

ALASKA STATE LEGISLATURE  
**SENATE JUDICIARY COMMITTEE**

May 10, 2002  
5:26 p.m.

**MEMBERS PRESENT**

Senator Robin Taylor, Chair  
Senator Dave Donley, Vice Chair  
Senator John Cowdery  
Senator Gene Therriault  
Senator Johnny Ellis

**MEMBERS ABSENT**

All Members Present

**COMMITTEE CALENDAR**

CS FOR HOUSE BILL NO. 317(FIN)

"An Act relating to stalking and to violating a protective order; and amending Rules 4 and 65, Alaska Rules of Civil Procedure, and Rule 9, Alaska Rules of Administration."

MOVED CSHB 317(FIN) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 27(FIN)

"An Act relating to the registration of individuals who perform home inspections; relating to regulation of contractors; relating to registration fees for specialty contractors, home inspectors, and associate home inspectors; relating to home inspection requirements for residential loans purchased or approved by the Alaska Housing Finance Corporation; relating to civil actions by and against home inspectors and to civil actions arising from residential unit inspections; and providing for an effective date."

MOVED SCS CSHB 27(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 182(FIN) am

"An Act relating to certain vehicles, including motorcycles and trailers; relating to the registration, bonding, and other regulation of motor vehicle dealers; relating to the registration and other regulation of certain motor vehicle buyers' agents; relating to acts and transactions involving vehicles, including trailers, and to the acts and practices of certain persons and entities involved in vehicle transactions, including trailer transactions; relating to consumer protection for used vehicle buyers; amending Rule 3, Alaska Rules of Civil Procedure; and providing for an effective date."

MOVED SCS CSHB 182(L&C) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 393(JUD) am

"An Act relating to unfair and deceptive trade practices and to the sale of business opportunities; amending Rules 4 and 73, Alaska Rules of Civil Procedure; and providing for an effective date."

MOVED SCS CSHB 393(L&C) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 489(JUD)

"An Act relating to cruelty to animals."

MOVED CSHB 489(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 499(JUD)

"An Act declaring legislative intent to reject the continuity of enterprise exception to the doctrine of successor liability adopted in *Savage Arms, Inc. v. Western Auto Supply*, 18 P.3d 49 (Alaska 2001) as it relates to products liability; providing that a successor corporation or other business entity that acquires assets of a predecessor corporation or other business entity is subject to liability for harm to persons or property caused by a defective product sold or otherwise distributed commercially by the predecessor only if the acquisition is accompanied by an agreement for the successor to assume the liability, results from a fraudulent conveyance to escape liability for the debts or liabilities of the predecessor, constitutes a consolidation or merger with the predecessor, or results in the successor's becoming a continuation of the predecessor; defining 'business entity' that acquires assets to include a sole proprietorship; and applying this Act to the sale, lease, exchange, or other disposition of assets by a corporation, a limited liability corporation, a partnership, a limited liability partnership, a limited partnership, a sole proprietorship, or other business entity that occurs before, on, or after the effective date of this Act."

MOVED CSHB 499(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 246(JUD)

"An Act relating to regulation of a person providing insurance for the cost of medical care, to confidentiality of insurance records, to insurance hearings, to insurance fees, to annual and quarterly statements by insurers, to managed care insurance, to taxes on insurance, to insurer certificates of authority, to risk based capital for insurers, to unauthorized and nonadmitted insurers, to surplus lines insurance, to health insurance, to life insurance, to annuity insurance, to consumer credit insurance, to insurer liquidation, to multiple employer welfare arrangements, to the Alaska Insurance Guaranty Association, to hospital and medical service corporations, and to regulation of

insurance producers, agents, brokers, managers, and adjusters; and providing for an effective date."

MOVED SCS CSHB 246(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 252(RLS)

"An Act relating to the construction of certain statutes relating to children; relating to the scope of duty and standard of care for persons who provide services to certain children and families; relating to civil liability for damages to certain children and their families resulting from failure to comply with certain statutes; relating to intensive family preservation services; and providing for an effective date."

MOVED SCS CSHB 252(JUD) OUT OF COMMITTEE

#### **PREVIOUS COMMITTEE ACTION**

HB 317 - No previous action to record.

HB 27 - See Labor and Commerce minutes dated 4/30/02.

HB 182 - See Labor and Commerce minutes dated 4/25/02.

HB 393 - See Labor and Commerce minutes dated 4/30/02 and 5/4/02.

HB 489 - No previous action to record.

HB 499 - See Labor and Commerce minutes dated 5/4/02.

HB 246 - See Labor and Commerce minutes dated 4/30/02 and 5/4/02.

HB 252 - No previous action to record.

#### **WITNESS REGISTER**

Representative Harry Crawford

Alaska State Capitol

Juneau, AK 99801-1182

**POSITION STATEMENT:** Introduced HB 317.

Ms. Mary Wells

No address given

**POSITION STATEMENT:** Testified in support of HB 317.

Ms. Janet Seitz

Staff to Representative Norman Rokeberg

Alaska State Capitol

Juneau, AK 99801-1182

**POSITION STATEMENT:** Introduced HB 27.

Representative Norman Rokeberg

Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Introduced HB 27 and HB 499.

Ms. Amy Erickson  
Staff to Representative Lisa Murkowski  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Introduced HB 182.

Mr. Steve Alewine  
Alaska Auto Dealers Association  
3725 Mallard St.  
Juneau, AK 99801  
**POSITION STATEMENT:** Testified on HB 182.

Mr. Mark Mueller  
No address given  
**POSITION STATEMENT:** Testified in support of HB 182.

Mr. Jim Kiley  
No address given  
**POSITION STATEMENT:** Testified in support of HB 182.

Mr. Stan Hurst  
Chrysler Corporation  
No address given  
**POSITION STATEMENT:** Testified in support of HB 182.

Mr. Rick Morrison  
Alaska Auto Dealers Association  
935 Gambell St.  
Anchorage, AK 99501  
**POSITION STATEMENT:** Testified in support of HB 182.

Mr. Ed Sniffen  
Assistant Attorney General  
Fair Business Practices Section  
Department of Law  
1031 W. 4<sup>th</sup> Ave. Ste. 200  
Anchorage, AK 99501-1994  
**POSITION STATEMENT:** Testified in support of HB 182.

Representative Gary Stevens  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Introduced HB 393.

Ms. Cindy Drinkwater  
Assistant Attorney General  
Fair Business Practices Section

Department of Law  
1031 W. 4<sup>th</sup> Ave. Ste. 200  
Anchorage, AK 99501-1994

**POSITION STATEMENT:** Testified in support of HB 393.

Ms. Marie Darlin  
Capital City Task Force  
AARP Alaska  
3101 Penland Pkwy.  
Anchorage, AK 99508

**POSITION STATEMENT:** Testified in support of HB 393.

Representative Mike Chenault  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Introduced HB 489.

Ms. Heather M. Nobrega  
Counsel to House Judiciary Committee  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Introduced HB 499.

Ms. Lisa Hanby  
Hughes Thorsness  
550 W. 7<sup>th</sup> Ave. Ste. 1100  
Anchorage, AK 99501

**POSITION STATEMENT:** Testified in opposition to HB 499.

Mr. Ted Pease  
Burr Pease & Kurtz  
810 N St.  
Anchorage, AK 99501

**POSITION STATEMENT:** Testified in support of HB 499.

Representative Lisa Murkowski  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Introduced HB 246.

Mr. Bob Lohr  
Director  
Division of Insurance  
Department of Community & Economic Development  
3601 C St. Ste. 1324  
Anchorage, AK 99503-5948

**POSITION STATEMENT:** Testified on HB 246.

Mr. Kirk Wickersham  
236 W. 34<sup>th</sup>  
Anchorage, AK 99503

**POSITION STATEMENT:** Testified on HB 246.

Mr. Jerry Reinwand  
Blue Cross/Blue Shield of Alaska  
2 Marine Way #219  
Juneau, AK 99801

**POSITION STATEMENT:** Testified on HB 246.

Representative John Coghill  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Introduced HB 252.

Ms. Susan Cox  
Assistant Attorney General  
Civil Division  
Department of Law  
PO Box 110300  
Juneau, AK 99811-0300

**POSITION STATEMENT:** Testified on HB 252.

**ACTION NARRATIVE**

**TAPE 02-29, SIDE A**

5:26 p.m.

**CHAIRMAN ROBIN TAYLOR** called the Senate Judiciary Committee meeting to order at 5:26 p.m. Present were Senators Cowdery, Donley, Therriault and Chairman Taylor. Senator Ellis arrived shortly thereafter.

The first order of business before the committee was HB 317.

#HB 317

**HB 317-STALKING & PROTECTIVE ORDERS**

REPRESENTATIVE HARRY CRAWFORD, sponsor of HB 317, said HB 317 would fill a gap in Alaska law to protect people from stalkers that they don't know. He said existing laws only protect victims from stalkers they had previously been involved with under domestic violence statutes.

CHAIRMAN TAYLOR asked if there were any questions for Representative Crawford. There were none. He asked Ms. Mary Wells to provide testimony.

MS. MARY WELLS said an individual or minor who was stalked could only call the police and file a report under existing law. She

said the victim could seek assistance through the courts if there was a threat of physical violence but the court could only have them escorted to a shelter such as AWAKE in Anchorage.

She said she was lucky that her stalker had been arrested on other charges and incarcerated for four years. He had since been released. In order to get a protective order for her family, she said she would have to have been involved with him or related to him. She said she got no relief from the legal system and Judge Murphy told her the law needed to be changed.

She said stalking was not about sex; it was about power. She said the stalker might focus on something unusual in a person such as the color of their hair or their eyes. She said her stalker just wanted to hear her voice. She said it took her two months to figure out who her stalker was. She said some victims never learn the identity of their stalker. Some victims went into hiding. She said it was difficult to go grocery shopping or take their children to school. She said her children were unable to participate in physical education activities outdoors because they risked being exposed to the stalker.

She said she was representing herself and many other stalking victims that couldn't get any relief. She said HB 317 was needed to protect victims of stalkers.

5:35 p.m.

SENATOR COWDERY moved CSHB 317(FIN) out of committee with attached zero fiscal notes and individual recommendations.

There being no objection, CSHB 317(FIN) moved out of committee with attached zero fiscal notes and individual recommendations.

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The next order of business before the committee was HB 27.

#HB 27

#### **HB 27-HOME INSPECTORS/CONTRACTORS**

MS. JANET SEITZ, Staff to Representative Norman Rokeberg, sponsor of HB 27, said HB 27 would require registration for home inspectors along with certain educational and practice requirements.

SENATOR THERRIAULT moved the work draft (Version V) as the working document before the committee.

There being no objection, Version V was adopted as the working document before the committee.

CHAIRMAN TAYLOR asked Ms. Seitz to explain the changes made in Version V.

MS. SEITZ said Version V does not contain the section that dealt with legal actions against home inspectors and associated language requiring a report to be filed on an existing home within two years and a new home within one year. She said there would be no contractual limitation of liability of home inspectors according to Sec. 17.

CHAIRMAN TAYLOR asked Ms. Seitz for the location of the provisions that would allow only two certifying entities.

MS. SEITZ said those provisions were in Sections 7 and 43. She said Sec. 7 would require passage of appropriate examination to get a home inspector's license and Sec. 43 would provide for transitional licensing.

CHAIRMAN TAYLOR said those two entities were the American Society of Home Inspectors (ASHI) and the International Conference of Building Officials (ICBO).

MS. SEITZ said that was correct.

CHAIRMAN TAYLOR asked if that would include the National Association of Home Inspectors (NAHI).

MS. SEITZ said no.

CHAIRMAN TAYLOR asked if the American Home Inspector Training Institute (AHITI) was a different school.

MS. SEITZ said it was. She said ASHI had an Alaska chapter and the Alaska Housing Finance Corporation (AHFC) required ICBO certification for new construction.

5:37 p.m.

REPRESENTATIVE ROKEBERG, sponsor of HB 27, said he reviewed a number of other entities offering training and testing services that expressed interest in being included. He said ASHI and ICBO were well respected throughout the country. He didn't want to list every particular entity and would not object to the committee adding a provision that would allow inclusion of other

entities by regulation. He didn't want to exclude any entities but wanted to be sure they were reviewed before they were approved. He said the legislature didn't have the capacity to review each of the entities.

CHAIRMAN TAYLOR said HB 27 limits certification to just two entities. He received correspondence from someone who suggested also including NAHI and AHITI because those entities offered training and testing services. He didn't want to pass HB 27 only to discover that a good portion of the home inspectors in Alaska could no longer practice because they got their certification from some other entity.

REPRESENTATIVE ROKEBERG said he had been working on the issue for four years and that work spawned the Alaskan ASHI chapter. He said there was some competition between ASHI and one of the entities Chairman Taylor mentioned but he didn't believe that affected Alaska. He felt comfortable including only ASHI and ICBO.

CHAIRMAN TAYLOR moved conceptual Amendment 1 to change the semicolon on page 4, line 24 to a comma and add AHITI and NAHI to the list of eligible entities offering examination and courses for inspecting existing homes.

REPRESENTATIVE ROKEBERG was not sure of the quality or competency of AHITI and NAHI.

SENATOR THERRIAULT asked why it would be preferable to specify certain entities when there could be other qualified entities. He said they could delete all of the language from line 20 to line 27 on page 4.

REPRESENTATIVE ROKEBERG said there must be basic standards. He said AHFC required ICBO certification for inspecting new construction. He said Senator Therriault's suggestion would lower requirements and he didn't think they wanted to do that. He said existing home inspection certification was what was at issue and ASHI was the normally accepted standard.

CHAIRMAN TAYLOR said members of the committee had received correspondence from people who wouldn't be able to get a license unless they went back through the educational process.

REPRESENTATIVE ROKEBERG had reviewed some of the entities. He read the complete curriculum from one of the entities mentioned that was in a one-room second-floor walk-up in Connecticut and he didn't believe they had sufficiently demonstrated their

qualifications to be included in HB 27. He said entities that could show sufficient qualifications should be included.

CHAIRMAN TAYLOR said he wasn't concerned with where the inspectors got their certification because they would be liable if they did anything wrong.

REPRESENTATIVE ROKEBERG said the same change should be made on page 22, line 6 to be consistent.

CHAIRMAN TAYLOR said they could change the "or" on page 22, line 6 to an "and." He said that would require all inspectors to take an examination by the board.

REPRESENTATIVE ROKEBERG said there wasn't a board.

CHAIRMAN TAYLOR said the language on page 22, lines 7-8 referred to, "the Examination Board of Professional Home Inspectors." He asked if HB 27 created that board.

MS. SEITZ said that examination was already given by a group called Professional Home Inspectors and some people in the state had already taken that examination.

CHAIRMAN TAYLOR reiterated that conceptual Amendment 1 would include AHITI and NAHI on page 4, line 24 and page 22, line 6. He asked if there was any objection to Amendment 1.

There being no objection, Amendment 1 was adopted.

SENATOR COWDERY moved SCS CSHB 27(JUD) out of committee with attached fiscal notes and individual recommendations.

There being no objection, SCS CSHB 27(JUD) moved out of committee with attached fiscal notes and individual recommendations.

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The next order of business before the committee was HB 182.

#HB 182

### **HB 182-MOTOR VEHICLE SALES AND DEALERS**

MS. AMY ERICKSON, staff to Representative Lisa Murkowski, sponsor of HB 182, said HB 182 addresses the relationship between motor vehicle dealers, manufacturers and prospective buyers. She said the bill would:

- Provide guidelines to protect dealers and consumers from abuses within the industry;
- Create a platform for dispute resolution between manufacturers and dealers with regard to franchise agreements;
- Include franchise agreements under the jurisdiction of Alaska courts;
- Create a uniform process for transferring, terminating or conveying franchise agreements;
- Provide protection against the placement of new dealerships within proximity of a current dealership;
- Provide uniform guidelines for designating successors in the case of death or incapacity of a franchisee; and
- Provide safeguards to protect consumers from deceptive advertising, price comparison and availability of advertised items.

CHAIRMAN TAYLOR asked Mr. Steve Alewine if he wished to testify.

MR. STEVE ALEWINE, Alaska Auto Dealers Association, said he did not.

CHAIRMAN TAYLOR asked Mr. Mark Mueller to provide testimony.

MR. MARK MUELLER said he was comfortable with HB 182.

CHAIRMAN TAYLOR asked Mr. Jim Kiley to provide testimony.

MR. JIM KILEY said he supported HB 182.

CHAIRMAN TAYLOR asked Mr. Stan Hurst to provide testimony.

MR. STAN HURST, Chrysler Corporation, said Chrysler is comfortable with the bill.

CHAIRMAN TAYLOR asked Mr. Rick Morrison to provide testimony.

MR. RICK MORRISON, Alaska Auto Dealers Association, thanked everybody that had worked on the bill. He thanked the committee for its support.

CHAIRMAN TAYLOR asked Mr. Ed Sniffen to provide testimony.

MR. ED SNIFFEN, Assistant Attorney General, Fair Business Practices Section (FBPS), Department of Law (DOL), said DOL supported HB 182.

SENATOR COWDERY moved SCS CSHB 182(L&C) out of committee with attached zero fiscal notes and individual recommendations.

There being no objection, SCS CSHB 182(L&C) moved out of committee with attached zero fiscal notes and individual recommendations.

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The next order of business before the committee was HB 393.

#HB 393

**HB 393-SALES OF BUSINESS OPPORTUNITIES**

5:53 p.m.

REPRESENTATIVE GARY STEVENS, sponsor of HB 393, said HB 393 is a consumer protection bill that would help Alaskans confronted with consumer scams known as business opportunities. He said he had a packet of examples of the business opportunities people received in the mail. He said HB 393 would not hurt legitimate businesses; it would only protect against the high-pressure business opportunities that promised people high earnings. He said vulnerable Alaskans such as senior citizens and people with disabilities, were especially taken in by them. He said HB 393 would require these businesses to register, disclose information, use an escrow account for delivery and allow a 30-day cancellation period. He said direct sellers for companies such as Avon, Mary Kay and Amway would be exempted from requirements of the bill.

CHAIRMAN TAYLOR said many people who were appreciative of HB 393 had contacted him. He asked Ms. Cindy Drinkwater to provide testimony.

MS. CINDY DRINKWATER, Assistant Attorney General, Department of Law (DOL), said DOL strongly supported HB 393.

CHAIRMAN TAYLOR asked if there were any questions for Ms. Drinkwater. There were none. He asked Ms. Marie Darlin to provide testimony.

MS. MARIE DARLIN, Capital City Task Force, AARP Alaska, said they supported HB 393. She said the committee had AARP Alaska's letter of support and had heard from many of its members, many of who had really been ripped off by business opportunities. She said the latest CS cleared up any questions.

CHAIRMAN TAYLOR asked if there were any questions for Ms. Darlin. There were none.

SENATOR ELLIS noted that HB 393 passed the floor of the House of Representatives with a vote of 37 to one. He said the nay vote was from Representative Vic Kohring. He asked Representative Stevens if he knew why Representative Kohring had voted against HB 393.

REPRESENTATIVE STEVENS thought Representative Kohring was opposed to any governmental regulations that would impact people.

CHAIRMAN TAYLOR said he spoke to Representative Kohring, who indicated that his primary concern was that HB 393 would add another level of government and more employees and would result in more cost to other small businesses. He said the language that would allow the department to set the cost of fees based upon the cost of issuing licenses was fairly broad. He felt Representative Kohring was philosophically supportive of HB 393 but had concerns about the cost of government.

He asked if there was any further discussion on HB 393. There was none.

SENATOR COWDERY moved SCS CSHB 393(L&C) out of committee with attached zero fiscal note and individual recommendations.

There being no objection, SCS CSHB 393(L&C) moved out of committee with attached zero fiscal note and individual recommendations.

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The next order of business before the committee was HB 489.

#HB 489

#### **HB 489-CRUELTY TO ANIMALS**

REPRESENTATIVE MIKE CHENAULT, sponsor of HB 489, said it is well documented that animal abuse is a precursor to child abuse. He said studies by the American Humane Society and the American Psychiatric Association strongly suggested that a great deal of adult domestic abuse could be avoided if animal cruelty was identified and treated as a juvenile problem. He said HB 489 would allow prosecutors to charge a person with cruelty to each animal found to be neglected or abused and suggests that the courts mandate behavioral counseling. He said the bill would also create the duty to report abuse to authorities and hold a person harmless if they reported animal abuse in good faith.

6:00 p.m.

CHAIRMAN TAYLOR asked if HB 489 would have any impact on the process of raising domestic animals for food production.

REPRESENTATIVE CHENAULT said that was not his intent.

CHAIRMAN TAYLOR asked if there were any further questions. There were none.

SENATOR COWDERY moved CSHB 489(JUD) out of committee with attached zero fiscal notes and individual recommendations.

There being no objection, CSHB 489(JUD) moved out of committee with attached zero fiscal notes and individual recommendations.  
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The next order of business before the committee was HB 499.

#HB 499

**HB 499-SUCCESSOR LIABILITY FOR PRODUCT LIABILITY**

MS. HEATHER NOBREGA, counsel to the House Judiciary Committee, sponsor of HB 499, said HB 499 would determine when a successor in a corporation could be held liable for a previous corporation's products liability.

CHAIRMAN TAYLOR said HB 499 was a complex piece of legislation that would involve the legislature reversing a Supreme Court decision. He said whether or not a successor corporation that purchased the assets of a bankrupt business would be liable for the activities of the previous corporation was a significant policy question.

SENATOR THERRIAULT asked what kind of liability was being addressed.

6:07 p.m.

CHAIRMAN TAYLOR said the case involves Savage Arms, Inc. and the Western Auto Supply Corporation and is very unique. Western Auto sold a .22 Savage Industries rifle that had design factors or problems that caused a tragic accident. He explained that Representative Chenault employed the father of the young man who was shot in the temple by the rifle. Suit was brought against Western Auto and full compensation has been provided to the victim but additional subrogation claims have gone back and forth between Western Auto and Savage Arms as to who was liable. He said the matter was up on an interlocutory appeal to the Supreme Court from a decision made by Judge Link. He said the Supreme Court rendered a decision using a four-part test as to whether or

not the successor corporation was liable for the previous corporation's products liability. He said Savage Industries had been purchased along with the name. He thought Alaska's Supreme Court was one of only three that came out with a different continuity of enterprise theory. The Supreme Court decided that the new corporation might have become liable with the purchase of the assets of Savage Industries. He said the matter had not been resolved yet and the new corporation would go to trial in the fall to determine the matter of liability. He said the Supreme Court indicated that successor liability affected the manner in which the case would be tried and who would be held liable.

6:09 p.m.

SENATOR COWDERY thought the gun had been sold by Western Auto but had passed through many owners before the young man was injured.

MS. NOBREGA said that was correct.

SENATOR COWDERY said he purchased a Helio Courier factory when Piper Aircraft went bankrupt. He said they would have been liable for the entire history of the aircraft even though they were manufacturing a different model. He said that made him ask, "Is the plumber responsible for what goes through the pipe?"

MS. NOBREGA said products liability was very interesting because it could hold any entity liable throughout the chain of possession. She said liability moved down the chain from the manufacturer to the wholesaler and the retailer.

SENATOR COWDERY asked if that model of gun was still made and if they had corrected the flaws if there were flaws.

MS. NOBREGA said she didn't know but assumed that either the gun was no longer being made or the problem that resulted in the gun exploding had been fixed.

REPRESENTATIVE ROKEBERG, Chairman of House Judiciary Committee, said when Savage Industries purchased Savage Arms they purchased four product lines but did not purchase that particular product line. He said Western Auto had settled the case. He said the case was now between the subrogated insurance companies AllState and Lloyd's of London. He said HB 499 addressed the Restatement (Third) of Torts to determine successor liability.

CHAIRMAN TAYLOR asked Ms. Lisa Hanby to provide testimony.

MS. LISA HANBY, Hughes Thorsness, said her supervisor, Mr. Jim Powell, wished to provide testimony but was not available.

CHAIRMAN TAYLOR asked if Ms. Hanby had any testimony to provide.

MS. HANBY said Hughes Thorsness' major concern was that the retroactivity of HB 499 would make the law applicable to parties already in litigation.

CHAIRMAN TAYLOR asked how HB 499 would affect their case.

MS. HANBY thought it would eliminate their case. She said they were seeking indemnification for about \$12 million.

CHAIRMAN TAYLOR asked if there were any further questions for Ms. Hanby. There were none.

REPRESENTATIVE ROKEBERG said HB 499 would overturn one of two theories that were adopted by the Supreme Court to be utilized by the trial court in applying products liability law. He said the Supreme Court adopted the mere continuation theory, which was one of the four tests allowed under the Restatement (Third) of Torts, and the continuity of enterprise theory. He said HB 499 overturned the continuity of enterprise theory. He said the Supreme Court retroactively applied that standard because the legislature had never addressed the issue. He said HB 499 would clarify what the law should be because the case was before the Supreme Court to get clarification of the law. He said HB 499 would simply do what the Supreme Court had done in making it retroactive. He felt the Supreme Court had picked the wrong law. He said 46 other states agreed with the Restatement (Third) of Torts. The Supreme Court picked a law that had been discredited throughout the judiciary of the country.

**TAPE 02-29, SIDE B**

6:15 p.m.

REPRESENTATIVE ROKEBERG said the previous testimony from Mr. Powell was that there was approximately \$14 million involved in the case. He said the case was a clear tort case and it was clear in case law that there was no vested right to the \$14 million until the entire case had been tried and brought to final judgment. He said there was case law in the brief in the bill packet going all the way back to Chief Justice John Marshall's decision in the *The Schooner Peggy* case in 1801 that stated that legal principle. He said it was very well tested and HB 499 would not interfere with the case. He said the Superior Court would look at the Supreme Court's decision and HB 499 in making judgment. He said they would get to retry the case based on what the law should be. He said it was up to the facts to determine

responsibility.

CHAIRMAN TAYLOR asked Mr. Ted Pease to provide testimony.

MR. TED PEASE, Burr Pease & Kurtz, said his firm was counsel to Savage Arms. He pointed out that HB 499 would adopt section 12 of the American Law Institute's Restatement (Third) of Torts. He said the American Law Institute was a respected agency that studied laws and presented an analysis on what the law was and what it should be. He said they adopted the following four conditions that would make a successor corporation liable in 1998:

- If the successor corporation expressly assumed liability;
- If it was a merger or consolidation of two corporations;
- If it was fraud; or
- If the new corporation was a clear continuation of the old corporation.

He said clear continuation was when the two companies had the same shareholders, stockholders, directors and business but was a different corporation.

MR. PEASE said HB 499 would eliminate Western Auto's ability to use the continuity of enterprise theory to answer the question of liability in their case against Savage Arms. He said the continuity of enterprise theory was a wide-open theory that said if a successor company appeared to be the same corporation the jury could decide the successor corporation was liable.

He said the original corporation went bankrupt because of financial problems. He said the new corporation decided to purchase part of the bankrupt corporation including most, but not all, of the assets. It did not purchase the product line that included the gun that hurt the young man. He said the accident hadn't happened when the negotiations were going on. He said the accident had happened by the time the deal was closed but neither corporation nor the bankruptcy court knew about it. He said a year later the suit was filed. He said Savage Industries was looked at for liability but had gone out of business so the suit went after Western Auto, the original seller of the gun.

He urged the passage of HB 499 because it would protect any corporation or individual who purchased all or part of the assets of another business that could find themselves liable for products liability for an accident that hadn't even happened yet.

CHAIRMAN TAYLOR maintained that the Restatement (Third) of Torts said the successor corporation was liable if liability was assumed, if fraudulent conveyance was used to escape debts or liabilities, if it was a consolidation or merger or if the successor corporation was really a continuation of the predecessor. He asked if the Supreme Court decided that Savage Arms was a continuation of Savage Industries.

MR. PEASE said Judge Link decided that there were fact issues to be examined and recognized two theories that might be applicable. One theory was the continuity of enterprise theory.

CHAIRMAN TAYLOR asked if that applied in this case.

MR. PEASE said it did not. He said the corporation that purchased the assets of Savage Industries was wholly owned by an international, publicly traded corporation called Challenger.

CHAIRMAN TAYLOR said he appreciated the hard work Mr. Pease and Mr. Powell had put in on HB 499. He wasn't convinced that HB 499 was appropriate but believed there should be some finality in the marketplace. He thought everyone would agree that liability should continue if the transaction fell under any of the exceptions under the Restatement (Third) of Torts.

SENATOR COWDERY asked if the corporation was purchased at a bankruptcy.

MR. PEASE said it was purchased from Chapter 11 bankruptcy proceedings with the approval of the bankruptcy court.

CHAIRMAN TAYLOR asked if there was anyone else who wished to testify on HB 499. There was nobody.

SENATOR COWDERY moved CSHB 499(JUD) out of committee with attached zero fiscal note and individual recommendations.

SENATOR ELLIS objected.

SENATOR DONLEY had not made up his mind about HB 499. He didn't know if he opposed moving it out of committee. He asked what Senator Ellis' objection was.

SENATOR ELLIS said he had a bad feeling about HB 499. He didn't think the committee understood the bill. He said the next committee of referral was the Senate Rules Committee and then the bill would be on the floor where a group of uninformed people would be asked to cast a vote on this complicated measure in the

closing days of session.

SENATOR DONLEY said he would not oppose moving HB 499 out of committee but he shared Senator Ellis' concerns.

Upon a roll call vote, Senators Donley and Cowdery and Chairman Taylor voted in favor of moving CSHB 499(JUD) out of committee and Senator Ellis voted in opposition. Therefore, CSHB 499(JUD) moved out of committee by a vote of three to one with attached zero fiscal note and individual recommendations.

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The next order of business before was HB 246.

#HB 246

### HB 246-OMNIBUS INSURANCE BILL

REPRESENTATIVE LISA MURKOWSKI, Chair of the House Labor & Commerce Committee, sponsor of HB 246, said the majority of HB 246 was technical cleanup language. She said there were a few policy provisions that she wanted to point out to the committee.

REPRESENTATIVE MURKOWSKI said the first policy provision related to multiple employer welfare arrangements (MEWAs). HB 246 would establish a more appropriate regulatory structure for MEWAs in regard to appropriate capital, surplus reserving and financial reporting requirements.

She said the second policy provision would establish tighter confidentiality of records laws so that Alaska would continue to be accredited by the National Association of Insurance Commissioners. She said there were sharing agreements to allow the Division of Insurance (DOI) to obtain information.

She said there would also be fees for late payment of premium taxes. She said there was also a provision that would allow an annual fee to operate as a joint insurance arrangement (JIA). She said there was probably an amendment relating to that provision.

CHAIRMAN TAYLOR asked if there were questions for Representative Murkowski. There were none.

He moved Amendment 1 to delete Sec. 52 on page 20, lines 12-22 and renumber the remaining sections accordingly. He said Sec. 52 added a new provision that would charge a fee against the pooling organizations created by the legislature for school districts and

municipalities. He said those were not regulated by DOI and there was no reason for DOI to charge them a fee. He asked DOI to provide testimony on Amendment 1.

MR. BOB LOHR, Director, DOI, Department of Community & Economic Development, said Sec. 52 addressed a very specific situation in which a JIA complained to DOI that the competing JIA was operating unfairly by doing things that weren't allowed under the JIA statutes. He said that had happened approximately four times. He said JIAs were not normally subject to regulation. He said DOI was being asked to be the gatekeeper for competitive forays by each JIA into the territory of the other by using Title 21 to define the boundary. He said those JIAs should pay the actual cost of that regulation. He said DOI was a fee-based agency and other fee payers were paying those costs. DOI was concerned that Sec. 52 had been drafted too broadly and he had a more narrowly crafted amendment to offer the committee.

CHAIRMAN TAYLOR said it seemed like the JIAs were simply asking DOI to do its job.

MR. LOHR said DOI was being asked to regulate the competitive playing field between JIAs. He said that was beyond their scope of regulation because they did not regulate JIAs.

CHAIRMAN TAYLOR said DOI didn't regulate JIAs but they did regulate the insurance business. He said if somebody tried to set up a phony insurance corporation and they received a complaint, he assumed they would enforce the insurance laws of the state.

MR. LOHR said that was correct.

CHAIRMAN TAYLOR thought Sec. 52 would have a chilling effect upon anyone wanting to turn to DOI for assistance and enforcement of the laws they were supposed to enforce.

MR. LOHR said it wasn't designed to have a chilling effect except when one JIA wanted DOI to regulate the other's conduct.

CHAIRMAN TAYLOR said that was DOI's purpose. He said that would be like going to the police to get a driver to slow down in a neighborhood and being charged to lodge the complaint. He thought that would have a tremendous chilling effect on anyone coming to DOI. He said it would be like charging a fee to file a complaint.

MR. LOHR said DOI didn't object to Amendment 1.

CHAIRMAN TAYLOR asked if there was any further discussion on Amendment 1. There was none. He asked if there was any

objection to Amendment 1.

There being no objection, Amendment 1 was adopted.

CHAIRMAN TAYLOR asked Mr. Kirk Wickersham to provide testimony.

MR. KIRK WICKERSHAM said he was a lawyer and a real estate broker. He said he was also the owner of a small title agency called Attorneys Title Guaranty. He offered an amendment to the committee. He said the amendment was the result of a variety of actions related to Attorneys Title Guaranty.

He said the legislature adopted a bundle of laws governing title insurance in 1974. He said AS 21.66.170 required title companies to prepare a title report before issuing a title insurance policy. He said AS 21.66.200 and AS 21.66.210 provided two methods by which to do that. He said AS 21.66.200 required title companies to have a title plant consisting of approximately 25 years of public records; that would equal about 11 million documents in Anchorage. He said AS 21.66.210 allowed companies to join together to form a joint title insurance company that would be allowed to use the public records.

MR. WICKERSHAM said Attorneys Title Guaranty and it's underwriter, Old Republic, formed a joint title company the previous summer, applied for and obtained a certificate of authority from DOI and started selling title insurance and doing title searches using the public records. He said complaints from other title companies resulted in a lawsuit that had been dismissed, a license action that was still pending and a bill that would clarify the law in the opposite direction of his proposal.

He said his amendment would grandfather Old Republic and Attorneys Title Guaranty to allow them to continue in the business. He said it would foster more competition in the industry. His company was able to offer price competition because they didn't have to build and maintain a copy of the public records.

CHAIRMAN TAYLOR asked how other companies could participate in the field if the amendment was adopted.

MR. WICKERSHAM said they could join the joint title company, which he was open to. He said he was advised not to propose an overall policy change, which was why he presented a grandfather amendment. He believed every skilled title examiner could do a title search from the public records.

CHAIRMAN TAYLOR asked if the other companies would be grandfathered in.

MR. WICKERSHAM said they would because they could either be or become a participant in or an owner of a joint title company.

CHAIRMAN TAYLOR asked if his joint title company was the only one that new companies could join.

MR. WICKERSHAM said that was a problem and that was why they had to create their own joint title company. He said there were only two joint title companies, theirs and the one owned by three of the four other title insurance companies in Anchorage

CHAIRMAN TAYLOR said grandfathering his joint title company would put him in a select group that had built their plants over the years. He said there wouldn't really be another option for a competing company to form and create a title plant in the same manner that he did.

MR. WICKERSHAM said that would be the effect of the amendment. He said he could also suggest a very simple amendment that would allow any two title companies to join and form a joint title plant.

CHAIRMAN TAYLOR asked what that would be.

MR. WICKERSHAM said the first sentence of AS 21.66.210(a) provided that two or more title insurance companies or limited producers could join together to form a joint title company for the purposes of producing title searches. He said the second sentence provided that a title insurance company or a limited producer that belonged to a joint title company that complied with AS 21.66.210 was in compliance with the section. He said the amendment would simply include AS 21.66.200 in that compliance. He said that would end the controversy and allow anybody to form a joint title company. It would also bring Alaska into conformance with 39 other states that did not have title plant requirements.

CHAIRMAN TAYLOR asked Mr. Wickersham to work with Mr. Lohr and Representative Murkowski to work out that amendment and come back to the committee. He asked if the committee had any objection to Mr. Wickersham's approach. He said he would rather provide a more generic solution than try to pass an amendment that would only take care of one operator and wouldn't provide opportunities in the future for expansion in the field.

SENATOR ELLIS asked if the new amendment would make the one Mr. Wickersham passed out unnecessary.

CHAIRMAN TAYLOR said it would.

MR. LOHR said there was an adjudicatory matter pending in front of DOI in which Mr. Wickersham's company was appealing a cease and desist order. He would be the ultimate decision-maker for that matter. He said he needed to maintain distance from the issue and could not work with Mr. Wickersham on the amendment.

CHAIRMAN TAYLOR said that was appropriate and apologized for making the request. He hoped that Mr. Lohr's decision would be easier to make if they passed the amendment.

MR. WICKERSHAM said the cease and desist order was not against his company; it was against the underwriter.

CHAIRMAN TAYLOR said he understood that. He asked Mr. Jerry Reinwand to provide testimony.

MR. JERRY REINWAND, Blue Cross/Blue Shield of Alaska, said he wanted to present two technical amendments that had been worked out between Blue Cross/Blue Shield and DOI. He said the committee should have those amendments in their packets. He said the first amendment dealt with AS 21.42.365(b).

MR. LOHR said the proposed amendment related to the timing of adjusting the cost inflation factor for the statutorily described benefits for alcoholism and drug abuse treatment services provided under insurance plans. He said it would avoid the problem of having to amend policies already in place to include the increases. He said policies starting after the date of the inflation adjustment by DOI would be affected. He said DOI supported the amendment.

CHAIRMAN TAYLOR asked if it would make regulation easier for DOI.

MR. LOHR said it would.

MR. REINWAND said the second amendment dealt with an error that was made in Blue Cross/Blue Shield's favor and would change the law back to the way it was intended to be. He said they worked with Representative Pete Kott on a bill regarding retaliatory taxes several years ago. He said they asked for some relief for the public entities covered by Blue Cross/Blue Shield that shouldn't be charged retaliatory taxes. He said there was a mistake made in the drafting of that amendment at the end of session that expanded what was intended. He said the proposed amendment would narrow that provision back to the intent. The existing law could be interpreted in such a way that Blue Cross/Blue Shield didn't have to pay retaliatory taxes.

MR. LOHR said Blue Cross/Blue Shield had acted honorably in accord with the original intent.

CHAIRMAN TAYLOR asked if Mr. Lohr recommended the proposed amendment.

MR. LOHR said yes.

CHAIRMAN TAYLOR said the first proposed amendment would be Amendment 2 and the second proposed amendment would be Amendment 3.

MR. REINWAND said Blue Cross/Blue Shield and DOI were involved in a lawsuit and the proposed amendments would not affect that lawsuit in any way.

CHAIRMAN TAYLOR asked if Mr. Lohr agreed.

MR. LOHR said he did.

SENATOR ELLIS moved Amendment 2 to replace "January 1, 1999" with "July 1, 2004" on page 14, lines 30-31 and add to page 15, line 4 the language, "The adjusted benefits shall be applicable to coverage issued or renewed on or after January 1 of the calendar year following the July 1 adjustment by the Director."

There being no objection, Amendment 2 was adopted.

SENATOR ELLIS moved Amendment 3 to replace the language on page 7, lines 19-23 with the following language:

(f) For purposes of the application of subsection (a) of this section, a health care insurer may not include taxes, assessments, or other similar obligations on health care insurance premiums received from the state, a municipality, a city or borough school district, a regional educational attendance area, the University of Alaska, or a community college operated by the University of Alaska. For purposes of this paragraph, "health care insurer" has the meaning given in AS 21.54.500.

There being no objection, Amendment 3 was adopted.

SENATOR ELLIS moved Amendment 4 to amend AS 21.66.210(a) to read:

(a) Two or more title insurance companies or two or more title insurance limited producers, or a combination of title insurance companies and title insurance limited producers, may apply to the director of insurance to form an association, corporation, or other legal entity, for the purpose of engaging in the business of preparing abstracts of title searches from

public records or from records to be owned by the entity, upon the basis of which a title insurance limited producer or a title insurance company will issue title policies. The owners or participants are considered to be in compliance with the provisions of this section and AS 21.66.200 if the title plant of the association, corporation, or other legal entity complies with the provisions of this section. The application must contain

(1) a copy of the proposed articles of incorporation or association and the bylaws or agreement governing the operation of the entity;

(2) a list of the owners or participants;

(3) the names and addresses of the persons who will operate the entity, with a description of their experience and qualifications;

(4) the conditions under which ownership or participation in the entity may be sold or acquired;

(5) a statement of whether or not title information will be compiled and sold to persons other than owners of or participants in the entity;

(6) a pro forma balance sheet and other financial information to indicate the sufficiency of financing the entity.

CHAIRMAN TAYLOR asked Mr. Wickersham to explain Amendment 4.

MR. WICKERSHAM said Amendment 4 would resolve the situation he previously described. He said AS 21.66.200 required a title company to own a title plant while AS 21.66.210 gave title companies the option of joining with another title company to form a joint title company to use public records. He said the Attorney General and DOI had taken the position that even if the public records were used, a title company was not exempt from the provisions of AS 21.66.200. Therefore, these companies would still have to make a copy of the public records. He said Amendment 4 would allow any two title companies or limited producers, or any combination thereof, to form their own joint title company and use public records and be in compliance with AS 21.66.200.

He thought this was good law and good public policy. He said it would bring price competition to the field and would be good for the consumers of Alaska.

6:55 p.m.

REPRESENTATIVE MURKOWSKI stated for the record that Amendment 4 would be a significant public policy change. She said Alaska was

a title plant state and Amendment 4 would make it a non-title plant state. She said the discussion was very similar to the discussion before the House Labor & Commerce Committee. She said being a non-title plant state would open Alaska up for competition and hopefully there would be some price reductions.

CHAIRMAN TAYLOR appreciated the background she provided. He knew she had worked on the issue in the past and was sure that it was a controversial issue. He asked if there was any further discussion on Amendment 4.

SENATOR ELLIS was even more excited to be the sponsor of Amendment 4 after hearing what Representative Murkowski had to say. He looked forward to the committee's support.

CHAIRMAN TAYLOR said Amendment 4 had his support. He withdrew his objection to Amendment 4.

There being no objection, Amendment 4 was adopted.

SENATOR COWDERY moved SCS CSHB 246(JUD) out of committee with attached zero fiscal note and individual recommendations.

There being no objection, SCS CSHB 246(JUD) moved out of committee with attached zero fiscal note and individual recommendations.

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The final order of business before the committee was HB 252.

#HB 252

**HB 252-CHILDREN IN NEED OF AID: SERVICES & LIAB.**

6:59 p.m.

CHAIRMAN TAYLOR said the committee had a work draft (Version U) of HB 252. He asked if Representative John Coghill was familiar with Version U.

REPRESENTATIVE JOHN COGHILL, sponsor of HB 252, said he was.

CHAIRMAN TAYLOR asked if Representative Coghill would prefer that the committee work it.

REPRESENTATIVE COGHILL said he would but wanted to make a minor adjustment to it.

SENATOR ELLIS moved Version U as the working document before the

committee.

There being no objection, Version U was adopted as the working document before the committee.

REPRESENTATIVE COGHILL said HB 252 dealt with Title 47 dealing with protection of children. He said children had been emphasized to the point that parents were being excluded from the process. He said HB 252 attempted to include parents with the intent language and the construct language in Sec. 2. He said there was new language on page 2 that would allow the parents to participate in the child's upbringing once the child was in the jurisdiction of the court if it was within the best interest of the child. He felt that was appropriate.

CHAIRMAN TAYLOR asked if he had an amendment to present to the committee.

REPRESENTATIVE COGHILL said the words "by the department" should be struck on page 5, line 4 because that would specify the Department of Health & Social Services. He said many agencies, including local police officers, were involved in these situations.

CHAIRMAN TAYLOR moved Amendment 1 to strike the words "by the department" on page 5, line 4. He asked if there was any objection to Amendment 1.

There being no objection, Amendment 1 was adopted.

CHAIRMAN TAYLOR asked if there were any other changes Representative Coghill wished to make.

REPRESENTATIVE COGHILL said there were none.

CHAIRMAN TAYLOR asked Ms. Susan Cox to provide testimony.

**TAPE 02-30, SIDE A**

7:02 p.m.

MS. SUSAN COX, Assistant Attorney General, Civil Division, DOL, said HB 252 had been changed many times by many committees in the House of Representatives. She said Amendment 1 and the other changes made in the work draft were acceptable to DOL.

SENATOR ELLIS asked about the word "construction" on page 1, line 1 in the title. He said he had never seen that term in a title

before.

CHAIRMAN TAYLOR said it meant the intent. He said the word "construction" was often used in terms of how the law would be construed, not how it was drafted or developed.

REPRESENTATIVE COGHILL said there were so many new provisions in Title 47 that they began with the construction language.

CHAIRMAN TAYLOR asked if the changes to Version U would require a title change.

REPRESENTATIVE COGHILL said they would not.

CHAIRMAN TAYLOR asked if there was any further discussion on HB 252. There was none. He asked if there was anybody else who wished to testify on HB 252. There was nobody.

SENATOR COWDERY moved SCS CSHB 252(JUD) out of committee with attached zero fiscal notes and individual recommendations.

There being no objection, SCS CSHB 252(JUD) moved out of committee with attached zero fiscal notes and individual recommendations.

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The Senate Judiciary Committee recessed to the call of the chair.