

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

May 5, 2004  
8:24 a.m.

TAPE(S) 04-63, 64

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

Senator Johnny Ellis

**COMMITTEE CALENDAR**

SENATE BILL NO. 97

"An Act relating to public interest litigants and to attorney fees; and amending Rule 82, Alaska Rules of Civil Procedure."

MOVED CSSB 97(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 334(RLS)

"An Act relating to unlawful exploitation of a minor and to distribution of child pornography."

MOVED CSHB 334(RLS) OUT OF COMMITTEE

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."

MOVED SCS CSSSHB 273(JUD)am OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 549(JUD) am

"An Act relating to unsolicited communications following an aircraft accident."

HEARD AND HELD

CS FOR HOUSE BILL NO. 342(FIN) am

"An Act relating to driving while under the influence, to the definition of 'previously convicted,' to alcohol-related offenses, to ignition interlock devices, and to the issuance of limited driver's licenses; and providing for an effective date."

MOVED CSHB 342(FIN)am OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: SB 97

SHORT TITLE: ATTY FEES: PUBLIC INTEREST LITIGANTS

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

03/03/03 (S) READ THE FIRST TIME - REFERRALS  
03/03/03 (S) RES, JUD  
03/28/03 (S) RES AT 3:30 PM BUTROVICH 205  
03/28/03 (S) Heard & Held  
03/28/03 (S) MINUTE(RES)  
04/03/03 (S) RES AT 8:00 AM BELTZ 211  
04/04/03 (S) JUD AT 1:30 PM BELTZ 211  
04/04/03 (S) <Pending Referral>  
04/07/03 (S) RES AT 3:30 PM BUTROVICH 205  
04/07/03 (S) Moved Out of Committee  
04/07/03 (S) MINUTE(RES)  
04/08/03 (S) RES RPT 2DP 2DNP 1NR 1AM  
04/08/03 (S) DP: WAGONER, SEEKINS;  
04/08/03 (S) DNP: ELTON, LINCOLN;  
04/08/03 (S) NR: DYSON; AM: STEVENS B  
04/09/03 (S) JUD AT 1:30 PM BELTZ 211  
04/09/03 (S) Scheduled But Not Heard  
04/23/03 (H) JUD AT 1:00 PM CAPITOL 120  
04/23/03 (S) Heard & Held  
04/23/03 (S) MINUTE(JUD)  
04/28/03 (H) JUD AT 1:00 PM CAPITOL 120  
04/28/03 (S) Moved SB 97 Out of Committee  
04/28/03 (S) MINUTE(JUD)  
04/29/03 (S) JUD RPT 3DP 2DNP  
04/29/03 (S) DP: SEEKINS, OGAN, THERRIAULT;  
04/29/03 (S) DNP: ELLIS, FRENCH  
05/01/04 (S) RETURNED TO JUD COMMITTEE  
05/04/04 (S) JUD AT 8:00 AM BUTROVICH 205  
05/04/04 (S) Heard & Held  
05/04/04 (S) MINUTE(JUD)  
05/05/04 (S) JUD AT 8:00 AM BUTROVICH 205

BILL: HB 334

SHORT TITLE: UNLAWFUL EXPLOITATION OF MINOR/CHILD PORN

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  
01/30/04 (H) JUD AT 1:00 PM CAPITOL 120

01/30/04 (H) <Bill Hearing Postponed>  
 02/20/04 (H) JUD AT 1:00 PM CAPITOL 120  
 02/20/04 (H) Scheduled But Not Heard  
 02/23/04 (H) JUD AT 1:00 PM CAPITOL 120  
 02/23/04 (H) Heard & Held; Assigned to Subcommittee  
 02/23/04 (H) MINUTE(JUD)  
 03/01/04 (H) JUD AT 1:00 PM CAPITOL 120  
 03/01/04 (H) <Bill Hearing Postponed Wed. 3/3/04>  
 03/03/04 (H) JUD AT 1:00 PM CAPITOL 120  
 03/03/04 (H) Scheduled But Not Heard  
 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) Moved CSHB 334(JUD) Out of Committee  
 03/16/04 (H) MINUTE(JUD)  
 03/18/04 (H) JUD RPT CS(JUD) NT 5DP 1NR 1AM  
 03/18/04 (H) DP: SAMUELS, HOLM, ANDERSON, OGG,  
 03/18/04 (H) MCGUIRE; NR: GARA; AM: GRUENBERG  
 04/15/04 (H) RLS AT 9:00 AM FAHRENKAMP 203  
 04/15/04 (H) Moved CSHB 334(RLS) Out of Committee  
 04/15/04 (H) MINUTE(RLS)  
 04/19/04 (H) RLS RPT CS(RLS) NT 2DP 4NR  
 04/19/04 (H) DP: COGHILL, ROKEGERG; NR: BERKOWITZ,  
 04/19/04 (H) MORGAN, KERTTULA, MCGUIRE  
 04/19/04 (H) TRANSMITTED TO (S)  
 04/19/04 (H) VERSION: CSHB 334(RLS)  
 04/20/04 (S) READ THE FIRST TIME - REFERRALS  
 04/20/04 (S) STA, JUD  
 04/27/04 (S) STA AT 3:30 PM BELTZ 211  
 04/27/04 (S) Moved CSHB 334(RLS) Out of Committee  
 04/27/04 (S) MINUTE(STA)  
 04/28/04 (S) STA RPT 3DP 1NR  
 04/28/04 (S) DP: STEVENS G, COWDERY, STEDMAN;  
 04/28/04 (S) NR: GUESS  
 05/05/04 (S) JUD AT 8:00 AM BUTROVICH 205

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  
 05/03/04 (S) Heard & Held  
 05/03/04 (S) MINUTE(JUD)  
 05/05/04 (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  
 05/03/04 (S) Heard & Held

05/03/04 (S) MINUTE(JUD)  
05/05/04 (S) JUD AT 8:00 AM BUTROVICH 205

BILL: HB 342

SHORT TITLE: DRIVING UNDER INFLUENCE/ALCOHOL OFFENSES

SPONSOR(S): REPRESENTATIVE(S) GATTO

01/12/04 (H) PREFILE RELEASED (1/2/04)  
01/12/04 (H) READ THE FIRST TIME - REFERRALS  
01/12/04 (H) JUD  
02/02/04 (H) JUD AT 1:00 PM CAPITOL 120  
02/02/04 (H) Heard & Held  
02/02/04 (H) MINUTE(JUD)  
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) <Bill Hearing Postponed>  
02/20/04 (H) JUD AT 1:00 PM CAPITOL 120  
02/20/04 (H) Heard & Held  
02/20/04 (H) MINUTE(JUD)  
02/27/04 (H) JUD AT 1:00 PM CAPITOL 120  
02/27/04 (H) Heard & Held  
02/27/04 (H) MINUTE(JUD)  
03/01/04 (H) JUD AT 1:00 PM CAPITOL 120  
03/01/04 (H) Moved CSHB 342(JUD) Out of Committee  
03/01/04 (H) MINUTE(JUD)  
03/08/04 (H) JUD RPT CS(JUD) NT 3DP 4NR  
03/08/04 (H) DP: ANDERSON, GRUENBERG, MCGUIRE;  
03/08/04 (H) NR: HOLM, GARA, SAMUELS, OGG  
03/08/04 (H) FIN REFERRAL ADDED AFTER JUD  
04/13/04 (H) FIN AT 3:00 PM HOUSE FINANCE 519  
04/13/04 (H) Heard & Held  
04/13/04 (H) MINUTE(FIN)  
04/26/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
04/26/04 (H) Continuation of Meeting Canceled 6:39  
PM  
04/27/04 (H) FIN AT 8:30 AM HOUSE FINANCE 519  
04/27/04 (H) -- Meeting Canceled --  
04/27/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
04/27/04 (H) Moved CSHB 342 (FIN) Out of Committee  
04/27/04 (H) MINUTE(FIN)  
04/28/04 (H) FIN RPT CS(FIN) NT 2DP 3NR 5AM  
04/28/04 (H) DP: FOSTER, WILLIAMS; NR: JOULE, FATE,  
04/28/04 (H) HARRIS; AM: MEYER, HAWKER, STOLTZE,  
04/28/04 (H) CROFT, CHENAULT  
05/01/04 (H) MOVED TO BOTTOM OF CALENDAR  
05/01/04 (H) TRANSMITTED TO (S)

05/01/04 (H) VERSION: CSHB 342(FIN) AM  
05/02/04 (S) READ THE FIRST TIME - REFERRALS  
05/02/04 (S) JUD, FIN  
05/05/04 (S) JUD AT 8:00 AM BUTROVICH 205

**WITNESS REGISTER**

Mr. Craig Tillery  
Assistant Attorney General  
Department of Law  
PO Box 110300  
Juneau, AK 99811-0300

**POSITION STATEMENT:** Explained the changes made in version X of SB 97

Mr. Joe Balash  
Staff to Senator Therriault  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Answered questions about SB 97

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

**POSITION STATEMENT:** Sponsor of HB 334

Ms. Linda Wilson  
Public Defender Agency  
Department of Administration  
900 W 5<sup>th</sup> Ave., Suite 200  
Anchorage, AK 99501-2090

**POSITION STATEMENT:** Supports CSHB 334(RLS)

Ms. Vanessa Tondini  
Staff to Representative McGuire  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Presented CSSSHB 273(JUD)am and answered questions about HB 549

Ms. Amanda Wilson  
Staff to Representative Rokeberg  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Answered questions about HB 342

Representative Carl Gatto

Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Prime sponsor of HB 342

Mr. Cody Rice  
Staff to Representative Gatto  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Presented HB 342 for the sponsor

Ms. Cindy Cashen  
MADD Juneau Chapter  
Juneau, AK

**POSITION STATEMENT:** Supports HB 342

#### **ACTION NARRATIVE**

#### **TAPE 04-63, SIDE A**

**CHAIR RALPH SEEKINS** called the Senate Judiciary Standing Committee meeting to order at 8:24 a.m. Senators Ogan, Therriault, French and Chair Seekins were present.

#### **SB 97-ATTY FEES: PUBLIC INTEREST LITIGANTS**

CHAIR SEEKINS informed members that a new proposed committee substitute (CS), labeled version X, was before the committee.

SENATOR THERRIAULT moved to adopt version X for the purpose of discussion. Without objection, the motion carried.

SENATOR THERRIAULT asked how the issues of sovereignty and the preservation of the rights to appeal the recent court decision have been addressed in version X.

CHAIR SEEKINS said that according to Section 6 on page 5, Sections 2 through 5 of the act apply to civil action appeals filed on or after the effective date of the bill, therefore it would not affect the current lawsuit.

SENATOR FRENCH noted that according to Section 8, Sections 5(a) and (c) are retroactive to September 11, 2003.

CHAIR SEEKINS took an at-ease from 8:25 a.m. to 8:30 a.m. He then stated that according to Section 8, the retroactivity clause would apply to the court rules. Section 4 of Version G-2, which applied to sovereign immunity, was removed from version X.

SENATOR THERRIAULT said he did not feel that using the sovereign immunity approach to say that the legislature shall not pay the court ruling for fees, discussed the previous day, was the preferable way to go out because it would set up a potential constitutional conflict between the legislature with its appropriation powers, and the judicial branch.

CHAIR SEEKINS agreed.

SENATOR FRENCH asked if the provisions of Section 2(f) through (i) are identical to legislation passed the previous year.

SENATOR THERRIAULT said that is his understanding.

SENATOR FRENCH noted according to the recent court decision, subsection (f) and (g) are unconstitutional. He asked Mr. Tillery to respond to that concern.

MR. CRAIG TILLERY, Assistant Attorney General, Department of Law (DOL), said version X would still contain a two-thirds vote requirement for a court rule change, which was the primary leg upon which the court decision was based. He noted the court decision, with respect to fees against a public interest litigant, was also based on due process and equal protection grounds. He continued:

And to a large extent, that was responding to the court's understanding that the legislature - of a disconnect between the legislature's - what they do - the legislature's focus on natural resource cases and the fact that the bill affected a broader range of cases. I haven't seen the bill but at least some versions have made it clear that the legislature understands that this does affect a broader range of cases other than just natural resource cases. I don't know if that's in there.

CHAIR SEEKINS interjected to say that those sections in version X are the same as those in version G-2.

MR. TILLERY replied:

Then there was something in [version] G-2 that did make sure that connection was there so that would have to go back to the court for it to do that. Okay, with that understanding now, is it constitutional? So it

would present the court with a different concern. Also ... part of those statutes was the attorneys' fees to a public interest litigant. The court ... indicated that they were not raised. In the G-2 version, that was split out and a severability clause was added to make clear that the legislature was treating those as separate - the fees to a public interest litigant and the fees against so that if one of those proved to be constitutionally infirm, the other could still stand. And again, I haven't seen the version so I don't know if that survived or not.

CHAIR SEEKINS asked where that provision was located in version G-2.

MR. TILLERY said that was in Section 2 (f) and (g). Subsection (f) of the version last year said the court or the state could not discriminate the award of attorneys' fees to or against. In version G-2, (f) was made to a party and (g) was made against a party.

CHAIR SEEKINS asked if that was in Section 2 of version G-2.

MR. TILLERY said what was originally combined into one section was divided into subsections (f) and (g) of Section 2 in version G-2.

MR. TILLERY said this version, as opposed to HB 145, clarifies that should the court determine that the award of attorneys' fees against a public interest litigant is constitutionally defective, the legislature's decision regarding fees to a public interest litigant may still stand.

SENATOR FRENCH pointed to Section 4 on page 4 of version X, regarding attorneys' fees and costs.

CHAIR SEEKINS interjected to say that Section 4 was Section 5 in version G-2.

SENATOR FRENCH asked if everyone is operating on the premise that section 4 is aimed at subsistence cases and what the drafter's intent was.

SENATOR THERRIault said his understanding is that section is aimed at subsistence cases.

SENATOR FRENCH asked Mr. Tillery if he agrees that language creates a far weaker standard than the one the state has been operating under for some time. He noted:

The standard here is that you'll get your attorneys' fees if you do not otherwise have an economic incentive to bring the case. That seems to imply that if you have any economic incentive to bring the case, then you can't be a public interest litigant, but the standard we've been working under is quite different. The standard we've been working under says your economic incentive must be sufficient incentive to file a suit in order to fail. So, that is, you've got to have a sufficient economic incentive to bring it for money reasons, and if you have that sufficient incentive, then you're not a public interest litigant. Mr. Tillery, I'd be interested in hearing your comments on that change in standards.

MR. TILLERY commented that he believes a court would construe that similarly to the way it now considers an economic incentive with regard to public interest litigant criteria. He stated:

In fact, this provision is actually more beneficial to a public interest litigant than the current court-made policy in that it does not require the other three factors. It doesn't require a large number of people to be affected and it doesn't require an issue of great public importance and so forth. It only really - if you fit within - if it's an appeal from this kind of a case, and if you don't have an economic incentive - and I certainly agree, you could construe - it could be argued that that is a tougher standard but - and I don't know what the drafter's intentions were but I don't believe a court would construe it as tougher. I think the court would view it as too extensive with its public interest litigant criteria.

SENATOR FRENCH then questioned whether the drafter's intent is to weaken or maintain the standard.

SENATOR THERRIAULT deferred to the drafter to answer that question.

CHAIR SEEKINS agreed to contact the drafter. He then asked Mr. Tillery whether he sees this provision as creating a tougher or weaker standard to award attorneys' fees.

MR. TILLERY said it comes down to a question of intent and noted that the constitutional exception uses different language: it says the claimant does not have sufficient economic incentive to bring the action or appeal regardless of constitutional claims involved. The language [in version X] is drafted differently. He explained that if the drafter's intent is to use the same standard, using the same language would be useful.

CHAIR SEEKINS asked if subsistence is not an economic interest but is an interest of meeting the protein needs of one's family.

MR. TILLERY replied, "Mr. Chairman ... this section is not, as I read it, is not directed solely at subsistence so it would include any actions of the Board of Fisheries or the Board of Game."

SENATOR FRENCH asked why Sections 5(a) and (c) need to be made retroactive to September 11, 2003.

CHAIR SEEKINS asked Mr. Tillery if there is any reason from DOL's perspective.

MR. TILLERY said he was again at a disadvantage as he was looking at an older version of the bill.

CHAIR SEEKINS announced an at-ease from 8:43 a.m. to 8:48 a.m. He then asked the drafter, Jerry Luckhaupt, to walk members through the bill.

MR. JERRY LUCKHAUPT, legal counsel, Legal and Research Services Division, asked that Mr. Balash address the first question.

MR. JOE BALASH, staff to Senator Therriault, told members:

In looking at the provision on Title 16, what we were attempting to do was allow for the appeal of the Board of Game, Board of Fish decisions for individual subsistence and personal use users. We wanted to cleave away those who had a large economic incentive, like a commercial fish harvester or processor or a big game guide and sort of take those folks out of the equation. And so, while the intent may not have been to create a necessarily weaker standard for a litigant to qualify for full fees, that's how it came back and, after thinking about it a little bit, I guess the question is for the committee - do you want, in order

to protect subsistence users, do you want to give them a little bit lower bar because you find that the benefits and the privilege and right for subsistence users who depend on their food to be a little bit lower?

CHAIR SEEKINS said he had no problem with that as long as it is done on an individual basis, so that the bill will not create a lower bar for a whole new class of people. He said that would allow those people who depend on the resource to challenge the ability of their families to do so. He asked Mr. Luckhaupt if the bill was drafted clearly enough so that it addresses individual cases and not class action lawsuits.

MR. LUCKHAUPT said it will not preclude groups of people from gathering together to challenge those decisions. He continued:

And nominally even in a class action, you're going to have nominal plaintiffs - you're going to have to go out and find a plaintiff, a particular person that's affected and name them and then you certify your class action afterwards so, you know, it doesn't preclude those types of actions but to the extent that it involves groups or organizations or corporations that have an economic incentive either in the fishery or in harvesting the resource, then it should be precluded under this.

CHAIR SEEKINS asked if the bill could be drafted to clarify that it is intended for those people who depend on the resource for sustenance as part of that process.

MR. LUCKHAUPT assumed he could be more specific but cautioned the more specific the language, the more potential for problems such as equal protection because it would create benefits for one smaller group that are denied to others. He advised that sufficient justification would have to be provided for that decision. He added, "That may be that, you know, these are people that you've decided depend upon the resource for sustenance and that may be a good enough reason. I don't know. A court will decide that based upon the sliding scale approach, the equal protection approach."

CHAIR SEEKINS responded that in looking at how Title 16 applies right now, as far as game is concerned, almost every resident is considered to be a subsistence user because of the tier system that applies to all residents on an equal basis. He said he

would have no problem saying that those people who depend on the resource to feed their families should be entitled to the full award of fees for actions taken by the Board of Game as he believes that is consistent with what is considered to be subsistence. The Boards of Game and Fisheries have, under the current system, a primary responsibility to provide for subsistence uses. He commented, "We do have the highest priority for the uses of the resource to be subsistence and for those people who are using the courts to be able to protect that right, that they have the ability to recover full attorneys' fees. Now would that make it easier to justify it in terms of equal protection under the Constitution?"

MR. LUCKHAUPT said that providing for people's basic sustenance would be a fairly substantial justification.

CHAIR SEEKINS referred to page 4 and asked Mr. Luckhaupt to provide a conceptual amendment for the committee's consideration.

SENATOR THERRIAULT asked for an answer to the question [about retroactivity] in Section 8.

SENATOR FRENCH reiterated his question of why Sections 5(a) and (c) would be retroactive to September 11, 2003.

MR. BALASH replied that he could not remember the exact effective date of HB 145 but he believed it was sometime after September 11. He explained that the litigation that Judge Collins ruled on was filed in Superior Court the day before that law [HB 145] went into effect. Therefore, September 11 was prior to the date that case was filed.

SENATOR FRENCH asked if the intent of Section 8 is to cure the defects Judge Collins found in the law by making this bill take effect before HB 145 went into effect.

MR. BALASH believed that was correct.

MR. LUCKHAUPT responded:

...That's sort of that view - while the legislature did not agree that there was a defect with a change to the court rule affecting attorneys' fees was procedural, if it was, basically the legislature in portions of this bill is attempting to go back and say the time that bill was passed - here's a two-thirds

vote.... And so it's up to the court to decide whether they can relate back or not. I'm doubtful that that could occur. I'm doubtful that any new provisions we enact now, that we could somehow relate those back. In fact I'm pretty sure that wouldn't happen.

SENATOR THERRIAULT pointed out that the committee discussed a section that stripped out the old statute, which precluded the legislature and administration's right to continue to appeal a lower court's ruling. That section was removed so that right has been preserved. Therefore, if the legislature and administration want to further litigate that issue, that right has been preserved.

CHAIR SEEKINS asked Mr. Luckhaupt and Mr. Balash to draft an amendment to Section 4 to make sure it applies to subsistence users on an individual basis, which he would introduce later in the process. He then closed public testimony, as there were no more participants.

SENATOR THERRIAULT pointed out that he requested a new fiscal note from the Administration, which was delivered that morning.

CHAIR SEEKINS stated the new fiscal note is a zero fiscal note.

SENATOR FRENCH asked how much has been spent to date defending the previous law in court.

CHAIR SEEKINS indicated that Mr. Marcus [of DOL] was unaware of the cost.

SENATOR THERRIAULT moved CSSB 97(JUD) from committee with individual recommendations and its attached zero fiscal note.

SENATOR FRENCH objected.

The motion to move CSSB 97(JUD) carried with Senators Ogan, Therriault and Seekins in favor, and Senator French opposed.

The committee took up HB 334.

#### **CSHB 334(RLS)- UNLAWFUL EXPLOITATION OF MINOR/CHILD PORN**

REPRESENTATIVE KEVIN MEYER, sponsor of HB 334, told members that this legislation increases the penalty for unlawful exploitation of a minor, basically the production of child pornography. It will increase the penalty from a class B to a class A felony for

a second offense. He thanked Senator French for his input on this bill during its early stages. His initial intent was to concentrate on the actual production of child pornography and unlawful exploitation of a minor. However, as the bill moved through the committee process, discussions ensued about how, if there was no demand for the product, the product would not be made. He disagrees with that argument. He said he believes the distribution is also a problem so agreed to also raise the penalty to a class A felony.

REPRESENTATIVE MEYER said his concern about this issue stems from his service for three years on the Stand Together Against Rape (STAR) board, where he saw pornographic activities lead to more serious offenses, such as sexual abuse of a minor. In addition, he is the father of two young daughters. He believes that young juveniles are very vulnerable and can often be enticed to participate in pornographic activities for drugs or money and later regret that participation. Once a pornographic video is made, it could be circulated or put on the Internet forever.

He pointed out the presumptive sentence for a class B felony is one to four years in prison. Research shows that most people convicted of that crime spend only one to two years in prison. He is concerned that convicts can be out on the street after one year, reoffending the same crime. That is the reason he believes a long prison sentence for a second offense is appropriate. This legislation will more closely align Alaska's penalty with the federal penalty, which applies to interstate activity. He said he has heard from various groups that because Alaska's law is so liberal compared to the federal law, it is often difficult to get federal grants.

CHAIR SEEKINS asked for the definition of "unlawful exploitation of a minor."

REPRESENTATIVE MEYER defined it as the making of a video or taking a photograph. He explained that no touching is involved; touching falls under sexual abuse of a minor.

CHAIR SEEKINS asked if anything in the bill would apply to a parent who takes a photograph of his infant in the bathtub for a family photo album.

REPRESENTATIVE MEYER said nothing in the bill would apply.

CHAIR SEEKINS said he wanted to affirm for the record that is not the intent of this legislation.

REPRESENTATIVE MEYER noted that he has done some research on the type of people being convicted for this crime and found they are not parents taking photos of their naked infants.

MS. LINDA WILSON, Public Defender Agency, commended Representative Meyer for the hard work he has done on this bill. She noted the current version of the bill targets predatory pedophiles. The language in the existing statute of unlawful exploitation is fairly broad; it addresses anyone under the age of 18 and applies to someone who intends to produce a single photo. There have been concerns expressed that the original law makes the penalty a class A felony, and could be applied to just that one offense. It could also apply to juveniles or two people engaged in consensual sex who took a picture. HB 334 is more targeted toward the people it should apply to.

CHAIR SEEKINS noted no one else wished to testify, so he closed public testimony.

SENATOR OGAN thanked Ms. Wilson for her input on this bill, especially in light of her huge workload.

CHAIR SEEKINS also thanked Ms. Wilson.

SENATOR OGAN moved CSHB 334(RLS) from committee with individual recommendations and its attached fiscal note. There being no objection, the motion carried.

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

MS. VANESSA TONDINI, staff to Representative Lesil McGuire, sponsor of HB 273, explained to members that this legislation gives the legal right to a parent to release a child's claim of negligence against a provider of a sports or recreational activity. She recalled at the last meeting on this legislation, members raised very good points about what portions of an activity the waiver should cover. She discussed that issue with committee members' staff and the legislative drafter and explained:

What this bill does is to give the parent the right to sign a waiver for their child and the specifics of the waiver in this bill were envisioned to be left up to the private parties contracting. We didn't want to

interfere with the right of a private company or with an adult to contract however they see fit in regards to what a waiver might contain. So we sort of envisioned, depending on the activity, whether it be playing baseball or skiing, the waiver itself would contain the details of what was included, whether it be transportation or not. This bill just says as an adult, you can contract to whatever you want to - sign a waiver releasing your claim of negligence, and you could also do the same for your child. So that's sort of one issue and that's what we sort of envisioned this bill as doing, as just recognizing the parents' right to do that.

If we then wanted to delineate what a company or a recreational provider could waive - or what claims of negligence would cover or not, saying we don't think that you should be able to waive a claim of negligence regarding transportation, only the activity itself, then that would have to be - I don't mean to say a different bill, but we just need to make sure how we amend that. It doesn't say the parents have the authority to waive with regard to participation in the activity but they don't have the authority with the ancillary activities. So we wouldn't be opposed to specifically laying out which activities or the portions of the activity a waiver would be given for or valid for but, to the extent it is addressed in this bill, on page 2, line 24, the clause is added to the bill which just reads, 'to the extent the waiver is otherwise valid'. So I believe this bill as written...says that a waiver as it's drawn up to fit that particular activity and as the parties choose to contract is valid unless we as a legislature wanted to say what couldn't be included in that waiver, such as transportation or other ancillaries....

CHAIR SEEKINS said that is how he read the bill, to give the parent the right to waive on behalf of the minor child but does not constrict the content of the waiver. He noted the law already waives the sponsor for gross negligence for harm caused by the inherent risk of the activity. He asked if this bill will allow a parent to waive negligence, but not gross negligence or reckless behavior.

MS. TONDINI said that is correct.

CHAIR SEEKINS said the parent would have to determine exactly what he or she is willing to waive in the content of the contract. He said he believes parents should have the right to act on behalf of their minor children.

SENATOR THERRIAULT referred to the language on page 2, line 24, and commented that a subsequent piece of legislation could carve those things out. He said his concern is that parents understand that some activities are inherently dangerous and would sign a waiver with that in mind but would not know that the waiver applies to everything else.

CHAIR SEEKINS suggested saying in the bill that to the extent that the activities waived are included in the waiver form and to the extent the waiver is otherwise valid so that those activities being waived would be specified in the contract so that the parent is aware of exactly what he or she is waiving.

SENATOR FRENCH liked that idea and said he read the cases Ms. Tondini cited at the last meeting. The rule is very strict.

**TAPE 04-63, SIDE B**

He explained that those cases are always resolved against the party that is seeking "to get off the hook." To be enforced, the intent to release a party for future negligence must be conspicuously and unequivocally expressed. He said the waiver must be broken down to on-field, off-field activities, travel, nighttime activities, and etcetera.

CHAIR SEEKINS proposed a conceptual amendment [Amendment 1] to insert, after the word "extent", a statement that says the waived activities are clearly and conspicuously set forth in the form of the waiver and to the extent that the waiver is otherwise valid.

SENATOR FRENCH felt such language comports with the cases he has read.

MS. TONDINI did not believe the sponsor would oppose such an amendment as it is within the intent of the legislation.

CHAIR SEEKINS pointed out that to be conspicuous, the language would have to be in a different font or bolded to set it off.

CHAIR SEEKINS repeated his proposed amendment and moved for its adoption.

There being no objection, Amendment 1 was adopted.

There being no further discussion, SENATOR THERRIAULT moved SCS CSHB 273(JUD) and its accompanying zero fiscal note from committee with individual recommendations.

CHAIR SEEKINS announced that without objection, the motion carried.

**HB 549-UNSOLICITED COMMUNICATION:AIRCRAFT CRASH**

MS. VANESSA TONDINI, staff to Representative McGuire, chair of the House Judiciary Committee, which sponsored HB 549, reminded members she presented the bill at a previous hearing and was available to answer questions.

CHAIR SEEKINS noted that with no one wishing to testify, public testimony was closed and the bill was under consideration by committee members.

SENATOR FRENCH said he had been hoping to hear from someone who has been badgered by a lawyer during a time of personal family grieving or other emotional turmoil, in relation to this bill. Instead, he has only heard from businesses that have said that attorneys continue to file lawsuits against them. He stated:

With all due respect to the folks who brought us this bill, it's been brought to us under the guise of perspective clients who maybe feel overwhelmed by the circumstances, giving rise to the need for legal services - you know, the families of the deceased or injured are vulnerable to the external pressures of others. And we've heard absolutely zero testimony about that - none, not a bit. For that reason I think this bill is more about giving some kind of a break to the small aviation operators in Bush Alaska - and they may need a break - but that's not the reason that the bill came to us under - the auspices. And so I look at section (d), which would make it a crime to send a postcard or make a phone call to someone offering them legal services 30 days after an accident. It would fine them \$100,000 for having done so and indeed, the cases that have been brought to our attention are head bump cases - they're not serious cases, they're cases where the aviation operator feels aggrieved because someone's chasing after someone with a head bump. And

I just see something that's going to get tossed out of court and it's going to be found to be wildly out of proportion to the harm that's done by someone making a phone call or signing up a client.

SENATOR FRENCH then moved [Amendment 2] to strike section (d) and to make it a civil penalty. He explained that if the attorney general wants to file a civil case against a lawyer and pursue a reasonable fine, he feels that would be acceptable. He argued that if a person is unwilling to bring a bar complaint against one of these attorneys, the person is unlikely to want to testify in a criminal case.

CHAIR SEEKINS asked Senator French if Amendment 2 is a conceptual amendment.

SENATOR FRENCH said it is.

SENATOR OGAN objected for the purpose of discussion and asked if Amendment 2 is to strike section (d). He said if so, that is not a conceptual amendment.

SENATOR FRENCH said his intent is to strike section (d) and to replace it with language that authorizes the attorney general to bring an action to enforce and pursue a civil penalty up to \$100,000 for such activity. He said that would put some sideboards on the amount the attorney general could pursue.

MS. TONDINI said the sponsor would oppose Amendment 2 because she feels strongly that a criminal penalty is appropriate and necessary and is the reason for the bill. She furthered that the federal law contains a very weak civil penalty of \$1,000, which is not enforced. She also cautioned that it is possible that the bar association would not take notice of civil enforcements, therefore Representative McGuire wanted to have a criminal conviction on the person's record to make it noticeable. She said the \$100,000 fine is designed to get people's attention and indicated that the awards in these cases can be very large so a large fine is necessary to deter such behavior.

SENATOR OGAN asked if there are sanctions for this same activity in other areas.

MS. TONDINI said the Senate State Affairs Committee members asked why this same penalty hasn't been put into law for other types of accidents. She said the large penalty in this bill is due to the fact that aviation accidents receive a lot of media

attention, are usually of a tragic nature and involve large amounts of money.

SENATOR THERRIAULT asked Ms. Tondini to review the federal law.

MS. TONDINI said under the federal law, the violation is a civil penalty and carries a \$1,000 fine. It requires the Civil Aeronautics Board or the U.S. Attorney General to take action to be enforced. She noted it has not been enforced much but the other issue is that it does not apply to intrastate flights; it only applies to interstate flights, so, for example, it would not cover flights between Anchorage and Bethel.

SENATOR THERRIAULT asked if the owner of an aviation service can only file a bar complaint on an interstate flight based on the federal law.

MS. TONDINI recalled the testimony of Marsha Davis, who said the aviation companies would have the ability to file a bar complaint but that is not an advantageous thing to do during a settlement agreement. She said people are hesitant to file bar complaints for that reason and because they are reluctant to pursue a bar complaint while grieving over a family loss.

SENATOR THERRIAULT asked if the person who has that available as a remedy is the person who was injured or lost a loved one.

MS. TONDINI said she believes anyone can file the bar complaint.

SENATOR THERRIAULT asked if that would apply to the owner of the aircraft.

MS. TONDINI said she did not see why not.

SENATOR THERRIAULT asked if that also applies to intrastate flights.

SENATOR FRENCH said if the attorney was operating in Alaska and a member of the bar, a bar complaint could be filed.

SENATOR THERRIAULT asked what the basis of the claim would be involving an intrastate flight if the federal law does not apply to them.

MS. TONDINI said the claim would be brought under the Alaska Rules of Professional Conduct, namely Rule 7.3(a). She read:

An attorney shall not solicit by in person or live telephone contact professional employment from a perspective 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.

SENATOR THERRIAULT asked why no one is filing claims under that rule now.

SENATOR FRENCH said that is his point. He said the rationale he has heard from the lawyers representing the airline companies is, "Well that's just too inflammatory, that's too combative, we'll get all beat up, they'll be mean to us if we do that. It's too aggressive." He said his response is that is no more aggressive than asking a district attorney to file a criminal complaint on someone and brand them with a criminal action with a \$100,000 fine. That is simply passing on one's obligation to do what's right to somebody else.

CHAIR SEEKINS said in his opinion, the issue goes back to whether the activity was done knowingly, since rules of conduct exist.

SENATOR FRENCH argued that the same can be said about any profession.

MS. TONDINI said it is her understanding that if a culpable mental state is not specifically described, the standard is knowingly, so that would apply in HB 549.

SENATOR FRENCH said if an attorney made contact 43 days after an accident instead of 45 days, due to a miscalculation, that would not be a defense.

CHAIR SEEKINS announced an at-ease. Upon reconvening, he said he would bring HB 549 up during the afternoon to give Ms. Tondini time to talk to the sponsor about some of the concerns expressed by committee members. He thanked Ms. Tondini for her time.

SENATOR THERRIAULT noted that bar complaints are a huge problem for attorneys so he is trying to balance the fact that there is a system available that the public may not know how to avail itself of but when a bar complaint is filed, it gets the attention of the attorneys. He said if an attorney had a number of these complaints filed against him, the bar association would definitely take notice.

CHAIR SEEKINS announced the committee would take up HB 342.

**HB 342-DRIVING UNDER INFLUENCE/ALCOHOL OFFENSES**

MR. CODY RICE, staff to Representative Carl Gatto, co-sponsor of HB 342, said this legislation addresses several issues related to driving under the influence (DUI), limited licenses, and look-back provisions. HB 342 sets up a situation where, based on blood alcohol content (BAC), the most egregious offenders will be required to have ignition interlocks for six months to one year. It also contains provisions that allow a 15-year look-back for misdemeanor DUI offenses. Currently, the law provides for a lifetime look-back. Felony DUIs would have a 10-year window. HB 342 also contains provisions for the granting of limited licenses and requires the offender to go through a series of steps. He offered to answer questions.

SENATOR THERRIAULT asked for further explanation of the look-back provisions.

MR. RICE explained that under current law, the felony look-back provision requires that a third offense within eight years qualifies as a felony. In 2006, the look-back time period will increase to ten years. The misdemeanor look-back is unlimited. This bill would limit that window to 15 years.

SENATOR FRENCH asked how the 15-year time limit was arrived at.

MR. RICE said that was a provision of HB 175, which was Representative Rokeberg's bill.

MS. AMANDA WILSON, staff to Representative Rokeberg, explained in looking at other states' provisions, 15 years is the longest look-back provision, except in Massachusetts. The only other state with a lifetime look-back provision is Massachusetts but the consequences for subsequent offenses are less harsh than Alaska's. Currently, Alaska has one of the harshest punishments for subsequent offenses in the nation. She noted the intent is not to go easy on subsequent offenders but to find some number to make the law more just.

SENATOR THERRIAULT asked if an intoximeter works in extremely cold temperatures.

MR. RICE said he believes Senator Therriault is questioning how the ignition interlock works, and answered that ignition

interlocks have been used in Canada and Poland and have been approved for use in Alaska since 1996. They have not been widely used because they are not commercially viable, since people are not required to use them. He noted that judges do not want to impose their use because they are not easily available and manufacturers do not want to market them here since they are not widely used. This bill will solve that problem by requiring the most egregious offenders to use them. He said his data suggests that about 50 percent of the DUIs in Alaska are double the legal limit. People in that range would be required to use an ignition interlock for six months after the offense.

He informed members that he has talked to an ignition interlock distributor who has expressed a willingness to make them available in Alaska if this bill passes.

CHAIR SEEKINS asked about the reliability and effectiveness of interlock devices.

MR. RICE said while researching that question, he learned that what these companies are selling is their reputations because their devices cannot be bypassed. Part of the reason they require a minimum pool of ignition interlock users is that they must do background checks on installers and make sure they are well trained. He said they have been proven, according to journal articles, to reduce recidivism. MADD is on record in support. He explained that ignition interlocks are located near the steering column. The driver must blow into the device before the car will start. They are fairly complex to prevent someone other than the driver to activate them. They also require retests while the car is being driven and will log whether the retest was performed. The cost is about \$3 per day; the offender would lease the device and pay for its installation.

SENATOR OGAN questioned how such a device could ensure that the driver was activating it, not someone else.

MR. RICE said no device could assure that but the fact is that it is highly unlikely that a sober passenger would activate the device for a drunk driver, which is a crime in existing statute.

SENATOR OGAN commented that it appears the only way to get a limited license under the bill is to have an interlock device installed.

MR. RICE said a person could receive a limited license for a first offense without an interlock device. The bill also

contains a separate provision from HB 175 that addresses the wellness court program.

MS. WILSON explained that the wellness court program currently has about 40 participants. That court only takes misdemeanants and provides an intensive outpatient treatment program. Participants must report to the court regularly and are required to take naltrexone. Upon graduation after 18 months of successful treatment, participants are provided a limited license without an ignition interlock device. An offender who does not participate is able to get a limited license within 90 days but must use an interlock device.

SENATOR FRENCH referred to lines 6-7 on page 1, and asked what prompted that language.

MR. RICE said the legal drafter used that language to allow the court to impose the use of an interlock device as part of the sentence. Initially, ignition interlocks were only assigned as part of probation requirements.

CHAIR SEEKINS furthered that the judge could require the offender to use the device for a certain time period even if the offender was not on probation.

MR. RICE agreed.

SENATOR FRENCH asked how that would be enforced.

MR. RICE said in all cases, the offender's license is revoked, either judicially or administratively. To reinstate the license, the offender would have to provide proof of certain actions to DMV personnel. That might include showing a letter from an interlock device company saying the device had been installed.

CHAIR SEEKINS asked Ms. Cashen to testify.

10:08 a.m.

MS. CINDY CASHEN, representing four MADD chapters in Alaska, stated support for this legislation and the use of interlock devices. According to the studies conducted in Maryland, California, and Alberta, Canada, they have worked in other states. The use of the devices resulted in a 50 to 90 percent reduction of subsequent offenses compared to offenders who were not required to use them. She said that MADD supports the wellness court provision in the bill. The wellness court has

been successful. She commented, "We've seen that by helping wellness court clients get back on the road quicker, they become a contributor to our community as opposed to draining our community of many things, among them resources."

MS. CASHEN said the amendment is of concern to MADD because [the bill] as written, will make it easier for drunk drivers to get their licenses back and continue to drink and drive. MADD believes that the first and second time a person makes a mistake a look-back of 15 years is appropriate but not for a third offense. Studies show that a drunk driver drives between 200 and 2,000 times before being caught and, according to the National Transportation Safety Board, it takes 10 years to catch an offender the second time. She said the amendment is a reasonable request. If a person is caught three or more times, the court should be able to look-back in the records forever. She pointed out that some of the people that want the amendment that shortens the look-back provision to 15 years is a multiple DUI offenders, one an 8-time offender. This bill will allow that person to get his license back sooner. She cautioned that many high-risk DUI offenders have been caught more than twice, so this amendment is very dangerous. She asked members to consider the MADD amendment.

SENATOR FRENCH asked Ms. Cashen if she was saying that 15 years is an acceptable look-back time period for a first or second offense, but a lifetime look-back period should apply to a third offense.

MS. CASHEN said that is not MADD's official position. She explained, "With MADD national and MADD chapters, we are able to work within our states - we are given a certain amount of freedom and this is one that we've come up with within the state."

REPRESENTATIVE CARL GATTO, prime sponsor of HB 342, expressed a concern that if the bill is amended, it will have to go back to the House for concurrence and, due to time constraints, that could prevent passage of the bill. He said the goal of the bill is to prevent drunk drivers from driving. He said with that goal in mind, he asked whether the amendment will further that goal. He does not believe there is enough evidence to prove that extending the look-back time period will be beneficial. He said his intent is to provide motivation and encouragement for people who "have been on the wrong side" and to give them an opportunity to correct their actions. If indeed they are out of the loop, they will drive drunk regardless of anything.

He said he believes 15 years is a good, long time and he questioned whether records will exist in some instances for a longer time period. He said this bill needs some restrictions. He said he believes this bill is an excellent one that has wide support and he does not want it to be jeopardized. He noted that extending the look-back provision could be considered next year. He repeated that his goal is to "get the drunks out of the cars" and not to look-back to get anyone who has ever been guilty of anything.

SENATOR FRENCH noted that he had a schedule conflict.

**TAPE 04-64, SIDE A**

CHAIR SEEKINS felt Representative Gatto's argument was compelling even though he agrees with the intent of the amendment. He expressed concern about the late date of the session and said he would like to see the concept of the bill embodied in law this year. He also pointed out that a very long look-back period could encourage offenders to plead to other offenses that would not go on their records as DUIs. He asked the will of the committee.

SENATOR OGAN expressed support for Amendment 1, which reads as follows, and moved to adopt it.

A M E N D M E N T 1

IN THE SENATE JUDICIARY COMMITTEE

TO CS HB 342(FIN)AM

**Page 4, lines 4-7 Delete all material and insert:**

"(e) In (d)(2) of this section, "previously convicted" means having been convicted in this or another jurisdiction within the 15 years preceding the date of the present offense, of any of the following offenses; however, convictions for any of these offenses, if arising out of a single transaction and single arrest, are considered one previous conviction:

(1) operating a motor vehicle, aircraft, or watercraft in violation of AS 28.35.030 or in violation of another law or ordinance with similar elements, except that the other law or ordinance may

provide for a lower level of alcohol in the person's blood or breath than imposed under AS 28.35.030;

(2) refusal to submit to a chemical test in violation of AS 28.35.032 or in violation of another law or ordinance with similar elements; or

(3) operating a commercial motor vehicle in violation of AS 28.33.030 or in violation of another law or ordinance with similar elements, except that the other law or ordinance may provide for a lower level of alcohol in the person's blood or breath than imposed under AS 28.33.030."

**Section 4 of the bill (page 4, lines 8-26): Delete all material.**

**Add two new sections to the bill as shown on the following two pages.**

**"\*Sec.\_\_\_\_.** AS 28.35.030(b) is amended to read:

(b) Except as provided under (n) of this section, driving while under the influence of an alcoholic beverage, inhalant, or controlled substance is a class A misdemeanor. Except as provided under (p) of this section, upon conviction,

(1) the court shall impose a minimum sentence of imprisonment of

(A) not less than 72 consecutive hours and a fine of not less than \$1,500 if the person has not been previously convicted;

(B) not less than 20 days and a fine of not less than \$3,000 if the person has been previously convicted once **within the 15 years preceding the date of the present offense;**

(C) not less than 60 days and a fine of not less than \$4,000 if the person has been previously convicted twice and is not subject to punishment under (n) of this section;

(D) not less than 120 days and a fine of not less than \$5,000 if the person has been previously convicted three times and is not subject to punishment under (n) of this section;

(E) not less than 240 days and a fine of not less than \$6,000 if the person has been previously convicted four times and is not subject to punishment under (n) of this section;

(F) not less than 360 days and a fine of not less than \$7,000 if the person has been previously convicted more than four times and is not subject to punishment under (n) of this section;

(2) the court may not

(A) suspend execution of sentence or grant probation except on condition that the person serve the minimum imprisonment under (1) of this subsection;

(B) suspend imposition of sentence;

(3) the court shall revoke the person's driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.181, and may order that the motor vehicle, aircraft, or watercraft that was used in commission of the offense be forfeited under AS 28.35.036; and

(4) the court may order that the person, while incarcerated or as a condition of probation or parole, take a drug or combination of drugs intended to prevent the consumption of an alcoholic beverage; a condition of probation or parole imposed under this paragraph is in addition to any other condition authorized under another provision of law."

**\*\*Sec.\_\_\_\_.** AS 28.35.032(g) is amended to read:

(g) Except as provided under (r) of this section, upon conviction,

(1) the court shall impose a minimum sentence of imprisonment of

(A) not less than 72 consecutive hours and a fine of not less than \$1,500 if the person has not been previously convicted;

(B) not less than 20 days and a fine of not less than \$3,000 if the person has been previously convicted once within the 15 years preceding the date of the present offense;

(C) not less than 50 days and a fine of not less than \$4,000 if the person has been previously convicted twice and is not subject to punishment under (r) of this section;

(D) not less than 120 days and a fine of not less than \$5,000 if the person has been previously convicted three times and is not subject to punishment under (r) of this section;

(E) not less than 240 days and a fine of not less than \$6,000 if the person has been

previously convicted four times and is not subject to punishment under (r) of this section;

(F) not less than 360 days and a fine of not less than \$7,000 if the person has been previously convicted more than four times and is not subject to punishment under (r) of this section;

(2) the court may not

(A) suspend execution of sentence or grant probation except on condition that the person serve the minimum imprisonment under (1) of this subsection;

(B) suspend imposition of sentence;

(3) the court shall revoke the person's driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.181, and may order that the motor vehicle, aircraft, or watercraft that was used in commission of the offense be forfeited under AS 28.35.036; and

(4) the court may order that the person, while incarcerated or as a condition of probation or parole, take a drug or combination of drugs intended to prevent the consumption of an alcoholic beverage; a condition of probation or parole imposed under this paragraph is in addition to any other condition authorized under another provision of law; and

(5) the sentence imposed by the court under this subsection shall run consecutively with any other sentence of imprisonment imposed on the person."

**Renumber bill sections accordingly.**

SENATOR THERRIAULT said he prefers that amendments be prepared by the Legal and Research Services Division and did not know whether he would support the amendment without knowing what the final product would be.

SENATOR OGAN withdrew his motion to adopt Amendment 1.

MS. CASHEN informed members that the bill has a Senate Finance Committee referral. She cautioned that the amended bill would have to move out of that committee by Thursday for it to pass the legislature. She noted that MADD wants to see this legislation enacted.

CHAIR SEEKINS proposed that the Senate Judiciary Committee take action on the bill today and that the sponsor and Ms. Cashen

Speak with the drafter to make sure there are no problems with the amendment and let the Senate Finance Committee address it.

SENATOR OGAN moved CSHB 342(FIN)am from committee with individual recommendations.

CHAIR SEEKINS announced that without objection, the motion carried. He then recessed the meeting at 10:25 a.m. and said his intent was to reconvene after the Senate floor session.