

**ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE**

March 5, 2004

8:04 a.m.

MEMBERS PRESENT

Representative Bruce Weyhrauch, Chair
Representative Jim Holm, Vice Chair
Representative John Coghill
Representative Bob Lynn
Representative Paul Seaton
Representative Max Gruenberg

MEMBERS ABSENT

Representative Ethan Berkowitz

COMMITTEE CALENDAR

HOUSE BILL NO. 516

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

- MOVED CSHB 516(STA) OUT OF COMMITTEE

HOUSE BILL NO. 423

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

- HEARD AND HELD

HOUSE BILL NO. 422

"An Act repealing the special subaccount established in the constitutional budget reserve fund; relating to the powers of the Department of Revenue for the investment of amounts in the constitutional budget reserve fund; and providing for an effective date."

- MOVED CSHB 422(STA) OUT OF COMMITTEE

HOUSE BILL NO. 412

"An Act relating to the continuation of pay and benefits to employees of public corporations called to active duty; and providing for an effective date."

- BILL HEARING CANCELED

HOUSE BILL NO. 520

"An Act relating to the expenses of investigation, hearing, or public advocacy before the Regulatory Commission of Alaska, to calculation of the regulatory cost charge for public utilities and pipeline carriers to include the Department of Law's costs of its public advocacy function, to inspection of certain books and records by the attorney general when participating as a party in a matter before the Regulatory Commission of Alaska; and providing for an effective date."

- BILL HEARING POSTPONED TO 3/8/04

PREVIOUS COMMITTEE ACTION

BILL: HB 516

SHORT TITLE: BAD CHECK CHARGE

SPONSOR(S): FINANCE

02/19/04	(H)	READ THE FIRST TIME - REFERRALS
02/19/04	(H)	STA, JUD
03/04/04	(H)	STA AT 8:00 AM CAPITOL 102
03/04/04	(H)	<Bill Hearing Postponed to 3/5/04>
03/05/04	(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 423

SHORT TITLE: TAXICAB DRIVER LIABILITY

SPONSOR(S): REPRESENTATIVE(S) ANDERSON

02/02/04	(H)	READ THE FIRST TIME - REFERRALS
02/02/04	(H)	JUD
02/02/04	(H)	STA REFERRAL ADDED AFTER JUD
02/09/04	(H)	REFERRAL ORDER CHANGED
02/09/04	(H)	STA, JUD
02/10/04	(H)	STA AT 8:00 AM CAPITOL 102
02/10/04	(H)	<Bill Hearing Postponed>
03/02/04	(H)	STA AT 8:00 AM CAPITOL 102
03/02/04	(H)	Heard & Held
03/02/04	(H)	MINUTE(STA)
03/05/04	(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 422

SHORT TITLE: BUDGET RESERVE FUND INVESTMENT

SPONSOR(S): FINANCE

02/02/04	(H)	READ THE FIRST TIME - REFERRALS
02/02/04	(H)	STA, FIN

02/10/04	(H)	STA AT 8:00 AM CAPITOL 102
02/10/04	(H)	Scheduled But Not Heard
02/26/04	(H)	STA AT 8:00 AM CAPITOL 102
02/26/04	(H)	Heard & Held
02/26/04	(H)	MINUTE(STA)
03/02/04	(H)	STA AT 8:00 AM CAPITOL 102
03/02/04	(H)	Heard & Held
03/02/04	(H)	MINUTE(STA)
03/04/04	(H)	STA AT 8:00 AM CAPITOL 102
03/04/04	(H)	Heard & Held
03/04/04	(H)	MINUTE(STA)
03/05/04	(H)	STA AT 8:00 AM CAPITOL 102

WITNESS REGISTER

TOM WRIGHT, Staff
to Representative John Harris
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 516 on behalf of
Representative Harris, sponsor.

SCOTT KING
Cornerstone Credit Services, L.L.C.
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 516.

PEGGY GRADY, Accountant
Girl Scouts, Susitna Council
Address not provided

POSITION STATEMENT: Stated support for HB 516.

JENNIFER YORK, Accounting Manager
Kaladi Brothers Coffee Company
Anchorage, Alaska

POSITION STATEMENT: Stated support for HB 516.

JILL JAECKEL, Legal Assistant
Spenard Builders Supply
Anchorage, Alaska

POSITION STATEMENT: Stated support for HB 516.

JIM SHINE, Staff
to Representative Tom Anderson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: On behalf of Representative Anderson, sponsor of HB 423, summarized the changes made in Version D and answered questions.

JOHN PATTEE

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 423.

FRANK DAHL

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 423.

BRENT FRASER, Transportation Inspector

Municipality of Anchorage

Anchorage, Alaska

POSITION STATEMENT: Testified and answered questions during the hearing on HB 423.

MICHAEL LESSMEIER, Attorney at Law

Lessmeier & Winters

Lobbyist for State Farm Insurance Company

Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 423 and addressed committee concerns.

TOMAS H. BOUTIN, Deputy Commissioner

Office of the Commissioner

Department of Revenue

Juneau, Alaska

POSITION STATEMENT: Answered questions on behalf of the department during the hearing on HB 422.

ACTION NARRATIVE

TAPE 04-29, SIDE A

Number 0001

CHAIR BRUCE WEYHRAUCH called the House State Affairs Standing Committee meeting to order at 8:04 a.m. Representatives Holm, Coghill, Lynn, and Weyhrauch were present at the call to order. Representatives Seaton and Gruenberg arrived as the meeting was in progress.

Number 0040

CHAIR WEYHRAUCH informed members that Mr. O'Tierney had traveled to Juneau to testify on HB 520. He noted that the hearing for

HB 520 had been postponed to 3/8/04, but invited Mr. O'Tierney to give a brief, informal introduction. [Mr. O'Tierney testified by teleconference on 3/8/04.]

Number 0100

DANIEL PATRICK O'TIERNEY, Senior Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Anchorage), Department Of Law, indicated that he came to his position last May. He disclosed that "in a prior life" he was a member of the then Alaska Public Utilities Commission, which was the predecessor to the [Regulatory Commission of Alaska (RCA)]. He stated that HB 520 concerns the public advocacy function of the attorney general, "on behalf of Ray Pears, before the [RCA]." In response to a question from Chair Weyhrauch, he confirmed that he had had the chance to speak with [other legislators].

The committee took a brief at-ease at 8:07 a.m.

HB 516-BAD CHECK CHARGE

Number 0285

CHAIR WEYHRAUCH announced that the first order of business was HOUSE BILL NO. 516, "An Act relating to a charge for a bad check."

Number 0296

TOM WRIGHT, Staff to Representative John Harris, Alaska State Legislature, presented HB 516 on behalf of Representative Harris, sponsor. He stated that the bill simply would increase the amount for a bad check to \$30. He noted that there is a companion bill that just passed the other body and "we're just trying to help move the process along a little bit."

Number 0338

CHAIR WEYHRAUCH stated his understanding that "this was related somehow to the requirement ... to document costs associated with checks," and would eliminate the language regarding costs incurred, replacing it with a flat fee.

MR. WRIGHT answered that's correct. He explained that this would allow businesses to recoup costs related to a bad check, without going through a lot of bookwork.

CHAIR WEYHRAUCH related having unintentionally written checks when there wasn't enough money in his account and that he received fees for NSF [nonsufficient funds] and subsequently put money in his account and paid "the check." He said, "So, let's see, I get hit by the bank, and then I get hit by the merchant - sometimes - although ... sometimes if they know you they say, 'Just pay it.'" He observed, "You still get an NSF, it doesn't deal with that. And merchants still then sometimes have the discretion to charge you a \$30 fee anyway; but this just gives them the legal authority to do that without question?"

MR. WRIGHT answered that that's his understanding. He said he should defer further comment to Scott King, but offered his understanding that there are 22 other states that have adopted a \$30 fee.

Number 0451

SCOTT KING, Cornerstone Credit Services, L.L.C., testified in support of HB 516. He said that historically, in Alaska, "we" have assumed a \$25 fee on NSF checks or checks that returned. The interpretation of the law has been, up to this point, that if a business can justify [charging] the \$25, as an operating or business practice, then that has been allowed. He indicated that that justification is easily done. He revealed that a recent court ruling in Fairbanks has "said that it's actual cost," which would require a merchant to keep a ledger of each cost involved in [getting the money for] the check, and [that merchant] would not be allowed to collect that cost until it was incurred. Mr. King reviewed that the bill would make two simple changes to statute: First, it would remove the language regarding the actual costs incurred. Second, it would change the amount from \$25 to \$30.

MR. KING revealed that Cornerstone Credit Services, L.L.C. represents approximately 2,000 merchants throughout Alaska. Many of the businesses rely on taking checks in order to conduct business. He offered to answer questions from the committee.

Number 0562

CHAIR WEYHRAUCH declared a conflict. He explained that he has a problem with Cornerstone Credit Services, L.L.C., because that office has been repeatedly calling him regarding a bill that it says is unpaid, but which Chair Weyhrauch said has been paid for a long time. He added, "I've been quite irate with Cornerstone." He provided details.

REPRESENTATIVE GRUENBERG said, "I'll object, so you have to vote. So moved."

CHAIR WEYHRAUCH said he was going to ask to be excused from voting, but Representative Gruenberg had objected. He said, "That's not going to get in the way of dealing with this bill; I just wanted you to know that."

MR. KING offered to discuss the issue in private with Chair Weyhrauch.

Number 0660

REPRESENTATIVE HOLM asked if the changes made to the bill would theoretically take away the legal problem with "having to support that you deserve the money."

MR. KING answered yes. In response to a question from Chair Weyhrauch, he said the aforementioned case in Fairbanks was resolved. He said, "We'd end up having to settle it through our E&O [errors and omissions] insurance carrier. I think it's in the process of being settled."

Number 0697

REPRESENTATIVE GRUENBERG said he supports HB 516, because it would stop "all kinds of ancillary litigation." Notwithstanding that, he mentioned a problem and the title of the bill and continued as follows:

Lawyers, because of the unusual canons of ethics, if a client doesn't pay a bill, they are not allowed to, in any manner, have that fact, through an agency like Cornerstone ..., reflected on the person's credit rating. And this, as you know, Mr. Chairman, is a very effective way of getting a legitimate bill paid. And what it does is it requires lawyers to sue their clients, or arbitrate, rather than just going very informally, low key, to get the bill paid. And I went to the bar association to try to get the ethical rule changed. And a number of states have gone and changed their ethical rule - some have not. And the ethics committee wouldn't do it, as I recall. I have a file and I'm going to talk over the interim with the industry. But I would be inclined to try to see if we can change that, because ... it makes it very

difficult for lawyers to collect bills that are legitimately (indisc. - voice faded out).

Number 0839

PEGGY GRADY, Accountant, Girl Scouts, Susitna Council ("Council"), stated support for HB 516. She told the committee that current arrangements with the Council's bank allow NSF [checks] to go directly to the collection agency. When the check writer pays the collection agency, the Council is able to recover 100 percent of the cost of each check. Prior to that agreement, she noted, NSF checks were either written off, or attempts to collect the debts were made by staff members. She said she thinks it's fair to assume that if the collection agencies with trained professionals are not able to charge a flat fee for their services on behalf of the Council, the cost to collect the debts would increase for the Council, [which is] a not-for-profit agency, or worse, the burden of collecting these debts would fall back on "our agency."

Number 0920

JENNIFER YORK, Accounting Manager, Kaladi Brothers Coffee Company, stated support for HB 516. She said the bill would help streamline the collection process. She noted that, as with the previous testimony [from Ms. Grady], the company's [NSF] checks automatically go to the bank and are forwarded from there. She said the company is able to recoup 100 percent of its NSF checks. She continued as follows:

And it also acts as a deterrent for those who knowingly write [bad] checks. If they know that the fee can be arbitrarily waived or \$5 here, \$10 there - they play the system. And it's just a straightforward fact: it's simple, it's straightforward, it cuts down on the time. That's one of the reasons why we outsource our collection, is we spend so much time trying to document how many phone calls we did, how many minutes worked doing it, going through the telephone book and going through the telephone bills and itemizing how many minutes we spend calling this person or that person. And by the time that we wrote all of our times down, more than often we had spent more than \$25 in trying to collect ... a \$5 check. And for those people who accidentally, erroneously [bounce a check] ... a lot of times I even override the decision and [say], "Okay, well, I'll go ahead and

waive the 30 dollars - just come in and pay the check." So, we still have that option of waiving the fee. It's just [that] I use [the NSF fee] as a deterrent to stop the people from writing bad checks. ... I myself, ten years ago, wrote a bad check for \$1.20 and it ended up costing me \$45. I now make sure that I balance my checkbook and whatnot. It's a learning experience.

Number 1032

REPRESENTATIVE HOLM noted that Ohio has a \$30 fee or 10 percent of the amount of the check, whichever is greater.

MS. YORK responded that the same amount of work is involved collecting the amount of a \$1 check or a \$5,000 check, "if a person does not want to pay the bill."

REPRESENTATIVE HOLM observed that a check of a larger amount indicates that a larger purchase was made; therefore, the merchant has lost the ability to resell a larger amount of inventory. In many cases, he added, that's a huge expense.

MS. YORK said, "The \$25 isn't really to cover the merchandise, or whatever, it's to cover the time and effort it [takes] to collect on these checks that people don't want to pay." She noted that while one person who has written a bad check may pay immediately, another may persistently postpone payment. She indicated the law of averages and said that the \$25 flat fee is to cover the cost for, basically, everyone. She added, "Everyone knows what the fee is; you don't have to worry about anything else, and they know what it is."

REPRESENTATIVE HOLM suggested that a person who knows that a \$5,000 bad check will cost him/her \$500 will probably not do that too many times.

Number 1200

JILL JAECKEL, Legal Assistant, Spenard Builders Supply, stated that "we" handle the collections for all the branch locations throughout the state. She stated support for HB 516. She stated her belief that a \$5 increase in the fee is not in any way outrageous and barely covers the cost that businesses incur from habitual [bad] check writing. She said that the bank charges a fee when the checks come back and the \$30 doesn't begin to cover the loss of profit that occurs in those

instances, whether it be a large or small check. She suggested that clearing up the language would be beneficial for everyone.

CHAIR WEYHRAUCH said he endorses what Ms. Jaeckel is saying regarding the problem of dealing with these checks.

Number 1306

REPRESENTATIVE HOLM asked Ms. Jaeckel the aforementioned question regarding [the \$30 fee or 10 percent of the amount of the check].

MS. JAECKEL answered as follows:

As far as the fees go, when we have large checks, we tend to file suit with the civil penalties that are allowed through the Alaska Statute, and that is three times the amount of the check or \$1,000, whichever is greater. And when you sue an individual with several civil penalties, you waive your NSF fee altogether. So, ... as far as a fee that would be posted for those people [who] accidentally write a [bad] check, I don't think that there would be very many vendors that would actually go out of their way to charge 10 percent of the check over the \$30 It would cover more of the cost, but it would alienate a huge group of customers that accidentally write a bad check. Those would be the ones that you would be able to collect it from, I think.

Number 1385

CHAIR WEYHRAUCH said he wants to know that it's not the intention of the bill that a merchant who receives a bad check would be bound to charge a fee.

Number 1402

MR. WRIGHT stated his understanding [that that's not the intention].

CHAIR WEYHRAUCH directed the committee's attention to the language on page 2, lines 10-11, which read as follows:

(2) the defendant fails to tender, before the action begins, an amount equal to [AT LEAST] the

amount of the check plus \$30 [COST INCURRED BY THE PLAINTIFF UP TO A MAXIMUM OF \$25].

CHAIR WEYHRAUCH suggested that it could be interpreted that that fee has to be charged. He asked if that is the intent of the bill.

Number 1455

MR. KING explained that the current language in the bill explains what can be charged, but is not required. He clarified, "The statute taken as a whole is something that can be enforced but is not required to be enforced." He related that he knows of many cases where merchants waive NSF fees for those who just write one bad check.

MR. KING, in response to examples posed by Chair Weyhrauch, reiterated that the statute does not require [the NSF fee] to be charged; it is an option. He added, "If we go back to a language that would talk about incurred cost or talk to 'up to' a maximum, then we would be back in the same boat, and we'd be arguing again with attorneys and judges about what does it mean by 'up to.' And that's why we removed that part of the language to remove any arguments that we would face in the future."

CHAIR WEYHRAUCH reiterated that he just doesn't want well-meaning people who want to get along to say that the law requires that they [have to charge the NSF fee]. He added that he may just want to clarify that when the bill ends up on the House floor.

Number 1572

REPRESENTATIVE GRUENBERG stated that he could see that that's not the intent of the statute. Notwithstanding that, he said he could see that that's how the statute could be misinterpreted. He suggested a sentence could be added for purposes of clarification.

CHAIR WEYHRAUCH said he may offer that when the bill is heard in the House Judiciary Standing Committee.

REPRESENTATIVE GRUENBERG asked Mr. Wright if he has a list of states that charge less than \$30.

Number 1639

MR. WRIGHT answered that there are a number of states that charge less than \$30, which is shown on a list in the committee packet. In regard to the aforementioned discussion regarding how the statute may be interpreted, he pointed out that the language uses the word "may", not "shall". Notwithstanding that, he said he thinks the sponsor would not have a problem with adding a sentence to clarify that.

Number 1660

REPRESENTATIVE GRUENBERG stated his support of the bill as written, but said he sees it doing two things: First, it would eliminate the requirement for a proof of cost, which he said would be "administratively tough to do." Second, it would increase [the NSF fee] from \$25 to \$30. He mentioned the cost of living and said he thinks it's been awhile since the statute was enacted.

MR. WRIGHT answered that is his understanding.

Number 1684

CHAIR WEYHRAUCH noted that Representative Holm owns a business that deals with lots of checks. He asked Representative Holm if he would consider the \$30 a fee or a surcharge.

Number 1700

REPRESENTATIVE HOLM said it is a fee. On that point, he referred to previous consideration of "10 percent or whichever is greater." He indicated that might be an additional deterrent and said it piqued his interest that there may be something that "might make it have a little more teeth to it." He related that sometimes people will write a bad check and then bring back the merchandise, which is in worse condition than when it left the store.

Number 1775

CHAIR WEYHRAUCH suggested a possible [Amendment 1] to page 1, line 11, which would change the language to read: "plus a \$30 fee, but the defendant in its discretion may waive the collection of that fee."

REPRESENTATIVE GRUENBERG said he hopes that amendment would be offered in this committee [rather than waiting to offer it in the House Judiciary Standing Committee].

Number 1794

MR. KING responded that he believes that amendment "further states the already stated intent of the statute." In response to a previous insinuation that the statute is not challenged, he noted that it is actually challenged all the time; a lot of law suits are regularly filed and the court system "battles regarding this statute." He added, "That's why this Fairbanks statute came out; there's a lot of very creative attorneys out there who are very smart and have a great way of interpreting or - in my opinion - misinterpreting what the intents are of these different statutes." He opined that simplification of the statute is imperative.

CHAIR WEYHRAUCH explained he thinks the intent of the committee is to "take this and just make it sure that - boom: you write a bad check; you're paying a \$30 fee; we're waiving the necessity of requiring that you prove what costs are in collection of that fee; and, by golly, if you want to waive it, that's in your discretion. We're giving that discretion to the defendant ...; this is not up to the plaintiff to decide whether they want to waive the justifications of cost or not."

Number 1845

MR. KING responded that he doesn't want to end up in a situation where a debate ensues over why one defendant was discretionarily excused [from paying the fee], while another was not, and whether or not a merchant is being fair in his/her business practice.

CHAIR WEYHRAUCH offered to broaden the language.

MR. KING stated, "I think as soon as we allow the word discretion, we open up for discrimination."

Number 1860

CHAIR WEYHRAUCH recrafted [Amendment 1] to read as follows:

Page 1, line 11

Between "plus" and "\$30"

Insert "a"

After "\$30"

Insert the following:

"fee, but the plaintiff may waive the collection of any fee."

CHAIR WEYHRAUCH reiterated that he doesn't want anyone to say he/she has to charge [the fee].

REPRESENTATIVE HOLM suggested [Mr. King] made a good point that "you then would lay yourself open for discrimination, because you may or may not."

Number 1942

REPRESENTATIVE GRUENBERG, on that point, indicated that a person can always find fault with a merchant, and he said, "You can't guard against that."

MR. KING added the following:

We have gone to great lengths to determine what language changes ... we would make or how we would perceive this through our experience in the court systems. And the words that are in the statute currently do read, "the plaintiff may recover". That specific statement right there ensures that there is no requirement to recover those costs and, therefore, no language change would be necessary.

CHAIR WEYHRAUCH noted that it doesn't say that the plaintiff may "waive it too."

MR. KING noted that by simply saying that "it may not recover, it may not recover." He urged that the committee not change the language.

Number 1982

REPRESENTATIVE SEATON indicated that he agreed with Chair Weyhrauch. He said he would like to see clarification that the merchant has the ability to waive the fee, which would be better than trying to interpret "where the 'may' is in this." He offered examples.

Number 2055

MR. WRIGHT directed the committee's attention to [paragraph (1)], beginning on page 1, line 8, which read as follows:

(1) the plaintiff makes a written demand for payment of the check at least 15 days before beginning the action; and

MR. WRIGHT said that if a plaintiff decides not to send that letter, then in actuality the plaintiff is saying that he/she is waiving the fee.

REPRESENTATIVE SEATON said he interprets it to mean that "you're waiving recovery of the money - of the amount of the check, as well." He indicated that his problem is that the use of the word "may" is "covering both sections and not clearly allowing the merchants to waive the fee."

Number 2087

REPRESENTATIVE GRUENBERG brought attention to [page 1, line 4] and the language, "a check that is dishonored". He noted that a person could conceivably have a check that's dishonored through a fault of the bank, rather than a fault of the customer.

MR. KING confirmed that that happens, but the bank absorbs the fee in many instances because it wants the consumer [to continue banking there].

[Discussion of Amendment 1 was momentarily set aside.]

REPRESENTATIVE GRUENBERG turned attention to page 1, lines 9-10, where it reads "beginning the action" and "action begins". He said "beginning" an action could be subject to a different interpretation.

Number 2150

REPRESENTATIVE GRUENBERG offered [Conceptual Amendment 2] as follows:

Page 1, line 9

Delete "beginning"
Insert "commencing"

Page 1, line 10

Delete "begins"
Insert "commences"

REPRESENTATIVE GRUENBERG clarified that this language specifically speaks to the filing of the lawsuit. In response to a request for further clarification, he said he would leave it to the drafters whether to say on line 10 that "the action commences" or "the action is commenced".

Number 2210

CHAIR WEYHRAUCH announced that there being no objection, [Conceptual Amendment 2] was adopted.

Number 2234

CHAIR WEYHRAUCH moved to adopt Amendment 1 [text provided previously]. He asked if there was any objection. He told Mr. King, "By the time this gets to [the House Judiciary Standing Committee], if you have an issue, pick that up there with them - they can 'lawyer it'."

[The committee treated Amendment 1 as adopted.]

Number 2252

REPRESENTATIVE LYNN returned to the previous comment that sometimes banks make the error and some banks absorb [the fee in that case]. He said, "This is a case where neither the check payor or the merchant is at fault, but it's a burden on both." He asked if there is anything that can be done to mandate that the bank would absorb this charge.

CHAIR WEYHRAUCH responded that he is not certain whether that would fall under the banking statutes, or where [it would be addressed]. He suggested that it may be beyond the scope of [HB 516] to get into that issue.

REPRESENTATIVE GRUENBERG indicated that he would not oppose an amendment addressing the issue [of ensuring that the bank pays the fee when it is at fault]. He commented that the bill has "a ways to go."

CHAIR WEYHRAUCH asked that the committee "not deal with that in this bill."

REPRESENTATIVE GRUENBERG indicated that he would pursue the issue [in the House Judiciary Standing Committee].

Number 2313

REPRESENTATIVE HOLM moved to report HB 516, as amended, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 516(STA) was reported out of the House State Affairs Standing Committee.

HB 423-TAXICAB DRIVER LIABILITY

Number 2340

CHAIR WEYHRAUCH announced that the next order of business was HOUSE BILL NO. 423, "An Act relating to accidents involving the vehicle of a person under the influence of an alcoholic beverage; and providing for an effective date."

Number 2356

JIM SHINE, Staff to Representative Tom Anderson, Alaska State Legislature, on behalf of Representative Anderson, sponsor of HB 423, offered a summary of the introduction to the bill he read to the committee at the previous hearing on March 2, 2004. He stated that HB 423 is a Good Samaritan bill for taxicab operators who transport an intoxicated person by driving that person's vehicle to his/her home or other directed location. The proposed legislation would be a deterrent to those who would otherwise drive impaired if unable to find an alternative method of transportation. The bill would grant taxicab companies legal immunity in the event that an accident occurs, except in the case of recklessness, gross negligence or intentional misconduct.

TAPE 04-29, SIDE B

Number 2348

REPRESENTATIVE HOLM moved to adopt the committee substitute (CS) for HB 423, Version 23-LS1600\D, Luckhaupt, 3/3/04, as a work draft. There being no objection, Version D was before the committee.

Number 2315

MR. SHINE highlighted the changes made to HB 423 [in Version D], as noted in a handout to the committee [available in the

committee packet]. The first change was on page 1, line 11, where the phrase, "in the course and scope of employment" was inserted after the phrase, "a person employed". He explained that this language was added to clarify that the driver must be currently working for the taxicab company at the time of the accident. The second change occurred on page 2, [lines 1-2], where the phrase, "inhalant, or controlled substance" was inserted after "alcoholic beverage,". Mr. Shine note that this change conforms to the definition given in AS 28.35.030. The third change made on page 2, [lines 3-4] was to add the phrase, "or designated residential location" after the phrase "owner's residence". He said this clarification was made so that people would not abuse the service by having taxicab drivers take them to another bar.

Number 2270

REPRESENTATIVE HOLM asked why the word "dwelling" was not used instead.

MR. SHINE explained that the words chosen were discussed in a meeting with Representative Gruenberg and staff. Notwithstanding that, he indicated there would be no objection to [using the word "dwelling"].

REPRESENTATIVE HOLM indicated that the word dwelling had been used during discussion of another bill dealing with carbon monoxide.

Number 2245

REPRESENTATIVE GRUENBERG remarked that usually the word "residence" would be used, because it is more of a location, while "dwelling" refers to the building itself. He noted that "designated residential location" would include an adjacent street and is a "reasonable drafting choice."

Number 2200

MR. SHINE turned to [Amendment 1], recommended by Legislative Legal and Research Services: On page 2, line 4, after the words "vehicle owner" insert the words "or operator". He explained that the intent of that is so the person [making the request] doesn't have to be the owner of the vehicle.

Number 2183

REPRESENTATIVE GRUENBERG moved to adopt Amendment 1.

REPRESENTATIVE HOLM suggested that the word "or" is not necessary.

REPRESENTATIVE GRUENBERG said he would leave the word "or" in, because conceptually, a person would not say "motor vehicle operator". He asked that Amendment 1 be a conceptual amendment.

CHAIR WEYHRAUCH noted that the phrase "motor vehicle owner or operator" is used on page 2, lines 6-7.

Number 2110

CHAIR WEYHRAUCH asked if there were any further objections to Conceptual Amendment 1.

Number 2099

REPRESENTATIVE SEATON said he is not opposing the idea, but he thinks that there may be ramifications having to do with insurance. He indicated there could be some question regarding whether a person driving someone else's vehicle is covered under insurance.

Number 2089

REPRESENTATIVE HOLM asked if Representative Seaton was referring to "uninsured motorists." He indicated that with his own State Farm insurance coverage, he is insured in any vehicle. For example, if he rents a car in California, he doesn't have to pay the extra insurance coverage, because he is insured under his policy. He said he doesn't know what other folks do with other policies.

REPRESENTATIVE GRUENBERG said, "I think he's talking about the opposite."

Number 2058

REPRESENTATIVE SEATON stated that his concern is in regard to remembering that the intent of "this" is just to protect somebody's property. He said he worries about "the liability incurring."

Number 2018

CHAIR WEYHRAUCH noted that he has an amendment that he "was going to offer," having to do with offering some kind of immunity so that "somehow, if somebody's harmed, ... there's some way you get coverage of this."

Number 2000

REPRESENTATIVE SEATON said he would remove his objection. He explained that adding the word ["or"] "raises a larger point than just adding the word operator in there." He said he just wanted to make that point.

[Amendment 1 was treated as adopted.]

Number 1951

REPRESENTATIVE GRUENBERG stated that this is an interesting situation because multiple parties are involved: the person who is drunk, the cab company, the cab driver, the owner of the vehicle, and the injured person. The situation can be examined from various points of view. He noted that two different vehicles would be involved. Representative Gruenberg said, "You have to look at Frank Dahl's letter to really understand it." He continued as follows:

We have a situation where the drunk is being separated from the vehicle, and the rescuer comes in a cab as a cab driver, and there's a passenger in the cab ..., and it's another cab driver who drives the vehicle home. We're not talking about the situation where the drunk is in the back of the cab. That person is clearly covered, and it's not within this bill. We're talking about the second trip. And the reason we're talking about the second trip, as I understand it, is ... cabbie number two - her insurance doesn't cover her unless she's driving the cab.

That's the purpose of the bill. It's ... a potentially uninsured situation, where the second cabbie is driving the drunk's vehicle only - and this is the Seaton situation. The vehicle may not belong to the drunk; it may belong to the drunk's parents, or cousin, or buddy. However, back to the hierarchy here, we've got the innocent pedestrian here who's wiped out by the ... car belonging to the wife or the cousin, driven by another cabbie who's not covered by

insurance. And that is where we are in this factual scenario. Am I not right?

Number 1879

MR. SHINE answered that's correct.

Number 1870

REPRESENTATIVE GRUENBERG stated that this is a situation where the whole program - which is a good one - can fail because of "the nail in the horseshoe." If cabbie number two isn't covered, he said, the cab companies won't participate in the program. If they don't participate by giving the bars a reasonable break on the price, he continued, the bars won't participate and the drunk gets behind the wheel. In response to a remark by Representative Seaton, he added that another party involved would be the bar owner.

Number 1836

REPRESENTATIVE SEATON asked if it has been fully established that the cab insurance does not cover the cab driver.

Number 1831

MR. SHINE noted that there are 162 taxicabs operating in "the Anchorage bowl." He explained that they are independent operators. The cab companies are dispatchers that "contract out" to the independent cab drivers who own their own vehicles and take out their own liability insurance. He said the insurance only covers the drivers under "that one vehicle." He mentioned he has copies available of the municipal code.

Number 1799

REPRESENTATIVE HOLM asked what the situation is in other parts of the state.

Number 1783

REPRESENTATIVE SEATON noted that Representative Holm, for example, had previously stated that his insurance policy covers him in whatever vehicle he drives. He indicated that this [kind of coverage] may be a cheap way to get around "this uninsured and this policy," so that the person who is participating just has to have the rider on his/her insurance. He said, "Maybe

it's going to have to be another two dollars or something on there to compensate for that insurance." He clarified that he would be much more comfortable with a solution that builds in protections for the potential victim."

Number 1734

MR. SHINE commented that Mr. Lessmeier represents the insurance industry and had indicated that he would be able to testify regarding some of the liability issues. He also noted that both Mr. Dahl and Mr. Pattee are available to answer questions.

Number 1700

JOHN PATTEE told the committee that as a board member of Anchorage CHARR [Cabaret Hotel Restaurant & Retailers Association], the Downtown Community Council, Anchorage, and the Anchorage Downtown Partnership, he could speak for all three organizations. He noted that he has owned a couple of nightclubs in downtown Anchorage for over 20 years. He stated his support of [HB 423]. Referring to the previous discussion regarding [all the people who would need to be covered by insurance], he noted that the administrator of the program would have to be covered also. Turning to the program itself, he said it is a great one. He noted that one of the simple, if not justifiable reasons that people drink and drive is that they need their cars. A person may need his/her vehicle the next morning to get to work, or may worry that it will be towed or vandalized. He indicated that a "no-brainer" program like this, which would be free to the customer, would make a significant mark in reducing the number of occurrences of people driving under the influence (DUI). He said he understands that there [are concerns regarding] liability; however, he stated that [HB 423] is a Good Samaritan law with good intent. He cautioned nitpicking the bill to death and encouraged the committee to just "do it."

Number 1551

REPRESENTATIVE GRUENBERG assured Mr. Pattee that the committee's intent was not to nitpick the bill to death, but to ensure that the bill is properly drafted to avoid causing more litigation later. He asked Mr. Pattee if CHARR or the industry would be hiring an administrator to work on this program.

MR. PATTEE said Anchorage CHARR will run the program. In response to a question from Chair Weyhrauch, he opined that if

Fairbanks wants to run such a program, it has the ability to do so.

Number 1499

REPRESENTATIVE GRUENBERG stated that if an industry group is going to be running this program, then the committee needs to consider the language on page 2, lines 9-11, which immunizes those who are licensed. He pointed out that CHARR and its employees are not licensed. He opined that if [those employees] could be "a target defended in this," then the committee needs to add a provision that immunizes them.

MR. PATTEE concurred. He said it doesn't have to be CHARR; any organization could run the program. He said, "When it first started four years ago, it was the Anchorage Downtown Partnership ... that was going to run this program." He said, for example, that Mothers Against Drunk Driving (MADD) could run the program. Whatever language is put in the bill needs to be vague, so that whoever decides to administer the program can do so without being held liable, he concluded.

Number 1446

REPRESENTATIVE GRUENBERG said that would require another section of the bill, or an amendment to subsection (b).

Number 1425

FRANK DAHL told the committee that he is past-president of Anchorage CHARR and owner of Blues Central at the Chef's Inn. He stated his support of HB 423. He stated that most of what he had to say to the committee had been sent in a letter [included in the committee packet]. He posited that [HB 423] really is an opportunity to do something proactive and positive about an ongoing problem, and it is an idea that stands a good chance of working. He said, "It kind of gets us away from just more and more punishment that has not worked in the past." He stated, "We're there to watch out for our friends and patrons and this gives us the tool to do so." He urged the committee to pass the bill.

Number 1376

BRENT FRASER, Transportation Inspector, Municipality of Anchorage, told the committee that he directs the department of the municipality that regulates the taxicabs, the limousines,

and the chauffeurs of those vehicles. In response to a question from Representative Gruenberg, he stated his understanding that the municipality will not have any direct participation in the program. He imparted [the municipality's] concern that the legislation does not "put any undue burden upon the chauffeur." He added that he thinks that the organizations that are in place seem to be very capable of effectively administering the program.

REPRESENTATIVE GRUENBERG asked if Mr. Fraser thinks the municipality needs to be immunized, too.

MR. FRASER answered no, to the best of his knowledge. He reminded the committee that the taxicabs in Anchorage are all privately owned and operated and the municipality simply issues the permits. He surmised that that's not to say that an enterprising attorney couldn't attempt to "get into the municipality's pockets" if there was a lawsuit, but he noted that that has never happened.

Number 1254

MICHAEL LESSMEIER, Attorney at Law, Lessmeier & Winters, Lobbyist for State Farm Insurance Company ("State Farm"), told the committee that he has practiced law in the state for 25 years, and most of his work as a practicing lawyer has been doing litigation work. He said State Farm thinks the bill is a great idea. He said there are some solutions to the legitimate concerns raised by Representatives Seaton and Gruenberg.

MR. LESSMEIER stated he thinks the concerns that have been heard thus far fall into two categories: The first category has to do with how to "protect an innocent victim who would no longer have a remedy against somebody that's driving a vehicle, because they're immunized by this bill." He offered a recommendation to the committee that the insurance that is on a vehicle [would] "go with the driver of that vehicle as a permissive user." He offered his understanding that Representative Gruenberg has drafted "something to that effect." He said he hasn't talked about this issue with other members of the industry; however, he stated he thinks it's something they would support, because the risk to the industry is a lot less if a sober professional is delivering the vehicle than it would be if an intoxicated or impaired person were to get behind the wheel. He emphasized that State Farm Insurance would certainly support that.

MR. LESSMEIER noted the second thing that should be done is to ensure that the vehicle isn't uninsured or underinsured, or "would be treated that way." He gave an example of a vehicle not being insured, but the person injured having uninsured/underinsured motorist coverage, and he indicated that that would be a remedy. He added, "As the bill is written now, I'm not sure that they would have that remedy." He noted that there is a "strong scheme" in the state to make [uninsured/underinsured motorist insurance] available to people.

Number 1136

MR. LESSMEIER turned to a third issue, which he said was previously raised by Representative Gruenberg. He stated that, as a practicing lawyer, he thinks it's important that [the legislature] "immunize to the extent of this bill for negligence" anybody who participates in the administration of this program, because he said he thinks the program will save lives and [prevent] injury.

Number 1087

REPRESENTATIVE SEATON asked if a rider would have to be added to the insurance that the cab drivers generally have, or if that would "normally be included in their insurance policy."

Number 1040

MR. LESSMEIER stated, "The insurance to provide this kind of service is unaffordable for them. And so, we're talking about the insurance that would go with the vehicle." He clarified that he is referring to the insurance that would be on the vehicle of the person who is intoxicated and wants the free ride home. The cab driver would be a permissive user under that vehicle owner's policy. He said he thinks most policies now provide that the insurance applies to a permissive user. He concluded, "So, our suggestion is that we just make these people permissive users." That would avoid the problem of affordability for the taxicab industry, while placing the burden where it should be placed - on the vehicle owner. He stated that it seems to him it's a win-win situation all the way around, because the risk for the intoxicated person is going to be less if they have a sober cab driver delivering that vehicle.

REPRESENTATIVE GRUENBERG offered to work on a new CS over the weekend.

Number 0935

MR. SHINE told Chair Weyhrauch that he would work with Representative Gruenberg.

Number 0928

CHAIR WEYHRAUCH turned to [Conceptual Amendment 2], which would add a new section to read, "The terms of this act shall be repealed on January 1, 2006."

Number 0886

MR. SHINE said the issue of whether to have a sunset included in the language of the bill was brought up at "the last meeting." Also discussed was whether to have a "reporting back to legislature to the effectiveness of the program." He turned to a question previously asked by Representative Holm regarding how many cabs are in locations other [than Anchorage]. He explained that this is a pilot program for the Anchorage area, which is why only Anchorage was looked at [in terms of numbers of cab drivers, for example].

CHAIR WEYHRAUCH remarked that he doesn't want to add a "report to legislature," because it's implicit in the sunset that the legislature will have to [decide] whether to extend [the program] or not.

Number 0840

REPRESENTATIVE SEATON asked if the January 1, 2006, date would "give them one year."

REPRESENTATIVE WEYHRAUCH clarified that it would take effect July 1, 2004, and would be in effect through 2005 [for one and one half years]. He said, "I just arbitrarily picked 2006. It could be 2007. That gives them two years."

Number 0827

REPRESENTATIVE GRUENBERG said he wants to know if "they" want to have a sunset on there. However, if there is a sunset, he suggested that it be at the end of the legislative session, so that the legislature would "have that session, then, to extend it."

Number 0800

CHAIR WEYHRAUCH amended his Conceptual Amendment 2 to read:
"The terms of this act shall be repealed on July 1, 2007."

CHAIR WEYHRAUCH, in response to a question by Representative Lynn, stated his understanding that [the program] is predominately being promoted by groups and individuals [in] Anchorage; however, he said anyone statewide would be able to take advantage of "this provision."

REPRESENTATIVE LYNN asked, "And use the same language?"

CHAIR WEYHRAUCH answered, "Correct."

Number 0737

REPRESENTATIVE HOLM reiterated that he thinks it's appropriate to make statewide policy that can easily be incorporated into other municipalities.

Number 0719

REPRESENTATIVE GRUENBERG asked Mr. Lessmeier if he is aware of any other places that "do this," and whether the insurance industry participates at all in the setting of rates.

Number 0708

MR. LESSMEIER responded that he is not aware of that.

Number 0699

CHAIR WEYHRAUCH moved to adopt Conceptual Amendment 2 [as amended], as previously stated. There being no objection, it was so ordered.

CHAIR WEYHRAUCH stated his understanding that Representative Gruenberg would not be offering his amendments today, but instead would work on amendments with the sponsor and with the cooperation of CHARR and Mr. Lessmeier.

Number 0608

REPRESENTATIVE HOLM noted that Alberta, Canada, has this kind of program, and he is waiting to hear back from Senator Ralph Seekins' daughter who lives in Alberta.

Number 0572

CHAIR WEYHRAUCH announced that HB 423 [was heard and held].

HB 422-BUDGET RESERVE FUND INVESTMENT

Number 0552

CHAIR WEYHRAUCH announced that the last order of business was HOUSE BILL NO. 422, "An Act repealing the special subaccount established in the constitutional budget reserve fund; relating to the powers of the Department of Revenue for the investment of amounts in the constitutional budget reserve fund; and providing for an effective date."

Number 0543

REPRESENTATIVE SEATON moved to adopt the committee substitute (CS) for HB 422, Version 23-LS157\Q, Cook, 3/4/04, as a work draft. [No objection was stated, and Version Q was treated as adopted.]

Number 0450

REPRESENTATIVE GRUENBERG moved Amendment 1 to Version Q.

REPRESENTATIVE HOLM objected.

Number 0398

The committee took an at-ease from 9:37 a.m. to 9:38 a.m.

TAPE 04-30, SIDE A

Number 0001

REPRESENTATIVE GRUENBERG said he wanted to know if Amendment 1 would give the Department of Revenue additional flexibility.

Number 0058

TOMAS H. BOUTIN, Deputy Commissioner, Office of the Commissioner, Department of Revenue, responded that while he has no problem with Amendment 1, it would not really provide additional flexibility. Furthermore, he stated that Version Q, without Amendment 1, would "do just fine," and is worded better than the original bill.

Number 0126

REPRESENTATIVE GRUENBERG withdrew Amendment 1.

Number 0156

REPRESENTATIVE HOLM moved to report CSHB 422, Version 23-LS1527\Q, Cook, 3/4/04, out of committee with individual recommendations [and the accompanying fiscal note].

REPRESENTATIVE SEATON objected for discussion purposes. He turned to the title of Version Q. He asked, "If the special subaccount established in the constitutional budget reserve fund (CBRF) is repealed, does the money automatically flow to the CBR, or does it flow to the general fund?"

Number 0200

MR. BOUTIN stated he is certain it would be part of the CBR. He said the department currently reports the CBR balance, without even delineating the CBR. He explained that the only difference in the subaccount is that it needs to be invested with a five-year minimum time horizon in mind.

REPRESENTATIVE SEATON explained that he wanted it on the record that "this was not a ... CBR draw that we were offering."

Number 0300

REPRESENTATIVE GRUENBERG moved [Amendment 2 to Version Q], a technical amendment that would remove the words, "On July 1, 2004," from page 1, line 7 of Version Q. He explained that since the committee had changed the effective date from "July 1, 2004" in the original bill version to "effective immediately", the July 1, 2004 date in the "TRANSITION" part of the bill was no longer accurate.

MR. BOUTIN concurred.

Number 0339

REPRESENTATIVE HOLM, at the bequest of the chair, withdrew his previously stated motion [as a point of order, so that the committee could address Amendment 2].

REPRESENTATIVE GRUENBERG questioned whether the tense of the word "merge" on page 1, line 8 should be changed.

Number 0374

CHAIR WEYHRAUCH offered his understanding that line 7 would therefore begin with the word "The".

REPRESENTATIVE SEATON asked for clarification on whether the word "TRANSITION" would be deleted.

CHAIR WEYHRAUCH announced that, without objection, the technical [Amendment 2] was so ordered.

Number 0400

REPRESENTATIVE HOLM moved to report CSHB 422, as amended, out of committee with individual recommendations and the accompanying fiscal note. There being no objection, CSHB 422(STA) was reported out of the House State Affairs Standing Committee.

ADJOURNMENT

Number 0449

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 9:46 a.m.