

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004

8672

11268 SENATE LABOR & COMMERCE

# 2001 ALASKA ACCIDENT & HEALTH MARKET SHARE

## 01 - GROUP (\$000)

COMPANY NAME	PERCENT OF MARKET	DIRECT PREMIUMS WRITTEN
Aetna Life Ins Co	15.43	18,188
Principal Life Ins Co	15.28	18,011
United Healthcare Ins Co	10.03	11,823
Great West Life & Annuity Ins Co	6.22	7,329
Golden Rule Ins Co	5.33	6,279
Unum Life Ins Co of Amer	5.23	6,166
United of Omaha Life Ins Co	4.34	5,115
Mega Life & Health Ins Co The	4.22	4,973
Guardian Life Ins Co of Amer	2.89	3,405
Hartford Life & Accident Ins Co	2.22	2,615
Safeco Life Ins Co	2.18	2,566
Stonebridge Life Ins Co	1.89	2,229
Standard Ins Co	1.79	2,104
States West Life Ins Co	1.48	1,748
Fortis Benefits Ins Co	1.47	1,733
Union Labor Life Ins Co	1.44	1,700
Metropolitan Life Ins Co	1.28	1,509
Life Ins Co of North Amer	1.23	1,451
Mutual of Omaha Ins Co	1.09	1,289
John Alden Life Ins Co	0.96	1,133
<hr/>		
TOTAL FOR TOP 20 RANKED INSURERS	86.01	101,367
TOTAL FOR ALL 151 INSURERS WRITING THIS LINE	100.00	117,859

## 02 - CREDIT (\$000)

COMPANY NAME	PERCENT OF MARKET	DIRECT PREMIUMS WRITTEN
Cuna Mut Ins Society	21.33	1,055
American Bankers Life Assur Co of FL	21.30	1,053
American Natl Ins Co	19.66	972
Union Security Life Ins Co	11.78	583
Minnesota Life Ins Co	9.82	486
North Central Life Ins Co	5.30	262
Resource Life Ins Co	4.77	236
Centurion Life Ins Co	2.25	111
Household Life Ins Co	1.01	50
Stonebridge Life Ins Co	0.73	36
Protective Life Ins Co	0.46	23
American Gen Assur Co	0.33	16
Life Investors Ins Co of Amer	0.31	15
Union Fidelity Life Ins Co	0.29	14
Associates Financial Life Ins Co	0.24	12
Allstate Life Ins Co	0.24	12
Balboa Life Ins Co	0.18	9
American Heritage Life Ins Co	0.11	5
USAA Life Ins Co	0.02	1
Central States H & L Co of Omaha	0.01	0
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TOTAL FOR TOP 20 RANKED INSURERS	100.14	4,952
TOTAL FOR ALL 30 INSURERS WRITING THIS LINE	100.00	4,945

# 2001 ALASKA ACCIDENT & HEALTH MARKET SHARE

## 9 - ALL OTHER (\$000)

COMPANY NAME	DIRECT PERCENT OF MARKET	PREMIUMS WRITTEN
American Family Life Asr Co Columbus	32.51	5,434
New York Life Ins Co	6.94	1,160
Physicians Mut Ins Co	4.49	750
Mutual of Omaha Ins Co	3.52	589
Unum Life Ins Co of Amer	3.31	553
Northwestern Mut Life Ins Co	3.17	530
Provident Life & Accident Ins Co	2.92	488
General Electric Capital Assur Co	2.87	481
Life Investors Ins Co of Amer	2.85	477
Golden Rule Ins Co	2.81	470
Paul Revere Life Ins Co	2.65	443
Colonial Life & Accident Ins Co	2.31	387
Guardian Life Ins Co of Amer	2.21	370
John Hancock Life Ins Co	1.77	296
Mony Life Ins Co	1.76	294
Equitable Life Assr Soc of The US	1.74	290
Continental General Ins Co	1.40	234
Conseco Senior Health Ins Co	1.38	230
USAA Life Ins Co	1.34	223
Bankers Life & Cas Co	0.89	149
<hr/>		
TOTAL FOR TOP 20 RANKED INSURERS	82.83	13,846
TOTAL FOR ALL 164 INSURERS WRITING THIS LINE	100.00	16,716

## 10 - TOTAL (\$000)

COMPANY NAME	DIRECT PERCENT OF MARKET	PREMIUMS WRITTEN
Aetna Life Ins Co	13.06	18,224
Principal Life Ins Co	12.98	18,104
United Healthcare Ins Co	8.44	11,823
Great West Life & Annuity Ins Co	5.26	7,342
Golden Rule Ins Co	4.84	6,749
Unum Life Ins Co of Amer	4.82	6,719
American Family Life Asr Co Columbus	3.90	5,438
United of Omaha Life Ins Co	3.67	5,115
Mega Life & Health Ins Co The	3.57	4,975
Guardian Life Ins Co of Amer	2.71	3,775
Hartford Life & Accident Ins Co	1.87	2,616
Safeco Life Ins Co	1.84	2,566
Stonebridge Life Ins Co	1.66	2,323
Standard Ins Co	1.51	2,112
Mutual of Omaha Ins Co	1.35	1,878
New York Life Ins Co	1.31	1,828
States West Life Ins Co	1.25	1,748
Fortis Benefits Ins Co	1.24	1,736
Union Labor Life Ins Co	1.22	1,704
Metropolitan Life Ins Co	1.14	1,590
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TOTAL FOR TOP 20 RANKED INSURERS	77.67	108,364
TOTAL FOR ALL 224 INSURERS WRITING THIS LINE	100.00	139,519

# HEALTH INSURANCE BY PRODUCT LINE

## INDIVIDUAL - CALENDAR YEAR 2001

PRODUCT	# POLICIES IN FORCE BEG OF YEAR	# INDIVIDUALS COVERED BEG OF YEAR	# NEW POLICIES ISSUED DURING THE YEAR	# INDIVIDUALS NEWLY ISSUED COVERAGE DURING THE YEAR	# POLICIES TERMINATED DURING THE YEAR	# COVERED INDIVIDUALS TERMINATED DURING THE YEAR	# POLICIES IN FORCE END OF YEAR	# INDIVIDUALS COVERED END OF YEAR	EARNED PREMIUM*	INCURRED CLAIMS*
Accident	10,929	18,489	5,016	8,811	4,604	7,347	11,461	20,146	2,875,162	1,161,898
Comp MedPPO	5,163	9,308	725	1,320	461	991	5,427	9,637	15,268,979	12,405,798
Non-PPO	263	474	3	3	41	81	229	396	1,125,263	740,664
Dental PPO	0	0	0	0	0	0	0	0	0	0
Non-PPO	29	14	488	867	90	161	424	740	87,030	4,972
Disability Income	6,131	6,052	1,193	1,207	1,711	1,691	5,662	5,555	5,332,179	5,515,180
Hospital Expense	883	1,325	94	146	194	301	780	1,170	1,418,883	1,557,964
Hospital Indemnity	3,800	5,854	1,324	2,066	1,350	2,158	3,778	5,768	1,209,738	416,712
Limited Benefit	66	66	13	13	1	1	79	79	136,657	0
Long Term Care	1,072	1,103	578	593	55	61	1,593	1,648	2,196,447	509,619
Medical Expense	9	11	2	2	1	1	10	12	9,504	-8,426
Medicare Supplement	2,008	2,029	160	161	204	209	1,968	1,985	2,910,614	1,855,132
Specified Disease	4,658	9,053	2,341	4,103	1,320	2,500	5,703	10,690	1,823,060	693,468
Vision PPO	19	1,589	6	96	1	54	24	1,631	95,683	78,147
Non-PPO	0	0	0	0	0	0	0	0	0	0
Other	2,976	6,083	1,279	2,465	1,112	2,149	3,143	6,399	476,293	108,310
<b>TOTAL</b>	<b>38,006</b>	<b>61,470</b>	<b>13,222</b>	<b>21,853</b>	<b>11,145</b>	<b>17,705</b>	<b>40,281</b>	<b>65,856</b>	<b>34,965,491</b>	<b>25,039,438</b>

Note: This health survey report was compiled from data provided by the companies. The Division of Insurance does not warrant the accuracy of this information.



## Alaska Insurance Consumer Guide

### Health Insurance

Everyone runs the risk of becoming ill or suffering an accident that results in doctor or hospital bills, and sometimes in loss of income. Most Alaskans need protection from unexpected and sometimes devastating expenses associated with an illness or accident.

How do you choose from the hundreds of medical plans available? To wisely purchase medical care protection you must:

- Determine your family's needs
- Know the different types of protection available
- Choose a plan on the basis of coverage, costs, and services

Before buying a health insurance policy, know what insurance or other benefits you already have. This will help prevent duplicating coverage and will help you determine if you have enough coverage, inadequate coverage, or no coverage at all. Make sure you have up-to-date information on medical insurance, disability benefits, and sick leave benefits provided by your employer. Your first priority should be assuring that you have either a comprehensive major medical insurance policy or both basic medical insurance and supplemental major medical insurance.

### How Health Insurance Policies are Sold

#### Individual Insurance

An individual insurance policy provides coverage to a specific individual or to an individual and their family under a policy issued to that individual. In order to be considered for individual insurance coverage, you will be asked to provide evidence of insurability that may require you to undergo a medical examination. This is called medical underwriting. The same requirements would apply to any dependents you may insure under the policy.

#### Group Insurance

A group insurance policy provides coverage to individuals under a single master policy issued to the group policy owner. Certificates of insurance are provided to the individuals. The policy owner may be an employer, an association, a labor union, or other entity. Unless the group is small, no individual medical underwriting is performed. Instead, insurers require minimum employee or member participation levels and minimum employer contribution levels in order to assure that there are sufficient individuals in the group in good health to balance those in the group in poor health.

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## Alaska Insurance Consumer Guide

### Considerations in Purchasing Health Insurance

Whether you have individual or group health insurance coverage, it is important to understand what your coverage is and what charges you may be responsible for paying. Read your policy or certificate thoroughly and consider the following:

- What services and supplies are covered?
- What limits are set on the benefits for these services and supplies?
- What are the deductible, coinsurance and other charges you will be responsible for paying?
- How are benefit payments coordinated with other health coverage you may have?
- What are the managed care features and requirements of the plan?
- What level, type, and quality of service can be expected from the insurer?

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## Alaska Insurance Consumer Guide

### Types of Health Insurance Plans

Following is a summary of several types of health insurance plans sold as group and individual health insurance. The actual health insurance benefits will vary from policy to policy. Therefore, it is important to read and understand your insurance contract. The term **provider** is commonly used in health insurance and in this guide to refer to physicians and other providers of medical care.

#### Basic Medical

A basic medical insurance policy provides coverage for basic hospital, provider and other services. There are limits placed on the benefits for covered services such as a limited number of hospital days, a maximum payment for each day of hospital confinement, or a surgical schedule where a specific payment maximum is established for each procedure. These benefits are provided without deductibles or coinsurance.

#### Supplemental Major Medical

Under a supplemental major medical policy, benefits are structured to supplement a basic medical insurance policy. The policy would pay for any covered services and supplies not covered by the basic medical insurance policy after the required deductible has been paid and subject to the coinsurance requirements. A basic medical policy in combination with a supplemental major medical policy results in coverage similar to a comprehensive major medical policy.

#### Comprehensive Major Medical

A comprehensive major medical policy provides coverage for almost all types of medical care services and supplies and has high benefit limits. These policies cover hospital, provider, and other services subject only to the required deductible, coinsurance, and benefit maximums. Unlike basic medical, individuals are required to share in the cost of their medical expenses. These policies have replaced most of the basic medical insurance policies.

#### Limited Benefit

Limited benefit plans are offered as independent, noncoordinated benefits provided under a separate policy and paid without regard to any other insurance plan. Examples of these types of plans include **hospital indemnity policies** that pay a fixed amount for each day of hospital confinement, and **specified or dread disease policies** that only pay for medical expenses associated with a specified disease (such as cancer or heart disease).

#### Long-Term Care

Long-term care insurance policies provide nursing home or home health care benefits for individuals with a prolonged physical illness, disability or mental disorder, medical condition, or a deficiency affecting activities of daily living or lifestyle. Benefits are provided as a reimbursement for services, but subject to a fixed dollar maximum per day. Usually a waiting period called an **elimination period** of 0, 30, 90, 180, or 360 days is required before the plan will pay benefits. Long-term care insurance may be available as a rider to a life insurance or annuity policy, as well as a separate health insurance policy.

#### Medicare Supplement

Medicare supplement (also called Medigap) insurance is sold to people age 65 and older and helps pay for medical costs that Medicare Parts A & B do not pay, such as the deductible and coinsurance amounts. Medicare supplement insurance is regulated by both state and federal laws. This coverage can only be provided through ten standard health plans that vary in the amount and type of coverage provided. Coverage is available to individuals without medical underwriting for six months following the date the individual first becomes eligible for Medicare Part B. The Division of Insurance produces, on an annual basis, a rate comparison guide that outlines the basic characteristics of Medicare supplement insurance, describes the ten standard health insurance plans, and shows the current premium rates charged by the insurers selling this insurance in Alaska. There is also a pamphlet entitled "Health Insurance for People with Medicare" produced by the 50 states and the federal government that summarizes the Medicare and Medicare supplement programs. Both publications are available from the Division of Senior Services, 3601 C Street, Suite 310, Anchorage, Alaska 99503, telephone number (907) 269-3680 or (800) 478-6065.

### **Dental Insurance**

Dental insurance covers costs associated with the care of teeth. Benefits for preventive services, such as cleanings and exams are generally limited to once every six months. Most plans contain coinsurance and deductible cost-sharing requirements. The coinsurance provisions will vary based on the type of procedure.

### **Vision Coverage**

Vision coverage provides benefits for glasses, contact lenses, and eye examinations up to a specified amount per year. Vision benefits are often subject to a set schedule of benefits and limits on the frequency of services. A typical vision plan covers the cost for one examination per year, with coverage for glasses and contact lenses limited to once every two years.

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## Alaska Insurance Consumer Guide

### Things to be Aware of Regarding Health Insurance Policies

#### Benefit Limits

- Most health insurance plans set a maximum benefit amount that will be provided for all covered services and supplies over the lifetime of the covered individual. This is called a **lifetime maximum**. This maximum is often set at \$1,000,000.
- Most health insurance plans set a maximum benefit amount that provides for particular services and supplies, such as a maximum benefit of \$250,000 for organ transplants.
- Some health insurance plans limit the benefit that will be provided per day for a covered service. This is called a **daily maximum**. They may also limit the number of days that a service will be covered. These types of limits are generally used for services including mental and nervous disorders, skilled nursing facilities, and home health care.
- Many health insurance plans limit the total benefit that will be provided per year for covered services. This is called an **annual maximum**. These limits are generally used for those services where it is difficult to assess whether the service is medically necessary.
- Most health insurance plans exclude or limit coverage for a period of time for medical conditions that existed within a certain period, commonly six months, prior to the date coverage began for which medical advice, diagnosis, care or treatment was recommended or received. This is called a **preexisting condition waiting period**. The waiting period is commonly 12 months. In most cases, insurance companies must reduce this waiting period by the number of days you were covered under prior health insurance plans, as long as you had no more than a 90-day break in your health insurance coverage.

#### Deductibles, Coinsurance, and Other Charges

- A **deductible** is a specified dollar amount an individual must pay in each policy period before reimbursement for expenses begin. The primary purpose of the deductible is to encourage individuals to use health care services only when necessary. A separate deductible may be required for specified services such as hospital admissions or prescription drugs. Some health plans may include a provision that allows any claims incurred in the last quarter of the policy period to be carried over and applied to meet the deductible in the next quarter.
- **Coinsurance** is that per-centage of covered services and supplies the insurer will pay for after the individual pays the de-ductible. The individual is responsible for the amount the insurer does not pay. A common coinsurance arrangement is for the insurer to pay 80% of charges for covered services and the individual 20%.
- **Out-of-pocket maximum** is the maximum dollar amount the individual pays for covered services and supplies during a specified period, generally a calendar year. This maximum may be defined to include or exclude the deductible. Once the out-of-pocket maximum is paid, benefits are paid at 100% of the costs incurred after that time.
- A **copayment** is the fixed dollar amount that the individual is required to pay at the time each covered service takes place. Copayments vary by type of service. They are commonly used with emergency services and prescription drugs.
- A **usual, customary and reasonable (UCR) charge** is an established maximum amount that an insurance company will reimburse for a medical expense covered under your health insurance policy. UCR charges are generally determined based on charges that are actually billed by providers for each medical procedure or service in a geographical area. In order to

determine a reasonable charge, UCR charges are commonly calculated as a percentile of the charges billed by providers. The percentile is generally set so that a large percentage, such as 80% or 90%, of charges actually billed by providers are reimbursable in full. Note that UCR charges are determined by each insurer and will vary.

- Under most health insurance plans, you will be responsible for paying any amount billed by a hospital or physician that is larger than the insurer's established UCR charges for the service or procedure. However, service corporations, such as Blue Cross, contract with various hospitals and providers who agree to accept the service corporation's payment as payment in full. Therefore you would not be responsible for paying any amount that exceeds their UCR charges, unless you chose to use a hospital or provider that does not have a contract with the service corporation.
- The following is an example of how the various charges described above impact the amount you may be responsible for paying for medical services:

**The limits specified by your insurance policy:**

Deductible	\$ 500
Coinsurance	80%
Out-of-pocket maximum	\$1,000

*Amount Insurer Owes:*

Charges billed by provider	\$4,200
Amount greater than the UCR for the procedure	-\$ 550
Amount you owe for your deductible	-\$ 500
Charges eligible for reimbursement by insurer	<u>\$3,150</u>
Insurer's coinsurance	80%
Amount insurer owes before out-of-pocket limit applied	\$2,520
Amount that is greater than your out-of-pocket limit	<u>\$ 130</u>
<b>Total amount insurer owes after out-of-pocket limit applied</b>	<b>\$2,650</b>

*Amount You Owe:*

Deductible	\$ 500
Coinsurance amount (20% of \$3,150)	<u>\$ 630</u>
Amount of eligible charges before out-of-pocket limit applied	\$1,130
Amount greater than your out-of-pocket limit	<u>-\$ 130</u>
Amount of eligible charges after out-of-pocket limit applied	\$1,000
Amount greater than the UCR for the procedure	<u>\$ 550</u>
<b>Total amount you owe</b>	<b>\$1,550</b>

**Covered Services and Supplies**

There are two basic categories of services and supplies covered by health insurance policies.

- **Hospital Benefits** include expenses associated with stays at hospitals and other covered facilities, such as skilled nursing facilities, nursing homes and outpatient surgery centers. Benefits for hospital services often require that the individual or their physician contact the insurer or the employer to obtain prior approval for the number of days of hospital stay. Without this approval the benefits may be reduced.
- **Physician or Provider Benefits** include services provided by licensed physicians and other medical providers.

There are a number of other charges and services generally excluded from coverage under most health insurance plans. Following are examples of common exclusions:

- Services determined by the insurer to be medically unnecessary
- Services considered experimental by an accepted medical authority
- Services related to cosmetic surgery
- Services for mental or nervous disorders, vision, hearing
- Services that are provided without charge
- Services provided due to war
- Services provided as a result of a work-related injury
- Services provided by a relative
- Services related to normal pregnancy and routine well-baby care (these are generally excluded from individual policies and included in group policies).

Alaska law mandates that the following specific charges or services be covered in health insurance plans sold in Alaska. These requirements do not apply to employers with self-insured health plans.

- Coverage for newly born or adopted children for at least 30 days, if coverage includes dependents
- Coverage for treatment of alcoholism or drug abuse
- Low-dose mammography screening if the contract covers mastectomies and prosthetic devices and reconstructive surgery
- Treatment of phenylketonuria
- Coverage for not less than 48 hours after vaginal birth and 96 hours after a cesarean birth, if the contract covers the costs of childbirth
- Coverage for prostate cancer screening and cervical cancer screening

### **Coordination of Benefits**

This provision applies to the situation where an individual is covered under two different health insurance plans. It is included in almost all group insurance plans. It requires that payments made under the two plans be coordinated so that the individual does not receive duplicate payments for a service, thereby being reimbursed more than what was spent. Duplicate coverage frequently occurs when an individual is covered under both their own and their spouse's insurance plans. Most coordination of benefits provisions require that the individual's own plan pay first on a claim, and the other plan only pay the amounts not covered by the first plan. It is important that this provision be reviewed so that misunderstandings can be avoided regarding the benefit payments each insurer will make.

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## Alaska Insurance Consumer Guide

### Federal Laws Affecting Health Insurance

#### COBRA

COBRA is the federal law that requires employers to continue to provide their health insurance coverage to employees who have been laid off or terminated. The coverage may extend from 18 to 36 months. To obtain coverage under COBRA, the employee or their dependent must apply to the employer within 60 days of termination of their employment. The U.S. Department of Labor handles all inquiries regarding COBRA coverage. Inquiries should be sent to:

Office of Program Services  
Pension and Welfare  
Benefits Administration  
U.S. Department of Labor  
200 Constitution Ave., N.W.  
Washington, DC 20210  
(202) 219-8776

#### ERISA (Employee Retirement Income Security Act)

Many people who believe that they have a health insurance policy through their employer are actually covered under what is called a self-insured health plan. A self-insured health plan exists when an employer chooses to pay for medical bills directly, instead of purchasing insurance for that purpose. Most self-insured plans are regulated by the federal government through the Department of Labor under the authority of ERISA and are exempt from state regulation. Most large employers have self-insured health plans. The State of Alaska changed to a self-insured health plan for employees and retirees effective July 1, 1997.

Employers choosing to self-insure their health plans are not subject to state insurance laws such as benefit mandates, state premium taxes, capital and surplus requirements, and reserve requirements. They are also able to gain more control over their cash flow and have more freedom in determining benefits to be provided to their employees. Most employers with self-insured health plans purchase stop-loss insurance from insurance companies to protect themselves against large losses.

Employees who receive health coverage under a self-insured plan are not afforded the protections of state insurance laws and regulations. These protections include financial solvency requirements as well as requirements applying to the payment of claims. If a self-insured plan fails, Alaska benefits and managed care protections, such as standards for grievance procedures, fair disclosure of plan provisions, fair claims settlement practices and consumer services, are not available to employees. The federal laws governing these self-insured plans limit damages to actual costs and may not even cover attorney fees. Individuals covered under a self-insured plan must assume responsibility for all claims if the plan fails. Also, individual employees are required to obtain their own legal counsel to settle disputes, since the U.S. Department of Labor will not become involved in individual disputes over coverage. One other important consideration is that a self-insured employer may make material changes to the health plan (such as reducing or eliminating benefits) without providing advance notice.

#### HIPAA (Health Insurance Portability and Accountability Act of 1996)

This Act establishes federal standards for group and individual health insurance plans. The Act sets minimum standards for guaranteed renewability, preexisting condition waiting periods, and crediting for prior health insurance coverage. Alaska has enacted into law these federal standards which are

discussed in the health insurance sections of this guide.

### **Medical Savings Accounts**

Under this federal law a bank, insurance company, or other federally approved entity may set up an individual savings account called a Medical Savings Account (MSA) where you can set money aside to pay for qualified medical expenses. The deposits (called contributions) in the account are tax deductible. Qualified medical expenses are those expenses paid by you for medical care including any deductible and coinsurance payments. Medical Savings Accounts are regulated by the federal government, not the Alaska Division of Insurance. One advantage to establishing an MSA is that contributions are not subject to tax and qualified medical expenses paid out of the account are not included in gross income for federal income tax purposes.

In order for a savings account to qualify as an MSA, you must be covered by a high deductible health plan offered by a small employer (2-50 employees) or be self-employed and have purchased a high deductible health plan. A high deductible health plan is an individual health insurance policy with deductibles between \$1,500 and \$2,250 and out-of-pocket limit of \$3,000, or a family health insurance policy with deductibles between \$3,000 and \$4,500 and out-of-pocket limit of \$5,500. These high deductible health plans are regulated by the Division of Insurance in the same manner as other health insurance policies.

If you are seeking information on setting up an MSA account, the best place to start is by contacting your financial advisor or producers selling health insurance in Alaska. Producers should have knowledge of the high deductible plans that are available in Alaska and any MSAs that may be offered in conjunction with those plans.

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**HB**

**1999**

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# SENATE COMMITTEE REPORT

E: 5/18/03

FURTHER:

DATE TURNED  
IN TO OFFICE: 5/19/03

or and Commerce Committee considered HOUSE BILL NO. 199

## HB 199 DELETE MINIMUM WAGE INFLATION - PROOFING

Act removing the annual adjustment to the minimum wage based on the rate of inflation; and providing an effective date."

recommends:

**Senate Bill:**

- same title
- new title

**House Bill:**

- same title
- technical title
- new: SCR # \_\_\_\_\_

be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)

adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)

attached amendment(s)

adopt Letter of Intent by \_\_\_\_\_ Committee

further referral to \_\_\_\_\_ Committee

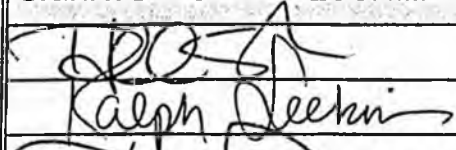
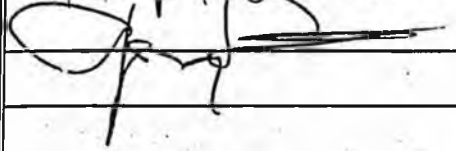
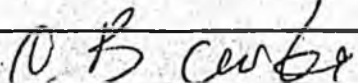
**NEW FISCAL NOTE(S):**

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

Department	Date	Fiscal	Zero	FN#
LWF	4/24		✓	2

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
		X		
			✓	
			X	
CHAIR: 	✓			

# ALASKA STATE LEGISLATURE

## House of Representatives

### COMMITTEE ASSIGNMENTS

RULES COMMITTEE, CHAIRMAN  
LABOR & COMMERCE COMMITTEE, MEMBER  
LEGISLATIVE COUNCIL, MEMBER  
SPECIAL COMMITTEE ON OIL & GAS, MEMBER  
LEGISLATIVE ETHICS COMMITTEE, MEMBER

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ALASKA STATE CAPITOL  
JUNEAU, AK 99801-1182  
PHONE: (907) 465-4966  
FAX: (907) 465-2040

## Representative Norman Rokeberg

e-mail: [Representative\\_Norman\\_Rokeberg@legis.state.ak.us](mailto:Representative_Norman_Rokeberg@legis.state.ak.us)

### SPONSOR STATEMENT FOR HB 199

BY: Representative Norman Rokeberg

**Title: An Act removing the annual adjustment to the minimum wage based on the rate of inflation; and providing for an effective date.**

In 2002, the 22<sup>nd</sup> Legislature enacted HB 56 repealing the minimum wage formula, which tied Alaska's minimum wage to the federal minimum wage PLUS \$.50 per hour or \$5.65. The bill established a base minimum wage of \$7.15 per hour, an increase of \$1.50 or 27%. In addition, HB 56 created a two-pronged formula annually adjusting the minimum wage by the Consumer Price Index (Anchorage), or increasing it by \$1.00 over the federal minimum wage, which ever is greater. Therefore, every January small businesses must increase their labor costs in spite of particular business circumstances, sector trends or economic conditions.

The rationale for increasing the minimum wage is to increase income for lower income people and reduce poverty. Indexing is supposed to allow these workers to keep up with inflation, give "certainty" to employers, and keep a divisive issue off the legislature's calendar.

Sound economic analysis argues against such results. Forced wage hikes lead entry-level employers to eliminate jobs or reduce working hours. The evidence suggests that such increases do not help the poor, but on the contrary, increase unemployment, effect only a small percentage of the target group, create inflation and fail to account for worker mobility.

This issue is of such importance that the legislature should be required to periodically take up the issue of the appropriate amount of the minimum wage. By doing so, this will allow the business community to have a seat at the table when bargaining for a change to the wage rate. The principle of collective bargaining requires employees and employers to be at the table when negotiating wage rates and other conditions of employment. However, when the legislature acts unilaterally, the effected employers have no say or input to the amount of the minimum wage.

In the four months since the minimum wage increase has occurred, Alaskan businesses have already reacted in a negative manner to low-income workers. This includes the closing of a business in Anchorage, directly related to the minimum wage increase, and the loss of 54 jobs.

Indexing the minimum wage has failed in its primary objective. I urge your support of this legislation.

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
 Bill Version: HB 199  
 (H) Publish Date: 5/6/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Department: Labor and Workforce Development  
 Title: Delete Minimum Wage Inflation - Proofing BRU: Labor Standards & Safety  
 Component: Wage and Hour  
 Sponsor: Rules Committee  
 Requester: House L&C Component Number: 345

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2003) cost: None

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill would modify AS 23.10.065(a) by removing the provision that requires the department to annually adjust the minimum wage in Alaska for the effects of inflation. The department does not anticipate a financial impact from this legislation.

Prepared by: Grey Mitchell, Director Phone: 465-4855  
 Division: Labor Standards & Safety Date/Time: 4/24/03 1:21 PM  
 Approved by: Greg O'Claray, Commissioner Date: 04/24/03  
 Agency: Department of Labor and Workforce Development

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Director

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## Vedder Study: Economic Impact of Washington's Minimum Wage Law

Release Date: 02/03/2003

by *Richard Vedder and Lowell Gallaway, Ohio University*

In the fall of 1998, the voters of Washington approved a large increase in the state's minimum wage. Four years have passed since its inception. It was designed to improve economic conditions for the poorer and less advantaged members of the population. Has it achieved its objective? The evidence strongly suggests the answer is "NO" - and indicates the law has had adverse consequences.

Some specific points:  
Coincident with the implementation of the new law, poverty in Washington began rising; Washington has had the greatest increase in poverty of any state in the nation since 1998.

The Washington minimum wage has caused considerable unemployment. Various estimates were made, suggesting a loss of not less than 20,000 or more than 48,000 jobs. It is a reasonably safe estimate that the law has raised the unemployment rate by at least one percentage point.

While unemployment in the Pacific Northwest has actually declined since 1998, it rose sharply in Washington. Much of the increase comes after the implementation of the minimum wage increase, but before the 2001 recession or the September 11 tragedy.

A tale of two cities: Coeur d'Alene, Idaho, unhampered by the new Washington law, has had far more robust employment growth than adjacent Spokane, Washington.

Some industries have had disproportionately large unemployment impacts from the law. The restaurant industry is a good example.

In low wage/highly competitive industries like farming, it is impossible for farmers to shift higher labor costs to consumers. It is no accident that there was a significant decline in farm proprietors after 1998, in marked contrast to robust growth in earlier years

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years.  
This law is a perfect example of the Law of Unintended Consequences, achieving the opposite results to that intended - at great human cost.

[View the full \*Economic Impact of Washington's Minimum Wage Law\* study here.](#)

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**JOIN**



*Alaska Cabaret, Hotel,  
Restaurant & Retailers Association*



1111 East 80th Ave., Suite 3 • Anchorage, Alaska 99518  
(907) 274-8133 • Fax: (907) 274-8640  
Toll Free In Alaska: (800) 478-2427

The Honorable Norman Rokeberg  
House of Representatives  
Alaska State Capitol  
Juneau, Alaska 99801-1182

March 21, 2003

Dear Representative Rokeberg,

On Behalf of the Alaska Cabaret, Hotel, Restaurant and Retailer's Association Board of Directors, our Members and Associates, we respectfully request your assistance in formulating a bill to remove the adjustment clause of the annual consumer price indexing included in last years minimum wage legislation.

During the past few months I have spoken at length with many of our restaurateurs and have received numerous negative comments about the devastating effects the unprecedented dollar and-a-half minimum wage jump has had on their businesses. The repercussions of this legislation have begun in reducing hours, limiting and/or removing benefits, laying off employees and ultimately, closing businesses.

Although removing the CPI clause will not significantly change this situation, it would be a positive starting point.

I will be encouraging our members to provide written back-up documentation to your office.

Thank you for your continued interest in Alaska's second-largest private employer, the hospitality industry.

Best regards,

Kac'e McDowell  
Executive Director, AK CHARR



# SOUTHSIDE BISTRO, INC.

1320 Huffman Park Drive  
Anchorage, Alaska 99515  
(907) 348-0088

04/01/03

Representative  
Norman Rokeberg  
State Capitol  
Juneau, AK 99801-1182

Dear Mr. Rokeberg

Thank you for supporting our concerns about the minimum wage increase. At the Southside Bistro we have 45 employees. Over half of them work for minimum wage. Everyone in this group are tipped employees and make between \$15 and \$25 per hour. This is more than any of the non tipped skilled laborers we have working here, including management.

I am for people earning good money, however, making a living in the restaurant business is hard enough with all the various taxes and regulations we already have. The recent 26% wage increase was a bit much to accept, without some form of "tip credit" to compensate small business owners.

With the previous wage it was far easier to justify hiring young adults, many of them going to work for the first time without experience.

In order to offset the current wage we have had to trim our service staff down. This could become a double edged sword as we are known for great service.

In other words, not only is it much more expensive to operate now, but the overall long term success of my business is in jeopardy.

The CPI tie-in will continue to undermine our business and drive our prices up and our ability to serve down.

Mr. Rokeberg, I fully support your efforts to remove the CPI tie-in. As mentioned I also believe a tip credit should be implemented. The minimum wage increase was intended for people earning only that, and their W-2 should reflect that at the end of the year. It is hard for me to accept paying someone 26% more in payroll when they actually make 2-3 times the minimum wage.

My goal is to continue employing young Alaskan's and keep our economy going. I look for your support in Juneau, to keep my small family business afloat.

Thank you for looking out for me.

Respectfully yours,

  
Jens Nannestad  
Proprietor



## Chamber of Commerce

\* P.O. Box 610, Anchor Point, Alaska 99556 \* Mile 156 Sterling Hwy \* (907) 235-2600 \*

March 17, 2003

Representative Norman Rokeberg  
Alaska State Capitol  
Juneau, AK 99801-1182

Re: Minimum Wage, Consumer Price Index (CPI)

Dear Representative Rokeberg:

A major portion of the membership of Anchor Point Chamber of Commerce is the small, family owned businesses. For the most part, these businesses employ a few employees in addition to family members and operate on a small profit margin.

The minimum wage tied to the CPI or having to increase it each year would place an unfair burden on these, and all, businesses by their not knowing what their wage scale would be from one year to the next. How can a business be expected to make plans for the coming year when one of their largest expenses is an unknown?

Anchor Point Chamber of Commerce believes in a fair and equitable minimum wage, one which an employee is able to reap benefits from his hard work; however, that wage must be one that employers can factor into their business plans with some certainty of constancy.

For these reasons, we request you introduce legislation to remove the above provision from the statute.

If you have any questions, please do not hesitate to contact me either at the Chamber Office number or at my business number, 235-2411.

Sincerely,

Kathy Poms  
President

KT/jac

Minimum Wage impact

**Subject: Minimum Wage impact**

**Date:** Fri, 28 Mar 2003 14:39:27 -0900

**From:** "Bernadette Bradley" <berni@alaskabradleyhouse.com>

**To:** <Representative\_Norman\_Rokeberg@legis.state.ak.us>

Dear Representative Rokeberg:

The Bradley House is a restaurant in South Anchorage with approximately 62 seats. This past year we have been hit with a multiple number of increases that are beyond our control.

In September of 2002 our liability insurance for general & liquor increased from \$9,000 to 19,100!! Then in October the medical insurance rates skyrocketed from \$1,400 per month to \$2,100 per month. We were also tasked with the liquor excise tax increase and decided to raise the minimum wage early to avoid changing menus twice for price increases. I am sure you are aware of the recent utility rate increases the past years and to top it off property taxes are higher again.

In the last few years with competition many restaurants have allowed themselves to be sucked into price wars to get customers through the door. I have priced goods at the Bradley House according to standards within the industry according to what my costs are. Although customers have noted the higher prices with one even calling us "unethical" I have no choice if I expect to get my bills and payroll paid. Unfortunately despite the price increases sales have remained the same to last year yet our higher overhead still needs to be paid.

The war has impacted business greatly due to the public being mesmerized by the News and need for safety at home. I have seen Carlos the restaurant next door to us close down at 8pm because he had no customers.

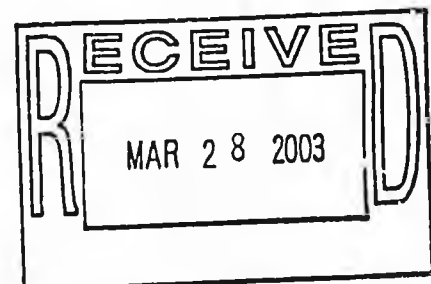
Anything you can do to help, especially by eliminating the CPI on the minimum wage I believe will give many restaurateurs some desperate relief.

Thanks for your consideration.

Sincerely,

Bernadette Bradley

Owner





Brews Brothers, LLC  
 737 West 5<sup>th</sup> Ave., Suite 110  
 Anchorage, AK 99501  
 Phone (907) 792-3761 Fax (907) 792-3740

Date: April 22, 2003  
 To: Representative Norman Rokeburg  
 Subject: H-B 199 Removal of the annual adjustment to the minimum wage

As co-owner of the Brews Bros. L.L.C. (the Glacier BrewHouse, ORSO) I am a strong supporter of this legislation to remove the annual CPI adjustment to minimum wage.

- The Brews Bros. L.L.C. employs 235 full and part time Crewmembers.
- The Federal Government defines *income* as all earnings, to include reported tips and paid wages.
- 65% of our staff has an *income* that includes both tips and wages.
- Service staff (Servers and Bussers) typically earn an average hourly *income* that is 1 1/2 – 3 times the minimum wage on an hourly basis.
- The Federal Government recognizes tips as *income*, thus personal income taxes are paid on all reported tips and wages.
- The business is responsible to accurately report tips and to pay its portion of taxes on that *income*.
- In 2002 the Brews Bros.L.L.C. tipped Crewmembers worked an excess of 135,000 hours.
- The cost of the increase in the minimum wage (\$5.65 to \$7.15) is projected to cost the business \$188,245 in wage increases, including payroll taxes and overtime cost increases.
- These additional wages did not go to any crewmember who had an *income* that was equal to the minimum wage of \$5.65, but rather to crewmembers whose *income* was \$6.65-\$20.00 per hour due to tips they earned. Of these additional wages 70% went to servers whose average *income* was \$19.00.
- Our actual minimum hourly *income* for a tipped Crewmember as legislated in 2002 is now \$8.15 per hour (\$7.15+\$1.00, minimum wage plus minimum reported tips) NOT \$7.15.

- The Brews Bros. L.L.C. agrees that a minimum *income* of \$7.15 per hour should be paid to all Alaskan Workers. As you can see we have always exceeded that standard.
- After September 11<sup>th</sup> the Alaskan economy along with the National economy was in decline. In 2002 visitor numbers were down, and for the first time since the 1980s industry wide sales throughout the state were also in decline. To further complicate these issues smoking bans were imposed, liquor taxes were raised, statewide tourism marketing dollars were reduced, minimum wage increased, local property and government taxes and fees increased, production caps were implemented on part of my business thus reducing potential sales. The real cost to my business in 2002 was in excess of \$250,000 in new costs to a company that already exceeded all wage and benefit standards. It seems to me that the reward for running a great business in Alaska, one that exceeds in wages, crew benefits, community support and Downtown developments is a quarter million dollar unfair increase in operating expenses.

In summary I support this legislation, however it is time for the state to get it's head out of the sand and recognize total *income* as the minimum *income* level required throughout the state. I am confident that total *income* is what the intension of the legislators was when crafting minimum wage legislation. I support this legislation until we can implement a fair and balanced tip credit that can be supported by the industry, the staff, and labor. Further increases to the minimum wage will only make an unfair situation worse.

Sincerely,



Chris Anderson  
Managing Member

SENT BY FAX TO: 907-465-2040

April 30, 2003



Rep. Harris & Rep Williams  
Co-Chairs House Finance Committee  
State Capitol  
Juneau, AK 99801

Dear Representatives Harris and Williams,

I am writing in support of HB 199, which eliminates the CPI increase provision currently in minimum wage statute.

As the operator of the Millennium Alaskan Hotel in Anchorage I can attest first hand to the impacts that recent 27% minimum wage increase has had on my business. In order to accommodate this increase, I have had to lay off workers, both salaried and hourly, increase menu prices, cut employee benefits and defray capital improvement projects. All of these changes have hurt the employer, the employee and the consumer public. Additionally, the current economic downturn and declining tourism numbers in our state has created a climate of uncertainty in my operation for which I must prepare with plans for further layoff and cuts. (SARS-Iraq War)

The net effect on my operating expenses to accommodate the minimum wage increase was in excess of \$180,000 annually. The CPI increase provision threatens to further erode my bottom line and the quality of service I provide in my business. Alaska is only one of three states that ties the CPI to its minimum wage. It is both unreasonable and inappropriate to weigh our industry down with yet another financial burden.

I urge you to pass HB199 out of committee.

Sincerely,

A handwritten signature in cursive script that reads "Max J. Lowe".

Max J. Lowe, CHA  
General Manager

4800 Spenard Road  
Anchorage, Alaska 99517-3236 USA  
Telephone 907.243.2300  
Fax 907.243.8815  
Reservations 866.866.8086  
[www.millenniumhotels.com](http://www.millenniumhotels.com)



BY CHOICE HOTELS

SENT BY FAX TO: 907-465-2040

April 23, 2003

Rep. Harris  
Rep. Williams  
Chair Labor & Commerce Committee  
State Capitol  
Juneau, AK 99801

Dear Representative Anderson,

I am writing in support of HB199 which eliminates the CPI increase provision currently in minimum wage statute.

As the General Manager of the Comfort Inn in Fairbanks, Alaska, I can attest first hand to the impacts that the recent 27% minimum wage increase has had on my business. In order to accommodate this increase, I have had to lay off workers, cut back on my deluxe continental breakfast and cut employee benefits. All these changes hurt the employer, the employee and the consumer public. Additionally, the current economic downturn and declining tourism numbers in our state has created a climate of uncertainty in my operation for which I must prepare with plans for further layoffs and cuts.

The CPI increase provision threatens to further erode my bottom line and the quality of service I provide in my business. Alaska is only one of three states that ties the CPI to it's minimum wage. It is both unreasonable and inappropriate to weigh our industry down with yet another financial burden.

I urge you to pass HB199 out of committee.

Sincerely,

A handwritten signature in cursive script that reads "Bronne Harrison".

CC: Rep Crawford  
Rep Guttenberg  
Rep Dahlstrom  
Rep Gatto  
Rep Rokeberg  
Rep Lynn

**Chena River**

1903 Chena Landings Loop  
Fairbanks, Alaska 99701  
Phone: 907.479.8080  
Fax: 907.479.8063

**Subject: HB 199 Support Letter**

**Date: Thu, 08 May 2003 14:46:29 -0400**

**From: "Dale Martens" <dsmartens@denalifoods.com>**

**To: "The Honorable Norman Rokeberg" <Representative\_Norman\_Rokeberg@legis.state.ak.us>**

Dale Martens  
7240 Setter Drive  
Anchorage, AK 99502-4197

May 8, 2003

The Honorable Norman Rokeberg  
House of Representatives  
Juneau, AK 99801-1182

Dear Representative Rokeberg:

As one of your constituents, I am writing in support of HB199 which eliminates the CPI increase provision currently in minimum wage statute.

This is very important to my business as I employ many first time workers in my Taco Bell business. Many of these employees have never had jobs previously and learn important work habits and other skills while employed with us. In all my 17 years in this business I have seen very few (if any) people who are supporting a household on this wage. The vast majority are young, single people just starting out in the work world. Regardless, very few of our employees start at minimum wage and all employees who show a modicum of interest and self initiative are rapidly promoted to much higher wage levels.

Please vote yes for HB199. I would appreciate a response from you indicating your position on this bill. It makes no sense that Alaska currently has the highest minimum wage (passed by republicans) and it makes even less sense to make it continually go up on an annual basis.

Thank you.

Sincerely,

Dale Martens, President Taco Bell of Alaska



**ALYESKA PRINCE HOTEL**  
ALYESKA RESORT, ALASKA

SENT BY FAX TO: 907-465-2040

April 29, 2003

Rep. Harris & Rep Williams  
Co-Chairs House Finance Committee  
State Capitol  
Juneau, AK 99801

Dear Representatives Harris and Williams,

I am writing in support of HB199 which eliminates the CPI increase provision currently in the minimum wage statute.

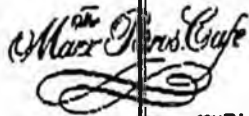
As the Director of Human Resources/Risk Mgmt. for Alyeska Resort in Girdwood, I can attest first hand to the impacts that the recent 27% minimum wage increase has had on our business. In order to accommodate this increase, we have had to reduce hiring, leave positions unfilled, increase menu prices and cut employee benefits. All these changes hurt the employer, the employee and the consumer public. Additionally, the current economic downturn and declining tourism numbers in our state has created a climate of uncertainty in our operation for which I must prepare with plans for further controls and reductions.

The CPI increase provision threatens to further erode our bottom line and the 4-diamond quality of service we provide at Alyeska Resort. Alaska is only one of three states that tie the CPI to its minimum wage. It is both unreasonable and inappropriate to weigh our industry down with yet another financial burden.

I urge you to pass HB199 out of committee.

Sincerely,

Richard Dowd  
Director Human Resources/Risk Management  
Alyeska Resort  
Girdwood, Alaska



SIX HUNDRED THIRTY SEVEN  
WEST THIRD AVENUE  
ANCHORAGE, ALASKA 99501  
TELEPHONE: 273-1133 or 277-MARK  
FAX: 254-MARK

SENT BY FAX TO: 907-465-2040

April 29, 2003

Rep. Harris & Rep Williams  
Co-Chairs House Finance Committee  
State Capitol  
Juneau, AK 99801

Dear Representatives Harris and Williams,

I am writing in support of HB199 which eliminates the CPI increase provision currently in minimum wage statute.

As the The Marx Bros Café in Anchorage I can attest first hand to the impacts that recent 27% minimum wage increase has had on my business. In order to accommodate this increase, I have had to lay off workers, increase menu prices and cut employee benefits. Increased labor costs along with years of large premium increases have taken away our ability to provide group health insurance in our small company. This is a benefit that we have provided for over 20 years and the decision was painful but we simply could not meet the costs. All these changes hurt the employer, the employee and the consumer public.

This winter we faced our first year of declining business. Couple with increased costs in labor and insurance we decided to curtail hours and reduced our staff by 25%. In addition some of the remaining staff had their hours reduced.

Uncertainty about this summer's tourist season we are going to operate shorter hours than in the past and not hire as many workers as we have in past seasons.

The CPI increase provision threatens to further erode my bottom line and the quality of service I provide in my business. Alaska is only one of three states that ties the CPI to its minimum wage. It is both unreasonable and inappropriate to weigh our industry down with yet another financial burden.

I urge you to pass HB199 out of committee.

Sincerely,



SENT BY FAX TO: 907-465-2040

April 30, 2003

Rep. Harris & Rep Williams  
Co-Chairs House Finance Committee  
State Capitol  
Juneau, AK 99801

Dear Representatives Harris and Williams,

I am writing in support of HB199 which eliminates the CPI increase provision currently in minimum wage statute.

How would the Legislature feel if 40% of the State's budget increased automatically every year according to the CPI index? This is precisely what the Legislature has done to restaurants in Alaska.

Establishing minimum wage has always been a prerogative of the Legislature, for good reason, and it should remain so. Simply allowing a major cost component of many businesses to rise automatically is inflationary, contributes to the loss of jobs and economic growth, and is not warranted from the standpoint of helping those at the poverty level.

As the owner and operator of Land's End Resort in Homer, I can attest to the impacts that recent 27% minimum wage increase has had on my business. In order to accommodate this increase, I have had to lay off workers or reduce their hours. Why, you ask? Because every restaurant runs on thin margins, and labor is budgeted as a fixed percentage of revenue. Therefore, as wages increase, the hours and benefits of employees must be cut back in order to meet fixed weekly payroll budgets. Anyone familiar with restaurants knows they are subject to extreme competition, and the profit margins are not there to "absorb" increases such as this from profit.

Approximately 25 – 50% of restaurant revenue is spent directly on labor, for us it depends on the time of year. For such a major cost component to rise with inflation is, by its very definition, inflationary. It will cause prices to increase and demand for our services to go down. More restaurants will fail.

Does annual CPI increases in the minimum wage help poor people struggling to feed their families? Perhaps it helps a few, but it hurts many more than it helps. Why? Restaurants must keep payroll costs at specific levels; for every dollar in hourly rate increases we must cut a dollar from hours or employee benefits.

April 30, 2003  
Representatives Harris and Williams  
Page 2

Of far greater negative impact to those at minimum wage is the fact that most server's real source of income is not wages—its is tips—and restaurant owners are tired of seeing unreported tip income and parsimonious tip-out practices by servers—both of which hurt the business. When restaurants are squeezed by inflation-adjusted wage increases, designed to help those earning, on average, three times the minimum wage, we pay more attention to accurate reporting of tip income and appropriate levels of server "tip-outs" for key personnel within the restaurant. This focused attention will hurt minimum wages earners far more than any gains from CPI increases in minimum wage.

In conclusion, HB 199 will increase jobs among those who need them; it will reduce inflationary pressure, and will benefit, not hurt, minimum wage earners. I urge you to pass HB199 out of committee.

Sincerely,



Jon Faulkner, Owner  
Land's End Resort

CC: Rep Crawford  
Rep Gutterberg  
Rep Dahlstrom  
Rep Gatto  
Rep Rokeberg  
Rep Lynn



ALASKA

01937

Date	3/28	# of pages	1	Fax Transmittal Memo	
To	Heather Norbuss		From	Thyes	
Co./Dept.			Co./Dept.		
Phone #			Phone #		
Fax #	465-2040		Fax #		

March 6, 2003

Representative Norman Rokeberg  
State Capitol Room 214  
Juneau, Alaska 99801-1182

Dear Representative Rokeberg,

As you know, last year the legislature passed a bill to increase the minimum wage from \$5.65 to \$7.15. The legislation also indexed future increases to inflation. NFIB members were opposed to the increase as well as the automatic indexing.

We are now concerned about a third aspect to this issue that wasn't clearly apparent in discussions on minimum wage last year. The increase in the minimum wage not only impacts what employers pay to hourly workers but also increases the minimum amount paid to salaried workers.

The Alaska Wage and Hour Act exempts salaried employees that meet certain criteria. In order for an employee to be exempt from the wage and hour law they must be paid at least two and one-half times the Alaska minimum wage per hour during the first 40 hours of employment each week. Based on the current minimum wage, the minimum salary would be \$715 for the first 40 hours worked each week. That equates to \$37,180 per year.

It is our understanding that you are considering legislation to remedy some or all of these issues. We encourage you to do so and will support your efforts.

The NFIB/Alaska Leadership Council will be meeting March 14 in Juneau and the wage and hour issues will be on our agenda.

You have long been a supporter of small business. We look forward to working with you and greatly appreciate your advocacy for business.

Sincerely,

Thyes Shaub, NFIB Alaska Lobbyist



ALASKA

**National Federation of Independent Business**

**Statement of Support for HB 199**

**Removal of Automatic Inflation Adjustment for Minimum Wage**

**April 21, 2003**

The Alaska Chapter of the National Federation of Independent Business has 2,500 members, making it the largest small-business advocacy group in the state. The legislative agenda of NFIB is determined by ballot. The ballot is a poll of the membership on a series of issues.

Following are the ballot results in response to the following question: Should the minimum wage be indexed for inflation?

17% YES                      76% NO                      7% Undecided

NFIB members are in strong support of removing the automatic indexing of the minimum wage to inflation as provided in House Bill 199. Some members are struggling as it is with the recent increase in the minimum wage from \$5.65 to \$7.15. Alaska now has the highest minimum wage in the nation.

Future minimum wage increases should be determined by the legislature after careful review of the current economic conditions that exist in Alaska.

**Vote YES on House Bill 199**

Submitted by Thyes Shraub on behalf of NFIB/Alaska.

Headquarters:  
217 2nd Street, Suite 201  
Juneau, Alaska 99801  
(907) 586-2323 FAX 463-5515



April 4, 2003

Representative Norm Rokeberg  
Alaska State Capitol  
Juneau, Alaska

Re: Alaska Wage and Hour Act Revisions

Dear Representative Rokeberg:

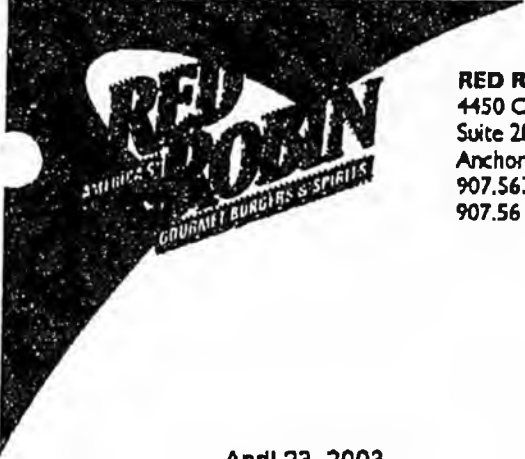
The minimum wage bill that was passed into law last session contained provisions that the members of the Alaska State Chamber of Commerce believe to be detrimental to business. We request your support and assistance to amend the current law in the following manner:

1. We urge the elimination of the Consumer Price Index (CPI) provision that increases the minimum wage annually commensurate with cost of living increases. There are many factors that impact the cost of doing business that businesses cannot automatically pass on to the consumer or marketplace. The elected representatives of the people are able to evaluate the economic environment and assess the ability of the economy to sustain mandatory wage increases. Responsibility for adjusting the minimum wage should be returned to the legislature.
2. We urge elimination of the provision that mandates that the Alaska minimum wage be \$1.00 over the federal minimum wage. The cost of doing business is already greater in Alaska than elsewhere in the nation. A mandate of this sort results in employers having fewer employees or reducing the benefits they offer to employees.
3. We urge elimination of the 80/20 statute, which requires that exempt employees performing non-exempt work greater than 20% of the time be paid twice the minimum wage.

We also seek introduction of a training wage consistent with that that is federally allowable. This will result in employers having the ability to afford to hire untrained workers and provide them with on-the-job training. It will mean more jobs for inexperienced workers and development of a stronger workforce for the state.

Sincerely,

Pamela La Bolle  
President



RED ROBIN ALASKA, INC.  
4450 Cordova Street  
Suite 200  
Anchorage, AK 99503  
907.563.7777  
907.561.2525 FAX

April 23, 2003

SENT BY FAX TO: 907-485-2040

Rep. Tom Anderson  
Chair Labor & Commerce Committee  
State Capitol  
Juneau, AK 99801

Dear Representative Anderson,

I am writing in support of HB199 which eliminates the CPI increase provision currently in minimum wage statute.

As the owner of the Red Robin restaurants in Anchorage, I can attest first hand to the impacts that the recent 27% minimum wage increase has had on my business. In order to accommodate this increase, I have had to lay off workers, have eliminated over 14,000 man-hours per year [equivalent to 16 employees working a 35 hour workweek], increased menu prices and cut employee benefits. I also had to close one of my restaurants. This closure resulted in the loss of over 50 jobs

All these changes hurt our business, the employees and the consumer public. Additionally, the current economic downturn and declining tourism numbers in our state has created a climate of uncertainty in my operation for which I must prepare with plans for further layoffs and cuts.

The CPI increase provision threatens to further erode my bottom line and the quality of service I provide in my business. Alaska is only one of three states that ties the CPI to its minimum wage. It is both unreasonable and inappropriate to weigh our industry down with yet another financial burden.

I urge you to pass HB199 out of committee.

Sincerely,

Fred Rosenberg  
President

CC: Rep Crawford  
Rep Dahlstrom  
Rep Gatto  
Rep Guttenberg  
Rep Lynn  
Rep Rokeberg

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**MIDTOWN RED ROBIN**  
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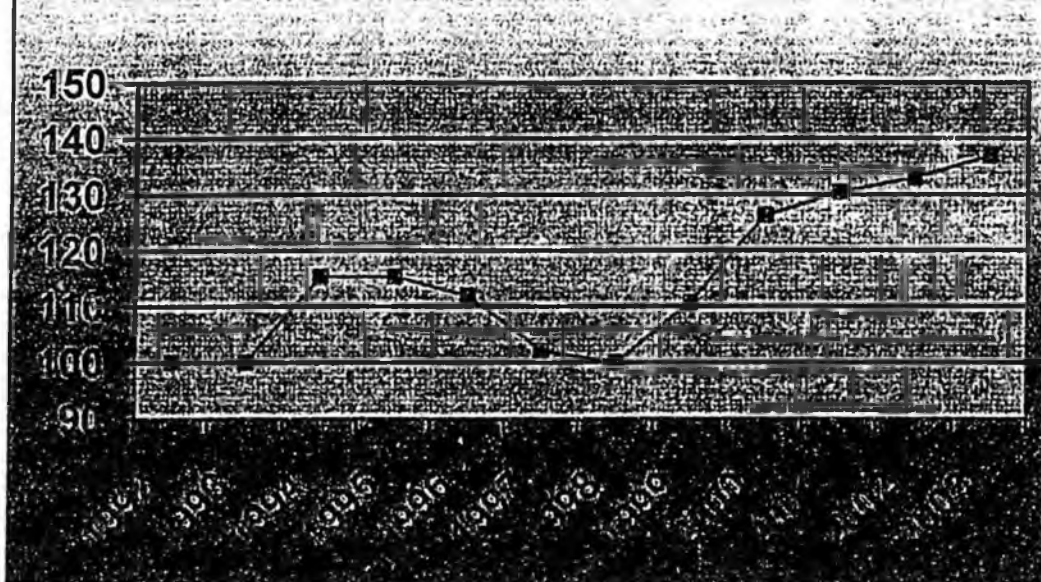
# The Economic Impact of Washington's Minimum Wage Law

By Richard Vedder and Lowell Gallaway  
Ohio University

## Introduction

On January 1, 1999, the minimum wage for workers in Washington rose as a result of a voter initiative. Subsequent increases have brought the Washington minimum wage to more than 36 percent higher than the national average. As Figure 1 shows, in much of modern history, the Washington state minimum wage was at, or relatively close to, that determined nationally via the Fair Labor Standards Act of 1938 as amended. The 1998 decision of the voters, however, has led to an unprecedentedly high minimum wage in Washington relative to national norms. Today, the Washington state minimum wage is the highest, relative to the national standard, at any time in history.

**Figure 1: Washington Minimum Wage as Percent of U.S., 1992-2003**



The increase in the minimum wage approved by the voters was presumably motivated by a desire to create income for lower income people. The hope was that it would reduce poverty. Yet the Law of Demand suggests that when the price of something rises, the quantity the people wish to purchase falls. Government mandated higher minimum wages mean the price of labor is being increased, which should induce some

reduction in the amount of workers who will be hired<sup>1</sup>. Thus the income-generating effect of higher wages might be offset by the income-destroying impact of falling employment opportunities arising from higher wages. The Nobel Prize winning economist Joseph Stiglitz, who was Chair of the Council of Economic Advisers under President Clinton, put it well: "a higher minimum wage does not seem to be a particularly useful way to help the poor. Most poor people earn more than the minimum wage when they are working; their problem is not low wages."<sup>2</sup> Secondly, if a significant percentage of low paying jobs were held by persons from non-poor families, the minimum wage might be ineffective in achieving its objective even if the unemployment effects of higher wages are small.<sup>3</sup> Moreover, the longer term ability to increase worker income is closely tied to experience and training, and if the minimum wage hike were to lead to reduced training, and if unemployment lowered opportunities to gain experience, the longer term prospects of lower skilled workers would be further reduced.<sup>4</sup>

The first empirical question, then, is: have economic conditions for lower income citizens of Washington improved since the enactment of the high state minimum wage? Is, for example, the rate of poverty higher or lower? Does Washington's poverty experience in recent years mirror that of the nation? If no, is it plausible to argue that the minimum wage law has played a role in the deterioration in the income position of relatively disadvantaged Washingtonians?

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<sup>1</sup> The evidence in this respect is persuasive. A review of earlier studies is found in Charles Brown, Curtis Gilroy and Andrew Kohen, "The Effect of the Minimum Wage on Employment and Unemployment," *Journal of Economic Literature* 46(1), October 1982, pp. 487-528. For a more recent review, see Charles Brown, "Minimum Wages, Employment and the Distribution of Income," in Orley Ashenfelter and David Card, eds., *Handbook of Labor Economics*, 3B, 1999, pp. 2101-2163. On the impact of changes in the federal minimum wage instituted in 1990 and 1991, see Donald Deere, Kevin M. Murphy and Finis Welch, "Employment and the 1990-1991 Minimum Wage Hike," *American Economic Review*, 85(2), May 1995, pp. 232-237. David Neumark and his colleagues have also performed much valuable recent research. See, for example, David Neumark and William Wascher, "A Cross-National Analysis of the Effects of Minimum Wages on Youth Employment, National Bureau of Economic Research (NBER) Working Paper No. 7299, August 1999, Neumark's "The Employment Effects of Recent Minimum Wage Increases: Evidence from a Pre-Specified Research Design," NBER Working Paper No. 7171, June 1999, and David Neumark, William Wascher and Mark Schweitzer, "The Effects of Minimum Wages Throughout the Wage Distribution," NBER Working Paper No. 7519, February 2000. For the NBER studies, go to <http://www.nber.org>. See also Richard V. Burkhauser, Kenneth A. Couch and David C. Wittenburg, "Who Minimum Wages Bite: An Analysis Using Monthly Data," *Southern Economic Journal* 67(1), 2000, pp. 16-40; David Macpherson, "The Effects of the Proposed California Minimum Wage Hike," Employment Policies Institute, October 2000. The only major dissenting voice to the consensus that minimum wages cause unemployment comes from David Card and Alan Krueger, whose research are discussed below.

<sup>2</sup> See his *Economics* (New York: W.W. Norton, 1993), pp. 130-133.

<sup>3</sup> For statistics on work experience and earnings of poor and near-poor persons, see U.S. Department of Commerce, Bureau of the Census, Current Population Reports No. 219, *Poverty in the United States: 2001* (Washington, D.C.: Government Printing Office, 2002), available at [www.census.gov/hhes/www/poverty.html](http://www.census.gov/hhes/www/poverty.html).

<sup>4</sup> Empirical evidence that minimum wages reduce training is provided in Masanori Hashimoto, "Minimum Wage Effects on Training on the Job," *American Economic Review*, 72(5), December 1982, pp. 1070-1087. For a more recent affirmation of that evidence, see David Neumark and William Wascher, "Minimum Wages and Training Revisited," NBER Working Paper, W6651 available at [www.nber.org](http://www.nber.org).

## Rising Poverty in Washington

Despite rising incomes in the late 1990s and into the new century, the poverty rate has gone up in the state of Washington. Table 1 looks at the poverty rate in 1998, the year prior to the beginning of the state's higher minimum wage, and 2001. Note that in Washington, the rate rose by 1.9 percentage points, going from 8.9 to 10.8 percent, implying an increase of the actual number of poor persons of substantially over 20 percent. By contrast, nationally, the poverty rate fell by a percentage point, and in the neighboring states of Idaho and Oregon the decline was even greater. Whereas in 1998, the poverty rate was dramatically lower in Washington than in Oregon (8.9 vs. 15.0 percent), by 2001, the rate was actually *higher* in Washington.

Table 1  
Changes in the Poverty Rate, Washington and the Nation, 1998-2001

State or Area	1998 Poverty Rate	2001 Poverty Rate	Change, Poverty Rate, 1998-2001
Washington	8.9%	10.8%	+1.9%
U.S.	12.7	11.7	-1.0
Oregon	15.0	10.6	-4.4
Idaho	13.0	11.2	-1.8

Source: U.S. Bureau of the Census, authors' calculations.

The use of single year poverty rate data is somewhat hazardous, however, because the samples on which poverty rates are calculated at the state level are rather small. To reduce that problem, the Bureau of the Census prefers to use averages of the poverty rate over two or more years. We can compare 1997 and 1998, the last two years prior to the implementation of the voter mandated minimum wage increase, with 2000 and 2001, after the law had been fully in effect. The results, presented in Table 2, are similar to those derived from the single year data. Poverty rates are falling elsewhere, but rising in Washington during the period following the implementation of the higher state minimum wage.

Table 2  
Changes in the Poverty Rate, Washington and the Nation, 1997-98 to 2000-01

State or Area	1997-98 Poverty Rate	2000-01 Poverty Rate	Ch., Pov. Rate, 97-98, 2000-01
Washington	9.1%	10.8%	+1.7%
U.S.	13.0	11.5	-1.5
Oregon	13.3	11.3	-2.0
Idaho	13.8	12.0	-1.8

U.S. Bureau of the Census, authors' calculation

Moreover, Table 2 looks only at Washington, two bordering states, and the aggregate figure for all Americans. A detailed examination of changes in the two-year poverty rate from 1997-98 to 2000-2001 reveals that *the poverty rate rose far more in Washington than in any other state in the Union*. Indeed, only six of the 50 states had rising poverty rates during this period of general prosperity (despite the mild 2001

recession), and the second highest increase in the poverty rate, 1.1 percentage points in Oklahoma, was more than one-third smaller than in Washington.

It is at least conceivable that Washington's rise in poverty happened coincidentally with the introduction of sharply higher minimum wages. That possibility would be strengthened if the period in question was one of economic stagnation and decline in Washington. The evidence, however, does not support that possibility. Real per capita personal income rose 9.65 percent from 1997 to 2001, which, other things equal, should have led to some reduction in poverty. Moreover, the real income growth in Washington exceeded the national average for the same period. The median real per capita income growth for the 50 states and the District of Columbia was 7.96 percent, suggesting that Washington's real per head income growth was more than one-fifth larger than the typical state. In most of the rest of the U.S., poverty rates were falling as real income was rising – but not in Washington.

More sophisticated statistical analysis confirms the descriptive statistical evidence. We regressed the 2000-01 poverty rate for the 50 states plus the District of Columbia against the 1997-98 poverty rate and against the growth in real personal income per capita. As expected, there was a positive observed relationship between the recent poverty rate and the earlier rate, and a negative relationship observed between the 2000-01 poverty rate and the rate of economic growth. From the model, we can estimate what the 2000-01 poverty rate in the state of Washington would have been. The actual rate, 10.8 percent, was almost precisely one-third higher than the predicted rate of 8.14 percent. Why the big error (for a model that explained well over 82 percent of the interstate variations in the poverty rate)? The unique event in Washington was the sharp increase in the minimum wage, not observed in the typical other state.

Why would poverty rates rise in a state that had significantly rising income levels and a simultaneous increase in the state minimum wage? While several factors are no doubt at work, the minimum wage increase would only reduce poverty if the "income effect" on higher wages is greater than the "substitution effect" associated with reduced employment arising from higher wages. Elaborating, proponents of minimum wages would argue that increasing pay to relatively low paid workers often would increase their income sufficiently to raise them above the poverty level. This income effect, however, may be completely offset by the substitution effect that arises when the increased minimum wage leads to behavioral changes on the part of employers.

What are these behavioral changes? First, employers respond to the Law of Demand – when the price of something rises, people want to buy less of it. In the case of labor, workers are hired for the revenues that their efforts provide to the firm. If the extra cost to a firm of hiring another worker is less than the extra revenue that worker will provide, it is profitable to hire the worker, and employment will be increased. For example, suppose a worker's effort is expected to add \$6 per hour in revenue to the firm. If the wage is, say, the federal minimum wage of \$5.15 per hour, the firm will hire the worker because she or he is expected to enhance the firm's profitability. If, however, the wage is mandated under state law to be over \$7 (as is currently the case in Washington), the decision will be made not to employ the worker, as her addition to the payroll of the business would actually lower profits.

If the unemployment effects of the minimum wage are sufficiently large, than one would expect the reduction in poverty associated with some workers receiving a higher wage would be offset by the loss of income from reduced employment among lower skilled workers. Moreover, the employment decision is not simply a "yes" or "no" one where workers either work fulltime or are unemployed. There is considerable

evidence that increases in real minimum wages lead to reductions in hours worked. Consider a worker who works 40 hours a week at \$5.15 per hour for 50 weeks a year, providing him or her with \$10,300 income. Suppose the minimum wage goes up to \$6.25, but the employer, feeling cost pressures, reduces the hours of employment to 30 hours per week. Annual compensation of the worker would fall to \$9,375, or by nine percent, which might actually work to bring the worker into poverty from non-poverty status (that depends on the income of other members of his or her household).<sup>5</sup>

There are other ways in which increases in the mandated minimum wage could increase worker poverty. First, employers, to reduce costs, might eliminate certain fringe benefits, such as health insurance or company subsidized retirement plans. Second, the firm might cut back on worker training, reducing the probability of the worker gaining on the job skills that would increase earnings over the long run.

This brings us to two other problems with using minimum wages as a means of eliminating poverty, or more generally, to redistribute income. First, most poor persons (over 88 percent in 2001) do not work full-time, and a large percent (over 61 percent in 2001) do not work at all. The poverty rate among full-time workers is a paltry 2.6 percent.<sup>6</sup> Thus, most adult poor people have no wage income, so minimum wage laws can have but a marginal impact. Moreover, a significant percentage of persons working minimum wage jobs are second or third wage-earners in a household which often has income levels substantially above the poverty levels (e.g., teen-age children from two parent middle class families). Thus there is a significant targeting problem with the minimum wage as a poverty reduction strategy.

The second problem relates to income mobility. Today's poor are tomorrow's non-poor. There is a good deal of movement of persons up and down the income distribution. While there may be some long-term poor who have little opportunity to improve their lot because of various disabilities (a group for which minimum wages are largely irrelevant), most poor move out of the poverty condition as job opportunities present themselves.<sup>7</sup> If minimum wages deny individuals opportunities for initial employment, they retard the move up the job ladder that provides a means out of poverty for many.

We have previously estimated statistically the relationship between state minimum wages and poverty rates using data for the 50 states and the District of Columbia.<sup>8</sup> To summarize our findings, we consistently found *positive* relationships between the presence of state minimum wages above the federally mandated level and the rate of poverty. While the results were not always robust statistically, the opposite contention that state minimum wage laws help reduce poverty is completely rejected. This is consistent with several studies using federal data, including some by us, that show either no relationship between the minimum wage and poverty or even a positive one – higher minimum wages are associated with greater poverty.

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<sup>5</sup> Consistent with this argument are the findings of David Neumark and William Wascher, "Do Minimum Wages Fight Poverty?" NBER Working Paper No. W6127, August 1997, available at [www.nber.org](http://www.nber.org). See also their paper with Mark Schweitzer, "Order from Chaos? The Effects of Early Labor Market Experiences on Adult Labor Market Outcomes," *Industrial and Labor Relations Review*, 51(2), January 1998, pp.299-322.

<sup>6</sup> This is for persons 16 years of age or over. The statistics are from the U.S. Census Bureau, Current Population Survey 2002, annual demographic supplement. Available on the Internet at [www.census.gov](http://www.census.gov).

<sup>7</sup> William Even and David Macpherson, *Rising Above the Minimum Wage* (Washington, D.C.: Employment Policies Institute, January 2000); web address: [www.epioline.org/even-macpherson.htm](http://www.epioline.org/even-macpherson.htm).

<sup>8</sup> Richard K. Vedder and Lowell E. Gallaway, *Does the Minimum Wage Reduce Poverty?* (Washington, D.C.: Employment Policies Institute, June 2001); see also our "The Minimum Wage and Poverty Among Full-Time Workers," *Journal of Labor Research* 23(1), Winter 2002, pp. 41-47.

In conclusion, the actual evidence of the past four years along with the findings for other states leads us to reject the major rationale for the Washington state minimum wage law, namely that it helps alleviate financial distress among the poorest members of the population. If anything, the evidence suggests that the state minimum wage law is a cruel albatross around the necks of Washington's poor, preventing them from participating in the market economy in a way that can alleviate their economic situation.

### Unemployment Effects

If it is true that the increase in the Washington minimum wage has not brought about its intended objective of improving conditions for low income persons, and indeed, likely had the opposite effect, then this is strong circumstantial evidence that the state's minimum wage is causing some unemployment and job loss. What is the actual unemployment experience in Washington in the years since the institution of the high minimum wage?

**Table 3**  
**Changing Unemployment Rates, Washington and 10 Other Western States, 1998-2001**

State or Area	1998 Unemp. Rate	2001 Unemp. Rate	Change, Unemp. Rate
WASHINGTON	4.8%	6.4%	+ 1.6%
UNITED STATES	4.5	4.8	+ 0.3
Arizona	4.1	4.7	+ 0.6
California	5.9	5.3	- 0.6
Colorado	3.8	3.7	- 0.1
Idaho	5.0	5.0	0.0
Montana	5.6	4.6	- 1.0
Nevada	4.9	5.3	+ 0.4
New Mexico	6.2	4.8	- 1.4
Oregon	5.6	6.3	+ 0.7
Utah	3.8	4.4	+ 0.6
Wyoming	4.8	3.9	- 0.9

Source: U.S. Department of Labor, Bureau of Labor Statistics

Table 3 shows that from 1998, the last year before the minimum wage increase, to 2001, unemployment showed little change in the nation as a whole or in the 10 other contiguous Western states. Nationally, the unemployment rate rose by a modest 0.3 percentage points, and in five of the other western states it rose, in four it fell, and in one it remained the same. No state had an increase in its state unemployment rate of over 0.7 percentage points – except Washington. The increase in the unemployment rate in Washington was more than double for any other state in the region. By 2001, Washington had the highest unemployment rate of any American state, whereas in 1998 its unemployment rate was exactly the median (middle) of the states in the region.

We asked ourselves: what would the Washington unemployment rate have been if it had followed the pattern, relative to the U.S. or its neighbors, that it did in the years prior to the adoption of the new Washington minimum wage? We estimated two regression equations, both using monthly data for the 84 months prior to the effective date of the new law (the years 1992 through 1998). In one, we estimated the Washington unemployment rate based on the national rate, and in the second, we estimated the Washington rate based on the average of its two bordering states, Oregon and Idaho. In both regressions, there was a

highly significant statistical relationship between the national or neighboring unemployment rate and that in Washington – Washington typically followed national and regional patterns.

We then took the estimated coefficients from the regression equations and forecast what the Washington unemployment rate should have been in September 2002, the last month for which data were available at the time of this analysis. That forecast implicitly assumes that the historic (1992-98) pattern of relationship between the Washington and national (or neighboring) unemployment rates still existed. The actual unemployment rate in September 2002 was 7.4 percent. The rate predicted from the model using national data was 6.04 percent, and with neighboring (Oregon and Idaho) data was 6.63 percent. Thus unemployment in Washington was 0.77 percent points higher than expected using neighboring states as the guide, and 1.36 percent points higher using national data to do the calculation.

Given the fact that the September 2002 labor force in the state of Washington was 2,979,000, the implied loss of jobs arising from Washington's unemployment rate exceeding what historical patterns would predict was 22,930 jobs using neighboring state data, and 40,499 using national data. Using a mid-range estimate, we would opine that the Washington unemployment rate is slightly over one percentage point above what might be expected, implying a loss of over 31,000 jobs.

It is true that this surge in Washington unemployment after 1998 may be caused by factors other than the increase in the Washington minimum wage, notwithstanding the fact that there are voluminous scholarly studies showing that minimum wages causes unemployment. One might note that the dot.com collapse in 2000 and beyond hit Washington hard, and that the slowdown in aviation since the recession began and especially after September 11, 2001, has reduced employment at Washington's largest employer, Boeing. According to this view, the rising unemployment was caused by these factors, not the minimum wage increase.

It should be pointed out, however, that the deterioration in Washington's unemployment situation began well before the September 11 tragedy – when the minimum wage hike was already operative. Indeed, the full impact of the rise in the minimum wage in Washington was probably felt by the summer of 2000. From December 1998 to September 2000, the unemployment rate fell by 0.5 percentage points nationally, and by 0.3 percentage points in Idaho and a rousing 1.1 percentage points in Oregon. Yet it *rose* by 0.4 percentage points in Washington. If Washington's rate had responded as it did nationally after December 1998, it would have been 0.9 percentage points lower in September 2000. If it had responded at the average of Washington's two neighbors, it would have been 1.1 percentage points lower. It would appear that the Washington unemployment rate in September 2000 was about one percentage point higher than what the 1999-2000 labor market situation would have predicted – *before the onset of the recession and fully a year before the September 11 tragedy*. This supports the notion that the minimum wage hike may have boosted the state's unemployment rate by about one percentage point, meaning the loss of roughly 30,000 jobs.

To learn more about the *immediate* impact of the increase in the minimum wage in January 1999, we did a comparison of employment growth rates in Washington and its two neighbors, Oregon and Idaho, in the periods immediately before and immediately after the minimum wage increase. Specifically, we looked at total-nonagricultural job growth as well as that in eight specific employment categories for the six months April through October of 1998, the last six months before the voters approved the minimum wage increase in November 1998. Then we looked at job growth from December 1998 (the last month prior to the increase in the minimum wage) and June 1999. The results are shown in Table 4.

Looking at total job growth, it declined from 3.19 to 0.75 percent as Washington moved into the higher minimum wage era. By contrast, there was little change in growth in the neighboring states. If we take the average of Oregon and Idaho, employment growth in the 1998 period was 1.18 percent, compared with 1.22 percent in the 1999 period. Growth stayed the same, roughly, while it fell sharply in Washington. Whereas in 1998, before the minimum wage change, job growth was sharply higher in Washington than in either Idaho or Oregon (where it was almost nonexistent), in the post-minimum wage increase period growth was far higher in Idaho than in Washington, and almost 95 percent of the huge differential between Washington and Oregon had been eliminated.

**Table 4**  
**Percent Growth in Employment, Washington and Neighbors: 6 Months Before**  
**and 6 Months After the Implementation of the Minimum Wage Increase**  
 Before Minimum Wage Change:                      After Minimum Wage Change:

Sector	Wash.	Oregon	Idaho	Wash.	Oregon	Idaho
<b>Total Emp.</b>	<b>3.19%</b>	<b>0.21%</b>	<b>2.15%</b>	<b>0.75%</b>	<b>0.60%</b>	<b>1.85%</b>
Services	2.16	0.56	2.46	1.72	2.12	2.70
Manufact.	-0.99	-1.54	-0.13	-4.97	-0.32	0.66
Trade	1.18	-0.31	1.37	0.41	0.55	1.72
Government	0.95	2.34	2.08	0.64	-0.96	1.63
Finance	2.55	0.74	3.56	0.22	-0.63	-0.42
Transport.	0.44	-0.13	3.19	0.95	2.64	3.47
Construction	5.35	-0.61	3.15	3.91	1.84	4.20
Mining	0.00	0.00	-6.67	-9.09	0.00	-7.41

Source: Authors' calculations from data from the U.S. Department of Labor, Bureau of Labor Statistics

Individual sectors show the same pattern. Excepting transportation, every single employment category had reduced growth in Washington after the minimum wage hike. For example, in trade (retail and wholesale), job growth had been 1.18 percent; it fell by nearly two-thirds to an anemic 0.41 percent. By contrast, in both Oregon and Idaho, a majority of sectors had higher growth in 1999 than in the 1998 period. *A sharp decline in employment growth coincides exactly with the implementation of the new state minimum wage law in Washington.*

### *A Tale of Two Cities*

Looking at interstate comparisons in unemployment may be questioned because geographic differences in economic conditions are often profound, and the observed results may therefore reflect factors other than the Washington minimum wage experience. Accordingly, an alternative approach is to compare communities geographically close to each other that have relatively similar economies.

Accordingly, an interesting dimension of much recent minimum wage research has been the use of the methodology of making before and after comparisons of employment and unemployment in comparable geographic areas where one of the locales has experienced a change in the minimum wage rate. This is especially applicable where state minimum wage rates are involved.

A highly publicized example of the use of such a technique is the Card-Krueger analysis of the impact of an increase in the New Jersey state minimum wage rate in 1991.<sup>9</sup> Their strategy was to contrast changes in employment in selected fast-food restaurants in central New Jersey with employment movements in a panel of selected fast-food outlets in Southeastern Pennsylvania, where the minimum wage had not changed. Unfortunately, their data collection techniques, which were based on telephone surveys, were fatally flawed, rendering their conclusion (denying an impact of minimum wages on unemployment) meaningless. Where their analysis was replicated using actual payroll record information, significant negative employment effects were observed in New Jersey fast-food restaurants.<sup>10</sup>

Despite the shortcomings of the initial Card-Krueger analysis, their methodology is quite useful for our purposes by providing a way of conducting an alternative assessment of the employment effects of the 1999 increase in minimum wage rates in Washington. Our choice of an area to analyze in this fashion is the Spokane, Washington-Coeur d'Alene, Idaho region.

Coeur d'Alene is the central city in Kootenai County Idaho, a county with well over 100,000 population and a per capita income level in 2000 of \$23,456, within 10 percent of that in Spokane County (per capita income \$25,550), a county with over 400,000 residents.<sup>11</sup> Thus these two counties, physically adjacent to each other, each have reasonably similar economies and relatively large population bases. The experience of Kootenai County will serve as a control for evaluating events that transpired in Spokane County in the wake of the 1999 minimum wage increase in Washington.

We begin by describing the unemployment experience in the Idaho area, Kootenai County. In 1998 (the year before the Washington minimum wage change went into effect), the unemployment rate was 7.7 percent. The rate remained stable thereafter, falling slightly by 2000 to 7.4 percent (and rising again to 7.6 percent in 2001). At the same time, a very different pattern of events was emerging in Spokane County. The 1998 unemployment rate (according to the Washington Employment Security Department) was 4.8 percent.

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<sup>9</sup> David Card and Alan Krueger, "Minimum Wages and Employment: A Case Study of the Fast-Food Industry in New Jersey and Pennsylvania," *American Economic Review*, 84(4), September 1994, pp. 772-793, and "Minimum Wages and Employment: A Case Study of the Fast-Food Industry in New Jersey and Pennsylvania: Reply," *American Economic Review*, 90(5), December 2000, pp. 1397-1420.

<sup>10</sup> See David Neumark and William Wascher, "Minimum Wages and Employment: A Case Study of the Fast-Food Industry in New Jersey and Pennsylvania: Comment," *American Economic Review*, 90(5), December 2000, pp. 1362-1396.

<sup>11</sup> The income data in this section come from the Web site of the Bureau of Economic Analysis, U.S. Department of Commerce ([www.bea.gov](http://www.bea.gov)). The unemployment data are obtainable from the Web site of the Bureau of Labor Statistics, U.S. Department of Labor ([www.bls.gov](http://www.bls.gov)).

It rose consistently after the new minimum wage law took effect, going to 5.2 percent in 1999, 5.6 percent in 2000, and 6.3 percent in 2001. The combined effect of these changes was to dramatically reduce the gap between the unemployment rates in Kootenai and Spokane counties. In 1998, the unemployment differential was 2.9 percentage points; it was reduced by more than half (to 1.3 percentage points) by 2001.

Probably the primary difference between 1998 and 2001 in the labor market milieu facing the two counties was the Washington minimum wage increase. This suggests that the impact of increasing the state minimum wage was to increase the Spokane County unemployment rate by about 1.6 percentage points (assuming that in the absence of the minimum wage increase, Spokane would have followed the pattern prevailing in Coeur d'Alene). Given the labor force in Spokane County of about 200,000, this implies a loss of about 3,200 jobs in the county attributable to the upward movement in Washington's minimum wage rate. While that impact seems relatively small, if a proportionate impact were felt state-wide, it implies a job loss of nearly 48,000 jobs. Thus, this finding employing the Card-Krueger methodology is quite consistent with our other findings, and indeed suggests a somewhat greater unemployment impact.

### *The Simple Theory of Unemployment*

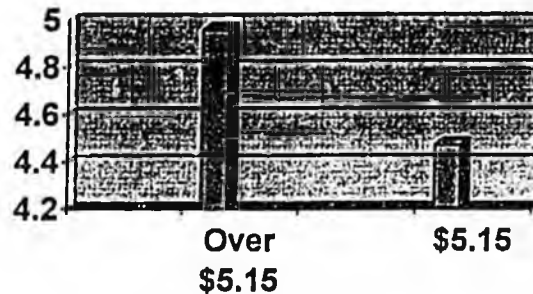
While the evidence appears strong that the 1999 minimum wage hike significantly impacted unemployment, it is circumstantial evidence. For the minimum wage hike to have unemployment effects, labor markets have to be impacted. In particular, if, as expected, the minimum wage increases heightened labor costs, this should have led to some reduction in the demand for labor, and probably also some modest increase in labor supply, both occurrences that would increase unemployment.

By definition, unemployment exists when the quantity of persons seeking jobs exceeds the number that employers wish to hire. Put differently, the quantity of labor supplied exceeds the quantity of labor demanded at the existing wage rate. Other things unchanged, an increase in wages mandated by governmental authority will reduce the quantity of labor demanded as some workers become unprofitable to hire, and increase the quantity of labor supplied, increasing unemployment. That is why economists generally believe minimum wage laws cause unemployment.

The extent to which this happens depends of the sensitivity of employers and workers to wages. While the precise response varies no doubt considerably, it is typical that when wages of workers rise by, say, one percent, the quantity of workers that employers wish to hire will also fall by almost 1 percent as well, say 0.90 percent... Economists would say that "the price elasticity of demand for labor is 0.90." By contrast, the empirical evidence suggests that the supply of labor is more inelastic – less sensitive to wage changes. Typically, a one percent increase in wages will increase the quantity of labor supplied by perhaps 0.15 percent. Thus a one percent increase in wages might well lead to a 0.90 percent decline in the number of workers employers wish to hire, but to a 0.15 increase in the number wanting to work. The combined effects would be to raise the rate of unemployment by about 1.05 percent.

A minimum wage increase obviously impacts mainly on occupations where it changes wages from what they otherwise would be, namely relatively lower skilled jobs. Restaurants, agriculture, and retail trade are three areas that employ large numbers of workers who would be impacted by mandated wage changes, whereas minimum wage laws should impact professional and managerial workers relatively little.

**Figure 2: Unemployment Rates-  
States at \$5.15 and States with  
Higher Wage**



Before turning to wage data specific to Washington, we would note that research that we previously performed provides empirical evidence that state minimum wage laws raise unemployment by raising wages. Figure 2 compares the 11 jurisdictions that throughout 2001 had minimum wage rates at the state level above the federal minimum, with the 40 states that either had no state minimum wage law or had rates at or lower than the federal standard of \$5.15. The average unemployment rates in the high minimum wage states was almost exactly one-half of one percentage point greater than that in the other states (4.96 vs. 4.47 percent). The four jurisdictions that had unemployment rates in excess of six percent all had minimum wages above the federal level – District of Columbia, Washington, Oregon and Alaska. By contrast, all five states with unemployment rates less than 3.5 percent (Maine, Iowa, Nebraska, North Dakota, South Dakota) had no minimum wage above the standard at the beginning of 2001.

The similar comparisons of unemployment rates, however, does not control for other factors that might cause unemployment. Using 1997 data, in an earlier study we observed a statistically significant (at the one percent level) positive relationship between the presence of state minimum wage laws above the federal level and the incidence of unemployment, controlling for several other possible causes of unemployment (e.g., immigration, unionization, government transfer payments). The results suggested that on average states with higher than federal minimum wage mandates had about one-third of one percentage point higher rates of unemployment. The study failed, however, to distinguish between states that had minimum wages only modestly in excess of the federal norm as opposed to states (such as contemporary Washington) where the minimum wage far outdistances the national standard. The same study also showed a positive relationship between state minimum wages (in excess of the federal mandate) and average annual pay of workers, suggesting, even using aggregate data, that state minimum wage laws raise labor costs.

The national data are supported in the Washington example. The Department of Labor data for “average annual pay” showed an unusually large upsurge in 1999, the year of the implementation of the new state minimum wage law. The average annual pay measure rose by 8.04 percent in Washington, more than double the national increase of 3.71 percent. A large part of that difference is explained by a productivity surge in Washington that outdistanced the national norm. But our estimate is that the productivity-adjusted real wage in Washington rose by 0.91 percent in 1999 – compared with a mere 0.22 percent nationally. We

have documented at great length that unemployment varies directly with the adjusted real wage.<sup>12</sup> The differential increase in the adjusted real wage in Washington alone can explain a 0.7 to 0.8 percentage point increase in the unemployment rate in Washington relative to the nation in that year. That is close to the suggested unemployment effects based on the national and regional labor market situation discussed above.

*Case Study: The Restaurant Industry*

The restaurant industry has been the focal point of much of the research dealing with the issue of the impact of minimum wage rates on employment. This stands to reason, because there are a disproportionately large number of employees in this industry earning wages at or very near the minimum wage level. Therefore, it is appropriate for us to analyze the effect on employment in this industry after the 1999 increase in the Washington minimum wage.

To set the stage for such an analysis, we collected data describing aggregate wage and salary employment and employment in eating and drinking establishments in Washington for the three years 1995, 1998, and 2001. They are shown in Table 5. The 1995-98 period is the last three years prior to the enactment of the new higher Washington state minimum wage, while the 1998-2001 period reflects activity after that mandated change.

The data displayed in Table 5 indicate that wage and salary employment in the aggregate grew much more rapidly between 1995 and 1998 – 9.51 percent – than it did from 1998 through 2001 – 3.83 percent. Not all of this decline in employment growth, however, represents the impact of the increase in the minimum wage. During that period, employment levels were adversely impacted by the national business cycle downturn. For example, if one were to assume a loss of 40,000 jobs in Washington because of the minimum wage hike, the number of those employed in 2001 in the state would have been 2,967.7 thousand, suggesting a percentage growth in jobs from 1998 and 2001 of 5.26 percent, still well below the growth in the earlier period, reflecting the business cycle downturn.

**Table 5**  
**Aggregate Wage and Salary Employment and Employment in Eating and Drinking Establishments, Washington, 1995, 1998, and 2001**

Employment Category	1995	1998	2001
All Wage and Salary Employment (000s)	2,564.7	2,819.5	2,927.7
Eating and Drinking Establishments (000s)	172.8	187.2	192.7

Source: U.S. Department of Labor, Bureau of Labor Statistics

<sup>12</sup> See Richard K. Vedder and Lowell E. Gallaway, *Out of Work: Unemployment and Government in Twentieth-Century America*, Updated Edition (New York: New York University Press, 1997).

Turning to restaurant employment (the eating and drinking establishment category in the table), there is evidence of an even greater impact on employment. Between 1995 and 1998, for every additional 100 wage and salary jobs created, 5.97 of them were in eating and drinking places. By contrast, over the interval 1998 through 2001, the incremental restaurant employment per 100 jobs statistic drops noticeably to 4.86 – a decline of about 19 percent. The difference of 1.11 may be considered a measure of the disparate impact of the increase in the minimum wage in Washington on restaurant employment. Given the actual aggregate wage and salary employment increase of 108,200, this factor accounts for a loss of employment in the restaurant sector of about 1,200 jobs.

In addition to this impact on restaurant employment, there also is a loss of jobs that is attributable to the overall slowing of employment growth induced by the minimum wage increase. In 1998, employment in eating and drinking places account for 6.64 percent of all wage and salary jobs. Assuming the total job loss from the minimum wage legislation is 40,000, as suggested above, this indicates a decline in restaurant employment of about 2,650 than can be explained by minimum wage-induced slower employment growth. Adding the two factors together gives a job loss of 3,850, which is proportionally about one-half larger than the average for other industries.

Yet this estimate of adverse employment effects is quite conservative. The data records only the number of jobs, not the number of hours worked. If, as national empirical evidence suggests is likely, the minimum wage change induced some reduction in hours for continuing employees, the total loss of hours of employment could be far greater than suggested by the two percent drop in the number of workers. In any case, the minimum wage law had a significant adverse impact on employment in the restaurant industry.

### *Agriculture*

Agricultural workers are typically paid far less than the average for non-agricultural workers, so this is a sector that is particularly vulnerable to laws mandating minimum wages. From 1998 to 2001, the growth in farm employment virtually stopped, falling 90 percent from 2.80 percent in the 1995-98 period, to 0.28 percent in the years after the institution of the new higher state minimum wage. Since proprietors in agriculture produce in international highly competitive markets and are “price takers” that have no control over the price of the goods sold, in the short run the minimum wage hike has a particularly egregious impact on their investment return. Accordingly, it is not surprising that there was a 2.80 percent decline in what the Bureau of Labor Statistics refers to as “farm proprietors” from 1998 to 2001, whereas from 1995-98 the number had increased substantially. Although circumstantial, the evidence strongly suggests that the cost squeeze imposed by the minimum wage may have been a major factor in a reversal in agricultural entrepreneurial activity after 1998.

### *Conclusions*

The passage of the referendum in 1998 that has dramatically raised the state minimum wage in Washington is a quintessential example of the Law of Unintended Consequences. The goal was to improve the lot of the disadvantaged in Washington, but the effect has been for poverty to rise, not fall, and rise far more than income trends would suggest should happen. The Washington minimum wage law created not eliminated poverty. It did it largely by creating unemployment and reduced hours for workers. While various estimates of job loss were calculated, the true figure likely is not less than 24,000 (0.8 percent of the labor force) and may be as high as 48,000 – after correcting for the impact of the business cycle turndown. The job losses were found in virtually every sector of the Washington economy. Some occupations relying heavily on relatively less skilled labor were particularly impacted. The restaurant industry suffered more job losses than most industries, and if the shortening of hours is taken into account, the employment effects may well be double or triple as severe as was typical of other industries. Agriculture, competing in highly competitive markets where farmers have no control over price, probably suffered not only from job loss, but from the profit squeeze that the minimum wage imposed, as evidenced by a noticeable drop in the number of farm proprietors (unlike in earlier periods, where the number had grown).

The Washington minimum wage, then, has failed in its primary objective. Rather than a relatively cheap way to alleviate poverty, the law has cruelly and capriciously brought about job and income loss to workers and small entrepreneurs. Had the voters known this would happen, it is difficult to believe they would have endorsed this well intended but truly economically destructive mandate.

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**EMPLOYMENT  
POLICIES  
INSTITUTE**

# **Indexing the Minimum Wage: A Vise on Entry-Level Wages**

March 2003

**T**he Employment Policies Institute (EPI) is a non-profit research organization dedicated to studying public policy issues surrounding employment growth. In particular, EPI research focuses on issues that affect entry-level employment. Among other issues, EPI research has quantified the impact of new labor costs on job creation, explored the connection between entry-level employment and welfare reform, and analyzed the demographic distribution of mandated benefits. EPI sponsors non-partisan research that is conducted by independent economists at major universities around the country.

# Indexing the Minimum Wage: A Vise on Entry-Level Wages

Employment Policies Institute

## Introduction

Indexing the minimum wage is a rising trend at the state and local levels. Whether through a ballot initiative, as in Washington and Oregon, or state legislature, as was the case in Alaska, efforts have increased in the recent years to tie minimum wage increases to specific economic indicators such as the Consumer Price Index (CPI).

Washington, Oregon, and Alaska all have minimum wages exceeding the federal standard that also increase annually based on changes in the CPI. In the 2001 legislative session, 24 other states considered increasing their minimum wages, and 15 of these considered linking those increases to indexing.

The arguments in favor of indexing are deceptively simple. Advocates argue indexing helps low-wage workers keep up with inflation and gives "certainty" to employers about wage increases. And besides, raising the minimum wage every year keeps a divisive issue off the legislative calendar.

But mandated wage increases are proven to be vastly inefficient. Moreover, there is a general consensus that forced wage hikes lead entry-level employers to eliminate jobs or reduce work hours. Even if jobs are not cut, employers respond to higher labor costs by shifting their hiring focus to better skilled employees or more capital-intensive production, leaving the least skilled out of the labor market.<sup>1</sup>

Automating minimum wage increases shifts these negative effects from a once-in-a-while

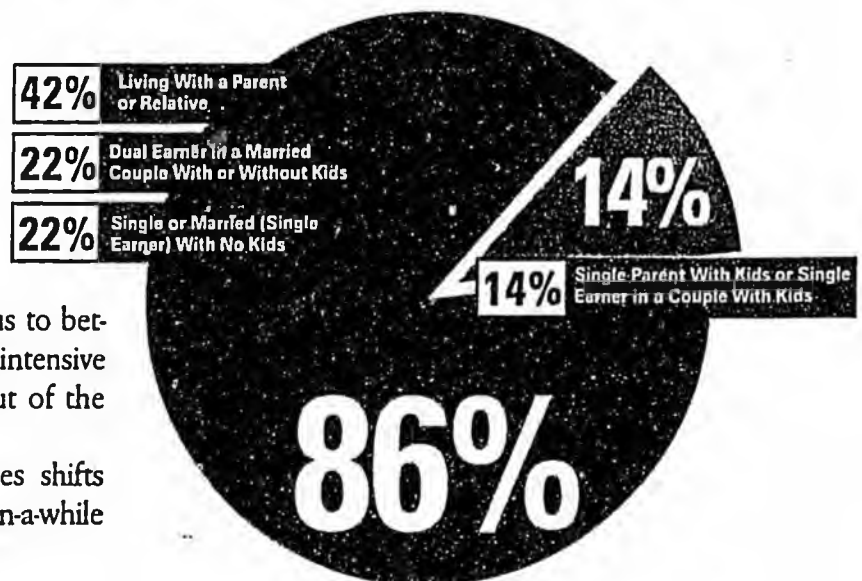
occurrence to an annual event, albeit in an incremental fashion. Indexing is little more than an effort to institutionalize on auto-pilot a cycle of rising labor costs leading to reduced job growth, annual harm to job opportunities for the least skilled, and constant inflationary pressure, all without any measurable reduction in poverty.<sup>2</sup>

## 1. Targeting the Wrong People

Few people will deny that the stated goal of increasing the minimum wage is to get more money to families who are supported only by a minimum wage earner. However, even a casual examination of recent minimum wage proposals shows that minimum wages fail to target the families they are intended to help.

For instance, as seen in Figure 1, of every 100 workers affected by the \$6.65 minimum

**Figure 1** Distribution of Workers Affected by a Proposed \$6.65 Minimum Wage



wage recently proposed in Congress, only 14 are single parents supporting children with just that low-wage job. The other 86 beneficiaries—who by definition are the actual “target” of the policy—are either teenagers living with their parents, single adults, married adults without children or one of multiple workers in a family with children.<sup>3</sup>

Indexing the minimum wage does not address the poorly targeted nature of the program itself. The overwhelming majority of “new dollars” created by annual wage hikes will still be delivered to people who are neither living in poverty nor supporting children.

## 2. Failing to Reduce Poverty

The 2001 study *Does the Minimum Wage Reduce Poverty?* conducted by Drs. Richard K. Vedder and Lowell E. Gallaway of Ohio University shows conclusively, “that minimum wage laws cannot be justified as a poverty-reducing device.”<sup>4</sup> Their research shows that no matter which groups are examined, how one defines poverty or where in the country you look, minimum wages have had no negative effect on poverty.

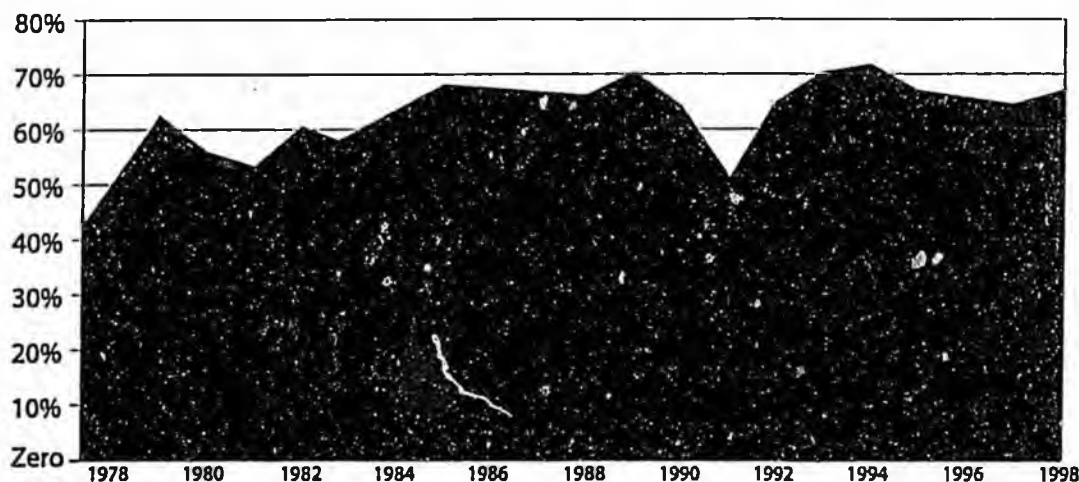
This study examines all poor households, and reveals that poverty exists primarily among nonworkers. In fact, for every full-time poor worker, there are seven who either do not work or only work part time. These people are helped out of poverty through first getting employed, improving their skills and then having increased job opportunities.<sup>5</sup>

## 3. Ignoring “Natural” Wage Growth

At the heart of the case for indexing is the notion that the bulk of minimum wage workers remain at the minimum wage and experience increasing financial strains brought on solely by annual inflationary pressures. In reality, it is difficult to find employees who stay at the minimum wage year after year. Those who do often have serious skill deficiencies or other problems that will not be solved with an indexed minimum wage.

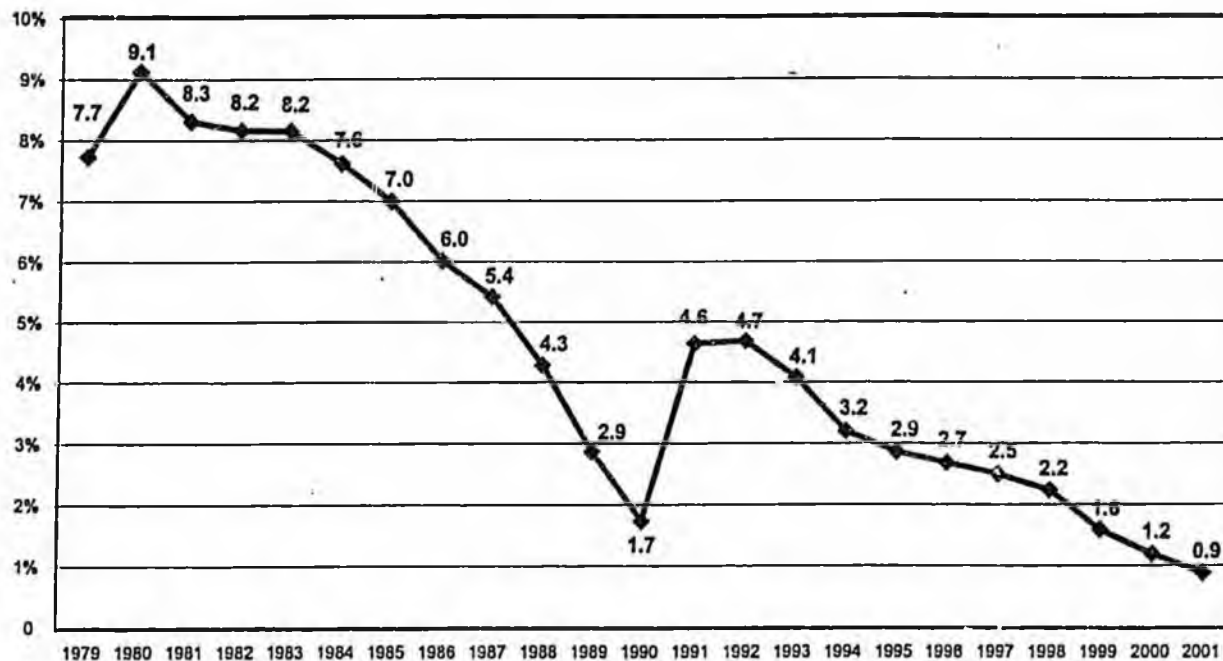
The fact is that wages for most minimum wage workers rise quickly without any intervention from the government. These wage increases come as workers increase their skill and experience levels, switch jobs, take on more responsibility, or improve their educational credentials.

**Figure 2** Time Line of Exit Rates\* from 1977-1997



\* The “exit rate” is defined as the percentage of minimum wage workers that have sufficient wage growth to earn above the minimum wage one year later. If the minimum wage increases over the year, a person’s wage must increase beyond the level of the new minimum to be counted as an exit.

**Figure 3** Percentage of Hourly Workers Earning the Minimum Wage



\*The prevailing Federal minimum wage was \$2.90 in 1979, \$3.10 in 1980, and \$3.35 in 1981-89. The minimum wage rose to \$3.80 in April 1990, to \$4.25 in April 1991, to \$4.75 in October 1996, and to \$5.15 in September 1997. Thus, the Federal minimum was \$4.25 for the 1992-95 period, and \$5.15 in 1998-2001. Data for 1990-91 and 1996-97 reflect changes in the minimum wage that took place in those years.

SOURCE: Unpublished tabulations from the Current Population Survey (CPS), Bureau of Labor Statistics.

Research from Dr. William E. Even from Miami University of Ohio and Dr. David Macpherson from Florida State University shows in Figure 2 that between 1977 and 1997, on average 65% of minimum wage employees made more than that wage the following year, with typical wage growth exceeding 10%.<sup>6</sup> Even the most ardent proponents of indexing have not suggested raising wages by 10% per year, yet this is exactly what most minimum wage workers accomplish on their own.

#### 4. Declining Numbers of Minimum Wage Employees

A corollary to the natural wage growth described above is the well-documented decline in the share of the population that is even

affected by the minimum wage. Bureau of Labor Statistics (BLS) data show that the number of workers at the minimum wage has been declining steadily over the past decade as seen in Figure 3. In 1992, 4.7% of the workforce was at the minimum wage, while in 2001 just 0.9% of workers earned the minimum wage.<sup>7</sup>

Between 1980, when 9.1% of the workforce was earning the minimum wage, and 2001, there was an 86% decline in the number of employees working at the minimum wage — a drop of over 4 million workers. During the same time span the workforce added over 21 million more hourly workers.<sup>8</sup>

This decline can be attributed largely to the wage hikes earned by entry-level workers. It also points out the fallacy behind the argument that indexing is necessary if the government is to “help” minimum wage workers.

## 5. Overstating the Effects of Inflation

Foremost among the faulty arguments cited by indexing proponents is the one referencing the effects of inflation on the real value of the minimum wage.

A representative of the Oregon Center for Public Policy (a left-leaning advocate of indexing) said, "Each year families working at or close to the minimum wage find it harder to make ends meet because prices go up. Indexing the minimum wage to inflation stops the erosion of its value."<sup>9</sup>

Accepting this statement at face value means ignoring the substantial wage growth that minimum wage workers experience each year. The population of minimum wage employees is a constantly-changing mix of labor market entrants. As noted above, to suggest that folks who are earning the minimum wage today are the same people who earned this wage last year or the year before is demonstrably false.

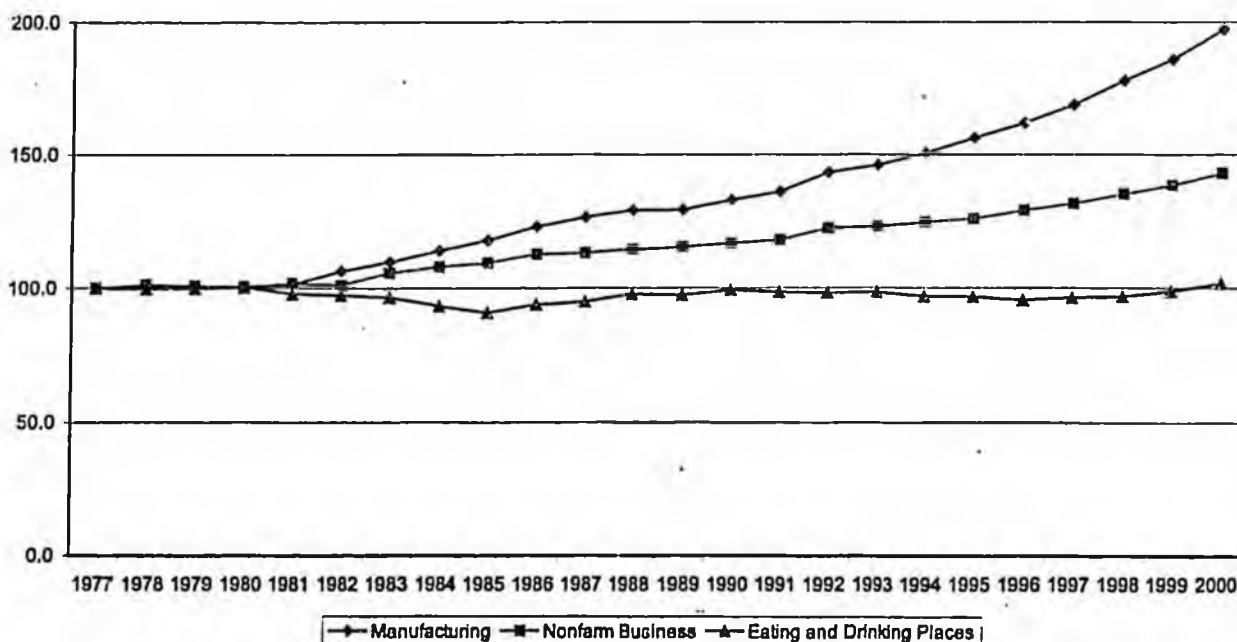
But the pitfalls of the inflation argument go beyond the composition of the minimum wage workforce. Even if one accepts constant inflationary pressures on minimum wage workers, the fact remains that the CPI is a crude tool for indexing because it has been shown to overstate inflation. Even some proponents of minimum wage increases have denounced linking automatic wage increases to the CPI as it does not accurately reflect market-caused price increases.<sup>10,11</sup>

If the CPI overstates inflation as research has shown, then indexed minimum wages based on the CPI would actually cause inflation, creating the need for greater and greater minimum wage increases every year.

## 6. Productivity of Low-Skill Workers Fails to Justify Indexing

A study by Oren M. Levin-Waldman (1998) proposes to instead link the minimum wage to productivity increases which the BLS has measured

**Figure 4** Productivity Indexes for Various Sectors (1977 = 100)



as increasing by an average of 2.7% annually since 1949.<sup>12</sup> Alternatively, this paper suggests adjusting the minimum wages by tying them to the median wages for low-skilled jobs, so minimum wages do not increase too far out of line with wages of the least skilled. Under this scenario, the median wage of the lowest-wage workers is used as a proxy for the productivity of the least skilled workers.

However, this approach also has serious pitfalls. If one examines the Bureau of Labor Statistics measures of productivity in the eating and drinking industry (one of the largest employers of entry-level workers), it is clear from Figure 4 that since 1977 the eating and drinking industry has seen only a negligible increase in productivity.<sup>13</sup> In fact, when Dr. Levin-Waldman uses the median wages of low-wage employees as a proxy for productivity linked to the \$3.35 minimum wage of 1983, the estimated minimum wage index was only \$0.06 different in 1997 than the current \$5.15 minimum wage.<sup>14</sup>

This is hardly a sound basis for arguing the need for indexing. On the contrary, from this analysis, it would seem that suggestions of the “declining value of the minimum wage” are simply untrue.

## 7. Siphoning Off Wage Increases

Supporters of indexing also rarely mention the lost benefits and additional taxes families incur following mandated wage increases.

In 2002, families supported by a single minimum wage employee with two children could receive \$4,140 in refundable Earned Income Tax Credit benefits, about \$3,500 annually (\$300 monthly) in food stamp benefits, thousands of dollars in Section 8 benefits if they qualify, and free or low-cost health insurance for their children in every state.

Any family taking advantage of all these programs and subsequently “benefiting” from a mandated increase in the minimum wage

would lose between 50% and 100% of every extra dollar they earn (up to about \$15.00 per hour).<sup>15</sup> This is because eligibility for these well-targeted assistance programs falls rapidly as wages rise. In the end, the overall income available to poor families does not rise at all, or rises just marginally, after an indexed wage hike takes effect.

## 8. Risks of Economic Uncertainty

In times of economic uncertainty, policymakers are motivated by a desire to enhance job creation and improve the business environment. Thus, minimum wage hikes rarely pass in the midst of a recession. Indexing the minimum wage would change that. Indexing puts minimum wage hikes on automatic pilot, forcing labor costs to rise even during times when no rational public servant would force this kind of mandate, such as periods of high unemployment or otherwise slow economic growth.

Historically, business cycles rise and fall over time. This has become evident (again) in recent years. With an unpredictable economic environment, it is important to remember that the labor market needs a certain amount of flexibility to deal with changing demands.

## 9. Better Targeted Programs Save Money and Provide More Assistance

For the small number of individuals who are supporting children on a minimum wage income, there already exist a number of tightly-focused programs that are far better suited to delivering income to those in need. These programs can either be better promoted, expanded or combined to provide even more assistance to poor families.

Since 1968 several programs have been created or expanded that are vastly more efficient than the minimum wage at getting

money to the poorest and most needy families. However, proponents of wage mandates wrongly criticize these programs as reasons for wage increases. Robert Pollin, often called the father of the living wage movement, said in the December 2002 *Journal of Economic Issues*, "[T]he need for such programs to support families which include full-time workers only emphasizes further the low level to which the national minimum wage has fallen."<sup>16</sup>

What Mr. Pollin fails to acknowledge is that these programs are not a symptom of the national minimum wage, but well-targeted policies superior to the minimum wage, specifically designed to target poor families with children. The programs that exist are far more efficient and cost effective than the general wage mandates he proposes.

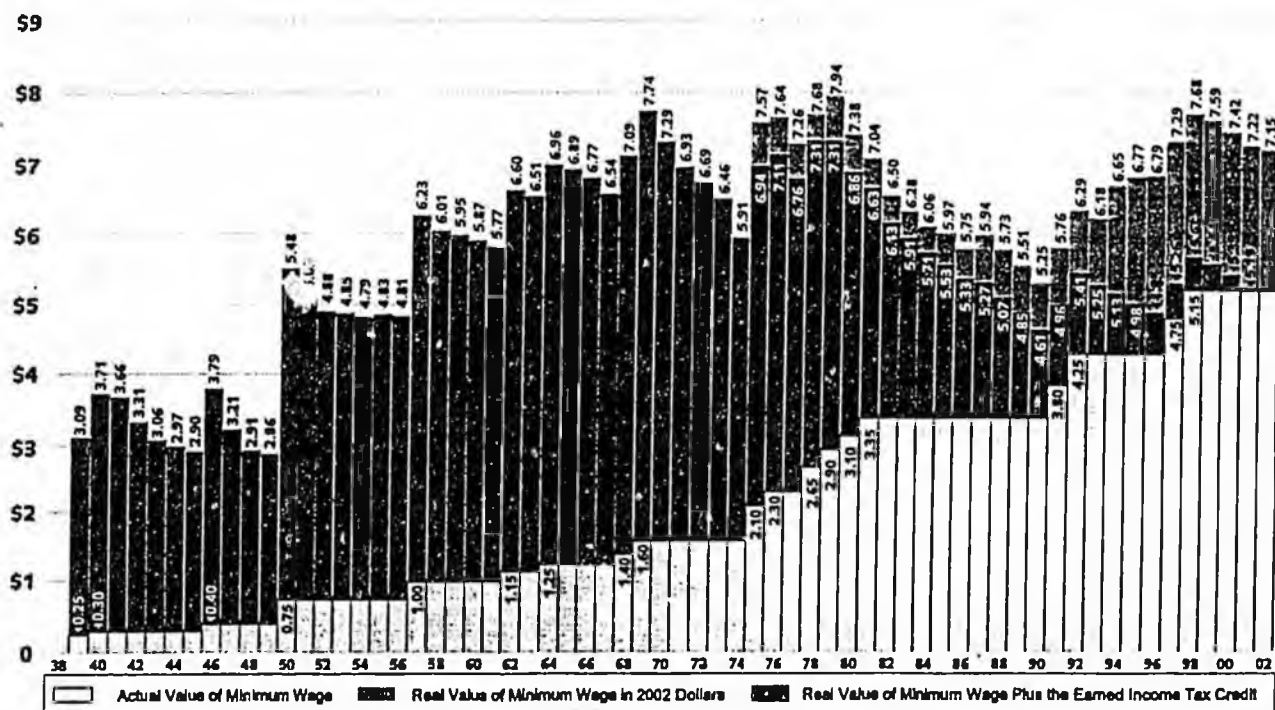
Parents who cannot provide for their children with their earnings now have access to in-kind programs such as food stamps, Section 8 or public housing, Medicaid and state Children's Health Insurance Programs (sCHIP), as well as cash-benefit programs like Temporary Aid for

Needy Families (TANF) and the refundable Earned Income Tax Credit (EITC). Funds from each of these programs are targeted solely to low-income families with children, unlike minimum wage increases where a substantial portion of the benefit goes to middle and upper class families or teenagers.

Restricting one's focus to the inflation-adjusted value of the minimum wage fails to take account of the EITC which has expanded greatly over the past 25 years. Expansions of the EITC increase hourly income for a single full-time minimum wage worker by over \$2.00 per hour as seen in Figure 5. This \$4,000 is delivered directly to families with children, rather than wasted on individuals and families outside of those most in need.

Unfortunately, advocates of indexing would prefer that policymakers consider their proposal in a vacuum, ignoring the reality that poor families have a wide variety of resources available to supplement their incomes until their skill levels rise to a point where they can command higher wages.

**Figure 5** Comparison of the Real and Actual Value of the Minimum Wage Plus the Earned Income Tax Credit (as of January 1st each year)



## Conclusion

There are several key questions legislators should ask when considering indexing wage mandates:

- Who are we trying to help by indexing wages?
- Is wage indexing an efficient way to deliver assistance to the target population?
- Is the CPI the proper tool for indexing wages, or could using the CPI cause more inflation or exacerbate unemployment?
- How will employers react to automatic increases in the wages they pay? Will they welcome the "certainty" offered by indexation? Or will employers seek out more efficient and productive employees, cut back on jobs and hours or switch to more capital intensive production?

In the balance between government, families and employers, creating an environment where business is challenged annually through an untargeted and unfunded mandate cannot have positive effects for any party. Because it offers few benefits, is foolishly targeted to those individuals who are not in need, and substantially increases risks for low-skill workers, indexing must be viewed for what it is: a politically-motivated tool with no place in a balanced approach to assisting the working poor.

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## Endnotes

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- 1 See David Neumark, Mark Schweitzer and William Wascher, *The Effects of Minimum Wages Throughout the Wage Distribution*, Working Paper 9919 (Cleveland: Federal Reserve Bank of Cleveland, December 1999), for an overview of current minimum wage research on displacement and substitution effects of minimum wage increases.
- 2 See Richard K. Vedder and Lowell E. Gallaway, *Does the Minimum Wage Reduce Poverty?* (Washington, D.C.: Employment Policies Institute, 2001), which concludes that changes to the minimum wage have not had an effect on poverty.
- 3 See Employment Policies Institute, *Winners and Losers of Federal and State Minimum Wages*, October 2002; available from [http://www.epi-online.org/50states\\_all.html](http://www.epi-online.org/50states_all.html); accessed 22 January 2003.
- 4 Vedder and Gallaway, *Minimum Wage*, 1.
- 5 *Ibid.* 16.
- 6 See William Even and David Macpherson, *Rising Above the Minimum Wage*, (Washington, D.C.: Employment Policies Institute, 2000).
- 7 These calculations are based on unpublished data from the U.S. Department of Labor, Bureau of Labor Statistics.
- 8 *Ibid.*
- 9 Jeff Thompson as quoted in Oregon Center for Public Policy, "Good Economic News for the New Year: Thousands of Low Wage Oregonians Will get a Raise on January 1st," 30 December 2002; available from <http://www.ocpp.org/2002/nr021230.htm>; accessed 22 January 2003.
- 10 See Michael J. Boskin, et al., "Toward a More Accurate Measure of the Cost of Living," (Washington, D.C.: Advisory Commission to Study the Consumer Price Index, U.S. Senate, 1996).
- 11 See Dimitri B. Papadimitriou and L Randall Wray, *Targeting Inflation: The Effects of Monetary Policy on the CPI and Its Housing Component*, Public Policy Brief no. 27 (Annandale-on-Hudson, N.Y.: The Jerome Levy Economics Institute, 1996).
- 12 See Oren M. Levin-Waldman, *Automatic Adjustment of the Minimum Wage: Linking the Minimum Wage to Productivity*, Public Policy Brief no. 42 (Annandale-on-Hudson, N.Y.: The Jerome Levy Economics Institute, 1998).
- 13 Figures calculated using published statistics by the U.S. Department of Labor, Bureau of Labor Statistics, "Industry Productivity Data Tables," 16 October 2001; available from <http://www.bls.gov/lpc/iprdata1.htm>; accessed 22 January 2003.
- 14 Waldman, *Automatic Adjustment*, 29.
- 15 Based on unpublished analysis of interactions of tax and benefit programs in a number of states.
- 16 See Robert Pollin, Mark Brenner, and Stephanie Luce, "Intended Versus Unintended Consequences: Evaluating the New Orleans Living Wage Ordinance," *Journal of Economic Issues* 36, no. 4 (December 2002), 843-876.

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## References

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- Vedder, Richard K. and Lowell E. Gallaway. *Does the Minimum Wage Reduce Poverty?* Washington, D.C.: Employment Policies Institute, 2001.
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- Papadimitriou, Dimitri B. and L. Randall Wray. *Targeting Inflation: The Effects of Monetary Policy on the CPI and Its Housing Component*. Public Policy Brief no. 27. Annandale-on-Hudson, N.Y.: The Jerome Levy Economics Institute, 1996.
- Levin-Waldman, Oren M. *Automatic Adjustment of the Minimum Wage: Linking the Minimum Wage to Productivity*. Public Policy Brief no. 42. Annandale-on-Hudson, N.Y.: The Jerome Levy Economics Institute, 1998.
- U.S. Department of Labor, Bureau of Labor Statistics. "Industry Productivity Data Tables." 16 October 2001. Available from <http://www.bls.gov/lpc/iprdata1.htm>. Accessed 22 January 2003.
- Pollin, Robert, Mark Brenner, and Stephanie Luce. "Intended Versus Unintended Consequences: Evaluating the New Orleans Living Wage Ordinance." *Journal of Economic Issues* 36, no. 4 (December 2002), 843-876.

## Recent Publications

- Living Wage and Earned Income Tax Credit: A Comparative Analysis**, Mark D. Turner, Georgetown University/Optimal Solutions Group, Burt S. Barnow, Johns Hopkins University, January 2003.
- The Economic and Distributional Consequences of the Santa Monica Minimum Wage Ordinance**, Richard H. Sander, University of California at Los Angeles, E. Douglass Williams, University of the South Joseph Doherty, Empirical Research Group at UCLA, October 2002.
- Measuring Poverty in America**, by the Employment Policies Institute, April 2002.
- The Economic Well-Being of Low-Income Working Families**, by John P. Formby, Hoseong Kim, University of Alabama and Dr. John A. Bishop, East Carolina University, March 2002.
- The Long-Term Effects of Youth Unemployment**, by Thomas A. Mroz, University of North Carolina at Chapel Hill, Timothy H. Savage, Welch Consulting Economists, October 2001.
- National Good Times, Local Bad Times: The Local Area Unemployment Crisis**, by Employment Policies Institute, August 2001.
- Who Would Benefit from a \$6.65 Minimum Wage? A State-by-State Profile: 2001 Edition**, by Employment Policies Institute, July 2001.
- The Case for a Targeted Living Wage Subsidy**, by Employment Policies Institute, June 2001.
- The Effect of Minimum Wages on the Labor Force Participation Rates of Teenagers**, by Walter J. Wessels, North Carolina State University, June 2001.
- Winners and Losers of Federal and State Minimum Wages**, by Thomas MaCurdy and Frank McIntyre, Stanford University, June 2001.
- Does the Minimum Wage Reduce Poverty?** by Richard K. Vedder and Lowell E. Gallaway, Ohio University, June 2001.
- State Flexibility: The Minimum Wage and Welfare Reform**, by Employment Policies Institute, March 2001.
- Evaluating the Effects of Medicaid on Welfare and Work: Evidence from the Past Decade**, by Aaron S. Yelowitz, University of California at Los Angeles, December 2000.
- Higher Minimum Wages Harm Minority and Inner-City Teens**, by Mark Turner and Berna Demiralp, Johns Hopkins University, September 2000.
- The Living Wage: Survey of Labor Economists**, by The Survey Center, University of New Hampshire, August 2000.
- The Relative Compensation of Part-Time and Full-Time Workers**, by Barry Hirsch, Trinity University, April 2000.
- Living Wage Policy: The Basics**, by Employment Policies Institute, March 2000.
- Rising Above the Minimum Wage**, by William Even, Miami University of Ohio, and David Macpherson, Florida State University, January 2000.
- Economic Analysis of a Living Wage Ordinance**, by George Tolley, University of Chicago, Peter Bernstein, DePaul University, and Michael Lesage, RCF Economic & Financial Consulting, July 1999.
- The Employment Impact of a Comprehensive Living Wage Law: Evidence from California**, by Employment Policies Institute, July 1999.
- Effective Marginal Tax Rates on Low-Income Households**, by Daniel N. Shaviro, New York University School of Law, February 1999.
- An Analysis of the Baltimore Living Wage Study**, by Employment Policies Institute, October 1998.
- Targeted Jobs Tax Credits and Labor Market Experience**, by Frederick J. Tannery, University of Pittsburgh, June 1998.
- Job Loss in a Booming Economy, 2nd Edition**, by Employment Policies Institute, May 1998.
- Work Ethic and Family Background**, by Casey B. Mulligan, University of Chicago, May 1997.
- The Minimum Wage Debate: Questions and Answers: Third Edition**, by Employment Policies Institute, May 1997.
- From Welfare to Work: The Transition of an Illiterate Population**, by Employment Policies Institute, February 1997.
- Who Are The "Low-Wage" Workers?** by Derek Neal, University of Chicago, July 1996.
- Jobs Taken by Mothers Moving from Welfare to Work: And the Effects of Minimum Wages on this Transition**, by Peter D. Brandon, Institute for Research on Poverty, University of Wisconsin—Madison, February 1995.
- Minimum Wage Laws and the Distribution of Employment**, by Kevin Lang, Boston University, January 1995.

**HB**

**214**

## SENATE COMMITTEE REPORT

DATE: 4/15/03

FURTHER: Judiciary

DATE TURNED  
IN TO OFFICE: \_\_\_\_\_

Labor and Commerce Committee considered CS FOR HOUSE BILL NO. 214(JUD)

### HB 214 PUNITIVE DAMAGES AGAINST EMPLOYERS

"An Act relating to the recovery of punitive damages against an employer who is determined to be vicariously liable for the act or omission of an employee; and providing for an effective date."

and recommends:

be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)

adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)

attached amendment(s)

adopt Letter of Intent by \_\_\_\_\_ Committee

further referral to \_\_\_\_\_ Committee

**Senate Bill:**

same title

new title

**House Bill:**

same title

technical title

new: SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Ralph Becker</i>	✓			
<i>[Signature]</i>			X	
CHAIR: <i>O. Bunde</i>	✓			



## RESOURCE DEVELOPMENT COUNCIL

Growing Alaska Through Responsible Resource Development

April 29, 2003

Senator Con Bunde  
Chair, Senate Labor & Commerce Committee  
Alaska State Capitol  
Juneau, Alaska 99801-1182

Re: CSHB 214(JUD) — Punitive Damages Against Employers

Dear Senator Bunde:

On behalf of the Resource Development Council for Alaska, Inc. (RDC), I am writing to express our support for CSHB 214(JUD). While employers should be held to the highest standards with regard to the safety and training of employees, it is unreasonable to hold employers liable for damages incurred by an employee's reckless behavior to which the employer did not contribute. CSHB 214(JUD) protects employers from punitive damages if they have taken all necessary steps to ensure their workers act responsibly and safely.

RDC is a private, statewide business association representing individuals and companies from Alaska basic industries — oil and gas, tourism, fisheries, mining and forestry. Our membership also includes Native village and regional corporations, local communities, organized labor and industry-support firms. Our mission is to help grow Alaska's economy through the responsible development of our natural resources.

CSHB 214(JUD) does not reduce an employer's responsibility to properly train and manage its employees. Rather, the bill replaces a standard of strict liability with one based on personal responsibility. If an employee, of his own volition, acts recklessly, he will be held liable for punitive damages associated with his action or omission.

RDC supports this legislation and urges the Senate Labor & Commerce Committee to move the bill forward. Thank you for considering our position on this important issue. Please contact me with any questions.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL  
for Alaska, Inc.

Tadd Owens  
Executive Director



# REPRESENTATIVE RALPH SAMUELS

HOUSE DISTRICT 29

## House Bill 214 Sponsor Statement

**“An Act relating to the recovery of punitive damages against an employer who is determined to be vicariously liable for the act or omission of an employee; and providing for an effective date.”**

House Bill 214 changes the standard under which employers must pay for punitive damages assessed against their employees. The standard is changed from strict liability to one that is more fault-based. Essentially, the bill stipulates that unless an employer authorized the act that caused the damages, or acted recklessly or knowingly in approving of the act after it occurred, or the employee is of such a high rank that he or she is essentially the employer, then the employee's punitive damages should not be awarded against the employer.

For example, if a construction worker causes an accident while driving a company vehicle after completing a company safety-training program and violates the policies implemented by the employer, the employer shall not be required to pay the punitive damages assessed against the employee. If the employer released the vehicle to the construction worker knowing that the employee had no safety training regarding the vehicle, the employer may be responsible for the damages because the employer may have been at fault for not properly training the employee.

HB 214 does not absolve businesses and employers from creating and maintaining a safe environment with strict codes for training and employing staff; it protects the employer from damages incurred by an employee that acted recklessly or outrageously on his or her own volition without contribution by the employer. If an employer has taken all of the necessary steps to ensure its' employees act safely and properly, the employer should not have to pay for the punitive damages incurred by the employee.

The employer will, however, continue to be vicariously liable for the compensatory damages arising from its employees' conduct. In addition, the employer will continue to be liable for punitive damages assessed directly against the employer because of its' own conduct.

Email: [Representative\\_Ralph\\_Samuels@legis.state.ak.us](mailto:Representative_Ralph_Samuels@legis.state.ak.us)

Session: Alaska State Capitol, Juneau, Alaska 99801-1182 • Phone: (907) 465-2095 Fax: (907) 465-3810  
Interim: 716 W. 4th Ave., Anchorage, Alaska 99501-2133 • Phone: (907) 269-0240 Fax: (907) 269-0242

# FISCAL NOTE

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: CSHB 214(JUD)  
(H) Publish Date: 4/4/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
Title Punitive damages against employers BRU Alaska Court System  
Component Trial Courts  
Sponsor Representative Samuels  
Requester House Judiciary Component No. 768

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2003) cost: 0.0  
Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
The court system does not anticipate any fiscal impact from the passage of HB 214.

Prepared by: Douglas Wooliver, Administrative Attorney Phone 463-4750  
Division: Alaska Court System Date/Time 3/28/03 10:27 AM  
Approved by: Stephanie Cole, Administrative Director Date 3/28/2003  
Agency: Alaska Court System

# FISCAL NOTE

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: CSHB 214(JUD)  
(H) Publish Date: 4/4/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Law  
Title "An Act relating to the recovery of punitive BRU Civil Division  
damages against an employer . . ." Component Governmental Affairs  
Sponsor Representative Samuels Special Litigation  
Requester House Judiciary Component No. 2207; 2213

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2003) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill would limit when an employer who is held liable in a civil action for an act or omission of an employee could be required to pay punitive damages.

The State of Alaska as an employer is immune from punitive damages under AS 09.50.280. This bill will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson Phone (907) 465-5370  
Division Attorney General's Office Date/Time 3/28/03 2:45 PM  
Approved by: Joan M. Kasson for Gregg D. Renkes, Attorney General Date 3/28/2003  
Agency Department of Law

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## ALASKA TRUCKING ASSOCIATION, INC.

3443 Minnesota Drive • Anchorage, Alaska 99503 • PHONE (907) 276-1149 • FAX (907) 274-1946

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March 28, 2003

Representative Ralph Samuels  
Alaska State Legislature  
Juneau, Alaska

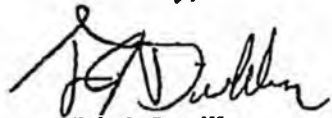
Dear Representative Samuels:

The Alaska Trucking Association membership which consists of over 300 transportation companies in Alaska understands the importance of the justice system, and the direct effect it can have on business. ATA feels that House Bill 214 will re-emphasize the importance and equality of the system.

Frequently punitive damages are placed on companies that had no direct influence in the actions take by their employees. These damages are assessed because there is a presumption that the company had acted recklessly. House Bill 214 offers some clarity in addressing the issue by stating that an employer who never approved or authorized an act resulting in wrongdoing is not held vicariously responsible for the employee, this meets the purpose of the current Alaska law covering punitive damages.

Alaska Trucking Association supports HB 214 in its current form.

Sincerely,



Frank J. Dillon  
Executive Vice President





April 3, 2003

6441 South Airpark Place  
Anchorage, Alaska 99502-1809  
(907) 245-1544  
Fax: (907) 245-1744

Representative Ralph Samuels  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99801

Dear Representative Samuels:

This is a letter of support for House Bill 214, which clarifies the liability of employers for the actions of non managerial employees.

Recent court decisions have found employers liable for punitive damages in cases where employees violated clear company policies and procedures without the knowledge of the employer or supervisor.

Your bill clarifies state law by stating the specific conditions under which the employer has potential liability for punitive damages. Where those conditions do not exist, the employer would not be liable.

This clear and common sense approach to punitive damages will be very helpful to companies such as Lynden, which has solid administrative procedures in place to try to prevent any such actions by employees which may cause damage or injuries to others. It should help to reduce our insurance costs by limiting one major avenue for plaintiff attorneys to pressure firms into higher settlements or limiting our exposure to unwarranted jury verdicts.

I understand that the State of Alaska is immune from such punitive damages if one of its employees violates State policies and causes damage or injury to others. If it is good for the State of Alaska, it should be good for Alaskan businesses.

Thank you for sponsoring this legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Jansen".

Jim Jansen  
President & CEO



**ALASKA STATE  
HOMEBUILDERS ASSOCIATION**

April 8, 2003

The Honorable Ralph Samuels  
Alaska State House of Representatives  
State Capitol Building  
Juneau, Alaska

IN RE: Letter of Support for HB214

Dear Representative Samuels:

Thank you for your sponsorship of HB214, relating to the recovery of punitive damages against an employer.

Over the past year, insurance rates for liability coverage have risen dramatically. The number of insurance companies in Alaska that provide liability coverage is becoming scarce.


The Alaska State Home Building Association (ASHBA) has worked in conjunction with the National Association of Home Builders (NAHB) to enact legislation in all the states regarding insurance availability and affordability. In spite of current economic conditions and litigation risks, insurance coverage is a vital component of providing protections that benefit employers, employees, and their customers.

HB 214 changes the standard under which employers must pay for punitive damages assessed against their employees. For example, if an employee caused an accident while driving a company vehicle, the employer shall not be required to pay punitive damages awarded to the victim. This is reliant upon the employer providing safety-training, risk-management programs, and establishing appropriate employment policies.

Incentives for safety-training and other risk management programs should be encouraged as matters of public policy.

ASHBA currently is advocating passage of HB151, the Right to Repair legislation sponsored by Rep. Kevin Meyers. Its intent is very similar to HB214.

Sincerely,

  
Thom Antonovich, President  
Alaska State Home Building Association



Headquarters:  
217 2nd Street, Suite 201  
Juneau, Alaska 99801  
(907) 586-2323 FAX 463-5515

Regional Office:  
601 West 5<sup>th</sup> Ave., Suite 600  
Anchorage, Alaska 99501  
(907) 278-2722 FAX 278-6643



March 28, 2003

Representative Ralph Samuels  
Alaska State Legislature  
Juneau, Alaska

Dear Representative Samuels:

The Alaska State Chamber of Commerce, representing approximately 700 business members and local chambers of commerce throughout the state, supports fairness in the civil justice system. House Bill 214 brings a greater degree of fairness to the system.

Punitive damages are intended to punish wrongdoers who, through outrageous conduct and acts done with malice or reckless indifference, have harmed or caused loss to the interests of another. HB 214, in establishing that an employer who neither authorized nor approved an act of wrongdoing is not to be held vicariously responsible for the act of an employee, fulfills the intent of the present Alaska law regarding punitive damages.

We support the passage of HB214 as it has been introduced.

Sincerely,

A handwritten signature in cursive script that reads "Pamela La Bolle".

Pamela La Bolle  
President

REST 2d AGEN S 217C  
Restatement (Second) of Agency § 217C (1958)

Restatement of the Law -- Agency  
Restatement of the Law Second -- Agency  
Current through June 2002

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Chapter 7. Liability Of Principal To Third Person; Torts  
Topic 2. Liability For Authorized Conduct Or Conduct Incidental Thereto  
Title A. In General

§ 217C. Punitive Damages

[Link to Case Citations](#)

**Punitive damages can properly be awarded against a master or other principal because of an act by an agent if, but only if:**

- (a) the principal authorized the doing and the manner of the act, or**
- (b) the agent was unfit and the principal was reckless in employing him, or**
- (c) the agent was employed in a managerial capacity and was acting in the scope of employment, or**
- (d) the principal or a managerial agent of the principal ratified or approved the act.**

**Comment:**

*a.* The circumstances under which punitive damages can properly be awarded are stated in the Restatement of Torts, Section 908. The following Section (§ 909) states the rules as to the liability of an employer. This Section is taken from Section 909, to which reference is made for comment and illustrations. The cases are divided; some courts impose liability upon a master for unauthorized wanton acts of servants who are not managers; others do not.

*b.* Mere failure to dismiss a servant, unaccompanied by conduct indicating approval of the wrongful conduct, is not a sufficient basis on which to impose punitive damages.

*c.* The rule stated in this Section does not apply to the interpretation of special statutes such as those giving triple damages, as to which no statement is made.

REST 2d TORTS S 909  
Restatement (Second) of Torts § 909 (1979)

Restatement of the Law -- Torts  
Restatement of the Law Second -- Torts  
Current through June 2002

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Division 13. Remedies  
Chapter 47. Damages  
Topic 1. General Statements

§ 909. Punitive Damages Against A Principal

Link to Case Citations

Punitive damages can properly be awarded against a master or other principal because of an act by an agent if, but only if,

- (a) the principal or a managerial agent authorized the doing and the manner of the act, or
- (b) the agent was unfit and the principal or a managerial agent was reckless in employing or retaining him, or
- (c) the agent was employed in a managerial capacity and was acting in the scope of employment, or
- (d) the principal or a managerial agent of the principal ratified or approved the act.

Comment:

a. This Section is duplicated by § 217C of the Restatement, Second, of Agency, which refers to this Section for comment and illustrations.

b. The rule stated in this Section results from the reasons for awarding punitive damages, which make it improper ordinarily to award punitive damages against one who himself is personally innocent and therefore liable only vicariously. It is, however, within the general spirit of the rule to make liable an employer who has recklessly employed or retained a servant or employee who was known to be vicious, if the harm resulted from that characteristic. (See Illustration 1). Nor is it unjust that a person on whose account another has acted should be responsible for an outrageous act for which he otherwise would not be if, with full knowledge of the act and the way in which it was done, he ratifies it, or, in cases in which he would be liable for the act but not subject to punitive damages, he expresses approval of it. (See Illustration 2). In these cases, punitive damages are granted primarily because of the principal's own wrongful conduct.

Although there has been no fault on the part of a corporation or other employer, if a person acting in a managerial capacity either does an outrageous act or approves of the act by a subordinate, the imposition of punitive damages upon the employer serves as a deterrent to the employment of unfit persons for important positions. (See Illustration 3).

Illustrations:

1. A employs an ejection company to dispossess a tenant. A knows that the company has a reputation for using undue force in dealing with tenants. An employee of the company, in accordance with its usual methods, commits an unprovoked battery upon B, the wife of the tenant, in order to induce her to leave. In an action by B against A, punitive damages can properly be awarded.
2. A, the owner of a theatre, employs a special policeman to keep order. In ejecting a small boy from the theatre, the policeman cruelly abuses him. Upon learning the facts, A expresses his approval. Punitive damages can properly be awarded against A in an action for the battery.
3. A, a corporation owning a series of retail stores, employs B as operations manager to supervise the management of the units. While visiting a unit B discovers facts

REST 2d TORTS S 909

that lead him to believe erroneously that one of the clerks has been stealing. He directs the local manager to imprison the clerk. In the ensuing interview he permits the local manager to use outrageous means of intimidation. In the clerk's action against the corporation, punitive damages can properly be awarded.

## Laidlaw Transit, Inc. v. Crouse (8/30/2002) sp-5619

Notice: This opinion is subject to correction before publication in the Pacific Reporter. Readers are requested to bring errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, phone (907) 264-0608, fax (907) 264-0878, e-mail corrections@appellate.courts.state.ak.us.

### THE SUPREME COURT OF THE STATE OF ALASKA

LIDLAW TRANSIT, INC.,	)	
	)	Supreme Court No. S-9850/9869
Appellant and	)	
Cross-Appellee,	)	
	)	Superior Court No.
v.	)	3AN-94-10301 CI
	)	
GAIL CROUSE, for and on behalf of	)	
her daughter, SHAWN CROUSE,	)	
a minor,	)	OPINION
	)	
Appellee and	)	
Cross-Appellant.	)	[No. 5619 - August 30, 2002]
	)	

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Sen K. Tan, Judge.

Appearances: Thomas A. Matthews, Thomas L. Hause, Matthews & Zahare, P.C., Anchorage, for Appellant/Cross-Appellee. Don C. Bauernmeister, Burke & Bauermeister, P.L.L.C., Anchorage, for Appellee/Cross-Appellant.

Before: Fabe, Chief Justice, Matthews, Eastaugh, Bryner, and Carpeneti, Justices.

BRYNER, Justice.

#### I. INTRODUCTION

I. A school bus ran off the roadway and rolled over, injuring passenger Shawn Crouse. Shawns mother sued the bus driver and the drivers employer, Laidlaw Transit, Inc.; a jury awarded Crouse \$19,259 in compensatory damages and \$3.5 million in punitive damages. The trial court remitted the punitive award to \$500,000 and entered judgment for Crouse. Laidlaw appeals, challenging the punitive award and disputing several evidentiary rulings. Crouse cross-appeals, questioning the trial courts remittitur. We affirm, concluding that the trial court correctly found Laidlaw vicariously liable for punitive damages, did not err in its evidentiary rulings, and did not abuse its discretion in its remittitur.

#### II. FACTS AND PROCEEDINGS

On November 24, 1992, a school bus driven by Dawn Finitz, a Laidlaw employee, slid off an icy road and rolled over. Shawn Crouse, a bus passenger, suffered minor injuries. In keeping with its drug policy, Laidlaw gave Finitz a post-accident drug test, which revealed that Finitz's blood contained trace amounts of marijuana.

Shawn's mother, Gail Crouse, filed a complaint on behalf of her daughter against Finitz and Laidlaw for compensatory and punitive damages, alleging that Finitz recklessly caused the accident. Crouse claimed that Laidlaw was both vicariously liable for Finitz's conduct because the conduct occurred within the course and scope of Finitz's employment and directly liable because Laidlaw negligently or recklessly hired and/or supervised Finitz that it knew or should have known that Finitz was likely to drive while under the influence of drugs or alcohol.

In its answer, Laidlaw admitted liability for the accident and confirmed that Finitz tested positive for marijuana. As a result, the only issues for trial were the amount of compensatory damages, whether Finitz's or Laidlaw's conduct was sufficiently outrageous to warrant a punitive damages award, and if so, the amount of that award.

Laidlaw subsequently filed a motion for summary judgment on its liability for punitive damages. The superior court concluded that Laidlaw could not be held directly liable for punitive damages because it had not acted outrageously in hiring and supervising Finitz. But the court ruled that Laidlaw could be held vicariously liable for Finitz's conduct because her actions fell within the course and scope of her employment.

Laidlaw also filed several pretrial motions seeking to exclude certain evidence, including all reference to Finitz's drug use; all evidence of Laidlaw's financial resources; the testimony of Crouse's expert witness, Forest S. Tennant, Jr., M.D.; and all evidence of Laidlaw's conduct. The trial court partially granted the motion to exclude evidence of Laidlaw's conduct, precluding evidence of alcohol and controlled substance abuse by Laidlaw drivers other than Finitz. The court denied Laidlaw's other pretrial motions.

The trial consisted of two phases: the first addressed liability and compensatory damages; the second addressed punitive damages. In the first phase, the jury awarded Crouse \$19,259 in compensatory damages and found that Finitz acted sufficiently outrageously to justify an award of punitive damages; in the second phase it awarded \$3.5 million in punitive damages.

Laidlaw filed a motion for remittitur, which the trial court granted. Analyzing the punitive damages award in light of the factors in *Norcon, Inc. v. Kotowski*,<sup>1</sup> the trial court concluded that the maximum justifiable award was only \$375,000. Crouse moved to reconsider; the trial court granted the motion and increased the punitive damages award to \$500,000.

Laidlaw appeals; Crouse cross-appeals.

### III. DISCUSSION

#### A. Standard of Review

A. On appeal, Laidlaw challenges the trial court's summary judgment ruling that it was vicariously liable for punitive damages and also disputes a number of the court's evidentiary rulings. We review grants of summary judgment *de novo* and will affirm if there are no genuine issues of material fact. . . .<sup>2</sup> A trial court's decision regarding the admissibility of evidence, including expert testimony, is generally reviewed for abuse of discretion;<sup>3</sup> but when admissibility turns on a question of law, we apply our independent judgment.<sup>4</sup>

On cross-appeal, Crouse challenges the trial court's remittitur of the punitive damages award from \$3.5 million to \$500,000. We review a trial court's grant of remittitur for abuse

of discretion. To reverse, we must be left with a definite and firm conviction that the trial court erred in granting the remittitur.<sup>5</sup>

#### B. Laidlaws Vicarious Liability for Punitive Damages

In partially denying Laidlaws summary judgment motion, the trial court ruled that Finitz acted within the course and scope of her employment and, so, if the jury found her conduct sufficiently outrageous to justify an award of punitive damages against Finitz, Laidlaw would be vicariously liable. Laidlaw challenges that ruling.

1. Laidlaw failed to preserve its argument that this court should adopt the complicity rule.

In *Alaskan Village, Inc. v. Smalley*, we adopted the so-called course of employment rule for determining when an employer is vicariously liable for punitive damages arising out of its employees conduct.<sup>6</sup> Under this rule, an employer is vicariously liable, regardless of the employees rank, so long as the employee was acting within the course and scope of employment.<sup>7</sup>

On appeal, Laidlaw urges us to follow a different standard, the complicity rule, which requires at least some degree of employer complicity before vicarious liability attaches for punitive damages arising from the conduct of a non-supervisory employee.<sup>8</sup> But Laidlaw did not raise this argument at the trial court level. Because Laidlaw failed to preserve the argument for appeal, we decline to consider overruling *Alaskan Village* or adopting the complicity rule.<sup>9</sup>

2. The trial court did not err in applying the course of employment rule.

Laidlaw next argues that the trial court erred in applying the course of employment rule by deciding as a matter of law that Finitz had acted within the course and scope of her employment. Because Finitz did not smoke marijuana to serve Laidlaw and because Laidlaws drug policy specifically prohibited drug use, Laidlaw contends, Finitzs conduct could not have been within the scope of her employment.

But the conduct giving rise to the punitive damages award was not Finitzs act of smoking marijuana; it was her act of driving children in a school bus while she was impaired by marijuana.<sup>10</sup> The issue, then, is whether the trial court erred by concluding that Finitzs act of driving the school bus while under the influence of marijuana fell within the course and scope of her employment.

This court does not follow a rigid rule for determining when tortious conduct occurs within the scope of employment; rather, we apply a flexible, multi-factored test.<sup>11</sup> We have generally looked to the various factors in the Restatement (Second) of Agency 228 as relevant considerations, though not prerequisites, to determine whether an employer should be held responsible for an employees acts.<sup>12</sup> The Restatement (Second) of Agency 228 provides:

(1) Conduct of a servant is within the scope of employment if, but only if:

(a) it is of the kind he is employed to perform;

(b) it occurs substantially within the authorized time and space limits;

(c) it is actuated, at least in part, by a purpose to serve the master, and

(d) if force is intentionally used by the servant against another, the use of force is not unexpected by the master.

(2) Conduct of a servant is not within the scope of employment if it is different in kind from that authorized, far beyond the authorized time or space limits, or too little actuated by a purpose to serve the master.

Applying these factors to this case, we conclude that the trial court properly found as a matter of law that Finitz's outrageous conduct occurred in the course and scope of her employment. First, Finitz had specifically been employed to drive a school bus. That she performed this activity while under the effects of marijuana does not mean that she acted outside the scope of her employment; instead, it demonstrates the recklessness with which she performed her assigned task.<sup>13</sup>

Moreover, the fact that Laidlaw policy explicitly prohibits smoking marijuana does not insulate the company from liability: A wrongful act committed by an employee while acting in his employer's business does not take the employee out of the scope of employment, even if the employer has expressly forbidden the act.<sup>14</sup>

Second, the disputed conduct occurred within the time and space limits of Finitz's employment. Finitz drove under the influence of marijuana while on her usual morning route.

Finally, even though Finitz acted recklessly in driving the bus, she nonetheless acted, at least in part, to serve Laidlaw. In *Doe v. Samaritan Counseling Center*, we held that where tortious conduct arises out of and is reasonably incidental to the employee's legitimate work activities, the motivation to serve test will have been satisfied.<sup>15</sup> Here the conduct at issue—driving while impaired by marijuana—both arose out of and was incidental to Finitz's legitimate work activities because it carried out the very function that Finitz was hired to perform: driving a school bus. We thus affirm the superior court's decision.

### C. Evidentiary Issues

1. The trial court did not err by admitting evidence regarding Laidlaw's failure to locate a driver named Mike. During the trial's liability phase, Crouse introduced evidence over Laidlaw's objection that Laidlaw had failed to identify and locate a Laidlaw driver who was known to Finitz only as Mike. Finitz asserted that she and Mike had previously smoked marijuana together. On appeal, Laidlaw claims that whether it ever found Mike was irrelevant to whether Finitz's marijuana use impaired her driving on the day of the accident. Moreover, Laidlaw points out, the trial court had previously ruled that evidence concerning drug and alcohol use by Laidlaw drivers other than Finitz was irrelevant and thus inadmissible.

Laidlaw adopted the theory at trial that Finitz was merely an occasional, recreational marijuana user and that the jury could therefore believe her assertion that she had not smoked marijuana on the day of the accident. This theory was based in large part on Finitz's testimony that while she was working for Laidlaw she smoked marijuana [v]ery irregularly, very seldom. Given Laidlaw's affirmative reliance on the theory that Finitz was a recreational user, Crouse obviously had a legitimate interest in locating witnesses who were familiar with Finitz's drug use and might be able to shed light on the credibility of her testimony.

During pretrial discovery and at trial, Finitz named only two people with whom she had smoked marijuana in the past: Cora, a resident in Finitz's apartment complex, and Mike. She

could not recall either Coras or Mikes last names. As Crouse points out, [p]laintiff repeatedly sought through discovery identifying information about Cora and Mike because these were the only witnesses [Finitz] could even recall the first name of who had knowledge of her claimed recreational marijuana use. Because Cora had moved and was no longer in contact with Finitz, the only way Crouse could verify Finitzs testimony on this point was through Mike. But Laidlaw failed to locate Mike, claiming that, despite an extensive inquiry, it had failed to find anyone named Mike who worked as a Laidlaw driver in Eagle River at the time of the accident.

By establishing Laidlaws failure to locate Mike and questioning the reasonableness of Laidlaws efforts, Crouse legitimately sought to demonstrate not only the absence of anyone who could corroborate Finitzs claim of merely occasional drug use, but also that Laidlaw might have been less than diligent in uncovering evidence that could contradict its recreational user theory. Because the disputed evidence had at least some legitimate tendency to refute Laidlaws theory of defense, we reject Laidlaws claim of irrelevance and conclude that the trial court did not abuse its discretion in admitting the evidence.

2. The trial court did not err by refusing to give a cautionary instruction after Crouses closing argument.

Laidlaw claims that even if we find that the trial court properly admitted the evidence concerning Mike, it nonetheless erred by failing to give a cautionary instruction after Crouse referred to this evidence during closing arguments. In closing argument, Crouses attorney stated,

But Laidlaw not finding out who Mike was is detestable. Its one of their drivers, he's smoking marijuana with this driver.

.....  
We're going to ask you to say Laidlaw shouldn't be using drivers like Mike. Now you've never seen Mike and I've never seen Mike, and Mike might still be driving, for all of us know. If you do nothing in this case, you do nothing, then tomorrow morning, when that bus pulls up and those doors open, and a child looks up those big stairs and climbs into the bus, Mike may well be behind that steering wheel. And that's who you're going to leave there. And if you think this is okay, then you say no to these questions. But if you're worried about that child and you're worried about this type of conduct, then your answers have to be yes in this action. And that's the biggest decision you're going to make in this case.

Following these statements, Laidlaw requested a cautionary instruction to explain that Laidlaws conduct was irrelevant. The trial court denied this request, reasoning that the argument was relevant to the issue of deterrence. We agree with the trial courts conclusion. Jury instruction 18 stated:

The Plaintiff has also requested that you find Defendant, Dawn Finitz, liable for punitive damages in order to punish her and to deter her and others from repeating similar acts. Laidlaw did not object to this instruction. As we have stated on other occasions, the purpose of punitive damages is to punish the wrongdoer and prevent similar conduct in the future.<sup>16</sup> The argument at issue was based on evidence presented at trial, conformed to the jury instructions, and was aimed at convincing the jury of the need to deter other drivers and employers who were similarly situated to Finitz and Laidlaw. We conclude that the trial court did not err in refusing Laidlaws request for a cautionary instruction.