

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

February 13, 2012

3:21 p.m.

**MEMBERS PRESENT**

Representative Kurt Olson, Chair  
Representative Craig Johnson, Vice Chair  
Representative Steve Thompson  
Representative Lindsey Holmes  
Representative Bob Miller

**MEMBERS ABSENT**

Representative Mike Chenault  
Representative Dan Saddler

**COMMITTEE CALENDAR**

HOUSE BILL NO. 274

"An Act relating to the exemption of certain acts and transactions from the provisions dealing with unfair methods of competition and unfair or deceptive acts or practices."

- MOVED HB 274 OUT OF COMMITTEE

HOUSE BILL NO. 235

"An Act relating to certain vehicles, including trailers; and relating to motor vehicle dealer advertising, motor vehicle dealer sales of used motor vehicles, motor vehicle sales contracts, motor vehicle service contracts, and motor vehicle sales financing."

- BILL HEARING CANCELED

**PREVIOUS COMMITTEE ACTION**

BILL: HB 274

SHORT TITLE: UNFAIR TRADE PRACTICES

SPONSOR(S): REPRESENTATIVE(S) HOLMES, OLSON

01/17/12	(H)	PREFILE RELEASED 1/13/12
01/17/12	(H)	READ THE FIRST TIME - REFERRALS
01/17/12	(H)	L&C
02/13/12	(H)	L&C AT 3:15 PM CAPITOL 106

## **WITNESS REGISTER**

JAMES WALDO, Staff  
Representative Lindsey Holmes  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented HB 274 on behalf, Representative Lindsey Holmes, a joint prime sponsor of HB 274.

CLYDE (ED) SNIFFEN, JR., Senior Assistant Attorney General  
Commercial/Fair Business Section  
Civil Division (Anchorage)  
Department of Law (DOL)  
Anchorage, Alaska

**POSITION STATEMENT:** Testified and answered questions during the discussion of HB 274.

## **ACTION NARRATIVE**

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**CHAIR KURT OLSON** called the House Labor and Commerce Standing Committee meeting to order at 3:21 p.m. Representatives Holmes, Miller, Johnson, and Olson were present at the call to order. Representative Thompson arrived as the meeting was in progress.

### **HB 274-UNFAIR TRADE PRACTICES**

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CHAIR OLSON announced that the only order of business would be HOUSE BILL NO. 274, "An Act relating to the exemption of certain acts and transactions from the provisions dealing with unfair methods of competition and unfair or deceptive acts or practices."

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REPRESENTATIVE LINDSEY HOLMES, Alaska State Legislature, prime joint sponsor, stated HB 274 is a consumer protection bill that would clear up a potential ambiguity in the Alaska's Consumer Protection Act (CPA). This bill would clarify that the state can step in and protect Alaskan consumers when the federal government is not pursuing enforcement of prohibited conduct. This bill would make it clear that the state and its citizens are not without remedy due to a misapplication of what is known as the safe harbor provision in the consumer protection laws.

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JAMES WALDO, Staff, Representative Lindsey Holmes, Alaska State Legislature, on behalf of Representative Lindsey Holmes agreed with the sponsor's summary of the bill. He reiterated that Alaska's consumer protection laws should be able to protect Alaska and its citizens in instances in which the federal government is unable or disinterested in enforcing laws that overlap with the state's Consumer Protection Act (CPA). This bill would remove an exemption for federal law contained in the CPA. Currently, an exemption in the CPA says that if conduct is covered by another state law, or federal law, or regulation, a party cannot bring an action using the CPA. He related that the CPA works well with state law, since the legislature and the governor are in control of state law. Additionally, if the state decided to ramp up enforcement or scale it back, it could do so; however, the state has less control with respect to federal regulation or prohibitions.

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MR. WALDO highlighted that little can be done when the federal government decides to handle a case or preempts the state. In some instances, the federal government may leave it up to states to enforce certain conduct. He highlighted that the problem arises when the federal government expresses some interest, yet has not preempted the state nor taken any action. The joint sponsors want to make the state's position clear, that it is willing and able to pursue enforcement when bad conduct happens. The current exemption in law leaves the enforcement jurisdiction somewhat unclear. In some instances a federal judge has not issued a ruling, but may have implied that the exemption would apply in certain cases. He offered one remedy is to remove from the CPA the exemption for federal law. In instances in which the federal government preempts the state, little can be done. Thus in the gray areas, the proposed change would clearly indicate the state has the authority to enforce the CPA. He gave an example in which a consumer identifies troubling conduct from an insurance company, and concluded that the Division of Insurance (DOI) would proceed to investigate the matter. However, in areas in which jurisdiction is unclear, or in other gray areas, this bill would empower the DOL to enforce the CPA. In closing, he summarized that under the bill, the state could move forward to enforce the law when no other remedy is available and it would clarify that the state has the right to do so.

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REPRESENTATIVE JOHNSON referred to page 1, line 6, and asked for the effect of removing the language, "or regulation."

MR. WALDO asked for further clarification.

REPRESENTATIVE JOHNSON suggested that removing the language "or regulation" from the bill would be to only refer to statute.

MR. WALDO suggested that the Department of Law could better answer this. He offered his belief that removing the reference to regulation might create some difficulty in instances in which state regulations have already been promulgated, such as with the Division of Insurance (DOI). He emphasized the importance of relying on specific state laws govern that conduct - in this case the DOI - rather than relying on the DOL since the DOI's enforcement would be preferable to enforce the CPA.

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REPRESENTATIVE JOHNSON said he is comfortable if the regulations adhere to the intent of the statute. He said, "...they don't always and that is the concern that I have."

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CLYDE (ED) SNIFFEN, JR., Senior Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Anchorage), Department of Law (DOL), stated his duties include the enforcement of the CPA. He related that the DOL has experience with HB 274. He characterized this bill as an important one for his office for the reasons Mr. Waldo mentioned. He said the state's CPA covers a lot of conduct. The DOL does its best to enforce the CPA against wrongdoers, whether the wrongdoers are in the state or outside the state. This bill pertains to conduct regulated or prohibited by federal or state law. As Mr. Waldo explained, when a federal statute or regulation limits certain conduct, enforcement is off limits to the DOL, even when the federal government decides not to enforce the federal law. This bill would remove the reference to federal law in the exemption statute. Thus the state could still take action even if the federal government decided not to pursue enforcement of conduct regulated and prohibited by federal law. He offered numerous instances exist in which the federal government recognizes the state's authority to enforce certain laws jointly

with the federal government. However, it becomes difficult for the DOL to take action when the federal government decides not to pursue a matter. He characterized this bill as a means to strengthen the DOL's statute and to give the DOL another tool to use to take action and not leave the state without a remedy. He concluded by offering the DOL's support for HB 274.

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REPRESENTATIVE JOHNSON asked what would happen in an instance in which the regulation was counter to the statute.

MR. SNIFFEN, in response to Representative Johnson's suggestion to Mr. Waldo, said that removing the reference to regulation in the bill would be fine. He offered his belief that when conduct is regulated by statute by removing the reference to regulation would broaden the scope of the DOL and allow the department to pursue action in a number of cases. He understood the concern, with respect to regulations, which may expand beyond the scope of the statute and may give an agency more authority than the legislature intended. He cautioned that changing the language to collectively include statute and regulation could limit the DOL's authority to enforce the CPA since many statutes do not have corresponding regulations to interpret or enforce the statute. He reiterated that some issues may arise. He summarized that removing the reference to regulation would expand the DOL's authority and give his office discretion to take action in certain areas, but combining statute and regulation in the proposed paragraph would be more restrictive.

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CHAIR OLSON related his understanding that the DOL has oversight over any state agency or division.

MR. SNIFFEN clarified that conduct is regulated by statute in some agencies, such as the DOI or the Division of Corporations, Business, and Professional Licensing (DCBPL), which are agencies with statutes and regulations that specifically prohibit certain conduct. These agencies have remedies in their statutes for misconduct and the agencies can take action against violators, including issuing fines or imposing injunctive orders. He explained that in those cases, the DOL does not have jurisdiction to enforce the conduct, but rather it is up to the state agency to enforce its statute or regulation.

CHAIR OLSON asked whether that would be true even if the agencies had exceeded their scope of authority.

MR. SNIFFEN answered that the specific question of scope of authority would need to be decided first. He pointed out in circumstances in which a court has ruled that the regulation was not authorized by statute and the specific regulation also removed the DOL's jurisdiction, the DOL could then step in.

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REPRESENTATIVE JOHNSON asked whether it would clarify the authority if the language included a caveat so the paragraph would read, "statute and regulation, if they exist." He related his understanding that in the absence of regulation the statute would take precedent.

MR. SNIFFEN responded that he would need to further consider the language. He did not see anything objectionable with the language under consideration, so long as the statutory authority exists without a corresponding regulation. He concluded that the DOL interacts fine with state agencies, but what will help the department's efforts is to remove the reference to the federal agencies.

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REPRESENTATIVE JOHNSON acknowledged the importance of state regulations matching statutory authority. He suggested that the revisor may wish to consider adding language "if they exist" to cease the regulatory overreach of some agencies.

MR. SNIFFEN suggested the committee may wish to consider another way to perhaps accomplish the same goal, by adding language, such as "regulated by a statute or by a regulatory board or agency through its powers." He offered to give this concept further consideration rather than to combine "statute and regulation" in this bill.

REPRESENTATIVE JOHNSON remarked if it were that easy [to prevent overreach] that he would have done so a long time ago.

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CHAIR OLSON, after first determining no one else wished to testify, closed public testimony on HB 274.

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REPRESENTATIVE JOHNSON moved to report HB 274 out of committee with individual recommendations and the accompanying fiscal note. There being no objection, HB 274 was reported from the House Labor and Commerce Standing Committee.

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**ADJOURNMENT**

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 3:39 p.m.