

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

April 20, 2004

2:04 p.m.

TAPE(S) 04-34

MEMBERS PRESENT

Senator Con Bunde, Chair
Senator Ralph Seekins, Vice Chair
Senator Gary Stevens
Senator Bettye Davis
Senator Hollis French

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 272

"An Act relating to certain monetary advances in which the deposit or other negotiation of certain instruments to pay the advances is delayed until a later date; and providing for an effective date."

MOVED CSSB 272(L&C) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 428(JUD)

"An Act relating to civil liability for acts related to obtaining alcohol for persons under 21 years of age or for persons under 21 years of age being on licensed premises."

MOVED CSHB 428(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 15(FIN) am

"An Act relating to fair trade practices and consumer protection, to telephone solicitations, to charitable solicitations; and providing for an effective date."

MOVED SCS CSHB 15 (L&C) OUT OF COMMITTEE

SENATE BILL NO. 349

"An Act requiring licensure of midwifery birth centers; and providing for an effective date."

MOVED SB 349 OUT OF COMMITTEE

SENATE BILL NO. 389

"An Act relating to the conversion of certain corporations to limited liability companies; and providing for an effective date."

MOVED SB 389 OUT OF COMMITTEE

SENATE BILL NO. 392

"An Act relating to the expenses of investigation, hearing, or public advocacy before the Regulatory Commission of Alaska, to calculation of the regulatory cost charge for public utilities and pipeline carriers to include the Department of Law's costs of its public advocacy function, to inspection of certain books and records by the attorney general when participating as a party in a matter before the Regulatory Commission of Alaska; and providing for an effective date."

MOVED SB 392 OUT OF COMMITTEE

SENATE BILL NO. 387

"An Act authorizing the making of certain commercial fishing loans to eligible community quota entities for the purchase of certain fishing quota shares; and providing for an effective date."

MOVED SB 387 OUT OF COMMITTEE

SENATE BILL NO. 369

"An Act exempting a person who allows a student of the University of Alaska to gain practical work experience with the person while participating in a practicum from vicarious liability as an employer, and exempting the student participating in a practicum from the Alaska Wage and Hour Act and workers' compensation coverage."

SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 272

SHORT TITLE: DEFERRED DEPOSIT ADVANCES (PAYDAY LOANS)

SPONSOR(s): RULES

01/21/04 (S) READ THE FIRST TIME - REFERRALS
01/21/04 (S) L&C, FIN

04/06/04 (S) L&C AT 2:00 PM BELTZ 211
04/06/04 (S) Heard & Held
04/06/04 (S) MINUTE(L&C)
04/15/04 (S) L&C AT 1:30 PM BELTZ 211
04/15/04 (S) Scheduled But Not Heard
04/20/04 (S) L&C AT 2:00 PM BELTZ 211

BILL: HB 428

SHORT TITLE: CIVIL PENALTY: MINORS & ALCOHOL

SPONSOR(S): REPRESENTATIVE(S) MEYER

02/04/04 (H) READ THE FIRST TIME - REFERRALS
02/04/04 (H) L&C, JUD
02/25/04 (H) L&C AT 3:15 PM CAPITOL 17
02/25/04 (H) Moved Out of Committee
02/25/04 (H) MINUTE(L&C)
02/26/04 (H) L&C RPT 5DP
02/26/04 (H) DP: CRAWFORD, LYNN, ROKEBERG,
02/26/04 (H) GUTTENBERG, GATTO
03/18/04 (H) JUD AT 1:00 PM CAPITOL 120
03/18/04 (H) Heard & Held
03/18/04 (H) MINUTE(JUD)
03/19/04 (H) JUD AT 1:00 PM CAPITOL 120
03/19/04 (H) Moved CSHB 428(JUD) Out of Committee
03/19/04 (H) MINUTE(JUD)
03/24/04 (H) JUD RPT CS(JUD) 4DP 1AM
03/24/04 (H) DP: SAMUELS, ANDERSON, GRUENBERG,
03/24/04 (H) MCGUIRE; AM: GARA
03/29/04 (H) DIVIDE THE AMENDMENT WITHDRAWN
03/29/04 (H) TRANSMITTED TO (S)
03/29/04 (H) VERSION: CSHB 428(JUD) AM
03/31/04 (S) READ THE FIRST TIME - REFERRALS
03/31/04 (S) L&C, JUD
04/13/04 (S) L&C AT 1:30 PM BELTZ 211
04/13/04 (S) -- Meeting Canceled --
04/15/04 (S) L&C AT 1:30 PM BELTZ 211
04/15/04 (S) Scheduled But Not Heard
04/20/04 (S) L&C AT 2:00 PM BELTZ 211

BILL: HB 15

SHORT TITLE: SOLICITATIONS/CONSUMER PROTECTION

SPONSOR(S): REPRESENTATIVE(S) FATE

01/21/03 (H) PREFILE RELEASED (1/10/03)
01/21/03 (H) READ THE FIRST TIME - REFERRALS
01/21/03 (H) L&C, STA, FIN
01/29/03 (H) L&C AT 3:15 PM CAPITOL 17

01/29/03 (H) <Bill Postponed>
 02/07/03 (H) L&C AT 3:15 PM CAPITOL 17
 02/07/03 (H) Moved CSHB 15(L&C) Out of Committee
 02/07/03 (H) MINUTE(L&C)
 02/10/03 (H) L&C RPT CS(L&C) NT 3DP 4AM
 02/10/03 (H) DP: CRAWFORD, ROKEBERG, ANDERSON;
 02/10/03 (H) AM: LYNN, GATTO, GUTTENBERG, DAHLSTROM
 02/18/03 (H) STA AT 8:00 AM CAPITOL 102
 02/18/03 (H) Heard & Held
 02/18/03 (H) MINUTE(STA)
 02/25/03 (H) STA AT 8:00 AM CAPITOL 102
 02/25/03 (H) Scheduled But Not Heard
 03/11/03 (H) STA AT 8:00 AM CAPITOL 102
 03/11/03 (H) Heard & Held
 03/11/03 (H) MINUTE(STA)
 03/13/03 (H) STA AT 8:00 AM CAPITOL 102
 03/13/03 (H) Moved CSHB 15(STA) Out of Committee
 03/13/03 (H) MINUTE(STA)
 03/26/03 (H) STA RPT CS(STA) NT 3DP 4NR
 03/26/03 (H) DP: SEATON, GRUENBERG, WEYHRAUCH;
 03/26/03 (H) NR: HOLM, LYNN, DAHLSTROM, BERKOWITZ
 02/19/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 02/19/04 (H) Heard & Held
 02/19/04 (H) MINUTE(FIN)
 02/23/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 02/23/04 (H) Moved CSHB 15(FIN) Out of Committee
 02/23/04 (H) MINUTE(FIN)
 02/24/04 (H) FIN RPT CS(FIN) NT 7DP 3NR
 02/24/04 (H) DP: HAWKER, CROFT, CHENAULT, FATE,
 02/24/04 (H) MEYER, HARRIS, WILLIAMS; NR: STOLTZE,
 02/24/04 (H) JOULE, MOSES
 03/03/04 (H) TRANSMITTED TO (S)
 03/03/04 (H) VERSION: CSHB 15(FIN) AM
 03/04/04 (S) READ THE FIRST TIME - REFERRALS
 03/04/04 (S) L&C, JUD
 03/25/04 (S) L&C AT 1:30 PM BELTZ 211
 03/25/04 (S) Heard & Held
 03/25/04 (S) MINUTE(L&C)
 04/06/04 (S) L&C AT 2:00 PM BELTZ 211
 04/06/04 (S) Heard & Held
 04/06/04 (S) MINUTE(L&C)
 04/13/04 (S) L&C AT 1:30 PM BELTZ 211
 04/13/04 (S) -- Meeting Canceled --
 04/20/04 (S) L&C AT 2:00 PM BELTZ 211

BILL: SB 349

SHORT TITLE: MIDWIFERY BIRTH CENTER LICENSING

SPONSOR(s): SENATOR(s) DAVIS

02/16/04 (S) READ THE FIRST TIME - REFERRALS
02/16/04 (S) L&C, FIN
04/20/04 (S) L&C AT 2:00 PM BELTZ 211

BILL: SB 389

SHORT TITLE: CORP. CONVERSION TO LIMITED LIABILITY CO.
SPONSOR(s): LABOR & COMMERCE

04/15/04 (S) READ THE FIRST TIME - REFERRALS
04/15/04 (S) L&C
04/20/04 (S) L&C AT 2:00 PM BELTZ 211

BILL: SB 392

SHORT TITLE: REGULATORY COMMISSION OF ALASKA
SPONSOR(s): LABOR & COMMERCE

BILL: SB 387

SHORT TITLE: COMMERCIAL FISHING LOANS FOR QUOTA SHARES
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

04/13/04 (S) READ THE FIRST TIME - REFERRALS
04/13/04 (S) CRA, L&C
04/19/04 (S) CRA AT 1:30 PM FAHRENKAMP 203
04/19/04 (S) Moved SB 387 Out of Committee
04/19/04 (S) MINUTE(CRA)
04/20/04 (S) L&C AT 2:00 PM BELTZ 211

WITNESS REGISTER

Mr. Richard Schmitz
Staff to Senator Cowdery
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Commented on SB 272 for sponsor.

Mr. Ed Sniffen
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Supports SB 272.

Mr. Steven Cleary, Executive Director
Alaska Public Interest Research Group
Anchorage AK

POSITION STATEMENT: Supports SB 272.

Ms. Deborah Fink
No address provided
POSITION STATEMENT: Opposes SB 272.

Mr. Jim Davis, Supervising Attorney
Alaska Legal Services
Anchorage AK
POSITION STATEMENT: Opposes SB 272.

Mr. Terry Lutz, Chief Financial Institution Examiner
Division of Banking, Securities and Corporations
Department of Community & Economic Development
PO Box 110800
Juneau, AK 99811-0800
POSITION STATEMENT: Commented on SB 272.

Mr. Chip Wagoner
Alaska Catholic Conference
Juneau AK
POSITION STATEMENT: Commented on SB 272.

Mr. Mark Davis, Director
Division of Banking, Securities and Corporations
Department of Community & Economic Development
PO Box 110800
Juneau, AK 99811-0800
POSITION STATEMENT: Commented on SB 272.

Representative Kevin Meyers
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of HB 428.

Ms. Cindy Cashen
Mothers Against Drunk Drivers (MADD)
Juneau AK
POSITION STATEMENT: Supports HB 428.

Mr. O.C. Madden, Director
Human Resources and Loss Prevention, Brown Jug, Inc.
Anchorage AK
POSITION STATEMENT: Supports HB 428.

Mr. Dave Lambert
Fairbanks AK
POSITION STATEMENT: Supports HB 428.

Ms. Jessica Paris
MADD Youth in Action Program
Juneau AK
POSITION STATEMENT: Supports HB 428.

Ms. Suzanne Cunningham
Staff to Representative Meyer
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Commented on HB 428 for sponsor.

Mr. Jim Pound
Staff to Representative Hugh Fate
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Commented on HB 15 for sponsor.

Ms. Cindy Drinkwater
Department of Law
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Commented on HB 15.

Mr. Bob Flint
Hartig & Rhodes
Direct Marketing and Publishers
Anchorage AK
POSITION STATEMENT: Opposes HB 15.

Ms. Ann Darr
Magazine Publishers of America
No address provided
POSITION STATEMENT: Opposes HB 15.

Ms. Myra Pugh
Staff to Senator Bettye Davis
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Commented on SB 349 for sponsor.

Ms. Judy Davidson
Mat-Su Midwifery
No address provided
POSITION STATEMENT: Supports SB 349.

Ms. Kathryn Piatt
Frontier Midwifery

Soldotna AK

POSITION STATEMENT: Supports SB 349.

Ms. Kelly DeSieyes
Women's Way Midwifery
Soldotna AK

POSITION STATEMENT: Supports SB 349.

Ms. Barbara Norton, co-owner
Geneva Woods Birth Center
Anchorage AK

POSITION STATEMENT: Supports SB 349.

Ms. Dana Brown
Fairbanks AK

POSITION STATEMENT: Supports SB 349.

Ms. Kay Kanne, Executive Director
Juneau Family Birth Center
Juneau AK

POSITION STATEMENT: Supports SB 349.

Mr. Mark Hickey
Aleut Corporation
211 4th St., Suite 108
Juneau AK

POSITION STATEMENT: Supports SB 389.

Mr. David Jensen, CEO
Aleut Corporation
No address provided

POSITION STATEMENT: Supports SB 389.

Mr. Daniel Patrick, Senior Assistant Attorney General
Regulatory Affairs
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Supports SB 392.

Mr. Pat Luby, Advocacy Director
AARP Alaska
Juneau AK

POSITION STATEMENT: Supports SB 392.

Mr. Greg Winegar, Director
Division of Investments

Department of Community & Economic Development
PO Box 110800
Juneau, AK 99811-0800
POSITION STATEMENT: Supports SB 387.

ACTION NARRATIVE

TAPE 04-34, SIDE A
^#SB272

SB 272-DEFERRED DEPOSIT ADVANCES (PAYDAY LOANS)

CHAIR CON BUNDE called the Senate Labor and Commerce Standing Committee meeting to order at 2:04 p.m. Present were Senators Bettye Davis, Ralph Seekins and Chair Con Bunde. Senator Gary Stevens arrived at 2:05 and Senator Hollis French arrived at 2:10. The first order of business to come before the committee was SB 272.

SENATOR RALPH SEEKINS moved to adopt CSSB 272(L&C), version /S. There were no objections and it was so ordered.

MR. RICHARD SCHMITZ, staff to Senator Cowdery, sponsor, explained that the original bill had a \$1,000 cap on the amount that could be loaned, which was lowered to \$500 in the CS. The new version allows only two rollovers so a person can't go into perpetual debt. The lender also has to post a bond giving the Division of Banking closer scrutiny and offer the consumer a payment plan before initiating a legal action to collect on a default. Damages a lender can recover are limited to \$700, down from \$1,000 and he can only charge \$15 per \$100 loaned. The original bill allowed for some additional interest. A couple of other minor changes were made like raising the NSF fee from \$25 to \$30, which is an amount that another bill puts in statute.

MR. ED SNIFFEN, Department of Law, clarified that the fees a lender can charge include the \$15 per \$100 plus a \$5 origination fee. A stylistic change included removing a problem with third-party collectors. In the original version, third-party collectors were required to comply with the payment plan, which was problematic because the Division of Banking didn't have jurisdiction over them. The CS requires a payment plan to be offered by the lender before taking any other action on a default. He stood by his previous testimony on other issues in the bill.

CHAIR BUNDE noted that the general public seems to think this is enabling legislation that would create something that doesn't exist in Alaska now. However, that is not correct. This is simply regulating a legal industry that currently exists in Alaska.

MR. SNIFFEN concurred with that saying that's why the Department of Law supports it. There is some room for debate on whether or not the current form of this industry is legal or not in Alaska, because of the Small Loan Act and the usury statute structure that is a little confusing, but pending legal action might clarify that. This legislation goes a long way in dealing with the problems in the industry, although it's not a perfect fix.

MR. STEVE CLEARY, Executive Director, Alaska Public Interest Research Group (AKPIRG), said that other states have a somewhat varied track record with payday loans. Recently, Georgia capped the annual percentage rate at 60 percent, whereas this bill has the rate at approximately 470 percent.

So, we've been testifying and trying to show how dangerous these types of loans are to consumers. In Georgia, they basically shut them down, particularly around military bases because they were preying on military families who couldn't afford to get on a cycle of debt. This bill purports to just be a short-term fix for consumers, but oftentimes what happens is consumers get on a cycle of debt that they aren't able to escape from.

The compromise AKPIRG has come up with is changing the minimum term of the loans from 14 days to 30 days, which would allow consumers two pay periods to get this loaned money back. It also would allow people who are only paid once a month a chance to better repay this loan. One of the payday lenders testified that he gave roughly 26,000 loans in a year to 24,000 different customers, meaning that most customers are only choosing one loan per year. If the amount of time allocated to these customers were doubled, it would have a negligible affect on the profits of payday lenders. He urged the committee to change the length of the loan term from 14 to 30 days, which would roughly halve the annual percent rate to 200 percent.

MS. DEBORAH FINK, a lender, said she would answer questions.

CHAIR BUNDE asked for her reaction to extending the loan term from 14 to 30 days.

MS. FINK replied that would essentially reduce the income from the fees, which would make payday loans a losing proposition for any of the people who did it. "We would have to double our customer base in order to cover that cost...."

MR. JIM DAVIS, Alaska Legal Services, said this is, in effect, enabling legislation.

It will make legal what is, in effect, illegal, which is to charge 400 to 1,000 percent interest on consumers and it's motivated for no other reason except to terminate the lawsuit pending in front of the Superior Court here in Anchorage, which will, if left undisturbed, lead to a ruling and, in all probability, that says these kinds of businesses are violating existing Alaska law....

He pointed out that SB 272 would make legal an interest in excess of what the Gambino crime family charged on similar loans. Other purported protections in the bill will not protect consumers in fact - monitoring by the Division of Banking, for one.

Without additional staff, there will be no monitoring.... And apparently there are no additional staff people that are going to be added because there is no fiscal note to this bill. So, you'll have no effective monitoring by the Division of Banking or any other division of the state. You'll have reams of data under this bill provided to the Division of Banking or to another division of the state, but without new staff to look at these reams of data, it'll just be in a box sitting in a warehouse someplace....

CHAIR BUNDE responded that there is a \$226,000 fiscal note, which he asked Mr. Lutz to address.

SENATOR FRENCH arrived at 2:10 p.m.

MR. TERRY LUTZ, Financial Institution Examiner, Division of Banking, Securities and Corporations, Department of Community & Economic Development (DCED), said he had a lot to do with the revenue side of the fiscal note and explained that the expenditure side was done by Director Mark Davis who anticipated several hearings initially, which accounts for the contractual amount of \$103,000. Division of Personal Services has to add an

examiner and a clerk. The travel is pretty much self-explanatory.

MR. CHIP WAGONER, Alaska Catholic Conference, said the main issue of whether loans should be for two weeks or 30 days is what affect that would have on the consumers, which he thought was pretty easy to figure out, and what affect it would have on the industry, which wasn't easy to figure out. Before the bill leaves this committee, he thought it incumbent upon the committee to get written facts and figures from the industry as to what affect it would really have. Without that information, he didn't see how the issue could be evaluated.

SENATOR BETTYE DAVIS said she wasn't aware that it might be illegal to conduct this kind of business in Alaska and wanted to know if the court would make a decision soon. "If that's the case, why would we want to bother about regulating this if it turns out to be illegal?"

MR. MARK DAVIS, Director, Division of Banking, Securities and Corporations, responded:

These loans have been made for some time under a perceived exemption to the Small Loan Act, which exempts, some people argue, loans up to \$500. That's in litigation. However, the Act also has an exemption for certain types of other activities such as pawnbrokers. What we're suggesting is the regulation of this industry, which, I think, will tend to exist in one form or another, no matter what the outcome of the litigation.... In 44 states, the state's answer has been to regulate them.

SENATOR SEEKINS said he didn't think the Legislature wanted to eliminate the industry and he looked at this as regulation rather than enabling legislation. He moved to pass CSSB 272(L&C), version /S, from committee with individual recommendations and attached fiscal note.

SENATOR FRENCH objected because he thought they would be passing enabling legislation that the state is better off without and he wanted to allow the lawsuit to work its way through the court system.

CHAIR BUNDE asked for the roll. Senators Gary Stevens, Ralph Seekins and Chair Con Bunde voted yea; Senators Bettye Davis and Hollis French voted nay; and CSSB 272(L&C) moved from committee.

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^#HB428

CSHB 428(JUD)-CIVIL PENALTY: MINORS & ALCOHOL

CHAIR CON BUNDE announced CSHB 428(JUD) to be up for consideration.

REPRESENTATIVE KEVIN MEYER, sponsor, said HB 428 was requested by Mothers Against Drunk Drivers (MADD) and Brown Jug. It simply tries to deter kids from asking adults to buy alcohol for them and tries to deter adults from buying alcohol for kids. "The way to do this is to have businesses take civil action against these people who try to do it." A business in Anchorage has already used this technique, nicknamed 'Hey, Mister' on about 100 people. Once a person is notified of a civil action, he is given a choice of either paying a fine of \$1,000 or going to an education program sponsored by MADD and other organizations to get \$700 waived. Most people choose to participate in this program.

He explained that three different groups of people buy alcohol for minors - older brothers and sisters, homeless people and sex offenders (who probably have other motives). This bill has passed the House with no opposition. There was a concern that businesses would be forced to take this type of action, but it is totally optional. It doesn't cost the state or the city anything.

SENATOR HOLLIS FRENCH said he totally agreed with the intent of the bill and asked what happens to the \$1,000 once Brown Jug gets its mitts on it.

REPRESENTATIVE MEYER answered that Brown Jug's testimony states that it waives \$700 of the fine and keeps \$300, if the offender agrees to go through the alcohol education program. The \$300 covers their administrative costs.

MR. O.C. MADDEN, Director, Human Resources and Loss Prevention, Brown Jug, Inc., explained that the municipal assembly adopted this ordinance last year. The civil penalty has been used to encourage a bunch of youngsters who would not have otherwise received treatment to get involved in a treatment program.

We offer a bonus to our employees to seize fake IDs from minors and minors who illegally enter licensed premises and now we are offering a bonus to employees

to interrupt these third-party sales where an adult has purchased alcohol for a minor. We use the \$300 to pay the bonus to the employee; we waive \$700 of the \$1,000 if the minor will agree to sign up for treatment. Virtually all of them have. We are also able to do the same thing with the adults who are purchasing alcohol for minors. We found this to be a very effective tool and due to some questions we have from other licensees around the state that are interested in doing the same thing, we approached Representative Meyers with this idea.

SENATOR SEEKINS asked which statute deals with persons who buy alcohol for minors.

REPRESENTATIVE MEYER replied that it falls under AS 4.16.060.

SENATOR FRENCH asked if the bill goes after the fake IDs or the Hey, Mister sale.

REPRESENTATIVE MEYER replied that Brown Jug has been very aggressive in getting fake IDs, but that action falls under a different bill and a different statute. This bill focuses on the Hey Mister sales.

MR. DAVE LAMBERT, Fairbanks, said he owns two establishments and strongly supported HB 428. He said a similar bill about minors entering premises passed a couple of years ago had worked very well. It gave employees incentive to go after minors trying to purchase. Prior to that, most employees didn't care.

SENATOR FRENCH asked how the \$1,000 is divvied up when he is successful in one of these suits.

MR. LAMBERT replied that he has five in the works right now and has received partial payment on two of them. An employee receives \$500 for catching his first offender. After that, he gets \$250 for each one - after the money is collected.

So, all of a sudden the door-people and bartenders are really paying attention to checking IDs.... A thousand dollars isn't that much if a minor comes into a premises and is served and goes out and gets in a wreck. A thousand dollars doesn't go very far to cover our legal fees.

SENATOR FRENCH asked if he could assume that the other half of the money in the first instance and the other three quarters of it in the second in the subsequent instances go to him as the bar-owner.

MR. LAMBERT replied yes, after he collects it. He strongly supports the training, but he doesn't think it should be part of this bill. The city of Fairbanks doesn't have the money to go after small things.

SENATOR SEEKINS asked if paragraph (B) puts a foster parent at risk for the actions of a 14 or 15 year old who wants him to buy a six-pack.

REPRESENTATIVE MEYER replied that he didn't think so, because it's currently legal for parents to buy alcohol for their kids within their own home and for their own use.

SENATOR SEEKINS clarified that he was wondering about a person who has legal custody of an unemancipated minor.

REPRESENTATIVE MEYER said he didn't know.

MS. CINDY CASHEN, MADD Juneau Chapter, said she is also representing the other three MADD Alaska Chapters in Anchorage, Mat-Su and Fairbanks and supported HB 428 because it will assist in the prevention of underage drinking. The Alaska Youth Risk Behavior Survey is conducted annually. The latest one included 42 schools out of 19 districts with 2,175 completed questionnaires for grades 9 - 12. According to the survey, 38.7 percent of teenagers claim they had at least one drink in the 30 days prior to filling out the survey; almost 27 percent claimed five or more drinks within a couple of hours, binge drinking, in the previous month. In comparison, 29.9 percent of Alaskan adults reported binge drinking one or more times in the past month. This bill will help prevent that by adding a tool to community policing.

SENATOR GARY STEVENS asked if Anchorage is the only area that has a program and if MADD would be involved if it were here.

MS. CASHEN replied that's true. MADD would be involved in the communities that wanted to start the program.

MS. JESSICA PARIS, MADD Youth In Action Program, said as an opponent of underage drinking, she supports HB 428, because it proposes a unique, free and proactive way to prevent underage

drinking and the tragedies associated with it like dropping out of high school, premature sexual activity, car crashes, etc. "This bill provides the incentives for store owners to get involved and help prevent these transactions."

MS. PARIS stated that a \$1,000 civil fine is an appropriate amount because it is enough to impact either an adult or a youth. It is compensation for an otherwise thankless task of providing extra staff, confronting people in their parking lot, sending legal documents and risking being taken to court by the defendant.

MS. SUZANNE CUNNINGHAM, Staff to Representative Meyer, explained that AS 4.16.051 does not prohibit a parent or a guardian or the legal spouse of that person from giving alcohol to a minor. It doesn't say legal guardian specifically, but the bill includes that. She wasn't sure about the foster parent question.

CHAIR BUNDE noted there was no further testimony and closed the public hearing.

SENATOR SEEKINS moved to pass CSHB 428 (JUD) from committee with individual recommendations and attached fiscal note. Senators Bettye Davis, Hollis French, Ralph Seekins, Gary Stevens and Chair Con Bunde voted yea; and CSHB 428(JUD) moved out of committee.

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^#HB15

HB 15-SOLICITATIONS/CONSUMER PROTECTION

CHAIR CON BUNDE announced HB 15 to be up for consideration and that some agreement had been reached between the competing interests that resulted in an amendment. He moved amendment 1 and objected for discussion purposes.

23-LS0058\VA.1
Craver

A M E N D M E N T 1

OFFERED IN THE HOUSE

BY REPRESENTATIVE FATE

TO: CSHB 15(FIN) am

Page 8, lines 14 - 15:

Delete all material.

Insert "[MAGAZINE, PERIODICAL,] sound recording or [,] book through [, OR MEMBERSHIP IN] a book or record club"

Page 8, line 20, following "(11)":

Insert "by a publisher, or a publisher's agent operating under a written agreement between a publisher and the agent, who is soliciting the sale of a publisher's magazine if

(A) the buyer has the right to review the magazine and cancel the subscription for the magazine within seven days after receipt of the magazine; a cancellation request is timely if the request is mailed, properly addressed and postmarked, postage prepaid, within seven days after receipt of the magazine; and

(B) the right of cancellation and refund is fully disclosed to the buyer before or at the time the initial invoice is received by the buyer;

(12)"

Page 8, line 22:

Delete "(12)"

Insert "(13) [(12)]"

Page 8, line 24:

Delete "(13)"

Insert "(14) [(13)]"

Page 8, line 26:

Delete "(14)"

Insert "(15) [(14)]"

Page 8, line 29:

Delete "(15)"

Insert "(16) [(15)]"

Page 9, line 5:

Delete "(16)"

Insert "(17) [(16)]"

Page 9, line 6:

Delete "(17)"

Insert "(18) [(17)]"

Page 9, line 11:

Delete "(18)"

Insert "(19) [(18)]"

MR. JIM POUND, staff to Representative Hugh Fate, sponsor, deferred comments to Cindy Drinkwater and Bob Flint.

MS. CINDY DRINKWATER, Department of Law (DOL), explained that Amendment 1 is similar to language that about five other states have in their telemarketing registration laws. The reasoning behind it is that some of the scams that are associated with magazine subscription sales are believed to be perpetrated by entities that are often considered to be clearing houses or wholesalers or some other entity that doesn't have responsibility for the ultimate product, but is mostly concerned with making a quick sale over the telephone. Amendment 1 makes an exemption for a publisher, or an agent of his, operating under a written agreement for the sale of that publisher's magazine if two conditions apply. The first condition is that the buyer has the right to review the magazine and cancel the subscription for it within seven days of receipt of the magazine and that the right of cancellation and refund is fully disclosed to the buyer at the time the initial invoice is received or before. She felt this would address some of the issues the Direct Marketing Association has raised. However, the Consumer Protection Unit urged an alteration, which would involve two small words on line 15. It would read, "The right of cancellation and refund is fully disclosed in writing to the buyer." She supported that, because in reality the solicitations happen and a month or two later, the magazine arrives and the consumer might not remember that they were told in a phone conversation that they had a right to cancel their subscription.

CHAIR BUNDE asked if this notice would come with the invoice.

MS. DRINKWATER replied that is correct.

SENATOR SEEKINS moved to amend Amendment 1 on line 15 after "disclose" by adding "in writing". There were no objections.

SENATOR GARY STEVENS said you get the invoice after getting the magazine and thought that was kind of late to receive the notice.

MS. DRINKWATER replied that she would like to see the consumer receive something much closer in time to the solicitation, but believed that some notice in writing with an opportunity to cancel is the critical feature.

SENATOR SEEKINS moved to amend Amendment 1 for the second time on line 12 after "receipt of the magazine" by adding "or at the time the initial invoice is received by the buyer, whichever is later".

TAPE 04-34, SIDE B

SENATOR FRENCH objected to understand the amendment and then withdrew his objection.

CHAIR BUNDE announced that there were no further objections to the second amendment to Amendment 1.

CHAIR BUNDE asked if there was further discussion on Amendment 1 as amended. There were no objections and Amendment 1 was adopted.

MR. ROBERT FLINT, Hartig & Rhodes, Direct Marketing Association, said he thought he had an agreement, but not after the committee adopted Amendment 1. Adding "in writing", which has been the consistent position of the Department of Law, isn't consistent with industry practices and forbids people to charge the product on their credit card at the time of the call.

I think we're back to square one. That's not the way the business works. We do have in your packets, I hope, our Freedom of Information Act request that suggests that there is such a low level of complaints from 2000 and 1999 that there is no discernible practice of abuse regarding this.

MS. ANN DARR, Magazine Publishers of America, said:

We're selling a magazine subscription! Every American knows what a magazine is. There's nothing mysterious or questionable about it. We have the best review, return or cancel guarantee in the world. If somebody doesn't want it, we'll credit them or cancel the billing. If they decide they don't like it after two months or three months or six months, we'll cancel all unmailed issues. It's making it too complicated to sell a simple magazine subscription. We offer many wonderful things to Americans through magazines. We offer information about retirement, financial issues, information for elderly persons, entertainment for children, educational articles, articles about history.... So, we don't feel there is anything mysterious about selling a magazine subscription, that there is anything the consumer is confused about. If they say they want it, we believe we should be able to

consider it sold with their ability to cancel and not have to confirm it in writing.

CHAIR BUNDE asked, "Even if that confirmation comes with the invoice?"

MS. DARR answered, "They don't always get an invoice. If they have given us their credit card and that's how they want to pay for it, they're not going to get an invoice."

CHAIR BUNDE asked Mr. Pound if he cared to comment on the deal that was broken.

MR. POUND replied that the "in writing" issue is the one that Ms. Drinkwater and Mr. Flint were consistently arguing, primarily because according to the Direct Marketing Association, most of these deals are done with credit cards over the telephone. Requiring "in writing" would make it impossible to make credit card sales over the phone.

CHAIR BUNDE asked Ms. Drinkwater how many complaints are registered yearly about magazine scams.

MS. DRINKWATER answered there were five complaints in 2003 about magazine scams, which may not seem like a huge number, but the quality of the complaint is what she considers. These were complaints from senior citizens who are on a limited income who had gone to great lengths to try to cancel their magazine subscriptions and were simply unable to cancel or were unable to get through to a live person at the 800 number they were given. She did not want to change any of the other 17 exemptions that exist in the current statute.

SENATOR SEEKINS moved to pass SCS CSHB 15(L&C)am from committee with the attached fiscal note and individual recommendations. Senators Hollis French, Gary Stevens, Ralph Seekins, Bettye Davis and Chair Con Bunde voted yea; and SCS CSHB 15(L&C)am moved from committee.

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^#SB349

SB 349-MIDWIFERY BIRTH CENTER LICENSING

CHAIR CON BUNDE announced SB 349 to be up for consideration.

MS. MYRA PUGH, staff to Senator Bettye Davis, sponsor, explained that currently there are six birth centers in Alaska; five more

are registered and one is licensed. The owners, who are certified direct entry and certified nurse midwives, unanimously concluded they need to have one license standard for all birth centers.

CHAIR BUNDE asked if in other enterprises that involve the Division of Licensing, the licensees have to bear the cost of licensing and if that was the case now.

MS. PUGH replied that is the case, but wanted the department to verify that.

MS. JUDY DAVIDSON, owner and operator, Mat-Su Midwifery, said she does over 100 births per year.

We feel this bill is very appropriate in that it would license us for doing what licensed care providers are already doing. We would prefer to be licensed rather than registered and [to] adhere to a single standard.

MS. KATHRYN PIATT, owner, Frontier Midwifery, said she serves a large section of outlying communities and agreed that having one licensed birth center is a good idea so that the standard of care is consistent all over the state.

SENATOR GARY STEVENS asked how many births per year happen at her facility.

MS. PIATT replied about 25, but another birth center in Soldotna does that many, as well.

MS. KELLY DESIEYES, Women's Way Midwifery, said having a consistent standard would not only help the birth centers, but also the families they serve. She supported SB 349.

MS. BARBARA NORTON, Geneva Woods Birth Center, supported SB 349 for the reasons previously stated.

MS. DANA BROWN, Fairbanks, said she is the director of a non-profit birth center that also serves outlying Bush communities in the Interior and that she supported SB 349. Licensing will make a better standard for birth centers throughout the state and will continue to advance midwifery, which the public really wants.

MS. KAY KANNE, Executive Director, Juneau Family Birth Center, said she sat on the board of Certified Direct Entry Midwives

from its inception in 1992 until 2000. She is also the volunteer lobbyist for the Midwives Association of Alaska. She gave the committee background on how two kinds of birth centers came about in Alaska - registered and licensed.

This happened back in 1992 when we passed our original legislation to create a board of Certified Direct Entry Midwives for licensure. We also went back to the Health and Social Services law and changed the line...where it said, 'The commissioner shall adopt regulations for the registration of lay midwifery in the State of Alaska.' Well, we no longer needed that because we were going to be licensed by the Division of Occupational Licensing. So, we changed that line to address one of our other concerns, which was the fact that the birth center regulations at the time stated that only a physician or a nurse midwife could attend births in a birth center. So, basically we changed the line to say 'the registration of birth centers' and then we changed the wording to say that 'The commissioner shall not require that a physician or nurse midwife be present at a birth', accidentally leaving the word 'registered' in instead of changing it to 'licensed'. We didn't notice that until we went back after the law was passed and the Department said, 'Oh, we can't change these regulations for licensed birth centers. What you've done is create a whole different kind of birth center. So, that's how it happened in 1992. It was never intended....

CHAIR BUNDE asked if anyone opposes this bill. Someone indicated no.

SENATOR FRENCH moved to pass SB 349 from committee with individual recommendations and attached fiscal note.

CHAIR BUNDE objected only to get clarification that the registration will in deed be handled like other licensing and actually pay for itself. He asked for the roll. Senators Ralph Seekins, Hollis French, Gary Stevens, Bettye Davis and Chair Con Bunde voted yea; and SB 349 moved from committee.

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^#SB389

SB 389-CORP. CONVERSION TO LIMITED LIABILITY CO.

CHAIR CON BUNDE announced SB 389 to be up for consideration. He said this is a housekeeping measure and was requested by several Alaska regional Native corporations and amends existing law to allow an Alaskan corporation that is a subsidiary to be converted into a limited liability company. Many states already allow this.

MR. MARK HICKEY, Aleut Corporation, thanked the committee for sponsoring the bill and hearing it promptly. He concurred with the chair's summary of the bill. Current definition in state law sets out which business entities may convert to the status of limited liability company (LLC) and corporations are not on that list. SB 389 includes subsidiary corporations only so there are no tax consequences to the state.

MR. HICKEY said it is possible for Aleut Corporation to convert now, but it would have to dissolve and reform a limited liability company. The problem this presents is that a number of its subsidiaries have 8A minority business contractors under the federal contracting process. One of them has 15 such individual contracts. To dissolve the corporation, he would have to go back to the government agencies on each contract and get a new one put in place and then go back to the Small Business Administration and get those approved.

This change in law will allow us to make the simple conversion without having to go through that cumbersome process. The basic advantage for us in terms of being able to shift to an LLC is it's cheaper to operate, we have fewer rules that apply, no need for a board structure in cases of pursuing financing, a lesser standard in terms of financial statements and the audit requirements.

I would just like to point out on page 2 - it's really the operative language - we have structured it pretty carefully. It is only to a subsidiary and goes on to say 'owned directly or indirectly'. The only reason for the indirect part is we have, in some cases, subsidiaries that are owned by another subsidiary of our entity or at least in part by another subsidiary. So, we want to be broad enough to cover that case. Then it goes on to say 'owned by one or more parent corporations'. There are some, but not many, entities that are jointly owned between two corporations and this would allow those, as well, to become LLCs, but even in that case, the tax consequence would remain

neutral. The parent would have the obligation for the tax obligation that had been with the prior subsidiary.

CHAIR BUNDE asked if he was aware of any opposition to this bill.

MR. HICKEY replied that he wasn't aware of any.

MR. DAVID JENSEN, CEO, Aleut Corporation, said his corporation originally created C corporations, one of which is out of state, prior to legislation that authorized incorporation of the LLCs.

To restructure Aleut Corporation for streamlining purposes, we need to make all of our wholly owned subsidiaries all LLCs for management reasons, governance and so on. It makes sense for us internally. Externally, there are no tax implications to the state or, for that matter, to the federal government either since we consolidate all of our income tax returns annually anyway.

SENATOR GARY STEVENS asked if he would have to completely disorganize and reform and get a lot of approval for contracts.

MR. JENSEN said yes and added that another alternative would be to move the corporation from Alaska and put it in Colorado or some other state where it can be done easily, another lengthy process.

SENATOR SEEKINS asked why SB 389 doesn't allow just any corporation to convert.

MR. JENSEN replied that has been proposed, but it raises tax consequences and the subsidiary language clearly doesn't create that problem.

SENATOR HOLLIS FRENCH asked why there are no tax consequences to this move.

MR. HICKEY explained that current subsidiaries either have a tax obligation on their own or, in many cases, they are consolidated with the parent. If they are an LLC and a subsidiary, the tax obligation passes up to the parent.

SENATOR GARY STEVENS moved to pass SB 389 from committee with individual recommendations and attached zero fiscal note.

Senator Bettye Davis, Gary Stevens, Ralph Seekins and Chair Con Bunde vote yea; and SB 389 moved from committee.

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^#SB392

SB 392-REGULATORY COMMISSION OF ALASKA

CHAIR CON BUNDE announced SB 392 to be up for consideration and said that it was requested by the administration.

MR. DANIEL PATRICK, Senior Assistant Attorney General, Regulatory Affairs, Department of Law (DOL), said the need for this bill arises as a result of last year's Executive Order 111, which transferred the responsibility for advocacy on behalf of the public in utility matters from the Regulatory Commission of Alaska (RCA) to the Attorney General's Office. That has already occurred. SB 392 is essentially a compliment to that bill. The RCA personnel who were responsible for that advocacy now act under the direction of the DOL. This bill would complete that transfer of control by expressly providing four aspects of its execution. They are:

1. The bill would clarify that regulatory cost charge receipts, not general funds, will continue to pay of the costs of public advocacy, but now administered by the Department of Law - just as those off-budget receipts historically paid for the advocacy costs when the function was performed within the RCA.
2. The bill modifies the regulatory cost charge ceiling and creates two distinct budget components - one for the RCA and one for the DOL public advocacy function in order to provide each entity with budgetary independence from the other. The purpose for that is that the RCA, in its context, functions as the adjudicator and the Department of Law, as the public advocate, will be an advocate before them as a party and it's important that there be independence between the two as in any judicial or quasi-judicial setting.
3. The bill provides the Department of Law with qualified access to utility or pipeline carrier records, again similar to that that was afforded the RCA's former public advocacy staff in order to maintain efficient economical access to information.
4. Finally, the bill clarifies that state agencies are exempt from paying the allocated costs of RCA proceedings to which the state agency is a party, because there is no net fiscal benefit in the current arrangement. You have one state

agency, that from time to time and unexpectedly, may cost-allocate to another state agency and then that state agency, whether it's the state as the state or the Department of Law public advocate, would come to the Legislature to get a supplemental to pay those costs. So, it would eliminate that exercise.

MR. PATRICK summarized that the bill completes the consolidation of the public advocacy function within the DOL and gives that function budgetary independence for the RCA. It provides the advocate with qualified access to records and it eliminates the inefficiency by exempting key agencies from paying RCA allocated costs.

MR. PAT LUBY, Advocacy Director, AARP, said it has 76,000 members in Alaska, all of whom consume utilities. He said:

All too often the RCA is perceived as a referee between competing utilities as they battle for market share. From AARP's perspective, the RCA is our voice, our watchdog, our public advocate in the utility marketplace.

Now that the responsibilities for public advocacy have been shifted to the Attorney General's Office, we know that the budget will always be limited. The cost of representing the public on utility issues should not have to be weighed in comparison with other important functions in the AG's office. If the issues before the RCA do not, in effect, cost the Attorney General some of his limited budget, he would be more comfortable allowing his staff to proceed as necessary and appropriate knowing the utilities will be picking up the cost. This is as it should be. AARP families need the RCA, we need them to have the budget and the staff to do the investigations necessary for all utility issues and we encourage your support of SB 392.

SENATOR STEVENS moved to pass SB 392 from committee with individual recommendations and attached fiscal note. There were no objections and it was so ordered.

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^#SB387

SB 387-COMMERCIAL FISHING LOANS FOR QUOTA SHARES

CHAIR CON BUNDE announced SB 387 to be up for consideration.

MR. GREG WINEGAR, Director, Division of Investments, Department of Community & Economic Development (DCED), said he appreciated the committee hearing this bill. It is straightforward and is a very small change to the Commercial Fishing Revolving Loan Fund.

It allows a new type of quota shareowner to qualify for loans, which are called community quota entities. These entities are being created as a result of changes the National Marine Fisheries Service (NMFS) is making in the quota share program. Essentially, 42 smaller Gulf communities will be able to form non-profit corporations, go out in the marketplace and purchase quota shares and lease them back to citizens within those particular communities. The goal is to try to improve the economic viability of these communities through local ownership of fishing privileges. The new federal rule is expected to take place sometime in May. It's not in effect yet.

MR. WINEGAR said this would be a very small change to the loan program and that he can already do this for individuals. The loan criteria, such as interest rates and down payments, would be the same.

There is plenty of funding. This fund is self-sufficient and hasn't had any general funds for many years....It will bring the loan program in line with what NMFS is doing with the quota share program. It is consistent with the mission of the Commercial Revolving Loan Fund and, most importantly, it is going to provide these loans to communities with a tool they can use to try and generate some economic activity. Many of them have lost a lot of quota share since inception of the program in 1995.

SENATOR GARY STEVENS said he heard about this program in another committee and thinks it's an excellent idea. It makes the smaller communities more economically viable and doesn't force anyone to sell permits.

MR. WINEGAR acknowledged that those are two good points.

CHAIR BUNDE said he was distributing testimony in support of SB 392 to the committee from Don Beamer and Gordon Jackson.

SENATOR GARY STEVENS moved to pass SB 392 from committee with attached fiscal note and individual recommendations. Senators Ralph Seekins, Gary Stevens and Chair Con Bunde voted yea; and SB 392 moved from committee.

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SENATOR SEEKINS moved to forward all the names of the confirmees to the full body. There were no objections and it was so ordered. There being no further business to come before the committee, adjourned the meeting at 3:30 p.m.