

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

May 2, 2004

3:50 p.m.

TAPE(S) 04-58

**MEMBERS PRESENT**

Senator Ralph Seekins, Chair  
Senator Scott Ogan, Vice Chair  
Senator Gene Therriault

**MEMBERS ABSENT**

Senator Johnny Ellis  
Senator Hollis French

**COMMITTEE CALENDAR**

CS FOR HOUSE BILL NO. 539(L&C)

"An Act exempting a person who allows a student of the University of Alaska to gain practical work experience with the person while participating in a practicum from vicarious liability as an employer, and exempting the student participating in a practicum from the Alaska Wage and Hour Act; and providing for an effective date."

MOVED CSHB 539(L&C) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 339(JUD)

"An Act relating to opt-out marketing plans for sales, to free trial periods for goods or services, and to acts that are unlawful as unfair trade practices."

MOVED SCS CSHB 339(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 336(JUD) am

"An Act relating to motor vehicle insurance; limiting recovery of civil damages by an uninsured driver; and providing for an effective date."

MOVED SCS CSHB 336(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 423(JUD) am

"An Act relating to accidents involving the vehicle of a person under the influence of an alcoholic beverage."

MOVED CSHB 423(JUD) am OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 438(JUD) am

"An Act relating to motorists moving over or slowing down for emergency vehicles."

MOVED SCS CSHB 438(STA) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HB 539

SHORT TITLE: UNIV. STUDENT PRACTICUM LIABILITY/WAGES

SPONSOR(s): JUDICIARY

03/18/04 (H) READ THE FIRST TIME - REFERRALS  
03/18/04 (H) L&C, JUD  
04/16/04 (H) L&C AT 3:15 PM CAPITOL 17  
04/16/04 (H) Moved CSHB 539(L&C) Out of Committee  
04/16/04 (H) MINUTE(L&C)  
04/19/04 (H) L&C RPT CS(L&C) NT 7AM  
04/19/04 (H) AM: CRAWFORD, LYNN, GATTO, ROKEBERG,  
04/19/04 (H) DAHLSTROM, GUTTENBERG, ANDERSON  
04/19/04 (H) JUD AT 1:00 PM CAPITOL 120  
04/19/04 (H) -- Meeting Canceled --  
04/21/04 (H) JUD AT 1:00 PM CAPITOL 120  
04/21/04 (H) Moved CSHB 539(L&C) Out of Committee  
04/21/04 (H) MINUTE(JUD)  
04/22/04 (H) JUD RPT CS(L&C) NT 2DP 4NR  
04/22/04 (H) DP: OGG, MCGUIRE; NR: GARA, HOLM,  
04/22/04 (H) SAMUELS, GRUENBERG  
04/28/04 (H) MOVED TO BOTTOM OF CALENDAR  
04/28/04 (H) NOT TAKEN UP 4/28 - ON 4/29 CALENDAR  
04/29/04 (H) TRANSMITTED TO (S)  
04/29/04 (H) VERSION: CSHB 539(L&C)  
05/01/04 (S) READ THE FIRST TIME - REFERRALS  
05/01/04 (S) JUD  
05/02/04 (S) JUD AT 3:30 PM BUTROVICH 205

BILL: HB 339

SHORT TITLE: TRADE PRACTICES: FREE TRIAL/OPT-OUT PLANS

SPONSOR(s): REPRESENTATIVE(s) MEYER

01/12/04 (H) PREFILE RELEASED (1/2/04)  
01/12/04 (H) READ THE FIRST TIME - REFERRALS  
01/12/04 (H) L&C, JUD  
02/02/04 (H) L&C AT 3:15 PM CAPITOL 17  
02/02/04 (H) Moved CSHB 339(L&C) Out of Committee  
02/02/04 (H) MINUTE(L&C)  
02/05/04 (H) L&C RPT CS(L&C) NT 4DP 2NR 1AM  
02/05/04 (H) DP: CRAWFORD, LYNN, DAHLSTROM,  
02/05/04 (H) ANDERSON; NR: GATTO, ROKEBERG;

02/05/04 (H) AM: GUTTENBERG  
 03/05/04 (H) JUD AT 1:00 PM CAPITOL 120  
 03/05/04 (H) -- Meeting Postponed to 3/16/04 --  
 03/16/04 (H) JUD AT 1:00 PM CAPITOL 120  
 03/16/04 (H) Heard & Held  
 03/16/04 (H) MINUTE(JUD)  
 03/29/04 (H) JUD AT 1:00 PM CAPITOL 120  
 03/29/04 (H) Bill Postponed To 3/30/04  
 03/30/04 (H) JUD AT 1:00 PM CAPITOL 120  
 03/30/04 (H) Scheduled But Not Heard  
 03/31/04 (H) JUD AT 1:00 PM CAPITOL 120  
 03/31/04 (H) Moved CSHB 339(JUD) Out of Committee  
 03/31/04 (H) MINUTE(JUD)  
 04/01/04 (H) JUD RPT CS(JUD) NT 5DP  
 04/01/04 (H) DP: HOLM, GARA, GRUENBERG, OGG, MCGUIRE  
 04/07/04 (H) TRANSMITTED TO (S)  
 04/07/04 (H) VERSION: CSHB 339(JUD)  
 04/08/04 (S) READ THE FIRST TIME - REFERRALS  
 04/08/04 (S) L&C, JUD  
 04/22/04 (S) L&C AT 1:30 PM BELTZ 211  
 04/22/04 (S) EXTEND BOARD OF REAL ESTATE APPRAISERS  
 04/27/04 (S) L&C AT 1:30 PM BELTZ 211  
 04/27/04 (S) Moved CSHB 339(JUD) Out of Committee  
 04/27/04 (S) MINUTE(L&C)  
 04/28/04 (S) L&C RPT 4DP  
 04/28/04 (S) DP: BUNDE, FRENCH, SEEKINS, STEVENS G  
 05/02/04 (S) JUD AT 3:30 PM BUTROVICH 205

BILL: HB 336

SHORT TITLE: MOTOR VEHICLE INS./ UNINSURED DRIVERS  
 SPONSOR(S): REPRESENTATIVE(S) MEYER

01/12/04 (H) PREFILE RELEASED (1/2/04)  
 01/12/04 (H) READ THE FIRST TIME - REFERRALS  
 01/12/04 (H) JUD  
 03/31/04 (H) JUD AT 1:00 PM CAPITOL 120  
 03/31/04 (H) <Bill Hearing Postponed>  
 04/06/04 (H) JUD AT 1:00 PM CAPITOL 120  
 04/06/04 (H) Heard & Held  
 04/06/04 (H) MINUTE(JUD)  
 04/07/04 (H) JUD AT 1:00 PM CAPITOL 120  
 04/07/04 (H) Failed To Move Out Of Committee  
 04/07/04 (H) MINUTE(JUD)  
 04/14/04 (H) JUD AT 1:00 PM CAPITOL 120  
 04/14/04 (H) Moved CSHB 336(JUD) Out of Committee  
 04/14/04 (H) MINUTE(JUD)  
 04/15/04 (H) JUD RPT CS(JUD) NT 1DP 3DNP 2NR

04/15/04 (H) DP: ANDERSON; DNP: HOLM, GARA, OGG;  
04/15/04 (H) NR: SAMUELS, MCGUIRE  
04/29/04 (H) TRANSMITTED TO (S)  
04/29/04 (H) VERSION: CSHB 336(JUD) AM  
05/01/04 (S) READ THE FIRST TIME - REFERRALS  
05/01/04 (S) JUD, FIN  
05/02/04 (S) JUD AT 3:30 PM BUTROVICH 205

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  
03/05/04 (H) Heard & Held  
03/05/04 (H) MINUTE(STA)  
03/09/04 (H) STA AT 8:00 AM CAPITOL 102  
03/09/04 (H) Moved CSHB 423(STA) Out of Committee  
03/09/04 (H) MINUTE(STA)  
03/12/04 (H) STA RPT CS(STA) NT 3DP 3NR 1AM  
03/12/04 (H) DP: SEATON, HOLM, LYNN; NR: COGHILL,  
03/12/04 (H) BERKOWITZ, WEYHRAUCH; AM: GRUENBERG  
03/19/04 (H) JUD AT 1:00 PM CAPITOL 120  
03/19/04 (H) Heard & Held  
03/19/04 (H) MINUTE(JUD)  
03/26/04 (H) JUD AT 1:00 PM CAPITOL 120  
03/26/04 (H) Moved CSHB 423(JUD) Out of Committee  
03/26/04 (H) MINUTE(JUD)  
03/29/04 (H) JUD RPT CS(JUD) NT 6DP  
03/29/04 (H) DP: HOLM, SAMUELS, GRUENBERG, OGG,  
03/29/04 (H) ANDERSON, MCGUIRE  
04/19/04 (H) TRANSMITTED TO (S)  
04/19/04 (H) VERSION: CSHB 423(JUD) AM  
04/20/04 (S) READ THE FIRST TIME - REFERRALS  
04/20/04 (S) L&C, JUD  
04/29/04 (S) L&C AT 2:45 PM BELTZ 211  
04/29/04 (S) Moved CSHB 423(JUD)am Out of Committee  
04/29/04 (S) MINUTE(L&C)

05/01/04 (S) L&C RPT 1DP 2NR  
05/01/04 (S) DP: BUNDE; NR: FRENCH, DAVIS  
05/02/04 (S) JUD AT 3:30 PM BUTROVICH 205

BILL: HB 438

SHORT TITLE: MOVE OVER LAW FOR DRIVERS

SPONSOR(S): REPRESENTATIVE(S) HOLM

02/05/04 (H) READ THE FIRST TIME - REFERRALS  
02/05/04 (H) TRA, STA, JUD  
02/17/04 (H) TRA AT 1:30 PM CAPITOL 17  
02/17/04 (H) Scheduled But Not Heard  
02/24/04 (H) TRA AT 1:30 PM CAPITOL 17  
02/24/04 (H) Moved Out of Committee  
02/24/04 (H) MINUTE(TRA)  
02/26/04 (H) TRA RPT 3DP 2NR  
02/26/04 (H) DP: OGG, STEPOVICH, HOLM; NR: MASEK,  
02/26/04 (H) KOHRING  
03/09/04 (H) STA AT 8:00 AM CAPITOL 102  
03/09/04 (H) Moved CSHB 438(STA) Out of Committee  
03/09/04 (H) MINUTE(STA)  
03/12/04 (H) STA RPT CS(STA) 1DP 2NR 3AM  
03/12/04 (H) DP: LYNN; NR: COGHILL, WEYHRAUCH;  
03/12/04 (H) AM: GRUENBERG, SEATON, HOLM  
04/02/04 (H) JUD AT 1:00 PM CAPITOL 120  
04/02/04 (H) <Bill Hearing Postponed TO 4/5/04>  
04/05/04 (H) JUD AT 1:00 PM CAPITOL 120  
04/05/04 (H) -- Meeting Postponed to Tues. 4/6/04 --  
04/06/04 (H) JUD AT 1:00 PM CAPITOL 120  
04/06/04 (H) Moved CSHB 438(JUD) Out of Committee  
04/06/04 (H) MINUTE(JUD)  
04/07/04 (H) JUD RPT CS(JUD) 5DP  
04/07/04 (H) DP: SAMUELS, HOLM, GARA, GRUENBERG,  
04/07/04 (H) MCGUIRE  
04/15/04 (H) TRANSMITTED TO (S)  
04/15/04 (H) VERSION: CSHB 438(JUD) AM  
04/16/04 (S) READ THE FIRST TIME - REFERRALS  
04/16/04 (S) STA, JUD  
04/27/04 (S) STA AT 3:30 PM BELTZ 211  
04/27/04 (S) Scheduled But Not Heard  
04/29/04 (S) STA AT 3:30 PM BELTZ 211  
04/29/04 (S) Moved SCS CSHB 438(STA) Out of  
Committee  
04/29/04 (S) MINUTE(STA)  
05/01/04 (S) STA RPT SCS 3DP 1NR SAME TITLE  
05/01/04 (S) DP: STEVENS G, COWDERY, STEDMAN;  
05/01/04 (S) NR: GUESS

05/02/04

(S)

JUD AT 3:30 PM BUTROVICH 205

**WITNESS REGISTER**

Mr. Heath Hilyard  
Staff to Representative McGuire  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Testified for the sponsor of HB 539.

Mr. Pete Kelly  
University of Alaska  
Fairbanks, AK

**POSITION STATEMENT:** Testified that HB 339 is identical to SB 369, which the committee passed out the previous week.

Representative Kevin Meyer  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Sponsor of HB 339

Ms. Suzanne Cunningham  
Staff to Representative Meyer  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Answered questions about HB 339

Mr. Michael Lessmeier  
State Farm Insurance  
Lessmeier and Lessmeier  
Juneau, AK

**POSITION STATEMENT:** Supports HB 339

Representative Tom Anderson  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Sponsor of HB 423

Mr. Matthew Rudig  
Staff to Representative Holm  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Testified for the sponsor of HB 438

**ACTION NARRATIVE**

**TAPE 04-58, SIDE A**

**CHAIR RALPH SEEKINS** called the Senate Judiciary Standing Committee meeting to order at 3:50 p.m. Senators Ogan, Therriault and Chair Seekins were present. The first order of business was HB 539.

**CSHB(L&C) 539-UNIV. STUDENT PRACTICUM LIABILITY/WAGES**

MR. HEATH HILYARD, staff to Representative Lesil McGuire, sponsor of HB 539, quoted Herman Melville, "A whale ship is my Yale college and my Harvard" and said to a certain extent, that is what CSHB 539(L&C) addresses: practical learning experiences, or university practicum. HB 539 does two things. First, it limits vicarious liability by the student participating in a practicum, the practicum provider and the University of Alaska (UA). Second, it clarifies that practicum students are not employees for the purpose of wage and hour laws, in particular the minimum wage requirements. HB 539 is very important to UA for its practicum programs because providers are concerned about the amount of liability they are exposed to when participating, particularly in the health and construction fields. He pointed out that last year, the UA had a great deal of difficulty securing enough practicum opportunities for graduating students.

CHAIR SEEKINS asked how CSHB 539(L&C) differs from SB 369, which the committee heard and took action on the prior week.

MR. HILYARD said it is his understanding that the two pieces of legislation are identical.

MR. PETE KELLY, University of Alaska, verified that SB 369 was modeled verbatim after CSHB 539(L&C) so the two bills are the same.

SENATOR OGAN moved CSHB 539(L&C) from committee with individual recommendations and attached fiscal notes.

The motion carried with Senators Ogan, Therriault and Seekins in favor.

**CSHB 339(JUD-TRADE PRACTICES: FREE TRIAL/OPT-OUT PLANS**

REPRESENTATIVE KEVIN MEYER, sponsor of HB 339, informed members that he would be commenting on a proposed committee substitute (CS) distributed to committee members. He worked with the Department of Law (DOL) and other businesses on this legislation

to address concerns and believes the changes made in the CS make the bill better.

CHAIR SEEKINS moved the proposed committee substitute, labeled version B, as the working document before the committee. With no objection, the motion carried.

REPRESENTATIVE MEYER said CSHB 339(JUD) is a consumer protection bill that deals with two business practices: the pretrial period and the opt-out marketing program. No one has opposed this legislation during its evolution and it has picked up many co-sponsors. A pretrial period is used by, for example, magazine companies, and is a time period for which a potential consumer receives magazines at no charge and then is eventually charged for a subscription. This legislation clearly discloses all of the terms and conditions of that pretrial period, as well as any participating consumers' obligations. It basically shifts the burden to the business to prove that all disclosures were made to the consumer in the case of a dispute.

The opt-out provision addresses situations in which consumers are given a service, for example call waiting on a telephone, without requesting it and are charged for it. Those people are required to take specific actions to opt-out of that service. Businesses use the opt-out method because it is profitable as it is often time consuming or difficult to cancel. The bill clarifies the responsibilities of the consumer and shifts the burden to the business to prove that all disclosures were made to the consumer before he or she accepted the product or service.

REPRESENTATIVE MEYER indicated that he worked with the Department of Law, as well as East Coast businesses that use these practices, to level out the playing field for consumers.

CHAIR SEEKINS said he would outlaw opt-out plans as he believes they are meant to deceive because they depend on lack of communication or people forgetting for their success. He noted that this legislature has addressed two bills that deal with telephone sales and more people are asking legislatures nationwide to protect them from these kinds of marketing plans.

REPRESENTATIVE MEYER agreed.

There being no further questions or testimony, SENATOR OGAN moved SCS CSHB 339(JUD) from committee with individual recommendations and attached fiscal note(s).

The motion carried with Senators Therriault, Ogan, and Seekins in favor.

**CSHB 336(JUD)am-MOTOR VEHICLE INS./ UNINSURED DRIVERS**

REPRESENTATIVE KEVIN MEYER, sponsor of HB 336, introduced staff member Suzanne Cunningham, and told members that this legislation states that if a person knowingly breaks the law by driving without mandated vehicle insurance, that person cannot sue for the same amount in damages as a person with the required insurance. He pointed out the key word is "knowingly." If an accident occurred, the uninsured driver could sue for non-economic and compensatory damages but not for pain and suffering. He noted that damages for pain and suffering are most costly to the 82 percent of people who do have insurance coverage. This issue was brought to his attention by a constituent who said she pays \$1500 per year in insurance and must listen to a neighbor brag that he has no insurance, yet both would collect the same damage award if either were in an accident. The California Legislature enacted similar legislation because 35 percent of drivers there had no insurance. He said although he carries insurance coverage in case an uninsured motorist hits his vehicle, if that happened, his rates would increase.

REPRESENTATIVE MEYER said this bill is a matter of fairness. Although there are probably many reasons that 18 percent of drivers have no insurance in Alaska, one reason may be that they are unsafe drivers with multiple DUI offenses or reckless driving offenses so the 82 percent of insured drivers become the true victims. He said the bottom line is whether the legislature wants to protect the people who comply with the laws. He noted that theoretically, reducing the number of pain and suffering lawsuits should lower rates.

CHAIR SEEKINS questioned how "knowingly" is defined.

REPRESENTATIVE MEYER said the language on page 1, line 10, says the person must know that he or she was not in compliance.

CHAIR SEEKINS said the only argument he could imagine that would hold water is that the person might not know his policy was cancelled or lapsed because of an unanticipated oversight.

REPRESENTATIVE MEYER said it would be the insurance company's responsibility to prove the driver knew he didn't have insurance, which is a high hurdle.

SENATOR OGAN asked how that would affect an uninsured driver who was in an accident in which someone else was at fault.

REPRESENTATIVE MEYER clarified that the driver could sue for all damages except pain and suffering. The logic is that the driver broke the law by driving without insurance.

SENATOR OGAN felt that is too limiting because the driver who caused the accident could be very drunk, eluding police, or involved in criminal activity and driving dangerously and be let off the hook.

CHAIR SEEKINS said the uninsured driver should not have been on the road in the first place. This legislation says if a person chooses to drive without insurance, that person is assuming the risk of not being able to recover economic damages, no matter the cause of the accident.

SENATOR OGAN agreed that driving without insurance is irresponsible and said he does not condone it but he knows of seniors who live on very limited fixed incomes who drive without insurance because of the financial hardship. Those people have no other options and he does not believe it is right to let someone with criminal culpability off on a tort claim in such a case.

REPRESENTATIVE MEYER said Senator Ogan raised a good point but he believes that many of the 18 percent of drivers without insurance should not be driving. So, the question becomes, is it fair for one of those drivers to be on the road and hit an insured motorist. He noted the uninsured motorist could have been drunk. He reminded members that driving is a privilege, not a right, and that part of the responsibility is mandated insurance coverage. He repeated that rates are increasing because the 18 percent are not paying into the system.

SENATOR OGAN disagreed that is the only reason rates are increasing.

SENATOR THERRIAULT asked what would happen if he, as a father, knowingly let his insurance policy lapse and his teenage son and friends took the car and got into an accident. He questioned

whether they would be covered because they did not know the car was uninsured.

REPRESENTATIVE MEYER deferred to a representative from an insurance company to answer but said he believes the father would probably be responsible.

MS. SUZANNE CUNNINGHAM, staff to Representative Meyer, said the bill is written to apply to the person who is operating the motor vehicle so if the son did not know, it would not apply.

CHAIR SEEKINS thought if the son caused the accident, the friend and son's only recourse would be against the father. If another driver caused the accident, a claim for non-economic damages would be available against that driver by the passengers and son, who did not know.

SENATOR THERRIAULT asked how that would apply to an uninsured parked vehicle in which a person was injured.

CHAIR SEEKINS noted the key word is "operating" a motor vehicle. He then said, in response to Senator Ogan's earlier comment, people who make the choice to drive without insurance knowingly are giving up their rights to recover non-economic damages.

MR. MIKE LESSMEIER, a Juneau attorney representing State Farm Insurance, stated support for CSHB 336(JUD)am. State Farm did not ask Representative Meyer to introduce Section 1 but it did ask him to introduce some of the other sections, which he would explain. Those sections have not been controversial. Sections 2, 4 and 5 deal with what is called the "mirror rule." That rule says if the liability portion of a policy provides coverage for punitive damages, then the uninsured and underinsured motorist coverage must also include coverage for punitive damages. Therefore, in effect, the policyholder is funding his ability to recover punitive damages. Those damages are designed to punish the person without coverage but, in effect, the insured driver is paying for that coverage himself. He said that makes no sense and has caused that coverage to increase in price. To address that situation, State Farm proposed an amendment, which was adopted, that says regardless of what the liability provision of a driver's policy says, the uninsured/underinsured motorist provision need not provide coverage for punitive damages.

SENATOR THERRIAULT asked, "...right now the law requires that if it is in one, it must be in the other, so you're alleging that you're paying for double?"

MR. LESSMEIER responded that it forces people to pay for something most would choose not to purchase, if they had the choice. A person might want that coverage in the liability portion of a policy because often when a person is sued for reckless driving, for example, there is an allegation of punitive damages in that claim. However, when one turns around and looks at an uninsured/underinsured motorist claim, most policyholders would not want to pay for damages that are essentially punitive damages, designed to punish another person. The policyholder is essentially punishing himself because it does not affect the uninsured motorist that ran into him as he is recovering punitive damages under his own policy. HB 336 says the coverage in the uninsured/underinsured portion of one's policy does not have to mirror the liability coverage with respect to punitive damages.

MR. LESSMEIER said the other change is in Section 3. He explained:

When we ... go all the way back to the history of uninsured/underinsured motorist coverage in the state, in 1983 and 1984 we passed a system that mandated offers of uninsured and underinsured motorists and that system has evolved. Now what happens, when you buy an insurance policy, it contains coverage for uninsured/underinsured motorists unless you decline it in writing. And then what happens is every six months, if you're a State Farm insured, you get a written offer of uninsured/underinsured motorist coverage all the way up to \$1 million. What the Supreme Court said in a case called [Indisc.] vs. State Farm, is that in umbrella policies, there has to be these offers as well and the difficulty with that is if we make these offers on each vehicle, and people make the selection on each vehicle and then we're required to make them in the umbrella policy as well, it leads to conflicting offers. We don't know what the price - and as a result of that it's just created a mess in terms of the umbrella policies and one major carrier in this state has actually stopped writing because of that decision.

Our point is that we have a wonderful system for making this coverage available through these mandated offers already and that it ought to be on the primary policy and this would just mean that we don't have to

make those offers on excess or umbrella policies. We'd still make them on the primary policies and I think those changes make eminent good sense.

If we go back to the first provision, we look at this provision really as an issue of fairness. The issue of fairness is this issue: if a person is unwilling to provide liability coverage for someone else, provide protection for someone else, it's not unfair for them to not expect to receive the same level of benefit. Now with respect to Senator Ogan's concern, the person that is the violator, the bad actor that is intoxicated, that person is subject to all of the criminal penalties, is subject to an award for economic damages, and is also subject to an award of punitive damages. This does not affect the ability of an injured person to recover punitive damages so they have a pretty big hammer to get whatever that person would have in terms of assets. They're not left unprotected and I think that's important.

We look at this, and one of our judges across the street, he talks about what he calls the goose/gander rule, and this is really the goose/gander rule. We think that people that make this choice - and the way this bill was changed in the House, it was changed to be knowing - so we don't - the situation that you were talking about Senator Therriault, we don't want to cover anyone with this bill that does not knowingly violate the law. One of the amendments that had originally been proposed was with knew or should have known, and it became knowing. That's a pretty high standard to meet and we would hope that as a result of this, what would happen is that we would have less people that make that choice to drive without insurance. The less people that sign the registration certification that says I certify that I have and will maintain automobile insurance on this car and then turn around and don't.

We would hope that there would be more financially responsible drivers on the road so we don't end up with a situation where what we have now is probably 16 to 18 percent and it truly is a situation where every person that drives and doesn't buy insurance is being subsidized by those that do - everyone of us. Ninety-six percent of our policyholders do buy

uninsured/underinsured motorist coverage and that coverage has been a coverage that certainly has changed over the years. It's increased in terms of its benefit but it's also increased in its price. It's gotten way away from what it originally was intended to be and so we think this bill is a good idea and I'd be willing to answer any questions that anybody might have of me.

4:30 p.m.

SENATOR THERRIault asked for the definition of "operating a motor vehicle."

MR. LESSMEIER said he wished he had a good answer but thinks it depends on where the vehicle was parked. He thought, for example, if a person drove to downtown Juneau, stopped and was waiting to get out of the vehicle and was hit, that would fall under operating a motor vehicle. However, if a vehicle was off the roadway, it would not.

SENATOR OGAN asked what percentage of non-economic damage claims involves clear criminal activity.

MR. LESSMEIER was unable to provide a percentage but said there are always scenarios in which the application of a law is not perfect. He suggested that using the remaining tools of the criminal law and the ability to collect punitive damages in egregious cases, he suspects there will be very few cases where every single penny that the bad actor has available is not paid. He said in looking at this, he keeps coming back to the fact that people make the choice not to provide protection for others and, at the same time, to give up some compensation for them. The consequence of that choice is fair under this bill.

CHAIR SEEKINS announced a 3-minute recess.

CHAIR SEEKINS asked if he chose not to buy insurance on his family's vehicles without the knowledge of the other family members, whether those family members would have the right to recover non-economic damages. He then questioned whether a person could not recover non-economic damages under this bill but could recover punitive damages if the act was egregious.

MR. LESSMEIER said that is correct.

CHAIR SEEKINS noted that 50 percent of punitive damages must be shared with the State of Alaska. He then asked, "So it would mean if it was truly an egregious act on the part of the non-insured or the other person, then you still can go after those punitive damages under the law but not what we would classify as non-economic - pain and suffering."

MR. LESSMEIER agreed.

CHAIR SEEKINS then expressed concern that an uninsured driver could hit a pedestrian. He thought this bill might not provide an incentive for those people without insurance to get it, but it will limit some of the exposure for the legal drivers.

With no further participation, he closed public testimony.

**TAPE 04-58, SIDE B**

SENATOR OGAN asked Representative Meyer if he would oppose an amendment to address a situation where:

...if someone is driving with criminal culpability - either a reckless driver, a DUI, felony looting - and run into somebody, I think they should get hammered with as many tools as the guy that gets hurt regardless of whether or not they had insurance. I support what the bill does if it's just a simple violation but I think - I haven't talked to the MADD folks about it among others about drunk driving, I don't know how they'd feel about it, but I mean I think this goes a little too far in that area....

REPRESENTATIVE MEYER expressed concern about the late date in the session and noted this bill has a referral to the Senate Finance Committee.

CHAIR SEEKINS offered to hear the bill again on Wednesday. The committee then took a brief at-ease.

SENATOR OGAN moved to adopt a conceptual amendment [1], which read:

The limitation of recovery does not apply, however, if the driver of the other vehicle (1) is cited for a violation of the state's operating a motor vehicle while intoxicated as a result of the accident and is convicted of the offense, (2) intentionally causes the

accident, (3) flees from the scene of the accident, (4) at the time of the accident is in furtherance of an offense that is a felony.

He noted that language is from a Louisiana statute.

CHAIR SEEKINS announced that without objection, Amendment 1 was adopted.

SENATOR THERRIAULT indicated that he would work with the prime sponsor on a definition of what constitutes operating a motor vehicle.

SENATOR THERRIAULT then moved SCS CSHB 336(JUD) from committee with individual recommendations and its zero fiscal note.

The motion carried with Senators Ogan, Therriault and Seekins in favor.

4:42 p.m.

**CSHB 423(JUD)am-TAXICAB DRIVER LIABILITY**

REPRESENTATIVE TOM ANDERSON, sponsor of HB 423, said this bill applies to taxicab operators who transport motor vehicles owned by intoxicated individuals to their homes or other directed residential locations. This bill will lighten the insurance law a bit by not making the taxicab driver's insurance company liable for any damages that may occur, unless the taxicab driver was grossly negligent or reckless. The insurance company of the intoxicated person would be liable for any damage. He indicated that in 2002, 87 traffic deaths occurred, of which 35 were alcohol related. In order to create a successful program, liquor establishments have committed to implementing some policies, such as installing direct phone lines to cab companies. They would agree, in partnership with taxicab companies, to make public service announcements to help influence patrons to use the program. They have also agreed to pay a portion of the agreed upon cab fare costs and will track the program's usage to determine its effectiveness. The service will be free to consumers and cab companies will receive \$40 per trip from bar owners. MADD supports this legislation; it passed the House with unanimous support. He noted this bill was introduced in a previous legislature but died in the Senate on the last day due to lack of time.

SENATOR OGAN asked if a very alcohol-impaired person could give legal consent to another to drive his car.

REPRESENTATIVE ANDERSON said the principle of the needs of the many outweighs the needs of the few would apply. The needs of the many in this case would be those who are cognizant of the ramifications of driving while impaired. If the person is very drunk, the bar can sanction that person, who should not be in the bar. In a worst-case scenario, the staff would help the person into a taxi and another would drive the car home. If that person decided to sue, he said he would love to see how a judge and jury would react. He referred to lines 21-23 of page 2 of the bill and thought that language might be applicable. He read:

The motor vehicle owner is considered to have given consent to another person to drive the person's motor vehicle if the other person is involved in an accident.

He said in a worst-case scenario, a person who was really drunk and did not want a cab driver to drive his car home would be out of luck and probably could not testify in opposition to that.

SENATOR OGAN expressed concern that the legislature is making that decision for the person.

CHAIR SEEKINS said nothing in the bill says the person has to originate at a licensed establishment.

REPRESENTATIVE ANDERSON said that is incorrect; the vehicle must be driven home from a licensed establishment. The partnership with taxicab companies would not work otherwise as the taxicab companies would go broke.

CHAIR SEEKINS closed public testimony, as no one else wished to testify.

SENATOR OGAN moved CSHB 423(JUD)am from committee with individual recommendations and its attached fiscal notes.

The motion carried with Senators Therriault, Ogan and Seekins in favor.

#### **HB 438-MOVE OVER LAW FOR DRIVERS**

MR. MATTHEW RUDIG, staff to Representative Holm, sponsor of HB 438, told members that moving over and slowing down can save lives. It is very dangerous for law enforcement officers and emergency personnel to work alongside a roadway. According to

the National Law Enforcement Officers Memorial Fund report, from 1997 through 2002, 93 law enforcement officers were struck and killed nationwide along the roadside. Many more have been injured and many have had close calls. No measure of "move over" legislation will guarantee officers and emergency personnel complete safety, however this bill and further public education efforts will heighten driver awareness of the inherent dangers of officers and emergency personnel. Establishing such a requirement in statute will encourage the public to take precautions when passing emergency vehicles along the roadside with emergency lights flashing. Thirty other states have enacted similar legislation. Testimonials given by several Fairbanks police officers are included in members' packets that expressed a need for such legislation.

SENATOR THERRIAULT asked if this legislation essentially requires drivers to slow down to 20 mph and move over to the lane furthest away if an emergency vehicle is alongside the road. He pointed out that he was referring to information on the fiscal note.

MR. RUDIG said that language was in the original version of the bill but was amended by the House Judiciary and Senate State Affairs Committees. The new language in those versions reads:

Unless otherwise directed by law enforcement or emergency personnel, shall slow to a reasonable and prudent speed considering the traffic roadway and weather conditions.

CHAIR SEEKINS noted the bill in its present form has no stated speed limit in these instances.

MR. RUDIG agreed.

SENATOR OGAN said he fully supports the intent of this legislation but asked if this bill simply clarifies the law and creates a class A misdemeanor if personal injury results if a person does not follow the law.

MR. RUDIG said that is correct but that the offense could be written as a violation as well.

CHAIR SEEKINS noted it would be an infraction if no personal injury resulted.

SENATOR THERRIAULT said this only applies to stationary emergency vehicles, not vehicles en route.

MR. RUDIG clarified that is the intent of the sponsor.

SENATOR OGAN moved SCS CSHB 438(STA) from committee with individual recommendations and attached fiscal notes.

The motion carried with Senators Ogan, Therriault and Seekins in favor.

With no further business to come before the committee, CHAIR SEEKINS adjourned the meeting at 5:08 p.m.