

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

February 23, 2018

1:31 p.m.

**MEMBERS PRESENT**

Representative Matt Claman, Chair  
Representative Jonathan Kreiss-Tomkins  
Representative Gabrielle LeDoux  
Representative David Eastman  
Representative Chuck Kopp  
Representative Charisse Millett (alternate)  
Representative Louise Stutes (alternate)

**MEMBERS ABSENT**

Representative Zach Fansler, Vice Chair  
Representative Lora Reinbold

**COMMITTEE CALENDAR**

HOUSE BILL NO. 330

"An Act authorizing the commissioner of natural resources to disclose confidential information in an investigation or proceeding, including a lease royalty audit, appeal, or request for reconsideration and issue a protective order limiting the persons who have access to the confidential information."

- HEARD & HELD

HOUSE BILL NO. 259

"An Act relating to containing or confining loads being transported on highways."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 330

SHORT TITLE: DNR: DISCLOSURE OF CONFIDENTIAL INFO

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/05/18	(H)	READ THE FIRST TIME - REFERRALS
02/05/18	(H)	JUD, RES
02/16/18	(H)	JUD AT 1:00 PM GRUENBERG 120
02/16/18	(H)	Heard & Held

02/16/18 (H) MINUTE (JUD)  
02/21/18 (H) JUD AT 1:00 PM GRUENBERG 120  
02/21/18 (H) Heard & Held  
02/21/18 (H) MINUTE (JUD)  
02/23/18 (H) JUD AT 1:30 PM GRUENBERG 120

BILL: HB 259

SHORT TITLE: CONFINING VEHICLE LOADS

SPONSOR(s): STUTES

01/08/18 (H) PREFILE RELEASED 1/8/18  
01/16/18 (H) READ THE FIRST TIME - REFERRALS  
01/16/18 (H) TRA, JUD  
01/25/18 (H) TRA AT 1:15 PM BARNES 124  
01/25/18 (H) -- MEETING CANCELED --  
01/30/18 (H) TRA AT 1:00 PM BARNES 124  
01/30/18 (H) -- MEETING CANCELED --  
02/01/18 (H) TRA AT 1:00 PM BARNES 124  
02/01/18 (H) Heard & Held  
02/01/18 (H) MINUTE (TRA)  
02/08/18 (H) TRA AT 1:00 PM BARNES 124  
02/08/18 (H) Moved CSHB 259 (TRA) Out of Committee  
02/08/18 (H) MINUTE (TRA)  
02/09/18 (H) TRA RPT CS (TRA) 1DP 5AM  
02/09/18 (H) DP: STUTES  
02/09/18 (H) AM: KOPP, CLAMAN, DRUMMOND, EASTMAN,  
WOOL  
02/21/18 (H) JUD AT 1:00 PM GRUENBERG 120  
02/21/18 (H) <Bill Hearing Canceled>  
02/23/18 (H) JUD AT 1:30 PM GRUENBERG 120

**WITNESS REGISTER**

GREG SMITH, Staff  
Representative Gabrielle LeDoux  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** During the hearing of HB 330, presented Amendment 1.

ED KING, Special Assistant  
Commissioners Office  
Department of Natural Resources  
Juneau, Alaska

**POSITION STATEMENT:** During the hearing of HB 330, answered questions.

MATT GRUENING, Staff  
Representative Louise Stutes  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** During the hearing of HB 249, presented the legislation on behalf of Representative Stutes.

HILARY MARTIN, Legislative Legal Counsel  
Legislative Legal and Research Services  
Legislative Affairs Agency  
Juneau, Alaska

**POSITION STATEMENT:** During the hearing of CSHB 259, answered questions.

ROBIN ABEL  
Seattle, Washington

**POSITION STATEMENT:** During the hearing of CSHB 259, testified.

KELLY ROY  
Anchorage, Alaska

**POSITION STATEMENT:** During the hearing of CSHB 259, testified.

AVES THOMPSON  
Executive Director  
Alaska Trucking Association  
Anchorage, Alaska

**POSITION STATEMENT:** During the hearing of CSHB 259, testified.

EDWARD MARTIN  
KEE Construction  
Cooper Landing, Alaska

**POSITION STATEMENT:** During the hearing of CSHB 259, testified.

DAN SMITH, Director  
Measurement & Commercial Vehicle Standards Enforcement  
Department of Transportation and Public Facilities  
Anchorage, Alaska

**POSITION STATEMENT:** During the hearing of CSHB 259, answered questions.

CAPTAIN DAN LOWDEN  
Deputy Commander  
Central Office  
Division of Alaska State Troopers  
Department of Public Safety (DPS)  
Anchorage, Alaska

**POSITION STATEMENT:** During the hearing of CSHB 259, answered a question.

**ACTION NARRATIVE**

[1:31:49 PM](#)

**CHAIR MATT CLAMAN** called the House Judiciary Standing Committee meeting to order at 1:31 p.m. Representatives Claman, Kreiss-Tomkins, Millett (alternate for Representative Reinbold), Stutes (alternate for Representative Fansler), LeDoux, and Kopp were present at the call to order. Representative Eastman arrived as the meeting was in progress.

**HB 330-DNR: DISCLOSURE OF CONFIDENTIAL INFO**

[1:33:24 PM](#)

CHAIR CLAMAN announced that the first order of business would be HOUSE BILL NO. 330, "An Act authorizing the commissioner of natural resources to disclose confidential information in an investigation or proceeding, including a lease royalty audit, appeal, or request for reconsideration and issue a protective order limiting the persons who have access to the confidential information."

[1:34:17 PM](#)

REPRESENTATIVE LEDOUX moved to adopt Amendment 1, which read as follows:

[Amendment 1 did not go through the Legislative Legal and Research Services Office. The legislative drafting procedures were not followed.]

Page 3, line 25, following "department":  
Insert "relating to oil and gas"

Page 3, line 26:  
Delete "a lease"  
Insert "an"

Page 6, line 20, following "royalty":  
Insert "or net profit share"

REPRESENTATIVE KREISS-TOMKINS objected for purposes of discussion.

[1:34:39 PM](#)

GREG SMITH, Staff, Representative Gabrielle LeDoux, Alaska State Legislature, advised that the general intent of Amendment 1 seeks to limit the type of disclosures that are subject to the protective orders for oil and gas lease audit appeals and requests for consideration, as opposed to all types of leases. He opined that adding this net profit share after the word "royalty" [HB 330, page 6, line 26] better encapsulates what is needed (audio difficulties) the types of work for these disclosures.

[1:35:43 PM](#)

REPRESENTATIVE KREISS-TOMKINS noted that given the addition of "relating to oil and gas," he asked whether Mr. King had any communications with Usibelli Coal Mine, Inc., as to whether this will satisfy its concern.

MR. SMITH advised that they had reached out to Usibelli Coal Mine, Inc., and had not received a confirmation that this amendment would allay its concerns, but he believes it does.

[1:36:07 PM](#)

REPRESENTATIVE KREISS-TOMKINS asked Mr. Smith to share with the committee any response it may receive from Usibelli Coal Mine, Inc.

MR. SMITH responded that he definitely would share Usibelli Coal Mine's response with the committee.

[1:36:29 PM](#)

ED KING, Special Assistant, Commissioners Office, Department of Natural Resources, was available to testify.

CHAIR CLAMAN asked Mr. King to generally offer the position of the Department of Natural Resources (DNR) as to Amendment 1.

MR. KING referred to the first change within the amendment as follows:

Page 3, line 25, following "department":

Insert "relating to oil and gas"

MR. KING said that it is DNR's perspective that it would restrict or narrow the scope of the protective orders to issues relating only to oil and gas; thereby alleviating the hypothetical concerns of Usibelli Coal Mine, Inc., or others may have in the mining community. Generally speaking, he said that DNR does not object to this narrowing of the scope as it is not aware of any issues, outside of oil and gas, that would actually use this protective order. Clearly, he pointed out, DNR would prefer the more general authority in the event those types of situations arose in the future.

[1:37:39 PM](#)

MR. KING advised that the next two changes are technical changes the department felt would benefit the bill, as follows:

Page 3, line 26:  
Delete "a lease"  
Insert "an"

MR. KING explained that the words "a lease" before the word "audit" is not necessary, and as a modifier, it could be interpreted to modify the words "appeal, or request for reconsideration," as well. Therefore, removing the word "lease" was a cleaner way to approach this issue, and then making the grammatical change from "a" to "an."

Page 6, line 20, following "royalty":  
Insert "or net profit share"

MR. KING explained that the third change in this amendment and adding, after the word "royalty," the words "or net profit share," of which has to do with the fact that net profit share lease terms are not considered royalty payments. Therefore, he advised, when DRN runs into a situation where it has to audit the net profit share payments to make certain that revenue was properly paid and collected, DNR wants to make certain the terminology is there and there is no doubt that the intent of the legislature was to include those net profit share terms.

[1:39:15 PM](#)

REPRESENTATIVE KREISS-TOMKINS withdrew his objection. There being no objection, Amendment 1 was adopted.

[HB 330 was held over.]

**HB 259-CONFINING VEHICLE LOADS**

[1:39:38 PM](#)

CHAIR CLAMAN announced that the final order of business would be HOUSE BILL NO. 259, "An Act relating to containing or confining loads being transported on highways." [Before the committee was CSHB 259(TRA).]

[1:40:10 PM](#)

MATT GRUENING, Staff, Representative Louise Stutes, Alaska State Legislature, offered his testimony as follows [original punctuation provided]:

Whether someone overflows the bed of their truck with rocks and gravel, plywood, scrap metal, loose debris on their way to the dump, or simply fails to tie down large objects in a flatbed, unsecured loads are an undisputed hazard to other users of the roadway and pedestrians. Improperly secured loads can cause serious injuries, property damage, and fatalities.

The AAA Foundation for Traffic Safety concluded that from 2011-2014, road debris was a factor in more than 200,000 police-reported crashes. Those crashes resulted in approximately 39,000 injuries and 500 deaths. Additionally, the report found that about two-thirds of these accidents were the result of items falling from a vehicle due to unsecured loads and improper maintenance. In another study by the U.S Government Accountability Office, it was found that there were approximately 440 fatalities caused by roadway debris in 2010; that data was gathered by the National Highway Traffic Safety Administration.

All 50 states have laws that require drivers to properly secure loads in any vehicle or trailer and impose fees that range from \$10 to \$5,000. In most states, failing to properly secure a load is a traffic violation. In Alaska, even if it results in the serious physical injury, it is an infraction punishable by a fine not to exceed \$300. However, 15 states have instituted possible criminal penalties for failing to properly secure loads. I would also like to

note that there is a legislative research report in members' packets that compares those laws and provides additional information about Maria's law, which this legislation closely resembles.

Last year, the State of Alaska, the Mayor of Anchorage, the Anchorage Assembly, the Mayor of the Mat-Su Borough, and the Mat-Su Borough Assembly officially declared June 6th as Secure Your Load Day by issuing proclamations and resolutions recognizing the hazards of failing to take the simple steps of securely affixing every load. These documents are included in members' packets.

HB 259 increases Alaska's standards for load securement of all types of materials and requires covering or maintaining six inches of freeboard with loads consisting of sand, dirt, gravel, rock, or similar materials. It also raises a violation to the level of a Class A misdemeanor on the first offense if it results in the serious physical injury to another person or causes \$1,000 or more in property damage.

The legislation will decrease roadway litter, property damage, injuries, and fatalities on Alaska's highways. It is a responsible measure to protect the safety of Alaskan drivers and avoid costly repairs that result from the actions or inactions of others.

As invited testimony today, I have Robin Abel and Kelly Roy online for testimony. Robin is not only a nationwide expert and advocate regarding load securement, but she is also the mother of the Maria Federici, who is the namesake of "Maria's Law" in Washington State. Robin's 24-year-old daughter, Maria, was struck by piece of particle board that escaped from the back of a trailer in front of her. She was nearly decapitated as the debris crushed every bone in her face, leaving her blind. Miraculously, she survived.

At the time, there was no law addressing the consequences of unsecured loads and the driver was cited for a traffic infraction and fined. Robin has dedicated her life to changing the law, educating the public, and doing whatever she can to avoid this from happening to others.

Thanks to Robin's efforts, Washington legislators adopted what has been called "Maria's Law," which criminalizes a person's failure to properly secure a load that results in injury or death. She has been leading education and law changing efforts across the country, but I will let her speak to the rest of her story.

Also, for invited testimony, we have Kelly Roy, who is an Alaskan who experienced a very similar tragedy to Maria and is also fortunate to be alive, but I will let her tell her story personally to the committee. In the previous committee, Kelly flew all the way down from anchorage to tell her story but was unable to do so today.

Kelly is the impetus and driving force behind this bill. Her life has been forever changed, and again, in Alaska, there was no recourse besides a traffic fine. She has been leading the effort in Alaska to raise awareness, educated the public, and I am truly grateful not only that she brought this bill to our office, but that she had the courage to tell her story to the committee. These types of tragedies are completely avoidable with few simple steps of taking time to inspect your load and secure it properly.

CHAIR CLAMAN advised the committee that the legislation currently before the committee is CSHB 259, Version 30-LS0917\L, and subsequent to the sectional analysis, the motion to adopt Version L would be before the committee.

[1:45:04 PM](#)

MR. GRUENING presented the sectional analysis on CSHB 259, Version 30-0917/L, as follows [original punctuation provided]:

Section 1 on Page 1, line 3 through Page 3, line 4: AS 28.35.251 is repealed and reenacted.

Subsection (a) (1) and (a) (2) on page 1, lines 4 through line 9:

This subsection states that person is guilty of the crime of failure to contain or confine a load in the first degree if, with criminal negligence, they violate (b) and as result, causes serious physical

injury to another person or property damage of \$1,000 or more. Criminal negligence applies to the act of the securing the load.

Subsection (b)(1)(A)(i)(ii) and (B) on Page 1, lines 10 through Page 2, line 6:

This subsection specifies that a person commits the offense of failure to contain or confine a load in the second degree if the person drives or moves a motor vehicle loaded with any material on a highway unless it is secured or situated in a way that prevents it from escaping the vehicle or shifting to the extent that the vehicle's maneuverability or stability is adversely affected or the load is treated by methods approved through regulation by the Department of Public Safety that are designed to settle the load or remove loose material before it is driven on a highway.

Subsection (b)(2) on Page 2, lines 7 through 10:

This subsection is an exemption that specifies that a person may drive or move a motor vehicle loaded with sand, gravel, dirt, rock, or similar materials without the securement requirements listed in (b)(1)(A)(i)(ii) and (B) if at least 6 inches of freeboard is maintained around the perimeter of the load or a cover is used and securely fastened.

Subsection (c)(1) on Page 2, lines 11 through 14:

This subsection is an exemption that specifies that the provisions of this act do not apply to a vehicle that deposits sand, liquids, or other materials for the purpose of cleaning, maintaining, or improving traction on the highway.

Subsection (c)(2) on Page 2, lines 15 through 16:

This subsection is an exemption that specifies that the provisions of this act do not apply to the natural accumulation of snow, ice, mud, dirt, or similar materials.

Subsection (c)(3) on Page 2, line 17:

This subsection is an exemption that specifies that the provisions of this act do not apply to a vehicle that is removing snow or hauling snow after removal.

Subsection (d) on Page 2, lines 18 through 20:

This subsection specifies that in prosecution under (a), which is failure to secure a load in the first degree, a person being previously convicted of a violation of this section is prima facie evidence that the person acted with criminal negligence when securing the load.

Subsection (e)(1) on Page 2, lines 21 through 23:

This subsection specifies that failure to secure a load in the first degree is a class A misdemeanor.

Subsection (e)(2)(A), (B), and (D) on Page 2, line 24 through Page 3, line 2:

This subsection specifies that failure to secure a load in the second degree is an infraction punishable by a fine of not more than \$300 on the first offense, \$750 on the second offense, \$1,500 on the third offense, and \$2,500 on the fourth offense. The penalty for the first violation is consistent with current statute.

Subsection (f) on Page 3, lines 3 through 4:

This subsection specifies that criminal negligence in this section has the meaning given in AS 11.81.900.

Section 2 on Page 3, lines 5 through 6. AS 28.35.253 is amended by adding a new subsection:

This subsection is a conforming amendment to reflect the repeal and reenactment of AS 28.35.251 in Section 1 of the bill and the repeal of AS 28.35.255. AS 28.35.255 currently houses the penalties for violations of both AS 28.35.251 and AS 28.35.253. Violating AS 28.35.253 is currently an infraction and there is no substantive change.

Section 3 on Page 3, line 7:

Repeals 28.35.255.

[1:51:51 PM](#)

REPRESENTATIVE KREISS-TOMKINS moved to adopt CSHB 259, Version 30-LS0917\L, Bruce/Martin, 2/22/18, as the working document. There being no objection, Version L was before the committee.

[1:52:18 PM](#)

REPRESENTATIVE KOPP, in response to Representative LeDoux, advised that freeboard represents the height of the sideboards of a vessel or truck before water flows in, or the load falls out. For example, he said, if there are six inches of freeboard on a boat, that means the boat is only six inches above the waterline before sinking; and if there are six inches of freeboard in the bed of a pickup truck, the load has six inches before it spills off of the truck.

[1:53:09 PM](#)

REPRESENTATIVE LEDOUX referred to [Section 1. AS 28.35.251(b)(2)], page 2, lines 7-9, which read as follows:

(2) at least six inches of freeboard is maintained around the entire perimeter of a load consisting of sand, gravel, dirt, rock, or similar materials or the load is covered and securely fastened to prevent the cover from becoming loose or detached or from being a hazard to other users of the highway.

REPRESENTATIVE LEDOUX advised that she understands that the provision is with regard to sand and dirt, but it would seem that gravel and rock could be loaded above the six-inch line of freeboard and that this might be a loophole that subsumes the entire bill.

MR. GRUENING responded that the six-inch freeboard exemption was copied from Washington State law in the form of Maria's Law. This law was a negotiation that was passed in Washington State between the bill sponsor and the Washington Trucking Association. This law has been in practice for 10-years and he has not heard about any specific issues with the trucking association, the bill sponsor, or the people within which he has been in communication in Washington State, he advised. Although, he acknowledged, there could be an instance when Representative LeDoux's comment could take place, but he is not aware of any issues with that exemption as to how it has been applied or any safety hazards in Washington State. He then deferred to Robin Able who is well aware of the effectiveness of that law, and she has worked with the Washington State Department of Transportation (WSDOT).

[1:55:18 PM](#)

REPRESENTATIVE LEDOUX commented that "if it is so safe for big rocks," why would there not be the freeboard exception for everything.

MR. GRUENING answered that if it was the will of the committee, that issue could be addressed.

REPRESENTATIVE STUTES explained that the rocks are below the six-inch freeboard line and opined that a big rock would not be picked up and blown out when traveling fast down the freeway. Whereas, she pointed out, with the six-inch freeboard and a load of particle board, for example, even though there is that six-inch freeboard, there is still the potential of the wind picking up a corner of it and blowing it off the truck.

[1:56:25 PM](#)

REPRESENTATIVE KOPP responded that it appears the bill is not preventing a load being loaded in the mounded traditional manner. It is just that as it comes down and runs into the wall of the bed of the truck, there had better be at least six-inches of freeboard so as things roll around, the six-inch wall is there to catch the items. He related that it would be almost impossible to load a belly-dump or a dump truck flat and there would be a mound that sticks above that six-inches. He explained that that is why the bill read, "is maintained around the entire perimeter," not that the entire bed is below a six-inch line as "that's a whole different thing."

MR. GRUENING added that when he spoke with the drafter, he specific asked that it be crafted in such a manner as to allow for the mound. Thereby, allowing that when the Alaska Department of Transportation and Public Facilities (DTPF) and commercial vehicles load those types of materials, they are allowed to have the cone in the middle, and that was a "very specific intent," he emphasized.

[1:57:41 PM](#)

REPRESENTATIVE KREISS-TOMKINS referred to the passage of this law in other states and asked whether any criminal charges had been brought under this new law, for instance in Washington State.

MR. GRUENING answered that he could not offer any specific information, although, enforcement of this law typically happens when an accident occurs and the police get involved. To the

extent of how often this law is specifically enforced, he said he could not speak to that question.

[1:58:46 PM](#)

REPRESENTATIVE KREISS-TOMKINS related he would like to get a sense as to the enforcement frequency of this law and the severity of the accidents. He asked about the sentencing associated with a class A misdemeanor.

MR. GRUENING responded that there is a fine and imposition of jailtime. He referred to a class A misdemeanor under AS 12.55.035(a) and paraphrased as follows:

A defendant convicted of a class A misdemeanor may be sentenced to a definite term of imprisonment of not more than one year, and it is typically not imposed to that maximum.

MR. GRUENING then referred to AS 12.55.035(b)(5), which read as follows:

(5) \$10,000 for a class A misdemeanor;

MR. GRUENING offered that that fine is rarely imposed to that maximum amount.

[2:00:27 PM](#)

REPRESENTATIVE STUTES asked whether Mr. Gruening had advised that a current statute requires that rocks and sand are covered.

MR. GRUENING clarified that the load either needs to be confined, contained, or covered, so the materials do not escape.

REPRESENTATIVE STUTES pointed out that this does not supersede that statute or preclude that requirement.

MR. GRUENING advised that it does have the six-inch freeboard exemption, which goes to Representative LeDoux's comment. He advised that from his initial conversations with the Washington State Department of Transportation (WSDT) and Robin Able, the six-inch freeboard exemption appears to be effective in keeping items from escaping the vehicle, but he is not an expert on that issue, he said.

[2:01:36 PM](#)

REPRESENTATIVE LEDOUX asked whether she should be looking at another statute in conjunction with this freeboard issue because Version L uses the word "or." She referred to page 2, lines 7-10, which read as follows:

(2) at least six inches of freeboard is maintained around the entire perimeter of a load consisting of sand, gravel, dirt, rock, or similar materials or the load is covered and securely fastened to prevent the cover from becoming loose or detached or from being a hazard to other users of the highway.

REPRESENTATIVE LEDOUX then specifically referred to AS 28.35.251(b)(2), page 2, lines 8-10, which read as follows:

(2) ... perimeter of a load consisting of sand, gravel, dirt, rock, or similar materials or the load is covered and securely fashioned to prevent the cover from becoming loose or detached or from being a hazard to other users of the highway.

REPRESENTATIVE LEDOUX asked whether the language should read, "and the load is covered and securely fastened" because there is this large heap of rock and, "we agree" that the freeboard does not have to come up 2-3 feet. Due to this mound being similar to a pyramid, should it not read that there is both the freeboard and something secured around the rock, sand, or gravel, she asked.

MR. GRUENING related that he follows Representative LeDoux's logic and could see how "and" could be tied to AS 28.35.251 (b)(1)(A) and (i)(ii), [Section 1, page 1, lines 10-14 and page 2, lines 1-2]. There would either be the freeboard or a tarp, but that would need to be tied to "it not escaping the vehicle," and it would have to be confined and have six-inches of freeboard or be confined and have the tarp. He opined that if it is viewed as a loophole, the word "and" could be helpful in that regard.

[2:03:58 PM](#)

CHAIR CLAMAN noted that oftentimes in Anchorage, gravel trucks and trucks are driving around town transporting uncovered rock for construction purposes and the bed of a trailer carrying a mound of rock or sand or gravel is uncovered and, oftentimes, the trucks carry covered loads with a tarp. Although, he

commented, if the word "and" was used, it would take away the current practice wherein the truckers do have the option of not covering those loads when traveling. In the event "or" was changed to "and" on Page 2, line 8, it would cause that impact.

2:04:50 PM

REPRESENTATIVE LEDOUX offered a scenario of a truck carrying a huge pile of gravel with "a little bit" of freeboard around it, and the truck suddenly stops causing all of the gravel or rocks to "go every which way." She asked whether that scenario is what this legislation is supposed to prevent.

REPRESENTATIVE KOPP commented that there actually is a limit on the height of the bed under the commercial vehicle statutes, which he opined is 12 inches or 18 inches. Even with a load in the middle of a "big belly-dump," it is almost impossible for a weight that heavy to shift and come flying out, unless the truck went from zero to 30 mph in about two seconds. The mound naturally occurs when a loader empties out a huge shovel into the truck and the material piles up. He stressed that the load is not allowed to be 36 inches above the bed, and this freeboard requirement would definitely be more restrictive. Loads are not uniform and can be odd shaped, such as when taking apart a building and so forth. That is why the committee would want to leave the second occurrence of the word "or" in page 2, line 8, where the trucker can tie down and secure the load. In that regard, he pointed out, sometimes the freeboard would not work at all due to the odds pieces, shapes, and angle irons sticking out. The truckers would simply need to have the load tied down and secured. Having the dual requirement, he stressed, would prevent truckers from being able to perform "a lot of things."

2:07:01 PM

REPRESENTATIVE LEDOUX surmised that Representative Kopp was referring to commercial trucks. She then asked about the private person who put rocks in the back of their pickup truck, and under this legislation the person can stack the rocks as high as they prefer.

REPRESENTATIVE KOPP commented that the person had better have the load properly secured.

REPRESENTATIVE LEDOUX said that she thought the securing was the freeboard.

REPRESENTATIVE KOPP explained that the person cannot stack the load as high as he wants to if there is a freeboard requirement.

CHAIR CLAMAN added that a small pickup truck would be more restricted by how much weight could be put in the bed of the truck because the pickup would break before it would get to the freeboard requirements.

[2:08:36 PM](#)

REPRESENTATIVE KOPP pointed to page 1 of CSHB 259, and advised that there are two ways in which to be charged with a misdemeanor under this bill, as follows: violation of AS 28.35.251(b) wherein the person does not have a properly secured load to prevent it from leaking, spilling, escaping, or it shifts the vehicle in a manner that adversely affects the vehicle; and on top of that, violates AS.28.35.251(a)(1)(2) by causing serious physical injury to another person, or damages the property of another person in an amount of \$1,000 or more. He pointed out that under current law, a misdemeanor damage value at an accident scene of \$2,000 or more, requires a mandatory report to law enforcement.

CHAIR CLAMAN asked whether he was suggesting that in the world of consistency to consider changing the value to \$2,000 or more.

REPRESENTATIVE KOPP thanked Chair Claman for his assistance and commented that it would be consistent in the law, currently where the misdemeanor penalty kicks in for property damage.

The other issue, when looking at a class A misdemeanor, includes the following: the fact that even a second DUI is a class A misdemeanor - a third DUI in seven years is a felony; most domestic violent assaults; fairly serious assaults; and endangering vulnerable adults. These examples are class A misdemeanors and these misdemeanors are very serious, he stressed. Possibly, he suggested, the committee could consider, if it is to approve a misdemeanor penalty, changing it to a class B misdemeanor may be more appropriate, or not, the idea is just for discussion. Quite a range of behaviors fall under a class A misdemeanor and a person could receive one-year in prison and a \$10,000 fine, he pointed out.

[2:11:33 PM](#)

REPRESENTATIVE EASTMAN referred to AS 28.35.251(e), page 2, lines 21-22, sentencing for a class A misdemeanor, referencing

AS 12.55, and noted that recently passed legislation may impact that statute but the supplementals are not yet available. He asked that Ms. Martin remind the committee what the current sentencing is for a class A misdemeanor.

[2:12:05 PM](#)

HILARY MARTIN, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, responded that the sentencing for class A misdemeanor, as Mr. Gruening reported, is under AS 12.55.135, and it was amended under Senate Bill 91 [passed in the Twenty-Ninth Alaska Legislative Session]. The sentence would actually be 30-days under the statute, and under Senate Bill 91 it was changed that only certain class A misdemeanors carry a penalty of one-year, so it would be imprisonment up to 30-days. Defined under AS 12.55.035, the sentence is up to \$25,000 for a class A misdemeanor, she opined, which was also amended under Senate Bill 91.

[2:13:17 PM](#)

CHAIR CLAMAN opened public testimony on CSHB 259.

[2:13:27 PM](#)

ROBIN ABEL advised that she is a mother living in Seattle, Washington who had never heard about the six-inch rule before "this happened either." She related that she would tell a story because this is all about behavior and change, as follows:

My daughter was driving home 14-years ago this morning. And so, if I'm a little emotional you'll know why. It was like it was yesterday that the hospital called me and said, "Your daughter's alive, please come back to the hospital." I had donated an organ the night before because I got a call out of the blue, and it said, "Is your daughter Maria Federichi?" And, you know, it was the only time I ever wanted to say no. But I said yes. And when I got to the hospital, they said they couldn't save her life. I spent the next few hours filling out paperwork, donating her organs. But, 14-years ago this morning they called me and said, "Come back, she's fighting for her life."

The board that went through my daughter's windshield weighed 40 pounds, it destroyed her eye sockets, her

nose, her cheekbones, her palate. She had no face and it almost completely decapitated her. It left her blind, she has great hearing, she can dance, and all of the things they said she could never do. She is blind and she has severe brain damage. Her life will never be the same because someone made a choice, not for the few moments or few dollars time, to secure their load for their vehicle.

I have since changed two laws in Washington State namely because they told me that what happened to my daughter was no more than a littering ticket. It was too late for my child but it's worth it to save other lives and that is why I do this. Because, I know that if I can get a moment of compassion with you, and I'm a little bit partial to the Judiciary Committee because you guys are the first committee I ever spoke before. (Audio difficulties.) I changed the law in Washington State, the one who made sure we got the general accountability report in Washington D.C., and recently Obama signed off in 2012 saying that there was money available. This was a serious problem and I encouraged the states to step forward and apply for (indisc.).

I've since moved on and had (audio difficulties) which your governor did agree to, and it has been a wonderful way to educate the public. You guys know as legislators and especially in the judiciary committee, changing the law is only one thing, the hard work starts when you have to stand behind it and stand up and educate the public. Because we don't all sit down every year and say, "Well, let's look at what our legislator did." Okay. And, we can't do that. So, I ask you today to please look at this law and seriously consider it. You've got an amazing Alaska citizen who's gonna testify after me. People approach me all the time and ask me to help them, but I can count on two hands the people that actually made it and came forward. But, I can only raise one finger to a person who has gotten this far and it is a young woman in your state who has hurt herself and she asked for help. I hope today you will acknowledge that she is an amazing Alaskan citizen. Because I'm partial to you, I hope you'll be favorable to this bill. I know it saves lives, the six-inch rule has not been a problem in our state. It allows when a -- when a

truck (audio difficulties) and doesn't pull out unless they are already exceeding (audio difficulties) so it's been very effective. And, it was the way we got the truckers to agree to support this law that absolutely did not find it (audio difficulties) in any way knowing that it was that either that they complied with the six-inch law or they cover. Now, the six-inch law does not apply to any other load, okay. It is only dirt, sand, and gravel, and rock. So, please, please take a look at this law, give it your consideration, we're doing it for your families, it's too late for our family, and please change the law. Thank you.

[2:18:16 PM](#)

KELLY ROY offered testimony as follows:

My name is Kelly Roy, and I am calling from Anchorage, Alaska. I want to say thank you, first of all, for listening to me today.

Around three years ago, I was driving on the Glenn Highway, and there was a driver on the road, a truck that was carrying an unsecured load. And, the truck's unsecured load came apart sending debris and trash, and a large trashcan that came straight at my windshield. Witnesses said my car rolled four times, and the Anchorage Fire Department had to cut me out of my vehicle because I was trapped. I was driven to hospital with broken bones, bruises, cuts, but what nearly killed me was a massive blow to my skull. I had brain bleeding both from the outside and inside of my brain. Brain bleeding that occurs on the inside of the brain causes survival rates of about 30 percent. I survived those odds but not without consequence. I was diagnosed with a traumatic brain injury, a brain injury that I live with every day. I had no idea how much I took for granted until my brain was damaged. I tried to fight back to get back to the simplest of things, like holding a fork or brushing my hair, and walking across the room without falling over. Even talking to you today, right now, is something that I had to get back, simply talking.

February 16th was three years since my car crash and I'm still in therapy. Even today, before I came on

this call to talk to the committee, I have had (indisc.) nerve feedback and counseling therapy. It is a weekly routine for me. All of that fight and loss was because someone could not be bothered to secure their load.

There is someone else that I would briefly like to talk about today, an article I found that talks about another Alaskan affected by an unsecured load. Sargent Harris was a Fort Richardson military police who was traveling down on Tudor Road when a projectile came crashing through the windshield at the equivalent of 100 mph and hit Sargent Harris in the head. The projectile was a steel bar about a foot long, four inches wide, about an inch thick, and weighed about five pounds. It had apparently been ejected off of a pickup truck and slid -- and shot into the oncoming lane and then struck the windshield. Sargent Harris died of his injuries the following day, he was 24-years old. The time that that driver did not spend to secure his load, Sargent Harris paid for with his life, a fellow Alaskan like myself, and someone who is my age. In the time that my driver did not spend properly securing the load, I have paid for with the rest of my life, I paid for something that is entirely preventable.

A person chooses not to secure their load just as a person chooses to get behind the wheel of a car drunk. Unsecured loads are a huge problem. Anchorage Solid Waste Services issued 1,392 fines in 2016 for unsecured loads. 1,392 negligent drivers that were on Alaska roads that year, and 1,392 chances for someone to die or be seriously hurt. And that is just accounting for drivers going to the landfill. I hope that this bill will educate and remind everyone how dangerous an unsecured load is, and that it will protect everybody in this state and hold these negligent drivers accountable for a choice that has hurt and killed so many people. I ask that you help me change this law, change a law that could not protect me and cannot protect anyone unless there is change. And, I thank you again for listening to my story. Thank you.

[2:23:09 PM](#)

REPRESENTATIVE KREISS-TOMKINS referred to the 1,392 citations from the Anchorage Solid Waste Services and asked whether she has a sense of what constitutes a citation or violation, and how it relates to the definition of failing to secure a load in the first or second degree, as written in CSHB 259.

MS. ROY answered that her general sense from her conversations with the Anchorage Solid Waste Services is that if a load is unsecured, the driver receives a ticket and a fine. The load being unsecured when it shows up at the landfill means the load traveled on the roadways and was unsecured, she remarked.

[2:24:12 PM](#)

REPRESENTATIVE LEDOUX thanked her for bringing this issue forward because it obviously is a problem that needs to be addressed.

[2:24:44 PM](#)

AVES THOMPSON, Executive Director, Alaska Trucking Association, advised that the trucking industry is heavily regulated by both the United States Department of Transportation (USDOT) and the Alaska Department of Transportation and Public Facilities (DTPF) through their commercial vehicle enforcement. Both sets of regulations contain specific requirements concerning securement of loads. He then paraphrased the portion of the federal regulation covering this issue, which was also adopted into the Alaska Administrative Code, as follows:

Part 393

Section § 393.100: Which types of commercial motor vehicles are subject to the cargo securement standards of this subpart, and what general requirements apply?

(a) Applicability. The rules in this subpart are applicable to trucks, truck tractors, semi-trailers, full trailers, and pull trailers.

(b) Prevention against loss of load. Each commercial motor vehicle must, when transporting cargo on public roads be loaded and equipped and the cargo secured in accordance with this subpart to prevent the cargo from leaking, spilling, blowing, or falling from the motor vehicle.

(c) Prevention against the shifting of load. Cargo must be contained, immobilized, or secured in accordance with this subpart to prevent shifting upon, or within the vehicle, to such an extent that the

vehicle's stability or maneuverability is adversely affected.

MR. THOMPSON noted that together with these broad regulations are specific regulations about confining and securing each individual type of load. It is the Alaska Trucking Association's position that this legislation is unnecessary and duplicates the requirements already in law for commercial motor vehicles, he advised.

[2:27:03 PM](#)

REPRESENTATIVE LEDOUX related that she understands that the trucking industry may be regulated by the federal government, but what sort of criminal penalties apply when violating those regulations.

MR. THOMPSON deferred to the DOTPF Commercial Vehicle officers because he is not a lawyer.

[2:28:03 PM](#)

EDWARD MARTIN, KEE Construction, advised that KEE Construction has numerous trucks, and further advised that he is 63 years old and has been driving truck long before there were CDL rules and "long before there was a lot of laws." He said that he agrees with Mr. Thompson in that this legislation is unnecessary new rules, "under the trucking rules and the commercial codes." In the early days, when he received his first CLD license, he said that he experienced a situation where he traveled to Glenn Allen to pick up a D9 dozer in minus 10-degree freezing weather. Prior to leaving Glenn Allen, he cleaned the D9's tracks of snow and ice to the best of his ability. While returning to Anchorage, the snow on the tracks of the D9 thawed and a rock fell off of that tractor's tracks onto the deck, and he was immediately fined for an unsecure load of a rock on the deck, "of which I didn't have any idea," and he paid the \$100 fine. He offered sympathy for those people who are injured due to unsecured loads, and he understands the purpose of Maria's Law. Although, he expressed he does not believe it is necessary to change the law to "this freeboard thing" because it seems to be irrelevant. He encouraged the committee to not include a tarp requirement on commercial trucks that haul gravel due to the cost of the construction of projects, the lost labor time in attempting to secure a tarp that may possible flap, "and maybe in an area where you cannot see your load as you are traveling on the road." People need to use common sense here, he

suggested. In the event something is written into a new law, he offered that there should be more defining and the committee needs to apply it, with an exemption, under the current Federal Motor Vehicle Safety Standards (FMVSS) because they are already covered.

CHAIR CLAMAN listed the names of the people online available to testify.

CHAIR CLAMAN, after ascertaining no one wished to testify, closed public testimony on CSHB 259.

[2:31:29 PM](#)

REPRESENTATIVE LEDOUX asked whether anyone was online to answer whether any criminal penalties are imposed when a person violates the federal regulations.

[2:32:05 PM](#)

DAN SMITH, Director, Measurement & Commercial Vehicle Standards Enforcement, Department of Transportation and Public Facilities, answered that violations of 49 CFR carry a fine of either \$150 or \$300.

REPRESENTATIVE LEDOUX asked whether "that is it" even if someone is killed, it is \$150 or \$300 under federal law.

MR. SMITH deferred to Captain Dan Lowden, Alaska State Troopers, and advised that the Alaska State Troopers is the lead agency in a legal case and the commercial vehicle enforcement officers assist the troopers.

CHAIR CLAMAN asked Captain Dan Lowden to answer Representative LeDoux's question about criminal sanctions, wherein someone failed to meet the federal regulations and whether that would subject the person to a fine (audio difficulties) does not sound like the federal regulations provide for a criminal penalty. He asked whether there are crimes in Alaska in which a person could be charged.

[2:33:06 PM](#)

CAPTAIN DAN LOWDEN, Deputy Commander, Central Office, Division of Alaska State Troopers, Department of Public Safety, Department of Public Safety (DPS) answered that he is not familiar with the federal code and its rules. Currently, he

explained, when a trooper is called to a crash where someone is hurt, injured, or dead, the trooper reviews all of the statutes available for criminally negligent homicide, manslaughter, and assault. The facts of the situation would probably dictate how the person was charged in those areas, he offered.

[2:33:47 PM](#)

REPRESENTATIVE EASTMAN asked Ms. Martin whether she is aware of any statutory limitation prohibiting anyone from seeking relief in civil court.

MS. MARTIN responded that there is nothing that would prohibit civil action under this legislation.

[2:34:30 PM](#)

REPRESENTATIVE EASTMAN referred to the language "any material," and asked whether there are any parameters about the load being discussed here. He commented that when the committee discussed the loads generally, the context was "maybe a commercial vehicle, or gravel, or dirt, or something like that," and he asked whether there is any type of weight limitation to something that would not be confined in this statute.

MR. GRUENING replied that there is no weight threshold in this bill.

[2:35:22 PM](#)

REPRESENTATIVE EASTMAN asked whether there is a limitation on the type of materials that could be caught up in this definition of "load."

MR. GRUENING answered that he is not an attorney, but in his layman's definition of "any material," he would say no.

[2:35:44 PM](#)

REPRESENTATIVE EASTMAN offered a scenario wherein someone gets into their car, forgets to secure their trash, and a McDonald's cheeseburger wrapper flies off. He asked whether that scenario would be caught up in this definition of "load," or whether there is anything in the bill that would put that scenario into a separate category.

MR. GRUENING replied that it would be caught up but offered a caveat to his response and added that if a McDonald's bag flew out of a window, hit his windshield causing him to crash, that scenario would be covered under Section 1, "Failure to secure a load in the first-degree." He opined that when looking at whether a material is a danger to motorists, the wrapper could be a danger. Although, if the wrapper simply flew out of the vehicle and a police officer witnessed it, he imagined the person would receive a citation, and the first instance of that situation would be a \$300 fine, and there is a current littering statute, as well.

[2:36:48 PM](#)

REPRESENTATIVE EASTMAN asked how the current littering statute compares if a person is cited under subsection (b), which violation would carry the greater penalty.

MR. GRUENING deferred to Ms. Martin and opined that the littering statute is either \$150 or it is \$300 as is the infraction in "the first one." There is no sliding scale in the bill currently so the second violation under the bill would be harsher than the current littering statute.

[2:37:48 PM](#)

REPRESENTATIVE KOPP opined that the current littering fine is up to a \$500 fine, even on a first offense. Representative Kopp, in response to Representative Eastman's comments, clarified that the bill does not read "any materials," and referred to AS 28.35.251(b), page 2, line 8, which as follows:

(2) perimeter of a load consisting of  
sand, gravel, dirt, rock, or similar materials ...

REPRESENTATIVE KOPP pointed out that those are the types of materials the bill is addressing. Also, he explained, currently there are axle weight limits on every class of commercial vehicles in the law that must be followed. In the event a person overloaded a passenger vehicle, that is considered an "improper load" under 13 AAC or Title 28. For example, in the event a car is bottomed out on its shocks, a law enforcement officer can fine the driver for an improperly loaded vehicle. Alaska law does cover situations where someone might take advantage of weight either on the commercial side or the passenger vehicle side, he advised.

[2:39:03 PM](#)

REPRESENTATIVE EASTMAN referred to CSHB 259, Version L, [AS 28.35.251(b)] page 1, lines 11-12, which read as follows:

(b) ...second degree if the person drives or moves a motor vehicle loaded with any material on a highway unless ...

REPRESENTATIVE EASTMAN asked the types of materials being referenced.

REPRESENTATIVE KOPP responded that that it is further defined on page 2, lines 7-10, [provision previously typed], and explained that the content must be taken in context.

[2:39:54 PM](#)

CHAIR CLAMAN reminded the committee that the two suggested potential amendments are as follows: an amendment to change the property damage amount from \$1,000 to \$2,000, on page 1, line 8. He asked the committee whether the bill should be held in committee in order to take up amendments (audio difficulties) and the committee could discuss the merits of those two amendments. He asked whether any member is interested in bringing up the amendment that would raise the property damage amount from \$1,000 to \$2,000 in order to track the vehicular damage statute Representative Kopp mentioned earlier.

[2:40:35 PM](#)

REPRESENTATIVE KREISS-TOMKINS said he would like to better understand the parallelism it may create in association with class A misdemeanors.

REPRESENTATIVE KOPP offered that a further reason for that amendment is that a small ding on the hood of a new truck is clearly over \$1,000. In the event the committee is looking at misdemeanor territory, "which I'm nervous about, for the record," the committee definitely wants to raise that property value. The \$2,000 figure represents the mandatory reporting requirement, otherwise a person is in criminal jeopardy at that point, he explained.

[2:41:38 PM](#)

REPRESENTATIVE KREISS-TOMKINS offered his experience of gravel being kicked up from other cars, and that he concurs with Representative Kopp.

CHAIR CLAMAN related that there appears to be an interest in amending the amount from \$1,000 to \$2,000 and advised that the bill would not be moved today.

REPRESENTATIVE STUTES asked whether that amendment language would be considered a "friendly amendment."

[2:42:25 PM](#)

The committee took an at-ease from 2:42 p.m. to 2:43 p.m.

[2:43:27 PM](#)

CHAIR CLAMAN noted a broad support within the committee for the friendly amendment.

[2:43:56 PM](#)

REPRESENTATIVE KREISS-TOMKINS offered an interest in related class A misdemeanors associated with property damage and the value threshold under current law.

CAPTAIN LOWDEN replied that class A misdemeanors recently changed and he would have to research the issue, and he opined that it may be \$5,000.

CHAIR CLAMAN noted that the set of statutes broadly relating to property damage are probably under the criminal mischief statutes.

REPRESENTATIVE KOPP explained to Captain Lowden that the committee is looking at property damage for vehicles that trigger the mandatory report and asked whether the amount was \$2,000, or whether it was recently raised.

CAPTAIN LOWDEN advised that he does not have the figure off the top of his head and would look it up during this hearing.

[2:45:44 PM](#)

REPRESENTATIVE EASTMAN said that when discussing "freeboard" there was talk about the types of material, except under subsection (b), generally, there is no description of any types

of material. His concern is whether the language, in some manner, will prescribe or limit the types of materials being discussed regarding a load. He opined that most Alaskans would not think of a cheeseburger wrapper as a load, and possibly the committee needs to define "load" because "any materials" appears to be broad. While some may say that that is not a class A misdemeanor, except due to the most recent change in criminal negligence, there could be a situation where someone could be in that cheeseburger wrapper scenario, be convicted of that scenario, suddenly they have a conviction, and now whatever they do in the future now (audio difficulties) category due to littering. He asked whether that is the intent of the committee.

MR. GRUENING commented that it would be difficult to prove that someone acted with criminal negligence when a cheeseburger wrapper flew out of their truck. As to whether the word "load" could use further defining as to "any material," he said he would leave that up to the will of the committee through discussions with the chair and drafters.

[2:48:12 PM](#)

REPRESENTATIVE KOPP noted that after researching the mandatory reporting requirement, advised that the amount of \$2,000 triggers the mandatory reporting requirement.

CHAIR CLAMAN asked whether this issue requires a friendly amendment.

[2:48:48 PM](#)

The committee took an at-ease from 2:48 p.m. to 2:51 p.m.

[2:51:05 PM](#)

CHAIR CLAMAN advised that while off-record, the committee discussed taking up Conceptual Amendment 1 to CSHB 259 to increase the property damage amount on page 1, line 8, from \$1,000 to \$2,000.

[2:51:33 PM](#)

REPRESENTATIVE KOPP moved to adopt Conceptual Amendment 1 to CSHB 259, [to increase the property damage amount on page 1, line 8, from \$1,000 to \$2,000].

REPRESENTATIVE EASTMAN objected for purposes of discussion.

[2:51:47 PM](#)

REPRESENTATIVE EASTMAN referred to the discussion of a possible amendment to change it from a class A misdemeanor to something lower than that classification. He opined that it might be important especially when discussing damage of only \$2,000, which is fairly easy to reach when dealing with vehicles and highways, and now the person is at risk of a \$25,000 fine as a class A misdemeanor for a fender bender. He remarked that he is not comfortable with that because he believes that threshold would have to be higher than \$2,000 and/or remove that class A misdemeanor label.

CHAIR CLAMAN noted that the question of the class A misdemeanor is a separate question. The only issue before the committee currently is whether to increase the property damage amount for the purposes of this bill from \$1,000 to \$2,000.

REPRESENTATIVE STUTES called for the question.

REPRESENTATIVE EASTMAN removed his objection. There being no objection, Conceptual Amendment 1 to CSHB 259, was adopted.

[2:53:04 PM](#)

CHAIR CLAMAN advised that the committee would now move to the more complicated question about class A misdemeanors versus class B misdemeanors in terms of what the offenses represent. He advised that he was involved with the sponsor's office in working on the bill and the two things to bear in mind are as follows: at least two people involved in the trucking industry are unhappy, although they are currently covered with regulations that dictate the requirements that truckers secure their loads; and there were 1,392 failures to secure loads citations at the Anchorage Solid Waste Services which suggests this may be more directed at consumers who do not know what they are doing, rather than the truckers. Public testimony clearly pointed out that the risk of not securing a load and its potential damage is enormous, he remarked.

[2:54:17 PM](#)

REPRESENTATIVE KOPP offered that a key issue here is that in order to reach the class A misdemeanor, the person would have had to have committed this violation with criminal negligence.

He referred to [AS 28.35.251(a), page 1] line 6, "criminal negligence" and explained that criminal negligence is the mental state that must apply under AS 11.81.900(4), which read as follows:

(4) a person acts with "criminal negligence" with respect to a result or to a circumstance described by a provision of law defining an offense when the person fails to perceive 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 the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

REPRESENTATIVE KOPP clarified that "normal negligence" would not bump a person into misdemeanor territory, it must be criminal negligence which is a "gross deviation from the standard of care that a reasonable person would [observe] in the situation." He explained that there must be criminal negligence which caused serious physical injury, which anyplace else in the law would be felony assault. He continued, "Or not causing serious physical injury, the person had to act with criminal negligence or cause property damage in amount ... " He explained that when there is no criminal negligence and the person caused \$10,000 in property damage, the ensuing investigation would "say, you know that's a really bummer that happened, but I can see an honest effort was made to secure the load." He offered appreciation that the mental state standard must be met, and if the committee wanted to be even safer it could ratchet it up to "recklessly," which is a higher standard that is normally associated with class A misdemeanors. Possibly the committee could consider whether criminal negligence would be a good one for a class B misdemeanor, although, because there is a mental state, it helps justify attaching criminal behavior if that mental state is met, he said. Otherwise, he explained, all of "these things" could happen and for a person who is honestly trying to do the right thing, they would not "get hit with a misdemeanor ever," because criminal negligence would have had to be attached.

[2:56:46 PM](#)

REPRESENTATIVE EASTMAN argued that on page 2, line 20, the bill redefines criminal negligence for purposes of this law, which says that any violation of this section ...

CHAIR CLAMAN interjected that the bill does not redefine criminal negligence, it is specifically defined under AS 11.81.900(4) which is the existing definition.

REPRESENTATIVE EASTMAN said "Well, we can use some different words to talk about what we're doing on page 2, line 20, then." He offered that the bill specifically calls out criminal negligence and specifically calls out any violation of this section as constituting a prima facia violation under criminal negligence. His concern, he noted, is that the bill will have something which normally would not be considered criminal negligence, i.e., trash or litter, and now any conviction of trash or litter bumps the person up, under subsection (a), to a class A misdemeanor because "you don't have to have the normal criminal negligence definition criteria." Now, he explained, the person just has to have some previous conviction which, under this section, could have been a simple \$300 fine.

[2:58:15 PM](#)

REPRESENTATIVE LEDOUX asked whether criminal negligence ever comes into play when no injuries or property damage is involved. She referred to Representative Eastman's trash scenario and asked whether the trash could ever injure a person.

CHAIR CLAMAN clarified that if a cheeseburger wrapper hit a person while walking, it would likely not cause serious physical injury which makes it hard to conceptualize how it "gets to this level." He noted that Representative Eastman's descriptions are inaccurate as to the intent of this bill because a littering violation would not be a prior conviction in this regard, the only prior convictions under this particular statute would require a violation of failure to secure a load, and a littering violation would not count as prior events.

[2:59:33 PM](#)

REPRESENTATIVE LEDOUX asked whether there are any other criminal negligence crimes that are considered prima facia evidence of criminal negligence if the person had committed it previously, or whether this would be the only one.

MS. MARTIN answered that there are some other crimes where certain facts are prima facia evidence, but she did not know offhand whether a prior conviction is prima facia evidence similar to this legislation.

3:00:46 PM

REPRESENTATIVE LEDOUX referred to AS 28.35.251(e)(2), page 2, lines 24-31, which read as follows:

(2) second degree is an infraction punishable by a fine of more than

(A) \$2,500 if the person had been previously convicted three or more times of a violation of this section;

(B) \$1,500 if the person has been previously convicted twice of a violation of this section;

(C) \$750 if the person has been previously convicted one time of a violation of this section; or

REPRESENTATIVE LEDOUX noted that this is for an infraction and asked whether this section is when personal injury is not involved.

CHAIR CLAMAN answered in the affirmative.

3:01:08 PM

REPRESENTATIVE LEDOUX surmised that it is only a class A misdemeanor when someone is hurt or there is serious property damage.

CHAIR CLAMAN answered in the affirmative.

REPRESENTATIVE KOPP agreed with Representative LeDoux as to the way the bill is currently written and noted that there is a real misunderstanding to what prima facia is here. Prima facia simply means "at first glance, at the first encounter," he explained, but it has to support subsequent cooperative investigation. He further explained that when first looking at the issue, it appears there is criminal negligence due to a prior conviction, but "you have to actually look to see if that mental state still ... it is assumed that it does." Except a person can argue to the court that the wrapper flew out the bed of their truck even though they had everything bagged up, and criminal negligence should not apply even though, at first glance, criminal negligence applies due to a prior violation, he advised. The person still has a legal defense, it is just now more on the person to show that that alone should not push the

person into the criminal negligence state. He asked that a lawyer comment on his understanding.

[3:02:43 PM](#)

REPRESENTATIVE LEDOUX surmised that it changes the burden of proof. Under a normal criminal trial, the person is charged, and they do not have to testify and they do not have to present a defense. Although, she pointed out, this language read that a person does not have to actually prove anything for criminal negligence other than "somebody has done something before."

CHAIR CLAMAN referred to Evidence Rule 303(b) and noted that the rule specifically shifts the burden. Therefore, if the prima facia case has been established, that would then shift the burden to the defendant to disprove the criminal negligence, which is consistent with Representative Kopp's comments.

MS. MARTIN noted that Evidence Rule 303 discusses preemptions, and Evidence Rule 303(b) discusses prima facia evidence, which read as follows:

Rule 303. Presumptions in General in Criminal Cases.

(b) Prima Facie Evidence. A statute providing that a fact or group of facts is prima facie evidence of another fact establishes a presumption within the meaning of this rule.

[3:04:10 PM](#)

REPRESENTATIVE LEDOUX referred to AS 28.35.251(e), page 2, lines 21-31, which read as follows:

(e) Failure to confine a load in the  
(1) first degree is a class A misdemeanor punishable as provided in AS 12.55;  
(2) second degree is an infraction punishable by a fine of more than  
(A) \$2,500 if the person had been previously convicted three or more times of a violation of this section;  
(B) \$1,500 if the person has been previously convicted twice of a violation of this section;

(C) \$750 if the person has been previously convicted one time of a violation of this section; or

REPRESENTATIVE LEDOUX surmised that it is first degree, which is a class A misdemeanor but only if someone is injured. She asked where that language is located in the bill.

CHAIR CLAMAN, in response, turned to subsection (a), page 1, lines 6-9, which read as follows:

(a) ... criminal negligence violates (b) of this section and, as a result of that violation,  
(1) causes serious physical injury to another person; or  
(2) damages property of another person in an amount of \$1,000 or more.

[3:04:49 PM](#)

REPRESENTATIVE LEDOUX asked where that refers to AS 12.55.

CHAIR CLAMAN said that it does not. Alaska Statute 12.55 is simply providing a penalty provision on page 2, lines 22-23, which read as follows:

(e) Failure to confine a load in the  
(1) first degree is a class A misdemeanor punishable as provided in AS 12.55;

CHAIR CLAMAN advised that the above-mentioned provision read that if a person violated the first degree ... He then turned to AS 28.35.251(a) page 1, lines 4-9, which read as follows:

(a) A person commits the crime of failure to contain or confine a load in the first degree if the person, with criminal negligence, violates (b) of this section and, as a result of that violation,  
(1) causes serious physical injury to another person; or  
(2) damages property of another person in an amount of \$1,000 or more.

CHAIR CLAMAN turned to AS 28.35.251(a), page 1, lines 5-9 and paraphrased as follows: "A person who commits the crime of failure to confine -- contain or confine a load in the first degree if the person, with criminal negligence, violates (b) ...

and then causes the injury or the property damage." That language gives the classification of the first-degree offense, he explained.

[3:05:30 PM](#)

REPRESENTATIVE LEDOUX asked whether there must be criminal negligence as to second-degree also.

CHAIR CLAMAN answered, "No," that is a strict liability offense.

[3:05:46 PM](#)

REPRESENTATIVE LEDOUX asked where that language is located.

CHAIR CLAMAN answered that the language is found under AS 28.35.251(b) page 1, lines 10-12, which read as follows:

(b) A person commits the offense of failure to contain or confine a load in the second degree if the person drives or moves a motor vehicle located with any material on a highway unless

[3:06:38 PM](#)

REPRESENTATIVE KREISS-TOMKINS commented that given the mens rea that Representative Kopp noted, adjusting criminal negligence to recklessness is more consistent with other class A misdemeanors. He asked the sponsor whether a class B misdemeanor would be amendable given the committee's current discussion and noted that the property damage and the \$2,000 of vehicular property damage pieces catch him. He commented that there is probably \$10,000 worth of property damage on his Jeep currently because he has never taken it into a shop to deal with it, which is five class A misdemeanors. He said he is uncomfortable with the language making it a class A misdemeanor, and the causing serious physical injury to another person piece feels more appropriate. He suggested potentially separating out those two issues.

[3:08:12 PM](#)

REPRESENTATIVE MILLETT remarked that she agrees with Representative Eastman because in correlating classifications for a class A misdemeanor and class B misdemeanor with criminal negligence and recklessness, the committee needs some time to show equity in class A misdemeanors and class B misdemeanors.

While she understands the intent, she said she believes "we're going overboard" with class A misdemeanors when it comes to "what you're trying to do," because it has progression in it, and she thought a comparative would be helpful.

CHAIR CLAMAN explained that a comparative may be helpful, except this legislation has both together in a first-degree offense. It may be that with a class A misdemeanor, even with criminal negligence for serious physical injury, this committee would be comfortable with a class A misdemeanor when serious physical injury is involved but feels differently about property damage. Therefore, possibly the direction to move into is to make it a class B misdemeanor as to property damage, and a class A misdemeanor when serious physical injury is involved, he suggested.

[3:09:51 PM](#)

REPRESENTATIVE EASTMAN restated that the class A misdemeanor is probably more than is necessary in this type of situation. He then noted testimony wherein someone advised that they had a secured load involving snow and ice, and when the snow and ice melted and a rock fell, it became an unsecured load. He suggested that the committee go back to the definition of a load to make certain it is defined consistent with the committee's discussions. It is not his belief, he offered, that any number of prosecutions under these types of situations would train the average member of the public dealing with snow, ice, pebbles, and so forth, on their cars. He opined that the public would not get the message based on stiffer penalties even in the class B misdemeanor category. He related that he is uncomfortable with criminalizing things that the committee would not necessarily think of as criminal activity when, usually, there is no criminal intent. He said he wants to shift the conversation outside of the criminal side and make sure that those kinds of situations and that type of behavior is treated more normally under civil sanctions. In the event someone caused damage, they could be taken to court in order to recover those damages under the normal process. He questioned whether a criminal conviction would help someone "be made well" because a rock hit their windshield. No matter the amount of training or how narrowly these types of provisions are tailored, "that stuff is still going to happen" and in some cases, maybe it is criminally negligent, but in a lot of cases it probably is not criminally negligent.

[3:13:11 PM](#)

REPRESENTATIVE KOPP clarified for Representative Eastman that the criminal offense would never apply unless the person had already demonstrated criminal negligence. The person must meet the criminal negligence standard, otherwise the person will not ever face a criminal [charge], he explained. In the event the person acted with criminal negligence and caused serious physical injury as a result of failing to secure their load, that person should be in criminal territory. Criminal negligence, he reiterated, is a gross standard of deviation from the care a reasonable person would exercise in that same circumstance, and if the issue is property damage the criminal negligence applies. In the event the person was not acting with criminal negligence, it does not matter if a person wipes out another person's entire \$45,000 pickup, if the accident investigation showed that it was an accident. By the way, he advised, if the person was criminally negligent there are many other statutes under which the person could be charged, such as vehicular assault, vehicular homicide with reckless endangerment, and so forth. He offered appreciation to Representative Eastman for his statement about not over-criminalizing things, and he appreciates the differentiation in Representative Eastman's mind, depending on the issue. But, again, having the mental state here "we're protected" on getting too far astray on that issue, he remarked.

CHAIR CLAMAN referred to the question of civil liability versus criminal liability and noted that one of the ways "we reflect our" society's values is when it is believed that certain conduct is so egregious it should be criminalized. That action not only reflects our values but it also reflects an expectation on the part of the public that is very different than civil liability. And, he noted that when he listened to Kelly Roy's testimony about what she experienced when someone did not secure their load, and the testimony from Robin Abel as to what happened to her daughter when someone did not secure their load, he does not believe this issue belongs solely in civil law territory. Criminal sanctions are appropriate, particularly, when serious physical injury occurs because someone failed to secure their load, and that person should be looking at potential criminal sanctions. He pointed out that the 1,392 unsecured loads at the Anchorage Solid Waste Services shows that something needs to change and it will not change solely with civil liability. The question about serious physical injury versus property damage is appropriate for the committee to try to determine the parameters, but he does not believe civil

liability is enough to express society's views in terms of the importance of securing loads, he stressed.

[HB 259 was held over.]

[3:17:24 PM](#)

**ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:17 p.m.