

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

April 6, 2012

1:37 p.m.

**MEMBERS PRESENT**

Senator Hollis French, Chair  
Senator Bill Wielechowski, Vice Chair  
Senator Joe Paskvan  
Senator John Coghill

**MEMBERS ABSENT**

Senator Lesil McGuire

**COMMITTEE CALENDAR**

SENATE BILL NO. 224

"An Act making privileged certain communications between employees and employee union representatives; and amending Rule 402 and Rule 501, Alaska Rules of Evidence."

- MOVED CSSB 224(JUD) OUT OF COMMITTEE

SENATE BILL NO. 134

"An Act relating to child support awards; and repealing Rule 90.3, Alaska Rules of Civil Procedure."

- MOVED CSSB 134(JUD) OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 229(JUD)

"An Act relating to the duties of the Big Game Commercial Services Board; relating to activities, including violations and penalties, under the supervision of the Big Game Commercial Services Board; creating a retired status license for certain retired guides and outfitters; and providing for an effective date."

- HEARD & HELD

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."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 224

SHORT TITLE: EVIDENCE RULES: UNION/EMPLOYEE PRIVILEGE

SPONSOR(s): LABOR & COMMERCE

03/05/12 (S) READ THE FIRST TIME - REFERRALS  
03/05/12 (S) L&C, JUD  
03/20/12 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)  
03/20/12 (S) Heard & Held  
03/20/12 (S) MINUTE(L&C)  
03/22/12 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)  
03/22/12 (S) Moved SB 224 Out of Committee  
03/22/12 (S) MINUTE(L&C)  
03/23/12 (S) L&C RPT 4DP  
03/23/12 (S) DP: EGAN, DAVIS, MENARD, PASKVAN  
03/30/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
03/30/12 (S) Heard & Held  
03/30/12 (S) MINUTE(JUD)  
04/06/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 134

SHORT TITLE: CHILD SUPPORT AWARDS

SPONSOR(s): KOOKESH

01/17/12 (S) PREFILE RELEASED 1/6/12  
01/17/12 (S) READ THE FIRST TIME - REFERRALS  
01/17/12 (S) HSS, JUD  
02/06/12 (S) HSS AT 1:30 PM BELTZ 105 (TSBldg)  
02/06/12 (S) Heard & Held  
02/06/12 (S) MINUTE(HSS)  
02/15/12 (S) HSS AT 1:30 PM BUTROVICH 205  
02/15/12 (S) Moved CSSB 134(HSS) Out of Committee  
02/15/12 (S) MINUTE(HSS)  
02/17/12 (S) HSS RPT CS 2DP 2NR NEW TITLE  
02/17/12 (S) DP: DAVIS, EGAN  
02/17/12 (S) NR: MEYER, DYSON  
02/17/12 (S) FIN REFERRAL ADDED AFTER JUD  
03/07/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
03/07/12 (S) Heard & Held  
03/07/12 (S) MINUTE(JUD)  
04/04/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
04/04/12 (S) Heard & Held  
04/04/12 (S) MINUTE(JUD)  
04/06/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: HB 229

SHORT TITLE: BIG GAME COMMERCIAL SERVICES BOARD

SPONSOR(s): FEIGE

04/06/11 (H) READ THE FIRST TIME - REFERRALS  
04/06/11 (H) RES, JUD  
04/08/11 (H) RES AT 1:00 PM BARNES 124  
04/08/11 (H) Heard & Held  
04/08/11 (H) MINUTE(RES)  
02/15/12 (H) RES AT 1:00 PM BARNES 124  
02/15/12 (H) Heard & Held  
02/15/12 (H) MINUTE(RES)  
02/17/12 (H) RES AT 1:00 PM BARNES 124  
02/17/12 (H) Moved CSHB 229(RES) Out of Committee  
02/17/12 (H) MINUTE(RES)  
02/20/12 (H) RES RPT CS(RES) NT 6DP 2NR 1AM  
02/20/12 (H) DP: MUNOZ, FOSTER, DICK, P.WILSON,  
SEATON, FEIGE  
02/20/12 (H) NR: GARDNER, HERRON  
02/20/12 (H) AM: KAWASAKI  
03/02/12 (H) JUD AT 1:00 PM CAPITOL 120  
03/02/12 (H) Moved CSHB 229(JUD) Out of Committee  
03/02/12 (H) MINUTE(JUD)  
03/05/12 (H) JUD RPT CS(JUD) NT 7DP  
03/05/12 (H) DP: LYNN, GRUENBERG, KELLER, HAWKER,  
HOLMES, PRUITT, THOMPSON  
03/12/12 (H) TRANSMITTED TO (S)  
03/12/12 (H) VERSION: CSHB 229(JUD)  
03/14/12 (S) READ THE FIRST TIME - REFERRALS  
03/14/12 (S) JUD  
04/06/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: HB 274

SHORT TITLE: UNFAIR TRADE PRACTICES

SPONSOR(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  
02/13/12 (H) Moved Out of Committee  
02/13/12 (H) MINUTE(L&C)  
02/15/12 (H) L&C RPT 4DP 1NR  
02/15/12 (H) DP: MILLER, HOLMES, THOMPSON, OLSON  
02/15/12 (H) NR: JOHNSON  
02/17/12 (H) TRANSMITTED TO (S)  
02/17/12 (H) VERSION: HB 274

02/21/12 (S) READ THE FIRST TIME - REFERRALS  
02/21/12 (S) JUD  
04/06/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

DANA OWEN, Committee Aide  
Senate Labor and Commerce Committee  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Explained the changes contained in the CS for SB 224.

CINDY SMITH, Staff  
Senator Hollis French  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Explained the changes contained in the CS for SB 134.

REPRESENTATIVE ERIC FEIGE  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Sponsor of HB 229.

MICHAEL PASCHALL, Staff  
Representative Eric Feige  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Provided a sectional analysis for HB 229.

SENATOR LINDA MENARD  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Testified in support of HB 229.

JOE KLUTSCH, representing himself  
King Salmon, AK

**POSITION STATEMENT:** Testified in support of HB 229.

KELLY VREM, Guide Representative  
Big Game Commercial Services Board  
Sutton, AK

**POSITION STATEMENT:** Testified in support of HB 229.

PAUL JOHNSON, Guide Representative  
Big Game Commercial Services Board

Elfin Cove, AK

**POSITION STATEMENT:** Testified in support of HB 229.

VIRGIL UMPHENOUR, representing himself

North Pole, AK

**POSITION STATEMENT:** Testified in support of HB 229.

JOE WANT, representing himself

Fairbanks, AK

**POSITION STATEMENT:** Expressed concern with Section 4 of HB 229.

DON QUARBERG, Public Member

Big Game Commercial Services Board

Delta Junction, AK

**POSITION STATEMENT:** Testified in support of HB 229.

DAN MONTGOMERY, representing himself

Wasilla, AK

**POSITION STATEMENT:** Testified in support of HB 229.

KAREN POLLEY, Public Member

Big Game Commercial Services Board

Juneau, AK

**POSITION STATEMENT:** Testified in support of HB 229.

THOR STACEY

Alaska Professional Hunter Association (APHA)

Juneau, AK

**POSITION STATEMENT:** Testified in support of HB 229.

JAMES R. WALDO, Staff

Representative Lindsey Holmes

Alaska State Legislature

Juneau, AK

**POSITION STATEMENT:** Introduced HB 274 on behalf of the sponsor.

CLYDE "ED" SNIFFEN JR., Senior Assistant Attorney General

Commercial/Fair Business Section

Civil Division

Department of Law (DOL)

Anchorage, AK

**POSITION STATEMENT:** Provided supporting information on HB 274.

#### **ACTION NARRATIVE**

[1:37:46 PM](#)

**CHAIR HOLLIS FRENCH** called the Senate Judiciary Standing Committee meeting to order at 1:37 p.m. Present at the call to order were Senators Coghill, Paskvan, and Chair French.

**SB 224-EVIDENCE RULES: UNION/EMPLOYEE PRIVILEGE**

[1:38:07 PM](#)

CHAIR FRENCH announced the consideration of SB 224, "An Act making privileged certain communications between employees and employee union representatives; and amending Rule 402 and Rule 501, Alaska Rules of Evidence." He asked for a motion to adopt the proposed committee substitute (CS).

[1:38:21 PM](#)

SENATOR PASKVAN moved to bring the work draft CS for SB 224, labeled 27-LS1427\M, before the committee for discussion.

CHAIR FRENCH announced that without objection, version M was before the committee.

[1:38:38 PM](#)

SENATOR WIELECHOWSKI joined the committee.

DANA OWEN, aide to the Senate Labor and Commerce Committee, said the L&C committee supports the changes contained in the CS for SB 224. He explained the following:

All instances of the word "individual" and one instance of the word "person" were replaced with the word "advocate," which is defined in Section 2 [on page 2, lines 27-29.] Also in Section 2, provisions in Sec. 23.40.065(b)(1) and (2) were changed to more closely track the language of similar provisions in existing privileges under Court Rules. Paragraph (3) [on page 2, line 17,] was added to clarify that no privilege exists for matters of workplace safety.

CHAIR FRENCH found no questions or discussion and asked for a motion.

[1:40:12 PM](#)

SENATOR WIELECHOWSKI moved to report CS for SB 224, version M, from committee with individual recommendations and attached fiscal note(s).

CHAIR FRENCH announced that without objection, CSSB 224(JUD) moved from Senate Judiciary Standing Committee.

**SB 134-CHILD SUPPORT AWARDS**

[1:40:33 PM](#)

CHAIR FRENCH announced the consideration of SB 134, "An Act relating to child support awards; and repealing Rule 90.3, Alaska Rules of Civil Procedure." He asked for a motion to adopt the committee substitute (CS).

[1:40:46 PM](#)

SENATOR WIELECHOWSKI moved to adopt the work draft CS for SB 134, labeled 27-LS0671\D, as the working document.

CHAIR FRENCH announced that without objection, version D was before the committee.

[1:40:53 PM](#)

CINDY SMITH, staff to Senator French, explained that the CS places Court Rule 90.3 in statute.

CHAIR FRENCH relayed that he was uncomfortable with both moving the court rule into statute and changing the method for child support calculations. Because most of the testimony at the last hearing appeared to oppose the new calculations, he decided on the one-step process to move the rule into statute. The calculation remains the same. He then noted that he had two conceptual amendments to offer.

CHAIR FRENCH moved Amendment 1.

**AMENDMENT 1**

Page 6, line 21, replace the words "a court" with "the tribunal"

CHAIR FRENCH found no objection and announced that Amendment 1 passed.

CHAIR FRENCH moved Amendment 2.

**AMENDMENT 2**

Page 9, line 12, following the word "or" insert the word "monthly"

[1:42:49 PM](#)

CHAIR FRENCH found no objection and announced that Amendment 2 passed.

[1:42:56 PM](#)

SENATOR WIELECHOWSKI moved to report CS for SB 134, version D as amended, from committee with individual recommendations and attached fiscal note(s).

CHAIR FRENCH announced CSSB 134(JUD) moved from the Senate Judiciary Standing Committee.

[1:43:12 PM](#)

At ease.

**HB 229-BIG GAME COMMERCIAL SERVICES BOARD**

[1:44:41 PM](#)

CHAIR FRENCH announced the consideration of HB 229, "An Act relating to activities, including violations and penalties, under the supervision of the Big Game Commercial Services Board."

[1:44:49 PM](#)

REPRESENTATIVE ERIC FEIGE, sponsor of HB 229, said the bill was drafted at the request of the Big Game Commercial Services Board to address concerns about the rules governing the activities and licensing of commercial guides. The bill does four things. First, it expands the regulatory authority of the board. Second, it allows retired licensed guides to be recognized as such. Third, it clarifies provisions in statute that allow employment between guides and how they are supervised. Finally, it allows a judge discretion to order the board to suspend a license for minor violations instead of requiring the court to order the suspension of the license.

The regulation of professional guides and the provisions of this bill pertain to state, federal, and private land. There is no connection to proposals concerning guide use areas on land by the Department of Natural Resources.

[1:46:45 PM](#)

MICHAEL PASCHALL, staff to Representative Eric Feige, read the following sectional analysis into the record:

Section 1 provides additional authority to the Big Game Commercial Services Board to create regulations to administer the regulation of big game guides. Under

current statute, the board is limited to regulations that are "required" under statute.

Section 2 creates the provision in statute for a retiree status license that recognizes those that have earned a guide license. No privileges are granted under the license to provide guiding services.

CHAIR FRENCH asked if this is simply a nice gesture to retired guides.

MR. PASCHALL replied it will also be helpful to those retired guides who are involved in marketing guide and other services outside the state.

Section 3 clarifies language to specify that a guide-outfitter may provide the services of a class-A assistant guide under the control of a contracting guide-outfitter, anywhere the contracting guide-outfitter is licensed to contract hunts.

Section 4 changes the requirements for a registered guide-outfitter to require them to primarily be in the field supervising, participating in and conducting a hunt as defined under regulations by the board, unless a class-A assistant guide is conducting the hunt as regulated by the board.

[1:48:42 PM](#)

SENATOR WIELECHOWSKI noted that current statute [AS 8.54.610(e)(1)] says the guide shall be physically present in the field. He asked the rationale for the proposed change to say "primarily in the field supervising."

MR. PASCHALL explained that this works in conjunction with the board's additional authority to write regulations. The idea is to give registered guide-outfitters more of a supervisory role on guided hunts.

Section 5 provides the board with the power to suspend or revoke a license of someone engaged in conduct involving unprofessionalism, moral turpitude, or gross immorality.

Section 6 changes penalties for certain violations to allow a court to order the board to suspend a license

instead of requiring the court to order the board to suspend a license.

Section 7 authorizes the department to set a fee for the new retired master guide-outfitter license.

Section 8 is conforming language to specify the holder of a retired guide license may not guide.

Section 9 provides an effective date for Sections 3, 4, and 5 of the bill of April 1, 2013.

Section 10 provides for an immediate effective date for sections of the bill other than Sections 3, 4, and 5.

[1:51:14 PM](#)

CHAIR FRENCH asked for additional explanation of Section 6.

MR. PASCHALL explained that the primary issue is that current statute requires the court to order a suspension of the license for any game violation, including even minor violations such as improperly completed paperwork. This gives the court discretion.

[1:52:15 PM](#)

SENATOR LINDA MENARD introduced her staff member Steve Perrins, who is a registered big game guide. She testified in support of HB 229 and relayed that she was the sponsor of the Senate companion bill. It is good policy that will serve both the guiding community and the Big Game Commercial Services Board well.

CHAIR FRENCH identified the individuals available to answer questions.

[1:55:02 PM](#)

JOE KLUTSCH, representing himself, King Salmon, AK, said he was a master guide testifying in support of HB 229. He described the legislation as well vetted with input from the troopers, guides, and the Department of Law (DOL). It will help the guiding industry and other hunters. The enforcement provisions are particularly important and will help the commercial services board get rid of repeat offenders.

[1:56:40 PM](#)

KELLY VREM, guide representative, Big Game Commercial Services Board, Sutton, AK, said he was testifying in support of HB 229,

and could confirm that the bill was well vetted. He explained that the language "primarily in the field supervising" was inserted to allow a registered guide to leave the field when necessary to do things in direct support of the hunt. He also spoke in support of the new subsection that addresses moral turpitude. It will allow the board to weed out bad actors relatively quickly.

[1:58:28 PM](#)

PAUL JOHNSON, guide representative, Big Game Commercial Services Board, Elfin Cove, AK, testified in support of HB 229. He agreed with the previous testimony, and added that some of the provisions that were added are found in other boards.

[1:59:19 PM](#)

VIRGIL UMPHENOUR, representing himself, North Pole, AK, testified in support of HB 229. He said it's appropriate to delete the language "physically present in the field with the client at least once during the contracted hunt" because it removes a loophole. The guide is supposed to be in the field guiding, not there just one time during the hunt. He described the change in Section 6 where paragraph (8) moves from "shall" to "may" as extremely important to keep a guide from being put out of business for a minor paperwork violation. He reiterated his support for the bill.

[2:01:35 PM](#)

JOE WANT, representing himself, Fairbanks, AK, said his only concern with the bill is the amendment to AS 8.54.610(e) in Section 4, because it reduces the obligation to supervise and participate. Current regulations do not require an assistant guide to be supervised by a guide. The regulations for supervision and participation allow an 18-year-old who has never seen a sheep, goat, or bear to be in camp without any supervision from a guide or class-A assistant guide. Yet a retired biologist from the Alaska Department of Fish and Game (ADF&G) who has hunted for 30 years cannot accompany a friend on a hunt. He said that sort of dichotomy puts the whole system at risk. He noted that he submitted written comments to the committee.

[2:03:17 PM](#)

CHAIR FRENCH said he distributed copies to the members and the sponsor.

[2:04:04 PM](#)

DON QUARBERG, public member, Big Game Commercial Services Board, stated that HB 229 protects the intent of the law and makes it easier to enforce. It will also make it easier for guides to operate and will ease the workload for the Division of Occupational Licensing. He explained that the word "primarily" was used [in Section 4 on page 3, line 2,] because it tends to allow an exemption for people to leave the field in case of emergency. He pointed out that if the bill passes, the board will look at regulations to address in the future. It is already forming a committee to look at definitions for the terms "supervision," "participation," and "field."

[2:06:06 PM](#)

DAN MONTGOMERY, representing himself, Wasilla, AK, said he was a master guide and had attended every Big Game Commercial Services Board meeting for the past several years. It's a good bill that has his full support. He said the amended language in Section 4 will make it easier to operate. He explained that his base camp is in the small village of Port Heiden, and he has to drive his clients five miles to village corporation lands in order to hunt bear.

[2:07:43 PM](#)

KAREN POLLEY, public member, Big Game Commercial Services Board, Juneau, AK, stated support for HB 229. It will lead to more professionalism among guides and the industry in general. She highlighted the importance of the retired status license for certain retired guides and outfitters, and reiterated her support for the bill.

[2:08:48 PM](#)

THOR STACEY, Alaska Professional Hunter Association (APHA), said APHA is in strong support of HB 229.

[2:09:16 PM](#)

CHAIR FRENCH asked if Mr. Want's concerns were about regulation or statute.

MR. STACY said he believes the overall concern is about supervision by a qualified professional to ensure positive outcomes for the client. It's a valid concern; it is important to define "supervision" but the deleted language is a superfluous supervision requirement that does not carry out the intent. The board is committed and the current redraft of the statute will allow regulations that have more or less restriction.

CHAIR FRENCH commented that removing the loophole (page 1, line 31 through page 2, line 1) appears to encourage the presence of the guide more strongly.

MR. STACY agreed; the key is to have supervision requirements with proximity attached so that the guide is in the area of the hunt and can train assistant guides. The bill does not address Mr. Want's concerns about assistant guide qualifications and where they can be.

[2:13:01 PM](#)

MR. PASCHALL said the goal was to give the Big Game Commercial Services Board the authority to write regulations necessary to regulate the industry, as opposed to the legislature process.

CHAIR FRENCH said the committee would contemplate HB 229 over the weekend and likely take action at the next meeting.

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

[2:14:15 PM](#)

CHAIR FRENCH announced the consideration of HB 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."

[2:14:43 PM](#)

REPRESENTATIVE LINDSEY HOLMES, sponsor of HB 274, stated that the bill clears up a potential ambiguity in the Alaska Consumer Protection Act (CPA). It clarifies that the state can step in to protect Alaskan consumers when the federal government is not doing so. The bill makes it clear that the state and its citizens are not without remedy due to a misapplication of the safe harbor provision in the CPA.

[2:15:42 PM](#)

JAMES R. WALDO, staff, Representative Lindsey Holmes, confirmed that there is an ambiguity about where the Alaska Consumer Protection Act can apply when federal laws prohibit or regulate the same conduct, but don't explicitly preempt state law.

CHAIR FRENCH asked if that was in paragraph (1).

MR. WALDO said yes; the safe harbor provision says the CPA does not apply to conduct that is regulated and prohibited by state or federal law. The bill removes the exemption for conduct regulated and prohibited by federal law. He said it's a good

idea to preserve the exemption for state law. For example, if a consumer finds troubling conduct from an insurance company, the Division of Insurance (DOI) can solve the problem using state insurance laws, not the Consumer Protection Act. Additionally, if the state decides that enforcement is too much or too little, it can change those laws as it sees fit.

The state is preempted when state law and federal law regulates or prohibits the same conduct. However, there are gray areas when there is shared jurisdiction or when the federal government has laws or regulations it doesn't intend to enforce or intends the state to so its own enforcement. In those cases, the CPA arguably would not apply. This was at issue in a case involving two pharmaceutical companies. He noted that the judicial order from Judge Beistline was included in the packet. This bill would make it very clear that the state has the power to enforce the CPA in cases where the federal government is not going to take action and the state sees need to protect Alaskan consumers.

SENATOR FRENCH asked on what page in the order Judge Beistline discusses the issues that impinge on the bill.

MR. WALDO directed attention to page 18.

[2:19:41 PM](#)

CLYDE "ED" SNIFFEN JR., Assistant Attorney General, Commercial/Fair Business Section, Civil Division, Department of Law (DOL), said his responsibilities include enforcement of Alaska's consumer protection and antitrust laws. He confirmed that there have been situations where a federal court or agency announced shared state/federal jurisdiction over certain areas like drug labeling. The state believes it should be able to take action against companies that violate the CPA on those issues. Because of the ambiguity in statute, if a federal law or regulation covers that conduct, whether it's enforced or not, defendants are using that as a shield against the state's enforcement activity. HB 274 removes the federal exemption from the CPA and allows the state to take action if need be.

He agreed with Mr. Waldo said that the state could not take action if the federal government preempts an area, but that wasn't really the issue. He said there are cases where the federal government has specifically found there is no preemption and the state still can't take action because the conduct is still regulated or prohibited. The state takes the position that the statutory language is strong enough that it can take action if the federal government isn't enforcing the law. That's what

the state is arguing in the case referenced above, but this amendment makes it very clear.

CHAIR FRENCH asked if the bill would make it easier to protect Alaskan consumers.

MR. SNIFFEN said yes, particularly in cases of shared jurisdiction where the federal government is not taking any action.

CHAIR FRENCH announced he would hold HB 274 in committee.

[2:22:03 PM](#)

There being no further business to come before the committee, Chair French adjourned the meeting at 2:22 p.m.