

HOUSE FINANCE COMMITTEE
April 28, 2007
April 29, 2007
11:07 A.M.

CALL TO ORDER

Co-Chair Meyer called the House Finance Committee meeting to order at [11:07:03 AM](#).

MEMBERS PRESENT

Representative Mike Chenault, Co-Chair
Representative Kevin Meyer, Co-Chair
Representative Bill Stoltze, Vice-Chair
Representative Harry Crawford
Representative Richard Foster
Representative Les Gara
Representative Mike Hawker
Representative Reggie Joule
Representative Mike Kelly
Representative Mary Nelson
Representative Bill Thomas Jr.

MEMBERS ABSENT

None

ALSO PRESENT

Representative Kyle Johansen; David Scott, Staff,
Representative Kyle Johansen; Diane Casto, Section Manager,
Prevention and Early Intervention Section, Division of
Behavior Health, Department of Health and Social Services;
Richard Godfre, Mendenhall Valley Tesoro, LLC., Juneau; Joan
Cahill, Juneau

PRESENT VIA TELECONFERENCE

Cindy Drinkwater, Assistant Attorney General,
Commercial/Fair Business Section, Civil Division
(Anchorage), Department of Law, Anchorage; Steve Rush,
Holiday Stationstores, Inc., Anchorage; John Trebow,
Attorney, Holiday Stationstores, Inc., Anchorage; Kip
Knudson, External Affairs Manager, Tesoro Alaska Company,
Anchorage; Jason Moulton, Safeway Carrs, Anchorage; Michelle
Toohey, Director, Public Relations & Advocacy, American Lung
Association of Alaska, Anchorage; Suzanne Meunier, American
Heart Association-Alaska, Anchorage; Stephen Warren, Youth
Tobacco Prevention Manager, Sitka Community Hospital, Sitka;
Roger Hames, President, Sea-Market Grocery Association,
Sitka

SUMMARY

HB 187 An Act relating to holders of business license endorsements for sales of tobacco products.

HB 187 was HEARD & HELD in Committee for further consideration.

#HB187

[11:07:41 AM](#)

HOUSE BILL NO. 187

An Act relating to holders of business license endorsements for sales of tobacco products.

DAVID SCOTT, STAFF, REPRESENTATIVE KYLE JOHANSEN, noted that HB 187 addresses the lack of Due Process under the 5th Amendment of the Alaska and U.S. Constitutions that retailers face during business license enforcement proceedings under AS 43.70.075. He pointed out the handout from the State of Alaska Superior Court decision in the case of Holiday Alaska Inc. versus the State of Alaska, decided on October 26, 2006. The Court held that AS 43.70.075(d) was unconstitutional because it violated Holiday's due process rights.

Mr. Scott advised that a facet of AS 74.70,075 was broken & that HB 187 provides a fix for it. The bill recommended that business license holders with a tobacco endorsement be afforded a "meaningful hearing" where mitigating and aggravating facts are considered by an Administrative Law Judge (ALJ). In current license enforcement proceedings, the State is not obligated to prove negligence by a retailer, as the conviction of the employee who made the sale is the only admissible evidence. A retailer is prohibited from introducing the evidence of its policies prohibiting illegal sales, its good faith efforts at education and training of its employees, as well as the sanction imposed on employees who do not abide by the retailer's requirements.

- Section 1 would establish that a hearing must be held before a business license endorsement can be suspended.
- Section 2 makes the hearing meaningful by expanding the evidence that the ALJ should consider.
- Section 3 consists of two parts. The first part, Subsection (T) creates policy for license holders to comply with, if they want an ALJ to consider a reduction of sentence. The second part allows the license holder and the Department to agree to an informal disposition of suspension & allows the

Department to reduce the suspension. The Department may reduce the period of suspension only if the license holder has previously never received a suspension. In essence, the reduction is a one-time deal.

Mr. Scott continued, it is not the intent of HB 187 to allow businesses that routinely and knowingly sell tobacco to minors, a decrease in fines and penalties. The legislation does allow for an ALJ to reduce the suspension if at a hearing, the license holder can prove they had fulfilled the requirements of Section 3, Subsection (T). He added that the ALJ is not required to reduce the suspension but would have the discretion to impose full civil penalties delineated in Section 1.

[11:12:27 AM](#)

Vice Chair Stoltze asked when the license could be suspended under the proposed bill. Mr. Scott replied, not until there had been a hearing, requesting that the Department of Law address the penalty issues.

[11:13:57 AM](#)

Representative Gara indicated concern with the Due Process portion of the bill as it makes it more difficult to penalize tobacco companies who sell to minors. He advised it be addressed through regulation, noting the court opinion and not changing the penalties. Mr. Scott explained that the ALJ does not have to reduce penalties; the bill allows discretion in that decision.

[11:15:53 AM](#)

CINDY DRINKWATER, (TESTIFIED VIA TELECONFERENCE), ASSISTANT ATTORNEY GENERAL, COMMERCIAL/FAIR BUSINESS SECTION, CIVIL DIVISION (ANCHORAGE), DEPARTMENT OF LAW, ANCHORAGE, testified on behalf of the Department of Commerce, Community & Economic Development in administrative proceedings involving tobacco endorsements & the Department of Health & Social Services investigators, who conduct the Tobacco Compliance Program.

Ms. Drinkwater addressed the penalties. She referenced Subparagraph (M-4), Page 3, Line 13, language which establishes procedures for the hearing process. As currently drafted, there are three narrow issues that could be considered. In the Superior Court's decision in the Holiday case, there was no option for the party accused to confront the issues of the case. That language does not get to the "heart" of the Due Process question & is problematic in a number of ways. The language runs contrary to the purpose of the statute, requiring an abiding or a

possibility of employers for the unlawful acts of their employees. Ms. Drinkwater encouraged the Committee to amend that provision, eliminating the requirement. The initial language of that section makes the rest of the paragraph ineffective. The purpose of the language was intended to give incentive to endorsement holders to determine a training and compliance program for their employees. It is important for the ALJ to consider the training program offered by the employer, but it does not address that concern.

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Ms. Drinkwater referenced Subparagraph (T), where the compliance program is established. She thought that as currently drafter, it would be easy for any employer to come up with a paper trail of compliance with requirements without going the extra step of being pro active in terms of how they address issues with their employees. She urged the Committee to add additional requirements that required the employer to have a training program in place relating to how to implement and check identifications (ID).

Ms. Drinkwater recommended requirements that employers monitor their employees. Also, the employer should make sure that there has been a determination made that the employee has the ability to perform the job they are given.

Ms. Drinkwater continued, Subparagraph 5, Page 3, Line 18, allows the ALJ to consider other evidence that would reduce and increase the suspension period or the civil penalty. The ALJ can reduce the suspension time, there is no provision that increases time. She urged the Committee to adopt language that allows the State the ability to add evidence and that the penalty might not be sufficient in any given case.

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Ms. Drinkwater referenced Subparagraph (W), Page 4, Line 15, the ALJ could reduce the suspension period to a floor of 10-days. The Department suggests that a reduction would be appropriate in certain first-time circumstances and that a reduction of 10-days would be acceptable but clarified that for subsequent offenses, there should be no reduction warranted.

Ms. Drinkwater recommended amending language on Page 1, Line 9, "after the opportunity for a hearing" for those situations in which retailers do not request a hearing, then the Department could implement a suspension period. Additionally, there is an allowance for disposition short of a hearing & recommends correcting that language before a suspension or penalty is imposed.

Page 4, Line 7, Paragraph (V), referenced an "informal disposition", & that the Department recommends the language be changed to a Memorandum of Agreement. Also, the Administration requests that a reduction in the suspension periods lapse or reflect the limitation reductions through the settlement process. Paragraph (X), Page 4, Line 17, addresses an important concept relating to Due Process in contesting the central issues of the case. Through (X), there is a mechanism by which an employer could raise issues related to the sale, conducted by the employee.

[11:27:44 AM](#)

Representative Gara inquired which points of the opinion the legislation addresses. Ms. Drinkwater explained that the decision discussed what the Department could have done as an alternative; the Department made the decision to say only the employee, however, they could have sighted the employer, which is an option available through AS 11.15.130, a criminal provision providing for the legal accountability of organizations. There was nothing in that opinion that would requires a direct citation of the employer. In terms of Due Process, under HB 187, the employer would have the opportunity to introduce evidence that there was not negligence of a sale by the employee.

Representative Gara asked if there was anything else in the opinion indicating a short coming in the law in terms of Due Process, needing to be fixed. Ms. Drinkwater responded on reducing the suspension period, clarifying it does not make sense to have a fuller hearing process. The Department does not oppose the opportunity for the employer to see a reduction in the suspension period under certain circumstances. She added, a mandatory suspension period should be mandatory and is justified.

Representative Gara asked if there was anything in the opinion requiring that law be changed. Ms. Drinkwater responded, it is an option to not change the law, however, there are reasons to address Due Process through the administrative process.

[11:32:04 AM](#)

MICHELLE TOOHEY, (TESTIFIED VIA TELECONFERENCE), DIRECTOR, PUBLIC RELATIONS AND ADVOCACY, AMERICAN LUNG ASSOCIATION (ALA) OF ALASKA, ANCHORAGE, acknowledged the need to make statutory changes to provide Due Process. The American Lung Association has been working with the Administration to that end. However, it is important that the changes do not compromise the enforcement of law prohibiting tobacco sales to kids. The main concern with the current draft goes beyond the Due Process and significantly undermines the

effective enforcement of State law regarding illegal selling of tobacco to children.

Ms. Toohey highlighted specific areas of concern in the House Judiciary Committee version of the bill. She highlighted the requirement for the State to prove negligence on the part of the employer to receive a reduction in suspension & the ability of repeat offenders to receive reduced suspension.

Ms. Toohey stressed that HB 187 goes far beyond addressing Due Process, while weakening the enforcement program & reduces a retailer's incentive to prevent sales to minor tobacco consumers. She encouraged that the Committee accept the changes recommended by the Department of Health & Social Services.

[11:37:16 AM](#)

Co-Chair Meyer understood that American Lung Association does not support the language of CS HB 187 (JUD). Ms. Toohey reiterated that ALA prefers the recommendations made by the Department of Health & Social Services and as currently written, they oppose the House Judiciary version.

[11:38:24 AM](#)

Representative Gara pointed out statistics indicating that previously, 30% of sales go to minors; however, with the mandatory suspension laws, that number has decreased to around 13%. Ms. Toohey explained that the statistics were based on a compliance check, a federal law requiring the State to offer the check. The statistics are based on the compliance rates of kids that attempted to buy and 36% of them had a successful purchase.

[11:39:31 AM](#)

STEVE RUSH, (TESTIFIED VIA TELECONFERENCE), HOLIDAY STATIONSTORES, INC., ANCHORAGE, voiced support from the Anchorage business community for hearing and passage of the proposed bill. The bill addresses issues of business license enforcement proceedings that the retailer faces for the sale of tobacco products to underage buyers. The statute as currently drafted is unconstitutional as it deprives the fundamental right to Due Process. He referenced comments made by Ms. Drinkwater. At this time, the State is not obligated to show negligence by the retailer as the conviction of the sales associate that made the sale. The statute specifically prohibits consideration of evidence of the retailer concerning policy prohibiting illegal sales and good faith efforts of the employers.

Mr. Rush mentioned the sanctions imposed on employees not abiding by the requirements. The consequences facing the retailer are onerous. The retailer will automatically lose their business license for 20-days. The loss is severe and will affect sales in other categories including gasoline. He urged passage of HB 187.

[11:43:18 AM](#)

Representative Hawker noted that the bill had moved through the House Judiciary Committee and asked if these arguments had been significantly addressed. Mr. Rush requested that his attorney expound on those questions.

Representative Gara worried that the bill had not been introduced until testimony had been taken in the last committee of referral. He noted that if cigarettes are sold to a minor, the operation does not lose their ability to sell other products. Mr. Rush acknowledged that they would not be prohibited from selling other items; however, being a convenience store operation, people want one stop shopping.

Representative Gara advised that the legislation attempts to change State policy; he asked why. Mr. Rush stated current law will not be changed; the sanctions are too severe. He pointed out many states have better compliance than Alaska without mandatory periods of suspension.

Representative Crawford noted that the Department of Law recommended that the licensee must be directly responsible; if that language is left in, the other penalties in the bill would be virtually mute. The licensee could use it as a defense. He did not think that language should be negotiable and that the business should be responsible for their employees. Mr. Rush countered that business is not attempting to avoid responsibility for their employees; however, the results can impact each business greatly. It is inconsistent with the notion of Due Process for a business to suffer an automatic penalty with no ability to offer evidence of good faith efforts. He worried about losing licensing for such a significant period of time.

[11:51:18 AM](#)

Representative Gara stressed it is not a violation of the Due Process rights to be held responsible when your employees sell cigarettes to a minor. The employer is liable for their employee's negligence and that this is not a Due Process issue. Mr. Rush differed, pointing out that the businesses are liable for losing their business license. The State Supreme Court has recognized that this type of property interest is one that can not be deprived without a hearing, in order to provide evidence of good faith and lack of negligence.

Representative Nelson agreed there should be a hearing, however, if the employee did sell the tobacco product to a minor, how would they prove differently. Mr. Rush responded, in the current system, the business would not be charged as the license holder until the party was found guilty; the timing of the enforcement action is not being contested. The process moves quickly.

Representative Nelson noted that there is a distributor in Bethel, who is lamenting the difficulty in the training & retaining of employees and the loss of licensure. She emphasized it is a simple law and that the cashier should look at the ID of each customer.

[11:56:14 AM](#)

JOHN TREBOW, (TESTIFIED VIA TELECONFERENCE), ATTORNEY FOR HOLIDAY STATIONSTORES, INC., ANCHORAGE, commented about the decision made by Judge Morris regarding the Holiday versus State of Alaska decision. He questioned why the issue of the Constitution had been involved during the discussion; the determination made by Judge Morris was the determination that the tobacco endorsement is a piece of property entitled to Due Process. Holiday has a property interest in its ability to sell products and that must be protected.

Mr. Trebow pointed out that Alaska has the strictest prosecuting laws for selling tobacco in the country and addressed the consequences of those actions. He identified criminal offense to negligently selling tobacco as the issue of concern. The conviction of the employees can not be used as proof of suspension of the endorsement holder's license. Fundamental fairness requires that the endorsement holder's conduct be reviewed and evaluated before action is taken that would affect constitutional rights. He advised that the issue is the employees conduct & the conduct of the endorsement holder.

[12:00:07 PM](#)

Representative Thomas inquired if Mr. Trebow supported the amendments recommended by Ms. Clearwater. Mr. Trebow focused on the amendment that specifically addresses if the person holding the business license, which negligently violates the statute. The language meets concerns expressed by Judge Morris.

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AT EASE: [12:01:41 PM](#)
RECONVENE: [12:02:11 PM](#)

RICHARD GODFRE, MENDENHALL VALLEY TESORO, LLC., JUNAEU, related his own experience with the tobacco laws as currently written. He noted that he owns three convenience stores. He was the first person to contest the tobacco law. He stated that he took his case to the State Supreme Court because upon notification of suspension hearing, the outcome was predetermined as an employee had sold cigarettes to a minor. That employee was fined and fired. He stressed the verdict had been based on a preceding in which he had no legal standing, the license was subject to suspension and that violated his own Due Process.

Representative Gara pointed out that Mr. Godfre's case was still pending for a decision and recommended that the bill be TABLED until the Supreme Court determines how the law should read. He did not think that the lower Court opinion should stand and that the consideration should not be a priority at this time in session.

Vice Chair Stoltze stated that the concern is a public policy issue, which should not be affected by what the court does or does not do. He thought that public policy should be addressed by the Legislature regarding Due Process, not by the Court.

Co-Chair Meyer agreed, pointing out that there is no license suspensions being issued or enforced until the Legislature does take action. Business owners do not know where they stand nor does the State of Alaska; there needs to be a resolution. The Administration supports the Legislature addressing these concerns.

Representative Kelly interjected that Due Process is a valid issue and that he did not support tabling the bill.

[12:10:34 PM](#)

Representative Crawford noted that language on Page 3, Line 13, "negligently violates", is an extremely high standard. Mr. Godfre clarified that by nature of the product, they regularly hold the establishment with multiple violations, and that the negligence would be a high standard to prove otherwise. He thought that the hearing officers could level the playing field. The State of Alaska regularly sponsors training programs, but ultimately, the outcome would be based on a hearing. He wanted to see penalties higher for the person who actually commits the crime.

RECESSED: [12:14:08 PM](#) April 28, 2007
RECONVENED: [1:07:32 PM](#) April 29, 2007

DIANE CASTO, SECTION MANAGER, PREVENTION AND EARLY INTERVENTION SECTION, DIVISION OF BEHAVIOR HEALTH, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, explained that the Division of Behavioral Health is responsible for enforcement of illegal sale of tobacco to youth under the age of 19. In addition, as required by the federal SYNAR legislation, the State must maintain an illegal sell rate to minors of 20% or face federal monetary penalties to the Substance Abuse Prevention & Treatment Block Grant.

The Department opposes CS HB 187 (version K) as written. The primary areas of concern are:

- 1) Section 2 - Currently the State has to prove that the employee negligently sold tobacco to a minor. HB 187 would require the State to prove also the employer's negligence in that sale. The intent is to hold the employer accountable for the acts of the employee.
- 2) Section 3 - Allows retailers to develop, on paper, a loosely identified and monitored "training" program to inform employees of the State's laws related to the sale of tobacco to minors, thereby reducing (or eliminating), their responsibility for the actions of their employees and reducing the period of suspension to sell tobacco for the illegal sale.
- 3) Section 3, Paragraph (w) - While the bill does add a 10-day floor for suspension, guaranteeing that all citations would include some level of tobacco endorsement suspension, the floor appears to be the same for all violations, which would provide for a retailer with a history of non-compliance to continue to have their suspensions reduced to 10 days instead of 45, 90 or 100 days. While the Department does support a suspension floor, it should be graduated in relation to the indicated number of days or not available at all to those who repeatedly violate the law.

Ms. Casto pointed out that the current system of fines and suspensions is working. State law was amended in 2002 to ensure that retailer violations resulted in consistent, temporary suspensions of tobacco sales, in addition to fines to the clerk of the sale. In 2002, the State's illegal sell rate was 30%; following a change in law, the 2003 rate was 10%. In addition to reducing youth access, youth usage of tobacco also has decreased. The Department supports a fair fix to the due process issue for Alaska retailers and does not support dismantling the current system of fines and suspensions for business that sell tobacco to youth under the age of 19.

Ms. Casto addressed previous points brought forward to the Committee on 4/28/07:

- Alaska does have the most stringent laws related to enforcement of illegal sale of tobacco to minors and is not the only state to impose suspensions, but is the only State to have a mandatory number of suspension days per violation. One problem noted by the U.S. General Accounting Office is the inconsistent application of fines and suspension in many states, which reduces the quality of the tobacco enforcement programming. Alaska's laws are equitable and consistently applied to all retailers violating Alaska's tobacco laws.
- As noted, there are other states with sell rates as low as or lower than Alaska's rate, without mandatory suspension. While true, there are varied reasons, one of which is that many states are using youth ages 14-15 to conduct the purchases. Alaska's program uses youth who are primarily 15-17 years old. The use of younger kids naturally produces fewer sales. The federal government is reviewing the age of youth buyers and considering changes to the SYNAR methodology. Other methodology inconsistencies affect the ability to compare outcomes state-by-state and are under review by the General Accounting Office.
- It is also important to remember that the number of compliance checks the Department does each year is very small; there are only three (3) Tobacco Investigators that cover the entire State. In a report by the Schneider Institute for Health Policy, it is estimated that "even aggressive compliance inspections programs will observe far less than 1/100th of 1% of all [tobacco sale] transactions." The majority of tobacco sales occur when Tobacco Investigators are not observing & that compliance and enforcement work is not a constant intrusion on retailers.

[1:16:55 PM](#)

Co-Chair Chenault asked if any 18 or 19 year olds were used in the study. Ms. Casto said no.

Co-Chair Chenault noted that he had spoken with someone that was out of compliance and understood that the kid was within a week of turning 19 years old. That person was extremely frustrated with the current law. Ms. Castro clarified that when the program begun, there was much more attention to the age; now however, 18 year olds are not used. Co-Chair Chenault said the business owner believed the language was an entrapment.

[1:20:20 PM](#)

Co-Chair Meyer asked if the Department preferred to get the issue resolved. Ms. Castro commented that internally, the Department has discussed the case before the Supreme Court. That case could indicate that the State's Due Process is fine. At this point, with the current Holiday decision pending, the State's Due Process has been deemed not appropriate. The Administration is currently handling the compliance & enforcement checks and all suspension notices are going to the Department of Commerce, Community & Economic Development. The Department is sitting in wait until a remedy is reached and intends to move forward with the suspensions, not negating it until the Due Process is fixed. The Department of Health and Social Services wants to see some conclusion in order to make it cleaner through a language fix.

Ms. Casto added, the Department looked at finding an internal fix so not to have to go through the legislative policy change to fix the regulation. That resulted in a fix that could address about 90% of the cases; however, the remaining 10% could not be handled in that way because they are sole proprietors. The Department would not have the authority to address such businesses. The program includes three departments, Department of Health and Social Services, Department of Commerce, Community & Economic Development & Department of Law.

[1:24:36 PM](#)

Representative Gara noted that he generally supports the department's position; however, asked why they had not appealed the case. Ms. Castro did not know why that decision had been made.

Representative Gara asked if the Department wanted the law changed. Ms. Castro responded that she could not speak for the entire Department on that particular issue; however, pointed out that a temporary fix does not address the problem. It would be good to have the issue resolved, to meet the intent of the Tobacco Enforcement Program. Representative Gara suggested that the Department's position places the Legislature in a difficult position.

[1:28:02 PM](#)

SUZANNE MEUNIER, (TESTIFIED VIA TELECONFERENCE), AMERICAN HEART ASSOCIATION-ALASKA, ANCHORAGE, stated that the American Heart Association agrees that all are entitled to Due Process, however, HB 187 goes beyond what is required by the Court. Current law helps prevent illegal tobacco being sold in Alaska and incorporates the best practices recognized by the National Centers for Disease Control and Prevention. Alaska's program combines tobacco vendor

education with random compliance checks. No store would be cited if they made the minimum effort to verify the age of the buyer. The State has seen the direct benefit of the law.

Ms. Meunier listed concerns with the current version of the bill. The proposed legislation has language which allows for the reduction of suspension down to 10-days. She noted that she supports adding language to clarify that on a first violation, the suspension could be reduced to 10-days, based on mitigating factors. She urged the Committee to address the deficiencies of the legislation.

[1:32:14 PM](#)

STEPHEN WARREN, (TESTIFIED VIA TELECONFERENCE), YOUTH TOBACCO PROTECTION MANAGER, SITKA COMMUNITY HOSPITAL, SITKA, stressed that relaxing the penalties was not a good idea. He encouraged that penalties instead be increased. He urged that store owners be held responsible on strict tobacco sales as tobacco is addictive to kids. Stores in Sitka have used the penalties as a marketing tool and that some stores receive a discount on tobacco products by using aggressive advertising by the tobacco industry. Mr. Warren commented on the misguided State law that allows under-age kids to sell tobacco products. He encouraged a more active system to educate the clerks about the responsibilities of selling tobacco.

[1:36:59 PM](#)

ROGER HAMES, (TESTIFIED VIA TELECONFERENCE), PRESIDENT, SEA MART - GROCERY RETAILER, SITKA, indicated strong support for HB 187. He understood the penalties, which cause retailers compliance. He stressed that it is not easy being in business, which complying with the laws. He said his last suspension dramatically affected the business sales.

Representative Gara inquired about previous testimony regarding a bonus from cigarette outlets to advertise tobacco products in an effective way. Mr. Hames replied that is called a "buy down" from the tobacco industry, reflecting the price incentive passed on to the consumer to remain competitive. Representative Gara asked if that was based on where the cigarettes are placed on the shelves or the actual advertising. Mr. Hames replied it was both and that visibility is important for receiving the discount. The stores are inspected through tobacco compliance guidelines & are affected by visibility.

[1:42:29 PM](#)

JOAN CAHILL, JUNEAU, indicated that she is active in the tobacco control field and encouraged that current law be

tightened and enforced. She endorsed comments by Mr. Warren regarding tightening and enforcing the current law versus relaxing it. There are repercussions when the law is enforced, which is the point. It is the incentive for the merchant to "beef up" their systems to insure that cigarettes do not get passed to juveniles. The tobacco industry is now marketing to children. She opposed relaxing the standards.

Co-Chair Meyer mentioned a law placing tobacco products behind the counter. He advised that HB 187 could provide Due Process to business owners. Ms. Cahill stated that Due Process currently exists and should not be amended.

[1:47:12 PM](#)

KIP KNUDSON, (TESTIFIED VIA TELECONFERENCE), EXTERNAL AFFAIRS MANAGER, TESORO ALASKA COMPANY, ANCHORAGE, spoke in support of restoration of the Due Process language in HB 187. He emphasized that Tesoro supports a no-under age tobacco sales culture, accomplished through rigorous training. In the 31 stores currently being operated by Tesoro, they have received 18 violations since 2000. He stressed that a twenty-day suspension has a huge impact on stores even as big as the Tesoro company. Every employee charged in a sales violation is immediately terminated. He addressed the costs and burdens of business. Mr. Knudson reiterated support of the Due Process language.

Representative Crawford hoped to see a generation of young Alaskans that have no desire to smoke. He knows kids still get tobacco products and are smoking at a very young age. He asked why Tesoro has failed by selling tobacco to under-age customers. Mr. Knudson did not know; however, thought that often, the employee is only attempting to keep the lines moving.

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Representative Gara observed that the suspension only occurs where a sale was made to a minor. Mr. Knudson pointed out that the employees involved admit to the sales and then the business is held accountable. He added that State enforcement officials are not allowed to use fake identification.

PUBLIC TESTIMONY CLOSED

[1:56:00 PM](#)

Representative Gara questioned why the case had not been appealed.

Ms. Drinkwater noted that she could not discuss that case at this time. She explained that on another similar case (Godfre) raised Due Process issues, similar to the Holiday case. The hearings occurred at a time when the Division had not yet issued regulations implementing the tobacco enforcement statute. At that time, the hearing officer decided the regulations weren't in place and would allow Mendenhall Tesoro to raise any defenses they wanted to. Mendenhall Tesoro raised a number of issues regarding entrapment & government overreaching but they did not succeed. The Superior Court advised that the hearing allowed the issues to be raised. She could not hypothesis the decision of the Supreme Court, but felt that they might take a more narrow approach.

Ms. Drinkwater observed that it would be difficult to fix the issue through statute. Hearings are limited in statute and can not be fixed by regulation.

[2:00:25 PM](#)

Representative Gara summarized, the negligence issue is before the Court. Ms. Drinkwater explained that the Court could reach a decision that would affect the way the issues are addressed.

Representative Gara asked if changes in the law could be made contingent on the outcome of the Supreme Court ruling. He explained that statute for a shorter sentence, if there is good policy could retain existing statute if the court found it appropriate. Ms. Drinkwater could not answer that.

[2:03:18 PM](#)

Representative Kelly questioned the place number in law, where guilt is automatic and licenses are automatically lost. Ms. Drinkwater could not respond, but noted that there are a number of areas, in general context, where one event causes automatic results.

HB 187 was HEARD and HELD in Committee for further consideration.

#

ADJOURNMENT

The meeting was adjourned at 2:07 P.M.