuisine and floor manager. He disagreed that one would give an hourly employee a supervisory position.

These are people who are your supervisors and who are your top-level employees. In my mind, if one has the authority to hire and fire and is responsible for the work, they are managers whether they manage from behind the stove or behind a desk. I, myself, often manage with my hands in a dish sink.

I'm afraid that opponents of this bill will state that it's an attempt by business owners to cheat-hard working employees out of the overtime they deserve. Nothing could be farther from the truth. In order to run a successful business, it's essential to retain your top-quality employees. These top workers know their work and there's demand for their skills. One could not keep them long by taking advantage of them.

There was constant talk that this is going to be - there was some talk yesterday that owners are going to look for ways to work people 60 or 70 hours a week. You know, we know that the productivity of employees drop off by working those long hours. There's really no benefit to doing that. This change in the statute will allow more flexibility for employers and employees to make compensation arrangements that are beneficial to both.

[2:28:22 PM](#)

BARBARA HUFF-TUCKNESS, Director, Governmental and Legislative Affairs, Teamsters Local 959, opposed SB 131 in its current form. She referenced Senator Ellis' question about whether this affected unions or not saying:

We looked at this potential impact on every Alaskan worker in the state, whether they're union or non-union. Our biggest concern traditionally has been the impact on the lower-paid, not the professionals. Technically, I don't think that that's where traditionally over the years that there have been abuses.

She related how the 80/20 rule came about because at that time there were many lawsuits on the books and a lot of abuse by employers. The 80/20 legislation helped level the playing field with equitable treatment for workers in general.

Her initial concern with the original bill was the impact on the low-paid worker. She commended Representative Rokeberg for maintaining the double-minimum wage. She stated:

I will say on the record that having still the double-minimum wage we do believe will help protect the majority of those entry level workers. I will use, for example, the McDonald's manager who does flip burgers and they put a manager sign on him. I'm sorry, but it does happen. At least the double minimum wage will help discourage that.

What I am here to talk about and it is a concern.... While one of the earlier speakers addressed federal regulations, we do have a concern with the fact that the primary duty definition is not addressed in the bill.... We do believe that definition should be defined in state statute - while we believe regulation is fine whether it's on a state level or a federal level, for that matter. We believe that having that in our state law will actually help clarify for the employee as well as the employers when they are reviewing our state laws so that they don't have to go from a state law and then funnel through the FLSA, which is literally a fact.

I also want to go on record with respect to a comment made...that there is a lot of federal case decisions that have been made. So, adopting the FLSA is the right thing for the State of Alaska to do. I would just caution everyone there's been a drastic change in the Federal Labor Standards Act and I don't believe that there has been near the litigation. I mean, it's been in place less than a year. You are going to be challenged, we're concerned, even with the primary duty definition. While it's not clear, it gives some guidance out there for the employers and/or employees when it's being applied. But, we do believe that it is somewhat ambiguous and you will probably see lawsuits come out of the application of that as well....

She suggested amending the bill to include a primary duty definition. Other terms used in the bill should also be defined in statute including customarily and regularly, discretion and independent judgment, and matters of significance - so they are applied consistently regarding primary duties.

[2:33:56 PM](#)

Lastly, she noted another exemption for employees who make at least \$100,000 or more per year in last year's implementation of the FLSA that was strongly supported by labor and management and said she would like to see it in this bill.

CHAIR BUNDE asked how replacing "supervisory" with three other definitions - executive, administrative and professional - would be more workable and exact.

MR. MITCHELL explained that currently there is an exemption for an employee employed in a supervisory capacity. This bill proposes to remove that exemption. There are also currently exemptions for the five categories: administrative, executive, professional and two sales jobs - straight commission and outside sales. They are defined in regulation and this bill takes those definitions and makes them meaningless, basically, and establishes statutory definitions for them.

CHAIR BUNDE asked if the definitions are just being taken out of regulation and being put into statute.

MR. MITCHELL replied:

No, the terms are currently in statute and then they are defined in regulation. What this bill does is it

takes the definitions that are in regulation and uses bits and pieces of them and some of the federal regulations and takes those definitions basically out of the regulations and put them into statute.

CHAIR BUNDE thanked him for his explanation and set SB 131 aside for further consideration at a later date.

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^#SB138

SB 138-MOTOR VEHICLE DEALER SALES

CHAIR CON BUNDE announced SB 138 to be up for consideration.

SENATOR SEEKINS moved to adopt CSSB 138(L&C), version G, for discussion. There were no objections and it was so ordered.

CHAIR BUNDE asked Mr. Sniffen to explain the differences.

ED SNIFFEN, Department of Law (DOL), said he is the attorney who handles all of the consumer protection issues that come with automobiles in the State of Alaska. The reason the language in AS 08.66.015 is the way it is currently is because of a concern with auto brokers some years ago who were selling used cars as new vehicles. A lot of those problems are no longer prevalent in auto transactions today, but there is some question about when a used car dealer should be allowed to obtain a low-mileage vehicle and sell it off their used-car lot as a used car even though it might have the appearance of a new car. There were concerns about warranty and odometer issues with cars imported from Canada and the lemon. Those were addressed through amendments to another statute that require auto dealers to disclose those issues to consumers.

[2:40:02 PM](#)

He wanted a balanced fix to the problem of allowing new and used car dealers to sell products and not interfere with the free flow of commerce. He proposed in his report:

The first one was to simply remove the language "current model vehicle" from the statute, which would essentially allow anyone to sell a vehicle as a used vehicle as long as it had been sold once and the vehicle lost its manufacturer's statement of origin (MSO), which is a document that comes from the factory with a new car that is surrendered to the Department of Motor Vehicles (DMV) as soon as a car has been

titled to a first purchaser.... Then we would leave these other issues related to low mileage, current model vehicles showing up on car lots - we would leave that to the auto dealers and their manufacturers to resolve, because that really doesn't involve too many enforcement issues with our office.

The second proposal I made and, I think, the committee substitute that you have before you is premised on the second proposal is essentially adopted from Washington State's DMV's approach to this problem. They deal with some related issues being a border state with Canada and they have decided in their code to define new motor vehicles to mean motor vehicles that have 3,000 miles or less or have been titled for 90 days or less - and you can't sell a vehicle unless it meets that requirement unless you are a new car dealer. And there is an exception to that rule that allows for the resale of a vehicle if it was actually a vehicle purchased by a bona fide purchaser and that is defined to mean someone who actually bought the car to use it as opposed to a broker who is actually buying a car just for the purpose of reselling it.

The CS has language that allows for that arrangement. The department's concern is to fix language in AS 08.66.015, because now no car dealer, new or used, can sell a used current model vehicle. He thought it was an oversight.

CHAIR BUNDE asked if the new definition of "new vehicle" takes care of that problem.

MR. SNIFFEN replied yes.

2:45:45 PM

STEVE ALLWINE, Alaska Automobile Dealers Association, supported CSSB 138(L&C) and agreed with Mr. Sniffen's synopsis of the issue. Currently, new car dealers who sell used cars are in violation of this statute, which was an unintended consequence to the legislation.

2:49:26 PM

CHAIR BUNDE said that 3,000 miles is a lot of miles.

STEVE ALLWINE said that "demonstrators" are still under the MSO and it must be disclosed that it is demonstration vehicle, but they are still new vehicles.

CHAIR BUNDE asked him to comment on the 90 days difference between 120 days and 30.

MR. ALLWINE replied that 90 days is a compromise.

This precludes people from manufacturing used cars.... In other regions of the country, manufacturers may pile on some significant incentives because they have huge inventories. If they put those incentives on and somebody walks in there to buy one of those cars... those incentives may be significant enough that it allows them to manufacture a used car, bring it to this side of the world and dump here in Alaska.

Now, that vehicle, depending on the manufacturer, also may or may not include any manufacturers warranty. If you put a 90-day or a 120, or 150 or a 180-day time on it, if they want to manufacture a used car, they are going to pay the interest on that money for that period of time. What that does is it slows them down from doing that. That's the reason we feel the 90 or 120 or 150 is more than appropriate. If you went with a 30-day number, I think that would be a cursory number; it would have zero impact.

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SENATOR SEEKINS disclosed that he has been an automobile dealer in Alaska since 1977.

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There are ways to obtain a vehicle from the black market or from another country where the exchange rate is different and not increase the price. However, the manufacturer takes a lesser profit than if they sold it to a dealer in the United States. He explained:

As a result of that, in the exchange rates, there may be automobiles that come into the market that a broker can buy and turn around and sell at a reasonable profit for less money than a franchise automobile dealer can buy from their own manufacturer. In some cases, for some manufacturers, those vehicles that do cross the international border no longer carry a warranty on them from the fact that - Chrysler Corporation was one of them that I'm aware of - that dropped the warranty. I believe Daimler Benz may have,

Honda may have, Chevrolet, General Motors may have - I've seen lists and I think that those four, maybe Toyota, as well have it, but I'm not sure of all the manufacturers. I just know that some of them don't do that.

So, when it comes time, then, for someone who has a used car license in a temporary facility that's on the corner of a lot somewhere - will attempt to sell that vehicle and misrepresent it as a vehicle with a warranty. Because all automobiles in the United State that are bought in the United States, the warranty follows that vehicle, not the owner. And all of a sudden, the person finds out they don't have a warranty. But they may have been sold a service contract that was represented as a warranty. So there's a lot of misrepresentation that can take place in that process and I think probably the best police that are out there of other dealers are automobile dealers, themselves. When they see someone who is not living up to the standards of the law, it's not unusual for them to make a phone call to Mr. Sniffen or someone else in the DMV or Department of Law and say this dealer is not complying with the law....

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Franchise dealers who feel they must meet the needs of their community by providing expensive servicing are at a disadvantage because of the loophole. There are also problems with people are buying cars without knowing for sure.

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MR. ARPINO, Affordable Used Cars, said he is located in both Fairbanks and Anchorage. He supported the CS with the timeframe and mileage. He said it would help clarify current law which is not working.

ART HOUSER, Alaska Park and Sell, agreed that the loopholes have to be closed. The only issue he has is that using 3,000 miles and 90-days for a new vehicle is that there are still loopholes.

For long-term benefits, the bill has to be kept simple. If it's got an MSO, it's a new vehicle; if it's got a title, it's a used vehicle.

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RICK MORRISON, Auto Dealers Association, agreed that the law needs to be clarified or there could be a class action suit. He supported CSSB 138(L&C).

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CHAIR BUNDE asked if he thought industry would be self-policing.

MR. MORRISON said he thought that would help. The current law is very vague.

If you are in the new car business and are a franchise dealer, you have paid thousands of dollars for tools; you've paid thousands of dollars for training; you've paid millions of dollars for a facility and all in order to take care of the consumer....

He concluded saying that this bill gives the consumer an opportunity to defend himself and gives other dealers in the area something to stand on.

WAYNE BANNOCK, Division of Motor Vehicles, said he works very closely with dealers and has some concerns with version G. His comments were on section (d)(2), but didn't concern the mileage or the timeframe.

DMV believes that the definition of a new motor vehicle is limited to that of a vehicle that retains its MSO or MCO. Once a vehicle has been converted to a titled vehicle, it is a used vehicle. What is described in (d)(2)(b)(1) and (2) is indeed a used vehicle. It is a very slightly used vehicle, but it is without exception a used vehicle. Now recognizing the industry, recognizing some of the excellent points that have been made by the speakers before me, with your permission, sir, I would like to propose an alternative that I think may solve both the DMV's problem and adequately addresses the other speakers as well.

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If the language of (d)(2)(b)(1) and (2) is written in the affirmative and is placed in section (c)(4), (c)(4) would then read, 'The vehicle has been operated in excess of 3,000 miles or titled and registered in more than 90 days.'

Section (c) speaks to what cars can be sold. So, what it says in section (c), if that were to be adopted, is that it is definitely a used car. We're recognizing that it's a used car and it can be sold if it meets that threshold of 3,000 miles or more than 90 days....

So, I believe from the speakers we've heard from before, it would accomplish the exact same effect, yet it would not put the State of Alaska in the awkward position of attempting to define a slightly used car as a new car.

CHAIR BUNDE thanked him for the suggestion. He said he would hold the bill for a further hearing.

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^#SB130

SB 130-WORKERS' COMPENSATION

CHAIR CON BUNDE announced SB 130 to be up for consideration.

MIKE JENSON, attorney, said he exclusively represents injured workers with workers' compensation cases. He said his colleagues had faxed the committee with their concerns today.

MR. JENSON said he has heard a lot of testimony about premium increases, but he hasn't ever heard an explanation that accounts for the increases.

When you look at the annual reports that the commissioner and the Governor are relying upon, they show, in fact, that time-loss claims have decreased. Injuries have decreased over 5 percent in the last annual report. Employee legal expenses have decreased over 10 percent. Incidentally, we've enjoyed the greatest decrease in expense for the workers' comp system.

Our colleagues on the insurance side, on the other hand, have seen an increase in legal expenses and, in fact, received approximately three times as much in legal expense reimbursements as employees do. In addition, the annual report shows reemployment benefits have decreased medical costs. They have shown an increase, but that's only 8 percent and total benefits are only up 7 percent. So, it's difficult for me as a lay person to understand why employers are

facing up to 400 percent premium increases when the total benefits have only gone up 7 percent. I have not heard any discussion or explanation from the Governor's office, the commissioner or the director, which addresses that concern.

In addition to representing injured workers, I'm also an employer and I also have to face increased premiums, but as an employer, I would like to know that if we are to reform the compensation system, that my premiums are, in fact, reduced. If total benefits are only up 7 percent, it's difficult for me to comprehend how reforming a workers' compensation system will address the problems that other employers are facing with as much as 400 percent increases.

He wanted to address the creation of a commission in section 10 that creates a court without calling it a court and creates judges without calling them judges.

Judges will be mere political appointees, not subject to the standards of judicial conduct. Preemption would not be allowed; the commission would not be subject to the present standards of judicial review. It will decide cases de novo and the judges will never be evaluated for their ability or fairness.

Section 29, which is part of this creation of the commission, takes away current power of the board to determine the credibility of medical reports. A board finding concerning the weight to be accorded witness testimony including medical testimony will no longer be conclusive. The board's determination of credibility will be exclusively limited to testimony presented by a witness at a hearing. This will increase, not decrease, the cost of litigation to employers and employees alike, since medical reports will no longer have the weight currently accorded by the present act. The board will lose, in fact, its power to determine credibility of medical reports or other evidence not presented by a witness at hearing. In addition, it makes clear the commission, since it will review de novo all prior board decisions, it makes clear that instead of resolving a case with one hearing, now all cases will require two hearings. How this will decrease litigation costs that employers are facing is difficult for me to comprehend. It permits

parties to present new or additional evidence at this second hearing. It permits an easier granting of stays without requiring any bonds - increasing the likelihood of having two hearings.

It makes certain that all adverse board decisions will be appealed by the party who lost at the board level. All of this will greatly increase litigation costs. Every party who loses at the board will be compelled to appeal for a chance at two bites of the apple. Me, as an employer, would be certainly troubled by hearing a case that went to a hearing in which I prevailed. I would only have to face another hearing where I would have to defend, face additional and new evidence. This does not benefit employers and it certainly doesn't benefit injured workers. It creates another hurdle that both employers and employees have to jump through. It certainly doesn't address, in light of the annual report statistics, the increased premiums that employers here in Alaska face.

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MARK KLINE, representing himself, said reduced fees in section 25 might reduce the quality of health care already available through existing law. Studies done during the Clinton administration found that regulation of health care to control costs decreased the quality of it. He also thought the majority of cost problems employers are having is because of the lack of appropriate pursuit of safety that in turn causes a significant quantity of injuries and illnesses. The national estimate rate is five injuries per hundred employees, but Alaska's is seven injuries per hundred employees. That makes it 40 percent higher than the national average according to the Bureau of Labor statistics.

This higher incidence could likely cause increased prices in insurance premiums. He favored increased involvement by OSHA, employers and employees who should have meetings pertaining to safety issues. This would keep injuries and insurance premiums down.

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Section 16 reduces the amount of permanent impairment capital an employee is entitled to, which might encourage employers who have little or no interest in safety to reduce their efforts even further in preservation of the working environment. They

could afford to take more chances because of a lesser amount of penalty they would be subjected to.

CHAIR BUNDE thanked him for his testimony.

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LANCE BUSH said he works at Fred Meyer in Anchorage and agreed with Mr. Kline. A garage door came down and hit him on the shoulder and broke his foot in six places. His wife, six children and he are going through a living hell. Loopholes in the law are being used against him. He thinks the Legislature is increasing corporate protection in Alaska. He sees Alaskans with injuries that require minimal medical attention and said:

But seriously injured Alaskans are swept under corporate America's rug, left to be ignored in litigation because the liability is too costly and they don't want to take accountability.... Now I feel me and my family's American dream is altered and we've begun to live the workman's comp nightmare. I would like to know when we are going to hold corporate Alaska, corporate America, accountable for illegal practices, bullying, intimidation and outright lies - to us as truly proven cases of injured Alaskans....

CHAIR BUNDE thanked everyone for their testimony and said the committee ran out of time and adjourned the meeting at [3:27:24 PM](#).

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