

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

March 12, 2008

1:17 p.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

Representative Bob Lynn

**COMMITTEE CALENDAR**

HOUSE BILL NO. 103

"An Act amending Rule 62, Alaska Rules of Civil Procedure, to limit the amount of the bond required to stay execution of a judgment in a civil litigation during an appeal or review; and amending Rules 204 and 205, Alaska Rules of Appellate Procedure, to limit the amount of the bond required to stay execution of a judgment in a civil litigation during an appeal."

- HEARD AND HELD

HOUSE BILL NO. 331

"An Act relating to mandatory motor vehicle insurance, license suspensions, mandatory impoundments of vehicles used in certain offenses, and notices relating to motor vehicles and driver's licenses."

- MOVED CSHB 331(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 400

"An Act relating to a person who seeks medical assistance for a person experiencing a drug overdose."

- MOVED HB 400 OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HB 103

SHORT TITLE: BOND REQUIREMENT ON APPEAL  
SPONSOR(S): REPRESENTATIVE(S) COGHILL

01/22/07 (H) READ THE FIRST TIME - REFERRALS  
01/22/07 (H) JUD  
03/12/08 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 331

SHORT TITLE: MOTOR VEHICLES:INS/LICENSES/IMPOUNDMENTS  
SPONSOR(S): REPRESENTATIVE(S) ROSES

01/18/08 (H) READ THE FIRST TIME - REFERRALS  
01/18/08 (H) L&C, JUD  
02/20/08 (H) L&C AT 3:00 PM CAPITOL 17  
02/20/08 (H) Moved CSHB 331(L&C) Out of Committee  
02/20/08 (H) MINUTE(L&C)  
02/21/08 (H) L&C RPT CS(L&C) NT 1DP 3NR 3AM  
02/21/08 (H) DP: GARDNER  
02/21/08 (H) NR: LEDOUX, RAMRAS, OLSON  
02/21/08 (H) AM: BUCH, NEUMAN, GATTO  
03/12/08 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 400

SHORT TITLE: MITIGATING FACTOR: CARE FOR DRUG OVERDOSE  
SPONSOR(S): REPRESENTATIVE(S) KERTTULA

02/19/08 (H) READ THE FIRST TIME - REFERRALS  
02/19/08 (H) JUD, FIN  
02/25/08 (H) JUD AT 1:00 PM CAPITOL 120  
02/25/08 (H) Heard & Held  
02/25/08 (H) MINUTE(JUD)  
03/12/08 (H) JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

CRYSTAL KOENEMAN, Staff  
to Representative Bob Roses  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented HB 331 on behalf of the sponsor,  
Representative Roses.

KERRY HENNINGS, Driver Licensing  
Director's Office  
Division of Motor Vehicles (DMV)  
Department of Administration (DOA)  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 331.

VICTOR SCHWARTZ, Attorney at Law, Co-Chair  
Civil Justice Task Force  
American Legislative Exchange Council (ALEC)  
Washington D.C.

**POSITION STATEMENT:** Testified on HB 103.

MICHAEL WILSON, Coastal Helicopters  
The National Federation of Independent Business (NFIB)  
Juneau, Alaska

**POSITION STATEMENT:** Testified on HB 103.

WAYNE STEVENS, President  
Alaska State Chamber of Commerce (ASCC)  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 103.

ANNE JOHNSON, Assistant Attorney General  
Oil, Gas & Mining Section  
Civil Division (Juneau)  
Department of Law (DOL)  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions on HB 103.

AURORA HAUKE, Staff  
to Representative Beth Kerttula  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented HB 400 on behalf of the sponsor,  
Representative Beth Kerttula.

#### **ACTION NARRATIVE**

**CHAIR JAY RAMRAS** called the House Judiciary Standing Committee meeting to order at [1:17:21 PM](#). Representatives Gruenberg, Coghill, Samuels, Holmes, and Ramras were present at the call to order. Representative Dahlstrom arrived as the meeting was in progress. Representative Lynn was excused.

#### **HB 103 - BOND REQUIREMENT ON APPEAL**

[1:17:34 PM](#)

CHAIR RAMRAS announced that the first order of business would be HOUSE BILL NO. 103, "An Act amending Rule 62, Alaska Rules of Civil Procedure, to limit the amount of the bond required to

stay execution of a judgment in a civil litigation during an appeal or review; and amending Rules 204 and 205, Alaska Rules of Appellate Procedure, to limit the amount of the bond required to stay execution of a judgment in a civil litigation during an appeal."

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REPRESENTATIVE HOLMES moved to adopt the proposed committee substitute (CS) for HB 103, Version E, labeled 25-LS0401\E, Bailey, 5/2/07 as the working draft. There being no objection, Version E was before the committee.

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REPRESENTATIVE COGHILL, speaking as the sponsor of HB 103, explained that the bill would place a cap on the amount of an appeals bond to \$5 million or 10 percent of the appellant's net worth in a civil lawsuit. Currently, an appellant is required to post a bond equal to the amount of the judgment plus appeal costs and interest. However, this limitation would not apply to awards resulting from the injury, loss, or destruction of natural resources caused by an environmental disaster, or to awards in actions or proceedings in which the state or another governmental entity is a party. He said that his intent is to allow companies the ability to appeal with a reasonable bond posting without putting them out of business. Representative Coghill opined that a defendant's right to appeal shouldn't be precluded by an inability to post a bond.

The committee took an at-ease from 1:21 p.m. to 1:30 p.m.

CHAIR RAMRAS relayed that HB 103 [Version E] would be set aside until later in the meeting.

HB 331 - MOTOR VEHICLES:INS/LICENSES/IMPOUNDMENTS

[1:30:59 PM](#)

CHAIR RAMRAS announced that the next order of business would be HOUSE BILL NO. 331, "An Act relating to mandatory motor vehicle insurance, license suspensions, mandatory impoundments of vehicles used in certain offenses, and notices relating to motor vehicles and driver's licenses." [Before the committee was CSHB 331(L&C).]

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CRYSTAL KOENEMAN, Staff to Representative Bob Roses, Alaska State Legislature, relayed on behalf of Representative Roses, sponsor, that HB 331 pertains to motor vehicle insurance, license suspensions, and notices relating to motor vehicles. She explained that HB 331 reduces the penalty for failure to report to the Division of Motor Vehicles (DMV) a name change or address change from a class B misdemeanor to a fine not to exceed \$25. She stated that Section 2 of the bill provides an affirmative defense clause to allow a person to provide proof of automobile insurance in the event that a person's automobile insurance was suspended for failure to provide prove of current insurance within 30 days of the required notice. The insurance must be in place at the time of the offense and not purchased after the offense, she noted. Currently, conviction of driving without vehicle insurance would result is a license suspension between 90 days and one year, she stated. Ms. Koeneman explained that proposed Section 3 would add a new subsection in AS 28.22.019 that would impose a class B misdemeanor and a fine of at least \$500 on a person convicted of not possessing the required vehicle insurance. She offered that Section 4 would change the notification process to send notification to the current address on file or else to the address provided on the accident report.

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KERRY HENNINGS, Driver Licensing, Director's Office, Division of Motor Vehicles (DMV), Department of Administration (DOA), in response to Representative Dahlstrom, related that the division is "very happy" with HB 331. She stated that the changes contained in HB 331 will assist the DMV with its customer service and make it easier for people who have had vehicle accidents to prove they hold vehicle insurance.

REPRESENTATIVE COGHILL offered his recollection that language contained in the bill passed the body last year in HB 184, sponsored by Representative Roses, although the provision was later removed in the other body. Thus, HB 184 passed the legislature last session without the driver's address of record issue addressed, he stated. Representative Coghill characterized HB 331 as a "very good" piece of legislation.

CHAIR RAMRAS characterized HB 331 as a great "fix it bill."

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MS. KOENEMAN, in response to a request by Representative Gruenberg, reiterated her explanation of HB 331.

CHAIR RAMRAS, after first determining no one else wished to testify, closed public testimony on HB 331.

REPRESENTATIVE GRUENBERG referred to Section 3 and inquired as to what the current penalty is for driving an uninsured vehicle.

MS. KOENEMAN answered that the current penalty is a license suspension of 90 days to up to one year. She referred to a handout in the committee packet labeled, "State of Alaska - Division of Motor Vehicles, Certificate of Insurance" adding that the second to the last paragraph states the mandatory insurance. In response to Representative Gruenberg, Ms. Koeneman answered that the offense would be a class B misdemeanor. She pointed out that other states have imposed stronger penalties, such as Massachusetts whose penalty is up to \$5,000 in fines and up to one year in jail.

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REPRESENTATIVE GRUENBERG relayed his understanding that the penalty imposed would be a minimum fine of \$500 and a class B misdemeanor.

MS. HENNINGS answered she did not know, nor was she aware of whether it would be a civil penalty plus the fine. She stated that the DMV executes an administrative license suspension.

REPRESENTATIVE GRUENBERG surmised, then, that the DMV would assess a reinstatement fee of \$100-\$500, plus a fine of \$500, and the cost of insurance.

MS. HENNINGS answered that DMV does not collect any fines. However, the court system would collect the fine. In response to Representative Gruenberg, Ms. Hennings answered that a reinstatement fee would apply to any license suspension, and depending on the person's driving record would be required to pay a fee ranging between \$100- \$500 for a revocation.

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REPRESENTATIVE GRUENBERG surmised that if HB 331 is adopted that a person could be subject to 90 days in jail, \$2,000 fine, a \$500 reinstatement fee, plus the cost of insurance. He

expressed concern that these fines could be imposed in situations in which the mail is delayed.

REPRESENTATIVE DAHLSTROM offered her understanding that it is the individual's responsibility to keep the vehicle insurance current.

REPRESENTATIVE GRUENBERG inquired as to whether the vehicle would also be impounded if proof of insurance is not in the vehicle.

MS. KOENEMAN surmised that it would be up the individual municipalities to impose [impound fees.]

REPRESENTATIVE GRUENBERG recalled that in the Municipality of Anchorage (MOA) the companies also charge a towing fee. He pointed out that in his district some people are on the fiscal margin. He expressed concern that the proposed penalties would harm many people.

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REPRESENTATIVE DAHLSTROM recalled her own experiences and confirmed that the MOA have the ability to impound. She opined that HB 103 isn't strict enough.

REPRESENTATIVE GRUENBERG argued that this bill would take away from the court the ability to suspend imposition of the \$500 fee. He recapped the fees imposed under HB 103 would adversely impact some of his constituents to the extent that some might not be able to afford to get to work or would ignore the law.

CHAIR RAMRAS offered his understanding that Representative Gara, co-sponsor of HB 103, previously spoke eloquently on the bill such that it would remedy the problem of the public facing the same charges administratively and that this bill was introduced to address similar concerns.

MS. KOENEMAN explained that Section 4 was voted on by this body during the last legislative session.

REPRESENTATIVE COGHILL offered his understanding that better notification is necessary since the notices are sometimes sent to the wrong address and the parties are unaware of the DMV requirement for proof of insurance as a result of a vehicle accident. Thus, this bill requires better notification and establishes an affirmative defense.

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MS. KOENEMAN, in response to Representative Gruenberg, answered that she did not recall the details of the prior legislature's bill in terms of the fines imposed for each section.

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REPRESENTATIVE DAHLSTROM moved to report CSHB 331(L&C) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 331(L&C) was reported from the House Judiciary Standing Committee.

HB 103 - BOND REQUIREMENT ON APPEAL

[1:50:24 PM](#)

CHAIR RAMRAS announced that the committee would next return to the hearing on HOUSE BILL NO. 103, "An Act amending Rule 62, Alaska Rules of Civil Procedure, to limit the amount of the bond required to stay execution of a judgment in a civil litigation during an appeal or review; and amending Rules 204 and 205, Alaska Rules of Appellate Procedure, to limit the amount of the bond required to stay execution of a judgment in a civil litigation during an appeal." [Before the committee was the proposed committee substitute (CS) for HB 103, Version 25-LS0401\E, Bailey, 5/2/07, which had been adopted as the work draft earlier in the meeting.]

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VICTOR SCHWARTZ, Attorney at Law, Co-Chair, Civil Justice Task Force, stated that he serves as the private sector co-chair, along with U.S. Senator Kirk Dillard, Illinois, for ALEC's Civil Justice Task Force. He explained that he coauthored a case book often used in law schools, and offered a brief history of his work, including that for the past twenty years he has worked on the defense side. He stated that the views he is presenting today are on behalf of ALEC, but basically he shares the same views. He stated that he became interested in appeal bonds about 15 years ago because the laws were arcane. He related that typically, a person would sue a landlord, win the case, an appeal would be filed, and the landlord would intentionally dissipate the assets or place the assets in a "bogus" account and the person could not execute the judgment. He stated its purpose was legitimate. However, in some instances in which

large judgments are awarded, the party may not be financially able to post the appeal bond.

MR. SCHWARTZ offered historical information on several cases, including one in which the Valdez Fisheries Department Association (VFDA), a nonprofit operated a fish hatchery in Valdez and filed for bankruptcy when it faced a \$2.1 million judgment from a failed real estate transaction. The bankruptcy court found that the defendant had pursued all options in lieu of bankruptcy. Although judges can exercise some discretion with appeal bonds, the court didn't in that case. He offered his understanding that the appeal bond in Alaska is equal to the amount of the judgment. He mentioned another case, in which Nome Commercial Company and two individuals declared bankruptcy after two judgments were filed against them totaling \$1.5 million. The bankruptcy court noted that there was "uncontradicted evidence" that the debtors lacked the ability to post a supersedeas bond, which would have forced the demise of their business while the cases were pending appeal before the Alaska Supreme Court. Finally, Askinuk Corporation, a Native village corporation, whose shareholders consisted of several hundred Native Alaskans declared bankruptcy when it could not obtain a bond on a judgment of \$231,000. Due to the size of the judgment and the corporation's lack of liquidity, the court wrote that Askinuk was in no position to rely on Rule 204(d), which grants courts the discretion to reduce a required appeal bond, he stated.

[Chair Ramras turned the gavel over to Vice Chair Dahlstrom.]

MR. SCHWARTZ opined that some version of ALEC's appeal bond reform is currently law in 37 states, although he noted that 6 states do not have an appeal bond requirement. He related that not many states remain that do not put some form of limit on appeal bonds.

MR. SCHWARTZ stated that provisions in HB 103 would allow the judge discretion to impose a cap of \$5 million or 10 percent of all appellants' net worth, whichever is lower, on the amount of a supersedeas bond. The purpose of supersedeas bonds is to secure the prevailing party's judgment in a lawsuit as the case goes up on appeal. He pointed out that an exception was placed in ALEC's model legislation which would allow the defendant to show by a preponderance of evidence that the assets might be dissipated to avoid paying the judgment. He said that he is not aware of any situation in which a plaintiff has been

disappointed. In cases with high verdicts, the defendant has a right to appeal, whether the defendant is popular or not.

[Vice Chair Dahlstrom returned the gavel to Chair Ramras.]

MR. SCHWARTZ characterized HB 103 as "sound." He posited that it has worked well in other states and that other states have not repealed any appeal bond reform. Thus, Alaska can benefit from the 37 other states that have appeal bond reform. He characterized the legislation as "fair legislation." He highlighted that HB 103 does not place any caps on damages or limit damages. This bill would help to ensure that economic obstacles will not impede a person's right to appeal.

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REPRESENTATIVE HOLMES referred to a printout in members' packets from the American Tort Reform Association, labeled "Appeal Bond Reform" that which lists other states' reforms. She stated that the caps range from \$25-\$100 million. She pointed out that seems to create a discrepancy and it appears to her that the language in the bill would take the state from being one of the most lax to one of the most restrictive in terms of bond reform.

MR. SCHWARTZ concurred that most of other bond limits are higher. A lower bond limit gives more people an opportunity to appeal such as the instance of the \$231,000 appeal mentioned earlier. He stated that on the one hand, this bill would set an appeal bond limit that would be lower than most states. However, on the other hand more people can benefit with a lower limit, he opined.

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REPRESENTATIVE SAMUELS recalled past legislation in which government was one of the parties in an appeal. He further recalled that the tobacco companies attempted to limit the appeal bonds. However, the legislature did not do so, he stated.

MR. SCHWARTZ acknowledged the cases. He stated that appeals bond reform is currently of interest to small and large businesses. He opined that government is excluded from HB 103, as are environmental situations and circumstances that are important to the state. He explained that ALEC establishes model legislation. However, it is up to individual state

legislatures to decide the limits that will work best in their state, he offered.

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REPRESENTATIVE GRUENBERG inquired as to whether Mr. Schwartz was familiar with these types of cases in question. He offered that plaintiffs often have fewer resources available to them than defendants. He further inquired as to the rate of bankruptcy for plaintiffs in appeals cases.

MR. SCHWARTZ stated that plaintiffs are not subject to appeal bonds, and surmised that plaintiffs might encounter circumstances in which problems arise. Mr. Schwartz offered his understanding, at least in cases in which he has been involved, that when cases have some value and the plaintiffs lose, that the plaintiff discusses this with their attorney who is on a contingency fee. He related that in his own 14 years of plaintiff's work, that if he felt that the verdict was absolutely wrong, he would make his best judgment if the case could result in recovery and if so, the case was then appealed.

REPRESENTATIVE GRUENBERG noted that Alaska has a unique court rule, Alaska Civil Rule 82, which provides that the losing party bears a portion of the winner's attorney fees. Thus, if a plaintiff loses, generally the standard is that the plaintiff must pay 30 percent of the defendant's actual attorney's fees, which can be substantial, plus all of their costs. He related that a judgment is entered against that plaintiff and unless the plaintiff acquires a supersedeas bond, pending the appeal the defendants execute on the plaintiff and regularly cause plaintiffs in Alaska to go into bankruptcy or forego their appeals. He inquired as to whether that changes Mr. Schwartz's testimony.

MR. SCHWARTZ opined that with problem with unfairness to plaintiffs, that the state can decide those issues. He offered that knowledge of the court rule does not change his testimony.

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MR. SCHWARTZ, in response to Representative Gruenberg, surmised that if tort reform is doing harm or causing serious problems that the committee could address those issues. He offered that his testimony is based on HB 103 and on ALEC's model legislation.

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REPRESENTATIVE GRUENBERG inquired as to whether he was aware of a change in insurance industry practice such that the industry reviews cases in a macro basis rather than an a micro basis. He surmised that it is a far greater likelihood, particularly in the insurance industry that the defendants prefer to litigate an appeal to draw the cases out and dissuade the plaintiffs from litigating, which would lead them to settle.

MR. SCHWARTZ opined that doesn't occur in the areas of the country that he is aware of in Virginia and Maryland. He said that he does not know whether that practice occurs elsewhere in the country, but that would be willing to research that information should the committee wish it.

REPRESENTATIVE GRUENBERG referred to the three cases previously mentioned. He related his understanding that none of the appellants challenged the court rule and indicated that this would cause him problems. He further stated that the courts ordered, but the orders were not challenged. He stated that in Alaska, one can appeal the ruling on a bond and that would take place in the context of the appeal such that he/she would appear before the judge and ask for a bond. If the bond is denied, a motion can be taken to a single justice on the court, which can be appealed to the five members of the Alaska Supreme Court.

REPRESENTATIVE GRUENBERG inquired as to whether Mr. Schwartz was aware that in Alaska one can challenge the ruling on a bond.

MR. SCHWARTZ inquired as to whether the judge has to automatically stay that, because in other states in which problems have arisen, one can actually appeal an excessive appeal bond when there is some room for that, of the failure of the judge to exercise discretion. He stated that there isn't an automatic stay; one can appeal, but the bond must be posted, pending the appeal. He surmised that the person is still in the same situation.

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REPRESENTATIVE GRUENBERG surmised, then, that there would need to be a motion for a stay of that until the bond issue could be appealed.

MR. SCHWARTZ noted his agreement.

REPRESENTATIVE GRUENBERG further surmised that the courts may treat people differently than in other states.

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REPRESENTATIVE COGHILL offered his understanding that in the cases in which appeals could be considered, that the cost was likely to be so high that the challenge of a court rule would even "ratchet it up" further. He said that he thought the reason for a court rule change is evident in that discussion.

REPRESENTATIVE HOLMES inquired as to the mechanics of determining an appellant's "net worth" under HB 103.

MR. SCHWARTZ answered that materials are presented to the court to show assets and liabilities. He opined that the court can require financial statements and then determines the company's "net worth" and offered that is how it has worked in other states.

REPRESENTATIVE COGHILL referred to the definition of "policyholder surplus" in AS 21.90.900(34)(C), and opined that that definition might be helpful to the committee.

REPRESENTATIVE HOLMES inquired as to whether the opposing party has an opportunity to question the net worth.

MR. SCHWARTZ answered that it is his understanding that the opposing party has an opportunity in other states to question the net worth.

REPRESENTATIVE HOLMES posed a scenario in which insurance policies are involved. She inquired as to whether the limit should be set, at the very least, to the limits in the insurance policy.

MR. SCHWARTZ answered that it depends on the local rules as to whether the insurance limit information is available.

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REPRESENTATIVE GRUENBERG advised that under the rules of discovery in Alaska, that information would need to be disclosed.

REPRESENTATIVE HOLMES related her understanding that at least one of the other states requires the parties against whom the

judgment has been entered to prove hardship. She highlighted that some judgments are huge and would bankrupt a company. She posed a scenario in which a person might have a good job, but that the person might also have a huge debt load such that his/her actual net worth is very low. She stated that under HB 103, that person would not be required to post a bond.

MR. SCHWARTZ offered that in such situations of that type, the greatest concern is that the person won't have assets to satisfy the judgment or the person may take actions, which the bill protects against. He related his understanding that in other states since when the appeal bond statutes "kick in" it is with companies such as dry cleaners, hair salons, or big businesses such as pharmaceutical companies.

REPRESENTATIVE HOLMES inquired as to whether that amount would be set at zero.

MR. SCHWARTZ concurred that in instances in which a person had a zero net worth that the bond would be set at zero.

REPRESENTATIVE HOLMES argued that the person could have a good income stream and the ability to pay. However, the bill bases the calculation on the net worth of the person.

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REPRESENTATIVE GRUENBERG recalled a California case, in which a fleet of yellow cabs had incorporated each one separately. Thus, in the event of an accident in which the cab company was sued, the party could only receive the value of the one cab. He inquired as to whether that would be the case under HB 103, that the plaintiff could only receive the value of one cab.

MR. SCHWARTZ offered to research that issue, if that type of practice were used. He said that the goal is to ensure that the net worth of the company as a whole would be what would be considered.

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REPRESENTATIVE HOLMES inquired as to whether the term "net worth" is defined.

REPRESENTATIVE GRUENBERG noted that AS 21.90.900(34)(C) reads:

(C) for an insurer other than a stock or mutual insurer, the net worth of the insurer, calculated as its recorded assets less its liabilities, as determined by the accounting criteria set out in this title;

REPRESENTATIVE GRUENBERG related his understanding that "net worth" is the concept of assets less any liabilities.

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MICHAEL WILSON, Coastal Helicopters, the National Federation of Independent Business (NFIB), stated that his company is Coastal Helicopters and that he also represents the NFIB. He explained if he were to attempt to get a bond for what he considered to be a wrongful judgment that it could put him out of business. He offered that his company employs 20 to 25 employees and seasonal employees. He further stated that people that people often view the aviation companies as "deep pockets." He opined that to obtain a large bond to appeal a judgment would be detrimental to his company.

MR. WILSON, in response to Chair Ramras, offered a hypothetical example in which something were to cause damage to someone's property. He noted that besides the property damages, the person could seek huge civil damages, and that would require him to layoff employees and liquidate assets in order to defend the appeal for damages. He stated that he could realistically be placed into bankruptcy.

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MR. WILSON, in response to Representative Gruenberg, answered that he does have insurance and that he would be defended by the insurance company in the event of property damage. In further response to Representative Gruenberg, Mr. Wilson stated he would not object to providing his "net worth."

REPRESENTATIVE GRUENBERG pointed out that HB 103 stipulates that the amount of the bond is the lesser of \$5 million or 10 percent. He stated that in the event of an appeal, his assets and liabilities would be filed and made public. He stated that currently the bond is based on the amount of the judgment and is posted by the insurance company.

MR. WILSON responded that he did not think that it would make any difference. His competitors would have an idea regarding

his assets and he did not think that his competitors would gain an advantage by knowing his net worth.

REPRESENTATIVE GRUENBERG referred to page 2, lines 2-3, and inquired as to whether Mr. Wilson would want the information disclosed as a condition of appeal.

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MR. SCHWARTZ answered that in some states the information is provided to the courts under seal in the same manner as information on trade secrets would be given to the court.

REPRESENTATIVE GRUENBERG argued that is not a provision in HB 103.

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WAYNE STEVENS, President, Alaska State Chamber of Commerce (ASCC), referred to a letter of support for HB 103 from the ASCC that is in committee members' packets. He stated that the ASCC supports HB 103, which limits the size of appeal bonds as both sides work through the court process. He stated that tort reform has long been a priority of the ASCC. He offered his belief that HB 103 is the "right step" in creating a better appeal process for keeping businesses whole while ensuring that plaintiffs who obtain judgments will have solvent defendants from whom they can collect damages.

REPRESENTATIVE GRUENBERG noted that Version E contains an additional provision that was not in the original bill. He referred to page 2, lines 11-12, which would exempt actions or proceedings in which the state or another governmental entity is a party. He surmised that is to provide protection to the state and other governmental agencies when they prevail. Thus, it would enable "the state's sword to pierce through" this rather than to use a shield. He inquired as to whether other people should be given the same status as the state.

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ANNE JOHNSON, Assistant Attorney General, Oil, Gas & Mining Section, Civil Division (Juneau), Department of Law (DOL), concurred that the state would be exempt.

REPRESENTATIVE GRUENBERG noted that if the state were to prevail, as an appellant, that it could require the normal bond to be posted.

MS. JOHNSON answered that the state favors the language listed on page 2, lines 11-12 of the bill. In further response to Representative Gruenberg, Ms. Johnson acknowledged that she has been a party to some limited discussions regarding the language and that she supports it.

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REPRESENTATIVE HOLMES inquired as to whether "net worth" is defined.

MS. JOHNSON answered that "net worth" is not defined in this statute. She offered to research whether "net worth" is defined in other statutes.

REPRESENTATIVE HOLMES said that she did not know how "net worth" would be calculated.

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REPRESENTATIVE COGHILL said that assets and liabilities are part of the formula for defining "net worth." He maintained his view that arriving at net worth is attainable.

MS. JOHNSON pointed out that "net worth" is not defined in the statutes. However, common ways to determine net worth exist, she opined.

REPRESENTATIVE HOLMES stressed that that the committee is not aware of how "net worth" is defined at this point.

REPRESENTATIVE COGHILL objected to the concept that "net worth" could not be defined and related to his personal experiences in business that routinely require "net worth" determinations.

REPRESENTATIVE HOLMES maintained her concern that for purposes of HB 103, she would like to know [how "net worth" will be determined]. She stated that the court rules are being revised in several places in the bill. She noted that the bond is posted in the amount of the judgment plus appeals cost and interest, which she opined is limited to \$5 million or 10 percent of the net worth with exceptions such as in cases of dissipating assets. She referred to page 2, lines 7-8, which

requires the appellant to post a bond in an amount up to the full amount of the judgment. However, this does not allow the appeals cost and interest to be added back in, she stated. She noted the language is also found on page 4, line 10, in the proposed changes to Rule 205. Thus, if the goal is to reinstate the full bond in instances in which the appellant is dissipating assets, this bill does not really institute the full bond.

MS. JOHNSON answered that it is not intended to do so.

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REPRESENTATIVE GRUENBERG surmised that if the question is whether \$5 million is more or less than the appellant's net worth, that would involve a trial within a trial to make that determination.

MS. JOHNSON said it would depend on how "net worth" is defined.

REPRESENTATIVE GRUENBERG questioned whether even if the term were defined, that would involve considerable proof.

MS. JOHNSON acknowledged that it could, and it possibly could lead to a dispute of which amount is greater.

REPRESENTATIVE GRUENBERG related that the court would have to make a fairly complicated factual finding as to the appellant's net worth.

MS. JOHNSON acknowledged that point.

REPRESENTATIVE HOLMES inquired as to how the appellee would prove that the appellant was dissipating assets. She inquired as to whether rights of subpoena would be allowed to obtain the required evidence.

MS. JOHNSON said that she did not yet know since that is not part of current law. She surmised, however, that a hearing would be conducted that would probably include discovery of the income statements and balance sheets. However, she stated she could not speak from experience.

REPRESENTATIVE HOLMES referred to page 2, line 5, and asked if the language "proves by a preponderance of the evidence" in HB 103 is sufficient or if the evidence should be stipulated, since currently that language doesn't provide much guidance.

MS. JOHNSON offered that [the proof of dissipating evidence] could possibly be made clearer by adoption of regulations. She stated that the court rule change does provide the burden of proof, but it doesn't discuss what type of forum the issue would be held in, such as if the evidence will be submitted at a hearing before the same judge. Thus, she agreed there is a lack of clarity in this matter.

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REPRESENTATIVE COGHILL stated that the court rule stipulates that on appeal the court will consider the petitioner's views. Thus, the court already has this matter under consideration, he argued. He opined that the [net worth] would be decided at a further hearing or a separate hearing based on the appeal.

MS. JOHNSON noted her agreement that it would be determined at "some type of" hearing.

REPRESENTATIVE COGHILL stated that it did not seem unreasonable to him that the court would assign another hearing for the discovery.

MS. JOHNSON answered that it is quite possible the court would do so.

REPRESENTATIVE HOLMES referred to page 4, lines 23-24, asked which cases this would apply to and whether bonds that have already been posted could be reduced.

MS. JOHNSON offered her understanding that the language is straightforward, that HB 103 would apply to cases pending on or filed on or after the date it becomes law. Thus, if an action is pending in the court system, the provisions in HB 103 would apply to it.

REPRESENTATIVE HOLMES asked whether something in the middle of an appeal would result in the recalculation of bonds and if persons could ask to have the bonds raised.

MS. JOHNSON answered, "Possibly."

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REPRESENTATIVE GRUENBERG offered a hypothetical example in which three parties in different courts filed on basically the same subject. The language of HB 103 says the amount of the bond

collectively of all appellants may not exceed the lesser of \$5 million or 10 percent of all appellants. He inquired as to how the court would sort through the three separate cases.

MS. JOHNSON explained that when the matter is appealed, the issue of whether to combine the cases would need to be decided. She surmised that in Representative Gruenberg's hypothetical example, the three separate cases would probably be kept separate.

REPRESENTATIVE GRUENBERG pointed out that if the cases were consolidated, it could be characterized as a tangled web due to the multiple parties.

MS. JOHNSON noted her agreement.

[HB 103, Version E, was held over.]

HB 400 - MITIGATING FACTOR: CARE FOR DRUG OVERDOSE

[2:54:23 PM](#)

CHAIR RAMRAS announced that the final order of business would be HOUSE BILL NO. 400, "An Act relating to a person who seeks medical assistance for a person experiencing a drug overdose."

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AURORA HAUKE, Staff to Representative Beth Kerttula, Alaska State Legislature, relayed that Representative Kerttula, sponsor of HB 400, introduced the bill to allow for a mitigating factor for calling "911" to obtain emergency help for someone experiencing a drug overdose. In response to Representative Samuels, she explained that the way HB 400 was drafted does not require the person in need of help to actually have overdosed on drugs. The bill allows for consideration of factors during sentencing if the person who called "911" thought that the person had overdosed on drugs.

CHAIR RAMRAS relayed that from his experience as a hotel owner, drug overdoses happen and some people can be saved with the provisions in HB 400.

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REPRESENTATIVE DAHLSTROM moved to report HB 400 out of committee with individual recommendations and the accompanying fiscal

notes. There being no objection, HB 400 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 2:59 p.m.