

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

May 5, 2003

1:07 p.m.

MEMBERS PRESENT

Senator Ralph Seekins, Chair
Senator Scott Ogan, Vice Chair
Senator Gene Therriault
Senator Johnny Ellis
Senator Hollis French

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 177(STA)

"An Act relating to concealed handguns."

MOVED CSSHB 177(STA) OUT OF COMMITTEE

SENATE BILL NO. 176

"An Act relating to civil liability for injuries or death resulting from livestock activities."

MOVED CSSB 176(JUD) OUT OF COMMITTEE

SENATE BILL NO. 175

"An Act relating to civil liability for commercial recreational activities and for guest passengers on an aircraft or watercraft; and providing for an effective date."

HEARD AND HELD

CS FOR HOUSE BILL NO. 114(JUD)(title am)

"An Act relating to the issuance of a search warrant upon the sworn testimony or affidavit of a person communicated by telephone, other appropriate means, or facsimile machine."

MOVED CSHB 114(JUD)(title am) OUT OF COMMITTEE

PREVIOUS ACTION

HB 177 - No previous action to record.

SB 176 - See Labor and Commerce minutes dated 4/29/03.

SB 175 - See Labor and Commerce minutes dated 4/29/03.

HB 114 - See State Affairs minutes dated 4/15/03 and Judiciary minutes dated 5/2/03 and 5/3/03.

WITNESS REGISTER

Ms. Barbara Bitney
Staff to Representative Bill Stoltze
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Commented on HB 177.

Representative Bill Stoltze
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of HB 177.

Mr. Brian Judy
National Rifle Association (NRA)
555 Capitol Mall Suite 625
Sacramento, CA 95814
POSITION STATEMENT: Supported HB 177.

Mr. Jim Douglas
Cooperative Extension Service, 4-H
University of Alaska
3032 Vintage Park
Juneau AK 99801
POSITION STATEMENT: Commented on SB 176.

Mr. Brian Hove
Staff to Senator Seekins
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Commented on SB 175.

Mr. Doug Wooliver, Administrative Attorney
Alaska Court System
303 K St.
Anchorage, AK 99501-2084
POSITION STATEMENT: Commented on HB 114.

ACTION NARRATIVE

TAPE 03-37, SIDE A

CSSSHB 177(STA) -CONCEALED HANDGUNS

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at 1:07 p.m. Present were Senators

Therriault, French and Chair Seekins. The first order of business to come before the committee was HB 177.

MS. BARBARA BITNEY, staff to Representative Bill Stoltze, sponsor of HB 177, said this was similar to SB 152, except that on line 14, "that have the legal authority to enter into such agreements" is inserted. HB 177 creates concealed carry permits to allow for recognition in all other states. It corrects a situation that was created with 2002 legislation where Texas couldn't recognize Alaska's concealed carry permits.

SENATOR FRENCH asked if there are any other states that don't have reciprocity agreements.

MS. BITNEY said Alaska has created reciprocity agreements with states that have statutes that are similar or identical to ours, but we haven't established reciprocity agreements with all states.

REPRESENTATIVE STOLTZE added it isn't possible to have a reciprocity agreement with states that don't have concealed carry or reciprocity laws.

SENATOR FRENCH asked for a breakdown of the states.

REPRESENTATIVE STOLTZE agreed he would get that for him.

MR. BRIAN JUDY, National Rifle Association, informed members that about 26 states have some form of reciprocity, but some states need to have an agreement with the Alaska Department of Public Safety (DPS) for Alaska permits to be recognized - even though Alaska recognizes all permits. He said that's why there's a second section of the bill.

SENATOR FRENCH asked what other states have taken issue with Alaska in light of our current law.

SENATOR OGAN arrived at 1:46 p.m.

MR. JUDY said none and SB 242 (last session) opened up the reciprocity issue. Only Texas requires an agreement with DPS because Alaska law is more restrictive than theirs.

SENATOR THERRIAULT moved to pass CSSH B 177(STA) from committee with individual recommendations and attached fiscal note. SENATOR French objected.

CHAIR SEEKINS called for a roll call. The motion passed with Senators Ogan, Therriault and Seekins voting yea and Senator French voting nay. CSSSHB 177(STA) passed from committee.
1:19 - 1:26 p.m. - at ease

SB 176-CIVIL LIABILITY FOR LIVESTOCK ACTIVITIES

CHAIR SEEKINS announced SB 176 to be up for consideration.

SENATOR THERRIAULT made a motion to adopt amendment 1 to insert "domestic" before "cow", "bison", "musk ox" and "elk" on page 4, to insert "legally possessed" before "caribou" and on line 21 to delete "duck or" before "alpaca" and insert "or water fowl, which does not require a federal permit". He wanted the amendment to be conceptual because he didn't know whether the drafter would want to repeat the word domestic. There was no objection and it was so adopted.

MR. JIM DOUGLAS, Cooperative Extension Service, State 4-H Office, said he has also worked with domestic livestock as an agricultural agent for the last 30 years. 4-H has good liability coverage for the leaders, but when kids want to go to a livestock judging contest to make a comparison of animals they have not seen before, they put those owners in the contentious position of having to decide whether they want the kids on their property or not. What happens if the kid gets hurt - whether it's a rabbit bite or a horse kick?

Another very contentious problem is for veterinarians in the state. They cannot come on your property and ask you to hold your rabbit while they check it. If your rabbit bites you, the veterinarian becomes liable. Working with a 1,200 lb. horse would then require a vet and his assistant. Now more vets are refusing to treat horses simply because of the liability insurance. In the course of treatment it's not uncommon for the vet to inflict some pain causing the animal to strike out.

SB 176 just raises the level of proof to avoid frivolous lawsuits. Many of the small Mat-Su farmers would be put out of business with just one situation like this.

SENATOR THERRIAULT asked if there would be a problem with deleting parades from the list of livestock activities listed on page 4, line 25. He thought a horse in a parade might bolt if spooked and the watchers are subject to limited liability without knowing it.

SENATOR OGAN asked if it was simple negligence when a person lets an inexperienced young person ride a spirited horse.

SENATOR FRENCH replied that would be negligent entrustment.

CHAIR SEEKINS pointed out language on page 3, line 16, that said: "...the failure of a livestock activity sponsored by professionals to make a reasonable and prudent effort to determine the ability of the participant to safely manage the livestock activity."

MR. DOUGLAS explained that liability issues have arisen when they did not bother to ask about the experience of the rider to see if they were capable of handling a horse.

SENATOR ELLIS arrived at 1:39 p.m.

SENATOR OGAN pointed out that language on page 3, line 3, covered livestock participants, but not livestock owners.

CHAIR SEEKINS replied if you're a livestock owner, under this bill, you would be a livestock activity sponsor.

SENATOR THERRIAULT moved amendment 2 to exclude parades on page 4, line 25. There was no objection and it was so ordered.

SENATOR THERRIAULT asked if there was a section about transportation of animals. He wanted to know if an individual was choosing to take part in a livestock activity if they approached a horse van parked in a town.

CHAIR SEEKINS said he thought the bill referred to people that place themselves in proximity to livestock for any reason involving an activity.

SENATOR THERRIAULT made a motion to adopt amendment 3 to insert "knowingly" on page 2, line 28, to clarify that. There was no objection and amendment 3 was adopted.

SENATOR FRENCH said he was thinking about trailer hitches and how this might affect a person pulling his horses in a trailer with a passenger in his car. The trailer isn't hooked up right and it comes off killing the passenger. Is the passenger not able to recover because he knowingly put himself in the vicinity of a livestock activity (trailer horses)?

CHAIR SEEKINS replied that he didn't anticipate that to be the case. He thought it would be grossly negligent to not hook a trailer up right. He noted language on page 3, line 12, said if a person knows "equipment, tack or other product provided by the activities' sponsor" is defective, that would be exempt from this bill.

SENATOR THERRIAULT asked what activity traveling was intended to cover, transport to and from a rodeo?

CHAIR SEEKINS answered that it was common to take your horse to a fair and rodeos, etc. and contestants often ride with the owner of the trailer.

SENATOR THERRIAULT moved to pass CSSB 176(JUD) from committee with individual recommendations. There were no objections and it was so ordered.

SB 175-LIABILITY:RECREATIONAL ACTIVITY/BOATS

CHAIR SEEKINS announced SB 175 to be up for consideration.

MR. BRIAN HOVE, staff to Senator Seekins, sponsor, said that liability insurance is a significant cost to existing outdoor activity enterprises and presents a significant barrier for new businesses entering this industry. SB 175 delineates the burden of responsibility for the commercial recreation business as well as the person who elects to participate in that recreational activity. Commercial businesses are responsible for meeting safety standards and providing trained and competent personnel. Without exception, participation in outdoor activities carries a degree of inherent risk. This legislation would decrease uncertainties regarding the legal responsibilities for injuries and encourage the responsible businesses that offer these activities to the public. This bill would help avoid unfair and unreasonable claims that are closely identified with the Alaskan lifestyle and have come to be expected by visitors looking for exceptional experiences.

SENATOR THERRIAULT moved to adopt CSSB 175(JUD), version Q, which adds "skateboarding" to a lengthy list of activities. There were no objections and it was so ordered.

SENATOR OGAN asked if this was a replication of Senator Bunde's bill they already passed.

MR. HOVE asked the drafter how this interfaces with Senator Bunde's bill. He assured Mr. Hove that there was no overlap.

SENATOR ELLIS still wanted to know what the interplay was with the Bunde language.

MR. HOVE replied that Senator Bunde's bill covered non-commercial activities; this one covers commercial. He said the sponsor statement was incorrect.

SENATOR FRENCH asked what the effective date was.

SENATOR OGAN said he was concerned that good people were hired to be guides for things like white water rafting.

CHAIR SEEKINS noted that language on page 3, lines 4 - 5, says this does not apply to a civil action based on negligence of a provider.

SENATOR OGAN asked if negligence isn't what people always sue for and what are they accomplishing by passing this bill.

CHAIR SEEKINS replied that it limits liability to the extent that someone can show that there is no negligence and that the person accepts the inherent risk of the activity.

TAPE 03-37, SIDE B

SENATOR THERRIAULT noted that the list of sports or recreational activities on page 3, line 28, doesn't include boxing contests and wanted to know why.

SENATOR FRENCH said that bungee jumping and paragliding crossed his mind as other activities.

SENATOR OGAN suggested using the catchall phrase, "limited to, but not including..."

SENATOR FRENCH said in this case it is better to use general terminology rather than specific.

CHAIR SEEKINS said they would set the bill aside for further work.

CSHB 114(JUD) (title am)-ISSUANCE OF SEARCH WARRANTS

CHAIR SEEKINS announced HB 114 to be up for consideration.

MR. DOUG WOOLIVER, Administrative Attorney, Alaska Court System, said HB 114 was introduced at the request of the Alaska State Supreme Court to clear up the technical way in which judges are allowed to receive testimony and affidavits from a police officer that wants to get a search warrant. Under general circumstances, if a police officer wants a search warrant, he can either fill out an affidavit and take it to court or talk to the judge in person. This works fine except in the many circumstances when the judge and the police officer are in different communities, which is common in Alaska. Right now to handle those circumstances the law allows under very limited circumstances a police officer to fax in their application and allows them to speak to the judge over the phone. The trouble with that is the only time that's allowed is when the item the officer wants to search is in danger of being lost or destroyed.

Many times that standard simply can't be met. For instance, police officers in Togiak seized what they believed was bootlegged liquor in some luggage off of an airplane. Once they seized it, it was no longer in danger of being lost or destroyed, but they needed a search warrant to open it. Routinely they call in to a trooper post at the nearest location that has a judge, who in turn asks the judge for the search warrant. It's faster and more reliable if the officer can just contact the judge directly. Another circumstance that happens frequently is an officer will do a "knock and talk" outside of Talkeetna, for example. They get to a residence at night and smell a marijuana growing operation in a shed by the house. Now the troopers are on-site so the marijuana is not in danger of being lost or destroyed, they need a warrant to go into the shed. So, one trooper stays in Talkeetna, another trooper drives all the way into Anchorage where the nearest judge is at night, gets the search warrant and then drives all the way back. It takes two troopers out of commission for four hours to do that round trip.

All this bill does is add one sentence to the statute - "or not getting a search warrant in this manner will interfere with the ongoing investigation." It allows a judge to accept telephonic and faxed testimony to issue a search warrant. It does not change in any way the standard that has to be met in order to get a search warrant.

SENATOR THERRIAULT asked if the trooper having to stay on site is the interference or the delay.

MR. WOOLIVER said anything would be a delay. Everything has to be stopped to get a warrant as a practical issue and the delay means something.

SENATOR FRENCH said he worked in this area and getting search warrants in bush communities is more difficult than in many places that have ready access to courts. He thinks this is a good common sense approach to the matter.

SENATOR OGAN moved to pass CSHB 114(JUD)(title am) from committee with the zero fiscal note and asked for unanimous consent. There was no objection and it was so ordered.

2:13 - 2:15 p.m. - at ease

CHAIR SEEKINS adjourned the meeting at 2:15 p.m.