ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
February 9, 2004
1:04 p.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson, Vice Chair
Representative Jim Holm
Representative Dan Ogg
Representative Ralph Samuels
Representative Les Gara
Representative Max Gruenberg (via teleconference)

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 340
"An Act relating to damages in an action for a defect in the design, construction, and remodeling of certain dwellings; and providing for an effective date."

- MOVED CSHB 340(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 397
"An Act relating to defense contacts with and recordings of statements of victims or witnesses; and amending Rule 16, Alaska Rules of Criminal Procedure."

- MOVED CSHB 397(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 349
"An Act amending Rule 412, Alaska Rules of Evidence."

- MOVED CSHB 349(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 357
"An Act relating to restitution; and providing for an effective date."

- RESCINDED ACTION OF 1/30/04; MOVED NEW CSHB 357(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 227
"An Act increasing the jurisdictional limit for small claims and for magistrates from $7,500 to $10,000; increasing the jurisdictional limit of district courts in certain civil cases from $50,000 to $75,000; and amending Rule 11(a)(4), Alaska District Court Rules of Civil Procedure, relating to service of process for small claims."

- MOVED CSHB 227(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 342
"An Act relating to driving while intoxicated; and providing for an effective date."

- BILL HEARING POSTPONED

HOUSE BILL NO. 367
"An Act relating to the licensing and regulation of sex-oriented businesses and sex-oriented business entertainers; relating to protection of the safety and health of and to education of young persons who perform in adult entertainment establishments; and providing for an effective date."

- BILL HEARING POSTPONED TO 2/16/04

HOUSE BILL NO. 414
"An Act relating to filling the vacancy in the office of United States senator, and to the definition of 'political party.'"

- BILL HEARING POSTPONED TO 2/16/04

PREVIOUS COMMITTEE ACTION

BILL: HB 340
SHORT TITLE: DAMAGES IN CONSTRUCTION CLAIMS
SPONSOR(S): REPRESENTATIVE(S)MEYER

01/12/04	(H)	PREFILE RELEASED 1/2/04
01/12/04	(H)	READ THE FIRST TIME - REFERRALS
01/12/04	(H)	L&C, JUD
01/23/04	(H)	L&C AT 3:15 PM CAPITOL 17
01/23/04	(H)	Moved CSHB 340(L&C) Out of Committee
01/23/04	(H)	MINUTE(L&C)
01/26/04	(H)	L&C RPT CS(L&C) 1DP 4NR
01/26/04	(H)	DP: ANDERSON; NR: CRAWFORD, LYNN,
01/26/04	(H)	GATTO, GUTTENBERG
02/04/04	(H)	JUD AT 1:00 PM CAPITOL 120

02/04/04 (H) -- Meeting Canceled --
02/09/04 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 397
SHORT TITLE: DEFENSE CONTACTS WITH VICTIMS & WITNESSES
SPONSOR(S): REPRESENTATIVE(S) MCGUIRE

01/23/04 (H) READ THE FIRST TIME - REFERRALS
01/23/04 (H) JUD
01/26/04 (H) JUD AT 2:00 PM CAPITOL 120
01/26/04 (H) Scheduled But Not Heard
01/30/04 (H) JUD AT 1:00 PM CAPITOL 120
01/30/04 (H) Heard & Held
01/30/04 (H) MINUTE(JUD)
02/04/04 (H) JUD AT 1:00 PM CAPITOL 120
02/04/04 (H) -- Meeting Canceled --
02/09/04 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 349
SHORT TITLE: ILLEGALLY OBTAINED EVIDENCE
SPONSOR(S): REPRESENTATIVE(S) SAMUELS, MCGUIRE, STOLTZE, DAHLSTROM

01/12/04 (H) PREFILE RELEASED 1/2/04
01/12/04 (H) READ THE FIRST TIME - REFERRALS
01/12/04 (H) JUD
01/26/04 (H) JUD AT 2:00 PM CAPITOL 120
01/26/04 (H) Heard & Held
01/26/04 (H) MINUTE(JUD)
02/02/04 (H) JUD AT 1:00 PM CAPITOL 120
02/02/04 (H) Scheduled But Not Heard
02/04/04 (H) JUD AT 1:00 PM CAPITOL 120
02/04/04 (H) -- Meeting Canceled --
02/09/04 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 357
SHORT TITLE: RESTITUTION
SPONSOR(S): REPRESENTATIVE(S) SAMUELS, STOLTZE, MCGUIRE, DAHLSTROM

01/12/04 (H) PREFILE RELEASED 1/2/04
01/12/04 (H) READ THE FIRST TIME - REFERRALS
01/12/04 (H) JUD
01/26/04 (H) JUD AT 2:00 PM CAPITOL 120
01/26/04 (H) Heard & Held
01/26/04 (H) MINUTE(JUD)
01/30/04 (H) JUD AT 1:00 PM CAPITOL 120

01/30/04	(H)	Moved CSHB 357(JUD) Out of Committee
01/30/04	(H)	MINUTE(JUD)
02/04/04	(H)	JUD AT 1:00 PM CAPITOL 120
02/04/04	(H)	-- Meeting Canceled --
02/09/04	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 227
SHORT TITLE: DISTRICT COURTS & SMALL CLAIMS
SPONSOR(S): JUDICIARY

03/28/03	(H)	READ THE FIRST TIME - REFERRALS
03/28/03	(H)	L&C, JUD
05/14/03	(H)	L&C AT 3:15 PM CAPITOL 17
05/14/03	(H)	Scheduled But Not Heard
05/16/03	(H)	L&C AT 3:15 PM CAPITOL 17
05/16/03	(H)	-- Meeting Canceled --
05/17/03	(H)	L&C AT 12:00 AM CAPITOL 17
05/17/03	(H)	-- Meeting Postponed --
01/21/04	(H)	L&C AT 3:15 PM CAPITOL 17
01/21/04	(H)	Moved Out of Committee
01/21/04	(H)	MINUTE(L&C)
01/23/04	(H)	L&C RPT 3DP 3NR 1AM
01/23/04	(H)	DP: GUTTENBERG, GATTO, ANDERSON;
01/23/04	(H)	NR: DAHLSTROM, LYNN, CRAWFORD;
01/23/04	(H)	AM: ROKEBERG
01/23/04	(H)	FIN REFERRAL ADDED AFTER JUD
02/02/04	(H)	JUD AT 1:00 PM CAPITOL 120
02/02/04	(H)	Scheduled But Not Heard
02/04/04	(H)	JUD AT 1:00 PM CAPITOL 120
02/04/04	(H)	-- Meeting Canceled --
02/09/04	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE KEVIN MEYER
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of HB 340.

DAVE DILLARD, Owner
3-2-1 Construction, Inc.
Fairbanks, Alaska
POSITION STATEMENT: Provided comments and responded to questions during discussion of HB 340.

STEVE ORR
Wasilla, Alaska

POSITION STATEMENT: Provided comments and responded to a question during discussion of HB 340.

JESS HALL, National Representative
Area 15 Vice President
Alaska State Home Builders Association (ASHBA)
Palmer, Alaska
POSITION STATEMENT: Provided comments and responded to questions during discussion of HB 340.

SIDNEY K. BILLINGSLEA, Attorney
Alaska Academy of Trial Lawyers (AATL)
Anchorage, Alaska
POSITION STATEMENT: Provided comments during discussion of HB 340.

JEFF DeSMET
Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 340 and responded to questions.

KELLY STEPHENS, Owner
Superior Builders, Inc.
Juneau, Alaska
POSITION STATEMENT: During discussion of HB 340, testified in support of HB 340 and in opposition to HB 289.

ROBIN WARD, Legislative Chair
Alaska State Home Builders Association (ASHBA)
Anchorage, Alaska
POSITION STATEMENT: During discussion of HB 340, provided comments and responded to questions, and spoke in opposition to HB 289.

SARA NIELSEN, Staff
to Representative Ralph Samuels
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: During discussion of HB 349, presented information on Version H and responded to questions on behalf of Representative Samuels, one of the prime sponsors of HB 349; discussed two amendments to HB 357 on behalf of Representative Samuels, one of the prime sponsors of HB 357.

STEPHEN BRANCHFLOWER, Director
Office of Victims' Rights (OVR)
Alaska State Legislature

Anchorage, Alaska
POSITION STATEMENT: During discussion of HB 349, answered questions.

DOUG WOOLIVER, Administrative Attorney
Administrative Staff
Office of the Administrative Director
Alaska Court System (ACS)
Anchorage, Alaska
POSITION STATEMENT: During discussion of HB 357, answered questions; related concerns with regard to HB 227.

VANESSA TONDINI, Staff
to Representative Lesil McGuire
House Judiciary Standing Committee
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Answered questions during discussion of HB 227, which was sponsored by the House Judiciary Standing Committee.

EILEEN McVEY
(No address provided)
POSITION STATEMENT: During discussion of HB 227, testified in support of increasing [the small-claims jurisdictional limit] from $7,500 to $10,000 or greater.

ACTION NARRATIVE

TAPE 04-11, SIDE A
Number 0001

CHAIR LESIL McGUIRE called the House Judiciary Standing Committee meeting to order at 1:04 p.m. Representatives McGuire, Holm, Ogg, Samuels, and Gara were present at the call to order. Representatives Anderson and Gruenberg (via teleconference) arrived as the meeting was in progress.

HB 340 - DAMAGES IN CONSTRUCTION CLAIMS

[Contains reference to HB 151; contains testimony in opposition to HB 289.]

Number 0042

CHAIR McGUIRE announced that the first order of business would be HOUSE BILL NO. 340, "An Act relating to damages in an action

for a defect in the design, construction, and remodeling of certain dwellings; and providing for an effective date." [Before the committee was CSHB 340(L&C).]

Number 0081

REPRESENTATIVE KEVIN MEYER, Alaska State Legislature, sponsor, said that HB 340 limits the damages that can be awarded in a construction defect lawsuit to the actual cost of fixing the construction defect and other closely related costs such as reasonable temporary housing expenses during the repair of the defect, any reduction in market value cause by the defect, and reasonable and necessary attorney fees. House Bill 340 does not apply to, limit, or otherwise affect lawsuits alleging personal injury or wrongful death resulting from construction defects. He referred to the bill as a necessary and significant step towards assisting homebuilders and contractors in obtaining affordable and necessary liability insurance, which affects the actual cost of a house because builders will pass those insurance costs on to the [homebuyer]. Such costs do not add any value to the home; they simply raise its cost.

CHAIR McGUIRE asked Representative Meyer whether he could guarantee that passage of HB 340 will lower the cost of home prices.

REPRESENTATIVE MEYER said he could not because there are a lot of factors that go into the cost of a new home. He suggested, however, that HB 340 will affect insurance costs, which is a factor in the cost of a home. He relayed that according to information from Nevada, for every $1,000 increase in the cost of [a home], 1,400 people no longer qualify for [a home loan]. Since 2001, the cost of general liability insurance has been going up while its availability has been declining; thus many builders are unable to purchase adequate insurance even though they are required to under current law. Currently, there are only two "national providers" willing to provide general liability insurance in Alaska: A conglomerate of companies that offer surplus lines [of insurance], and Alaska National Insurance Company (ANIC).

REPRESENTATIVE MEYER surmised that a couple of reasons for the dearth of providers in Alaska is that the market is so small that insurance providers don't even want to "mess with it," and that Alaska has a very dangerous construction environment. He offered his hope that HB 340 will assist in making Alaska and Alaska's homebuilders more attractive to insurance companies,

which in turn will benefit consumers because there is some concern that if builders cannot get insurance, they will simply build without it. He relayed that according to Alaska Economic Trends, since 1989, construction has provided more certainty and more steadiness to the state's economy than most other industries, especially with regard to overall employment and growth. Therefore, he surmised, if there are fewer insurance companies and [thus] fewer people building homes, then that will impact Alaska's economy.

Number 0369

REPRESENTATIVE MEYER noted that there are other states that have either passed legislation similar to HB 340, or are considering such legislation. In conclusion, he offered that HB 340 - coupled with HB 151, which he described as the right to cure - is a necessary and final step towards getting insurance companies to come back to Alaska; HB 340 provides that if the homeowner cannot get the problem corrected and has to go to court, the damages that can be awarded will be limited. He relayed that he has been told by an insurance provider that although the right to cure is a good first step, a bill that limits the damages that can be awarded is necessary and of more interest to providers.

REPRESENTATIVE GARA said that philosophically, he tends to have a hard time telling people that they can't recover their full actual damages. He asked what damages HB 340 is supposed to prevent people from recovering.

REPRESENTATIVE MEYER suggested that HB 340 would prevent people from recovering damages for items unrelated to the home or its construction; for example, damage awards for emotional stress.

REPRESENTATIVE GARA asked whether the insurance industry has indicated that passage of HB 340 would result in reductions in insurance rates and, if so, how much might those reductions be. "Have they made any commitments?" he asked.

REPRESENTATIVE MEYER said that the insurance industry has not made any such commitments to him. Instead, he has only been told that if HB 340 were in place, Alaska would be more attractive to insurance providers.

CHAIR McGUIRE opined that it would be nice if the insurance industry would weigh in on these issues in committee. It is very frustrating, she added, when taking on issues of tort

reform, to never be provided any information from the insurance industry.

Number 0682

DAVE DILLARD, Owner, 3-2-1 Construction, Inc., relayed that at the end of the year, he was having to look for new insurance, both liability and workers' compensation. His former insurance provider of almost 18 years, State Farm, has completely pulled out of Alaska because of costs and "mold issues" in California. Last year, he said, he paid $6,500, and this year he was given a quote of $20,000 [for the same coverage]; this quote was then refigured to $50,000. He said that there is no way he could pass those costs on to his consumers. Additionally, the cost of his workers' compensation insurance went from 14 percent to 21 percent.

MR. DILLARD suggested that HB 340, along with other legislation, will make Alaska more [attractive to] the insurance industry, and noted that his current insurance, although more reasonable, is still twice what he paid last year and doesn't "cover" his shop. He warned that if insurance prices continue to rise, it will limit the number of people who can afford to build houses, which will in turn drive the cost of homes up. If there is a problem with a home, it is the builder's responsibility to fix it, but the Alaska market must be made more competitive so that insurance providers will return to Alaska and offer decent rates. In response to questions, he said that he'd never had a liability claim filed against him, and again suggested that State Farm pulled out of Alaska due to mold issues in California and Alaska's lack of a liability cap for damages.

CHAIR McGUIRE surmised, then, that State Farm's pulling out of Alaska wasn't due to the number of claims filed in Alaska, rather it was due to the possibility of being exposed to limitless damages.

MR. DILLARD concurred.

REPRESENTATIVE GARA pointed out that the insurance industry was using just such an excuse in 1988 before tort reform took place, and again in 1996, and so more tort reform took place. But even after twice enacting tort reform measures in the past, there has never been any demonstrable reduction in insurance rates. So why would doing it a third time have a different result, he asked, and how will limiting damages in non personal-injury cases lower rates?

MR. DILLARD opined that the first step is getting insurance providers back in Alaska; once they are providing insurance to Alaskans again, then there can be discussion about lowering prices.

REPRESENTATIVE GARA noted that in workers' compensation claims, one is not entitled to recover for pain and suffering, yet those rates are also going up. Thus, he suggested, rates are going up for reasons other than the award of pain and suffering damages, though that is not to discount the problems faced by Mr. Dillard and others in the home building industry.

REPRESENTATIVE ANDERSON said he believes in the bill and agrees with Mr. Dillard's comments. He suggested that when people sue for damages caused by defects, they often attempt to recover more than the value of what was corrected.

MR. DILLARD concurred, and reiterated that he has never been sued.

Number 1177

STEVE ORR, after noting that he is an "entry local builder" in the Matanuska-Susitna ("Mat-Su") valley - the Wasilla/Palmer area - testified that he, too, has experienced higher insurance rates in the last year: general liability insurance that used to cost him $8,000 now costs him $80,000. This does nothing for the homes he builds except to make them more expensive - thus taking a few people out of the market. He opined that Alaska needs to slow down the progression of rising insurance rates, which he described as a national problem, adding that he doesn't want to see anybody left without the ability to go to court and that he sees no harm coming from passage of HB 340. He suggested that nuisance cases overshadow legitimate cases.

REPRESENTATIVE GARA asked Mr. Orr how many times he has been sued for pain and suffering in a case that didn't involve personal injury.

MR. ORR said that someone tried to do so once.

Number 1303

JESS HALL, National Representative, Area 15 Vice President, Alaska State Home Builders Association (ASHBA), after relaying that he has been building homes for 25 years, said that HB 340

together with HB 151 make a complete package designed to address what he called a crises in liability insurance rates and availability. He described this problem is a national problem, adding that his rates, too, have gone up approximately 800 percent, and this increase is not something that builders wish to pass on to consumers. He pointed out that even though builders are paying between 500 percent and 800 percent more for general liability policies, the coverage of those policies is only about one-fourth of what it used to be even just two years ago.

MR. HALL suggested that when a builder is taken to court to redress a construction defect, the attorneys have always viewed the insurance companies as being the pocket to go to if the builder wouldn't cure the defect. However, current policies, except for bodily injury, now exempt most things that a builder can be sued for, thus leaving the builder with the burden. He characterized current policies as providing mere license insurance, since, in order to get a contractor's license, one must have a liability policy; however, when a liability policy doesn't really cover liability, builders are left with "self insurance." He remarked that HB 340 is important in that if there is a lawsuit, only actual damages can be recovered, and predicted that lawsuits for punitive damages will result in builders filing for bankruptcy, which will in turn leave the consumers with no one to seek recourse from.

MR. HALL predicted that adoption of HB 340 [and HB 151] will let all parties know, up front, that if there is a problem, the problem needs to be corrected. In conclusion he said that adoption of HB 340 is an important step that needs to be taken.

CHAIR McGUIRE referred to page 2, lines 28-30, and mentioned that proposed AS 09.45.895(b) appears to disallow the damages that could be recovered via proposed AS 09.45.895(a)(1)-(4) if they exceed the greater of the claimant's purchase price for the residence or the current fair market value of the residence without the defect. In other words, subsection (b) appears to place an additional limit on the compensation allowed for in subsection (a); thus, even if a claimant is entitled to damages allowed for in subsection (a), if they exceed the amount specified in subsection (b), he/she will not be awarded that excess amount. She said that she supports the idea of excluding punitive damages and limiting awards to those things that are "compensatory and ... reasonable."

Number 1684

REPRESENTATIVE HOLM relayed a personal experience in which he had to go to court to get redress for a construction defect in his home; the attorney fees for both sides combined far exceeded not only the cost of fixing the problem but also the value of the home. Noting that proposed AS 09.45.895(a)(4) allows compensation for "reasonable and necessary attorney fees", he asked who would be making the determination of "reasonable" with regard to attorney fees, particularly given the fact that many insurance companies have a seemingly endless pocket when it comes to paying attorneys to fight their case, whereas a homeowner might not have that kind of financial leeway. He indicated that he wants the limitations set forth in HB 340 to be fair, but he is not sure that limiting compensation to just the value of the home would be fair.

CHAIR McGUIRE suggested as a solution simply removing proposed AS 09.45.895(b) altogether.

MR. HALL, in response to questions, reiterated his view that HB 340 is an important step towards relieving what he termed a crises in Alaska - the lack of insurance providers willing to underwrite in this state - and his earlier comments pertaining to builders now having to shoulder the burden of liability even when they succeed in purchasing what providers are now calling liability insurance. He suggested that passage of HB 340 and HB 151 will entice insurance providers into coming back to Alaska.

REPRESENTATIVE OGG said he is concerned that HB 340 does not currently address situations of willful or intentional [misconduct], malicious conduct, or fraud on the part of the builder. In those situations, he opined, the limitations set forth in HB 340 should not apply.

MR. HALL suggested that such conduct is addressed elsewhere in statute, adding that he agrees that fraudulent behavior should be addressed differently than instances of defective construction due to mistakes, though he would want to see any proposed language change addressing that issue before having it included in HB 340.

Number 2126

SIDNEY K. BILLINGSLEA, Attorney, Alaska Academy of Trial Lawyers (AATL), offered the following comments on HB 340:

This law comes into effect when builders and remodelers and contractors do bad work. The question seems to be whether or not they can get affordable insurance to cover the possibility of them doing bad work that needs to be compensated for. There [has] historically been absolutely no correlation whatsoever between tort reform if you will, or lawsuit reform, and the reduction of insurance rates, primarily because the insurance industry is, historically, a cyclical industry that is tied to the market - tied to the stock market. Insurance companies, historically, invest their premiums into the market place and, for example, in the 1990s, no insurer could fail in the market; the insurance premiums can either hold fast or be reduced so that the insurers can get a larger share of the market, by cutting their prices, and still make a lot of money on their investments.

When the stock market declines, as it did, insurers no longer [have] the huge cash reserves they once had, and they go to the insured - their customers - to get those funds restored by raising their premiums. When their coffers are rebuilt by increased premiums, they can then reinvest in the stock market and go back into a competitive industry, where they can reduce premiums to get yet a larger share of the market of consumers, because some insurance companies won't have large enough reserves to survive the falling markets. And the larger insurance companies who do survive will then exploit that gap in the market and reduce their premiums in order to get a larger share of the consumers that are left. Unfortunately, what happens is that the insurers become somewhat tolerant of the higher prices of their premiums, and the premium costs don't, necessarily, drop to below the rate they were when the markets were fat.

Number 2237

The other observation I have about this particular bill is that [subsection] (b) takes away all the awards of [subsection] (a), because, as [Chair McGuire] observed a little bit earlier, what if the cost of (a) exceeds the value of (b) that's awarded: You don't get recovery for the provisions in (a), if that happens, under the way this proposed law is written. The other thing it doesn't account for is

> the loss of personalty that would occur if a house is damaged due to bad construction, remodeling, or other defects that the bill covers or is intended to cover. So, if I were to make a claim on my ... personal homeowners' insurance policy for the personalty I lost - my stereo, my rugs, my furniture, et cetera, my car - my insurance policy would be canceled or my premiums would be increased through no fault of my own but through, in fact, the fault of a negligent builder.

MS. BILLINGSLEA concluded:

> So, I don't think the law is helpful to consumers; in fact, it's only helpful to one industry, and that's the insurance industry who - I can tell you, and you know from two rounds of tort reform - have never responded with a decrease in premiums. They've never made a promise to decrease their premiums and they've never come through, nor do they actually testify that they will, and the reason that they don't is because ... the insurance company can't make that kind of promise in the way they operate in this cyclical market-driven economy. Thank you very much.

Number 2356

JEFF DeSMET noted that he has been a builder and remodeler in Juneau since 1977, and that he is considering retiring. He said he supports HB 340 in the interest of doing whatever it takes to bring the cost of construction down so that those costs don't have to be passed on to the homeowners and so that there is at least an attempt at providing affordable housing during what he termed "this crisis." He noted that he, too, was dropped from State Farm after many years, and that he is now paying double for less [liability] insurance and paying 20 percent for workers' compensation insurance, the cost of which, he's been told, will increase next month.

TAPE 04-11, SIDE B
Number 2395

MR. DeSMET added that he is at this hearing to support the rest of the homebuilding industry in whatever needs to be done to attract affordable insurance [to Alaska]. He went on to say:

> It's difficult enough to get people that are qualified, good builders that don't have claims, don't

> fraudulently represent their work, they're interested in building affordable, quality, healthy houses. And I'm here to testify to that, not so much in detail as to the bill, but anything that would bring the competitive insurance market back to the state of Alaska I'm in support of ....

MR. DeSMET also said:

> I see this as being more of a problem ... with licensing and enforcement, [which] we don't really have right now because we are in a crisis, ... [and] trying to have enforcement paid for. I think all the builders that are on line ... would be in favor of increased fees if, in fact, we would get some enforcement. Unfortunately, I think builders like myself, who've never had claims and try to ... build quality homes, fall victim to those that are the fraudulent ones that are operating either under handyman licenses or with no license whatsoever. And ultimately, those end up in court in litigation and, unfortunately, the whole industry has to pay for those.

MR. DeSMET, in response to questions, suggested that professional homebuilders would support enhancing enforcement through the bill in order to prevent fraudulent and unqualified builders from getting into the field to begin with.

REPRESENTATIVE ANDERSON suggested that the possibility of being sued for pain and suffering might be deterring new people from getting into the construction field.

MR. DeSMET indicated agreement, adding he would counsel his son against going into the construction business because it is no longer profitable; "we can't pass ... those excessive costs on until we have some assurance ... that ... the insurance coffers are back up to full mark, where they can go back [and] start offering competitive rates." He suggested that HB 340 is a proactive stance that may encourage the insurance industry to at least justify its high premiums if not actually lower them.

Number 2182

KELLY STEPHENS, Owner, Superior Builders, Inc., relayed that he agrees with and supports HB 340 100 percent. Even though no one can guarantee that insurance premiums will go down, he remarked,

hopefully things can be done to attract insurance companies back to Alaska so that more competitive rates become available. With only two insurance providers serving Alaska, there is no way that insurance rates will drop, he added. He noted that the cost of his builder's insurance is no longer just a percentage of the cost of a home he builds; it is now "a line figure" that gets added to the list of what the purchaser is paying for when buying a home. In response to a question, he predicted that not passing HB 340 will encourage more builders to lie in order to get insurance or to do without insurance because insurance costs are so high. The problem with lying to get insurance, of course, is that it voids the policy should something happen. He, too, suggested that attention should be given to the issue of enforcement.

MR. STEPHENS, in response to a question regarding HB 289, said he does not support that bill because people will think that contractors have deep pockets; additionally, there is the likelihood that it will leave young people with no chance to get into the industry. Returning to the issue of HB 340, he said that the increases in insurance costs make it very difficult to stay in business.

Number 1947

ROBIN WARD, Legislative Chair, Alaska State Home Builders Association (ASHBA), offered:

> First of all, this is absolutely an insurance bill; this is our main thrust here. We are one of 28 states who have either just recently or over the last two years ... adopted ... a "right to repair" bill. This is the next section of this. There are 14 of us ... across the United States that are doing this piece of it. We can't do it alone; we are a very, very small market. We are painted with the brush from national markets. So we are actually working in concert with other associations to do this very piece.
>
> Second of all, this bill is meant to keep, and help keep, our good builders in business, but not to protect our bad ones. If we need to, under exemptions - with, of course, the approval and support of our sponsor - ... go back and clarify that fraud and gross negligence need to be exceptions, we don't have a problem with that; we don't want to protect our bad builders, so if we need to ... clarify that, I don't

have a problem with doing that. This is all about making sure that our good builders stay in business.

I'm a 23-year insured of State Farm - never, not one claim in 23 years; every contractor in the United States has been canceled by State Farm .... It was no longer a profitable line for them. ... And that's not the only one. Lots of insurance companies have realized that. Because there is no cap on the upper risks, they have canceled and gone out of markets. So ... right now, even affordability isn't our biggest question - accessibility is. We have to create a market they will come back to, and this is the first step, is to make it a little more friendly environment for them to work in - then we can start negotiating some rates.

Number 1857

MS. WARD continued:

So this is what we're trying to do, in concert with the rest of the United States, to create a better market for our whole entire industry. We [also] do not ... have a problem - again, with the support and approval of our sponsor - [with] taking out the cap on the top limit of the house. If you were to go down today and ... replace your vehicle through the [National Automotive Parts Association] NAPA parts department, it would cost you three or four times the cost of the original vehicle. That's just the way it is. So if it exceeds that, as long as it's actual damages and reasonable costs, we don't have a problem with that. So, hopefully, that will take [care of] a couple of concerns.

And then finally I just want to address the bonding [HB 289]. We are not in favor of that for exactly the same reasons you are. ... We had a concern four or five years ago about people being able to get into the business with almost no capital and no experience. And we've worked hard [on] our continuing education. A general contractor today can go build a school without any education, but a residential endorsement requires, to build a house, that we have to have continuing [education] and certain levels of education, so we've worked very hard at that. But the

> threshold now for a young person to get into business, with the insurance situation, is so high that we're not attracting people in any more. And once all of us retire, ... there's going to be no one to take over for us, and then the cost will ...

CHAIR McGUIRE interjected to ask why the residential requirements are different with respect to continuing education.

MS. WARD replied that general contractors have no education requirements. [Residential contractors], on the other hand, must not only attend a "homebuilding and artic engineering homebuilding workshop" in order to obtain their license, they must also attend 16 hours of continuing education every two years in order to renew their license. She suggested that the requirements differ because people live in homes, whereas they don't live in commercial buildings.

Number 1772

CHAIR McGUIRE remarked, however, that schools are also very important, ranking right up there with homes.

MS. WARD continued relaying the ASHBA's concerns with HB 289:

> We had two concerns with the bonding. One is the threshold to get into business. And the other is, it's a very litigious society, and we were afraid, with the $100,000 bond, they'd go right directly [at that]; I might as well paint a big target on my shirt. So, we were concerned for those two reasons.

REPRESENTATIVE OGG, noting that HB 340 has been described as the second "piece" of a "full package," asked whether the legislature could expect to see more "pieces."

MS. WARD indicated that HB 340 is the final piece. In response to a question, she said that according to the Department of Labor & Workforce Development (DLWD), [operating] without a license is a misdemeanor. If one advertises his/her services without proper licensing and bonding, then there might be other penalties involved, she suggested. She added that rising insurance premiums "are driving many of our people underground - to use handyman licenses."

CHAIR McGUIRE, in response to a concern expressed by Representative Holm, explained that the language in subsection

(c) of proposed AS 09.45.895 is not being changed - it currently exists as AS 09.45.895.

MS. WARD noted that any compensation paid to the homeowner from what she referred to as the "national warranty program" that she provides will not affect the homeowner's policy. If compensation is paid by the homeowner's policy, however, then there is the potential that his/her policy premiums might go up.

REPRESENTATIVE GARA said it is absolutely inconceivable to him that insurance rates which went from $8,000 to $80,000 will be at all impacted by "a bill that only addresses non personal-injury cases and that only addresses a minor portion of damages that we've never even heard, ... from any testimony, ever get awarded in those non personal-injury cases." He asked what assurances can be given that HB 340 will have any impact on insurance rates.

Number 1599

MS. WARD, in reply, offered:

> This does come from a national perspective. As we do this as a group, we have met with the national insurers, and this is what they're telling us. So we're responding to what they're telling us. And they may not go down, but maybe they won't rise as fast, and maybe we'll create more competition. And right now that's what we're looking for, frankly, is the competition.

REPRESENTATIVE GARA asked for examples of abuses under the current law - examples of people who have non personal-injury cases who recovered full damages.

MS. WARD replied that people have been awarded huge claims for personal damages such as emotional distress: trauma, for example. She noted that someone tried to sue her for trauma, most of the claim being for stress, but did not recover anything because she fought that case. Her insurance company, however, wanted to just write the person a check; she wouldn't let them.

CHAIR McGUIRE suggested that part of the problem is perhaps the perceived exposure to such claims.

REPRESENTATIVE GARA opined that HB 340 falls in that class of bills that in order to protect one group of Alaskans, the rights

of another group of Alaskans are being taken away. "The rights that we're taking away are the rights of people who have legitimate claims for personal injury, for emotional injury, and we're telling them ... that we're going to take away those rights to protect people on the other side," he remarked. He offered an example of a homeowner being willing to live in a garage for three months while work is being done on the house, but having to live in the garage for nine months instead just because the builder decided, at the end of three months, to go work on "a more profitable job." He asked why that homeowner should not be compensated for the inconvenience of having to live in the garage for an extra six months.

MS. WARD pointed out, however, that [the bill] addresses situations in which the homeowner is in the house, everything is fine, and then a defect in the construction forces the homeowner to live in "good" temporary housing while repairs are made; proposed AS 09.45.895(a)(2) provides that the homeowner shall be compensated for the reasonable cost of that temporary housing.

Number 1423

REPRESENTATIVE GARA noted, however that even in that situation, if the builder leaves the repair job early to go work on a more profitable job and the homeowner has to live in the temporary housing for a much longer period of time, he/she will only get compensated for the cost of that housing after he/she sues. Why should the homeowner not get compensated for the inconvenience as well, especially when the builder "has blown them off."

MS. WARD replied that for every one person that might reasonably deserve that compensation, there will be five people that sue for it and really don't deserve it.

REPRESENTATIVE GARA countered: "Then why don't we pass something that would just punish people who file frivolous lawsuits, instead of passing something that takes away the rights of people who have legitimate claims?"

CHAIR McGUIRE indicated that she would like to work with Representative Gara on that issue at a later time - perhaps a bill that would put some teeth into the Alaska Rules of Court addressing frivolous lawsuits.

REPRESENTATIVE GARA added that it torques him to take away the rights of people with legitimate claims in order to solve somebody else's problem:

> If the problem really is frivolous claims, I would have no problem coming up with significant penalties ... [for] people who file frivolous claims; we should do that. But I really hate the idea of taking away the rights of people with legitimate claims because somebody on the other end gets what I believe is a false promise from an insurance company that they'll lower rates if they just take away these people's rights.

CHAIR McGUIRE suggested that part of the problem is that the barrier to filing such lawsuits is too low, and builders wind up having to defend themselves at great cost.

Number 1317

REPRESENTATIVE GRUENBERG offered some suggestions as to which Alaska Rules of Court ought to be altered to more adequately address frivolous lawsuits. He then turned attention to proposed AS 09.45.895(c), and said:

> The collateral source rule doesn't cover a situation where the insurance coverage that may have paid the claimant in the first place contains a subrogation clause. And I'm wondering if there should be some change in [CSHB 340(L&C)] to reflect the circumstance where the insurance company would have first claim on the money because of a subrogation clause. If we don't put that in, the result will be that the claimant is unfairly penalized ... because their claim is reduced, and ... then ... the benefit would [actually] go to the tort-feasor - or the person who caused the damage here - because they wouldn't have to pay the amount they should additionally have to pay to compensate the insurance company for the money it has paid out to the claimant. Care to comment?

MS. WARD replied: "I think I understand, Representative Gruenberg, where you're going; I guess I would have to find the technical path."

REPRESENTATIVE GRUENBERG said that this issue need not be addressed right now, but it should be looked at, at some point because, normally, if there is a subrogation clause in an insurance policy, that doesn't let the tort-feasor - or the person who's responsible - off the hook; the insurance company

gets first claim on the money in order to reimburse itself for any money its paid out. Then any additional money that the claimant claims for deductible or non-covered costs would go directly to the claimant. But it could be a significant and unfair windfall for the person responsible for the damages if the bill doesn't include a provision "like that." So although the language in proposed AS 09.45.895(c) is not being changed via HB 340, perhaps it contains a defect that should be addressed at some point.

MS. WARD said she would research that issue.

REPRESENTATIVE ANDERSON, offering an example of an in-home wedding being disrupted because of a construction defect, predicted that the potential of a claim for pain and suffering in such a situation could very well drive some people out of the homebuilding business. He opined that in such an example, as a matter of public policy, curing the defect and reimbursing reasonable costs should be sufficient.

Number 1099

MS. WARD agreed, adding that reasonable and actual damages will still have to be determined by the court system, which may, in fact, decide to award "a little something" for any pain and suffering incurred as a result of the construction defect. She opined that the language in HB 340 is broad enough to give some discretion regarding actual damages and is not eliminating the possibility of recovering some sort of punitive damages.

REPRESENTATIVE ANDERSON remarked that courtroom debate on the issue of damages for pain and suffering can go on and on.

MS. WARD, in conclusion, said: "The majority of these claims are going to be because of gross negligence, fraud, and so on. We don't want to protect those people. We want to protect the good builders; that's our aim here."

REPRESENTATIVE GARA predicted that many more tort reform bills were going to come before the committee. He asked whether the committee is considering exempting negligence from the protections provided by HB 340.

CHAIR McGUIRE clarified that a suggestion discussed earlier involved exempting fraud and gross negligence from the bill's protections.

REPRESENTATIVE GARA said that changing the bill in that fashion would satisfy his concerns quite a bit. He added that the concept that a jury will award a claimant with "some crazy claim" a lot of money disregards the fact that, historically, juries in Alaska have not done that, and opined that such a fear is not justified given the way Alaskan juries have conducted themselves.

CHAIR McGUIRE suggested that part of the problem is that insurance companies do not take that fact into account; instead, they look to circumstances in the Lower 48 when determining risk.

Number 0859

REPRESENTATIVE SAMUELS said he agrees that Alaskan juries, particularly in Anchorage, are conservative. He suggested, however, that part of the problem is that when threatened with a lawsuit, it is often cheaper to settle [out of court] even if no wrongdoing occurred; very few cases ever actually go to court.

REPRESENTATIVE GARA remarked that the idea that someone with a bogus claim will be awarded a lot of money because the defendant is afraid of a jury verdict ignores one reality: the attorney for the defense is there and he/she is not going to advise the client to pay a lot of money on a bogus claim. So what happens in these cases, he explained, is that the defense attorney says to the claimant, "You have a bogus claim; I dare you to spend a ton of money over these next five years and take me to court, because you're going to spend money on your attorney and you're going to lose." So to assume that someone will give a claimant money just for filing a bogus claim ignores the reality that the response will be, "We know you have a bogus claim; we're not going to pay you money, because we know you're not going to get anywhere with it." Logic doesn't leave the judicial system just because one side has a claim, he remarked.

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on HB 340.

Number 0686

CHAIR McGUIRE made a motion to adopt Amendment 1, to delete subsection (b) from page 2, lines 28-30. There being no objection, Amendment 1 was adopted.

Number 0651

REPRESENTATIVE OGG made a motion to adopt Conceptual Amendment 2, to "conceptually create an exemption, to these limitations, for [gross] negligence and fraud."

Number 0610

REPRESENTATIVE GARA objected for the purpose of discussion. He said the levels of bad conduct are: negligence, gross negligence, intentional misconduct, and "recklessness." He recommended that the committee include, as exemptions from the protections provided by HB 340, conduct that is grossly negligent, conduct that is fraudulent, and conduct involving intentional misconduct. He indicated that conduct involving intentional misconduct would address situations wherein the contractor decides, in the middle of the project, that he/she is just going to go "somewhere else for a while." That's not fraud, it's not gross negligence, but it's intentional misconduct, "and I don't think that we should reward people who engage in intentional misconduct," he added, but unless Conceptual Amendment 2 is amended to include intentional misconduct, that's exactly what will happen.

REPRESENTATIVE OGG said he did not have a problem with that concept.

REPRESENTATIVE HOLM suggested that intentional misconduct might apply to the contractor who delayed a project because he/she could not get materials within a certain timeframe or because the proper subcontractors weren't available.

REPRESENTATIVE OGG remarked, "I think the concept is there, and I think that the sponsor can craft it." He suggested that Representative Holm's examples would fall more within the category of negligence or actually even the realm of a bona fide excuse, and so it wouldn't qualify as intentional misconduct. He indicated that he would rather leave Conceptual Amendment 2 as is, and work with the sponsor to ensure that intentional misconduct is not protected.

CHAIR McGUIRE indicated agreement that Representative Holm's examples would not qualify as intentional misconduct, and expressed a willingness to allow Representative Ogg to work with the sponsor regarding what Conceptual Amendment 2 would include. She told Representative Meyer that the committee did not wish to gut the bill, and suggested to Representative Gara that he

review the bill in its amended form, before it goes to House floor, in order to ensure that his concerns are addressed.

REPRESENTATIVE MEYER agreed to work with Representatives Ogg and Gara on the concepts discussed.

REPRESENTATIVE GARA withdrew his objection to Conceptual Amendment 2.

Number 0355

CHAIR McGUIRE, noting that there were no further objections to Conceptual Amendment 2, announced that Conceptual Amendment 2 was adopted.

Number 0325

REPRESENTATIVE ANDERSON moved to report CSHB 340(L&C), as amended, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 340(JUD) was reported from the House Judiciary Standing Committee.

HB 397 - DEFENSE CONTACTS WITH VICTIMS & WITNESSES

Number 0270

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 397, "An Act relating to defense contacts with and recordings of statements of victims or witnesses; and amending Rule 16, Alaska Rules of Criminal Procedure."

Number 0246

REPRESENTATIVE SAMUELS moved to adopt the proposed committee substitute (CS) for HB 397, Version 23-LS1510\I, Luckhaupt, 2/9/04, as the work draft. There being no objection, Version I was before the committee.

CHAIR McGUIRE, as the sponsor of HB 397, remarked that Version I has engendered new fiscal notes that will be accompanying the bill as it continues through the process. She relayed that through Version I, the bill has been narrowed down to ensure that parental consent is obtained before minors who are victims or witnesses provide recorded statements regarding sexual offenses, and no longer contains an indirect court rule change.

The committee took an at-ease from 2:40 p.m. to 2:50 p.m.

REPRESENTATIVE SAMUELS moved to report the proposed CS for HB 397, Version 23-LS1510\I, Luckhaupt, 2/9/04, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 397(JUD) was reported from the House Judiciary Standing Committee.

HB 349 - ILLEGALLY OBTAINED EVIDENCE

Number 0067

CHAIR McGUIRE announced that the next order of business would be, HOUSE BILL NO. 349, "An Act amending Rule 412, Alaska Rules of Evidence." House Bill 349 has four prime sponsors: Representatives Stoltze, Dahlstrom, Samuels, and McGuire.

Number 0020

REPRESENTATIVE HOLM moved to adopt the committee substitute (CS) for HB 349, Version 23-LS1322\H, Luckhaupt, 2/6/04, as the work draft. There being no objection, Version H was before the committee.

Number 0016

SARA NIELSEN, Staff to Representative Ralph Samuels, Alaska State Legislature, spoke on behalf of Representative Samuels, one of the prime sponsors of HB 349, regarding Version H and how it differs from the original bill.

TAPE 04-12, SIDE A

MS. NIELSEN pointed out that in Version H, a comma was inserted on page 1, line 15, after "**prosecution**". On page 2, line 7, the word "**prosecution**" was changed to "**civil or criminal action**", and this addresses one of Representative Gruenberg's concerns.

Number 0100

REPRESENTATIVE SAMUELS moved that the committee adopt Amendment 1, which read [original punctuation provided]:

> Page 2, line 7
> (B) **any criminal action,** to impeach the **defendant** if the prosecution shows that the evidence was not

obtained in substantial violation of rights of the **defendant.**

CHAIR McGUIRE objected.

REPRESENTATIVE SAMUELS, speaking as one of the prime sponsors of HB 349, recalled that during the bill's last hearing, the committee spoke with the public defender, and the drafters of the legislation [indicated] the need to ensure that the legislation isn't too broad. Therefore, the legislation has been narrowed in an attempt to make everyone happy on the issue.

MS. NIELSEN, in response to a question, pointed out that [the language in Amendment 1] only needs to refer to "**criminal action**" due to the change from "**witness**" to "**defendant**".

CHAIR McGUIRE removed her objection and said that Amendment 1 is a good amendment.

REPRESENTATIVE GRUENBERG posed a situation in which there are co-conspirators and one is testifying against the other. The one testifying has already concluded his or her criminal case and thus there is no further taint from the illegally obtained evidence. He questioned why [the illegally obtained evidence] shouldn't be used if the witness has no further claim against the evidence due to the conclusion of that witness's case.

REPRESENTATIVE SAMUELS remarked that he tried to walk a fine line with the Office of Victims' Rights (OVR), the Public Defender's Office, and the Department of Law in order to ensure that the legislation wasn't so broad that evidence which isn't desired is coming in all the time.

Number 0446

STEPHEN BRANCHFLOWER, Director, Office of Victims' Rights (OVR), Alaska State Legislature, returned to Representative Gruenberg's hypothetical situation regarding impeachment of a co-conspirator through a previous statement. The aforementioned can be done in spite of Amendment 1, he said, and opined that the answer lies on page 1, line 15 [of Version H].

REPRESENTATIVE GRUENBERG acknowledged that this isn't [addressing] testimonial evidence illegally obtained but rather non-testimonial evidence that was obtained in a technically incorrect manner, such as through a defective search warrant, and is being used to impeach a key witness.

MR. BRANCHFLOWER answered that he thinks the solution would be to add the language "or co-defendant" after the word "**defendant**" in Amendment 1.

REPRESENTATIVE GRUENBERG posed a situation in which the witness isn't technically a co-defendant and may have had his or her case dismissed or dealt with earlier. Although he acknowledged that adding "co-defendant" is an improvement, he asked whether it would be too narrow.

MR. BRANCHFLOWER suggested adding the language "co-defendant or former co-defendant" [to page 2], lines 7 and 9, [of the bill].

REPRESENTATIVE GRUENBERG mentioned that he would support Mr. Branchflower's suggestion as an amendment.

REPRESENTATIVE GARA suggested that on page 1, line 15 of Version H, the word "**person**" should be changed to "defendant" if this right is being limited to defendants whom one wants to impeach.

REPRESENTATIVE GRUENBERG recommended that Representative Gara expand his suggestion to include "defendant, co-defendant, or former defendant".

Number 0740

CHAIR McGUIRE, upon determining there were no further objections to Amendment 1, announced that Amendment 1 was adopted.

REPRESENTATIVE GARA moved that the committee adopt Amendment 2, as follows:

Page 1, line 15,
Delete "**person**"
Insert "defendant, co-defendant, or former defendant"

Page 2, line 7, after "**defendant**" [the new language per the adoption of Amendment 1],
Insert "defendant, co-defendant, or former defendant"

Page 2, line 9, after "**defendant**" [the new language per the adoption of Amendment 1],
Insert "defendant, co-defendant, or former defendant"

CHAIR McGUIRE specified a conceptual caveat to Amendment 2 that wherever "**defendant**" appears in [proposed paragraphs (1)(B) and (2)(B)], the language "co-defendant, or former defendant" should follow.

CHAIR McGUIRE, upon determining that there were no objections to Amendment 2 [as amended], announced that Amendment 2 [as amended] was adopted.

Number 0891

REPRESENTATIVE GARA moved that the committee adopt Amendment 3, a handwritten amendment which read [original punctuation provided]:

Insert @ p. 2 line 2 after "voluntary",
", recorded if required by law,"

REPRESENTATIVE GARA indicated that his fear is that there could be a circumstance in which a tape was thrown away, and a claim is later made in court that the tape said something for which there is no longer any evidence. He said he wanted to exclude from this legislation cases in which law enforcement discards a tape that is required by law. He said he didn't believe [a discarded tape] should be used against a defendant. This protects due process, he said.

MR. BRANCHFLOWER informed the committee that this legislation would raise the bar higher than the Alaska Supreme Court stated in the [Stephan v. State of Alaska] opinion. The aforementioned case provided for exceptions when recordings are not available. The exceptions are when there has been a mechanical difficulty that results in no recording or when the defendant requests that no recording be made. Mr. Branchflower said that he believes it would be difficult to codify circumstances in which the police have not engaged in any intentional misconduct and yet the tape is no longer available. Mr. Branchflower surmised that Representative Gara is trying to focus on the unusual situation in which a police officer is guilty of a crime, destruction of evidence. The aforementioned would prevent a statement from being used to impeach a defendant who commits perjury. Mr. Branchflower said it is difficult to imagine a circumstance in a trial context where the aforementioned would be the history of the case.

REPRESENTATIVE SAMUELS expressed concern about slowing down the bill's progress.

REPRESENTATIVE GARA agreed with Mr. Branchflower that there is no desire to create an exemption each time the police don't retain a recording because some recordings wouldn't be required by law. Amendment 3 merely addresses those circumstances when a recording is required by law.

MR. BRANCHFLOWER inquired as to how the exceptions under the law would be handled in instances where there could be a statement that is required to be recorded but the recording isn't available due to one of the exceptions.

REPRESENTATIVE GARA pointed out that if there is an exception, then [the recording] isn't required by law.

CHAIR McGUIRE asked about changing the language being inserted in Amendment 3 to read ", recorded if required by law, and not governed by one of the recognized exceptions".

REPRESENTATIVE GARA agreed to Chair McGuire's conceptual suggestion.

MR. BRANCHFLOWER said such language would address the exemption issue.

Number 1166

CHAIR McGUIRE removed her objection.

The committee took an at-ease from 3:12 p.m. to 3:14 p.m.

REPRESENTATIVE GARA clarified that [Conceptual] Amendment 3 [as amended] would be: "the statement shall not be allowed if it was required to be recorded by law, recognizing that there are some exceptions to the recording requirement that would be retained".

CHAIR McGUIRE, upon determining that there were no further objections to Conceptual Amendment 3 [as amended], announced that Conceptual Amendment 3 [as amended] was adopted.

Number 1241

REPRESENTATIVE HOLM moved to report CSHB 349, Version 23-LS1322\H, Luckhaupt, 2/6/04, as amended, out of committee with

individual recommendations [and the accompanying fiscal notes]. There being no objection, CSHB 349(JUD) was reported from the House Judiciary Standing Committee.

HB 357 - RESTITUTION

Number 1270

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 357, "An Act relating to restitution; and providing for an effective date."

Number 1285

REPRESENTATIVE SAMUELS moved that the committee rescind its action in reporting CSHB 357, Version 23-LS1384\H, Luckhaupt, 1/29/04, as amended, from committee. There being no objection, it was so ordered.

REPRESENTATIVE SAMUELS moved to adopt a new proposed committee substitute (CS), Version 23-LS1384\I, as the working document. There being no objection, Version I was before the committee.

Number 1327

SARA NIELSEN, Staff to Representative Ralph Samuels, Alaska State Legislature, spoke on behalf of Representative Samuels, one of the prime sponsors of HB 357. She reminded the committee that at the last hearing on HB 357, the committee passed an amendment that inserted "**when presented with evidence,**" on page 1, line 4. The drafters have said that the aforementioned language is unnecessary and actually complicates the situation because it would require that other statutes be changed in order to ensure that the statutes [use parallel language]. She noted that this language was also inserted on page 1, line 10. Ms. Nielsen then turned attention to the insertion of a new Section 6 on page 3, beginning on line 2. This new Section 6 addresses [the ability of the] juvenile court to take into consideration a defendant's ability to pay past the age of 19. She relayed that the committee has possession of two amendments that will eliminate both of the insertions discussed.

Number 1402

REPRESENTATIVE SAMUELS moved that the committee adopt Amendment 1, which read [original punctuation provided]:

Page 1, line 4

Delete "when presented with evidence,"

Page 1, line 10

Delete "when presented with evidence,"

REPRESENTATIVE GARA objected and asked why there is a problem [with the language adopted at the prior hearing].

MS. NIELSEN referred members to a memorandum from Gerald Luckhaupt, Attorney, Legislative Legal and Research Services, dated February 2, 2004, which said in part [original punctuation provided]:

> The committee added the words "when presented with evidence" in two places. Apparently, the committee is limiting a criminal court from ordering restitution except when evidence is presented. I do not understand the reason for the amendment, as a criminal court (or even a civil court for that matter) cannot deprive a person of property arbitrarily or without evidence to support the judgment. It seems beyond question to me that a court cannot enter a restitution order without evidence to support the order and I therefore do not see the need for the amendment. Beyond this concern, the amendment is troubling because the legislature requires a court to order restitution in AS 12.55.045(e) and allows the awarding of restitution under AS 12.55.045(d). In each of these provisions there is no mention of "when presented with evidence." Because of the differences in these restitution statutes, the courts may choose to interpret these provisions differently. It is possible that a court could interpret AS 12.55.045(a) to require a restitution order to be supported by a different level, quantity, or type of evidence than restitution orders under AS 12.55.045(d) or (e).

REPRESENTATIVE SAMUELS, speaking as one of the prime sponsors of HB 357, explained that by [inserting language] only in the areas specified by this legislation, it appears to have muddied the waters.

MS. NIELSEN informed the committee that she had spoken with Anne Carpeneti, Assistant Attorney General, Department of Law (DOL),

who had attended the hearing at which the language was inserted. Ms. Nielsen relayed that Ms. Carpeneti said she was troubled by the insertion of the language, but that day didn't feel strongly one way or another; however, upon being informed of the memorandum from Legislative Legal and Research Services, Ms. Carpeneti agreed with the drafters.

Number 1546

REPRESENTATIVE GARA remarked that if the [legislation] tells the court that it has to order restitution, then it will do so. "If the victim doesn't present any evidence, the court still has to order restitution," he said. He recalled that the concern was that the court shouldn't have to spend scarce resources or [order] restitution when no evidence has been presented. Representative Gara said that he believes Mr. Luckhaupt's opinion is possibly correct and possibly incorrect. Unless the legislation requires that the prosecution and/or the victim comes in with evidence, then the legislation will require that the courts speculate, spend time coming up with evidence that the prosecution doesn't have. Therefore, he disagreed with the argument that "we should just see what the courts do with this."

REPRESENTATIVE SAMUELS pointed out that currently, there is a constitutional right to [restitution]. Therefore, the courts should order restitution every time. He said that the courts aren't going to order restitution unless there is some proof that a loss was suffered.

REPRESENTATIVE GRUENBERG said that he has a concern similar to that of Representative Gara in that he didn't know what a judge might do. He agreed that there needs to be some evidence to support an award.

CHAIR McGUIRE, speaking as one of the prime sponsors of HB 357, agreed. However, if a term in one part of the statute is defined in a different way [than in other parts of existing statute], then it might give an unintended meaning or implied meaning to the term in those other sections of statute.

REPRESENTATIVE GRUENBERG expressed the need to be sure that something indicates the intent.

CHAIR McGUIRE remarked that she believes a sufficient record has been created specifying that there is no intention for judges to waste time trying to uncover evidence that simply doesn't exist because of a mandate in the constitution or this legislation.

She said she is supportive of removing the "when presented with evidence," language. She suggested that Representative Gara could contact Mr. Luckhaupt on this matter and if Representative Gara continues to believe there is a problem, then the legislation can be revisited or amended on the House floor. She noted her hesitation with holding the legislation further.

Number 1771

REPRESENTATIVE SAMUELS pointed out that currently the judge operates under the constitutional [mandate] that restitution shall be ordered. Therefore, this legislation makes the statute follow the constitution, which doesn't say anything about needing evidence. He related his belief that if there is no evidence, then no restitution would be awarded.

REPRESENTATIVE GARA commented, "The only reason that this odd wording is needed is because we're doing a very odd thing with the bill." This legislation specifies that restitution shall be awarded; the only circumstance in which the court isn't allowed to award restitution is when the victim expressly denies the need for restitution. The legislation creates an odd circumstance by saying that the award should be made even if the person the money is going to go to doesn't ask for it, doesn't present any evidence for it, doesn't do anything to help the court decide the amount of money. He characterized this as almost unprecedented, which is why he supports this additional language. In response to Mr. Luckhaupt's statement saying that the language in the legislation doesn't appear in other provisions, Representative Gara surmised that that is because in other areas of law the victim presents evidence to support the claim. Representative Gara said, "This is a unique circumstance and that's what justifies the unique language."

REPRESENTATIVE SAMUELS reiterated that the constitution already specifies that the courts shall award restitution. He said that he would give the court some leeway for common sense.

REPRESENTATIVE GARA maintained his objection. He pointed out that the legislation changes [the statute] from "may" to "**shall**" and specifies that there is only one circumstance under which the court can't follow this mandate. Therefore, the court will be left in a situation wherein there is no evidence but there is a mandate to order restitution.

REPRESENTATIVE GRUENBERG asked if Doug Wooliver could speak to this matter.

Number 1942

DOUG WOOLIVER, Administrative Attorney, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), said that he didn't know what a court would do either. However, judges are famous for finding ambiguities where no one else thinks they exist. Furthermore, judges sometimes interpret a statute in a way that the legislature didn't intend. Therefore, Mr. Wooliver said that if the committee sees any ambiguity, then it would be best to clarify it now, rather than later. Mr. Wooliver pointed out that the court, if there is a mandate to order restitution and there's no evidence, could direct the district attorney or prosecutor to find the evidence.

REPRESENTATIVE SAMUELS asked, "Wouldn't the constitution be the mandate?"

MR. WOOLIVER said that he didn't have any more insight than anyone else with regard to how the court would interpret this. However, he reiterated that if there is ambiguity, the court will find it.

REPRESENTATIVE GRUENBERG urged the committee to leave the language and then there would be no question.

The committee took an at-ease from 3:32 p.m. to 3:40 p.m.

REPRESENTATIVE GARA explained that with the adoption of Amendment 1, the legislation specifies that the court shall award restitution. He posed a situation in which the prosecution has no evidence from the victim because the victim has decided he or she doesn't care. However, [with the adoption of Amendment 1, the court would have to order the prosecution to go out and do something that the victim doesn't want and for which the prosecution doesn't have time. Including the language, "when presented with evidence," tells the court that if the prosecution doesn't come in with evidence, the court won't make the prosecution undergo a second hearing. Representative Gara said, "Let's not tell the courts to tell the prosecution to go do more work than the prosecution has thought is justified when a victim doesn't give you the evidence that you want." Representative Gara recalled that this was more of a fiscal concern than an evidence concern.

CHAIR McGUIRE suggested that if a defense attorney representing a client found a situation [in which the victim didn't come in

with evidence], it would assist in obtaining a decline [of restitution].

Number 2157

MR. BRANCHFLOWER explained that when a person is convicted, it comes about by the person entering a guilty or no contest plea or there is a conviction following a trial. In the latter case, there will always be evidence in the record to support a conviction, especially with regard to financial crimes. The state will have had to put on some evidence concerning the degree of the crime. However, most convictions follow a plea, and in that situation the court requires a factual basis, which is found in the charging document before the court. So, there is always evidence before the court and upon which it can rely to enter a restitution award. The complaint or information is a sworn document supported by an affidavit that is filed by the prosecutor or police officer. Because of the structure of the defense statute, there is a requirement that a specific dollar loss be alleged. He reiterated that it isn't possible for a conviction to be obtained without some evidence on the record. Therefore, Mr. Branchflower said that he didn't see a problem that needs to be fixed because there will always be some evidence.

REPRESENTATIVE SAMUELS surmised from Mr. Branchflower's comments that it doesn't matter whether the language is left in or not. Therefore, if the language "**when presented with evidence**" is left in the CS to alleviate Representative Gara's concerns, it wouldn't matter because the evidence is always going to be there anyway.

MR. BRANCHFLOWER reiterated that the evidence would be present in the form of a sworn document or some oral representation that is made by the prosecutor, which would form the basis for taking the plea.

REPRESENTATIVE SAMUELS relayed his understanding, then, that if the language is included, the prosecution wouldn't be impacted one way or another.

MR. BRANCHFLOWER responded that he didn't believe so unless it's a particularly complicated case.

CHAIR McGUIRE asked if Mr. Branchflower has concerns that including the language would impact how restitution is awarded in other places in the statute.

MR. BRANCHFLOWER replied no.

Number 2269

REPRESENTATIVE SAMUELS withdrew Amendment 1.

Number 2287

REPRESENTATIVE SAMUELS moved that the committee adopt Amendment 2, which read [original punctuation provided]:

Page 3, line 2

Delete all of Section 6

REPRESENTATIVE GRUENBERG said he didn't understand why Section 6 is being deleted.

MS. NIELSEN explained that [Section 6] attempted to clarify something that the courts can already do. In doing so, it seems that [Section 6] has "mucked it up." Therefore, it seems best to leave Section 6 out.

REPRESENTATIVE GRUENBERG asked if the court already has the ability to take into account the minor's ability to pay.

MS. NIELSEN replied yes. The concern, she explained, is that the language on page 3, line 31, could limit the amount of restitution now.

REPRESENTATIVE GRUENBERG emphasized the need to be sure that the court can already do this. Therefore, Representative Gruenberg said he would withdraw his objection [to Amendment 2] if he was assured that the court already has this authority.

Number 2390

CHAIR McGUIRE asked if there was any objection to Amendment 2. There being no objection, Amendment 2 was adopted.

TAPE 04-12, SIDE B
Number 2386

REPRESENTATIVE HOLM moved to report the proposed CS for HB 357, Version 23-LS1384\I, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE GARA objected. He explained that although he will vote to move this legislation from committee, he still has some real concerns with it. He then removed his objection.

CHAIR McGUIRE, upon determining that there were no further objections, announced that CSHB 357(JUD) was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 3:50 p.m. to 3:53 p.m.

HB 227 - DISTRICT COURTS & SMALL CLAIMS

Number 2330

CHAIR McGUIRE announced that the final order of business would be HOUSE BILL NO. 227, "An Act increasing the jurisdictional limit for small claims and for magistrates from $7,500 to $10,000; increasing the jurisdictional limit of district courts in certain civil cases from $50,000 to $75,000; and amending Rule 11(a)(4), Alaska District Court Rules of Civil Procedure, relating to service of process for small claims." [HB 227 was sponsored by House Judiciary Standing Committee.]

REPRESENTATIVE GRUENBERG noted that the committee should have a title amendment to accompany this legislation.

Number 2290

REPRESENTATIVE SAMUELS moved to adopt the proposed committee substitute (CS) for HB 227, Version 23-LS0896\I, Luckhaupt, 2/4/04, as the work draft. There being no objection, Version I was before the committee.

REPRESENTATIVE GRUENBERG reminded the committee that upon his request, the committee introduced this legislation late last session. He pointed out that originally, Section 1 of the legislation increased the district court jurisdiction from $50,000 to $75,000. However, a number of superior court judges and [other people] suggested increasing the district court's jurisdiction to $100,000, which is one of the changes encompassed in Version I. Section 2 remains the same as in the original version. Section 3 is a new section [that deletes the following language] "action for false imprisonment, libel, slander, malicious prosecution" because Representative Gruenberg said he believes that district court judges and juries are capable of hearing cases for false imprisonment, libel, slander,

and malicious prosecution. Section 4 remains the same as in the original version.

REPRESENTATIVE GRUENBERG pointed out that Sections 5 and 6 go together. He explained that under small claims law, an individual that is out of state can't be sued unless it's an action falling under the Landlord-Tenant Act or service on a nonresident owner of a motor vehicle. He said that he wanted to increase the ability to sue someone who is out of state. Therefore, language saying "if the defendant was physically present in the state when the accident, contract, or whatever it was occurred" was added. The aforementioned is difficult to determine in some cases, however, especially with regard to when a corporation is physically present in the state. He pointed out that most small claims cases are heard by district court judges who are fully capable of hearing these cases. The only situation in which there would be a problem is if there is a magistrate, some of which have law degrees and some do not. If the magistrate is qualified, the presiding judge can appoint the magistrate as a district court judge pro tem in order to hear the small claims case. Therefore, paragraphs (5) and (6) of Section 4 specify that any case can go to small claims, for up to $10,000, as long as it is a district court judge who is hearing the case. He noted that if the judge feels that a small claims case will take more time, for example, if there is telephonic testimony involved, the judge can calendar the case when there is more time to hear it.

Number 2051

REPRESENTATIVE GARA informed the committee that those who practice in the personal injury and tort bar on the plaintiff and defense side use an expedited process that makes it a lot easier and cheaper to bring superior-court type cases with damages of less than $100,000 to district court. He said he wanted to be sure that this legislation does not unintentionally interfere with this expedited process.

REPRESENTATIVE GRUENBERG recalled that process to be governed by Civil Rule 26. He said that there were discussions with a superior court judge on that matter. Therefore, the district court jurisdiction was increased to $100,000 so that [small claims cases] would be under the same expedited procedures now used in superior court.

REPRESENTATIVE GARA asked if Representative Gruenberg had run this by any of the practitioners who use [Civil Rule 26], in order to determine whether it interferes with that option.

REPRESENTATIVE GRUENBERG replied no. He said he didn't see any problem because the bill simply allows practitioners to proceed in district court, where those expedited proceedings could be used.

Number 1988

REPRESENTATIVE OGG turned to the $10,000 limit for small claims court and said that it seems a little low for this day and age. For example, if a person has $1,000 a month rent, and the [landlord] gives notice of eviction but isn't able to get the renter out of the apartment for a year. Furthermore, the landlord would have to hire an attorney and go to regular court because he/she wouldn't be able to go through the small claims procedure. Therefore, he inquired as to why the [threshold] is being set at $10,000.

REPRESENTATIVE GRUENBERG said that with this legislation, Alaska is going to have just about the highest small claim [threshold] in the country, and noted that some of the judges were concerned with going up to even $10,000. He indicated that he didn't have a problem with raising it, but would prefer to do it incrementally.

REPRESENTATIVE OGG posed another situation in which the owner of an expensive automobile had an accident with an uninsured motorist. In such a situation, in order to recover anything, the [automobile owner] has to hire an attorney and go into regular court wherein the legal fee, at minimum, will be $5,000.

REPRESENTATIVE GRUENBERG said he sympathized, but he didn't want to jeopardize the legislation [by raising the threshold too much].

REPRESENTATIVE OGG expressed the need to keep in mind possible real situations.

CHAIR McGUIRE inquired as to when the statute for the jurisdictional limit on small claims was raised to $7,500.

REPRESENTATIVE GRUENBERG recalled that the last increase to the jurisdictional limit on small claims to $7,500 was two to three years ago.

Number 1852

VANESSA TONDINI, Staff to Representative Lesil McGuire, House Judiciary Standing Committee, Alaska State Legislature, on behalf of the House Judiciary Standing Committee, sponsor, offered her recollection that the jurisdictional limit on small claims was last raised in 1997 from $5,000 to $7,500. In response to Representative Ogg, Ms. Tondini noted that as of 2001, the jurisdictional limit of five other states is above $7,500; that two states have a limit of $7,500; and that 42 states have a limit of between $2,000 to $5,000.

MS. TONDINI told the committee that although the House Labor and Commerce Standing Committee didn't amend the legislation, Section 5 of Version I was [added] in order to alleviate concerns by Representative Rokeberg and other members of the House Labor and Commerce Standing Committee.

Number 1785

DOUG WOOLIVER, Administrative Attorney, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), said that although the ACS doesn't have a position on this legislation, some of the judges do have some concerns with this legislation. The court has no objection to raising the district court jurisdictional limit to $100,000, which most judges view as a fairly common sense amendment. Furthermore, it's consistent with Civil Rule 26(g), which is the limited discovery rules for superior court cases. However, some judges have concerns with raising the jurisdictional limit to $10,000. Some judges don't believe many people will come in with claims in excess of $7,500 simply because that's not considered a small claim for most people. When the jurisdictional limit was raised from $5,000 to $7,500, there wasn't an increase in small claims cases. Therefore, there is some evidence to support the notion that those aren't the bulk of the cases coming in. However, other judges were concerned that cases of [$10,000 in] value don't belong in small claims, which is designed to move quickly through a large number of cases that are of a small dollar amount. These judges are concerned that in these cases, more and more people will bring in attorneys, and therefore the process will turn into a mini district court and it will take longer to process cases. Furthermore, the process will cause more arguments because more and more money is at stake.

MR. WOOLIVER turned to the matter of out-of-state defendants, who will invariably be teleconferenced. In a teleconference situation, particularly when it's a pro se situation, the party on teleconference won't have all the information. The other issue is that often the individual can't be reached on the phone right away or he/she will call on a cell phone and the connection might be lost. Furthermore, it's difficult for judges to assess the credibility of witnesses over the phone as opposed to one in front of them. He specified that this is another frustration regarding what is supposed to be a quick-moving process. Therefore, some judges believe that there could be cases brought forth that aren't really small claims cases anymore.

MR. WOOLIVER explained that the court doesn't oppose this legislation because there are people who wouldn't go to court if there wasn't a small claims court, which is "pro se" friendly. In Alaska as well as nationwide, there are more and more pro se litigants. This legislation is consistent with the philosophy of better adapting to the needs of pro se litigants.

Number 1569

REPRESENTATIVE GARA asked if there is a way to address Representative Ogg's concern. He asked if other states have a small claims exception above $10,000 for car repair cases.

MR. WOOLIVER said that he didn't know of any. In trying to compare Alaska to other states, he found a breakdown of all the jurisdictional limits of all courts from the National Center for State Courts. However, that information doesn't go into the detail [of exceptions].

REPRESENTATIVE GARA posed a situation in which there was an $80,000 claim arising from an accident with an expensive car. In such a situation, if both sides agreed, a $100,000 case or less should be allowed to go to small claims court. He asked if that could be done now.

MR. WOOLIVER answered, "Only up to the jurisdictional limit of the court itself." However, he highlighted that Representative Gara is correct in that both parties always have to consent to be in small claims court. In further response to Representative Gara, Mr. Wooliver said that a case couldn't go to small claims court even if both parties in a $100,000 or less case consent to be in small claims court. Currently, $7,500 is the most that one can collect or allege in order to be in small claims court.

REPRESENTATIVE HOLM asked if an individual's insurance covers an uninsured motorist, wouldn't the insurance company take care of [recovering damages from the accident]. He assumed that he wouldn't have to go into small claims court and this would preclude having to worry about suing someone for damages.

MR. WOOLIVER said that he wasn't sure how often insurance claims come through small claims court or how they are handled.

REPRESENTATIVE GRUENBERG explained that usually, if one is hit and the insurance pays it off, the individual would be given the right of subrogation so that the individual could sue the defendant in small claims court and recover. He noted that such a case could go into district court.

Number 1367

EILEEN McVEY testified in support of increasing [the jurisdictional limit for small claims] from $7,500 to $10,000 or greater. She related her personal experience when she had a metal roof installed. After discovering that a metal roof was inappropriate for her house, she retained an attorney who felt that she had a 95 percent chance of winning the case. However, if she lost, it would cost her $10,000. Ms. McVey reiterated support for passing [this legislation].

CHAIR McGUIRE, upon determining that no one else wished to testify, closed public testimony on HB 227.

REPRESENTATIVE GRUENBERG informed the committee that the addition of Section 5 on page 4 requires a title amendment.

Number 1048

CHAIR McGUIRE made a motion to adopt Amendment 1, labeled 23-LS0896\I.1, Luckhaupt, 2/9/04, which read:

> Page 1, line 3, following "**courts;**":
> Insert "**limiting magistrates from hearing certain small claims cases;**"

There being no objection, Amendment 1 was adopted.

Number 1029

REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment 2 [to increase the small claims limit to $50,000]. He suggested that this increase would assist people in situations such as the one encountered by Ms. McVey. He also mentioned that if one has a case against an insurance company, the insurance company isn't going to let the individual go to small claims court.

REPRESENTATIVE SAMUELS, in response, highlighted Mr. Wooliver's testimony that some of the judges didn't want to turn what should be high volume, low dollar cases into cases with full-blown trials. He further recalled that some of the judges even had difficulties with increasing the jurisdictional limit to $10,000. [To increase the jurisdictional limit to $50,000] would seem to get to the upper limit where people view it as a "real" case.

MR. WOOLIVER agreed that this is the concern, adding that there is a fiscal concern as well. The fiscal concern would arise if the number of small claims cases increased as opposed to the number of cases going to district court. Mr. Wooliver pointed out that in small claims court there is no motion practice and no pre-hearings. Furthermore, at the small claims level, court clerks rather than the parties perform all of the service of process and the court clerks are directed by rule to assist the pro se litigants through the process. The small claims court process is a fast and easy way for litigants to go through the system, although it isn't a cheap way for the courts to handle cases. The cheapest way for courts to handle cases is to accept the filing and settle in a few months. Mr. Wooliver was sure that for many judges a $50,000 claim would be disruptive of the process, particularly if there were a great number of them.

REPRESENTATIVE GARA acknowledged that it might cost more if more people bring cases to court. However, he said he wasn't comfortable that savings would be realized by telling people that they shouldn't pursue their rights because their cases don't involve enough money to attract an attorney. Representative Gara surmised that in some cases there would be savings because small claims cases are quicker and less intensive than the full-blown discovery cases.

MR. WOOLIVER agreed that there may be some savings in individual cases. Mr. Wooliver said that he didn't know where the point is at which it becomes worthwhile for attorneys to take cases. Although attorneys aren't necessary in district court cases either, most people do retain an attorney because it's a complicated process. However, throughout the court system, more

and more people are taking their cases all the way to the supreme court without an attorney. Mr. Wooliver explained that the purpose of small claims court is that small claims can be handled quickly and the hearing doesn't have to be scheduled months in advance. He said that he hadn't polled the judges on their views on a $50,000 claim, but given the number of concerns the judges expressed regarding a $10,000 [limit], he was fairly confident that there would be very little support for a $50,000 limit.

REPRESENTATIVE GRUENBERG requested that Representative Gara withdraw Conceptual Amendment 2, adding that he wouldn't support it because it would change the nature of small claims cases. [With a limit of $50,000], he predicted that small claims cases would subsume the district court jurisdiction.

Number 0740

REPRESENTATIVE OGG inquired as to the possibility of having an exception for personal property claims or residential rents up to $20,000.

REPRESENTATIVE GRUENBERG said that such an exception would create a serious burden on small claims court, and therefore he expressed the need to know the court system's position on such a change before doing it. He urged the committee not to adopt such a change.

MR. WOOLIVER said he wasn't sure what percentage of small claims cases fall under the category specified by Representative Ogg. However, he said he might be able to determine whether such an exception covers the majority of cases or just a small amount. He offered his guess that there are a lot of auto claims in small claims court, and therefore raising the limit to $20,000 would create a significant impact on the court.

REPRESENTATIVE GARA requested that Mr. Wooliver discuss the aforementioned issues with judges because the $20,000 limit makes more sense than his original proposal of $50,000. He surmised that attorneys tell individuals with a $20,000 construction or automobile claim that they would be happy to take the case. However, even if a low fee is charged, it will cost more than the damages being sought. Therefore, he felt that there should be a small claims remedy for such individuals. He asked about extending the jurisdictional limit to $20,000 for real and personal property claims as well as Landlord-Tenant Act claims. Representative Gara asked Mr. Wooliver if he would be

able to bring back information before the legislation reaches the House floor.

MR. WOOLIVER inquired as to what claims wouldn't, in small claims court, fall under the category of real and personal property and the Landlord-Tenant Act.

REPRESENTATIVE GARA countered by questioning why wouldn't "we" want to offer a remedy for those individuals who can't find an attorney to take cases such as these.

MR. WOOLIVER surmised, then, that Representative Gara's amendment would be to amend the [small claims] jurisdictional limit to $20,000.

REPRESENTATIVE GARA said that he was trying to limit the categories because medical evidence would be too complex [to address in small claims court].

REPRESENTATIVE SAMUELS pointed out that all the cases in small claims court are real property cases.

Number 0397

REPRESENTATIVE GRUENBERG commented that he understands what both Representative Gara and Representative Ogg are attempting and believes that their hearts are in the right place. However, he didn't want to jeopardize the legislation. He said he could see such changes creating a lot of controversy.

REPRESENTATIVE GARA agreed that if such a change would kill the legislation, he didn't want to do it. However, he said he would like to hear a response from the chief justice or the presiding judge in the trail courts regarding the issue of raising the limit to $20,000.

REPRESENTATIVE GRUENBERG requested that Mr. Wooliver obtain such a response [to raising the limit to] $15,000 or $20,000. He requested that response in writing.

MR. WOOLIVER agreed to do so.

Number 0240

REPRESENTATIVE SAMUELS moved to report the proposed CS for HB 227, Version 23-LS0896\I, Luckhaupt, 2/4/04, as amended, out of committee with individual recommendations and the accompanying

fiscal notes. There being no objection, CSHB 227(JUD) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

Number 0214

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 4:35 p.m.