

ALASKA STATE LEGISLATURE
SENATE JUDICIARY COMMITTEE

February 6, 2002
1:43 p.m.

MEMBERS PRESENT

Senator Robin Taylor, Chair
Senator John Cowdery
Senator Gene Therriault

MEMBERS ABSENT

Senator Dave Donley, Vice Chair
Senator Johnny Ellis

COMMITTEE CALENDAR

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 111(JUD) am
"An Act relating to civil liability for injuries or death
resulting from livestock activities."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

HB 111 - see Resource minutes dated 4/20/01

WITNESS REGISTER

Rynnieva Moss
Staff to Representative John Coghill
State Capital, Rm 102
Juneau, AK 99801-1182

Melissa Fouse
Executive Director, Alaska Academy of Trial Lawyers
813 W. 3rd
Anchorage, AK 99501

POSITION STATEMENT: Opposes HB 111

Donna McCready
President, Alaska Academy of Trial Lawyers
1130 W. 6th
Anchorage, AK 99501

POSITION STATEMENT: Opposes HB 111

Beverly Nester

5465 Chena Hot Springs Road
Two Rivers, AK 99712
POSITION STATEMENT: Supports HB 111.

Tamara Larry
1853 Bridgewater Dr.
Fairbanks, AK 99709
POSITION STATEMENT: Supports HB 111.

Gabrielle Larry
1853 Bridgewater Dr.
Fairbanks, AK 99709
POSITION STATEMENT: Supports HB 111.

Joan Levenson
11876 Middle Bay Dr.
Kodiak, AK 99615
POSITION STATEMENT: Supports HB 111.

Sandy Shacklett
310 Harriette St.
Wasilla, AK 99654
POSITION STATEMENT: Supports HB 111.

Al Poindexter
P.O. Box 400
Homer, AK 99603
POSITION STATEMENT: Supports HB 111.

Robin Davies
1606 Roosevelt St.
Fairbanks, AK
POSITION STATEMENT: Supports HB 111.

ACTION NARRATIVE

TAPE 02-02, SIDE A

CHAIRMAN ROBIN TAYLOR called the Senate Judiciary Committee meeting to order at 1:43 p.m. Present were Senator Therriault, Senator Cowdery and Chairman Taylor. Chairman Taylor announced the order of business would be CSSSHB 111(JUD)am.

#HB 111

HB 111-CIVIL LIABILITY AND LIVESTOCK

RYNNIEVA MOSS, Staff to Representative John Coghill, said that Representative Coghill was the prime sponsor of HB 111. It is a product of several meetings with people from 4-H groups and

several veterinarians from the Fairbanks area. The original intent of HB 111 was to legislate common sense to the judicial system. It came about because of at least 2 frivolous lawsuits that occurred in the state in the last ten years. She noted that after discussing the legislation with Senator Taylor, Representative Coghill believed the bill needed work and they were looking forward to working with him to accomplish that.

SENATOR TAYLOR was aware of the suit involving a lady with open toed sandals who got stepped on by a horse at the state fair.

MS. MOSS said that occurred at the fair in Fairbanks. The other incident occurred in 1996 during the Miller Reach Fire. The Palmer Fair opened up its stables to livestock. A woman told them her horse was easily spooked around other animals. They warned her not to ride the horse but she did. It spooked and she was bucked off and injured. She filed a lawsuit against the Palmer Fair that was settled out of court.

SENATOR TAYLOR said in the case at Fairbanks a lawsuit was filed but thrown out. They spent money, time and legal fees bringing that suit and then it was thrown out. He wanted to know about the Miller Reach case.

MS. MOSS said the Palmer Fair paid her \$3500 in legal fees and she dropped the case.

SENATOR THERRIAULT asked about the work with Senator Taylor's office to identify a problem that needed an amendment.

MS. MOSS said the major problem was the bill did not include gross negligence. There could be a case of gross negligence where they would be exempt from a lawsuit and that was a big flaw. What the bill was trying to address was people who go to livestock activities knowing there is a danger.

SENATOR TAYLOR said that on page 2, line 26 it specifically stated that the bill does not immunize people from liability if they have acted grossly negligent.

MS. MOSS ascertained she was looking at version L of the bill while he and Representative Coghill had been working with version O.a.

SENATOR TAYLOR explained that the immunity provision on page 2 made certain no person could sue any other person for the listed activities except if the party acted in gross negligence. Gross negligence is a very high standard often equated with criminal

activity. It would be difficult to prove that somebody intentionally had his or her horse jump up into the grandstand at a fair or an audience at a parade. He gave a scenario involving six Clydesdales on a parade route where someone throws out a firecracker or a horn goes off and the horses were spooked into the crowd. He said the way the bill was written if those horses were to kill several people there would be absolutely no liability. He thought that was a pretty strong public policy call.

SENATOR COWDERY asked if the bill addressed the situation when a person borrows a horse, was the owner responsible for that animal or the person riding the horse.

MS. MOSS said the bill addressed activities it did not address ownership of a horse.

SENATOR COWDERY asked if he borrowed Senator Taylor's horse and it kicked somebody would Senator Taylor be the one responsible.

MS. MOSS said if an owner allowed a person to ride a horse in a horse show then there would be no liability if the person were injured.

SENATOR TAYLOR said the intent of the bill was to make certain that sponsored events would not have to acquire huge amounts of insurance. He pointed out that the definition of livestock activities on page 4 included livestock training or teaching activities which could take place in somebody's pasture. On line 18, boarding or pasturing of livestock would give complete immunity to any person who has a horse out in their pasture whatever occurs. If they had rotten fences or the fences were down that would be negligence, but would not necessarily be gross negligence.

SENATOR TAYLOR said the bill included the inspecting of livestock and the driving, riding, traveling, or other livestock activities of any type, however informal, that are sponsored by a livestock activity sponsor. He said a sponsor could put their horse in a trailer and have an accident along the way without liability.

MS. MOSS said if that was correct it needed to be changed because the intent was for this limited liability to be effective during a sanctioned horse show.

SENATOR TAYLOR said the language "boarding and pasturing livestock" was awfully broad. It would include every single person that has any kind of livestock in a field in the state.

SENATOR THERRIAULT asked if she had worked with the legislative drafters to narrow the scope.

MS. MOSS said they had worked with several groups and she felt part of the flaw with the bill was there were too many hands on it. They were coming to Senator Taylor for guidance to fence what it is they really want to do.

SENATOR THERRIAULT thought there were interests trying to make it so broad it was breaking down under its weight. They needed to draw constraints on the limitation on liability.

MS. MOSS said the intent of the meeting was to take some testimony and from that testimony work with Senator Taylor to develop a committee substitute.

SENATOR THERRIAULT said he was supportive of the idea.

CHAIRMAN TAYLOR thanked Ms. Moss, Representative Coghill and the involved groups for bringing the bill forward.

MELISSA FOUSE, Executive Director, Alaska Academy of Trial Lawyers, said they, as an organization, have some concerns with the bill. She introduced the Academy's President to discuss those concerns.

DONNA McCREADY, President, Alaska Academy of Trial Lawyers, said she agreed with many of the comments that Senator Taylor made. She understands there have been two cases in the last 10 years and one was disposed of in the proper manner. She discussed Rule 82 and Rule 68 where the party that is not prevailing has to pay attorney fees to the other side. That is a disincentive to bring frivolous lawsuits. The problem the bill wants to address is too all encompassing and would cause more harm than good. She was concerned about immunizing a large group of activities or some segment of the population from being personally responsible for wrongful or negligent acts and whether that is really necessary. A trial lawyer has to prove negligence, causation and harm great enough to make it worthwhile to bring a lawsuit. Litigation is expensive.

SENATOR TAYLOR said he was going to take testimony and have an additional hearing to do a final markup. He intended to move a form of the bill out of his committee that would provide some form of limitation on liability for those organizations and sponsoring organizations that are attempting to put on events in the state. One problem was perception, accurate or not, of specious law suits being brought. Another being the insurance

industry uses these specious bits of litigation to overcharge for a liability policy. The committee would be very appreciative of assistance from her organization.

SENATOR THERRIAULT asked Ms. McCready if their organization knew if there were other states which had limited liability in this area in some common sense way.

MS. FOUSE said they were doing some research on that and contacting some parallel organizations in other states.

SENATOR TAYLOR explained there are several states that have open range laws and closed range laws based on whether agricultural animals can be allowed to wander or must be fenced. States came up with different solutions. This bill was patterned after Oklahoma and he would submit to the committee the research that had been collected.

SENATOR THERRIAULT said in reference to Rule 82 he didn't want people to think if they were the winner they would get repaid all their expenses, because that is not what Rule 82 does.

SENATOR COWDERY asked if this would help the public attain liability insurance for special events and if livestock had been defined.

SENATOR TAYLOR said that special events would not need any insurance. Livestock was defined on page 4, line 7 and included cow, bison, hog, sheep, goat, musk-ox, yak, pig, caribou, reindeer, elk, rabbit, hamster, guinea pig, turkey, chicken, pheasant, peafowl, pigeon, duck, horse, donkey, camel, llama, or alpaca; does not include dog or cat.

BEVERLY NESTER, Two Rivers resident, wanted the definition of livestock to include mules, moose, common zoo animals and pet shop animals or say livestock is any domesticated animal and/or pet other than dogs or cats. She wanted in the definition of livestock activity the words "is not limited to" after the word includes because she felt it was impossible to list every single event or activity.

She had been informed that pastured livestock are an "attractive nuisance" and people have no protection against kids crawling through fences and getting injured by an animal. She supported limiting liability for many activities.

TAMARA LARRY, 4-H Assistant Leader, said her group project was to research and advocate for the introduction of HB 111 and to

follow its progress. In helping to develop HB 111 they researched bills in 44 other states and talked to a University lawyer. They think people who place themselves in the vicinity of livestock should assume responsibility for any injuries that occur unless gross negligence is involved.

SENATOR TAYLOR said the current bill did include gross negligence. He expressed concern over the broad activities it included. He wanted to get a bill out that would take care of the 4-H, rodeos and fairs.

GABRIELL LARRY, Fairbanks resident, felt she was putting herself and others in her family at risk because of lawsuits that are potentially draining. The bill was important and similar to those in other states. She gave examples of past problems and explained the loss of a 4-H program run by Dr. Dee in Fairbanks for children who did not have horses.

JOAN LEVENSON, Kodiak 4-H Club, said she is a horse leader and involved with Kodiak's rodeo and fair. She supported the bill and believed it was very important because it would allow them to do more with their horses.

CHAIRMAN TAYLOR asked if they had had any accidents in Kodiak involving people riding horses along roadsides. He said there had been two serious accidents in Ketchikan due to narrow shoulders along the road. In one case a horse had shied and leaped out in front of an oncoming car. Under this bill if a horse leaps out in front of a car and people are killed no one would be liable.

MS. LEVENSON said in Kodiak they do not have that problem because they have trails alongside the roads, but maybe that needed to be addressed in the bill.

CHAIRMAN TAYLOR did not know if everyone intended the bill to go that far. It had grown beyond protecting 4-H clubs.

SANDY SHAKLETT, Publisher, Alaska Horse Journal, said the roadside incident would be considered reckless which would not exempt the person from a lawsuit. There are markers available for riders to wear in the dark so they can be seen. If a horse was not broken to ride and used to traffic it should not have been ridden along the road.

SENATOR TAYLOR said that was the difference in the standard between gross negligence and simple negligence. He asked her about the scenario involving the Clydesdales in the parade.

MS. SHACKLETT read from the bill (page 2, line 25). This section does not affect a civil action for damages resulting from gross negligence or reckless or intentional misconduct. She thought that would fall into reckless behavior.

SENATOR TAYLOR said reckless is that which is life endangering and you know it to be life endangering before you do it.

TAPE 02-02, SIDE B

MS. SHAKLETT said there is a responsibility that participants make sure an animal is safe for the activity and, if they did not, she would go back to the clause where that would be reckless or intentional misconduct.

SENATOR TAYLOR said they would have to prove that the person knew the horse was not fit and it would be difficult to establish. The word reckless is a major hurdle to go over.

SENATOR COWDERY read from page 3, line 19; a person may agree in writing to waive the right to recover damages. He asked if that would hold up in court.

SENATOR TAYLOR said that would not necessarily hold up though it would give it more strength.

MS. SHAKLETT said readers had been contacting her continually about this bill and everyone had been in favor of it. She said there might be a need for some changes but it would have a positive effect on people who participate in livestock activities.

AL POINDEXTER, Homer Soil & Water Conservation District, said there was broad support for the bill in Homer and people who had wanted to attend were unable due to weather.

All of his four children were involved with 4-H and Future Farmers of America (FFA). He said people who raise horses and other livestock for kids to learn with and on are limited or curtailed by the liability or the lack of ability to get insurance. The intent of the bill is to enable them to pursue some of these wholesome activities without trying to come up with funds for insurance.

SENATOR TAYLOR asked if 4-H had an insurance program they provided to member organizations for a nominal fee. He thought one was available and wondered if the cost was causing activities

to be restricted.

MR. POINDEXTER was not sure, but informed them that the sponsoring organization of 4-H is the Cooperative Extension Service for the University of Alaska. FFA is normally run by the Department of Education through the school system. He assumed the children were insured in the same way as other school activities.

He said dogs and cats are not covered in the bill, but some 4-H children are involved in two activities - training Seeing Eye Dogs and showing dogs. Children also mush dogs and give people rides on the sleds. He wanted to know why dogs were not part of the bill. He reiterated that all the groups in Homer support the bill, however, the language might need some changes.

SENATOR THERRIAULT said Mr. Poindexter's comments led him to believe he was supportive of limitation of liability on activities. Senator Therriault said as a citizen he could think about an activity, evaluate it and understand there would be livestock there and there would be an inherent risk if he chose to go to that activity. Because of that risk he might choose not to go to that activity. He saw a difference between that kind of reasoned process and driving a car down a public right-of-way and coming around a corner and finding livestock there. He asked Mr. Poindexter if he saw a differentiation between those activities. One was an official kind of livestock activity where he could choose to go or not go, the other being where you just happen upon livestock. He thought it was Senator Taylor's intention to try and differentiate between those two.

MR. POINDEXTER believed what they wanted to do was make sure that activities can occur and sort of be protected because people understand that there is some inherent danger in choosing to participate and are therefore accepting that responsibility. He believed there was a difference between a horse going down the road at night and someone choosing to go to a rodeo or 4-H show at a fair.

ROBIN DAVIES, Fairbanks 4-H Leader, informed the committee that Risk Management for the University of Alaska covers the insurance for 4-H. Her 4-H group talked with Risk Management a year ago and they were shocked to find out that the horse is not covered. If the horse was to kick another child and the child was a 4-H member they would be covered but the horse was not covered. Fairs have spectator insurance that would cover any spectators.

SENATOR TAYLOR said the reason they have the Risk Management

section at the University and with the State of Alaska is because they both decided years ago they were not going to be ripped off by the insurance industry. Risk Management handled all their claims because it is a lot less expensive to be self-insured. He would contact them to get information and also the people at the fair to get information about spectator coverage.

MS. DAVIES said covering sponsored activities was the intent of the bill but was concerned about there being sponsored activity that would not be covered.

SENATOR TAYLOR said they would have a subsequent hearing on the bill probably in the next week or two. It was his intent to get this to the floor for a vote in time to get it back to the House.

MS. DAVIES said it was not their intent to not carry insurance. Her insurance company would not put it in writing that her horse was covered though they said it is.

SENATOR COWDERY said many Homeowners Policies covered animals and pets.

MS. DAVIES said the insurance company said they were covered but would not put it in writing. She knew of people who's insurance companies had dropped them as soon as they found out they had horses on their property.

She said the reason they did not put dogs on the bill was because the sled dog issue is such a difficult one they thought that dogs needed to be dealt with in a separate bill.

SENATOR TAYLOR thanked all those who had participated. He adjourned the meeting at 3:00 p.m.

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