

**ALASKA STATE LEGISLATURE**  
**HOUSE LABOR AND COMMERCE STANDING COMMITTEE**

February 2, 2004

3:25 p.m.

**MEMBERS PRESENT**

Representative Tom Anderson, Chair  
Representative Carl Gatto, Vice Chair  
Representative Nancy Dahlstrom  
Representative Bob Lynn  
Representative Norman Rokeberg  
Representative Harry Crawford  
Representative David Guttenberg

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 282

"An Act relating to contracts between the University of Alaska and its employees involving research or other development of intellectual property and to the authority of the president of the University of Alaska regarding employee contracts for development of intellectual property."

- MOVED HB 282 OUT OF COMMITTEE

HOUSE BILL NO. 339

"An Act relating to negative option plans for sales, to charges for goods or services after a trial period, and to acts that are unlawful as unfair trade practices."

- MOVED CSHB 339(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 367

"An Act relating to the licensing and regulation of sex-oriented businesses and sex-oriented business entertainers; relating to protection of the safety and health of and to education of young persons who perform in adult entertainment establishments; and providing for an effective date."

- MOVED CSHB 367(L&C) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HB 282

SHORT TITLE: UNIVERSITY EMPLOYEE RESEARCH CONTRACTS

SPONSOR(S): REPRESENTATIVE(S) FATE

04/23/03	(H)	READ THE FIRST TIME - REFERRALS
04/23/03	(H)	HES, L&C
05/15/03	(H)	HES AT 3:00 PM CAPITOL 106
05/15/03	(H)	Scheduled But Not Heard
01/22/04	(H)	HES AT 3:00 PM CAPITOL 106
01/22/04	(H)	Moved Out of Committee
01/22/04	(H)	MINUTE(HES)
01/23/04	(H)	HES RPT 3DP 1NR
01/23/04	(H)	DP: CISSNA, SEATON, WILSON; NR: GATTO
02/02/04	(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 339

SHORT TITLE: TRADE PRACTICES

SPONSOR(S): REPRESENTATIVE(S) MEYER

01/12/04	(H)	PREFILE RELEASED 1/2/04
01/12/04	(H)	READ THE FIRST TIME - REFERRALS
01/12/04	(H)	L&C, JUD
02/02/04	(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 367

SHORT TITLE: LICENSING SEX-ORIENTED BUSINESSES

SPONSOR(S): REPRESENTATIVE(S) MCGUIRE, GARA

01/12/04	(H)	PREFILE RELEASED 1/9/04
01/12/04	(H)	READ THE FIRST TIME - REFERRALS
01/12/04	(H)	L&C, JUD, FIN
01/30/04	(H)	L&C AT 3:15 PM CAPITOL 17
01/30/04	(H)	Heard & Held
01/30/04	(H)	MINUTE(L&C)
02/02/04	(H)	L&C AT 3:15 PM CAPITOL 17

**WITNESS REGISTER**

JIM POUND, Staff  
to Representative Hugh Fate  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Presented the sponsor statement for HB 282  
on behalf of Representative Fate.

REPRESENTATIVE KEVIN MEYER  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Testified as the sponsor of HB 339 and addressed changes in Version I.

SUZANNE CUNNINGHAM, Staff  
to Representative Kevin Meyer  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: During hearing on HB 339, answered question about Version I.

CLYDE (ED) SNIFFEN, JR., Assistant Attorney General  
Commercial/Fair Business Section  
Civil Division (Anchorage)  
Department of Law

POSITION STATEMENT: Testified in support of HB 339 and answered questions.

ANDREE McLEOD  
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 367.

REPRESENTATIVE LESIL McGUIRE  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Testified as one of the sponsors of HB 367.

KATHY HARTMAN, Co-Owner  
Fantasies  
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 367.

CAROL HARTMAN, Co-Owner  
Fantasies  
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 367.

REX BUTLER  
Anchorage, Alaska

POSITION STATEMENT: Testified as a representative of Crazy Horse and Teasers clubs in opposition to HB 367.

SHERMAN JONES  
Anchorage, Alaska

POSITION STATEMENT: As an employee at Fantasies, testified in opposition to HB 367.

JEANETTE JOHNSON, Owner  
Teasers and Crazy Horse  
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 367.

DOUG HARTMANN

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 367 and offered his experience as a dancer and bouncer.

#### **ACTION NARRATIVE**

#### **TAPE 04-7, SIDE A**

Number 0001

**CHAIR TOM ANDERSON** called the House Labor and Commerce Standing Committee meeting to order at 3:25 p.m. Representatives Anderson, Dahlstrom, Lynn, Rokeberg, Crawford, and Guttenberg were present at the call to order. Representative Gatto arrived as the meeting was in progress.

#### HB 282-UNIVERSITY EMPLOYEE RESEARCH CONTRACTS

Number 0050

CHAIR ANDERSON announced that the first order of business would be HOUSE BILL NO. 282, "An Act relating to contracts between the University of Alaska and its employees involving research or other development of intellectual property and to the authority of the president of the University of Alaska regarding employee contracts for development of intellectual property."

Number 0100

JIM POUND, Staff to Representative Hugh Fate, Alaska State Legislature, presented HB 282 on behalf of Representative Fate, sponsor. He said HB 282 allows the university to compete in research and development. Across the nation, many universities have moved towards a research role as a way of supplementing the high cost of education.

MR. POUND said this valuable research has been responsible for inventions, innovations, and supplementing the high cost of that education. It has also produced a profit by coordinating

through the private sector. Because of lack of financial incentives, however, based on the Alaska Executive Branch Ethics Act [AS 39.52], Alaska isn't allowed to participate. He paraphrased a portion of AS 39.52.010, which states in part:

Declaration of policy, (A) to discourage those officers from acting upon personal or financial interest in the performance of their public responsibilities;

He then paraphrased a portion of AS 39.52.170, which states in part:

Outside employment restricted. (a) A public employee may not render services to benefit a personal or financial interest or engage in or accept employment outside the agency which the employee serves, if the outside employment or service is incompatible or in conflict with the proper discharge of official duties.

MR. POUND explained that HB 282 will give the president of the university a recruiting tool. He or she will be able to negotiate intellectual property contracts and agreements with a researcher, who could then develop a project or commercially viable product. Based on negotiation, the researcher and the university could both benefit from that commercial enterprise through sale, entrepreneurial activities, or the development of an industry within the state. He said:

The agreement would allow the researcher to continue advancing work, which would help maintain staff at the university. And with passage of HB 282, we open the door to a new form of quality staff at the university, quality researchers, and, potentially, quality faculty who would be able to earn additional money that would not be coming out of the general fund.

Number 0285

REPRESENTATIVE GUTTENBERG asked Mr. Pound what he saw as the ultimate, long-term benefit of HB 282.

MR. POUND replied that there are many research projects currently taking place, such as nanotechnology research, at the University of Fairbanks. He said there have been advances having to do with mining, geothermal, and geophysical research. He saw the ultimate benefit occurring when a researcher develops

a valuable product and then works with the university in an entrepreneurial status. Both the researcher and the university would benefit financially from this process.

REPRESENTATIVE GUTTENBERG noted that he'd signed on to HB 282 as a cosponsor because he saw the benefit of research facilities affiliated with the university exploring nanotechnology or cold-weather research, for example.

MR. POUND said a researcher presently has the advantage of using university research facilities and the efforts of undergraduate students. An individual would not be able to duplicate these resources.

REPRESENTATIVE GUTTENBERG asked if the president [of the university] had expressed having problems with recruiting scientists.

MR. POUND offered his belief that this bill will improve the ability to recruit. Referring to a survey in the packet that indicated a retention problem in the university system, he said researchers have no incentive to stay "once they've gotten to a certain level."

Number 0460

REPRESENTATIVE DAHLSTROM asked Mr. Pound to clarify the section of bill information relating to inventions and patents. Relating her understanding that [patents] would be assigned to the university, she inquired about equitable compensation for the researcher who worked on the patent for 20 years, and what happens when that person retires and leaves the university system.

MR. POUND answered, depending on how the contract would be negotiated, that it would be part of the negotiation process between the researcher and the university with regard to "who gets what and when" ....

REPRESENTATIVE DAHLSTROM suggested it would depend on the negotiation skills of the professor involved, then.

MR. POUND replied in the affirmative.

REPRESENTATIVE DAHLSTROM requested information about other universities in the country that may handle intellectual

property rights in this manner, and whether these efforts are successful.

MR. POUND said he didn't have total numbers, but had provided information in the packet from two other states. He noted that Duke University Medical Center, a prime research facility in the medical profession, had developed new techniques that are considered intellectual property. He said both the professor or researcher and the university benefit from that greatly.

Number 0580

REPRESENTATIVE DAHLSTROM asked Mr. Pound:

Do you ... foresee any problem with ... professors doing research and getting to a certain point and thinking, "Oh, I've really hit on something." And, at that point, changing the focus of their research and maybe even, then, leaving the university, and so the students actually don't, then, have the benefit ... of their education and knowledge, because they're looking at it from just the financial aspect of the patent?

MR. POUND said he thinks that is the problem now. He indicated HB 282 would put in place a negotiated contract whereby a researcher would know up front what was expected of him or her. He added:

There is a potential reward for them remaining and continuing their research where it's already been started, and not taking it with them. And then, ... depending, again, how the contract is written, there is at least an implied right for the university to say, "Well, that's our property; ... whether you take it to Iowa or not, ... 50 percent of it ... is our property."

Number 0668

REPRESENTATIVE ROKEBERG asked about the university's current policy with regard to ownership of intellectual property.

MR. POUND referred to a handout, noting that currently for an invention, the inventor gets 100 percent of the first \$10,000 and the university gets zero; if the invention is worth more than \$10,000, the split is 50-50.

REPRESENTATIVE ROKEBERG asked, "Fundamentally, the university can set its own policy currently on these issues, ... but they're restricted from actually entering into business enterprises; that's the nature of the bill?" He also asked for specific instances at the University of Alaska when this legislation would have been helpful.

MR. POUND replied that Representative Rokeberg was correct with regard to current university policy. However, he wasn't aware of specifics that he could discuss due to personnel policies. He said it's a general policy issue. He referred to the instructors' survey in the bill packet and said there is a fairly large concern about the "outflux" of professors and faculty from the University of Alaska. He remarked, "We believe that this is an incentive to keep some of them there."

Number 0832

REPRESENTATIVE ROKEBERG said he believes this is positive, but declared a potential conflict of interest because he has a seat on the University of Alaska's EPSCoR [Experimental Program to Stimulate Competitive Research] board. He explained, "It has to do with experimental research with both the federal government and the University of Alaska, with the aim of endeavoring to get additional grants or research, and to facilitate the university's role in research, and to increase their funding."

CHAIR ANDERSON responded, "We'll object so that you vote on this." He went on to say he'd spoken with [Mark Hamilton, president of the University of Alaska] and had offered to sponsor this bill. Saying he supports the university and strengthening business and entrepreneurialship, he added:

This ... enforces that and says to researchers, ... that if you have an idea, you can partner with the university, and we will keep you here, and you can instruct our students and ... keep the talent in the school, rather than depart.

REPRESENTATIVE ROKEBERG noted that this bill invests the president of the university with the right to grant, or not grant, a business application. He asked what the role of the regents would be.

MR. POUND said he wasn't sure, but understood that most of the hiring and firing is done by the president.

Number 0947

REPRESENTATIVE DAHLSTROM moved to report HB 282 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 282 was reported from the House Labor and Commerce Standing Committee.

HB 339-TRADE PRACTICES

CHAIR ANDERSON announced that the next order of business would be HOUSE BILL NO. 339, "An Act relating to negative option plans for sales, to charges for goods or services after a trial period, and to acts that are unlawful as unfair trade practices."

Number 0985

REPRESENTATIVE KEVIN MEYER, Alaska State Legislature, sponsor, explained that HB 339 does two things. He said:

First of all, it's going to make it clear and concise when a business uses either free trial practices or negative option marketing practices. It's going to require that the seller make it clear and disclose all the material items and conditions of a free trial period. ...

Any consumer obligations that are required will be clear and will be known by the consumer. The seller is going to have to describe, in detail, all the charges that are going to be made after the ... free trial period, and how these charges are calculated, and how they are going to be paid.

Bottom line: the seller may not charge a consumer for a good or service that was provided under a free trial period unless the requirements ... have been made [and] satisfactorily are met by the business. And there's a list of all those requirements ... in the bill itself for this free-trial-period plan.

Number 1200

REPRESENTATIVE MEYER continued:

The second part ... of this bill has to do with negative option plans. And they're defined as a type

of arrangement where a seller provides goods or services to someone who doesn't necessarily want them or order them, but you just receive them. And then it requires you to take a proactive position to ... say, "I don't want these," or to stop the payment.

Some businesses have used this; they see this as a successful method to get their product out there to various consumers because, frankly, we're all busy. A lot of us have two, three jobs, kids, and we get something in the mail, we go, "OK, I don't really want this, but it's only 24 bucks; I'm going to keep it." And that's what they're ... hoping for, is that you don't send it back.

REPRESENTATIVE MEYER highlighted the unfairness of putting the burden on consumers to take action to get rid of something that they don't necessarily want or order. And it can be very costly, he noted, citing an example when he was charged \$8 a month and was unable to recover the money from a travel agency. He continued:

This bill prohibits the use of a negative option plan unless certain disclosures, again, are made to the consumer, ... and those disclosures are listed in this bill too. And what this bill does is, it aligns Alaska Statutes more closely to the federal statutes and the federal rules dealing with negative-option marketing. And it removes any uncertainty in our statute of what role and responsibility business has in protecting a consumer, so when people are doing business up here, it will be clear as to what they can and can't do.

Number 1217

REPRESENTATIVE MEYER indicated the Department of Law had worked closely with him on this, and noted that Mr. Sniffen would testify via teleconference. Referring to the proposed committee substitute (CS), he said the changes are fairly minor.

Number 1239

REPRESENTATIVE GATTO moved to adopt the proposed CS, Version 23-LS1265\I, Bannister, 1/29/04, for discussion purposes.

CHAIR ANDERSON announced that [Version I] was before the committee for discussion purposes. In response to members' requests, he said [the committee aide] would distribute copies.

[Chair Anderson called on Mr. Sniffen, but there was no response.]

Number 1319

REPRESENTATIVE DAHLSTROM said she thinks this is important, especially for people who don't understand the system or vulnerable, older Alaskans. She noted that when she'd had to deal with this kind of a situation personally, the burden of proof was always on her to make phone calls, write letters, and so forth.

REPRESENTATIVE MEYER agreed that the elderly are probably the most vulnerable to these marketing techniques. He said he believes this bill will clarify what is required for the State of Alaska. He added that [the Department of Law] can go after in-state offenders, and for out-of-state ones, federal statute could be used as well.

REPRESENTATIVE ROKEBERG referred to Section 1 of the original bill and said there seems to be a significant change in Version I with regard to prohibiting free trial periods. He expressed concern as a small-business owner, and asked whether reaching into one's pocket and giving someone a free pass to a gymnasium would be subject to this, for example.

Number 1429

SUZANNE CUNNINGHAM, Staff to Representative Kevin Meyer, Alaska State Legislature, responded, "No." She paraphrased [Version I] subsection (e), page 2, beginning at line 13, which read:

This section does not apply to a seller who offers, promotes, advertises, or otherwise gives a consumer goods or services for free if the seller does not impose any obligations on a consumer who accepts the free goods or services.

MS. CUNNINGHAM remarked, "So, if you were to give myself a free pass to your gym, and if there's no obligation that I join the gym or pay \$15 when I walk in the door, then this does not apply to it."

Number 1500

CHAIR ANDERSON asked about AOL [America Online, Inc., an Internet service provider], which costs perhaps \$30 a month and yet stores give away [compact disks that provide] the first 500 hours free. He said he doesn't use 500 hours a month, and noted that AOL didn't give him free hours when he signed up. He asked whether this bill would affect that, or whether it's more of a federal issue, since [AOL] transcends all states.

MS. CUNNINGHAM said she believes it would be more of a federal issue, but deferred to Mr. Sniffen to answer that.

REPRESENTATIVE GATTO expressed a negative opinion of businesses that say they're giving a free month of a good or service, but not until the third month, after the consumer has paid for the first two months.

REPRESENTATIVE MEYER noted that he'd been relying on Mr. Sniffen [who wasn't available on teleconference yet] to answer some of these questions. He added that as long as it's disclosed and in writing, and the consumer is fully aware of what he or she is signing up for, the foregoing situation would be fine.

Number 1638

REPRESENTATIVE GATTO asked whether this will absolutely prevent having a company provide something like a phone service without the consumer's positive assent.

REPRESENTATIVE MEYER said yes.

REPRESENTATIVE DAHLSTROM noted with regard to communications, there was a specific ruling related to that. She added that the Regulatory Commission of Alaska (RCA) determines those issues with that industry.

REPRESENTATIVE GUTTENBERG asked if undisclosed balloon payments are covered under HB 339, such as when a person buys a television and the interest is deferred.

REPRESENTATIVE MEYER responded that the consumer would have to sign a written consent and clearly accept terms; the onus would then be on the business to prove it had disclosed the terms to the customer, and have this proof in writing.

Number 1728

CHAIR ANDERSON, in the absence of testimony from Mr. Sniffen, directed the committee to pages 1-2 to discuss whether there was discomfort with the [disclosures]. He said he was comfortable with paragraphs (1) through (4), which read:

(1) any obligation by the consumer to purchase a minimum quantity of goods or services after the free trial period ends;

(2) a description of all charges that will be made after the free trial period ends and how those charges will be calculated;

(3) whether any charges for goods or services will include postage;

(4) any other obligations the consumer assumes by accepting or using the goods or services within the free trial period.

Number 1756

REPRESENTATIVE ROKEBERG asked for verification that Section 1 relates only to consumer goods or services, rather than, for example, free rent for an apartment rental.

REPRESENTATIVE MEYER said that was his understanding.

[Representative Rokeberg deferred an additional question until after Mr. Sniffen testified.]

Number 1785

CLYDE (ED) SNIFFEN, JR., Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Anchorage), Department of Law, informed members that in spite of technical problems, he'd listened to the previous discussion. He said the department has been working closely with Representative Meyer's office to come up with the language in the bill, and it's intended to address a lot of the issues being discussed by the committee. He continued:

We did have some problems last year with one of the utility companies trying to get consumers to agree to pay for services that they had no idea they were paying for, through a negative option plan. And it was our position that, essentially, consumers should never have to pay for anything that they don't ask for. You shouldn't just have luggage show up on your doorstep and you get to keep it, if you want it; if

you don't want it, send it back. And that's what this bill does: it prevents that exact kind of thing.

Some of these other issues I heard the committee discuss relating to ... "buy three months, get one month free," other types of offers, might be a little outside the scope ... of this bill. This bill really targets two specific types of conduct: the free trial period, which is, ... "Have this merchandise for 30 days and if you like it, keep it and we'll bill you." Or another sort of twist on that is, "Try our cable for 30 days, and if you decide to watch a movie on this premium channel, then you're automatically signed up for that unless you call us and tell us you don't want it." That's sort of a mix of a free trial period along with a negative option plan. ...

The target of this kind of legislation is really ... the bigger utility companies and national chain stores who might already have your business. You already have cable, you already have phone service, and they want to get you to sign up for additional services that they offer that you may or may not actually want.

And a lot of these are small-dollar things that consumers just won't blink an eye about. ... It's \$2 a month; it's \$4 a month. ... You get a notice with your billing: "Oh, by the way, we've decided to sign you up for this extra ... voice calling plan, and if you don't want it, you have to tell us." And we think federal legislation prohibits that.

Number 1877

MR. SNIFFEN continued:

We have some consumer protection language in our current consumer protection Act that probably prohibits that, but it's not nearly as clear ... as this bill. So we certainly support this, and see a need for it in Anchorage. And I don't think it imposes an incredible burden on businesses at the same time.

MR. SNIFFEN concluded by saying it's simply a disclosure type of legislation, with the need to get the consumer's consent beforehand.

Number 1908

REPRESENTATIVE GUTTENBERG referred to page 1 [lines 10-11], "shall clearly and conspicuously disclose all material". He also referred to page 2 [lines 7-8], "The form for the written consent must be prepared by the seller". He asked if there is any standard for the form in terms of format and clarity.

MR. SNIFFEN said that's an excellent question. The language in the bill just requires it to be "clear and conspicuous", which he surmised would be on a case-by-case basis. He noted that there aren't any definitive standards as to the size of the type, for example, but said "clear and conspicuous" gives a little more room to look at the circumstances. He cited auto dealers as an example, and suggested that most people know what "clear and conspicuous" is.

Number 2010

REPRESENTATIVE ROKEBERG paraphrased the first sentence of Section 1, subsection (c), which read:

Before offering, promoting, advertising, or otherwise giving a consumer goods or services for a free trial period, a seller shall obtain express written consent from the consumer to the free trial period.

REPRESENTATIVE ROKEBERG asked how that would be done in a general advertising campaign. He inquired, "Are you making the assumption that the consumer would send for, or consent to, the free trial period concurrent with the offers to accept the free trial period?"

MR. SNIFFEN said it's an excellent question. Noting that he was reading it as Representative Rokeberg was, he suggested rewording would be possible. He added:

I think what you're suggesting is a business should be able to run an advertisement that said, "Come on into our store and sign up for a free 30-day trial period." And you shouldn't have to get written permission from a consumer to run that ad. I understand that concern, and there may be a way we can rework that language a little bit to clarify that.

MR. SNIFFEN suggested a possible solution for subsection (c) purposes only, to say "before offering or giving a consumer" and then delete the "promoting or advertising" language.

REPRESENTATIVE ROKEBERG referred to advertising, subsection (b), and the "for disclosure" language. He asked about fine print.

MR. SNIFFEN responded, "It would just need to be clear and conspicuous, and if we saw something in ultrafine print that required a magnifying glass to read or understand, we would consider that to be a violation."

Number 2130

REPRESENTATIVE ROKEBERG said he thought it important that this be clear. He said the committee doesn't want to remove legitimate, free opportunities for the consumer.

Number 2150

MR. SNIFFEN, in response to Chair Anderson, offered conceptual language to be substituted in subsection (c), page 2, line 5, along with an explanation:

Remove the terms "promoting and advertising" from that line, so the ... section would read "before offering or otherwise giving a consumer goods or services", and then continue with that paragraph. That would at least allow advertising for a free trial period, in a certain manner, before the consumer would have to enter into a written agreement.

Number 2183

REPRESENTATIVE ROKEBERG moved that the foregoing be adopted as Amendment 1.

Number 2185

REPRESENTATIVE DAHLSTROM objected for purposes of discussion and asked the sponsor to comment.

REPRESENTATIVE MEYER agreed with Amendment 1, but noted that it might also apply to page 1, line 9.

MR. SNIFFEN said he didn't believe it would harm the legislation to make that change as well.

REPRESENTATIVE ROKEBERG said he wasn't certain about doing the same amendment there, however, because of the desire to make sure that the promotion and advertisements still have some sideboards. He suggested a need to look at it.

Number 2223

REPRESENTATIVE CRAWFORD began discussion of what later became Amendment 2. He proposed that changing "before" to "when" would make more sense. He asked how those things would be provided before advertising.

MR. SNIFFEN responded:

I don't know that there's really a semantic difference between "before" and "when" offering. The intent, I think, of the legislation here is to say, "Before you engage in this kind of activity, we want to give these kinds of disclosures to the consumer." ... If you say, "Before you advertise, for example, you have to do these things," I think Representative Crawford is correct: it would happen at the same time as the advertisement, or the advertising would include these kinds of disclosures. And I read this to mean that, but I can see how a different reading could mean something different.

REPRESENTATIVE MEYER said he thought that if the recommendations that Representative Rokeberg had proposed were made, Representative Crawford's concerns would be rectified. He asked whether Amendment 1 needed to be made in both subsection (b), page 1, and subsection (c), page 2.

MR. SNIFFEN referred to the proposed changes in subsection (b), page 1, line 9, and remarked that removing "promoting and advertising" would allow a seller to advertise or offer, even though [the consumer] would be required to go into the store to find out more details. He added:

But when you actually went into the store and actually signed up for the deal, before you signed on the dotted line, [the business] would have to make the disclosures, as required, under this statute.

It really is a policy call on whether you want the advertisements to include the conditions of the offer,

or are you going to let the advertisement bait the consumers into the store, and then - when they actually sign on the dotted line - have that document disclose the terms of the offer.

MR. SNIFFEN recommended that the advertisement at least contain some elements of the offer so people aren't being lured into the store when they wouldn't have gone if they'd known the details. He said that's the main difference he sees in having that language in subsection (b), as opposed to having the "promoting and advertising" language on page 2, line 5, subsection (c).

Number 2370

CHAIR ANDERSON asked if there was any objection to adopting Amendment 1, deleting "promoting and advertising" from page 2, line 5. There being no objection, it was so ordered.

REPRESENTATIVE ROKEBERG agreed with Representative Crawford on the use of "before" in subsections (b) and (c).

**TAPE 04-7, SIDE B**

Number 2385

REPRESENTATIVE ROKEBERG commented, "You couldn't have 'before' and 'concurrent' or 'concurrently'. ... Maybe 'when' would be better."

CHAIR ANDERSON asked Mr. Sniffen whether that makes sense to have "when offering" on page 1, line 9, and on page 2, line 5.

MR. SNIFFEN said he didn't see any problems with it.

Number 2357

REPRESENTATIVE GATTO proposed perhaps substituting "after offering".

MR. SNIFFEN countered that it might allow too much leeway to the prospective sellers to make a pitch and trap the consumer. He restated the bill's purpose: to bring disclosures out before a consumer is obligated to do anything.

REPRESENTATIVE GATTO asked about "upon offering".

MR. SNIFFEN agreed this would work, or "when offering" would also work.

Number 2311

CHAIR ANDERSON interpreted Amendment 2 from Representative Crawford's previous suggestion: On page 1, line 9, and on page 2, line 5, delete "before" and insert "when".

CHAIR ANDERSON asked whether there was any objection to adopting Amendment 2. There being no objection, it was so ordered.

Number 2291

REPRESENTATIVE ROKEBERG referred to [Section 1] subsection (b), paragraphs (1) to (4). He asked whether it's correct that when [a business] is advertising, these terms must be in the advertisement.

MR. SNIFFEN emphasized the need to address the four [paragraphs] of subsection (b). Although there are no specific terms, he said the material terms need to be included in some clear and conspicuous way in the offer. In further response, he said, for example, that if the charges for the goods or services required paying for postage to receive them, there could be some disclosure that the offer doesn't include free postage, or that the consumer is responsible for those charges.

REPRESENTATIVE ROKEBERG noted that [paragraph (3)] says "whether any charges will be included", not "if".

MR. SNIFFEN agreed, suggesting either could be used. In further response, he said this language comes straight from the federal statute that is very similar to HB 339. He added:

However the seller wants to address that postage - if there isn't any, sometimes silence can be confusing. But to say that the offer includes all postage and handling charges, for example, here in Alaska, that could be important because that could consume a large part of the cost of the goods or service. ...

Of course, it's up to the committee if you want to only have to disclose that if there is an obligation on the consumer, or ... you can let it be silent if there is not an obligation on the consumer. That would be the effect of changing ... the word "whether" to "if".

Number 2202

REPRESENTATIVE GATTO began discussion of Conceptual Amendment 3. He asked Mr. Sniffen whether "postage" is too focused, since there are different ways of transporting goods.

MR. SNIFFEN said that's an excellent point and that he'd not object to amending that to just say "includes shipping charges".

REPRESENTATIVE ROKEBERG suggested "shipping and handling".

Number 2165

REPRESENTATIVE GATTO moved to adopt Conceptual Amendment 3: On page 2, line 2 [paragraph (3), delete "postage" and insert "shipping" or "shipping and handling".

CHAIR ANDERSON announced that it would be "shipping and handling". He asked whether Representative Meyer objected.

REPRESENTATIVE MEYER said he had no objection.

CHAIR ANDERSON asked whether there was any objection to adopting Conceptual Amendment 3. There being no objection, it was so ordered.

Number 2146

REPRESENTATIVE ROKEBERG reiterated Representative Guttenberg's issue with small print, and asked Mr. Sniffen if there are regulations on this issue.

MR. SNIFFEN said there are no regulations on the size of print, although the [department] could certainly adopt some. The requirement under this language is simply that it must be clear and conspicuous, which could be dealt with on a case-by-case basis. He added that "clear" and "conspicuous" have been judicially defined in a variety of circumstances, and suggested the department could probably "make a run" at violations dealing with small print.

Number 2111

REPRESENTATIVE GUTTENBERG asked if there were any issues concerning interstate commerce.

MR. SNIFFEN responded that he didn't believe so and remarked, "We don't have a problem here with a lot of outside companies engaged in this practice." As an example, he cited Borders Bookstore in Anchorage and explained:

Well, Borders is a national chain, and they're subject to a lot of federal regulation. And to the extent ... they are complying with the federal regulation, nothing in our statute here ... would change that. So I don't think there's a burden on interstate commerce through this language, that doesn't already exist through other federal statutes.

CHAIR ANDERSON asked whether anyone else wished to testify. He then closed public testimony.

Number 2049

REPRESENTATIVE DAHLSTROM recalled stating an objection [to adopting Version I] and removed it.

Number 2038

REPRESENTATIVE ROKEBERG moved to report CSHB 339, Version 23-LS1265\I, Bannister, 1/29/04, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 339(L&C) was reported from the House Labor and Commerce Standing Committee.

The committee took an at-ease from 4:20 p.m. to 4:23 p.m.

HB 367-LICENSING SEX-ORIENTED BUSINESSES

Number 2016

CHAIR ANDERSON announced that the final order of business would be HOUSE BILL NO. 367, "An Act relating to the licensing and regulation of sex-oriented businesses and sex-oriented business entertainers; relating to protection of the safety and health of and to education of young persons who perform in adult entertainment establishments; and providing for an effective date." [Before the committee, adopted as a work draft on 1/30/04, was a proposed committee substitute (CS), Version H.]

CHAIR ANDERSON informed members that public testimony would continue, and requested that testimony be limited to three

minutes apiece. He noted that Representative McGuire, one of the two sponsors, was present to answer questions. He also noted that he would propose an amendment.

Number 1989

ANDREE McLEOD expressed appreciation for efforts to protect minors under age 18 from predators and so forth, but voiced concern that HB 367 has far-reaching effects on people 18 and older in terms of freedom of expression and free speech. Noting that this is called a "sex-oriented business" bill, she suggested it might be prudent to change it to "adult-oriented business" because sex isn't necessarily occurring. She said:

I believe this is a local issue that's just come up, in front of our community council. I am the vice president of Tudor Community Council. We dealt with it; I voted against the resolution, although our community council passed it. This is local because local governments can establish and limit what will be allowed and tolerated in their communities, but I don't believe the state has any business in it. ...

What really concerns me is that government is telling women, 18 years old and older, what they can and cannot do with their bodies; ... I caution this body to be mindful of that. There are already laws addressing illegal activities, especially when they deal with minors under the age of 18, and prostitution. And the onus is on ... the police departments to enforce those [laws] and go after the adults and the predators.

But, again, in this country we value our rights of dealing with freedoms of expression, and I would, again, caution you to not behave as censors because you don't find them to your liking, based on your morals and beliefs.

In the second paragraph of the sponsors' statement it's mentioned that it's likely unconstitutional to ban 21-year-olds from these jobs. So you already understand that there might be an unconstitutional issue here. We are talking about performance art, and it's a century of performance art.

Number 1876

REPRESENTATIVE GATTO asked if Ms. McLeod was saying state protection isn't needed for minors, and it can be done locally.

MS. McLEOD replied no, reiterating that she appreciates efforts to protect minors under the age of 18. She referred to the second paragraph of the sponsor statement and noted that it mentions that it is likely unconstitutional to ban [those under] 21 years from these jobs. She said this is a censoring of performance art.

Number 1836

REPRESENTATIVE LYNN offered his understanding that this bill doesn't ban this type of activity, but licenses it.

Number 1825

REPRESENTATIVE LESIL McGUIRE, Alaska State Legislature, one of the sponsors of HB 367, responded:

Suffice it to say, I think what we're doing here is constitutional. We are walking a fine line, and we realize that, but we have good news to report, that in Barnes v. Glenn Theater, Inc., which was reported out of the United States Supreme Court in 1991 - very recent - what we're seeing is a trend in the Supreme Court that goes toward saying that in the past, conduct has been considered a form of expression, and yes, that's true. But that said, we want to give a greater role to states and local governments in countering that by saying if you have a substantial state interest in curbing the secondary effects of something that, in fact, may involve speech and may involve conduct that comes out of that, that the state does have a role and, in fact, an obligation. That's one.

And number two: the Supreme Court in that case ... made it very, very clear that you have to be careful when you talk about conduct as being equated with free speech, and that all types of conduct - including walking down the street, chanting a song that maybe you learned in Girl Scouts, or going to meet your friends for lunch, or so on - there are all kinds of things that we engage in as humans that are conduct that can be described as "expression."

And so what you are seeing, Andree [McLeod] is absolutely right. This is an area that has had constitutional challenges and controversy. But it is my belief, and Representative Gara's, that you are allowed to license. In fact, ... I would state that 100 percent. ... Within the license, I believe - and we believe from our case law - that you can make an age-based restriction on that license.

Number 1720

REPRESENTATIVE McGUIRE continued:

So we are not banning nude and semi-nude dancing in the state of Alaska under any stretch of the imagination. We are not even going as far as other states have. For example, in the case that I just mentioned by the Supreme Court, Indiana went so far as to say, "You have to have pasties, and G-strings, no matter what age you are." ...

What we are saying is, you can do that in the state of Alaska, but you have an age-related restriction that's associated with it, so that when you apply for a license, you have to demonstrate that you're of a certain age. And we're also requiring that the establishment itself be licensed.

The final thing, [Ms. McLeod]: I appreciate what you say about local governments, but the fact is, local governments aren't regulating this industry. What we know from testimony from the state troopers, the APD [Anchorage Police Department] and the [Alcoholic] Control Beverage Board is that these clubs have gone unregulated. ...

Number 1707

REPRESENTATIVE McGUIRE continued:

And so you have no oversight that's going on. And the police, in their testimony, if you recall, said, "We would love to have some kind of a legal framework that gives us an excuse, that gives us an opportunity, whether it's just a mere fact of checking licenses.

Right now, ... the standard is much higher. So ... that's where we're at. We believe that we're on comfortable ground. ... We don't maintain that it won't be challenged, but we think it would be challenged whether or not we were merely licensing at 18 or 19. We think that the folks that you're going to hear from online are going to absolutely oppose anything that requires regulating of their industry or asking them to pay for that regulation. ... And I think [that] is logical: you would expect they would oppose that.

CHAIR ANDERSON called on Ms. Kathy Hartman.

Number 1635

KATHY HARTMAN, Co-Owner, Fantasies, asked whether Ms. McLeod was allowed to respond.

CHAIR ANDERSON replied that the question was posed to the sponsor, who'd answered it.

MS. KATHY HARTMAN said she and her sister, who also owns the business, have been in business for 15 years and don't have many regulations on their business. However, they've tried to self-regulate. Indicating she hadn't had an opportunity to review the new proposed CS, she noted the need for more time to research it. She agreed with Ms. McLeod that [she and her sister] don't consider their business to be sexually oriented, but more adult-oriented, dealing in performance art rather than sex. She explained:

We are not a participation sport so much as a spectator sport, if you will. People come in to watch; they don't come in to participate. We have various and sundry laws already on the books that regulate most of the issues that are in this bill. If the city police and the people that are supposed to be regulating this can't regulate it at this point, [what makes] anybody think that somebody else is going to come in and regulate it more, with more laws, particularly when a lot of the laws are just redundant. They just [do] things that are already on the books that are not being enforced, if that is the problem.

At the last public safety meeting that I attended, Chief Monegan [of the Anchorage Police Department] told us that the police had better things to do than deal with legal businesses that are already regulated.

Number 1551

CAROL HARTMAN, Co-Owner, Fantasies, voiced concern about dancers' having to take classes about STDs [sexually transmitted diseases] and self-defense, for example; objected strongly to having her business called a sexually oriented business [SOB], saying it's an adult-oriented business, which is how it's been referred to in other codes; objected to having all these regulations; and said there is no sex involved and thus the STD [education requirement] is a moot point.

MS. CAROL HARTMAN said people who are 18 years old are adults, and should have every right and be able to work wherever they want. To work in another industry, she said, they don't have to follow these rules and regulations, take classes, or learn about other jobs. So why should they have to for this industry? Citing a 10-year study done in Las Vegas on dancers and their customers, she said it showed that STDs occur on average 20 percent of the time among typical same-age females; with dancers, it was only 9.6 percent. She concluded:

There was a lot of other things covered in there, too, but at three minutes, I'm not going to be able to cover it. I've got a lot of Supreme Court rulings here, too, that I'd like to get into, but obviously we don't have time. And I just would think that we should be given a little bit more time to go over this and study it, and come up with some more answers and questions for you.

Number 1439

CHAIR ANDERSON asked that Ms. Carol Hartman send any written ideas regarding those cases or her thoughts to the committee. He pointed out that the bill had further committees of referral.

REPRESENTATIVE ROKEBERG asked Ms. Carol Hartman if the dancers in her business are hired under the wage-and-hour Act or are independent contractors.

MS. CAROL HARTMAN replied that they had never done independent contracting, which she believes would be against the law. She

offered to show paperwork from her business that had to do with employees.

Number 1364

REPRESENTATIVE ROKEBERG asked Ms. Carol Hartman if she allowed people over the age of 21 into her under-21 club, and if many of her clientele were military personnel.

MS. CAROL HARTMAN replied that most of the dancers, employees, and patrons are over 21. On Fridays and Saturdays she sees some who are 18, 19, or 20 years of age, but basically it is an older clientele. She declared, "We have a lot of military."

Number 1356

REPRESENTATIVE DAHLSTROM asked that Ms. Carol Hartman include information about the study from Las Vegas in the information she would provide to the committee. She also inquired about the licensing process there.

MS. CAROL HARTMAN said she didn't know. She clarified that she had information from "Legal Economics, Incorporated," and mentioned information about Supreme Court rulings on licensing and licensing applications that were ruled unconstitutional, but didn't have copies with her at the time.

REPRESENTATIVE McGUIRE, noting that her office had information on Las Vegas, San Diego, and Los Angeles, added:

It is far more stringent. This [bill] barely scratches the surface of the licensing requirements that are in place in those communities, and many more communities. Those were just the three that we looked at. So ... I think it's important that people understand, while Las Vegas will tout that as one of their industries and attractions, they also step up to the plate in terms of licensing and responsibility that's [commensurate] with it.

Number 1235

CHAIR ANDERSON noted that he was formerly associated with the Anchorage CHARR [Cabaret Hotel Restaurant & Retailers Association]. He asked if any associations that are members of CHARR or ARBA [Anchorage Restaurant and Beverage Association] had written Ms. Hartman or taken a stance on this.

MS. CAROL HARTMAN indicated she'd ask them about it.

Number 1157

REX BUTLER, saying he represents Crazy Horse [club] and Teasers [under-21 club] and noting that owner Jeanette Johnson was present, asked what research had been done in Anchorage to establish the need for this regulation. He expressed concern about having an opportunity to look at it and comment on it. He also expressed concern that isolated instances may have been encountered and thus led to a request for this regulation. He provided an Internet address, "legaleconomics@aol.com" - saying Dr. Robert Schmidt (ph) and Dr. Alan Slotman (ph) apparently did this, a 10-year study of 700 dancers and 400 patrons; he also provided a phone number, (702) 579-4101.

MR. BUTLER emphasized the desire to review the research or complaints in order to determine whether this additional regulation is needed. Also noting that dancing is a transient business, he explained:

Young ladies will come in, sometimes just for the summer, and work. Some will just come in just to work for winter. Now, you want the club owners to pay for these people to have STD testing, when I'm not sure that ... that's necessary - and certainly owners of the businesses are concerned - and to have career training, and self-defense classes where we're not even sure ... that any dancer's ever been harmed by a patron, or that ... any dancer has ever had STDs, or needs career training.

But the fact of the matter is, ... most of the dancers in town are over 21. But aside from that, there are lots of them. ... You've got three or four clubs ... in Anchorage that feature dancers - maybe five - to put in enough money to pay for all of this. And, of course, that's creating a burden ... on the clubs. And, of course, if they don't comply, then they can lose their license and what-have-you. So I'd also ask the committee to please review ... that aspect of it. And certainly, when it gets to [the House Finance Committee], they need to take that into consideration.

Number 0985

CHAIR ANDERSON informed Mr. Butler that last week's testimony included "a doctor from Duke University, on mental and emotional brain formation, and how this actually does adversely affect, in this case, young ladies who are dancing, under 21, in terms of the potential for ... anything from language to touching, assault, and other things, that certainly he believes and others believe do occur in these establishments." He continued:

Secondly, we heard ... a lot of representation from the Anchorage Police Department, in fact, so many that we had to cut some of the officers off, and I think we only heard from four, stating that, in actuality, there are problems. And they're not stating one club or another, and we were talking about under-21, not Crazy Horse, ... but the establishments that afford 18-year-old women to dance.

And they talked about that sometimes there are high school girls dancing and certainly high school patrons. It was noted that they're 18-year-olds. ... The state troopers came on and endorsed the bill wholeheartedly, and said ... they agree with the direction it's going. And then, finally, the other person ... that testified was ... the PTA chair.

CHAIR ANDERSON concluded by saying he'd have his staff send Mr. Butler and the Hartmans a packet.

REPRESENTATIVE DAHLSTROM disagreed that patrons don't "go after" the dancers. She remarked:

We do have proof, and I would use as an example the famous Alaska case of ... the baker, Mr. Robert Hanson, who years ago specifically targeted nothing but dancers and prostitutes. And that's a case that terrorized our entire state for many years, and took the lives of dozens ... of women of all ages.

MR. BUTLER said he understood that, but pointed out that it was years ago and that Mr. Hanson was convicted of numerous crimes that this bill doesn't even address. He reiterated that he wondered whether some sporadic instances are now fueling this.

Number 0800

REPRESENTATIVE McGUIRE remarked:

When I talked earlier about the role of local governments and state governments, what we know is that we're allowed to place ... reasonable time, place, and manner restrictions ... because we have a substantial state interest and there are secondary effects.

To establish a substantial government interest, ... a city must show that in enacting particular limitations, it did rely upon evidence permitting a reasonable inference that absent such limitations, the adult business would have harmful secondary effects. ... So that's important, and it goes to what Mr. Butler was saying.

What is also important is, a city need not conduct new studies or produce evidence independent of those that have already been generated by other cities to demonstrate the problem of secondary effects, and may rely upon studies by other cities and legal opinions on similar issues.

So that's what's really important in ... the testimony that you heard. Some of it by the neuropsychologist was direct; by the PTA president, it's direct. And it stems, Mr. Butler, ... directly from the fact that teachers and parents are reporting that there are students in the classrooms ... in our schools in the state of Alaska that are stripping. And some of them are not 18. Some of them are 18. Some of them are 17. Some of them are 16.

And they are also reporting that in these classrooms some of the young men are patronizing these places. It's having a disrupting effect on education. There are taunts that go on to these young women. They are called all kinds of names. ... They are compromised, in the opinion of teachers and parents, basically, for life. ... They are put into a category of a person, and are treated within the school setting ... in that way.

And in the opinion of one teacher I talked to, she believes ... it had a direct effect on one student dropping out that she knows of. I don't know how many more. So that is an impact on our state.

Number 0658

REPRESENTATIVE MCGUIRE referred to a study done on strip clubs, according to strippers, exposing workplace sexual violence; she offered to provide it to Mr. Butler or anyone else, and noted that it had been read by Representative Gara at the previous bill hearing. It says 78 percent of women in these clubs report being grabbed by their arm; 94 percent, grabbed by their waist; 56 percent, bitten; 78 percent, licked; 39 percent, slapped; 72 percent, punched; 72 percent, pinched; 61 percent, spit upon; and 83 percent, having their costume actually pulled off. With regard to the "legal part," she remarked:

It is relevant that we have local information, but it is not the entire story. We are allowed to rely upon studies that have been done Outside. We are allowed to rely upon legal opinions of other communities. And that's what we've been doing, is building ... that record.

CHAIR ANDERSON assured listeners that the legal aspects would be debated in a another committee.

Number 0571

SHERMAN JONES, currently an employee at Fantasies, explained that he'd worked at eight clubs around the country and thus brings a different perspective to his testimony. He said:

Basically, it is very easy to say ... what happens in the clubs. And if you have never actually been into one of the establishments, all the studies in the world can be done, people can say this happened or that happened, but if you have not been in the club, you don't know what's going on. ...

Any perspective that you want to find, you can find. You can find a person that fell down on a piece of ice, or you can find a person that this happened or that happened. I don't think, under any circumstances, any type of licensing that you bring is going to change any of that. ...

It was said that ... troopers, as well as APD, have reported all these things that have happened. Where are the people that are being arrested for breaking the law? If a law has been broken, the people should

be arrested. If something happened or occurs in a club and it's a crime, the people [who committed the crime] should be arrested. And we would love to see the blotter reports.

I work at Fantasies. We have a relationship with the police officers. We have no problem with them coming in. If we do something wrong, we expect the same thing across the board. But all these things are being said. We would love to see it, but I don't want to see the study. I don't want to see Dr. Long (ph) or whoever did the study on this, because anything that you want to find, you can find. ...

If you start to teach young ladies, young adults, how to so-called protect themselves, that's what I do. I am ... police-certified trained. [I teach them] how to protect themselves if someone does bump into them. And it's going to happen. It happens at McDonald's [restaurant]. So what are you going to do - are we going to get a license for McDonald's and we're going to say, "Hey, if you work at McDonald's, you can't do this?"

This is a job; this is entertainment. And you have to look at it like that. Just because someone [doesn't] approve, that's their moral convictions; that's something that they deal with. But ... this is still the United States, when I woke up this morning, unless it's changed. ... And now, are we going to start passing all of our positions and moral beliefs on everyone else? No. This is the United States.

Number 0343

JEANETTE JOHNSON, Owner, Teasers and Crazy Horse, testified that she opened Teasers a year ago and has yet to get an 18-year-old. She countered the idea that "all of these young ladies at 18 are rushing to get in a strip bar." As for girls dancing at 14, 15, or 16, she asked, "Where are their parents? ... I wonder if the PTA went to their parents from schools, and told them they [were] out in these places." She continued:

On the girls' getting a business license, I think if a girl comes up from the Lower 48 and has to go to work, knows that she has a job or can get a job here, and had to wait 10 days for this business license to be

approved and to be posted and whatever, that young lady's going to go to the streets or somewhere fast if she needs to make hotel money or something like that. I think 10 days is just too long a time for a business license to be issued.

As far as diseases, you can go in any public restroom, if it's not clean, and sit on the toilet. If [there's] not tissues there or toilet seat covers, ... you can contact a disease.

Number 0222

CHAIR ANDERSON surmised that amending the bill to change the age to 21 wouldn't affect Crazy Horse, a full-dispensary, licensed establishment with dancers and patrons over the age of 21; he asked whether that's correct. He noted that it would affect Fantasies.

MS. JOHNSON replied, "Except Teasers." She added:

If everybody is so worried about 18, we don't hire girls that are still in high school. If they [are] still in high school at 18, I don't know what the system is like now, but what are they still doing in high school at 18 and 19?

CHAIR ANDERSON estimated that perhaps 20 percent of high school seniors are 18 years of age. He offered to send her a packet of the input and letters.

Number 0108

DOUG HARTMANN, Anchorage, began by saying he has no relationship to the two Hartmans who'd previously testified. He stated, "I joined the military at age 18, and we ended up going to war, the second half of the war that we're continuing on with now." As for freedom of expression, he said he has been an artist almost 10 years and remarked:

At age 18, if a person can go to war and die for their country or kill another human being for their country, how come they can't participate [in] artistic expression? I think that ... what the lady over here was talking about, with the woman's right to choose what she does with her own body, if she's an adult,

... that's a strong statement, and I stand behind that also.

MR. HARTMANN referred to the suggestion that this gives local law enforcement an excuse to come into the clubs and check the licensing. He asked, "An excuse to do what?" He referred to testimony by Rex [Butler] and said there are crimes committed everywhere, including these establishments. He added, "We have bouncers, we have people protected, and we try to do everything we can to make sure these girls know about sexually transmitted diseases."

**TAPE 04-8, SIDE A**

Number 0025

MR. HARTMANN emphasized the desire to make sure that "our dancers come back to us safely." He questioned, however, why it would be more difficult for people to get a license to work for a club than to get a business license to start their own business or a license to operate a vehicle. He also suggested fingerprinting and so forth would make people "look and feel like they are a criminal." With regard to crime and bad behavior, he said:

I'm the guy who goes out there, and I watch the dancers, and I watch the customers to make sure these crimes are not committed. And when I see anything that looks remotely ... disrespectful to one of my ladies, then I stop it. And I stop it immediately.

I think if there's going to be regulations, ... we need more help in stopping these from happening. If somebody does try to do something, ... we need to be able to call the police. We need to be able to say, "Hey, this guy is stealing from her, this guy is doing something," rather than, "Excuse me, sir, can you please leave?" ... That's not right; that's not respectful to the business; that's not respectful to the ladies who work there.

MR. HARTMANN suggested that this doesn't show any concern for people 21 years old or older. Reiterating that this issue isn't with the dancers or clubs, but is with the people, he concluded:

We need more regulations on what we can do to help keep these things - keep these bad people - away from our dancers, and we can keep this a clean industry,

because, believe me, nobody in this room wants these things to happen that you've described that happen all the time - which, I can tell you, ... do not happen as often ... as it is claimed to happen.

Number 0200

REPRESENTATIVE ROKEBERG, noting that the bill would require a dancer to get a biennial license for \$844, asked Mr. Hartmann how this would affect his hiring practices.

MR. HARTMANN cited an example, pointing out that the cost of a business license has been raised to \$200, from \$50. He asked why it would be twice that [\$844 every two years] for a dancer, who isn't even a business owner.

REPRESENTATIVE ROKEBERG asked how it would affect the business itself.

MR. BUTLER spoke up: "It would close it up. A lot of these young ladies don't have that kind of money to start with, ... and that kind of money, oh, that's astronomical." He added that it doesn't cost that much to get a license to practice law.

CHAIR ANDERSON closed the public hearing.

Number 0322

CHAIR ANDERSON introduced Amendment 1, labeled [23-LS1394\D.3, Craver, 1/30/04], which read:

Page 1, lines 2 and 3:

Delete "**relating to protection of the safety and health of and to education of young persons who perform in adult entertainment establishments;**"

Page 4, line 5:

Delete "19"  
Insert "21"

Page 4, lines 16 - 23:

Delete all material.

Page 6, line 5:

Delete "(a)"

Page 6, lines 9 - 12:

Delete all material.

Page 9, line 9:  
Delete "18"  
Insert "21"

Page 9, line 11:  
Delete "18"  
Insert "21"

Page 9, line 16:  
Delete "18"  
Insert "21"

Page 9, line 22:  
Delete "18"  
Insert "21"

Page 10, line 2:  
Delete "18"  
Insert "21"

Page 11, lines 18 - 31:  
Delete all material.

Renumber the following bill sections accordingly.

Page 12, line 6:  
Delete "Sections 3 - 5 of this Act take"  
Insert "Section 3 of this Act takes"

Page 12, line 12:  
Delete "Sections 3 - 5 of this Act take"  
Insert "Section 3 of this Act takes"

Page 12, line 13:  
Delete "sec. 7(b)"  
Insert "sec. 5(b)"

Page 12, line 19:  
Delete "Sections 1, 2, 6, and 7"  
Insert "Sections 1, 2, 4, and 5"

Number 0235

CHAIR ANDERSON referred to testimony the previous week and said he believes the claim that any change of age would be violative

of the First Amendment isn't accurate in this case, because there are secondary effects. He highlighted the need to make policy with regard to what affects the public. He said testimony from the PTA, APD, and state troopers led him to believe that "we do think prostitution is increasing, and maybe not at your club, but at others," and that 18-year-olds aren't attending school. He continued:

A doctor from Duke University stated mental and emotional abuse, and credible statistics to that; drug use; there was a list of things and reasons why I'd like to make an amendment to say that patronage should be 21 and dancing should be 21. ...

To refute what the last gentleman said, right now you can't gamble until you're 21 years of age, and you can't drink until you're 21 years of age. And we have to have parity; we have to have a uniformity if we're going to ... have laws that affect ... these establishments. And so it's purely on a public policy basis and [a concern for] the safety for these 21-year-old dancers.

Number 0430

CHAIR ANDERSON moved to adopt Amendment 1 [text provided previously].

REPRESENTATIVE ROKEBERG objected for purposes of discussion.

CHAIR ANDERSON explained that Amendment 1 inserts [age] "21 for 19 and 18 where necessary." He suggested it's fairly self-explanatory. In reply to Representative Guttenberg, he said it amends the original bill [Version D, labeled 23-LS1394\D], and that Barbara Craver [the drafter] had told him it applies substantively to [Version H] as well, but that the [page and line] numbering would change.

REPRESENTATIVE ROKEBERG asked if this simply changes the ages, but the other provisions do nothing else.

CHAIR ANDERSON said that was correct, other than the title. He explained that removed [from the title] would be "relating to protection of the safety and health of and to education of young persons who perform in adult entertainment establishments".

Number 0536

REPRESENTATIVE ROKEBERG asked whether the amendment includes changes from DCED to the Department of Labor [& Workforce Development], the Department of Law, or the Department of Public Safety (DPS).

CHAIR ANDERSON said no.

REPRESENTATIVE ROKEBERG remarked that he'd "take any one of those ... departments except that one," but wouldn't address it now.

CHAIR ANDERSON suggested any recommendations could be analyzed in the House Judiciary Standing Committee [which Representative McGuire chairs and he is a member of].

Number 0536

REPRESENTATIVE ROKEBERG removed his objection.

REPRESENTATIVE MCGUIRE commented:

Representative Rokeberg and I have already discussed this. I'm amenable to any changes that would include placing it within the appropriate department, the department that has the most resources to handle it.

And then I also just wanted to make it clear on the record that the licensing fee was not determined by me. And I would not have it that high. The reason that the license fee is apportioned out that way is on account of a fiscal note that I received just Friday. ... So what I've been doing, for those online, is, I've been working with the [Division of Occupational] Licensing to reduce that.

The biggest part of that fiscal note is the education and training that we want to give young people so that they know there are other alternatives out there. The testimony comes from former strippers that were young when they got into it. And what they have been saying to me, and to my staff and to us, is that they didn't know that there were vocational opportunities, scholarships, any other alternatives, and they needed to make a buck.

And so, we just want them to have ... the education; that's the high part of the fiscal note. We're trying to find a model for that, and we're going to get the fiscal note down. And I'd be amenable to anything ... Representative Rokeberg has suggested.

CHAIR ANDERSON referred to testimony the previous week and asked for confirmation that representatives from Covenant House [Alaska], DPS, APD, and the PTA, as well as the professor from Duke [University], had all said they'd prefer the age for both patronage and dancers to be 21.

Number 0654

REPRESENTATIVE McGUIRE agreed. Saying she didn't have the case before her, she added:

One of the things we know that's interesting is that your constitutional rights are less as a patron; in fact, they're almost nonexistent. Your right to be entertained ... is not affected at all. So ... that's not even something we need to deal with. But the reason that they testified to that is that it's, in fact, the exposure that young people have to drugs, to the potential for prostitution, to abuse, and to other things that they may not be prepared for.

The final thing I would say is, I really support this move to change it to 21. What we heard from the [Alcoholic Beverage Control Board], from the troopers, and the APD is there are already institutions in place for 21-and-older clubs, by virtue of serving alcohol. So that's a license that's already required; that's a big hammer that's over somebody's head. I guarantee that if you ask Jeanette Johnson, she makes sure her servers are 21 and older because the penalty is so great: if they are not, they can get their alcohol license pulled.

REPRESENTATIVE McGUIRE closed by saying she believes it is important for patrons and dancers to be at least 21 years old.

Number 0733

REPRESENTATIVE GUTTENBERG stated concern, with this amendment, about the severability clauses if it becomes a constitutional issue. He also asked about the fallback position. Would people

ages 19 to 21 be allowed to dance and be covered by these regulations?

REPRESENTATIVE McGUIRE responded:

What I have uncovered through my research, and others have as well -- Kara Nyquist, the attorney from Covenant House [Alaska] -- is that the constitutional challenges ... exist whether you say 19, 20, or 21. So the issue is the age of majority. We think we can overcome that. We think that there [are] arguments that ... you can't smoke until you're 19 now; you can't drink until you're 21 now. We think we've presented evidence on the secondary effects.

That said, the fallback position and what you'll see, just to ... cut to the chase: ... the severability clause, as everybody understands, if one part is deemed unconstitutional, the guts of it remain. The guts of it that would remain begin on page 11, and they start at Section 3 and go down through Section 7. So, essentially, what we're going to do is fall back to saying, "OK, if you say it's unconstitutional to have the age-related requirement in the license, that part's out, but the license still exists." So we still have a mechanism for regulating this industry.

Number 0942

REPRESENTATIVE CRAWFORD asked for clarification because [Amendment 1] appears to delete the education requirements for those between ages 19 and 21. Thus if the age is 21, the education isn't needed.

CHAIR ANDERSON directed members to page 4, line 26.

REPRESENTATIVE CRAWFORD asked, if age 21 is thrown out, whether the education and licensing requirements would come back again.

REPRESENTATIVE McGUIRE said she didn't have a copy of the amendment, but stated:

So long as it doesn't affect, starting on page 11, Sections 3 through ... 10, then the severability clause is in. So you can amend whatever you want to in the former part of the bill, but the latter part of the bill that's important is the severability clause, and then what happens, once it's severed. And that is

still a license requirement that says ... that you've got to ... attend a course developed by the department to inform applicants of career and educational opportunities and so on, but only if you're under 21. So, essentially, what [Sections] 3 through 8 do is ... they reencapsulate the guts of the bill, but in a smaller version.

CHAIR ANDERSON agreed. In reply to a request for further clarification, he said:

If you're looking at the CS, ... on page 4, line 26, Section 08.90.060 deals with additional provisions for sex-oriented business entertainer licenses for, basically, 19- and 20-year-olds. Because I've amended it to 21 [through Amendment 1, not yet adopted], that's stricken. And ... on page 11, that remains ... where you're talking about for age 21 - [Sections] 3, 4, 5, 6, 7, all the way down. So the reference that still remains, that you're in fear of, is on page 12, Section 6. [Those] 21 years of age and older will still have to have this education.

Number 1002

CHAIR ANDERSON asked if there was any objection to adopting Amendment 1 [as conformed to Version H]. There being no objection, it was so ordered.

REPRESENTATIVE ROKEBERG asked that the sponsors look at deleting DCED [from the bill]. He said it should be a criminal statute, or perhaps should be assigned to the Department of Labor [& Workforce Development] or even the Department of Public Safety.

Number 1045

REPRESENTATIVE ROKEBERG moved to report CSHB 367 [Version 23-LS1394\H, Craver, 1/30/04], as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 367(L&C) was reported from the House Labor and Commerce Standing Committee.

## **ADJOURNMENT**

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:20 p.m.