

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

February 22, 2006
9:19 a.m.

MEMBERS PRESENT

Senator Ralph Seekins, Chair
Senator Charlie Huggins, Vice Chair
Senator Gene Therriault
Senator Hollis French
Senator Gretchen Guess

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 301

"An Act relating to granting certain defendants an absolute right to change venue in civil actions; setting venue for civil actions based on employment at the employer's principal place of business; allowing multiple defendants to control venue by agreement; amending Rule 3, Alaska Rules of Civil Procedure; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 222

"An Act relating to breaches of security involving personal information, consumer report security freezes, consumer credit monitoring, credit accuracy, protection of social security numbers, disposal of records, factual declarations of innocence after identity theft, filing police reports regarding identity theft, and furnishing consumer credit header information; and amending Rule 60, Alaska Rules of Civil Procedure."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 301

SHORT TITLE: CHANGE OF VENUE IN CIVIL CASES

SPONSOR(s): SENATOR(s) SEEKINS

02/14/06	(S)	READ THE FIRST TIME - REFERRALS
02/14/06	(S)	JUD, FIN
02/22/06	(S)	JUD AT 8:30 AM BUTROVICH 205

BILL: SB 222

SHORT TITLE: PROTECTION OF PERSONAL INFORMATION

SPONSOR(S): SENATOR(S) THERRIAULT, GUESS

01/09/06	(S)	PREFILE RELEASED 12/30/05
01/09/06	(S)	READ THE FIRST TIME - REFERRALS
01/09/06	(S)	L&C, JUD
01/24/06	(S)	L&C AT 1:30 PM BELTZ 211
01/24/06	(S)	Heard & Held
01/24/06	(S)	MINUTE(L&C)
02/14/06	(S)	L&C AT 1:30 PM BELTZ 211
02/14/06	(S)	Moved CSSB 222(L&C) Out of Committee
02/14/06	(S)	MINUTE(L&C)
02/16/06	(S)	L&C RPT CS 4DP 1AM NEW TITLE
02/16/06	(S)	DP: BUNDE, DAVIS, ELLIS, SEEKINS
02/16/06	(S)	AM: STEVENS B
02/22/06	(S)	JUD AT 8:30 AM BUTROVICH 205

WITNESS REGISTER

Peter Kelley, President
Kelley Insurance Associates
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of SB 301

Bob Hajoukovich, President
Frontier Flying Service
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of SB 301

Bruce McGlasson, President
Grant Aviation
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 301

Richard Harding, Senior Vice President
Peninsula Airways, Inc.
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 301

Karen Casanovas, Executive Director
Alaska Air Carriers Association
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 301

Mike Hagland, Secretary and Treasurer

Hagland Aviation Services
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 301

Kneeland Taylor, Attorney
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 301

Chris Schleuss, Attorney
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 301

Meg Simonian, Attorney
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 301

Skip Doomershine, Electrician
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 301

Paul Lantz, General Manager
Dimond Electric
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 301

Russ Winner, Attorney
Alaska Action Trust
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 301

Jerry Rock, President
Evergreen Aviation
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 301

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at [9:19:19 AM](#). Present were Senators Gene Therriault, Gretchen Guess, and Chair Ralph Seekins.

SB 301-CHANGE OF VENUE IN CIVIL CASES

[9:20:06 AM](#)

CHAIR RALPH SEEKINS announced SB 301 to be up for consideration. He informed the committee that the Department of Law (DOL) would

testify on the bill at a later date. He opted to hear public testimony first.

Senator Charlie Huggins joined the meeting.

[9:21:44 AM](#)

BOB HAJOUKOVICH, President of Frontier Flying Service, testified in support of SB 301. He said liability insurance was a major cost component for his company. It has been his experience that judgments in lawsuits are heavily weighted on the plaintiff side. He cited an incident in Bethel in 2000, where the power steering component on an aircraft failed, causing the aircraft to run off the runway. Seventeen passengers were onboard and there were no injuries. An attorney representing six of the passengers wrote a demand letter asking for an early settlement of \$75,000 each. The attorney indicated that Bethel juries were famous for awarding large settlements to the plaintiffs and that, if the case goes to trial they could easily award the plaintiffs six figures each. The claim ultimately settled out of court for \$300,000.

[9:24:21 AM](#)

MR. HAJOUKOVICH said last year there were zero fatalities in Part 135 and Part 121 operations. The public would be served by the reduction of costly litigation.

[9:25:08 AM](#)

CHAIR SEEKINS asked Mr. Hajoukovich to repeat the attorney's description of the Bethel jury system.

MR. HAJOUKOVICH read from the attorney's demand letter:

As you may be aware, Bethel is a town whose jurists are used to awarding a lot of money for pain and suffering. For example, moved by subjective complaints of pain that allegedly disrupted their lives, a Bethel jury recently awarded five ladies \$75,000 each following an accident where a cab driver tapped the ladies' vehicle at under 5 miles an hour. None of the ladies sought or received any medical treatment whatsoever, had no lost income, and were not claiming emotional distress. One of our attorneys is a pilot himself and has been successfully litigating airplane crashes for 22 years. He estimates that a Bethel jury would award six figures each to those passengers for the emotional distress damages alone. However, in the interest of compromise and early settlement, the

passengers listed above would be willing to settle all claims for \$75,000 each.

[9:27:41 AM](#)

PETER KELLEY, insurance broker and president of Kelley Insurance Associates, testified in support of SB 301. He believes there is a precedent that places the plaintiff at an unfair advantage. He has seen where plaintiff's attorneys have sent insurance company adjusters demand letters with copies of very large jury awards for simple soft tissue cases in an attempt to strong-arm the company into settlements, which he feels is legal extortion.

He cited a case where, on final approach, passengers experienced turbulence but the aircraft landed without incident. Some passengers filed a suit alleging that they feared for their life and suffered emotional distress. The insurance company settled for \$7,500 for each passenger. He said underwriters are currently afraid to do business in Alaska and some refuse to do business in rural Alaska due to the potential high jury awards.

[9:30:29 AM](#)

MR. KELLEY said SB 301 would level the playing field and attract new underwriters to the state.

CHAIR SEEKINS said a rural newspaper reported that the problem was due to insurance companies sending poorly prepared young attorneys to handle the lawsuits. A Bethel attorney was quoted as saying the disparity in awards was due to ineptness, arrogant attitudes, or unprepared attorneys. He asked for the gentlemen to comment.

MR. KELLEY said he has not witnessed that.

MR. HAJOUKOVICH said he has seen the opposite. Insurance companies tend to send the best attorneys to handle the suits.

[9:33:37 AM](#)

BRUCE MCGLASSEN, President of Grant Aviation, testified in support of SB 301. He has received threatening letters from attorneys in Bethel in particular; letters that threaten outrageous jury awards. Insurance companies have expressed an unwillingness to go to trial in Bethel despite the lack of merit for the plaintiff's cases and the history of awards made there.

[9:35:54 AM](#)

MR. MCGLASSEN said a change of venue to the corporate headquarters in Anchorage would more likely result in a fair trial.

[9:36:31 AM](#)

RICHARD HARDING, Senior Vice President, Peninsula Airways, Inc. (PenAir), testified in support of SB 301. He advised the committee that the cost of a large settlement would be devastating to PenAir and would have reverberations throughout the state. PenAir employs over 500 Alaskans and serves 36 locations with passenger and freight services. Several years ago PenAir withdrew service from Bethel primarily due to the inequity in the judicial system. PenAir transports almost 200,000 passengers each year and could now get sued for minor incidents due to the precedents set by the rural jury system.

MR. HARDING continued the cost of settling claims in rural communities is significant and unnecessary. A corporation with headquarters in Point Barrow should not have to travel to Anchorage anymore than a corporation in Anchorage should have to travel to Point Barrow to defend itself. Federal law allows a corporate defendant to change the venue to their place of business and Alaska should do the same, he stated.

[9:39:34 AM](#)

KAREN CASANOVAS, Executive Director, Alaska Air Carriers Association, testified in support of SB 301. She said the Association represents over 160 businesses including insurance companies, avionic suppliers, maintenance workers, aircraft manufacturers, consultants, attorneys, and airlines. SB 301 seeks to rectify the problems of the current system and would create an even playing field by allowing defendants the right to move the case to a different venue. Many companies around the state refuse to do business in remote jurisdictions due to potential expensive litigation.

When an airline gets sued due to equipment malfunction, avionic suppliers get dragged into the litigation and that cost of doing business gets passed down to the flying public or shippers. Many insurance underwriters refuse to do business in Alaska due to the added expenses.

[9:41:44 AM](#)

MS. CASANOVAS said the current system allows the plaintiff to choose the venue. SB 301 is neutral and would work to lower litigation costs and allow for cheaper, easier settling of cases.

[9:43:29 AM](#)

MIKE HAGLAND, Secretary and Treasurer of Hagland Aviation Services, testified in support of SB 301. Hagland Aviation has been doing business in Western Alaska for 25 years and the company feels Alaska citizens are becoming more litigious due to the large awards handed down by rural juries. He agreed that people should be taken care of in the event of an accident but not for minor things such as fear during turbulence. He expressed support for being able to move the venue in pursuit of getting a fair trial.

[9:45:12 AM](#)

KNEELAND TAYLOR, introduced himself as an attorney with a broad-based civil practice. He spoke about unintended consequences of the bill. He gave an example of a couple that lived together unmarried but financially linked. The couple's relationship ended and the woman had to file claims for stolen furniture, family heirlooms, handicrafts and for injuries sustained by the man. The bill exempts divorce, dissolution and custody cases but does not cover unmarried, financially linked couples. The bill would give the man absolute right to venue and require that the woman bring her claims to the city where the man now lives.

[9:48:17 AM](#)

MR. TAYLOR cited an example involving a real estate deal gone sour in the MatSu Valley. One party sued another and the defendant subsequently filed a fraudulent claim in Nome. The third party defendant, under SB 301, could move the venue to Nome, and force the remaining parties to travel to Nome for the case trial. He said there are huge, unintended consequences of the bill and requested that committee oppose it.

[9:50:07 AM](#)

SENATOR THERRIAULT asked Mr. Taylor whether he has experienced any problems in the Bethel court system.

MR. TAYLOR responded he handled a case in Bethel and the bill brings up a good point yet it would bring disaster to the civil system in many areas. He suggested the only people who are aware of the bill were people involved in the aviation industry. He agreed that insurance companies sometimes send arrogant "big-city lawyers" to small communities and juries tend to side with the hometown lawyer.

[9:51:55 AM](#)

MR. TAYLOR added he is not disputing the appearance of disparity between Bethel juries and Anchorage jury verdicts.

CHRIS SCHLUSS, attorney, testified against the bill. She informed the committee that the Alaska Action Trust wrote a position paper on the bill dealing largely with what they see as constitutional infirmities. She pointed out the committee was considering an enormous fix for a very limited problem. She said the federal system, as well as every state in the country, operates the same way as Alaska operates today and does not allow a defendant an absolute right to change venue. She gave many examples of unintended consequences of the bill, which would give any defendant the power to force plaintiffs to travel far out of the area where the situation occurred. She said under SB 301 a drunk driver who was in town for a meeting could injure a person in Fairbanks and that injured person could have to travel to Naknek to have their case heard.

[9:55:17 AM](#)

MS. SCHLUSS said she represents women and children who are victims of rape and molestation. Under the current system, she is often successful in suing the offender and is able to do so because of the law that states criminals are not allowed to keep their personal property exempt. She said she is allowed to pursue this because she can keep the costs of litigation fairly well affordable. SB 301 would force she and her clients to travel extensively to a location chosen by the offender to have their day in court. She asked the committee to think about the issues in a broader manner.

[9:57:51 AM](#)

MEG SIMONIAN, introduced herself as an attorney for a firm that does contract work, personal injury work, and business law contract work. She said SB 301 would change the current law, which says the claim should be brought at the place it arose. Judges have the ability to change a venue if impartiality is proved or when the interest of justice requires it. SB 301 would remove the ability of the judge to do that and put the power entirely with the defendant. She estimated that lawyers would find ways to make things extremely inconvenient for plaintiffs to get to court. She maintained that the bill could cause enormous impacts across spectrums of litigation, would increase litigation, and bog the courts.

[10:00:36 AM](#)

MS. SIMONIAN asserted not all claims in Bethel result in plaintiff's verdicts. She agreed that an out-of-town lawyer is

always at a disadvantage but SB 301 wouldn't necessarily fix that because it would just shift the disadvantage. She asked the committee members to think about the broad-based impact the bill would have.

[10:02:21 AM](#)

CHAIR SEEKINS asked Ms. Simonian whether a provider or seller could limit venue for any civil action that is brought against them as part of the contract.

MS. SIMONIAN said yes.

CHAIR SEEKINS asked her whether a small airline, as condition of purchase of the ticket, is able to do so under contract law.

MS. SIMONIAN said it is possible but there would be obstacles. There would be questions of adhesion where the person signing the contract would be aware that they were signing away certain rights.

CHAIR SEEKINS commented he has seen sales contracts where venue is prescribed as a condition of the contract. He asked her to comment.

MS. SIMONIAN said she was discussing that topic with colleagues earlier and is not sure of the restrictions on passenger adhesion contracts. She said it seems to be within the realm of a potential solution for what appears to be a special interest problem in limited areas of the state.

[10:04:16 AM](#)

CHAIR SEEKINS asked Ms. Simonian whether the personal injury snow machine case in Bethel last week was brought against a Bethel business.

MS. SIMONIAN said she understood it to be brought against a Bethel business. She said currently the court is the impartial arbitrator and maintained that SB 301 would bring about a battle between parties over venue.

[10:06:14 AM](#)

SKIP DOOMERSHINE, electrician, testified that he was recently involved in a lawsuit that went to arbitration. The judge reviewed the facts of the case and stated the case, if tried in Anchorage, would have a value of zero dollars because the case lacked merit. Later during arbitration the judge insisted they settle for a six-figure amount. He feels there is something

wrong with the rural judicial system. Threatening letters were received listing awards given in other cases and since he was personally named in the lawsuit, it was a frightening experience. His employer has ceased bidding for work in rural areas because of the risk of frivolous lawsuits.

[10:09:01 AM](#)

MR. DOOMERSHINE said his specialty is doing bush runway lighting and so the decision by his employer personally affects him but it also affects residents and businesses that depend on good runway lighting.

[10:09:31 AM](#)

SENATOR GUESS asked Mr. Doomershine the reason the arbiter recommended settlement.

MR. DOOMERSHINE said the arbitrator was a retired superior court judge and she simply advised his employer that a rural community would probably award a tremendous amount of money.

SENATOR GUESS asked Mr. Doomershine whether he or his employer tried to change the venue citing lack of impartial jury.

MR. DOOMERSHINE said his employer went to great lengths to attempt to change the venue to Fairbanks but it was denied.

[10:11:36 AM](#)

Senator French joined the meeting.

PAUL LANTZ, General Manager of Dimond Electric, testified in support of SB 301. He said his company has been building infrastructure in Western Alaska for over 20 years through weather, logistics, and cultural challenges. They have chosen to draw the line at legal challenges. The company was taken to court in Bethel for a case that would never have seen the light of day anywhere else in Alaska, he stated. This issue presents a direct effect on economic development in the region surrounding Bethel. Infrastructure projects, improved communications, and improved transportation would provide many opportunities to the people in the region but contractors are shying away from accepting contracts in rural Alaska and Dimond Electric is one of them.

[10:14:34 AM](#)

RUSS WINNER, Attorney, testified against the bill on behalf of Alaska Action Trust. SB 301 would allow defendants to automatically transfer venue to their home court. Virtually

every state in the nation tries the case in the vicinity of where the harm has been done. It is an over-broad measure to address the legitimate concerns of the air carriers yet would have unintended consequences. He gave an example:

If a Fairbanks resident is in an auto accident and is hit by a person from out of town, perhaps a village in Western Alaska, under this bill, if that Fairbanks resident filed suit in a Fairbanks court against that out of town defendant, the defendant would have the automatic right to transfer the case out of Fairbanks into a rural court.

[10:19:50 AM](#)

MR. WINNER continued that he has tried cases in Bethel and knows most of the attorneys who practice there. He claimed that the defendants who find themselves in Bethel court hire lawyers who are out of tune to the differences between Bethel juries and other juries. In reference to previous testimony regarding threatening letters sent to defendants, he said, lawyers write those letters all the time.

[10:22:31 AM](#)

MR. WINNER alerted committee members to a position paper that he faxed to Senator Seekins' office and wrapped up his testimony by stating SB 301 was unconstitutional and that defendants should be hiring local Bethel lawyers.

[10:25:26 AM](#)

JERRY ROCK, President, Evergreen Aviation, testified in support of the bill. He cited a medical evacuation (med-evac) case in Kotzebue where a contractor was working on a road and a village elder was run over by a front-end loader as he was driving a four-wheeler through the construction site. The elder died during the med-evac flight. The family sued Evergreen Aviation for the death and the lawyer for the family told him that a Kotzebue jury would rule against the airline. The lawyer advised him to settle with the family.

MR. ROCK said the bill would bring jury awards down and in turn help bring insurance costs down for contractors and air carriers as well.

[10:28:46 AM](#)

SENATOR GUESS asked Mr. Rock whether he or his insurance company tried to change the venue citing lack of impartial jury.

MR. ROCK said they settled out of court on both of the rural cases that they had.

[10:29:22 AM](#)

CHAIR SEEKINS held SB 301 in committee.

SB 222-PROTECTION OF PERSONAL INFORMATION

[10:29:40 AM](#)

CHAIR RALPH SEEKINS announced SB 222 to be up for consideration.

SENATOR GENE THERRIault moved version I as the working document before the committee.

CHAIR SEEKINS objected for explanation.

SENATOR GRETCHEN GUESS explained Article 1 relates to breach of security involving personal information. It deals with the definition of personal information and the requirement to notify people during a breach of security. There are four changes in the section. The first is a definition of "clause of information" on page 24; line 12. The second change is to delete "whether or not the personal information has or has not been accessed by an unauthorized third part for legal or illegal purposes" on page 2; lines 2-3.

[10:32:11 AM](#)

The third change is page 4; line 11 to include the word "currently" before lawfully available. At one time in Alaska it was lawful to obtain social security numbers and the bill had to be clarified to recognize things that may have been lawful at the time of occurrence. The fourth change is on page 4; lines 22-24 where the pass code language was deleted. It can be easy to guess a person's password or pass code.

[10:34:07 AM](#)

Article 2 relates to credit reports and security freezes. This section only deals with consumer credit reporting agencies. On page 6 lines 15-16, language was added that would allow the agency to treat an application as incomplete when there is a security freeze on the consumer's credit report. The next change is a narrowed definition on page 23; lines 27-31 regarding the consumer credit reporting agencies.

[10:36:43 AM](#)

Article 3 starts on page 13 and there are no changes in the section but it discusses consumer rights and the process in monitoring credit accuracy.

Article 4 is related to protection of the social security number and page 16; line 27 of the bill adds the language "unless expressly required by federal or state law." It is not the intent to prohibit anything that is required by state or federal law to disclose a social security number if needed.

Page 16; line 30 is a new section addressing additional governmental prohibition. It says that a state or local government agency is not allowed to ask for a social security number unless required by state or federal law.

CHAIR SEEKINS asked the reason for making an exception to the judicial branch.

SENATOR GUESS explained the drafter made that exception because a person under the current law does not impede the judicial branch and so that is to be consistent with the rest of the section.

[10:39:18 AM](#)

SENATOR GUESS advised the committee she would submit the memo from Legislative Legal that discusses the exception.

Article 5 applies to businesses and how records should be disposed of. Page 18 lines 21-23 specifies that federal law trumps regulated disposal methods. Throughout the bill, the term "consumer report" has been replaced with "credit report" although the definition has not been changed.

[10:41:34 AM](#)

Article 6 applies to identity theft. It would allow for a person whose identity has been stolen to file a police report wherever they are and not necessarily where the crime has taken place. Article 7 relates to credit header information and addresses the selling and trading of the social security number. Article 8 applies to truncation of the credit card to help protect consumers and Article 9 is the general provisions definition section.

CHAIR SEEKINS asked Senator Guess whether the state would be held to the same standard as businesses.

SENATOR GUESS said yes but that the committee should discuss the section related to the disclosure of records.

CHAIR SEEKINS removed his objection. Hearing no further objections, the committee adopted CSSB 222(JUD) version I. He held the bill in committee.

10:43:42 AM

There being no further business to come before the committee, Chair Seekins adjourned the meeting at 10:45:56 AM.