ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
March 18, 2004
2:15 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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

PRESENTATION: JUAN MELENDEZ, FORMER DEATH ROW INMATE

- HEARD [See 1:15 p.m. minutes for this date]

CS FOR SENATE BILL NO. 30(JUD) am
"An Act relating to information and services available to pregnant women and other persons; and ensuring informed consent before an abortion may be performed, except in cases of medical emergency."

- HEARD AND HELD

CS FOR SENATE BILL NO. 203(FIN) am
"An Act relating to administrative hearings, to hearing officers, and to administrative law judges; establishing the office of administrative hearings and relating to that office; and providing for an effective date."

- MOVED HCS CSSB 203(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 447
"An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

- MOVED CSHB 447(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 428
"An Act relating to civil liability for acts related to obtaining alcohol for persons under 21 years of age or for persons under 21 years of age being on licensed premises."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 30
SHORT TITLE: ABORTION: INFORMED CONSENT; INFORMATION
SPONSOR(S): SENATOR(S) DYSON

01/21/03	(S)	READ THE FIRST TIME - REFERRALS
01/21/03	(S)	HES, JUD, FIN
03/17/03	(S)	HES AT 1:30 PM BUTROVICH 205
03/17/03	(S)	Heard & Held
03/17/03	(S)	MINUTE(HES)
03/26/03	(S)	HES AT 1:30 PM BUTROVICH 205
03/26/03	(S)	Heard & Held
03/26/03	(S)	MINUTE(HES)
04/03/03	(S)	HES AT 5:00 PM BELTZ 211
04/03/03	(S)	Heard & Held
04/03/03	(S)	MINUTE(HES)
04/09/03	(S)	HES AT 1:30 PM BUTROVICH 205
04/09/03	(S)	Heard & Held
04/09/03	(S)	MINUTE(HES)
04/14/03	(S)	HES AT 1:30 PM BUTROVICH 205
04/14/03	(S)	Moved CSSB 30(HES) Out of Committee
04/14/03	(S)	MINUTE(HES)
04/15/03	(S)	HES RPT CS 2DP 1DNP 1NR SAME TITLE
04/15/03	(S)	DP: DYSON, GREEN;
04/15/03	(S)	DNP: DAVIS; NR: WILKEN
05/02/03	(S)	JUD AT 1:00 PM BELTZ 211
05/02/03	(S)	Heard & Held
05/02/03	(S)	MINUTE(JUD)
05/03/03	(S)	JUD AT 9:00 AM BELTZ 211
05/03/03	(S)	Moved CSSB 30(JUD) Out of Committee
05/03/03	(S)	MINUTE(JUD)
05/06/03	(S)	JUD RPT CS 3DP SAME TITLE
05/06/03	(S)	DP: SEEKINS, THERRIAULT, OGAN
05/12/03	(S)	FIN AT 9:00 AM SENATE FINANCE 532
05/12/03	(S)	Moved Out of Committee
05/12/03	(S)	MINUTE(FIN)
05/12/03	(S)	FIN RPT CS(JUD) 3DP 3NR 1AM
05/12/03	(S)	DP: GREEN, TAYLOR, STEVENS B;

05/12/03	(S)	NR: WILKEN, HOFFMAN, BUNDE; AM: OLSON
05/16/03	(S)	TRANSMITTED TO (H)
05/16/03	(S)	VERSION: CSSB 30(JUD) AM
05/16/03	(H)	READ THE FIRST TIME - REFERRALS
05/16/03	(H)	HES, JUD, FIN
05/17/03	(H)	HES AT 1:00 PM CAPITOL 106
05/17/03	(H)	Moved HCS CSSB 30(HES) Out of Committee
05/17/03	(H)	MINUTE(HES)
05/17/03	(H)	HES RPT HCS(HES) 4DP 1NR
05/17/03	(H)	DP: SEATON, COGHILL, WOLF, WILSON;
05/17/03	(H)	NR: CISSNA
02/18/04	(H)	JUD AT 1:00 PM CAPITOL 120
02/18/04	(H)	Heard & Held
02/18/04	(H)	MINUTE(JUD)
03/18/04	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: SB 203
SHORT TITLE: ADMINISTRATIVE HEARINGS/OFFICE
SPONSOR(S): RULES BY REQUEST

04/29/03	(S)	READ THE FIRST TIME - REFERRALS
04/29/03	(S)	STA, JUD, FIN
05/06/03	(S)	STA AT 3:30 PM BELTZ 211
05/06/03	(S)	Moved CSSB 203(STA) Out of Committee
05/06/03	(S)	MINUTE(STA)
05/07/03	(S)	STA RPT CS 1DP 3NR SAME TITLE
05/07/03	(S)	DP: STEVENS G;
05/07/03	(S)	NR: COWDERY, GUESS, DYSON
05/09/03	(H)	JUD AT 1:00 PM CAPITOL 120
05/09/03	(S)	Heard & Held
05/09/03	(S)	MINUTE(JUD)
01/30/04	(S)	JUD AT 8:00 AM BUTROVICH 205
01/30/04	(S)	Heard & Held
01/30/04	(S)	MINUTE(JUD)
02/06/04	(S)	JUD AT 8:00 AM BUTROVICH 205
02/06/04	(S)	Moved CSSB 203(JUD) Out of Committee
02/06/04	(S)	MINUTE(JUD)
02/09/04	(S)	JUD RPT CS 3DP 1NR NEW TITLE
02/09/04	(S)	DP: SEEKINS, THERRIAULT, OGAN;
02/09/04	(S)	NR: FRENCH
02/19/04	(S)	FIN AT 9:00 AM SENATE FINANCE 532
02/19/04	(S)	Bill Postponed
02/23/04	(S)	FIN AT 10:00 AM SENATE FINANCE 532
02/23/04	(S)	Heard & Held
02/23/04	(S)	MINUTE(FIN)
02/26/04	(S)	FIN AT 9:00 AM SENATE FINANCE 532
02/26/04	(S)	Heard & Held

02/26/04	(S)	MINUTE(FIN)
03/01/04	(H)	FIN AT 9:00 AM HOUSE FINANCE 519
03/01/04	(S)	Scheduled But Not Heard
03/02/04	(S)	RLS TO CALENDAR 3/3/04
03/03/04	(S)	FIN AT 9:00 AM SENATE FINANCE 532
03/03/04	(S)	Moved CSSB 203(FIN) Out of Committee
03/03/04	(S)	MINUTE(FIN)
03/03/04	(S)	FIN RPT CS 5DP 1NR NEW TITLE
03/03/04	(S)	DP: GREEN, WILKEN, DYSON, BUNDE,
03/03/04	(S)	STEVENS B; NR: HOFFMAN
03/04/04	(S)	TRANSMITTED TO (H)
03/04/04	(S)	VERSION: CSSB 203(FIN) AM
03/08/04	(H)	READ THE FIRST TIME - REFERRALS
03/08/04	(H)	JUD, FIN
03/18/04	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 447
SHORT TITLE: 2004 REVISORS BILL
SPONSOR(S): RULES BY REQUEST OF LEGISLATIVE COUNCIL

02/09/04	(H)	READ THE FIRST TIME - REFERRALS
02/09/04	(H)	STA, JUD
02/24/04	(H)	STA AT 8:00 AM CAPITOL 102
02/24/04	(H)	Moved CSHB 447(STA) Out of Committee
02/24/04	(H)	MINUTE(STA)
02/26/04	(H)	STA RPT CS(STA) 4DP 1NR
02/26/04	(H)	DP: HOLM, LYNN, COGHILL, WEYHRAUCH;
02/26/04	(H)	NR: BERKOWITZ
03/18/04	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 428
SHORT TITLE: CIVIL PENALTY: UNDERAGE ALCOHOL PURCHASES
SPONSOR(S): REPRESENTATIVE(S) MEYER

02/04/04	(H)	READ THE FIRST TIME - REFERRALS
02/04/04	(H)	L&C, JUD
02/25/04	(H)	L&C AT 3:15 PM CAPITOL 17
02/25/04	(H)	Moved Out of Committee
02/25/04	(H)	MINUTE(L&C)
02/26/04	(H)	L&C RPT 5DP
02/26/04	(H)	DP: CRAWFORD, LYNN, ROKEBERG,
02/26/04	(H)	GUTTENBERG, GATTO
03/18/04	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

DAVID A. INGRAM

Juneau, Alaska
POSITION STATEMENT: During discussion of SB 203, offered comments and suggested changes.

EDWARD H. HEIN
Juneau, Alaska
POSITION STATEMENT: Testified in support of SB 203 and responded to questions.

DAVID STANCLIFF, Staff
to Senator Gene Therriault
Joint Committee on Administrative Regulation Review
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Spoke on behalf of Senator Therriault, Chair of the Joint Committee on Administrative Regulation Review, regarding SB 203, which was sponsored by the Senate Rules Standing Committee by request of the Joint Committee on Administrative Regulation Review.

ANDREW HEMENWAY, Hearing Officer: Procurement & Longevity Bonus
Hearings and Appeals
Office of the Commissioner
Department of Administration (DOA)
Juneau, Alaska
POSITION STATEMENT: Responded to questions during discussion of SB 203.

PAM FINLEY, Revisor of Statutes
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency
Juneau, Alaska
POSITION STATEMENT: Speaking as the revisor of statutes, presented HB 447 and responded to questions.

REPRESENTATIVE KEVIN MEYER
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of HB 428.

BRENDA SADLER, President
Fairbanks Chapter
Mothers Against Drunk Driving (MADD)
North Pole, Alaska
POSITION STATEMENT: During discussion of HB 428 asked for support of the bill.

CINDY CASHEN, Executive Director
Juneau Chapter
Mothers Against Drunk Driving (MADD)
Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 428 on behalf of the Juneau and Anchorage chapters of MADD.

LOGAN SPENCER
Youth in Action (YIA)
Mothers Against Drunk Driving (MADD)
Juneau, Alaska
POSITION STATEMENT: During discussion of HB 428 provided comments and urged passage of the bill.

O.C. MADDEN III
Brown Jug, Inc.
Anchorage, Alaska
POSITION STATEMENT: During discussion of HB 428 provided comments and responded to questions.

DALE FOX, Executive Director
Cabaret Hotel Restaurant & Retailers Association (CHARR)
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 428 and responded to questions.

SUZANNE CUNNINGHAM, Staff
to Representative Kevin Meyer
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: During discussion of HB 428, assisted the sponsor, Representative Meyer, by responding to questions.

ACTION NARRATIVE

TAPE 04-39, SIDE A
Number 0001

CHAIR LESIL McGUIRE called the House Judiciary Standing Committee meeting back to order at 2:15 p.m. Representatives McGuire, Anderson, Holm, Ogg, Samuels, Gara, and Gruenberg were present at the call back to order. [For the presentation by Juan Melendez, former death row inmate, see the 1:15 p.m. minutes for this date.]

SB 30 - ABORTION: INFORMED CONSENT; INFORMATION

Number 0021

CHAIR McGUIRE announced that the next order of business would be CS FOR SENATE BILL NO. 30(JUD) am, "An Act relating to information and services available to pregnant women and other persons; and ensuring informed consent before an abortion may be performed, except in cases of medical emergency." [Before the committee was HCS CSSB 30(HES).]

CHAIR McGUIRE mentioned that public testimony is closed with the exception of written testimony, which the committee will still entertain. She relayed that just today the attorney general provided the committee with a legal analysis of the proposed House committee substitute (HCS) for SB 30, Version 23-LS0193\N, Mischel, 2/18/04; this analysis is dated 3/18/04.

CHAIR McGUIRE suggested that the committee incorporate the specific recommendations listed in attorney general's legal analysis into a forthcoming HCS. She explained, however, that there are other aspects of the analysis that she does not mean to have incorporated into a proposed HCS, such as the references to potential privacy challenges, to potential equal protection challenges, and to potential costs associated with [such challenges]. What she would like to incorporate, she relayed, is the recommendation to return to the bill the language requiring that the information in the pamphlet be "unbiased information that is reviewed and approved for medical accuracy and appropriateness by recognized obstetrics and gynecological specialists"; the recommendation that a disclaimer be given on the web site; the recommendation that people be given a choice regarding inclusion in the pamphlet; the recommendation to remove the provision regarding a 24-hour waiting period; and a number of other [specific] recommendations that are outlined.

Number 0213

CHAIR McGUIRE made a motion "that the specific recommendations outlined in the March 18, 2004, letter by the attorney general be incorporated into a new [House Judiciary Standing Committee HCS]."

Number 0260

REPRESENTATIVE GRUENBERG objected for the purpose of discussion. He said that although he likes the procedure, he isn't saying

that he likes the proposed changes, embodied in the legal analysis, on their merits.

REPRESENTATIVE OGG offered his understanding that the only portion of a woman's pregnancy that doesn't require a consultation is the first trimester, and surmised that "this is aiming towards that." He said that his hope is that the proposed changes will provide direction on this issue.

CHAIR McGUIRE offered her understanding that although the Alaska Administrative Code already has an informed consent requirement, it doesn't require it for the first trimester. She indicated that such is not required by the bill either.

REPRESENTATIVE OGG surmised, then, that consent is required but consultation is not.

CHAIR McGUIRE concurred. In response to a question, she said that her motion includes the deletion of the 24-hour waiting period.

REPRESENTATIVE OGG withdrew his objection.

Number 0440

CHAIR McGUIRE asked whether there were any further objections to the motion. There being none, the motion carried.

CHAIR McGUIRE announced that SB 30 would be set aside for the purpose of awaiting the forthcoming HCS.

The committee took an at-ease from 2:24 p.m. to 2:25 p.m.

SB 203 - ADMINISTRATIVE HEARINGS/OFFICE

Number 0464

CHAIR McGUIRE announced that the next order of business would be CS FOR SENATE BILL NO. 203(FIN) am, "An Act relating to administrative hearings, to hearing officers, and to administrative law judges; establishing the office of administrative hearings and relating to that office; and providing for an effective date." [Members' packets include a proposed House committee substitute (HCS) for SB 203, Version 23-LS0903\J, Cook, 3/17/04.]

Number 0553

DAVID A. INGRAM relayed that he is a former hearing officer for the state, specifically the Commercial Fisheries Entry Commission (CFEC), and has served for many years as the chair of the administrative law section for the Alaska Bar Association. He offered the following:

> I have an abiding interest in the improvement of administrative law in this state, and I speak from a varied background; I've also taught administrative law at the university for over the last 20 years. ... I am such a fan of this bill. I think ... central panels is just ... an idea who's time has definitely come; in fact, I think it's way overdue. ... A majority of the states have some sort of central panel ... - 29 states, something like that. ... I think this is a major step forward in the improvement of administrative law in the state. ... I think a central panel is essential for basically three main reasons. The appearance of fairness is so much improved if you have a central panel.
>
> ... I assure you, to the people out there who have been denied benefits, been denied [a] commercial fishing entry permit, or have [an] adverse action brought against them by some agency trying to take away their livelihood, it's very important. ... So the basic appearance ... [of fairness] is essential. ... Can you imagine how the public would feel if the general jurisdiction judges worked for the Department of Law and were employed and under the supervision and control of the Department of Law so [that] you've got their cohorts coming and arguing cases in front of them. It's the same kind of thing you've got in the agencies.

Number 0692

MR. INGRAM continued:

> Another problem with the current system is that "ALJ's" - administrative law judges - and hearing officers are just human, and they work with these people. If you are employed by and under the supervision and control of the agencies, they become family; you're celebrating one another's birthdays, you're going to parties together, and it's just not

good. ... No matter how much you fight it, your relationships with those people are bound to affect your decisions. And this is sort of where the rubber meets the road - at the agency; ... this is the hearing where facts are going to be found, and from that point on, sure, you can appeal it to the courts, but you're talking about legal error once you get on appeal. Your one shot at that fact finding is down there at the agency level, and it should be as fair and unbiased and unprejudiced and untainted by relationships as possible.

Finally, ALJs and hearing officers should be removed from any threats of retribution, whether explicit or implicit. And as long as they are under the control and supervision of the agencies, I assure [you that] they are loath to expose misdeeds, corrupt practices, and the like that are going on in the agency, because they fear bad performance reports, denial of pay increases, demotions, [and other things]; you hear hearing officers and ALJs at various levels talk about some ... picayune things ... [like] parking spaces and ... bathroom privileges and what office you get and the like, but ... what it really comes down to is pay, and there's always that threat as long as they're under the thumb of the agencies.

So, ... I've been working with ... Senator Therriault and Dave Stancliff and Andy Hemenway and the Senate Judiciary [Standing] Committee, and some earlier recommendations I had have already been incorporated into the [House] committee substitute you've got before you. There's one other, though, [that] I'd really like you to consider, and that is to strengthen the language in Section 1 of the bill regarding the purpose of the Act and the intent to include respect for an individual's privacy and to prohibit actions that threaten, intimidate, or harass a member of the public.

Number 0842

MR. INGRAM concluded:

And as a graphic example as to why something like this is necessary, and I even gave you some language there as to how it could be done, I've submitted four pages

> from a decision I rendered on January 30 of this year that discuss an incident where an agency hearing officer left a message on an individual's telephone answering machine which I found to violate that person's right of privacy and, even if it didn't constitute a threat, certainly constituted intimidation and harassment. And I would encourage you to strengthen up the language and send a clear message that this kind of conduct isn't going to be tolerated. ... That's all I have, and I thank you very much for this opportunity to appear; [I'd] be glad to answer any questions.

CHAIR McGUIRE said that although ideas similar to what is being proposed via SB 203 were proffered during her time on the Joint Committee on Administrative Regulation Review, she is glad to see that now those ideas are finally gaining support. She thanked Mr. Ingram for his past work and his current efforts.

REPRESENTATIVE GRUENBERG asked Mr. Ingram whether he sees any other problems with the bill.

MR. INGRAM said he believes that all ALJs and hearing officers for every agency ought to be swept into a central panel at some point, although what the bill currently proposes is a good first step. He offered his understanding that the agencies currently listed in the bill are those that are willing to go along with this kind of change and not fight it.

REPRESENTATIVE GRUENBERG noted that this idea is not new; prior legislators have offered similar legislation in the past.

CHAIR McGUIRE concurred.

Number 1008

REPRESENTATIVE ANDERSON indicated agreement with the concept embodied in bill. He noted, however, that workers' compensation is not included.

MR. INGRAM posited that others could speak to that issue.

REPRESENTATIVE ANDERSON mentioned the issue of exempt employees.

MR. INGRAM noted that as a hearing officer for the CFEC, he was an exempt employee, and he was always kind of disturbed that he and his fellow hearing officers didn't have some sort of union

protection as did other employees of the Alaska Department of Fish & Game. He said he would like to see some sort of protection for hearing officers and ALJs.

REPRESENTATIVE GARA noted that some areas of regulation require a certain amount of expertise on the part of the ALJs and hearing officers that hold hearings regarding those areas of regulation, such as those pertaining to the Regulatory Commission of Alaska (RCA) and to workers' compensation. He asked whether RCA and workers' compensation and oil tax ALJs are included in the bill and would therefore function under a central panel.

MR. INGRAM offered his understanding that the aforementioned are not included in the bill, and that it basically just includes agencies under the purview of the Department of Administration (DOA) and the Department of Revenue (DOR).

REPRESENTATIVE GARA said he supports the concept of the bill, but added that he believes that in certain areas of regulation, the ALJs and hearing officers need a certain amount of specialized expertise.

MR. INGRAM relayed his understanding that in states that have a central panel, ALJs and hearing officers from the agencies requiring a certain amount of expertise are swept into the panel and are then the ones to hear those types of cases without being under the control of the associated agency. He mentioned that the goal of having a central panel is to get the ALJs and hearing officers with the expertise away from the agencies.

Number 1220

REPRESENTATIVE GARA asked whether ALJs are required to have a particular legal background.

MR. INGRAM said yes, ALJ's must be members of the [Alaska] Bar and have two years of experience.

REPRESENTATIVE GARA asked Mr. Ingram whether he felt that two years of experience is enough.

MR. INGRAM opined that more is better, but remarked that whenever there is a job opening for an ALJ, there are plenty of candidates with plenty of experience. He mentioned that the agency he'd worked for had a rule that a person also had to have either two years of judging experience or two years of

representing people in trials or before administrative agencies. In response to a question, he offered his understanding that the bill only requires two years' membership in the Alaska Bar Association.

REPRESENTATIVE GARA said that two years of experience could mean completely different things: two years in a law library is not the same as two years in court.

MR. INGRAM acknowledged that that requirement could be strengthened, and suggested that the two years consist of either judging experience or representing individuals before courts or administrative agencies.

REPRESENTATIVE GARA pointed out, however, that when lawyers work for a law firm, they are considered to be representing someone in court though they may never have to show up in court. He asked how the latter part of Mr. Ingram's suggestion would be defined.

MR. INGRAM posited that the question of whether the experience is adequate would be determined by the chief ALJ, who will be doing the hiring.

REPRESENTATIVE GARA suggested that perhaps it would be more practical to require five years of experience, since many attorneys are still "pretty fresh" with only two years of bar membership.

MR. INGRAM opined that five years of experience would be better, adding, "The more experience the better." He surmised that making more experience a requirement wouldn't seriously limit the number of applicants.

Number 1401

REPRESENTATIVE OGG asked how the bill has changed from its original form.

MR. INGRAM indicated that others could speak to that issue.

REPRESENTATIVE OGG asked which agencies would not be participating.

CHAIR McGUIRE suggested that that issue could be better addressed by the sponsor's representative.

REPRESENTATIVE OGG asked what were the oldest unresolved cases in the CFEC's system.

MR. INGRAM said that he knew of "open" cases that were initially filed in 1975 and 1977, and that there are between 50 and 100 open cases that have had a hearing officer decision since 1982-1983 but are still unresolved. Part of the problem is that an applicant receives the benefit of being able to fish until his/her case is resolved, so from the applicant's point of view, if it is a bad case, just keeping it alive will result in being allowed to fish.

REPRESENTATIVE GARA opined that leaving ALJs exempt, which lets the governor terminate them if he/she is dissatisfied with them, negates the bill's attempt at taking them out from under the pressure put upon them by the agencies. He asked Mr. Ingram whether he thought it would be a good idea to make ALJs nonexempt.

MR. INGRAM said he did think that would be a good idea, and further suggested that it might also be a good idea to require that an ALJ or hearing officer can only be removed for cause, similar to the requirement for commissioners appointed to "quasi-judicial" agencies.

Number 1706

EDWARD H. HEIN said that he is the chief appeals officer for the National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce. He also relayed that he is a member of the Alaska Bar Association, an officer with the Alaska Association of Administrative Law Judges, a member of the National Association of Administrative Law Judges (NAALJ), and was a drafting attorney with the Legislative Affairs Agency during most of the 1980s. He went on to say:

> I'm just here to support the bill generally and to answer any questions if you have any. My office is ... the federal counterpart to ... [the] CFEC; we do cases involving the denial of fishing licenses and privileges. ... I've been involved with this issue and with both this bill and the previous bill for [the] past four years. I think this bill is a much-improved version of what was offered a few years ago. I support the bill. I'm not here in a representative capacity, I'm just here to speak on my own although

the [NAALJ] ... generally supports centralized hearing offices. I think this is a bill that is a good-government bill. I think it will be good for Alaska; it places Alaska in the majority of states that have centralized panels. ...

[There's] basically just four or five issues: ... independence of the hearing officers, professionalism of the hearing officers, efficiency, and public confidence. ... I work within an agency ... but my office is a separate office within the agency; I'm in a separate building, ... which ... reinforces the idea that we're independent. Our record is that we've reversed the agency [in] about an average of 25 percent of the cases, ... but I think we're the exception, and I can't speak for a lot of Alaska agencies. ... I can tell you that there are certainly other federal agencies that have significant problems with regard to their independence.

MR. HEIN added:

I use as one example the Social Security Administration. ... They've had a number of problems over the years including [the fact that] the ... agency set up a panel of lawyers to oversee the decisions that the administrative law judges were putting out, and they only review cases where the [ALJ] has found in favor of the claimant. And it has been a major source of dispute and contention within the agency .... And there are many other agencies in other states that have either formally or informally imposed criteria when it comes time for the hearing officers' review [of] their performance: they look at ... how many times that they ruled against their own agency. Those are the kind of things that are awful abuses ... of the independence, and something which the central panel ... will go a long way toward avoiding if not correcting. ...

Number 1905

The professionalism: I think the fact that you would have a centralized office and a new code of ethics specifically for the hearing officers that the chief ALJ would produce and which would be applicable even under this bill to hearing officers outside the

central panel, I think would be a good move toward professionalization of the statewide hearing officer core. [There are] also opportunities for cost effectiveness in centralized training for the hearing officers, and of course the qualifications would be more standardized.

And then efficiency: there's always this argument between the expertise that a particular hearing officer [or] a set of hearing officers has within an agency versus giving a hearing officer a variety of cases. As I understand it in this bill, it's set up ... so that it could be the case that the hearing officers who will end up being ALJs under this centralized panel are already doing the work that they would be doing in the centralized panel to a great degree [though not entirely] .... And so essentially you're taking whatever expertise there might be and not eliminating it but putting it into the central [panel]. And to the extent that other expertise is needed, the [panel] itself will have an opportunity under this bill, I believe, to provide expertise as witnesses or as part of the case.

Number 1986

And then public confidence I think is a matter of perception as much as reality. And ... I'm told ... that many people come into agencies with ..., if not the expectation, at least the suspicion that a hearing officer who works for the agency is already biased in favor of the agency. And many attorneys that I've talked to in Alaska have said that ... they go through the hearing through the agency because they're required to exhaust their administrative remedies, but they feel that the real hearing comes when they get to court.

MR. HEIN continued:

I think if you have a centralized panel and you have more confidence (indisc. - paper shuffling) and establishes a record of independence (indisc. - paper shuffling) I think you have less of that attitude going in and in fact may have a reduced number of cases going to court. I think a lot of people, depending on the case of course, ... even if they lose

their appeal [or] lose their administrative claim, if they feel that they've had a fair hearing and that ... their evidence and their case has been adequately considered, I think it lessens the likelihood that they're going to want to take it to court and proceed further. I can't give you any guarantees about that, but that's my perception.

So, with all that said, I have no opinion about which agencies and programs should be in or out of the jurisdiction of the central panel - ... those are really political decisions - but it's a good bill. And [the] one other thing I would say is that in February, ... the Alaska Association of Administrative Law Judges ... had a public panel discussion on this bill, and about the issues around it, with four chief ALJS from other states, and the consensus ... was this was as good a bill as they've seen and they all supported it. So with that, if you have any questions, I'll try to answer them.

CHAIR McGUIRE asked Mr. Hein what kind of protections he has at the federal level that allow him to retain his independence and rule without fear of reprisal.

MR. HEIN said that he has the same protections that all other federal employees have, and noted that there are avenues by which federal employees can pursue employment grievances. Without such protections, however, an employee really is at the mercy of whoever happens to be his/her supervisor, he observed. He posited that the protections offered by the bill will go quite a way towards improving the situation for state ALJs and hearing officers, and that there are probably any number of ways that even those protections could be strengthened. He opined that there is a legitimate need for strong protections for hearing officers and ALJs because there are a lot of subtle pressures that can be brought to bear on them, particularly when they are working within an agency; just having a centralized panel will help that situation.

Number 2177

REPRESENTATIVE GARA asked Mr. Hein what his thoughts are on requiring at least five years of experience or, if less than five years, requiring that an applicant has "done" at least two trials or administrative law hearings.

MR. HEIN replied:

> I think you have to have a balance in that ... you want to have it open to all qualified people, and you don't want to arbitrarily say you have to have ten years' experience or five years' experience in these particular things. ... But on the other hand I would agree that someone fresh out of law school might not be the best type of person to hire. It depends. I think that on the whole, having practical experience in court or with administrative agencies is a real plus. On the other hand ..., the role of a hearing officer is different than the role of an advocate, and I think that there are a lot of lawyers who make great advocates but would not make good hearing officers because they have a different temperament.
>
> So ... I think it's important that you hire someone who's able to make a decision and who's able to write well and ... is sensitive to the public, not ... only getting due process and a fair hearing in fact, but also having the appearance of doing so, both to the general public and to the people who come before you. As I say, ... even if a person loses and you have to deny their claim, I think you at least want to make sure that they know that they've gotten a fair hearing and that you've honestly considered all the evidence and that you've given them their day in court. So not everybody is suited to do that sort of work, and I think you're going to attract people who want to play that role rather than an advocate.

Number 2271

MR. HEIN concluded:

> So I don't think you necessarily have to have a lot of advocacy in order to be a good hearing officer; I think you have to have those sensitivities. So in terms of setting up requirements, I think there should be a basic threshold, and I think this bill does that. I think it's very important to have legal training and, if necessary, to be a licensed attorney. ... I think this [bill] sets a nice balance in that with the two years' [experience] and then for the chief [ALJ] five years. But on the other hand, the chief ALJ is going to chose from those who apply, ... and the

> market may fluctuate ... [and so] it depends on how you pay these people and what kind of reputation the panel develops as to how attractive it will be to people.

REPRESENTATIVE GARA indicated that he would be comfortable requiring five years' experience, though would not be as comfortable requiring only two years' experience [if] an applicant has never "done" either a trial or an administrative hearing. He opined that an applicant should at least be familiar with the process of introducing evidence. He asked Mr. Hein whether he has any concerns regarding that issue.

MR. HEIN indicated that it would be a good idea for a person with only two years' experience to have at least some trial experience or administrative hearing experience. He noted, however, that extensive training is available for people who hold positions similar to his.

TAPE 04-39, SIDE B
Number 2380

MR. HEIN indicated that such training is available through federal programs and national organizations. He relayed his understanding that the majority of hearing officers across the country are not lawyers, and this is one of the reasons that training is available. However, he said he does think that lawyers have more sensitivity and understanding of due process and other [related] issues, but would not say that it's impossible to be a good hearing officer without being a lawyer. He concluded by reminding members that in the end, it will be up to the chief ALJ to pick from those who apply.

CHAIR McGUIRE ascertained that a representative from the Child Support Enforcement Division (CSED) was available to answer questions should the committee have any for that division.

Number 2307

DAVID STANCLIFF, Staff to Senator Gene Therriault, Joint Committee on Administrative Regulation Review, Alaska State Legislature, spoke on behalf of Senator Therriault, Chair of the Joint Committee on Administrative Regulation Review, regarding SB 203, which was sponsored by the Senate Rules Standing Committee by request of the Joint Committee on Administrative Regulation Review. He said:

Basically, we set out to build the best model we could build, to do the least disruption to the existing system, as this transition away from captive judges in agencies becomes a centralized, highly-trained, highly-motivated, report-to-the-public, funded-separately group. To do that, we needed to be sensitive to the fact that the ALJs that would be stationed there needed to have the expertise that was going to be coming to them. And so we kind of matched the hearing officers with the expertise, and then we looked at the areas that ... require highly trained technical expertise, such as Representative Gara has mentioned, and we decided to exclude those: workers' [compensation], RCA, rate hearings, those types of things.

We also looked at some of the boards and commissions that the legislature has seen fit to empower as adjudicatory bodies; some of these commissions are specifically set up and designed in boards to deliberate and to provide adjudication, so they weren't a neat fit. What you have left, from a list of about a little over 50, is now a list pared down by about 25 percent that matches what the office will be able to do with the expertise that will be coming into the office, with the resources that will be available for the office. And other states' experiences have been, once you show that this works, and once the model works and the agencies start getting comfortable with it - we gave the agencies options to use the hearing officers, as they see fit, out of the model - this all becomes a very orderly, meaningful transition. That's how we got to the list that we got to.

Number 2189

CHAIR McGUIRE surmised, then, that future legislators might promote inclusion of other agencies.

REPRESENTATIVE GRUENBERG relayed that according to discussions he'd had with Annette Kreitzer, Chief of Staff, Office of the Lieutenant Governor, she'd been anticipating that the procedures pertaining to notary publics would be included in SB 203. He asked whether such was included.

Number 2148

ANDREW HEMENWAY, Hearing Officer: Procurement & Longevity Bonus, Hearings and Appeals, Office of the Commissioner, Department of Administration (DOA), said, "What we did is try to create a list that was the universe of hearings and then we sorted through that list, and I don't recall seeing something like that on any list ...."

REPRESENTATIVE GRUENBERG expressed an interest in adding [notary publics] to the list.

REPRESENTATIVE HOLM indicated that he is comfortable with the legislation, though he is concerned with whether there will be appropriate oversight [of the central panel].

REPRESENTATIVE ANDERSON relayed that he supports the legislation.

REPRESENTATIVE GARA indicated that he'd like to address "the nonexempt issue" via a conceptual amendment.

MR. STANCLIFF said:

> That has been the focus of much debate and much deliberation and much compromise. The compromise that we reached was that the protections that are in this bill now are not the full protections - which we've been told we shouldn't do, from models in other states. However, they are the protections that are modeled after [the Division of Elections] employees, where they can't simply be removed, that there's a hearing process that they have; they have a process to protect them from indiscriminate behavior from a supervisor, but you don't rise to the level of a full "PX" (ph) position. So that was a compromise that the administration was willing to make, that the people within, that are working now as hearing officers, are willing to accept, that come into the panel. And that's how we got where we're at. Andy has specifics on that "custom PX" that we've created here.

Number 2039

MR. HEMENWAY added:

> It's on page 6 of the draft [HCS] at the top. Lines 6-8 [state] that even though they are partially

> exempt, notwithstanding that most partially exempt don't have to go through the personnel rules to be disciplined, these positions are subject to the personnel rules adopted under the personnel Act. And [in] those specific provisions - [AS 39.25.150(7) and (15)-(16)] - [paragraph] (7) is the one that deals with the probationary period, so you get a one-year probationary period during which time your performance is assessed and [if] it's not satisfactory, you could be dismissed; after that, [paragraphs] (15) and (16) kick in - those are the disciplinary and dismissal provisions of the personnel rules - and they apply to these hearing officers. And one of the rules ... states that you can only be dismissed for just cause ....

REPRESENTATIVE GARA surmised, then, that [dismissal for] just cause applies after the one-year probationary period.

MR. HEMENWAY concurred, adding that they'd wanted to provide flexibility on the "hiring side" while providing protections on the "discharge side."

REPRESENTATIVE GARA turned attention to proposed AS 44.64.030(a)(19), which starts at the bottom of page 4 and ends at the top of page 5. He asked whether the statutes proposed in this language pertain to rate-setting issues.

MR. STANCLIFF indicated that they do not, and noted that the definition section of the bill specifies that hearings conducted by the central panel won't include rate-setting hearings.

REPRESENTATIVE GARA commended Mr. Stancliff for his work on this difficult issue. "The bill sounds good, strong, needed, and done right," he added.

REPRESENTATIVE GRUENBERG indicated that he intended to offer Mr. Ingram's suggested language as an amendment.

MR. STANCLIFF said he is comfortable with having that language added to the intent section of the bill.

Number 1875

CHAIR McGUIRE inquired about the possibility of adding, to the list on pages 4-5, statutes pertaining to the legislative ethics

Act. She suggested that it might be best if hearings pertaining to such issues were conducted by the central panel.

MR. STANCLIFF indicated that that issue had not heretofore been discussed, offered to give it consideration, but warned that some legislators might have discomfort with allowing employees of the executive branch to adjudicate issues pertaining to the legislative branch.

CHAIR McGUIRE remarked that she likes the model being proposed by SB 203 and is simply thinking in terms of perhaps in the future applying it to other areas, such as legislative ethics hearings, as well.

REPRESENTATIVE GARA indicated that he would have concerns about having hearings pertaining to legislative ethics conducted by executive branch employees; it would be too easy for partisan politics to hold sway in such a situation. Although the current system regarding legislative ethics may not be perfect and might perhaps be looked at in the future with the goal of making it better, at least right now both parties are represented in equal number, he added.

REPRESENTATIVE GRUENBERG, noting that the chief ALJ is to be appointed by the governor and confirmed by the legislature, asked why the bill does not propose to use the method currently used by the Alaska Judicial Council (AJC) regarding the appointment of judges, wherein the AJC nominates persons and then the governor chooses from those nominees.

MR. STANCLIFF indicated that the bill was based on models used in other states, with the premise being that because the chief ALJ would perform duties as part of the executive branch, it would be more appropriate for the appointment process to start with the governor.

Number 1551

REPRESENTATIVE GRUENBERG clarified that he is more concerned about the issue of subjecting the chief ALJ to confirmation by the legislature, since that process can be very political in nature.

MR. STANCLIFF relayed that although the attorney general recommended not using the legislative confirmation process, an amendment adding that process was offered on the Senate floor by Senator Guess and was adopted unanimously.

REPRESENTATIVE GRUENBERG said he still has concerns about that issue. He then turned attention to page 2, line 25, which stipulates that the governor can remove the chief ALJ from office only for just cause and after a hearing conducted by the attorney general. He said he has concern about the latter aspect of that stipulation because such a hearing could end up being political in nature. He asked why such a hearing couldn't be conducted by the Commission on Judicial Conduct (CJC).

MR. STANCLIFF offered that the intent was that any given administration should have some influence on the process, and that the level of that influence is up to the legislature to decide. The object, he noted, is to get the best qualified person for the position, someone who will operate independently and bring together a highly trained, highly motivated, efficient and fair panel. In response to a question, he relayed that it is only the chief ALJ that is subject to legislative confirmation and a hearing conducted by the attorney general.

CHAIR McGUIRE mentioned that it was time to consider amendments to the bill.

Number 1318

REPRESENTATIVE ANDERSON moved to adopt the proposed House committee substitute (HCS) for SB 203, Version 23-LS0903\J, Cook, 3/17/04, as the work draft. There being no objection, Version J was before the committee.

Number 1304

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 1, "to add to the list, disciplinary proceedings involving notaries public." There being no objection, Conceptual Amendment 1 was adopted.

Number 1291

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 2, to replace the language in paragraph (2) of Section 1 with Mr. Ingram's suggested language, which reads [original punctuation provided]:

> (2) ensure respect for the **privacy and** dignity of the individuals whose cases are being adjudicated **[;]**

and protect them from threats, intimidation, and harassment;

CHAIR McGUIRE asked whether there were any objections to Amendment 2. There being none, Amendment 2 was adopted.

REPRESENTATIVE GRUENBERG turned attention back to page 2, lines [22 and 25], which pertain to the appointment and removal of the chief ALJ, and again mentioned the possibility of having the CJC involved in the process.

MR. HEMENWAY relayed that he'd spoken with the executive director of the CJC, Marla Greenstein, about possibly having the CJC become involved in the process, but Ms. Greenstein had expressed concerns about constitutional issues.

REPRESENTATIVE GRUENBERG said he is still concerned about the appointment and removal processes as currently proposed.

MR. STANCLIFF offered that including legislative confirmation in the appointment process does add some balance to that process. He relayed that the sponsor is still open to suggestions for improving the bill.

REPRESENTATIVE GARA opined that involving the CJC in the appointment process would create a constitutional problem. He then offered his belief that including the attorney general in the removal process is a bad idea and could become something of a farce, and suggested that simply allowing the governor to remove the chief ALJ for good cause is sufficient.

Number 1055

REPRESENTATIVE GARA made a motion to adopt Amendment 3, on page 2, line 25, to remove, "and after a hearing conducted by the attorney general".

Number 1046

CHAIR McGUIRE objected for the purpose of discussion.

REPRESENTATIVE GRUENBERG said he supports Amendment 3.

REPRESENTATIVE SAMUELS said he agrees that having the attorney general involved in the removal process could create difficulties.

Number 0973

CHAIR McGUIRE, after removing her objection, asked whether there were any further objections. There being none, Amendment 3 was adopted.

REPRESENTATIVE GRUENBERG asked whether there is anything in the bill that would prohibit looking at the percentage of rulings against an agency as part of an ALJ's performance evaluation.

MR. STANCLIFF replied:

> There's some excellent models, through both Maryland and Colorado, that get to that very point. They want to survey for public acceptance and public approval; they do not want to start rating them according to how they rule this way or the other. And I can get a copy of that for Representative Gruenberg. We're going to provide all those materials. And I might add for the committee's comfort here that both Ed Felter (ph), who is ... [an] internationally respected central panel expert, and John Hardwood (ph) will have availed themselves to work setting up the new panel with the new chief ALJ, and these type of resources and these cautions that you raise will be a part of what we want to avoid. We've stayed away from the micromanaging because there's no end to it.

REPRESENTATIVE GRUENBERG asked whether the bill contains a provision to make all ALJs and hearing officers, not just those on the central panel, nonexempt and, if not, should there be such a provision in the bill.

MR. STANCLIFF replied:

> The central panel protections are in place; we don't extend the rules and the central panel protections outside the central panel at this time. The hearing officers that are operating and ... will continue to operate in their jobs outside the central panel, in most cases, are full "PX" employees and will remain that way until they come into the jurisdiction and become ALJs. And that's the way [the bill] is written right now.

REPRESENTATIVE GRUENBERG asked about the possibility of including a provision that requires the other agencies that use

ALJs and hearing officers to make a report to the legislature - perhaps in six months, for example, or by the end of the next legislative session - regarding whether they believe their hearing officers and ALJs ought to be nonexempt. He opined that the policy should be to free hearing officers and ALJs from political considerations; the burden should be on an agency to [prove] that someone should be politically appointed.

MR. STANCLIFF replied:

> That has been thought of and taken care of under the duties and responsibilities of the chief [ALJ]; they are to gather ... exactly that type of information from not only their own house but also ... [from other agencies] and to bring to you, the legislative policy makers, their recommendations, and I'm sure this is going to be one of them. ...

REPRESENTATIVE GRUENBERG asked about centralized training and qualifications for ALJs and hearing officers that are not on the central panel.

MR. STANCLIFF said that the bill requires [the central panel] to provide cross training, resource materials, and to work with all ALJs and hearing officers, whether part of the central panel or not, to help them "come up to speed."

Number 0660

REPRESENTATIVE ANDERSON moved to report the proposed House committee substitute (HCS) for SB 203, Version 23-LS0903\J, Cook, 3/17/04, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCS CSSB 203(JUD) was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 3:45 p.m. to 4:10 p.m.

HB 447 - 2004 REVISORS BILL

Number 0598

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 447, "An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date." [Before the committee was CSHB 447(STA).]

Number 0585

PAM FINLEY, Revisor of Statutes, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, noted that in members' packets is a sectional analysis of HB 447 and two amendments. The bill, in general, is a cleanup bill, she remarked, that to the best of her knowledge has no policy changes in it - it merely makes conforming changes to statutes that have been amended. Of the two amendments, the first one, which comes at the request of the attorney general, cleans up statutes in light of Carlson v. C.F.E.C., 65 P.3d 851 (Alaska 2003)(Carlson III), which pertains to fishing fee differentials; in its decision, the Alaska Supreme Court has determined which part of current statute is valid and which part is not. She added that because the current statute became law at the request of the executive branch specifically for the Carlson case, "it makes sense to me to clean it up as they have requested." The second amendment, she relayed, merely alters one subsection that was missed "when we went from spousal equivalents to domestic partners."

Number 0447

CHAIR McGUIRE made a motion to adopt Amendment 1, labeled 23-LS1377\I.1, Finley, 3/11/04, which read:

> Page 7, line 27, through page 8, line 9:
> Delete all material and insert:
> Insert
> "(C) [GENERAL GOVERNMENT EXPENDITURES FOR GOVERNMENT SERVICES THAT ARE USED BY A PORTION OF THE POPULATION ATTRIBUTABLE TO THE PRESENCE OF THE COMMERCIAL FISHING INDUSTRY, INCLUDING GOVERNMENT SERVICES PROVIDED BY THE DEPARTMENT OF ADMINISTRATION, DEPARTMENT OF CORRECTIONS, DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS, AND DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES;
> (D)] capital **costs directly supporting** [EXPENDITURES TO SUPPORT] the commercial fishing industry [AS MEASURED BY ANNUAL DEPRECIATION OF PUBLIC FACILITIES AND INFRASTRUCTURE]; and
> **(D)** [(E)] expenditures to subsidize the construction and operation of salmon hatcheries [; AND

(3) THE AMOUNT OF REVENUE FOREGONE BY THE STATE DUE TO THE CURRENT MANAGEMENT SYSTEM FOR COMMERCIAL FISHERIES IN THE STATE]."

REPRESENTATIVE GARA objected for the purpose of discussion. He asked why the change proposed via Amendment 1 should be made to the revisor's bill.

MS. FINLEY relayed that Section 11 of CSHB 447(STA) amends items that were missed in executive orders, and that AS 16.43.160(e) is an explanation of all the aspects of state government that could justify fee differentials between resident and non resident fishing licenses and entry permits. When subsection (e) was passed - at the time, the Carlson case was still ongoing - it was done so at the request of the executive branch, which wanted legislative support of its position as to what would constitute a legitimate basis for fee differentials between resident and nonresident. The Alaska Supreme Court looked at all of those items, said yes to some of the items and no to others, and decided what changes needed to be made.

MS. FINLEY said that Amendment 1 reflects the Alaska Supreme Court's decision, that being that what is listed in the current subparagraph (C) - which relates to general government expenditures - is not specific enough; that the language in current subparagraph (D), "expenditures to support ... as measured by annual depreciation of public facilities and infrastructure" is not acceptable, though "capital costs directly supporting the commercial fishing industry" is an acceptable basis for a fee differential; and that the language in current paragraph (3), regarding the amount of revenue forgone by the state, was also unacceptable.

Number 0277

REPRESENTATIVE GARA opined that these appear to be substantive changes that are properly the subjects of bills rather than a revisor's bill.

MS. FINLEY remarked:

That's one reason why I don't usually clean up statutes, because I figure the legislature might want to clean them up in [a] different way. In this particular case, the bracketed language ... could still be there [but] it can't be effective because the court has said it can't be effective, that ... it

would not be constitutional to use those as bases. So in terms of substantive effect, there ... should be no substantive effect. We could leave the language in and it still wouldn't matter. So the only reason for taking it out is so that people that read the statute - but not the case notes - understand what is acceptable and what isn't.

MS. FINLEY, in response to further questions, said that Carlson III was decided almost a year ago, and the Alaska Supreme Court "reversed and remanded on the issue of the hatcheries loan fund subsidy and they partially remand on the issue of capital costs for findings." Beyond that, she relayed, she is not familiar with the status of "that remand."

CHAIR McGUIRE said she could think of a lot of statutes, particularly in the area of abortion and parental consent, that have been "repeatedly shot down" but are still in existence. "I could imagine the [House] floor fight on a revisor's bill if we were to do a similar type of exercise on them," she added.

MS. FINLEY said she would be happy to withdraw Amendment 1; she'd merely felt the need to offer it because it came at the request of the attorney general and it was a reasonable request. "That's why I do not usually try to clean up the statutes to make them fit the court, because sometimes the legislature has different ideas about what they want to do," she relayed, adding that if the committee is uncomfortable with Amendment 1, she is fine with not adopting it.

REPRESENTATIVE GRUENBERG said he would like to have the statutes be constitutional, suggested that the committee should adopt Amendment 1, and pointed out that if anyone objects to this change, Amendment 1 could be removed on the House floor or by the Senate.

TAPE 04-40, SIDE A
Number 0001

CHAIR McGUIRE said her concern revolves around whether the Carlson case is still going through the process and whether Amendment 1 would be codifying what the court has said now but which could change later. She indicated that she did not have a problem with adopting Amendment 1.

REPRESENTATIVE GARA asked Ms. Finley whether she feels that what is being done via Amendment 1 is a proper subject for a revisor's bill.

MS. FINLEY said she doesn't think that Amendment 1 makes a substantive change because the language it is deleting isn't applicable due to the court ruling. Amendment 1 is cleaning up a statute to match a court decision, though such a change would not usually be included in a revisor's bill because most statutes are passed by the legislature because the legislature wanted a change. The statute being altered by Amendment 1, however, came at the request of the executive branch. In conclusion, she remarked that Amendment 1 is properly the subject of a revisor's bill, though, again, she would not have suggested it and doesn't feel any need to push the issue.

Number 0203

REPRESENTATIVE GARA removed his objection.

Number 0214

CHAIR McGUIRE asked whether there were any further objections to Amendment 1. There being none, Amendment 1 was adopted.

Number 0224

CHAIR McGUIRE made a motion to adopt Amendment 2, labeled 23-LS1377\I.2, Finley, 3/11/04, which read:

> Page 12, following line 3:
> Insert a new bill section to read:
> "*** Sec. 24.** AS 39.50.030(g) is amended to read:
> (g) The requirements in this section for disclosures related to a person's **domestic partner** [SPOUSAL EQUIVALENT] do not apply to an elected or appointed municipal officer."
>
> Renumber the following bill sections accordingly.
>
> Page 18, line 3:
> Delete "**sec. 38**"
> Insert "**sec. 39**"
>
> Page 19, line 3:
> Delete "sec. 38"
> Insert "sec. 39"

Page 19, lines 22, 24, 25, 26, 28, 29, and 31:
Delete "sec. 25"
Insert "sec. 26"

Page 20, line 1:
Delete "sec. 25"
Insert "sec. 26"

Page 20, line 5:
Delete "SECTION 25. Section 25"
Insert "SECTION 26. Section 26"

Page 20, line 8:
Delete "sec. 41"
Insert "sec. 42"

Page 20, line 13:
Delete "sec. 25"
Insert "sec. 26"

Page 20, line 14:
Delete "sec. 41"
Insert "sec. 42"

Page 20, line 17:
Delete "sec. 51"
Insert "sec. 52"

CHAIR McGUIRE asked whether there were any objections to Amendment 2. There being none, Amendment 2 was adopted.

Number 0290

REPRESENTATIVE GRUENBERG noted that many years ago, the legislature used to receive a pamphlet detailing "court decisions, administrative decisions, regulations, and potentially statutes that may need amendment or change." He indicated that he would like to get the pamphlets from the last few years and then relay to the committee any suggestions for changes.

MS. FINLEY mentioned that those pamphlets are produced by Legislative Legal and Research Services.

CHAIR McGUIRE indicated that she did not have a problem with Representative Gruenberg following up on that issue.

Number 0548

REPRESENTATIVE ANDERSON moved to report CSHB 447(STA), as amended, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 447(JUD) was reported from the House Judiciary Standing Committee.

HB 428 - CIVIL PENALTY: UNDERAGE ALCOHOL PURCHASES

Number 0579

CHAIR McGUIRE announced that the final order of business would be HOUSE BILL NO. 428, "An Act relating to civil liability for acts related to obtaining alcohol for persons under 21 years of age or for persons under 21 years of age being on licensed premises."

Number 0629

REPRESENTATIVE KEVIN MEYER, Alaska State Legislature, sponsor, indicated that the concept behind HB 428 offers a good example of the community working together to aid law enforcement in enforcing "our alcohol laws." House Bill 428 allows businesses to file a civil action against minors who try to buy alcohol and against adults who buy alcohol for minors. The penalty provided for in HB 428 is $1,000. He noted that what is being proposed in HB 428 is already occurring in Anchorage under a local ordinance; Brown Jug, Inc. ("Brown Jug"), and Chilkoot Charlie's have been making use of this Anchorage ordinance, and this has sparked interest in other parts of the state. He relayed that Brown Jug is willing to waive $700 of the $1,000 penalty if the person agrees to attend alcohol education programs.

REPRESENTATIVE MEYER offered his understanding that almost all of the people that have been given the option of paying $1,000 or paying $300 and attending the programs opt for attending the programs and paying the lesser amount. He characterized this as a win-win situation; "it's a win for the community, it's a win for the person who was caught buying for the minor and the minor who tried to buy." Alcohol is the drug of choice amongst Alaska's youth, he remarked, adding that he highly endorses the program encompassed in HB 428 and is proud to bring the legislation forward because it will help deter both minors and adults.

CHAIR McGUIRE said she liked the alcohol education option being offered by Brown Jug, surmising that those who've just turned 21 may not realize the seriousness of buying alcohol for minors.

REPRESENTATIVE MEYER said that according to his understanding, there are situations involving teenage girls who unknowingly ask sexual predators to buy them alcohol, and this is why the organization Standing Together Against Rape (STAR) has gotten involved in the training aspect currently taking place in Anchorage.

Number 0950

BRENDA SADLER, President, Fairbanks Chapter, Mothers Against Drunk Driving (MADD), said that alcohol consumption by minors continues to be a challenge to the health, safety, and wellbeing of the Fairbanks community. On behalf of the Fairbanks chapter of MADD, she asked [the committee] to support the changes encompassed in HB 428 as a proactive way to halt the purchase of alcoholic beverages for minors. "Please remember ... [that] minors, too, may be behind the wheel when a loved one or [a] friend of yours or mine becomes the victim of a drunk driver," she said in conclusion.

Number 1012

CINDY CASHEN, Executive Director, Juneau Chapter, Mothers Against Drunk Driving (MADD), noted that she would be speaking on behalf of the Juneau and Anchorage chapters of MADD. She said:

> We support House Bill 428, as we feel it will assist in the prevention of underage drinking. Representative Meyer's bill will provide a tool to Alaska liquor licensees, and empower responsible businesses to participate in community policing. Last year there was a youth risk behavior survey - YRBS - that came out, and 42 schools from 19 districts [participated] in it, and there 2,175 completed questionnaires, grades 9 through 12. And according to the YRBS, ... 38.7 percent of teenagers who completed the survey claimed that they had had at least one drink in the 30 days prior. Over 26 percent claimed that they had consumed five or more drinks within a couple of hours in the 30 days prior to the survey.

> In comparison, when you compare it to Alaska Adults - of 29.9 percent - that percentage is not that far away from the adults, so the youth are catching up to the adults as far as binge drinking. This [YRBS] showed that Alaska high school students had their first drink of alcohol before the age of 13 - ... 23.2 percent. That is a decrease from 36.7 percent in 1995, so education is having some effect, however, the binge drinking has not changed. This bill would change that because it would [deter] kids who would otherwise try to get someone to buy alcohol for them and it would [deter] those who might consider purchasing alcohol for our teens.

Number 1133

LOGAN SPENCER, Youth in Action (YIA), Mothers Against Drunk Driving (MADD), said that YIA is opposed to teen lifestyles that feature alcohol outside of its legal uses, and believes that any legislation that can help prevent underage purchasing or drinking is good legislation. He urged the committee to pass HB 428 to keep minors safer and empower businesses to police minor alcohol-consumption. In response to questions he said that although underage drinking is becoming less "cool," it is still looked upon as "normal" behavior, particularly for high-school-age kids. He remarked that education programs are effective, but lots of kids like to drink simply because doing so is "against the rules." He opined that HB 428 will be effective because one thing that teenagers don't want to lose is their financial freedom, whereas they sometimes simply look at their minor consuming convictions as "badges of honor."

Number 1308

O.C. MADDEN III, Brown Jug, Inc., said that he'd approached Anchorage Assembly member, Anna Fairclough, to get the Anchorage ordinance passed. After its enactment, he said that his organization was able to get together with Akeela, Inc. ("Akeela"), and STAR to create "this diversion program." He went on to say:

> By using the civil penalty, we're able to take action against the minors and adults involved, and then use that as leverage to get them involved in some treatment programs. One of the things that's really exciting about this is that we've got almost 100 percent response rate from the kids that we've

approached with this diversion program. And ... the way it works is, they pay $300 - which goes to ... offset administrative costs and to pay a bonus to the employee - then we will waive $700 [of] the civil penalty, and the minors and the adults involved are required to go through some classes with Akeela - a 16-hour class with them, a (indisc.) - go through a victim impact panel with MADD, and then a class with [STAR]. And we've found this very effective.

Number 1428

Over the last couple of years we've made close to 120 arrests of adults purchasing alcohol for minors and minors soliciting adults to buy. I'd say we've been able to identify three primary groups of people that buy alcohol for minors. The first group is the friend or older relative ... of the minor, the second group is public inebriates, and the third group is sex offenders. We have caught a number of kids who approach public inebriates to buy alcohol for them; they'll go find the guy standing on the corner with the "will work for food" sign. And in many cases, these kids have no idea who it is or the criminal history of the person that they're dealing with. It's a very dangerous situation for the kid. And for those reasons (indisc. - paper rustling) education component was very, very important, and we're seeing a great deal of success (indisc.) virtually all the kids are signing up and about 40 percent of the adults, so far, that we've approached have signed up.

MR. MADDEN, in response to a question, noted that his organization does have difficulty contacting public inebriates and so is not having any success collecting the penalty from them, but is having success with the adults it is able to get in contact with. In response to further questions, he relayed that one suggestion he's made is to mandate that licensees seize IDs when they know they are fake ID's or when they know that the person attempting to buy alcohol is underage. He pointed out that as long as an ID is not seized for personal use, the seizure of an ID does not expose a licensee, or an employee of a licensee, to liability. He elaborated, "It's legal for us to hold evidence that a crime has been committed in order to turn it over to a law enforcement agency." He relayed that his organization has seized close to 1,000 IDs in the last six years, and these IDs have been turned over to the Alcoholic

Beverage Control Board ("ABC Board"); there have no problems with anyone trying to sue Brown Jug for seizing the IDs.

Number 1596

DALE FOX, Executive Director, Cabaret Hotel Restaurant & Retailers Association (CHARR), relayed that "the CHARR group" unanimously supports HB 428, which CHARR believes will deter illegal drinking by underage individuals, and which is exactly what responsible liquor license holders want. In response to a question, he said that CHARR is in favor of people following the law, which currently states that the drinking age is 21.

CHAIR McGUIRE posited that this age limitation is intended to not only prevent people from purchasing alcohol before they are 21 but also to prevent them from being exposed to alcohol while they're under 21.

REPRESENTATIVE GARA said he has no problem with the $1,000 penalty, but noted that only one company is actually assisting people with getting past their alcohol problems. He asked whether all members of CHARR have been surveyed to find out whether any of them will be willing put monies received from these civil actions towards alcohol education programs.

MR. FOX indicated that there has been no such survey. He went on to say:

> But what we have talked about is some guiding principles; the guiding principle of being responsible for your actions is one of the principles that the CHARR board has discussed. And the trend in society for everybody else to be responsible for what you do is one that we don't accept. And this assessment of penalties against the perpetrators - either the ... people that are buying for young people or young people that are trying to take fake IDs and go into a place - puts the responsibility, that is shared by the license holder because there are serious penalties if we sell alcohol to people, puts the penalties where they belong and personal responsibility where it belongs. So this is a vehicle to make that happen. But in terms of what will the 1,800 license holders across the state do with this, I don't know.

REPRESENTATIVE GARA asked Mr. Fox whether it is important to him that liquor establishments receive the money, or could the money just be remitted to local municipalities or to the state.

Number 1712

MR. FOX said that because the asset that is at risk if a minor buys alcohol is the business license, it seems reasonable that business owners should be rewarded for strengthening their procedures pertaining to catching minors and the adults that buy for them. He mentioned that the CHARR board has not discussed in any detail whether it would matter if HB 428 is amended to have the money go to local municipalities; the CHARR board does not yet have a position on such a change.

MR. MADDEN relayed that one of the arrests that was made last year involved a young man buying alcohol for a carload of minors, and although written confessions were obtained from everyone at the time, they ultimately decided to fight the charge. As a result, Brown Jug ended up going to trial, the trial lasted two days, tying up the resources of the state for two days, and the young man ended up paying only $100 fine. That case prompted Brown Jug to approach Ms. Fairclough with the concept that later became the Anchorage ordinance. And although the state has the ability to fine someone up to $5,000 for the crime of buying alcohol for minors, he remarked, he has never seen it done, and opined that outside of the civil penalty, nothing was happening with regard to penalizing people who bought alcohol for minors.

MR. MADDEN, in response to a question, offered his belief that a parent cannot be held liable for giving alcohol to his/her child, nor would the parent be liable if his/her child then gave that alcohol to other minors. He said that HB 428 primarily addresses three situations: a minor that solicits an adult to buy alcohol for the minor, an adult that orders or receives alcohol from a licensee for the purpose of giving it to a minor, or "someone who misrepresents the age of someone in order to provide alcohol to them."

REPRESENTATIVE GARA noted that currently under Alaska law, 50 percent of punitive damages recovered is supposed to be remitted to the state. He offered his belief that HB 428 ought to be altered to say that if a licensee recovers the $1,000 penalty, then the licensee should be obligated to remit 50 percent of that money to the state. "I'm sitting here ... wondering why we would impose this fine and give it all to a liquor

establishment, and I can see in the bill that ... it would be your effort to ... prosecute the civil action, but would you have any problem remitting half of the money to the state?" he asked.

MR. MADDEN said that such a provision would defeat the purpose of the legislation. He offered his belief that the state currently has the ability collect any fine it feels is necessary. "Our basic goal here is to create an incentive for licensees to actually take these steps, and the more that you restrict that incentive, the less likely some people will be to participate; I don't know that that's a positive step," he remarked.

Number 2001

REPRESENTATIVE GARA pointed out that the state can only collect a fine if it goes through all the hoops of a criminal prosecution. The process proposed by the bill involves a very easy civil case, and the state doesn't have the right, currently, to get a simple $1,000 civil fine. He said that because CHARR has not yet spoken to its membership about what licensees will do with the money, he feels that the legislature would be issuing a blank check in a very odd way. "I can't think of another law ... where we would transfer fine money to a liquor establishment," he concluded.

MR. MADDEN relayed that AS 04.16.049 does so, in that a minor who illegally enters a licensed premises is liable for a civil penalty of $1,000 to the licensee. He said he'd originally drafted that language for an Anchorage ordinance back in 1998, and Representative Meyer used that language in legislation that became law in 2001. It's an extremely effective tactic for dealing with underage drinking, he remarked, mainly because it is a form of zero-cost law enforcement in that it allows a licensee to pay substantial bonuses to employees who are in turn motivated to learn all they can about how to stop underage drinking in the establishments where they work. Under AS 04.16.049, the only one who is penalized is the person who deliberately breaks the law. "You couldn't ask for a better mechanism to be set in place," he opined.

REPRESENTATIVE GARA asked Mr. Fox what CHARR's membership does with the fines its licensees pursue via AS 04.16.049.

MR. FOX said he did not know, and pointed out that CHARR members represent only about 360 of Alaska's 1,800 licensees.

Number 2096

REPRESENTATIVE SAMUELS indicated that he agrees that requiring 50 percent of the penalty to go to the state would defeat the purpose of the legislation. He asked whether the civil actions under the Anchorage ordinance are being pursued separately, without the knowledge of law enforcement or the criminal justice system.

MR. MADDEN said that with regard to fake ID cases, Brown Jug's employees are not authorized to detain the kids with the fake ID's; instead, the employees are trained how to collect information that will allow the company to take action at a later date. In cases where a person is attempting to buy alcohol for minors, security staff that have been highly trained are detaining those individuals until their identity is established and in some cases law enforcement is called in.

REPRESENTATIVE SAMUELS surmised, then, that civil actions pertaining to fake IDs are pursued without any criminal proceedings taking place.

MR. MADDEN confirmed this.

REPRESENTATIVE SAMUELS said that this seems unusual in that the damaged party is the state of Alaska, not the licensee, but it is the licensee that gets to collect the money via civil action. He remarked that he agrees with the bill, however.

REPRESENTATIVE GRUENBERG opined that HB 428 is strangely drafted because "there are misplaced modifiers and stuff." He suggested that HB 428 ought to be redrafted to fit the proper legal form of statutes. For example, statutes do not normally use the term, "condition precedent", which is currently located on [page 1, line 13, and page 2, lines 3-4]. Also, the term "by first class mail" ought to be placed in a different location, he remarked, and pointed out that attorney fees are not generally spoken of as a liability, but the language on page 2, lines 8-10, does so. He also indicated that the term, "emancipated minor" should be defined using standard statutory language rather than how it is currently defined in the bill.

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on HB 428.

CHAIR McGUIRE surmised that the bill simply contains the wording of the Anchorage ordinance. She indicated a preference for having the bill redrafted using statutory drafting guidelines.

Number 2300

SUZANNE CUNNINGHAM, Staff to Representative Kevin Meyer, Alaska State Legislature, sponsor, relayed that the language in subsection (f) regarding the definition of "emancipated minor" was not a part of the Anchorage ordinance and instead came from the drafter. She agreed to have the drafter review the bill.

REPRESENTATIVE GARA remarked that "this" is not that different from something that occurs under federal law: where a government interest has been violated, in some circumstances private people are allowed to bring a suit on behalf of the government and are allowed to keep some of the fine money, but they have to remit a certain portion back to the government. That seems to be what's going on here, he opined, noting that somebody is being rewarded for bringing the action; however, he remarked, he would be a lot more comfortable if the fine is split between the licensee and the state. He said he is considering offering a conceptual amendment to that effect. He asked the sponsor to comment.

REPRESENTATIVE MEYER indicated that he has concerns about such a change, and opined that the companies that are most vigorously pursuing these civil actions are only keeping $300 of the penalty and waiving the remaining $700. He said he is afraid that such a change would defeat the goal of providing an incentive to licensees.

TAPE 04-40, SIDE B
Number 2380

MR. MADDEN, in response to a question, offered his belief that only a few establishments are making use of the Anchorage ordinance.

MS. CUNNINGHAM relayed that Mr. Madden travels throughout the state providing training to licensees and their employees regarding how to detect fake IDs and how to detect when someone is purchasing alcohol for minors. She explained that [other areas of the state] want to utilize a program similar to the one in Anchorage. She opined that these businesses are being rather generous by keeping only $300 of the $1,000 fine to cover administrative costs.

REPRESENTATIVE MEYER remarked that the bill currently provides the flexibility to reward the doorman or clerk to take the license. Therefore, he expressed the need to leave all the tools in place.

REPRESENTATIVE GARA announced that he is going to vote to pass this legislation out of committee. However, he pointed out that there are a lot of people who perform community work like this for free. He indicated some discomfort with the notion that an industry that makes money in an area that involves some of these ills should be paid. When one enters the business of selling alcohol, which can be quite profitable, one knows there are good and bad impacts on society. He said he was glad that these educational efforts are being undertaken, but again he highlighted that many volunteer such efforts.

REPRESENTATIVE GRUENBERG turned attention to subsection (d), and asked if there is a reason why claims shouldn't be assigned. He explained that he could see that a larger organization such as Brown Jug could do this [program] while a smaller organization wouldn't have the expertise or wherewithal to do it. Therefore, Representative Gruenberg suggested that it might be more efficient to assign the claims, perhaps to a law firm.

MR. MADDEN relayed that the language in HB 428 mirrors the shoplifting statute, which allows a retailer to take civil action in a criminal matter against a shoplifter. However, he said he didn't know of a reason why [assigning a claim] would be a problem.

Number 2182

REPRESENTATIVE GRUENBERG moved that the committee adopt Amendment 1, to delete subsection (d), from page 2, line 7. There being no objection, Amendment 1 was adopted.

REPRESENTATIVE GRUENBERG commented that there is a technical problem on page 2, line 10, which only allows attorney fees under Rule 82 of the Alaska Rules of Civil Procedure, but not costs under Rule 79 of the Alaska Rules of Civil Procedure. Furthermore, he suggested that there not be a subsection (e) and [that language pertaining to the Alaska Rules of Civil Procedure] be placed on line 8 and line 11.

Number 2140

REPRESENTATIVE GRUENBERG moved Conceptual Amendment 2, which would insert the following language: "plus costs and [attorney] fees as permitted by the Alaska Civil Rules" and would delete subsection (e) [on page 2, line 10]. There being no objection, Conceptual Amendment 2 was adopted.

REPRESENTATIVE MEYER, noting that he relies on Mr. Madden's expertise, inquired as to Mr. Madden's thoughts on the previous amendments, specifically Amendment 1.

MR. MADDEN indicated that the amendments are fine.

CHAIR McGUIRE noted that Brown Jug offers an alcohol awareness program and if an individual attends it, the fine is reduced. She asked if the language in HB 428 requires that.

REPRESENTATIVE MEYER commented that it's only a policy of Brown Jug. This legislation is written such that an establishment could keep the entire amount of the fine if it so desired. Furthermore, the fine could be given to the employees as an incentive to catch the minors, or could be kept to pay for administrative costs. Representative Meyer opined that most businesses will follow the lead of Brown Jug. Furthermore, he said he believes that MADD, STAR, and Akeela, who provide the education programs, will try to encourage waiving some of the fine in order to place these individuals in the educational programs. He offered his belief that CHARR wants the aforementioned as well.

CHAIR McGUIRE turned attention to subsection(a).

Number 2002

MR. MADDEN explained that when someone is caught, the individual receives a demand letter specifying that the fine is $1,000. Included in that letter is information regarding the diversion program [option that would reduce the fine], and specifies that the individual has to take advantage of the diversion program option before Brown Jug files suit. The legislation doesn't prohibit offering the diversion program, which he referred to as a free small claims offer. He added that the offenders are signing up for the diversion program because they don't want to go to court.

CHAIR McGUIRE asked if Mr. Madden would be comfortable with adding a provision to the legislation specifying that an alcohol

awareness program must be offered to offset this criminal penalty.

MR. MADDEN answered that he would have an issue with that because if the offenders know that they have to enroll in an alcohol awareness program, there is no incentive. He reiterated that for many offenders, the only reason they enroll in the class is because it's a lot less onerous than the entire process. The $1,000 provides significant leverage to get these offenders to enroll in the diversion program, which is currently a simple matter of the offender enrolling in the program at which point it's turned over to Akeela.

CHAIR McGUIRE clarified that she meant adding language specifying that the licensee must offer an alcohol awareness program to offset the fine. The offenders could still accept or deny attending the program, and therefore she didn't see how Mr. Madden's program would change, since the $1,000 fine would remain the "hammer." Chair McGuire expressed concern that there will be more licensees that simply choose to keep the $1,000 rather than offer the alcohol awareness classes, which she characterized as the best part of the legislation.

The committee took an at-ease from 5:20 p.m. to 5:21 p.m.

Number 1829

MR. MADDEN offered his understanding that the demand letter would have to include an offer for an alcohol treatment program, the cost of which would be borne entirely by the offender.

CHAIR McGUIRE agreed that that is what she is suggesting. In response to Mr. Madden, Chair McGuire clarified that she would refer to the program as an alcohol awareness program.

REPRESENTATIVE GARA interjected to say that the language should refer to education or treatment.

MR. MADDEN asked if a flyer from an alcohol awareness program would meet the requirements.

CHAIR McGUIRE answered that such wouldn't be the intent.

MR. MADDEN commented that he wouldn't want to do anything that would dissuade a licensee from performing enforcement on this level. Mr. Madden opined that [promoting] being aggressive in preventing alcohol from landing in underage hands is in the best

interest of the state and everyone involved, even if the licensee keeps the fine. Mr. Madden highlighted that under the law, it isn't illegal in Alaska to sell alcohol to an adult with a minor in his or her vehicle. Therefore, he reiterated that he wouldn't want to do anything that would take away the incentive to be extra aggressive and vigilant in these situations.

Number 1749

CHAIR McGUIRE said that she didn't disagree. She posed a situation, however, in which a 21 year old doesn't realize the seriousness of [purchasing alcohol for a minor]. Under the current legislation, if the 21 year old purchased alcohol for a minor at the Brown Jug, the 21 year old would receive the benefit of a treatment course that could change his or her life. However, if the situation happened at a store that didn't offer a treatment course, the individual would merely pay $1,000 and it may not change his or her life. Chair McGuire said that although she didn't want to do anything that would discourage [enforcement], she felt that perhaps education would help alleviate the ultimate problem.

MS. CASHEN stated that MADD supports getting people into treatment. However, it's extremely difficult to get the Juneau licensees to take advantage of the $1,000 civil fine for minors attempting to enter, which she predicted will be the same situation with this. The $1,000 civil fine is an incentive. She opined that for many liquor licensees, "this is what will do it." This legislation isn't treatment legislation, rather it encourages the employees to [be aggressive with enforcement] and deter those who want to purchase alcohol. Furthermore, Ms. Cashen pointed out that many communities don't have alcohol schools.

REPRESENTATIVE GRUENBERG pointed out that subsection (a) deals with the adult who purchases alcohol [for a minor] and subsection (b) deals with the parent of the minor who solicits another person to purchase alcohol. However, the legislation doesn't seem to address the minor.

MS. CUNNINGHAM informed the committee that minors don't have the capacity to be sued or have judgments brought against them in a court. Furthermore, Legislative Legal and Research Services staff specified that the Anchorage ordinance was based on the shoplifting statutes, which the drafter looked to [when drafting HB 428].

REPRESENTATIVE GRUENBERG highlighted that there are two groups of people involved. There are people who are 18-21 years of age who are adults. There is no reason that those who are 18-21 years old could not face the penalty. However, for those under 18 years of age, Representative Gruenberg said he wasn't aware of anything in law that specifies individuals of that age can't have a civil penalty assessed against them. Therefore, he expressed the need for legal counsel to check into that.

CHAIR McGUIRE indicated that the statute includes solicitation. She explained that [subsection (a)] specifies that if one attains the age of 18, that 18-year-old can be liable for a civil action of $1,000 if he/she violates any part of AS 04.16.060, which includes a variety of things. The group that doesn't end up paying are those [offenders] who are [under the age of 18].

Number 1419

REPRESENTATIVE GRUENBERG proposed Conceptual Amendment 3, which he specified would on page 1, line 6, to delete "who has attained 18 years of age, or an emancipated minor,". However, he said he wasn't sure how that would be drafted.

REPRESENTATIVE MEYER reiterated earlier testimony that civil action can't be taken against a minor under the age of 18.

REPRESENTATIVE GRUENBERG posed a situation in which a [minor] driving a car hits another car. He offered his belief that a judgment against that [minor] could be obtained. Although one may or may not be able to collect, if a judgment can be obtained, then a penalty can be assessed against the minor.

MS. CUNNINGHAM noted that the drafter had directed her to Rule 17(c) of the Alaska Rules of Civil Procedure.

REPRESENTATIVE GRUENBERG interjected to say that Civil Rule 17(c) has to do with the appointment of a guardian ad litem, which he said has nothing to do with this. In response to Ms. Cunningham, Representative Gruenberg specified that a guardian ad litem doesn't have to be appointed when a minor is sued. He highlighted that Civil Rule 17(c) uses "may" language, and explained that normally if [a minor] is sued, it's done through a next friend. He reiterated that he wasn't aware of any reason in law why a civil penalty can't be assessed against a minor.

REPRESENTATIVE GARA commended Brown Jug and Chilkoot Charlie's for what they are doing in this area. However, he said he would be more interested in the legislation if he could hear from CHARR regarding what its other members would do with [the fines collected]. He explained that it would be comforting to know that other members of CHARR would follow the lead of Chilkoot Charlie's and the Brown Jug.

MR. MADDEN offered that he believes that as written the legislation would encourage people to take action when they otherwise might not.

REPRESENTATIVE MEYER agreed with Ms. Cashen that even if the licensees are doing this merely out of greed, it's a good thing if it stops the alcohol from getting to minors He then reminded the committee of prior legislation dealing with liability for [minors] who vandalized schools. He recalled asking the attorneys in Legislative Legal and Research Services why the [offending minors] couldn't be held responsible for civil penalties. The response was that minors under age 18 couldn't be held responsible unless one goes through criminal court where a judgment could be obtained and the minor held financial liable. Representative Meyer said he isn't sure whether that's what Representative Gruenberg is discussing.

Number 1155

CHAIR McGUIRE announced that HB 428 would be held over [with Conceptual Amendment 3 pending].

ADJOURNMENT

Number 1145

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 5:35 p.m. [For the presentation by Juan Melendez, former death row inmate, see the 1:15 p.m. minutes for this date.]