ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE
February 20, 2003
8:02 a.m.

MEMBERS PRESENT

Representative Bruce Weyhrauch, Chair
Representative Jim Holm, Vice Chair
Representative Nancy Dahlstrom
Representative Bob Lynn
Representative Paul Seaton
Representative Ethan Berkowitz
Representative Max Gruenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 64
"An Act relating to court approval of the purchase of structured settlements."

- MOVED CSHB 64(STA) OUT OF COMMITTEE

HOUSE BILL NO. 18
"An Act relating to the liability of parents and legal guardians of minors who destroy property."

- HEARD AND HELD

HOUSE BILL NO. 46
"An Act relating to ballots."

- MOVED CSHB 46(STA) OUT OF COMMITTEE

PREVIOUS ACTION

BILL: HB 64
SHORT TITLE:PURCHASE OF STRUCTURED SETTLEMENTS
SPONSOR(S): REPRESENTATIVE(S)FOSTER

Jrn-Date	Jrn-Page		Action
01/27/03	0075	(H)	READ THE FIRST TIME - REFERRALS

01/27/03	0075	(H)	STA, JUD
01/27/03	0075	(H)	REFERRED TO STATE AFFAIRS
02/11/03		(H)	STA AT 8:00 AM CAPITOL 102
02/11/03		(H)	Heard & Held MINUTE(STA)
02/20/03		(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 18
SHORT TITLE:PARENTAL LIABILITY FOR CHILD'S DAMAGE
SPONSOR(S): REPRESENTATIVE(S)MEYER

Jrn-Date	Jrn-Page		Action
01/21/03	0036	(H)	PREFILE RELEASED (1/10/03)
01/21/03	0036	(H)	READ THE FIRST TIME - REFERRALS
01/21/03	0036	(H)	STA, JUD
01/21/03	0036	(H)	REFERRED TO STATE AFFAIRS
02/07/03	0153	(H)	COSPONSOR(S): ANDERSON
02/20/03		(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 46
SHORT TITLE:PRIMARY ELECTION BALLOTS
SPONSOR(S): REPRESENTATIVE(S)HAWKER

Jrn-Date	Jrn-Page		Action
01/21/03	0043	(H)	PREFILE RELEASED (1/10/03)
01/21/03	0043	(H)	READ THE FIRST TIME - REFERRALS
01/21/03	0043	(H)	STA
01/21/03	0043	(H)	REFERRED TO STATE AFFAIRS
02/20/03		(H)	STA AT 8:00 AM CAPITOL 102

WITNESS REGISTER

AL TAMAGNI, Broker
Structured Financial Associates;
Member, National Structured Trade Association
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 64.

PAUL LaBOLLE, Staff
to Representative Richard Foster
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Informed the committee of two possible amendments to HB 64.

JERRY LUCKHAUPT, Attorney
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency
Juneau, Alaska
POSITION STATEMENT: Answered questions during discussion of HB 64.

REPRESENTATIVE MIKE HAWKER
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Testified as sponsor of HB 18.

LAURA GLAISER, Director
Division of Elections
Office of the Lieutenant Governor
Juneau, Alaska
POSITION STATEMENT: Answered questions on HB 18.

VICKI HORODYSKI
Fairbanks, Alaska
POSITION STATEMENT: During the hearing on HB 18, expressed her concern that, if this legislation were adopted, families may reconsider their decisions to become guardians to or adopt high-risk children, because of the financial risk that would be involved.

CARL ROSE, Executive Director
Association of Alaska School Boards (AASB)
Anchorage, Alaska
POSITION STATEMENT: Testifying on behalf of AASB, told the committee that that association would like to see the cap removed, during the hearing on HB 18.

SEAN HALLORAN
Anchorage, Alaska
POSITION STATEMENT: Testified during the hearing on HB 46.

JENNIFER RUDINGER, Executive Director
Alaska Civil Liberties Union
Anchorage, Alaska
POSITION STATEMENT: Testified on behalf of that organization in support of the proposed committee substitute for HB 46.

ACTION NARRATIVE

TAPE 03-11, SIDE A
Number 0001

CHAIR BRUCE WEYHRAUCH called the House State Affairs Standing Committee meeting to order at 8:02 a.m. Representatives Holm, Seaton, Dahlstrom, Lynn, Berkowitz, and Weyhrauch were present at the call to order. Representative Gruenberg arrived as the meeting was in progress.

HB 64-PURCHASE OF STRUCTURED SETTLEMENTS

CHAIR WEYHRAUCH announced that the first order of business was HOUSE BILL NO. 64, "An Act relating to court approval of the purchase of structured settlements."

Number 0150

AL TAMAGNI, Broker, Structured Financial Associates; Member, National Structured Settlements Trade Association, testified his support in HB 64. He noted that this legislation has passed in various forms in 33 other states. This legislation is necessary in Alaska primarily for the protection of injured people to whom the [structured] payments are made. Basically, this is a consumer protection bill. He explained that there have been people who are to receive future periodic payments from workers' compensation cases, personal injury cases, and wrongful death cases. Those people have been approached to sell those annuities for a lump of cash at a substantial discount and with the loss of future tax-free benefits. Many of those who have sold the aforementioned annuities have returned to the welfare rolls and general Medicare relief and the like. Mr. Tamagni reiterated that this legislation should be passed and since it's consumer protection legislation, there should be no partisan politics.

REPRESENTATIVE BERKOWITZ inquired as to the following: the number people who are approached to have a structured settlement in the state; the number of people who have structured settlements; and the impact of this legislation.

MR. TAMAGNI informed the committee that no statistics are kept by the trial bar or the insurance companies. He pointed out that these are private settlements that aren't all a matter of public record.

REPRESENTATIVE BERKOWITZ inquired as to the number of settlements in Alaska annually. He further inquired as to the percentage of settlements that lead to structured settlements.

MR. TAMAGNI answered that the number of settlements in the state could be obtained from the court system. With regard to the number of cases settled by a structured settlement, Mr. Tamagni reiterated that no statistics are available. In further response to Representative Berkowitz, Mr. Tamagni said that he didn't believe there are any accurate statistics available from other states.

Number 0483

REPRESENTATIVE SEATON directed attention to page 1, Section 1, paragraph (1) which specifies [that this legislation] only applies to court filed and approved structured settlements. Therefore, he surmised that this legislation doesn't speak to private structured settlements.

MR. TAMAGNI explained that there are many instances in which cases have been settled when no lawsuit has been filed. This legislation addresses those people who want to sell their benefits and requires that those people go through a court approval for that process.

REPRESENTATIVE SEATON returned attention to page 1, Section 1, paragraph (1) and recalled that the language "action filed" meant a court action. He asked if that is Mr. Tamagni's understanding.

MR. TAMAGNI related his understanding that an action is one in which a lawsuit is filed in the appropriate state. However, there are cases for which no lawsuit is filed because the parties reach agreement prior to filing the lawsuit. Therefore, no action is involved because nothing was ever filed with the court.

REPRESENTATIVE SEATON clarified that Representative Gruenberg has pointed out the section with "or could've been filed" language and thus would include [private structured settlements].

Number 0773

MR. TAMAGNI, in response to Representative Berkowitz, confirmed that he does business in structured settlements. In further

response, Mr. Tamagni clarified that he is approached by either a plaintiff attorney or the defense counsel. In most cases, the plaintiff attorney will call and inform Mr. Tamagni of a severely injured individual for which there is concern of a proliferation of a lump cash and thus there is the desire to do a structured annuity to preserve the future benefits on a tax exempt basis. Therefore, a package annuity is prepared and placed with the concurrence of the defense and then the injured party receives the tax-free benefits. In response to Representative Berkowitz's question regarding the number of annuities placed annually, Mr. Tamagni related his personal experience of handling 25-40 cases per year. He noted that there is one other person in Anchorage in the same firm who performs the same service. The majority of structured settlements are handled by out-of-state brokers. In response to Representative Berkowitz, Mr. Tamagni said he had no idea of the portion of cases he handles because there is no statistical information with regard to the number of structured settlements that are placed per year per state. However, he estimated that [he and the other person] handle maybe 5-10 percent of the total cases in the state that are settled with a structured annuity.

REPRESENTATIVE BERKOWITZ surmised then that it would be fair to say that there are approximately 1,000 cases annually.

MR. TAMAGNI agreed and noted that would include automobile accidents.

Number 0950

REPRESENTATIVE GRUENBERG highlighted that there already exists a similar provision, AS 09.17.040, which addresses periodic payments. He asked if Mr. Tamagni was familiar with that provision, which is found in the Tort Reform chapter.

MR. TAMAGNI clarified that these structured annuities are periodic payments. The periodic payments are received from a structured annuity.

REPRESENTATIVE GRUENBERG pointed out that the current statute, AS 09.17.040(f), includes the following sentence: "Payments may be modified only in the event of the death of the judgment creditor, in which case payments may not be reduced or terminated, but shall be paid to persons to whom the judgment creditor owed a duty of support, as provided by law, immediately before death." Representative Gruenberg interpreted that to mean that the court has no jurisdiction to allow a lump sum

payment under the aforementioned statute. He asked if Mr. Tamagni knew of a case which would support modifying the aforementioned statute such that it allowed the court to entertain a motion for a lump sum payment as is being done in HB 64.

MR. TAMAGNI said he didn't believe the committee wanted to confuse structured annuity payments and periodic payments because they are synonymous under Section 104 A2 of the Internal Revenue Service (IRS) code. Mr. Tamagni surmised that HB 64 is attempting to lay out the terms, conditions, and protection that should be guaranteed for those payments to be converted to a partial lump sum. Mr. Tamagni indicated [that HB 64] is similar to the scenario in which the legislature took action to curb the selling of permanent fund dividends (PFD). Therefore, Mr. Tamagni related his belief that HB 64 attempts to meet the same standard and principle without modifying any section of the civil code beyond that specified.

Number 1230

PAUL LaBOLLE, Staff to Representative Richard Foster, Alaska State Legislature, informed the committee that the sponsor has some amendments that he would like incorporated into a committee substitute (CS). One of the amendments is the result of the Alaska courts' desire for the following: page 3, [line 20], after "maintained" insert "or the payee is domiciled in". Clarification that the language to be inserted would read "or where the payee is domiciled" was given. Mr. LaBolle mentioned another issue regarding whether the jurisdiction would be limited to superior court and announced that [the sponsor] has no stance with regard to whether that should be changed or not.

Number 1403

REPRESENTATIVE GRUENBERG moved that the committee adopt Amendment 1, which read as follows:

page 3, line 20, after "maintained",
Insert "or where the payee is domiciled"

There being no objection, Amendment 1 was adopted.

REPRESENTATIVE GRUENBERG informed the committee that he discussed the potential amendment dealing with court system jurisdiction with a representative from the court system. Representative Gruenberg related his belief that most of these

structured settlements would involved damages that would, at least, initially be above the jurisdictional limit of the district court, $50,000. Furthermore, in some of the cases, by the time the payee wanted to cash out, the remaining payments would total less than $50,000. Moreover, some of these cases would've never been filed in court and have an out-of-court settlement, which is an enforceable contract. Therefore, Representative Gruenberg recommended the following: page 3, line 19, delete "superior court", insert "court of competent jurisdiction".

REPRESENTATIVE GRUENBERG explained that this amendment would allow either [the superior court or the district court] to have the motion filed in the appropriate court. He said that he believes the court system feels that the district court would [be] competent in this area, although there had been mention as to whether this would be more of a probate matter. Representative Gruenberg said, "My feeling is it doesn't have to be, it's not just a competency kind of thing, [rather] it's an approval of a settlement." Furthermore, there are minor settlements that can be filed in the district or superior court.

Number 1630

JERRY LUCKHAUPT, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, said that he viewed [structured settlements] as akin to guardianship/conservatorship proceedings, which are solely within the jurisdiction of the superior court. Mr. Luckhaupt pointed out that the court has to make a finding that's in the best interest of the payee and the payee's dependents to allow this transfer to occur. He noted that the settlements he has seen have been fairly large settlements and thus it seemed more appropriate to be [under the jurisdiction] of the superior court. Mr. Luckhaupt expressed concern with the language "court of competent jurisdiction" because he wasn't sure that one would want a justice court making this decision if assets are spent down to a certain level. Therefore, Mr. Luckhaupt suggested the following language: "superior or district court as appropriate".

REPRESENTATIVE GRUENBERG clarified that he wasn't thinking of a magistrate. Representative Gruenberg asked if minor settlements can go to the district court.

MR. LUCKHAUPT answered that minor settlements can go to the district court, although he didn't believe it to be a common

process. Mr. Luckhaupt said, "I think there could be a difference of opinion as to the issue involved here as opposed to those normal minor settlements ... that don't necessarily have someone on the other side objecting to the transfer." He explained that this was presented to him as sometimes being an adversarial process and the minor settlements with which he is familiar aren't adversarial.

Number 1830

REPRESENTATIVE GRUENBERG inquired as to who would be objecting unless a conservator was appointed. If a conservator was appointed, then there would be a conservatorship and [the case] wouldn't be in the district court.

MR. LUCKHAUPT clarified that he was given examples in which the payor objected to these transfers at times. For example, a friend of the children would be involved, which would necessitate a guardian ad litem appointment and would almost have to go to superior court because there is a dispute. Therefore, it seemed to be an economy of resources to have the case in superior court, he explained. However, he noted that he didn't have any strong feeling on it, although most states placed this in their trial court of general jurisdiction.

MR. TAMAGNI interjected that there probably won't be a buyer for any case under $100,000. Furthermore, there is rarely a case with a future present value of less than $50,000. Therefore, he estimated that 99.99 percent of the cases will be set at the superior court level. Mr. Tamagni viewed the superior court as the final stop where everything can be done because it reduces the cost of the representatives of each party. Mr. Tamagni related his belief that there is a question of competency at some of the lower court levels and thus he encouraged the committee to maintain the superior court's [jurisdiction] as the initial and final jurisdiction.

Number 2046

REPRESENTATIVE BERKOWITZ identified the cost to the payee as a concern for the consumer protection. He inquired as to the amount brokers are compensated.

MR. TAMAGNI informed the committee that brokers aren't engaged in this portion of the process in any way. In fact, if he receives calls from people wanting to sell their annuities, he tries to discourage them. Mr. Tamagni clarified that he doesn't

provide his services at all when someone wants to sell their annuities. Mr. Tamagni explained that when people settle a lawsuit they use a structured annuity, periodic payment under Section 104 A2, and then he becomes involved and makes a commission. Once people receive those payments and the desire is to sell the annuities to whomever, he isn't involved in that process. Those involved in the sale of the annuities are in separate businesses, all of which are virtually out of state.

Number 2186

MR. LaBOLLE turned to another issue, which he thought would [address] some of Representative Berkowitz's [concerns]. Mr. LaBolle informed the committee that the National Association of Settlement Purchasers specified that the cost of bringing a structured settlement in for transfer is roughly $1,800-$2,500. The National Association of Settlement Purchasers also related to him that it take 60-90 days [to bring a structured settlement], although the association mentioned it might be a shorter time period in Alaska due to the volume of cases.

REPRESENTATIVE BERKOWITZ highlighted that those putting together these structured settlements receive a flat fee ranging between $1,800-$2,400.

MR. LaBOLLE responded that he wasn't exactly sure, but he understood it to be the total cost to the payee, dependent upon legal fees.

REPRESENTATIVE BERKOWITZ said that he was trying to determine where the money goes. He pointed out that part of HB 64 requires a payee to go to a professional and thus there is a cost for that. Furthermore, there is a cost for putting one of these [structured settlements] together. Representative Berkowitz said that although he agreed with the objectives [of HB 64], he wanted to understand who is receiving transactional fees.

MR. LaBOLLE specified that the $1,800-$2,500 doesn't include professional advice but rather is only the cost once the transferee firm actually supplies the material to the court.

CHAIR WEYHRAUCH announced his preference not to address the superior court [amendment].

REPRESENTATIVE GRUENBERG noted his agreement.

Number 2370

REPRESENTATIVE SEATON moved to report HB 64, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 64(STA) was reported from the House State Affairs Standing Committee.

The committee took an at-ease from 8:37 a.m. to 9:41 a.m.

HB 18-PARENTAL LIABILITY FOR CHILD'S DAMAGE

Number 2410

CHAIR WEYHRAUCH announced that the next order of business was HOUSE BILL NO. 18, "An Act relating to the liability of parents and legal guardians of minors who destroy property."

Number 2430

REPRESENTATIVE KEVIN MEYER, Alaska State Legislature, as sponsor of HB 18, told the committee that the proposed legislation would remove the cap of up to $10,000 for intentional damages caused by a child to corporations, schools, villages, churches, and charitable organizations. He said, "$10,000 just isn't very much. It's not uncommon for a child to be able to go out on a weekend and cause up to $100,000 in damage to school property." He stated that the money [that schools spend to repair damages] should go into the classroom to buy computers and to reduce classroom size, for example. He noted that the Anchorage School District suffered almost $750,000 in damages last year. It is an ongoing and increasing problem, he said.

REPRESENTATIVE MEYER stated that at one time the cap was set at $2,000. In 1995 the cap was raised to $10,000. He pointed out to Chair Weyhrauch that the amount to which [HB 18] would raise the cap has been "left open." He referred to information [included in the committee packet] that lists the varying amounts of caps in other states in the nation.

Number 2532

REPRESENTATIVE MEYER stated his belief that removing the cap will have the following effects: to give school districts more money for teaching; to make parents more aware of what their kids are doing, where they are doing it, and who they are doing it with; and to impress upon children that they will pay for foolish acts. For example, Representative Meyer stated that if

his own daughter ever [was involved in vandalism] he would [withhold] her permanent dividend for a few years and make her go to work and reimburse him.

REPRESENTATIVE MEYER urged the committee to pass HB 18 and offered to answer questions. He noted that [the issue] is a priority for the Anchorage School District, therefore they will be able to testify much better than himself.

Number 1590

CHAIR WEYHRAUCH stated that it is a fundamental policy discussion taking place regarding whether to have a cap at all.

Number 2668

CAROL COMEAU, Superintendent, Anchorage School District, on behalf of the school board and the community, expressed appreciation to Representative Meyer for sponsoring HB 18. She reminded the committee that [the Anchorage School District] suffered a lot of vandalism last year, which peaked the need to eliminate the cap on vandalism caused by juveniles. She said that the district is now finding that the courts are reluctant to assess damages, even to [$10,000] level if the juvenile does not have the ability to pay, "or their parents do not have an ability to pay past the age of nineteen."

MS. COMEAU said there is concern about the message being sent to young people when there are very few consequences for vandalism. She said she thinks that most people in the community share Representative Meyer's aforementioned comments. "Students should have an obligation and it may extend into their adult life that they have to repay damages for vandalism to public property," she said.

MS. COMEAU mentioned other acts of vandalism at Dimond High School and Chugiak Elementary School. She urged eliminating any cap, thereby allowing the courts to impose judgments based upon the situation, the damage caused, and the attitudes of the students and parents toward working off the damages and restitution.

Number 2804

REPRESENTATIVE SEATON referred to page 1, line 14, to page 2, line 15, and read, "without regard to legal custody but with due

consideration for the actual care and custody...". He asked Representative Meyer to clarify that.

REPRESENTATIVE MEYER said he would defer the question to his staff.

Number 2845

REPRESENTATIVE GRUENBERG offered the following explanation:

> Generally, if the parents are divorced and custody is awarded, there are two types of custody. There's legal custody and physical custody. Legal custody is a decision as to who will make decisions for the child, generally, decisions involving health, education, religious upbringing, that sort of thing. And the physical custody is where the kid lives and with whom the child spends their time. And it's usually some form of a divided physical custody. So, what this means is that, in determining who is responsible among the parents - apportioning the damages between the parents up to the limit at the present time - the court shall do it, regardless of who has legal custody, in the sense [of] who can make the decisions for education and this sort of a thing. But, the court shall consider where the child is living and the amount of control particularly the absent parent has.
>
> Let's give an example. Let's say that the parents are divorced, and one of the parents moves to another part of the state, or even to a different state, ... and they have joint legal custody. The parent that actually has the child may be the only parent that has any practical control over the child when the vandalism occurs, and the court would then take that into consideration in determining who was responsible between the parents for the damages.

Number 2929

REPRESENTATIVE SEATON asked, for example, if a father does not have physical custody during the time that a child commits vandalism, is that father "off the hook"?

REPRESENTATIVE GRUENBERG responded that [the language in the proposed legislation] would give the judge the discretion to consider that factor; it's not an absolute rule.

Number 2989

REPRESENTATIVE HOLM asked about [unemancipated minors].

TAPE 03-11, SIDE B
Number 2990

REPRESENTATIVE HOLM offered the following example: A child runs away from home, gets into a program, such as the Family Focus program in Fairbanks, Alaska, where "the troopers say that you cannot have any control over your child in that program, you have no contact with that program." At that point in time, the child commits an act of vandalism, he proposed. He asked how the language of the proposed legislation would address that.

Number 2946

REPRESENTATIVE MEYER replied that it is his understanding that [the parent of that child] would not be responsible for that child's actions, if the parent had turned over the child to the state's custody, or the state took custody of the child.

Number 2925

REPRESENTATIVE GRUENBERG, in confirmation of Representative Meyer's reply, referred to a portion of AS 34.50.020, subsection (b), which reads as follows [original punctuation provided]:

> (b) A state agency or its agents, including a person working in or responsible for the operation of a foster, receiving, or detention home, or children's institution, is not liable for the acts of unemancipated minors in its charge or custody. A state agency or an agent of a state agency, including a nonprofit corporation that designates shelters for runaways under AS 47.10.392 - 47.10.399 and employees of or volunteers with that corporation, is not liable for the acts of a minor sheltered in a shelter for runaways, as defined in AS 47.10.399.

Number 2850

REPRESENTATIVE LYNN, notwithstanding the aforementioned statute, asked why the state would not be responsible, if it has claimed it can better care for a child. He stated that it did not make sense, because the state is then acting [in loco parentis].

Number 2837

REPRESENTATIVE GRUENBERG stated that that was a decision that a previous legislature made, and if the current legislature would like to revisit the issue, it could consider a "partial appellate."

CHAIR WEYHRAUCH noted that that addresses only the cap, not the liability of the state in [subsection] (b), which is another fundamental policy issue that would have to be taken up by the committee in a separate bill or as an amendment to HB 18.

REPRESENTATIVE LYNN interjected, "I want to make that observation."

Number 2811

REPRESENTATIVE MEYER concurred that the purpose of the bill is solely to change the cap. He said that there are other complications involved that, perhaps, should be looked at. He noted that Representative Lynn has a bill similar to HB 18 and, after speaking to Representative Meyer, agreed jointly that HB 18 would be "the vehicle on the house side." Senator Fred Dyson also has a similar bill, which will be [heard by the Senate.]

Number 2783

CHAIR WEYHRAUCH referred to a page included in the committee packet, and noted that Florida allows what he said looks like a case-by-case review of damage claims, with some absolution of parents or guardians, depending on the circumstances. He said, "We all know about the child, even with good parents, who cannot be controlled at all." He said it appeared that Florida might allow an exception to making the parent responsible for that child's damages and, instead, "set it on the child where it belongs - a tougher love approach."

REPRESENTATIVE MEYER said that "we" are open to suggestions to improve the existing law.

CHAIR WEYHRAUCH stated that another concern is that a cap may be necessary in order to protect a destitute family from being bankrupted by the actions of a child.

REPRESENTATIVE MEYER, in response to a query by Chair Weyhrauch, reiterated that the cap of $10,000 was set in 1995. He said that he thinks some states may have "an automatic inflation kicker" that allows the cap to be raised periodically to match inflation. He suggested that that plan might help the legislature to avoid having to address this issue every five years.

CHAIR WEYHRAUCH referred to the article included in the committee packet about the two teenagers who ran amuck on a tractor through a school. He said, "It's the worst-case scenario you're playing to in this kind of thing."

Number 2750

REPRESENTATIVE BERKOWITZ referred to existing statutory language [AS 34.50.020(a)], which says in part [beginning at page 1, line 12, of the bill]:

> However, for purposes of this subsection, recovery in damages shall be apportioned by the court between the parents or between the parents and legal guardian, or both, without regard to legal custody but with due consideration for the actual care and custody of the minor provided by the parents or legal guardian.

REPRESENTATIVE BERKOWITZ said that there is no mention of accountability or responsibility "for the juvenile." He asked if the juvenile is excluded from responsibility.

REPRESENTATIVE MEYER stated that it is his understanding that it is up to the courts and sometimes [the courts] do hold the juveniles responsible.

Number 2645

REPRESENTATIVE GRUENBERG said, "No, the juvenile is responsible. This is only in addition to the juvenile. That doesn't permit double recovery."

REPRESENTATIVE BERKOWITZ asked where in statute that is written.

REPRESENTATIVE GRUENBERG responded that he did not have the title of the statute, but that it deals with "people other than the juvenile." He said, "The juvenile is [as] responsible as any other tort-feasor. This allows responsibility to be assessed against a third party - the parent. That's the whole purpose of the statute."

Number 2583

VICKI HORODYSKI testified as follows:

> At first glance, this bill looks like a bill which will force parents to provide adequate supervision and guidance for their children. However, there's another side to this issue, which does not immediately come to mind. Why would any family or couple willingly risk their financial security by taking a child or sibling group [who may be involved in] high-risk juvenile delinquency, including property damage.
>
> Many families do accept such children into their homes through guardianship and adoption. These families work diligently towards helping their children grow into the most successful, responsible adults that they can be. That journey is not necessarily smooth.
>
> I'm a foster and adoptive parent who takes only children with fetal alcohol spectrum disorders. I volunteer as a coordinator of our local FAS [fetal alcohol syndrome] parent support group, and, as a surrogate parent, I am an educational advocate for children in state custody. I'm also a parent navigator with the Fairbanks FAS diagnostic team. This puts me in contact with many children and families who are facing a variety of situations.
>
> In particular, I am working with an adolescent who is being considered for adoption by a very knowledgeable, competent family who wants to add one more child to their family of seven, of which three have fetal alcohol syndrome.
>
> My fear is that this family may reconsider their decision to add one more high-risk child to their family. As an adolescent, it's a miracle that a family is even considering adopting him. If they

change their minds because of financial risk to their family, there will be no other opportunity for him.

Number 2471

CHAIR WEYHRAUCH asked Ms. Horodyski if people who take in an FAS child or serve as foster parents have a contractual arrangement with the agency through which they get the child to allow them "indemnification for damages."

MS. HORODYSKI answered, "I know we're not responsible. I don't recall signing that type of a contract."

CHAIR WEYHRAUCH posed the following question:

> Would that give you some comfort, if you were taking these high risk kids and knowing that they're going to act outside the bounds of what you may or may not consider normal or acceptable behavior, in some case, where the state, or the agency ... through which you obtained the child would indemnify and defend you, in exchange for you taking that?

CHAIR WEYHRAUCH clarified that his question applied to Ms. Horodyski as either a foster parent or an adoptive parent.

MS. HORODYSKI answered, "As an adoptive parent, yes." She clarified that it is already the case that a foster parent is not responsible. She added, "When you're talking about really high risk kids, a lot of times they've already done a lot of damage, and families try to help them make changes so that that doesn't continue."

Number 2384

REPRESENTATIVE GRUENBERG stated that he has a conflict of interest on [HB 18] and asked that he be allowed to abstain from voting on it.

REPRESENTATIVE BERKOWITZ objected.

CHAIR WEYHRAUCH asked Representative Gruenberg to "continue to participate in this discussion."

REPRESENTATIVE GRUENBERG said that he thinks that it is hard to place some children. Throwing up roadblocks or requiring

indemnification would make it impossible to place them, as [Ms. Horodyski] stated.

CHAIR WEYHRAUCH asked Ms. Horodyski, if the state would indemnify her for damage caused by the child, would that give her comfort?

MS. HORODYSKI said yes. In response to a follow-up question by Chair Weyhrauch, she concurred that, if there was a policy decision to indemnify her for the acts of "these kids," it would "smooth the way for you to want to enter into these arrangements."

REPRESENTATIVE GRUENBERG clarified, "I meant the opposite. I mean, certainly, they'd like to be let off the hook. I don't know that any state would want to be on the hook for (indisc.)."

Number 2261

REPRESENTATIVE SEATON asked, "Are we going to find that we are actually stimulating emancipation of minors. Because that's what it sounds like, that as soon as they're emancipated, you're out from under this hook."

Number 2170

REPRESENTATIVE LYNN commended [Ms. Horodyski] and others like her who take in children with fetal alcohol syndrome and high-risk children into their homes.

CARL ROSE, Executive Director, Association of Alaska School Boards (AASB), stated that [AASB] would like to see the cap removed. He offered the following anecdote: A juvenile broke into a "pop" machine and, to remove the evidence, he set the school on fire. That [took place at] Mountain Village [School] and the damage totaled $7 million. Mr. Rose told the committee that, at the time, he was employed as a president of an insurance company that was insuring schools. He said, "That entire loss was picked up with a $10,000 deductible."

MR. ROSE stated that the school districts are the indemnification; they take insurance, pay the deductible, and assume the cost. He said that there is no remuneration - that money comes from instructional dollars. In the worst-case scenario, he said, the numbers could be alarming. He mentioned a resolution adopted by AASB, which he said he would make available to Representative Meyer.

MR. ROSE mentioned policy implications. He said, "When we start to look at the unintended consequence of simply removing the cap, that becomes a problem." He prevailed upon the committee and the legislature to "take a look at what we're dealing with here," for example, vandalism that can be demoralizing and puts the tax payers at risk of picking up the bill. In the previously mentioned case of the Mountain Village School, a $7 million loss affected all the members of the [insurance] pool, by increasing their rates for insurance dramatically.

MR. ROSE concluded as follows:

> To be able to take advantage of the uniqueness of the circumstance and to not create unintended consequences, that's an area of policy that you folks will have to deal with. Our interest is simply to remove the $10,000 cap, because we think it's inadequate. We'd like to recover the actual cost, and somewhere in between there there's a solution.

CHAIR WEYHRAUCH told Mr. Rose that it would be very useful to receive the resolution and any other supporting information from his agency.

Number 1955

REPRESENTATIVE BERKOWITZ told Mr. Rose that he raised an interesting point. The proposed legislation is an effort to solve a school district problem through one approach. He noted that Mr. Rose had raised the issue of insurance and insurance pooling. He asked if there is another way of, perhaps, combining different approaches to solve the problem. He asked if something could be done with insurance pooling.

MR. ROSE replied that that might be a possibility; however, he noted that there are only two active insurance pools in the state: the Alaska Municipal League Joint Insurance Association (AML/JIA), and the Alaska Public Entity Insurance Company (APEI). He mentioned the commercial market. He said that "we" are getting into a highly competitive area and there will be some "proprietary interest." He questioned if that's where [the legislature] wants to go in regard to legislation, but said he thinks it's an issue that needs to be addressed. He stated that, in the extreme cases, there are costs involved "that are assumed, not only by tax payers, but by the actual consumers of insurance across the state."

MR. ROSE said, "Vandalism can become a very expensive thing. If you're just talking about graffiti, it's still expensive. But if you're talking about major losses that result from this, that takes us into a whole 'nother arena." He reiterated that [AASB] would like to see the cap lifted, but does not want to see any unintended consequences.

REPRESENTATIVE BERKOWITZ noted that conflict exists, on the one hand, regarding the previously stated examples of "commercial interest with insurance." Furthermore, he stated, there are constitutional questions "on the other side," in regard to requiring accountability for the actions of a third party for unspecified conduct. He suggested that perhaps there might be an option to explore, a middle ground, third option.

Number 1830

REPRESENTATIVE SEATON referred to the $7 million in damages at the Mountain Village School. He asked if that money realistically could have been recovered from the parents of the child responsible.

MR. ROSE answered that his recollection is that that child was taken away by juvenile services. He stated that he does not think there was any attempt to get any remuneration, because the loss was so extreme. He said he thinks the case has been raised that when people don't have the money, there is no recourse other than to put them in debt for the rest of their lives. He stated that AASB's issue is that, when there is damage done to schools, it wants to be able to cover some of those costs when available. He mentioned "no-fault" insurance and car insurance. He posed, "When people who are not insured get in an accident, what recourse do you have if they have nothing?"

Number 1753

REPRESENTATIVE GRUENBERG stated that people can purchase "uninsured" or "underinsured" motorist coverage. He asked if school districts are insured "for this type of loss."

MR. ROSE answered yes; it is required by law that school districts carry insurance. The limits of coverage and the actual premiums that are paid are contingent on deductibles. Some school districts choose to take a large deductible to keep rates down, while others take a smaller deductible. He said, "You need a case, maybe even the deductible could be -- that

might be what you go after." He clarified that all school districts carry both property and liability insurance.

REPRESENTATIVE GRUENBERG noted that parents hold policies if they can afford to. He indicated insurance rates "going up." He said that the question is, "Whose pool do you want to have going up?" The only other issue, he stated, is the amount of the deductible. He noted that, based upon the previously stated testimony of Mr. Rose, there was no attempt to "go after" the $10,000 [deductible].

MR. ROSE responded that it appeared in that case that there was no money to be recovered.

Number 1635

REPRESENTATIVE BERKOWITZ focused on the "school district component," because he said that it is "the anecdote that's driving this legislation, which is always problematic." He asked how many times the cap has been a barrier to recovery. Specifically, he asked how many times damages have fallen below or above $10,000. He wondered if it would be possible just to raise the limit somewhat, instead of having no cap at all.

MR. ROSE said that he did not have that information, but could try to get it.

CHAIR WEYHRAUCH said that "we'll" work with the sponsor, as well, to address some of these questions.

[HB 18 was heard and held.]

HB 46-PRIMARY ELECTION BALLOTS

Number 1551

CHAIR WEYHRAUCH announced that the last order of business was HOUSE BILL NO. 46, "An Act relating to ballots."

Number 1520

REPRESENTATIVE MIKE HAWKER, Alaska State Legislature, sponsor of HB 46, explained that in the [Twenty-Second] Legislative session some changes were made to the state's structure of conducting primary elections, which limited the voting ability of people by requiring them to select a ballot from one of the established political parties in the state. He said that it was not

foreseen that there could be items on the ballot that don't involve voting for candidates - ballot propositions, for example. Representative Hawker told the House State Affairs Standing Committee that his constituents have expressed concern regarding being forced to choose a political party ballot when doing something as simple as choosing to vote only on the issues, for example. He stated that he felt the situation needed to be remedied as a matter of equity. He mentioned a committee substitute that had been offered to the committee.

Number 1425

REPRESENTATIVE DAHLSTROM moved to adopt the proposed committee substitute (CS) for HB 46 [Version 23-LS0298\D, Kurtz, 2/11/03]. There being no objection, Version D was before the committee.

Number 1398

REPRESENTATIVE HAWKER stated that the purpose of [Version D] is to clarify the intent of the legislation. Specifically, the [proposed legislation] requires the Division of Elections, during the preparation of ballots for primary elections, to prepare a separate ballot that only contains the propositions and issues to be voted on. He clarified that that would not change the already existing ballots containing the party candidates and issues. Persons choosing to vote in the primary election may choose only one ballot, which would include the nonparty issues ballot [if this legislation is passed], he said. Representative Hawker stated his belief that this [proposed legislation] levels the playing field and encourages the right and responsibility of all people to vote in the State of Alaska.

Number 1292

REPRESENTATIVE GRUENBERG said he thinks the bill is a good one. He stated his belief that with the current scrutiny of the [state's] budget, it is very important for the fiscal notes to be accurate. He told the sponsor that he thinks that it is inconceivable that [the proposed legislation] could have a zero fiscal note, because [the Division of Elections] will have to print an extra ballot.

REPRESENTATIVE GRUENBERG opined that the question to be asked is if there is additional cost to the division, regardless of whether the division can absorb it.

Number 1116

REPRESENTATIVE HAWKER responded that he followed the language provided by the Division of Elections during the preparation of the fiscal note. He stated his understanding, regarding the process of preparing ballots for election, that the division would not incur any incremental cost in excess of what it currently spends in preparation for elections.

REPRESENTATIVE GRUENBERG noted that the House State Affairs Standing Committee is the committee of first referral and the [House Finance Committee] is "normally" the committee of second referral. He added, "And the precedent that we set will come around to haunt us."

Number 0978

REPRESENTATIVE SEATON asked if "these ballots" are generated on a contract and asked if [the Division of Elections] could identify what the differential would be in the bid with multiple ballots.

REPRESENTATIVE HAWKER replied that he did not know the answer. He said he believes someone from the Division of Elections was available to address that line of questioning.

Number 0860

LAURA GLAISER, Director, Division of Elections, Office of the Lieutenant Governor, answered Representative Gruenberg's query as follows:

> That appropriation was for a six-ballot primary, and this year we've sent out notifications to the Republican Moderates and to the Green Party that they are below the 3 percent, so that the likelihood of a six-ballot primary next time is unlikely. So we thought it was justified to say that we can absorb those costs, because we've been given an appropriation that allows for six ballots, which really would be a seventh ballot, which is the way it was referred to previously.

Number 0795

REPRESENTATIVE GRUENBERG referred to Sonneman v. State, a case regarding the constitutionality of the rolling ballot, where "the order of the people would vary, so the person at the top of

the ballot would not continue to occupy that advantage." He reported that the cost to do one extra ballot statewide - in order to roll it - would have been $50,000. He continued as follows:

> That testimony impelled the [Alaska] Supreme Court to uphold the constitutionality of no rolling ballot. It was absolutely outcome-determinative. And a small fiscal note like this can have tremendous, unanticipated consequences.

Number 0688

REPRESENTATIVE GRUENBERG referring to the previous testimony of Ms. Glaiser, stated the following:

> And here, what you're saying Ms. Glaiser is that because a couple of minor parties are no longer on the ballot, there will be a cost savings. So, in fact, there would be a lapse, or additional money coming back to the state from this one little item, because you're not going to have to have as many ballots printed. If this bill passes, you'll still be able to absorb it, but the money coming back to the general fund will be less. So there really is a cost, it's just that the savings will be less. And for ... all of these reasons I think that it's really important that we have accurate fiscal notes.

Number 0655

REPRESENTATIVE BERKOWITZ stated that he wants to echo what Representative Gruenberg said. In this case, the amount of money is small, but there could be other instances involving substantial amounts of money. He noted that he believes there was an overestimation of $12 million this year for pupil allocation, for example. He said that that money ought to come back to the general fund, [the legislature] ought to know about it, and, if it is to be reappropriated, it ought to be listed on the fiscal notes. He said, "It's absolutely imperative for truth and honesty in budgeting that these numbers be available."

Number 0581

SEAN HALLORAN testified that he is not [affiliated] with any group, including political parties, which is why he is testifying and also why he is suing the Division of Elections

over the "current scheme that's in place right now." He stated his belief that the current "scheme," which requires voters to choose a political party in order to be allowed to vote on an initiative, referendum, or any other ballot measure on a primary election day, is unconstitutional. He opined that [the proposed legislation] is one of many "fixes" that could be implemented. All the "fixes" have one thing in common, he said, which is to make a state ballot, as opposed to a political party ballot, available to voters.

MR. HALLORAN explained that political parties are private organizations that have a right to exclude "under the law" any voters who are not members of that party. Currently, if each of the political parties closed its primary [election ballot], then no one who wasn't a member of a political party would be able to vote. He suggested that if [the legislature] is worried about the cost of another ballot, for example, it could "just have initiatives decided at the general election, instead of on primary election day, when [there is] a statewide ballot with state issues and state races being conducted."

MR. HALLORAN said that the "fix" will have to be done sooner or later, either voluntarily [through legislation], or when the court declares the current system unconstitutional. He told the committee that, "on the last election day - last summer," he got a restraining order from the court which allowed him to vote without expressing a preference for a political party. He said he received hundreds of phone calls within a couple of weeks after that election, from people congratulating him [for his action] and saying that they wished they had "done something similar themselves."

Number 0270

REPRESENTATIVE BERKOWITZ noted his own following two "fixes" to the problem: First, the elimination of primaries altogether, which would amount to a considerable savings to the state; and second, the elimination of state recognition for political party. He reiterated Mr. Halloran's previous statement that political parties are private organizations, and he said that state subsidization of them is "somewhat questionable" in his mind, as well.

Number 0209

MR. HALLORAN stated his opinion that both of [Representative Berkowitz's] alternatives would be perfectly acceptable.

Number 0177

REPRESENTATIVE BERKOWITZ responded as follows: "It always strikes me as peculiar that the state keeps track of which political party people have joined. I think it's a fairly intrusive thing. They don't keep track of people's religion, they don't keep track of people's gender, and it seems to me political affiliation is a first amendment association right."

MR. HALLORAN said he agrees with Representative Berkowitz.

Number 0072

REPRESENTATIVE LYNN said he supports the bill.

REPRESENTATIVE HOLM moved to report the proposed committee substitute for HB 46, Version 23-LS0298\D, Kurtz, 2/11/03, out of committee with individual recommendations and the accompanying fiscal notes. [No objection was stated and CSHB 46(STA) was moved from the House State Affairs Standing Committee.]

TAPE 03-12, SIDE A
Number 0014

[The following testimony regarding HB 46 was allowed by Chair Weyhrauch after bill action was taken.]

JENNIFER RUDINGER, Executive Director, Alaska Civil Liberties Union, spoke on behalf of that organization in support of the committee substitute for HB 46. She told the House State Affairs Standing Committee that ACLU is a nonpartisan, nonprofit organization, with over a thousand members in the state. Its mission is to defend the Bill of Rights and the guarantees of individual liberties that are found in the Alaska constitution. Ms. Rudinger said people contacted the ACLU in late July and early August [2002] regarding the issue previously discussed by Mr. Halloran. She said, "We looked into their complaints. We concluded they had a great case. Due to time constraints, we assured them that we would work for a legislative fix, and we thought this would be a no-brainer." She stated that "their first amendment rights to association and speech, and also their Alaska constitutional right to privacy was being infringed by the current system."

[CSHB 46(STA) was reported from committee.]

ADJOURNMENT

Number 0160

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 9:42 a.m.