

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

May 3, 2004
8:17 a.m.

TAPE(S) 04-59,60

MEMBERS PRESENT

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

MEMBERS ABSENT

Senator Johnny Ellis

COMMITTEE CALENDAR

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 273(JUD) am
"An Act relating to the right of a parent to waive an unemancipated child's claim of negligence against a provider of sports or recreational activities."

HEARD AND HELD

CS FOR HOUSE BILL NO. 275(FIN)
"An Act relating to animals, and to the care of and to cruelty to animals."

HEARD AND HELD

CS FOR HOUSE BILL NO. 427(JUD)
"An Act relating to guardianships and conservatorships, to the public guardian and the office of public advocacy, to private professional guardians and private professional conservators, to court visitors, court-appointed attorneys, guardians ad litem, and fiduciaries, and to the protection of the person or property of certain individuals, including minors; amending Rule 17(c), Alaska Rules of Civil Procedure, and Rules 16(f) and 17(e), Alaska Rules of Probate Procedure; and providing for an effective date."

HEARD AND HELD

CS FOR HOUSE BILL NO. 549(JUD) am
"An Act relating to unsolicited communications following an aircraft accident."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 273

SHORT TITLE: PARENTS' WAIVER OF CHILD'S SPORTS CLAIM

SPONSOR(s): REPRESENTATIVE(s) MCGUIRE

04/16/03 (H) READ THE FIRST TIME - REFERRALS
04/16/03 (H) TRA, JUD
05/07/03 (H) TRA REFERRAL WAIVED
02/16/04 (H) SPONSOR SUBSTITUTE INTRODUCED
02/16/04 (H) READ THE FIRST TIME - REFERRALS
02/16/04 (H) JUD
03/22/04 (H) JUD AT 1:00 PM CAPITOL 120
03/22/04 (H) Moved CSSSHB 273(JUD) Out of Committee
03/22/04 (H) MINUTE(JUD)
03/29/04 (H) JUD RPT CS(JUD) NT 4DP 1NR
03/29/04 (H) DP: SAMUELS, HOLM, OGG, MCGUIRE;
03/29/04 (H) NR: GRUENBERG
04/15/04 (H) TRANSMITTED TO (S)
04/15/04 (H) VERSION: CSSSHB 273(JUD) AM
04/16/04 (S) READ THE FIRST TIME - REFERRALS
04/16/04 (S) STA, JUD
04/29/04 (S) STA AT 3:30 PM BELTZ 211
04/29/04 (S) Moved CSSSHB 273(JUD)am Out of
Committee
04/29/04 (S) MINUTE(STA)
05/01/04 (S) STA RPT 3NR
05/01/04 (S) NR: STEVENS G, STEDMAN, GUESS
05/03/04 (S) JUD AT 8:00 AM BUTROVICH 205

BILL: HB 275

SHORT TITLE: ANIMALS AND CRUELTY TO ANIMALS

SPONSOR(s): REPRESENTATIVE(s) CHENAULT

04/17/03 (H) READ THE FIRST TIME - REFERRALS
04/17/03 (H) L&C, RES
02/20/04 (H) L&C AT 3:15 PM CAPITOL 17
02/20/04 (H) <Bill Hearing Postponed>
03/29/04 (H) L&C AT 3:15 PM CAPITOL 17
03/29/04 (H) Moved CSHB 275(L&C) Out of Committee
03/29/04 (H) MINUTE(L&C)
03/31/04 (H) RES REFERRAL WAIVED
04/01/04 (H) L&C RPT CS(L&C) NT 3DP 2NR 1AM
04/01/04 (H) DP: CRAWFORD, LYNN, ANDERSON;
04/01/04 (H) NR: ROKEBERG, DAHLSTROM; AM: GUTTENBERG
04/01/04 (H) JUD REFERRAL ADDED AFTER L&C

04/01/04 (H) FIN REFERRAL ADDED AFTER JUD
 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) Heard & Held
 04/06/04 (H) MINUTE(JUD)
 04/07/04 (H) JUD AT 1:00 PM CAPITOL 120
 04/07/04 (H) Heard & Held
 04/07/04 (H) MINUTE(JUD)
 04/14/04 (H) JUD AT 1:00 PM CAPITOL 120
 04/14/04 (H) Moved CSHB 275(JUD) Out of Committee
 04/14/04 (H) MINUTE(JUD)
 04/19/04 (H) JUD RPT CS(JUD) NT 2DP 2NR
 04/19/04 (H) DP: GRUENBERG, MCGUIRE; NR: SAMUELS,
 04/19/04 (H) HOLM
 04/26/04 (H) FIN AT 8:30 AM HOUSE FINANCE 519
 04/26/04 (H) Heard & Held
 04/26/04 (H) MINUTE(FIN)
 04/27/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 04/27/04 (H) Moved CSHB 275(FIN) Out of Committee
 04/27/04 (H) MINUTE(FIN)
 04/28/04 (H) FIN RPT CS(FIN) NT 5DP 6NR
 04/28/04 (H) DP: CROFT, MEYER, CHENAULT, FOSTER,
 04/28/04 (H) WILLIAMS; NR: HAWKER, STOLTZE, JOULE,
 04/28/04 (H) MOSES, FATE, HARRIS
 04/30/04 (H) TRANSMITTED TO (S)
 04/30/04 (H) VERSION: CSHB 275(FIN)
 05/01/04 (S) READ THE FIRST TIME - REFERRALS
 05/01/04 (S) JUD, FIN
 05/03/04 (S) JUD AT 8:00 AM BUTROVICH 205

BILL: HB 427

SHORT TITLE: GUARDIANS, CONSERVATORS, OPA, ETC

SPONSOR(S): REPRESENTATIVE(S) ANDERSON

02/04/04 (H) READ THE FIRST TIME - REFERRALS
 02/04/04 (H) HES, JUD
 04/01/04 (H) HES AT 3:00 PM CAPITOL 106
 04/01/04 (H) Heard & Held
 04/01/04 (H) MINUTE(HES)
 04/06/04 (H) HES AT 3:00 PM CAPITOL 106
 04/06/04 (H) Moved CSHB 427(HES) Out of Committee
 04/06/04 (H) MINUTE(HES)
 04/08/04 (H) HES RPT CS(HES) 1DP 5AM
 04/08/04 (H) DP: CISSNA; AM: SEATON, COGHILL, WOLF,
 04/08/04 (H) GATTO, WILSON
 04/13/04 (H) FIN REFERRAL ADDED AFTER JUD

04/14/04 (H) JUD AT 1:00 PM CAPITOL 120
04/14/04 (H) Moved CSHB 427(JUD) Out of Committee
04/14/04 (H) MINUTE(JUD)
04/21/04 (H) JUD AT 1:00 PM CAPITOL 120
04/21/04 (H) Moved New CSHB 427(JUD) Out of
Committee
04/21/04 (H) MINUTE(JUD)
04/22/04 (H) JUD RPT CS(JUD) NT 7DP
04/22/04 (H) DP: GARA, SAMUELS, GRUENBERG, OGG,
04/22/04 (H) HOLM, ANDERSON, MCGUIRE
04/23/04 (H) FIN REFERRAL WAIVED
04/30/04 (H) TRANSMITTED TO (S)
04/30/04 (H) VERSION: CSHB 427(JUD)
05/01/04 (S) READ THE FIRST TIME - REFERRALS
05/01/04 (S) JUD, FIN
05/03/04 (S) JUD AT 8:00 AM BUTROVICH 205

BILL: HB 549

SHORT TITLE: UNSOLICITED COMMUNICATION: AIRCRAFT CRASH

SPONSOR(S): JUDICIARY

03/29/04 (H) READ THE FIRST TIME - REFERRALS
03/29/04 (H) JUD
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 549(JUD) Out of Committee
04/06/04 (H) MINUTE(JUD)
04/07/04 (H) JUD RPT CS(JUD) NT 4DP 1NR 1AM
04/07/04 (H) DP: SAMUELS, HOLM, ANDERSON, MCGUIRE;
04/07/04 (H) NR: GARA; AM: OGG
04/21/04 (H) TRANSMITTED TO (S)
04/21/04 (H) VERSION: CSHB 549(JUD) AM
04/22/04 (S) READ THE FIRST TIME - REFERRALS
04/22/04 (S) L&C, JUD
04/27/04 (S) L&C AT 1:30 PM BELTZ 211
04/27/04 (S) Moved SCS CSHB 549(L&C) Out of
Committee
04/27/04 (S) MINUTE(L&C)
05/01/04 (S) L&C RPT SCS 1DNP 3NR SAME TITLE
05/01/04 (S) NR: BUNDE, SEEKINS, STEVENS G;
05/01/04 (S) DNP: FRENCH
05/03/04 (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: Testified for the sponsor of HB 273 and HB 549

Representative Mike Chenault
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of HB 275

Sue Wright
Staff to Representative Chenault
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Answered questions about CSHB 275(FIN)

Ms. Ethel Christensen
Director, Alaska PCA
No address provided

POSITION STATEMENT: Supports CSHB 275(FIN)

Ms. Sally Clampitt
President
Alaska Equine Rescue

POSITION STATEMENT: Supports CSHB 275(FIN)

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

POSITION STATEMENT: Sponsor of HB 427

Mr. Jim Shine
Staff to Representative Anderson
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Answered questions about CSHB 427(JUD)

Mr. Jim Parker
Assistant Public Advocate
Office of Public Advocacy
Department of Administration
900 W 5th Ave.
Anchorage, AK 99501-2090

POSITION STATEMENT: Supports and answered questions about CSHB 427(JUD)

Mr. Josh Fink
Office of Public Advocacy
Department of Administration
900 W 5th Ave.
Anchorage, AK 99501-2090

POSITION STATEMENT: Supports and answered questions about CSHB 427(JUD)

Ms. Marcia Davis
ERA Aviation
No address provided

POSITION STATEMENT: Supports CSHB 549(JUD)am

Mr. Art Warbelow
Warbelow Air Adventures
No address provided

POSITION STATEMENT: Supports CSHB 549(JUD)am

Mr. Bruce McGasson
Grant Aviation
No address provided

POSITION STATEMENT: Supports CSHB 549(JUD)am

Mr. Ed Greager
ALG Insurance
No address provided

POSITION STATEMENT: Supports CSHB 549(JUD)am

ACTION NARRATIVE

TAPE 04-59, SIDE A

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at 8:17 a.m. Senators French, Therriault and Chair Seekins were present. The first order of business to come before the committee was HB 273.

CSSSHB 273(JUD)am-PARENTS' WAIVER OF CHILD'S SPORTS CLAIM

MS. VANESSA TONDINI, staff to Representative Lesil McGuire, sponsor, explained that this legislation legally recognizes the right of a parent to waive a child's claim of negligence against a provider of a sports or recreation activity. She explained, "The reason for this bill - [it] came about as the result of a recent Colorado Supreme Court case that they actually refused to uphold the right of a mother of a 17-year old skier's signature on a release document used in a juvenile racing camp program."

Ever since that decision, the outdoor industry has been concerned about the ramifications that could result if such a holding were to occur in Alaska. Representative McGuire believes this erroneous rationale runs contrary to some mid-western and eastern states, which do find and hold that parents specifically have binding rights to sign release documents on behalf of their minor children. To find differently would be detrimental to scouting, athletic and extra-curricular school programs. A well-settled legal history of recognized parental rights over minor children exists in the medical treatment and education arena. To not extend the same logic to recreational activities is unfair. She also noted that the practical consequences of saying a parent's signature is invalid on such waivers makes the waiver itself invalid. That could affect insurance coverage, as insurance providers might hesitate to cover recreational activity providers.

MS. TONDINI concluded:

So we don't want these programs to go out of business or to be operating illegally. As an outdoor recreation supported state, Alaska just didn't want to stand by and watch these types of results. So it's important to know that this bill would not defeat, in any way, a parent or guardian's right to sue an operator that is not providing a safe service or program. An ordinary release waiver only provides a relief through causes of action founded in negligence. Claims of reckless or intentional misconduct are never released in a release waiver and this bill also reflects that. It's crucial to remember, with respect to pre-recreation releases, these documents - they regard activities that are totally voluntary in nature and the personal choice of the participant. If parents decide that a certain activity isn't right for their child - too dangerous or something, and they don't want them to participate in it, they definitely have that right to do so. This bill just reflects the freedom of choice and freedom of contract regarding these activities. So the fundamental right to make choices regarding a child's activities is being protected here.

SENATOR FRENCH asked the current law in Alaska and whether the Alaska Court System has made any recent pronouncements on this subject.

MS. TONDINI said the court has not made any pronouncements. This bill is "sort of a look into the future." She pointed out that the Alaska Court System scrutinizes these types of release documents and is very particular about making sure those documents are clear.

SENATOR FRENCH asked Ms. Tondini to cite some Alaska cases that discuss this concept.

MS. TONDINI offered to get back to Senator French at a later date. She noted she has a lot of case law from other states.

SENATOR THERRIAULT asked if the release is only for the sports activity itself and not for ancillary services, such as transportation.

MS. TONDINI believed that would be left to the company that designed the waiver. This legislation would cover a potential claim of negligence against the provider of those activities. She was unsure at what point the provision of the service would begin and end but surmised that would depend on the way the services were structured. She guessed the release of any potential claim of negligence would begin whenever the activity provided began, and that would have to be specified in the release waiver.

SENATOR THERRIAULT asked if the waiver would apply if, for example, a group of children was not properly supervised before a game started.

CHAIR SEEKINS said he reads it to say the waiver is against any prospective claim of negligence against the provider so anything in the package offered by the provider would be covered under that waiver.

SENATOR FRENCH thought the larger consideration is that in Alaska, recreational teams travel to sporting events. He said a claim could arise over something that happened in a hotel room in which the coach was somehow involved. He questioned whether the coach would be immune from all claims of negligence while in contact with the minors or only from claims that arise from conduct during the sporting event itself.

SENATOR THERRIAULT said most parents know that sporting activities are inherently dangerous but he doesn't know that parents should have to worry about an inherent risk in

transporting students or their overnight stays. He questioned whether those things could be separated out.

MS. TONDINI said the bill only covers providers of sports or recreational activities as defined in AS 09.65.290. She read:

Provider means a person or a federal, state or municipal agency that promotes, offers or conducts a sports or recreational activity, whether for pay or otherwise.

She furthered that sports or recreational activities are defined at length. She said her reading is that it would only apply to a provider of those specific activities so she felt there would be a good argument that a hotel owner would not be covered unless the release waiver included the entire trip.

SENATOR THERRIAULT asked who the provider would be, i.e. the Fairbanks-North Star Little League association.

MS. TONDINI said yes or the federal, state or local agency or a private agency or individual.

CHAIR SEEKINS thought, if the minors were entrusted to the coach's care, a coach might be liable for negligence but the association would not be.

SENATOR THERRIAULT said the Little League association usually covers everything and questioned whether this legislation would cover everything or just the sporting event.

CHAIR SEEKINS thought it would cover everything.

SENATOR FRENCH expressed interest in narrowing the bill's focus to just the sporting event itself.

CHAIR SEEKINS said the first stage of an insurance policy covers all claims that result from an accident of any kind, such as medical costs. Negligence would be the next portion of the claim. He pointed out that any damages from intentional misconduct or reckless behavior are no longer covered under his business's policy. He said he believes what is happening is that many sports organizations are having a difficult time getting coverage because a higher number of people not only want to make sure their children are covered for medical costs but to also get additional damages for negligence. That is why these waivers are more predominant.

SENATOR FRENCH said the rub is that insurance companies do not want to cover negligence. He surmised that the legislation needs to be as narrowly focused as possible because insurance companies will write a policy based on it the day it passes and will no longer cover negligence and transport.

CHAIR SEEKINS felt that sports providers feel they have too much liability and can't get coverage for it. He said the choice is that parents either waive the claim for negligence or the activity must cease. He said the question is whether parents should have the right to waive liability coverage for their children.

SENATOR THERRIAULT maintained that the fact that the bill is moving through the system is due to the fact that everyone knows that sporting activities can be inherently dangerous. However, there is the issue about the associated activities, such as transportation and lodging. He believed that most parents would sign a waiver knowing their children might get bruised but most would not know that waiver includes all of the other activities. He said if the transportation and lodging is a potential problem, he wants to hear that, otherwise it is getting pulled along with the waiver of liability for the activity that makes sense, yet there is a logical difference between the two.

CHAIR SEEKINS said the basic overriding question is whether or not a parent can sign an effective waiver.

MS. TONDINI said that is correct and the sponsor believes it is very important to recognize parental rights in this area. To not do so would be inconsistent with other recognized areas of parental rights. She then told Senator French that the Alaska Supreme Court has heard two cases on the effectiveness of pre-recreational releases, both of which were denied. She cited those cases and said in both of those cases, the court found neither release contained the words "negligence" or "death," which the court is careful to scrutinize for.

CHAIR SEEKINS noted that no one wished to testify on the bill and asked the will of the committee.

SENATOR THERRIAULT repeated his desire to specify that the waiver is for a sports activity only.

Members discussed possible language changes to address their concern.

SENATOR THERRIAULT offered to work with the legal drafter to confine the liability waiver to the activity itself and not include the ancillary services.

CHAIR SEEKINS agreed to bring the bill up at the next meeting and announced an at-ease.

8:40 a.m.

CSHB 275(FIN)-ANIMALS AND CRUELTY TO ANIMALS

REPRESENTATIVE MIKE CHENAULT, sponsor, deferred to his staff to present the bill.

CHAIR SEEKINS noted that he is the Vice Chairman of the State Policy Committee of the American Quarter Horse Association. One of his duties is the continuous evaluation of animal cruelty laws across the country, particularly as they apply to equines.

MS. SHARALYN WRIGHT, staff to Representative Chenault, told members this legislation is the result of hard work done on the House side with many participants. The issue of animal cruelty arose four years ago after several incidents of animal cruelty came to light. This bill aligns Alaska law with laws in some other states. Current Alaska statute has very few applications to animal cruelty so prosecuting cases of animal cruelty is difficult. It is not the sponsor's intent that this legislation affect livestock or dog mushing. It is the sponsor's intent to stop animal cruelty at its worst.

CHAIR SEEKINS took public testimony.

MS. CHRIS HEINZE, a Kenai Peninsula farmer, stated support for CSHB 275(FIN). She informed members that she has been taking care of unwanted and abused animals for many years and that many people on the Kenai Peninsula are tired of seeing the abuse and cruelty of animals there.

MS. ETHEL CHRISTIANSEN, director and founder of the Alaska SPCA, stated support for CSHB 275(FIN) and said it will be very important for her community.

MS. SALLY CLAMPITT, President of Alaska Equine Rescue, stated strong support for CSHB 275(FIN) because it is sensible and provides parameters and details. The current statute is very

hard to enforce; CSHB 275(FIN) will make prosecution easier for the district attorney.

CHAIR SEEKINS said he wants to see a penalty for abuse put into law but wants to maintain the ability to euthanize an animal. This legislation allows a licensed veterinarian to make certain determinations.

SENATOR THERRIAULT referred to the language on page 4, line 29, and expressed concern that some ethnic groups eat certain domesticated animals.

MS. WRIGHT said that the House Labor and Commerce Committee inserted that language.

SENATOR THERRIAULT felt the bill should acknowledge other culture's food sources. He then referred to the language on page 4, line 28, and asked for an explanation.

MS. WRIGHT said that the prohibition against decompression chambers is current law because that is an inhumane form of euthanasia.

SENATOR FRENCH referred to lines 20-21 on page 6 and asked what is meant by securing an animal in the back of a vehicle.

MS. WRIGHT said last year she was driving on Kalifonsky Beach road when a dog fell out of the back of a truck and landed in front of her vehicle. She had the choice of having a head-on collision with another car, hitting the dog, or swerving into a gas station. She said securing a dog is a matter of tying the dog with a short rope or leash inside the back of the truck.

SENATOR FRENCH questioned whether that requirement should be restricted to highways or streets and not, for example, a vehicle driving along a beach.

CHAIR SEEKINS agreed with Senator French.

REPRESENTATIVE CHENAULT pointed out that some municipalities have ordinances requiring animals to be secured inside of vehicles.

CHAIR SEEKINS questioned the language on lines 18-19 of page 6 and said it would raise the hackles of members of the Alaska Trappers Association.

MS. WRIGHT said this bill allows for commercial or subsistence trapping.

SENATOR FRENCH cited lines 25-26 of the same page.

CHAIR SEEKINS said a person could be charged with unlawful trapping under that language so the person would be burdened with the defense for lawful trapping.

SENATOR FRENCH agreed.

CHAIR SEEKINS suggested rewording that section so that a legitimate trapper would not have to defend himself in court.

SENATOR THERRIAULT questioned why that section was not written to address people with the sole purpose of snaring a domestic animal since trapping a wild animal is allowed.

SENATOR FRENCH suggested the phrase, "intentionally sets a steel jaw, leg hold snare, spring or similar trap for the purpose of injuring or killing a dog or cat or domestic animal."

TAPE 04-59, SIDE B

CHAIR SEEKINS said that section could be worked on.

SENATOR FRENCH commented that he agrees with the purpose of the bill and is interested in moving it out of committee, however, his only concern is that the requirement to secure animals in the back of pick-up trucks be restricted to highways.

CHAIR SEEKINS agreed. He then referred to the section pertaining to care of animals on page 1 and said that could be a potentially inflammatory section depending on who interprets it. He said he realizes the determination is to be made by a veterinarian but said people's standards differ and although some standards might be acceptable from a health perspective, others might find those standards objectionable. His concern is that if a police officer investigates a case of animal abuse, the police officer be required to at least make contact with a veterinarian before any animals are confiscated so that a well-intentioned but overzealous person does not make the wrong decision.

REPRESENTATIVE CHENAULT pointed out that to get a search warrant, one must show probable cause. The bill also contains the phrase, "if warranted" so that just because a complaint was

filed and a judge issued a search warrant, an officer would not automatically have to take the animals into custody. He said although egregious cases of abuse are obvious, police officers are not trained in animal cruelty.

CHAIR SEEKINS said he wonders if prior to seizure of an animal, some consultation with a veterinarian be required. He felt that would make for a better prosecutorial case.

SENATOR FRENCH thought only the most egregious cases would get attention because state troopers must prioritize their work and an animal abuse case may fall low on the list.

REPRESENTATIVE CHENAULT said that is true but if they are required to take a look, he wants them to make the best decision possible. He said he personally has no problem if a police officer makes contact, at a minimum, with a veterinarian.

CHAIR SEEKINS said that is why he is suggesting that the police officer consult with a veterinarian as soon as possible. He then announced that he would hold the bill for further review of the aforementioned issues.

SENATOR THERRIAULT specified those issues are: the consumption of domesticated animals by certain cultures; legal trapping; and securing a pet in a vehicle.

The committee took an at-ease from 9:20 a.m. to 9:27 a.m.

HB 427-GUARDIANS, CONSERVATORS, OPA, ETC.

REPRESENTATIVE TOM ANDERSON, sponsor of HB 427, told members that HB 427 is the result of conversations he has had with Josh Fink of the Office of Public Advocacy regarding the mistreatment of vulnerable adults who receive services from private guardians and conservators. Mr. Fink felt it important that Alaska be in parity with other states that have regulatory and supervisory statutes to prevent abuse. He sponsored this bill in concert with the Office of Public Advocacy and the Alaska State Association for Guardianship and Advocacy, Adult Protective Services, the Long Term Care Ombudsman, the Disability Law Center, the Senior Advocacy Coalition, AARP and the Alaska Court System. He explained that professional guardians and family guardians provide services to approximately 2,500 disabled, vulnerable adults in Alaska. Under current law, private guardians and conservators make legal, medical and housing decisions for those adults and are completely unregulated by the

state. Disabled adults are obviously easy prey for those wishing to exploit their resources, so HB 427 would grant regulatory authority over private guardians and conservators and establish minimum qualifications and standards, which will help ensure that disabled adults get the help and care they deserve. HB 427 will require private guardians and conservators to meet certain criteria and to register with the state. Private guardians will have to be certified by the National Guardianship Foundation and have at least two years of professional experience working with clients or a degree in human services, social work, psychology, sociology, special education or a closely related field. HB 427 will also require guardians to have experience in financial management or a degree in accounting. This legislation prohibits private guardians from registering with the state and practicing in the state without a criminal background check. HB 427 allows the Division of Occupational Licensing to revoke a private guardian's license if the guardian has abandoned, neglected or exploited his or her ward or has become unfit due to professional incompetence.

MR. JIM SHINE, staff to Representative Anderson, told members that since the legislature is under the 24-hour rule, it has been difficult to get in touch with the people who were instrumental in getting this legislation drafted but Mr. Parker was available to testify via teleconference.

MR. JIM PARKER, Assistant Public Advocate, Office of Public Advocacy, said he is a member of the State Association of Guardianships and a member of the task force that was instrumental in drafting this legislation.

CHAIR SEEKINS asked for an explanation of the changes made in Version S [CSHB 427(JUD)].

MR. PARKER stated that the House Judiciary Committee made no major changes. One change, suggested by the Division of Occupational Licensing, was to amend Title 8 rather than Title 13 regarding the qualifications of private guardians and conservators.

CHAIR SEEKINS asked for an estimate of the number of conservators and guardians in the state.

MR. PARKER said the great majority of persons appointed are family members. This bill does not cover people who are not in the business of providing guardianships or conservatorships.

CHAIR SEEKINS asked if a family member would not be regulated.

MR. PARKER said that is correct, although that person would be obligated to file reports with the court and receive some training. The State Association of Guardianships has created videotape for training purposes. Also, friends who act as guardians would not be regulated.

SENATOR FRENCH asked if, outside the Office of Public Advocacy, there is a discrete group of people who act as professional guardians, and if Mr. Parker could estimate that number.

MR. PARKER said about 10 or 12 people in Southcentral Alaska, fewer than optimal.

SENATOR FRENCH asked if any of those people will be unable to continue to provide services if the requirements of the bill apply.

MR. PARKER said he did not believe the legislation would disqualify anyone.

SENATOR FRENCH referred to line 17 on page 2 and said a person cannot be licensed if convicted of a crime within 10 years of application. He asked if that would be 10 years from the date of judgment or 10 years from the date the probationary period expired.

MR. PARKER said it would be 10 years from the date of conviction. He added that issue was discussed in the House. A guardian must be in good standing with a national organization; the only one that pertains to guardianships at this time is the National Guardianship Association (NGA). The NGA requires its test applicants to have a clean criminal record.

SENATOR FRENCH said he mentioned it because a person could be convicted of a serious offense, get a 10-year sentence, but become a guardian right after serving that sentence.

MR. PARKER said the House Judiciary Committee discussed that possibility. He assured Senator French that the NGA's standards are higher than those in the bill so that is not something to worry about.

CHAIR SEEKINS noted that without further questions or participants, public testimony was closed.

SENATOR THERRIAULT questioned how the Alaska Court System (ACS) can take on the additional responsibilities set out on page 13 if the fiscal notes are zero. He said it is his understanding that the ACS does not produce the report required under existing statute so this will add to that requirement.

MR. SHINE told members that Doug Wooliver played a major role in the process of drafting this bill but was unable to attend due to a prior commitment. According to Mr. Wooliver, CSHB 427(JUD) will have no fiscal impact on the ACS.

MR. JOSH FINK, Director of the Office of Public Advocacy, said he does not believe that requirement will trigger a fiscal note. Guardians are required to file annual reports and a visitor to the ACS must file a report every third year. The language [in existing statute] is ambiguous as to whether or not the visitor is to file a report annually, but the visitor cannot do that without access to the information every year. The point of a third year review by the visitor was to give the ACS input about how the guardianships were going, any problems, and whether any clients had improved and no longer needed guardianship services.

SENATOR THERRIAULT said the language on page 13, lines 25-27, is an attempt to clarify the language that is being deleted on lines 27-28. However, language [in the previous paragraph] requires the guardian to submit a report to the ACS but the ACS is not tracking those reports and nothing is submitted. He said he does not know whether that is due to lack of resources, but he would like an answer as to why the ACS is willing to take on additional responsibility when it is not following the existing statute. He then referred to written correspondence in members' packets and asked who Mr. Robert Penzenik represents.

MR. SHINE said he is a family guardian who lives in Anchorage. He testified in support of the bill before the House HESS Committee.

SENATOR THERRIAULT asked what Mr. Penzenik's relationship is to the guardianship issue.

MR. SHINE said Mr. Pensenik is a family guardian for his daughter. He stated in the House HESS Committee that this bill will not impact family guardians.

SENATOR THERRIAULT asked if he acts as a guardian in any other arena.

MR. SHINE said he works in conjunction with another conservator for other minors.

REPRESENTATIVE ANDERSON expressed concern that Mr. Wooliver could not answer members' questions.

CHAIR SEEKINS stated that Senate President Therriault could determine whether this legislation should be waived from the Senate Finance Committee. He noted the chair of the Senate Finance Committee will have to be convinced that this bill will have no fiscal impact before agreeing to waive the bill.

SENATOR FRENCH asked if guardians will pay a fee for licensure.

MR. SHINE thought the fee would be \$100 biennially.

REPRESENTATIVE ANDERSON noted the fee would cover the cost of licensure by the Division of Occupational Licensing.

SENATOR FRENCH said the fiscal note is unclear as to whether licensees will pay \$100 or \$450.

CHAIR SEEKINS indicated the Senate Finance Committee will want an answer to that question before agreeing to waive the bill.

REPRESENTATIVE ANDERSON agreed to get answers to those questions and distribute them to Senate Judiciary and Senate Finance members. If the Senate Finance Committee members are not satisfied with those answers, he will not request that the bill be waived from that committee.

SENATOR THERRIAULT asked that the bill be held in committee to give him time to talk to Mr. Wooliver.

CHAIR SEEKINS agreed and said he would schedule several bills that are being held over to the next day.

CSHB 549(JUD)am-UNSOLICITED COMMUNICATION:AIRCRAFT CRASH

MS. VANESSA TONDINI, staff to Representative McGuire, sponsor of HB 549, told members this bill prohibits an attorney from contacting passengers or their families in the aftermath of an aviation accident for 45 days. She noted that attorneys are bound by rules of professional conduct; Rule 7.3 is applicable to this type of conduct. That rule states:

Attorneys shall not solicit by in person or live telephone contact special employment from a prospective client, with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain.

She explained the reason behind Rule 7.3 is that prospective clients who are feeling overwhelmed may find it difficult to evaluate all alternatives with reasoned judgment after an accident. Those situations are fraught with the possibility of undue influence or intimidation. However, even though Rule 7.3 has been in place for some time, it has not controlled the "feeding frenzy" that takes place in the aftermath of awful accidents. The federal government tried to correct the problem by passing the Aviation Disaster and Family Assistance Act in 1996. That law mandated that air carriers provide specific support to families of those injured or killed and prohibited unsolicited contact by attorneys for 30 days. In 2000 that law was amended to expand the scope to include associate agents, employees, or other representatives of attorneys and it expanded the time frame to 45 days. She pointed out that enforcement of the federal law requires action by the Civil Aeronautics Board or the U.S. Attorney General. The penalty for a violation is close to a \$1,000 fine. Currently, little enforcement of this law takes place and there is debate about whether the federal law is enforceable against attorneys who violate it regarding accidents that happen entirely within Alaska. She thought everyone would agree that passengers and their families are very vulnerable to pressure by others in the aftermath of an accident, especially in rural Alaska. She pointed out that this bill will apply only to flights that take place entirely inside of Alaska.

MS. TONDINI indicated that CSHB 549(JUD)am merely codifies the federal law except that a reference to the air carrier's attorney has been added to make it clear that all attorneys are to refrain from making contact. The main reason that Representative McGuire included a criminal sanction in the bill is because she felt a civil financial penalty would be inadequate because the contingency fees for representing these clients are high. In addition, people are hesitant to file bar complaints against their neighbors in small towns, just as they would be hesitant to file a civil claim. Also, the Alaska Bar Association will take notice of a criminal case. The crime is a class A misdemeanor with a fine of \$100,000 or the attorney's legal fee, whichever is greater.

TAPE 04-60, SIDE A

MS. TONDINI further explained that CSHB 549(JUD)am only prevents attorneys from making initial contact; a client can initiate contact at any time.

10:00 a.m.

CHAIR SEEKINS asked if the definition of an "attorney" include an agent or representative of an attorney.

MS. TONDINI said it does on page 1, line 10, and in subsection (b).

CHAIR SEEKINS said he wanted it on the record that the definition of attorney extends to anyone who is soliciting on the attorney's behalf as well. He then took public testimony.

MS. MARCIA DAVIS, ERA Aviation, stated support for CSHB 549(JUD)am.

SENATOR FRENCH asked Ms. Davis if she has ever settled a claim that happened on an ERA flight and, if so, when.

MS. DAVIS said ERA has settled. When ERA is contacted by someone who claims to have suffered an injury during a flight, ERA asks the person to submit medical bills, which it pays immediately. If the person asks for extraneous damages, such as lost work time, ERA pays those as well if they seem reasonable. However, if ERA believes the person is trying to take advantage of the situation, ERA tries to settle those cases fairly, which sometimes involves offering additional air transportation. She said she cannot think of any cases in which the passenger was dissatisfied with how the claim was resolved when ERA was able to deal with the claim directly. However, in instances, for example, where a person had a bumpy flight out of Bethel and had an attorney write a letter, those situations have not gone well, primarily because the individual did not intend to sue but was encountered by a lawyer. Individuals have admitted that.

MR. ART WARBELOW, Warbelow Air Adventures, stated support of CSHB 549(JUD)am.

MR. BRUCE McGASSON, Grant Aviation, stated support for CSHB 549(JUD)am.

MR. ED GRAEGER, ALG Insurance, stated support of CSHB 549(JUD)am.

SENATOR OGAN asked if people who got a bruise on a bumpy flight actually file claims.

MR. GRAEGER replied:

Unfortunately, what we do see is attorney solicitation of claims for very minor injuries and that's what's part of eating into capacity and cost for providing liability coverage for the various air carriers in Alaska is that minor matters are getting pursued aggressively by counsel and it affects, over a long period of time, the costs of providing perhaps, larger limits for people who are more deserving with more serious injuries. So, our interest in this is to avoid unnecessary solicitation of minor matters so that greater capacity can be available to respond to more serious injuries.

He told members ALG Insurance covers the full gamut of aviation carriers.

SENATOR FRENCH asked Ms. Tondini if the attorney general would be nervous about filing a civil complaint against a lawyer.

MS. TONDINI said she does not know that "nervous" is the right word but she does not believe civil suits would be filed as aggressively as criminal suits would be. She said everyone agrees such conduct on an attorney's part is wrong so the penalty in the bill is strong enough to be worth enforcement.

SENATOR FRENCH noted that he asked, at a prior hearing, to hear from people who have been harassed by attorneys.

MS. TONDINI deferred to the aviation representatives to discuss some of those situations, however they would not release names to her because of privacy concerns.

MS. DAVIS related a current case in which a nose wheel snapped off on a landing outside of Bethel. Although no one was injured at the scene, all passengers were brought to Bethel for medical care as a safety precaution. ERA offered the passengers free tickets. A passenger told an ERA employee that a lawyer contacted him and a friend afterward. The passenger told the lawyer he had no intention of suing but the friend succumbed to

pressure from the lawyer and is now pursuing a claim for damages for emotional trauma. She said it is difficult to get people to talk about their neighbors who are sometimes the lawyers. She noted that ERA does not file bar complaints because that is one of the last things it would want to do while in the midst of litigation and trying to settle. In addition, it is problematic from a public relations aspect.

CHAIR SEEKINS noted that he would hold CSHB 549(JUD)am until the next day and adjourned the meeting at 10:13 a.m.