

**ALASKA STATE LEGISLATURE  
HOUSE TRANSPORTATION STANDING COMMITTEE**

March 29, 2001

1:10 p.m.

**MEMBERS PRESENT**

Representative Beverly Masek, Vice Chair  
Representative Scott Ogan  
Representative Drew Scalzi  
Representative Peggy Wilson  
Representative Mary Kapsner  
Representative Albert Kookesh

**MEMBERS ABSENT**

Representative Vic Kohring, Chair

**COMMITTEE CALENDAR**

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 68

"An Act relating to civil liability for transporting an intoxicated person or for driving an intoxicated person's motor vehicle; and providing for an effective date."

- MOVED CSSSHB 68(TRA) OUT OF COMMITTEE

**PREVIOUS ACTION**

SHORT TITLE: NO CIVIL LIAB FOR TAXI TRANSPORTING DRUNK

SPONSOR(S): REPRESENTATIVE(S)ROKEBERG

Jrn-Date	Jrn-Page		Action
01/17/01	0111	(H)	READ THE FIRST TIME - REFERRALS
01/17/01	0111	(H)	TRA, JUD
03/19/01	0647	(H)	SPONSOR SUBSTITUTE INTRODUCED
03/19/01	0647	(H)	READ THE FIRST TIME - REFERRALS
03/19/01	0647	(H)	TRA, JUD
03/29/01		(H)	TRA AT 1:00 PM CAPITOL 17

**WITNESS REGISTER**

REPRESENTATIVE NORMAN ROKEBERG

Alaska State Legislature

Capitol Building, Room 118  
Juneau, Alaska 99801  
POSITION STATEMENT: Sponsor of SSHB 68.

JANET SEITZ, Staff  
to Representative Norman Rokeberg  
Alaska State Legislature  
Capitol Building, Room 118  
Juneau, Alaska 99801  
POSITION STATEMENT: Addressed concerns and questions regarding  
SSHB 68.

KACE McDOWELL, Executive Director  
Cabaret Hotel Restaurant & Retailers Association (CHARR)  
(No address provided)  
Anchorage, Alaska  
POSITION STATEMENT: Testified in support of SSHB 68.

ROD PFLEIGER  
Anchorage Downtown Partnership  
245 West Fifth Street, Number 124  
Anchorage, Alaska 99501  
POSITION STATEMENT: Testified in support of SSHB 68.

**ACTION NARRATIVE**

TAPE 01-24, SIDE A  
Number 0001

VICE CHAIR BEVERLY MASEK called the House Transportation Standing Committee meeting to order at 1:10 p.m. Representatives Ogan, Scalzi, Wilson, Masek, and Kapsner were present at the call to order. Representative Kookesh arrived as the meeting was in progress.

[For minutes on the Department of Transportation Presentation on Cost-Benefit Analysis of Construction Projects, see the 2:02 p.m. cover sheet for this same date.]

HB 68 - NO CIVIL LIAB FOR TAXI TRANSPORTING DRUNK

[Contains discussion of HB 67 and other alcohol-related legislation]

VICE CHAIR MASEK announced that the first order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 68, "An Act relating to civil liability for transporting an intoxicated

person or for driving an intoxicated person's motor vehicle; and providing for an effective date."

[The sponsor had before him a proposed committee substitute (CS), Version F [22-LS0300\F, Ford, 3/26/01]; however, the committee only had the sponsor substitute itself, SSHB 68, Version C [22-LS0300\C], until later in the meeting.]

Number 0086

REPRESENTATIVE NORMAN ROKEBERG, Alaska State Legislature, sponsor, explained that SSHB 68 provides immunity for taxicab companies that provide a ride home for an intoxicated person or drive the intoxicated person's vehicle home. Currently there are programs throughout the United States, including in Alaska, where taxicab companies [provide rides] at no charge, particularly on nights like New Year's Eve, when it provides "safety for the roads."

REPRESENTATIVE ROKEBERG noted that in many instances, people are reluctant to take advantage of these services because they would have to leave their vehicles behind. This bill overcomes this by allowing taxicab companies to drive the potential offender's car home. It also grants taxicab companies legal immunity in the event that an accident occurs, except in the case of recklessness, gross negligence, or intentional misconduct. He said these are legal standards that sufficiently protect the public.

VICE CHAIR MASEK pointed out that the bill before the committee was a sponsor substitute, SSHB 68. She asked what the changes from the original bill were.

CHAIR ROKEBERG remarked that there was a proposed CS [Version F].

Number 0316

JANET SEITZ, Staff to Representative Norman Rokeberg, Alaska State Legislature, explained that SSHB 68 removes language in the original bill regarding "licensed premises and owner of the licensed premises also being brought in under the civil liability section". It also adds language that covers the driving of an intoxicated person's vehicle.

Number 0375

REPRESENTATIVE OGAN noted that he liked this bill, but asked whether gross negligence was chosen, rather than just negligence, because the former is a higher legal standard.

REPRESENTATIVE ROKEBERG agreed that it is a higher legal standard, and said simple negligence is a relatively low standard, such as when one drives without due caution or care. Since taxicab companies would be providing a public service, it warrants that they be granted a higher level of immunity, even if a taxi driver gets involved in an accident in which there normally might be some culpability. In this particular case, the public welfare exceeds the right of somebody to make a claim unless there was gross negligence.

Number 0579

REPRESENTATIVE SCALZI asked if this bill is necessary considering the "Good Samaritan law" that exists.

REPRESENTATIVE ROKEBERG remarked that this bill is really an "insurance bill." It bars a personal cause of action against the taxicab company or driver when engaged in this activity; that legal immunity does not exist now. He went on to say that he did not think the "Good Samaritan law" would cover this.

REPRESENTATIVE SCALZI asked, if taxicab companies charged a fee for this service, whether they would be covered under this bill without any added purchase of liability insurance.

REPRESENTATIVE ROKEBERG referred to subsection (a) [Version F], which says the bill pertains to an "intoxicated person ... who is not paying for the transportation". He remarked that he has concerns about this portion of the bill.

MS. SEITZ said subsection (a) only covers the person who is in the taxicab and not paying a fee for that ride. Subsection (b) makes no mention of whether [the intoxicated person] is paying a fee for his or her car to be driven home. She said insurance companies she has spoken with thought that not having the intoxicated person pay a fee for the actual transport of the intoxicated person would be a better way to implement this bill.

Number 0684

REPRESENTATIVE SCALZI asked if the person who is driving the [intoxicated person's] vehicle home would be covered under his or her own [insurance] company for the vehicle or any damage

that accrued, such as from running into somebody on the way. He said he assumes the taxicab company would be responsible for this insurance coverage.

MS. SEITZ commented that this is covered in subsection (b) [Version F], which says, "The owner of a motor vehicle may not bring a civil action to recover for damage to the motor vehicle if the motor vehicle damage occurred when the motor vehicle was being driven". She went on to say that subsection (c) bars anyone else from suing the taxicab company for damage. The theory is that the vehicle owner should be responsible and have insurance that would cover the vehicle, and that the taxicab company or employee who drives should not be held liable.

REPRESENTATIVE SCALZI remarked that there is a "gap" [in the bill]. He said it is implied that the vehicle owner's insurance would cover the responsibility and liability for the second party - the taxicab company's employee - driving the vehicle home. He indicated that even if there were a no-fault accident, somebody would have to have liability on the vehicle.

MS. SEITZ stated that the owner would have liability regarding his or her vehicle.

Number 0793

REPRESENTATIVE ROKEBERG referred to Representative Scalzi's question regarding subsection (a); he said the concern about compensation of payment was that anytime there was an intoxicated person who paid for a taxi ride, the immunity would "start to flow." He clarified that this is not what is being attempted in this bill; it is only in conjunction with the other vehicle being driven, so it is limited to when there is no payment for transportation. If the [intoxicated] person shows good sense and hires a cab to drive him or her home, notwithstanding the vehicle, there would be no immunity in this provision, since presumably the taxicab company would have its own insurance. He noted that HB 67 would require mandatory insurance levels for taxicab companies.

Number 0875

REPRESENTATIVE WILSON asked whether a driver who was not a taxicab employee would be covered under the bill for driving an intoxicated person's vehicle home.

REPRESENTATIVE ROKEBERG said he did not believe so, since this bill is specifically for [taxicab companies]; however, he noted that it was a point worth considering. He mentioned that while researching this issue, it was discovered that Syracuse, New York, has a shuttle service for intoxicated drivers. Due to its large size, Syracuse was able to establish this service, paid for by fees from various nightclubs and other establishments. [The shuttle service] has these people on "retainers." [An establishment] can call the shuttle service, which takes the intoxicated driver and the person's vehicle home, using two cab drivers. Therefore, this could be a private enterprise. However, with the possible exception of Anchorage, Representative Rokeberg said he does not think Alaska is big enough to justify [a system like Syracuse's].

REPRESENTATIVE WILSON asked if the two cab drivers worked for the same company. She also asked, if [an accident] happened to the car of the intoxicated person or to the taxi, whether this bill would cover both.

REPRESENTATIVE ROKEBERG said yes, the two cab drivers would work for the same company. Also, this bill would cover both vehicles as long as they didn't meet the higher standards of intentional recklessness or gross negligence and were acting in good faith. He added that there is a bar for a cause of action in court to claim damages.

Number 1024

REPRESENTATIVE WILSON asked what would happen if there was "a little bit of fault."

REPRESENTATIVE ROKEBERG explained that presumably the "client" [intoxicated person] would have insurance, which should apply because [the taxicab company] would have permission to drive the car. He indicated the problem is that 15 percent of the state's population does not have [car] insurance. Therefore, the desire is to ensure that taxicab companies would not be responsible for any damage that resulted from no fault of their own.

REPRESENTATIVE ROKEBERG noted that if an inebriated person needs a ride home, the [taxi] driver does not want to check to see if that person has [car] insurance before taking the person home. He referred to discussion in the House Labor and Commerce Standing Committee about how to prove whether one has insurance. Even if a police officer apprehends someone, he wondered if that person could show proof of insurance. For example, one could

show an expired insurance card, or a card in which the insurance was recently canceled. He then explained that the bill was written to take into consideration that there may be insurance coverage on the car being driven home.

Number 1129

REPRESENTATIVE OGAN described a possible accident in which the taxicab driver unintentionally runs a red light while taking the inebriated driver home. He said this would not be gross negligence; it is simply in violation of a traffic ordinance. However, it might involve culpability if a person were hurt or killed. He expressed concern about the gross negligence standard, and asked whether changing it to [simple] negligence would "gut" the bill.

REPRESENTATIVE ROKEBERG said he thinks it would. However, it is something that can be taken up in the House Judiciary Standing Committee, the next committee of referral.

Number 1308

An at-ease was called at 1:32 p.m. The meeting was called back to order at 1:35 p.m. [Version F was distributed to committee members.]

Number 1316

REPRESENTATIVE OGAN made a motion to adopt the proposed CS, version 22-LS0300\F, Ford, 3/26/01, as a work draft. There being no objection, Version F was before the committee.

REPRESENTATIVE ROKEBERG pointed out that Version F adds subsection (c), the third-party cause of action provision.

MS. SEITZ explained that a third-party cause of action is when, for example, "another person hits the taxicab driver, maybe driving the intoxicated person's vehicle, [and] that person doesn't have a cause of action against the taxicab employee or company." This person would "have to go against the intoxicated person's or his or her insurance or their uninsured coverage under their insurance policy."

Number 1394

REPRESENTATIVE OGAN asked if it was standard operating procedure for law enforcement officers to call a taxicab to drive an

intoxicated person home, rather than to impound the car.

REPRESENTATIVE ROKEBERG remarked that he thought the person would be told to find another way home. He said in many instances, bar owners and law enforcement have an interest in this [drunk driving]. He surmised that the majority of this would come from a bistro owner, for example, suggesting to a client that he or she should not be driving home. He indicated operators are more sensitive to these issues since liability insurance is very expensive and has not always been available. He went on to say:

I think that the whole idea is that this is one more alternative to keep the roads safe. And if the program's in place and workable, it will be taken advantage of. ... You can put yourself in a position of the person saying, "Joe, ... you don't need to be driving home, you had too much to drink, I can't serve you anymore." And Joe says, "Well, Harry, I don't want to go because I'll leave my car here and ... this is a tough neighborhood. I don't want to leave my car here." That's what it is all about.

Number 1484

REPRESENTATIVE KOOKESH asked whether Representative Rokeberg was assuming that bar owners would pay for the taxicab rides.

REPRESENTATIVE ROKEBERG confirmed this statement.

REPRESENTATIVE KOOKESH indicated that he sees [this bill] resulting in taxicab drivers' not being paid for transportation, although they are in the business to make money.

REPRESENTATIVE ROKEBERG responded that under subsections (b) and (c) of Version F, a person can't bring an action. The bill doesn't restrict the possibility of compensation, however. He said bar owners could pay it.

REPRESENTATIVE OGAN remarked that he would support moving the bill out of committee. However, it appears to enable drunks to stay drunk by taking care of them. Nonetheless, because of his belief that the bill will save the lives of innocent people, he said it overrides his "gut instinct" about its enabling aspect.

REPRESENTATIVE ROKEBERG indicated passage of the .08 BAC [blood alcohol concentration] legislation would help with this issue.

He explained that the BAC legislation would be a 20 percent reduction in the standard for those under the influence [of alcohol].

VICE CHAIR MASEK requested that Representative Rokeberg keep the discussion focused on HB 68.

Number 1638

KACE McDOWELL, Executive Director, Cabaret Hotel Restaurant & Retailers Association (CHARR), testified via teleconference that this program began with the [Anchorage] Downtown Partnership, Downtown License Beverage Association, CHARR, and Checker Taxi, although other taxi companies have joined since then. She provided some history:

We ran into a real roadblock when we were trying to put this program together because of the insurance laws on the taxicab. Now, I know you've discussed the fact that, as we know, the insurance should go with the car. So if a taxi driver is driving an intoxicated person's car, it should be covered.

Our problem is not only worrying about the fact that maybe that person wouldn't have any insurance; it was also the fact that the insurance companies might deny the insurance, saying the intoxicated person was not in their right mind to make a decision to have someone drive their car. The program was going along great until we ran into this, and the taxi companies absolutely could not afford the insurance it would take to cover them for driving somebody else's car home. So, that's where all this came to.

And then we came to Representative Rokeberg and asked him if there was some way he could help us out kind of on the line of a Good Samaritan bill. So that's kind of where we are right now. [This is] the only problem we're having [with this program]. This will be funded through the industry and other corporations and also through the bars and restaurants.

Number 1734

MS. McDOWELL informed members that this program began with downtown [Anchorage] and then evolved to all over the Anchorage area. She said it's almost impossible for someone to leave his

or her car in downtown Anchorage and take a taxi home because of the risk that the car will be towed. Therefore, there is a need to get the car home. Ms. McDowell also said she understood Representative Ogan's concerns about enabling; however, she thinks this program is a better way of keeping an intoxicated person - especially one who is a little drunk and therefore might be tempted to drive - off the road.

MS. McDOWELL noted that this program comes with a \$40 charge to the bar, restaurant, and other contributors. In addition, bars and restaurants pay \$20 each time this program is used. However, this program is not going to be "just shoveling out \$20 every time to enable people to stay in there and drink another two or three drinks." It will be monitored well. There will be training for taxicab company drivers and employees, and for bar and restaurant employees including bartenders, waiters, waitresses, and owners.

Number 1796

VICE CHAIR MASEK asked how many people have been using this program.

MS. MCDOWELL replied that due to insurance reasons, taxicab companies couldn't go through with this program [of bringing the intoxicated person's car home along with the driver]. In response to a further question, Ms. McDowell clarified that the intoxicated person traveling in the cab is not expected to pay for this program. It will be paid for through the industry and contributions from other corporations.

MS. McDOWELL mentioned the possibility of someone's coming in and taking it over as a for-profit program like the one in [Syracuse] New York. She also referred to a nonprofit program in Colorado in which the cars are not brought home. She remarked that she knows of places outside of Anchorage that do this now (taxis taking the person and car home); usually the car arrives later than the person; however, concerns have been expressed about insurance issues in doing these programs.

VICE CHAIR MASEK stated that in Anchorage during the holiday season there has been a free towing service to take people's vehicles home.

MS. McDOWELL commented that the person who initiated the towing program wanted to help with her program until insurance issues were resolved; however, she has been unable to talk with that

person. She said [towing] is relatively inexpensive, but it would not deter many people [from drinking and driving] because few people want their cars taken home by a tow truck with lights flashing.

Number 1913

REPRESENTATIVE WILSON asked how many people Ms. McDowell anticipates would participate weekly in this program.

MS. McDOWELL said about 70 people in the Anchorage area a month.

Number 1993

ROD PFLEIGER, Anchorage Downtown Partnership, testified via teleconference, noting that he had just received the bill. He thanked Representative Rokeberg for continuing with this issue. He said it is truly a community issue that the Anchorage area wants to solve in a positive manner, and he believes this bill goes in the right direction. A lot of acts that seem to be committed under the influence are unintentional, he noted. He emphasized that the program, which is called "Off the Road," is a community collaborative effort, as Ms. McDowell had stated.

MR. PFLEIGER pointed out that an individual could choose to pay [the taxicab driver] or to give a gratuity, and money therefore would change hands. On a different topic, he asked about someone in a chauffeur position doing the driving, rather than a taxicab driver, and whether there would be flexibility if the program grew. He urged passage of the bill.

Number 2123

REPRESENTATIVE ROKEBERG remarked that he was very pleased to be able to assist the Anchorage Downtown Partnership, which is trying to promote the economic development and quality of the atmosphere and services in downtown Anchorage. He also expressed appreciation for the interest shown by CHARR and ARBA [Anchorage Restaurant and Beverage Association] on this issue.

VICE CHAIR MASEK asked what the Department of Law's position on the bill was.

REPRESENTATIVE ROKEBERG replied that to his knowledge, no opinion had been received from the administration, although he expected to hear one in the next committee of referral, the House Judiciary Standing Committee.

REPRESENTATIVE WILSON pointed out that this bill might not include a fiscal note for the state, but that it entails businesses' spending about \$33,000 a year to be involved. She said, "They're trying to fix a problem that's out there and prevent needless possible loss of life, even under the circumstances."

VICE CHAIR MASEK said it is encouraging to see the public is trying to help with problems that "we" are facing in 2001 and in the future.

REPRESENTATIVE ROKEBERG remarked that this bill would save lives, and would save money from property damage. He said usually he is very concerned about placing fiscal notes on the private sector. However, in this situation, they are asking for it, and are happy to contribute to this "whole issue about removing drunk drivers from the street."

VICE CHAIR MASEK closed public testimony.

Number 2256

REPRESENTATIVE WILSON made a motion to move the CS for SSHB 68, version 22-LS0300\F, Ford, 3/26/01, from committee with individual recommendations and the attached zero fiscal note. There being no objection, CSSSHB 68(TRA) moved from the House Transportation Standing Committee.

VICE CHAIR MASEK called for an at-ease in order to hear a Department of Transportation Presentation on Cost-Benefit Analysis of Construction Projects. [The minutes for the presentation are found in the 2:02 p.m. cover sheet for this same date.]