

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

March 30, 2006

1:31 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 241

"An Act relating to modifying the qualifications required for workers' compensation self-insurance and permitting employers in the same trade or industry to form an employer association for self-insured workers' compensation coverage; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 307

"An Act relating to a fee provided for in the rental agreement for late payment of rent under the Uniform Residential Landlord and Tenant Act."

MOVED SB 307 FROM COMMITTEE

SENATE BILL NO. 272

"An Act relating to mortgage lenders and persons who engage in activities relating to mortgage lending; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 309

"An Act establishing a construction trades training grant program for award by the Department of Labor and Workforce Development, providing for special employee unemployment contributions to fund the program and an offsetting credit against the employees' general unemployment contribution, and providing for an expiration date for the program, contributions, and credit; and providing for an effective date."

POSTPONED

PREVIOUS COMMITTEE ACTION

BILL: SB 241

SHORT TITLE: JOINT INSURANCE ARRANGEMENTS

SPONSOR(s): SENATOR(s) COWDERY

01/18/06	(S)	READ THE FIRST TIME - REFERRALS
01/18/06	(S)	L&C, FIN
03/28/06	(S)	L&C AT 1:30 PM BELTZ 211
03/28/06	(S)	Scheduled But Not Heard
03/30/06	(S)	L&C AT 1:30 PM BELTZ 211

BILL: SB 307

SHORT TITLE: LANDLORD REMEDIES; LATE FEE

SPONSOR(s): LABOR & COMMERCE

02/23/06	(S)	READ THE FIRST TIME - REFERRALS
02/23/06	(S)	L&C, JUD
03/09/06	(S)	L&C AT 1:30 PM BELTZ 211
03/09/06	(S)	Heard & Held
03/09/06	(S)	MINUTE(L&C)
03/16/06	(S)	L&C AT 1:30 PM BELTZ 211
03/16/06	(S)	Scheduled But Not Heard
03/28/06	(S)	L&C AT 1:30 PM BELTZ 211
03/28/06	(S)	Heard & Held
03/28/06	(S)	MINUTE(L&C)
03/30/06	(S)	L&C AT 1:30 PM BELTZ 211

BILL: SB 272

SHORT TITLE: MORTGAGE LENDING

SPONSOR(s): SENATOR(s) WAGONER

02/08/06	(S)	READ THE FIRST TIME - REFERRALS
02/08/06	(S)	L&C, FIN
03/02/06	(S)	L&C AT 2:00 PM BELTZ 211
03/02/06	(S)	-- Meeting Canceled --
03/07/06	(S)	L&C AT 1:30 PM BELTZ 211
03/07/06	(S)	Heard & Held
03/07/06	(S)	MINUTE(L&C)
03/16/06	(S)	L&C AT 1:30 PM BELTZ 211
03/16/06	(S)	Scheduled But Not Heard
03/30/06	(S)	L&C AT 1:30 PM BELTZ 211

WITNESS REGISTER

RYAN MAKINSTER

Staff to Senator Cowdery
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Commented on SB 241 for the sponsor.

LINDA HALL, Director
Division of Insurance
Department of Labor & Workforce
Development

PO Box 21149
Juneau, AK 99802-1149

POSITION STATEMENT: Opposed CSSB 241(L&C), Version G.

PAUL LISANKIE, Director
Division of Workers' Compensation
Department of Labor & Workforce
Development

PO Box 21149
Juneau, AK 99802-1149

POSITION STATEMENT: Opposed CSSB 241(L&C), Version G.

TOM SMITH, President
Alaska State Homebuilding Association
MatSu, Alaska

POSITION STATEMENT: Supported SB 241.

ROBERT VOGEL
ProGroup Management
No address provided
Nevada

POSITION STATEMENT: Supported SB 241.

LARRY PARTUSCH
Anchorage Homebuilders' Association
Anchorage AK

POSITION STATEMENT: Supported SB 241.

KENTON BRINE
Property Casualty Insurers Association of America
No address provided

POSITION STATEMENT: Had concerns with SB 241.

MICHAEL BELL, Director
Alaska Trucking Association
Anchorage AK

POSITION STATEMENT: Supported SB 241.

AMY SEITZ

Staff to Senator Wagoner
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Reviewed CSSB 272(L&C), Version C, for the sponsor.

MARK DAVIS, Division of Banking and Securities
Department of Commerce, Community & Economic Development
PO Box 110800
Juneau, AK 99811-0800

POSITION STATEMENT: Answered questions on SB 272.

KEVIN BREELAND, President
Alaska Mortgage Bankers Association
Anchorage AK

POSITION STATEMENT: Supported SB 272.

JOHN CARMAN, Chair
Legislative Committee
Alaska Mortgage Bankers Association
Anchorage AK

POSITION STATEMENT: Supported SB 272.

DOUG ISAACSON
President, Gold Coast Mortgage
President, Alaska Association of Mortgage Brokers
Fairbanks AK

POSITION STATEMENT: Opposed SB 272.

LAURIE HOLTE
Officer of Residential Lending Mortgage Operations
Alaska Housing Finance Corporation (AHFC)
Anchorage AK

POSITION STATEMENT: Supported the concept of SB 272, but it needed more work.

BARBARA WORLEY
Director of Lending
Anchorage Neighborhood Housing Services
Anchorage AK

POSITION STATEMENT: Supported the concept of SB 272, but it needed more work.

KEN GAIN, Secretary Treasurer, Legislative Chairman
Independent Lenders of Alaska

No address provided

POSITION STATEMENT: Supported SB 272.

JOHN MARTIN

Alaska Mortgage Solutions

Anchorage AK

POSITION STATEMENT: Wanted time to read the CS to SB 272.

ACTION NARRATIVE

CHAIR CON BUNDE called the Senate Labor and Commerce Standing Committee meeting to order at [1:31:03 PM](#). All members were present at the call to order.

SB 241-JOINT INSURANCE ARRANGEMENTS

CHAIR CON BUNDE announced SB 241 to be up for consideration.

RYAN MACKINSTER, staff to Senator Cowdery, sponsor of SB 241, explained that it creates in statute the ability to have self-insured workers' compensation groups. Currently individual companies can be self-insured in Alaska and this allows companies within the same industry to get together and form a group to be self-insured like the individual companies if they meet all the other requirements. Several other states allow this now.

MR. MAKINSTER said that a minimum of five or more employers would be needed to form a group, but different types of companies could not form a group. He said the CS before the committee was much larger than the original bill and that Linda Hall, director of the Division on Insurance was concerned it left a lot of the ideas in regulation rather than putting them in statute so the boundaries would be clearer.

[1:34:32 PM](#)

SENATOR RALPH SEEKINS moved to adopt CSSB 241, version G, as the working document. There were no objections and it was so ordered.

MR. MAKINSTER explained that one of the first issues was to make sure there were adequate funds for expenses to maintain the program and to pay for claims. He said that Section 21.77.200 on page 12 requires the association to adopt a plan that is approved by the director that includes an advance payment of 15 percent with the balance to be paid in monthly or quarterly

installments. The assessments must be based on actuarial projections that include appropriate reserves and the costs associated with the plan. Appropriate reserves, he said, is defined on page 12 in Section 21.77.210. They cover actual claims, claims that have occurred but are not reported, and reserves for uncollected debts based on experience.

1:36:55 PM

Furthermore, Mr. MAKINSTER said, the group is required to deposit at least 65 percent of the money collected in an account to pay claims or expenses related to those claims. The remaining 35 percent would go to paying for operating costs. He said that workers' compensation costs are determined by AS 23.30, the workers' compensation statute.

MR. MAKINSTER said that what happens when not enough money is collected was a concern and page 12 also addresses that in Section 21.77.230. It requires the group to collect an additional assessment to make up any shortfall. It gives the director the power to decide what additional assessments are needed if the group fails to initiate that on its own. He reminded the committee that the original intent of workers' compensation was to insure that workers would be paid for lost wages, injuries and expenses incurred if an accident happened in exchange for not suing the employer for those costs.

He said another section provides that dividends can be paid back to the members, which is a provision used in other states. On page 11, Section 21.77.190 requires the approval of the director before those dividends are paid. The idea behind the dividend is that if the group works together to implement a safety plan that will lower risk over time for both the system and the workers, it would not have to pay out claims and there is some reward for that.

1:38:53 PM

MR. MAKINSTER said if one member of the group goes bankrupt, they are bound together through a joint and several liability clauses to insure that claims are paid and bankruptcy does not remove the liability to pay claims. Beyond that, there is a surety bond payable to the state in the amount required by the director to ensure that claims are paid.

CHAIR BUNDE asked if he had an estimate of what would be saved if this were to become law.

MR. MAKINSTER replied that he didn't have a number.

1:40:29 PM

LINDA HALL, Director, Division of Insurance, directed her comments to the CS. She said the bill requires the legislature to make a public policy decision and she wanted to make sure all the potential pieces were put before it before that decision was made. Also, she said she wasn't particularly comfortable coming before them with what they would perceive as an extremely negative position on the bill; she didn't do it lightly.

MS. HALL said she still wasn't convinced that the bill provided protections even though she worked with the sponsor group to do that. She said she would talk about three areas - financial oversight, regulatory oversight, and fiscal impact - and then what she saw as a different solution.

1:42:03 PM

MS. HALL said that one of the basic principles of insurance regulation is financial oversight to insure that claims get paid and while the CS had detailed requirements, she was still concerned that it had no liquidity requirements. It also had a narrow tangible net worth requirement.

1:42:41 PM

CHAIR BUNDE asked what amount she was talking about for a liquidity requirement.

MS. HALL replied that this bill was modeled after some Nevada statutes and with Oregon statutes that required specific working capital in sufficient amounts to establish the strength and liquidity of the business. She didn't favor setting a specific limit, but thought it could vary from group to group depending upon their financial statements. She said that currently, there is no requirement for individual members and suggested that higher risk occupations have greater need for more liquidity.

1:44:01 PM

MS. HALL said another concern she had was that there is no requirement for individual members to have audited financial statements, but the association is required to have one. She explained that there is a difference in general accounting principals (GAP), which this bill is predicated on, and insurance that is regulated based on statutory accounting; assets are valued differently. She said the National Association of Insurance Commissioners has an office called the SVO that strictly does asset valuation. A great deal of attention is given to the quality of assets in an insurance company, which is

important; and she said there are other assets besides liquidity that make up net worth and the department needs to know that there is a real method of evaluating those.

She said financial responsibility rests with the association and it needs to have a tie-in with its members, but the joint and several liability agreements in this bill do not include the association. They do in the Nevada bill and she thought that was very important.

MS. HALL said Section 21.77.230 deals with insufficient assets and when an association is insolvent, it allows the director to withdraw the certificate of approval, but doesn't say what happens then. Current insurance statutes have provisions for the Division of Insurance, namely the director, to become either a supervisor or the association can go into receivership. This bill does not give her authority to take over any assets.

[1:46:30 PM](#)

Under regulatory authority to penalize for violations, she explained that the largest insurance company in the world was penalized \$1.6 billion to resolve allegations of deceptive accounting practices. Prior to that, she had one subsidiary of that company as an Alaska domestic and had done a financial exam and found some accounting irregularities, which she didn't think were intentionally deceptive, but nevertheless were not in accordance with the state's standard accounting practices. The company was fined \$400,000. Recently, the division fined the same company \$65,000 for not getting its financial statements in on time. She emphasized, "There needs to be a penalty!"

MS. HALL said that regulatory oversight is not part of this bill even though a lot of financial requirements had been added and it specifically says it's not insurance and nothing else applied except Chapter 77, which was created for self-insured groups. Chapter 36 of the Insurance Title provides the controlling language for trade practices and frauds. It includes oversight of marketing, misrepresentation, false advertising, unfair discrimination, unfair claims practices, etc., and those could not be applied to a self-insured group. She thought those were consumer protections and asserted that claimants are consumers and they need to be protected in some instances.

MS. HALL said that the division is currently conducting a market conduct review of a claims adjusting company because of complaints. The adjusting company is a licensee and she has the authority to look at its files and determine what they are doing

and, as a result, has found a substantial number of statutory violations. This kind of regulatory oversight is not present in CSSB 241.

1:49:05 PM

MS. HALL went on to explain that all licensees have to pay a license fee and a continuation fee. The division operates in an arena where those who are regulated pay for it and not by choice. The bill provides for a license fee only and she wanted a continuation fee as well. However, the greater issue for the legislature to deliberate is the premium tax since the entities would no longer pay a premium and therefore no premium tax. This tax is a major source of revenue to the general fund. In 2004 premium tax was the second largest source of revenue to the general fund.

She said that probably one group self-insured association not paying tax wouldn't have an impact, but the more of that you get, the more the impact it has on the general fund.

1:50:40 PM

MS. HALL strongly felt the indemnity agreement should include the association. Nevada statutes require annual assessments - the premium the association would pay to an insurance company - of at least \$300,000 or an amount, which the director determines to be satisfactory based on annual review of actuarial solvency. Each member must have a tangible net worth of at least \$250,000, not just an aggregate and an insurance premium of at least \$10,000. It also provides that the director would approve an annual assessment much as rate filings are approved today. This means she would review the actuarial projections and reserving.

She said that Nevada also has provisions to assess other self-insured associations for the claims obligations of an insolvent association. In addition to the joint and several liability of the group, if they became insolvent, all of the members would be assessed although she didn't know if Alaska had enough bodies to make that work.

She said that Oregon also has good ideas like specific requirements for excess insurance and working capital - requirements that are likely to improve accident prevention and claims handling. It also requires irrevocable letters of credit for deposits.

The last concern Ms. Hall mentioned was in current statutes. AS 21.75 allows for the formation of reciprocals, she explained,

that are entities that are kind of like insurance companies, but they are limited to trade associations. Alaska has two that are operating very successfully today - the timber exchange and ARECA (Alaska Rural Electric Cooperative Association). They operate under the division's oversight much as an insurance company, but with lower requirements - \$1.5 million to capitalize, which she thought wasn't a lot of money for paying workers' compensation claims that have the potential of being expensive and long-tailed. She knew of an insurance company that had a reserve of \$7 million.

MS. HALL said she has yet to hear any reason that a reciprocal would not be a viable entity for the trade associations to join together and set its own rates, do its own safety programs and admit its own members. She emphasized that she has not seen any reason that this already statutorily-created entity could not serve the same purposes and it comes under the division's regulatory and financial oversight.

1:54:30 PM

MS. HALL closed saying she was very sensitive to the high cost of workers' compensation today and she didn't want to take people out of the system without first looking at improving it. She said that Director Lisankie provided her with a report from California that said after its reforms between July 1, 2003 and January 1, 2006, premiums had gone down by 46 percent. She emphasized that there are other ways to help employers reduce costs than by taking them out of the system and reducing the mass in which to spread the risk. She urged the committee to work within the current system to deal with escalating costs, 67 percent of which are medical. However that is funded, she said, those costs won't change and she didn't feel she had seen evidence indicating that premium would be reduced.

1:57:10 PM

PAUL LISANKIE, Director, Division of Workers' Compensation, Department of Labor and Workforce Development (DOLWD), offered background on the scope of the current self-insurance program. Only individual employers can be self-insured and he has the authority for granting or denying applications lodged with the Workers' Compensation Board. The program is up to 31 approved employers. He said approximately 26 percent of all employed Alaskans are working for an employer that self-insures its workers' compensation liability. That means there is no guaranty fund the way there is for insurance companies. If a self-insured becomes insolvent, the only recourse for injured workers who are getting benefits is bankruptcy court. He suggested that the

committee consider that in addition to the large self-insureds under his supervision, which he thought were barely adequately capitalized, that this legislation would be opening the doors to an unlimited and unknown number of small employers to self-insure through the trade associations.

MR. LISANKIE repeated that the current program is barely adequate - partly because it is operating under regulations that are 23 years old, but he is in the process of revising those regulations right now. Currently there is a minimum requirement of \$5 million in tangible assets to even qualify for consideration as a self-insurer; with inflation, that would be about \$10 million in today's dollars and that is probably where the regulations are going. Current regulations for security provide for a minimum of \$300,000 or 125 percent of actual liabilities; so, that \$300,000 would double to around \$600,000.

[2:01:38 PM](#)

MR. LISANKIE closed by saying when one looks at the opinions of people who talk about the best practices of workers' compensation, essentially they suggest having three guarantee funds. The first is a fund for the insurance companies, which Alaska has had for many years, the second is a fund for making up benefits of employees who are injured while they are working for employers who are illegally uninsured (Alaska has this since last year), and a last fund to guarantee self-insurers because of the importance of the benefits. Alaska doesn't have this in its current program and that absence is reflected in the current bill, which would be specific to group self-insurers.

[2:02:45 PM](#)

He underscored Director Hall's comment that if you look at the Nevada statute as a template, it does have a guaranty fund both for the individual self-insured employers and the group self-insurers - the groups that would be covered under this bill.

[2:03:11 PM](#)

CHAIR BUNDE asked if the state could be looked at as the guarantor if there would be some catastrophe under this bill.

MR. LISANKIE replied that he didn't know.

CHAIR BUNDE said he also wanted to know what a guaranty fund would look like as far as amounts and costs to the individuals that would be part of the group.

[2:04:09 PM](#)

SENATOR SEEKINS asked Mr. Lisankie to explain the guaranty fund for self-insured companies.

MR. LISANKIE replied that the fund would be in place for a failure of a self-insured. Now there is no recourse outside of the federal bankruptcy system. He said the assessment would presumably be made every year and go into a backup fund that would be accessed to pay benefits that could not be covered by one of the members of the group going insolvent.

CHAIR BUNDE said the state has something like that for insurance companies.

MR. LISANKIE affirmed that and added that fund had to be adjusted in 2004 because of the large loss from a few insolvent insurers. He said:

Frankly, that's part of the reason why I'm as concerned about this as I am right now - because we have this current system in place without a guaranty fund and having sat through that testimony and lived through that period, it's one of the things that keeps me awake at night when I'm regulating along with the panel of the Workers' Compensation Board - these 31 entities that are self-insured as we speak.

[2:06:03 PM](#)

TOM SMITH, President, Alaska State Homebuilding Association, supported SB 241, because it would provide one more option to any trade group, but specifically to homebuilders, to help with the escalating costs of workers' compensation insurance. He said he realized that rates wouldn't be that different, but they would have more control over safety by being part of a smaller group and members could possibly retain some of the premiums.

ROBERT VOGEL, ProGroup Management, said his is an administration company and he had worked with the sponsors of this bill to help them to understand self-insured groups. He said that ProGroup has managed four different self-insured groups for over 10 years; one of the groups consists of homebuilders.

[2:09:12 PM](#)

MR. VOGEL clarified that this law is intended to allow a group of individual employers to finance their projected losses in the same manner a single self-insured entity has done under those same provisions. Employers within the same industry would form an unincorporated, non-profit association that would be owned by

its members collectively for the purpose of self-insuring its workers' compensation liability, thereby obtaining the same status as a singly self-insured employer. This self-insured group is a separate distinct legal entity and is not part of the common trade association. The tie-in to the common trade association is it helps strengthen the commonality of the risk. You don't want a restaurant joining a builders association because of the different risks involved. He stated that SIGs (self insured groups) are viable alternatives for employers to improve their risk management procedures, worker safety and care; they have been authorized in 39 states, mostly recently in Texas. They have been in existence for over 40 years using the basic tenants outlined in this bill, which stresses solvency, owner accountability and responsibility.

He said one of the requirements to qualify to become a SIG is to have a minimum of \$5 million in tangible net worth. He noted that Director Lisankie said that the minimum tangible net worth for individual self-insureds in Alaska is \$10 million, so this would be \$10 million also. Whatever the self-insured law is, that is what these groups would follow.

MR. VOGEL explained that tangible net worth is the net worth of a company less its intangible assets. The employers sign a joint and several liability agreements binding them to pay all of the claims of this group. That is measured through GAP, the most common method of measuring net worth across the country. But the law backs away from intangible assets because the idea is to have assets that can be sold. He explained that the group would most likely have a \$350,000 to \$750,000 deductible. After that, even if there were a \$7 million claim, an excess insurance company would pay the rest. That is why they have to make sure they use "A" rated companies providing that the group would pay for. He said the group would be subject to paying claims under AS 23.30.

He said this law does not require each member to have audited financials, but from a liquidity standpoint, the group should have GAP audited financials. Annual CPA audits are required as well as adequacy audits by an independent actuary who has joint and several liability agreements that support the liquidity. Each member has annual payroll audits to assure correct reporting of collections and the director of the Division of Insurance can audit those records as necessary to insure compliance and solvency.

[2:17:09 PM](#)

He opined that a group self-insured becomes a better alternative to a single self-insured because if one company goes bankrupt, others are there to cover the claims. If a member leaves the group, he still remains bound to it by its joint and several agreements.

MR. VOGEL said that Nevada passed its law in 1990 and 2,400 businesses have formed 13 groups there. He said that the number of groups is generally a function of the number of businesses the state has. He thought possibly only a dozen groups would form in Alaska.

[2:23:17 PM](#)

He concluded saying this is not insurance, it is self-insurance and people should not be afraid of it. It may cost a little more in the first year to start a group, but over a 10-year period, savings can be generated. Improved care of the employees is the first and foremost goal of programs like this and he reported that his homebuilders group has saved about 20 percent on its premiums since 1999 compared to the standard carrier market. Return-to-work times and medical costs were generally cut in half. The auto dealers retail and transportation group experienced much the same results after 10 years. The groups have built up reserves and have continued to thrive and grow.

CHAIR BUNDE thanked Mr. Vogel for his comments and said that committee time was limited and asked testifiers to summarize their testimony.

[2:25:40 PM](#)

LARRY PARTUSCH, Anchorage Homebuilders' Association, supported SB 241 saying it provides another option for funding workers' compensation. He said that having companies in the same industry in one group encourages them to police their own industry. His experience was that he couldn't get benefits from the use of safety practices when he was in a big group.

KENTON BRINE, Property Casualty Insurers Association of America, said his is a trade association representing about 1,000 member insurance companies across the country including some of the leading workers' compensation insurance writers. He understood this legislation is an option that is being sought by homebuilders, in particular, and his concern stems from what he heard from the directors of the Division of Insurance and the Division of Workers' Compensation that there are not adequate regulatory oversights and from the perspective of an injured worker, if an entity becomes insolvent, it will look a lot like

a bankrupt insurance company and the question is how do you get your bills paid. He said:

It isn't that we are in opposition to the formation of this option; it is rather that we are concerned that the way it is being formulated it is going to lead to a great deal of risk to injured workers, to the employers that joined these groups and to the broader insurance marketplace.

He supported continuing the department's efforts of addressing the cost drivers to workers' compensation rather than creating other options using the same cost structure. He also pointed out that the system that these groups would be departing would suffer as well. Legislators and administrators might eventually have to pick up the pieces of a decimated insurance system that is the result of weak regulatory oversight as a result of this legislation.

[2:30:12 PM](#)

MICHAEL BELL, Alaska Trucking Association, supported SB 241. He testified that workers' compensation is one of the largest concerns for trucking companies in Alaska that are faced with increasing rates that can only be attributed to market increases. Customer service has been replaced by "Pay it or find it elsewhere" attitude. He mentioned that small companies have to cut corners, operate without coverage, sell off portions of their assets, or close their doors. A change is needed now he said, as some of his members' rates exceed \$36 per \$100 of payroll.

CHAIR BUNDE said the committee shared his concerns about the costs of workers' compensation and wanted to do what it could to help. He then set SB 241 aside.

SB 307-LANDLORD REMEDIES; LATE FEE

[2:31:38 PM](#)

CHAIR CON BUNDE announced SB 307 to be up for consideration.

SENATOR RALPH SEEKINS said he could address his concerns in the Judiciary Committee if the Chair wanted to move the bill.

CHAIR BUNDE noted there were no questions or amendments.

SENATOR SEEKINS moved to report SB 307 from committee with individual recommendations and attached fiscal notes. Senators

Davis, Ben Stevens, Seekins and Bunde voted yea; Senator Ellis voted nay; and SB 307 moved from committee.

SB 272-MORTGAGE LENDING

CHAIR CON BUNDE announced SB 272 to be up for consideration.

SENATOR RALPH SEEKINS moved to adopt CSSB 272, version C, as the working document. There were no objections and it was so ordered.

AMY SEITZ, staff to Senator Wagoner, sponsor of SB 272, reviewed changes in the CSSB 272, version C, at length. She said that page 1 had a new Section 1 that added mortgage lenders and mortgage brokers into the definition of financial institution and that licensing requirement language was added on page 2 clarifying that this covered persons doing business from out of state. Section 06.60.020. Exemptions, exempts a person from getting a license for six or fewer loans every 12 months, although he is not exempt from the business duties and restrictions under this chapter. Language was moved from subsection 3 into subsection 2 that subjects a person to general supervision, regulations and examination. References to audit were deleted in both subsections. The word "kickback" on page 3 in subsection 7 was deleted. Subsections 10 and 11 under exemptions were deleted, but their ideas were put into new Section 06.60.025 that deals with employees and independent contractors and clarifies that even though they are not required to get their own separate licenses, they are still required to follow the rules under this chapter. The licensee would be responsible for any breaking of the rules.

MS. SEITZ said on page 4 new language was inserted in Section 06.60.030 (6) that clarifies what other information the department may be requiring for the application and in Section 06.60.040. Investigation: "license" was changed to "application fee". On page 5, Section 06.60.050, language was changed to say that persons applying for a dual license didn't have to pay a dual fee. Section 06.60.060. Bonding: language was changed in subsection (b) to say that either the department or a person could collect fees. Section 06.60.070 (a) language clarified that a complete application, the required bond, any fees or assessments had to be turned into the department before a license was granted or denied. "Disapproved" was changed to "deny an applicant to license" in subsection (b) on page 6 and several places throughout the bill.

MS. SEITZ continued saying that "approved" was changed to "granting" in Section 06.60.080 and that subsection (1) now included investigative costs so the applicant would have to pay all the required fees and the investigative costs. Subsection (2) added "or other principals" to the list of what the financial responsibility would be. Subsection (3) changed language from "disapprove" to "deny". Also on page 6, in Section 06.60.090 "disapprove" was changed to "denial". On page 7, she said the language was changed in Section 06.60.110 on how long the license would be in effect.

[2:41:10 PM](#)

CHAIR BUNDE interrupted to ask if everyone had received the CS.

MS. SEITZ replied that she had sent a copy to everyone she had a fax number for. She continued saying that language was clarified saying the department could not accept a transfer without the provisions in subsection (b) of Section 06.60.110. Section 06.60.210 changed an "application fee" to an "annual license fee" because the license is being discussed, not the application. Section 06.60.240 conformed with previous language to include "control of licensee" in the title. The change has to be written notice and 30 days instead of 10 days. This section also has a new subsection (b).

She said that Section 06.60.250. Records of licensee: had significant changes and added subsections (b) through (e). Section 06.60.260 (2) was rewritten to read more smoothly with the reference to the statute at the beginning instead of the end. Section 06.60.270. Disqualified persons added a member and a sole proprietor to the list of people who this paragraph deals with. In subsection (c) language was changed from "an officer, director, or other person" to "a person". Under (1) - what a disqualified person means - was changed to just reference "if a person is convicted of" because the Department of Law felt that would cover a better variety of people than previous language. It also added a new subsection, (c).

MS. SEITZ continued her review saying on page 10, Section 06.60.280 on minimum net worth had inadvertently been left in and that was deleted completely.

[2:45:05 PM](#) at ease [2:45:47 PM](#)

CHAIR BUNDE announced that he needed to go to another meeting and he would turned the gavel to Vice Chair Seekins who would

continue going through the new CS, but because of the new information, the bill would not move today.

MS. SEITZ continued her explanation of the CS saying on page 12, Section 06.60.340. Revocation and suspension of a license: had clarifying language in the beginning paragraph (A) and (C). It now reads "Investigation and examination." instead of "Examination of licensee." Subsection (a) also had some clarifying language, although the content wasn't changed.

Going to page 13, Ms. Seitz said, subsection (b) was added to Section 06.60.350, the false information section. On page 14, Subsection (6) was added under compliance with federal requirements in Section 06.60.410 that states "any other federal law or regulation" to cover everyone. On page 17, Section 06.60.500. Cease and desist orders: was shortened to one sentence. The old Section 06.60.510 was deleted and renumbered. Section 06.60.520. Responsibility of licensee for violations: and Section 06.60.540. Civil penalty for violations: were new. On the same page under "additional enforcement provisions, actions, and rights," subsection (c) was added. Section 06.60.600, Authorization of program administration fee: was new and dealt with which applications would apply to the \$10-dollar application fee; the old Section 06.60.600 became Section 06.60.610. Section 06.60.700. Application to Internet activities: clarifies that this chapter also applies to Internet businesses. On page 22, new Section 4 added a new subsection to AS 45.50.481. She concluded saying those were all the changes.

[2:51:16 PM](#)

SENATOR SEEKINS said he had a question about page 19 on Section 06.60.610 that said the department can contract with an agent to collect a fee, but it appeared to him (b) said if the agent collects the fee and doesn't turn them in, the effect is the same as if they hadn't been collected.

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MARK DAVIS, Division of Banking and Securities, Department of Commerce, Community & Economic Development (DCCED), explained that the state didn't want to be liable if an agent didn't turn in the fees and the sovereign immunity of the state could be used in this instance.

SENATOR SEEKINS said he thought it violated the age-old principal of "I am responsible for my agent." He said he would feel more comfortable having the state collect the fees, itself.

MR. DAVIS agreed with his concern in a regular business context, but explained that this is the same process used by the Alaska Department of Fish and Game (ADF&G) that collects fees by using agents.

SENATOR SEEKINS remarked that maybe they would have to go back and fix that, too.

MR. DAVIS said if he had a complaint that someone was not collecting fees, the bill is worded so that the department would investigate that complaint and then it would move to cease and desist on the license immediately.

SENATOR SEEKINS asked if he had any other comments.

MR. DAVIS replied first by thanking all the staff who had worked on the legislation. He thought it was the same bill in spirit, but now it was tightened up. He said it still allows for a variety of mortgage companies and supports the inclusion of mortgage companies as financial institutions, to make sure all the banking authority that his division has could be applied if necessary to these companies. Because Alaska has never regulated mortgage companies, there would be a bit of a learning curve, as it had with payday lending last year. He said that Alaska is the last state to not have any regulation and this gives it the ability to enforce federal law, a positive aspect. The exemptions are there because of federal law and regulation. However, if he found a violation from an exempt institution that was supervised by the office that controlled the currency, once the bill passes, he would be able to make a complaint to the Office of the Comptroller of the Currency (OCC) and right now he does not have that authority.

SENATOR SEEKINS asked if he didn't have the ability to forward a complaint now.

MR. DAVIS replied that he routinely forwards complaints to the OCC, but he couldn't say someone was in violation of any state law. The Government Accountability Office (GAO) this week issued a report saying the OCC consumer complaint process was improving, but more was needed. The GAO wanted to see more cooperation between the OCC and state banks and commissioners; he was assuming that would occur and this bill would help.

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SENATOR SEEKINS said he heard that Mr. Davis received around 20 complaints a year on mortgage lending and he asked if that was correct.

MR. DAVIS replied that the numbers were a little larger than that and they concerned national banks, independent mortgage companies and some state chartered institutions.

SENATOR SEEKINS looked at Section 06.60.020. Exemptions: on page 2 and asked how many exceptions had been the subject of complaints.

MR. DAVIS said he couldn't really guess, but he thought a substantial portion had complaints. He was not trying to endorse the exemptions. He explained that he and the Attorney General signed the amicus briefs opposing the OCC regulations in the Wachovia Connecticut case, but that lost in court.

SENATOR SEEKINS said he was worried about how many people would slip through the loopholes in this bill.

MR. DAVIS added that his division has a lack of direct supervision over a national bank that would run a mortgage company as a subsidiary or is an affiliate of a national bank holding company. However, once the bill is in place, if he received a legitimate complaint against such an entity, he could say it violates this law and that could be forwarded to the OCC.

SENATOR SEEKINS said he looked back to 2004 when Household Finance settled with 48 different state attorneys general for close to \$500 million and in January 2006, when Ameriquest settled with 49 state attorneys general for around \$3.25 million.

MR. DAVIS added that he participated in that last settlement, but it was difficult because Alaska doesn't have a mortgage statute.

SENATOR SEEKINS asked if Alaska participated in the Household Finance lawsuit.

MR. DAVIS replied that he didn't know.

SENATOR SEEKINS asked if these companies have independent contractors working with them.

MR. DAVIS replied that some companies operate by using independent contractors; a change he was pleased to see in the imputed liability section declares that once you are a licensee subject to this bill, you are talking about contractor licensing on page 4 and you would agree to have that employer or contractor accept liability for his actions much in the same way that a lawyer is responsible for the actions of a paralegal in his or her office.

SENATOR SEEKINS asked if those independent contractors could slip through the exemption statute.

MR. DAVIS replied that he didn't think they would, but that might be litigated.

SENATOR SEEKINS thanked him for his testimony and said he would hear further testimony from offnet.

[3:01:42 PM](#)

KEVIN BREELAND, President, Alaska Mortgage Bankers Association (AMBA), said he is a minority partner in Residential Mortgage in Anchorage. He said AMBA supported SB 272, but he noted that he was not working from the CS and AMBA had expressed the same concerns regarding the exceptions. The bill was not perfect, but it was a good start.

[3:04:00 PM](#)

JOHN CARMAN, Chair, Legislative Committee, Alaska Mortgage Bankers Association, said he is also a partner in Home State Mortgage. He believed that this bill was a very positive first step and was very needed in the mortgage industry. He prepared his first mortgage loan in Alaska in 1972 and he had seen the landscape change dramatically from one where 90 percent of the loans were done by regulated banks to one where 90 percent of the loans are prepared by unregulated entities.

He also pointed out that Alaska now has no mortgage statute. The strongest point of this bill is having some enforcement agency, in this case the Division of Banking, that will have the authority to look at lenders where 90 percent of the loans are done. His biggest fear for the bill is that it will be delayed and it was needed years ago, not years from now.

[3:07:20 PM](#)

DOUG ISAACSON, President, Gold Coast Mortgage, said he is also President of the Alaska Association of Mortgage Brokers, and that he appreciated the amount of work that had gone into the

rewriting of this bill, but he still has issues. He shared exemption concerns with the chair and Mr. Breeland. He thought some had identified this bill as a positive first step, but that was misleading if it wasn't done right. As the last state to take up licensing, Alaska has plenty of models to look at to see how they have performed in other states. If the statute is not done right the first time, he was concerned that the small brokers would be put out of business because of the costs incurred in the bill. For instance, a small broker like himself who closes under 10 loans a month still must pay the cost for the division to come to an outlying area such as Fairbanks and that can become very expensive.

He also took exception with the idea that 90 percent of the loans are done by unregulated agencies. In the Lower 48, his information states that it's only 70 percent, but in Alaska, the number is reversed and "It's the regulated agencies that do most of the loans in Alaska." They need to make sure there is opportunity for redress by the public.

MR. ISAACSON said the Alaska Association of Mortgage Brokers has been in favor of reasonable licensing that protects the public, provides proper oversight, and enhances professionalism of the industry. However, certain questions still arise; for example, when a small segment in Alaska is penalized with a \$10-fee. In Fairbanks most loans are closed through financially regulated institutions and they would not be charged this fee, but the small broker would be. That difference could be used by other realtors as a reason to not use his company.

MR. ISAACSON also pointed out that government loans do comprise a bulk of the mortgage process and it has restrictions on what fees can be paid for by the buyer. He wondered if there should be a discussion with the government agencies to see if that would even be allowed. If it's not allowed, he asked if that would remove that loan option from some borrowers putting them in a discriminatory situation - contradicting the purpose of this bill, which is to protect the public.

He asked why appraisers are elevated and others, like title companies, are third parties or why home inspectors and surveyors are disregarded and he asked why the state is becoming the collecting agent. He actually suggested deleting the fee collection section.

MR. ISAACSON also asked what happens if the appraiser doesn't provide a competent report and a new one has to be ordered and

why would it take 90 days for the division to make a determination if a background check, including FBI records, could be made on the Internet in 72 hours. He thought 30 days was a more reasonable timeframe.

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One last issue Mr. Isaacson questioned was what authority the state has to monitor compliance with federal regulations and if it has the authority, would it need more than the projected two to three people the division is saying it needs. Would it have to supply proper training, supervision and competency for monitoring the federal requirements. So, he was concerned that this bill was not truly revenue neutral. He concluded that this bill was going in the right direction, but he asked the committee to consider it along with his testimony.

[3:16:03 PM](#)

LAURIE HOLTE, officer of Residential Lending Mortgage Operations, Alaska Housing Finance Corporation (AHFC), supported the concept of the proposed legislation. She said that AHFC is not a direct source of residential loans, but it offers a variety of loan programs that are aimed at increasing home ownership primarily for low-to-moderate income individuals and families. The programs are made available to Alaskan residents through 19 approved lenders statewide. She said:

Alaska is the only remaining state in the Union that does not require licensing of the mortgage lending community. A recent review of the deed of trust recording statistics indicate that not counting the many recognized lenders that do operate under supervision, regulation, or examination by state or federal regulatory body or agency, over 125 lenders representing over \$1.4 billion in loan activity for calendar year '05 are operating in the state without supervision. A significant number are Internet lenders. The \$1.4 billion is considered substantial in comparison to total estimated activity of approximately \$4.4 billion. AHFC applauds the efforts of the mortgage lending community in its efforts to provide needed protection for Alaska's home-buying public and regulatory oversight of its lenders. Thank you very much; that ends my comments.

[3:18:22 PM](#)

BARBARA WORLEY, Director of Lending, Anchorage Neighborhood Housing Services (ANHS), said it is a private non-profit

organization that provides outreach services to the underserved public - to people who most likely would not be able to realize home ownership without its assistance. She said the trend is for non-profits to be highly scrutinized especially under the Sarbanes-Oxley Act that requires better accounting and control for non-profits. Because of its funding sources, ANHS is already subject to monitoring and audits by the Department of Treasury, HUD, Alaska Housing, Neighbor Works America, the IRS, the Municipality of Anchorage, and it is required to have an annual independent audit and single audits on federal and state grants. She felt that ANHS is already regulated enough as its financials are also open to public scrutiny based on public funding sources and certifications it holds as a non-profit. She informed them that ANHS is also sits on the "Don't Borrow Trouble Alaska Anti-Predatory Lending Campaign" board, which is seeing a steady increase in complaints about out-of-state and a few local lenders.

MS. WORLEY said she was concerned about the exemptions section (b) on page 2 that states a qualified individual means an individual whose income is 60 percent or less of the median income in the United State, who is over 60 years of age, or who has a disability. But she said ANHS also serves Alaskans who are more than 60 percent up to 115 percent of the area's median income and Native Corporations or housing authorities serve Native folks who are eligible to receive their Native housing funds. She was concerned about that 60 percent. In closing she stated:

I am in favor of responsible legislation that would require mortgage licensing without limiting the access to affordable loan programs to the underserved segment of the public and feel that we're already regulated and by adding an additional layer of regulation, it would cause less services to be provided with more funding spent on regulation and which could result in an additional barrier to affordable housing.

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KEN GAIN, Secretary Treasurer and Legislative Chairman, Independent Lenders of Alaska, said he is also president of Cash Now Financial. He said he has already testified and sent a lengthy letter to the committee responding to some of the issues raised. He wanted to be available for questions to that letter and to make some minor points. He believed that Doug Isaacson was incorrect in how the \$10 application fee would be applied

and said he thought the fee would be charged on all residential loans whether or not the entity was licensed.

MR. GAIN said in his letter of March 15 that he was a small company that had experienced examinations by the division and felt if your records are in reasonable order and you're not committing fraud, it doesn't take them very long to do one. He calculated the license fee, bond, and the loss of one or two days per year for an examination would cost about \$1,500 a year and he didn't think that was excessive. He said no one has testified that there shouldn't be a bill. This is a good bill and it is supported by several of the organizations that will be regulated by it, as well as the Division of Banking and Securities that will have to administer it. People keep raising questions, and while they may be well-meaning, it may have the effect of delaying the bill so there won't be any tools to address the problem for several years.

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JOHN MARTIN, Alaska Mortgage Solutions, Anchorage, said he is a small lender and broker and was a member of several other mortgage organizations. He said he just got the recent changes to the bill and he wanted the chance to review them and come back to the committee with his comments.

[3:29:25 PM](#)

SENATOR SEEKINS thanked him for his comments and indicated that there was no further testimony and that SB 272 would be held in committee. There being no further business to come before the committee, he adjourned the meeting at [3:31:07 PM](#).