ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
March 1, 2002
1:50 p.m.

MEMBERS PRESENT

Representative Norman Rokeberg, Chair
Representative Jeannette James
Representative John Coghill
Representative Kevin Meyer
Representative Ethan Berkowitz

MEMBERS ABSENT

Representative Scott Ogan, Vice Chair
Representative Albert Kookesh

COMMITTEE CALENDAR

HOUSE BILL NO. 427
"An Act relating to civil claims against a third-party; amending Rule 14(c), Alaska Rules of Civil Procedure; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 346
"An Act relating to concealed handgun permittees."

- HEARD AND HELD

PREVIOUS ACTION

BILL: HB 427
SHORT TITLE:THIRD-PARTY CIVIL ACTION
SPONSOR(S): REPRESENTATIVE(S)GREEN

Jrn-Date	Jrn-Page		Action
02/13/02	2246	(H)	READ THE FIRST TIME - REFERRALS
02/13/02	2246	(H)	JUD
02/13/02	2246	(H)	REFERRED TO JUDICIARY
03/01/02		(H)	JUD AT 1:15 PM CAPITOL 120

BILL: HB 346
SHORT TITLE:CONCEALED HANDGUN PERMITTEES

SPONSOR(S): REPRESENTATIVE(S)MASEK

Jrn-Date	Jrn-Page		Action
01/22/02	2029	(H)	READ THE FIRST TIME - REFERRALS
01/22/02	2029	(H)	STA, JUD
02/04/02	2152	(H)	COSPONSOR(S): CROFT
02/21/02		(H)	STA AT 8:00 AM CAPITOL 102
02/21/02		(H)	Moved Out of Committee
02/21/02		(H)	MINUTE(STA)
02/22/02	2361	(H)	STA RPT 6DP
02/22/02	2361	(H)	DP: WILSON, CRAWFORD, STEVENS, HAYES,
02/22/02	2361	(H)	FATE, COGHILL
02/22/02	2361	(H)	FN1: ZERO(DPS)
02/22/02	2361	(H)	REFERRED TO JUDICIARY
03/01/02		(H)	JUD AT 1:15 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE JOE GREEN
Alaska State Legislature
Capitol Building, Room 403
Juneau, Alaska 99801
POSITION STATEMENT: Sponsor of HB 427.

RICHARD A. WEINIG, Attorney
800 East Dimond Boulevard, Suite 3-620
Anchorage, Alaska 99515-2096
POSITION STATEMENT: Assisted with the presentation of HB 427.

MICHAEL J. SCHNEIDER, Attorney
800 N Street, Suite 202
Anchorage, Alaska 99501
POSITION STATEMENT: Testified in opposition to HB 427.

JENNIFER YUHAS, Staff
to Representative Beverly Masek
Alaska State Legislature
Capitol Building, Room 128
Juneau, Alaska 99801
POSITION STATEMENT: Presented HB 346 on behalf of the sponsor, Representative Masek.

BRIAN JUDY, Alaska State Liaison
Institute for Legislative Action
National Rifle Association of America (NRA)

555 Capitol Mall, Suite 625
Sacramento, California 95814
POSITION STATEMENT: Testified in support of HB 346 and responded to questions.

JESSE VANDERZANDEN, Executive Director
Alaska Outdoor Council (AOC)
PO Box 73902
Fairbanks, Alaska 99709
POSITION STATEMENT: Testified in support of HB 346.

DEL SMITH, Deputy Commissioner
Office of the Commissioner
Department of Public Safety (DPS)
PO Box 111200
Juneau, Alaska 99811-1200
POSITION STATEMENT: Provided the department's position and responded to questions during discussion of HB 346.

PATTY OWEN, Alaska Chapter
Million Mom March
7677 North Douglas Highway
Juneau, Alaska 99801
POSITION STATEMENT: Testified in opposition to HB 346.

LAUREE HUGONIN, Executive Director
Alaska Network on Domestic Violence & Sexual Assault (ANDVSA)
130 Seward Street, Room 209
Juneau, Alaska 99801
POSITION STATEMENT: Testified during discussion of HB 346 and responded to questions.

ACTION NARRATIVE

TAPE 02-26, SIDE A
Number 0001

CHAIR NORMAN ROKEBERG called the House Judiciary Standing Committee meeting to order at 1:50 p.m. Representatives Rokeberg, James, Coghill, Meyer, and Berkowitz were present at the call to order.

HB 427 - THIRD-PARTY CIVIL ACTION

Number 0064

CHAIR ROKEBERG announced that the first order of business would be HOUSE BILL NO. 427, "An Act relating to civil claims against a third-party; amending Rule 14(c), Alaska Rules of Civil Procedure; and providing for an effective date."

Number 0070

REPRESENTATIVE JOE GREEN, Alaska State Legislature, sponsor, offered the following to explain HB 427:

> If "plaintiff A" brings an action against "defendant B," and during that action B finds out that ... there is another person that is equally culpable or maybe even more so, and he says, "Hey, I'm going to go against him because he's the one that should either share or maybe be responsible for this action," and brings him in and wins, then [plaintiff A] gets the action without any ... concern about the cost or ... risk involved. And that just seems unfair. ... This bill says that if plaintiff A wants to go against the third-party defendant as well, then that party A should be part of the whole action and be part of the cost as well as ... any possible liability that would come from that suit. So, in effect, what it does is just evens the playing field so that ... [plaintiff A] doesn't get rewarded without the actions taken by A; he can't just suck up on actions taken by other people.

Number 0250

RICHARD A. WEINIG, Attorney, after noting he has worked as a trial attorney in Anchorage for 30 years, said that HB 427 deals with a practical problem he has observed "since tort reform." He elaborated:

> The practical problem is that in apportionment of liability, first plaintiff can sue a defendant, and if the defendant thinks that someone else is liable for a portion or all of that, they can bring that party in as a third-party defendant. Plaintiff automatically has a right of recovery for whatever percentage of fault goes against either the defendant - original - or the third-party defendant. And the third-party defendant, if successful in exonerating himself ..., may recover a portion of his [attorney fees] - under Rule 82 [of the Alaska Rules of Civil Procedure] -

from the party that brought him in - the original defendant - but he has absolutely no recourse if, for instance, the plaintiff has refused to settle at all on the case. And if the third-party defendant is successful, the plaintiff has an absolutely free ride in terms of no liability for [attorney] fees to the third-party defendant.

My thought was that all parties to litigation should not operate in a risk-free environment, that anyone who is engaged in litigation should have exposure for [attorney] fees if they are found to be unmeritorious in their position. And, basically, what [HB 427] would do is to give plaintiff the option of whether he wants to seek recovery against the third-party defendant or not. If he does, he needs to give notice to the parties within a reasonable period of time - I selected 30 days because that's about the time that the original defendant has in which to decide whether to bring in someone else.

MR. WEINIG also said:

The major change, other than that, is that if the third-party defendant is successful in defending himself, and no fault is apportioned against [him], ... a portion of his [attorney] fees - under Rule 82 - may be recovered against both the plaintiff and the [original] defendant, whereas in the present time, the third-party defendant has no recourse against the plaintiff. The objective here is just an even playing field for all parties.

CHAIR ROKEBERG asked for example.

Number 0587

MR. WEINIG responded:

I'll give you an example ... of where [HB 427] might have a beneficial influence. Take a case in which plaintiff sues an aircraft manufacturer for personal injury. Aircraft manufacturer brings in mom-and-pop shop, which did some work on the upholstery in the plane, and says they're liable for "X" percentage of the fault. Mom-and-pop upholstery - ... [as] the third-party defendant - ... would have no recourse

against plaintiff if they were found to be pure as the driven snow; there'd be no holding to [attorney] fees.

And this may have a practical effect, because if - and this is a case that has occurred - plaintiff was unwilling to settle with mom-and-pop third-party-defendant shop at any price, ... they have been put through the mill of the entire judicial procedure by plaintiff, who has no risk whatsoever.... If mom-and-pop shop is absolved of any liability and is pure as the driven snow, there is no chance that they will recover any of their [attorney] fees from the plaintiff; ... they are unable to settle with plaintiff regardless of the amount that is being offered, and they're being held in and there's no recourse.

MR. WEINIG continued:

Now, this is obviously an extreme example, but it has occurred, and it's something which could occur again. And it is that type of situation that I think would be highly desirable to correct.... I think it would be highly desirable to eliminate the risk-free situation for the plaintiff, in terms of liability for the third-party defendant's [attorney] fees that presently exists.

Number 0744

REPRESENTATIVE BERKOWITZ asked:

Plaintiff sues big defendant, big defendant brings in small co-defendant, small co-defendant is found to be not culpable, and yet you feel the small co-defendant should be entitled to [attorney] fees against the plaintiff, who didn't even want them in the case in the first place?

MR. WEINIG responded:

Well, ... under the proposed bill, if plaintiff didn't want them in the case to start with, plaintiff doesn't have to elect to go after them for monetary recovery. But if plaintiff didn't want them in the case to start with - they're brought in by [the original] defendant [and] can't settle with plaintiff and get out of it,

under any circumstance - you have an unequal situation of risk-free behavior, as far as I'm concerned.

REPRESENTATIVE BERKOWITZ asked: Isn't the small defendant's claim really against the large defendant who brought him/her in?

MR. WEINIG said that in part it is, but in part it isn't; "it's being held in by two different parties." The small defendant is facing two antagonists. He continued: "The party that brought him in for pure apportion of default is not going to get any recovery from small third-party defendant; the plaintiff is going to get that money."

REPRESENTATIVE BERKOWITZ countered that according to his understanding, large defendant - "and I use large and small here just to distinguish" - brought small defendant in, in order to reduce large defendant's risks; plaintiff had no initial interest in small defendant. He added that it seems to him that in the circumstance being used as an example, large defendant is the one who invited small defendant to the party; therefore, large defendant should be the one responsible for anything that happens on account of small defendant's "being held responsible or not responsible."

MR. WEINIG opined that that's partly true, but not totally true. He elaborated:

> Both the plaintiff and the third-party plaintiff - the large defendant you're talking about - should be responsible for equally splitting whatever [attorney] fees are awarded to small third-party defendant if small third-party defendant is pure as the driven snow.

Number 0909

REPRESENTATIVE BERKOWITZ noted that the presumption in this hypothetical example is that plaintiff agrees to small party's joining. What if plaintiff disagrees that the small party should be brought in?

MR. WEINIG said that third-party defendant will be brought in whether plaintiff agrees or not. But if plaintiff wants to get money from that third-party defendant, plaintiff - under [HB 427] - would have to elect to do so. "At the present time it's automatic - the plaintiff does [get the money]," he added.

CHAIR ROKEBERG asked whether language [in Section 3] allows the plaintiff to file a motion that "gets rid of the third-party defendant."

MR. WEINIG said no. He reiterated that the third-party defendant is still going to be there, pointing out that language in Section 3 refers to filing a notice, not a motion. This notice by the plaintiff would be stating whether or not he/she wants to "seek recovery against" the third-party defendant.

REPRESENTATIVE BERKOWITZ pointed out, however, that the amount that the plaintiff would recover for the injury is the same whether it's just against big defendant or big defendant and small defendant. "So, why does the plaintiff benefit from taking the additional risk of bringing small defendant to the party?" he asked.

MR. WEINIG said that if small defendant were not a party, then "100 percent would be divided between plaintiff and original defendant." If the third-party defendant is "in there, you've got a three-way split of percentages leading to 100 percent." He continued:

> In the situation where plaintiff - under this bill - would elect to go against third-party defendant, you'd have the three-way split in terms of the actual assignment of proportions of liability and also in terms of the monetary division. ... Let's say, plaintiff's 40 percent at fault, original defendant is 30 percent at fault, third-party defendant is 30 percent at fault; you've got ... 100 percent there, and plaintiff will get 60 percent - 30 [percent] from original defendant, 30 [percent] from third-party defendant. If plaintiff does not elect to seek recovery against the third-party defendant, then ... plaintiff gets the 40 percent, original defendant gets the 30 percent, third-party defendant gets the 30 percent, but plaintiff can only recover money from the original defendant. It's a policy choice, pure and simple.

Number 1122

CHAIR ROKEBERG asked: "Why would we want to prohibit the plaintiff from recovering from the third-party defendant if the third-party defendant was apportioned 30 percent of the responsibility?" In response to a question from Mr. Weinig, he

clarified that his question is: "Why would you not want to recover that 30 percent from the third-party defendant?"

MR. WEINIG replied that plaintiff could do so, under HB 427, if plaintiff elects to bear the risk of ... being exposed to attorney fees. "If he does not want to bear [the] risk of being exposed to [attorney] fees, he doesn't get the 30 percent that the third-party defendant is tagged for," he added. It's the plaintiff's choice, early in the game, and if he/she wants to bear the risk of going after the third-party defendant, only then is he/she entitled to full recovery.

REPRESENTATIVE JAMES said that according to her understanding of the original example discussed:

> The plaintiff pursues the original defendant, and that was one with the big pocket. The big pocket reaches out and says, "Well, no, there's some culpability over here," and then everyone agrees, "Okay, this is what's happening." And then [it] turns out that this additional defendant ... was not culpable and was not responsible, but in the meantime, that defendant had to also pay money to protect his interest. Now, ... this guy has no place to go to get compensation? Or can he go to the first defendant who brought him in? Or you're wanting him to have recourse against the plaintiff?

Number 1224

MR. WEINIG said that under the present system, the innocent third-party defendant has recourse against the party that brought him/her in. He noted, however, that "all of these things are not for full [attorney] fees, they're 20 or 30 percent." He explained that what he is suggesting is that if plaintiff wants recovery against this third-party defendant, and if the third-party defendant is pure as the driven snow, then his/her attorney fees shall be borne equally by the plaintiff and the party that brought him/her in. He remarked that this is because "both parties were holding him in; he could not, for instance, be dismissed out on settlement without consent of both the party that brought him in - the original defendant- and the plaintiff." So, since both the plaintiff and the original defendant hold the third-party defendant in, both should be equally liable for a portion of attorney fees.

REPRESENTATIVE JAMES, using a similar example but with the exception that the third-party defendant was culpable in some respect, asked Mr. Weinig whether he is saying that [under HB 427], in order for the third-party defendant to be brought in, the plaintiff has to agree.

MR. WEINIG said no, he is not saying that. "What I'm saying is that the only action plaintiff takes is to notify the court whether he wants to get money from the third-party defendant or not," he explained. This has nothing to do, he remarked, with whether the third-party defendant can be brought into the case.

REPRESENTATIVE JAMES asked how the attorney fees would be apportioned if both the third-party defendant and the original defendant are found culpable.

MR. WEINIG said:

> That would be governed on a percentage basis. The plaintiff, in that case, would be the prevailing party because he got recovery against both of them. And, since he made a monetary recovery, there's a schedule in Rule 82 that sets up a given percentage of fees that are to be recovered. Let's say it's "X" percent of the first [$]25,000, and "Y" percent of the next [$]75,000, and "Z" percent of the sums over that; that is the percentage rule that would be applied in awarding [attorney] fees to the plaintiff where there is monetary recovery. And I would imagine that those fees, once the amount of them has been determined from this percentage of the recovery, probably should be borne between the original defendant and the third-party defendant on the basis of their comparative fault.

Number 1434

> In other words, let's say that the [attorney] fees awarded on the "ruling to schedule" comes out to $60,000, and let's say that the original defendant was 30 percent at fault, and let's say that the third-party defendant was 70 percent at fault. Now, in dividing up the $60,000, first defendant would be paying 30 percent of that and the other would be paying 70 percent of that.

REPRESENTATIVE JAMES said she assumes that if no fault is found with either the original defendant or the third-party defendant, "then the plaintiff has to pay something for bringing a claim that he didn't win." She asked how the money gets distributed if that is the case.

MR. WEINIG indicated that her assumption is correct. He explained that if plaintiff is found to be 100 percent at fault, the original defendant would be able to recover probably 20 to 30 percent of his/her attorney fees under Rule 82 as it exists now. And, currently, the third-party defendant would be able to recover probably 20 to 30 percent "against the guy who brought him in," but would not be able to recover anything from the plaintiff. Mr. Weinig opined that if the plaintiff wants to collect money from the third-party defendant, "he should be at an equal position of exposure" to that third-party defendant, as is the original defendant, when it comes to attorney fees. He remarked that although currently the plaintiff has "gotten a free ride" in such situations, in fairness to everyone, the third-party defendant's attorney fees should be split between the original defendant and the plaintiff.

MR. WEINIG, in response to further questions, explained that according to HB 427, in order for the plaintiff to eliminate exposure to the third-party defendant's attorney fees, the plaintiff merely has to notify the court that he/she is not seeking any recovery from the third-party defendant, only from the original defendant. He acknowledged, however, that if the plaintiff does so notify the court and it later turns out that the third-party defendant is 100 percent culpable and the original defendant is not culpable at all, the plaintiff does not recover anything; the plaintiff has simply made a bad decision.

Number 1896

REPRESENTATIVE JAMES indicated that the current practice seems to be the fair way. If a defendant chooses to bring in a third-party defendant, then the original defendant should pay any attorney fees owed to the third-party defendant, she opined.

CHAIR ROKEBERG remarked that that is the current practice.

MR. WEINIG argued that that isn't quite the way it is now, due to tort-reform legislation enacted back in 1997. He pointed out that AS 09.17.080 stipulates that all fault should be apportioned based upon everyone's percentage of fault. Thus,

plaintiff cannot simply sue the original defendant for 100 percent without allowing the original defendant to "apportion that down to other people." He acknowledged, however, that "the situation that I'm dealing with is a very minor part of some of these problems that have emanated from the 1997 tort-reform [legislation]." He opined it is only equitable, if someone wants recovery from someone else, that it not be done in a totally risk-free environment. In response to a question, he noted that Rule 82 is designed to only partially compensate someone for his/her costs and attorney fees.

REPRESENTATIVE BERKOWITZ noted that if there is a good reason to do so, the court can expand the amount of recovery established by Rule 82.

MR. WEINIG concurred.

CHAIR ROKEBERG, to clarify, stated that who they have been referring to as the original defendant is called the "third-party plaintiff" in HB 427.

MR. WEINIG concurred. The original defendant is wearing two hats: he/she is both defendant to the original plaintiff, and plaintiff to any third-party defendant that he/she might choose to bring in.

REPRESENTATIVE JAMES observed that there is a relationship between the third-party defendant and the plaintiff; had the plaintiff not filed a suit to begin with, the third-party defendant would not have become involved.

CHAIR ROKEBERG mentioned that typically, a plaintiff will file against multiple defendants. He asked whether these defendants would always be considered original defendants.

Number 2184

MR. WEINIG said yes; a defendant is not considered a third-party defendant unless an original defendant brings him/her in.

REPRESENTATIVE GREEN noted that for purposes of HB 427, the plaintiff would [initially] only be responsible to any original defendants.

CHAIR ROKEBERG surmised that under HB 427, a third-party defendant could possibly receive up to 100 percent of his/her attorney fees by seeking an additional award from the plaintiff.

REPRESENTATIVE JAMES, after noting HB 427 stipulates that a plaintiff must notify the court whether he/she intends to seek damages from a third-party defendant, asked how a plaintiff would know whether or not a third-party defendant is at fault; "that sounds like a trap to me."

MR. WEINIG reiterated that HB 427 allows a plaintiff 30 days in which to decide whether or not to seek damages from a third-party defendant. He added, however, that the key concept is that this decision "should be within a reasonable time - whatever is deemed to be reasonable." He continued:

> I would imagine that given the rules of amending pleadings, which are very liberally applied by the courts, that probably leave to amend that intention could be worked into this concept too. For instance, if plaintiff originally says, "I elect not to go for this fellow, this third-party defendant," and eight months later decides that he wishes to do so, I think provision could very easily be made for seeking leave to amend to do so. And, at that point, the relationship of potential liability for that party's [attorney] fees would kick in at the time he elected to go after him. But I would think that it would be no trouble at all to allow whatever this body deems to be a reasonable time for plaintiff to make that election, and reasonable provisions for amending that should he wish to change that later. That is customary with every other pleading, like an answer or a complaint; it should be true for this.

Number 2342

REPRESENTATIVE GREEN asked why wouldn't the plaintiff merely wait until he/she could see how the case was going and then decide whether to seek recovery from the third-party defendant? Shouldn't there be an earlier commitment?

MR. WEINIG said that a good reason why there should be an early commitment is because it defines the roles of the parties. Whether leave should be given later on, there are arguments that go both ways. He continued:

> I think a better argument is to have folks make decisions real early in the game, so that everyone knows what the playing field is going to be, but I am

not so inflexible to say that it's an absolute bar. But I think 30 days is a good rule. And if one wishes to, say, seek leave to withdraw that or amend it, you might be able to, for a really-good-cause-shown type of basis. There is almost nothing in the way of an answer or a complaint or other pleading that is totally beyond amendment, but I like the idea of making the decision very early in the game - 30 days or some similar reasonable date - so that everyone knows what the game rules are.

Number 2407

MICHAEL J. SCHNEIDER, Attorney, testified via teleconference. After noting that he has represented injured Alaskans and their families for over a quarter of a century and, thus, has some familiarity with the process that is the subject of HB 427, Mr. Schneider said that HB 427 "is a solution in search of a problem." He elaborated:

> Most of the members of this committee know - formally or on an informal basis - different superior court judges and justices of the supreme court. I would encourage each committee member to walk up to one of these folks and say, "Listen, we have this bill; is this really a problem, are there any abuses out there that you see, are plaintiffs getting away with murder, [or] are defendants ... - either the main defendant or the secondary defendant - ... being hurt by the way business is currently being done?" And when they get done rolling their eyes and slapping their thighs, they're going to tell you there is no problem to be addressed; they're not going to be able to give you a good reason why this bill is in front of you.
>
> Secondly, I would like the members of the committee to hearken back to some of the hard times we all had together during what I refer to as the tort-reform wars. It was one of the legislature's concerns that people that make claims, that haul their fellow citizens into court, have to stand behind those claims, and if they're not good claims, they should [bear the burden of Rule 82].

TAPE 02-26, SIDE B
Number 2474

MR. SCHNEIDER continued:

In other words, the legislature liked and endorsed Alaska's existing Rule 82 procedure. Secondly, the legislature was concerned, and it's my sense of the body that it remains concerned, about those - no matter who they are - who bring frivolous and unwarranted claims. If we keep those two concepts in mind, and then track what this bill does, I think it becomes pretty obvious, pretty quickly, that this is an idea whose time has not come. This bill does nothing but encourage frivolous claims by ... the main defendant - the first defendant that plaintiff sued - against other people upon whom that defendant wishes to lay off liability.

Let's do the math a couple of times using hypotheticals that this committee has just had before it. In the first situation, plaintiff is 40 percent at fault, the defendant that plaintiff sued is 30 percent at fault, [and] the secondary - or third-party - defendant that the first defendant brings in is 30 percent at fault. Okay, what you've got to realize is that ... Rule 82 is not the name of the game here.

If you've seen many movies, in drug investigations they always say, "Follow the money"; [you've] got to follow the money here to see what's going on. Defendant 1 brings in defendant 2 because -- what happened in our hypothetical? Their exposure was halved. They went from being potentially 60 percent at fault, and paying 60 percent of the bill, to paying only 30 percent of the remaining liability after plaintiff's comparative negligence. That is that first defendant's benefit from engaging in this third-party practice; it's really not motivated by a little Rule 82 award.

Number 2393

MR. SCHNEIDER went on to say:

If you take the other hypothetical: Okay, so first of all, when the ... secondary defendants, the third-party defendants - those brought in, not by plaintiff, but by the defendant that plaintiff sued - when those are righteous claims, ... you don't have to worry

about the Rule 82 awards. The defendant that brings those claims is going to be rewarded because their liability is greatly reduced. Now, yes, that defendant will also be rewarded because, having made the claim, the benefit and burden of Rule 82 thus far, before this bill, tracks the party that makes a claim. In other words, ... you want to make a claim; that's nice [but] it had better be good. If it is good, you get a little more than [attorney] fees; if it's bad, you pay [attorney] fees. That's the way it ought to be.

Now, when those third-party claims are righteous, defendant that brings them is rewarded because their liability is reduced. Let's go to [an] instance where those claims are frivolous, because that's where the game is here. If defendant 1 brings a frivolous claim against defendant 2 and 3 and 4 -- and why would they do that? ... If defendant 2 and 3 and 4 have no assets, if they have no insurance, if they have, frankly, only scarce liability, defendant still desperately wants to lay off their fault; they do not want to accept the personal responsibility that has been a constant theme with this legislature for many years.

And what do they want to do through this bill? They want to make sure that their effort to avoid their personal responsibility is foisted off on plaintiff, who never wanted to drag these parties into the lawsuit to begin with. That's what the agenda is here. The defense bar wishes to create a situation where they can name - now remember, plaintiff hasn't taken the shotgun approach, the defense has - all the king's horses, all the king's men, liable or not, and try to get enough empty, undefended chairs out there so, justice notwithstanding, they can reduce plaintiff's recovery by foisting off liability on the disinterested and the uninsured and the unrepresented. And they wish to burden the plaintiff with the bill for doing that; that's what this bill accomplishes.

Number 2253

MR. SCHNEIDER continued:

If you take a look at a couple of comments that were made to you a moment ago by ... Mr. Weinig, who drafted this legislation, he suggested that plaintiff take a hard a look at plaintiff's own case. Well, heck, plaintiff took a hard look at plaintiff's own case when plaintiff came into court and sued the defendant [whom] plaintiff wanted to sue. Now, Mr. Weinig asks that we take a look in 30 days: we don't get any discovery, we don't have any information, this is the first defendant's idea to bring these other folks in. He asks us to take a hard look at a case we don't know anything about, in 30 days. If this body is convinced that it's got to pass this bad idea, then it should make that 30 days, 30 days before trial or 60 days before trial or 90 days before trial. At least then we'd have a chance to know what it is we're dealing with because discovery will have taken place.

This bill is not there to level an already reasonably level playing field, where the burden of making a claim - the Rule 82 burden - tracks those people asserting that claim. This bill is designed to ... allow a defendant to sue people that may or may not have anything to do with a given case, and then give the plaintiff the Hobson's choice of endorsing that election or not, in a time frame when they can't make a reasonable decision. It's simply a bad idea. As Representative James observed, the way business is done now is the fair way, and ... introducing this bill sets up a trap for people who are already injured, who are already in court because they need to be there and have to be there because of what's happened to them. And it makes them take responsibility for a lawsuit they didn't bring against people they didn't want in that lawsuit; it's just not fair.

Number 2145

CHAIR ROKEBERG, after noting that there were no further questions at this time, announced that HB 427 would be held over.

HB 346 - CONCEALED HANDGUN PERMITTEES

[Contains brief reference to SB 242, the companion bill to HB 346.]

Number 2140

CHAIR ROKEBERG announced that the last order of business would be HOUSE BILL NO. 346, "An Act relating to concealed handgun permittees."

Number 2110

JENNIFER YUHAS, Staff to Representative Beverly Masek, Alaska State Legislature, sponsor, explained on behalf of the sponsor that HB 346 was introduced in response to inaction by the Department of Public Safety (DPS) to recognize other states under Alaska's "concealed-carry" laws. In response to questions she noted that HB 346 is the companion bill to SB 242, and that although amendments were offered for SB 242, it passed the Senate unamended.

Number 2051

BRIAN JUDY, Alaska State Liaison, Institute for Legislative Action, National Rifle Association of America (NRA), testified via teleconference in support of HB 346. He said:

> In 1994 the Department of Public Safety disseminated a white paper on the original "conceal-permit" law, [which] was HB 351, by Representative Jeanette James. The paper was entitled "To Conceal or Not to Conceal, That is the Question," and it was full of suggestions and predictions that there would be more guns at grocery stores, on ball fields; fender-benders would become shootouts. And in fact it was the same set of warnings that we heard in every other state that had considered "right-to-carry" legislation.
>
> ... Interestingly, the Department of Public Safety has acknowledged, in hearings on this bill, [that] the outcome in Alaska has been, in fact, the same as every other state: There have been virtually no problems caused by concealed-weapon permit holders in any state. ... This is a very important point; the empirical evidence from every state that's issued permits, regardless of the level of qualification or training standards, is the same: Law-abiding citizens who have been issued right-to-carry permits are exercising their constitutional right to bear arms and

their natural right to defend themselves, with the utmost responsibility.

... The major concern that we've heard expressed to this bill is that it's going to cause the State of Alaska to have to recognize permits from other states that may not have qualification or issuance standards quite to the level [of] Alaska. There are some states with tougher standards, there are some states with standards that aren't as strict as Alaska, but, again, the important point is that the evidence from everyone in these states is the same, and that is that the permittees are handling themselves responsibly.

Number 1962

Self-defense is a fundamental right, and the right of self-defense does not and should not stop at state borders. As with driver's licenses, right-to-carry permits should be honored universally. And in fact studies have shown that crime rates drop when law-abiding citizens have the means to provide for their own self-protection and when criminals then know that their next potential victim might have the means to fight back.

MR. JUDY continued:

In 1998, SB 141 first recognized permits from other states, and, interestingly, the same concerns were raised, that we were going to have people coming into the state and we were going to have problems. But they did not materialize. In 2000, Senator Taylor had a bill - SB 294 - that clarified and broadened the number of states that Alaska would recognize. And for that bill there was little or no opposition; people were finally understanding that these people weren't going to be a problem. Unfortunately, in the last couple of years, the Department of Public Safety has been unable to provide a complete and accurate listing of all the states which Alaska recognizes.

It's also a concern of ours that the web site postings that they do provide - the incomplete web site postings - [don't] necessarily give the information out, as they're required to do, to all the law enforcement agencies in the state. And that's

important because all the law enforcement officers out there throughout Alaska need to know which states' permits are valid in Alaska so they can enforce the laws. So this bill - HB 346 - and its companion - SB 242, which is coming over from the Senate - would simply recognize all other states' permits. It relieves the Department of Public Safety of the burden of having to evaluate all the other states' laws, and it will effectively notify all local law enforcement agencies in the state that permits from any state are valid.

Number 1866

MR. JUDY also said:

Again, regarding the concern that such a law will require Alaska to recognize permits from states with lower standards, there are 50 states out there; [43] of them ... issue permits to law-abiding citizens - some are mandatory issue and some are discretionary - but every one of those state laws is different. Some are tougher, some are not as tough, but the consistent feature in every state is that permit holders are exercising their rights responsibly. The State of Alaska should not have any reservations about welcoming the law-abiding citizens of other states and honoring their permits.

One last point I want to make. If you go back to that 1994 white paper, the Department of Public Safety pointed out then, rightfully, that all Alaskan's have a right to carry openly in Alaska. In fact, all law-abiding citizens, whether they're Alaskans or whether they are visiting the state, have the right to carry openly in Alaska. So what this bill really does is -- it make sense because anybody can carry in Alaska openly; this gives that small percentage of the population out there that's gone through their state's process to be licensed to carry concealed, [the ability] to carry concealed in Alaska. ... The NRA obviously urges your support for this bill, and if there are any questions, I'd be happy to respond.

REPRESENTATIVE JAMES asked: What happens with anyone from Vermont, for example, where they're not required to have a permit to carry concealed; how is reciprocity handled then?

MR. JUDY opined that if [HB 346/SB 242] became law, it would only recognize people who have permits issued by other states. Therefore, anybody from Vermont would not be able to carry in Alaska since Vermont does not issue permits.

REPRESENTATIVE JAMES asked whether Alaskan's could carry concealed in Vermont.

MR. JUDY said yes. He relayed that the way the Vermont law reads is that any law-abiding citizen can carry a firearm openly, concealed, loaded, or unloaded; "you do not need a permit to carry in Vermont." Regardless of what state people are from - as long as they are law-abiding citizens and don't have any criminal intent that could later be proven - they can carry lawfully in the state of Vermont, any way they choose.

Number 1735

REPRESENTATIVE BERKOWITZ, after noting that Mr. Judy had indicated that the state's web site was inaccurate regarding reciprocity, mentioned that he "had it in front" of him and that it lists 11 states for which Alaska recognizes valid handgun permits. He asked Mr. Judy to tell him what the inaccuracies are.

MR. JUDY clarified: "If I said it's inaccurate, I misspoke; what I mean is that it is incomplete." He added that there are somewhere in the ballpark of 25 states. In fact, he recalled, the DPS testified in the [Senate Judiciary Standing Committee] that there are 25 states' permits which are recognized in Alaska. Therefore, by listing only 11, 4 or 5 of which were only added [within the last two weeks since HB 346/SB 242 started moving], the web site is not providing complete information to all the law enforcement agencies out there regarding which states' permits are valid in Alaska.

REPRESENTATIVE BERKOWITZ relayed that one of the concerns that he has is not a subject-matter concern but is instead "a state's rights" concern. He elaborated:

> If Alaska sets standards, on this subject or on any other subject, it seems to me that we have a responsibility to ensure that visitors to this state comply with those standards. You mentioned the driver's licenses; I don't know exactly, but I believe there is some national legislation about [a] uniform

driver's licenses Act, and it just seems to me that there's a "state's rights" concern here that we shouldn't quickly run past.

MR. JUDY suggested that that is the policy question raised by [HB 346/SB 242]. He pointed out, however, that anybody from another state who carries - either openly, as allowed under existing Alaska law, or concealed, as allowed for some states' citizens because of reciprocity - is still required to comply with Alaska's laws. Therefore, he opined, the only change would be that the permits of some states that may not have concealed-weapons-permits-issuance criteria as strict as Alaska's would be valid after the passage of [HB 346/SB 242]. Additionally, he made the claim that permits from some states which currently have issuance criteria that are not as strict as Alaska's are recognized as valid by virtue of [a portion of the current law], which says that if another state's permits are valid in Alaska, then Alaska will recognize those permits. He surmised that that is why some states are listed on the DPS web site even though their issuance criteria are not as strict as those of Alaska.

Number 1565

REPRESENTATIVE JAMES asked whether [HB 346/SB 242] would require someone who had a valid permit from another state to replace that permit with an Alaska permit if he/she moved to Alaska.

MR. JUDY noted that [HB 346/SB 242] would delete the 120-day limitation; thus, if somebody moved to Alaska and became an Alaskan resident, the permit from his/her former state of residence would be valid in Alaska until it expired. After that permit expired, if that person wanted to continue to carry concealed, then he/she would be required to apply for and receive an Alaskan permit.

REPRESENTATIVE BERKOWITZ noted that persons who come to the state "with the intent to remain and gain employment" are required, within 90 days, to get a new driver's license. He asked Mr. Judy whether he recommends a different scheme as appropriate for a concealed-carry permit.

MR. JUDY said it would be a bit different if HB 346 became law. He informed the committee that there are 25-30 states that have laws that recognize permits from other states. Currently, only Alaska, at 120 days, and Utah, at 60 days, have time limitations. If [HB 346/SB 242] becomes law as it is, Texas would recognize Alaska's law. However, Texas currently won't

enter into an agreement with Alaska due to the 120-day limitation.

CHAIR ROKEBERG inquired as to whether that meant that a Texan could come to Alaska, establish residency, and use their Texas permit for infinity.

MR. JUDY answered that if [HB 346/SB 242] became law, a Texan with a Texas concealed handgun permit could carry in Alaska. If that Texan decided to stay in Alaska, that Texan's permit would be valid until it expired. In response to Chair Rokeberg, Mr. Judy confirmed that permits in Texas do have an expiration. He recalled that the longest permit available is for five years. Mr. Judy explained that if a person who had obtained a five-year permit moved to Alaska, then that permit would be good for five years. However, he felt that such a situation would be highly unlikely. Even if such a case happened, the permit holders are responsible individuals. People going through this permit process, regardless of the state and issuance criteria, are not causing problems.

Number 1321

REPRESENTATIVE BERKOWITZ noted that the permit holders should be protected as well. The more knowledge there is regarding who has concealed handgun permits - whether the person is a visitor or not - the more safety would be provided for concealed handgun permit holders.

MR. JUDY referred to the "Uniform Crime Report" put out by the Federal Bureau of Investigations (FBI), which illustrates that the states with most lenient gun laws have the lowest crime rate. He recalled that the State of Vermont, which allows anyone to carry any time, at any location, ranks 49th in crime [statistics in the United States]. The people causing problems aren't those that go through the process and are issued these concealed-carry permits.

REPRESENTATIVE BERKOWITZ commented that that isn't his point, although he tended to agree with the numbers mentioned by Mr. Judy. However, he said, he feels that there should be some protection afforded to those with concealed-carry permits. He questioned whether opening [the statutes] as wide as Mr. Judy suggests would afford that level of protection.

MR. JUDY said that he didn't understand what problem permit holders would face if [the statutes] were opened up; it would [merely] allow them to carry.

REPRESENTATIVE JAMES announced that she is a permit holder and isn't afraid of anyone that enters the state with a [concealed-carry] permit.

Number 1180

JESSE VANDERZANDEN, Executive Director, Alaska Outdoor Council (AOC), testified via teleconference in support of HB 346. He informed the committee that the AOC is composed of about 50 outdoor clubs as well as individual members. At least a dozen of those clubs are gun-oriented. There are several members that teach concealed-carry classes and have concealed-carry permits. Many of those folks have called AOC in support of HB 346 without solicitation from the AOC.

Number 1077

DEL SMITH, Deputy Commissioner, Department of Public Safety (DPS), began by noting that although HB 346 would lighten DPS's workload, he wasn't sure what [HB 346] does for Alaskans. He questioned whether it's good public policy to allow everyone to come to Alaska [with a concealed-carry permit] indefinitely. Conceivably, someone from Texas or elsewhere could come to Alaska and carry a concealed gun for five years without being required to obtain an Alaskan permit.

MR. SMITH, in response to Chair Rokeberg, specified that 11 [states] have [reciprocity] and three [states] are pending. He confirmed that he is in the process of officially verifying [which states have reciprocity agreements].

Number 0965

PATTY OWEN, Alaska Chapter, Million Mom March, informed the committee that the Million Mom March is a national grassroots organization for commonsense gun laws and safe kids. Ms. Owen expressed her fear that [HB 346] weakens the concealed-weapon law, as well as all other gun-safety laws, to an all-time low. [This legislation would] allow others to come into the state who haven't met Alaska's training or fingerprinting standards, and who could conceivably be teenagers. She noted that current law requires a person to be 21 before being issued a permit, and opined that HB 342 appears to repeal that portion of statute.

Furthermore, the lack of a time limit regarding when someone has to apply for an Alaskan permit appears to be a big loophole.

MS. OWEN posited that allowing other people to come into Alaska and carry concealed weapons, regardless of whether their states have lower standards, would, in effect, weaken Alaska's standards. She stated that she did not care whether passage of [HB 346] lightens the DPS's workload. "I am a concerned citizen and I feel like they should be doing their job, and its not the right answer to repeal good safety laws just to lighten the load; so I would just encourage some patience with what they're doing, and [encourage] upholding Alaska's standards," she said. It doesn't benefit Alaskan permit holders when they travel to other states; they still depend on the laws of other states. Therefore, she suggested, HB 346 would only benefit the newcomers to Alaska who have permits from other states.

Number 0796

LAUREE HUGONIN, Executive Director, Alaska Network on Domestic Violence & Sexual Assault (ANDVSA), in an effort to clarify a couple of points, said:

> As many of you know, we are not proponents of concealed-carry but we understand the reality as we have it here. But there are two things that I would like to clarify. One is that sexual assault in Alaska has not gone down since people have been allowed to carry concealed weapons here. We remain, unfortunately, in the top five per capita in the nation in sexual assault, and we vacillate between number one and number 2; I think maybe once in the last ten years we made it down to number three, but it's not crime that carrying concealed has had an impact on.
>
> There's a study on the NRA's web site that does show several crimes where that may have had some kind of impact in other states, and for sexual assault it only says a 3 percent reduction, but it didn't really say how that percentage was derived; but that's not the case here. [There also seems to be a] notion that hidden weapons [gives] offenders some kind of pause about whether or not to commit the crime. In sexual assault, most often, offenders know their victims so they're going to know whether or not they have a concealed-carry permit; they're probably going to know

whether or not a person has a weapon on them, and so that's not really going to be a deterrent effect.

And then the second point was ... about [the argument that] "well everybody can carry open." Well, okay; if you carry a [weapon openly], I can see it, I can make a decision about whether or not I want to be in proximity to you and that weapon. If you're carrying concealed, I don't have that option. So I would just ask you to consider thoughtfully what you're passing through, and to take into account that not everything that's said with statistics is true for Alaska, as it might be true in other parts of the nation, and that you would thoughtfully consider whether or not to move the bill from the committee. Thank you.

CHAIR ROKEBERG asked whether there have been any studies regarding the percentages of sexual assault in relation to rural and urban areas of Alaska.

Number 0604

MS. HUGONIN asked whether he was referring to how many of the total number of sexual assaults might have been committed in rural areas.

CHAIR ROKEBERG: Well, like a per capita incidence rate."

MS. HUGONIN said not that she is aware of, adding that she would research the issue.

CHAIR ROKEBERG announced that HB 346 would be held over and that the committee would probably take up SB 242.

MS. YUHAS, on Representative Berkowitz's driver's license analogy, offered the comment that "driving is a privilege that we issue a permit for, [whereas] the right to carry a firearm is [a] constitutionally guaranteed right [that] the state has chosen to regulate."

REPRESENTATIVE BERKOWITZ said, "Not concealed."

MS. YUHAS replied that the right to carry a weapon at all is a constitutionally guaranteed right, whereas driving is not.

REPRESENTATIVE BERKOWITZ argued that carrying concealed is not a constitutional right, and that the state has the ability to regulate it.

CHAIR ROKEBERG asked how long an Alaskan concealed-carry permit lasts.

MS. YUHAS said five years. She noted that the DPS has suggested that HB 346 might be just for people traveling to Alaska, and, in response, she pointed out that there are other states that will not grant reciprocity if their permits are not honored in Alaska. Therefore, she offered, this bill is specifically for Alaskans so that they are able to travel to other states with peace of mind, particularly in light of terroristic threats.

[HB 346 was held over.]

ADJOURNMENT

Number 0468

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:15 p.m.