

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 12, 2007

1:07 p.m.

MEMBERS PRESENT

Representative Jay Ramras, Chair
Representative Nancy Dahlstrom, Vice Chair
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 126

"An Act relating to driver's licenses and permits, commercial driver's licenses, and other motor vehicle laws; relating to the driver's license compact; and providing for an effective date."

- MOVED CSHB 126(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 118

"An Act relating to underage possession of alcoholic beverages in a dwelling."

- MOVED HB 118 OUT OF COMMITTEE

HOUSE BILL NO. 29

"An Act relating to infants who are safely surrendered by a parent shortly after birth."

- MOVED CSHB 29(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 126

SHORT TITLE: DRIVER'S LICENSES AND PERMITS

SPONSOR(S): REPRESENTATIVE(S) JOHANSEN

02/12/07 (H) READ THE FIRST TIME - REFERRALS

02/12/07 (H) STA, JUD
02/15/07 (H) TRA AT 1:30 PM CAPITOL 17
02/15/07 (H) <Bill Hearing Canceled>
02/20/07 (H) STA AT 8:00 AM CAPITOL 106
02/20/07 (H) Moved Out of Committee
02/20/07 (H) MINUTE(STA)
02/21/07 (H) STA RPT 6DP 1NR
02/21/07 (H) DP: GRUENBERG, JOHANSEN, LYNN, ROSES,
DOLL, JOHNSON
02/21/07 (H) NR: COGHILL
02/22/07 (H) STA AT 8:00 AM CAPITOL 106
02/22/07 (H) <Bill Hearing Canceled>
03/12/07 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 118

SHORT TITLE: PROHIBIT ALLOWING MINORS TO HAVE ALCOHOL
SPONSOR(S): REPRESENTATIVE(S) MEYER

02/05/07 (H) READ THE FIRST TIME - REFERRALS
02/05/07 (H) L&C, JUD
02/16/07 (H) L&C AT 3:00 PM CAPITOL 17
02/16/07 (H) <Bill Hearing Canceled>
02/21/07 (H) L&C AT 3:00 PM CAPITOL 17
02/21/07 (H) Moved Out of Committee
02/21/07 (H) MINUTE(L&C)
02/22/07 (H) L&C RPT 4DP 2NR
02/22/07 (H) DP: GARDNER, RAMRAS, GATTO, OLSON
02/22/07 (H) NR: LEDOUX, NEUMAN
03/12/07 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 29

SHORT TITLE: SAFE HAVEN FOR INFANTS
SPONSOR(S): REPRESENTATIVE(S) LEDOUX, GRUENBERG, LYNN, HARRIS,
NEUMAN, WILSON, DAHLSTROM, GARDNER, OLSON, DOLL, KERTTULA

01/16/07 (H) PREFILE RELEASED 1/5/07
01/16/07 (H) READ THE FIRST TIME - REFERRALS
01/16/07 (H) HES, JUD
02/08/07 (H) HES AT 3:00 PM CAPITOL 106
02/08/07 (H) <Bill Hearing Canceled>
02/20/07 (H) HES AT 3:00 PM CAPITOL 106
02/20/07 (H) Moved CSHB 29(HES) Out of Committee
02/20/07 (H) MINUTE(HES)
02/21/07 (H) HES RPT CS(HES) 6DP
02/21/07 (H) DP: CISSNA, NEUMAN, WILSON, FAIRCLOUGH,
GARDNER, ROSES
02/21/07 (H) FIN REFERRAL ADDED AFTER JUD

03/12/07

(H)

JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE KYLE JOHANSEN

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 126.

RANDALL RUARO, Staff

to Representative Kyle Johansen

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: During discussion of HB 126, provided comments and responded to questions on behalf of the sponsor, Representative Johansen.

DUANE BANNOCK, Director

Division of Motor Vehicles (DMV)

Department of Administration (DOA)

Anchorage, Alaska

POSITION STATEMENT: Provided comments and responded to questions during discussion of HB 126.

KERRY HENNINGS, Driver Licensing Manager

Division of Motor Vehicles (DMV)

Department of Administration (DOA)

Anchorage, Alaska

POSITION STATEMENT: Provided comments and responded to questions during discussion of HB 126.

MARGARET PATON-WALSH, Assistant Attorney General

Labor and State Affairs Section

Civil Division (Anchorage)

Department of Law (DOL)

Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of HB 126.

AVES THOMPSON

Alaska Trucking Association, Inc. (ATA)

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 126.

BARBARA HUFF TUCKNESS, Director

Governmental and Legislative Affairs

Teamsters Local 959

Anchorage, Alaska

POSITION STATEMENT: Spoke in favor of HB 126, expressed concerns, suggested a change, and responded to questions.

REPRESENTATIVE KEVIN MEYER

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 118.

MIKE PAWLOWSKI, Staff

to Representative Kevin Meyer

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: During discussion of HB 118, responded to questions on behalf of the sponsor, Representative Meyer.

DIANE CASTO, Acting Deputy Director;

Section Manager;

Prevention & Early Intervention Manager

Division of Behavioral Health (DBH)

Department of Health and Social Services (DHSS)

Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 118.

RODNEY DIAL, Lieutenant, Deputy Commander

A Detachment

Division of Alaska State Troopers

Department of Public Safety (DPS)

Ketchikan, Alaska

POSITION STATEMENT: Testified in support of HB 118.

CHRISTINE MARASIGAN, Staff

to Representative Gabrielle LeDoux

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented HB 29 on behalf of Representative LeDoux, joint prime sponsor.

GLENN CLARY, Pastor

Anchorage Baptist Temple

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 29 and recommended changes.

JAN RUTHERDALE, Assistant Attorney General

Child Protection Section

Civil Division (Juneau)

Department of Law (DOL)

Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 29.

ACTION NARRATIVE

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at [1:07:52 PM](#). Representatives Dahlstrom, Coghill, Lynn, Gruenberg, and Ramras were present at the call to order. Representatives Samuels and Holmes arrived as the meeting was in progress.

HB 126 - DRIVER'S LICENSES AND PERMITS

[1:08:35 PM](#)

CHAIR RAMRAS announced that the first order of business would be HOUSE BILL NO. 126, "An Act relating to driver's licenses and permits, commercial driver's licenses, and other motor vehicle laws; relating to the driver's license compact; and providing for an effective date."

[1:08:48 PM](#)

REPRESENTATIVE LYNN moved to adopt the proposed committee substitute (CS) for HB 126, Version 25-LS0453\L, Luckhaupt, 2/23/07, as the work draft. There being no objection, Version L was before the committee.

[1:09:26 PM](#)

REPRESENTATIVE KYLE JOHANSEN, Alaska State Legislature, sponsor, relayed that HB 126 is intended to reduce the number and severity of commercial-motor-vehicle-related fatalities and injuries, and incorporates into Alaska law key provisions of the federal Motor Carrier Safety Improvement Act of 1999, which is aimed at improving the overall effectiveness of the commercial driver's license program. The bill will bring Alaska into compliance with the regulations set forth in the aforementioned federal law. Noncompliance would result in a loss of up to 5 percent of federal-aid highway funds in the first year and up to 10 percent in subsequent years; over a five-year period, this could total a loss of up to \$80 million. He mentioned that the bill has two zero fiscal notes and no further committee referrals.

[1:12:02 PM](#)

RANDALL RUARO, Staff to Representative Kyle Johansen, Alaska State Legislature, on behalf of Representative Johansen, sponsor, outlined the changes incorporated into Version L: Section 16 now also contains the language, **of a person who holds or is required to have a commercial driver's license** - this will clarify that the provision doesn't apply to anyone else; Sections 18 and 19 now reference proposed AS 28.33.140(a)(9) and (10) - which are being added via Section 16; and Section 28 now in part proposes to delete the words, "in writing" from AS 28.35.135(b).

[1:14:24 PM](#)

DUANE BANNOCK, Director, Division of Motor Vehicles (DMV), Department of Administration (DOA), relayed that [the introduction of] HB 126 is in response to an audit performed on the DMV last summer which revealed that certain statutory changes needed to be made in order for the state to come into compliance with federal law pertaining specifically to commercial driver's licenses (CDLs); HB 126 encompasses those necessary changes.

[1:15:34 PM](#)

KERRY HENNINGS, Driver Licensing Manager, Division of Motor Vehicles (DMV), Department of Administration (DOA), concurred that most of the changes encompassed in HB 126 allow Alaska to comply with federal regulations; however, the DMV did request the inclusion of an exemption from the CDL requirement for those who operate snow removal equipment in small communities, such as those out in the Bush communities.

REPRESENTATIVE GRUENBERG referred to page 8, lines 14-15, which says, "(1) is at least 19 years of age, **to operate in intrastate commerce, or at least 21 years of age, to operate in interstate commerce**";", and asked whether this change is necessary in order to comply with federal law.

MR. RUARO said it is; federal law specifically states that a person must be 21 years of age.

MR. BANNOCK concurred, adding that a CDL that is used for interstate commerce may only be granted to a person 21 years of age or older.

MR. RUARO, in response to a question, said that the term "imminent hazard" as used in Section 23 is also used in 49 U.S.C. 31310(f), which says that the secretary of transportation shall disqualify an individual if the secretary determines that allowing the individual to continue to drive would create an imminent hazard as defined in 49 U.S.C. 5102.

MS. HENNINGS explained that the federal government requires the inclusion of the term, "imminent hazard" in state law. She added, "If there was a major crash, there were fatalities involved, they could come in and take action and declare someone an imminent hazard and remove them from the road; it would be a very, very rare occurrence - I don't know if they've ever done this, but they want the authority to do it."

[1:20:05 PM](#)

REPRESENTATIVE GRUENBERG noted that proposed AS 28.33.190(17) says:

(17) "imminent hazard" means the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding by the United States Department of Transportation begun to lessen the risk of that death, illness, injury or endangerment.

MR. BANNOCK, in response to questions, said that a person can get a CDL if he/she has had a driving under the influence (DUI) conviction, or even two such convictions, though it might be harder to get a job.

MR. RUARO, in response to questions regarding the term, "knowingly" as used in proposed AS 28.33.140(m), said he is not sure how that standard would be applied, but offered his belief that the employer would be charged if he/she knew that the employee wasn't permitted to drive and allowed it anyway. "Since the goal is to hold employers to a high standard, I would assume that the acts of a supervisor or a lower-level employee still lead to liability," he added. Furthermore, the bill stipulates that the employer would be subject to the civil penalties outlined in 49 U.S.C. 521(b).

[1:23:10 PM](#)

MARGARET PATON-WALSH, Assistant Attorney General, Labor and State Affairs Section, Civil Division (Anchorage), Department of Law (DOL), offered her understanding that the federal government originally proposed a "knowingly or willfully" standard, but this was modified because "willfully" isn't used that much in Alaska law. She went on to say that the term "knowingly" comes from standard Alaska tort law, adding that in terms of vicarious liability, it still requires some kind of knowledge on the part of the employer, so the penalties wouldn't apply to an employer that was unaware that his/her driver was driving on an invalid CDL or in violation of an out of service order - the employer has to know that in order to attract the additional civil penalties. The bill is not changing standard vicarious liability tort law in the larger Alaskan context; the "knowingly" standard used in the bill only applies to the imposition of the aforementioned civil penalties.

MS. HENNINGS offered her understanding that the civil penalty would consist of a fine of up to \$25,000.

MR. BANNOCK, in response to a question, said that a DUI conviction won't necessarily result in a person losing his/her privilege to own a CDL, it's simply that the CDL wouldn't be valid during the license suspension/revocation periods outlined in Section 13. In response to further questions, he confirmed that federal law requires the state to adopt regulations that conform to 49 U.S.C., and that this is the purpose of HB 126.

REPRESENTATIVE GRUENBERG noted that Section 1 in part says that an employee of the department assigned to perform functions under the specific chapters listed therein may access information, and asked whether this provision gives the department the authority to obtain private records from private employers without a court order.

MS. HENNINGS explained that that access pertains to criminal justice records; the DMV had access to those records when it was part of the Department of Public Safety (DPS), and was granted access again by changes to the DUI statutes, but this authority wasn't clearly specified in those statutes, and so the federal auditors pointed out that the DMV was missing data and thus not in compliance [with federal law].

REPRESENTATIVE GRUENBERG pointed out that the language on page 1, line 9, doesn't specifically say "criminal justice information", and asked whether that term is defined.

MR. RUARO said that the scope of the access is modified by the chapters referenced in Section 1, and pointed out that language on page 1, line 6, specifies that proposed AS 28.05.065 pertains to access to criminal justice information.

MS. PATON-WALSH relayed that Section 30 of Version L adds to proposed AS 28.90.990(a) a definition of "criminal justice information" as having the same meaning given in AS 12.62.900.

CHAIR RAMRAS noted that AS 12.62.900(12) says:

(12) "criminal justice information" means any of the following, other than a court record, a record of traffic offenses maintained for the purpose of regulating drivers' licenses, or a record of a juvenile subject to the jurisdiction of a court under AS 47.12:

- (A) criminal history record information;
- (B) nonconviction information;
- (C) correctional treatment information;
- (D) information relating to a person to be located, whether or not that person is wanted in connection with the commission of a crime;

REPRESENTATIVE GRUENBERG surmised, then, that this means relevant information only.

MS. PATON-WALSH concurred, and offered her belief that with regard to Section 1, subsections (a) and (b) need to be read together; for example, subsection (a) begins, "For purposes of carrying out the provisions of AS 28.05, AS 28.15, AS 28.33, and AS 28.35 ...", and so the access to information is only for the purpose of serving the provisions pertaining to the DMV's responsibility, and is not just access to any kind of information from any source.

REPRESENTATIVE JOHANSEN, in response to a question, indicated that he didn't object to having the language on page 1, line 9, specify "criminal justice information".

[1:32:38 PM](#)

AVES THOMPSON, Alaska Trucking Association, Inc. (ATA), said that the ATA supports HB 126 and any efforts to reduce the frequency and severity of crashes and to create a safer work environment for ATA drivers. The ATA is pleased to see

increased penalties for bad driving behavior, as this will help improve highway safety by removing those bad drivers from Alaska's highways. The ATA is also pleased that Alaska will be coming into compliance with federal law so as not to jeopardize federal highway funding, which he characterized as being very important to Alaska's transportation system. In response to a question, he offered comments regarding the Dalton Highway.

[1:35:17 PM](#)

BARBARA HUFF TUCKNESS, Director, Governmental and Legislative Affairs, Teamsters Local 959, spoke in favor of HB 126, adding that if the underlying federal law is good, the state shouldn't have to be threatened with a loss of federal funds in order to comply. She mentioned that her organization has two issues of concern. One pertains to the CDL being issued in the state where a driver is domiciled; currently, if a driver works in Alaska, he/she is required to get an Alaska driver's license, but that requirement has been removed by the bill and, instead, under federal law, a CDL will be issued in whatever the driver's state of residence is.

MS. HUFF TUCKNESS said that the other issue of concern is the bill's lack of training requirements in order to get a CDL; under current law, those seeking to obtain a CDL are not required to receive any training. She suggested, therefore, that language in proposed AS 28.33.100(a)(2) be changed to say in part, "meets the experience qualifications, education and training established by the department". She concluded by noting that in many states, hairdressers, cosmetologists, manicurists, and barbers are all required by state law to have more training and education than CDL holders regardless that CDL holders are responsible for driving extremely large vehicles on roads of varying conditions.

MS. HUFF TUCKNESS, in response to a question, offered her understanding that Alaska is one of the few states which require that training schools for CDL holders be certified.

REPRESENTATIVE SAMUELS asked whether a CDL is required for employees of a small business, for example, a small business that makes deliveries.

MR. BANNOCK explained that a CDL is not necessarily required for what he characterized as a regular automobile. Whether a CDL is required will be dependent upon the gross vehicle weight or the potential to carry a number of passengers.

REPRESENTATIVE SAMUELS asked how often a CDL must be renewed and whether companies that employ CDL holders are required to check their employees for possible violations and, if so, how often are they required to perform those checks.

MS. HUFF TUCKNESS relayed that CDLs must be renewed every five years; that under the new federal regulations, the state would be required to run checks on CDL holders; and that a DUI conviction would affect the driver's regular driver's license and his/her CDL. She surmised that if a person were convicted of a DUI crime, his/her employer would know about it because the person would be off work for several days in order to serve the accompanying jail sentence.

MR. BANNOCK confirmed that CDLs are issued in five-year blocks, and went on to mention that AS 28.33.110(b) says the driver must notify his/her employer before the end of the business day following the day the driver received notice of suspension, revocation, cancellation, loss, or disqualification of his/her operating privilege. He said he is aware of at least one firm that is attempting to contract, with large trucking companies, the monitoring of that program and thereby keep employers out of trouble.

[1:48:43 PM](#)

CHAIR RAMRAS asked Mr. Bannock to comment on Ms. Huff Tuckness's suggested change.

MR. BANNOCK said that the DMV is fully supportive of education efforts; however, the DMV has promoted HB 126 as being a conforming Act rather than as something that creates new law, and the DMV is not in a position to handle the education component of driver training. He said he concurs with some of Ms. Huff Tuckness's points, but asked that the issue of driver education be addressed outside the context of HB 126. In response to another question, he said that a lot of the funding that is contingent upon the CDL program isn't necessarily funding that is received or recorded by the DMV, and so the DMV doesn't have information regarding what might be driven by a matching-fund component, though perhaps either the Department of Transportation & Public Facilities (DOT&PF) or the DPS could provide that information.

REPRESENTATIVE COGHILL suggested to Ms. Huff Tuckness that her organization provide members with information about training

programs in other states, so that members can perhaps pursue that issue further at another time.

MS. PATON-WALSH, in response to questions about proposed 28.33.140(m), said the proposed statute must be read to mean that the penalties would apply if the employer knew that the employee was driving in violation of the out-of-service order, not just that the employer knew the employee was driving. She also offered her belief that the standard of "knowingly" requires actual knowledge - again, the employer would have to be aware of the violation - but acknowledged that the federal government might have a different take on the standard of "knowingly". She offered to research that issue further.

REPRESENTATIVE GRUENBERG remarked that AS 11.81.900 defines "knowingly", and concurred that it requires actual knowledge. He suggested that a definition of "knowingly" be referenced in the bill. He then referred to the language on page 12, line 8, which says in part, "The department may adopt regulations", and pointed out that for at least one other statute, it has taken a long time and the threat of a lawsuit to get a department to adopt necessary regulations. He suggested, therefore, that the word "may" be changed to "shall".

[1:57:25 PM](#)

REPRESENTATIVE COGHILL asked whether the federal law conforms to international standards.

MR. BANNOCK said he is not aware of whether it does.

REPRESENTATIVE SAMUELS asked what would be the result of eliminating - from page 12, lines 5-8 - the language, "An employer who knowingly allows an employee to drive in violation of an out-of-service order or in violation of a railroad-highway grade crossing is subject to civil penalties as described in 49 U.S.C. 521(b) as established by the department in regulation."

MR. BANNOCK said that if that language is removed, Alaska won't be in compliance with federal law; part of the CDL program is to hold employers responsible. The federal government is very clear on that point - the language the federal government is providing must not be changed.

REPRESENTATIVE GRUENBERG again suggested altering proposed AS 28.33.140(m) such that the term "knowingly" would be defined via a reference to AS 11.81.900.

MR. BANNOCK posited that such a change would not create a problem, and indicated that the DMV would not object to it.

REPRESENTATIVE SAMUELS said it wouldn't alleviate his concern, however, that being that an employer will be the one who is held responsible when an employee refuses to follow the law.

CHAIR RAMRAS noted that noncompliance puts at risk \$80 million of highway funds over the next five years.

MR. BANNOCK concurred.

CHAIR RAMRAS expressed a preference for having the committee address the bill rather than the issue of tort reform.

MS. PATON-WALSH explained that the aforementioned language on page 12, lines 5-8, does not create a new tort liability for employers; it merely makes employers subject to additional, specific civil penalties, which would be imposed by the department via regulation.

REPRESENTATIVE JOHANSEN, in response to questions, said he has no objections to adding a reference to the definition of "knowingly", or to changing "may" to "shall" on page 12, line 8.

REPRESENTATIVE COGHILL said he would object to changing "may" to "shall" since the department is going to have to promulgate regulations that are substantially similar to federal regulations in order to come into compliance with federal law.

[2:06:08 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1, to add to page 1, line 9, the words, "criminal justice" after the word, "access". There being no objection, Amendment 1 was adopted.

[2:06:44 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 2, to add a sentence to page 12, line 10, "In this [subsection] (m) 'knowingly' is defined in AS 11.81.900". There being no objection, Amendment 2 was adopted.

[2:07:22 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 3, to replace "may" with "shall" on page 12, line 8.

REPRESENTATIVE COGHILL objected. He opined that the department will promulgate the regulations anyway because it won't want to jeopardize federal funding.

REPRESENTATIVE GRUENBERG asked Mr. Bannock whether the department would be promulgating regulations if the language is left as is.

MR. BANNOCK said the department would be, and mentioned that the DMV has no objection to either Amendment 3 or the current language.

REPRESENTATIVE GRUENBERG withdrew Amendment 3.

[2:09:57 PM](#)

REPRESENTATIVE DAHLSTROM moved to report the proposed CS for HB 126, Version 25-LS0453\L, Luckhaupt, 2/23/07, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 126(JUD) was reported from the House Judiciary Standing Committee.

HB 118 - PROHIBIT ALLOWING MINORS TO HAVE ALCOHOL

[2:10:38 PM](#)

CHAIR RAMRAS announced that the next order of business would be HOUSE BILL NO. 118, "An Act relating to underage possession of alcoholic beverages in a dwelling."

[2:11:02 PM](#)

REPRESENTATIVE KEVIN MEYER, Alaska State Legislature, sponsor, relayed that HB 118 came about because constituents of his had a neighbor who was allowing his kids and their friends to have parties at his home wherein alcohol was consumed. Typically the police weren't doing anything when they'd respond to complaints about the parties, because the person wasn't providing the alcohol and the kids weren't admitting where they got the alcohol. Under HB 118, the person throwing the party, regardless of whether he/she provided the alcohol, could be fined up to \$500. It is common knowledge, he remarked, that children most often get access to alcohol at either their own

homes or at the homes of their friends. House Bill 118 would make it a non-criminal violation to permit underage persons to possess alcohol in the home.

REPRESENTATIVE MEYER indicated that ideally, at such a party, law enforcement officers would determine who purchased the alcohol for the kids and then charge him/her with the crime of contributing to the delinquency of a minor, but that is often very difficult to determine, and so often the only thing law enforcement officers do is break up the party. With the passage of HB 118, an officer can at least issue a ticket to the host of the party, and thus it will be another tool to help fight underage drinking.

CHAIR RAMRAS asked whether the child whose house it was would be the one ticketed if a parent weren't present.

REPRESENTATIVE MEYER indicated that that would be the case, but if the parent were present, then he/she would receive the ticket. In response to another question, he said that only the person in control of the house would receive the ticket provided for in HB 118, though all of the kids could also be cited for minor consuming. He mentioned that HB 118 was derived from [another state's legislation].

CHAIR RAMRAS questioned whether this type of legislation would act as a deterrent.

[2:16:47 PM](#)

MIKE PAWLOWSKI, Staff to Representative Kevin Meyer, Alaska State Legislature, on behalf of Representative Meyer, sponsor, surmised that HB 118 would act as a deterrent, particularly if one considers that just two or three such tickets can quickly amount to a lot of money, especially for those in their late teens or early twenties who are throwing parties for younger friends. In response to another question, he indicated that the bill would not apply in situations where kids gather outdoors and throw a party.

REPRESENTATIVE MEYER said his intent is to deal with situations in which parents are letting their children and their children's friends consume alcohol in the home.

REPRESENTATIVE SAMUELS asked whether the phrase "recklessly permit" - which is used on page 1, line 6 - is defined somewhere in statute.

MR. PAWLOWSKI observed that AS 11.81.900(a)(3) reads:

(3) a person acts "recklessly" with respect to a result or to a circumstance described by a provision of law defining an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation; a person who is unaware of a risk of which the person would have been aware had that person not been intoxicated acts recklessly with respect to that risk;

CHAIR RAMRAS surmised that this standard would protect the parents if they had not given the kids permission to possess alcohol.

MR. PAWLOWSKI, in response to a question, suggested that the bill would apply in situations involving roommates in a dormitory room [at a college].

REPRESENTATIVE SAMUELS acknowledged that such legislation might change the behavior of college students.

REPRESENTATIVE MEYER added that in such a situation, the underage persons could also be cited for the crime of minor in possession.

MR. PAWLOWSKI, in response to questions, indicated that although subsection (b) only references AS 12.55, for purposes of stipulating the punishment, only AS 12.55.035(b)(7), which says that a violation warrants a \$500 fine, would be applied.

[2:23:28 PM](#)

REPRESENTATIVE HOLMES, noting that there are already laws regarding minor in possession and minor consuming, asked why this bill is needed.

REPRESENTATIVE MEYER said that typically when the police respond to complaints pertaining to underage drinking parties, the police don't try to charge all of the minors, and he feels that the proposed non-criminal violation will provide law enforcement with another tool.

MR. PAWLOWSKI, in response to a question, offered his understanding that the Department of Law (DOL) prosecuted only 241 cases of minor consuming. According to law enforcement, he relayed, when officers respond to complaints of underage drinking parties, no one will admit to having furnished the alcohol.

REPRESENTATIVE GRUENBERG opined that because the bill uses the phrase, "a person who possesses ... a dwelling" the homeowner could still be fined even if he/she is out of town at the time his/her child threw the party. Furthermore, the phrase "exercises dominion and control" could be the subject of much debate in cases that go to court. He suggested that if the intent is to restrict the violation to only those present at the time, the bill ought to be more tightly drafted. In response to a comment, he questioned whether the bill would in essence require homeowners to lock up their alcohol [when they leave town] so that they wouldn't be held responsible should their children decide to throw a party in their absence.

CHAIR RAMRAS surmised that HB 118 puts the responsibility on the host of the party, and will become a tool for law enforcement. There is a degree of lawlessness that occurs when police respond to complaints of underage drinking parties taking place in homes - the kids simply scatter, no one can be held responsible, and then there are a bunch of kids under the influence roaming the neighborhood. The bill will act as another deterrent to stop underage people from consuming alcohol and will make neighborhoods safer.

REPRESENTATIVE DAHLSTROM asked whether being ticketed under the provisions of the bill would affect either the homeowner's insurance or the minor's car insurance.

REPRESENTATIVE MEYER offered to research that issue further.

MR. PAWLOWSKI noted that AS 11.81.900(b)(63) says in part that conviction of a violation doesn't give rise to any disability or legal disadvantage based on conviction of a crime, but acknowledged that traffic tickets - which are also violations - do affect insurance rates.

REPRESENTATIVE GRUENBERG said he is concerned that the bill will create confusion during prosecution. The standard being used may have some tort implications because it might apply when a

child's friend gets drunk and then causes damage. Would the homeowner then be responsible for that damage?

MR. PAWLOWSKI offered his understanding that there is what he termed a "social host exemption for culpability" in Title 4.

[2:35:40 PM](#)

DIANE CASTO, Acting Deputy Director; Section Manager; Prevention & Early Intervention Manager, Division of Behavioral Health (DBH), Department of Health and Social Services (DHSS), said the [DBH] supports HB 118, adding that social host laws are becoming more popular around the country, are recommended at the federal level, are recommended in the [Institute of Medicine (IOM) of the National Academies'] "Reducing Underage Drinking" policies, and are recommended in the recently-published "Blueprint for the States: Policies to Improve the Ways States Organize and Deliver Alcohol and Drug Prevention and Treatment". Regardless of liability concerns, from prevention and early intervention standpoints, such laws will start to change some of the public "norms" about alcohol. For example, numerous times, she has heard parents say that if their kids are going to drink anyway, they'd prefer to let the kids drink at home.

MS. CASTO questioned whether this is really what society wants, particularly given all the recent information about the effect alcohol consumption has on adolescent brain development. She suggested that this situation should be changed such that society stops supporting alcohol and drug consumption by youth, and bills like HB 118 are one step in that direction; such bills are aimed at changing the attitudes and the behaviors of the adults who purchase alcohol for youth. Although children will strive to obtain alcohol, the problem is compounded by large numbers of adults who think it is acceptable to purchase alcohol for children. The [DBH] supports HB 118 as a tool to start changing the societal attitude about underage drinking and the attitude of adults who currently think it's okay to give their children alcohol.

MS. CASTO noted that the IOM has relayed that if the aforementioned public norm is to change, social host laws must also be partnered with a good public education campaign, otherwise people won't know about the change in law. She mentioned that 20 states currently have social host laws, and that 7 of those states specifically gear their law towards youth.

2:39:19 PM

RODNEY DIAL, Lieutenant, Deputy Commander, A Detachment, Division of Alaska State Troopers, Department of Public Safety (DPS), said the DPS supports HB 118, and sees it as a means of improving the quality of life in the neighborhoods. When law enforcement receives information of an underage drinking party in a home, one officer shows up at a scene where potentially there are dozens of kids who've been drinking and at least one person who is in control of the home. At that point the officer simply attempts to maintain some semblance of control and doesn't take the time to issue tickets to all the kids who've been drinking. If HB 118 were adopted, the officer would be able to at least issue a ticket to the person in charge of the home and thereby exert some control over the scene. He reiterated that the DPS fully supports the bill.

CHAIR RAMRAS closed public testimony on HB 118.

REPRESENTATIVE HOLMES said she agrees with Representative Gruenberg's comments regarding the phrase, "possesses or exercises dominion and control over a dwelling", adding that she does not want to have a homeowner be held liable if his/her house sitter throws a party wherein youth consume alcohol.

REPRESENTATIVE SAMUELS asked the sponsor to provide information regarding possible exemptions.

REPRESENTATIVE GRUENBERG pointed out that sometimes the kids are drinking in the home without the parents being aware of it, and suggested to the sponsor that he look into tightening the bill up.

REPRESENTATIVE MEYER, in response to comments, said he would provide members with the additional information they requested. He surmised that in the case of a house sitter, unless the homeowner knows that the house sitter is going to be throwing underage drinking parties but leaves town anyway, the homeowner shouldn't have to worry about being held liable.

CHAIR RAMRAS opined that HB 118 provides for no greater degree of liability than the liability that already exists for every homeowner regardless of his/her individual circumstances.

REPRESENTATIVE LYNN said he is comfortable with moving the bill from committee.

CHAIR RAMRAS suggested to Representative Meyer that he work to address members concerns before the bill is heard on the House floor.

REPRESENTATIVE GRUENBERG said he is simply trying to help improve the bill rather than delay it, and would be happy to work with the sponsor.

[2:47:49 PM](#)

REPRESENTATIVE LYNN moved to report [HB 118] out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 118 was reported from the House Judiciary Standing Committee.

HB 29 - SAFE HAVEN FOR INFANTS

[2:48:35 PM](#)

CHAIR RAMRAS announced that the final order of business would be HOUSE BILL NO. 29, "An Act relating to infants who are safely surrendered by a parent shortly after birth." [Before the committee was CSHB 29(HES).]

[2:49:19 PM](#)

CHRISTINE MARASIGAN, Staff to Representative Gabrielle LeDoux, Alaska State Legislature, presented HB 29 on behalf of Representative LeDoux, joint prime sponsor. She stated that HB 29 is also known as the Safe Haven for Infants Act, that it has the potential to save the lives of infants up to 21 days of age, that similar legislation passed the House last year, and that there is similar legislation in 47 other states. She mentioned that members' packets contain information about the legislation in those other states. In response to a question, she said CSHB 29(HES) is not substantially different from what passed the House last year, though the list of people to whom an infant can be surrendered has been expanded and the age limit is now 21 days of age.

CHAIR RAMRAS noted that members' packets contain two proposed amendments.

[2:51:26 PM](#)

GLENN CLARY, Pastor, Anchorage Baptist Temple, said he is in support of HB 29, but recommended that it include an age limit

of 3 days of age rather than 21 days of age. He acknowledged that one of the proposed amendments will add members of the clergy to the list of people that a person can surrender an infant to. He mentioned, however, that although the bill makes use of the term, "department", he can't tell just by reading the bill which department is being referred to, and suggested that that point be clarified. He also recommended that the language in Section 5 that says, "is not required to" be changed to say "may"; this would ensure that efforts by the department to provide family support services are not precluded by the bill.

CHAIR RAMRAS referred to [Amendment 2], which read [original punctuation provided]:

Page 2, line 13, following "is":

Delete "abandoned safely within the meaning of"

Insert "surrendered in the manner described in"

Page 2, line 17:

Following "identity,":

Insert "and"

Following "history":

Delete ", or"

Insert "of the infant and"

Page 2, line 23:

Following "(4)":

Insert "immediately"

Following "the":

Insert "nearest office of the"

Page 2, line 23 - 24, following "department":

Delete "for initiation of custody, placement, and adoption proceedings as appropriate"

Insert "that the infant has been surrendered in the manner described in (c) of this section"

REPRESENTATIVE GRUENBERG, in response to Mr. Clary, explained that the department referred to in the bill is the Department of Health and Social Services (DHSS).

[2:54:18 PM](#)

JAN RUTHERDALE, Assistant Attorney General, Child Protection Section, Civil Division (Juneau), Department of Law (DOL), said the changes proposed by Amendment 2 are primarily housekeeping changes. The change proposed to page 2, line 13, provides

conforming language; the change proposed to page 2, line 17, would allow the parent to provide the medical history of the child and the parents; the first change proposed to page 2, line 23, would assist the department in getting involved immediately; and the second change proposed to page 2, line 23, would clarify that the department is simply being notified of the surrender of the infant without specifying what steps the department would be taking next.

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on HB 29.

REPRESENTATIVE SAMUELS referred to language on page 2, line 7, which says in part, "a hospital employee", and asked whether that means an infant could be left with a janitor, for example.

MS. MARASIGAN indicated that the point of the bill is to ensure that the infant is given to another human being rather than just abandoned someplace potentially dangerous.

[2:58:54 PM](#)

REPRESENTATIVE DAHLSTROM made a motion to adopt Amendment 1, labeled 25-LS0192\K.2, Mischel, 2/26/07, which read:

Page 2, line 7, following "peace officer,":
Insert "member of the clergy,"

CHAIR RAMRAS asked whether there were any objections to Amendment 1. There being none, Amendment 1 was adopted.

[2:59:14 PM](#)

CHAIR RAMRAS made a motion to adopt Amendment 2 [text provided previously]. There being no objection, Amendment 2 was adopted.

[2:59:34 PM](#)

REPRESENTATIVE DAHLSTROM moved to report CSHB 29(HES), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 29(JUD) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:00 p.m.