

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

May 11, 2022

3:19 p.m.

MEMBERS PRESENT

Representative Zack Fields, Co-Chair
Representative Ivy Spohnholz, Co-Chair
Representative Calvin Schrage
Representative Liz Snyder
Representative David Nelson
Representative Ken McCarty

MEMBERS ABSENT

Representative James Kaufman

COMMITTEE CALENDAR

HOUSE BILL NO. 344

"An Act relating to employee intellectual property."

- HEARD & HELD

CS FOR SENATE BILL NO. 185(L&C)

"An Act relating to exemptions from minimum wage."

- MOVED HCS CSSB 185(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 408

"An Act relating to the business of money transmission; relating to money transmission licenses, licensure requirements, and registration through the Nationwide Multistate Licensing System; relating to the use of virtual currency for money transmission; relating to authorized delegates of a licensee; relating to acquisition of control of a license; relating to record retention and reporting requirements; authorizing the Department of Commerce, Community, and Economic Development to cooperate with other states in the regulation of money transmission; relating to permissible investments; relating to violations and enforcement of money transmission laws; relating to money transmission license exemptions; relating to payroll processing services; repealing currency exchange licenses; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 344

SHORT TITLE: INTELLECTUAL PROPERTY OF EMPLOYEES

SPONSOR(s): LABOR & COMMERCE

02/17/22 (H) READ THE FIRST TIME - REFERRALS
02/17/22 (H) L&C, STA
05/11/22 (H) L&C AT 3:15 PM BARNES 124

BILL: SB 185

SHORT TITLE: ELIMINATE MINIMUM WAGE EXEMPTION

SPONSOR(s): MICCICHE

02/08/22 (S) READ THE FIRST TIME - REFERRALS
02/08/22 (S) L&C
02/28/22 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
02/28/22 (S) Scheduled but Not Heard
03/14/22 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
03/14/22 (S) Heard & Held
03/14/22 (S) MINUTE(L&C)
03/16/22 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
03/16/22 (S) Moved CSSB 185(L&C) Out of Committee
03/16/22 (S) MINUTE(L&C)
03/18/22 (S) L&C RPT CS 4DP SAME TITLE
03/18/22 (S) DP: COSTELLO, GRAY-JACKSON, STEVENS,
MICCICHE
03/21/22 (S) TRANSMITTED TO (H)
03/21/22 (S) VERSION: CSSB 185(L&C)
03/22/22 (H) READ THE FIRST TIME - REFERRALS
03/22/22 (H) L&C
04/25/22 (H) L&C AT 3:15 PM BARNES 124
04/25/22 (H) Moved CSSB 185(L&C) Out of Committee
04/25/22 (H) MINUTE(L&C)
04/29/22 (H) L&C AT 9:00 AM BARNES 124
04/29/22 (H) <Bill Hearing Canceled>
05/04/22 (H) L&C AT 3:15 PM BARNES 124
05/04/22 (H) Moved HCS CSSB 185(L&C) Out of
Committee
05/04/22 (H) MINUTE(L&C)
05/11/22 (H) L&C AT 3:15 PM BARNES 124

BILL: HB 408

SHORT TITLE: MONEY TRANSMISSION; VIRTUAL CURRENCY

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

04/04/22	(H)	READ THE FIRST TIME - REFERRALS
04/04/22	(H)	L&C, FIN
04/22/22	(H)	L&C AT 9:00 AM BARNES 124
04/22/22	(H)	Heard & Held
04/22/22	(H)	MINUTE (L&C)
05/04/22	(H)	L&C AT 3:15 PM BARNES 124
05/04/22	(H)	<Bill Hearing Canceled>
05/09/22	(H)	L&C AT 3:15 PM BARNES 124
05/09/22	(H)	-- Delayed to 5/10/22 at 9:00 am --
05/10/22	(H)	L&C AT 9:00 AM BARNES 124
05/10/22	(H)	-- Rescheduled from 5/9/22 --
05/11/22	(H)	L&C AT 3:15 PM BARNES 124

WITNESS REGISTER

SENATOR JESSE KIEHL
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Presented HB 344.

CATHY SCHLINGHEYDE, Staff
 Senator Jesse Kiehl
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: During the hearing on HB 344, answered a question on behalf of Senator Kiehl.

CHELSEA WARD-WALLER, Staff
 Representative Ivy Spohnholz
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: During the hearing on HB 408, provided a summary of changes in the proposed committee substitute, Version B.

ACTION NARRATIVE

[3:19:32 PM](#)

CO-CHAIR ZACK FIELDS called the House Labor and Commerce Standing Committee meeting to order at 3:19 p.m. Representatives McCarty, Snyder, Nelson, Spohnholz, and Fields were present at the call to order. Representative Schrage arrived as the meeting was in progress.

HB 344-INTELLECTUAL PROPERTY OF EMPLOYEES

[3:19:56 PM](#)

CO-CHAIR FIELDS announced that the first order of business would be HOUSE BILL NO. 344, "An Act relating to employee intellectual property."

CO-CHAIR FIELDS stated that HB 344 is a bill by the House Labor and Commerce Committee by way of Senator Jesse Kiehl.

[3:20:30 PM](#)

SENATOR JESSE KIEHL, Alaska State Legislature, presented HB 344. He thanked the co-chairs for taking up an issue that was discussed earlier in the session and making it a committee bill. He explained that HB 344 is designed to provide protection for innovation and innovators in Alaska and aligns with similar laws passed in recent years by Washington, Kansas, California, and Minnesota. He said the premise of the bill is to protect the intellectual property of an employee who innovates on their own time, but the bill does not change the well-established law that when someone is working for the boss, the boss owns the work product. The bill clarifies, he continued, that when someone is working on their own time with their own equipment and not employing their boss's resources, then the boss cannot claim the person's work product as theirs and cannot ask the employee to sign an employment contract that says otherwise. Senator Kiehl related that an Alaskan brought this issue to the legislature's attention and his understanding is that this Alaskan is currently in litigation. He specified that nothing the legislature does can or should affect an ongoing lawsuit, and this is seen in an applicability clause so that the legislature doesn't step over that line with this bill. This bill, he added, is designed to make the rules clear for the future so that employees and businesses know where the rules are, and everyone can work and innovate and enjoy the fruits of their industry.

[3:22:38 PM](#)

REPRESENTATIVE NELSON stated he understands that HB 344 relates to employees, but inquired about student research that creates an invention and then the university claims credit for or utilizes that [invention] afterwards.

SENATOR KIEHL replied that in most situations where a student is working on a research project with a university, the student would be using the university's laboratories and equipment and

probably getting a stipend from a university grant. Therefore, he said, the student would be under the terms of the bill using the boss's equipment and on the boss's paid time, so any patents coming from that research would probably adhere in the university under the usual sharing agreements that the university has with its professors.

[3:23:46 PM](#)

REPRESENTATIVE MCCARTY spoke about the originality of thought and how someone formulates because they have grabbed information from other places, such as working for a company and sharing a dialogue of thought. He inquired about the point at which a business is involved in the formulation of a thought, even though an employee goes home. He further inquired about where the differentiation exists for an employer on this concept of original thought and transition of information in formulating new ideas that may be directly related to the employment.

SENATOR KIEHL responded that the bill's language gives clear guidelines regarding that, and if trade secret is involved it is clear cut. He drew attention to page 1, lines 9-10, which provide a topical guideline. He posed an example of a computer programmer doing information technology (IT) security for McCarty Industries. If on his spare time at home and not using McCarty Industries computers, the programmer creates a game called First Person Shooter, it is unrelated, and McCarty Industries doesn't have any right to the programmer's intellectual property in the game. However, he continued, if on his spare time at home and on his own computer, the programmer creates an anti-virus program, then there is a significant overlap of the actual research and development that the programmer is doing for McCarty Industries and then there would be potential employer claim to that intellectual property.

[3:27:06 PM](#)

REPRESENTATIVE MCCARTY asked how a no-compete clause, a contractual agreement for employment, would fit into the bill or whether the bill would eliminate the no-compete clause for employers.

SENATOR KIEHL answered that nothing in the bill would impact a non-compete provision. He said the bill deals only with ownership of the intellectual property.

[3:28:00 PM](#)

CO-CHAIR FIELDS observed that the fiscal note states the legislation does not contain a provision for penalties, nor does it grant enforcement powers to the Wage and Hour [component]. He related that Title 23 empowers the [Department of Labor and Workforce Development] and says the department may enforce all state labor laws. Given the bill would add a section in Title 23, he asked whether it is fair to say that under AS 23.05.060 the department may enforce all state labor laws should the bill pass. He said [the bill would create] a currently undefined enforcement authority within the department. He said he also thinks that an affected employee would retain a private right of action just like they would in the event of wage theft. He further asked whether an employee would be protected both by state enforcement capacity and through private right of action.

SENATOR KIEHL deferred to his staff member, Cathy Schlingheyde, to answer the question.

[3:29:15 PM](#)

CATHY SCHLINGHEYDE, Staff, Senator Jesse Kiehl, Alaska State Legislature, on behalf of Senator Kiehl, responded that HB 344 specifically contemplates a private right of action where the employee can address the employer. She said she doesn't believe that the state would be able to enforce this, but she will confirm that and get back to the committee.

[3:29:39 PM](#)

The committee took a brief at-ease.

[3:29:52 PM](#)

CO-CHAIR FIELDS announced that HB 344 was held over.

SB 185-ELIMINATE MINIMUM WAGE EXEMPTION

[3:30:00 PM](#)

CO-CHAIR FIELDS announced that the next order of business would be CS FOR SENATE BILL NO. 185(L&C), "An Act relating to exemptions from minimum wage."

CO-CHAIR FIELDS specified the intent of the hearing was to bring the legislation back before the committee because, after lengthy consultation with stakeholders and Legislative Legal Services,

language has been written that will ensure Girl Scouts, Boy Scouts, and Campfire can continue to operate. He related that the [Department of Labor and Workforce Development] has promulgated temporary or emergency regulations so [these nonprofits] can continue to operate this summer regardless of whether a bill is passed, but this legislation would provide them some certainty. He said the committee needs to rescind action on SB 185, then adopt a new HCS, and then pass the amended legislation so it can be heard on the House floor.

[3:30:50 PM](#)

REPRESENTATIVE NELSON offered his understanding that this is for all nonprofits, not just Girl Scouts, Boy Scouts, and Campfire specifically.

CO-CHAIR FIELDS replied yes, this exemption would fall under the "learner" category in statute. It would codify an existing practice so that employees in a residential camp receiving room and board can be paid sub-minimum wage, he explained, and there are some thresholds depending on the number of hours worked. It does not create a new exemption, he continued, it codifies a new exemption following the Department of Labor and Workforce Development's re-interpretation of the existing learner exemption. He stated that this language has been endorsed by the Girl Scouts, Boy Scouts, Campfire, and the Alaska AFL-CIO. It would apply to other camps, he said, but it was important to work with those camps that had identified this problem.

[3:31:52 PM](#)

CO-CHAIR SPOHNHOLZ specified that this would only apply to nonprofit residential camps that operate for 12 weeks or less and which offer room and board in addition to the weekly wage. It is a very narrow exemption, she continued, designed to ensure that nonprofit organizations will be able to continue offering residential summer camps within their existing financial frameworks. It does not go beyond that, she added.

CO-CHAIR FIELDS clarified it would be more accurate to say that the Alaska AFL-CIO does not object to this language rather than to say that the Alaska AFL-CIO endorses it. He said he agrees it is important to have tight language so that this is not abused. His view, he opined, is that it needs to be language that can be passed on the floor; if it gets broadened it would endanger the underlying bill.

[3:32:46 PM](#)

REPRESENTATIVE MCCARTY asked whether anything has been heard from nonprofits that offer winter camps.

CO-CHAIR SPOHNHOLZ responded that the residential camps that were worked with operate residential camps and don't operate winter camps for the most part. While there are sometimes spring break camps, she continued, they are not typically residential camps, and this only applies to residential camps. The language is designed to apply to that very narrow exception, she added.

[3:33:54 PM](#)

CO-CHAIR SPOHNHOLZ moved to rescind the committee's action [on 5/4/22] in moving HCS CSSB 185(L&C) out of committee. There being no objection, it was so ordered.

CO-CHAIR FIELDS explained that now the new HCS with the consensus language, [Version 32-LS1443\E, Klein, 5/11/22)], would be brought before the committee.

[3:34:13 PM](#)

CO-CHAIR SPOHNHOLZ moved to adopt the proposed House committee substitute (HCS) for CSSB 185(L&C), Version 32-LS1443\E, Klein, 5/11/22. There being no objection, Version E was before the committee.

[3:34:55 PM](#)

The committee took an at-ease from 3:34 p.m. to 3:35 p.m.

[3:35:13 PM](#)

CO-CHAIR SPOHNHOLZ moved to report HCS CSSB 185(L&C), Version 32-LS1443\E, Klein, 5/11/22, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCS CSSB 185(L&C) was reported out of the House Labor and Commerce Standing Committee.

[3:35:43 PM](#)

The committee took an at-ease from 3:35 p.m. to 3:38 p.m.

HB 408-MONEY TRANSMISSION; VIRTUAL CURRENCY

[3:38:02 PM](#)

CO-CHAIR FIELDS announced that the final order of business would be HOUSE BILL NO. 408, "An Act relating to the business of money transmission; relating to money transmission licenses, licensure requirements, and registration through the Nationwide Multistate Licensing System; relating to the use of virtual currency for money transmission; relating to authorized delegates of a licensee; relating to acquisition of control of a license; relating to record retention and reporting requirements; authorizing the Department of Commerce, Community, and Economic Development to cooperate with other states in the regulation of money transmission; relating to permissible investments; relating to violations and enforcement of money transmission laws; relating to money transmission license exemptions; relating to payroll processing services; repealing currency exchange licenses; and providing for an effective date."

[3:38:22 PM](#)

CO-CHAIR SPOHNHOLZ stated that the Dunleavy Administration introduced this legislation to update Alaska statute to get more visibility into the utilization of virtual currency in the state. Given the original bill's large size, she said, it took about two weeks to get back the requested updated language. Although there is no confidence that the language is where it needs to be, she explained, the adoption of a committee substitute today will get the work done to date into the public sphere to enable future legislatures to build on that work. She recounted that in his [4/22/22 testimony], Robert Schmidt, Director of the Division of Banking and Securities, stated that significant growth has occurred in the utilization of cryptocurrency in Alaska and that this growth was way out of proportion to what other states have been seeing. This serious issue needs to be done right, she stressed. Multiple issues still need to be addressed before the legislation is ready to be adopted in final, including a series of definitions, she added. This committee, Co-Chair Spohnholz stated, is the only policy committee doing a deep dive into understanding the way that virtual currency can and should be overseen. The bill is not going to be ready for final consideration before the end of session next week, she pointed out, but the committee wanted to get the newest version of the bill into the public sphere so people can provide feedback to the division and to members of the legislature. She requested Ms. Ward-Waller to provide a summary of the [proposed] changes to HB 408.

[3:40:43 PM](#)

CHELSEA WARD-WALLER, Staff, Representative Ivy Spohnholz, Alaska State Legislature, at the request of Co-Chair Spohnholz, provided a summary of changes in the proposed committee substitute (CS) for HB 408, Version 32-GH2312\B, Bannister, 5/10/22 (Version B). She qualified that she did her best to highlight the most significant and substantial changes that were made. She spoke from the four-page written document in the committee packet titled "Summary of Changes CSHB 408(L&C) Version A to Version B", which read [original punctuation provided]:

Technical changes were made throughout the CS to bring the bill in line with the legislature's drafting style and for clarity. Examples include replacing "any" with "an", "a" with "the", a plural word with the singular, and reordering phrases for clarity. Under AS 01.10.050, which applies to all statutes, the singular includes the plural, and the plural includes the singular. References to private organizations have been replaced with organizations that the department selects as directed by the bill. Substantive changes are addressed below.

Page 1, line 10; added "amending Rules 79 and 82, Alaska Rules of Civil Procedure" to the title of the bill.

Section 1

Page 2, line 8; adds "for money transmission" to the end of the purpose of the act.

Section 2

Page 2, line 14; replaces "of a person who holds a license" by "licensee".

Page 2, line 19; includes section (b) of AS 06.55.101, that a license is not transferrable or assignable.

Section 3

Page 2, lines 23-26; combines subsections (1) and (2) regarding the form, medium, and content of an application as determined by the department.

Page 3, line 1; the department is not allowed to waive subsection (5) "a surety bond or other security as required by AS 06.55.505" or permit other information in place of this information in the application.

Page 3, line 3; AS 06.55.102 subsection (c) is removed because the department already has the authority to establish the application form and to require other information.

Section 4

Page 4, line 14; add clarifying language that appeals should be directed to the department.

Page 4, lines 23-24; inserts a new subsection (h) that the applicant must meet the requirements of the chapter.

Section 6

Page 5, lines 9-13; technical changes were made to clarify that a licensee shall always meet the requirements of the chapter. If not, the department may suspend or revoke the license in accordance with this chapter or other applicable law.

Page 5, line 14 - page 6, line 9; Section 06.55.109 has been reorganized for clarity. Criminal background check language in subsection (a)(1), page 5, lines 18-20, has been adjusted to the more usual way to handle fingerprinting. The background check has been added to AS 12.62.400(a), included in Section 63 of this bill on page 53, line 1 - page 54, line 31.

Page 5, line 31; replaces when an individual must additionally provide an investigative background report if they have resided outside the U.S. from "at any time in" to "for four or more of" the last ten years.

Section 7

Page 7, line 15 - page 13, line 11; updates and reorganizes sections under AS 06.55, including
Section 06.55.150, previously 06.55.206
Section 06.55.155, previously 06.55.207
Section 06.55.160, previously 06.55.208
Section 06.55.165, previously 06.55.209
Section 06.55.170, previously 06.55.205

Page 9, lines 20-22; adds additional disclaimers that "persons are not required to take payment in virtual currency, the value of virtual currency can change, and that virtual currency may not be backed by a government agency."

Page 10, line 17; for permissible investments considered under subsection (4), replaces "this chapter" with "AS 06.55.502".

Page 11, line 15; clarifies that licensees are required to maintain a record of the reports submitted under AS 06.55.403.

Page 13, line 11; definitions for "virtual currency", "virtual currency business activity", and "virtual currency exchange" that were previously included in this section have been added to the definitions section under AS 06.55.990 or more appropriate locations in the bill.

Section 8

Page 15, lines 2-3; adds a new subsection (f) that subdelegates cannot be used to conduct money transmission on behalf of a licensee and renumbers the next subsection.

Section 10

Page 15, line 18; adds "examination; investigation" to the subsection title.

Section 11

Page 16, line 20; replaces "the fiscal quarter" with "each quarter of the calendar year".

Section 12

Page 17, line 2; replaces "the fiscal quarter" with "each quarter of the calendar year".

[3:46:13 PM](#)

Section 13

Page 17, line 27; clarifies Bankruptcy Code as 11 U.S.C 101-112.

Section 15

Page 18, line 17; replaces subsection title "Acquisition of control" with "Control; acquisition; passive investor."

Page 19, lines 9-10; updates language to clarify the period referenced is "for approving or denying an application under (d) of this section."

Page 21, lines 23 and 26; replaces "AS 06.55.506" with "AS 06.55.510" due to reorganization of the bill. The content of the referenced subsection remains the same.

Page 22, lines 11-23; inserts language that a passive investor is not considered to have control under this chapter and defines a passive investor, which was previously included in the definitions section at the end of the bill.

Section 18

Page 23, line 15; directs reports to be filed to the "appropriate federal agency".

Section 19

Page 22, line 22; adds subsection (f) as an exemption to confidential information.

Section 24

Page 25, lines 12 and 14; replaces "fiscal" with "calendar."

Section 29

Page 33, line 6; deletes a subsection related to requirements for a letter of credit.

Page 33, line 30 - page 34, line 6; adds definitions for "eligible rating" and "eligible rating service", which were previously in the definitions section at the end of the bill.

Section 30

Page 35, line 5; lowers the minimum net worth that licensees are required to maintain to \$35,000.

Section 39

Page 38, line 11; removes changes to AS 06.55.606 subsection (a) from the bill to avoid the use of the word "such" and instead use more specific wording.

Section 44

Page 39, lines 27-30; inserts additional institutions that are exempt from the chapter.

Section 47

Page 43, line 31 - page 44, line 1; inserts a definition for "mobile application".

Section 48

Page 44, lines 3-9; inserts a new section on determining whether the person requesting the transaction is in this state.

Section 49

Page 44, line 27: adds a new subsection (9) to include an exchange rate on the receipt.

Page 45, line 2: removes subsection (d)(1), such that the section does apply to money received for transmission subject to 12 C.F.R. Part 1005, Subpart B.

Section 51

Page 46, line 17; removes previous section 50 that amended AS 06.55.845 related to disclosure for payroll processing services.

Section 54

Page 47, lines 3-7; adjust the definition of "control" to avoid having the defined term in the definition and to clarify the definition.

Section 55

Page 47, lines 22-23, inserts "engaging in virtual currency exchange" and "engaging in virtual currency business activity" under the definition of "money transmission."

Page 47, line 26; removes previous section 55, which changed the definition of "money transmission license"

Section 61

This section is reorganized to list new definitions alphabetically.

Page 50, line 10; inserts a definition for "license"

Page 50, lines 12-14; inserts a definition for "money received for transmission"

Page 51, line 3; removes the definitions for "payroll processing services" and "receiving money for transmission"

Section 63

Page 53, line 1 - page 54, line 31; adds a new section related to the criminal background check required for licenses under AS 06.55.

Section 64

Page 55, lines 2-4; adds AS 06.55.406(b), 06.55.990(16), and 06.55.990(17) to the list of repealed statutes in this bill.

Section 65

Page 55, lines 5-9, adds a new section regarding indirect court rule amendment. The change to AS 06.55.605 changes Rules 79 and 82, Alaska Rules of Civil Procedure, relating to the award of court costs and attorney fees.

Section 67

Page 55, line 24; removes previous section 66 related to payroll processors.

Section 68

Page 55, line 30; removes revisor's instructions.

Section 69

Page 55, line 31 - page 56, line 4; adds the conditional effect related to court rules change under section 65.

[3:51:29 PM](#)

MS. WARD-WALLER, in response to Representative McCarty, clarified that the change under Section 7, page 9, relates to lines 20-22 [of the bill].

[3:53:00 PM](#)

CO-CHAIR SPOHNHOLZ moved to adopt the proposed CS for HB 408, Version 32-GH2312\B, Bannister, 5/10/22, as the working document. There being no objection, Version B was before the committee.

3:53:16 PM

CO-CHAIR FIELDS announced that HB 408 was held over.

3:53:37 PM

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 3:53 p.m.