

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

February 13, 2008

3:05 p.m.

MEMBERS PRESENT

Representative Kurt Olson, Chair
Representative Mark Neuman, Vice Chair
Representative Carl Gatto
Representative Gabrielle LeDoux
Representative Jay Ramras
Representative Robert L. "Bob" Buch
Representative Berta Gardner

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 289

"An Act exempting employers from paying unemployment tax for crewmembers on fishing vessels that respond or prepare to respond to, or that prepare for or engage in an emergency or practice drill response to, an oil spill; and providing for an effective date."

- MOVED CS HB 289(FSH) OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 24

Opposing any law that would establish a federal insurance regulatory system.

- MOVED HJR 24 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 289

SHORT TITLE: EMPLOYMENT TAX EXEMPTION: SPILL RESPONSE

SPONSOR(S): REPRESENTATIVE(S) HARRIS, SEATON

01/04/08	(H)	PREFILE RELEASED 1/4/08
01/15/08	(H)	READ THE FIRST TIME - REFERRALS
01/15/08	(H)	FSH, L&C
01/23/08	(H)	FSH AT 8:30 AM BARNES 124
01/23/08	(H)	Heard & Held

01/23/08 (H) MINUTE(FSH)
01/28/08 (H) FSH AT 8:30 AM BARNES 124
01/28/08 (H) Moved CSHB 289(FSH) Out of Committee
01/28/08 (H) MINUTE(FSH)
01/30/08 (H) FSH RPT CS(FSH) NT 4DP
01/30/08 (H) DP: HOLMES, EDGMON, JOHANSEN, SEATON
02/13/08 (H) L&C AT 3:00 PM CAPITOL 17

BILL: HJR 24

SHORT TITLE: OPPOSING FEDERAL INSURANCE REGULATION
SPONSOR(S): REPRESENTATIVE(S) COGHILL

05/09/07 (H) READ THE FIRST TIME - REFERRALS
05/09/07 (H) L&C
02/13/08 (H) L&C AT 3:00 PM CAPITOL 17

WITNESS REGISTER

REPRESENTATIVE PAUL SEATON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as a joint prime sponsor of HB 289.

ROCHELLE VAN DEN BROEK, Executive Director
Cordova District Fishermen United (CDFU)
Cordova, Alaska

POSITION STATEMENT: Testified in support of HB 289.

TRACY MAYHEW, Port Representative
Seafarers International Union (SIU)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 289.

JOHN DEVENS, Ph.D., Executive Director
Prince William Sound Regional Citizens Advisory Commission
(RCAC)
Cordova, Alaska

POSITION STATEMENT: Testified in support of HB 289.

PAULA SCAVERA, Special Assistant
Office of the Commissioner
Department of Labor & Workforce Development (DLWD)
Juneau, Alaska

POSITION STATEMENT: Testified on HB 289.

KAREN LIDSTER, Staff

to Representative John Coghill
Alaska State Legislature
Juneau, Alaska.

POSITION STATEMENT: Presented HB 289 on behalf of the prime sponsor, Representative John Coghill.

JEFFREY TROUTT, Deputy Director
Division of Insurance
Department of Commerce, Community, & Economic Development
(DCCED)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HJR 24.

JOHN GRUMMETT, President
Alaska Independent Insurance Agents & Brokers, Inc.(AIIAB);
Vice-President, Shattuck & Grummett, Inc.
Juneau, Alaska

POSITION STATEMENT: Testified in support of HJR 24.

ACTION NARRATIVE

CHAIR KURT OLSON called the House Labor and Commerce Standing Committee meeting to order at [3:05:17 PM](#). Representatives Gatto, Buch, Gardner, and Olson were present at the call to order. Representatives Neuman, LeDoux, and Ramras arrived as the meeting was in progress.

HB 289-EMPLOYMENT TAX EXEMPTION: SPILL RESPONSE

[3:05:33 PM](#)

CHAIR OLSON announced that the first order of business would be HOUSE BILL NO. 289, "An Act exempting employers from paying unemployment tax for crewmembers on fishing vessels that respond or prepare to respond to, or that prepare for or engage in an emergency or practice drill response to, an oil spill; and providing for an effective date." [Before the committee was CS HB 289(FSH)].

REPRESENTATIVE PAUL SEATON, Alaska State Legislature, speaking as one of the joint prime sponsors, stated that commercial fishermen paid solely by the catch are exempt from unemployment insurance under state and federal law. However, commercial fishermen who are paid by any other method are considered employees and are not exempt. This bill would exempt commercial fishermen who participate in oil spill response training and duties from having to pay unemployment taxes so long as the

duration is seven days or less. This bill stems from a key element of the federal Oil Pollution Act of 1990 (OPA 90). Oil spill contingency plans provide for vessels of opportunity and fishing vessels that contract with the oil spill response organization to form the basis for an oil spill response. The crew must undergo annual training to maintain their hazardous materials operator cards. Although the crew is paid for the training, their wages are outside the percentage of the catch. Thus, the oil spill training wages are subject to the unemployment insurance tax. Since annual training averages one day, or eight hours a year, the person will never qualify for unemployment insurance, he opined. Therefore, HB 289 would exempt vessel owners and crew so long as the training does not exceed seven days of training. In the case of a major spill, the crew would likely work more than seven days, he opined. In those instances the vessel owners and crew would be subject to the unemployment, he noted.

REPRESENTATIVE SEATON pointed out that the vessel owners or crew may also opt into the unemployment insurance program. He noted that there has not been any opposition to HB 289. The committee packet includes an email exchange from the federal counterpart of the Department of Labor & Workforce Development relating that excluding workers from the state unemployment tax for temporary services will not pose any federal violations. He characterized HB 289 as a bill needed to maintain an oil spill response capability.

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REPRESENTATIVE GATTO pointed out that those who do not pay the unemployment tax are not eligible to receive benefits. He inquired as to whether it is possible for someone to abuse the system. He further inquired as to how often over a one-month period, could a person work fewer than seven continuous days.

REPRESENTATIVE SEATON noted the difficulty for vessel operators to maintain a crew, which is such that a vessel operator would not likely switch out crew to take advantage of the exemption. He stated that HB 289 would only affect commercial fishermen and not crew on tenders, since the tender crewmen or tugboat operators are paid employees and not subject to earning a percentage of the catch.

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REPRESENTATIVE GATTO inquired as to whether each training period is considered separately, and further inquired as to how HB 289 would apply if there were several training sessions.

REPRESENTATIVE SEATON answered that when a crew member worked more than seven days in oil response training, the employer would automatically submit the unemployment tax paperwork. He said he hasn't considered instances in which crew might only require one additional day of training.

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REPRESENTATIVE BUCH asked how often oil spill response training is offered.

REPRESENTATIVE SEATON answered that training time varies and he explained the oil spill response training times: In Cook Inlet all participants are required to have 1-day training, approximately 12 vessels participate, and the remaining 100 do not; in Prince William Sound the training is for approximately 1 week each year, with 50 core vessels participating; a second group trains for a shorter period of time; yet another group comprises the "vessels of opportunity" who sign up and agree to certify crews, and their training is similar to Cook Inlet vessels. While there are several layers of oil spill response training, none of the training exceeds seven continuous days, he noted.

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REPRESENTATIVE GARDNER expressed concern with respect to the trigger of "seven continuous days" such that if training were interrupted due to a storm, the training period might exceed seven days. She asked the sponsor to consider amending the language in HB 289 to limit the specific number of hours of training that a vessel owner or crew could participate in such as 56 hours, before he/she would be required to pay the unemployment tax.

REPRESENTATIVE SEATON explained the purpose for designating seven continuous days is to ensure that if there was a massive response to a spill that the vessel owner or crew would be subject to the unemployment tax. Since training offered does not exceed seven days, and compensation is limited, the "seven continuous days" satisfies the intended purpose.

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ROCHELLE VAN DEN BROEK, Executive Director, Cordova District Fishermen United (CDFU), related that the CDFU supports HB 289. The CDFU represents over 1,000 commercial fishermen in Prince William Sound, including over 150 vessel owners that participate in oil spill response training, she noted, and are trained as professional oil spill responders. The vessel operators are required to hire crew members several times a year to participate in training activities, but the training is limited to a few days a year. She surmised that the individual earnings for each crew member are less than \$700 annually. Last year, vessel owners received letters notifying them oil spill response training is subject to the unemployment insurance tax. Many vessel owners found the paperwork and tax activities onerous and threatened to abandon the training activities. Since the paperwork and tax collection places a disproportionate burden on vessel owners, CDFU lobbied for change. In the wake of the Exxon Valdez oil spill, the state needs to ensure adequate vessel owners and crew trained to respond in the event of another major oil spill, she opined.

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TRACY MAYHEW, Port Representative, Seafarers International Union (SIU), stated that the SIU represents merchant mariners on large ocean going vessels. The SIU supports HB 289, she related. The contingency plan relies on commercial fishermen and vessel owners' participation. In fact, if vessel owners and commercial fishermen do not participate in oil spill response efforts, the contingency plan could be held noncompliant, she cautioned. She said, "Who better to protect Alaska waters than Alaskans." She stressed that the contingency plan needs commercial fishermen involved consistently to provide for a well trained oil response team. She offered that SIU supports the training for crew members and vessel owners. She said that HB 289 would create an exemption from unemployment tax. However, the absence of an exemption would create a disincentive for vessel owners and commercial fishermen to participate in this vital program. It would also put other Alaska livelihoods at risk, she opined.

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JOHN DEVENS, Ph.D., Executive Director, Prince William Sound Regional Citizens Advisory Commission (RCAC), stated that the RCAC was created after the Exxon Valdez oil spill to prevent accidents and ensure improved cleanup if another oil spill happens. With respect to cleanup, fishing vessels play a vital

role in the system. This bill is an important measure to ensure that Alaska's fishing vessel program continues to function as it should. Last summer, the Department of Labor & Workforce Development (DLWD) informed fishing vessel captains that they were required to collect unemployment tax on crew members engaged in oil spill response training, who are exempt from unemployment coverage during normal fishing activities. The RCAC held discussions with vessel captains and became concerned that many of them might drop out of the program due to the recordkeeping and collection of the unemployment tax. This bill would provide a remedy by allowing an exemption for vessel owners and commercial fishermen involved in training [of limited duration] for oil spill response. He related that the Prince William Sound RCAC urges the committee to pass HB 289. He characterized HB 289 as "a good thing that everybody favors."

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REPRESENTATIVE BUCH referred to a letter from Mr. Devens, with respect to questions on HB 289. He inquired as to whether the questions have been addressed in the bill.

DR. DEVENS offered that he was misinformed at the time he wrote the letter. He offered that he was under the assumption the matter of unemployment tax had to be handled through the U.S. Department of Labor, but he was mistaken. He said he subsequently wrote to the DLWD and rescinded his earlier letter.

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CHAIR OLSON, after first determining no one else wished to testify, closed public testimony on HB 289.

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REPRESENTATIVE BUCH inquired as to whether all the questions with the U.S. Department of Labor have been answered with respect to the unemployment tax in HB 289.

PAULA SCAVERA, Special Assistant, Office of the Commissioner, Department of Labor & Workforce Development (DLWD), referred to an e-mail exchange in the committee packet between Robert Johnston, Supervisor, State Conformity and Compliance Team, U.S. Department of Labor and Mr. Berkowitz, Director, Pacific Coast Operations, Transportation Institute, Seattle, Washington. Mr. Johnston reviews all state laws and regulations to ensure that

they comply with federal law, she noted. She read into the record:

Mr. Berkowitz, I have reviewed the draft legislation that you provided regarding the Alaska UI coverage issue for fishermen participating in oil spill exercises/drills/response. As drafted, it does not appear to create any issues with Federal unemployment compensation law and as such will not endanger the certification of Alaska's UC law under FUTA.

MS. SCAVERA noted that FUTA refers to the Federal Unemployment Tax Act.

[3:31:09 PM](#)

REPRESENTATIVE GARDNER moved to report the CSHB 289(FSH) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 289(FSH) was reported from the House Labor and Commerce Standing Committee.

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The committee took an at-ease from 3:31 p.m. to 3:37 p.m.

HJR 24-OPPOSING FEDERAL INSURANCE REGULATION

[3:37:47 PM](#)

CHAIR OLSON announced that the final order of business would be HOUSE JOINT RESOLUTION NO. 24, Opposing any law that would establish a federal insurance regulatory system.

KAREN LIDSTER, Staff to Representative John Coghill, Alaska State Legislature, explained that this resolution opposes attempts by Congress to bifurcate insurance regulation between the states and the federal government. The "Optional Federal Charter" has been introduced in both chambers of the U.S. Congress, she said. She explained the history of federal regulation of insurance. She said that to avoid such a move by Congress to enact federal regulation of insurance, the legislature passed HB 439 unanimously in May 2006. She related that HB 439 added Alaska to the Interstate Insurance Product Regulation Compact. This commission, comprised of 30 states, serves as a single point of filing for specified insurance products such as life insurance, annuities, and disability income, and established uniform national standards for those

products. This resolution affirms state's rights, of which the prime sponsor is a strong proponent, she opined. This resolution affirms Alaska's opposition to the federal government attempting to supersede state regulation of insurance, she stated. She further opined that it would be best to keep insurance providers under state regulations. She urged the committee to support HJR 24.

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REPRESENTATIVE LEDOUX asked for an explanation of a clause on page 2, line 21, of HJR 24, which read:

WHEREAS a federal insurance regulatory system would cause a loss of jobs; and

[3:41:21 PM](#)

REPRESENTATIVE NEUMAN inquired as whether the "**FURTHER RESOLVED**" clause means essentially that Alaska opposes "more bigger, bloated federal government." He referred to page 2, line 27-28, of HJR 24, which read:

FURTHER RESOLVED that the Alaska State Legislature opposes any law that would establish a federal insurance regulatory system or otherwise alter the McCarran-Ferguson Act.

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REPRESENTATIVE GARDNER inquired as to whether the "Optional Federal Charter" means that it is optional for states to participate.

MS. LIDSTER answered that it would be optional, and that within the state you may have some insurance agents that have chosen to fall under the federal regulations, but those who choose not to use the federal guidelines would fall under state regulations.

REPRESENTATIVE GARDNER inquired as to whether individual agents have the option to choose either state or federal regulations as guidelines.

MS. LIDSTER answered yes, individual agents can select either state or federal regulations.

CHAIR OLSON clarified that it would be companies and producers, and not agents.

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JEFFREY TROUTT, Deputy Director, Division of Insurance, Department of Commerce, Community, & Economic Development (DCCED), related the division's strong support for HJR 24. For over 100 years state regulation has served consumers in the country and served it well, he opined. Expertise has been developed in state insurance departments nationwide. Part of the reason for this is that state regulations are closer to the people, he surmised. He noted that in fiscal year 2006, the division closed over 330 consumer complaints, which resulted in a return of over \$500,000 to consumers wrongfully denied claims. He further opined that the state can also monitor solvency issues. The division can also respond more quickly to update its statutes based on market conditions or uniformity. He noted that the division works with counterparts in other states to streamline licensing. While the process never works as fast or efficiently as the division would like, there is no guarantee that the federal process would be an improvement. He related some concerns the division would have with an optional federal charter, such as that federal regulations have not been developed and there is no way to know what might be included, or whether items such as mandatory benefits would be covered in an optional federal charter. The division and agents rely on the abundance of insurance case law in each state and with the federal regulations, federal courts would have jurisdiction. Additionally, state regulation allows for local control over such things as investigations, prosecutions, and financial and market examinations.

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MR. TROUTT offered that the division strives for uniformity through the National Association of Insurance Commissioners (NAIC). Alaska would have an insignificant voice as one of 53 jurisdictions in a federal regulatory system, which is a huge bureaucracy, he opined. He related concern about taxation revenues. Under the bill before Congress whether the state would continue to have the ability to tax premiums, but he expressed concern whether that would continue. He also offered that the idea of a federal charter has been considered and supported by some within the industry since it is more complex to understand regulations and licensure in 50 separate jurisdictions. State borders create some barriers, he opined,

but Alaska has made it as unobtrusive as possible for businesses while still maintaining consumer protections.

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REPRESENTATIVE GARDNER referred to page 2, line 18, of HJR 24, and inquired as to the definition of "residual market programs." She further asked whether the taxes and fees currently paid to the state would result in decreased premiums if the state were under federal regulations.

MR. TROUTT explained that the division charges a fee for licensees to cover the administrative costs for the program. All states, including Alaska, collect consumer premium taxes. A federal charter would create a system similar to the banking industry and most large companies would likely elect to fall under the federal charter because it is simpler for large companies to follow federal rules. However, in doing so, consumer protections could erode and consumers would be left with little recourse, he opined, because the insurance would fall under federal jurisdiction.

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REPRESENTATIVE GARDNER inquired as to whether it would reduce consumers' premium costs.

MR. TROUTT said he doubted that the federal government could reduce premiums and regulate for less cost. While he said he has no proof, he could not think of any instance in which cost is reduced due to federal management or regulation.

REPRESENTATIVE GARDNER inquired as to any benefit to Alaskans under an optional federal charter.

MR. TROUTT answered that he did not think so. He related that the division has streamlined the process for companies to compete in Alaska. He surmised that increased competition could result in lowered premiums, but he did not see that happening under an optional federal charter since Alaska is a small market.

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REPRESENTATIVE LEDOUX referred to page 2, line 21, of HJR 24, and inquired as to why a federal regulatory system would cause a loss of jobs.

MR. TROUTT surmised one reason might be job migration.

CHAIR OLSON interjected that some insurance companies that are domiciled in Alaska could move outside and consolidate.

MR. TROUTT noted his agreement. He said that it is likely that companies would find it easier to buy other companies and consolidate in major metropolitan areas such as Washington D.C. or regionally such as Sacramento, California. In Alaska, it may result in the loss of independent companies due to buyouts.

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REPRESENTATIVE LEDOUX inquired as to why the agents and brokers agree with the companies.

MR. TROUTT answered he did not know. He speculated that independent companies would likely oppose an optional federal charter.

CHAIR OLSON pointed out that he serves as a member of the National Conference of Insurance Legislators (NCOIL), comprised of Labor and Commerce Committee chairs nationwide. He related that NCOIL supports HJR 24 and it is one of its highest priorities. He surmised that the larger companies would have an advantage under federal regulation, but that smaller companies, agents, and brokers would not.

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JOHN GRUMMETT, President, Alaska Independent Insurance Agents & Brokers, Inc.(AIIAB); Vice-President, Shattuck and Grummett, Inc., said that as members of the AIIAB, agents represent the public with respect to consumer protection. He referred members to a letter from the AIIAB in the members' packets, and read the following: [original punctuation provided]:

The Alaska Independent Insurance Agents & Brokers (AIIAB) would like to submit the following comments in support of HJR 24.

AIIAB is one of the oldest and largest producer trade associations in Alaska. We represent over 360 independent business owners, agents, brokers and employees in the State of Alaska who sell and service the personal and business insurance needs of

consumers. Independent agents and brokers provide a professional service to their clients regarding their property, casualty, life, health, employee benefit plans and retirement plans.

State Based Consumer Protections Must Remain Intact

Alaska in particular has a difficult insurance environment at best. Alaska struggles to find adequate markets and the needs of Alaskan consumers vary greatly from consumers of other states. State Regulators understand the nuances of their own marketplace much better and can respond to market demands much quicker than a Federal Regulator. It is imperative that the consumer protections that the state regulation of insurance provides remains intact. The creation of an Optional Federal Charter, we believe would decrease the current consumer protections.

Support for Targeted Federal Legislation

AIIB does support streamlining and modernizing the State system of insurance regulation through targeted and limited federal legislation which would act as "tools" to help establish reciprocity or uniformity to create interstate consistency. This would allow for a system that responds quicker to industry demands yet maintains the State based consumer safeguards which are critical. Examples of limited federal legislation that have worked include:

- Surplus Lines and Reinsurance Reform
- Agent and Company Licensing Reform
-

Federal Regulation is not the Answer

As stated previously, we do agree that there is a need for specific targeted regulation to improve efficiencies and uniformity in insurance regulation. It is our belief that an "optional" federal charter is not the answer and would increase confusion for both consumers and the agents and brokers that service consumers. AIIB has many reasons for opposing Federal oversight of the Insurance Industry, here are just a few:

- Local insurance regulation works best for consumers and the state system ensures a level of responsiveness to consumers that could not be matched at the federal level.

- Agents and brokers would be required to become experts on both the state and federal regulations which apply to insurance.
- It would create a confusing environment whereby independent agents may have to deal with multiple insurance companies that could choose to follow state regulation or federal legislation. This would force agents who choose to be state licensed to know and understand a federal regulatory system they may prefer to not deal with but have no choice.
- Small insurance companies could be at a competitive disadvantage against larger companies that could afford to switch between the two systems. The smaller companies could get stuck in an unfavorable regulatory environment that they can't afford to get out of.
- By eliminating or drastically limiting regulatory review of policy language for the small commercial and personal lines markets, Federal Regulation would leave consumers unprotected.
- Federal Regulation would have a negative impact on revenue Alaska collects through a loss of licensing fees and could threaten state premium tax revenue - critical funding relied upon by the states for various purposes.

Federal Regulatory Oversight is not the answer and would only provide confusion to our consumers, brokers and agents. We urge you to support HJR 24.

MR. GRUMMETT pointed out that the premium tax collected was over \$46 million last year, which is deposited into the state's general fund.

CHAIR OLSON offered that the premium tax is the second largest source of tax revenue to the state.

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MR. GRUMMETT noted the following organizations have adopted similar resolutions or have opposed federal insurance chartering: National Governor's Association, The National Conference of Insurance Legislators, the National Council of State Legislatures (NCSL), The Council of State Government (CSG), and the National Association of Insurance Commissioners

(NAIC). Texas adopted a Senate concurrent resolution last year and many other states are considering similar resolutions, he offered.

[4:09:12 PM](#)

REPRESENTATIVE GATTO inquired as to whether insurance companies help individuals who have issues with an insurance company such as a person who files a claim and is denied by the insurance company.

MR. GRUMMETT explained that if the client has a problem, his company would recommend the client file an unfair practices complaint with the Division of Insurance.

REPRESENTATIVE GATTO opined that consumers generally don't want the federal government involved. He inquired as to Mr. Grummett's involvement if an individual complained about unfair treatment.

MR. GRUMMETT answered that his company's involvement would be limited. In fact, he said he's never had a client complain that he/she was not treated fairly.

REPRESENTATIVE GATTO posed a scenario in which an individual complained to Mr. Grummett about an ongoing issue with a major insurance provider.

MR. GRUMMETT said he would refer the individual to the Division of Insurance. He further advised that his company can only be involved with his company's client since companies only represent one agent or broker, but he can refer the person to the division. He offered that he has previously referred individuals to the division.

[4:12:13 PM](#)

MR. GRUMMETT, in response to Representative LeDoux, explained that he represents the person buying the insurance, not the person selling the insurance. He opined that it is his job to get the best coverage for the best price for his clients. He further opined that competition ensures that will happen since customers shop for insurance.

MR. GRUMMETT, in response to Representative LeDoux, answered that his company sells commercial, auto, building, and business insurance on behalf of multiple insurers.

4:13:33 PM

CHAIR OLSON, after determining no one else wished to testify, closed public testimony on HJR 24.

4:13:57 PM

REPRESENTATIVE GARDNER moved to report HJR 24 out of committee with individual recommendations and the accompanying fiscal notes. Representative Gardner commented that she could not see any benefit to consumers to give small and large insurance companies a choice to select the federal regulatory system. There being no objection, HJR 24 was reported from the House Labor and Commerce Standing Committee.

4:15:09 PM

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:15 p.m.