

**ALASKA STATE LEGISLATURE**  
**SENATE LABOR AND COMMERCE STANDING COMMITTEE**

April 29, 2003

1:37 p.m.

**MEMBERS PRESENT**

Senator Con Bunde, Chair  
Senator Ralph Seekins, Vice Chair  
Senator Gary Stevens  
Senator Hollis French

**MEMBERS ABSENT**

Senator Bettye Davis

**COMMITTEE CALENDAR**

CS FOR SENATE BILL NO. 114(L&C)

"An Act relating to the fee for a state business license; and providing for an effective date."

MOVED CSSB 114(L&C) OUT OF COMMITTEE

SENATE BILL NO. 175

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

MOVED CSSB 175(L&C) OUT OF COMMITTEE

SENATE BILL NO. 176

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

MOVED SB 176 OUT OF COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 214(JUD)(efd fld S)

"An Act relating to the recovery of punitive damages against an employer who is determined to be vicariously liable for the act or omission of an employee."

HEARD AND HELD

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 184(L&C) am

"An Act relating to individual deferred annuities; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 102

"An Act increasing the amount of revenue received by the state from charitable gaming activities; and providing for an effective date."

HEARD AND HELD

**PREVIOUS ACTION**

SB 114 - See Labor and Commerce minutes dated 3/18/03, 4/10/03, 4/15/03 and 4/24/03.

SB 175 - No previous action to consider.

SB 176 - No previous action to consider.

HB 214 - No previous action to consider.

HB 184 - No previous action to consider.

SB 102 - See Labor and Commerce minutes dated 3/13/03 and 4/24/03.

**WITNESS REGISTER**

Mr. Rick Urion, Director  
Division of Occupational Licensing  
Department of Community & Economic Development  
PO Box 110800  
Juneau, AK 99811-0800

**POSITION STATEMENT:** Supported the CS to SB 114(L&C).

Mr. Brian Hove  
Staff to Senator Seekins  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Commented on SB 175 for the sponsor.

Mr. Ron Peck, President  
Alaska Travel Industry Association  
Juneau AK 99801

**POSITION STATEMENT:** Supported SB 175.

Mr. Chris Vonimhof

Alyeska Resort  
Girdwood AK  
**POSITION STATEMENT:** Supported SB 175.

Mr. Steven Conn  
Alaska Public Interest Research Group (AKPIRG)  
PO Box 1690  
Seward AK 99446  
**POSITION STATEMENT:** Opposed SB 175 and commented on SB 176.

Mr. John George  
3328 Fritz Cove Rd.  
Juneau AK 99801  
**POSITION STATEMENT:** Supported SB 175.

Mr. Bob Dindinger, Chairman  
Alaska Travel Industry Association &  
President and CEO  
Alaska Travel Adventures  
9085 Glacier Hwy., No. 303  
Juneau AK 99801  
**POSITION STATEMENT:** Supported SB 175.

Ms. Gabi Dominguez  
Tanana Whirlwinds 4H Club  
PO Box 10866  
Fairbanks AK 99710  
**POSITION STATEMENT:** Supported SB 176.

Mr. Ted Franke, Camp Director  
Camp Lila  
PO Box 10434  
Fairbanks AK 99710  
**POSITION STATEMENT:** Supported SB 176.

Ms. Lauren Wilfer  
Tanana Whirlwinds 4H Club  
PO Box 70192  
Fairbanks AK 99707  
**POSITION STATEMENT:** Supported SB 176.

Ms. Kate Sanders  
PO Box 80982  
Fairbanks AK 99708  
**POSITION STATEMENT:** Supported SB 176.

Ms. Beverly Nester, Associate Coordinator

Cowboy Mounted Action Shooters  
5465 Chena Hot springs Rd.  
Fairbanks AK 99712  
**POSITION STATEMENT:** Supported SB 176.

Ms. Shirley Schollenberg,  
Kenai Peninsula Farm Bureau  
2014 Lake, Ste. 201  
Homer AK 99603  
**POSITION STATEMENT:** Supported SB 176.

Mr. Matt Robus, Acting Director  
Division of Wildlife Management  
Department of Fish & Game  
PO Box 25526  
Juneau, AK 99802-5226  
**POSITION STATEMENT:** Commented on SB 176.

Mr. Jim Douglas  
Cooperative Extension Service  
University of Alaska Fairbanks  
Juneau AK  
**POSITION STATEMENT:** Supported SB 176.

Ms. Jan Hanscom  
4H leader  
Tanana Valley  
PO Box 72832  
Fairbanks AK 99707  
**POSITION STATEMENT:** Supported SB 176.

Ms. Marsha Davis, General Counsel  
Era Aviation  
**POSITION STATEMENT:** Supported HB 214.

Ms. Pam LaBolle, President  
Alaska State Chamber of Commerce  
217 Second Street  
Juneau, Alaska 99801  
**POSITION STATEMENT:** Supported HB 214.

Ms. Jessica Graham, Chairman  
Anchorage Society of Human Resources Management  
1029 W 3rd, Ste. 300  
Anchorage AK 99501  
**POSITION STATEMENT:** Supported HB 214.

Representative Coghill  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Sponsor of HB 184.

Mr. Larry Persily, Deputy Commissioner  
Department of Revenue  
PO Box 110400  
Juneau, AK 99811-0400  
**POSITION STATEMENT:** Commented on SB 102.

**ACTION NARRATIVE**

**TAPE 03-26, SIDE A**

**SB 114-INCREASE BUSINESS LICENSE FEE**

**CHAIR CON BUNDE** called the Senate Labor and Commerce Standing Committee meeting to order at 1:37 p.m. Present were SENATORS STEVENS, SEEKINS and FRENCH. The Chair announced SB 114 to be up for consideration.

SENATOR SEEKINS moved to adopt CSSB 114(L&C), version I, as their working document. There were no objections and it was so ordered.

CHAIR BUNDE explained that the committee substitute (CS) deletes the requirement for multiple licenses for businesses in multiple locations.

MR. RICK URION, Director, Division of Occupational Licensing, supported the new CS and urged the committee to pass it out today.

CHAIR BUNDE asked him for an estimate of what revenue this bill would now generate.

MR. URION replied that their original estimate was \$77,000 for multiple location licenses and that would be deleted.

CHAIR BUNDE noted that aside from stores like Fred Meyer, SB 114 also included cab drivers and coffee carts on the other hand.

SENATOR FRENCH asked if it is correct that the CS now says that Safeway has to have only one business license for the whole state.

MR. URION said that is correct.

SENATOR FRENCH said it isn't as if they are reducing what they have to pay now, and, in fact, their fee is being increased from \$25 per year to \$300.

SENATOR SEEKINS asked if Safeway has to have a tobacco endorsement for each store or for just the one license.

MR. URION replied that tobacco endorsements go with each location.

SENATOR SEEKINS moved to pass CSSB 114(L&C), version I, from committee with individual recommendations and attached fiscal note.

The roll was called. SENATORS STEVENS, FRENCH, SEEKINS and BUNDE voted yea and CSSB 114(L&C), version I, passed from committee.

**SB 175-LIABILITY:RECREATIONAL ACTIVITY/BOATS**

CHAIR BUNDE announced SB 175 to be up for consideration.

MR. BRAIN HOVE, staff to Senator Seekins, sponsor, said that Alaska has many recreational opportunities, but the high cost of liability insurance is a significant factor to existing enterprises that offer these types of activities. It also presents a substantial barrier to new businesses, as the vast majority of existing companies are small firms based in Alaska. SB 175 delineates the burden of responsibility for the commercial recreation business, as well as the person who elects to participate in that activity.

CHAIR BUNDE asked if he could address the concerns of Mr. Richard Dow with Alaska Resorts and Ms. Tracy Knutson, an attorney.

MR. HOVE replied that those concerns resulted in the current committee substitute (CS).

SENATOR SEEKINS moved to adopt CSSB 175, version H, as the working document. There were no objections and it was so ordered.

CHAIR BUNDE asked Mr. Hove if the CS adequately addressed the concerns of Tracy Knutson and Richard Dow.

MR. HOVE replied that it does.

MR. RON PECK, President, Alaska Travel Industry Association, said the industry has been working for 10 years to improve reform in recreational liability and supported SB 175.

MR. CHRIS VONIMHOF, Alyeska Resort, said he had been with the Resort for 30 years and when the ski liability package passed, it was a tremendous help to their business. Safety is the key to so many sports and this bill protects both the client and the operator.

MR. STEVE CONN, Alaska Public Interest Research Group (AkPIRG), said he is currently a resident of Seward, a community that depends on many of the activities covered in this bill, although he doesn't run a recreational activity personally. He said there seems to be a kind of fever running through the Legislature where favored persons or businesses are being immunized from all forms of civil liability. He hoped legislators were prepared to predict all situations, because they are going back in time and recreating, through the reintroduction of an old horse in tort law, contributory negligence, an absolute bar to lawsuits in all situations - ones involving foreign tourists, elderly tourists, ones involving less reputable operations that come and go. He said that currently, Alaska juries have a real disdain for what they view as a frivolous lawsuit. He thought a law like this would seriously harm the tourism industry and create very bad publicity for Alaska's burgeoning recreation industry.

MR. JOHN GEORGE said he was representing himself today, not the insurance industry. He knows how difficult it is for the smaller operators or anyone who is doing anything that isn't absolutely mainstream to get insurance. He thought this bill would go a long way to easing that by providing relief for the insurance industry.

MR. BOB DINDINGER, Chairman, Alaska Travel Industry Association, said he is also the President and CEO of Alaska Travel Adventures, the state's largest provider of guided recreational activities handling just under 100,000 clients per year. He said SB 175 would be very beneficial to this industry, particularly to the smaller businesses. He said it is always difficult to get insurance in this state and there has never been more than two or three underwriters for this type of service. At times there has been only one underwriter, which led to a 50 percent to 60 percent rate increase per year. If this bill passes, clients, many from out of state, would still be able to pursue frivolous

lawsuits and they would still be expensive to defend. However, this legislation would help get those cases thrown out before companies have to undertake a great deal of expense.

MR. DINDINGER explained that most of the suits are settled for the deductible of the operator. The insurance company never eats a dime, because it's very common to have deductibles of \$5,000 to \$10,000 per incident. The first thing an insurance company does is offer up the first \$5,000 to \$10,000. At that point, his company has to defend itself or agree to pay. This bill will solve a lot of those frivolous suits and he is hopeful that it encourages additional underwriters to enter the market.

SENATOR STEVENS asked if frivolous lawsuits happen regularly.

MR. DINDINGER replied about one dozen per year, but in 20 years of business his company has never had to hospitalize a client. He has had to pay \$50,000 to \$100,000 this year in defense of those types of claims.

SENATOR STEVENS asked if this bill would affect the out-of-state lawsuits.

MR. DINDINGER replied that it wouldn't.

SENATOR FRENCH asked how this bill would not immunize his company from poorly trained employees.

MR. DINDINGER replied that it's not mentioned specifically in the bill. To the extent employees make mistakes, the business is liable for those mistakes. Those are errors, not inherent risks. For example, with river rafting, his employees have to take 10 trips down a river under instruction before they can take a paid client. There is a check-out process as well, and those expenses would not be diminished by this bill. It is in his best interests to have very well trained employees and he did not think they would put attorneys out of business, but litigation will be reduced. He has defended a lot of rafting incidents and never lost a case.

SENATOR FRENCH asked what the differences would be from the common laws that exist now.

MR. DINDINGER replied that this legislation will add clarity and could be sent to clients in response to the first letter a company receives in which the client is threatening to file suit. The company could also send them a copy of the release

they signed saying that they are in good condition and accept the inherent risks.

SENATOR FRENCH asked if Ms. Knutson has had the opportunity to look at the CS.

SENATOR SEEKINS said he wasn't sure.

CHAIR BUNDE said that he knew that Mr. Vonimhof had reviewed the CS and his concerns had been taken care of.

SENATOR SEEKINS noted that this bill goes to his committee, Judiciary, next and he was sure that Ms. Knutson would contact him if there were any concerns.

CHAIR BUNDE noted that there was no fiscal note, but that he assumed one would be forthcoming.

SENATOR SEEKINS said that is correct. He moved to pass CSSB 175(L&C), Version H, from committee with individual recommendations. SENATORS FRENCH, SEEKINS, STEVENS and BUNDE voted yea and it moved from committee.

#### **SB 176-CIVIL LIABILITY FOR LIVESTOCK ACTIVITIES**

CHAIR BUNDE announced SB 176 to be up for consideration.

MR. BRIAN HOVE, staff to Senator Seekins, said that SB 176 is largely a reincarnation of HB 111, introduced in the 22nd Legislature. It is intended to give livestock owners and others associated with livestock activities a certain measure of protection from frivolous lawsuits. It recognizes that people assume some degree of risk when placing themselves in the vicinity of livestock. The livestock owner, with the best of intentions, cannot completely prevent accidents from happening. SB 176 will not protect the livestock owner who acts in an unreasonable manner, but by reducing some of the liability, the expectation is that this legislation will create an atmosphere that will encourage more livestock activity. This bill is the work of 4H members statewide and 44 other states currently have similar legislation.

MS. GABI DOMINGUEZ, a livestock owner, supported SB 176.

MR. TED FRANKE, Camp Director, Camp Leila, supported SB 176. He said Camp Leila is a non-profit organization and has about 450 kids each summer and additional kids who come up to visit.

MS. LAUREN WILFER, Tanana Whirlwinds 4H Club, supported SB 176. She has friends who have horses and other animals. SB 176 would help her friend who is a riding instructor at the University with liability if one of her students was killed or injured accidentally. Anyone who accepts any payment is not considered a volunteer and isn't eligible for the University's insurance.

MS. KATE SANDERS said she is thinking about becoming a veterinarian and supported SB 176. Right now, if an owner helps her hold or restrain their animal and gets hurt, they can sue her. That is unfair. She also thought it was a good idea for the person who owns an animal to do the restraining, because the animal is more familiar with that person.

MS. BEVERLY NESTER, Associate Coordinator, Cowboy Mounted Action Shooters, said she is also the founder of the Alaska Trail Riders Association. She has worked with horses, horsemen and private landowners for over four decades. She supported SB 176 because it would add much needed common sense to the lawsuit crazed society we live in today.

MS. SHIRLEY SCHOLLENBERG, Secretary, Kenai Peninsula Farm Bureau, said she had been a 4H leader for 26 years and gives riding lessons and does tours on her farm. She said the bureau voted to support the bill. She is also treasurer for the Ninilchik Fair Association and this bill would definitely benefit fairs, since they are continually dealing with liability issues.

MR. STEVE CONN, AKPIRG, said there are parts of this bill that AKPIRG very much supports.

**TAPE 03-26, SIDE B**

MR. CONN continued to say AKPIRG doesn't support some parts of it, for example the part that lists rabbits, hamsters, guinea pigs, turkeys, chickens, pheasants, peafowls, pigeons and ducks as inherently dangerous and unpredictable livestock.

He said this immunizing bill stretches the definition of livestock and the reach of individuals pretty far. He pointed out that the conclusion on page 3, lines 16 - 20, does not affect a civil action resulting from what may be the core problem, which is when a participant who provides livestock makes a reasonable and prudent effort to determine the ability

of someone to safely manage the livestock activity. He thought this bill might not be as strong as the 4H folks think it is.

MR. MATT ROBUS, Acting Director, Division of Wildlife Conservation, pointed out the definition of livestock on page 4, line 19, includes caribou and they are, by definition elsewhere in statute, a game animal and not a domestic animal. Caribou cannot be owned by a person and can only be possessed under a permit from the department. Therefore, a caribou is not an appropriate animal for the list. The domestic form of that species is reindeer, which is on the list. Furthermore, there are three species that can legally be owned under some circumstances that would otherwise be game animals. Those are bison, musk ox and elk. Wild populations are managed as game animals, but if a person has a bill of sale that is proof that they are owned as domestic animals. He suggested that for the purposes of this definition of livestock, it be clearly indicated that the bill only addresses the domestic forms of those species.

Finally, Mr. Robus suggested regarding the word "duck" that there are other water fowl that are owned and shown as livestock under these conditions. He suggested removing "duck" and, at the end of the list, after "alpaca," inserting "waterfowl for which a permit from the U.S. Fish and Wildlife Service is not required".

SENATOR SEEKINS said he would work on language with Mr. Robus to make sure the bill protects the people they intend to protect.

MR. JIM DOUGLAS, Cooperative Extension Service, UAF, said this bill is an attempt by the Cooperative Extension Service and the 4H program to try to get kids to understand the process of law by choosing a pertinent issue and finding out what happens to a bill. They do not have litigious folks in their group, but they certainly have litigious insurance companies that tend to look at the University and property owners as deep pockets. He said an excellent example is an incident that occurred last year when four new horses were in a judging activity and someone slapped one of them and was seriously stepped on. In that situation, one might question whether the person should have been that close to the horses in the first place, even though he was just trying to help out. The bill is designed for people to use common sense.

SENATOR FRENCH said that kids like to pet attractive furry animals. He questioned why an owner wouldn't put a screen around such an animal so that a child doesn't get his fingers bit.

MR. DOUGLAS replied that the fair provides the cages, but it's difficult to find a screen with holes that small. Domestic cages have about a half-inch space and it does take some amount of force to get a child's fingers through them, but some kids still try - even with warning signs and moving the cages back.

SENATOR FRENCH asked if anyone he knew had been sued under these circumstances aside from the owner of the horse who was slapped.

MR. DOUGLAS replied no, he has not seen a lot of suits in Alaska, but fellow extension agents around the West are starting to see them. He thought Alaskans had a little tougher mentality.

SENATOR FRENCH had some hesitance about this bill because individual responsibility could go both ways.

MR. DOUGLAS responded that the bill says gross negligence as opposed to just negligence.

MS. JAN HANSCOM, 4H leader in the Tanana Valley, favored keeping small animals like chickens and guinea pigs in the bill. She said they are very well behaved, but they do bite because kids pull their hair and ears.

SENATOR SEEKINS moved to pass SB 176 from committee with individual recommendations.

The roll was called. SENATORS STEVENS, FRENCH, SEEKINS and BUNDE voted yea and SB 176 moved from committee.

#### **CSHB 214(JUD)-PUNITIVE DAMAGES AGAINST EMPLOYERS**

CHAIR BUNDE announced CSHB 214(JUD) to be up for consideration.

REPRESENTATIVE RALPH SAMUELS, sponsor of HB 214, said this bill adds a section to the punitive damages statute that would create a guideline for damages against an employer under vicarious liability. It stipulates that an employer shall not be responsible for paying punitive damages unless the employer okays the act or knew about it later or that the employer knew the employee to be unfit and recklessly employed them. One example would be a construction company owner that requires drug testing and training and specifically tells his employee that he cannot drive the forklift or truck because the employee has not been trained. If the employee does so anyway and someone gets injured, then the company should still be on the hook for

compensatory damages to pay for the pain and suffering, but the company should not be punished if it has not done anything wrong. Their policies would not be changed and the punitive damage factor should not apply.

REPRESENTATIVE SAMUELS explained that the bill does not affect any portion of the law with respect to direct liability. If the company, itself, does something wrong, the current law would apply and this does nothing to change that. It does not affect the ability of the plaintiff to get compensatory damages. The language came almost word for word from a restatement of tort, which is an amalgamation of case law from across the country. The standard also comes from the Laidlaw Case, heard before the Supreme Court, which commented if this had been brought up at a trial, it would have ruled with language that is in the case right now.

MR. STEVEN CONN, AkPIRG, cautioned against passage of this bill because although a small employer would deserve immunization from punitive damages in that particular instance, the only way to motivate larger corporations is with punitive damages. Hopefully, a message will be sent to big companies to tighten up and improve their hiring and training practices. He opposed the bill for its broad reach and asked them to trust civil juries.

MS. MARSHA DAVIS, General Counsel, Era Aviation, said the Exxon Valdez punitive damages issue had been raised in the House Labor and Commerce committee and the actual issues had been pretty well clarified there. The \$5 billion in punitive damages that is being batted around in court right now was a direct assessment against Exxon, therefore this bill would not touch that. This bill does not affect employers' direct liability for their compensatory damages or direct liability. What would be at stake would be the \$5,000 in punitive damages that was assessed against Mr. Hazelwood and the question is would Exxon, in addition, be vicariously liable for that \$5,000. The issue of big versus small is also a red herring. She told members:

The size of the employer isn't the issue; it's whether or not an employer should be held strictly liable for punitive damages assessed against their employee. While the punitive damages are intended to motivate a change in behavior, then it does no good to make strict liability, because you have disconnected the employer's behavior from the liability outcome. Only where the employer's behavior affects the outcome of that liability do you have a motivation. For example,

at Era Aviation, we do our best to make sure that employees are screened for drug and alcohol usage problems. We do drug and alcohol testing on a pre-hire basis. We do required random testing at a set percentage established by the FAA regulations. We also have a right to do for cause drug and alcohol testing anywhere we have suspicions of abuse. We do annual training of all supervisors to spot drug and alcohol problem usage amongst employees so that we can activate our for cause program.

Yet, we had a situation several years back where an employee stopped at their lunch break, drank a few beers, drove the company van and hit a motorcycle. If there's strict liability for the punitive damages that would be assessed against our employee, what, if anything, could Era have done differently? The answer is nothing. So, in that instance, where Era does not have a fault, has not done something wrong, it makes no sense to make us vicariously liable for the punitive damages assessed an employee who may have acted outrageously or recklessly. Rather, the standards set out in this bill are totally reasonable. They have been tested and tried throughout the nation...We strongly support the bill and encourage its passage.

MS. PAM LABOLLE, President, Alaska State Chamber of Commerce, stated support for fairness in the civil justice system and said CSHB 214(JUD) brings a greater degree of fairness to the system. Punitive damages are intended to punish wrongdoers, who through outrageous conduct and acts of malice or indifference have harmed or caused loss to another. To hold employers liable for punitive damages when their acts have no affect on an employee's behavior is not what punitive damages were intended for.

MS. JESSICA GRAHAM, Anchorage Society of Human Resources Management, said she is also an employment lawyer. She strongly seconded Marsha Davis's comments and added that in the last several years when she has been litigating employment cases, she has not seen a complaint that has not included a claim for punitive damages. She feels this is a feather in the cap of the plaintiff's bar that they regularly use to up the ante against employers. It increases the cost for litigation regardless of whether the claim actually has any merit or not. She commented:

Secondly, in the greater scheme of things, under the current system, if an employer is held strictly liable for the actions of an employee, regardless of whether the employer did anything to encourage it or benefited in any way, what happens at the end of the day is that the employer can pay out an enormous sum of money and do enormous damage to their ability to continue business while the employee, who actually did the harm probably gets fired, walks off essentially scott free, goes and gets another job at a different employer, does not disclose where he previously works and a new employer is going to be ultimately responsible for the same kind of conduct that can happen again and again. In the general spirit of Alaska independence you want to put the responsibility where it lies and put it on the individuals who are doing these kinds of activities that give rise to these punitive damages. If you want to stop the conduct, tell the employee who sexually harasses someone that they will hold them personally liable rather than tagging that on the employer who has otherwise done everything right.

SENATOR FRENCH said he heard her and others mention strict liability with respect to assigning fault to an employer for the acts of their employees and asked what cases in Alaska have set forth that standard.

MS. DAVIS replied in 1986 the Alaska Supreme Court initially enunciated the standard that is called the Scope of Employment Rule for liability for punitive damages in the Alaskan Village versus Spaulding case. That case was over a dogfight in a trailer court and was later cited by the Alaska Supreme Court in the Laidlaw case and others as the standard in Alaska. She continued:

Essentially the public employment rule as the Supreme Court enunciated it is if an employee is acting within the scope of their employment at the time the injury or damage is incurred and the jury assesses punitive damages against that employee, the employer will be vicariously liable for those damages the same as it would be for the comparative or the standard damages.

That stands in contrast to the restatement, which essentially sets out a set of four criteria that needs to be met before an employer could be held liable for those punitive damages.

SENATOR FRENCH asked if that is what she would call strict liability.

MS. DAVIS replied that it's strict liability if you assume that acting within the scope of employment is a given on both of those standards. For instance, the employee was hired to drive, and while the employee wasn't hired to drive drunk, the employee was doing something in furtherance of the employer's conduct - as opposed to them employee driving the company vehicle on his own time at night to a bar when the vehicle wasn't supposed to be used.

CHAIR BUNDE asked if the legal arguments could be deferred to the Judiciary Committee. Representative Samuels indicated concurrence and the Chair set HB 214 aside.

**CSSSHB 184(L&C)am-INDIVIDUAL DEFERRED ANNUITIES**

CHAIR BUNDE announced CSSSHB 184(L&C)am to be up for consideration.

REPRESENTATIVE COGHILL, sponsor, said the National Association of Insurance Commissioners (NAIC) made a recommendation with regard to minimum values of annuity contracts. Currently, the minimum amount is set in statute. HB 184 deals with deferred annuities and has an effective date. It started out on a minimum non-forfeiture amount of 3 percent. However, the NAIC does not think that can continue and has asked to have the statute changed from 3 percent to 1.5 percent. In addition, the NAIC wants to bring in an index system and faxed him copies of it as he introduced the bill. Although he is still learning about the index system, he explained that it basically allows for the reasons for the variable indexing. Page 2, subsection 2 contains what they will need to study the most - the interest rate used to determine the minimum non-forfeiture amount. The NAIC wants to halve the cap of 3 percent and on line 8, and tie it to a 5-year constant maturity treasury, an index that the NAIC agreed would always be there and could be discovered readily every day.

Subsection (c) is the floor, which is a resulting interest rate of not less than 1 percent. This protects the company from collapsing under a payout it can't sustain and it protects the customer who wants to get money out under a non-forfeiture from costing more than it's worth.

REPRESENTATIVE COGHILL said the Division of Insurance and the National Association of Insurance Commissioners endorse this bill. Fourteen other states have already made this change.

CHAIR BUNDE said it would be nice to have a win-win situation and that he looked forward to working with him on this issue next week.

3:00 - 3:06 p.m. - at ease

**SB 102-CHARITABLE GAMING REVENUE/TAXES**

CHAIR BUNDE announced SB 102 to be up for consideration. He told members he wanted to put something together that would work and move it from committee today so that it has some possibility of being discussed at another level. He noted that some folks in the pulltab industry in Fairbanks have found a way to cancel any communication with his office by sending out epistles like the one he had before him.

CHAIR BUNDE said there was concern that a surety bond might be difficult to get at any level in this industry so he wanted that deleted.

He said the other issue was the amount of tax and Mr. Persily had provided them with a comparison of the different returns. He said they had already turned down the 8 percent of gross that would have generated \$24 million in taxes. The current committee substitute (CS) suggests 5 percent of gross, which would generate \$15 million in taxes. Industry doesn't like it, but feels it could live with 3 percent of gross, which would generate \$9 million in taxes.

SENATOR SEEKINS asked Mr. Persily if he believes any operators in the state could be out of compliance in the way they pay out to either their charities or their taxes and to what extent.

MR. PERSILY replied if charities are out of compliance when they renew their licenses, they are given the opportunity to come into compliance. If they don't, their permits are yanked. He wasn't aware of any charities that are currently operating out of compliance, but he did know of some who were out of compliance that are no longer gaming.

SENATOR SEEKINS asked what number he figured the various percentages of the gross against.

MR. PERSILY replied those numbers were based on the assumption that the total gross receipts to gaming do not change. The people in gaming would have to change their prizes or deal with expenses in order to come up with extra money for taxes.

SENATOR SEEKINS asked if he could think of any reason the committee should base the tax on the ideal net rather than the gross.

MR. PERSILY replied that from the charities' perspective, the ideal net is more realistic as that is what is left after prizes. The Governor's proposal is based on gross, so the state would take a percentage of the total amount of gaming regardless of how much charities choose to pay out in prizes. From a charity's perspective, he assumed a tax on net would be a more reasonable basis.

CHAIR BUNDE said according to figures from the Department of Revenue, a 3 percent tax on gross would be equal to a 15 percent tax on the ideal net; 4 percent would be 18 percent of the ideal net; and 5 percent would be 20 percent of the ideal net. He thought that 5 percent would be closer to 25 percent of the ideal net and asked why he was confused.

MR. PERSILY replied that the department doesn't know how changing the tax rate would affect prizes or expenses and he felt these figures are close enough for the discussion. He clarified that currently, the department takes in about \$2 million per year in charitable gaming proceeds and these numbers are not in addition to that, but a total.

CHAIR BUNDE pointed out that the CS refers to 25 percent of the ideal net. He suggested that they have three options - to go with the CS that has the 25 percent of the ideal net, to change the amount of the ideal net, or they can allow the bill to die in committee. However, this was the last day he wanted to invest time in it.

SENATOR SEEKINS said he was wondering if there was a formula somewhere in the net that would make the equation work.

**TAPE 03-27, SIDE A**

SENATOR SEEKINS asked how much of the net charities currently take.

Someone replied 30 percent.

SENATOR SEEKINS said the Governor was trying to get 35 percent, which would leave 65 percent of the ideal net for the operator and expenses or for the charity if they were running their own operation. He wondered if that is how they should consider it if they are going to try to roll the Governor's numbers into the equation.

MR. PERSILY responded that the Governor's bill proposed setting in statute a limit on the prize payout, because they are now a little more than \$60 million. However, if the charities are going to pay a higher tax bill, they are going to have to take it out of their own pockets or out of the pockets of the players by reducing the prize payout. Without limiting the size of the payout, it would be hard to guesstimate what would happen with the volume of gaming.

CHAIR BUNDE reminded them that the committee rejected the Governor's latest proposal of 8 percent of the gross, plus a limit of 68 percent on prize payout. He noted information from Mary Magnuson that indicates that the volume of gaming went down in other states when they were too restrictive.

SENATOR FRENCH asked Mr. Persily to comment on section 5 of the CS, which removes a borough's ability to collect a sales tax on pulltabs. He asked if he knew how much Juneau, or any other city that levies a sales tax on pulltabs, is taking in right now through the tax.

MR. PERSILY replied that Juneau is the largest city that assesses a sales tax on pulltabs and he believes it is collecting about \$400,000 to \$500,000 per year.

CHAIR BUNDE said that is what the city is owed, but he didn't think Juneau had collected all of that.

SENATOR FRENCH said he didn't know about other cities like Sitka, Ketchikan, Wrangell and Kenai where they have a sales tax, as well.

CHAIR BUNDE replied that his understanding is that Juneau is the only major city where the sales tax applies to pulltabs.

MR. PERSILY added that was his understanding as well, and that Juneau charges it on the gross, so that when a player comes in and has \$5, but wins and keeps playing pulltabs, he may play \$20 worth of pulltabs for the \$5 investment. Under the Juneau sales

tax code, Juneau wants 5 percent of the \$20, a much higher percent of the actual cash that was played at the table. This is certainly the problem from the charity's perspective.

SENATOR FRENCH said that he was just given information indicating that Palmer does 3 percent of the gross, Kotzebue does 6 percent of the gross, North Pole does 3 percent of the gross and Wasilla does 2.5 percent of the ideal net.

CHAIR BUNDE said one of his arguments is that Juneau's industry continues even though charities are paying the state tax and the local sales tax, which would, in his mind, come close to 5 percent of the gross. He has heard some feedback that if this legislation was 15 percent of the ideal net or 3 percent of the gross, it would raise the revenue to about \$9 million and might have some negative impact on marginal operations, but it appears that many people in the industry could survive the shake out and become more efficient.

SENATOR FRENCH said he feels like he has barely scratched the surface of this issue and that Senator Seekins has learned a lot about it. He offered to serve with any other members on an interim committee to figure out how to make some needed reforms.

SENATOR STEVENS said he appreciated Senator French's comments and said he wasn't ready to make any decisions. He asked the Chair if he considered working on SB 102 in the interim.

CHAIR BUNDE replied that he didn't ever want to work on it again, being the charitable gaming guru that he is, but he would bring it up again if that was the wish of the committee.

SENATOR SEEKINS said it seem this issue boils down to four things. The first is the tax issue and the fact that the Governor wants to get a larger portion of gambling revenue for the state in a manner that doesn't harm the beneficiaries. The question is what pot of money they are looking at. He thought the committee needs to look at the ideal net and then decide what percentages goes to whom.

He said the second issue seems to be the size of the prize payout and how to change that without reducing the incentive for people to gamble. He thought the committee could establish target ranges. The third and fourth issues relate to the sphere of operation. He questioned whether it is right to be able to raise money for a Little League baseball team by allowing someone hundreds of miles away to have a gambling operation in a

community not connected to the license holder in any way. The fourth issue is who can participate. There is a certain size pie and as more groups qualify, they flood the pie and everyone gets a smaller piece - the competition gets fiercer, which could lead to abuses.

SENATOR SEEKINS reasoned if the Governor wants more money this year, the committee should focus on the first two issues. If they want to look farther, and he thought they should, they would have to look at the other questions.

CHAIR BUNDE noted a youth sports organization in Fairbanks has benefited from charitable gaming and it has been able to set aside a nest egg of \$2 million.

SENATOR SEEKINS said Senator Wilken sits on that Board of Directors and it's very well known that group has done a great job. He related they helped get wheelchair ramps for his wife's disabled handicapped riding program so that the kids could get up beside the horse.

CHAIR BUNDE asked Mr. Persily how much money the state currently brings in from pulltabs.

MR. PERSILY replied that it was slightly more than \$60 million in calendar year 2001 and the state's take was a couple million.

CHAIR BUNDE asked how much the Governor's original proposal to make the tax 25 percent of the ideal net would have increased the taxable income.

MR. PERSILY replied that it would change the state's take from \$2 million to \$14.5 million.

CHAIR BUNDE pointed out if the legislature does nothing, the administration will ask for reductions elsewhere to fill the \$10.5 million hole to limit the CBR draw. If the legislature does nothing, it will need to look for another \$10.5 million. He asked if Senators Seekins, French and Stevens wanted to look at potential short-range solutions this year or form a subcommittee over the interim and come back with recommendations.

SENATOR SEEKINS said if the state is going to allow gambling and the intent is to do something for charities, they have to make a comprehensive review of this whole matter. He said he is more than willing to work on the matter over the summer with the

understanding that the subcommittee would be undertaking a comprehensive review.

SENATOR STEVENS also thought the issue needed a comprehensive review.

SENATOR FRENCH said he would participate as well.

CHAIR BUNDE appointed them to a subcommittee and said he hoped to have a report from them by January at the latest.

CHAIR BUNDE adjourned the meeting at 3:35 p.m.