ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE
April 27, 2004
8:15 a.m.

TAPE(S) 04-53

MEMBERS PRESENT

Senator Ralph Seekins, Chair
Senator Scott Ogan, Vice Chair
Senator Hollis French

MEMBERS ABSENT

Senator Gene Therriault
Senator Johnny Ellis

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 385(JUD)
"An Act relating to awarding child custody; and providing for an effective date."
MOVED SCS CSHB 385(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 227(JUD)
"An Act increasing the jurisdictional limit for small claims and for magistrates from $7,500 to $10,000; increasing the jurisdictional limit of district courts in certain civil cases from $50,000 to $100,000; expanding the jurisdiction of district courts; limiting magistrates from hearing certain small claims cases; and amending Rule 11(a)(4), Alaska District Court Rules of Civil Procedure, relating to service of process for small claims."
MOVED CSHB 227(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 428(JUD) am
"An Act relating to civil liability for acts related to obtaining alcohol for persons under 21 years of age or for persons under 21 years of age being on licensed premises."
MOVED CSHB 428(JUD)am OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 385
SHORT TITLE: AWARDING CHILD CUSTODY
SPONSOR(s): REPRESENTATIVE(s) MCGUIRE

01/20/04	(H)	READ THE FIRST TIME - REFERRALS
01/20/04	(H)	JUD
02/25/04	(H)	JUD AT 1:00 PM CAPITOL 120
02/25/04	(H)	<Bill Hearing Postponed>
02/27/04	(H)	JUD AT 1:00 PM CAPITOL 120
02/27/04	(H)	<Bill Hearing Postponed>
03/01/04	(H)	JUD AT 1:00 PM CAPITOL 120
03/01/04	(H)	Moved CSHB 385(JUD) Out of Committee
03/01/04	(H)	MINUTE(JUD)
03/03/04	(H)	JUD RPT CS(JUD) 6DP
03/03/04	(H)	DP: OGG, GRUENBERG, SAMUELS, HOLM,
03/03/04	(H)	GARA, MCGUIRE
04/01/04	(H)	TRANSMITTED TO (S)
04/01/04	(H)	VERSION: CSHB 385(JUD)
04/02/04	(S)	READ THE FIRST TIME - REFERRALS
04/02/04	(S)	HES, JUD
04/16/04	(S)	HES AT 1:30 PM BUTROVICH 205
04/16/04	(S)	Moved CSHB 385(JUD) Out of Committee
04/16/04	(S)	MINUTE(HES)
04/19/04	(S)	HES RPT 3DP
04/19/04	(S)	DP: DYSON, GUESS, DAVIS
04/27/04	(S)	JUD AT 8:00 AM BUTROVICH 205

BILL: HB 227
SHORT TITLE: DISTRICT COURTS & SMALL CLAIMS
SPONSOR(s): JUDICIARY

03/28/03	(H)	READ THE FIRST TIME - REFERRALS
03/28/03	(H)	L&C, JUD
05/14/03	(H)	L&C AT 3:15 PM CAPITOL 17
05/14/03	(H)	Scheduled But Not Heard
05/16/03	(H)	L&C AT 3:15 PM CAPITOL 17
05/16/03	(H)	-- Meeting Canceled --
05/17/03	(H)	L&C AT 12:00 AM CAPITOL 17
05/17/03	(H)	-- Meeting Postponed to Sun. 5/18/03 --
01/21/04	(H)	L&C AT 3:15 PM CAPITOL 17
01/21/04	(H)	Moved Out of Committee
01/21/04	(H)	MINUTE(L&C)
01/23/04	(H)	L&C RPT 3DP 3NR 1AM
01/23/04	(H)	DP: GUTTENBERG, GATTO, ANDERSON;
01/23/04	(H)	NR: DAHLSTROM, LYNN, CRAWFORD;
01/23/04	(H)	AM: ROKEBERG
01/23/04	(H)	FIN REFERRAL ADDED AFTER JUD
02/02/04	(H)	JUD AT 1:00 PM CAPITOL 120
02/02/04	(H)	Scheduled But Not Heard
02/04/04	(H)	JUD AT 1:00 PM CAPITOL 120

02/04/04	(H)	-- Meeting Canceled --
02/09/04	(H)	JUD AT 1:00 PM CAPITOL 120
02/09/04	(H)	Moved CSHB 227(JUD) Out of Committee
02/09/04	(H)	MINUTE(JUD)
02/12/04	(H)	JUD RPT CS(JUD) NT 1DP 4NR
02/12/04	(H)	DP: MCGUIRE; NR: SAMUELS, HOLM,
02/12/04	(H)	GARA, OGG
04/06/04	(H)	FIN AT 1:30 PM HOUSE FINANCE 519
04/06/04	(H)	Moved CSHB 227(JUD) Out of Committee
04/06/04	(H)	MINUTE(FIN)
04/07/04	(H)	FIN RPT CS(JUD) NT 4DP 3NR
04/07/04	(H)	DP: CHENAULT, FATE, FOSTER, HARRIS;
04/07/04	(H)	NR: HAWKER, STOLTZE, JOULE
04/19/04	(H)	TRANSMITTED TO (S)
04/19/04	(H)	VERSION: CSHB 227(JUD)
04/20/04	(S)	READ THE FIRST TIME - REFERRALS
04/20/04	(S)	JUD, FIN
04/27/04	(S)	JUD AT 8:00 AM BUTROVICH 205

BILL: HB 428
SHORT TITLE: CIVIL PENALTY: MINORS & ALCOHOL
SPONSOR(s): REPRESENTATIVE(s) MEYER

02/04/04	(H)	READ THE FIRST TIME - REFERRALS
02/04/04	(H)	L&C, JUD
02/25/04	(H)	L&C AT 3:15 PM CAPITOL 17
02/25/04	(H)	Moved Out of Committee
02/25/04	(H)	MINUTE(L&C)
02/26/04	(H)	L&C RPT 5DP
02/26/04	(H)	DP: CRAWFORD, LYNN, ROKEBERG,
02/26/04	(H)	GUTTENBERG, GATTO
03/18/04	(H)	JUD AT 1:00 PM CAPITOL 120
03/18/04	(H)	Heard & Held
03/18/04	(H)	MINUTE(JUD)
03/19/04	(H)	JUD AT 1:00 PM CAPITOL 120
03/19/04	(H)	Moved CSHB 428(JUD) Out of Committee
03/19/04	(H)	MINUTE(JUD)
03/24/04	(H)	JUD RPT CS(JUD) 4DP 1AM
03/24/04	(H)	DP: SAMUELS, ANDERSON, GRUENBERG,
03/24/04	(H)	MCGUIRE; AM: GARA
03/29/04	(H)	DIVIDE THE AMENDMENT WITHDRAWN
03/29/04	(H)	TRANSMITTED TO (S)
03/29/04	(H)	VERSION: CSHB 428(JUD) AM
03/31/04	(S)	READ THE FIRST TIME - REFERRALS
03/31/04	(S)	L&C, JUD
04/13/04	(S)	L&C AT 1:30 PM BELTZ 211
04/13/04	(S)	-- Meeting Canceled --

04/15/04	(S)	L&C AT 1:30 PM BELTZ 211
04/15/04	(S)	Scheduled But Not Heard
04/20/04	(S)	L&C AT 2:00 PM BELTZ 211
04/20/04	(S)	Moved CSHB 428(JUD)am Out of Committee
04/20/04	(S)	MINUTE(L&C)
04/21/04	(S)	L&C RPT 5DP
04/21/04	(S)	DP: BUNDE, SEEKINS, DAVIS,
04/21/04	(S)	FRENCH, STEVENS G
04/27/04	(S)	JUD AT 8:00 AM BUTROVICH 205

WITNESS REGISTER

Ms. Vanessa Tondini
Staff to Representative McGuire
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Presented HB 227 for the sponsor

Mr. Doug Wooliver
Alaska Court System
303 K St.
Anchorage, AK 99501-2084
POSITION STATEMENT: Discussed the pros and cons of HB 227

Representative Kevin Meyer
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of HB 428

Ms. Cindy Cashen
Mothers Against Drunk Drivers (MADD)
Juneau, Anchorage, Fairbanks and Mat-Su Chapters
POSITION STATEMENT: Supports HB 428

Mr. O.C. Madden
Brown Jug
Anchorage, AK
POSITION STATEMENT: Supports HB 428

Mr. David Lambert
Fairbanks, AK
POSITION STATEMENT: Supports HB 428

Representative Lesil McGuire
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Presented HB 385

Ms. Paige Hodsin
No address provided
POSITION STATEMENT: Supports HB 385

Ms. Christine Pate
Network on Domestic Violence & Sexual Assault
POSITION STATEMENT: Supports HB 385

ACTION NARRATIVE

TAPE 04-53, SIDE A

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at 8:15 a.m. Senators Ogan, French and Chair Seekins were present. The committee took up HB 227.

CSHB 227(JUD)-DISTRICT COURTS & SMALL CLAIMS

MS. VANESSA TONDINI, staff to the House Judiciary Committee, explained that CSHB 227(JUD) makes necessary changes to the current jurisdiction of both small claims and district courts. The jurisdictional limit for district courts was last raised in 1990 from $35,000 to $50,000. CSHB 227(JUD) will raise that limit to $100,000, allowing for inflation and increased flexibility for litigants. The jurisdictional limit on small claims court and magistrate court was last raised in 1997 from $5,000 to $7,500. Small claims court offers many advantages over district court to litigants, including less formal discovery requirements, lower filing fees and relaxed evidentiary rules. CSHB 227(JUD) raises that limit to $10,000 and removes prohibitions against district court hearing claims for false imprisonment, libel, slander and malicious prosecution because district court judges are well qualified to hear those kinds of cases. Last, CSHB 227(JUD) will expand small claims jurisdiction over out-of-state defendants. Current law only allows small claims actions against out-of-state defendants under the landlord/tenant act and certain other statutes that authorize service of process against owners or operators of motor vehicles involved in accidents in Alaska. CSHB 227(JUD) will allow small claims jurisdiction over out-of-state defendants under traditional long-arm principles.

CHAIR SEEKINS welcomed Representative McGuire.

REPRESENTATIVE LESIL McGUIRE, sponsor of HB 227, added that this legislation is strongly supported by the business community. The

Alaska State Chamber of Commerce has formally backed this bill as this will allow businesses to go pro se and avoid high litigation costs for small cases.

CHAIR SEEKINS stated that he would prefer to increase the jurisdiction of the small claims courts to $20,000.

MR. DOUG WOOLIVER, Administrative Attorney, Alaska Court System, stated a neutral position on the bill and noted pros and cons to raising the jurisdictional limit of the small claims courts. One concern of judges is that the informality that allows pro se litigants to better access the courts can lead to unjust results because of the trade-off between speed, efficiency and lower costs, and thoroughness and due process. The higher the jurisdictional limit gets, the less faith judges have that the process leads to just results, especially when an experienced litigant faces an inexperienced litigant.

MR. WOOLIVER noted on the other hand, small claims courts are known as the “people’s court” because small claims can be disputed quickly and with less expense. The Alaska Court System (ACS), like court systems nationwide, has seen an increase in pro se litigants. The ACS has made a lot of changes to better accommodate pro se litigants; CSHB 227(JUD) will be another. Raising the jurisdictional limit of small claims courts will make those courts more accessible to people who choose to represent themselves. He repeated that although there is a trade-off, the ACS is comfortable with that trade-off with the limits provided in CSHB 227(JUD).

SENATOR HOLLIS FRENCH asked for an estimate of the number of cases that could fall in the upper jurisdictional limit.

MR. WOOLIVER said the ACS hears about 10,000 to 12,000 small claims cases per year statewide, but it does not have a breakout of the claims by dollar amount. He noted that last two times the jurisdictional limit was raised, the ACS did not see the number of filings increase, which suggests that the bulk of the cases are not at the upper limit.

SENATOR FRENCH asked if CSHB 227(JUD) will change the jurisdictional limit of the superior court.

MR. WOOLIVER said it will in the sense that right now the jurisdictional limit of the superior court begins at $50,000; that number would begin at $100,000. He explained that a person who wants to take a case to superior court will have to plead

damages in excess of $100,000. Currently, most superior court damage awards are less than $50,000, so those cases theoretically could have been brought in district court. This bill is unlikely to affect pleading decisions but it will allow people to choose district court, which has less formal discovery requirements.

CHAIR SEEKINS asked if the judge in a small claims action often asks questions to get the facts.

MR. WOOLIVER affirmed that is the case.

CHAIR SEEKINS then asked if that is not necessarily the case in a district court formal action.

MR. WOOLIVER said that is true and that district court cases use more formal discovery.

CHAIR SEEKINS asked about the attitude of judges across the state toward having more informal hearings during which they can ask questions.

MR. WOOLIVER said he has not discussed that specific issue with them, but when the idea of raising the jurisdictional limit to $10,000 was discussed, judges were split close to 50/50 about whether that amount was too high and whether the process and their role in it was adequate for that amount.

CHAIR SEEKINS said from personal experience, he learned that some judges really like it because they feel they can ask the questions they want to ask that they are restrained from asking during a more formal hearing.

There being no further questions or participants, CHAIR SEEKINS closed public testimony.

SENATOR OGAN moved CSHB 227(JUD) from committee with individual recommendations and its attached fiscal note.

CHAIR SEEKINS announced that without objection, CSHB 227(JUD) moved from committee.

CSHB 428(JUD)am-CIVIL PENALTY: MINORS & ALCOHOL

REPRESENTATIVE KEVIN MEYER, sponsor of HB 428, told members the intention of this bill is simply to prohibit adults from buying alcohol for minors. This bill will allow businesses to take

civil action against minors who buy alcohol or against adults who buy alcohol for minors. He noted that under an Anchorage ordinance, the Brown Jug Liquor Store in Anchorage is currently using the method in HB 428. The Brown Jug waives $700 of the $1,000 fine if the offender completes an alcohol education class offered by MADD, STAR and the Keala (ph) House. STAR is involved because it has found that adults who purchase alcohol for minors are sometimes sex offenders. He noted this bill makes participation in the program entirely optional. Some businesses have offered to help enforce state laws but the state cannot afford to have police officers at every liquor store, so it needs more volunteer help to ensure that alcohol does not get into the hands of minors. The Brown Jug Liquor Store in Anchorage is the only business participating in this program but it would like to see the program offered statewide. He pointed out the bill has a zero fiscal note.

8:34 a.m.

SENATOR SCOTT OGAN asked if this bill could have a reverse effect because a store could collect a $1,000 fine every time it sells alcohol to a minor and then turn that person in.

REPRESENTATIVE MEYER did not believe so because of the hassle of going through the civil process for a $1,000 fine. He pointed out that the Brown Jug Liquor program is participating to cover its own costs, which it estimates to be $300. He added if a business purposely sold to a minor, the business could lose its license.

CHAIR SEEKINS referred to the language on page 1, line 12, and asked what constitutes an order.

REPRESENTATIVE MEYER deferred to the owner of the Brown Jug Liquor Store for an answer.

CHAIR SEEKINS expressed concern that a minor could be lured into a bar to order a drink and then turned in for a reward.

REPRESENTATIVE MEYER was skeptical that would happen because bar owners would be subject to serious penalties. He said another state law allows businesses to take action against minors who try to enter an establishment with a fake I.D.

CHAIR SEEKINS took public testimony.

MS. CINDY CASHEN, representing the Juneau, Anchorage, Fairbanks, and Mat-Su MADD Chapters, stated strong support for CSHB 428(JUD)am because it will be an effective way to enforce the minimum drinking age law. It is a civil measure that will further limit illegal underage drinking access to alcohol, thereby reducing youth involvement in alcohol-related traffic accidents. In addition, MADD supports community policing and brings liquor licensees into the fight to prevent underage drinking. She noted she has heard from many liquor store clerks who are frustrated that they can do nothing to prevent adult males from purchasing alcohol for underage teen girls. This legislation provides the same motivational tool as a bill introduced by Representative Meyer that passed the legislature two years ago. It will provide an incentive to store clerks or bar bouncers by offering a financial reward and satisfaction from knowing they are being responsible citizens. Their jobs will become more of a career and those employees often get more training. MADD believes this bill will deter adults from purchasing alcohol for minors, particularly sexual predators and friends and family members of underage drinkers who think they are doing a favor for a minor.

MR. O.C. MADDEN, owner of Brown Jug Liquors in Anchorage, informed members that an Anchorage ordinance allows businesses to take a $1,000 civil penalty against those who order and receive beverages from a licensee for the purpose of giving those beverages to a minor and against minors who solicit adults. He provides rewards to employees who intervene in those cases and waives $700 of the fine if the offender agrees to take an alcohol awareness class. He pointed out that virtually 100 percent of the minor offenders take the class, which has been a very effective tool.

To address concerns raised by members, MR. MADDEN said a sale does not have to occur for an arrest or stop to be made. Alaska law currently prohibits an adult from ordering or receiving a beverage from a licensee for distribution to a minor. Brown Jug Liquors has made about 120 arrests or stops so far, and has found that what the court has accepted to be an order is when an adult takes a product at the request of a minor and places in a cart for the purpose of giving that product to the minor. The adult does not actually have to make the purchase.

Regarding luring a minor in to make a purchase, it is a criminal offense for a licensee to knowingly allow minors into the premise. Under AS 04.16.049, the licensee can stop the minor at the door and the minor, at that point in time, is liable for the

$1,000 civil penalty so it is not beneficial for the licensee to allow a minor to enter. He feels that law has been a very good tool. After the Anchorage Daily News did an article on the program, he received calls from other licensees around the state questioning how they could replicate that program.

SENATOR OGAN commented that he believes one of the most prevalent problems in the state is underage drinking.

SENATOR FRENCH thanked Mr. Madden for showing community leadership in its role in this program, particularly in his efforts to waive part of the fine in lieu of treatment. He asked whether this bill should provide more stimuli for treatment, rather than leaving that up to the licensee.

MR. MADDEN said that basically the way it works right now, when a Brown Jug Liquor employee catches a person under the Anchorage ordinance, it sends the offender a demand letter. He likes the $1,000 penalty and the fact that treatment is not mandatory because that provides a substantial hammer to encourage that minor to get on board with the treatment program. If the minor knows the outcome will be the same, whether he accepts the deal or fights it in court, he will choose to fight it in court. If that were the case, the licensee would not have the time to invest in pursuing these cases. He has found that requiring the educational component is not necessary because the minors sign up for it right away to lower the fine. He noted that offenders learn quickly that it will cost them more than $300 to get an attorney to fight the case.

SENATOR FRENCH said his perspective is that not all licensees will be as enlightened as Brown Jug Liquors and many may see this as an opportunity to put cash in their employees' pockets. He agrees that may have a positive effect in that employees will be more alert to these kinds of sales. He said he would like to see that the minors who get caught learn something other than that it was an expensive mistake.

MR. MADDEN responded that right now there is no incentive in current state law providing for a licensee to not sell to an adult who is purchasing for a minor. The licensee is not obligated to monitor areas outside the premise. At the present time, a licensee can actually profit from wearing blinders. This bill will encourage licensees to be more vigilant about what is going on outside of their establishments and will address a very, very serious problem. This bill has no enforcement costs so the only costs involved are paid completely by the offender.

MR. DAVID LAMBERT, the owner of two dispensary licenses in Fairbanks, stated strong support for CSHB 428(JUD)am. He said currently, licensees can go after minors who attempt to buy liquor for a $1,000 fine. That has been a great tool and although his establishments have made no money at it so far, the word is out that minors will get stopped if they attempt to purchase liquor at one of his establishments. A $1,000 fine is a high enough deterrent, and he would hate to see any changes to that penalty. He believes that in Fairbanks, his two establishments are the only two that are going after minors. He said he does give incentives to his clerks. He opposes a mandatory educational component because most establishments are doing nothing now; reducing the fine will not make it worth their while to do anything.

CHAIR SEEKINS asked Mr. Lambert what incentive he provides to his employees.

MR. LAMBERT said the first time an employee arrests a minor, he gives the employee $100. After the first time, the employee gets $250. He noted that most employees do not want to make trouble for the minor but he has told his employees that they are out of jobs if they knowingly serve a minor. He said he has lost business because the minors go elsewhere. He noted the biggest problem he has seen is when a group of people come to his bar and the minor uses the ID of another group member. He said going after minors entering a tavern is a low priority for police.

CHAIR SEEKINS asked if he uses a program similar to Mr. Madden's that includes the educational component.

MR. LAMBERT said he does not at this point but that is a possibility in the future. He agreed with Mr. Madden that if the legislature requires the education component and reduces the fine, the licensees will not bother to participate.

MS. CASHEN told members that MADD advocates for treatment but CSHB 428(JUD)am is not a treatment bill. This bill deals with deterrents and intervention. MADD believes if it saves one life, it is worthwhile. She said if this bill becomes law, it will help to set in place programs similar to the one in Anchorage in other communities, and eventually provide for an educational component.

With no further participants, CHAIR SEEKINS closed public testimony.

SENATOR FRENCH said he can see how this program is a win-win situation in Anchorage with Brown Jug Liquors, but he is not sure it will have the same benefit if no educational component is required. He said that a $1,000 fine will be a big deterrent for a minor but he would prefer to have some of that money turned into an educational program that would make for a better learning experience.

CHAIR SEEKINS felt some teenagers will learn from an education class, others won't, and some will endure the class for the benefit of a lower fine. He noted that the military prefers to have 18 and 19-year-old foot soldiers because those soldiers believe that consequences belong to someone other than them. That same attitude sometimes prevails in the use of dangerous substances with young people, due to the physiology of their development, particularly males. He would prefer to require a $1,000 fine and an education class. He said the committee has heard time and again that 90 percent of the cases heard in the court system have a drug and alcohol aspect to them.

TAPE 04-53, SIDE B

REPRESENTATIVE MEYER said he appreciates Senator French and Chair Seekins' concern and that the same concerns were expressed on the House side. He pointed out that because the program is just getting started, he wants the bill to have enough flexibility for licensees to work with their situations to get a program going. If licensees abuse the program, the statute can be tightened. He noted it is so hard to get licensees to pursue action against minors because it is easier to make the sale. He said the House decided to provide the program with enough flexibility so that it can grow and come back to make changes if need be later.

SENATOR OGAN said he believes some abuse will occur, but he would like to get data on the amount of liquor that is sold to minors on weekends. He bets that is a significant amount. He suggested putting some coercion language in the bill or stating on the record that the intent of this legislation is not to allow liquor salespeople to coerce minors to buy liquor to be able to fine them.

CHAIR SEEKINS agreed that is not the intent.

REPRESENTATIVE MEYER noted that MADD will be watching this program closely and that MADD wants the education component very

much. However, MADD is willing to forego requiring the education component just to get the program started. He said he would prefer to leave the bill as is and have MADD monitor how it works.

CHAIR SEEKINS agreed with that approach.

SENATOR OGAN repeated that he would prefer that the committee stated that its intent is not to entrap people.

CHAIR SEEKINS noted that all agree that is not the intent of the sponsor or anyone who has taken action on this bill to this point, as well as all committee members present.

SENATOR OGAN moved CSHB 428(JUD)am from committee with individual recommendations and attached zero fiscal notes.

CHAIR SEEKINS announced that without objection, the motion carried. He then called a five-minute recess.

CSHB 385(JUD)-AWARDING CHILD CUSTODY

REPRESENTATIVE LESIL McGUIRE, sponsor of HB 385, gave the following explanation of the measure.

> Just to let you know that whenever the words 'domestic violence' come into play, I think it raises everybody's awareness and we get on notice and we want to figure out what the bill says. In the House, it passed out just fine through all of the committees and through the floor but leading into the floor vote itself, there were a couple of members that came to me, similar to it sounds like what is going on here where they read the title, looked at it, had an understanding of it that was inaccurate, and once I was able to explain what the bill did, it passed with flying colors. So, let me try to walk you through how this plays out.
>
> Obviously, the issue of awarding child custody is a very sensitive issue and it's something that most of us have had a friend or a relative or a constituent that has dealt with a child custody situation that hasn't gone well or we've at least heard about one where the perception has been that a judge unfairly

gave sole custody to one or split joint custody when they shouldn't have.

Mr. Chairman, as you well know, similar to a divorce, a child custody situation, when parties come away, I think, everybody feels like they lost most of the time. So the judge is in an interesting position in awarding joint custody. This bill deals with the factors that should be considered when awarding joint custody. Obviously, Mr. Chairman, I support and I think most people do support the notion that when the unfortunate situation occurs where a family can't stay united, that to the very best of everybody's ability, the mother and the father ought to split the custody of that child and have the opportunity for the child, despite the fact that they don't have their nuclear family together, to have an opportunity to have a father and a mother growing up. So that is at the heart of and the root of my philosophy and what I believe in and so this bill is not any attempt to go against that philosophy.

What this bill does is, Mr. Chairman, there are 23 other states that have adopted friendly parent legislation. This was brought to me by a constituent. She's the president of the PTA in my district, Paige Hopson, and she should be on the line, and her attorney Alan Bailey, who is a family law attorney. I think he's traveling today and can't be on the line but has testified in the past and I can summarize his interest. He's a family law practitioner who works in this area and worked with Paige on this bill. What's been happening in cases where there is domestic violence, and when I'm talking about domestic violence I want to make sure that the members understand – and we have one amendment today that should be before you that even clarifies this more severely, is that we're talking about a case where they have caused serious bodily injury – this is not an allegation, this is not a pushing or shoving, this is not a you yelled at me and that made me feel bad. This is a serious bodily injury and it is a history. You have to have a history of perpetuating it and once you see the amendment today it will make it clear once again that in a second part of the bill, page 3, line 31, we want to repeat the words 'a history of perpetuating' so that throughout, what a judge is looking for, Mr. Chairman,

is serious bodily injury, a history of perpetuating domestic violence. And in those cases, prior to friendly parent legislation throughout the nation, and this is an unbelievable thing but stay with me, sometimes the person who has been a victim of domestic violence is not awarded partial custody.

How this happens is that under the existing statutes in our state and in others, if the members will look to ... page 2, line 22, everything in all caps and parentheses will show you the way the statute used to read. It used to say as one of the factors for consideration about shared custody, we want to know which parent is more likely to encourage frequent and continuing contact with the other parent. That's one thing. Then if members would look to page 3, lines 17 through 20, the law used to say 'the desire and ability of each parent to allow an open and loving and frequent relationship between the child and the other parent.' Mr. Chairman, if you have been the victim of domestic violence, if you have been the recipient of serious bodily injury on a repetitive, perpetual basis, it is unlikely that you would want to have a close and loving contact with that person that has been your batterer. That is the way that it plays out, and so the child ends up sort of in between the two and we don't want that to happen. But in awarding custody, what has happened, and there are statistics nationwide that in roughly 70 percent of those cases, it is the batterer that gets the custody of the child because they're the ones that say hey, I will encourage this close and loving contact, I don't have any problem having frequent contact with the other parent – no big deal to me, everything's fine. The person who has been battered is saying I am uncomfortable making that commitment to have close loving contact with the other parent and they end up losing the ability to have custody.

So what we're trying to do in this bill is to level the playing field and to simply say that, first of all, that will be one factor that the judge is still considering so it is still important – if you look on page 2 – that you're looking at the needs of the child, the stability of the home environment, the education, the advantage of keeping the child in the community and all these other things, but we're also

saying that if there has been this serious bodily injury and this history of perpetuating domestic violence, that there will be a presumption that goes in favor of the person that has been abused.

Now I might add, Mr. Chairman, I worked very closely with Max Gruenberg on this, and Les Gara, who are the minority members in my committee and Max practices in this area. The only reason I bring it up is that there are always places where you can make a bill stronger and sort of weaker. I want to call members' attention to the presumption itself on page 4 – we say that the presumption itself can be overcome by a preponderance of the evidence. A preponderance of the evidence is the lowest possible standard.... There are other states that have clear and convincing evidence, which is the higher standard. We have the preponderance of the evidence standard, which is 51 percent. And what we're saying is hey, if there's evidence of serious bodily injury and a history of perpetuating it, we're not going to let this be used against the person who was battered and the presumption can be overcome, though, again by a preponderance of the evidence and all you have to do is successfully complete an intervention program for batterers. That's all you have to do. We're not saying that you will not get custody of your child, as some people have misunderstood this bill. We are not saying that because you have been involved in domestic violence you'll never be a father or a mother and never have the right to see your child. So I just want to point those things out.

Once the bill was explained to people on the floor, it had wide bipartisan support on the floor and passed the House amended. I'd be happy to answer any questions that people have and sorry if I made it even more confusing.

SENATOR OGAN said he likes the fact that the bill allows for an intervention program for batterers because they are generally left untreated. He noted that the language on page 4, lines 9-10 says the parent does not engage in substance abuse but often "birds of a feather flock together" and questioned what the court would do if both parents engage in substance abuse.

REPRESENTATIVE McGUIRE remarked that not all 23 states' laws have that intervention language and she believes that is very important. She said she does not want this bill to be used to permanently prevent a parent from having a relationship with his/her child. Second, she pointed out that a provision on page 4, line 15, addresses the sad situation where both parents have a history of perpetuating domestic violence. The first option, in that case, is to award sole legal and physical custody to the parent who is less likely to continue to perpetrate domestic violence and require that parent to complete a treatment program. The second option is to award sole legal or physical custody, or both, to a third person. She said what is most important about this bill is that it gives the court many tools and discretion. She added that the first option might not be palatable to some people, but that is for judicial discretion and there must be a nod toward keeping a child with his or her natural family, when safe.

SENATOR OGAN maintained that a parent with a mental illness can be a good parent.

REPRESENTATIVE McGUIRE explained that to get to the section Senator Ogan is referring to, the court must determine serious bodily injury and a history of perpetrating violence.

CHAIR SEEKINS added that is assuming that a person is still in a custody battle and the court must make the decision.

REPRESENTATIVE McGUIRE agreed and said the mental illness would only come into play if it affects that person's parenting ability.

CHAIR SEEKINS moved to adopt Amendment 1, which reads as follows:

A M E N D M E N T 1

(Page 3, Line 31 – Page 4, Line 1)

DELETE "committed an act of"
INSERT "a history of perpetrating"

Rationale: In (h) below (Page 4, lines 4-7) "A history of perpetrating domestic violence" is given specific meaning. This amendment would make the language consistent in the two sections.

SENATOR FRENCH objected for the purpose of discussion.

CHAIR SEEKINS felt that Amendment 1 makes subsection (g) conform with the remainder of the section.

REPRESENTATIVE McGUIRE said that is exactly correct. She said the intent is to make sure that when this process is being abused, there is a documented history of it. It is not to apply to a single allegation.

CHAIR SEEKINS said it almost seems predictable in certain contested divorce cases that both parties rush to file a [domestic violence and/or sexual abuse of a minor] complaint when there is no basis in fact for the allegation. However, one complaint based on a documented history of domestic violence could lead to this conclusion.

REPRESENTATIVE McGUIRE agreed and clarified that she meant that the two be read together. She explained:

> So, we've always meant for it to be more than an act but when we looked back at it we realized it wasn't consistent in both parts so it's just to reaffirm that basic public policy that we had before and it's just what you said.

CHAIR SEEKINS said the committee has heard testimony that complaints of domestic violence can be used as a weapon and not for the best interests of the child.

REPRESENTATIVE McGUIRE clarified:

> So Mr. Chairman, what we're doing now is we're saying that – and these are difficult subjects to talk about because there will be some people that would say to you yea, the incidents of false complaints of domestic violence are rare and so on, but I think we all understand what we're talking about, which is that it can be used that way. What this bill is doing now is it is still asking that the best interest of the child be considered. It's also asking that the court consider a variety of other factors but it's simply saying now that the fact that someone has been a recipient of serious bodily injury, that there's a history of domestic violence, it is a thing that we want the courts to consider and....

CHAIR SEEKINS interjected, “All of which is meant to try to serve the best interests of the child.”

REPRESENTATIVE McGUIRE said that is the point. She noted the victim of serious bodily injury would not want that abuse to be used against him or her in a custody battle but the root of the issue is what is best for the child. She pointed out the evidence is overwhelming that in a household where domestic violence occurred, the child is likely to have been abused as well. About 10 years ago, the legislature acknowledged the fact that witnessing domestic violence has psychological implications for children. She noted the judge would have to consider a list of factors and if there is a history of domestic violence and serious bodily injury, there is the presumption that can be overcome by a preponderance of the evidence.

CHAIR SEEKINS noted that a loving parent may not necessarily be a good parent and asked how to balance other negative habits or conditions that may be present.

REPRESENTATIVE McGUIRE said the original language - the desire of each parent to provide a “loving, frequent relationship between the child” was an odd standard. She tried to put a more legally defensible and neutral standard into the standard so used “the willingness and ability of each parent to facilitate and encourage a close and continuing relationship....” She pointed to the language on line 20 and said that gets to the root of Chair Seekins’ concern, that being that a history of domestic violence will endanger the health or safety of the child. However, she wants to keep that as one of the factors for the court to determine because it is for the benefit of the child.

SENATOR FRENCH thought the bill strikes a good balance between the needs of both parties regarding child custody issues. He said in his experience, he has not found that most people use the filing of a domestic violence complaint as a weapon in custody battles. He finds legal professionals, for the most part, to be an ethical bunch. He then referred to the phrase “serious bodily injury” on page 4 and asked why she chose that phrase rather than “serious physical injury” and whether they are the same in her mind.

CHAIR SEEKINS asked that Amendment 1 be addressed first.

SENATOR FRENCH withdrew his objection to the adoption of Amendment 1, therefore it was adopted.

REPRESENTATIVE McGUIRE said Representative Gruenberg suggested that phrase and that she would be amenable to changing the phrase to “serious physical injury”. She meant the two to be the same. She then suggested including the definition of that phrase to improve the bill.

SENATOR FRENCH noted that because the phrase “serious physical injury” has been used in the criminal statutes for decades, he would move to change the word “bodily” on line 6 of page 4 to “physical” [Amendment 2].

CHAIR SEEKINS announced that without objection, Amendment 2 was adopted.

MS. PAIGE HODSIN, representing herself, told members she could provide them with the results of a 1988 American Bar Association study of 12 states in which 9,000 custody cases were reviewed. Less than 2 percent of those cases involved allegations of sexual abuse so the false allegation concern is low incidence. She then explained that she is a divorced single mother of two children and is a court-appointed special advocate for abused and neglected children, PTA president and a domestic violence survivor. She was in a verbally and physically abusive marriage for 11 years; most of the abuse occurred in front of her children, which is what the bill addresses. As her daughter grew older, she began to see the impact of witnessing abuse on her more clearly. As her daughter grew older, the father became abusive of her as well and she felt it was her responsibility to protect her children’s well being and serve as an appropriate role model. Her ex-husband had threatened to use whatever action necessary to prove her to be an unfit mother and take custody of the children, who she would never see again. During the custody battle, she found that her role had been turned upside down. Her common sense told her that she was responsible for getting out of the marriage to protect the children, yet she was pressured to not raise those concerns during the custody battle. Some of the statutes resulted in equal blame for the violence. Her children’s fears about their father’s abuse were pathologized and the court strongly implied that if she did not accept a shared physical custody arrangement, the court would give full custody to the father.

MS. HODSIN said as time went on, she found the toll on her daughter of unsupervised visitation with the father became enormous. She would scream, kick and cry when taken from her home and had trouble at school. Her daughter reached out to many

trusted adults yet the court failed to respond. Her son, a toddler, would be returned dehydrated and unclean, and once with a black eye. She went through two full custody trials and five years of litigation. She now has full legal and physical custody of her children but her ex-husband still has unsupervised visitation rights. Ultimately, she found her case to be representative of systemic failure in the court system to protect domestic violence victims and their children. She found women and children all over the country with similar experiences and she found an alarming number of abusive parents being awarded full custody of their children. She said HB 385 is the result of almost three years of researching and networking to find the best statutes in the country and it is strongly supported by many organizations involved with the protection of children. It brings Alaska's child custody statutes into line with what 11 states are doing. Congress and the National Council of Juvenile Court Justices recommend it. It also brings Alaska statute into line with voluminous research on the impact of domestic violence on children. She thanked members for considering this legislation.

MS. CHRISTINE PATE, Alaska Network on Domestic Violence and Sexual Assault, stated support for CSHB 385(JUD)am.

CHAIR SEEKINS announced that public testimony was closed.

SENATOR OGAN moved SCS CSHB 385(JUD) from committee with individual recommendations and its attached fiscal notes.

CHAIR SEEKINS announced that without objection, the motion carried. He then announced his intention to begin Wednesday's meeting promptly at 8:00 a.m. and adjourned the meeting at 10:01 a.m.