

HOUSE JUDICIARY COMMITTEE

February 23, 1987

1:30 p.m.

MEMBERS PRESENT

Representative John Sund, Chair
Representative Fran Ulmer, Vice Chair
Representative Sam Cotten
Representative Max Gruenberg
Representative Mike Navarre
Representative Robin Taylor
Representative Ramona Barnes

COMMITTEE CALENDAR

- HB 53 - An Act relating to penalties for violation of workplace safety laws.
- HB 121 - An Act repealing a provision related to payment of costs by private prosecutor.
- HB 125 - An Act relating to a cause of action for certain conduct involving discriminatory harrassment.

WITNESS REGISTER

Gayle Horetski
Assistant Attorney General
Criminal Division
Department of Law
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Phone: 465-3428
Position: Supports HB 121, Answer questions on HB 53 & HB 125

Janet Bradley
Executive Director
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Position: Supports HB 125

PREVIOUS ACTION

HB 121	DATE	PAGE	ACTION
	02/11/87 (H)	189	Read the first time - referrals Judiciary, Finance Governor's transmittal letter Zero fiscal note published Zero fiscal note and analysis

Committee Action: HB 121 heard first before Judiciary Committee on 2/23/87.

HB 125			
	02/11/87 (H)	195	Read the first time - referrals Judiciary, Finance Governor's transmittal letter Zero fiscal note published

Committee Action: HB 125 heard first before Judiciary Committee on 2/23/87.

HB 53			
	01/16/87 (H)		Profile released
	01/19/87	29	Read the first time - referrals Hess, Judiciary, Finance
	01/22/87	54	Cosponsor added: Davis
	01/30/87	100	Hess Rpt CS(Hess) 4DP, 3NR
		101	Fiscal note published
		116	Cosponsor added: Donley

Committee Action: HB 53 heard first before Judiciary Committee on 2/20/87; two amendments adopted; held for further discussion and new language.

ACTION NARRATIVE

TAPE 17 SIDE 1
Number 000

Chairman Sund called the meeting of the House Judiciary Committee to order at 1:35 p.m.

#HB 53
HJUD CMTE, 2/23/87
Chairman Sund announced that the committee would first take up CSHB 53 (Hess) which was held over. He described the changes made in the draft substitute.

Number 47

Representative Barnes arrived at 1:39 p.m.

Number 75

Representative Cotten voiced concerns about Section 5 and asked if the second offense required a conviction. Chairman Sund explained that the commissioner could proceed with a civil fine without a conviction.

Number 103

Representative Navarre arrived at 1:40 p.m.

Number 120

Representative Ulmer arrived at 1:41 p.m.

Number 138

Gayle Horetski, of the Department of Law, testified that there may be a problem with Section 5 because it says if a person is guilty of a misdemeanor the commissioner may also assess a fine. She stated it should clarify that a fine may be assessed independently, and not hinge upon conviction of a misdemeanor.

Number 190

Representative Cotten asked if the commissioner may assess a fine without a conviction. Ms. Horetski affirmed.

Number 265

Representative Gruenberg asked if there is a difference in the standards of proof between a civil and criminal penalty. Ms. Horetski said she was not familiar enough with OSHA procedures to answer that, but with regard to Alaska law there is a lower standard of proof for civil penalties.

Number 360

Ms. Horetski brought up concerns expressed by Jan DeYoung, of the Department of Law, regarding the substitution of the word knowingly because that term is more difficult to prove than wilfully in civil cases. She also pointed out that a change to a Class B misdemeanor may be a less onerous penalty than the federal OSHA penalty and thereby threatens federal funding by placing the state out of compliance.

Number 396

Chairman Sund suggested an amendment which would delete Section 5 of the CS and replace it with the Section 5 language in the HESS CS.

Number 417

Representative Gruenberg moved Chairman Sund's amendment one. There being no objection, amendment one was adopted.

Number 435

Ms. Horetski continued discussion about interpretation of knowingly versus wilfully. She noted that other states use the term wilfully in civil cases.

Number 456

Representative Gruenberg suggested changing knowingly back to wilfully in Sections 2, 3, 4 and 7 because they are civil penalties, and leave wilfully in Sections 5 and 6 because they are criminal penalties.

Number 497

Representative Cotten requested a matrix of definitions for the words knowingly, wilfully, recklessly, and intentionally, and which required the highest proof of intent for civil versus criminal cases. Chairman Sund explained that it takes less to prove reckless than knowingly, and wilfully is undefined.

Number 509

Chairman Sund moved amendment two to change knowingly to wilfully on page 1, line 10. Representative Taylor objected for purposes of discussion, then withdrew his objection. There being no further objection, amendment two was adopted. There was further discussion about whether to keep knowingly in Sections 5 and 6 and it was decided to keep it.

Number 611

Representative Ulmer moved for passage of CSHB 53 (Jud) as amended, and asked for unanimous consent. Representative Taylor objected and stated he would propose amendment three to delete Sections 3, 4 and 7. Representative Ulmer withdrew her motion.

Number 632

Representative Taylor moved amendment three. Representative Ulmer objected. Chairman Sund called for a vote. Representative Barnes and Taylor voted in favor of amendment three, Representative Ulmer, Representative Navarre, Representative Gruenberg, Representative Cotten, and Chairman Sund voted against it. The motion failed.

Number 657

Representative Gruenberg stated his concern with Section 8 in that it was unnecessary and would set bad precedent and because criminal penalties are already a matter of law. Chairman Sund felt it should remain in the bill for direction of the department.

Number 682

Representative Navarre moved amendment four to page 3, line 3 which reduces \$3,000 to \$2,000. There being no objection, amendment four was adopted.

Number 697

Representative Taylor moved to delete Sections 1 through 8, thereby eliminating the state OSHA program and turn it over to the feds. Representative Gruenberg objected. Chairman Sund called for a vote. Representative Taylor voted in favor, the balance of the committee voted against, so the motion failed.

Number 711

Representative Ulmer moved the committee pass CSHB 53(Jud) as amended with individual recommendations. There being no objection, CSHB 53 (Jud) passed out of committee.

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Number 725

#HB 121

HJUD CMTE, 2/23/87

Chairman Sund brought HB 121 before the committee and described the purpose of the bill. Representative Gruenberg asked about footnote 2 in the governor's transmittal letter and questioned if HB 121 would preclude private prosecution for criminal contempt.

Number 765

Ms. Horetski testified that it would not affect procedures already in place in other sections of the law. Representative Gruenberg questioned if HB 121 needed a letter of intent to explain. Ms. Horetski said it would not.

Number 780

Chairman Sund stated that the teleconference OFFNET was available for testimony on HB 125, so the committee would move on to that bill and go back to HB 121 later.

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Number 794

#HB 125

HJUD CMTE, 2/23/87

Janet Bradley, of the Human Rights Commission, testified in support of HB 125 and stated it was the number one priority of the Human Rights Commission, introduced the by governor at their request. She indicated that this was the result of a three year effort by the Discriminatory Harrassment Task Force and gave background information. Similar legislation had been introduced twice before, but problems arose because criminal sanctions were included. HB 125 only has civil action included.

TAPE 18 SIDE 2

Number 000

Ms. Bradley noted the zero fiscal impact and stated the commission particularly supported subsection (c) which requires notification to the commission.

Number 40

Representative Cotten referred to line 23 and questioned what other remedies might be available. He asked if the list in subsection (a) was meant to be exclusive of other causes of harrassment such as political beliefs. Ms. Bradley responded that other remedies would include filing a complaint with the Human Rights Commission to seek relief from discriminatory harrassment on the job, or seeking punitive damages through the court. She stated that the list is not meant to be exclusive, but that it lists causes which have been problem areas.

Number 84

Representative Cotten asked if someone causes physical injury or property damage, if the victim could be sued, and if so wouldn't that remedy already be available. Ms. Bradley testified that at present a person cannot sue for discriminatory reasons, but only for malicious destruction of property.

Number 120

Representative Taylor asked what other states have this type of legislation. Ms. Bradley replied that Washington, Oregon, and Idaho do, and that Maryland has appropriated money for a task force to research the need for legislation. She also listed groups which were active involved in this issue nationwide.

Number 195

Representative Taylor questioned whether current law has adequate remedies. Ms. Bradley said there were not. Representative Taylor asked if criminal penalties should be included in HB 125. Ms. Bradley noted that past legislation was fraught with problems because they included criminal penalties.

Number 231

Representative Gruenberg questioned discrepancies in language and categories between HB 121 and the Human Rights Act, such as age, sexual orientation, pregnancy, and marital status. Ms. Bradley stated she had no objection to adding the additional language and noted that HB 121 mainly addresses the problem areas.

Number 285

Representative Gruenberg referred to subsection (b) and noted that common law torts may exist to cover punitive damages, but that in order to get punitive damages, clear and convincing evidence must be shown. He stated that since HB 125 wouldn't change that standard he would propose an amendment to lines 18 and 19 which would award a prevailing plaintiff three times the amount of their actual damages, or \$2,000, whichever is greater. He asked Ms. Bradley for her comments. Ms. Bradley did not see any problem with it, but wanted to bring it up to the commission at their next meeting for their comments.

Number 330

Representative Cotten asked what it meant to maintain an action. Chairman Sund replied that it meant to file a law suit. Representative Cotten asked if there were limits on awarding punitive damages. Chairman Sund replied that it depended on the judge and whether it was district or superior court.

Number 372

Representative Taylor questioned the need for the legislation when civil laws already exist for awards for punitive damages. Chairman Sund questioned whether under current civil law evidence of discriminatory harrassment could be shown for punitive damages. Representative Gruenberg concurred with Representative Taylor, but noted that punitive damages are very limited and require clear and convincing evidence, which is the reason he plans to propose the aforementioned amendment.

Number 483

Representative Sund asked if there was anyone else who wished to testify on HB 125. He noted there was not. Ms. Bradley stated she would work with Representative Taylor and Representative Gruenberg regarding their concerns with the bill and provide requested information. Chairman Sund requested information regarding other remedies which are available under current law. Representative Taylor requested information regarding criminal sanctions which may be included in the bill. Chairman Sund indicated HB 125 would be held over for further work. Chairman Sund announced the committee would return to HB 121.

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Number 546

#HB 121

HJUD CMTE, 2/23/87

Representative Barnes gave an example of an individual bringing false charges against another which resulted in prosecution and asked if the victim of false charges would have any other recourse if HB 121 were passed. Ms. Horetski responded that a person would have recourse via torts and civil actions for false arrest, malicious prosecution, and such, and that punitive damages could be received under a civil complaint.

Number 582

Representative Gruenberg questioned the need for a letter of intent and referred to the case Firor versus Firor as an example. He wanted to be certain that criminal contempt can continue to be enforced in family law cases.

Number 599

Representative Taylor gave an example of malicious prosecution regarding a civil licensing action and questioned the removal of the state's obligation to protect people who are sued. Ms. Horetski pointed out that the statute deals only with criminal prosecution, there is no interaction with civil cases.

Number 643

Chairman Sund asked what the impetus was for HB 121. Ms. Horetski replied that it has been on the books since the 1800's to hold individuals accountable for costs of malicious prosecution. She said the Court System requested the bill because in the past year there have been five or six individual criminal charges in the Kenai area alleging such things as trespassing, violation of rights, and assault brought by private individuals against police officers who had arrested them. The criminal complaints have caused problems and confusion with the district attorney's office as to what to do with the charges. There is concern that the problem may spread.

Number 781

Representative Gruenberg moved that the committee pass HB 121 with individual recommendations. Representative Taylor objected. Chairman Sund asked for a vote. The motion failed so HB 121 was held over.

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Chairman Sund adjourned the meeting at 3:05 p.m.