

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 26, 2007

2:44 p.m.

MEMBERS PRESENT

Representative Jay Ramras, Chair
Representative Nancy Dahlstrom, Vice Chair
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Representative Craig Johnson

COMMITTEE CALENDAR

HOUSE BILL NO. 175

"An Act relating to the prohibition of the exercise of the power of eminent domain against a recreational structure for the purposes of developing a recreational facility or project."

- MOVED CSHB 175(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 187

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

- HEARD AND HELD

HOUSE BILL NO. 133

"An Act relating to requiring electronic monitoring as a special condition of probation for offenders whose offense was related to a criminal street gang."

- MOVED CSHB 133(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 175

SHORT TITLE: EMINENT DOMAIN; RECREATIONAL STRUCTURES

SPONSOR(S): REPRESENTATIVE(S) JOHNSON

03/05/07 (H) READ THE FIRST TIME - REFERRALS
03/05/07 (H) JUD, FIN
03/14/07 (H) JUD AT 1:00 PM CAPITOL 120
03/14/07 (H) Heard & Held
03/14/07 (H) MINUTE(JUD)
03/16/07 (H) JUD AT 1:00 PM CAPITOL 120
03/16/07 (H) -- MEETING CANCELED --
03/26/07 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 187

SHORT TITLE: TOBACCO SALES VIOLATIONS

SPONSOR(S): REPRESENTATIVE(S) JOHANSEN

03/12/07 (H) READ THE FIRST TIME - REFERRALS
03/12/07 (H) JUD, FIN
03/26/07 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 133

SHORT TITLE: ELECTRONIC MONITORING OF GANG PROBATIONER

SPONSOR(S): REPRESENTATIVE(S) BUCH

02/14/07 (H) READ THE FIRST TIME - REFERRALS
02/14/07 (H) JUD, FIN
02/19/07 (H) JUD AT 1:30 PM CAPITOL 120
02/19/07 (H) Scheduled But Not Heard
02/21/07 (H) JUD AT 1:00 PM CAPITOL 120
02/21/07 (H) Heard & Held
02/21/07 (H) MINUTE(JUD)
03/26/07 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

DAVID SCOTT, Staff
to Representative Kyle Johansen
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 187 on behalf of the sponsor,
Representative Johansen.

RANDALL RUARO, Staff
to Representative Kyle Johansen
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Assisted with the presentation of HB 187 on behalf of the sponsor, Representative Johansen.

STEVE RUSH

Holiday Stationstores, Inc.

(No address provided)

POSITION STATEMENT: During discussion of HB 187, provided comments and asked the committee to pass the bill.

JASON B. MOULTON, Loss Prevention Director
Safeway, Inc.

(No address provided)

POSITION STATEMENT: During discussion of HB 187, provided comments.

KIP KNUDSON, External Affairs Manager
Tesoro Alaska Company
Anchorage, Alaska

POSITION STATEMENT: During discussion of HB 187, provided comments.

DIANE CASTO, Section Manager
Prevention and Early Intervention Section
Division of Behavioral Health (DBH)
Department of Health and Social Services (DHSS)
Juneau, Alaska

POSITION STATEMENT: Testified in opposition to HB 187 as currently written.

CYNTHIA DRINKWATER, Assistant Attorney General
Commercial/Fair Business Section
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 187 as currently written.

EMILY NENON, Director
Alaska Government Relations
American Cancer Society (ACS)
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 187.

SUZANNE MEUNIER, Director of Advocacy
American Stroke Association (ASA)
American Heart Association (AHA)
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 187.

REPRESENTATIVE BOB BUCH
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 133.

ACTION NARRATIVE

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at [2:44:22 PM](#). Representatives Dahlstrom, Coghill, Samuels, Lynn, Holmes, and Ramras were present at the call to order. Representative Gruenberg arrived as the meeting was in progress. Representative Johnson was also in attendance.

HB 175 - EMINENT DOMAIN; RECREATIONAL STRUCTURES

[2:45:10 PM](#)

CHAIR RAMRAS announced that the first order of business would be HOUSE BILL NO. 175, "An Act relating to the prohibition of the exercise of the power of eminent domain against a recreational structure for the purposes of developing a recreational facility or project."

REPRESENTATIVE DAHLSTROM moved to adopt the proposed committee substitute (CS) for HB 175, Version 25-LS0619\E, Bullock, 3/16/07, as the work draft. There being no objection, Version E was before the committee.

REPRESENTATIVE COGHILL explained that Version E now stipulates that the term, "recreational structure" means a permanent structure that is used by the owner of or beneficiary of a trust holding legal title to the structure as a dwelling for seasonal recreational purposes.

[2:46:15 PM](#)

REPRESENTATIVE DAHLSTROM moved to report the proposed CS for HB 175, Version 25-LS0619\E, Bullock, 3/16/07, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 175(JUD) was reported from the House Judiciary Standing Committee.

HB 187 - TOBACCO SALES VIOLATIONS

[2:46:46 PM](#)

CHAIR RAMRAS announced that the next order of business would be HOUSE BILL NO. 187, "An Act relating to holders of business license endorsements for sales of tobacco products."

[2:47:53 PM](#)

DAVID SCOTT, Staff to Representative Kyle Johansen, Alaska State Legislature, said on behalf of Representative Johansen, sponsor, that HB 187 addresses the current lack of due process that tobacco retailers face during business license enforcement proceedings under AS 43.70.075. In the Alaska Superior Court case, Holiday Alaska, Inc. v. State of Alaska, the court ruled that AS 43.70.075(d) was unconstitutional because it violated Holiday's due process rights. House Bill 187 proposes that holders of business license endorsements for the sale of tobacco products be afforded a hearing wherein mitigating and aggravating factors can be considered by an administrative law judge. Currently the state is not obligated to prove negligence on the part of the endorsement holder when a violation occurs; instead, the conviction of the endorsement holder's employee is sufficient to subject the endorsement holder to the penalties outlined in statute for such violations.

MR. SCOTT explained that Section 1 stipulates that the department must conduct a hearing under proposed AS 43.70.075(m) before suspending an endorsement; that Section 2 expands AS 43.70.075(m) such that the hearing officer may consider whether the endorsement holder negligently violated Alaska's prohibitions on the sale of tobacco products to underage persons, as well as any evidence that might tend to mitigate or aggravate the length of suspension and penalty; and that Section 3 allows the department to reduce the license suspension period if the endorsement holder establishes that a written policy prohibiting the sale of tobacco products to underage persons was adopted and enforced prior to the date of the violation, and allows the department and the endorsement holder to agree to an informal disposition of a suspension.

MR. SCOTT, in conclusion, said that HB 187 is not intended to decrease suspension periods and penalties applied to businesses that routinely, negligently, and knowingly sell tobacco products to underage persons.

REPRESENTATIVE COGHILL referred to the language in proposed AS 43.70.075(m)(5) and asked for clarification regarding what would be considered mitigating or aggravating factors.

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RANDALL RUARO, Staff to Representative Kyle Johansen, Alaska State Legislature, said on behalf of Representative Johansen, sponsor, that a mitigating factor could be simply having an employee manual that specifically outlines the prohibition on selling tobacco products to underage persons and provides for the automatic discharge of an employee who violates that prohibition, or posting signs in the business regarding the prohibition, or programming the cash registers to require the input of a birth date when selling tobacco products. He surmised that there are probably a number of other things that an employer can do to ensure that tobacco sales to underage persons don't occur, and offered that paragraph (5) is meant to be a catch-all provision that would allow the endorsement holder to mention such things during the hearing.

CHAIR RAMRAS observed that with regard to the sale of alcohol, if a server has received [techniques in alcohol management (TAM)] training and fails to check a minor's ID, statute requires that this fact go on the permanent record of the licensee while the penalties accrue to the server; however, if the licensee doesn't employ TAM-trained servers, that fact could be considered an aggravator as could a history of the licensee continuing to serve alcohol to minors. He suggested that in this way both the retail alcoholic beverage industry and the retail tobacco industry have a litmus test regarding the age at which one can purchase such products.

REPRESENTATIVE COGHILL observed that paragraph (5) really has two parts: the potential for a mitigator to affect the length of suspension and civil penalty that may be imposed, and a possible reduction in the length of the period of suspension and penalty based on the fact that not granting a reduction would not be in the public's interest. He asked why paragraph (5) includes both of these two seemingly different provisions.

MR. RUARO offered that the first part of paragraph (5) pertains to the evidence that the endorsement holder could bring forth, whereas the second part of paragraph (5) sets out a standard by which the administrative law judge could use to reduce the period of suspension and penalty after consideration of mitigating and aggravating factors.

REPRESENTATIVE COGHILL said he can envision the phrase, "in the public interest" engendering an argument regarding its meaning.

MR. RUARO concurred, but relayed that [the sponsor and drafter] have not yet had an opportunity to develop alternative language.

REPRESENTATIVE HOLMES, acknowledging that current statutory language has been ruled by the court to be violating an endorsement holder's due process rights, questioned whether the bill provides for more change than needed to address the due process problem.

MR. SCOTT acknowledged that under HB 187, the administrative law judge would have new discretion.

REPRESENTATIVE COGHILL said he would be interested in knowing what the basis is for allowing for a change in the suspension period and penalty.

REPRESENTATIVE GRUENBERG asked whether the Holiday case has been appealed.

MR. RUARO said no, and relayed that the time for appeal has passed.

REPRESENTATIVE GRUENBERG asked whether there are any other similar cases pending.

MR. RUARO said not that he is aware of.

[3:02:38 PM](#)

STEVE RUSH, Holiday Stationstores, Inc., asked the committee to pass HB 187 as being in the interest of the retail business community in Alaska that sells tobacco products. He offered his understanding that HB 187 does nothing to change the current penalties, which he characterized as being the strongest in the country. If a retailer is negligent in the way it conducts its business, he remarked, it deserves to have its endorsement suspended, adding that his organization strongly supports that approach. He characterized a tobacco endorsement as valuable property worthy of protection under the due process clause of both the U.S. Constitution and the Alaska State Constitution.

MR. RUSH explained that under current law, once there is an alleged failed compliance check, the employee is charged as an individual and the employee always pleads guilty. Unfortunately, when this happens, the retailer is not provided notice of that hearing and is not allowed to participate in it,

but once the employee is convicted, the license enforcement proceeding begins and the state need not prove that the endorsement holder is guilty or negligent - it need only prove that the employee was found guilty of selling tobacco products to an underage person. It is a violation of Holiday's due process right to be punished based upon the conviction of another person during a proceeding that it was not allowed to participate in. He said it is frustrating to not be able to do anything whatsoever to affect the outcome of the second proceeding; that outcome is predetermined simply because of the guilty verdict of the employee in the first proceeding.

MR. RUSH spoke of the few violations that his organization was found guilty of immediately following the acquisition of its Alaska stores, and said that the 20-day suspension period has a huge effect on an endorsement holder because in addition to buying tobacco, customers also spend money on other products the business makes available, but when they are unable to purchase tobacco products, they go elsewhere for their tobacco products and those other products as well, sometimes even after the suspension period has elapsed.

CHAIR RAMRAS pointed out that although he is supportive of the bill, the current rules regarding both the sale of alcohol to minors and the sale of tobacco products to minors are in place to protect minors and the general public, and so he is also supportive of those rules and restrictions.

[3:11:59 PM](#)

MR. RUSH said that his organization merely wants the ability to present evidence at the aforementioned proceedings and have that evidence mean something in terms of the potential outcome. In response to an earlier question, he suggested that an aggravating factor could be the fact that it was a business's manager that failed the compliance check. He noted that proposed subsection (m)(4) speaks to whether the endorsement holder has appropriate protections in place to prevent the sale of tobacco products to underage persons. He opined that it is important, at a sentencing proceeding, for the judge to determine what the appropriate penalty is. For example, if an endorsement holder has some of the protections outlined in proposed AS 43.70.075(t) but not all, the endorsement holder ought to be found to be less guilty than an endorsement holder who didn't care enough about complying with the law to institute any of the protections outlined in subsection (t); likewise, should aggravators be found in a particular case, the

administrative law judge should impose the maximum penalties and suspensions available.

MR. RUSH said that in the aforementioned Holiday case, the court relied primarily on Frontier Saloon, Inc. v. Alcoholic Beverage Control Board, and on Javed v. Department of Public Safety. He opined that it is very telling that the state chose not to appeal Holiday, and again reiterated his belief that HB 187 does nothing to change the current penalty scheme for the sale of tobacco products to underage persons. He said that his organization supports the current penalty scheme and requests that HB 187 be passed out of the committee.

CHAIR RAMRAS said the committee is looking to remedy the current problem with the law but not in such a way that one could "drive a Mack truck through it."

REPRESENTATIVE DAHLSTROM asked Mr. Rush what his organization's policy is regarding what happens to employees who violate the law and whether management and non-management employees are treated differently under that policy.

MR. RUSH relayed that the policy is one of "virtually almost zero tolerance," particularly for management personnel, though if there is enough evidence for his organization to conclude that the individual wasn't negligent, the individual may not necessarily be fired.

CHAIR RAMRAS - acknowledging the high standards maintained in stores owned by Holiday Stationstores, Inc. - pointed out that current law must apply to all who engage in the retail sales of tobacco products, and his concern centers on the businesses that don't have as high a standard for how they conduct their retail tobacco product business; all endorsement holders must comply with a universal standard.

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REPRESENTATIVE GRUENBERG surmised that at issue is the liability of an organization for the act of its employee, and remarked that AS 11.16.130 specifically speaks to the procedure currently authorized in [AS 43.70.075]; in part, AS 11.16.130(a)(1)(A) says:

Sec. 11.16.130. Legal accountability of
organizations. (a) Except as otherwise expressly

provided, an organization is legally accountable for conduct constituting an offense if the conduct
(1) is the conduct of its agent and
(A) within the scope of the agent's employment and in behalf of the organization;

REPRESENTATIVE GRUENBERG opined that although it is a part of the criminal code, this statute establishes that if the agent operates negligently, it is enough to find criminal liability on the part of the corporation. He said he finds it troubling that there has not yet been recognition of this statute which sets the standard for the criminal responsibility of an organization for the acts of its agents.

REPRESENTATIVE SAMUELS said he disagrees with Representative Gruenberg's interpretation of AS 11.16.130.

REPRESENTATIVE GRUENBERG countered that a representative from the Department of Law (DOL) ought to be able to confirm his interpretation.

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JASON B. MOULTON, Loss Prevention Director, Safeway, Inc., after relaying that his company also does business in Alaska under the name of Carrs, offered some personal background information. He offered his understanding that the objective of current law is to limit access by underage persons to tobacco products. He mentioned that he also sits on Washington's Youth Access Task Force, and that what that Task Force has learned is that underage persons are accessing tobacco products via adults who purchase the products and then turn around and distribute them to the underage persons. He recounted that Washington's penalty for a first offense of selling tobacco products to underage persons is merely a fine of \$100, and also mentioned that the "Synar" compliance rates in Washington are significantly higher than those in Alaska.

CHAIR RAMRAS interjected to say he is pleased with the fact that Alaska has the strictest penalties in the nation, and suggested to Mr. Moulton that he refrain from offering a state-by-state comparison.

MR. MOULTON opined that greater penalties don't seem to enhance compliance rates. Referring to his company, he relayed that employees who commit violations are automatically suspended for five days, and said his company feels it has a good training

program in place to ensure compliance, and feels that Alaska's 20-day suspension period without the ability to appeal or mitigate is unfair and harsh and can ultimately decrease a store's revenues by as much as \$10,000.

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KIP KNUDSON, External Affairs Manager, Tesoro Alaska Company ("Tesoro"), mentioned that Tesoro has had 18 violations since 2000 and has terminated every one of the employees responsible for the violations, and that it has worked very hard to inculcate a culture of no tobacco or alcohol sales to underage persons. He pointed out that no one ever hears about the instances wherein businesses refuse to sell tobacco products to underage persons. He characterized the change proposed by HB 187 as a technical change that will result in state law adhering to the court decision and that will protect the constitutional rights of businesses. He offered that the bill will not result in many changes to the way Tesoro operates.

[3:36:26 PM](#)

DIANE CASTO, Section Manager, Prevention and Early Intervention Section, Division of Behavioral Health (DBH), Department of Health and Social Services (DHSS), first mentioned that the DBH is the agency responsible for the enforcement of illegal tobacco sales to underage persons and is required by the federal "Synar legislation" to maintain a compliance rate of 20 percent or less. Both the DBH and the DHSS oppose HB 187 [as currently written] but do support the intention to address the current due process problem tobacco retailers are experiencing, and to that end the DHSS has been working closely with the DOL, the Department of Commerce, Community, & Economic Development (DCCED), and the Department of Revenue (DOR), to amend the current statute to address that issue.

MS. CASTO said that as an interim measure, [the DHSS] is looking to change its current internal policy while still maintaining the continuity of its current enforcement program. For example, via the DHSS's existing authority, the DBH could cite both the clerk of sale and the business at the same time, and though this won't completely solve the problem, it should provide additional opportunity for due process as the DHSS continues its efforts to come up with a final solution.

MS. CASTO explained that the department is concerned with the bill's potential weakening of the current penalty structure. She elaborated:

We believe the current structure of citation and penalties works. We are quite proud of the fact that Alaska does have the strongest laws, and I can tell you, when I attend ... national meetings with other states working on tobacco enforcement, many of them are envious of our laws, so they know ... that our laws are strong and that they are working. State law was amended in 2001-2002 to ensure that violations resulted in a consistent temporary suspension of tobacco sales by retailers who sell tobacco to minors. In 2002, the state's illegal sale rate to minors was 30 percent, [but] following the change in law, in 2003, the rate dropped to 10 percent - clearly a direct relationship to the change in our citations and our penalties.

In 1995, the Youth Risk Behavior Survey [YRBS] reported that 26.3 percent of students bought cigarettes at a ... convenience store, [but] in 2003, the YRBS reported that 12.5 percent of students purchased cigarettes at a store - a considerable decrease that we believe is associated with Alaska's strong laws. Youth smoking in Alaska has shown consistent decreases over the last 10 years. Again, the YRBS ... shows a reduction in current smoking among youth, from 36.8 percent in 1995, to 19.2 percent in 2003 - significantly lower than the overall [national] ... rate of 28.5 percent. We believe these statistics and the significant reductions in youth access to and use of tobacco products is related to our strong enforcement laws.

MS. CASTO continued:

In a report from the U.S. General Accounting Office related to the Synar amendment implementation, ... it states that: "The components of an effective enforcement strategy include an enforceable law with penalties sufficiently severe to deter potential violators, according to the research. The [National Governors Association (NGA)] concluded from its interviews with representatives of state agencies on best practices in enforcing Synar that the single most

effective factor in reducing tobacco access to minors is the establishment of a statewide inspection and enforcement program that holds merchants and clerks accountable for their actions. Some state officials told us they believe that aggressive penalties assessed against the retailer can be very effective in changing merchant behavior."

MS. CASTO, in response to a question, clarified that the DHSS does not support HB 187 as it is currently written.

CHAIR RAMRAS said it is quite clear that the bill still needs some work.

MS. CASTO, in conclusion, said that the DHSS believes the Alaska youth tobacco prevention programs in Alaska are working because the state has a comprehensive, integrated, multi-strategy approach, part of which is strong enforcement. The DHSS is committed to strong enforcement and penalties for underage sale of tobacco products, and is proud of Alaska's current strong laws aimed at reducing youth access.

CHAIR RAMRAS said the committee will be taking the department's remarks under consideration before moving HB 187 from committee.

[3:42:53 PM](#)

CYNTHIA DRINKWATER, Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Anchorage), Department of Law (DOL), relayed that she has been involved in tobacco enforcement cases for about six years, that she represents the DCCED in the administrative proceedings involving tobacco endorsements, and that she has assisted the DHSS investigators in cases where clerks who have been cited for a violation of AS 11.76.100 have requested a trial and are represented by counsel. She said that today she is speaking at the request of the DHSS and in opposition to HB 187 as currently drafted. She concurred that in the Holiday case, the court held that AS 43.70.075 was unconstitutional because Holiday was not given an opportunity to address the central issues in the case, those being related to the conduct of the employees and whether those employees had negligently sold tobacco to an underage person.

MS. DRINKWATER also concurred that the DHSS is proposing to institute some internal changes, changes specifically relevant to the applicability of AS 11.16.130(a)(1). She elaborated:

Typically, the department in the past has cited just the clerks, [but] clearly ... under Alaska law there is a provision allowing for vicarious liability of business organizations, and the change that the department could make is to start citing not only the employee but also the business organization as well. The effect of that would mean that ... both parties would get the same court date, they could appear together, the ... endorsement holder would have the opportunity to raise factual defenses of the types that Judge Morse identified in his opinion, such as raising the issue of whether the employee was truly negligent, or whether, for instance, the buyer actually appeared to be over age 35 and therefore the employee wasn't negligent in failing to card, or whether the product at issue was a candy bar and not a package of cigarettes, and other factual issues. So there is a way, actually, that the department could enforce the statutes without any changes to AS 43.70.075, but, as has been mentioned, the department is willing to work with the sponsor and the committee to come up with a legislative solution that would address the due process concerns and at the same time keep intact a penalty provision that is meaningful and effective.

MS. DRINKWATER, in response to an earlier question regarding whether there were any similar cases pending, mentioned that there is currently a case before the Alaska Supreme Court called Godfrey v. State. In that case, among other issues, there was a due process challenge to AS 43.70.075, and the Alaska Superior Court did not find a defect in the statute though the hearing officer in the underlying case allowed the endorsement holder to raise defenses additional to those currently listed in AS 43.70.075(m)(1); Judge Collins looked at the issue and applied the three-part due process test that the U.S. Supreme court enunciated in Mathews v. Eldridge, 424 U.S. 319 (1975), and found that there was no violation of due process. In Godfrey, Ms. Drinkwater relayed, Judge Collins concluded: "The imposition of strict liability for limited monetary sanctions and suspended tobacco licenses for negligent conduct of employees selling tobacco to minors does not offend due process."

MS. DRINKWATER concluded by reiterating that there is a way for the department to continue its enforcement efforts while also providing endorsement holders with due process, and that the

department is also willing to continue working on a legislative solution. In response to a request, she said she would supply the written decision in the Godfrey case to the committee.

REPRESENTATIVE GRUENBERG, referring to AS 11.16.130, pondered whether the bill - specifically proposed AS 43.70.075(d) - should be altered to reflect that it must be shown that not only was the conduct within the scope of employment but also that it was on behalf of the organization.

MS. DRINKWATER opined that such is not necessary because of the way statute has been interpreted, particularly in Laidlaw Transit, Inc. v. Crouse, 53 P.3d 1093 (Alaska 2002); it is not sufficient for an employer to simply have a policy prohibiting illegal conduct by employees, and this issue was raised in Godfrey. She relayed that she would, however, consider Representative Gruenberg's suggestion further.

[3:51:28 PM](#)

EMILY NENON, Director, Alaska Government Relations, American Cancer Society (ACS), in response to a question, relayed that Michelle Toohey, from the American Lung Association of Alaska (ALAA), left written comments for the committee. Ms. Nenon, on behalf of the ACS, said that the ACS opposes HB 187 because "you can drive a Mack Truck through it." She added that enforcement of illegal tobacco sales to underage persons is a key component to a comprehensive tobacco control program. The vast majority of tobacco users started using tobacco as children; one-third of all cancer deaths are tobacco related. It is critically important to the ACS's mission to keep "this deadly, addictive product" out of the hands of children. Because of the nature of tobacco products, the ACS recognizes the unique responsibility placed on the vendors who sell tobacco products. Alaska is fortunate to have a successful vendor sales enforcement program, but that hasn't always been the case, she remarked.

MS. NENON mentioned that the graph in members' packets illustrates the significant drop in illegal vendor sales of tobacco products to underage persons right after 2002; prior to 2002, Alaska's laws governing tobacco enforcement did not have clear and predictable consequences for vendors selling tobacco products to underage persons. Because of this lack, approximately one-third of vendors in Alaska were found to be selling tobacco products to underage persons; after the laws changed in 2002, compliance rates increased dramatically, with an average of 90 percent of vendors "getting it right" and not

selling tobacco to underage persons. Ms. Nenon said the ACS wants to applaud the vendors that make efforts to educate their employees on this issue; those efforts, however, as is illustrated in the aforementioned graph, are dramatically more effective when combined with clear and predictable vendor sanctions.

MS. NENON mentioned that most other states do not handle the penalties for illegal sales entirely at the state level; instead the penalties are handled at the county/municipal level of government, and this results in the penalties varying depending on where in the state the violations occurs. Consistent statewide penalties have made a difference in Alaska's successful Synar compliance rates. In response to a question, she said that she has no problem with providing merchants with due process; the problem with the bill, however, is that it takes the issue of due process and uses it as an excuse to significantly weaken the state's current [suspension and] penalty scheme, thus making it easier for illegal sales of tobacco products to occur. She mentioned that the ACS has had conversations with some of the vendors regarding how the current [enforcement] program works.

CHAIR RAMRAS mentioned that the bill will be revised before moving from committee.

[3:57:37 PM](#)

SUZANNE MEUNIER, Director of Advocacy, American Stroke Association (ASA), American Heart Association (AHA), said she is speaking in opposition to HB 187. She opined that although the AHA agrees that everyone is entitled to due process, HB 187 is not needed and goes far beyond what the court requires, particularly given that the DHSS and the DOL are working on instituting policy modifications to address the due process issue. She surmised that all would agree that clear and predictable consequences ought to be applied to all vendors that violate the law by selling tobacco products to underage persons. Clear standards allow vendors to know exactly what is expected of them, and firm penalties motivate them to ensure that their employees comply with state law. She also surmised that all would agree that keeping tobacco products out of the hands of children is a crucial step towards curbing death and disease caused by tobacco. The AHA believes that the current law is working and is producing benefits - since its implementation, illegal sales of tobacco products to underage persons have dropped dramatically - and thus should not be changed.

MS. MEUNIER pointed out that HB 187 provides for the possibility of no suspension of an endorsement even if the vendor or clerk is found to be in violation, and would establish a negligent standard in place of a strict liability standard. The AHA believes that these changes are an unacceptable step in the wrong direction, she said; the current combination of vendor education programs and predictable temporary suspensions of endorsements are achieving the goal of minimizing illegal sales to children. As a matter of public health, she opined, an automatic suspension of a tobacco endorsement must be applied for every conviction. The AHA urges the committee to decline to pass HB 187 and instead allow the DHSS to remedy the identified due process issue.

4:00:50 PM

CHAIR RAMRAS suggested to members that they be mindful of the fact that small business owners don't intend to sell tobacco products to underage minors but can sometimes hire those that are irresponsible or negligent or don't execute their responsibilities, and of the fact that due process must be provided to vendors and they shouldn't be punished just for the sake of being punitive. He concluded by saying that he is proud that the state has the toughest tobacco laws in the country, and suggested that the sponsor consider the issues raised at today's meeting when developing a committee substitute or amendments to the bill.

REPRESENTATIVE GRUENBERG pointed out that AS 11.76.100(a)(1) uses the term, "negligently", and that in the statutes pertaining to alcohol, the term, "criminal negligence" is used. He asked all parties to consider whether the bill should reference criminal negligence; whether the bill should also contain the words, "and in the benefit of the person" in places where it speaks of the employee acting within the scope of agency or employment; and whether the bill ought to be altered such that if there is the potential for initiating a suspension that the endorsement holder be given notice of the initial hearing pertaining to the employee as well. He asked that members be provided with a copy of the regulations currently referred to on page 2, line 28, of HB 187.

CHAIR RAMRAS relayed that HB 187 would be set aside.

HB 133 - ELECTRONIC MONITORING OF GANG PROBATIONER

4:05:43 PM

CHAIR RAMRAS announced that the final order of business would be HOUSE BILL NO. 133, "An Act relating to requiring electronic monitoring as a special condition of probation for offenders whose offense was related to a criminal street gang." [Before the committee was the proposed committee substitute (CS) for HB 133, Version 25-LS0465\E, Luckhaupt, 2/20/07, which had been adopted as the work draft on 2/21/07; included in members packets was another proposed committee substitute (CS) for HB 133, Version 25-LS0465\L, Luckhaupt, 3/14/07.]

4:06:01 PM

REPRESENTATIVE DAHLSTROM moved to adopt the proposed committee substitute (CS) for HB 133, Version 25-LS0465\L, Luckhaupt, 3/14/07, as the work draft. There being no objection, Version L was before the committee.

4:06:47 PM

REPRESENTATIVE BOB BUCH, Alaska State Legislature, sponsor, relayed that Version L has deleted reference to AS 12.55.137 in order to narrow the focus of the bill so that it only applies to violent offenders who commit felony crimes; has deleted reference to "continuous monitoring" so that the type of electronic monitoring used will be that which immediately informs the probation officer if the probationer violates an inclusion or exclusion zone; and now contains a five-year sunset provision so that the legislature will have an opportunity to assess the effectiveness of the bill. He mentioned that all of these changes will result in decreased fiscal notes.

REPRESENTATIVE BUCH said that although he'd tried to expand the bill so that it would apply to youth who commit heinous violent crimes but who aren't members or associate members of a criminal street gang, he'd been advised by the drafter that such an expansion would be unconstitutional and by the Department of Corrections (DOC) and the Department of Law (DOL) that such an expansion is unnecessary because, if caught and convicted, there is a good chance that such persons either wouldn't be eligible for probation before the bill sunsets or would be subject to electronic monitoring anyway.

REPRESENTATIVE BUCH expressed his hope that the committee will support the bill and thus place this proposed additional burden

on those criminals that have shown a disregard for the lives of others.

REPRESENTATIVE DAHLSTROM expressed appreciation for the work done on the bill, and indicated that her concerns have been satisfied by Version L.

CHAIR RAMRAS characterized Version L as a better bill, and expressed appreciation for the work done it.

[4:14:12 PM](#)

REPRESENTATIVE DAHLSTROM moved to report the proposed CS for HB 133, Version 25-LS0465\L, Luckhaupt, 3/14/07, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 133(JUD) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 4:14 p.m.