

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

April 7, 2003

1:31 p.m.

MEMBERS PRESENT

Senator Ralph Seekins, Chair
Senator Gene Therriault
Senator Johnny Ellis
Senator Hollis French

MEMBERS ABSENT

Senator Scott Ogan, Vice Chair

COMMITTEE CALENDAR

SENATE BILL NO. 53

"An Act relating to disposition of a traffic offense involving the death of a person; providing for the revocation of driving privileges by a court for a driver convicted of a violation of traffic laws in connection with a fatal motor vehicle or commercial motor vehicle accident; amending Rules 43 and 43.1, Alaska Rules of Administration; and providing for an effective date."

HEARD AND HELD

CS FOR HOUSE BILL NO. 23(JUD)

"An Act relating to court-ordered restitution and compensation following a criminal conviction."

HEARD AND HELD

SENATE BILL NO. 49

"An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

MOVED CSSB 49(STA) OUT OF COMMITTEE

PREVIOUS ACTION

SB 53 - See Transportation minutes dated 2/18/03.

HB 23 - No previous action to consider.

SB 49 - See State Affairs minutes dated 2/20/03 and Judiciary minutes dated 3/17/03.

WITNESS REGISTER

Ms. Karen Sawyer
Staff to Senate Ogan
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Commented on SB 53 for the sponsor.

Ms. Anne Carpeneti
Criminal Division
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Commented on SB 53 and HB 23.

Ms. Nancy Campbell
No address provided

POSITION STATEMENT: Supported SB 53

Representative Bruce Weyhrauch
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of HB 23.

Mr. Riley Woodford, Former President
Alaska Folk Festival
Juneau AK

POSITION STATEMENT: Commented on HB 23.

Ms. Pam LaBolle, President
Alaska State Chamber of Commerce
217 2nd Street
Juneau AK 99801

POSITION STATEMENT: Supported HB 23.

ACTION NARRATIVE

TAPE 03-19, SIDE A

SB 53-REVOKE DRIVER'S LIC. FOR FATAL ACCIDENT

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at 1:31 p.m. Present were Senators Therriault, French and Chair Seekins. Senator Ellis arrived shortly thereafter. He announced SB 53 to be up for consideration.

MS. KAREN SAWYER, Staff to Senator Ogan, sponsor of SB 53, explained that this relates to circumstances where there is a true link between violating a traffic law and contributing to the death of someone. It allows courts to revoke an individual's license to drive if they caused someone's death.

Page 2, lines 11 - 12 allows the court the discretion of revoking the license for up to three years. Notwithstanding, SB 53 proposes that a person could get a limited license for the entire period if he or she convinces the court that their livelihood depends on having a license.

SENATOR ELLIS arrived at 1:35 p.m.

SENATOR THERRIAULT clarified that current law already revokes the license of someone who is drinking and has a traffic violation.

SENATOR FRENCH asked if this action would require a district court trial.

MS. SAWYER replied that it would. She understood that whenever there is a death of an individual, that person has the right to a jury trial.

SENATOR FRENCH said that this has more to do with taking away a driver's license, because as it stands now, you could kill someone in an accident and you might only be cited for negligent driving. You could sign the ticket, send in your fine, never appear in court and not lose your license and that's what this bill proposes to address.

SENATOR THERRIAULT asked why the current point system doesn't allow this to be done.

MS. ANNE CARPENETI, Criminal Division, Department of Law, said the infractions they are talking about wouldn't cost enough points to justify a loss of license, unless it was negligent driving on top of prior bad driving citations.

SENATOR THERRIAULT asked why they couldn't change the point system.

MS. CARPENETI replied no thought has been given to revising the point system. The purpose is to make a direct connection between a traffic violation that kills someone and loss of a license by a more direct route than the point system.

SENATOR SEEKINS asked if the more indirect route involving the point system requires a jury trial.

MS. CARPENETI replied, "Yes, whenever there is a possibility of loss of a valuable license like a driver's license, a person has the right to a jury trial and court appointed counsel."

SENATOR FRENCH asked if that is correct, because you don't have the right to a trial for a speeding ticket and speeding points can cause you to loose your license.

SENATOR THERRIAULT asked if using "may" on page 2 reflected the intent to see that a mother that picks up her children from soccer and hits some black ice and accidentally kills one of them loses her license in addition to the life of her child.

MS. SAWYER replied this bill gives the court the right to look at the circumstance surrounding the accident. The person's driving record and the violation would have significance.

MS. NANCY CAMPBELL said she and her husband lost their son in an auto accident in 1994. He was hit head-on by a man that swerved around a car that was turning. Six people were involved in the accident and six lawyers represented the six different insurance companies. One lawyer tried to get a misdemeanor and she and her husband went to traffic court to testify, but state law tied the judge's hands. Other people have talked to them about similar experiences with the system's shortfalls. The driver got a slap on the wrist and 300 hours of community service; he didn't lose his license and was subsequently involved in another accident in which two more people were killed. "As far as I know, he is still driving at this point."

SENATOR FRENCH said he would like to have a discussion regarding adding "serious physical injury" to the statute.

CHAIR SEEKINS said okay and that they would hold another hearing on it.

HB 23-RESTITUTION FOR CRIME VICTIMS

CHAIR SEEKINS announced HB 23 to be up for consideration.

REPRESENTATIVE BRUCE WEYHRAUCH, sponsor of HB 23, said he introduced the legislation to overturn a Court of Appeals decision. He explained that the treasurer of the Alaska Folk

Festival embezzled money from the non-profit corporation. When the new treasurer went to the police, they told him they did not have the resources to investigate. The Folk Festival spent hundreds of hours and dollars to follow the paper trail for the police, who then submitted it to the district attorney. The treasurer was convicted of theft and during sentencing the judge said he would have to pay back the time and effort expended by the volunteers. On appeal, the Court of Appeals indicated that the Legislature did not intend the restitution statutes to be read broadly enough to compensate volunteers of non-profits for their time, money and effort in uncovering a crime. They appealed to the Alaska Supreme Court and the divided court wanted to hear the appeal. Part of the ruling by the dissenting judges indicated that many other citizens and organizations will be affected by this ruling. The District Attorney indicated that they wanted legislation to address this appeal's court decision.

HB 23 would allow a non-profit to come to a court as the victim and specify the value of the time and effort incurred so the court could direct the defendant to reimburse the victim. The bold-faced language in the amended version of the bill makes it clear that the non-profit is the victim, not the individual volunteers that did the service. This language was developed by the Department of Law, the Public Defender's Office and the court system.

If the volunteer presents a reasonable bill to the non-profit for reimbursement, that can go in turn to the sentencing judge, so that the sentencing judge has a rational basis for providing the compensation to the non-profit to make its compensation decisions later on.

SENATOR FRENCH asked if volunteer labor and services are generally a subject of restitution in law.

REPRESENTATIVE WEYHRAUCH replied that wasn't intended in this bill. "This bill was meant to be narrow to address the specific facts of the Demers case where you have a non-profit that is the victim..."

SENATOR THERRIault asked if he is limited to damages or loss (page 2, line11) as an individual if he expends hours of time to provide information to the court.

REPRESENTATIVE WEYHRAUCH replied that would be the case, if he were a victim of a crime. "There is no intent to change that at all."

SENATOR FRENCH said that judges are often reluctant to grant restitution for the hours anyone spends taking their car to the body shop and picking it up or lost wages, for instance. "They usually want to see a receipt."

1:55 p.m.

MR. RILEY WOODFORD, former president of the Alaska Folk Festival, reiterated the story. The police made it clear that their focus was violent crime and public protection. White-collar crime tends to be a fairly low priority. So, in situations like this, it falls upon the board of the non-profit to do most of the investigative work, which takes away from the mission and the reason the people volunteered. In the end, they tallied up the amount of time they spent and picked what they thought was fair compensation to the festival, not to the individuals to help make right some of the impact of the crime. He thought this was a fair bill that would help compensate non-profits that are victimized by this same kind of white-collar crime.

SENATOR THERRIAULT asked if the group hired an accountant to quantify the amount of the embezzlement and was that a compensatable expense or would that come under loss.

CHAIR SEEKINS responded that, if his company's accounting department quantified an amount of embezzlement, more than likely he wouldn't be able to recover that internal time, but if he hired an accounting firm to do it, that would be a direct expense related to the crime and he would be able to claim that. He asked Senator French's opinion.

SENATOR FRENCH said this was a fuzzy area. In a \$100,000 bank embezzlement that he was familiar with, he doubted that the person would be charged with all the investigative costs. He asked if the festival was receiving any money from the Mr. Demers.

MR. WOODFORD replied they were receiving money and it would probably be paid back over a five-year period. He added that Judge Collins said she would have included the costs if the statute were more clear-cut.

Non-profits are in a little different situation than a business in that they are completely volunteer and there is a tremendous amount of trust and cooperation involved in the board members who sometimes handle quite a bit of money. Most of the time the checks and balances are very easy to subvert.

SENATOR FRENCH said they could change a few words on page 2 and treat everyone the same. You could say, "including compensation to a victim for the value of labor and goods if the labor and goods were necessary to alleviate or mitigate the effects of the crime."

REPRESENTATIVE WEYHRAUCH said he originally wanted this bill to be broad, but the court has the ability under (2) to address the financial burden placed on the victim and those who provide services to the victim and other persons...

The reason this language was put in specific to a non-profit was to address this particular issue and, two, without it, it loses a broader base of support from the administration and creates all kinds of legal issues.

It is intended to allow the individuals that Senator Therriault is talking about to already be compensated under this provision of the statute. This just reverses the Court of Appeals to make sure that a non-profit that has volunteer effort and expenses expended can recover, which right now is prohibited under our case law.

SENATOR FRENCH asked if anyone suggested that it would be illegal or unconstitutional to have volunteer labor repaid through a restitution award.

REPRESENTATIVE WEYHRAUCH replied no, because the intent is to make sure that a court can order it if it can be substantiated by a preponderance of evidence.

MS. PAM LABOLLE, President, Alaska State Chamber of Commerce, said they recently suffered embezzlement and didn't have the ability to determine the extent of their loss through volunteer efforts. They hired an accountant, which will cost an additional \$10,000. The chamber sees the value of this legislation for non-profits, because they know what the expense is.

CHAIR SEEKINS said that a lot of non-profits are too small to have many checks and balances and he can see why they want to

have volunteer time counted. It has intrinsic value and the court should be able to make a value determination in terms of restitution. The question now is do they want to bring a not-for-profit organization under the same bill.

MS. ANNE CARPENETI, Department of Law, said she wasn't as familiar with the bill as she would like to be, but restitution is hard for judges, prosecutors and defense lawyers. Limiting it to non-profits was a beginning point.

SENATOR THERRIAULT wanted to know if this bill gives non-profits something that private individuals and businesses don't currently enjoy.

MS. CARPENETI replied she thought they were and asked the sponsor.

REPRESENTATIVE WEYHRAUCH responded that wasn't what he said.

CHAIR SEEKINS said that would need to be clarified.

SENATOR THERRIAULT said that perhaps the policy call is whether the benefit society gets out of non-profits matches that special treatment.

TAPE 03-19, SIDE B

CHAIR SEEKINS closed testimony and said he would hold the bill for further work.

CHAIR SEEKINS announced that the sponsor of SB 59 asked to hold the bill.

SB 49-2003 REVISOR'S BILL

CHAIR SEEKINS announced SB 49 to be up for consideration.

SENATOR ELLIS moved to pass SB 49 from committee with individual recommendations. There was no objection and it was so ordered.

CHAIR SEEKINS adjourned the meeting at 2:24 p.m.