

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 31, 2004

1:20 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. 474

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

- MOVED CSHB 474(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 339

"An Act relating to negative option plans for sales, to charges for goods or services after a trial period, and to acts that are unlawful as unfair trade practices."

- MOVED CSHB 339(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 452

"An Act relating to licensing and regulation of sport fishing services operators and fishing guides; and providing for an effective date."

- MOVED CSHB 452(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 484

"An Act imposing a correctional facility surcharge on persons convicted of a crime under state law, and on persons whose probation is revoked; relating to fees and expenses for interstate transfer of probation or parole; and providing for an effective date."

- MOVED CSHB 484(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 439

"An Act relating to the authority to take oaths, affirmations, and acknowledgments in the state; relating to notaries public; relating to fees for issuing certificates with the seal of the state affixed; and providing for an effective date."

- MOVED CSHB 439(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 244

"An Act relating to the Code of Criminal Procedure; relating to defenses, affirmative defenses, and justifications to certain criminal acts; relating to rights of prisoners after arrest; relating to discovery, immunity from prosecution, notice of defenses, admissibility of certain evidence, and right to representation in criminal proceedings; relating to sentencing, probation, and discretionary parole; amending Rule 16, Alaska Rules of Criminal Procedure, and Rules 404, 412, 609, and 803, Alaska Rules of Evidence; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 336

"An Act limiting recovery of civil damages by an uninsured driver; and providing for an effective date."

- BILL HEARING POSTPONED

HOUSE BILL NO. 430

"An Act relating to employees under 21 years of age in the premises of hotels, restaurants, and eating places that are licensed to sell, serve, deliver, or dispense alcoholic beverages."

- BILL HEARING POSTPONED

PREVIOUS COMMITTEE ACTION

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

03/26/04 (H) Heard & Held
 03/26/04 (H) MINUTE(JUD)
 03/29/04 (H) JUD AT 1:00 PM CAPITOL 120
 03/29/04 (H) Bill Postponed To 3/30/04
 03/30/04 (H) JUD AT 1:00 PM CAPITOL 120
 03/30/04 (H) Scheduled But Not Heard
 03/31/04 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 339

SHORT TITLE: TRADE PRACTICES

SPONSOR(S): REPRESENTATIVE(S) MEYER

01/12/04 (H) PREFILE RELEASED 1/2/04
 01/12/04 (H) READ THE FIRST TIME - REFERRALS
 01/12/04 (H) L&C, JUD
 02/02/04 (H) L&C AT 3:15 PM CAPITOL 17
 02/02/04 (H) Moved CSHB 339(L&C) Out of Committee
 02/02/04 (H) MINUTE(L&C)
 02/05/04 (H) L&C RPT CS(L&C) NT 4DP 2NR 1AM
 02/05/04 (H) DP: CRAWFORD, LYNN, DAHLSTROM,
 02/05/04 (H) ANDERSON; NR: GATTO, ROKEBERG;
 02/05/04 (H) AM: GUTTENBERG
 03/05/04 (H) JUD AT 1:00 PM CAPITOL 120
 03/05/04 (H) -- Meeting Postponed to 3/16/04 --
 03/16/04 (H) JUD AT 1:00 PM CAPITOL 120
 03/16/04 (H) Heard & Held
 03/16/04 (H) MINUTE(JUD)
 03/29/04 (H) JUD AT 1:00 PM CAPITOL 120
 03/29/04 (H) Bill Postponed To 3/30/04
 03/30/04 (H) JUD AT 1:00 PM CAPITOL 120
 03/30/04 (H) Scheduled But Not Heard
 03/31/04 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 452

SHORT TITLE: GUIDED SPORT FISHING

SPONSOR(S): REPRESENTATIVE(S) HEINZE

02/16/04 (H) READ THE FIRST TIME - REFERRALS
 02/16/04 (H) L&C, JUD, FIN
 03/17/04 (H) L&C AT 3:15 PM CAPITOL 17
 03/17/04 (H) Heard & Held
 03/17/04 (H) MINUTE(L&C)
 03/19/04 (H) L&C AT 3:15 PM CAPITOL 17
 03/19/04 (H) Moved CSHB 452(L&C) Out of Committee
 03/19/04 (H) MINUTE(L&C)
 03/22/04 (H) L&C RPT CS(L&C) NT 1DP 3NR 1AM
 03/22/04 (H) DP: LYNN; NR: CRAWFORD, GATTO,

03/22/04 (H) ANDERSON; AM: ROKEBERG
03/31/04 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 484

SHORT TITLE: CORRECTIONS: FEES/SURCHARGE

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/16/04 (H) READ THE FIRST TIME - REFERRALS
02/16/04 (H) JUD, FIN
03/29/04 (H) JUD AT 1:00 PM CAPITOL 120
03/29/04 (H) Bill Postponed To 3/30/04
03/30/04 (H) JUD AT 1:00 PM CAPITOL 120
03/30/04 (H) Scheduled But Not Heard
03/31/04 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 439

SHORT TITLE: OATHS; NOTARIES PUBLIC; STATE SEAL

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/05/04 (H) READ THE FIRST TIME - REFERRALS
02/05/04 (H) STA, JUD, FIN
03/04/04 (H) STA AT 8:00 AM CAPITOL 102
03/04/04 (H) <Bill Hearing Postponed to Mon. 3/8/04>
03/08/04 (H) STA AT 8:00 AM CAPITOL 102
03/08/04 (H) Heard & Held
03/08/04 (H) MINUTE(STA)
03/18/04 (H) STA AT 8:00 AM CAPITOL 102
03/18/04 (H) Scheduled But Not Heard
03/19/04 (H) STA AT 8:00 AM CAPITOL 102
03/19/04 (H) Moved CSHB 439(STA) Out of Committee
03/19/04 (H) MINUTE(STA)
03/24/04 (H) STA RPT CS(STA) NT 2DP 3NR
03/24/04 (H) DP: GRUENBERG, LYNN; NR: SEATON,
03/24/04 (H) COGHILL, WEYHRAUCH
03/29/04 (H) JUD AT 1:00 PM CAPITOL 120
03/29/04 (H) Bill Postponed To 3/30/04
03/30/04 (H) JUD AT 1:00 PM CAPITOL 120
03/30/04 (H) Scheduled But Not Heard
03/31/04 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 244

SHORT TITLE: CRIMINAL LAW/SENTENCING/PROBATION/PAROLE

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

04/04/03 (H) READ THE FIRST TIME - REFERRALS
04/04/03 (H) JUD, FIN
04/14/03 (H) JUD AT 1:00 PM CAPITOL 120

04/14/03 (H) Heard & Held
 04/14/03 (H) MINUTE(JUD)
 04/25/03 (H) JUD AT 1:00 PM CAPITOL 120
 04/25/03 (H) -- Meeting Postponed --
 05/07/03 (H) JUD AT 1:00 PM CAPITOL 120
 05/07/03 (H) Scheduled But Not Heard
 05/08/03 (H) JUD AT 3:30 PM CAPITOL 120
 05/08/03 (H) Heard & Held
 05/08/03 (H) MINUTE(JUD)
 05/09/03 (H) JUD AT 1:00 PM CAPITOL 120
 05/09/03 (H) Moved CSHB 244(JUD) Out of Committee
 05/09/03 (H) MINUTE(JUD)
 05/12/03 (H) JUD RPT CS(JUD) NT 1DP 1DNP 4NR
 05/12/03 (H) DP: SAMUELS; DNP: GARA; NR: HOLM,
 05/12/03 (H) OGG, GRUENBERG, MCGUIRE
 05/13/03 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 05/13/03 (H) -- Meeting Canceled --
 05/14/03 (H) FIN AT 8:30 AM HOUSE FINANCE 519
 05/14/03 (H) Heard & Held
 05/14/03 (H) MINUTE(FIN)
 05/15/03 (H) FIN AT 8:30 AM HOUSE FINANCE 519
 05/15/03 (H) Moved CSHB 244(JUD) Out of Committee
 05/15/03 (H) MINUTE(FIN)
 05/15/03 (H) FIN RPT CS(JUD) NT 2DNP 4NR 4AM
 05/15/03 (H) DNP: KERTTULA, FOSTER; NR: MOSES,
 05/15/03 (H) CHENAULT, HARRIS, WILLIAMS; AM: HAWKER,
 05/15/03 (H) STOLTZE, BERKOWITZ, WHITAKER
 05/15/03 (H) RETURNED TO JUD COMMITTEE
 05/15/03 (H) IN JUDICIARY
 03/19/04 (H) JUD AT 1:00 PM CAPITOL 120
 03/19/04 (H) Heard & Held
 03/19/04 (H) MINUTE(JUD)
 03/24/04 (H) JUD AT 1:00 PM CAPITOL 120
 03/24/04 (H) Heard & Held
 03/24/04 (H) MINUTE(JUD)
 03/30/04 (H) JUD AT 1:00 PM CAPITOL 120
 03/30/04 (H) Heard & Held
 03/30/04 (H) MINUTE(JUD)
 03/30/04 (H) JUD AT 3:00 PM CAPITOL 120
 03/30/04 (H) -- Meeting Canceled --
 03/31/04 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

SUZANNE CUNNINGHAM, Staff
 to Representative Kevin Meyer
 Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented CSHB 339, Version U, on behalf of the sponsor, Representative Meyer.

REPRESENTATIVE KEVIN MEYER

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 339.

JON BITTNER, Staff

to Representative Cheryll Heinze

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Assisted with the presentation of HB 452, Version Q, on behalf of the sponsor, Representative Heinze.

REPRESENTATIVE CHERYLL HEINZE

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 452.

JAMES E. PRESTON, Owner

Big Jim's Charters

Auke Bay, Alaska

POSITION STATEMENT: During discussion of HB 452 testified in favor of passing the CS, raised a concern, and suggested a change.

JOEL HANSON

The Boat Company, LTD,

Sitka, Alaska

POSITION STATEMENT: During discussion of HB 452 raised concerns and suggested changes.

ROB BENTZ, Deputy Director

Division of Sport Fish

Alaska Department of Fish & Game (ADF&G)

Juneau, Alaska

POSITION STATEMENT: Assisted with the presentation of HB 452 by responding to comments and questions.

DOUG VINCENT-LANG, Assistant Director

Division of Sport Fish

Alaska Department of Fish & Game (ADF&G)

Anchorage, Alaska

POSITION STATEMENT: Assisted with the presentation of HB 452 by responding to comments and questions.

PORTIA PARKER, Deputy Commissioner
Office of the Commissioner - Juneau
Department of Corrections (DOC)
Juneau, Alaska

POSITION STATEMENT: Presented HB 484 on behalf of the
administration.

BARBARA BRINK, Director
Central Office
Public Defender Agency (PDA)
Department of Administration (DOA)
Anchorage, Alaska

POSITION STATEMENT: Relayed the PDA's concerns regarding HB
484.

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

POSITION STATEMENT: Provided a comment during discussion of HB
474.

ANNETTE KREITZER, Chief of Staff
Office of the Lieutenant Governor
Juneau, Alaska

POSITION STATEMENT: Presented HB 439 on behalf of the
administration.

SCOTT CLARK, Notary Commission Administrator
Office of the Lieutenant Governor
Juneau, Alaska

POSITION STATEMENT: Provided a comment during discussion of HB
439.

JOSHUA FINK, Public Advocate
Anchorage Office
Office of Public Advocacy (OPA)
Department of Administration (DOA)
Anchorage, Alaska

POSITION STATEMENT: Relayed concerns about the proposed
committee substitute (CS) for HB 244 and responded to questions.

SUSAN A. PARKES, Deputy Attorney General
Central Office
Criminal Division
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Provided comments and responded to questions during discussion of the proposed committee substitute (CS) for HB 244.

ACTION NARRATIVE

TAPE 04-54, SIDE A

Number 0001

CHAIR LESIL MCGUIRE called the House Judiciary Standing Committee meeting to order at 1:20 p.m. Representatives McGuire, Holm, Ogg, Samuels, Gara, and Gruenberg were present at the call to order. Representative Anderson arrived as the meeting was in progress.

HB 474 - LIABILITY FOR AIRPORTS AND AIRSTRIPS

Number 0140

CHAIR MCGUIRE announced that the first order of business would be HOUSE BILL NO. 474, "An Act relating to civil liability associated with aircraft runways, airfields, and landing areas." [Before the committee was the proposed committee substitute (CS) for HB 474, Version 23-LS1745\D, Bullock, 3/23/04, which was adopted as a work draft on 3/26/04; on 3/26/04 an Amendment 1 to Version D was adopted, but at the request of Amendment 1's sponsor, the committee, later in the meeting on 3/26/04, rescinded its action in adopting Amendment 1.]

REPRESENTATIVE HOLM, speaking as the sponsor, noted that he has a proposed amendment for HB 474, a new Amendment 1, labeled 23-LS1745\D.1, Bullock, 3/31/04, which read:

Page 1, line 6:

Delete "A [NATURAL]"

Insert "Except as provided in (c) of this section, a [A NATURAL]"

Page 2, following line 9:

Insert a new bill section to read:

"* **Sec. 2.** AS 09.65.093 is amended by adding a new subsection to read:

(c) The immunity from civil liability under (a) of this section does not apply to an owner or operator of an aircraft runway, airfield, or landing area with respect to the provider of flight services under contract with the owner or operator."

Number 0185

REPRESENTATIVE HOLM said he would like to "put ... forward" Amendment 1 because it addresses one of the issues raised at the bill's last hearing.

CHAIR MCGUIRE, after ascertaining that no one wished to testify on the bill and that a representative from the Aircraft Owners and Pilots Association (AOPA) was available to answer questions, closed public testimony on HB 474.

REPRESENTATIVE GRUENBERG said he has an amendment to Amendment 1 that will clarify Amendment 1.

REPRESENTATIVE HOLM said that Amendment 1 would address the issue of whether someone who contracts another to land on an airfield would be given immunity from liability. He added that Amendment 1 proposes to "fix" this issue. He asked Representative Samuels to comment.

REPRESENTATIVE SAMUELS said that his concern is that there are a few airports that contract flying and he wanted to exclude from the bill some of the larger runways. He noted that HB 474 does not propose to change any of the standards already in current law with regard to gross negligence, recklessness, or intentional misconduct.

REPRESENTATIVE GARA pointed out that current law already exempts owners of private airstrips who "run them voluntarily for no money" unless they engage in exceptionally bad conduct such as gross negligence, recklessness, or intentional misconduct. The bill, he surmised, will extend that exemption from liability to businesses that run airstrips, adding that he does have a problem with doing such unless the scope of the bill is very limited. He offered his belief that Amendment 1 will protect airplane companies that contract with the owners of an airfield, but will not protect people.

REPRESENTATIVE GARA, to illustrate his point, offered the following hypothetical: "What if you're being flown into a ... fishing lodge ... and you've arranged your own flight service in ...?" If for some reason a massive ditch has been dug across the runway that the lodge owner is purportedly maintaining, neither the person nor the flight company would know about that hazard. In such a situation, neither the person flying in to use the lodge nor the airplane company have a contract with the

lodge, and so would not be able to seek civil damages under Amendment 1. He opined that both the bill and Amendment 1 are flawed in this regard.

Number 0595

REPRESENTATIVE GARA offered what he termed a friendly amendment to Amendment 1, to add at the end of Amendment 1, the words, "or passenger" for the purpose of protecting not just the airplane carrier but the passengers on the airplane carrier.

CHAIR MCGUIRE announced that HB 474 would be set aside [with the amendment to Amendment 1 left pending] for the purpose of hearing the next [three bills]. [HB 474 was taken up again later in the meeting.]

HB 339 - TRADE PRACTICES

Number 0618

CHAIR MCGUIRE announced that the next order of business would be HOUSE BILL NO. 339, "An Act relating to negative option plans for sales, to charges for goods or services after a trial period, and to acts that are unlawful as unfair trade practices."

Number 0662

SUZANNE CUNNINGHAM, Staff to Representative Kevin Meyer, Alaska State Legislature, testified on behalf of Representative Meyer, sponsor of HB 339. She explained that on March 26, 2004, committee members received the latest version of HB 339, Version 23-LS1265\U, Bannister, 3/26/04, as well as memorandums from Legislative Legal and Research Services and Representative Meyer. She explained that Version U encompasses the amendments discussed at the bill's last hearing.

Number 0767

REPRESENTATIVE SAMUELS moved to adopt the proposed committee substitute (CS) for HB 339, Version 23-LS1265\U, Bannister, 3/26/04, as the working document. There being no objection, Version U was before the committee.

MS. CUNNINGHAM relayed that [Representative Meyer's] memorandum accompanying Version U outlines the changes encompassed in that version. In response to Representative Gruenberg, Ms.

Cunningham pointed out that Version U incorporates a definition of "seller."

REPRESENTATIVE GRUENBERG surmised, "I gather that's not quite the same as the UCC [Uniform Commercial Code] because it deals with services also."

MS. CUNNINGHAM answered in the affirmative.

REPRESENTATIVE GARA turned attention to subsection (e) on page 2 of Version U, and noted his appreciation for incorporating the change he had requested. He explained that if someone offers something for a free trial period, then that [person or entity] will have to send out an invoice before charging the consumer. The invoice would provide instructions with regard to cancellations. However, Version U specifies that this invoice has to be provided at least 15 days before charging the consumer's account rather than the 30 days he requested. He opined that 15 days aren't enough. He likened [the 15-day requirement] to how credit card bills arrive and are due relatively soon after arrival, which results in people missing the due date. Representative Gara requested changing the timeframe to 21 days.

MS. CUNNINGHAM offered her belief that the Department of Law changed the timeframe from 30 days to 15 days in order to be more in line with the requirements of the Federal Trade Commission, which requires 10 days. She viewed the matter as a policy decision for the committee.

Number 0943

REPRESENTATIVE GRUENBERG highlighted that [Version U] changes "express written consent" to "express verifiable consent", and inquired as to the reasoning behind that change.

MS. CUNNINGHAM answered that the Department of Law made that decision. She recalled that there was conversation with regard to mandating that the entire conversation of telephonic sales be recorded. There was also conversation with regard to Representative Gara's amendment requiring [the seller] to send a form on which the consumer checks a box that he/she understands and will meet all the obligations specified for the free trial period. The Department of Law's perspective with regard to "express verifiable consent" was that the seller will always have the burden of proving that consent was obtained from the buyer.

REPRESENTATIVE GRUENBERG remarked that the law often favors written documents because of the ease of proof, particularly in consumer matters. He inquired as to how the consent that isn't in writing will be verified.

Number 1062

REPRESENTATIVE KEVIN MEYER, Alaska State Legislature, sponsor, said that he'd had the same question. He noted that Clyde (Ed) Sniffen, Jr., Assistant Attorney General, Commercial/Fair Businesses Section, Civil Division (Anchorage), Department of Law, had wanted the "express verifiable consent" language. He offered his belief that the Department of Law is comfortable with the "express verifiable consent" language, which is used elsewhere in statute.

MS. CUNNINGHAM informed the committee that under the federal telemarketing sales rules, there are requirements for the express oral authorization for telephonic sales to be recorded. Therefore, she characterized [the "express verifiable consent" language] as a compromise.

REPRESENTATIVE GRUENBERG said that he didn't know whether "express verifiable consent" is a legally defined term.

CHAIR McGUIRE announced her desire to report this legislation from committee today. She pointed out that there will be an opportunity to speak with Mr. Sniffen before HB 339 reaches the House floor. She mentioned that she trusted Mr. Sniffen immensely.

REPRESENTATIVE GRUENBERG pointed out that "seller" is defined twice [in Version U]. The definition of "seller" on page 3, [lines 2-4], includes "... a person who engages in ... arranging for a free trial period for goods and services." However, the definition of "seller" [on page 3, line 31, through page 4, line 1] doesn't include the aforementioned language. He inquired as to why that is.

MS. CUNNINGHAM explained that the definition under AS 45.45.920 pertains to the "seller" in the free trial period, whereas the "seller" definition under AS 45.45.930 refers to the opt-out marketing plans. The [definition of "seller" is included in both] in order to be clear.

REPRESENTATIVE GRUENBERG returned to his earlier question with regard to the "express verifiable consent" language. He informed the committee that Black's Law Dictionary has two definitions of "verify", one of which is a verification as is in AS 09.63. However, the other definition of "verify" is as follows: "To prove to be true; to confirm or establish the truth or truthfulness of; to check or test the accuracy or exactness of; to confirm or establish the authenticity of; to authenticate; to maintain; to affirm; to support". He surmised that the language "verifiable" means provable.

Number 1221

REPRESENTATIVE HOLM moved to report CSHB 339, 23-LS1265\U, Bannister, 3/26/04, out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, CSHB 339(JUD) was reported from the House Judiciary Standing Committee.

HB 452 - GUIDED SPORT FISHING

Number 1250

CHAIR MCGUIRE announced that the next order of business would be HOUSE BILL NO. 452, "An Act relating to licensing and regulation of sport fishing services operators and fishing guides; and providing for an effective date." [Before the committee was CSHB 452(L&C).]

Number 1290

JON BITTNER, Staff to Representative Cheryll Heinze, Alaska State Legislature, sponsor, noted, on behalf of Representative Heinze, that the committee has in its possession a proposed committee substitute (CS).

Number 1314

REPRESENTATIVE GRUENBERG moved to adopt the proposed CS for HB 452, Version 23-LS1619\Q, Utermohle, 3/29/04, as the work draft. There being no objection, Version Q was before the committee.

Number 1319

REPRESENTATIVE CHERYLL HEINZE, Alaska State Legislature, sponsor, relayed that she'd at one time owned a sport fish guiding business, and offered that her experiences have given

her an insider's perspective on the needs and issues of the sport fishing industry. She said that HB 452 deals with three major needs in the "sport guide" industry: one, standardized consumer safety; two, increased information gathering; and three, improved consumer confidence. By mandating certain minimum requirements for sport fish guides and operators, such as first-aid training and liability insurance, people can be sure that guides and operators are trained and protected in the event of an emergency.

REPRESENTATIVE HEINZE said that the need for basic reporting shouldn't be underestimated, and by providing the Alaska Department of Fish & Game (ADF&G) with comprehensive information on the number of fish caught, the effort expended, the number of boats used, and general location where the fish were caught, then the ADF&G will be able to make more informed decisions that protect fish stocks and their habitats, and maximize their current and future yields. Such reporting benefits not just the sport fishing industry, but also ensures that Alaska fulfills its constitutional mandate to manage its resources for their maximum sustained yield. Thirdly, consumer confidence is improved by the guarantee of certain standards regarding protection and training that guides would have.

REPRESENTATIVE HEINZE, in conclusion, said that the sport fishing industry is an important and driving factor in Alaska's economy; such a vital industry needs to be protected and supported in order to ensure that it remains that way. She urged the committee to support HB 452.

Number 1440

JAMES E. PRESTON, Owner, Big Jim's Charters, said that he wishes to speak in favor of passing the CS for HB 452, and that he agrees with the sponsor's comments regarding the need for the legislation; this is a bill that is a long time in coming and is very similar to a bill sponsored by then-Representative Austerman in the 20th legislature. He relayed, however, that he does not yet have Version Q in his possession, and so his comments relate to CSHB 452(L&C). He said that according to his recollection, there were some proposed changes to the provisions pertaining to penalties and enforcement.

MR. BITTNER indicated that the penalties have not been changed in Version Q.

MR. PRESTON said that his concern revolves around potential penalties that may arise because of a minor paperwork infraction. Proposed AS 16.40.280, among other things, grants the department the authority to promulgate regulations necessary to implement "this section". Proposed AS 16.40.290 is the penalty provision, and subsections (b) and (c), which refer to violations of proposed AS 16.40.270(e), provide that a person is, for a first offense, guilty of a violation and may be subject to a fine of not more than \$500, and is, for a subsequent offense within a three-year period, guilty of a class B misdemeanor. However, because subsection (a) of proposed AS 16.40.290 says that knowing violations of proposed AS 16.40.260 - AS 16.40.299, which would include proposed AS 16.40.270(e), are to be considered class A misdemeanors, it appears that subsection (a) is in conflict with subsections (b) and (c).

MR. PRESTON said he hopes that when the bill comes out of committee "there would at least be intent language in there that a person who unwittingly, or for mitigated circumstances, misses a deadline by a day or so, of turning in their logbook, that they would not be guilty of a class A misdemeanor." He relayed an experience he had wherein he'd had a major [equipment] breakdown, forgot to turn in his logbook, and had to pay a \$200 fine even though his boat was out of the water. He reiterated that he would prefer that such situations not be charged as class A misdemeanors. Other than that, he concluded, he is very supportive of HB 452.

Number 1671

JOEL HANSON, The Boat Company, LTD, after describing how the company he works for engages in sport fishing activities, said that the company has two recommendations for change to HB 452, though he acknowledged that he does not yet have Version Q in his possession. Referring instead, then, to CSHB 452(L&C), he said that the company would like to see the language on page 4, line 24, deleted because it requires an applicant for a guide license to also hold a current fishing license before he/she will be issued a guide license. He noted that such a requirement could be satisfied just by purchasing a one-day fishing license just prior to applying for a guide license, and so the requirement appears to be nonsensical. He opined that a guide should not be required to hold a sport fishing license because a guide doesn't necessarily participate in sport fishing activities as they are commonly defined. He offered that what he is attempting to do is draw a clear distinction between guiding and sport fishing.

MR. HANSON, still referring to CSHB 452(L&C), said that the other recommendation the company he works for would offer pertains to page 5, lines 13-14, which requires a guide to possess "the current licenses, tags, and permits that are required to engage in the sport fishery for which the sport fishing guide services are being provided". He went on to say:

What this means to a sport fishing guide that's engaging in taking clients out on a saltwater king salmon fishing trip is that he or she must essentially have in possession both a personal sport fishing license and a personal king salmon stamp stuck on the back of the sport fishing license. This all kind of makes sense except [for the fact that] fish and game regulations prohibit the guide from fishing for king salmon or retaining personal catch along [with] the client on a guided king salmon fishing trip. Therefore, there is a conflict with this legislation.

...

MR. HANSON said that the company he works for recommends that this language be modified to clarify the circumstances under which a guide would actually need to possess sport fishing licenses. For example, change the language such that, "whenever actively personally participating in sport fishing or retaining personal catch, the current licenses, tags, and permits ..." and then delete the phrase, "for which the sport fishing guide services are being provided". Such a change would absolve the guide from the requirement of having a license and fish tag that he/she is prohibited from using. In conclusion, he said that he appreciates all the work that the sponsor and her staff have put into the legislation.

Number 1969

ROB BENTZ, Deputy Director, Division of Sport Fish, Alaska Department of Fish & Game (ADF&G), on the issue raised by Mr. Preston's testimony regarding class A misdemeanors, relayed that this language currently exists in the ADF&G's saltwater logbook program, but if HB 452 is adopted, the language would be altered somewhat and would no longer be exactly the same as in that program. He noted that a class A misdemeanor can result in a fine ranging from zero to \$10,000, but the exact amount would be determined by the judge on a case-by-case basis. On the issue raised by Mr. Hanson regarding sport fishing licenses, Mr. Bentz pointed out that language in the bill requires a guide to

present a current sport fishing license to law enforcement officers when requested to do so; therefore, a one-day license would not suffice to fulfill the requirement.

MR. BENTZ said that the reason for asking a guide to carry a current sport fishing license is because in many cases, both in freshwater and saltwater, guides do fish while guiding clients, particularly if they are trying to teach the clients to fish. Additionally, in the process of assisting clients, guides bait the hooks and use the downriggers - in other words, they are sport fishing. With regard to the assertion that a guide is not allowed to fish for king salmon and therefore there is no need for him/her to possess a king salmon tag, Mr. Bentz said this is not correct; guides in Southeast Alaska are prohibited from retaining king salmon when they have clients onboard, but they are not prohibited from fishing for king salmon and then releasing them. In fact, he explained, a king salmon tag is required when fishing for king salmon, not just when harvesting king salmon. In response to a comment, he said that in Southeast Alaska, one can have up to six lines per vessel in the water, but only as many lines as there are paying clients. However, if a paying client pulls his/her line in, then the skipper can fish.

Number 2138

DOUG VINCENT-LANG, Assistant Director, Division of Sport Fish, Alaska Department of Fish & Game (ADF&G), added that these stipulations originated when "we were doing the 'guide/charter task force' through the Board of Fisheries." Clearly, he remarked, many guides across the state have realized that to be a sport fishing guide, one has to be able to show clients how to fish, and this in turn requires having a sport fishing license as part of operating as a responsible sport fishing guide. There is some concern, though, regarding whether one needs to have that license in his/her possession when in an area that he/she is prohibited from fishing in. He remarked, however, that in such situations, the prohibition pertains to certain species or certain times of day. Therefore, he opined, it is not unreasonable to require someone to have the license in his/her possession.

REPRESENTATIVE GARA observed that the state may need to limit or reduce the number of guides in a particular area, and so he wants to make sure that they are not giving people a property right that could later be used to say the state can't take away someone's license without paying that person a lot of money. He

asked whether current law authorizes the state to limit the number of licenses in the future. Or should HB 452 be altered to clarify that the state retains that right?

MR. BENTZ said that the state's ability to limit the number of guides is unclear at this time, though last year, "when the moratorium bill for Southeast [Alaska] came up," the Department of Law (DOL) offered the opinion that the existing "limited entry amendment" to the Alaska State Constitution is perhaps broad enough to include charter vessels.

REPRESENTATIVE GARA said that assuming the courts affirm that the state is allowed to protect its fisheries by limiting the number of guides on a fishery, he wants to make sure that the state has the authority to limit licensure.

MR. VINCENT-LANG pointed out that HB 452 is not a limited entry bill, and opined that neither he nor Mr. Bentz is qualified to say whether licensing a guide would result in giving that person a property right. He said he would ask the DOL whether such would be the case, but noted that it is not the intent of HB 452 to issue a property right to an individual guide. Instead, the intent is to license sport fishing guides, set minimum standards and reporting requirements, and set penalties pertaining to licensing and reporting.

Number 2281

REPRESENTATIVE GARA said that is his understanding of the bill's intent as well, and relayed that he would probably be offering an amendment that simply clarifies that intent, that to the extent the department has the authority to reduce the number of licenses in order to protect a fishery, it should be allowed "to do it."

CHAIR MCGUIRE opined that Representative Gara makes a good point, and surmised that many years ago, when the department was first considering licensure of commercial fisheries, no one would have envisioned that "we would end up with quotas ... or the types of restrictions" that are currently in place. She added that she is vehemently opposed to [issuing property rights via licensure].

MR. VINCENT-LANG reiterated that HB 452 is not intended to be a limited entry bill, which would engender both constitutional and criteria hurdles.

REPRESENTATIVE GARA said he merely wants to preserve the department's authority - to the extent that the Alaska State Constitution grants the department that authority - to limit the number of guides on a river.

CHAIR MCGUIRE suggested that the committee could ask Legislative Legal and Research Services about this issue.

REPRESENTATIVE GARA offered his belief that the bill shouldn't be delayed just to wait for a response from Legislative Legal and Research Services. He then turned attention to page 4, subsection (e), of Version Q, which says that a sport fishing [operator] is not allowed to assist in the violation of AS 16.05 - AS 16.40 or in the violation of the regulations adopted under those provisions of statute.

TAPE 04-54, SIDE B

Number 2356

REPRESENTATIVE GARA referred to frustration he has heard voiced by some sport fishermen with regard to fishing guides who take clients out for catch and release fishing and leave the fish flopping on the bank while people get out their cameras. He stated that the whole point of catch and release fisheries, citing that the Kenai River has a regulation for rainbow trout that are under 30 inches long, is to maintain the fisheries with a vibrant population of large fish that will exist as long as possible. He stated that behaviors like letting a fish flop around on the bank are things that the fishing community finds completely out of line. He mentioned that would be offering an amendment to add some language that emphasized the rules governing the catch and release of fish.

MR. VINCENT-LANG said that the ADF&G feels that the regulations governing catch and release fishing are already in effect via Title 16, and so the proper way to adopt regulations is through the Board of Fisheries. Having said that, Mr. Vincent-Lang acknowledged that emphasizing [the regulations regarding catch and release fishing] in HB 452 would not cause any problems.

CHAIR MCGUIRE asked if there was anyone else that wanted to testify on HB 452; there being no one, she closed public testimony.

REPRESENTATIVE GRUENBERG indicated that he wanted to offer a technical, handwritten amendment [later adopted as Amendment 1] that read [original punctuation provided]:

page 6 lines 29-30. Strike "and upon conviction is punishable by a fine of not more than \$500".

page 7 lines 1-2. Strike "and upon conviction is punishable by a fine of not more than \$500"

REPRESENTATIVE GRUENBERG explained that he had spoken with Mr. Bittner as well as the drafter of the bill because the term "violation" [which is used in HB 452] is a legal term that is defined in the criminal code in AS 11.81.900(b)(61). Therefore, Representative Gruenberg remarked, these lines do not need to be in the bill. He also cited AS 12.55.035(b)(7), wherein the amount of the fines imposed for violations is set up in statute, and said that he is offering the amendment because the fines imposed may change from time to time and he wants the legislation to be congruent with the normal style and the current code. Representative Gruenberg said that he had pointed this out to the drafter, and the drafter was not aware that the fine for a violation had already been established or else he would have left the language out of the bill.

Number 2155

REPRESENTATIVE GRUENBERG moved to adopt Amendment 1. There being no objection, Amendment 1 was adopted.

Number 2132

REPRESENTATIVE GARA moved to adopt Amendment 2 as follows:

Page 4, line 17, after "person"
Insert ", including rules governing the proper release of fish"

REPRESENTATIVE GARA explained that Amendment 2 would not add any new rules, but would emphasize that violations include violating the current rules governing the release of fish.

REPRESENTATIVE HEINZE indicated that she had no objections to Amendment 2.

MR. BENTZ said that such was alright with the ADF&G as well.

REPRESENTATIVE GRUENBERG questioned the placement of Amendment 2, stating that it might fit better somewhere else in the bill.

He then suggested leaving the placement up to the discretion of the drafter.

REPRESENTATIVE GARA said it would be fine to leave it up to the drafter to put the language where he saw fit.

Number 2060

CHAIR McGUIRE clarified that the committee wanted to conceptually add this language, which would indicate that there is emphasis on rules governing the proper release of fish, knowing that there are already regulations dealing with releasing fish.

Number 2052

CHAIR McGUIRE asked if there was any objections to adopting [Conceptual] Amendment 2. There being no objection, Conceptual Amendment 2 was adopted.

REPRESENTATIVE GARA asked the sponsor if it is her intention to make the issue of a [fishing license] as a property right limited, as far as the constitution would allow, and noted that licenses are only valid for one year.

REPRESENTATIVE HEINZE confirmed that this is her intention.

REPRESENTATIVE GRUENBERG asked if it is the intent of either the sponsor or the ADF&G to limit the number of licenses given out in a given area.

REPRESENTATIVE HEINZE said that issue isn't dealt with in HB 452.

REPRESENTATIVE GARA stated that in the future, it may be determined that there are too many licenses being distributed. He said that limiting the number of licenses may help protect a fishery or someone's right to recreational enjoyment. He noted that there isn't any intention to do that at this time, but merely to think about it for the future.

REPRESENTATIVE GRUENBERG shared that it is his understanding that in certain areas, [the ADF&G] limits the number of hunting licenses for guides. He then clarified that although the issue isn't dealt with in HB 452, he wanted to know if something like that would be coming in the future.

REPRESENTATIVE HEINZE explained that HB 452 will provide [ADF&G] with the number of guides that fish in particular areas and what kind of load each area can sustain.

Number 1971

MR. BENTZ clarified that HB 452 will provide a fair licensing standard across the guide industry. He said it will give the ADF&G an accurate account of who is participating in the guide industry, as well as information that the ADF&G needs in order to manage the fisheries. He stated that if there is ever an attempt to limit guides in the future, there would have to be additional work done in order to do so. He again cited constitutional hurdles as one of the issues that would have to be addressed, as well as setting criteria regarding how the ADF&G is going to limit the licensing. He stated that the ADF&G would probably have to create more legislation just to be granted the authority to do something like that. He reiterated that HB 452 is necessary to get information that the ADF&G needs to manage the fisheries.

REPRESENTATIVE GRUENBERG asked if there are any other states that limit the number of licenses being distributed.

MR. BENTZ stated that the ADF&G has researched eight western states and only one, Washington, has a moratorium on chartered guiding. He said that this is the only example of states limiting licenses. He followed that up by saying that there are some federal programs, similar to the North Pacific Fishery Management Council, that have various restrictive measures.

CHAIR McGUIRE shared her concern that licensing sport fishing guides could be viewed as a quasi-property right. She said she doesn't want the licenses passed down from generation to generation, excluding all new entrants that may not have grown up in fishing families from that opportunity at a livelihood. She said she believes that passing HB 452 is the responsible thing to do, and the information that will be gleaned will assist the department in making future decisions regarding fisheries. She remarked that it would be interesting to look back at the discussions had while commercial fishing licenses were being debated, and view the results of those discussions.

CHAIR McGUIRE began discussion on what would eventually become Conceptual Amendment 3. She stated that she would like the license referred to in HB 452 to be one that could be withheld for failure to pay child support. She asked Representative

Heinze if she would allow this to be included in HB 452. Chair McGuire said that she would offer the amendment conceptually and have a conversation with the drafters about the intent. She stated that she wanted it to be put in the bill under the same context as other bills containing the same penalty. She offered that the forthcoming committee substitute (CS) would be subject to the sponsor's approval before being distributed to the committee.

REPRESENTATIVE HEINZE said she would be agreeable to that.

Number 1763

CHAIR MCGUIRE made a motion to adopt Conceptual Amendment 3, that this would be a type of license that could be taken away by Child Support Enforcement Division for failure to pay one's child support obligations, or could be withheld for a certain period of time.

REPRESENTATIVE GARA said that he is concerned that the ADF&G retain whatever authority it has to protect Alaska's fisheries and to protect the public's right to enjoy the fisheries. He stated that in order to do that, the ADF&G may need to limit the number of guides on a certain body of water. He surmised that given the broad power both the ADF&G and the Department of Natural Resources (DNR) have to protect the fisheries and the public's right to enjoy them, there is probably statutory authority already in place that enable the departments to limit the number of licenses issued. With regard to an earlier suggestion that in order to limit the number of guides it would take another piece of legislation, he said that he would hate for that to be the case.

Number 1689

CHAIR MCGUIRE suggested that the committee resolve the issue of whether to adopt Conceptual Amendment 3. Noting that there were no objections, she stated that Conceptual Amendment 3 was adopted.

REPRESENTATIVE GARA, returning to his earlier comments, stated that he didn't want the bill to be interpreted such that it detracted from ADF&G's ability to limit the number of guides and licenses for a certain area.

MR. VINCENT-LANG clarified that there is nothing in HB 452 that would limit ADF&G's authority. He noted the constitutional

concerns that the committee had discussed, but reiterated that HB 452 would not take away the existing authority of the Board of Fisheries or the ADF&G to deal with their statutory responsibilities regarding fish and game management.

Number 1642

REPRESENTATIVE HEINZE shared her concern regarding the heavy burden that the rivers are taking on now. She said that in the future, as tourism and sport fishing grow, [the legislature] may have to look at that burden and address it. She stated that for now, HB 452 is a good first step to determine the number of guides and the areas that are taking on a heavier burden. She said that limiting the licenses may be step two, but passing HB 452 is step one.

CHAIR MCGUIRE agreed with those assessments, and shared the concerns that she has regarding the limitation of licenses to guides. She pointed out that having guides available to a family that may not have a lot of resources is a concern that she has. She stated that if the number of guides on Lake Creek was reduced by one half, for instance, the cost of retaining a guide would increase considerably. She shared that fishing has been a considerable part of her life since she was a young girl, and she wants other people to have the same opportunities. She stated that if there aren't the resources available, then a family won't have the opportunity to fish and learn how to do it responsibly. She said that her experience with guides has been positive, and explained that they taught her respect for the resource, how to catch and release, how to trim hooks, and other things that someone probably wouldn't learn if they didn't have a mentor.

CHAIR MCGUIRE explained that her next concern with limiting licenses to existing fishing guides is that it would not allow new people to venture into the occupation of being a guide. Her final concern dealt with the balance between sport and commercial fishing. She said that fish are a limited resource, and although Alaska is lucky because the resource isn't that limited here, there could be a situation where someone in the ADF&G would have a desire to see more commercial fishing and less sport fishing, and then limit the licenses accordingly. She reiterated that she feels that it is responsible to license sport fishing guides, but she is leery about where the legislature goes from here. She noted that HB 452 does not change any power that the ADF&G has to the extent that the bill is unconstitutional. She said that this is certainly the first

step in providing the ADF&G with the information it needs in order to determine whether the number of licenses should be limited. She said that this is going to be the "first tool in that tool belt, and I just hope it's used wisely."

Number 1462

REPRESENTATIVE OGG referred to two rivers on Kodiak, and noted that concerns have been relayed to him about aliens - nonresidents from other countries - fishing on these rivers. He observed that page 4 [lines 20-21] contains language that says it's okay for residents of the U.S., Canada, or Mexico to obtain a sport fishing guide license. What constituents have relayed to him is that some visitors from Germany have been forming "clubs" wherein one of them "takes them down the river" without formally claiming to be a guide. Representative Ogg asked whether there is a way, via the bill, to ensure that such groups have a licensed sport [fishing] guide with them.

MR. BENTZ opined that the language in HB 452 will strengthen the department's ability to oversee such activities. He elaborated:

Right now, currently, anybody can come into Alaska, come to [an] area office of [the ADF&G], and register as a sport fishing guide - costs them nothing - and they can go out the next day and become a so-called professional fishing guide even though it's their first day on a river like the Ayakulik. This [bill] would restrict it down to people from the U.S., Canada, or Mexico at least. So it is a more restrictive version than what we're currently operating under.

REPRESENTATIVE OGG asked how they could "get at these club folks." When there is "a shove" for the resource, he remarked, he wants such clubs to be accompanied by a licensed guide.

CHAIR McGUIRE mentioned that a licensed guide is much more likely to be aware of what the rules are.

MR. VINCENT-LANG said that the department does have concern about requiring every alien to have a guide. He opined, however, that the way HB 452 is written, if an individual is organizing "a club" and an enforcement officer can prove that that individual is providing guide services as defined on page 7, line 12, then that individual would be covered under the bill and would have to obtain both a sport fishing guide license and

a business license. He relayed that the reason the U.S., Canada, and Mexico are listed together in the bill is to satisfy North American Free Trade Agreement (NAFTA) requirements.

Number 1091

REPRESENTATIVE HOLM turned attention to the fiscal note, and asked why it did not reflect anticipated revenues from the licensing fee.

MR. VINCENT-LANG said that it does, and pointed out the sections of the fiscal note that did so. He relayed that revenues from the licensing fee will go into "the fish and game fund" rather than the general fund (GF).

MR. BITTNER added that there is "a slight overshoot" on the "fines" that would be taken in.

MR. VINCENT-LANG said that the calculation was arrived at from information received from "registration of guides."

REPRESENTATIVE HOLM said he wanted to make sure that there is [yearly] oversight on the [fiscal aspect of the bill] so that it doesn't become a burden on the GF.

MR. BITTNER, in response to a question, confirmed that the licensing fee was set high enough to cover anticipated costs.

MR. VINCENT-LANG, in response to a further question, said:

Initially what we did was we took a shot at trying to set this license fee to cover the cost of [the] administration of the program. Now, we're not going to come back annually to ask for adjustments to this. Clearly, the department is probably going to live with this for four or five years, and we'll deal with it in the fish and game fund. But if in fact, in the future, four or five years down the road, we're seeing that the license revenues coming in are insufficient to run the program, then we'll probably be coming back and talking to you about it. But I think this a first good shot at approximating what other states are doing in terms of licensing ... sport fishing guides and what we figured to be the up costs of administering the program.

REPRESENTATIVE GARA asked about the NAFTA requirement to include residents of Canada and Mexico in the bill.

Number 0854

MR. VINCENT-LANG said:

When the guide/charter task force went through this they initially wanted to limit the availability to have a sport fishing guide license to just residents of ... the United States. But when we got a legal opinion back after NAFTA passed, [there have] to be fair business practices across ... the borders of those three countries. So at a minimum, we were told by the Department of Law, you had to include Canada and Mexico.

REPRESENTATIVE GARA suggested that it might look poorly upon them if they were to discriminate against residents of other countries, adding that if someone has the qualifications then he/she should be granted a sport fishing guide license regardless of his/her country of residence. He elaborated:

I don't know why we should favor a Mexican person over an El Salvadoran person - though I probably will faint the first time I see an El Salvadoran fishing guide on the Kenai River, but it might happen - and ... as unlikely as it might be that we ... get guides from other places in the world, I suppose if we're going to extend it to certain non-citizens, we might as well extend it to all non-citizens."

MR. VINCENT-LANG replied: "We're certainly not opposed, if an individual meets the requirements of what it takes to be a sport fishing guide, to granting that privilege (indisc.); I can see cases where somebody (indisc.)."

CHAIR MCGUIRE asked what the rationale was behind limiting licensure to residents of North America.

MR. BITTNER said it was in order to comply with NAFTA's requirements.

MR. VINCENT-LANG added that the language in then-Representative Austerman's bill, from which HB 452 is derived, limited licensure to residents of the U.S., but NAFTA required the inclusion of Canadian and Mexican residents. He reiterated that

the guide/charter task force wanted to limit licensure to U.S. residents, but he also reiterated that the department would not be opposed to expanding licensure to residents of other countries as well.

REPRESENTATIVE GARA asked members what their thoughts on this issue were.

REPRESENTATIVE HOLM said that if it were up to him, he would exclude residents of Canada and Mexico.

Number 0699

CHAIR MCGUIRE indicated that she would like to be respectful of the wishes of the industry task force. If there were ever a time when licensure must be limited, she added, then she would prefer that Alaskans get preference, though she acknowledged that such might not be possible.

REPRESENTATIVE HEINZE opined that as first step, licensure to non U.S. residents should be as limited as possible.

REPRESENTATIVE OGG indicated a preference for limiting licensure as much as possible.

REPRESENTATIVE GARA said that to the extent feasible, he would like to see the bill grant a preference to Alaskan residents, though the reality is that there are sport fishing guides who are not residents of Alaska and some even that are not citizens of the U.S. He noted that if the bill had not specifically included Canada and Mexico, the issue would not have caught his attention.

REPRESENTATIVE ANDERSON relayed that he knows folks from Switzerland who own a lodge and provide sport fishing guide services and who contribute a great deal to the local economy, and that until now he'd not realized that HB 452 would affect these folks.

REPRESENTATIVE OGG remarked that treaty law trumps both state law and constitutional law, adding that he is not prepared to go beyond the provisions of NAFTA and offer rights to other aliens.

CHAIR MCGUIRE mentioned that the folks that Representative Anderson knows might have to hire local guides in the future.

MR. VINCENT-LANG said that the restriction in HB 452 goes to sport fishing guide licenses and not to business licenses, so a foreign company could still have a business license but under the bill would have to employ citizens of either the U.S., Canada, or Mexico as sport fishing guides.

REPRESENTATIVE GARA relayed that he would not be offering an amendment to expand who could get a license.

Number 0279

REPRESENTATIVE ANDERSON moved to report the proposed CS for HB 452, Version 23-LS1619\Q, Utermohle, 3/29/04, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 452(JUD) was reported from the House Judiciary Standing Committee.

HB 484 - CORRECTIONS: FEES/SURCHARGE

Number 0225

CHAIR MCGUIRE announced that the next order of business would be HOUSE BILL NO. 484, "An Act imposing a correctional facility surcharge on persons convicted of a crime under state law, and on persons whose probation is revoked; relating to fees and expenses for interstate transfer of probation or parole; and providing for an effective date."

Number 0119

PORTIA PARKER, Deputy Commissioner, Office of the Commissioner - Juneau, Department of Corrections (DOC), said that HB 484 imposes a correctional facilities surcharge. The surcharge will be \$100 for felony convictions, and \$50 for misdemeanor convictions. As currently written, the surcharge only applies to those who are convicted or plead no contest. The surcharge will be part of the court judgment and be included as a court fee, and so it wouldn't set up a whole new collection process. The bill also imposes a \$100 fee as a condition of probation, but this fee would be suspended unless the probationer violates probation.

TAPE 04-55, SIDE A

Number 0001

MS. PARKER said that the second part of HB 484 imposes a \$100 application filing fee for a person who is on probation or

parole and wishes to go out of state and be supervised in another state in conjunction with the interstate compact. She noted that most other states already charge this fee. The third part of HB 484 involves a requirement that the probationer or parolee going out of state come up with a \$1,250 bond. She relayed that a big cost to the state - specifically the Alaska State Troopers - involves having to go and get probationers and parolees who've gone to other states and violated their probation or parole. It can cost anywhere from \$1,500 to \$9,000 to retrieve one offender, and the state is retrieving one to two offenders every week.

Number 0121

BARBARA BRINK, Director, Central Office, Public Defender Agency (PDA), Department of Administration (DOA), said that she wished to speak about the surcharge proposed in HB 484 and how it fits in with all the other surcharges that are currently being imposed. She said that her fear, and the fear of those who represent indigent Alaskans - is that the state is beginning to impose burdens on people that are just impossible to meet. Currently, 80 percent of all criminal cases in Alaska are represented by public counsel - either someone from the PDA, the Office of Public Advocacy (OPA), or an OPA contractor. What should be remembered is that those who are released from custody have financial obligations to meet and perhaps families to support. Frankly, because of a lot of the mandatory minimum sentences in Alaska, even those charged with misdemeanor crimes have lost their jobs and face additional stigmatization when trying to find employment. Often their most pressing obligation is paying child support and restitution for their crimes. In addition, most are disqualified from receiving a permanent fund dividend (PFD), so that can't be tapped to pay surcharges.

MS. BRINK offered the following synopsis of what people who find themselves in the criminal justice system are already being charged:

First of all, we have mandatory minimum fines that range from \$1,500 to \$10,000 - just for [driving while under the influence (DUI)]. We already do have a surcharge; there's already a \$100 surcharge for felonies, a \$50 surcharge for misdemeanors, and a \$75 misdemeanor [DUI] surcharge. I'm not entirely positive, but I think that money goes to law enforcement officer training. If a client is ordered to go to ASAP [Alcohol Safety Action Program] and get

some treatment or at least an assessment as a condition of his sentence, that's a \$100 fee per case, and ASAP will not take them until they come up with at least 50 percent of that fee. So sometimes, someone who needs treatment and wants to go to treatment just has to come up with the cold, hard cash to get the treatment.

MS. BRINK added:

Then, in [DUI] cases, we already force people to pay their cost of imprisonment. This can range from a low of \$236.40 for 72 hour mandatory minimum [DUI] sentence, up to \$2,000 for a felony sentence. And under Rule 39 [of the Alaska Rules of Criminal Procedure], they also have to pay for their costs of counsel; they have to pay a minimum of \$250 for an easy misdemeanor that settles quickly, and a maximum of up to \$5,000 for a more serious case that goes all the way to trial. So I ... think that we're imposing burdens that instead of providing incentive and rehabilitation, give people a sense of helplessness and frustration.

Number 0344

And the felony study recently done by the Alaska Judicial Council (AJC) indicates that ... our Alaskan defendants serve more time than ... similarly situated people outside. I wouldn't want to also increase our surcharges so that we are the most onerous in the country. My other point is that in particular it seems kind of onerous to impose a fee of \$100 and a bond requirement for those who want to get an interstate transfer. Studies have shown that the single most significant factor in the rehabilitation of a person is the support of families in their efforts to lead a law-abiding life.

What we know is that many of the clients we represent here in Alaska aren't from Alaska, don't have family here, and have come up here to take advantage of economic opportunities, maybe even seasonal economic opportunities. It seems like we would want to encourage those people who have family and support networks outside to go and to be a successful probationer, rather than ... forcing them to stay

here, especially when they get out of jail and have no support, no money, and have to struggle.

REPRESENTATIVE HOLM said, "Leave town."

MS. BRINK continued:

Finally, I think that there is some discretion in this bill that it could be unfairly applied. And it does seem like there's a difference if you get summonsed in or if you get arrested - even if you post bail immediately that day, you're booked in a facility. If the [district attorney] chooses to summon you in, you don't get assessed a fee, and if the [district attorney] just says, "I don't have time to issue a summons, just go get a warrant," ... it can be totally arbitrary. There aren't any standards for who gets arrested and who gets summonsed in, so even in a case so minor that the defendant gets no jail time imposed, once the case is resolved, the [surcharge] would be imposed. Thank you Madam Chair

Number 0498

CHAIR McGUIRE announced that HB 484 would be set aside for the purpose of returning to the hearing on HB 474. [HB 484 was taken up again later in the meeting.]

HB 474 - LIABILITY FOR AIRPORTS AND AIRSTRIPS

Number 0555

CHAIR McGUIRE announced that the committee would return to the hearing on HOUSE BILL NO. 474, "An Act relating to civil liability associated with aircraft runways, airfields, and landing areas."

CHAIR McGUIRE remarked that Representative [Holm] had offered Amendment 1 [text provided during the first portion of today's hearing on HB 474], and that Representative Gara had an amendment to Amendment 1.

Number 0627

REPRESENTATIVE GARA again offered the amendment to Amendment 1, to add at the end of Amendment 1, after "operator", the words, "or passenger".

Number 0630

REPRESENTATIVE HOLM objected.

REPRESENTATIVE GARA said that Amendment 1 as written does not afford protection to passengers - for example, if the owner of an airstrip dug a ditch across it and didn't tell anybody even though he/she knew a passenger was flying in - and the amendment to Amendment 1 would do just that.

REPRESENTATIVE HOLM offered his understanding that passengers would be protected because they are covered by the air carrier they are using.

REPRESENTATIVE GARA argued, however, that an air carrier's liability insurance would only protect a passenger if the air carrier was negligent, but not if the owner of the airstrip did something to cause a mishap, like dig a ditch across the airstrip without telling anybody.

REPRESENTATIVE HOLM opined that a good pilot wouldn't land on an airstrip that had a ditch dug across it.

CHAIR MCGUIRE invited the representative from the Aircraft Owners and Pilots Association (AOPA) to comment.

Number 0845

TOM GEORGE, Alaska Regional Representative, Aircraft Owners and Pilots Association (AOPA), said: "The original clause in this bill should protect the passengers. Again, if there is a ditch dug across the airport, then the airport operator is grossly negligent, and I think that's ... a fairly balanced protection, both for the consumer and for the person who's trying to operate the airport."

REPRESENTATIVE GRUENBERG asked that the amendment to Amendment 1 be amended such that the words "or to a passenger" would be added after "provider of flight services".

REPRESENTATIVE GARA opined that such a change doesn't make sense.

REPRESENTATIVE OGG mentioned the lack of a relationship between the owner/operator and the passenger.

REPRESENTATIVE GARA, upon further consideration, agreed to accept Representative Gruenberg's suggestion on the condition that he restate it.

Number 0979

REPRESENTATIVE GRUENBERG made a motion, then, to amend the amendment to Amendment 1 such that after "provider of flight services", the words "[or] to a passenger" are added.

REPRESENTATIVE GARA indicated that he would accept that change.

Number 1027

REPRESENTATIVE HOLM withdrew his objection [to the amendment to Amendment 1].

CHAIR MCGUIRE stated that the amendment to Amendment 1 has been adopted, and that Amendment 1, as amended, is now before the committee.

REPRESENTATIVE GRUENBERG said he has a second amendment to Amendment 1 [as amended].

The committee took an at-ease from 3:15 p.m. to 3:17 p.m.

Number 1103

REPRESENTATIVE HOLM withdrew Amendment 1 [as amended].

Number 1113

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 2, which was labeled 23-LS1745\D.1, Bullock, 3/31/04; contained handwritten changes; and read:

Page 1, line 6:

Delete "A [NATURAL]"

Insert "Except as provided in (c) of this section, a [A NATURAL]"

Page 2, following line 9:

Insert a new bill section to read:

"* **Sec. 2.** AS 09.65.093 is amended by adding a new subsection to read:

(c) The immunity from civil liability under (a) of this section does not limit the liability of an

owner or operator of an aircraft runway, airfield, or landing area to a provider of flight services under contract with the owner or operator."

REPRESENTATIVE GRUENBERG said he would also like to amend Amendment 2, to add, after "provider of flight services", the words, "and its passengers".

[Although no motion was made to amend Amendment 2, it was treated as amended.]

Number 1178

CHAIR MCGUIRE asked whether there were any objections to Amendment 2 [as amended]. There being none, Amendment 2, as amended, was adopted.

REPRESENTATIVE GARA, referring to HB 474, said that he is still not sure who this liability limitation is being extended to that is not already covered by current law. He also said:

It was okay when it was people who ... operate an airstrip voluntarily, but now it's not just people - it's also businesses. And I do have a problem with that. If we want to extend the immunity to people who do things voluntarily, that's okay. If we want to extend it to sort of nonprofit associations or voluntary, that's okay. But to the extent we're starting to extend it to profit-making businesses, I've got a problem with the bill.

Number 1200

REPRESENTATIVE SAMUELS moved to report the proposed committee substitute (CS) for HB 474, Version 23-LS1745\D, Bullock, 3/23/04, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 474(JUD) was reported from the House Judiciary Standing Committee.

HB 484-CORRECTIONS: FEES/SURCHARGE

Number 1239

CHAIR MCGUIRE announced that the committee would return to the hearing on HOUSE BILL NO. 484, "An Act imposing a correctional facility surcharge on persons convicted of a crime under state

law, and on persons whose probation is revoked; relating to fees and expenses for interstate transfer of probation or parole; and providing for an effective date."

CHAIR McGUIRE, after determining that no one else wished to testify, closed public testimony on HB 484.

Number 1274

CHAIR McGUIRE made a motion to adopt Amendment 1, which read [original punctuation provided]:

Page 2, lines 5 and 6:

Delete: ", as a condition of probation,"

Page 2, line 14:

Between "under" and "this" insert: "(a) of"

Page 2, line 15:

After "conviction." insert: "The court shall include the imposition of a surcharge under (c) of this section in the order revoking probation."

Page 2, line 20:

After "28.30.032(o)." insert: "The state may enforce payment of a surcharge under this section under AS 09.35 as if it were a civil judgment enforceable by execution. This subsection does not limit the authority of the court to enforce surcharges."

REPRESENTATIVE SAMUELS agreed to object for the purpose of discussion.

Number 1301

PORTIA PARKER, Deputy Commissioner, Office of the Commissioner - Juneau, Department of Corrections (DOC), explained that Amendment 1 contains changes suggested by the [Collections and Support Section] of the Department of Law (DOL). She elaborated, "Because the way it was originally drafted, as ... a condition of probation, [it] didn't work for being able to collect the surcharge if the ... probation was revoked; it couldn't be a condition of probation, so they had to the change the language so it would work as far as how they collect surcharges and fees."

Number 1328

REPRESENTATIVE SAMUELS removed his objection.

Number 1334

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

REPRESENTATIVE GARA, speaking on the bill itself, said:

It seems to me that the ... [three] highest priorities in the criminal system ... are: to the extent possible, restitution to the victim; punishment; and rehabilitation. And often, when you do something, it has an unintended consequence. One of the unintended consequences [in] some of these cases is going to be that by giving money to the state for booking charges - and we're requiring people even who aren't jailed, as part of their sentence, to do that - ... you may impact somebody's ability to pay restitution to a victim. You may impact an indigent person's ability to get back on their feet. You may impact an indigent person's ability to provide child support when they get out of jail. That's certainly [what] will happen in some cases, we just don't know how many.

I understand the competing interest, which is to make sure that people who commit crimes cost as little to society as possible. And I'm not comfortable that by passing this bill, we won't have some unintended consequences that impact some people's ability to rehabilitate themselves, in fact, [impact] some people's ability to pay restitution to victims, and impact some people's ability to care for their children when they get out. We're talking about people who live below the economic margin already; ... most people who go through the criminal system are already indigent, and, when they get out, they're likely not to have a job waiting for them. So they certainly don't deserve any [more] sympathy than their situation dictates, certainly many of these people have committed quite horrific crimes, [but] some of them have committed very minor crimes I'm just not convinced that on balance this is the right thing to do. I'm don't think I'm convinced either way at this point.

Number 1484

REPRESENTATIVE SAMUELS moved to report HB 484, as amended, out of committee with individual recommendations and the accompanying fiscal note. There being no objection, CSHB 484(JUD) was reported from the House Judiciary Standing Committee.

HB 439 - OATHS; NOTARIES PUBLIC; STATE SEAL

[Contains discussion and adoption of an amendment making a provision of HB 439 conform to provisions of SB 203.]

Number 1504

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 439, "An Act relating to the authority to take oaths, affirmations, and acknowledgments in the state; relating to notaries public; relating to fees for issuing certificates with the seal of the state affixed; and providing for an effective date." [Before the committee was CSHB 439(STA).]

Number 1530

ANNETTE KREITZER, Chief of Staff, Office of the Lieutenant Governor, relayed that members' packets contain a sectional analysis for CSHB 439(STA) and a two-page comparison between current law and CSHB 439(STA). She explained that when the current lieutenant governor came into office, as his chief of staff, she researched the issue of what could be done differently to serve Alaska's 12,000 notaries public better, adding that she'd looked at what other states have done and at legislation proposed in prior years.

Number 1589

SCOTT CLARK, Notary Commission Administrator, Office of the Lieutenant Governor, added that the current notary statutes have not been changed since 1961.

MS. KREITZER presented CSHB 439(STA) as follows:

These are the highlights. For the qualifications, we've lowered the minimum age from 19 to 18 years because we were only one of two states that had 19 as an age. So now, only [in] Nebraska [do] you have to

be 19-years-old to be a notary - if this bill passes. The second issue goes to whether or not ... we wanted to allow felons to be notaries, and in conversations with the Department of Corrections, their advice was ... [that] within 10 years of getting out of jail, if a felon doesn't reoffend, then they're likely to not offend again. And so that has been put into the bill as a qualification, that an applicant ..., from the time of release from prison, ... can apply 10 years later to be a notary. And in your packet ... are ... what the felonies consist of. ... So those are two changes on qualifications - major changes.

We looked at whether or not we ought to change the terms [of a] notary public - [it's] four years; we haven't changed that. The ... \$40 application fee stays the same. There is an increase for the certificates, that used to be per folio, which is an outdated term not used anymore; so now, every time we have to issue a certificate, it will be \$5 rather than \$3. And that just goes to the cost of business from 1961 to today - we're increasing it by \$2. We didn't change the amount of the bond; however, we are now - thanks to an amendment by Representative Gruenberg - ... required to keep copies of the bond for 10 years, which isn't a problem for us.

Number 1683

MS. KREITZER continued:

There are two commission types: ... notaries public, and ... limited governmental notaries public. We've kept that distinction, but expanded limited governmental notaries public commissions to include municipal and federal employees in addition to state employees. And we've also said that you can hold concurrent commissions; if you are a private citizen - ... you're not doing this for your job, you just do it because you want to be a good citizen and be a notary - you can do that in addition to holding a commission as a state employee or a federal employee. But when you're acting as a notary public in your federal job, you're not going to be charging fees - you're going to be doing it because in the course of your business that's what you're required to do. As a private citizen you can be a notary and you can charge fees

separate from that So that's one little change in the bill, is that you now can hold those concurrent commissions, but they operate in parallel; they don't cross over.

There is some information that we wanted to gather from the notaries to make it easier to go to a more web-based system working with the 12,000 notaries, and one of them were e-mail addresses, but we didn't want to open up notaries to spam, and so we wanted to keep that information confidential. Everything that currently is public information about notaries stays public information; we just wanted to gather a little bit more information so we could communicate with them more effectively. And that's a quick overview of the bill ...; we'll be glad to answer any questions. There is an amendment in your packet from us that would make our bill consistent with the administrative hearing officer bill [SB 203] which you amended in this committee previously.

Number 1776

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on HB 439.

REPRESENTATIVE GRUENBERG noted that he has an amendment similar to the one that Ms. Kreitzer mentioned.

MS. KREITZER expressed a preference for the amendment prepared by Deborah Behr from Department of Law (DOL) labeled 23G-2, 3/26/2004, (1:46 PM), which read:

Page 16, following line 30:

Insert a new bill section to read:

"* **Sec. 12.** AS 44.50.068(e) is repealed and reenacted to read:

(e) If the lieutenant governor finds that formal disciplinary action may be warranted, the lieutenant governor shall refer the matter to the office of administrative hearings for a hearing."

Renumber the following bill sections accordingly.

Page 17, line 25, following "**Sec. 15.**":

Insert "(a)"

Page 17, following line 27:
Insert the following new material:
"(b) AS 44.50.068(f) is repealed."

Page 18, line 2:
Delete "secs. 1- 14"
Insert "secs. 1 - 11 and 13 - 15(a)"

Page 18, line 7:
Delete "secs. 1- 14"
Insert "secs. 1- 11 and 13 - 15(a)"

Page 18, following line 16:
Insert new bill sections to read:
"*** Sec. 18.** The uncodified law of the State of Alaska is amended by adding a new section to read:
CONDITIONAL EFFECT. Sections 12 and 15(b) of this Act take effect only if a bill is passed by the Second Session of the Twenty-Third Alaska State Legislature, and enacted into law, that establishes procedures for administrative hearings conducted by an office of administrative hearings in the Department of Administration.
*** Sec. 19.** If secs. 12 and 15(b) of this Act take effect under sec. 18 of this Act, they take effect on the effective date of the provisions described in sec. 18 of this Act."

Renumber the following bill sections accordingly.

Page 18, line 17:
Delete "Section 16"
Insert "Section 17"

Page 18, line 18:
Delete "sec. 17"
Insert "secs. 19 and 20"

Number 1894

REPRESENTATIVE GRUENBERG, calling the aforementioned Amendment 1, [moved] to adopt Amendment 1.

CHAIR MCGUIRE asked whether there were any objections to Amendment 1.

REPRESENTATIVE GARA asked for an explanation of what Amendment 1 does.

MS. KREITZER relayed that Amendment 1 provides for the administrative hearing process outlined in SB 203 to be used after 7/1/2005 should SB 203 pass.

REPRESENTATIVE GARA indicated that he did not object to Amendment 1.

Number 1917

CHAIR McGUIRE announced that Amendment 1 was adopted.

Number 1932

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 2, which read [original punctuation provided]:

Page ____, Line ____: Insert new bill section to read:

*Sec. ____ AS 44.50 is amended to by adding a new section:

Sec. 44.50.____. Unauthorized practice. (a) A notary who is not an attorney may complete but may not select notarial certificates, and may not assist another person in drafting, completing, selecting, or understanding a document or transaction requiring a notarial act.

(b) This section does not prohibit a notary who is qualified in, and, if required, licensed to practice, a particular profession from giving advice relating to matters in that professional field.

(c) A notary may not make representations to have powers, qualifications, rights or privileges that the office of notary does not have.

Number 1937

CHAIR McGUIRE objected for the purpose of discussion.

REPRESENTATIVE GRUENBERG said that Amendment 2 will prohibit a notary from practicing law, and opined that the Hams case

illustrates that the exact language of notarization certificates is extremely important.

Number 1992

CHAIR McGUIRE removed her objection and asked whether there were any further objections to Amendment 2.

REPRESENTATIVE OGG noted that Amendment 2 does not specify where in the bill its language will be inserted. He asked whether Amendment 2 would be conceptual.

REPRESENTATIVE GRUENBERG confirmed that Amendment 2 would be conceptual.

Number 2007

CHAIR McGUIRE, after ascertaining that there were no further objections, announced that [Conceptual] Amendment 2 was adopted.

Number 2015

REPRESENTATIVE GRUENBERG moved to report CSHB 439(STA), as amended, out of committee with individual recommendations and the accompanying fiscal note. There being no objection, CSHB 439(JUD) was reported from the House Judiciary Standing Committee.

HB 244 - CRIMINAL LAW/SENTENCING/PROBATION/PAROLE

Number 2034

CHAIR McGUIRE announced that the final order of business would be HOUSE BILL NO. 244, "An Act relating to the Code of Criminal Procedure; relating to defenses, affirmative defenses, and justifications to certain criminal acts; relating to rights of prisoners after arrest; relating to discovery, immunity from prosecution, notice of defenses, admissibility of certain evidence, and right to representation in criminal proceedings; relating to sentencing, probation, and discretionary parole; amending Rule 16, Alaska Rules of Criminal Procedure, and Rules 404, 412, 609, and 803, Alaska Rules of Evidence; and providing for an effective date." Before the committee was

[Before the committee, adopted as a work draft on 3/19/04, was a proposed committee substitute (CS) labeled 04-0033, 1/16/2004.]

Number 2092

JOSHUA FINK, Public Advocate, Anchorage Office, Office of Public Advocacy (OPA), Department of Administration (DOA), indicated that he would be focusing on the sections of the proposed CS that he finds the most problematic. First are Sections 15-17 and 20, the sections on immunity. On page 9, lines 29, through page 10, line 1, it speaks about the judge informing the prosecution what level of crime the person wishes immunity for. He said:

For this legislation to be constitutional under [State v. Gonzales, 853 P.2d 526 (Alaska 1993)], an individual who has the privilege, that would be the witness about to self incriminate, if they are forced to testify to a judge or tell a judge their story back in chambers, and the judge comes out and tells [the] prosecution what level of crime, Gonzales requires that that individual with the privilege be in the same position they'd be in had they not opened their mouth. And if you think of it that way, if the judge comes out and says, "It would be a high-level felony; this person does have a privilege to not testify," are they in the same position? The district attorney now knows what level of crime, how serious the conduct was that they would be testifying about; that's another way to think about it.

That is a link; the judge providing the information, about what level of crime, is in fact a link. And if you look at Gonzales, it talks about a link being a thing that would help the police focus an investigation. It might help the district attorney decide whether to initiate prosecution against a witness. It might help the district attorney determine whether to offer a plea bargain, or how to interpret evidence, or how to plan cross examination, or develop trial strategy. All of those things are links. And ... it's just implausible to me, the district attorney's position that ... the immunity section would survive constitutional scrutiny by the [Alaska] Supreme Court. I'm going to use an example that I thought was very insightful, that I [was] given by Senator French just about an hour ago in [the Senate Judiciary Standing Committee].

Number 2167

MR. FINK continued:

Assume ... this is a murder case, a woman hears some shots, watches the front door of a house, no one comes in and leaves, the police arrive, there are four people in the house. The police go in, one person's dead - has been shot - they find a baggie of marijuana under ... a bed, and they find a bloody gun under another bed. There's a set of fingerprints on the bag of marijuana - that's suspect A. And then they find two sets of fingerprints on the bloody gun - suspect B and suspect C. They charge suspect A with possession, they want to put ... suspects B and C - or the witnesses - on the stand, and they both take the Fifth Amendment. The judge takes them in chambers. So what happens? One of them says, "Well, I shot the guy." The other one says, "All I did was throw the bloody gun under the bed." So the judge comes out, he says, "Well, both of them have a privilege; suspect B would be an unclassified or class A felony, and suspect C would be a class C [felony]."

The judge has just informed them who committed the murder. That is clearly a link. And I would just ask the committee to really look at that provision. I'm confident it would not survive a constitutional challenge, but it will cost money ... [and] resources to get there, so I believe that this committee should follow the Senate's lead in deleting that provision from the bill.

REPRESENTATIVE GARA asked whether, in that example, suspects B and C are immune from prosecution under the proposed CS.

MR. FINK said they were not, because at that point the district attorney still has the option of whether or not to grant immunity; the district attorney could decide not to grant immunity and instead refocus the investigation on the murder.

Number 2242

MR. FINK then turned attention to Section 9 of the proposed CS, and said that he understands the district attorney's desire, when an individual has been drinking - but is not above the legal limit - and gets in an accident and harms someone, to tighten the laws up so as to be able to charge assault in the

third degree. But Section 9 goes much further than that, he opined, because it takes away the mental element of awareness. Currently, in order to be charged with assault in the third degree, a person has to have done something with recklessness, which involves being aware of and consciously disregarding a substantial and unjustifiable risk.

MR. FINK pointed out, however, that Section 9 specifies criminal negligence, which merely involves failing to perceive a substantial risk, and noted that such could result from simply coming up to a stop sign that has black ice under a light dusting of snow and sliding through and hitting someone. Having a car accident while talking on a cell phone or putting on makeup could also be considered criminal negligence. Section 9 proposes to make all such instances, wherein an accident occurs and someone gets hurt, assault in the third degree, which is a felony. He said he did not believe such conduct warrants a felony charge, and predicted that the public would find the accompanying penalty grossly disproportionate to the charge. He concluded by characterizing the new language being proposed in Section 9 as too broad.

CHAIR McGUIRE asked Mr. Fink how he reconciles the fact that under existing law, if one of those same errors is made and someone dies, then the person making the error is held responsible, but if someone is merely badly injured - for example, has to have a leg amputated - then such is not the case.

MR. FINK offered that loss of life does warrant the charge available under existing law. He noted that the definition of serious physical injury currently includes an injury caused by an act performed under circumstances that create a substantial risk of death, and remarked that any car accident could be considered such.

CHAIR McGUIRE indicated disagreement with Mr. Fink's latter remark, but suggested that perhaps they should focus on clarifying what would be meant by serious physical injury as it relates to the language in Section 9.

TAPE 04-55, SIDE B

Number 2389

CHAIR McGUIRE mentioned that there is already a public policy that says mental intent will be disregarded if the circumstances involving a death involve actions that are so careless as to

constitute criminal negligence. Section 9 proposes the same policy if the circumstances result in serious physical injury such as becoming paralyzed. She indicated that she could agree to making the language narrower with regard to what is meant by serious physical injury.

MR. FINK offered his belief that that aspect of Section 9 needs to be tightened up, and indicated that he would work on some possible alternatives to the current language. He reiterated that criminal negligence does not involve an awareness of a substantial risk and that the definition of serious physical injury could involve something as simple as running into someone riding a bicycle and breaking his/her leg.

CHAIR McGUIRE mentioned that she does have concern that serious physical injury could involve such a circumstance, and remarked that that issue should be clarified.

REPRESENTATIVE GARA suggested that rather than changing the definition of serious physical injury, because it appears that Section 9 is intended to deal with alcohol-related crimes, they could instead alter Section 9 so that it only addresses serious physical injuries that have been caused by those who've been driving under the influence (DUI). He asked whether it is already a crime to injure someone while DUI.

Number 2200

MR. FINK offered his belief that anytime alcohol is involved, a person will meet the mens rea of reckless, which would lead to a charge of assault in the third degree. He added:

I've defended people ... where there was no alcohol involved where the state's charged assault [in the third degree]. I represented someone in the valley who was driving a friend home, it was late at night on a pretty bad road out there, [and] they went off the road. The friend hit their nose and broke their nose. The state charges the driver with assault [in the third degree]. The passenger said, "We hit a rut; there was no alcohol." He asked the state not to prosecute the case. The state refused [and] went for it on the prosecution - again, no alcohol - and ... I used the passenger as a witness at trial.

[The] guy got acquitted, but the state pursued assault [in the third degree] on a reckless theory because of

serious physical injury being the broken nose. So they're doing this now. [Proposed Section 9] is just going to make it a heck of a lot easier. ... If you want to narrow it to alcohol, put that in here. But right now, this is going through a stop sign, this is [talking] on the cell phone.

REPRESENTATIVE GARA asked: "Are you saying that if we limit it to alcohol, then in effect we'll just be doing what we're already doing currently if it's alcohol-related and you break a nose? Is that a felony?"

MR. FINK responded:

Well, it makes it a lot easier. I mean, currently, yes, ... if you're in an accident now and there's alcohol involved, you're going to be charged with assault [in the third degree] and there's a really good possibility you're going to get convicted. In all likelihood you'll be convicted - the jury hears "alcohol," that's going to be reckless. [Proposed Section 9] just makes it a lot easier to get those convictions. So ... I think the law's fine as it is, but if you wanted to pass this but add an alcohol requirement, you would make it easier to get those assault [in the third degree] charges where alcohol was involved and there's an accident but it's below the level of a [DUI].

REPRESENTATIVE OGG suggested looking to the workers' compensation statutes and making the language in proposed Section 9 dependant on the percentage of loss someone experiences due to a serious physical injury.

REPRESENTATIVE GARA, in response to a question, suggested perhaps using the phrase found in AS [09.17.010], "severe permanent physical impairment or severe disfigurement".

Number 2084

SUSAN A. PARKES, Deputy Attorney General, Central Office, Criminal Division, Department of Law (DOL), noted that the definition of serious physical injury - AS 11.81.900(55) - contains two provisions:

(A) physical injury caused by an act performed under circumstances that create a substantial risk of death; or

(B) physical injury that causes serious and protracted disfigurement, protracted impairment of health, protracted loss or impairment of the function of a body member or organ, or that unlawfully terminates a pregnancy;

MS. PARKES noted that "physical injury" is also defined in statute. She added that her experience has been that a clean broken arm or leg doesn't necessarily rise to the level of serious physical injury, though it does depend on whether there has been protracted impairment of health. She went on to say:

I'd like to also address this idea that criminal negligence is somehow not a very heightened mental state. As has been referenced, we have a homicide for criminal negligence, we have [assault in the fourth degree] that uses criminal negligence as the mental state, and what it is, it's got to be a gross deviation from the standard of care that a reasonable person would observe. That's what the definition is. Although alcohol-related cases are ... what cause us to see a hole in the statutes, there's a loophole in the law right now. If you, with criminal negligence, cause physical injury by means of a dangerous instrument, you're guilty of assault in the fourth degree.

Number 2027

There is no provision that covers causing, with criminal negligence, serious physical injury by means of a dangerous instrument. So, if you do the same conduct that you could be prosecuted in the [assault in the fourth degree] statute for but cause serious physical injury, there's nothing that recognizes that heightened level of damage as is referenced in the criminally negligent homicide [statute]; there's nothing that recognizes that, it's still going to just be a misdemeanor. And that appears to be just a hole in the statutes.

MS. PARKES continued:

And I'd like to point out, actually, people ... are charged with reckless conduct when [they have a blood alcohol concentration (BAC) of .08] or over; we've got statutes that cover when people are legally intoxicated - they are per se reckless - and they are charged under the statutes, under the recklessness. And right now I would point out that there is an [assault in the third degree], that if you are reckless and cause simply physical injury by means of a dangerous instrument, that's a felony.

So, yes, if you're drunk and you get in a car collision and your buddy busts his nose and it's not serious physical injury, it's still a felony. So it's a felony to cause physical injury if you're a drunk driver. So I just want to clear up that misconception. But there's no statute right now that covers criminally negligent conduct with a dangerous instrument that causes serious physical injury, and we need that.

REPRESENTATIVE GARA opined that unless paragraph (4) of Section 9 is limited to intoxication-related crimes, it will say that with essentially just a tad more than just regular negligence, a car accident case becomes a felony. He added that he would not be comfortable with that; "I don't think we should be considering people who make accidents, even dumb accidents, felons.

Number 1871

MS. PARKES, in response to a question, relayed that currently, if a person, with criminal negligence, blows through a stop sign and puts someone in coma, the highest level of crime that that person could be charged with would only be assault in the fourth degree, which is a class A misdemeanor, but if someone was killed under the same circumstances, the charge could be homicide, which is a class B felony.

REPRESENTATIVE GARA said he could guarantee, however, that if a person sped through a stop sign and put someone in a coma, that person would be charged with "a recklessness crime," and that would result in a felony. The jury is going to consider the extent of the injury even if it's not in the jury instruction, he predicted. He remarked, though, that he could agree to, "if we want to do a coma definition or some sort of similar level of injury," making that a felony.

MR. FINK suggested limiting proposed paragraph (4) of Section 9 so that it applies only to serious physical injuries as defined in AS 11.81.900(55)(B). Currently under paragraph (4), he opined, a broken finger could result in a felony being charged because serious physical injury is defined as one of two things, the first being any physical injury caused by an act performed under circumstances that create a substantial risk of death, and anytime someone is in "a couple-thousand-pound vehicle" going down the road, it constitutes a circumstance that could create a substantial risk of death. Another alternative, he suggested, if the goal is to get at circumstances involving alcohol consumption, would be to alter page 6, line 24, to say in part, "after the consumption of alcohol and with criminal negligence causes". Doing such would tie the alcohol consumption with the criminal negligence.

Number 1742

MR. FINK next directed attention to the provision pertaining to violation of a custodian's duty - Section 12. He said:

I would just like the committee to know, most custodians take their duties very, very seriously. I think the committee was correct in identifying the larger problems [as] far too many people are put under a third-party restriction - which costs them their jobs, keeps them incarcerated for, oftentimes, a significant period of time before their "Rule 45ers" (ph) seek trial-right routes - and they might even ... then be found innocent or acquitted at a trial, and yet, effectively, they've served a sentence and been presumed guilty, really, because they can't get a third-party [custodian]. I think that's the bigger problem; ... I'd love if the committee would address the third-party custodian problem.

Having said that, ... I would just like to say, I think the current contempt statute is sufficient. Right now it is difficult to get [third-party custodians]. You almost can't work; the judge tells you about the contempt possibility, that you could be looking at ... six months in jail [and a] \$300 fine. You know, it's something oftentimes people are on the fence [about], and you can't have a criminal record, you have to have the time to do it, and I'm concerned that this provision ... is really put in there to kind

of bully potential [third-party custodians] so that they can be frightened more. I mean, if you're on the fence and then the [district attorney] says, "Well, you know you could go to jail for a year and have a \$10,000 fine if you don't ... report this person," well you've just upped the stakes significantly.

And I think at the margins you've made it that much more difficult for [third-party candidates] to get ... decent people without criminal histories that are kind of on the fence; well, you've just kind of given them a little extra push on getting off that fence ... [so they] don't agree to do that. And I think the upshot's going to be [that] more people stay in jail for longer periods of time because they can't get [third-party custodians]. I think our statutes, with contempt, are adequate now. In the event the committee was going to go forward with this section, I would ask them to limit it to a class B misdemeanor, which doubles the current penalties under the contempt law.

Number 1608

MR. FINK continued:

And I'd ask that the committee consider putting "knowingly" on line 20 between "person" and "fails". That's because ... right now, if there's no mens rea or culpable state listed, it's knowingly as to conduct [and] reckless as to circumstance, and I'm concerned that ... [if a young person] goes out the window at 3 in the morning [and the] parents don't catch it until [later in] the morning, you could potentially make an argument [that] they were reckless as to that circumstance. You could ... threaten prosecution where there really was no bad behavior on the part of the [third-party custodian]. And so I would ask that you put "knowingly" in there to at least indicate the culpable state to that - the knowing failure, which means you have to know about the violation.

And again, I think limiting [it] to [a] class B misdemeanor, which doubles the current penalties, would be sufficient but not as onerous as -- you know, it's scary when someone's there, never been to court before, offers themselves as a third-party

[custodian], when the judge then says, "You realize you could go to jail for a year and pay \$10,000 if you don't report this person." It's just a scary thing, and it's going to discourage ... [third-party custodians], and the upshot is, there are going to be fewer [third-party custodians].

CHAIR McGUIRE relayed that the issue of a lack of mental intent had been noted at a prior hearing on the bill.

MS. PARKES clarified that although a class A misdemeanor would double the current penalty, a class B misdemeanor would reduce that penalty by half. She noted that Section 12 proposes to charge a class A misdemeanor when the failure pertains to a felon, and a class B misdemeanor when the failure pertains to a misdemeanant.

REPRESENTATIVE GRUENBERG mentioned that he has long been in favor of creating a class C misdemeanor, which would have a maximum jail sentence of 30 days, and suggested that perhaps Section 12 ought to be altered to that effect.

Number 1502

MS. PARKES said she did not want to reduce the penalty that low. She indicated that the differentiation in the penalties currently provided for in Section 12 adequately addresses the differences in the seriousness of the responsibility of being a third-party custodian for a felon as compared to being one for a misdemeanant.

REPRESENTATIVE GRUENBERG remarked:

On a policy basis and a constitutional basis, there is a right to bail. And all we want, as a society, is to be sure that they obey the conditions and that they don't flee. And assume for the purposes of discussion that there is a problem in finding third-party custodians, how do we solve that problem?

MS. PARKES said she does not know the answer to that, but agrees, to an extent, that third-party requirements may be being used too often by magistrates and judges. "I think it's become very routine to require it, and maybe that needs to be looked at," she remarked, adding, "My view is, though, anyone who ... isn't planning to neglect their duties as a third-party [custodian] is not going to be put off by being told there's

potentially criminal liability, which they're already told - this really doesn't change that ... in any way."

REPRESENTATIVE GRUENBERG said he'd like to see both sides - prosecutors and defense attorneys - come up with some guidelines regarding when a judge or a magistrate is to appoint a third-party custodian.

MS. PARKES, noting that there are provisions in the bail statute that speak to when the courts should appoint a third-party custodian, said she'd be happy to research that issue at a later time to see whether that statute is being applied properly, but doesn't anticipate anything to that effect being done with the current bill.

REPRESENTATIVE GRUENBERG suggested that they should either fix Section 12 to everyone's satisfaction or take it out altogether until more work is done on the issue. He asked Ms. Parkes which option she prefers.

MS. PARKES remarked that she does not accept the assumption that Section 12, as written, will discourage people from agreeing to be third-party custodians. Violation of a custodian's duties is already a criminal offense; Section 12 will merely provide a cleaner way to prosecute it and is not a major change, she opined.

Number 1291

REPRESENTATIVE GARA commented:

The reality as I see it is, this crime bill is probably going to move. The reality as a I see it is, if next year somebody comes up with a bill to make it harder to impose third-party custodianship, it's not going to pass. So if we're going to address that issue in a way that's acceptable to everybody, now is the time to do it. ... I'm not able to do this, [so] I would entertain any language that any of ... you feel is reasonable to put some limits on the circumstances where third-party custodianship is required by judges. This committee can't stop the judges from interpreting the current law the way they are interpreting it, so that's not going to happen. We need more guidance in the statute, apparently.

And I would say that if we make it very difficult for judges to impose third-party custodianship, that amendment's not going to pass, but if we can come up with some limited way just to make [it] more clear that third-party custodianships should not be granted so reflexively, I think that probably will pass. So if anybody can come up with any suggested language to the current third-party custodianship statute on the standards applicable to when you require third-party custodianship, ... I will try and offer an amendment.
...

CHAIR McGUIRE suggested to Mr. Fink that he check with someone with the Alaska Superior Court because, according to prior testimony by Ms. Brink, it appears that the Alaska Superior Court applies the current statutory standards more consistently than do magistrates.

REPRESENTATIVE GRUENBERG asked Ms. Parkes to do what she could to help solve the problem.

MR. FINK relayed that he would work on that issue.

Number 1147

MR. FINK next turned attention to Section 5 of the proposed CS. He said:

Section 5 ... makes it a felony to provide alcohol to a minor in a local option area. ... I almost find this the most outrageous section in the bill. This is going to "felonize" conduct that I don't believe the public believes is felony conduct. It's also going to grossly discriminate between rural and urban residents.

MR. FINK offered the following scenarios:

[If you are] 22-years-old and you give your 20-year-old brother a beer in Anchorage, if it's ever even prosecuted you may get a fine and maybe suspended time. If you're in the Bush, you've just made that a felony. That means that 22-year-old can't join the ... the military, now is a felon for the same conduct that in the urban areas would be a slap on the hand. I think this section just goes simply too far. I have spoken with the [Alaska Native Justice Center, Inc.],

... I know they're adamantly opposed to this from my conversations with them. ... You're "felonizing" conduct in the Bush that's not a felony in the urban areas, and I just think there's a real problem with this.

CHAIR McGUIRE noted that that point was raised by the Public Defender Agency during a prior hearing on the proposed CS. She pointed out that currently such behavior is already a class A misdemeanor, and so the penalty can't be raised without moving into the felony arena. She also noted that just by virtue of allowing local option areas to begin with, similar behavior is treated differently in urban and rural areas: Someone in Anchorage can go to a liquor store and buy alcohol, but someone in a dry or damp village cannot do the same thing without it being considered criminal conduct and thus he/she would be subject to criminal penalties. She opined that although it's a good argument to say that a felony conviction is with someone forever, Section 5 sends the message that in local option areas, such conduct does rise to a different level because of all of the problems that come about due to alcohol abuse in those areas.

MS. PARKES relayed that [the DOL] contacted the Bush caucus and spoke with Representative Kapsner, the chair, on this issue; Representative Kapsner expressed concern about the heightened penalties but supports them overall because if a village or community made the decision to go dry or damp, it is because of the recognition that alcohol has been such a social scourge on that community or village.

REPRESENTATIVE GRUENBERG suggested as a solution adding language to the effect that the behavior referred to in Section 5 would be felony in a location that had gone dry or damp if that locality voted to make the behavior a felony.

MR. FINK expressed approval of Representative Gruenberg's suggestion.

Number 0821

MR. FINK then turned attention to Sections 13 and 14 of the proposed CS. He said:

On Section 13 I would just indicate ... [that] you are disenfranchising an entire group of the citizenry from self defense. ... Let's say you're a prostitute - and

we just had a trial in Anchorage on this - and your john attacks you, under this language you lose the right to self defense. ... [let's say you're] in a bar and you're 20-years-old and you have a fake ID - and we just had a tragedy ... last week ... with some rough conduct in a bar that ... potentially led to a death - ... if you're in a bar underage ... and someone attacks you, ... you can't defend yourself. So I would just suggest to the committee [that] this language ... way overreaches And I understand what the [district attorney] is trying to do, but it needs some significant work.

REPRESENTATIVE GARA asked why the latter example would result in not being able to defend oneself.

MR. FINK said it is because the person has a criminal objective, since being in a bar while underage is illegal. He noted that the language in the bill says, "acting alone or with others", and so it wouldn't matter that the person is in the bar by himself/herself. He mentioned that the Senate altered this provision in the Senate version of the bill, and thus took care of his concern; he suggested that the committee follow the Senate's lead on this issue and adopt a similar amendment.

MS. PARKES relayed that a similar amendment is in members' packets and that it proposes to require that the person come armed with a deadly weapon and that felonious criminal conduct or a felonious drug transaction take place.

Number 0656

MR. FINK, in closing, offered the following regarding HB 244:

I understand that we want to ... be safe in our homes, safe in public, but I would suggest [that] this legislation last year grossly overreached. And because of outcries, particularly on [the] self defense [provisions], it was held on to and it's back before the legislature now and it's in better shape. However, while we want to be safe in our homes and in public, we also don't want to live in a police state. I would suggest [that] in certain [provisions], this bill criminalizes conduct in a way that is disproportionate to the conduct, and criminalizes conduct [that] the public doesn't consider criminal.

So while ... the district attorney might say, or law enforcement might say [that] this is an important tool for us, that, really, said another way, ... will lessen the level of civil rights, lessen the level of protection for our citizenry. So from a philosophical perspective, I understand what the committee is trying to do and what the [district attorney] wants, but just keep in mind ... [that] this is a free society, and to the extent [that] you give law enforcement more tools, you are diminishing citizenry's rights and legal protections. And with that I would just thank you for allowing me to testify.

CHAIR McGUIRE asked that forthcoming amendments be in writing and be made available to members before the bill's next hearing. She indicated that a representative from the Department of Public Safety has been on line and available for questions, and that a representative from the Public Defender Agency might provide possible amendments at the bill's next hearing.

[HB 244 was held over.]

ADJOURNMENT

Number 0503

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 4:30 p.m.