

**ALASKA STATE LEGISLATURE**  
**HOUSE JUDICIARY STANDING COMMITTEE**

April 19, 2002

2:00 p.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

Representative Scott Ogan, Vice Chair

**COMMITTEE CALENDAR**

HOUSE BILL NO. 472

"An Act relating to persons who buy and sell secondhand articles and to certain persons who lend money on secondhand articles."

- MOVED CSHB 472(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 499

"An Act relating to the sale, lease, exchange, or other disposition of business property and assets."

- MOVED CSHB 499(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 271

"An Act relating to recovery of punitive damages resulting from an aviation accident; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 489

"An Act relating to cruelty to animals."

- HEARD AND HELD

HOUSE BILL NO. 269

"An Act establishing employment protections for certain employees in the aviation industry relating to safety issues."

- SCHEDULED BUT NOT HEARD

**PREVIOUS ACTION**

BILL: HB 472

SHORT TITLE:PAWNBROKERS/SECONDHAND DEALERS

SPONSOR(S): REPRESENTATIVE(S)GREEN

Jrn-Date	Jrn-Page		Action
02/19/02	2315	(H)	READ THE FIRST TIME - REFERRALS
02/19/02	2315	(H)	L&C, JUD
03/04/02		(H)	L&C AT 3:15 PM CAPITOL 17
03/04/02		(H)	Heard & Held
03/04/02		(H)	MINUTE(L&C)
04/01/02		(H)	L&C AT 3:15 PM CAPITOL 17
04/01/02		(H)	Moved CSHB 472(L&C) Out of Committee
04/01/02		(H)	MINUTE(L&C)
04/02/02	2752	(H)	L&C RPT CS(L&C) NT 5NR 1AM
04/02/02	2752	(H)	NR: MEYER, HAYES, KOTT, HALCRO,
04/02/02	2752	(H)	MURKOWSKI; AM: ROKEBERG
04/02/02	2753	(H)	FN1: ZERO(DPS)
04/03/02	2788	(H)	COSPONSOR(S): MCGUIRE
04/05/02		(H)	JUD AT 1:00 PM CAPITOL 120
04/05/02		(H)	Scheduled But Not Heard
04/08/02	2840	(H)	COSPONSOR(S): MEYER
04/10/02		(H)	JUD AT 1:00 PM CAPITOL 120
04/10/02		(H)	Heard & Held
			MINUTE(JUD)
04/19/02		(H)	JUD AT 1:30 PM CAPITOL 120

BILL: HB 499

SHORT TITLE:DISPOSITION OF BUSINESS ASSETS

SPONSOR(S): JUDICIARY

Jrn-Date	Jrn-Page		Action
02/27/02	2407	(H)	READ THE FIRST TIME - REFERRALS
02/27/02	2407	(H)	JUD
03/15/02		(H)	JUD AT 1:00 PM CAPITOL 120
03/15/02		(H)	Heard & Held
03/15/02		(H)	MINUTE(JUD)
04/05/02		(H)	JUD AT 1:00 PM CAPITOL 120
04/05/02		(H)	Heard & Held
			MINUTE(JUD)

04/17/02 (H) JUD AT 1:00 PM CAPITOL 120  
 04/17/02 (H) Heard & Held  
 04/17/02 (H) MINUTE(JUD)  
 04/19/02 (H) JUD AT 1:30 PM CAPITOL 120

BILL: HB 271

SHORT TITLE:CAP ON AVIATION ACCIDENT PUNITIVE DAMAGES  
 SPONSOR(S): LABOR & COMMERCE

Jrn-Date	Jrn-Page		Action
05/04/01	1532	(H)	READ THE FIRST TIME - REFERRALS
05/04/01	1532	(H)	L&C, JUD
05/06/01	1617	(H)	PRIME SPONSOR CHANGED
04/10/02		(H)	L&C AT 3:15 PM CAPITOL 17
04/10/02		(H)	Moved CSHB 271(L&C) Out of Committee MINUTE(L&C)
04/11/02	2881	(H)	L&C RPT CS(L&C) 2DP 2NR 3AM
04/11/02	2881	(H)	DP: HAYES, HALCRO; NR: CRAWFORD,
04/11/02	2881	(H)	MURKOWSKI; AM: ROKEBERG, MEYER, KOTT
04/11/02	2881	(H)	FN1: ZERO(ADM)
04/11/02	2881	(H)	FN2: ZERO(CED)
04/19/02		(H)	JUD AT 1:30 PM CAPITOL 120

BILL: HB 489

SHORT TITLE:CRUELTY TO ANIMALS  
 SPONSOR(S): REPRESENTATIVE(S)CHENAULT

Jrn-Date	Jrn-Page		Action
02/19/02	2319	(H)	READ THE FIRST TIME - REFERRALS
02/19/02	2319	(H)	JUD
02/22/02	2370	(H)	COSPONSOR(S): KOTT
03/01/02	2450	(H)	COSPONSOR(S): CROFT
03/06/02	2497	(H)	COSPONSOR(S): JAMES, FOSTER
03/15/02		(H)	JUD AT 1:00 PM CAPITOL 120
03/15/02		(H)	Heard & Held
03/15/02		(H)	MINUTE(JUD)
03/15/02	2564	(H)	COSPONSOR(S): LANCASTER
03/20/02	2628	(H)	COSPONSOR(S) REMOVED: JAMES
04/19/02		(H)	JUD AT 1:30 PM CAPITOL 120

**WITNESS REGISTER**

LAURA ACHEE, Staff  
to Representative Joe Green  
Alaska State Legislature  
Capitol Building, Room 403  
Juneau, Alaska 99801

POSITION STATEMENT: On behalf of the sponsor, Representative Green, provided information regarding the proposed committee substitute (CS) for HB 472 and responded to questions.

HEATHER M. NOBREGA, Staff  
to Representative Norman Rokeberg  
House Judiciary Standing Committee  
Alaska State Legislature  
Capitol Building, Room 118  
Juneau, Alaska 99801

POSITION STATEMENT: Responded to questions regarding the proposed committee substitute (CS) for HB 499.

REPRESENTATIVE ANDREW HALCRO  
Alaska State Legislature  
Capitol Building, Room 414  
Juneau, Alaska 99801

POSITION STATEMENT: As chair of the subcommittee on aviation insurance, presented HB 271, which was sponsored by the House Labor and Commerce Standing Committee.

CHRISTOPHER KNIGHT, Staff  
to Representative Andrew Halcro  
Alaska State Legislature  
Capitol Building, Room 414  
Juneau, Alaska 99801

POSITION STATEMENT: Assisted with the presentation of HB 271.

KIP KNUDSON, President  
Alaska Air Carriers Association (AACA).  
6160 Carl Brady Drive  
Anchorage, Alaska 99502

POSITION STATEMENT: Provided comments during discussion of HB 271 and responded to questions.

BOB LOHR, Director  
Division of Insurance  
Department of Community & Economic Development (DCED)  
3601 C Street, Suite 1324  
Anchorage, Alaska 99503-5948

POSITION STATEMENT: Provided comments during discussion of HB 271.

SARAH McNAIR-GROVE, Actuary P/C  
Central Office  
Division of Insurance  
Department of Community & Economic Development (DCED)  
PO Box 110805  
Juneau, Alaska 99811-0805  
POSITION STATEMENT: Responded to questions during discussion of  
HB 271.

JOHN L. GEORGE  
3328 Fritz Cove Road  
Juneau, Alaska 99801  
POSITION STATEMENT: Provided comments during discussion of HB  
271.

SHARALYN "SUE" WRIGHT, Staff  
to Representative Mike Chenault  
Alaska State Legislature  
Capitol Building, Room 432  
Juneau, Alaska 99801  
POSITION STATEMENT: Presented HB 489 on behalf of the sponsor,  
Representative Chenault.

ETHEL CHRISTENSEN, Director  
Alaska Society for the Prevention of Cruelty to Animals (SPCA)  
549 West International Airport Road, SuiteB-2  
Anchorage, Alaska 99518  
POSITION STATEMENT: Testified in support of HB 489.

SHANNA ANDERSON; Animal Control Officer; Manager  
Valdez Animal Shelter  
City of Valdez  
PO Box 307  
Valdez, Alaska 99686  
POSITION STATEMENT: Provided comments during discussion of HB  
489.

BILL GODEK, Chief Animal Control Officer  
City of Kenai  
210 Fidalgo Avenue, Suite 200  
Kenai, Alaska 99611  
POSITION STATEMENT: Testified in support of HB 489.

BRETT REID, Animal Control Assistant  
City of Kenai  
210 Fidalgo Avenue, Suite 200

Kenai, Alaska 99611

POSITION STATEMENT: Testified in support of HB 489.

SUE CARTER

PO Box 212

Kenai, Alaska 99611

POSITION STATEMENT: Testified in support of HB 489.

ANNE CARPENETI, Assistant Attorney General

Legal Services Section-Juneau

Criminal Division

Department of Law (DOL)

PO Box 110300

Juneau, Alaska 99811-0300

POSITION STATEMENT: Testified in opposition to HB 489 and responded to questions.

CANDACE BROWER, Program Coordinator/Legislative Liaison

Office of the Commissioner - Juneau

Department of Corrections (DOC)

431 North Franklin Street, Suite 400

Juneau, Alaska 99801

POSITION STATEMENT: Provided information during the discussion of HB 489.

MARIE RILEY, Staff

to Representative Mike Chenault

Alaska State Legislature

Capitol Building, Room 432

Juneau, Alaska 99801

POSITION STATEMENT: Assisted with the presentation of HB 489 on behalf of the sponsor, Representative Chenault.

#### **ACTION NARRATIVE**

TAPE 02-51, SIDE A

Number 0001

CHAIR NORMAN ROKEBERG called the House Judiciary Standing Committee meeting to order at 2:00 p.m. Representatives Rokeberg, Coghill, Meyer, and Berkowitz were present at the call to order. Representatives James and Kookesh arrived as the meeting was in progress.

HB 472 - PAWNBROKERS/SECONDHAND DEALERS

Number 0037

CHAIR ROKEBERG announced that the first order of business would be HOUSE BILL NO. 472, "An Act relating to persons who buy and sell secondhand articles and to certain persons who lend money on secondhand articles." [Before the committee was CSHB 472(L&C).]

Number 0099

LAURA ACHEE, Staff to Representative Joe Green, Alaska State Legislature, sponsor, on behalf of Representative Green, said that a proposed committee substitute contains the requirement that any retailer who takes in an item with the intent of selling it or holding it as collateral for a loan shall provide a report biweekly to his/her local police agency. There is also a requirement that pawnbrokers, but not secondhand dealers, hold items for 30 days. A third change notes that the Department of Public Safety (DPS) is responsible for establishing the form or format of the report made to the local police agencies.

CHAIR ROKEBERG remarked that the latter change is intended to provide for a consistent method of communication between law enforcement agencies.

Number 0191

REPRESENTATIVE MEYER moved to adopt the proposed committee substitute (CS) for HB 472, version 22-LS1519\0, Bannister, 4/18/02, as a work draft. There being no objection, Version 0 was before the committee.

REPRESENTATIVE BERKOWITZ, referring to Section 1, asked what would happen if the pawnbroker or secondhand dealer doesn't record all the items listed, one of which is the eye color of the person selling/pawning the item.

MS. ACHEE indicated that a person who is guilty of "knowingly" violating [Section 1-3] of Version 0 would be subject to a class A misdemeanor. She mentioned that the language used in Section 4, regarding that penalty, was recommended by the drafter.

REPRESENTATIVE BERKOWITZ mentioned he'd received comments from someone who had concerns about the 30-day holding period.

MS. ACHEE, after acknowledging that those concerns did come up a lot, relayed that law enforcement's position is: What's the point of having a reporting requirement if an item could be

taken in on one day and sold the next day. She noted that the position of the business owners is that it costs them to hold items. The compromise proposed by Version 0 requires only pawnbrokers to hold items for 30 days, which is something they already do with pawned items.

REPRESENTATIVE BERKOWITZ referred to Section 6, which contains the language regarding the 30-day holding period. He pointed out that there are no exceptions to that holding period, even if law enforcement were to acknowledge that a particular item was not a stolen item.

MS. ACHEE said that is correct.

REPRESENTATIVE BERKOWITZ remarked that this could lead to an inequitable situation because the pawnbrokers would be stuck holding inventory for no legitimate purpose. "As I understand [it], the purpose of this bill is to make sure that you're not purveying stolen goods, and if you know that the goods aren't stolen, what's the object of requiring them to hold it for 30 days?" he asked.

MS. ACHEE replied that the object would be to allow time for law enforcement to correlate the reports of stolen goods with the reports of received goods.

REPRESENTATIVE BERKOWITZ posited: "So, on day 10, law enforcement comes back and says 'This is totally legitimate goods ...,' and yet the broker still has to hold it for an additional 20 days."

Number 0452

MS. ACHEE said that unfortunately, that's not the way it usually works. She opined that police departments would not be able to clear an item in that short a period of time simply because they would not yet have a record of stolen items. She noted that under the existing Municipality of Anchorage ordinance, pawnbrokers currently hold items for 30 days regardless of whether the police have received a report of particular items being stolen.

REPRESENTATIVE COGHILL mentioned that he, too, has concerns regarding the requirement that items "purchased or acquired" be held for 30 days. He noted that many [of these businesses] buy [wholesale] merchandise for retail sale. He asked if Section 6 would apply to this sort of item as well.

MS. ACHEE said that at this time, the language in Section 6 would apply to all items. She offered that there is room to specify that Section 6 only apply to items purchased from individuals, which would exempt items purchased from other dealers or licensed wholesalers. She said that another option would be to "look directly at the 30-day provision". This provision was modeled after Anchorage's municipal ordinance, but other states use different holding requirements, ranging from 24 hours up to 30 days, she explained.

REPRESENTATIVE COGHILL indicated that his concern, rather than being with the 30-day holding period itself, pertains to the fact that the holding period would also apply to items purchased wholesale.

REPRESENTATIVE BERKOWITZ surmised, then, that Representative Coghill's concern pertains to pawnbrokers who might purchase items at Costco Wholesale Corporation ("Costco"), for example, and then resell those items for a slight markup; according to the current language in Section 6, those pawnbrokers would have to hold those items for 30 days before reselling them.

REPRESENTATIVE COGHILL confirmed that that is his concern.

CHAIR ROKEBERG suggested decreasing the holding period.

REPRESENTATIVE BERKOWITZ questioned whether doing so would serve a legitimate purpose.

REPRESENTATIVE KOOKESH said he agreed with Representative Coghill. He opined that a distinction should be made between items purchased wholesale and items purchased from individuals, since the purpose of HB 472 is to assist law enforcement in recovering stolen goods. There should be a distinction between what the pawnbroker does as a pawnbroker and what he/she does as a merchant, he added; it's not fair to have to hold items for 30 days if, acting as a merchant, one purchases items wholesale.

REPRESENTATIVE BERKOWITZ added that such items might be perishable.

Number 0742

REPRESENTATIVE COGHILL made a motion to adopt Conceptual Amendment 1, which would change the language on page 3, line 29 to read: "shall hold pawned items purchased or acquired".

REPRESENTATIVE JAMES noted that sometimes items [brought in by individuals] are not "pawned"; sometimes the pawnbroker purchases those items outright.

CHAIR ROKEBERG added that it is more likely that stolen goods would be sold outright rather than pawned.

REPRESENTATIVE JAMES recounted that she'd had something stolen from her, and when she went to [a pawnshop] three days later to search for it, it had already been [sold].

Number 0853

REPRESENTATIVE COGHILL, after noting that he still has concern about requiring items purchased wholesale to be held for 30 days, withdrew Conceptual Amendment 1.

CHAIR ROKEBERG mentioned that one option would be to delete Section 6.

REPRESENTATIVE BERKOWITZ said that one of the problems with the 30-day holding requirement in Section 6 is that it doesn't provide for any exceptions for items that have "a chain of legitimate custody" established.

Number 0939

CHAIR ROKEBERG made a motion to adopt a new Conceptual Amendment 1 to page 3 [line 29-30]: "shall hold a purchased or acquired item for 30 days if purchased or acquired from an individual, but not from a retail or wholesale business".

REPRESENTATIVE JAMES stated she may have a conflict of interest.

Number 0995

CHAIR ROKEBERG noted that there were no objections to the new Conceptual Amendment 1. Therefore, Conceptual Amendment 1 was adopted.

REPRESENTATIVE BERKOWITZ asked whether there is anything in HB 472 that would prohibit or encourage public access to the information that pawnbrokers have. How does the public get at this information?

MS. ACHEE said that that issue is not specifically addressed in HB 472. She added that other states do have statutory provisions that specifically state that for the purposes of the Freedom of Information Act, "these are not considered public records." In response to another question, she said that if someone has something stolen, it is the responsibility of the local law enforcement agency to search pawnbroker records.

CHAIR ROKEBERG pointed out that [Section 3] says, "A pawnbroker or secondhand dealer shall make all records required by this chapter, whether entered by handwriting or in a computer, available for inspection by a law enforcement officer at all reasonable times". He added that according to his understanding, this information is not available to the general public.

MS. ACHEE relayed that the Anchorage Police Department does not consider these records public.

Number 1133

REPRESENTATIVE MEYER moved to report the proposed committee substitute (CS) for HB 472, version 22-LS1519\0, Bannister, 4/18/02, as amended, out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, CSHB 472(JUD) was reported out of the House Judiciary Standing Committee.

#### HB 499 - DISPOSITION OF BUSINESS ASSETS

Number 1141

CHAIR ROKEBERG announced that the next order of business would be, HOUSE BILL NO. 499, "An Act relating to the sale, lease, exchange, or other disposition of business property and assets." [Before the committee was committee substitute (CS) for HB 499, version 22-LS1490\S, Bannister, 4/5/02, which was adopted as a work draft on 4/5/02.]

Number 1162

REPRESENTATIVE COGHILL moved to adopt the proposed committee substitute (CS) for HB 499, version 22-LS1490\B, Bannister, 4/19/02, as a work draft.

Number 1181

REPRESENTATIVE BERKOWITZ objected for the purpose of discussion.

Number 1190

HEATHER M. NOBREGA, Staff to Representative Norman Rokeberg, House Judiciary Standing Committee, Alaska State Legislature, explained that Version B has been tailored to more specifically address the issues raised by the Savage Arms, Inc. v. Western Auto Supply Co. case. Version B specifically rejects the "continuity of enterprise" theory, and places in statute the generally accepted law - from the [American Law Institute's Restatement (Third) of the Law of Torts ("Third Restatement of Torts")] - regarding successor liability.

CHAIR ROKEBERG noted that [the provisions] of Version B are retroactive.

MS. NOBREGA confirmed that.

CHAIR ROKEBERG said:

So what we're doing here is, by slimming this thing down, we're overcoming some of the objections that were raised by the trial attorneys as to the general applicability (indisc.) other areas of contract law and so forth that went further afield [and] might have some unintended consequences we weren't ... [able to] specifically identify at this juncture. And because of the need for speed, I felt it was wise to take this route. Also, because of the briefs provided by all parties, I think that we're on ... very sound foundation as to the applicability provisions in the bill.

REPRESENTATIVE BERKOWITZ asked for an explanation of why the title was changed.

MS. NOBREGA said she had not requested a title change, and surmised that the drafter must have decided to change the title.

CHAIR ROKEBERG asked Representative Berkowitz if he is concerned that the new title is "too loose."

REPRESENTATIVE BERKOWITZ said, "Let me just put it this way: I'm suspicious of titles at this time of year."

CHAIR ROKEBERG opined that [the title] is a little too broad.

REPRESENTATIVE BERKOWITZ said: "It doesn't specify that what we're doing now is a fairly narrow modification to the "continuity of enterprise" exception to the doctrine of successor liability."

Number 1316

REPRESENTATIVE BERKOWITZ made a motion to adopt Conceptual Amendment 1, to "tighten this title so tight that no blowtorch, that no crowbar can get into it."

CHAIR ROKEBERG noted that Version B must first be adopted as a work draft.

Number 1339

REPRESENTATIVE BERKOWITZ withdrew his objection.

CHAIR ROKEBERG announced that Version B was before the committee.

Number 1348

REPRESENTATIVE BERKOWITZ restated his motion to adopt Conceptual Amendment 1. There being no objection, Conceptual Amendment 1 was adopted.

Number 1362

REPRESENTATIVE JAMES moved to report the proposed committee substitute (CS) for HB 499, version 22-LS1490\B, Bannister, 4/19/02, as amended, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 499(JUD) was reported out of the House Judiciary Standing Committee.

HB 271 - CAP ON AVIATION ACCIDENT PUNITIVE DAMAGES

Number 1389

CHAIR ROKEBERG announced that the next order of business would be HOUSE BILL NO. 271, "An Act relating to recovery of punitive damages resulting from an aviation accident; and providing for an effective date." [Before the committee was CSHB 271(L&C).]

CHAIR ROKEBERG called an at-ease from 2:24 p.m. to 2:25 p.m.

Number 1442

REPRESENTATIVE MEYER moved to adopt the proposed committee substitute (CS) for HB 271, version 22-LS0741\L, Ford, 4/19/02, as a work draft. There being no objection, Version L was before the committee.

Number 1445

REPRESENTATIVE ANDREW HALCRO, Alaska State Legislature, speaking as the chair of the subcommittee on aviation insurance, said that the concept of HB 271, which was sponsored by the House Labor and Commerce Standing Committee, originated last year. He elaborated:

We've heard ... many stories about increasing insurance premiums and the effect that that has had on a state that really, seriously, depends on aviation. As you know, many of our rural communities you can only access by air.... The trend in the last five or six years has become very alarming, and one that has caused a number of aviation providers to go out of business and communities that rely on vital air links to suffer. This is a very difficult conversation to have; ... as we all know, ... whenever you talk about affecting somebody's right to sue for damages, I think you need to be very careful, but I think in this case it is well warranted and there still certainly are avenues out there.

... We're all very aware of the fact that aviation in this state is a very dangerous and risky business. I believe the fact that we found out during our subcommittee research was that there is one death every nine days in the aviation industry.... It is ... just a very risky proposition, but one that is ... really important to the success of this state and certainly access to and from these communities. ... We found out in our subcommittee [that] there [were] ... three areas where we could improve. One was education for aviation companies; and combining certain industry changes with educational programs such as the [Five Star] Medallion Program [and] the ... Capstone Program, we can start to make some inroads into safety in the aviation industry.

The second thing we discovered was the ... problem where aviators are being forced to fly - feeling pressure to fly. And we introduced a subsequent piece of legislation - HB 269 - which actually at this point in time we've kind of let sit for a while because in our further discovery, there [are] enough protections under OSHA [Occupational Safety and Health Administration] Department of Labor standards to provide whistleblower protection for airline employees ... and more particularly pilots. The third ... area that we identified that could help this industry is tort reform for "aviation insurance accidents." There was one case, the Hageland case, where the insurance policy was for an "X" amount per seat, there was an unfortunate plane crash, and in subsequent settlements the judge ruled that the per-seat limitation was not the true exposure that the insurance company had.

Number 1617

REPRESENTATIVE HALCRO continued:

Now, I would simply say to you ... that regardless of what type of insurance business you're in, it's all predicated on risk. And if you go into an understanding - or the assigning of a policy - whereby you ... are under the legal impression that you are liable for "X" amount of dollars, and at the end of the day you find out you're liable for "Y" or "Z," ... I think it's understandable why they have pulled back. And we have seen not only an increase - a tremendous increase - in the amount of premiums being paid, but a real lack of coverage to begin with.

CHAIR ROKEBERG said that he is interested in pursuing, with the insurance industry and the Division of Insurance, issues regarding "per-seat-mile limitations," noting that he would like to add "that" to the bill, if at all possible. He opined that doing so would avoid some of the problems that surround "tort reform, per se," by limiting the causes of action and how much can be paid out. He noted that he has heard testimony in the House Labor and Commerce Standing Committee regarding the [Five Star] Medallion Program. He added:

In my conversations with you on this, and your staff, it indicates that you're of the believe and of the opinion that we cannot create any kind of an incentive

to grant any of these limitations to a [Five Star Medallion Program] plan member even though it's a [Federal Aviation Administration (FAA)] approved type of a program for safety. Could you comment on that?

REPRESENTATIVE HALCRO replied:

The [Five Star] Medallion Program was started years ago, here in Alaska; as a matter of fact, Dick Harding from [Peninsula Airways, Inc. ("Pen Air")] is really one of the founders of this program and a real strong advocate for it. And the [Five Star] Medallion Program basically embraces ... specific areas in aviation - your operation, maintenance, ... flight safety techniques - and they come around and grade you. And it's similar to a number of the chamber programs, for instance, the "Green Star program," where you meet a criteria and you are awarded this distinction.

Number 1747

The problem with interrelating what is a private program, albeit sanctioned by the FAA, [is that] it is a private program; and the thought that we are going to base liability limits on a private program causes a number of different headaches for the Department of Law. And they did cite to us, in a number of different cases, where this legally just would not work, and even some hypothetical situations where you could see that you could run into problems.

For instance, if I'm an air carrier and I think that I have done more than enough to satisfy certain "medallion level" criteria, and I am told that my operation has not, ... certainly there's going to be some confusion, there's going to be some contradiction, and I think ... we just create work for the court system with [regard] to this. I'd much rather see us take an approach, as far as a public policy standpoint, [of] just straight ahead. Certainly, encourage those companies in this state to participate and get involved with the [Five Star] Medallion Program, but any cap of punitive damage or any reduction in liability needs to stand clearly on its face, instead of being tied to a program that

really has no governmental oversight or governmental involvement.

REPRESENTATIVE BERKOWITZ asked, "What assurances do you have from the insurance industry that if this bill is enacted, rates come down/coverage increases?"

REPRESENTATIVE HALCRO said:

We have had conversations; ... the bottom line answer is that ... we do not have anything in writing from insurance providers that said, "If you do this, rates will come down." What we have found out in our investigation of award settlements is that ... this is one of those ... "silent but deadly" type areas as far as insurance rates are concerned. What happens is sometimes those that sue use the threat of punitive damages to leverage a larger award, and usually those awards are sealed and not public information.

So, in our discussions, in our having [Legislative Legal and Research Services] do some investigating on these types of accidents, ... we have found that ... [the] influence is, as I said, in kind of a silent but damaging way, where they are used as leverage [but] not actually claimed on those punitive damages. And by capping punitive damages, when these companies go into these settlement talks, at least the insurance carrier can eliminate one of these variables.

Number 1873

CHRISTOPHER KNIGHT, Staff to Representative Andrew Halcro, Alaska State Legislature, said:

To answer your question, ... I've talked with a number insurance companies and I've talked with a number of businesses that operate air carriers in Alaska, and each one has said every time they enter into one of these agreements - every time - a lawyer or a trial lawyer will threaten with punitive damages. And just the cost of defending the punitive damage case, whether you have committed any egregious acts or not, is huge.... The cost is so substantial that 99.9 percent of the time, these people would just rather enter into a settlement for the compensatory damages, and settle out at the insurance maximums. So, ... I

think what Representative Berkowitz probably really wants is empirical evidence; we don't have it, the courts aren't going to give it to us ....

MR. KNIGHT relayed that a representative from the Division of Insurance has indicated that she is unable to distinguish between premium costs and "torts," or whether there has been any sort of correlation. Referring to a handout in members' packets, he said that it "talks about the aviation industry and how much is going out each year in direct losses incurred ... and how much is earned in ... premiums." He also noted that according to the Division of Insurance, "They don't have the data ... to determine whether that was part of a settlement, [or] whether that was just increased costs of insurance; they just don't have the stuff broken down, so we really can't distinguish with empirical data." He alledged:

Just to reiterate, every time these things go to a court case, every time, punitive damages are threatened. If I was a trial lawyer - and I think ... Representative Berkowitz has probably been in a courtroom - when you go to prosecute someone, and this is a similar situation, ... you always threaten the higher charges, hoping to get some sort of settlement on a lesser charge. It saves you time, saves the court time, and it saves everybody else ... some money. So, it's usually how these people proceed.

Number 1982

REPRESENTATIVE BERKOWITZ countered:

First of all, you don't threaten what you cannot prove. That's very bad practice, ... particularly in a small bar like we have here; people sniff that out pretty quickly.... So I would just reject that as a premise, that people would seek punitive damages without a grounding in the law that they have the right to do so. But what we heard today on the [House] floor ... is that the folks ... over at the insurance companies could calculate whatever numbers they plug in and [then] come up with a reason for increasing premiums. And it would seem to me that the state ought to have at it's disposal individuals who have that kind of experience and can enter into their calculator whatever formula is used and come up with an answer to these questions.

REPRESENTATIVE HALCRO said he would agree that the Division of Insurance works from the disadvantage of not having enough information, and that that information is grouped together. For example, in 1998, aviation insurance companies paid out a \$1.65 for every \$1 they took in, in premiums. So, that kind of information is available at the Division of Insurance, he said, but the more specific and particular information with regard to suits and the correlation between "rights and payouts" is not available to the division because most records pertaining to awards and settlements are sealed by the courts. He added that it would be very interesting to look at any correlation that might exist.

REPRESENTATIVE BERKOWITZ said: "It seems to me that ... we're focusing here on the punitive-damage aspect of it as a way of driving insurance rates down, but you could also conceivably reduce them by increasing the performance standards for pilots and aviation companies. Is that correct too?"

REPRESENTATIVE HALCRO replied:

By performance standards I would assume ... you mean training and flight time requirements.... That is something that is the purview of the Federal Aviation Administration - certainly I don't believe one that the state legislature has any purview over... To be honest with you, ... the way we're trying to approach this ... problem is, ... we're basically in the position of being backseat drivers.... When you hear testimony, you will see real Alaskans - small business owners - that have had their going concern threatened by ... these horrific increases in insurance premiums. So ... I'm not quite sure how we get to the point where we get all of this information.

REPRESENTATIVE BERKOWITZ said, "Just ... so the record's clear, I'm very supportive of the idea of keeping as many people flying as possible, but I just want to make sure that we're looking at the problem completely."

REPRESENTATIVE JAMES posited that HB 271 will reduce the exposure to the insurance company, and although that may not lower insurance rates, it will still be advantageous for individual insureds. She acknowledged that there are a variety of reasons that insurance rates go up. She offered that the goal of HB 271 is not necessarily to reduce insurance rates;

rather, it is to keep rates from going higher and to reduce exposure.

Number 2202

KIP KNUDSON, President, Alaska Air Carriers Association (AACA), mentioned that his employer, Era Aviation, Inc. ("Era"), has a position similar to the AACA regarding HB 271. He said:

From the industry's perspective, ... we're just as frustrated ... that we can't put something on a piece of paper from the insurance industry saying, "This change will result in this decrease in rates." We are currently, though, as an association, contacting the underwriters and vice presidents of the underwriters in New York and London, trying to get them to come and at least provide some verbal testimony ... saying in the affirmative, "Yes, this would have an impact on rates" - a positive impact, I guess, from our perspective. They're a little bit like herding cats, though, unfortunately, so it's quite a business.

The empirical evidence you look at, the ... sum of the evidence that we can refer to on this issue of insurance and lawsuits, is that - and I've read this legislative research and I'm not exactly sure if the 2,354 civil cases are all aviation-related or not - but from the anecdotal evidence of our 90 members, no case in the last three [years] has ever gone to a jury. So there's obviously a great deal of pressure not to go to jury, and, of course, then, we don't know the outcome because it's all sealed, generally.

But that is one piece of empirical evidence we know of, and the play of punitive damages - again, anecdotal from 90 members - is, punitive [damages] are threatened simultaneously with compensatory, in an effort to get the insurance company to settle at the liability limits, because most carriers in the state are not insuring punitive damages - couldn't, even if they tried. So the threat to a carrier, fully exposed to the punitive side, is causing the carrier, then, to go and negotiate with their insurance company: "Let's get this out from under us and move on."

Number 2283

MR. KNUDSON continued:

Just in general, on the issue of insurance and aviation services in the state, every air carrier has watched their rates go through the roof over the last decade, actually. And this is a big problem. I think [the terrorist attacks of September 11, 2001, ("9/11")] showed you a little more empirical evidence: the air system shut down for three days, and on the fourth day, pretty much every air carrier said, "We're about to go bankrupt." So, it takes three days of no income for them to be at the edge of the business model. So, what happens when an air carrier's insurance [rate] goes up 20 percent, 50 percent, 100 percent? All of these small carriers [that are] out in rural Alaska are on the ragged edge of being able to stay in business.

Two reasons for the crises ...: one, and the one that's hardest for us to talk about, is loss experience, and it's Alaska-specific. There are a lot of airplanes crashing in this state, and Alaska is generally considered as a special entity when insurers look at the state. And, unfortunately, they look at that unbelievably high accident rate, and that's just sort of a general malaise in an insurer's head when they come ... to underwriting carriers.

The second issue ... is ... the jury/settlement experience in the state. Again, this is anecdotal, but insurers say that Alaska is right up there as the worst state in the union as far as settlements, and part of it has to do with the law that doesn't allow ... the cases to be removed from certain jurisdictions: If a plane crashes in Bethel, that's where the case occurs and, thus - I guess - the settlements or jury awards are quite a bit higher.

Number 2355

MR. KNUDSON went on to say:

What is the industry's response, then, to this crisis? Well, you've heard about [the Five Star Medallion Program] and this is something that's been hashed out for years among the carriers; it's not something that everybody's looking forward to, but everybody knows we

have to do it. [The Federal Aviation Association] has very strict regulations about how to operate aircraft, and they get more strict every year. And now the industry is going to come in and add a higher level of requirements on top of that, and it's a voluntary program. It will make an impact on the loss experience for carriers that are willing to dedicate themselves to it.

The conundrum for the industry is that there's a great deal of churning at the lower levels - the smaller airplanes. Some person will say, "This is a great industry; I want to get into it." They'll fly, they won't meet the standards, they won't live up to the higher expectations, they'll have problems, they'll go out of business, [and] somebody else will jump right back in. It's just over and over again - we see it - there's a lot of churning in the smaller parts of the industry. And they're the ones causing the accident rates, in a lot of the cases. But it's different carriers every year, because one's going bankrupt; another one starts up, crashes, goes bankrupt; and they just keep coming in. I don't know - something about the industry is quite sexy, apparently.

TAPE 02-51, SIDE B  
Number 2388

MR. KNUDSON, in conclusion, said that the AACA feels that HB 271 would, in the long term, go a long way towards smoothing out the raises in insurance costs. He also mentioned that any effort to tie any kind of punitive damage limit to participation in the [Five Star Medallion Program] is very attractive to the AACA; by doing so, there would be a true economic incentive for the smaller carriers to follow the standards laid out in the [Five Star Medallion Program].

CHAIR ROKEBERG said he agreed, adding that a legal nexus has to be established. He asked: "Are you familiar with the Hageland case and what occurred there as far as the different causes of action exceeding the 'per-seat-mile limitation'?"

MR. KNUDSON said he only knew that that was the first time that a "non-participant actually got their fingers into the money pot." He clarified that by non-participant, he was referring to someone who was not in the aircraft.

CHAIR ROKEBERG said:

It's a federal case that interpreted the actual real estate policy or contract, and it allowed the 'per-seat cap' to be breached ... on other causes of action; so, that's one thing I think the committee's going to look at if we can ... draft the statutory contract language to limit that.... And in [regard] to the amounts and the aircraft size and seating and weight, have you had a chance to look at the CS?

MR. KNUDSON said he had, adding that although it may seem bizarre to most people, those "dividing points" are fairly consistent with FAA regulations, so from the standpoint of the AACA, that is a fine division. What it will do, he explained, is it will change the punitive cap based on the size of the aircraft, which generally corresponds to the size of the operator. Most small operators are not going to operate anything over the first level indicated in HB 271; "95 percent of the [AACA's] membership is going to fall under the first category," he remarked.

CHAIR ROKEBERG asked how many seats are in a [Douglas] DC-3.

MR. KNUDSON said 24 or 28.

CHAIR ROKEBERG inquired about a "conveyer."

MR. KNUDSON said 50, adding that Twin Otters are 19, and "Dash 8s" are 37. But most carriers in the state, he pointed out, are 19 seats or less. In response to further questions, he noted that air carriers are held to a higher standard as evidenced by the fact that although a DC-3 could carry 40 paratroopers with all their equipment, air carriers are only allowed to carry "28 with cameras."

Number 2243

REPRESENTATIVE BERKOWITZ said that one of his concerns about "this proposal" is that the current limit on punitive damages is \$500,000 or three times the amount of compensatory damages, whichever is greater, and this doesn't seem like a lot more money than is proposed in "the amendment in front of us." He said, "I'm still a little perplexed as to how this relatively small percentage change corresponds to a reduction of rates; it seems that we ought to be looking ... at all the drivers, at insurance costs, and we're not; we're just looking at one of the

drivers." He suggested that they should expand their scope and be a little more comprehensive.

CHAIR ROKEBERG opined that the committee is doing just that via its discussions regarding the [the Five Star Medallion Program] and possibly restricting causes of action via "contract language" defining the "seat-limit cap." He mentioned that the "cap of \$500,000" in the Hageland case was breached.

MR. KNUDSON said that the industry would concur with Representative Berkowitz in saying that the punitive cap should be zero. He added, however, that he did not know that this is realistic. The theoretical concept behind punitive is that if a company is negligent, it should be made to pay to a point that it damages its business plan, in order to end negligent business practices. Unfortunately, he noted, it has turned into a different tool in the settlement process; very few of these cases end up showing gross negligence or negligence of any kind.

CHAIR ROKEBERG said he assumes that given the right set of circumstances, three times compensatory damages could be substantially higher than \$500,000.

MR. KNUDSON said that in Era's case, it is, although for a lot of the smaller air carriers, it is not.

CHAIR ROKEBERG asked Mr. Knudson what a typical policy is for Era: "What do you carry per seat?"

MR. KNUDSON replied: "We carry well in excess of \$1 million a seat." He added, "We're a bit of a strange bird in Alaska because we can actually go and get underwriting separate from the Alaska experience." He confirmed that this is possible because Era's parent company has greater financial strength and has operations all over the world. A typical Alaska operator, he noted, is completely at the whim [of insurance companies], adding that many operators have only the statutory limit of \$150,000 per seat, which, he opined, is "an almost negligent operational standard."

CHAIR ROKEBERG noted that the director of the Division of Insurance is available to answer questions.

REPRESENTATIVE BERKOWITZ asked whether there is enough actuarial information to calculate, with a reasonable degree of certainty, what the impact on insurance rates would be if punitive damages were reduced as proposed [by HB 271].

Number 2025

BOB LOHR, Director, Division of Insurance, Department of Community & Economic Development (DCED), said he would prefer that the division's actuary respond to that question. He added that anecdotally, folks within the industry who are involved in litigation have indicated to him their belief that "punitives are probably undervalued in rates currently." As with the case of the terrorist attacks of September 11, 2001, for example, before that date, terrorism "was simply not a major rate-making factor"; now, of course, it does have a significant effect on "rate making" and availability of coverage. He pointed out that to the extent that punitives are underrepresented - underreflected - in rates currently, making the changes proposed by HB 271 might have less of an effect on the rates than it would on the availability of coverage. But in that regard, he added, HB 271 would have an extremely significant effect because "underwriters do not need to write the Alaska market"; thus, if, on balance, underwriters feel that the risk is unacceptably high, "we won't see them up here." To that extent, he opined, HB 271 is an important step toward providing an incentive that would bring insurance carriers back to the Alaska market.

REPRESENTATIVE BERKOWITZ asked what the total value of the Alaska market is.

Number 1989

SARAH McNAIR-GROVE, Actuary P/C, Central Office, Division of Insurance, Department of Community & Economic Development (DCED), replied that it probably would be possible to make some estimates, but the Division of Insurance does not have the individual claim data with which to do that; instead, "it would be an insurance company that would look at it." In addition, she noted, since the Division of Insurance does not regulate aviation rates, individual company rate filings that have aggregates are not seen by the division. She remarked: "So, could we do it? The answer is probably not. Could an insurer do it? I believe they probably could make some estimates."

REPRESENTATIVE BERKOWITZ surmised, then, that the division wouldn't have any ability to calculate what the amount of coverage is in Alaska.

MS. McNAIR-GROVE, referring to the handout in members' packets, said that in 2000, there were about \$23 million worth of premiums in Alaska.

CHAIR ROKEBERG, referring to what happened in the Hageland case, said he would like the Division of Insurance and the Department of Law to assist him in crafting statutory language that would ensure that the "per-seat cap" is not breached. "We can't really limit the number of causes of action," he noted, "but what we want to do is be able to limit the awards to various participants."

MR. LOHR remarked that he is familiar with the issue and had reviewed the "case or cases involved," and opined that "that" would be a very worthwhile endeavor. He said:

I do believe that the legislature, of course, can provide guidance to the court, and I do believe the supreme court was involved in certifying the question in connection with one of those cases. In any case, I think that the legislature could do a considerable amount of damage control, so to speak, with respect to the NIED claims, for example - negligent infliction of emotional distress - and the unanticipated consequences of that kind of court decision on the costs and availability of coverage. I do think that when insurers - insurance companies - end up paying judgments that are substantially out of line with what they thought they were going to be covering when they wrote the policy, that is a serious public policy problem, and it comes home to roost with respect to withdrawal from the market and higher rates.

MR. LOHR, in conclusion, said he would be happy to help the chairman draft appropriate language.

CHAIR ROKEBERG extended his request for assistance to Mr. Knudson and to the insurance industry. He then specifically asked Mr. George whether any of his clients could "shed some light on this 'per-seat-mile type limitation.'"

Number 1794

JOHN L. GEORGE noted that he was not speaking on behalf of the clients for whom he is a lobbyist. He mentioned that as a former "risk manager" for the state and as former director of the Division of Insurance, he has a fair understanding of the

aviation market, although he did not have direct contact with "those companies."

MR. GEORGE said that in the case of aviation insurance, "you really have to find an underwriter that's willing," who then might just say, "Well, how much is worth to you," and then charge according to whim. He mentioned that underwriters are influenced by Civil Rule 82 [of the Alaska Rules of Civil Procedure] and various court cases, and, thus, might not necessarily be willing to underwrite in Alaska, particularly since other markets are more attractive. "These things, really, are incremental in changing someone's attitude on their willingness to participate," he remarked; "if you change five things, you might ... change their perception 5 percent or 10 percent or 50 percent." With regard to just how much that perception might change, however, he added that he did not think it is possible, even by an underwriter, to "put a number on it".

REPRESENTATIVE BERKOWITZ indicated that he is confused by this seeming inability: "Every year, the underwriters ... write bills to their clients, so if you say, 'If the facts were a little bit different, what would the bill be?'" "I don't know why it's so difficult to plug that [variable] in," he added.

MR. GEORGE replied:

As I say, there is no book they go to and say, "Ah, your airplane's this, and your pilot's that, and therefore your premium is this." It really is very subjective how some of these rates are calculated. And ... September 11 [2001] didn't affect Alaska at all from a crash standpoint, but somebody said, "Oh, geez, we lost a lot a lot of money; let's charge more money."

Number 1682

REPRESENTATIVE BERKOWITZ said:

But if I were to give you two side-by-side hypotheticals, one that was the current conditions, and one with the current conditions with one of these tweaks - or more of these tweaks - ... I would think that someone could give me two different quotes, right?

REPRESENTATIVE JAMES asked Representative Berkowitz whether he had his checkbook out.

REPRESENTATIVE BERKOWITZ, using that analogy, said, "The air carriers in Alaska have their checkbooks out." He suggested that it's a fair question to ask: "Here's one set of facts; what's the rate here? Here's another set of facts; what's the rate?" "I think we ought to be able to get an answer for it," he added.

CHAIR ROKEBERG posited that that is only one aspect of the issue that must be addressed, the other aspect is that "insurance underwriters are leaving the state," and thus the availability of insurance is decreasing.

MR. KNIGHT noted that he posed Representative Berkowitz's question to representatives of the insurance company, American International Group, Inc. (AIG), and was told that they would like to give him that actuarial data. Mr. Knight said: "They have unequivocally told me that the rates will, if they don't go down, they will stay at where they're at for at least some time." He mentioned that according to an insurance company representative from Ketchikan, rates may not necessarily go down, but should maintain their current value. Rates shouldn't go up any more if there is some sort of limitation on punitive damages, surmised Mr. Knight. He added that as much he and others would like the data pertaining to the calculation of insurance rates, he is not convinced that they will ever get it.

REPRESENTATIVE BERKOWITZ remarked that economists use a term that means, "all other things being equal, what happens if you change a variable." "All I'm asking for," he said, "is 'What happens if I change this variable?'" He added that Mr. Knight has given him the first glimmer of evidence that rates would stay flat if one of the variables were changed, and surmised that to mean that if nothing is changed, rates will go up. In closing, he said: "So, How do we get there?... Somebody's got a slide rule or a calculator or whatever it is they're using - adding machine, I don't know, abacus, something - and things are going up, and ... I'd like to know how that calculation takes place."

Number 1544

CHAIR ROKEBERG announced that HB 271 [Version L] would be held over.

HB 489 - CRUELTY TO ANIMALS

Number 1540

CHAIR ROKEBERG announced that the last order of business would be HOUSE BILL NO. 489, "An Act relating to cruelty to animals."

Number 1502

SHARALYN "SUE" WRIGHT, Staff to Representative Mike Chenault, Alaska State Legislature, said on behalf of Representative Chenault, sponsor, that HB 489 increases the penalties for animal cruelty. It staggers the penalties for a first and second serious offense. Generally speaking, she noted, when there is an offense, an animal control officer becomes involved, adding that several such officers are available to testify.

Number 1474

REPRESENTATIVE BERKOWITZ moved to adopt the proposed committee substitute (CS) for HB 489, version 22-LS1580\0, Luckhaupt, 4/18/02, as a work draft. There being no objection, Version 0 was before the committee.

MS. WRIGHT referred to Section 2 of Version 0, and explained that a first-time offense would be charged as a misdemeanor, and a second-time offense would be charged as a class C felony. She noted that some discretionary penalties have been added as well. She read from Version 0:

... the court may (1) require a defendant convicted of cruelty to animals to participate in psychological counseling and treatment at the defendant's expense, as the court determines to be appropriate; (2) prohibit a defendant from owning or possessing an animal for a period of not more than five years.

MS. WRIGHT offered her belief that [paragraphs] (1) and (2) can be enforced through probationary orders/conditions from a judge. She explained that HB 489 is event-driven:

In Sterling, in November, we [had] a lady from Texas who has repeatedly - and this is her third offense - taken too many dogs. And when I went out to her property, I came upon a Bouvier that the only part of that dog that wasn't frozen to the ground, that could move, was its eyes. It was the most pathetic thing I

think I've ever seen. The [Alaska SPCA (Society for the Prevention of Cruelty to Animals)] rescued those animals at a cost that they've had to absorb to the tune of between [\$40,000 and \$50,000], and to the best of my knowledge ... most of those dogs ... have found homes....

We're here to address the situation that animal cruelty needs to be [a] serious violation of the law. It is a precursor to child abuse and domestic violence. It's been pointed out that some of the penalties for both of those two things aren't as serious as what we're asking for in the bill today. I wasn't aware of that until after we introduced the bill, and the time was gone to introduce more legislation for child abuse. Next year I promise that my boss will work on child abuse [legislation]. And with that, I understand that [Representative James] may have an amendment.

REPRESENTATIVE JAMES noted that her proposed amendment is applicable to Version O of HB 489.

Number 1313

ETHEL CHRISTENSEN, Director, Alaska Society for the Prevention of Cruelty to Animals (SPCA), testified via teleconference in support of HB 489. She said that she is in support of strengthening the laws pertaining to this issue. She recounted that the Alaska SPCA was involved in a 1981 case in which a woman - Charlotte Fitzhugh (ph) - had over 40 dogs tied up on Bureau of Land Management (BLM) land at "mile 101 Glen Highway". The Alaska SPCA rescued those dogs, although some did have to be destroyed. Ms. Christensen relayed that this same individual later created similar circumstances in the Fairbanks area, and over 100 dogs had to be destroyed at that location in 1995 because they were so emaciated. Ms. Christensen stressed that this individual, as well as others such as the woman in the Sterling case - Carolyn Boughton - repeatedly create these conditions. She indicated that whatever can be done to stop this behavior would be very much appreciated because the Alaska SPCA cannot continue to absorb the financial burden of such large rescue operations.

Number 1200

SHANNA ANDERSON; Animal Control Officer; Manager, Valdez Animal Shelter; City of Valdez, testified via teleconference. She mentioned that she has been the manager of the animal shelter for almost 13 years and is president of the Alaska Animal Control Association. She said:

As [professionals] in the animal-welfare field, one of our most important jobs is to protect the companion animals in our community. Anyone who has worked in this area for any length of time has experienced firsthand acts of incredible cruelty and neglect to animals (indisc.). In many cases, neglect is ignorance on the part of the animal's owner, and can be corrected with education on proper animal care. When there are repeated offenses, and when the animal's life is in immediate danger, then that neglect becomes much more serious, and that is when animal neglect becomes cruelty. Even in a small community like Valdez, I placed 17 animals last year in protective custody. Intentional cruelty or abuse can encompass behaviors that range from knowingly depriving an animal of food to torturing an animal.

There is strong evidence of the correlation between animal abuse and other acts of violence. A child who abuses animals often comes from a home where they or another family member is being abused. Most serial killers and mass murderers begin their acts of violence as children by torturing and killing animals. In cases of domestic violence, pets may be used as [a] method to control a victim; abuse of a pet may be a warning to the victim such as, "You are next." The threat of harming the pets, or actual animal abuse, may be used as a method of keeping the victim from reporting to authorities the domestic or sexual abuse they're experiencing. Many abused victims hesitate to leave a violent situation for fear of what the perpetrator may do to the pets they leave behind. Acts of animal cruelty should never be taken lightly; they are signs that the perpetrator may be involved in other violent crimes. (Indisc.) acts of animal cruelty are a threat to our communities.

MS. ANDERSON concluded:

As professionals, people in animal law enforcement will use the law, such as the one being proposed, only

as a last resort. Educating and working with the pet owners is always a first step. And sometimes much more is needed to protect an animal and any future animals that person may acquire. I ask that you take animal cruelty [seriously] and help to strengthen the existing laws. I also ask that you help make it mandatory to report animal cruelty to proper authorities. Many acts of cruelty are committed behind closed doors and in backyards, areas that I do not have access [to]; I rely heavily on the reports of neighbors, relatives, veterinarians, and service people to make me aware of possible abuse cases. With mandatory reporting in effect, those who would be afraid or feel uncomfortable to come forward would be able to do so. Thank you.

Number 1020

BILL GODEK, Chief Animal Control Officer, City of Kenai, testified via teleconference in support of HB 489. He simply offered that it is really important to consider making repeat offenses a felony and to allow the courts to order psychological counseling and prohibit the offender from owning animals for a period of up to five years.

Number 0979

BRETT REID, Animal Control Assistant, City of Kenai, testified via teleconference. He said he concurred with previous testimony. He opined that the most useful aspect of HB 489 is the provision that allows the courts to order psychological counseling. He said that in passive cruelty cases, he considers this to be a form of mental illness known as "animal collecting," which, he added, seems to be plaguing his community. He noted that there has been some discussion in his area about making a change to one of the domestic violence laws; he pointed out, however, that animal abuse laws are much older than child abuse laws. He indicated that it is not unusual for individuals with abusive tendencies to first exhibit this behavior towards animals. He encouraged members to support the proposed changes [encompassed in HB 489] to the existing statute.

Number 0925

SUE CARTER testified via teleconference in support of HB 489. She said:

Unfortunately, Alaska now holds the distinction of having the highest rate of abuse in the nation, not only relative to people, but animals as well. This is simply not tolerable to many of us who expect and wish to enjoy a certain level of quality of life here in Alaska. Animal abuse appears to be increasingly on the rise, and some of the worst cases in recent times [have] occurred here on the Kenai Peninsula. It appears there will be no charges in the recent Sterling rescue; the [Alaska] State Troopers advised me that these persons most likely will be repeat offenders due to the lack of effective animal cruelty laws that provide appropriate punishment and perhaps determent.

We should note that the state dogsled racing association had made great strides in providing a healthier and safer environment for their dogs. And so that leaves the rest of us to work - to expect responsible and appropriate requirements for shelter, food, and care for all domestic animals in Alaska. The first step, in my opinion, is to make stronger animal cruelty laws and let those individuals who cannot live within these structures know their actions won't be tolerated by the Alaska legal system.... I do thank you for giving me this opportunity to speak in favor of HB 489. I've been a resident ... of Alaska since 1966 and it appears that things are getting worse rather than better, so I know you'll help us, and I wish you all well in this legislative session.

Number 0789

ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), said that the DOL is in opposition to HB 489. She elaborated:

I have to oppose both the substantive law change and the penalty change. In terms of the substantive law change, the change to subsection (a)(2), I really don't think this helps us prosecute animal cruelty cases. It adds language that doesn't have a definition, and it's hard to articulate what is the minimal standard of care for an animal. And it also adds language that is not only unclear, but will

require us to have expert testimony by including "humane veterinary care".... Terms like "minimal standard of care" and "humane veterinary care" are really difficult for prosecutors to deal with. We would have to have a veterinarian ... testify in terms of what is humane veterinary care in our case in chief. This doesn't help us, and I think the sponsor wants to help us prosecute animal cruelty cases. And I don't think these changes do so.

The second issue I'd like to address is the felony. And we oppose it just on a proportionality argument. It was in this very room in the late '70s that the criminal-code revisors discussed this issue, ... and it was finally decided not to have the felony-level cruelty-to-animals crime in our state. And I know things have changed; we try and maintain some semblance of proportionality for ... the seriousness of offenses - what penalty they will be. And we're not always perfect, and we don't always ... [agree] on what is proportional. But in this state, a domestic violence crime is [a class] A misdemeanor - [as] ... is the second [offense] ... - and it's hard for me to support a cruelty to animals provision that makes that crime a [class] C felony, under those circumstances.

Number 0651

MS. CARPENETI continued:

I did have a suggestion, however; ... and this is something I discussed today with Dwayne McConnell, who is our district attorney for the Kenai Peninsula. As a matter of fact, just for a correction, I think [in] the Sterling case there have been charges filed; there's eight or nine counts in that case that have been charged. I don't think the defendant has been found yet or served with the charges, but there have been charges filed. I would just suggest for your consideration the possibility of saying in the statute that harm to each individual animal can be an individual charge against a defendant. Generally this is true. I know in one of the Kenai cases, [however], the judge combined 40 to 50 charges into one charge; I think he was incorrect because statute does say "an animal", although the title says "Cruelty to animals".

But it might be useful to make it clear that each animal that is mistreated should be the object of a separate misdemeanor charge, and maybe have some provision for sentencing that for every animal that's mistreated there should be some consecutive jail time.... That's a possibility for you to consider - I don't know whether that is of interest to you - but we do think that it is simply not good public policy to make cruelty to animals a felony, when serious crimes to people are not.

CHAIR ROKEBERG noted that the Alaska Farm Bureau (AFB) also opposes HB 489; thus the DOL is not alone in its opposition.

REPRESENTATIVE COGHILL asked how many class A misdemeanor convictions have taken the full penalty of the law. He remarked that if the current penalties haven't been fully applied, he would be reluctant to increase those penalties.

MS. CARPENETI said that she would research the issue and provide the committee with that information. She said that in one of the cases from the Kenai area, a woman had horses, dogs, birds, and cats, and had sort of just turned her house over to all of them. This woman, who also had a drug problem, was sentenced to three to six years on the underlying case, although drug charges were also involved.

REPRESENTATIVE JAMES said she, too, is concerned about increasing penalties to the felony level. She mentioned that her proposed amendment might make some of the farmers a little happier.

Number 0402

CANDACE BROWER, Program Coordinator/Legislative Liaison, Office of the Commissioner - Juneau, Department of Corrections (DOC), explained that when she compiles fiscal notes for legislation, she usually consults with the DOL to try to determine "what is the practice and how many convictions there have been regarding the legislation." After acknowledging that in some years there may be significantly more convictions than in other years, she relayed that the DOL reported to her that during the year 2000, there were eight people who were convicted of cruelty to animals, with that being the most serious charge. In other words, there may have been other convictions with more serious charges involved, but only eight wherein the most serious charge

was cruelty to animals, and for those, the average sentence was about ten days.

REPRESENTATIVE BERKOWITZ asked how many of those individuals were repeat offenders.

MS. BROWER said she did not know the answer to that question.

CHAIR ROKEBERG suggested making a first offense lower than a class A misdemeanor, and then having a second offense be a class A misdemeanor. He asked whether that would alleviate concerns regarding proportionality.

REPRESENTATIVE BERKOWITZ said he would object to such a change. "A first offense just means that it's the first time you got somebody; [a] first offense could be a pretty heinous act of cruelty," he noted.

CHAIR ROKEBERG said he did not disagree, but indicated concern that there have only been eight convictions with only ten days in jail. "That's like a slap on the hand," he added.

Number 0212

REPRESENTATIVE BERKOWITZ noted that there is a wide degree of what constitutes cruelty to animals, and although he has not looked at those eight cases, he said his hunch would be that a number of them were probably in lieu of other charges. He recounted that he'd had a case wherein a person had hung a dog for a while, and had had another case wherein a person had tried to dispatch a number of puppies with a hammer and with a 22-caliber firearm and was unsuccessful with much of the litter. He said that those were "high misdemeanors."

MS. CARPENETI said that although Chair Rokeberg's suggestion would address some of the proportionality concerns, she would have to agree with Representative Berkowitz that "it doesn't hurt to have this possibility here and have a class A misdemeanor - it seems to have been working - and leave the particular sentences to the judge."

CHAIR ROKEBERG indicated that he is not sure it has been working, or else HB 489 would not be before them.

REPRESENTATIVE BERKOWITZ said that he is hearing that there are two problems. The first is the "problems of proof with the existing statute." The second is the [propensity] to

consolidate multiple cases into a single count, which, he added, might not always be appropriate.

MS. CARPENETI recalled that in the case of the woman with the drug problem, "we argued against the ... decision to consolidate it into one charge; we wanted them to be charged in separate counts so that the judge ... [would have] the opportunity to impose a sentence for each one, which is what he or she should do." Hence her suggestion that the statute specify that each instance in which an animal is abused be a separate case and subject to some kind of consecutive sentence. She indicated that she is not aware that there are problems with the current statute, nor has Mr. McConnell informed her of any specific problems with it.

REPRESENTATIVE BERKOWITZ remarked that over the past few years, others have tried to alter the existing statute, among them Representative Ben Grussendorf. Representative Berkowitz again mentioned "proof problems."

CHAIR ROKEBERG mentioned that the statute regarding cruelty to animals was recently changed.

MS. CARPENETI added that that change occurred in 1998, and entailed the addition of AS 11.61.140(a)(2), which pertains to treating an animal with criminal negligence.

TAPE 02-52, SIDE A  
Number 0001

REPRESENTATIVE BERKOWITZ said he is envisioning having to bring into the more remote communities an expert witness who could testify what the minimal standard of care is or what humane veterinary care is, pointing out that according to his experiences in the criminal system - as both prosecutor and defense attorney - those cases fell through the cracks because they became prohibitively expensive to prosecute. "You are not going to fly experts out to Sand Point to work on a case ...; the more striped down the language is, the better a case you can make for a prosecution," he added.

REPRESENTATIVE JAMES, at the request of Chair Rokeberg, turned to her proposed amendment, hereafter called Amendment 1, which read:

Page 1, line 8, following "care":  
Insert ", that conforms to accepted animal

husbandry practices"

Page 1, following line 11:

Insert a new bill section to read:

"\* **Sec. 2.** AS 11.61.140(b) is amended to read:

(b) It is a defense to a prosecution under  
(1) (a)(1) [OR (2)] of this section that the  
conduct of the defendant  
(A) [(1)] conformed to accepted veterinary  
or animal husbandry practice;  
(B) [(2)] was part of scientific research  
governed by accepted standards;  
(C) [(3)] was necessarily incident to  
lawful hunting or trapping activities; or  
(D) [(4)] conformed to professionally  
accepted training and disciplinary methods; or  
(2) (a)(2) of this section that the conduct  
of the defendant  
(A) conformed to accepted veterinary  
practice;  
(B) was part of scientific research  
governed by accepted standards;  
(C) was necessarily incident to lawful  
hunting or trapping activities; or  
(D) conformed to professionally accepted  
training and disciplinary methods."

Renumber the following bill section accordingly.

Number 0077

REPRESENTATIVE JAMES said Amendment 1 ensures that HB 489 did not apply to accepted animal husbandry practices, and addresses the conduct of the defendant. She mentioned that the agricultural community has concerns anytime there is talk about altering the cruelty to animal statutes; they don't want to "get caught in the trap."

MS. BROWER mentioned that some people don't think that dog mushing practices are humane, and asked whether Amendment 1 would give protection to dog mushing practices.

REPRESENTATIVE JAMES, in response, read portions of lines 9-16 of Amendment 1.

CHAIR ROKEBERG asked where dog mushing fits in.

REPRESENTATIVE JAMES indicated that she thought it had been included.

REPRESENTATIVE BERKOWITZ pointed out that the language in subsection (b) of [Amendment 1] is already in statute, noting that he is a little confused as to what [Amendment 1] adds.

REPRESENTATIVE JAMES said: "It puts the identification of the accepted animal husbandry practices up where it is part of the charge as opposed to part of the defense."

MS. CARPENETI said she has to express concern "about that: ... I think that this bill will make it harder for us to prove, beyond a reasonable doubt, animal cruelty."

REPRESENTATIVE JAMES said that according to her understanding, that's absolutely true. She indicated that she wanted to ensure that it be determined in the beginning that individuals are guilty of "this" before they have to defend themselves. She said that "this puts the burden on the prosecution, as opposed to the defense."

REPRESENTATIVE BERKOWITZ said that as practical matter, when a crime is being charged, if there is a defense that the prosecutor is able to perceive, he/she cannot ethically proceed; "one of the ethical requirements before you can charge is that you have to believe that you can get beyond a reasonable doubt, and if you have a reason to think that one of the defenses is applicable, you can't get beyond a reasonable doubt."

MS. CARPENETI added: "And I will note that these are defenses, so the state has to disprove them beyond a reasonable doubt in order to get a [conviction]."

REPRESENTATIVE JAMES said that regardless of whether Amendment 1 gets adopted, she wanted to ensure that people engaged in valid activities don't get challenged.

REPRESENTATIVE MEYER remarked that Amendment 1 appears to take HB 489 in a completely different direction.

Number 0442

MARIE RILEY, Staff to Representative Mike Chenault, Alaska State Legislature, sponsor, said that she has done considerable research on animal cruelty legislation. She pointed out that even before a case gets to the stage of prosecution, the

responding animal control officer and [Alaska] State Trooper have already determined the severity of the situation. She said that she is referring to situations of animal cruelty such that it endangers or kills animals; intentionally causes pain, suffering, or death; and could include neglecting to provide food, water, or shelter. In all instances, the animal suffers, and in some cases, clearly the perpetrator means to cause harm.

MS. RILEY said that the types of animal cruelty that HB 489 is attempting to address are not simply situations in which someone forgot to feed the dog. She mentioned that when animal control officers respond to complaints, they don't just go out once; they go out and make every effort to educate the owner so that he/she can take care of the problem. She reiterated that HB 489 is intended to address severe cases of animal cruelty - blatant animal cruelty.

CHAIR ROKEBERG asked about the "criminal negligence" standard referred to in Section 1(a)(2).

MS. CARPENETI explained that criminal negligence is the lowest standard of culpable mental state, and that this language was added to the current statute in 1998.

REPRESENTATIVE BERKOWITZ mentioned that it made prosecution easier. Prior to that language addition, he noted, the statute only said, "knowingly inflicts severe physical pain or prolonged suffering on an animal", which is very difficult to show. He pointed out that one can't ask the animal, "Did that hurt you for a long period of time?" He asked the sponsor's staff whether they'd had a chance to see how the "model penal code" addresses animal cruelty.

Number 0633

MS. WRIGHT replied:

There's a couple of things. First of all, we have a state veterinarian that takes care of these issues, that goes in and determines some of these cruelty-to-animals [issues]. Thirty-three other states have provisions for penalties; Alaska is sadly lagging in their penalty for felonies. The model law is written by the "humane society of America," and we are far behind that. The models that we used are from Nebraska, Michigan, Washington, Iowa - everywhere; ... we've looked at every state. Basically, there are

thirty-three states that have provisions for felony punishments in their animal cruelty law.

As far as the case ... in Sterling, I talked to Mr. Wolfe from the Kenai prosecutor's office, [and] there have been ... nine charges ... filed. Ms. Boughton, the perpetrator in this crime, has been in court three times since she was charged, and we have failed to serve her with a summons to appear on animal cruelty. When I call the District Attorneys office, it's almost like, "Oh God, another call about animal cruelty; what about kids?" And that's not what we're here to address. I'm really sorry kids get abused; I don't like it, ... but the fact of the matter is, is that we need to address animal cruelty in Alaska. We are behind model law in any size, shape, or form.

MS. WRIGHT mentioned that she has provided the committee with copies of the information gathered by Legislative Legal and Research Services, as well as a "partial petition" from "hundreds of people" that really want to see this legislation [adopted]. She indicated that the perpetrator in the Sterling case, having created similar situations two prior times, is currently looking for another piece of property upon which to create the same conditions. Ms. Wright relayed that about a month ago, there was a man who drug his dog behind his truck for eight or ten miles, and the dog had to be destroyed; this man has been charged and served, but Ms. Boughton, who had between 40 and 60 dogs, has not been served even though she has appeared in court twice.

Number 0818

REPRESENTATIVE BERKOWITZ pointed out that passage of HB 489 will not affect the charging decision in the Sterling case. He said that in order to correct the failure to charge, he would need to know whether there is some obvious reason why "they're" unable to pursue that case.

MS. WRIGHT indicated her belief that there isn't an incentive to pursue the case. "We had to encourage prosecution of this case," she explained; law enforcement agreed to take the dogs and turn them over to the Alaska SPCA, but wanted to keep the case quiet. Members of the Kenai community, however, wouldn't stand for it. "This was a serious matter, ... these animals were locked in a bus with no food, no water; they were laying in feces - frozen feces," she stated, and both she and the trooper

were physically ill after seeing the conditions. "And she's going to do it again," warned Ms. Wright.

CHAIR ROKEBERG asked why the sponsor didn't take the tack of establishing an aggravated offense that could be charged as a felony - for example, aggravated animal cruelty - rather than addressing a second offense as is done in HB 489.

MS. WRIGHT said: "We weren't advised that we could do that."

CHAIR ROKEBERG noted that this is what Maine and Minnesota did.

MS. WRIGHT said: "Our [Legislative Legal and Research Services] didn't like those terms; the only options that we were given were the class A misdemeanor and then the [class] C felony."

REPRESENTATIVE MEYER asked Ms. Wright to comment on Amendment 1.

MS. WRIGHT opined that it is a fine amendment and helps define what the qualities of care are.

REPRESENTATIVE COGHILL noted that a class A misdemeanor can carry a \$5,000 fine. He asked whether there is any data regarding how the class A misdemeanor fine has been applied.

MS. WRIGHT said she did not have that data on hand, adding that the animal cruelty laws in Alaska are very difficult to prosecute. She noted that in the previously mentioned "horse case," she knew the woman and knew that numerous complaints had been made, but [law enforcement] did nothing until the situation was so bad that there were animals laying dead in piles.

REPRESENTATIVE COGHILL indicated that before he would be willing to increase the penalties, he would like some kind of proof that the current penalties are being applied but are still not sufficient to deter the behavior.

Number 1073

MS. WRIGHT said:

One of the most important features of this bill is recognizing that there is a problem, and ordering psychological counseling. Every ... mass murderer that we've done research on, including Robert Hansen from Anchorage, was guilty of animal cruelty as a child; Jeffrey Dahmer was guilty of animal cruelty as

a child. I think what our Department of Law needs to do is be a little bit more aggressive in prosecuting some of these cases. There were no charges filed at first in Ms. Boughton's case until [there was] outcry from the community.

... I had difficulty even getting through to someone to confirm the charges, and then trying to find out why she hadn't been served yet when I know where she's at - I have given them the address. Why hasn't she been served? I don't know. There's no aggressive [prosecution]. What's really frightening to me is that she now has the care of a child, and if we're not going to stop animal cruelty, what is she going to do with that child?

REPRESENTATIVE COGHILL remarked that he has concerns about making something a felony when the state isn't even bothering to prosecute at the misdemeanor level and make use of the those penalties.

REPRESENTATIVE BERKOWITZ commented:

We have crushed the [Alaska State] Troopers' budget, we have crushed the prosecutor's budget, we have crushed the court budget, and ... the problem is [that] when folks are looking at what [you're] going to prosecute - are you going to go after domestic violence and major felony assault, or are you going to do an animal cruelty case - it's very tough to make that decision, but you're going to go for [cases involving] people. And that's the situation that they're in; those offices are so overloaded down there. And so you want to know about cutting the budget? This is one of the consequences of cutting the budget: ... these kind of cases don't get the attention they deserve.

CHAIR ROKEBERG asked for input regarding what the committee should do to address the issues raised by HB 489.

Number 1257

REPRESENTATIVE JAMES said that first the goal of the legislation ought to be determined: "Is it to punish these people that are doing this? Is it to save the animals? Is it [to] stop it from happening again?... There's all those different kind of

approaches as to how you deal with it." She said that Representative Berkowitz is right; "every time we put another law on the book, it costs us more money," as does putting more people in prison. There is a cost associated with everything, she noted, and people have to be willing to pay the cost associated with a desired goal. She suggested that there ought to be a better description of what the crime is; to just list certain activities as being acceptable and then going after "whatever is leftover" is not a good solution. She also mentioned that even if HB 489 becomes law, if no one is prosecuted, then it is questionable whether anything has really been gained.

REPRESENTATIVE BERKOWITZ, referring to page 2 [paragraphs (1) and (2)], said it seems to him that a court ought to be able to take those actions currently. He asked Ms. Carpeneti if that is accurate.

MS. CARPENETI opined that the court could do so, but noted that it doesn't hurt to "say it again, under these circumstances," nor would it hurt to say that each animal can be "a separate charge" requiring some consecutive time in jail for every animal that is abused. She offered that this last suggestion is a way of accomplishing the sponsor's goals without having to go to a felony. She indicated that merely combining many instances of abuse into one charge, as the judge did in one of the Kenai cases, is problematic.

REPRESENTATIVE BERKOWITZ proposed:

Deleting "provide the minimal standard of" on lines 7 and 8 - ... the new language ... [in paragraph] (2), because I think that makes it more difficult to prosecute the cases. I understand the intent, but I think the practical consequences are adverse to the intent. In fact, I would just ... eliminate the changes in [paragraph] (2). I understand the intent, but [you've] got to go in and prove each one of these elements, and that compounds the case. For the sake of moving this thing along ... to [the House Finance Committee], I would remove the felony provision ... [for] now. I would then ... [move] the elements ... [found at the] top of ... page 2; I think [they] more properly belong in Title 12 - I don't know what the appropriate section is there, but Title 12 is the sentencing section. I would raise those amendments,

suggest those amendments - conceptually - and then I'd be willing to move the bill.

Number 1396

REPRESENTATIVE KOOKESH suggested putting Representative Berkowitz's conceptual amendments into a committee substitute (CS), which the committee could then review before moving out.

CHAIR ROKEBERG asked whether the committee wanted to include Ms. Carpeneti's suggestion regarding multiple charges.

REPRESENTATIVE BERKOWITZ indicated that he would like that included.

CHAIR ROKEBERG asked whether the CS should also include Section 3, which addresses the duty to report.

REPRESENTATIVE BERKOWITZ indicated that he would like to see that provision included as well.

[HB 489 was held over for the purpose of developing a committee substitute (CS).]

#### **ADJOURNMENT**

Number 1442

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 4:00 p.m.