

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

April 11, 2011

3:25 p.m.

MEMBERS PRESENT

Representative Kurt Olson, Chair
Representative Craig Johnson, Vice Chair
Representative Mike Chenault
Representative Dan Saddler
Representative Steve Thompson
Representative Lindsey Holmes
Representative Bob Miller

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 72

"An Act authorizing and relating to certain causes of action for relief for direct or indirect injuries sustained as a result of antitrust violations; repealing the provision limiting to the attorney general the recovery of monetary relief for injury directly or indirectly sustained as a result of an antitrust violation; and relating to criminal and civil penalties for antitrust violations."

- HEARD & HELD

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 23(FIN)

"An Act relating to transferable film production tax credits and film production tax credit certificates; requiring the legislative audit division to audit the Alaska film production incentive program; and providing for an effective date by amending the effective dates of secs. 3 and 4, ch. 63, SLA 2008."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 72

SHORT TITLE: ANTITRUST ACTIONS & PENALTIES

SPONSOR(S): REPRESENTATIVE(S) GRUENBERG, PETERSEN

01/18/11 (H) PREFILE RELEASED 1/7/11
 01/18/11 (H) READ THE FIRST TIME - REFERRALS
 01/18/11 (H) L&C, JUD
 04/01/11 (H) L&C AT 3:15 PM BARNES 124
 04/01/11 (H) Heard & Held
 04/01/11 (H) MINUTE(L&C)
 04/11/11 (H) L&C AT 3:15 PM BARNES 124

BILL: SB 23

SHORT TITLE: FILM PRODUCTION TAX CREDIT/AUDITS

SPONSOR(S): SENATOR(S) ELLIS

01/19/11 (S) PREFILE RELEASED 1/7/11
 01/19/11 (S) READ THE FIRST TIME - REFERRALS
 01/19/11 (S) L&C, FIN
 02/17/11 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
 02/17/11 (S) Heard & Held
 02/17/11 (S) MINUTE(L&C)
 02/22/11 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
 02/22/11 (S) Moved SB 23 Out of Committee
 02/22/11 (S) MINUTE(L&C)
 02/23/11 (S) L&C RPT 4DP 1NR
 02/23/11 (S) DP: EGAN, DAVIS, PASKVAN, MENARD
 02/23/11 (S) NR: GIESSEL
 03/21/11 (S) FIN AT 9:00 AM SENATE FINANCE 532
 03/21/11 (S) Heard & Held
 03/21/11 (S) MINUTE(FIN)
 04/04/11 (S) FIN RPT CS 7DP NEW TITLE
 04/04/11 (S) DP: HOFFMAN, STEDMAN, THOMAS, EGAN,
 MCGUIRE, OLSON, ELLIS
 04/04/11 (S) FIN AT 9:00 AM SENATE FINANCE 532
 04/04/11 (S) Moved CSSB 23(FIN) Out of Committee
 04/04/11 (S) MINUTE(FIN)
 04/06/11 (S) TRANSMITTED TO (H)
 04/06/11 (S) VERSION: CSSB 23(FIN)
 04/07/11 (H) READ THE FIRST TIME - REFERRALS
 04/07/11 (H) L&C, FIN
 04/08/11 (H) L&C AT 3:15 PM CAPITOL 106
 04/08/11 (H) Heard & Held
 04/08/11 (H) MINUTE(L&C)
 04/10/11 (H) L&C AT 3:15 PM BARNES 124
 04/10/11 (H) -- MEETING CANCELED --
 04/11/11 (H) L&C AT 3:15 PM BARNES 124

WITNESS REGISTER

CLYDE (ED) SNIFFEN, JR., Senior Assistant Attorney General

Commercial/Fair Business Section
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HB 72.

REPRESENTATIVE MAX GRUENBERG
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as one of the joint prime sponsors of HB 72.

KONRAD JACKSON, Staff
Representative Kurt Olson
Juneau, Alaska

POSITION STATEMENT: As staff to the House Labor and Commerce Standing Committee, reviewed the changes contained in SB 23.

THOMAS R. DALY, Owner
HiSpeed Gear;
Member, Alaska Film Group
Kenai, Alaska

POSITION STATEMENT: Testified during the discussion of SB 23.

WES SCHACHT, Owner
Omnitour Alaska
Homer, Alaska

POSITION STATEMENT: Testified in support of SB 23.

MICHAL NEECE, Owner
Alaska Film Works
Homer, Alaska

POSITION STATEMENT: Testified in support of SB 23.

GREG KERN, Owner
A K Grip and Lighting
Anchorage, Alaska

POSITION STATEMENT: Testified during the discussion of SB 23.

ACTION NARRATIVE

[3:25:55 PM](#)

CHAIR KURT OLSON called the House Labor and Commerce Standing Committee meeting to order at 3:25 p.m. Representatives Olson, Chenault, Johnson, Saddler, Thompson, and Miller were present at

the call to order. Representative Holmes arrived as the meeting was in progress.

HB 72-ANTITRUST ACTIONS & PENALTIES

3:26:02 PM

CHAIR OLSON announced HOUSE BILL NO. 72, "An Act authorizing and relating to certain causes of action for relief for direct or indirect injuries sustained as a result of antitrust violations; repealing the provision limiting to the attorney general the recovery of monetary relief for injury directly or indirectly sustained as a result of an antitrust violation; and relating to criminal and civil penalties for antitrust violations." [A motion to adopt the proposed committee substitute (CS), Version M, for HB 72 was left pending.]

3:26:13 PM

CLYDE (ED) SNIFFEN, JR., Senior Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Anchorage), referred to a flowchart in members' packets. He explained that last week the committee heard HB 72. He offered to answer questions and discuss concepts. He related that the chart shows that the current statute with respect to antitrust violations. Price fixing happens when several suppliers conspire to fix the price of a component of a product. He recalled a current attorney general's case on price fixing between several manufacturers of Dynamic Random Access Memory (DRAM) known as computer memory chips. He briefly described that the path a computer memory chip product would take from the time it is imported until it was sold to a consumer. The chip would be manufactured, transferred to a distributor and wholesaler, placed in a product such as a computer, and subsequently sold to a store such as Best Buy. When a component such as a DRAM is artificially priced, the consumer pays slightly more for the product since a component of the product was "price fixed."

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MR. SNIFFEN stated that when Alaskan consumers purchase such a product they are without a remedy since the consumer is not the direct purchaser of the computer memory chip. He highlighted that when consumers buy the product at Best Buy they purchase the computer and are not solely purchasing the chip. Thus, the computer purchase represents an indirect purchase of a "price fixed" product. The U.S. Supreme Court indicated that the consumer is not in direct line with the company that fixed

prices so he/she does not have right to sue for damages. However, the U.S. Supreme Court has allowed states to adopt their own laws to provide a remedy for consumers to sue for indirect damages. In 2006, Alaska passed such a law. He reported that these laws are referred to as Illinois Brick repealers since the initial case that did not allow consumers to sue was a U.S. Supreme Court Case, Illinois Brick Co. v. Illinois, 431 U.S. 720 (1977). Currently, Alaska allows consumers to bring actions against the suppliers who engage in illegal conduct. He reiterated indirect purchasers are purchasers who buy a product that contains a price-fixed item.

[3:29:40 PM](#)

MR. SNIFFEN related that in 2006, when Alaska's initial bill passed the legislature it limited any price-fixing lawsuits actions to the attorney general. The legislation could have allowed both the attorney general (AG) and private parties to bring action but it did not do so. At the time, a number of states decided that it would be appropriate for the AG to bring actions against the parties. However, one concern was that if private parties and the AG were both involved in class action lawsuits that it could complicate the process. In fact, Mr. Sniffen indicated that he had testified in favor of an AG only law. Since then, some issues have arisen with an AG only limitation. This bill would allow private parties and class action plaintiffs to bring cases against conspirators in this case for indirect damages. He referred to a map in members' packets that highlights which states have AG only laws and which ones allow for private indirect purchaser laws. He pointed out that a majority of states allow both the AG and private parties to sue. A number of states have brought action against the computer chip supplier and the states with an AG only law have had a difficult time. The class action plaintiffs cannot settle the case for all consumers since only the AG can do so in states with an AG only law, like Alaska. Changing the law to also allow private individuals to bring action would alleviate some of the issues, he said. He recalled that this bill contains a provision that would actually require anyone bringing a class action lawsuit for indirect damages to notify the AG's office. The AG's office would have a number of days to decide whether it would pursue any action. In the event that the AG's office declined to pursue the case the private parties could still pursue the case. He commented when the AG's office had multiple lawsuits simultaneously filed that conflicts could arise as to evidence and prosecution. He concluded that this bill would

change the law to allow private parties to bring these types of actions as opposed to limiting it to the AG.

[3:33:00 PM](#)

REPRESENTATIVE SADDLER asked whether the AG would relieve the private party or if it would work in conjunction with the AG in cases in which the private party notifies the AG.

MR. SNIFFEN responded that the AG could determine to bring the action or may decide it would be an opportunity for a joint effort. The AG could also join the case simply to recover penalties but it could allow the class action case handle any penalties.

[3:34:12 PM](#)

REPRESENTATIVE SADDLER asked whether fines could be assessed.

MR. SNIFFEN answered that under current statute the state could assess penalties of up to \$25,000 for every price-fixing violation. He mentioned another bill is pending this year that could strengthen the penalty provisions for antitrust violations.

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CHAIR OLSON reported that the specified bill is moving in the other body.

REPRESENTATIVE CHENAULT asked whether the work draft had been adopted.

REPRESENTATIVE SADDLER removed his objection. Version M was before the committee.

[3:36:02 PM](#)

CHAIR OLSON asked for clarification on the effect of HB 72 on foreign corporations.

MR. SNIFFEN related his understanding that one issue has been whether the state could enforce price fixing cases against foreign corporations doing business in Alaska. He answered probably yes. Most foreign corporations have subsidiaries that operate in Alaska such as BP Alaska whose main corporation is domiciled in London. Many bigger companies have subsidiaries in

Alaska that operate under an Alaska name and are most likely registered with the Department of Commerce, Community & Economic Development (DCCED) Division of Corporations, Business, and Professional Licensing. He added that the AG's office can prosecute foreign companies doing business in Alaska.

[3:36:46 PM](#)

REPRESENTATIVE SADDLER reiterated he has removed objection to the work draft labeled 27-LS0381/M, Bannister, 3/22/11. Version M was before the committee.

CHAIR OLSON asked for clarification on the repealers in proposed Section 14 of Version M.

MR. SNIFFEN explained the sections being repealed refer to sections that limit the type of recovery to only the AG. The modifications to other sections would allow private parties or the AG to bring these actions, he said.

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REPRESENTATIVE JOHNSON asked for an estimate of the number of cases that might be filed if this bill passed and whether it would be 1,000 or if it would be 1 case.

MR. SNIFFEN predicted it would not be 1,000 but probably would be more than 1. He explained that in the past ten years the AG's office has had about a dozen multi-state cases that have implicated this statute in one way or another. The AG's office has been unable to pursue claims since it did not have the statutory authority early on. Now that it has statutory authority, the state can join other cases to recover damages. The computer chip case mentioned earlier is one case and two years ago the state took action against a pharmaceutical company, Warner Chilcott Corporation, for price-fixing a drug called Ovcon. At the time the state could have recovered additional damages had the changes contained in HB 72 been in place. He offered his belief that a number of patent challenges for generic drugs have implicated indirect purchaser damages. He recalled the state did not pursue a few other cases that this bill may or may not have affected. He offered his belief the the bill would assist the AG in cases with broader price fixing conduct in the U.S. which also affected Alaskans. He acknowledged that it really is hard to predict.

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REPRESENTATIVE JOHNSON asked whether Alaska is currently prohibited from taking action in federal cases on class action suits.

MR. SNIFFEN answered no. He agreed that Alaska could participate relating that federal anti-trust law gives all states the jurisdiction to enforce federal law in federal court. Federal law restricts the collection of indirect purchaser damages under the "Illinois Brick" rule previously mentioned. The federal law has not been repealed so the Alaska cannot pursue indirect damages in those cases.

[3:39:58 PM](#)

REPRESENTATIVE JOHNSON asked whether the state is limited to indirect damages in state court.

MR. SNIFFEN clarified the state could pursue state court claims in federal court, referred to as pendent jurisdiction claims, that follow along with federal court action. Pendent jurisdiction refers to the court's authority to adjudicate claims it could not otherwise hear. The state has had the authority to pursue pendent jurisdiction claims since 2006 when the price-fixing law passed.

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REPRESENTATIVE JOHNSON asked for further clarification. He related his understanding that the state can bring action even though the federal law prohibits individuals from initiating claims.

MR. SNIFFEN acknowledged that this is a little confusing. He referred to the DRAM computer chip case which was a case initiated in a California Federal District Court as previously mentioned. In that case Alaska and 30 other states joined in the lawsuit. When Alaska joined the lawsuit, it filed an amended complaint that included a section that contained all Alaskan claims. In that case, the conduct occurred prior to enactment of the Alaska "Illinois Brick" repealer statute. Therefore, Alaska was not allowed to join the federal lawsuit since it could not pursue damages on behalf of the consumers. He reported that prior to the state being precluded from participating in the federal antitrust case the state settled some claims on behalf of consumers and is still in the process of recovering those settlement amounts. However, all other

states with "Illinois Brick" repealers were able to assert their claims. In those instances the federal court has been applying state law in federal court, he said.

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REPRESENTATIVE JOHNSON related his understanding that Alaska needs this authority.

MR. SNIFFEN responded that it would help in cases in which the state decided not to pursue claims and for global settlement in cases with private class action lawsuits that have joined in the case. Currently, the AG cannot settle those types of cases since only the AG can represent the individual, he said. Given that the AG often represents state agencies, the AG frequently leaves it to the class action lawsuits to represent individual consumers. He thought the authority would help in some cases, but would be curious to see if more consumers filed lawsuits if they were allowed to do so.

[3:43:21 PM](#)

REPRESENTATIVE SADDLER referred to page 4 of Version M. He asked whether other states with the "Illinois Brick" provisions use statistical sampling as a means to recover aggregate damages. He also referred to the chart in members' packets titled "Explicit Indirect Purchaser Antitrust Claim Statutes" to the states listed in red. He further asked whether revocation of business charter or license provision in proposed Section 12 are common elements of those states with private indirect purchaser actions authorized.

MR. SNIFFEN answered yes and no. He explained that the proposed Section 12 enforcement provision which authorize the forfeiture or suspension of a business license is unique in Alaska. The aggregate damages in proposed Section 10 are common in most repealers since it makes calculating damages a lot easier by using aggregate sampling. The state can take a certain number of sales and calculate the average harm to each consumer instead of having to determine how much each person paid for his/her computer, he said.

[3:45:02 PM](#)

REPRESENTATIVE CHENAULT asked for the average cost for the state to intercede in these cases.

MR. SNIFFEN answered that he was unsure. He agreed that it uses Department of Law's resources to intercede on behalf of state agencies in instances when the AG's office determines significant harm to the state has occurred. He considered the effort as effort to recover damages the state would not otherwise recover. He reiterated that he was unsure if it would cost less if private parties were involved. He thought the state may have decided to pursue cases anyway, but it is possible the state may allow the private parties to pursue the claim if the state thought it was an effective way to stop the conduct and still obtain recovery for consumers.

[3:46:03 PM](#)

REPRESENTATIVE JOHNSON asked whether this bill would add to the case load of the court system.

MR. SNIFFEN answered that it is hard to predict. He thought allowing private parties may add a few case but the number of cases would be fairly limited.

REPRESENTATIVE JOHNSON asked whether people would be more or less likely to settle when fines are increased.

MR. SNIFFEN responded that this bill does not address the penalty provisions. He agreed a balance exists in terms of litigation and settlement. Thus, exposure to penalties and fines could act as an incentive to either settle or litigate. He suggested the outcome depends on many things including the size of company, the issues, and the level of importance to set precedent for other cases. He related that in his experience states with stronger enforcement tools seem to settle more quickly and favorably.

[3:48:09 PM](#)

CHAIR OLSON referred to page 4, to proposed Section 12 of Version M. He asked whether this sampling indicated would be similar to the federal Medicare reimbursement sampling. He recalled that the sampling may determine 3 of 100 billings are not accurate but the formula assumes the remaining billings are in line with sampling.

MR. SNIFFEN answered yes, the process would be similar.

[3:49:02 PM](#)

REPRESENTATIVE CHENAULT asked him to predict whether this bill might add to additional individual lawsuits. He recalled watching late night television advertising in which attorneys offered to represent clients who had suffered from exposure to various chemicals or products. He expressed concern that if HB 72 passed it could create burgeoning class-action lawsuits that might ensue at the state level and its impact on the court system. He referred to the zero fiscal note in members' packets and reiterated his concern of the costs to the court system.

MR. SNIFFEN responded that he did not think HB 72 would increase the number of lawsuits the AG's office would file. He offered his belief that late night advertising by attorneys would happen anyway but currently these lawyers cannot represent Alaskans whereas under the bill they could do so. In further response to Representative Chenault, he said he was unsure if more lawsuits would be filed in Alaska. He thought it was more likely that the lawsuits would be filed elsewhere and the court would certify the class that includes Alaska's consumers. He suspected it would not substantially increase the number of cases.

REPRESENTATIVE CHENAULT remarked that anytime the court system is involved it costs money.

[3:52:55 PM](#)

REPRESENTATIVE JOHNSON expressed concern that price fixing may have happened with respect to gasoline costs in Alaska. He asked whether individual citizens could join in a lawsuit on a "witch hunt." He pointed out the state has three oil producers. He asked whether 20 people could file a lawsuit in which gas stations or refineries would be affected.

MR. SNIFFEN answered yes. He agreed this could represent a risk since consumers buy gasoline. If one of the refineries was engaging in price-fixing conduct and had conspired with other refineries or suppliers to fix prices. He said the additional costs would be passed on through the distributors, the jobbers, and the retail stations to consumers. The consumers would be the recipient of the price-fixed product and as an indirect purchaser. He related that it would be difficult for consumers to pursue cases against the producers since they do not have direct dealings with them. He pointed out that the gas itself does not change. This bill would clearly remove any barrier and allow consumers in most cases to pursue price-fixing claims.

3:55:03 PM

REPRESENTATIVE JOHNSON asked whether consumers could sue the State of Alaska (SOA) since it sells royalty oil to the North Pole refinery in the event of allegations of price fixing.

MR. SNIFFEN answered that he was unsure since that issue would be more complicated to sort through. He said he did not think it would happen since the SOA enjoys immunity. Even so, the parties would not likely be successful if they did sue the state. He offered his belief that merely supplying the oil would not generate a cause of action so consumers would have to find some other problem. He reiterated that the state would likely have immunity. In response to Representative Johnson, reducing the cost of fuel to Fairbanks residents would not apply to this bill. This bill would merely allow for a private individual to bring claims in addition to the AG.

3:57:08 PM

REPRESENTATIVE JOHNSON asked for further clarification on the scenario since he viewed the SOA selling royalty oil for less than fair value would represent grounds for a lawsuit. He added that his scenario would also include a Tesoro station buying from an independent oil refinery. He asked whether the state would be subject to numerous lawsuits filed by people who are inclined to think that price fixing is involved since Alaska only has one refinery.

MR. SNIFFEN said he was unsure. He acknowledged that HB 72 would provide a cause of action that does not currently exist for any consumers who suffer indirect damages. Under the scenario, just given if an antitrust claim of indirect harm is made based on upstream activity, the AG would be the only party that could bring the claim. This bill would allow private individuals an opportunity to bring the claim if indirect damages resulted from upstream conduct. In further response to Representative Johnson, he answered that it would be a policy call to determine whether the bill created any undue risk.

3:58:57 PM

CHAIR OLSON related that about a year and a half ago he contacted the AG's office with respect to a price gouging bill. The AG's office investigated the matter including examining activities of Tesoro Alaska Company (Tesoro) and Flint Hills Resources (Flint Hills) but did not find any issues. He further

recalled the House Judiciary Standing Committee also reviewed Alaska's gasoline prices. During this time the committee did not have an antitrust bill before either committee, he stated.

REPRESENTATIVE JOHNSON remarked on the level of confidence he has with Mr. Sniffen. He was concerned about expanding this beyond the AG's ability to file lawsuits.

[4:00:33 PM](#)

REPRESENTATIVE SADDLER asked whether the SOA is immune to antitrust violations.

MR. SNIFFEN answered that the answer is somewhat complicated. He stated that generally speaking state legislatures can authorize price fixing in some instances, which is fine. However, if the SOA acts like a competitor as a market participant, the SOA would be subject to antitrust laws. However, when the SOA actively engages and authorizes activity, that type of conduct falls under a doctrine which affords the state immunity.

REPRESENTATIVE JOHNSON asked whether the SOA would be subject to antitrust issues as a result of tax credits given to Cook Inlet producers.

MR. SNIFFEN answered not to his knowledge. He indicated he has not studied the issue but he did not think any antitrust issues were raised.

REPRESENTATIVE JOHNSON asked for clarification, noting that one member, Representative Holmes, is shaking her head no.

REPRESENTATIVE CHENAULT offered his belief that tax credits were not exclusively offered to any one company. He referred to Flint Hills and asked whether the royalty oil is sold at a premium rate.

MR. SNIFFEN agreed the cost of the oil sold to Flint Hills Refinery has been at a premium rate and not a discount. In further response to Representative Chenault, he reiterated that royalty oil was sold at a premium rate.

[4:03:32 PM](#)

REPRESENTATIVE JOHNSON asked for clarification on whether any issue would result if the SOA sold its royalty oil below that cost as result of policy decisions.

REPRESENTATIVE CHENAULT asked to state for the public record that the Cook Inlet oil is sold at a premium and not at a discount.

[4:04:10 PM](#)

REPRESENTATIVE SADDLER asked for the general value of direct and indirect damages in antitrust violations.

MR. SNIFFEN answered that he did not have any exact splits or percentages. He stated that the federal courts pursue direct damages. He was unsure of the proportion of direct and indirect damages, noting that the indirect damages come primarily from states, which he thought were fairly significant.

[4:05:21 PM](#)

REPRESENTATIVE MAX GRUENBERG, Alaska State Legislature, stated that he did not recall any "blue" states, or states with no express statute, authorized via case law on the chart in members' packets, titled "Explicit Indirect Purchaser Antitrust Claim Statutes." He pointed out that the map indicates 22 red states, 8 Brick states, 5 blue states and 15 gray states. The previous chart Mr. Sniffen referred to was a chart used for prior legislation that gave the AG the authority to take action. This bill would simply extend that authority to private individuals. He stated that HB 72 would not cause any new cause of action, but would allow a broader group of people to be able to bring the same cause of action. He offered his belief that this is particularly important because the Commercial/Fair Business Section or "consumer protection" section is fairly small. The result is that in many instances the cases the AG's office pursues involve national corporations. This bill would allow citizens in any of the "red" states, such as Nebraska or California to join the lawsuit. The legend for "red" states reads, "AG & Private Indirect Purchaser Actions Authorized." The other states' citizens would be added to any lawsuit filed but the respective state laws would apply.

[4:08:25 PM](#)

REPRESENTATIVE GRUENBERG recapped the process. Generally these cases are filed in federal court based on diversity

jurisdiction. This rule would apply in the event that certain thresholds were met to resolve disputes between the citizens of different states. Nevada's citizens would proceed under the Nevada law. Nebraska's citizens would join the lawsuit. This bill would allow the Alaskans to join in under Alaska's law. Currently, Alaska's citizens are precluded from doing so, he said. Since computer chips are sold by "Best Buy" all over the country, it seems unfair to Alaskans when people in the Lower 48 can sue and be made whole but Alaskans cannot. He offered his belief Alaska should protect its citizens and there isn't any reason not to do so.

[4:09:55 PM](#)

REPRESENTATIVE GRUENBERG answered a question Representative Johnson previously asked with respect to the legislature determinations. He clarified when something is permitted under state law it is not illegal. The fact that the activity is permitted under the law also provides the SOA an absolute defense. The antitrust law protects against illegal collusion and allows parity but is not designed to create an impediment. He related his understanding this type of law represents a national trend.

[4:11:36 PM](#)

REPRESENTATIVE GRUENBERG related a scenario in which two companies from another country are colluding. He recalled an earlier question as to whether the companies can be sued and the answer is yes, so long the action occurred in Alaska. He referred to Alaska Statutes AS 09 to a jurisdictional statute, which indicates that when the legal activity happens in Alaska or affects Alaskan consumers, that the state has jurisdiction to apply state law if the case is filed in Alaska. The statute allows Alaska law and the courts of Alaska to reach to the maximum extent constitutionally permissible. He recalled that California's civil code simply says it has jurisdiction to the maximum extent constitutionally permissible. He recalled that has been how Alaska's antitrust statute has also been interpreted. He further recalled a question arose with respect to collection of a judgment on a case filed in Nebraska. He offered his belief that the consumer would likely obtain a money judgment rather than an injunction.

[4:13:41 PM](#)

REPRESENTATIVE GRUENBERG pointed out that the divestiture of business licenses has specifically been modeled after Idaho's law. He said was not aware of any instance in which "we're inventing the wheel." He referred to two statutes in Alaska Statutes that applies. He explained that in AS 09.30.200-270, the Uniform Enforcement of Foreign Judgments Act would allow a party to register an Alaska judgment in another state and obtain a writ of execution. He further explained that this was designed to domesticate the judgment and is very simple. He related that virtually all states have adopted this uniform act. Secondly, if the action happens in a foreign country, the Uniform Foreign Money Judgments Recognition Act would apply. He offered his belief that this act would allow enforcement of a foreign money judgment from another country.

[HB 72 was held over.]

[4:16:26 PM](#)

The committee took an at-ease from 4:16 p.m. to 4:18 p.m.

SB 23-FILM PRODUCTION TAX CREDIT/AUDITS

[4:18:38 PM](#)

CHAIR OLSON announced that the final order of business would be the CS FOR SENATE BILL NO. 23(FIN), "An Act relating to transferable film production tax credits and film production tax credit certificates; requiring the legislative audit division to audit the Alaska film production incentive program; and providing for an effective date by amending the effective dates of secs. 3 and 4, ch. 63, SLA 2008."

[4:19:26 PM](#)

KONRAD JACKSON, Staff, Representative Kurt Olson, Alaska State Legislature, introduced himself.

[4:19:33 PM](#)

REPRESENTATIVE JOHNSON moved to adopt the proposed committee substitute (CS), labeled 27-LS0252\G, Bullock, 4/10/11, as the working document.

CHAIR OLSON objected for the purpose of discussion.
[Version G was before the committee.]

[4:20:06 PM](#)

MR. JACKSON, on behalf of the House Labor and Commerce Standing Committee, chaired by Representative Kurt Olson, reviewed the changes contained in Version G. He referred to page 2, lines 26-30. This change would require the Division of Legislative Audit to conduct audits of the Alaska Film Production Incentive Program at the beginning of the legislative sessions in 2013, 2017, and 2021 at the request of the Division of Legislative Audit. This provision would allow an audit to the initial program prior to the proposed sunset of this program.

MR. JACKSON referred to page 3, line 9, which would add the language "in the title" to allow credits to be used by other taxpayers, including those paying fisheries taxes or insurance taxes.

[4:21:15 PM](#)

MR. JACKSON referred page 3, lines 20-21, of Version G which would change the amount of the aggregate amount of the program. This increases the total amount of film production tax credits that may be authorized from \$100 million to \$200 million. Initially the program staggered the total amount of \$200 million but this would make the entire \$200 million available to avoid the possibility of a gap in the program.

MR. JACKSON referred to page 4, lines 14-16 of proposed Section 8, which would require the Alaska Film Office to include the amount of qualified expenditures and not qualified expenditures that were paid to Alaska businesses and to Alaska residents as wages in its annual report to the legislature. Currently, the report would contain qualified expenditures only.

[4:22:41 PM](#)

MR. JACKSON referred to page 5 lines 11-12 of proposed Section 11. This change would require the state to evaluate the effect of the program on the production on natural resources of the state. He read the specific language, "state policy on the utilization and development of the natural resources of the state." He explained the concern that the state would potentially allow film production tax credits to a film denouncing state's aerial wolf hunting policy or timber harvest in the Tongass National Forest.

MR. JACKSON referred to page 6 to proposed Section 18, which would require film production companies to be licensed in order to do business in the state.

[4:23:44 PM](#)

MR. JACKSON referred to page 7, line 26-28 of Section 19, which would add a new section to the bill at the request of the department. This change would increase the limit for legal proceedings from one year to six years for wrongfully issued tax credits. He referred to the statute of limitations in Alaska Statute (AS) Title 09.

MR. JACKSON referred to page 8, line 1, to proposed Section 19, which would clarify the definition of rural area to mean a rural area located in Alaska since concern was expressed that rural could be interpreted as rural Arkansas. He pointed out that the legal drafter did not think this would be the case, but the specific language was added for clarity.

MR. JACKSON commented that the committee will continue to work on additional amendments to the bill.

[4:25:08 PM](#)

REPRESENTATIVE SADDLER referred to proposed Section 4 of Version G and asked for clarification on which taxes applied.

MR. JACKSON answered that any taxes paid under AS 43 would be eligible for the film production tax credits. Currently, the film production tax credits offset corporate income tax liability. This change would allow it to apply to other taxes, such as insurance taxes and fishery taxes.

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CHAIR OLSON added one reason for this change is that the film production tax credits would not be of any value to a company unless corporate taxpayer is able to use the tax credits.

REPRESENTATIVE SADDLER asked whether a taxpayer could use tax credits all in one section.

MR. JACKSON deferred to the department.

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THOMAS R. DALY, Owner, HiSpeed Gear, Member, Alaska Film Group, referred to Alaska's economy as a three-legged stool consisting of government, energy, and all other activity. He reported that as an Alaskan business owner, his company suffered a significant loss of income three years ago when the state chose to not allow Alaskan-owned companies in the business equipment industry to bid on state contracts. This may have ended badly but the company was able to replace a portion of its income by providing services to the Alaska Film Industry. The production of Everybody Loves Whales (ELW), which was completely shot in Alaska, benefited from the Film Production Incentive Program. This program also provided him with an opportunity to work. This film had an estimated direct and indirect economic impact of \$16.5 million in the Anchorage, Barrow, and Seward communities. Over the past two years, ELW benefited 35 Alaska communities. The economic benefits surfaced in a number of ways, from 1,000 casting roles, 100 crew positions behind the cameras, 28 drivers, and 7,900 man hours. Staff provided security services, catering, equipment rentals, and 12,100 nights of hotel rooms. He remarked that it would take a hotel renting a one hotel room for 7 nights a week over the next 33 years to match the significant impact provided by ELW. The direct benefits also extended to multiple sectors of Alaska's economy. His business has subsequently decided to invest in the further training and development of talent and technical positions in order to work on other films. He is working to retrain the technical operatives to use digital versions of a loader and to provide the data dense hard drive requirements needed to conduct modern filming with qualified professionals.

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MR. DALY related that he is aware of other businesses who would like to invest in bigger items such as 10-ton grip trucks at a cost of \$250,000; generator trailers at a cost of \$100,000, and lights at \$20,000-\$45,000 each. He pointed out that film equipment is specialized and expensive. An entry level sound stage can range from \$10-\$20 million to build. He stated that Alaska's businesses need assurances that the state is a competitive environment for filming. He offered his belief that the current film production incentive program is competitive but will end. He related that British Columbia produces 200 films and its program does not have a sunset clause. He emphasized that businesses need companies to make long term investments in order for the industry to grow in Alaska to provide the stability and attract new dollars. He recapped the reasons he is firmly in favor of SB 23, including that it will help keep

the state competitive in the film production industry, assist in the growth of a more diversified economy, and will endorse private investment. He urged the committee to support a minimum 10-year renewal as provided by SB 23.

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REPRESENTATIVE CHENAULT asked whether he has same passion about the oil industry.

MR. DALY remarked that the oil industry put him through high school and any college years he acquired.

[4:31:25 PM](#)

WES SCHACHT, Owner, Omnitour Alaska, stated that he has been around the film industry for approximately 30 years. He said he fully supports SB 23.

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MICHAL NEECE, Owner, Alaska Film Works, stated that his company trains people vocationally and academically. He has worked in the film industry for almost 30 years. He suggested the state work in the same vein as British Columbia and Halifax, Nova Scotia has done to develop their film industries. He agreed with Mr. Daly. He said he supports SB 23 and would like to see the bill passed.

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GREG KERN, Owner, A K Grip and Lighting, stated that he has a small mom/pop business that provides lights, generators, and grip trucks to the film industry. He said he supports SB 23 which will allow him to obtain the long-term financing to grow his business. He would like to hire more employees. He said he worked on the ELW project. However, he observed lots of equipment come and go when the project was finished. He characterized this activity as carpetbagger activity. He related that he is struggling to make it in Alaska and needs a chance to "sink my teeth into this stuff" and get the financing to allow him to compete with Lower 48 firms. He commented that these firms are large corporations that are well funded. These companies are accustomed to setting up shop in other states and send money home to California or New York. He stressed that he and other small vendors are trying to preempt this. He asked for the opportunity to build an industry from the ground up.

[SB 23 was held over.]

4:35:31 PM

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:35 p.m.