

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 26, 2004

1:10 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

HOUSE BILL NO. 423

"An Act relating to accidents involving the vehicle of a person under the influence of an alcoholic beverage; and providing for an effective date."

- MOVED CSHB 423(JUD) OUT OF COMMITTEE

SENATE BILL NO. 299

"An Act relating to a charge for a bad check."

- MOVED HCS SB 299(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 533

"An Act relating to the state's administrative procedures and to judicial oversight of administrative matters."

- MOVED CSHB 533(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 474

"An Act relating to civil liability associated with aircraft runways, airfields, and landing areas."

- HEARD AND HELD

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."

- SCHEDULED BUT NOT HEARD

SENATE BILL NO. 344

"An Act relating to the Uniform Probate Code and trusts, including pleadings, orders, nonprobate assets, estates of decedents, minors, protected persons, incapacitated persons, guardians, conservators, trustees, foreign trusts, principal and income, and transfer restrictions; relating to corporate voting trusts; and providing for an effective date."

- BILL HEARING POSTPONED TO 3/29/04

PREVIOUS COMMITTEE ACTION

BILL: HB 423

SHORT TITLE: TAXICAB DRIVER LIABILITY

SPONSOR(S): REPRESENTATIVE(S) ANDERSON

02/02/04	(H)	READ THE FIRST TIME - REFERRALS
02/02/04	(H)	JUD
02/02/04	(H)	STA REFERRAL ADDED AFTER JUD
02/09/04	(H)	REFERRAL ORDER CHANGED
02/09/04	(H)	STA, JUD
02/10/04	(H)	STA AT 8:00 AM CAPITOL 102
02/10/04	(H)	<Bill Hearing Postponed>
03/02/04	(H)	STA AT 8:00 AM CAPITOL 102
03/02/04	(H)	Heard & Held
03/02/04	(H)	MINUTE(STA)
03/05/04	(H)	STA AT 8:00 AM CAPITOL 102
03/05/04	(H)	Heard & Held
03/05/04	(H)	MINUTE(STA)
03/09/04	(H)	STA AT 8:00 AM CAPITOL 102
03/09/04	(H)	Moved CSHB 423(STA) Out of Committee
03/09/04	(H)	MINUTE(STA)
03/12/04	(H)	STA RPT CS(STA) NT 3DP 3NR 1AM
03/12/04	(H)	DP: SEATON, HOLM, LYNN; NR: COGHILL,
03/12/04	(H)	BERKOWITZ, WEYHRAUCH; AM: GRUENBERG
03/19/04	(H)	JUD AT 1:00 PM CAPITOL 120
03/19/04	(H)	Heard & Held
03/19/04	(H)	MINUTE(JUD)
03/26/04	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: SB 299

SHORT TITLE: BAD CHECK CHARGE

SPONSOR(S): LABOR & COMMERCE

02/06/04 (S) READ THE FIRST TIME - REFERRALS
02/06/04 (S) L&C, FIN
02/17/04 (S) L&C AT 1:30 PM BELTZ 211
02/17/04 (S) Moved Out of Committee
02/17/04 (S) MINUTE(L&C)
02/18/04 (S) L&C RPT 3DP 1NR
02/18/04 (S) DP: BUNDE, SEEKINS, STEVENS G;
02/18/04 (S) NR: FRENCH
03/01/04 (S) FIN RPT 5DP 1NR
03/01/04 (S) DP: GREEN, DYSON, HOFFMAN, BUNDE,
03/01/04 (S) STEVENS B; NR: OLSON
03/01/04 (H) FIN AT 9:00 AM HOUSE FINANCE 519
03/01/04 (S) Moved SB 299 Out of Committee
03/01/04 (S) MINUTE(FIN)
03/04/04 (S) TRANSMITTED TO (H)
03/04/04 (S) VERSION: SB 299
03/08/04 (H) READ THE FIRST TIME - REFERRALS
03/08/04 (H) STA, JUD
03/24/04 (H) STA REFERRAL WAIVED
03/26/04 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 533

SHORT TITLE: IF UNREAS. AGENCY DELAY, COURT DECIDES

SPONSOR(S): STATE AFFAIRS

03/08/04 (H) READ THE FIRST TIME - REFERRALS
03/08/04 (H) JUD, FIN
03/24/04 (H) JUD AT 1:00 PM CAPITOL 120
03/24/04 (H) Heard & Held
03/24/04 (H) MINUTE(JUD)
03/26/04 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 474

SHORT TITLE: LIABILITY FOR AIRPORTS AND AIRSTRIPS

SPONSOR(S): REPRESENTATIVE(S) HOLM

02/16/04 (H) READ THE FIRST TIME - REFERRALS
02/16/04 (H) JUD
03/26/04 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

JIM SHINE JR., Staff

to Representative Tom Anderson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided an update on HB 423 on behalf of Representative Anderson, sponsor.

MICHAEL L. LESSMEIER, Attorney at Law
Lessmeier & Winters
Lobbyist for State Farm Insurance Company ("State Farm")
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 423.

SENATOR CON BUNDE
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented SB 299 as chair of the Senate Labor and Commerce Standing Committee, sponsor.

RONALD JORDAN
Anchorage, Alaska

POSITION STATEMENT: Characterized SB 299 as a bad idea and responded to questions.

SCOTT KING
Cornerstone Credit Services, LLC
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 299 and responded to questions.

CHRIS D. GRONNING, Attorney at Law
Bankston, Gronning, O'Hara, Sedor, Mills, Givens & Heaphey, PC
Anchorage, Alaska

POSITION STATEMENT: During discussion of SB 299 provided comments on behalf of Cornerstone Credit Services, LLC.

PAMELA LaBOLLE, President
Alaska State Chamber of Commerce (ASCC)
Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of SB 299.

REPRESENTATIVE BRUCE WEYHRAUCH
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Offered comments during discussion of SB 299; spoke as chair of the House State Affairs Standing Committee, sponsor of HB 533.

TODD LARKIN, Staff
to Representative Jim Holm
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Responded to questions during discussion of HB 474 on behalf of the sponsor, Representative Holm.

TOM GEORGE, Alaska Regional Representative
Aircraft Owners and Pilots Association (AOPA)
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 474 and responded to questions.

ACTION NARRATIVE

TAPE 04-48, SIDE A

Number 0001

CHAIR LESIL MCGUIRE called the House Judiciary Standing Committee meeting to order at 1:10 p.m. Representatives McGuire, Anderson, Holm, Ogg, and Samuels were present at the call to order. Representatives Gruenberg and Gara arrived as the meeting was in progress.

HB 423 - TAXICAB DRIVER LIABILITY

Number 0083

CHAIR MCGUIRE announced that the first order of business would be HOUSE BILL NO. 423, "An Act relating to accidents involving the vehicle of a person under the influence of an alcoholic beverage; and providing for an effective date." [Before the committee was the proposed committee substitute (CS) for HB 423, Version 23-LS1600\I, Luckhaupt, 3/17/04, which was adopted as a work draft on 3/19/04.]

REPRESENTATIVE ANDERSON, speaking as the sponsor, requested that his staff update the committee.

Number 0133

JIM SHINE JR., Staff to Representative Tom Anderson, Alaska State Legislature, relayed that he and Mr. Lessmeier have

reviewed some proposed conceptual amendments, and noted that the sponsor statement has been updated.

The committee took an at-ease from 1:15 p.m. to 1:16 p.m. in order to distribute the aforementioned amendments.

REPRESENTATIVE HOLM highlighted the urgency of the bill. He characterized it as a recognition of people taking responsibility for their actions. He recalled being in Red Deer, Alberta, where an establishment did something similar; in fact, the bar owners and taxi companies acted in concert, and the patrons paid nothing. Noting that Fairbanks can be extremely cold at night and that people risk losing a vehicle or having it freeze up someplace, he pointed out that people will take the chance of either driving home, or going to their cars, keeping the cars running to prevent freezing to death, falling asleep, but still be considered drunk drivers, even without the intention of driving. He concluded by characterizing the bill as a marvelous piece of legislation.

Number 0390

REPRESENTATIVE SAMUELS drew attention to Amendment 1, a handwritten, edited amendment, which read [original punctuation provided]:

The auto insurance that covers the driver also covers the taxi-cab driver that drives the car from the licensed premises to the home or directed location of the original driver.

REPRESENTATIVE SAMUELS offered his belief that under current law, if [the owner of a car] expressly tells someone that he/she may drive the car, that person is covered by the [owner's] insurance. Thus the amendment is unnecessary.

CHAIR MCGUIRE announced that Amendment 1 was withdrawn.

Number 0450

REPRESENTATIVE GRUENBERG moved to adopt Amendment 2, a handwritten amendment that read [original punctuation provided]:

1. page 1 line 7 after "by" insert "or on behalf of"
2. page 2 line 12 after "person insert "or entity"

REPRESENTATIVE ANDERSON objected for the purpose of discussion.

REPRESENTATIVE GRUENBERG suggested bifurcating Amendment 2 because the two parts are quite different.

CHAIR MCGUIRE labeled the first part Amendment 2a and the second part Amendment 2b.

Number 0500

REPRESENTATIVE ANDERSON objected for the purpose of discussion.

REPRESENTATIVE GRUENBERG offered his understanding that a person could have a policy that wasn't technically purchased by the owner of the vehicle. If a vehicle is owned by a young person, for example, the parent may purchase the insurance policy. He noted that Mr. Lessmeier was nodding.

REPRESENTATIVE ANDERSON removed his objection.

Number 0545

CHAIR MCGUIRE asked whether there were any further objections to adopting Amendment 2a. There being none, Amendment 2a was adopted.

Number 0550

CHAIR MCGUIRE brought attention to Amendment 2b [text provided previously].

REPRESENTATIVE ANDERSON objected for the purpose of discussion.

REPRESENTATIVE GRUENBERG explained that [page 2] line 12 talks about a person that participates in making the arrangements. In Anchorage, however, it isn't a person that does it, but an entity, a group of taverns. He said he didn't know whether that would technically qualify as a "person" under the general definition in Title 1.

Number 0591

REPRESENTATIVE ANDERSON removed his objection.

CHAIR MCGUIRE asked whether there were any further objections to adopting Amendment 2b.

REPRESENTATIVE OGG remarked that "entity" assumes there is some entity, and asked whether a group really is an entity.

Number 0614

MICHAEL L. LESSMEIER, Attorney at Law, Lessmeier & Winters, Lobbyist for State Farm Insurance Company ("State Farm"), gave his view that if it says "person or entity", it would be broad enough to cover an "organization of people, whether it's informal or formal."

REPRESENTATIVE OGG replied that he'd withdraw his objection as long as "entity" [would be interpreted in that manner].

Number 0649

CHAIR MCGUIRE again asked whether there were any further objections to adopting Amendment 2b. There being none, Amendment 2b was adopted.

Number 0682

REPRESENTATIVE GRUENBERG [made a motion to adopt] Amendment 3, a handwritten amendment by Representative Gara that read [original punctuation provided]:

A page 2 line 19, after "vehicle", insert "or other applicable."

REPRESENTATIVE ANDERSON objected and asked to hear from Mr. Lessmeier.

Number 0702

MR. LESSMEIER urged the committee to reject Amendment 3. He said he believes it takes a bill that is now very clean in terms of its intent and makes it messy. If this amendment is adopted, he predicted there will almost be an issue of what is "other applicable" insurance. He also said it seems to take away from the original intent of the bill.

REPRESENTATIVE ANDERSON maintained his objection, saying he tends to agree that it expands this beyond driver's insurance or automobile insurance and goes too far to stay within the intent of the bill.

REPRESENTATIVE GRUENBERG asked Mr. Lessmeier whether some other kind of insurance such as homeowner's insurance might apply.

MR. LESSMEIER answered that it's really a complicated question because most homeowner's insurance policies exclude anything that arises out of driving a motor vehicle; that's what people buy motor vehicle insurance for. He said the problem he has with it is this: it's so broad that one could almost go back and ask whether the taxicab company, the municipality that put this together, or one of the people who participates in a group to try to offer this service has "other applicable insurance". He explained:

What happens in litigation is, there's always a search for the insurance, and what we've tried to do is make it clear as to where that search begins and ends with this bill, and offer some coverage where there was no coverage before. And so, I just think once we go down that road, we go to areas that we can't foresee right now and that ... I could almost guarantee you will be litigated.

Number 0823

REPRESENTATIVE GRUENBERG asked whether technically, under the current language of the bill, an umbrella policy would be included; if not, then would Mr. Lessmeier object to having it say "or applicable umbrella insurance coverage".

MR. LESSMEIER answered:

My view is that that is covered under subsection (a). In other words, ... a person is not liable beyond the limits of any applicable insurance policy purchased by the owner of the vehicle for damages resulting from a motor vehicle accident if the person was driving the vehicle. Now, ... if that owner has a primary policy on the vehicle and also an umbrella policy that would cover the damages resulting from an accident for that vehicle, then, in my view, ... it's already there. Once you go beyond that, though, and say any umbrella policy, then we run into these issues of "where do we stop." And ... I can't sit here and tell you what conceivable situations would come up, but ... I can tell you that those situations would be litigated, and that is exactly what you're trying to avoid with this bill.

REPRESENTATIVE GRUENBERG replied that with in mind, he doesn't support the amendment, which he'd offered on behalf of Representative Gara, but relayed his belief that he didn't have the authority to withdraw the amendment.

REPRESENTATIVE ANDERSON renewed his objection.

Number 0970

A roll call vote was taken. Representatives Ogg, Gruenberg, Samuels, Holm, Anderson, and McGuire voted against Amendment 3. Therefore, Amendment 3 failed by a vote of 0-6.

Number 0988

REPRESENTATIVE HOLM moved to report the proposed CS for HB 423, Version 23-LS1600\I, Luckhaupt, 3/17/04, as amended, out of committee with individual recommendations and the accompanying [zero] fiscal notes. There being no objection, CSHB 423(JUD) was reported from the House Judiciary Standing Committee.

SB 299 - BAD CHECK CHARGE

[Contains references to HB 516, the companion bill.]

Number 0999

CHAIR MCGUIRE announced that the next order of business would be SENATE BILL NO. 299, "An Act relating to a charge for a bad check."

Number 1012

SENATOR CON BUNDE, Alaska State Legislature, speaking as the chair of the Senate Labor and Commerce Standing Committee, sponsor of SB 299, relayed that the bill comes at the request of members of the business community. Current law permits those who write bad checks to require that the businesses they've written bad checks to document the cost of collecting the funds. He opined that in some cases, it is more expensive to document those costs than the actual costs themselves. Senate Bill 299 would allow business to assess a flat fee of \$30 on each bounced check it receives, and removes the necessity of having to document the costs incurred while going through the collection process. He opined that a flat fee will make collecting the money from bounced checks less cumbersome.

SENATOR BUNDE offered his understanding that about 15 percent of bounced checks are written by people unintentionally; about 40 percent are written by people who chronically write bad checks, and it can take up to 90 days for businesses to recover those funds; and that about 45 percent of bounced checks are never recovered. He opined that SB 299 will act as a deterrent to writing bad checks, and that the consequence of not passing this legislation is that more and more businesses will stop accepting checks altogether. He mentioned that HB 516, a companion bill, has been amended in the House State Affairs Standing Committee, but asked that the committee adopt the original version of SB 299.

CHAIR MCGUIRE indicated agreement with Senator Bunde's prediction that more business will stop accepting checks altogether as it becomes more difficult to collect on bad checks.

REPRESENTATIVE GRUENBERG mentioned that he'd offered the amendment to HB 516 changing "beginning" and "begins" on lines 9 and 10, respectively, to "commencing" and "commences", respectively. He explained that such language is consistent with that found in Rule 3 of the Alaska Rules of Civil Procedure, and indicated that he would be offering the same amendment to SB 299.

SENATOR BUNDE relayed that he did not have any objection to such a change.

CHAIR MCGUIRE mentioned that in committee packets is a memo from Representative Weyhrauch pertaining to HB 516 and the changes made to that bill in the House State Affairs Standing Committee.

Number 1459

RONALD JORDAN said he is speaking on his own behalf as a former business owner. He opined that the change proposed by SB 299 would not be for the betterment of anyone, that the increase from \$25 to \$30 will only provide more profit for collection companies, and that the bill will not deter people from writing bad checks. He remarked that the way collection companies operate and with the fees that banks charge, a \$5 bad check could wind up costing \$70. He then characterized SB 299 as a bad idea, relayed his experience with bad checks, and suggested that the current law is sufficient. In response to a question,

he explained that he used to run a drug and alcohol testing service.

REPRESENTATIVE GARA asked Mr. Jordan whether it would allay his concerns to give business owners the flexibility to charge less than the proposed fee of \$30.

MR. JORDAN said yes and no, but reiterated his belief that SB 299 will only increase the profits of collection agencies and will not result in more money going to businesses.

REPRESENTATIVE ANDERSON mentioned that a couple of businesses in his district asked him to strengthen the laws pertaining to bad checks. He asked Mr. Jordan whether he condones the writing of bad checks.

MR. JORDAN said he does not, but remarked that he doesn't see the point of SB 299 since most bad check situations can be resolved with a phone call.

Number 1699

SCOTT KING, Cornerstone Credit Services, LLC, said he would be testifying in support of SB 299. He relayed that his company's more than 2,000 clients would be directly affected by this bill. He elaborated:

We are one of the main collections agencies that provide check recovery services to businesses who do not wish to handle this problem on their own. Businesses which do choose to collect bad debts themselves are equally affected by this bill. I believe the \$30 charge is a reasonable and fair amount, and, for the record, I'm the business owner today, now, and I have to deal with today's costs.

MR. KING indicated that he has a concern with one of the changes made to HB 516 - that of inserting language specifying that a business owner may waive the fee - because the purpose of the original legislation is to simplify AS 09.68.115(a). He opined that this simplification will allow creditors to collect for bad checks "without the fear of predatory litigation base on ambiguous language." Should a similar change be made to SB 299, he opined, it will put all business at risk and defeats the purpose of the bill. He then noted that his company's legal firm has provided a couple of memorandums regarding such a change, adding that he supports the view expressed in those

memorandums. He said that according to his understanding, such language as that added to HB 516 is not found elsewhere in statute, and opined that there should be consistency throughout the statutes.

MR. KING, in conclusion, offered his belief that "the greater encompasses the lesser," and, thus, it is already the case that a business is not required to charge the entire fee proposed or even any fee if it doesn't want to. He thanked the committee for considering SB 299, and urged the committee to support it.

CHAIR McGUIRE said she questions why adding the language that a business may waive collection of the fee would confuse anybody, since it is already the case that the business can waive collection if it so chooses. What is the harm in adding clarifying language?

Number 1871

MR. KING opined that doing so will raise a whole new set of issues that [collection agencies] will have to deal with, adding that less is best particularly if everyone agrees that leaving the language as is will have the same result as changing it.

REPRESENTATIVE ANDERSON noted that current language specifies that a person "may" recover damages, and suggested that such is sufficient.

MR. KING concurred.

REPRESENTATIVE ANDERSON said he does not see the need for an amendment on this issue.

CHAIR McGUIRE said she didn't see that adding clarifying language on this issue would result in litigation against business owners.

REPRESENTATIVE GARA said that adding language specifying that a business may waive collection of the fee won't result in litigation. "I think people are fearful of a legal argument that a court would never uphold, and I think we've got to stop making policy based on the fear that somebody might make a bad legal argument," he added. Somebody might say that some sort of equal protection problem would arise, but there is no equal protection problem, he opined, adding that if a business doesn't want to charge a fee, it doesn't have to.

REPRESENTATIVE GRUENBERG indicated that at one point, he didn't think that adding language specifying that a business may waive collection would generate litigation. However, he remarked, after reviewing the aforementioned memorandums, he is no longer sure either way.

Number 2105

CHRIS D. GRONNING, Attorney at Law, Bankston, Gronning, O'Hara, Sedor, Mills, Givens & Heaphey, PC, after confirming that he'd written the aforementioned memorandums to Cornerstone Credit Services, LLC, said that he agrees with Representative Gara that a court probably wouldn't uphold an equal protection argument based on statutory language stating that a business may waive collection of a fee. He elaborated:

I believe, at the end of the day, after thorough litigation, that that would indeed be correct, that a court would say, "The power to waive is there, in the discretion of the plaintiff, and if the plaintiff chooses not to exercise that power, that is the decision of the plaintiff and we're not going to inquire further." But I think the problem is in the making of the argument and the costs that the business incurs in defending against the argument, because I can easily envision and think about this mechanically in the manner in which these bad checks are collected. A demand letter is normally sent out that says ..., "You have written a check with insufficient funds, here is the statute and the appropriate penalties at appropriate stages; at this point you have the opportunity to cure by giving us the amount of the check and ... a fee of \$30." I'm assuming that that is the new law.

At that point, the person sends back a check, or cashier's check, or comes in and pays the principal amount, but says: "Well, I see in the statute that ... you have the opportunity to waive. Would you please waive this?" And then the collection agency or the business says, "No, we will not." And the dialog develops: "Why will you not? I'm not prepared to pay this fee until you've told me why you won't waive it and whether you'll consider the arguments that I'm going to give you for why you should waive it - all of my hardships, all of my reasons - and then I want to see whether you have a policy, internally, about when

you do or don't waive. And if you don't have a policy, I want to know why you don't. And if you do have a policy, I want to see whether it's a reasonable one, and ... whether you're applying it properly or fairly to me."

All of those arguments, I think, will eventually get made in court pleadings, and will be expensive to rebut. And I think an attorney, any defense attorney who's fighting against a claim like this, is going to send out a discovery request that asks to see the policy, asks to schedule a deposition of the person in charge of making these kinds of determinations, and [will want] to see the history of waivers. So you're going to run up a significant amount of cost and it will be a repetitive problem as significant or more significant than the current problem, which is simply documenting, to a court's satisfaction, \$25 of actual incurred expense. So that is where I think the real harm is to the business owners.

Number 2274

MR. GRONNING continued:

The converse side - what's the ... benefit to the check writer whose check has been dishonored - ... that person is put in no worse [a] position by not including this language, because the business owner always has the option of waiving the fee and can always listen to a hardship case. And I suspect any of these business owners and collection agencies will tell you, there are a fair number of those hardship cases that sufficiently tug at the heartstrings [such] that these are waived. The fees can be waived under the current statute without the language that is proposed in the amendment. They can be waived under the new statute, or the proposed change, without the amendment. And having the amendment creates a tremendous potential for litigation. ...

I have not seen any other statute ... where a remedy is granted ... coupled with an express statement that the ... remedy can be waived. That's always implied; it's always understood. Anyone who has the power to collect something has the power not to collect it. So I don't think it's necessary

CHAIR MCGUIRE pointed out, however, that in some instances it is desirable to draw attention to a particular right that someone has, for example, when a plain reading of a statute doesn't elicit an understanding that that right exists. She said her concern revolves around businesses and individuals that aren't educated enough to realize that waiving collection of a fee is an option.

TAPE 04-48, SIDE B

Number 2378

REPRESENTATIVE HOLM opined that the use of the word "may" in existing statute is sufficient.

REPRESENTATIVE ANDERSON indicated agreement with the arguments offered by Mr. King and Mr. Gronning.

REPRESENTATIVE SAMUELS, indicating agreement that the word "may" is sufficient, further remarked, "If you don't want to take their money, give it back to them."

SENATOR BUNDE indicated a preference for keeping the language in the bill simple.

CHAIR MCGUIRE surmised, however, that since the clarifying language was added to HB 516 in the House State Affairs Standing Committee, there must be some merit to the arguments in favor of including it in statute.

REPRESENTATIVE GARA indicated that he didn't see the harm in including the clarifying language, particularly since it appears that everyone agrees that the courts will decide that a business can waive collecting the fee if it so chooses. He added:

The whole idea that people who write bad checks are then going to litigate them is undermined by this one very important fact: if you lose a case in Alaska state court, you have to pay 20 percent of the other side's [attorney] fees and their costs. So if you're sitting there in an attorney's office, in my office or Mr. Gronning's office ..., I think both of us will tell you: "I wouldn't push this because you're going to have to pay your check, ultimately, and, the longer you push this, the more money you're going to have to pay because you're going to have to pay 20 percent of the other side's [attorney] fees if you keep pushing

this, so does it make sense for you not pay your \$100 check and instead challenge this in court where the more arguments you make the more [attorney] fees you're going to have to pay on the other side so you ultimately have pay \$5,000 or \$10,000 or \$15,000?" I'm going to tell you not to take that case. Mr. Gronning, I think, essentially admitted that he's going to tell you not to take that case.

I guess there's a possibility that someday somebody will take that case, but what can you do about that? I mean, ... there are a certain number of people in the community who sometimes don't make reasonable decisions, and you can never stop that. So I don't think it's going to start a floodgate of litigation; if it does, it's going to start a floodgate of litigation by people who are just going to decide to pay even more money than they would have if they'd just paid the check in the first place. ... And then finally, this whole idea that a business can't charge people differently, we do it all the time - it's capitalism. You walk into a store and you pay \$40 for a garden hose, somebody else walks into the store after you and maybe negotiates with the store owner and says, "You know, ... what about \$35?" and the store owner says, "Okay, \$35." I mean, it's capitalism, so ... you just charge people based on what you think you should charge people, and let's just put it in the statute

Number 2099

REPRESENTATIVE GARA recommended that the committee amend SB 299 in the same fashion that HB 516 was amended: adding language which clarifies that a business may waive collection of the fee.

REPRESENTATIVE GRUENBERG noted that when the chair of the House State Affairs Standing Committee proposed the amendment to HB 516, it was adopted without much discussion and without objection. Representative Gruenberg offered his belief that in offering the amendment, the chair of the House State Affairs Standing Committee felt it would be helpful.

REPRESENTATIVE HOLM concurred that no one objected to that amendment to HB 516.

REPRESENTATIVE GRUENBERG pointed out that a third change was made to HB 516 in the House State Affairs Standing Committee, that of changing "\$30" to "a \$30 fee". Such a change clarifies that this is a fee and just an arbitrary imposition.

SENATOR BUNDE suggested that if the language pertaining to waiving the fee is added to SB 299, then the committee should also consider whether it should be added to all statutes pertaining to fees.

CHAIR MCGUIRE said that is a good point.

Number 1950

PAMELA LaBOLLE, President, Alaska State Chamber of Commerce (ASCC), said that the ASCC supports SB 299, and pointed out that the current law has engendered litigation and thus it needs to be simplified in the manner proposed. She opined that use of the word "may" is sufficient and so there is no need to add further language regarding the waiving of fees. She offered her belief that business regularly make the determination of whether to waive the fees associated with bad checks. She explained that in one instance where the ASCC received a bad check, the bank charged the ASCC \$25 and it took about a month to get the money for that bad check. She opined that if the waiver language is inserted into SB 299, it will create difficulties and costs for businesses who have to go to court to try and collect for a bad check.

REPRESENTATIVE GARA pointed out, however, that if such cases do continue to come to court for resolution, it won't be because of the statutory language. The person who wrote the bad check did not do so because he/she read the statute and determined that he/she might get away with not being charged a fee for writing the bad check. Instead such cases will arise because a business loses patience and goes to court in order to collect the money it's owed. The statute is not going to cause people to get involved in litigation, though it may give someone another argument once he/she is already involved in litigation.

MS. LaBOLLE mentioned that when sending out a letter demanding payment for a bad check, the business typically cites the statute giving the authority for that demand; thus people will become familiar with the statute at that point. She acknowledged, however, that most people who receive a demand letter will go ahead and pay the money owed before going to court.

REPRESENTATIVE ANDERSON asked whether the ASCC has ever received calls from members wanting to know if collection of a fee can be waived.

MS. LaBOLLE said that that kind of service is not what members expect of the ASCC and so it has not received any calls such calls. She opined that all business owners know that they may charge a fee but are not required to do so.

CHAIR McGUIRE said that as a person who writes checks, she did not know that businesses had the discretion to waive the fee.

REPRESENTATIVE ANDERSON remarked, "I say sock it to them because it's costing the businesses fees, and I say don't give any more fodder for ideas for litigation or to waive; it's known, and don't codify it."

REPRESENTATIVE OGG remarked that the language in statute is only a triggering device for the court case. In other words, a plaintiff can go to court if [paragraphs (1) and (2)] apply, but if the don't both apply, then there will be no court case.

Number 1469

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1, to change "beginning" on line 9 to "commencing", and to change "begins" on line 10 to "commences". There being no objection, Amendment 1 was adopted.

REPRESENTATIVE GRUENBERG asked Representative Weyhrauch to comment on the addition, in the House State Affairs Standing Committee's version of HB 516, of the word "fee".

Number 1386

REPRESENTATIVE BRUCE WEYHRAUCH, Alaska State Legislature, instead explained his intention behind the amendment to HB 516 that he'd offered in the House State Affairs Standing Committee regarding waiving collection of the fee. He opined that it ought to be clear to all parties that collection of the fee may be waived, adding that it would be simplest to just say so in statute rather than relying on an attorney's memorandum.

REPRESENTATIVE OGG reiterated his comments about the language in statute simply being a triggering device. He opined that adding

specific language regarding waiving collection of the fee will cause ambiguity for the purpose of going to court.

REPRESENTATIVE WEYHRAUCH disagreed. He relayed, however, that he didn't want to influence the House Judiciary Standing Committee's policy discussion on this issue. He added, "I simply ... thought it made sense to allow a business to have ... clear discretion to waive a fee; that was simply the intent here." In response to a question, he clarified that what could be waived would be the fee, not the amount of the bad check.

CHAIR MCGUIRE agreed that if waiver language is added, it would only pertain to the fee, not the bad check.

REPRESENTATIVE WEYHRAUCH mentioned that it might be a good idea if the bill refers to a specific fee rather than to just any fee.

CHAIR MCGUIRE indicated a preference for having the bill specifically reference that it is the fee which is being assessed as a penalty that can be waived, so as not to have it be confused with any other costs associated with collection of the bad check.

REPRESENTATIVE SAMUELS asked whether there is motion before the committee.

CHAIR MCGUIRE observed that a motion has not yet been made.

Number 0927

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 2:

[To] clarify that the plaintiff may recover the amount of the check, the liquidated fee - which would not be the court costs but the administrative fee of going through anything that they might have had to do in the collection effort - they would also, if the case went to court, be entitled to get costs under [Alaska Rules of Civil Procedure] Rule 79, plus [attorney] fees under [Alaska Rules of Civil Procedure] Rule 82. But I want it clear that the deletion of the term, "costs" and the insertion of the term, "fee" means that you would be entitled, if you didn't go to court, to demand the \$30 in addition to the amount of the check, and, if you did go to court, you could demand the

amount of the check, the \$30 fee, courts costs under Rule 79, and [attorney] fees under Rule 82.

Number 0836

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

Number 0809

REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment 3, to have the language from [lines 10-13 of CSHB 516(STA)] replace the language on lines 10-12 of SB 299.

REPRESENTATIVE ANDERSON objected.

CHAIR McGUIRE, noting that SB 299 has already been amended, suggested that Representative Gara restate his motion for the purpose of clarifying that he is merely referring to the language pertaining to the waiver.

REPRESENTATIVE GRUENBERG opined that it would be simpler if Conceptual Amendment 3 were changed such that it adopted the language in CSHB 516(STA), because doing so would incorporate the amendments already made to SB 299.

CHAIR McGUIRE opined that there is really no need to do that, adding, "I think we should be clear about what the policy is [that] we're focusing on, which is the waiver itself."

Number 0703

REPRESENTATIVE GARA, after withdrawing Conceptual Amendment 3, made a motion to adopt a new Amendment 3 to SB 299: after "\$30" on line 11, insert ", but the plaintiff may waive collection of any fee."

Number 0649

CHAIR McGUIRE made a motion to amend Amendment 3, "to say 'the \$30 fee'."

REPRESENTATIVE GARA said, "I wouldn't object."

Number 0641

REPRESENTATIVE ANDERSON objected.

[Although the objection to amending Amendment 3 was not addressed or withdrawn, Amendment 3 was treated as amended.]

REPRESENTATIVE OGG asked why a business would continue a suit in court if it was simply going to waive the fee.

REPRESENTATIVE GARA opined that such would not happen. He added:

But what you're doing [currently] is saying that just so we can protect the person's right to go to court, we're also going to require [that] the \$30 fee be charged to all people we don't go to court against. And that was the whole purpose of the amendment [as amended]: for the bulk of cases, you don't want to charge the \$30 fee ... if you have a good relationship with a customer, and we want to make sure the statute isn't interpreted by businesses to think that they have to charge the \$30 fee against a customer that they don't want to charge that fee against. So you make a decision, as a business, that you're going to waive the fee or not waive the fee; it's totally up to you.

REPRESENTATIVE OGG argued, however, that the statute won't apply if someone isn't being taken to court.

CHAIR McGUIRE offered an example illustrating why a business should still have the ability to take someone to court to recover the amount of a bad check even if a fee is never charged, and opined that Amendment 3 [as amended] provides for that ability. She noted that current language stipulates that the demand for payment must be in writing, and offered her belief that the language without Amendment 3 [as amended] would also stipulate that a fee must be charged.

REPRESENTATIVE GRUENBERG offered his belief that under current statute, a business may always sue for the amount of the check, and pointed out that AS 09.68.115(a) - the statute being amended via SB 299 - simply provides a business with the ability to claim treble damages up to \$1,000; therefore, the triggering mechanisms in SB 299 simply pertain to collecting damages, not the right to collect on debt owed. Additionally, he remarked that SB 299 and the statute it amends appear to only apply to checks written for a small amount; he suggested that perhaps the

committee could look into what to do about checks that are written for large amounts.

MS. LaBOLLE suggested that perhaps that issue could be addressed at another time, adding that it was a recent court decision that raised concerns about the current language in AS 09.68.115(a) and engendered SB 299 and HB 516.

REPRESENTATIVE GRUENBERG observed, however, that SB 299 will not be helpful in instances wherein bad checks for large amounts are written.

Number 0057

A roll call vote was taken. Representatives Gara and McGuire voted in favor of Amendment 3, as amended. Representatives Ogg, Gruenberg, Samuels, Holm, and Anderson voted against it. Therefore, Amendment 3, as amended, failed by a vote of 2-5.

Number 0039

REPRESENTATIVE ANDERSON moved to report SB 299, as amended, out of committee with individual recommendations and the accompanying zero fiscal [note]. There being no objection, HCS SB 299(JUD) was reported from the House Judiciary Standing Committee.

HB 533 - IF UNREAS. AGENCY DELAY, COURT DECIDES

TAPE 04-49, SIDE A

Number 0001

CHAIR MCGUIRE announced that the next order of business would be HOUSE BILL NO. 533, "An Act relating to the state's administrative procedures and to judicial oversight of administrative matters." [Before the committee was the proposed committee substitute (CS) for HB 533, Version 23-LS1833\D, Bannister, 3/24/04, which was adopted as a work draft on 3/24/04.]

Number 0030

REPRESENTATIVE BRUCE WEYHRAUCH, Alaska State Legislature, as chair of the House State Affairs Standing Committee, sponsor of HB 533, relayed his appreciation with regard to the Department of Law's comments at the last hearing. He also noted that he

has been provided with a copy of some proposed changes and has no objections to them.

Number 0105

REPRESENTATIVE GRUENBERG moved that the committee adopt Amendment 1, a handwritten amendment which read [original punctuation provided]:

page 2 line 14 delete "15" insert "30"

page 2 line 15 delete "provide" and insert "filed in"

page 2 line 15 delete "with" and insert "a"

REPRESENTATIVE ANDERSON objected.

REPRESENTATIVE GRUENBERG recalled that the DOL had expressed concern with the 15-day provision to file the notice and suggested that 30 days would be more appropriate. Representative Gruenberg said he agrees with the aforementioned, particularly if the private party is another part of state [government]. He highlighted that Amendment 1 also incorporates a language change that specifies that the [notice] is filed in the agency.

REPRESENTATIVE WEYHRAUCH reiterated that he has no objection to Amendment 1.

REPRESENTATIVE ANDERSON withdrew his objection.

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

Number 0197

REPRESENTATIVE ANDERSON moved to report the proposed CS for HB 533, Version 23-LS1833\D, Bannister, 3/24/04, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 533(JUD) was reported from the House Judiciary Standing Committee.

HB 474 - LIABILITY FOR AIRPORTS AND AIRSTRIPS

Number 0247

CHAIR MCGUIRE announced that the final order of business would be HOUSE BILL NO. 474, "An Act relating to civil liability associated with aircraft runways, airfields, and landing areas."

REPRESENTATIVE HOLM, speaking as the sponsor, noted that members have a proposed committee substitute (CS) in their packets.

Number 0299

CHAIR McGUIRE moved to adopt the proposed CS for HB 474, Version 23-LS1745\D, Bullock, 3/23/04, as the work draft. There being no objection, Version D was before the committee.

REPRESENTATIVE HOLM said that HB 474 proposes to make minor changes to AS 09.65.093. It will remove the word "natural" so that "person" will include "a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person", which is currently the definition of "person" given in AS 01.10.060(a)(8). With regard to civil liability, the law currently only protects individuals who maintain airstrips without compensation; HB 474 will allow "a greater range of people and organizations to provide this service for free." Also included are changes intended to make the statute more comprehensive and clear, he relayed. The goal is to allow volunteer organizations and good corporate neighbors to provide some services that might otherwise fall to the state. If a company or organization or individual spends their own time and money to maintain or construct an airstrip that others are free to land upon, they should not be sued for "this kind act," he concluded, noting that HB 474 is [supported] by the Aircraft Owners and Pilots Association (AOPA).

REPRESENTATIVE GARA asked if proposed subsection (b) is supposed to apply to people who voluntarily provide or maintain an airfield.

REPRESENTATIVE HOLM indicated that that is his intent.

REPRESENTATIVE GARA remarked, however, that as written, subsection (b) appears to apply to all airfields, even those that are "run for profit." He suggested adding a specific reference, in subsection (b), to the airfields described in subsection (a).

REPRESENTATIVE HOLM replied:

I think the reason is ... that private or public airfields would fall underneath this release of liability. And the reason being is that there are public airfields that are maintained by private

individuals without compensation, and ... we didn't want to limit the ability of somebody to assist the state and feel that their liability is increased.

REPRESENTATIVE GARA said he agrees that those individuals volunteering their services should not be held liable. He opined that such would be clarified if, on page 1, lines 12-13, the words were changed to say in part: "A person who is the owner or operator of an aircraft runway, airfield, or landing area described in subsection (a) ...".

REPRESENTATIVE HOLM said he would accept such as a friendly amendment to Version D.

Number 0552

REPRESENTATIVE GARA made a motion to adopt Amendment 1, to add to page 1, line 13, after "landing area" the words, "as described in subsection (a)". There being no objection, Amendment 1 was adopted.

REPRESENTATIVE GRUENBERG suggested that the language currently in proposed subsection (b)(1) would exclude a person from liability - even if the act or omission constitutes gross negligence, recklessness, or intentional misconduct - as long as the runway is not marked with a large "X."

Number 0706

TODD LARKIN, Staff to Representative Jim Holm, Alaska State Legislature, in response to questions about a possible duplication of language in proposed subsections (a) and (b), relayed that proposed subsection (a) essentially covers "groomers," whereas proposed subsection (b) is "an additional consideration for owners who are already covered under" proposed subsection (a). He said that it is possible in Alaska for someone - for example, a gold miner or a corporation like Alyeska [Pipeline Service Company] ("Alyeska") - to actually own an airstrip privately and not charge any fees but be on public land. Currently, such persons would be liable to whoever lands on the airfields they maintain even though they receive no compensation. He went on to say:

[Proposed subsection] (b) ... specifically speaks to ... negligence and recklessness; if you're that owner or operator [and] you're not charging the fee, that's the important part. And [say you] need to dig a

utility ditch across your airstrip ..., you will be grossly negligent or reckless if you don't put an X [on the strip] and notify the FAA [Federal Aviation Administration] that that strip is closed. Now, everybody who wants to land there who's in trouble can go ahead and land, but if they see a big X or read in FAA that you've said your strip is closed, and they crash, that owner who dug a ditch across their [airstrip is] ... not going to be liable: the strip was closed - you landed at your own risk.

REPRESENTATIVE OGG offered his understanding that proposed subsection (a) pertains to open airstrips, whereas proposed subsection (b) pertains to closed airstrips.

Number 0850

REPRESENTATIVE GRUENBERG disagreed. He offered his understanding that proposed subsection (b) applies to owners, and that "the rule is you're not civilly liable for one of these types of airfields." He surmised, however, that "even if the owner was grossly negligent, the field would have to be marked for [he/she] to be liable."

MR. LARKIN opined that if the owner closes the field through the two methods listed in paragraphs (1) and (2), then there is no opportunity for gross negligence of recklessness.

REPRESENTATIVE GRUENBERG asked, "How about if the ... field is not closed but it is open?"

MR. LARKIN replied, "If you have not received compensation, again, without gross negligence or recklessness, you're not liable."

REPRESENTATIVE SAMUELS said he assumes that the people who work on the runways for Alyeska Pipeline Service Company are paid, and thus do not fall under the category of not having received compensation.

MR. LARKIN said that in the case of Alyeska using its employees to do the work, those employees would be considered assets of Alyeska, and thus would not be liable as individuals because Alyeska would be simply using its assets to improve/maintain its airfield.

REPRESENTATIVE SAMUELS referred to the Red Dog Mine, and asked, "If somebody works for Cominco [Alaska] and they go out there and they tell you the breaking action is fine, and Alaska Airlines slides off the runway because the breaking action was nil, is anybody accountable for their actions?"

Number 1060

MR. LARKIN said he would defer the question of whether such action constitutes gross negligence to those with legal experience.

REPRESENTATIVE SAMUELS said:

That would be considered maintaining the runway, but I don't think -- I assume that you're getting after little mining strips here and there, or [if] some guy owns a lodge and gets a bulldozer and he plows a runway, and if some guy happens to land there and he flips over his [plane] ... he can't sue [the lodge owner]. I assume that's what you're trying to get at. But when you said Alyeska Pipeline [Service Company], if you look at Coldfoot and all the pump stations up the line, that's a little different story.

REPRESENTATIVE OGG surmised that "compensation" refers to things like landing fees. "But if these folks had [an] airport for their own business and other people landed on it and they're just negligent, they're not liable, but if they're grossly negligent, then they are liable," he suggested, adding his belief that "the same thing" applies under proposed subsection (b): "you're not liable for just negligence, but if you have gross negligence, you're liable even if you marked [the airstrip]."

Number 1141

TOM GEORGE, Alaska Regional Representative, Aircraft Owners and Pilots Association (AOPA), said that the AOPA's interest is in preserving a healthy aviation infrastructure, including backcountry airstrips. He relayed that the AOPA supports HB 474, which, he opined, broadens the current statute limiting civil liability on aircraft runways, airfields, and landing areas. The primary goal of [the proposed statutory changes], he suggested, is to protect the backcountry airstrips that [the AOPA's members] rely on for access to Alaska's remote locations; HB 474 should help protect the companies, corporations, and

organizations that devote their time and resources, without compensation, to maintaining airstrips across the state.

MR. GEORGE said that currently, the statute only applies to an individual person, and the AOPA feels it is necessary to use the broader definition of person so that entities such as mining companies, lodges, and aviation associations are included. He offered that the other changes encompassed in Version D will clarify what activities and situations "this protection" applies to. The AOPA thinks HB 474 is a good step towards protecting airstrips that provide access primarily to public lands, and that protection from liability should help the AOPA find support for keeping those airstrips open and usable in years to come. In conclusion, Mr. George thanked Representative Holm for sponsoring the bill, and relayed that he would be happy to answer any questions from the committee.

Number 1219

REPRESENTATIVE GARA, after noting that he'd made a mistake regarding Amendment 1, moved that the committee rescind its action in adopting Amendment 1. There being no objection, the committee rescinded its action.

REPRESENTATIVE GARA asked whether it is the intent of the bill to extend the limitation on liability to someone who operates a business and orders supplies, thereby requiring that a delivery plane land on an airstrip being maintained by the business owner. In such a situation, the delivery plane would not be paying a landing fee.

MR. GEORGE suggested that the issue is whether the operation of the airstrip is commercial; in other words, is somebody being paid, either by the government or through landing fees, to operate the airstrip. He noted that there are approximately 260 airstrips that the Department of Transportation & Public Facilities (DOT&PF) supports, and those would not be covered by HB 474. Thus it wouldn't matter whether the people landing on the airstrip are doing it as private individuals or as commercial operators. He pointed out that there are FAA regulations regarding what class of aircraft can use what kind of airport, adding that these regulations "would deal with that issue."

REPRESENTATIVE GARA asked whether the intent of the bill is to extend the limitation on liability to those who run a commercial airstrip but don't charge landing fees; for example, the Red Dog

Mine airstrip. "Assuming that they're not charging any landing fees, do we want to extend this limitation to an airstrip that knows that supply planes are going to come in for a commercial operation," he asked.

MR. GEORGE replied:

I would argue that we would want to extend it because they are providing a service that the state is not having to pay for. So ... limiting their liability would hopefully be an incentive for them to continue to provide that service. And ... the same case is covered with Alyeska Pipeline [Service Company], where they're operating airports on, as I understand it, public lands, but they're totally paying the cost of maintenance and operation, yet those are open to the public to land on. So I think limiting liability ... in a balanced way ... is a reasonable way to ... [provide] an incentive to continue doing that maintenance function.

REPRESENTATIVE SAMUELS asked: "What's the standard that the state follows? ... Is it gross negligence?"

REPRESENTATIVE GARA said it is negligence.

Number 1475

REPRESENTATIVE HOLM, in response to further comments by Representative Samuels, said that the size or type of the business does not matter; the intent of the bill is to limit liability for those who [maintain airstrips] without compensation, and thereby provide incentive for them to continue. He suggested, however, that if a business makes an assertion that an airstrip is maintained in a certain condition and that is not true, then there might be [a cause of action].

REPRESENTATIVE SAMUELS said that he could understand limiting liability for those who provide this service without compensation. However, companies like Alyeska Pipeline Service Company are getting paid: "that's their job, is to plow the runway or make sure the lights are working or what ever it is [they're] doing - they are being compensating." He offered his belief that such a company should not be liable for any airstrip it built but then abandoned, but it should be liable if it is paying somebody to plow an airstrip or maintain its lighting or approach.

REPRESENTATIVE OGG surmised that if a company like Alyeska is maintaining a runway, it then becomes a "person" and so the limit on liability extends to any of its employees because they are a part of the company. The compensation being referred to in the bill, he also surmised, is probably a landing fee, not an employee's paycheck.

Number 1625

REPRESENTATIVE GRUENBERG said that when considering whether there has been compensation, the question becomes: compensation for what? For example, is it somebody who is compensated specifically for maintaining the runway? Or is it somebody who is compensated for maintaining the facility? Or is the entity doing the maintaining a profit-making business? The question of what the legislature means by the term, "without compensation" will become the subject of some litigation, he predicted.

REPRESENTATIVE HOLM pointed out that the language on page 1, lines 6-7, says in part: "who without compensation constructs, maintains, or repairs an aircraft runway, airfield, or landing area".

REPRESENTATIVE GRUENBERG noted, though, that the bill also refers to the owner of "an aircraft runway, airfield, or landing area", and surmised that the target will be the owner of the airfield. Current law refers to situations involving private land, but HB 474 could conceivably refer to situations involving any airfield anywhere, he remarked, and opined that such is much broader than would be good public policy. The bill proposes to immunize airfield owners, and could conceivably be considered precedent for immunizing owners of docking facilities or people who maintain private roads, he added.

Number 1769

REPRESENTATIVE GARA said he did not mind limiting liability for those who do something on a volunteer basis, and surmised that that is the goal of the bill. With that in mind, subsection (a) is written fine, he remarked, but coming up with the right language so that subsection (b) has the same effect could be problematic. He added:

I would assume that we're essentially trying to get at airfields that are run by noncommercial entities, and for which nobody is receiving compensation. ... I

assume we don't want to extend the liability [limitation] to an airfield that a supply plane has to use because they've got a contract with the business that's running the airfield, even though they're not charged a landing fee; I think the supplier should have an expectation that that's a responsibly-run airfield. ... So maybe we can say "a noncommercial airfield operated without compensation".

REPRESENTATIVE GARA asked Representative Holm to describe the circumstances that he'd like HB 474 to apply to and which ones he doesn't want it to apply to.

REPRESENTATIVE OGG asked whether the definition of "person" could be interpreted to mean state agencies or state corporations.

CHAIR MCGUIRE noted that "person" is defined in AS 01.10.060(a)(8) as: "a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person".

REPRESENTATIVE GRUENBERG offered his belief that none of the members object to having that definition of "person" apply in the bill. However, the bill also eliminates the phrase, "that is located on private land".

REPRESENTATIVES OGG and HOLM offered their understanding that that phrase only pertains to closed airports.

Number 1947

MR. GEORGE - with regard to the phrase, "that is located on private land", in subsection (b) - said that part of the problem is that most of Alaska is still public land, and so a lot of backcountry airstrips are operated - to the extent that they are operated at all - by miners and lodge owners, and so if they didn't do it, either there wouldn't be access or there would be pressure put on the state to do it. He went on to say:

The second part of this bill is about extending that protection from liability in the case where the airfield needs to be closed, and showing how to go about doing that closing. So I guess I think that is a reasonable thing to do and I don't think it takes the lid off Pandora's box in terms of wildly extending the coverage provided by the statute.

CHAIR McGUIRE, in response to questions, highlighted the changes proposed by subsection (b) of the bill.

REPRESENTATIVE GARA offered his belief that proposed subsection (b), as written, applies to both open and closed airfields, specifically that everything after "a person" on page 2, line 1, applies to closed airfields, and everything up to and including "a person" applies to open airfields. He suggested that the committee should add language to the bill that would limit its effect to airfields that are not part of some sort of commercial operation. Another alternative, he remarked, would be to leave subsection (b) applying only to a "natural person", because that would maintain the current policy that a person who owns an airfield would not be held liable, but corporations that own an airfield could be held liable.

CHAIR McGUIRE relayed that HB 474 would be held over for the purpose of allowing the sponsor to address the issues raised.

REPRESENTATIVE HOLM offered his understanding that proposed subsection (b) applies strictly to closed airfields, but agreed to look into the issue further.

REPRESENTATIVES OGG and SAMUELS agreed with Representative Holm's interpretation of proposed subsection (b).

CHAIR McGUIRE suggested that any forthcoming amendments be in writing.

[HB 474 was held over.]

ADJOURNMENT

Number 2130

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:30 p.m.