

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 6, 2004

1:50 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. 549

"An Act relating to unsolicited communications following an aircraft accident; and amending Rule 503, Alaska Rules of Evidence."

- MOVED CSHB 549(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 336

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

- HEARD AND HELD

HOUSE BILL NO. 438

"An Act relating to motorists moving over or slowing down for emergency vehicles."

- MOVED CSHB 438(JUD) OUT OF COMMITTEE

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."

- MOVED HB 430 OUT OF COMMITTEE

HOUSE BILL NO. 275

"An Act relating to veterinarians and animals."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 549

SHORT TITLE: UNSOLICITED COMMUNICATION:AIRCRAFT CRASH

SPONSOR(S): JUDICIARY

03/29/04	(H)	READ THE FIRST TIME - REFERRALS
03/29/04	(H)	JUD
04/05/04	(H)	JUD AT 1:00 PM CAPITOL 120
04/05/04	(H)	-- Meeting Postponed to Tues. 4/6/04 --
04/06/04	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 336

SHORT TITLE: CIVIL DAMAGES FOR UNINSURED DRIVERS

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)	JUD
03/31/04	(H)	JUD AT 1:00 PM CAPITOL 120
03/31/04	(H)	<Bill Hearing Postponed>
04/06/04	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 438

SHORT TITLE: MOVE OVER LAW FOR DRIVERS

SPONSOR(S): REPRESENTATIVE(S) HOLM

02/05/04	(H)	READ THE FIRST TIME - REFERRALS
02/05/04	(H)	TRA, STA, JUD
02/17/04	(H)	TRA AT 1:30 PM CAPITOL 17
02/17/04	(H)	Scheduled But Not Heard
02/24/04	(H)	TRA AT 1:30 PM CAPITOL 17
02/24/04	(H)	Moved Out of Committee
02/24/04	(H)	MINUTE(TRA)
02/26/04	(H)	TRA RPT 3DP 2NR
02/26/04	(H)	DP: OGG, STEPOVICH, HOLM; NR: MASEK,
02/26/04	(H)	KOHRING
03/09/04	(H)	STA AT 8:00 AM CAPITOL 102
03/09/04	(H)	Moved CSHB 438(STA) Out of Committee
03/09/04	(H)	MINUTE(STA)
03/12/04	(H)	STA RPT CS(STA) 1DP 2NR 3AM

03/12/04 (H) DP: LYNN; NR: COGHILL, WEYHRAUCH;
03/12/04 (H) AM: GRUENBERG, SEATON, HOLM
04/02/04 (H) JUD AT 1:00 PM CAPITOL 120
04/02/04 (H) <Bill Hearing Postponed TO 4/5/04>
04/05/04 (H) JUD AT 1:00 PM CAPITOL 120
04/05/04 (H) -- Meeting Postponed to Tues. 4/6/04 --
04/06/04 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 430

SHORT TITLE: EMPLOYEES UNDER 21 AT LICENSED PREMISES
SPONSOR(S): REPRESENTATIVE(S) KERTTULA

02/04/04 (H) READ THE FIRST TIME - REFERRALS
02/04/04 (H) L&C, JUD
02/25/04 (H) L&C AT 3:15 PM CAPITOL 17
02/25/04 (H) Moved Out of Committee
02/25/04 (H) MINUTE(L&C)
02/26/04 (H) L&C RPT 5DP
02/26/04 (H) DP: CRAWFORD, LYNN, ROKEBERG,
02/26/04 (H) GUTTENBERG, GATTO
03/31/04 (H) JUD AT 1:00 PM CAPITOL 120
03/31/04 (H) <Bill Hearing Postponed>
04/06/04 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 275

SHORT TITLE: VETERINARIANS AND ANIMALS
SPONSOR(S): REPRESENTATIVE(S) CHENAULT

04/17/03 (H) READ THE FIRST TIME - REFERRALS
04/17/03 (H) L&C, RES
02/20/04 (H) L&C AT 3:15 PM CAPITOL 17
02/20/04 (H) <Bill Hearing Postponed>
03/29/04 (H) L&C AT 3:15 PM CAPITOL 17
03/29/04 (H) Moved CSHB 275(L&C) Out of Committee
03/29/04 (H) MINUTE(L&C)
03/31/04 (H) RES REFERRAL WAIVED
04/01/04 (H) L&C RPT CS(L&C) NT 3DP 2NR 1AM
04/01/04 (H) DP: CRAWFORD, LYNN, ANDERSON;
04/01/04 (H) NR: ROKEBERG, DAHLSTROM; AM: GUTTENBERG
04/01/04 (H) JUD REFERRAL ADDED AFTER L&C
04/01/04 (H) FIN REFERRAL ADDED AFTER JUD
04/05/04 (H) JUD AT 1:00 PM CAPITOL 120
04/05/04 (H) -- Meeting Postponed to Tues. 4/6/04 --
04/06/04 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

VANESSA TONDINI, Staff
to Representative Lesil McGuire
House Judiciary Standing Committee
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 549 on behalf of the House
Judiciary Standing Committee, sponsor.

MARCIA R. DAVIS, Vice President and General Counsel
Era Aviation, Inc.
Anchorage, Alaska

POSITION STATEMENT: Testified on HB 549, providing background
information and answering questions.

TOM NICOLOS, General Manager
Cape Smythe Air Service;
Vice President
Board of Directors
Alaska Air Carriers Association
Barrow, Alaska

POSITION STATEMENT: Voiced strong support for HB 549.

ART WARBELOW, President
Warbelow's Air Ventures, Inc.
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 549.

ED GREGOR (ph)
AIG Aviation Insurance (ph)
(No address provided)

POSITION STATEMENT: Testified on HB 549, echoing testimony of
Mr. Nicolos and Mr. Warbelow and providing the perspective of an
insurance claims handler.

PAUL LANDIS, Member
Board of Directors
Alaska Air Carriers Association
Anchorage, Alaska

POSITION STATEMENT: Urged support for HB 549 as written.

MELISSA FOUSE
Anchorage, Alaska

POSITION STATEMENT: Testified on HB 549, saying it's absurd to
make this a felony and asking for consideration of those hurt or
killed in accidents.

ROBERT JACOBSEN, President

Wings of Alaska
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 549.

REPRESENTATIVE KEVIN MEYER

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 336.

JOHN L. GEORGE, Lobbyist
for Property Casualty Insurers Association of America
Juneau, Alaska

POSITION STATEMENT: Testified during the discussion of HB 336.

DONNA J. McCREADY, Attorney at Law
Ashburn and Mason
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 336.

MICHAEL J. SCHNEIDER, Attorney at Law
Law Offices of Michael J. Schneider, PC
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 336.

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

POSITION STATEMENT: Testified during the discussion of HB 336.

MATTHEW RUDIG, Staff
to Representative Jim Holm
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided background information regarding
HB 438 on behalf of Representative Holm, sponsor.

ALLEN STOREY, Lieutenant
Central Office
Division of Alaska State Troopers
Department of Public Safety (DPS)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 438; provided
comments during discussion of HB 275.

SHELLEY OWENS, Health Program Manager
Community Health & Emergency Medical Services

Division of Public Health
Department of Health and Social Services (DHSS)
Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 438.

REPRESENTATIVE BETH KERTTULA
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of HB 430.

AURORA HAUKE, Staff
to Representative Beth Kerttula
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Answered a question relating to HB 430.

ELISE HSIEH, Assistant Attorney General
Environmental Section
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska
POSITION STATEMENT: Suggested changes to HB 275.

TIM COLBATH, Founder
Alaska's Extended Life Animal Sanctuary
Nikiski, Alaska
POSITION STATEMENT: Testified in support of HB 275.

CHRISTINE HEINTZ
Sterling, Alaska
POSITION STATEMENT: Testified in support of HB 275.

BARBARA BRINK, Director
Central Office
Public Defender Agency (PDA)
Department of Administration (DOA)
Anchorage, Alaska
POSITION STATEMENT: Relayed the PDA's concerns during discussion of HB 275.

SHARALYN WRIGHT, Staff
to Representative Mike Chenault
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: During discussion of HB 275, provided a comment to the PDA on behalf of the sponsor, Representative Chenault.

ETHEL CHRISTENSEN, Executive Director
Alaska Society for the Prevention of Cruelty to Animals (SPCA)
Anchorage, Alaska

POSITION STATEMENT: During discussion of HB 275, offered her belief that mandatory jail time should be imposed for heinous crimes involving animal cruelty.

SALLY CLAMPITT, President
Alaska Equine Rescue (AER)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 275.

ACTION NARRATIVE

TAPE 04-59, SIDE A

Number 0001

CHAIR LESIL MCGUIRE called the House Judiciary Standing Committee meeting to order at 1:50 p.m. Representatives McGuire, Holm, Samuels, and Gara were present at the call to order. Representatives Anderson, Ogg, and Gruenberg arrived as the meeting was in progress.

HB 549 - UNSOLICITED COMMUNICATION:AIRCRAFT CRASH

Number 0077

CHAIR MCGUIRE announced that the first order of business would be HOUSE BILL NO. 549, "An Act relating to unsolicited communications following an aircraft accident; and amending Rule 503, Alaska Rules of Evidence."

Number 0120

VANESSA TONDINI, Staff to Representative Lesil McGuire, House Judiciary Standing Committee, Alaska State Legislature, presented HB 549 on behalf of the House Judiciary Standing Committee, sponsor. Calling it is a good, straightforward, "anti-ambulance chaser bill" that regulates the conduct of attorneys, Ms. Tondini said it mirrors what is currently done under the Alaska Rules of Professional Conduct and federal law. It basically says an attorney cannot solicit business or contact individuals for 45 days after an aviation accident.

Number 0201

REPRESENTATIVE HOLM moved to adopt the proposed committee substitute (CS) for HB 549, Version 23-LS1860\D, Bullock, 4/1/04, as a work draft. There being no objection, Version D was before the committee.

MS. TONDINI explained that the original bill included a reference to the attorney-client privilege. At such an early stage of communication, however, there is no attorney-client privilege in effect, so that reference was removed in Version D after review of the bill and discussions with other attorneys.

MS. TONDINI noted that while HB 549 is based on federal law, it applies only to intrastate flights that take place entirely within Alaska. It differs from the federal counterpart in that a reference to the air carrier's attorney has been added to make it clear that all attorneys are to refrain from unsolicited contact with injured passengers and their families during this difficult time when they are vulnerable to external pressures and may make premature decisions. The bill only prevents lawyers and their agents from initiating contact; a person may call an attorney at any time. Thus Ms. Tondini opined that this doesn't hinder a person's ability to get effective assistance or counsel. Noting that people on teleconference could provide greater detail, she offered to answer questions.

Number 0358

REPRESENTATIVE GARA remarked that the intent seems fine of not having an attorney seek these clients, but the bill as written seems to go beyond that. He explained two concerns. First, a person might want the attorney he/she hired to be able to contact a witness - who may be an individual injured in the accident - for confirmation. Second, if a potential party may not contact an individual injured in the accident, that means someone may not speak about [a potential action] to the person who was sitting in the adjacent seat, for example, in order to decide how to proceed. He asked why that should be included.

CHAIR McGUIRE suggested the first part could be narrowed as to the potential party to say something like "unless the attorney has been voluntarily contacted by a claimant" and that the party is a part of the [incident], for example.

REPRESENTATIVE GARA, in response to a request from Chair McGuire, reiterated his second concern.

REPRESENTATIVE SAMUELS agreed with respect to the second concern and allowing passengers to talk with each other. As for the first concern, he urged caution, since a lawyer who'd been contacted by one person would be the only lawyer who could then call everybody else.

REPRESENTATIVE GARA noted that it would still be criminal for that lawyer to ask, "By the way, can I represent you?"

REPRESENTATIVE SAMUELS mentioned connecting the dots, though.

MS. TONDINI explained that the language is based on the federal law, which includes both an attorney and a potential party.

Number 0645

CHAIR McGUIRE asked whether this is identical to the federal language.

MS. TONDINI replied, "Except that it's expanded to cover the air carrier's attorney." She noted that the federal law and the language of the Alaska Rules of Professional Conduct are in the bill packet. Addressing Representative Gara's concern about the breadth, she suggested possibly including language from Rule 7.3(a) and narrowing it to situations of solicitation, rather than actual working relationships. Ms. Tondini surmised that one reason for saying someone shouldn't be contacted by an attorney might be that once a person is represented by an attorney, it is illegal to go through that person and not his/her lawyer. Since there will be a time during which people won't be represented, she suggested this will "keep everyone away" until they take it upon themselves to seek [legal counsel].

CHAIR McGUIRE remarked that 45 days is a fairly insignificant amount of time to ask somebody to wait and have a cooling-off period when compared with the years such a case could take. She indicated her intention to look at narrowing it a little bit, but added that there still probably will "be a place where there's a rub" because of the concerns Representative Samuels had brought up.

REPRESENTATIVE SAMUELS suggested [a plaintiff] who wanted his/her attorney to talk to other passengers could ask the passengers to talk to the attorney. He said it wouldn't be fair to a reputable attorney who follows the 45-day rule, which is the federal standard, to "let somebody in the back door here."

REPRESENTATIVE GARA said there are two different issues. First, in any involved case it is necessary to start investigating right away in order to gather facts, find people before they leave the state, avoid having stale evidence, and so forth. As for having an attorney contact a witness who then wants to be represented by the attorney, Representative Gara said that happens now. He clarified that he has no problem making it a crime for an attorney to solicit a client, especially in this timeframe, but emphasized the need to avoid getting in the way of someone to be represented and have fact finding done. Second, he said he doesn't understand the policy of not letting a potential party talk to another passenger for 45 days.

Number 0928

REPRESENTATIVE GRUENBERG remarked that he sees nothing in the federal law that has a criminal penalty anything like this. He asked Ms. Tondini about it.

MS. TONDINI replied that she believes the state criminal penalty was chosen "just for teeth" in enforcement. She conveyed her understanding that it's not enforced very much on the federal level and is a small civil fine.

REPRESENTATIVE GRUENBERG said it's \$1,000 a day.

MS. TONDINI responded, "They shouldn't be doing it anyway."

CHAIR McGUIRE highlighted the desire for a meaningful penalty and said the amount [attorneys] could get in contingency fees could be high enough that they'd pay a \$10,000 penalty with no problem, as part of doing business. She said the point of the criminal penalty is that it's recognized by the bar in terms of retaining a license. She expressed the desire for this to have teeth and not be a cost that's simply absorbed [by the offending attorney].

REPRESENTATIVE GRUENBERG asked whether there has been any constitutional challenge at the federal level.

MS. TONDINI said she wasn't sure, but suggested somebody on teleconference might be able to answer.

REPRESENTATIVE GRUENBERG remarked that he sees one or two minor problems with this.

Number 1052

REPRESENTATIVE GARA proposed having the bill read as follows beginning on line 6 [page 1]:

... an attorney may not initiate contact with an individual injured in the accident or a relative of an individual involved in the accident to offer or discuss representation based on the accident for personal injury or wrongful death within 45 days of the accident.

REPRESENTATIVE GARA explained that the foregoing would [exclude] "potential party" and replace "concerning a potential action" with "to offer or discuss representation based upon the accident".

CHAIR McGUIRE turned to public testimony.

Number 1127

MARCIA R. DAVIS, Vice President and General Counsel, Era Aviation, Inc. ("Era"), indicated the proposal [by Representative Gara] is exactly what she'd suggest. She pointed out that under the federal law where it has the language "potential party", the reference was intended to capture the air carrier. However, the state bill goes further by including language that prohibits contact by an attorney for the air carrier. Thus she said "or potential party" is not needed.

MS. DAVIS referred to comments by Representative Gara that one wouldn't want to prohibit an attorney from contacting other witnesses or gathering facts. Saying this is a legitimate concern, she suggested that deleting "or potential parties" solves that problem and yet still bars the attorney for the air carrier from contacting individuals. She added that the language just proposed about retention for employment works extremely well also.

MS. DAVIS spoke to the overall bill, saying ERA's Bush operations out of Bethel have run very smoothly, with a good relationship with passengers, management by people who live in Bethel, and little difficulty; in the last year and a half, however, there has been evidence that people are creating "nuisance lawsuits" in situations that previously weren't litigable. She said it's almost a cottage industry in the Bush, with attorneys advising people in the immediate aftermath when

they hear that a plane landed just short of the runway and there was a bump, for example; they plant ideas in the minds of people who otherwise wouldn't have thought about suing.

MS. DAVIS said these lawsuits are beginning to be a real problem for insurers; they take away attention from legitimate claims and affect the willingness to do business. Unfortunately, the teeth in the mechanisms to prevent this behavior aren't there. The ethics rules have a lot of "wobble room," particularly in small communities where people can claim they're personal friends or connected to the families somehow. Likewise, she said, the federal law has been virtually useless, since it requires the NTSB [National Transportation Safety Board] or the U.S. Attorney General to issue a citation; it simply doesn't happen in Alaska's intrastate environment. Even if substantial resources were expended, she suggested the \$1,000 fine would be laughed at and considered the cost of doing business.

MS. DAVIS opined that this is an important statement to make - not only to the community at large and lawyers at large, but also to insurers, to let them know an effort is being made to keep costs rational but fair. Ms. Davis reported that she'd seen no cases on the federal side challenging this particular statute, which was passed as part of the aviation disaster and family assistance Act and is imbedded in an NTSB provision. She noted that there was a sting operation on lawyers done perhaps 15 years ago in the aftermath of these accidents, which culminated in passage of the federal law.

Number 1411

REPRESENTATIVE SAMUELS declared a conflict, saying he is employed by a small air carrier.

CHAIR McGUIRE objected, specifying that Representative Samuels is required to participate and vote.

REPRESENTATIVE GARA asked Ms. Davis if attorneys are calling people and asking whether they want to sue.

MS. DAVIS answered that they're actually going to the hospital. Whenever there is a bump, for example, Era [encourages] the passengers to go to the health center as a prophylactic measure.

[Chair McGuire turned the gavel over to Vice Chair Anderson.]

REPRESENTATIVE GARA remarked that assuming the language is adopted that he and she discussed, he'll support the bill. He suggested perhaps Ms. Davis should file a bar complaint [against those attorneys].

MS. DAVIS reiterated that she'd looked at the ethics rules but found wiggle room. She said Rule 7.3 basically prohibits a lawyer from soliciting in person or via telephone contact; the exception is if the prospective client is related.

REPRESENTATIVE GARA asked Ms. Davis to call him if she sees a case that comes close to that line again, saying he might sign a bar complaint with her.

MS. DAVIS explained that she is cautious because there are lots of various relationships within small communities and it wouldn't be good to take a broad swath that makes an enemy out of a sector of a community. She acknowledged that these are extreme cases.

Number 1548

TOM NICOLOS, General Manager, Cape Smythe Air Service; Vice President, Board of Directors, Alaska Air Carriers Association, voiced strong support for HB 549 on behalf of both the air service and the association in order to correct an oversight in the federal aviation disaster and family assistance Act of 1996, which failed to put into effect any substantial deterrent. Saying the air service has seen attorneys firsthand who operate with disregard to the federal Act, he cited an example. Agreeing with providing for passengers who are involved in occurrences, he emphasized the need to stop the sense of entitlement that has been fostered by attorneys who know the system and know that they can "muscle settlements" out of air carrier insurers, and who take advantage of families when they are most vulnerable.

Number 1652

ART WARBELOW, President, Warbelow's Air Ventures, Inc., began by saying his business has operated about 35 years and has about 100 employees in Fairbanks. He expressed support for HB 549 because of the high cost of liability insurance, the fourth-largest expense behind labor, fuel, and parts.

[Vice Chair Anderson returned the gavel to Chair McGuire.]

MR. WARBELOW continued, saying most air carriers in Alaska are underinsured; there is a legal [minimum] of \$300,000, and most [have insurance limits] in the range of \$300,000 to \$500,000. When there's an accident, a company realizes the carrier is underinsured and is willing to settle quickly for policy limits. In that scenario, an attorney who can get to the victim can extract a significant contingent fee, knowing it will be an easy case to settle; the victim ends up shortchanged. Mr. Warbelow suggested that allowing time for the operator and the insurance companies to settle will get more money to those who deserve it, rather than the attorneys.

REPRESENTATIVE GARA asked whether there is a significant difference in premiums for a \$300,000 policy and something Mr. Warbelow considers more adequate.

MR. WARBELOW replied that part of the problem is that the underwriters won't provide higher limits, period. He cited an example and said people can barely afford to buy [the minimum]. Saying this is driven by a number of factors, he mentioned the difficulty of getting the cost of insurance to the point that people can afford to buy reasonable coverage.

Number 1824

ED GREGOR (ph), AIG Aviation Insurance (ph), echoed the statements of Mr. Nicolos and Mr. Warbelow; expressed concern about capacity in the insurance market; and said although brokers make heroic efforts to make limits as high as possible on behalf of their clients, insurers sometimes suffer in their ability to effect good, strong defenses because of the low limits. "It's a concern for us," he added; "we would prefer to see higher limits." Applauding the discussion within the committee about keeping the language "broad yet specific," he said it needs to be broad enough to prevent creative solutions.

MR. GREGOR noted that in 25 years he has seen interesting extremes relating to the solicitation of claims. He cited examples from Louisiana and Mississippi when events involving chemical plants led to attorneys' signing people up for huge class action lawsuits. Acknowledging it isn't to that extent in Alaska, he said there is concern by insurers nonetheless when solicitation is uninhibited for minor accidents. Offering his perspective as a claims handler, Mr. Gregor said it upsets him that he often doesn't have the opportunity to exhibit the good will that is available and to help carriers assist injured passengers as quickly as possible, including all-important

immediate financial assistance when breadwinners have been injured.

REPRESENTATIVE GARA opined that just as an attorney shouldn't be able to solicit a client within the first 45 days, a defendant shouldn't be able to get a client to waive the right to pursue legal action.

MR. GREGOR agreed.

REPRESENTATIVE GARA asked whether the early financial assistance has strings attached.

MR. GREGOR answered that the federal law requires carriers to provide immediate financial assistance; it is the practice and part of the coverage of the air carriers to provide that sort of assistance up front as well. He specified that there are no strings attached. Recognizing that these claims for people who are genuinely injured can be large, he said an immediate payment of \$10,000, \$20,000, or \$25,000 won't significantly change the fact that the claim will have to be settled for payment of additional monies down the road.

Number 2024

PAUL LANDIS, Member, Board of Directors, Alaska Air Carriers Association, noted that he is senior vice president of Era Aviation, Inc., but was speaking on behalf of the Alaska Air Carriers Association, whose executive director and president were unable to testify. Mr. Landis said the association certainly understands the sense of entitlement that exists, particularly now in rural Alaska, where lawyers are making promises that can't be kept to passengers who listen in a weak moment.

MR. LANDIS mentioned the air carriers' practice of bringing passengers to hospitals for an examination following any sort of incident, and that lawyers are waiting to sign them up on the spot. He reported that also being heard from the air carriers is that following turbulence or a hard landing, passengers may experience soreness that will disappear in 48 hours, but these people are hooked in with promises of easy cash. He cited the example of a fear-of-flying lawsuit and out-of-court settlement following the collapse of nose gear when a plane landed in Bethel. The effort with HB 549 is to prevent the unsolicited strong-arming of passengers by lawyers, he said, which drives up

the cost of insurance and, in the long run, hurts the traveling public. He urged support for HB 549 as written.

Number 2131

MELISSA FOUSE specified that she was speaking on her own behalf as a survivor and family member of someone who was killed in an airplane crash, although she is executive director of the Alaska Academy of Trial Lawyers. She said:

Frankly, I'm a little offended by the testimony of the airplane people who say, ... "Oh, it's just a bump on the end of the runway and these lawyers are like piranhas." My brother was actually killed, and we didn't have a single lawyer contact us until after the federal law date - not one single lawyer. I will say that at the end of that, we did get solicitations, and that was fine because we wanted to know what to do next.

MS. FOUSE related her opinion that making this a felony is absurd, and that it isn't the attorneys who start the cycle; rather, it is the accident. She asked the committee, when considering this legislation, to please consider the people who were hurt or killed.

CHAIR MCGUIRE apologized if any comments from the committee were offensive; she said the intent certainly isn't to minimize the loss or injury suffered in accidents, and many times recovery is deserved. She explained that there is a rule of professional conduct in this same spirit and that this is to get at [attorneys] who are soliciting passengers inappropriately. Referring to earlier discussion, she stated the intention of narrowing this from the federal law on which it is based, to clarify that it wouldn't exclude legitimate cases where information is needed.

Number 2321

ROBERT JACOBSEN, President, Wings of Alaska, noted that Wings of Alaska and Wings Airways are sister companies and indicated they emplane about 75,000 passengers annually. Speaking in support of the bill, Mr. Jacobsen said he has been in the business about 25 years and has seen accidents over the years, both "bumps and bruises" and catastrophic ones. He said:

Honestly, we care deeply about the industry, and this is an attempt to start to help this hemorrhaging industry that we've been experiencing for a number of years. But also, most of my professional colleagues in this business have a lot of integrity, and we care deeply about our customers too. Our customers are our neighbors, and we care about them.

MR. JACOBSEN recalled four instances when there were mishaps but no serious injuries; he said plaintiff attorneys got hold of his customers, who weren't cared for in the long run because they weren't well represented and their attorneys took that "one-third plus expenses" away from the settlement. He remarked, "That doesn't make us feel good; ... we'd just as soon more of it get into the hands of the families or the victims that ... were part of the incident." He encouraged passage of HB 549 and consideration of more tort-reform issues.

CHAIR McGUIRE asked whether anyone else wished to testify. Hearing no response, she then closed public testimony.

TAPE 04-59, SIDE B

Number 2392

REPRESENTATIVE GARA moved to adopt Amendment 1, a handwritten amendment that read [original punctuation provided]:

Page 1, Line 6
After "attorney"
Delete "or potential party"

Page 1, Line 8
After "accident"
Delete "concerning a potential action"
Insert "for the purpose of offering or discussing
potential representation in an action"

Number 2379

REPRESENTATIVE HOLM objected.

REPRESENTATIVE GARA explained that Amendment 1 does what he and Ms. Davis had discussed earlier: it limits criminal conduct to those attorneys who contact a client in the first 45 days seeking to be hired, and it deletes the language that addresses "sort of the situations that I think we don't want to address with this bill."

REPRESENTATIVE HOLM removed his objection.

Number 2350

CHAIR McGUIRE asked whether there was any further objection to Amendment 1. [No objection was stated, and Amendment 1 was treated as adopted.]

CHAIR McGUIRE remarked that it's a good amendment and suggested, "You should contact the federal folks, too, because throughout their statute it says 'potential action' and 'potential party', and it is broad."

REPRESENTATIVE GARA replied that he thinks it's trying to prevent insurance companies from getting people to settle quickly before they can contact an attorney. He added that it's beyond the scope of what [HB 549] is intended to address.

REPRESENTATIVE OGG referred to line 6 and asked why "intrastate" is used, rather than having this also apply to interstate or international [flights].

CHAIR McGUIRE said it's because federal law would supercede; the bill can only apply to flights within the state because there's already a federal law.

Number 2260

MS. DAVIS said that when the federal government chooses to regulate the interstate aspects of aviation, the state cannot "step over the top of that," but can legislate relative to purely intrastate [flights]. She offered her belief that there'd be a significant "federal preemption problem" if the bill went beyond intrastate activity. She added that other than the obvious ones, few flights go directly out of state; if they do, Alaska's state law would be trumped by federal law as well as international law.

REPRESENTATIVE OGG asked whether Alaska's law could be stricter than the federal law.

MS. DAVIS answered that because the federal law resides within NTSB's body of law, in the aviation and family disaster Act, she guessed the question would be whether [Alaska's law] could be more solicitous and helpful to families. She said that it's not quite like commerce, where there are "overlying layers of

commerce," since NTSB is "sort of an all-or-none kind of entity." She went on to say it's possible that [Alaska's law] could be more restrictive regarding intrastate aspects, and she offered to look into whether it would doom the bill if it were expanded to cover interstate [flights].

REPRESENTATIVE OGG said he'd appreciate that.

Number 2149

REPRESENTATIVE ANDERSON moved to report the proposed CS for HB 549, Version 23-LS1860\D, Bullock, 4/1/04, as amended, out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, CSHB 549(JUD) was reported from the House Judiciary Standing Committee.

HB 336 - CIVIL DAMAGES FOR UNINSURED DRIVERS

Number 2137

CHAIR MCGUIRE announced that the next order of business would be HOUSE BILL NO. 336, "An Act limiting recovery of civil damages by an uninsured driver; and providing for an effective date."

Number 2128

REPRESENTATIVE KEVIN MEYER, Alaska State Legislature, sponsor of HB 336, explained that the bill has three provisions. It provides that persons who do not comply with existing motor vehicle laws may not recover for damages for noneconomic loss suffered while operating their cars. Second, it provides that punitive damages are not required to be of the mandated offers of uninsured/underinsured motorist coverage. Third, it clarifies that insurance companies are not required to offer uninsured/underinsured motorist coverage on insurance policies that provide coverage for auto liability on an excess or umbrella basis.

REPRESENTATIVE MEYER mentioned that the first section was brought to his attention by a constituent who asked why his [car insurance] payments had to be made every six months when his neighbor did not even have insurance and yet could drive. Representative Meyer agreed it was not fair, and noted that other states had passed legislation similar to HB 336 called "no pay, no play." Driving is a privilege, and unless you pay and abide by the laws of the state, then you shouldn't be able to drive," he said. He pointed out that recently California passed

Proposition 213, by a 77 percent vote, even though it was estimated that 35 percent of the people did not have insurance. In Alaska it is estimated that between 16-20 percent of drivers do not have car insurance. He said it is a matter of fairness to require that everyone have auto insurance in order to be able to drive in Alaska, and those who opt to break the law should not have the right to sue for damages. The uninsured motorist will still be able to recover for economic damages, just not the punitive - the pain and suffering - damages, he explained.

Number 2006

REPRESENTATIVE MEYER explained that the second part of the bill has to do with clarifying what insurance companies are required to offer and what Alaskans are required to obtain as far as car insurance goes. He added:

The Alaska Supreme Court handed down a decision in 2001 that said that uninsured/underinsured motorist coverage must mirror a policyholder's liability coverage. It was interpreted that if there is coverage for punitive damages under a person's liability policy, then a person's uninsured/underinsured motorist coverage must also have coverage for punitive damages. However, in the statute there is nothing requiring this. State statute only requires that financial limits on an uninsured/underinsured policy match the financial limits on a liability policy. There's also no requirement that a regular automobile liability insurance policy has punitive damage recovery. As you know, punitive damages are intended to punish or deter, and it's hard for me to see how an uninsured motorist is punished when they are seeking compensation from an insured person who's actually funding the right for recovery. So, in other words, you're paying that person to sue you for damages.

REPRESENTATIVE MEYER related that the last part of the bill clarifies that uninsured/underinsured motorist coverage only has to be offered on automobile liability policies and not on insurance policies that provide coverage for automobile liability under an umbrella basis. The intent is to avoid repetitive offers; insurance companies don't have to offer that and people don't have to pay for repetitive offers, he explained.

REPRESENTATIVE GARA said that Section 3 is a concern because he has umbrella insurance which allows him to buy up to \$1,000,000 of uninsured/underinsured coverage. The insurance company does not offer that large amount of coverage unless an umbrella policy is purchased, he related. He noted that his liability insurance does not provide that coverage, but his umbrella coverage does. He asked if Section 3 interferes with this type of umbrella coverage.

REPRESENTATIVE MEYER deferred to the insurance industry speakers for the answer, but said he thinks it is optional and not a requirement.

REPRESENTATIVE GARA said it is mandated under current law that insurance companies have to offer the right to buy up to \$1,000,000 worth of uninsured/underinsured coverage. He said he is worried that [HB 336] might roll that back.

REPRESENTATIVE MEYER replied that all the bill is trying to do is avoid repetitive policies.

Number 1849

JOHN L. GEORGE, Lobbyist for Property Casualty Insurers Association of America - which, he explained, consists of companies that write about 50 percent of all the automobile insurance in Alaska - answered Representative Gara's question by saying that the mandatory offer is under the primary auto insurance policy and low limits or up to \$1,000,000 coverage can be bought. It is not reduced by not having it under an umbrella policy, unless it is a policy in excess of \$1,000,000, he added.

Number 1797

REPRESENTATIVE SAMUELS moved to adopt the proposed committee substitute (CS) for HB 336, labeled 23-LS1254\D, Bullock, 2/23/04. There being no objection, Version D was before the committee.

REPRESENTATIVE GARA repeated that his insurance company told him he could not buy \$1,000,000 worth of insurance unless he bought the umbrella policy. He said he does not want to interfere with the right to buy that policy.

MR. GEORGE replied that he is certain that the mandatory offer is by the primary carrier and has nothing to do with the excess policy and suggested that Representative Gara may have been

misinformed or may have misunderstood his options. He offered to follow up on it.

REPRESENTATIVE GARA said he has been misinformed by his insurance company before.

MR. GEORGE continued to explain his extensive background with insurance and said that as director and deputy director of the insurance division he frequently got calls from consumers who were upset because other people did not have insurance, causing their insurance rates to go up if there was an accident. He noted that there have been many attempts to get people to buy insurance by mandating it, but it remains a problem with 16-18 percent uninsured drivers. He said there are test questions on the driver's license exam regarding the requirement to have insurance, and there are vehicle registration requirements certifying that the owner has liability insurance, and yet, a significant portion of drivers lack insurance. As a result there was a mandated offer of uninsured/underinsured motorist coverage so people could protect themselves from people who did not have insurance. He mentioned that there have been a number of attempts to make people aware that automobile insurance is a requirement. This bill would restrict a person's ability to collect the noneconomic damages and would serve as a reminder and as a penalty for driving without insurance, he concluded.

Number 1583

MR. GEORGE gave an example of some of the problems related to umbrella policies. Many companies have stopped writing umbrella policies or have sought other companies that would write umbrella policies over their own company's policies. He stated that there are advantages for having the same carrier for primary and excess policies. It is more efficient and practical, but, at this point, not possible with some insurance companies today, he said.

REPRESENTATIVE OGG read on page 2, [lines 10-12], "coverage for punitive damages that might otherwise be recoverable from an uninsured or underinsured person is not required under this paragraph", and asked if someone who is uninsured drove recklessly and "ran into you, but you had [uninsured]/underinsured insurance on your policy, basically, does this paragraph say that you won't be able to collect punitive damages under that policy?"

MR. GEORGE replied, "You would not collect punitive damages under your own - your self-procured - uninsured/underinsured motorist coverage. Yes, that's correct." He explained that the logic behind that idea is that punitive damages are designed as a punishment and are extra damages, not for medical or vehicle or pain and suffering. He asked, "If you're the uninsured person and I collect punitive damages from my insurance carrier, and that means I have to pay more for my insurance to cover that, what punishment is it to you?"

REPRESENTATIVE ANDERSON offered another example. If someone drives drunk on the wrong side of the road down Egan Drive, "they're itching for a punitive claim against them, because that's punishment," if they hit someone who has no insurance. He asked if the person who was hit could sue for punitive damages.

MR. GEORGE said a person can always sue. Just because a person does not have insurance does not mean they don't have assets, and a judgment and collection may be obtained. But insurance is the issue, he said, and he maintained that "my insurance shouldn't have to pay punitive damages for his negligent act, but they will pay for my car, my medical bills, my pain and suffering"

Number 1323

REPRESENTATIVE GRUENBERG asked if the justification for Section 1 is purely punitive.

MR. GEORGE said no.

REPRESENTATIVE GRUENBERG asked if there is another justification. He said he thought that the logic is to punish those who are uninsured by not allowing them to get recompense for pain and suffering.

MR. GEORGE replied that is correct.

REPRESENTATIVE GRUENBERG asked, "Can you think of any other logic to support that section? Any other policy basis?"

MR. GEORGE replied that the legislature, in its wisdom, determined that everyone should have insurance and no one should drive without insurance. This is a punitive deterrent for the misbehavior of failing to provide coverage, he said. "I'm reminded of the Golden Rule - do unto others as you would have

them do unto you. You are required to buy insurance to protect the other person from your actions. You failed to do that. Should the other person have to protect you from their actions?" The other logic is that an invoice can be produced to show the cost of damage to a car or medical bills or lost wages, but pain and suffering has no hard number, he concluded.

REPRESENTATIVE GRUENBERG surmised that the real policy behind this is to eliminate pain and suffering [damage claims].

MR. GEORGE disagreed. He said the real reason for [the bill] is for it to be a deterrent, to encourage people to buy insurance so that this would never take effect.

REPRESENTATIVE GRUENBERG said these are really two very different issues. He repeated that he believes the real policy driving this bill is the desire to limit pain and suffering as damages. He said if that is true, "We should talk in frank terms about the fairness or unfairness of pain and suffering. The only justification I've heard hear is that it is difficult to measure in dollars and cents. That's a far cry from saying it's not fair." He implied that if pain and suffering is eliminated entirely, it would save clients in the insurance industry millions of dollars annually. He called it a terrific windfall for the insurance industry.

MR. GEORGE replied that 20 percent [of drivers] are not paying insurance premiums.

REPRESENTATIVE GRUENBERG asked about the other 80 percent.

MR. GEORGE said the bill is not designed by the insurance industry to get out of paying noneconomic awards. He said the industry supports the bill, but it really is to encourage people to comply with the law.

Number 1010

REPRESENTATIVE GARA called the bill oddly incongruent and said it does not seem to address the policy concerns that seem to be the basis of the bill. The first part of the bill benefits a bad actor. It says that if a person drinks, drives, and has an accident with an uninsured motorist, that person does not have to pay the noneconomic damages. He said he is not sympathetic to that idea. He asked if he is missing something.

MR. GEORGE replied that the bill is directed at people who are violating the law by not having insurance. "Had they complied with the law, under that scenario that you gave, they would be entitled to collect noneconomic damages," he said.

REPRESENTATIVE GARA said he is being asked to benefit the person who injured other people and he is not willing to do that, so he is not supportive of the first part of the bill. The second part of the bill seems to be just as illogical, he opined. He asked if Mr. George would agree to say that all insurers would have to offer uninsured/underinsured coverage. He said he wants to have the opportunity as a consumer to buy a large amount of coverage.

MR. GEORGE said it could be called something other than a punitive damage award. He suggested "compensatory damages or windfall profit," because it really is not punitive to anyone else but the person who has to pay for it.

REPRESENTATIVE GARA said one of the recognized purposes of punitive damages is punishment, but another is the implicit recognition that compensatory damages never really end up fully compensating anyone after taxes and attorney's fees, and there is that aspect in the wording "punitive damages."

REPRESENTATIVE ANDERSON asked if those are Representative Gara's thoughts or legal standards.

REPRESENTATIVE GARA replied, "In legal discussions." He said it is really just about what a consumer gets to buy, so he said he agrees with Mr. George that maybe it shouldn't be mandated.

MR. GEORGE said he believes that [compensatory awards] are not taxed.

REPRESENTATIVE GARA replied that compensatory and punitive damages are taxable in a personal injury case. He said there may be certain classes of cases where they are not taxed.

MR. GEORGE repeated that he believes that they are not taxed.

Number 0656

REPRESENTATIVE ANDERSON said that Representative Gruenberg made a good point that someone in the Office of the Attorney General said that the "50 percent rule to the state" applied on punitive

[damages]. He said he would like to hear an opinion of the bill from the Office of the Attorney General.

MR. GEORGE said, "That is an interesting concept where you're buying insurance to pay yourself for punitive damages, but half of it goes to the state."

REPRESENTATIVE HOLM said he understood Mr. George to say:

The qualifications for insurance were not necessarily in the best interest of all of us, and by us having mandatory insurance you have to provide it at whatever cost you can provide it for. But, in general, it seems to me that it somehow raises the bar, then, because your exposure is increased as the level of inexperience or bad driving ... enters into the equation.

REPRESENTATIVE HOLM said the problem is that just because a person passes the driver's license test, it does not give him/her the right to drive. He asked Mr. George for his thoughts on the matter.

MR. GEORGE replied that the legislative branch has to balance what's good for the insurance company with what's good for the public. He said he thinks that the decision of everyone being insured is good public policy. "The insurance companies would prefer not to have to offer it," he said. "But, because it is mandated, there is an assigned risk plan. If no insurance company wants to write it, then they're assigned and an insurance company will write it and it's more expensive, but it's certainly not a money maker."

REPRESENTATIVE OGG asked why "punitive damages" is left out of Section 1.

MR. GEORGE replied it is not his bill and that he can take some responsibility for the uninsured motorist additions to the CS, but Representative Ogg may have to ask the sponsor his intent on that section.

Number 0395

CHAIR McGUIRE said, "There are noneconomic damages which are loss of consortium, loss of your ability to hold your child"

REPRESENTATIVE GARA said that noneconomic damages are intended to compensate the person, to make the person whole. They are not punitive but compensatory, he explained. Punitive damages are deterrents and punishments, he added.

CHAIR McGUIRE said generally that is true, but "some people would argue that 'noneconomics' go beyond compensatory."

REPRESENTATIVE OGG said the point of the bill is if someone is a bad actor, and they have "dirty hands", they are not going to get the benefits. He asked why an uninsured person does not lose both noneconomic and punitive damages.

MR. GEORGE deferred to Mr. Lessmeier and to the bill sponsor to answer that question.

CHAIR McGUIRE stated her intent to finish with the public testimony and then set the bill aside.

Number 0158

DONNA J. McCREADY, Attorney at Law, Ashburn and Mason, said she thinks it is great public policy to create incentives for people to be insured when driving, and that there already exists a penalty for driving without insurance in that a person could lose his or her license. However, this bill does not actually do anything to meet the goal of getting people to drive with insurance, she opined. She mentioned the Portage Glacier Road Case where a drunk driver drove his truck into a lake, was able to get the truck out of the lake, and then hit a vehicle containing two teenagers and their grandparents head-on. The grandparents did not have insurance, she noted.

TAPE 04-60, SIDE A

Number 0001

MS. McCREADY continued to say that the two teenagers died and the grandparents were seriously injured. Under this bill these people would not be able to recover noneconomic damages for pain, suffering and loss. The mother of the teens who were killed could not seek recompense from the drunk driver. She emphasized that these cases do happen and the bill would affect these people. She said the bill instead should target the people who cause accidents who do not have insurance.

REPRESENTATIVE OGG said it appears from the way [HB 336] is written that the person who is driving without insurance is not protected, but everyone else in the car is protected.

MS. McCREADY said that is a question she still has. She pointed out that for children under 18, economic damages are not very high. She asked for clarification on the issue that Representative Ogg raised.

Number 0291

MICHAEL J. SCHNEIDER, Attorney at Law, Law Offices of Michael J. Schneider, PC, said that these issues are extremely complex. The first part of the bill is a blatant gift to the insurance industry that cannot accomplish its stated goal, he opined. He noted that Alaska has a mandatory requirement to have insurance before one can get a driver's license and if one drives without insurance and has an accident one will lose that license. He also said that in the face of those disincentives, one out of five people is still driving without a [insurance]. He maintained that this bill will pose no incentive to [uninsured] drivers who are just "trying to stay even with life" to worry about damages they might incur. He emphasized that the insurance company will benefit by this bill.

MR. SCHNEIDER termed the second part of the bill "solutions in search of a problem." The Alaska Supreme Court has adopted the mirror image approach in analyzing some insurance questions, so if an insurance company, an uninsured/underinsured carrier, does not want to be on the hook for punitive damage exposure, all they've got to do is carefully write their policy, he stated.

MR. SCHNEIDER addressed the third provision of the bill regarding umbrella coverage. The insurance industry, in spite of legislative demands that it offer uninsured limits up to certain levels, and without regard to the elected liability level, for years has refused to comply with the law, he related. He said it is possible that Representative Gara did get the wrong advice from his carrier because many people do not get the insurance that they are entitled to. He noted that uninsured coverage can be waived in writing and said there is nothing wrong with the Alaska Supreme Court's determination that uninsured coverage can be attached to an umbrella policy. He said it is not a problem and there is no need to address it legislatively.

Number 0818

MICHAEL L. LESSMEIER, Attorney at Law, Lessmeier & Winters, Lobbyist for State Farm Insurance Company ("State Farm"), said that when he started doing legislative work in 1983, one of the most controversial issues was the issue of mandatory automobile insurance. He relayed that he has worked on every bill related to the "mandatory automobile insurance scheme" that is in effect in this state, and he also worked on the connected system set up for mandated offers of uninsured/underinsured motorist coverage, which was an idea by the insurance industry in recognition of the fact that there are going to be people that drive without insurance. [State Farm] has about 26 percent of the market, he reported, or 123,511 policies in force. "In spite of what my colleague Mr. Schneider told you, we think we do a good job of selling uninsured motorist coverage, [because] 96 percent of our policyholders have uninsured motorist coverage," he said.

MR. LESSMEIER related that in 1983, there was a bill introduced by then-Speaker of the House, Joe Hayes, and the concern at that time was the uninsured motorist population. In the last 20 years there have been numerous changes in legislation and still 16-18 percent of drivers are uninsured, and so one out of every five or six accidents is going to be uninsured, which is a significant problem for policyholders. He said that many other states have addressed this issue. The rationale for the "no pay, no play" was recently before the New Jersey Supreme Court in February of 2004. In a couple of sentences the policy is explained. He read:

The law advances a policy of cost containment by ensuring that an injured uninsured driver does not draw on the pool of accident victim insurance funds to which he did not contribute. The legislation thus gives the uninsured driver a very powerful incentive to comply with the compulsory insurance laws, obtain automobile insurance coverage, or lose the right to maintain a suit for both economic and noneconomic injuries.

MR. LESSMEIER continued to say that in New Jersey, if somebody drives without insurance, they don't get to collect either economic or noneconomic damages. Referring to Representative Gruenberg's question whether this bill is purely punitive or not, Mr. Lessmeier replied that it is not. It is intended to ensure responsibility and fairness to the 82-84 percent of the driving public that does pay for [insurance], he concluded.

Number 1098

MR. LESSMEIER said that there were a number of questions raised about "benefiting a bad actor" and hurting somebody that is totally innocent. He maintained that somebody that drives without insurance is not totally innocent. They have a choice in advance; if they want the protection of the system they need to contribute to the funding of the system, he said. "That is a matter of fairness and that is a matter of responsibility," he added.

MR. LESSMEIER opined that there is nothing in Alaska law that says the purpose of punitive damages is compensatory. "Punitive" by its very definition is punishment, and when that issue goes to the jury, the jury has already decided the issue of compensatory damages, he explained. He urged the committee to not get sidetracked by that issue.

CHAIR McGUIRE asked Mr. Lessmeier about the line between compensatory and punitive damages, such as noneconomic damages.

MR. LESSMEIER replied that he would categorize punitive damages as noneconomic damages in the context of this bill because they are not quantifiable.

CHAIR McGUIRE responded, "You're saying that noneconomic damages, in your opinion, are the same as punitive?"

MR. LESSMEIER replied, "No, what I would say is when we created the limits for noneconomic damages in the tort reform, clearly those limits did not include punitive damages. There's no question about that." He said it depends on how the committee defines the term noneconomic. "If the committee is concerned about letting go the person who is the supposed wrong-doer that commits a bad act, then perhaps you wouldn't want to include punitive damages within the definition of noneconomic," he suggested.

CHAIR McGUIRE said it probably relates to the 1997 tort reform legislation and the way that [insurance companies] write their policies. She asked if it is the case that noneconomic damages and punitive damages are lumped together.

Number 1307

MR. LESSMEIER said they are not really covered that way in the policies. The way the policies are written and the discussion

of concern regarding punitive damages has to do with Section 2 of the bill, he explained. The Alaska Supreme Court adopted the mirror rule in [State Farm Mutual Automobile Insurance Co. v. Lawrence]. "If we sell coverage for punitive damages under the liability portion of the policy, ... it means that we now have to sell that coverage and include that coverage in the uninsured/underinsured motorist coverage. And it makes absolutely no sense for our policyholders to pay a premium so that they can recover punitive damages. They're not punishing someone else, because that someone else is not paying those punitive damages," he said. Furthermore, 50 percent of the damages must go to the state, he added.

CHAIR McGUIRE asked Mr. Lessmeier if it is his belief that because of the mirror image rule, without a statutory change there is no way for State Farm to do what has been suggested about offering various choices to the consumer.

MR. LESSMEIER replied, "We can't." He pointed out that he has a choice with two consequences because of what the Alaska Supreme Court did. The first consequence is "we change our liability policy, ... we take away the coverage where people may really need it and they really want to pay for it, just because it makes another coverage more expensive, where it makes no sense to have that coverage. So we'd have to take it away from the liability policy in order to do what Mr. Schneider talked about. It makes no sense for us to do that."

CHAIR McGUIRE added, "Just to get around it."

MR. LESSMEIER continued, "The problem is ... that people don't have that choice; they could have the choice by going and purchasing a policy that doesn't provide it on the liability side, so it doesn't provide it on the uninsured/underinsured motorist side, also."

CHAIR McGUIRE summarized her understanding by saying it's unfair to allow somebody who is breaking the law to avail themselves of higher privileges.

Number 1505

MR. LESSMEIER responded by saying that for somebody who has not contributed to the system that everyone else pays for, it's unfair to allow him/her full participation in that system. He repeated it is an issue of fairness and responsibility. He responded to Mr. Schneider's comment that the only people who

would benefit by this are the insurance companies, by saying that the challenge to the insurance industry has been to make its products affordable. He continued:

If we look back at our 20-year history - we go back to 1894 - we have decreased rates six times. We have increased rates a number of time, too, but we do what we're able to do in terms of the market. We look at this particular coverage over the last four years; we have paid out in terms of our expenses and our claim payments, about \$1.70-something for every dollar that we've take in. We go back over the last 20 years and we look at what the premium structure has been with respect to uninsured/underinsured motorist coverage versus what it's been for bodily injury and property damage coverage.

Now uninsured/underinsured has increased much more rapidly and, of course, we've made many, many significant changes to the law during that period of time. But, there's a cost. We don't believe it is in the interest of our policyholders to be funding punitive damage claims against ourselves. We do not believe it is necessary to make these mandated offers on pure excess policies when they are made on the underlying automobile policy at the time the person purchases the vehicle and at every single time of renewal, and they're made in writing. And if they're not made, there are significant ... consequences.

CHAIR MCGUIRE asked if insurance rates will be decreasing.

MR. LESSMEIER replied that there is no way to answer that question. He referred to the tort reform legislation of 1997 and said there is not a clear answer as to whether it is constitutional or not. He said HB 336 will work in two different ways if it is passed. It will be a deterrent and there will be fewer people on the roads without insurance. He also predicted that claims will be reduced by people without insurance, and he said he hopes that will reduce the cost of premiums.

CHAIR MCGUIRE said she doesn't think it will act as a deterrent.

Number 1663

REPRESENTATIVE HOLM presented a hypothetical situation of a wealthy person who chooses not to purchase insurance. This action says that the person is electing not to be able to collect damages because he or she makes plenty of money and is "self-insured," he said. He asked what is wrong with that picture.

MR. LESSMEIER said that is a debate that was held back in 1983-4, and there is a way for a self-insured person to avoid the mandatory insurance laws.

CHAIR MCGUIRE asked how that is done.

MR. LESSMEIER replied that he would have to go back and look at the statutory scheme to be able to do that.

CHAIR MCGUIRE asked Mr. Lessmeier to bring that information tomorrow.

MR. LESSMEIER related that the policy made back then required all people who drove to have at least a minimum limit of liability, "50/100/25." He said that that coverage for most people has remained relatively affordable. He said a system cannot be created in Alaska that would allow for the policing of the self-insured. People are mandated to buy insurance at a certain level and the insurance companies are mandated to make the offers summarized on page 2 of the proposed CS. He said it is not a perfect system, but it is the best system currently available.

Number 1784

REPRESENTATIVE HOLM said he objected to several things that Mr. Lessmeier said, such as the implication that people are "guilty" if they didn't benefit the general public when they choose to self-insure. He maintained that the public is not hurt by a wealthy person not carrying insurance. He questioned whether the legislature should be passing laws to benefit insurance companies.

MR. LESSMEIER said he did not mean to offend Representative Holm. He said he didn't think that this bill will benefit the insurance companies, but the benefit will be passed along. He said:

I think that if we're going to go back and debate the issue of mandatory insurance at the very beginning and

try to create a system that would exempt those that are in your situation, that you described, then we have to talk about a different system. I applaud those people who are able to be financially responsible. Most people can't. I don't know that we've figured out a way to enforce a system like that.

REPRESENTATIVE HOLM recalled that his father was self-insured for fire insurance for years because he didn't borrow money from the bank.

CHAIR McGUIRE said it is a tough debate whether to have mandatory insurance or not.

Number 1893

REPRESENTATIVE GARA, responding to the earlier discussion of noneconomic damages such as pain, suffering, loss of enjoyment of life, stated that those are compensatory, not punitive damages according to statutory definition.

MR. LESSMEIER replied that the noneconomic damage caps that were passed were not intended to limit punitive damages. There is a separate section of that legislation that addresses punitive damages, he added.

REPRESENTATIVE OGG referred to Section 1 and the New Jersey Supreme Court saying that no damages are awarded [to uninsured drivers]. He said he wondered about the justification of awarding economic damages in Alaska.

MR. LESSMEIER opined that the Alaska Supreme Court would uphold this section of the bill because it is a legislative policy choice about where to draw the line. He said he also believes that it is in the legislature's power to go further with this legislation in the hope that it might achieve more. He said he suspects this [bill] comes from what was passed in California. There are six or seven states that have also done some variation of this, he added.

REPRESENTATIVE OGG said he does not buy the "deterrent" argument that much and may be interested in adding a sunset clause of five or seven years; then, if it doesn't show a measurable deterrent, maybe that portion is not needed. He said he still has questions about the section that deals with punitive damages.

MR. LESSMEIER explained that what the bill basically says is that "we don't have to." Simply because it is sold in the liability portion of the policy, does not mean it has to be included in the uninsured/underinsured portion of the policy. He opined that there won't be much of a demand for that product because people won't want to fund the ability to recover punitive damages against somebody else.

Number 2119

CHAIR McGUIRE asked whether, if one of these cases went to court, would the fact that somebody is uninsured or underinsured go toward contributory negligence.

MR. LESSMEIER replied that the only possible way that that could come into evidence would be on a punitive damage claim. If part of what they're covered for on the liability portion of the policy is punitive damages, then there's a pretty good argument that evidence of amount of insurance would go to the jury, he opined.

REPRESENTATIVE GARA pointed out that the 1997 tort reform legislation did go to the Alaska Supreme Court where it was upheld.

MR. LESSMEIER explained that whenever a piece of legislation like this is passed, there is a period of time where the legislation will be challenged, and different interpretations made. A good example of that is the [State Farm Mutual Automobile Insurance Co. v. Lawrence] decision. He relayed:

Our product was never priced to cover punitive damages on uninsured/underinsured motorist coverage. ... Many of the umbrella policies were not priced to cover uninsured/underinsured. So we don't know what the court's going to do, and the example that I gave you is a valid one because, right now, as you know, the court upheld the constitutionality of tort reform, but it did so on a 2-2 decision, and a 2-2 decision is not precedent.

MR. LESSMEIER noted that it took 10 years for California to litigate the constitutionality of the MICRA [Medical Injury Compensation Reform Act] that was passed. It's taken seven years in Alaska and there is not a definitive answer yet, he said. He opined that in looking back at the history of

insurance in Alaska, the rates reflect the experience. He said he would like to think that [Alaska] is a competitive market.

REPRESENTATIVE GARA replied, "I suspect that when you argue about the Alaska Supreme Court ruling that upheld our 1997 tort reform [legislation] ... in court, and you're on the defense side, I suspect that you tell the court that that is a definitive ruling."

CHAIR MCGUIRE relayed that HB 336 [Version D] would be set aside.

HB 438 - MOVE OVER LAW FOR DRIVERS

Number 2294

CHAIR MCGUIRE announced that the next order of business would be HOUSE BILL NO. 438, "An Act relating to motorists moving over or slowing down for emergency vehicles."

Number 2300

REPRESENTATIVE HOLM moved to adopt CSHB 438(STA). There being no objection, it was so ordered.

REPRESENTATIVE HOLM, sponsor of HB 438, explained that the bill was brought to him by public safety officers in the state because of concern about danger. He deferred to Mr. Rudig.

Number 2320

MATTHEW RUDIG, Staff to Representative Jim Holm, Alaska State Legislature, sponsor, agreed that safety is the goal of the bill and said moving over and slowing down can save lives. He reported that 93 law enforcement officers across the country from 1997 to 2002 were struck and killed by vehicles alongside of roads; many more were injured, and substantially more experienced close calls. Although no measure of "move over" legislation will guarantee complete safety for officers and other emergency personnel, he said this bill, along with further public education efforts, can heighten drivers' awareness of the inherent danger to these men and women who serve the public. He indicated that at least 38 states have already addressed this issue.

[An at-ease was called because of a technical difficulty; this is the end of Tape 04-60.]

TAPE 04-61, SIDE A

Number 0001

CHAIR McGUIRE called the meeting back to order.

MR. RUDIG noted that Allen Storey and Shelley Owens could answer questions. He closed by saying, "These people fight for our lives every day, ... and this legislation is just an opportunity for the legislature to fight for theirs."

Number 0100

ALLEN STOREY, Lieutenant, Central Office, Division of Alaska State Troopers, Department of Public Safety (DPS), testified in support of HB 438, saying it's long overdue. He gave real-life examples involving two of his own patrol cars, the car of his first patrol sergeant, two troopers in the Palmer region who were struck recently, and a near miss he'd seen just that morning. If the bill becomes law, he surmised that [DPS's] public information office can get the word out through public service announcements and other efforts so people know of the requirement, which is to slow down and provide a cushion of safety to people who are trying to help others in need - not just troopers and police officers, but also volunteer and professional firefighters and others taking care of business on the shoulder of the road.

Number 0239

SHELLEY OWENS, Health Program Manager, Community Health & Emergency Medical Services, Division of Public Health, Department of Health and Social Services (DHSS), testified that the department supports this bill in the hope it will reduce the incidence of secondary collisions that result from inattentive and distracted drivers. She provided statistics and further information as follows:

It is estimated that there are 12,000 emergency medical vehicle collisions each year, and the U.S. Fire Administration reports that emergency vehicle crashes are the second leading cause of death for firefighters. The International Association of Chiefs of Police reported that in 1997 nearly 40 percent of law enforcement officers who died in the line of duty died in traffic.

And Washington State found that in a seven-year period over 3,000 shoulder collisions - collisions where a vehicle was parked on the side of the road - resulted in 40 deaths and 1,770 injuries. In Florida during a five-year period, 1996 to 2000, motorists crashed into working ... law enforcement vehicles that were stopped along Florida roadways 1,800 times, resulting in five deaths and over 400 injuries.

In Alaska, in the four-year period from 1998 to 2001, 386 emergency response vehicles were involved in accidents. Of the 386 crashes, 46 incidents involved a parked emergency response vehicle. There's also a statistic from California that ... once there's been an initial accident, ... the fact that this vehicle is on the side of the road creates a 600 percent increase of likelihood of a secondary collision.

MS. OWENS concluded:

Motor vehicle operators are exposed to multiple sources of distraction including mobile phones, radios, children, failure to see or hear sirens and lights, and driver inattention. The department supports the efforts to reduce the number and severity of injuries to fire, EMS [emergency medical service], and law enforcement personnel at emergency scenes.

Number 0390

REPRESENTATIVE GRUENBERG indicated he had a question for someone from the Criminal Division of the Department of Law, but didn't see anyone present. Noting that he was searching for statute related to mental states and the requirements for culpability, he explained that subsection (a) of the bill requires a person to move over [or slow to specified speeds], and subsection (b) makes it a class A misdemeanor if [the behavior] results in injury. However, it just says "who violates this section" [on line 14], which he suggested almost makes it a crime of strict liability. Thus he proposed that the bill should at least say "negligently or something" because people can go to jail for a year.

REPRESENTATIVE GARA remarked that "knowing" is important in a lot of the criminal [statutes], but he can't imagine someone using the defense of having sped by a car that had flashing

lights without knowing, which should be even worse, perhaps a felony.

REPRESENTATIVE GRUENBERG read from the statute he'd been looking for, AS 11.81.610, which stated in part:

(b) Except as provided in AS 11.81.600(b), if a provision of law defining an offense does not prescribe a culpable mental state, the culpable mental state that must be proved with respect to

- (1) conduct is "knowingly"; and
- (2) a circumstance or a result is "recklessly."

REPRESENTATIVE GRUENBERG said he thought that probably would apply, but wasn't sure and was simply drawing it to the committee's attention. He added that he was satisfied with the language now because he believed AS 11.81.610 "would be what would be read into the statute if we leave it alone."

CHAIR MCGUIRE asked whether anyone else wished to testify. She then closed public testimony.

Number 0619

REPRESENTATIVE HOLM moved to adopt Amendment 1, labeled 23-LS1602\D.1, Luckhaupt, 4/2/04, which read:

Page 1, lines 11 - 13:

Delete all material.

Insert "fighter, shall slow to a reasonable and prudent speed below the speed limit."

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

REPRESENTATIVE GARA remarked that Amendment 1 was good and clarified a lot for him, but requested clarification. He said he understands the circumstance when a trooper or ambulance is dealing with an accident or injured person. But can someone still drive by at 55 miles an hour in the right lane of the highway if a trooper has pulled a driver over for speeding and they're in the "breakdown" lane? Would that be a safe and prudent speed under the circumstances, or would it now be a crime? he asked.

REPRESENTATIVE HOLM answered:

It's my understanding ... that the reason that we offered the amendment was so that it would be reasonable and prudent speed. And that means it would have to be something defensible, at some point in time, if there was a problem. And I would assume, if someone was going 55 miles an hour past ... a problem on the side of the road, he would miss the other person. If he didn't, I suppose it would be no different than any other case where you are negligent or reckless in your driving.

CHAIR MCGUIRE paraphrased subsection (a)(1), which talks about safely vacating the lane closest to the emergency, fire, or law enforcement vehicle when there are two or more lanes traveling in the same direction.

REPRESENTATIVE GARA noted that many people stay in the right lane when they see a trooper pull someone over for speeding, but said he thinks that would be OK with Amendment 1 because it says "or if you are driving safely under the circumstances."

CHAIR MCGUIRE concurred, mentioning "reasonable and prudent".

Number 0754

CHAIR MCGUIRE asked Representative Holm whether he'd thought about adding an "emergency signal override" and whether there already was a House version of Senator Therriault's [legislation related to that].

REPRESENTATIVE GARA said, "Let's get that in there too."

REPRESENTATIVE HOLM answered that he hadn't thought about it.

REPRESENTATIVE GRUENBERG reported that he'd talked to Senator Therriault about that bill because the same firefighters who were interested in the carbon monoxide and arson legislation also considered that a priority. He recalled that the feeling expressed was that there was no need for House companion legislation because the Senate version was moving.

CHAIR MCGUIRE remarked, "Fair enough - just an idea."

REPRESENTATIVE GRUENBERG said it's a good idea.

Number 0816

REPRESENTATIVE HOLM moved to report CSHB 438(STA), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 438(JUD) was reported from the House Judiciary Standing Committee.

HB 430 - EMPLOYEES UNDER 21 AT LICENSED PREMISES

[Contains discussion of HB 367]

Number 0837

CHAIR MCGUIRE announced that the next order of business would be 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."

Number 0848

REPRESENTATIVE BETH KERTTULA, Alaska State Legislature, sponsor, acknowledged her staff, Aurora Hauke, for doing the majority of work on the bill. Representative Kerttula explained that a constituent had wanted to hire an 18-year-old who was a foster child but technically was out of foster care because he was considered an adult under that system; current law, however, requires a parent's signature. Thus HB 430 solves a small problem for 18-year-olds who want to work in a hotel or restaurant where alcohol is served, although, of course, such a person cannot serve, touch, or sell the alcohol. Representative Kerttula noted that the same situation occurs for 18-year-olds who travel to Alaska. She reported that the Alcoholic Beverage Control Board ("ABC Board") supports the legislation and that Mothers Against Drunk Driving (MADD) has no opposition.

REPRESENTATIVE GARA remarked that he thinks the bill is fine, but raises the question of whether 16- or 17-year-olds, if [HB 367, which he and Chair McGuire sponsored] doesn't pass, would be allowed to work at The [Great Alaskan] Bush Company, for example, if it serves fries. He suggested perhaps it's incumbent on [him and Chair McGuire] to deal with it in the other bill.

REPRESENTATIVE KERTTULA deferred to Ms. Hauke.

Number 1004

AURORA HAUKE, Staff to Representative Beth Kerttula, Alaska State Legislature, sponsor, voiced her belief that this would only apply to places that have "a certain type of license to sell alcohol, which involves that most of the business does not come from the alcohol." She said she couldn't remember the exact name of the license, but it's a different category.

AN UNIDENTIFIED MEMBER mentioned "restaurant."

REPRESENTATIVE KERTTULA said she believes that's right. Furthermore, 16- and 17-year-olds still have to get permission. This just covers 18-year-olds; they've reached the age of majority but still need the signature currently, although that might be impossible for someone from out of state or who has been a foster child. She pointed out that 19-year-olds already can do it on their own.

CHAIR MCGUIRE asked Representative Kerttula whether she'd looked at a "bypass" through the Department of Labor [& Workforce Development (DLWD)] because of the foster-child status, rather than lowering the age limit.

REPRESENTATIVE KERTTULA said her office had worked on this a couple of years with DLWD and the ABC Board; because of the "morass of statutes that are quite circular," it was decided that a statutory change was needed. She added, "They wanted to do it; if they could've, they would've."

REPRESENTATIVE SAMUELS recalled that when a smoking ordinance passed in Anchorage, distinctions were made via the licensing mechanism. Much of the difference between a particular bar that sells food and a particular restaurant that sells alcohol, although very similar, was based on the age of those who could bus tables. Thus there'd been a lot of contention. He suggested this bill probably wouldn't impact that situation, but said it certainly comes to mind.

REPRESENTATIVE KERTTULA agreed it probably wouldn't, because 18-year-olds can work in both sets of establishments now with parental permission; all this bill does is remove that one requirement [of permission]. She offered to check it out, however, and provide that information.

REPRESENTATIVE SAMUELS said he'd like to know later and didn't want to hold the bill up. He mentioned a deal on the assembly and that it was an odd choice. He recalled a line being drawn at age 21, but said he didn't know the details.

REPRESENTATIVE KERTTULA pointed out that someone must be 21 years old in order to serve alcohol or sell it, which might have been the distinguishing factor.

CHAIR MCGUIRE asked whether anyone else wished to testify.

REPRESENTATIVE KERTTULA noted that the ABC Board was unavailable to testify but supported the legislation.

Number 1245

REPRESENTATIVE GRUENBERG moved [to report HB 430 out of committee with individual recommendations and the accompanying zero fiscal note]. There being no objection, HB 430 was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 4:35 p.m. to 4:40 p.m.

HB 275 - VETERINARIANS AND ANIMALS

Number 1303

CHAIR MCGUIRE announced that the final order of business would be HOUSE BILL NO. 275, "An Act relating to veterinarians and animals." [Before the committee was CSHB 275(L&C).]

Number 1333

ELISE HSIEH, Assistant Attorney General, Environmental Section, Civil Division (Anchorage), Department of Law (DOL), relayed that she has sent the committee, via e-mail, a list of what she termed friendly, suggested amendments to CSHB 275(L&C). Referring to page 1, line 6 - proposed AS 03.55.100(a) - she suggested that the word "include" be changed to "includes". Referring to page 1, line 8, - proposed AS 03.55.100(a)(1) - she suggested that the word "daily" be deleted because it could [be interpreted to mean] providing potable water once a day, which, she opined, is probably not sufficient. Referring to page 1, lines 10-12 - proposed AS 03.55.100(a)(2) - she suggested that the language be changed to read: "(2) shelter; indoor shelter must be maintained at a temperature compatible with the good health of the animal; outdoor shelter must". She opined that the latter change will clean up the introductory phraseology [of paragraph (2)], characterizing the current wording as being very awkward.

MS. HSIEH, referring to page 2, line 9 - proposed AS 03.55.100(a)(5) - suggested adding the words "for the health and safety of the animals" after "standards"; this will clarify the standards expected from the state veterinarian. Referring to page 2, lines 10-14 - proposed AS 03.55.100(b) - she suggested adding a sentence, "In the event of disagreement under this paragraph, the State Veterinarian will provide the professional opinion needed under this paragraph."; this will clarify that the state veterinarian will be the final arbiter of any disagreement between veterinarians making determinations under paragraph (b). Referring to proposed AS 03.55.100, she suggested adding language in a new subsection (c) giving the Department of Environmental Conservation (DEC) the authority to promulgate regulations regarding sufficiency of care under proposed AS 03.55.100(b); the language could read, "(c) The department of environmental conservation may adopt regulations to implement this section." She noted that the latter suggested change was recommended by Debra Behr of the Department of law.

Number 1504

MS. HSIEH, referring to page 2, line 19 - proposed AS 03.55.110(a) - suggested deleting, "on which it wishes to take action", because the discretion to enforce against animal abusers should be with the Department of Public Safety (DPS) rather than with an unnamed, possibly private, organization that may or may not wish to act. Referring to page 3, lines 3-4 - proposed AS 03.55.120(b) - and noting that custodians of abused animals may be unwilling to have their location known, she suggested deleting the words, "and under whose custody the animal is to be sheltered and cared for", and inserting instead the words, "and a reference to their right to petition the court under AS 03.55.130", which would be more helpful to owners who seek the return of their animals.

MS. HSIEH, referring to page 3, line 10 - proposed AS 03.55.120(d) - and remarking that, "every reasonable effort", connotes something that may be unending, suggested replacing "every" with "a"; the language would then read, "shall make a reasonable effort to locate the owner". Referring to page 3, line 24 - proposed AS 03.55.130(c) - she suggested, for clarity, replacing "warranted by" with "reasonable under"; she remarked that the word "warranted" could, in some circumstances, be more ambiguous than reference to a "reasonable" standard. Referring to page 4, line 30 - proposed AS 11.61.138(a)(6) - she suggested deleting the words, "a herd, collection, or kennel [of]",

opining that that language is unnecessary and complicates enforcement.

MS. HSIEH, referring to page 5, line 2 - proposed AS 11.61.138(a)(7) - suggested using language that would be more specific than, "with elements similar to a crime under this section". Referring to page 5, lines 4-5 - proposed AS 11.61.138(b) - and remarking that that language is very awkward, she suggested changing it to read, "Each animal that is subject to cruelty to animals under (a)(1)-(5) and (7) of this section shall constitute a separate offense." In conclusion, Ms. Hsieh opined that these suggested "friendly" amendments will make HB 275 stronger and easier to enforce.

CHAIR McGUIRE mentioned that the committee would address the DOL's suggested changes at the bill's next hearing.

Number 1655

TIM COLBATH, Founder, Alaska's Extended Life Animal Sanctuary, characterizing HB 275 as a major step in the right direction, simply offered his organization's support for the bill.

Number 1687

ALLEN STOREY, Lieutenant, Central Office, Division of Alaska State Troopers, Department of Public Safety (DPS), indicated that the DPS is in support of HB 275, and said he agrees with Ms. Hsieh's points, in particular the point about it being a bad idea to disclose to owners the location of their animals. He added, "I don't think it will be a burden for [law] enforcement officers simply to refer people to the statute or the courts so they can petition for return of their animals." He noted that law enforcement officers see a lot of cases of animal abuse, adding, "we've seen some ugly things." In response to comments, he said he agrees that there is a significant link between cruelty to animals and other crimes of violence; law enforcement officers and teachers are trained to look for cruelty to animals in juvenile behavior because such may indicate abnormal personality traits.

Number 1759

CHRISTINE HEINTZ, after noting that she volunteers at Alaska Equine Rescue (AER) and that she has taken in unwanted and abused animals, mainly horses, on her own for over 20 years, said simply that she is in total support of HB 275.

Number 1797

BARBARA BRINK, Director, Central Office, Public Defender Agency (PDA), Department of Administration (DOA), remarked that HB 275 proposes a huge change to current law, and indicated that she wanted the committee to be aware of the possible ramifications. She went on to say:

My first question has to do with the amendment suggested by [Ms. Hsieh regarding] page 2, [subsection] (b), [lines 10-14]. Somehow this kind of, I think, muddies the water as to who makes these determinations of sufficiencies through water, shelter, space, et cetera because, frankly, in making this a class A misdemeanor offense, those determinations are going to have to be made by a jury. So perhaps we should put some limiting language in that section - [which] limits the state veterinarian and the veterinarians to providing opinions with [regard] to the sufficiency of evidence - to just simply engage in a prosecution.

My next concern is, I just want to emphasize [that] currently, the law requires that a person knowingly inflict severe physical pain or prolonged suffering on an animal, or, with criminal negligence, they fail to care for animal and cause death, serious physical pain, or prolonged suffering, or that they kill ... an animal by using a decompression chamber. So everything in addition to that - [proposed] paragraphs [(3)-(7)] on page 4, ... [and proposed AS 11.61.140(a)(1)-(4)] - ... are all things that are not currently crimes and will be crimes under this new bill. ...

And frankly, when we prosecute ... an assault against a person, we require that that person either be placed in fear of serious physical injury or that they actually suffered a physical injury, which is any pain or impairment. And here we're providing [that] if you recklessly fail to observe minimum standards of care for your pets, even if there is no injury whatsoever, you can be prosecuted and convicted under this section. So ... the broadness of this bill is rather enormous and, while I can't predict with accuracy exactly how many dollars it's going to cost the state

and in particular my agency, I can promise you that this will be costly.

MS. BRINK, in response to a question, noted that proposed AS 11.61.138(a)(5) simply says in part, "owns or is responsible for the care of an animal and recklessly fails to provide the minimum standards of care", and thus doesn't contain a damage element; the behavior could have had no deleterious effect on an animal and yet a person could still be prosecuted and convicted.

Number 1971

SHARALYN WRIGHT, Staff to Representative Mike Chenault, Alaska State Legislature, sponsor, suggested to Ms. Brink that she contact the sponsor to discuss the PDA's concerns.

MS. BRINK said she would do so.

Number 1984

ETHEL CHRISTENSEN, Executive Director, Alaska Society for the Prevention of Cruelty to Animals (SPCA), relayed that she has sent the committee some written comments, and offered her belief that mandatory jail time should be imposed for heinous crimes involving animal cruelty, and that drug and mental health counseling should be required for all other cases involving animal cruelty. She listed examples of cases that she characterized as heinous. She, too, remarked that people who are cruel to animals are also cruel to people, and noted that examples of such were relayed to her at a conference she attended in Seattle several years ago. In conclusion, she said [the bill] is long over due.

CHAIR McGUIRE thanked Ms. Christensen for her work with the Alaska SPCA.

Number 2084

SALLY CLAMPITT, President, Alaska Equine Rescue (AER), said she supports HB 275. She mentioned some of the animals the AER currently has in protective custody, and relayed that groups like the AER are willing to take on the expense and burden of providing the legislature with whatever support it needs [to pass HB 275]. She said she sees HB 275 as having many provisions that will make "the procedure" a whole lot easier, efficient, and faster, and hopes that the bill will result in more prosecutions. Current state law, as currently enforced, is

a green light for cruelty and abuse, she opined, adding that cruelty to animals is "the unwanted child" of the judicial system and takes a back seat to many other issues. She went on to say:

I don't believe that our organization or any other animal welfare group subscribes to putting animals before people. Nevertheless, to ignore the really ugly, ugly situations that go on out there would be very remiss ... as a moral responsibility.

MS. CLAMPITT offered to share the details of cases that have occurred, reiterated that she supports HB 275, and urged the committee to make it as tough as possible. Characterizing current statutory language as vague, hard to enforce, and hard to prosecute under, she indicated that she would like to see the minimum standards of animal care left in the bill, as well as the new references to the behaviors that would become crimes. In conclusion she opined that HB 275 would get the job done, and asked the committee to support it.

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on HB 275 and indicated that the bill would be held over.

ADJOURNMENT

Number 2251

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 5:04 p.m.