

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 25, 2007
1:10 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

COMMITTEE CALENDAR

HOUSE BILL NO. 187

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

- MOVED CSHB 187(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 207

"An Act relating to questionnaires and surveys administered in the public schools."

- HEARD AND HELD

HOUSE BILL NO. 217

"An Act relating to required onboard disclosures and displays about tours, flightseeing operations, other shoreside activities, and visitors bureaus; and providing for an effective date."

- MOVED CSHB 217(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 225

"An Act relating to misconduct involving weapons and bail."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 213

"An Act relating to an aggravating factor at sentencing for crimes committed at certain shelters and facilities."

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

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
03/26/07	(H)	Heard & Held
03/26/07	(H)	MINUTE(JUD)
04/18/07	(H)	JUD AT 1:00 PM CAPITOL 120
04/18/07	(H)	-- MEETING CANCELED --
04/25/07	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 207

SHORT TITLE: STUDENT QUESTIONNAIRES AND SURVEYS

SPONSOR(S): REPRESENTATIVE(S) WILSON

03/19/07	(H)	READ THE FIRST TIME - REFERRALS
03/19/07	(H)	HES, JUD
04/03/07	(H)	HES AT 3:00 PM CAPITOL 106
04/03/07	(H)	Scheduled But Not Heard
04/10/07	(H)	HES AT 4:00 PM CAPITOL 106
04/10/07	(H)	Heard & Held
04/10/07	(H)	MINUTE(HES)
04/12/07	(H)	HES AT 3:00 PM CAPITOL 106
04/12/07	(H)	Moved CSHB 207(HES) Out of Committee
04/12/07	(H)	MINUTE(HES)
04/13/07	(H)	HES RPT CS(HES) 2DP 2NR
04/13/07	(H)	DP: CISSNA, WILSON
04/13/07	(H)	NR: FAIRCLOUGH, NEUMAN
04/25/07	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 217

SHORT TITLE: TOURISM DISCLOSURES AND NOTICES

SPONSOR(S): REPRESENTATIVE(S) HOLMES

03/22/07	(H)	READ THE FIRST TIME - REFERRALS
03/22/07	(H)	EDT, JUD
04/03/07	(H)	EDT AT 5:30 PM CAPITOL 106
04/03/07	(H)	Heard & Held

04/03/07 (H) MINUTE(EDT)
 04/10/07 (H) EDT AT 5:00 PM BARNES 124
 04/10/07 (H) Heard & Held
 04/10/07 (H) MINUTE(EDT)
 04/17/07 (H) EDT AT 5:00 PM BARNES 124
 04/17/07 (H) Moved CSHB 217(EDT) Out of Committee
 04/17/07 (H) MINUTE(EDT)
 04/18/07 (H) EDT RPT CS(EDT) NT 4NR 2AM
 04/18/07 (H) NR: JOHANSEN, LYNN, DOLL, NEUMAN
 04/18/07 (H) AM: GATTO, KOHRING
 04/25/07 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

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

POSITION STATEMENT: Provided an explanation of the committee substitute for HB 187 on behalf of the sponsor, Representative Johansen.

REBECCA ROONEY, Staff
 to Representative Peggy Wilson
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Presented HB 207 on behalf of the sponsor, Representative Wilson.

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

POSITION STATEMENT: Testified in support of HB 207.

CARL ROSE, Executive Director
 Association of Alaska School Boards (AASB)
 Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 207.

REPRESENTATIVE PEGGY WILSON
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 207.

JAY BUTLER, M.D., Director
 Central Office

Division of Public Health
Department of Health and Social Services (DHSS)
Juneau, Alaska

POSITION STATEMENT: Provided comments and responded to questions during discussion of HB 207.

TAMMY GREEN, Deputy Director
Central Office
Division of Public Health
Department of Health and Social Services (DHSS)
(No address provided)

POSITION STATEMENT: Provided comments during discussion of HB 207.

MARIE DARLIN, Coordinator
AARP Capital City Task Force
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 207.

ANDREE McLEOD
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 207.

MATT FELIX, Executive Director
Juneau Affiliate
National Council on Alcoholism and Drug Dependence, Inc. (NCADD)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 207.

CHIP THOMA
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 217, provided comments and responded to questions.

STEVEN HITES, Owner
Skagway Street Car Company, Inc.
Skagway, Alaska

POSITION STATEMENT: Testified in support of HB 217.

ROBERT WYSOCKI, President & CEO
Huna Totem Corporation
Hoonah, Alaska

POSITION STATEMENT: Testified in support of HB 217.

DENNIS DeWITT, State Director
National Federation of Independent Business (NFIB)
Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 217.

JOSEPH W. GELDHOF
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 164, provided comments as one of the joint prime sponsors of the ballot initiative pertaining to cruise ship taxation, regulation, and disclosure.

JOHN DUNLAP, Manager
Allen Marine Tours
Sitka, Alaska

POSITION STATEMENT: Testified in support of HB 217, Version V, and proposed amendments.

FREDERIC DRAKE, Owner
Snorkel Alaska
Ketchikan, Alaska

POSITION STATEMENT: Testified in support of HB 217.

ROB SCHEER
Great Alaskan Lumberjack Show;
Experience Alaska Tours
Ketchikan, Alaska

POSITION STATEMENT: Testified in support of HB 217.

RON PECK, President and Chief Operating Officer
Alaska Travel Industry Association (AlaskaTIA)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 217.

ALLAN TESCHE, Co-Owner
G Street House Bed and Breakfast
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 217.

JOHN FERGUSON
JC Penney Company, Inc.
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 217.

BRUCE BUSTAMANTE, President and CEO
Anchorage Convention & Visitors Bureau (ACVB)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 217.

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

POSITION STATEMENT: Responded to questions during discussion of the proposed amendments to HB 217, Version V.

ACTION NARRATIVE

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at [1:10:40 PM](#). Representatives Holmes, Dahlstrom, Coghill, and Ramras were present at the call to order. Representatives Lynn, Gruenberg, and Samuels arrived as the meeting was in progress.

HB 187 - TOBACCO SALES VIOLATIONS

[1:11:16 PM](#)

CHAIR RAMRAS announced that the first order of business would be HOUSE BILL NO. 187, "An Act relating to holders of business license endorsements for sales of tobacco products." [In members' packets were two proposed committee substitutes for HB 187: Version 25-LS0719\M, Luckhaupt, 4/23/07; and Version 773-07-0086 bil.doc, Drinkwater, 4/2/2007, (3:34 PM).]

REPRESENTATIVE DAHLSTROM moved to adopt the proposed committee substitute (CS) for HB 187, Version 25-LS0719\M, Luckhaupt, 4/23/07, as work draft. There being no objection, Version M was before the committee.

CHAIR RAMRAS offered a recap of the progress made on HB 187 thus far and the issues it has raised.

[1:14:17 PM](#)

DAVID SCOTT, Staff to Representative Kyle Johansen, Alaska State Legislature, sponsor, relayed on behalf of Representative Johansen that Section 1 of Version M [still] stipulates that a hearing must be held before a business license endorsement can be suspended, and that Section 2 makes a hearing "meaningful" by expanding the evidence that the administrative law judge shall consider. He noted that in using the term "meaningful," he is referring to the Alaska Superior Court case, Holiday Alaska, Inc. v. State of Alaska, wherein the court indicated that in order for an administrative hearing to be meaningful, the

accused must be granted the opportunity to fully contest issues of central importance.

MR. SCOTT indicated that Section 3 of Version M establishes new subsections (t), (u), and (v) to AS 43.70.075. Proposed subsection (t)(1)-(5), he offered, "basically creates policy for license holders ... to comply with if they want [an administrative law judge] to even consider a reduction in sentence." Specifically, proposed paragraph (1) stipulates that a license holder must adopt and enforce a written policy against selling tobacco products to persons under the age of 19; proposed paragraph (2) stipulates that a license holder must have informed his/her employees of applicable laws; proposed paragraph (3) stipulates that the license holder must require his/her employees to sign a form acknowledging that they have been informed of and understand the aforementioned written policy; proposed paragraph (4) stipulates that the license holder requires his/her employees to verify, via photographic identification, the age of those purchasing tobacco products; and proposed paragraph (5) stipulates that a license holder must establish and enforce disciplinary sanctions [against employees] for noncompliance.

MR. SCOTT, in response to a comment, observed that there is a proposed amendment which would stipulate that a period of suspension may not be reduced to a period of less than 10 days. He added that the administrative law judge will have the discretion, but is not required, to reduce the suspension period. He then relayed that proposed subsection (v) of Section 3 allows the license holder and the department to agree to an informal disposition of suspension, and allows the department to reduce the period of suspension but only for a first time offense.

REPRESENTATIVE HOLMES pointed out, though, that proposed subsection (u) stipulates that a reduction in the period of suspension may not be granted more than twice in a 12-month period for any one location.

CHAIR RAMRAS offered his understanding that there is a proposed amendment addressing that point.

[1:19:23 PM](#)

CHAIR RAMRAS made a motion to adopt Amendment 1, labeled 25-LS0719\M.1, Luckhaupt, 4/24/07, which read:

Page 4, following line 14:

Insert a new subsection to read:

"(w) A period of suspension may not be reduced under (t) or (v) of this section to a period of less than 10 days."

REPRESENTATIVE HOLMES objected for the purpose of discussion.

CHAIR RAMRAS offered his understanding that Version M allows for the possibility of having the period of suspension reduced if the license holder is able to bring forth information proving that he/she complied with proposed AS 43.70.075(t)(1)-(5), and Amendment 1 merely stipulates that a period of suspension may not be reduced to a period of less than 10 days. He posited that Version M addresses the issue of due process for license holders, while Amendment 1 addresses his concern that any suspension period not be reduced to less than 10 days. He added, "When this bill goes to the [House Finance Committee] I hope that those members do not go below the 10-day minimum, because I think that stiff penalties have contributed to curbing minors consuming and purchasing tobacco."

CHAIR RAMRAS, in response to a question, pointed out that the language on page 1, line 11, of Version M provides for a 20-day suspension period [for a first offense].

REPRESENTATIVE SAMUELS opined that endorsement holders who have done nothing wrong and do everything stipulated in proposed subsection (t)(1)-(5) but still have an employee who chooses to sell tobacco to a minor are being treated the same as those endorsement holders that choose not to train their employees.

CHAIR RAMRAS pointed out that all employers are culpable for the actions of the employees they hire, and offered some examples. "At some point we have to draw the line, and in this case, ... I would like to draw it around ... being firm on making it a significant penalty [to] conducting commerce if you're not careful in the people that you hire and the way that they are going to engage in tobacco sales," he added.

REPRESENTATIVE SAMUELS again expressed disfavor with the concept of treating all endorsement holders the same.

REPRESENTATIVE HOLMES removed her objection.

CHAIR RAMRAS announced that Amendment 1 was adopted.

[1:26:29 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 2, which read [original punctuation provided]:

1. P. 2 - L. 25 delete:
"a hearing office"
and add:
"an administrative law judge"

REPRESENTATIVE GRUENBERG explained that the language to be deleted should instead read, "a hearing officer", and that Amendment 2 is a technical amendment acknowledging that those working in the office of administrative hearings are called administrative law judges, not hearing officers.

CHAIR RAMRAS, noting that there were no objections, announced that Amendment 2 was adopted.

[1:27:14 PM](#)

REPRESENTATIVE GRUENBERG referred to Amendment 3, which read [original punctuation provided]:

1. P. 4 - L. 5 delete:
granted more than "twice"
and add:
granted more than "once"

REPRESENTATIVE DAHLSTROM made a motion to adopt Amendment 3.

CHAIR RAMRAS objected for the purpose of discussion, and offered his understanding that Amendment 3 would stipulate that a reduction in suspension may be granted only once within a 12-month period. He then removed his objection.

REPRESENTATIVE COGHILL objected and asked whether a reduction may only be granted once.

REPRESENTATIVE GRUENBERG said no, and concurred that a reduction may only be granted once in a 12-month period. He opined that a license holder shouldn't be able to break the law and then seek mitigation of the penalty more than once during a 12-month period for any one location.

CHAIR RAMRAS concurred.

REPRESENTATIVE COGHILL removed his objection.

REPRESENTATIVE HOLMES pointed out that current law doesn't provide endorsement holders with any opportunity to seek a reduction in the suspension period, and added, "We are loosening the tobacco laws.

CHAIR RAMRAS, noting that there were no further objections, announced that Amendment 3 was adopted.

[1:29:30 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 4, which, along with a handwritten change, read [original punctuation provided]:

Page 4, line 14

Add a new subsection to read:

(w) conviction for a violation of AS 11.76.100, 11.76.106, or 11.76.107 by the agent or employee of the person who holds the business license endorsement is rebuttably presumed to constitute proof of the fact that the agent or employee negligently sold a cigarette, a cigar, or tobacco, or a product containing tobacco to a person under 19 years of age. The person who holds the business license endorsement may overcome the presumption by establishing by clear and convincing evidence that the agent or employee did not negligently sell a cigarette, a cigar, or tobacco, or a product containing tobacco to a person under 19 years of age in violation of AS 11.76.100, 11.76.106, or 11.76.107 as alleged in the citation issued to the agent or employee. The presentation of evidence authorized by this subsection does not constitute a collateral attack on the conviction described in this subsection.

REPRESENTATIVE SAMUELS objected.

REPRESENTATIVE GRUENBERG explained that Conceptual Amendment 4 would add a new subsection (w) to proposed AS 43.70.075, and offered that in the Holiday case, the court said:

In order to satisfy due process requirements, the litigant must be given more than just a hearing. That

hearing must be "meaningful." In determining "whether a hearing is a meaningful one, [the court is] guided by 'considerations of fundamental fairness.'" Thus at an administrative hearing concerning the suspension of a driver's license "the accused must be granted the opportunity to fully contest issues of 'central importance' to the revocation decision."

REPRESENTATIVE GRUENBERG opined that the same principle applies with regard to [suspensions of tobacco endorsements]. Conceptual Amendment 4 will clarify that the employer can also rebut the presumption of the conviction that the employee sold the tobacco product to someone under the age of 19.

MR. SCOTT relayed that the sponsor is primarily concerned with correcting the lack of due process in existing law, and offered his understanding that the sponsor would not object to Conceptual Amendment 4.

CHAIR RAMRAS remarked that Conceptual Amendment 4 seems to favor the employer.

REPRESENTATIVE GRUENBERG concurred, adding that it favors the employer's due process rights.

REPRESENTATIVE SAMUELS removed his objection.

CHAIR RAMRAS announced that Conceptual Amendment 4 was adopted.

[1:33:00 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 5, which read [original punctuation provided]:

1. P. 3 - L. 26 add:
", 11.76-106, and 11.76-107"
2. P. 3 - L. 31 add:
", 11.76-106, and 11.76-107"

REPRESENTATIVE DAHLSTROM objected.

REPRESENTATIVE GRUENBERG, after reviewing the language in Section 3 of the original version of the bill, withdrew Amendment 5.

CHAIR RAMRAS recapped the changes that were made to the bill.

[1:34:52 PM](#)

REPRESENTATIVE COGHILL moved to report the proposed CS for HB 187, Version 25-LS0719\M, Luckhaupt, 4/23/07, as amended, out of committee with individual recommendations and the accompanying fiscal note. There being no objection, CSHB 187(JUD) was reported from the House Judiciary Standing Committee.

HB 207 - STUDENT QUESTIONNAIRES AND SURVEYS

[1:35:29 PM](#)

CHAIR RAMRAS announced that the next order of business would be HOUSE BILL NO. 207, "An Act relating to questionnaires and surveys administered in the public schools." [Before the committee was CSHB 207(HES).]

[1:37:01 PM](#)

REBECCA ROONEY, Staff to Representative Peggy Wilson, Alaska State Legislature, sponsor, explained on behalf of Representative Wilson that HB 207 will change the parental consent requirements in schools from active to passive for anonymous surveys only. Active parental consent requires written permission to participate in the survey. Active parental consent overburdens the school system and significantly increases costs involved in conducting student surveys. Research and experience suggests that the vast majority of parents would consent to their children participating in such surveys. Most of the research indicates that failures to provide written permission are driven by apathy, oversight, or student error, not be parents' refusal. Many schools are unable to use the data they collect because there are not enough participants.

MS. ROONEY explained that passive parental consent notifies and informs the parents about the nature of a survey, and allows parents to refuse to allow their child to participate in the survey. School-based surveys continue to be a reliable method for gathering valuable population-based information on youth; this data helps policymakers, educators, program planners, and parents to better understand important health and social issues that affect young people's chances of success. Routine standardized surveys such as the national and state Youth Risk Behavior Survey (YRBS), which is conducted by the Centers for Disease Control and Prevention (CDC), track trends over time and help guide and evaluate important health and prevention

programs. State and federal grant programs that rely on these surveys include programs pertaining to tobacco prevention and control; obesity prevention; heart disease and stroke; diabetes; safe and drug-free schools; other substance abuse prevention; injury prevention - including violence and suicide prevention; human immunodeficiency virus (HIV) and sexually transmitted disease (STD) prevention; and more.

MS. ROONEY offered that the overall statewide response rate to YRBS in 2005 was 55 percent, thus falling short of the required response rate of 60 percent. The state was unable to use the data or publish a report because the data would not be representative of the high school population. When the state doesn't get such reports, it loses the ability to have timely data and track trends over time, and is not able to compare Alaska data with national data during the same time period. Under the bill, notification of surveys and their content will still be sent to every parent of a child that is a candidate participant just as occurred under active parental consent - a parent will have the option of reviewing the survey and how it will be administered before it is actually administered. Therefore, any parent who doesn't want his/her child to participate will be able to opt out. This type of parental consent provides both protection and flexibility for parents and schools.

[1:41:29 PM](#)

EMILY NENON, Director, Alaska Government Relations, American Cancer Society (ACS), relayed that she is very happy that the committee is hearing HB 207, adding that the ACS supports using the best means possible to gather health-related data from Alaska's youth. That health-related data is of interest to the ACS; as a science-based organization, the ACS uses youth data to assess the challenges to children's life-long health patterns, to set goals and action plans to meet those challenges, and to monitor the success of its efforts. There really is no debate over the value of the data collected in such surveys, she remarked; instead, the debate centers on how the data is collected. House Bill 207 has been drafted in such a way that it retains the key parent and student protections of [existing] statute. In addition to retaining all of the parental notification requirements, it also makes it practical for schools to obtain survey data. In conclusion, she reminded the committee that the surveys are anonymous and voluntary.

[1:43:45 PM](#)

CARL ROSE, Executive Director, Association of Alaska School Boards (AASB), relayed that the AASB advocates for children and youth, and assists local school districts in providing a quality education with an emphasis on student achievement through effective local governance. The ability of the AASB to identify the issues, look for solutions, and measure results is contingent upon being able to acquire the information garnered by these surveys. There are three programs the AASB is involved in, and all are contingent upon being able to gather information through various surveys regarding the attitudes and behaviors of children and youth. He offered, "If you're making an investment in trying to get communities engaged in helping kids be successful, you'd like to know that your efforts ... can be validated and that progress is being made." He concluded by saying that the AASB supports HB 207.

CHAIR RAMRAS offered his understanding that under HB 207, parental consent is required for surveys that are not anonymous, and that a child can simply decline to participate in a survey or his/her parents may, in writing, deny permission for their child to participate.

MR. ROSE added that the parents' written denial of permission must be submitted to the school principal.

REPRESENTATIVE LYNN offered his understanding of the difference between active and passive permission, and surmised that not many notices given to children to take to their parents are returned.

MR. ROSE said that the AASB is trying to access confidential, anonymous information, but seeking active permission can inhibit obtaining that information.

[1:49:37 PM](#)

REPRESENTATIVE PEGGY WILSON, Alaska State Legislature, sponsor, relayed that the College of Nursing at the University of New Mexico Health Sciences Center found that when active parental consent is required, parental permission is typically obtained for only 30-60 percent of the students; in comparison, when passive consent is used, 93-100 percent of the students participate. Extensive follow-up may result in 55-100 percent of parents giving permission but at a significant cost - \$20-\$25 per student. She relayed that according to the superintendent of schools in Anchorage, a lot of money is spent on a yearly

basis in trying to obtain permission, but even then participation is still too low.

CHAIR RAMRAS observed that there is no fiscal note attached to HB 207.

REPRESENTATIVE WILSON, in response to a question, offered her understanding that requiring active consent results in the exclusion of minorities, of students having problems in school, and of students already engaged in or at risk of problem behavior.

[1:52:55 PM](#)

JAY BUTLER, M.D., Director, Central Office, Division of Public Health, Department of Health and Social Services (DHSS), relayed that the YRBS is an epidemiologic surveillance tool designed by the CDC and administered in schools every other year by state and local health agencies around the country. Alaska has participated in the YRBS since 1995. Typically, the YRBS in Alaska is administered to students in 42 high schools in approximately 20 districts, with just over 2,000 students eligible to participate. The YRBS asks students about a number of health-related activities that those in the public health field would like to encourage such as seat-belt and helmet use, daily consumption of fresh fruits and vegetables, and exercise, as well as a number of activities that those in the public health field would like to discourage such as tobacco use, alcohol use, drug use, and sexual activity.

DR. BUTLER said that in the field of public health, this data is used to develop and evaluate public health programs designed to help keep kids healthy and help them become healthy adults. Student responses are anonymous, and it's not possible to trace an individual questionnaire back to any given student. For the YRBS in Alaska, a predefined response rate of 60 percent is required for statistical validity. The 2003 YRBS survey provided representative data but only after considerable time and investment in incentives, and the overall response rate in 2005 was only 55 percent despite incentives provided to help schools offset the additional administrative burden associated with active consent; as a result, the 2005 survey did not provide useful data.

DR. BUTLER said that an evaluation of YRBS data illustrates that participation rates have been greater in areas using passive consent. Of the roughly 45 states across the country that

participate, only 2 or 3, including Alaska, have statewide requirements for active consent. House Bill 207 won't change the ability of local school districts to create their own policies regarding consent for student surveys. He pointed out that there are advantages and disadvantages to both active and passive consent. Active consent increases parental participation in the survey process and ensures that consent has been based on a conscious decision by the student's parent. Additionally, involvement of parents could build community support for participation in the survey process which those in the field of public health view as a methodological advantage.

DR. BUTLER said that passive consent, on the other hand, improves participation rates and can provide more representative data; it allows administration of the survey at less cost and with less burden on schools and teachers. Additionally, with passive consent, it is [thought] that nonparticipation is due to parental objection to the survey, not just that parents were not made aware of the survey because students didn't bring the notice home.

DR. BUTLER, in response to questions, acknowledged that the subject matter of some surveys is considered sensitive by some parents, and their concern is taken seriously. The proposed switch to passive consent is not meant to take away the ability of parents to preclude their child from taking a survey. Furthermore, there is no attempt to cover up the content of a survey; in fact, the survey is made available to parents if they request it.

[1:58:41 PM](#)

REPRESENTATIVE LYNN asked whether the surveys ask questions about sexual behavior, sexual orientation, and safe sex. He noted that some parents believe that their children should not be exposed to such questions at school.

DR. BUTLER offered that with the YRBS, the nature of the questions posed to high school students regarding sexual activity are [preset]. There is a question of whether the student has been sexually active, and, if so, how many partners the student has had, and how many the student has had in the past three months; all these questions includes an answer option of, "I am not sexually active." There is also a question of whether the student, within the past 30 days, has been under the influence of alcohol while sexually active, and there is a question of whether the student used any type of birth control

or prophylactic during sexual activity. He said that in terms of the YRBS, he is very comfortable with the wording of the questions; the questions are in no way leading and are mild in comparison to the lyrics of songs played over the PA system at schools.

REPRESENTATIVE COGHILL surmised that the questions are probably fairly well crafted to address today's issues. He said, however, that because of the sensitive nature of the issues addressed in such surveys, he would rather presume that the parent has the right to grant permission and that the school has to obtain that permission. He acknowledged that some parents might be apathetic to the surveys, and that some children simply won't give their parents the notification and parental consent form, but there are other parents who, if given the opportunity, will say "no" to allowing their children to participate in such surveys. He indicated that he doesn't want to assume that the non return of parental consent forms can be attributed to a failure on the part of the parents; instead it may simply be that the parent is refusing to grant permission.

DR. BUTLER said that there have been studies done regarding the lack of response to parental consent forms.

[2:02:45 PM](#)

TAMMY GREEN, Deputy Director, Central Office, Division of Public Health, Department of Health and Social Services (DHSS), concurred that there have been follow-up studies done to determine why parental consent forms aren't returned, and a fair amount of those questioned said they simply forgot to fill out the form. These studies also determined that given the choice, those parents who will object to granting their children permission to participate in a survey will respond regardless of whether consent is active or passive. Notwithstanding these studies, she offered, there is no way to know for sure, in each case, why the parental consent form was not returned. It is the school district's responsibility, she opined, to make sure that parents are informed about surveys and are given the chance to look at them; parents should never feel that there has been an attempt by the school to hide anything about the surveys.

REPRESENTATIVE COGHILL opined that if active consent is not the method used, parents will be left behind on this issue.

[2:04:54 PM](#)

REPRESENTATIVE LYNN asked whether the parental consent forms are provided in languages other than English.

MS. GREEN said she is not sure but thinks that they are not provided in other languages, adding that she will research that issue further. In response to another question, she offered her belief that under the bill, parents must be notified regardless of whether the survey is anonymous.

CHAIR RAMRAS observed that the bill is not specific regarding whether the required notification must detail the subject matter of a survey.

REPRESENTATIVE GRUENBERG offered his understanding that under existing statute, a questionnaire that inquires into family or personal affairs may not be administered, regardless of whether the questionnaire is anonymous, unless written permission is first obtained from the parent or guardian, and that under the bill, an anonymous questionnaire, regardless of the subject matter, can be administered unless the parent specifically says that his/her child cannot participate.

CHAIR RAMRAS said he is comfortable with switching to a passive-consent approach, but wants to ensure that schools actively pursue notifying parents about the subject matter of any upcoming surveys.

REPRESENTATIVE COGHILL indicated that his belief is that the parent should have to specifically grant permission, each time, before a student is given a survey regardless of whether it is anonymous.

REPRESENTATIVE GRUENBERG offered his understanding that under the bill, two weeks' notice to the parent is required regardless of whether the survey is anonymous.

CHAIR RAMRAS expressed a desire to alter the bill such that schools will be required to notify the parents of the subject matter of any upcoming survey regardless of whether a passive consent approach is used.

[2:12:03 PM](#)

MARIE DARLIN, Coordinator, AARP Capital City Task Force, after relaying that the AARP has submitted a letter of support for HB 207, offered that the AARP's membership includes grandparents who are very concerned about the issues raised in surveys as

those issues relate to their grandchildren. She said that the type of information garnered by surveys is important, and noted that the question of how to conduct such surveys was an issue for the Juneau school board even in the '60s and '70s when she served on it. She posited that any school board is going to pay very careful attention to notifying parents about what questions a survey contains. This bill will result in better participation rates, she indicated, and noted that parents will have two weeks notice to consider whether to withhold consent.

MS. DARLIN expressed hope that any school district that adopts a passive consent approach will send out a copy of the survey so that parents will be aware of the questions that will be asked. It should be the school board's responsibility, rather than the student's, to ensure that parents are properly notified and informed about the types of questions a survey contains and what the resulting information will be used for. The issue is one of getting useful information in the easiest way possible, and allowing parents the ability to deny permission would seem to take care of their concern because even then the responsibility is given back to the parents. In conclusion, she said that the AARP supports HB 207.

[2:15:34 PM](#)

ANDREE McLEOD said she opposes HB 207, and relayed that in 1999, her son participated in a survey without her being aware that he was doing so; as a result she went to the Anchorage school board to try to get the policy changed, but because of the funding associated with such surveys, it was really hard to get anything accomplished at the school-board level, and so she had to go to the state level to get the law changed. She opined that HB 207 diminishes the role of parents' interaction in their children's schools, adding, "We need to maintain the parents' authority in their child's education, not less." She went on to say: "I see this as a fundamental issue of parents versus schools and who has the right. Parents have the right to their child's experience in the schools. They own it. And they give consent to do certain things at the schools."

MS. McLEOD pointed out that the YRBS is not only given to high school students, but to students even younger. She relayed that back in 1999, she was about 43 or 44 years old, and that when she read the YRBS to see what kinds of questions were being asked, she found that the numerous questions regarding sex left her, even at the age of 44, with the thought that she ought to be having sex. Such surveys ask a lot of questions about

private family affairs, and, prior to 1999, these questions were being asked of children without their parents knowing it. It was a very hard-fought battle to get that situation changed, particularly given that funding issues played a big part. She opined that passage of HB 207 will again result in violating the parents' role in their children's school experience, and that the bill actually goes against what its stated intent is.

2:20:01 PM

MATT FELIX, Executive Director, Juneau Affiliate, National Council on Alcoholism and Drug Dependence, Inc. (NCADD), said that the Juneau Affiliate of NCADD depends a lot on grants and contracts, and so is concerned about the lack of data and the lack of accuracy in the data. Currently there are two major surveys that the NCADD depends upon to obtain federal grants, but one of those surveys is not conducted in Alaska because the state doesn't use passive consent and so it is too expensive to conduct; the data that that survey gathers pertains to drug and alcohol use, and it would be great, from his organization's perspective, he relayed, to have that data so as to be able to compare Alaska with other states and so as to be able to apply for certain federal grants. Currently the YRBS "is the only thing that we have" and its accuracy is inadequate at this point for use in obtaining federal monies. He added, "I think we all realize that we do have a serious problem ... with [drugs] and alcohol." In response to a question, he said he strongly supports HB 207.

MR. FELIX, in response to questions, offered that the survey questions are worded and the statistics are gathered in such a way so as to minimize the margin of error, and that funding is one of the main reasons for seeking accurate data.

REPRESENTATIVE GRUENBERG relayed that some of his constituents might be intimidated by having to submit a written denial of permission to the school principal as is required by the bill, and questioned whether the committee ought to alter the bill such that it would be possible to submit the written denial of permission to either the principal or the teacher.

MR. ROSE relayed that the 53 school districts in Alaska address this issue in different fashions; for example, in some small communities, the school districts send out self-addressed, stamped return envelopes along with the notice. He mentioned, however, that in larger communities there are a number of children who don't have parental oversight, and so each school

district has to address the issue as appropriate, though smaller school districts can be far more flexible in obtaining active consent.

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on HB 207. He then asked the sponsor to comment on the concerns raised thus far.

[2:27:21 PM](#)

REPRESENTATIVE WILSON provided members with a copy of a YRBS, and noted that of the 99 questions asked, only 7 of them pertain to sex. She assured committee members that the proposed change in the law is not about funding; instead it is about prevention and about having the knowledge that can be used to protect children. Although there are state programs that seek to combat obesity and drug and alcohol abuse, as examples, the state can't do everything, and the federal government is willing to provide funds if the data accurately reflects a need.

REPRESENTATIVE DAHLSTROM said that speaking as a parent of four and a grandparent of [soon-to-be four], she intends to be involved in her grandchildren's schools, and asked whether volunteers could simply be used to phone parents and remind them to fill out the active consent form. She said that she is not so much concerned about the subject matter of the questionnaires as she is about a parent's right to know what is going on at school. She surmised that HB 207 could deprive parents of that right if they are not made aware of surveys that their children are being asked to participate in. Regardless that people complain that it is not the schools or teachers' responsibility to raise kids or discipline them, teachers are often stuck doing such things anyway because they care, but as a parent, she is not expecting the state to do those things for her.

CHAIR RAMRAS indicated that CSHB 207(HES) would be set aside.

HB 217 - TOURISM DISCLOSURES AND NOTICES

[2:33:12 PM](#)

CHAIR RAMRAS announced that the final order of business would be HOUSE BILL NO. 217, "An Act relating to required onboard disclosures and displays about tours, flightseeing operations, other shoreside activities, and visitors bureaus; and providing for an effective date." [Before the committee was CSHB 217(EDT), and included in members' packets was a proposed

committee substitute (CS) for HB 217, Version 25-LS0696\V, Bannister, 4/19/07.]

CHAIR RAMRAS relayed that he has a potential conflict of interest because of his close economic association with the cruise ship industry, and that he has submitted a written request for an advisory opinion from the Select Committee on Legislative Ethics regarding his participation in the legislative process as it relates to HB 217.

CHAIR RAMRAS then turned the gavel over to Vice Chair Dahlstrom.

2:35:01 PM

REPRESENTATIVE HOLMES made a motion to adopt the proposed committee substitute (CS) for HB 217, Version 25-LS0696\V, Bannister, 4/19/07, as the work draft. There being no objection, Version V was before the committee.

REPRESENTATIVE HOLMES, speaking as the sponsor, relayed that HB 217 will address some unintended consequences of [the recently passed ballot initiative regarding cruise ship taxation, regulation, and disclosure], specifically with regard to the provisions pertaining to disclosure; HB 217 proposes to mitigate those unintended consequences while maintaining the ballot initiative's intent as described in the voter information pamphlet to provide for real disclosure and consumer protection. Version V provides for disclosure additional to that which was required by the ballot initiative.

REPRESENTATIVE HOLMES relayed that Version V addresses the tours that are sold on board a cruise ship, and requires four levels of disclosure. When a tour is being sold on board a cruise ship by somebody who is aboard the cruise ship, he/she must disclose, both orally and in writing, that the sale is a paid promotion - a commission is being paid - and that there may be other alternatives available at the port of call; must provide information regarding visitors bureaus in the ports of call - including the physical address, web site address, and telephone number; and, if the commission exceeds 25 percent of the total sale price, must disclose that information as well.

REPRESENTATIVE HOLMES said Version V maintains the ballot initiative's requirements that all of the aforementioned information be disclosed both orally and in writing and that the written information be in 14-point off-color font. Under the language of the ballot initiative, the only information that had

to be disclosed was the exact dollar amount of the commission, but the problem with that is that one would be able to use that information to calculate the tour's actual price as charged by the vendor, and this puts tour companies at a competitive disadvantage.

VICE CHAIR DAHLSTROM asked why 25 percent was chosen as the threshold.

REPRESENTATIVE HOLMES explained that 25 percent was chosen as being a commission high enough that the consumer would want to know about it. In response to another question, she clarified that under both the ballot initiative and HB 217, either the amount of the commission or the percentage of the total price the commission constituted had to be disclosed; that under CSHB 217(EDT), only the fact that the percentage of the commission exceeded 33 percent had to be disclosed; and that under Version V, only the fact that the percentage of the commission exceeded 25 percent has to be disclosed.

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CHIP THOMA, after relaying that he has been involved in issues related to cruise ships for a number of years, said that he supports Version V of HB 217. Version V removes specificity regarding the amount of commissions, thereby giving all tour vendors a level playing field; he opined that that is what the voters wanted. He noted that 81,000 people voted "yes" on the ballot initiative, which included disclosure provisions for the benefit of consumers - the passengers aboard the cruise ships.

MR. THOMA relayed that extensive testimony in the House Special Committee on Economic Development, International Trade and Tourism indicated that for at least one tour vendor, 70 percent of his shore excursion customers "come to him" via the company's web site. Thus, Mr. Thoma surmised, the current problems related to having sufficient disclosure on the cruise ships will be decreasing as time goes on because fewer passengers will be purchasing such excursions while on board the cruise ships. He characterized this required disclosure as good because it will give consumers more information. He cautioned against providing an exemption from these disclosure provisions for those cruise ship companies that use private docks, noting that most of the ports currently being used by cruise ships in Alaska also have private docks associated with them.

MR. THOMA, in conclusion, said he supports Version V, and urged the committee to forward the legislation.

[2:46:27 PM](#)

REPRESENTATIVE SAMUELS asked whether other entities selling shore excursions need to disclose information about the commissions they receive or whether commissions earned in other industries need to be disclosed.

MR. THOMA said not to his knowledge, with the exception of real estate commissions.

REPRESENTATIVE SAMUELS characterized the commission disclosure provision in Version V as being better than what was provided for via the ballot initiative, but expressed concern, however, that requiring disclosure about commissions will affect the marketplace in unintended ways.

MR. THOMA pointed out that the disclosure provision in Version V only applies to tours sold on cruise ships. According to testimony heard in a prior committee, he relayed, the cruise ship, not the tour vender, determines what the commission will be.

REPRESENTATIVE SAMUELS said he would prefer to call it a "markup" rather than a commission, and offered his belief that companies will mark up the price of something as much as they can get away with. Referring to the language in paragraph (2) of Section 1 - "other alternatives at different prices and with different features" - he questioned whether companies paying different insurance premiums, for example, are really selling the same product. "How much detail on a business deal do you want to get involved with," he asked.

MR. THOMA said none.

REPRESENTATIVE SAMUELS argued that that is exactly what is occurring via the bill's disclosure provisions, adding that there can be a world of difference between companies and what they provide even if they are seemingly selling the same product. He expressed disfavor with the concept of requiring cruise ships to promote businesses they don't like.

MR. THOMA pointed out that with regard to the commission disclosure provision, [only the fact that a commission is more than 25 percent of the total cost of the tour] will be

disclosed, reiterating that this provision only pertains to tours sold on board cruise ships.

REPRESENTATIVE SAMUELS reiterated his argument that cruise ships will be forced to advertise tour companies they don't approve of.

MR. THOMA offered his understanding that cruise ships won't be required to advertise other tour companies, merely that the cruise ships will be required to disclose that other options may be available.

REPRESENTATIVE HOLMES concurred with that summation.

REPRESENTATIVE SAMUELS characterized that as "advertising" nonetheless.

[2:53:58 PM](#)

STEVEN HITES, Owner, Skagway Street Car Company, Inc., after relaying that his company offers sightseeing tours in Skagway and has been doing so for 21 years, and that over 40 percent of his company's business is "sold on the ship," expressed support for HB 217. Referring to the language in paragraph (1) of Section 1 - "that the onboard sale is a paid promotion by a shoreside vendor" - he offered his belief that the intention of this provision is to [promote] disclosure and the truth. However, he pointed out, the truth is that the term "paid promotion" is not correct: "we don't pay the cruise line anything, there is no promotion, this is actually confused with an onboard shopping program that ... [existed prior]; the ship is a store, they buy wholesale products from us and pay us for what ... they sell." He suggested, therefore, that the language be changed to, "that the onboard sale is a retail-wholesale relationship between the vessel operator and shoreside vendor".

[2:55:55 PM](#)

CHAIR RAMRAS said he would be introducing an amendment that will address that concern, agreeing that the term, "paid promotion" is inaccurate, and offered an example of a retail-wholesale relationship he was familiar with.

MR. HITES said he also supports having the language in paragraphs (2) and (3) of Section 1 remain the same because that language accurately reflects the relationship and the situation. With regard to paragraph (4) of Section 1, he said that if the

goal is to have the disclosure be truthful, then the word "commission" is not really accurate because what is actually happening is that a wholesale product is being marked up by a retailer, and although that markup can be expressed as a percentage of the retail price, "the '25 percent' is not accurately portraying the universe and the marketplace." He went on to say:

I have a tour sold by a major cruise line that has early- and late-season sale pricing offered ... in the shoulder season ... - both ... spring and fall. They sell this tour of mine for 10 percent less than they do in the height of the season. They lower their retail price to move more of my product - I'm basically a volume seller of product to a store. The result is that they sell my tour for what is essentially only a 10 percent markup. This is a fact. Therefore, my point is, I know of no other retail business that is required by Alaska state law to disclose the percentage of a retail markup. Can any of you name one? If so, we are putting an arbitrary number here. If you absolutely have to, then, for heaven sakes please make it a number [that's] as low as possible because the lower the number the more you disclose the truth, because it's not that relationship at all.

MR. HITES then referred to the language on page 1, line 8 - "both orally and in writing" - and said that thousands of his company's sales are made online, and since current technology allows tickets to be printed and delivered to the passenger without him/her ever seeing the crewmember delivering the ticket, it would make more sense for the language to be changed to, "orally or in writing".

CHAIR RAMRAS indicated that there is a proposed amendment that will address that specific concern.

MR. HITES, in conclusion, offered that time is of the essence given that the first cruise ship is scheduled to come to Alaska on May 5th, opined that the legislature does have a legal right to amend an initiative, and asked that some form of HB 217 be passed from committee on to the House [floor].

[3:01:27 PM](#)

ROBERT WYSOCKI, President & CEO, Huna Totem Corporation, offered that Icy Straight Point is a private port - a private destination on private property where guests disembark, embark, and take most of the tours on the corporation's property. This is a very different model than any other Southeast Alaska port, he opined, adding that only one ship at a time docks at Icy Straight Point, all of the port's assets are owned by Huna Totem Corporation, and there is no outside investment. He went on to say:

We focus a lot on nature, culture, and history in a different way than every other port. As a private destination, we had to invest millions and millions of dollars to create the destination. Again, the port is not the City of Hoonah - it's Icy Straight Point - and we had to invest heavily in creating an attraction and set of tours that would attract cruise guests.

MR. WYSOCKI said that the only way the corporation recovers its substantial investment is through tour revenue, and so it's very critical that the corporation experience a very high volume of tourists, and with substantial enough margins, in order to be able to recoup its investment and survive. He explained that the ballot initiative addresses two points that don't actually apply to the corporation: one, there are no independent tours being offered at Icy Straight Point, and, two, there is no convention and visitors bureau there. He then mentioned that this year, for this project, the corporation will bring in over \$1.5 million to the community of Hoonah; with the decline in fishing and logging revenues, the Icy Straight Point project is considered to be the economic engine of Hoonah.

MR. WYSOCKI relayed that this coming year, it is estimated that over 15 percent of all cruise ship passengers that visit Alaska will come to Icy Straight Point. He said that the Huna Totem Corporation absolutely supports disclosing to guests its relationship with its cruise partners - "they are retailing our wholesale product." "Our cruise guests are on lines that had to take an extra risk with us in marketing and carrying a port that nobody knew about," he added; for the Icy Straight Point destination, cruise ship companies offer their expertise and do much more marketing on the corporation's behalf - "they earn every penny of their retail markup." The community of Hoonah is very supportive of Huna Totem Corporation's project.

MR. WYSOCKI explained that the cruise ship lines have verified that the corporation is offering a quality product, is properly

insured, will take proper care of their passengers, and that passengers will have recourse should something go wrong. Economic development in rural Alaska is very challenging, and those that are willing and able to pursue such development take a substantial risk and therefore deserve to be able to compete fairly. He opined that although the intent of the ballot measure was to provide for community involvement and to allow convention and visitors bureaus to "spread around" competition, the Huna Totem Corporation is in an entirely different situation. In conclusion, he asked the committee to consider the concerns of his corporation as HB 217 proceeds through the process.

MR. WYSOCKI, in response to questions, offered his understanding that although Icy Straight Point is currently the only such private port - private destination - another one is "in the works" for Southeast Alaska.

CHAIR RAMRAS indicated that there is a proposed amendment that will address Mr. Wysocki's concern.

[3:08:27 PM](#)

DENNIS DeWITT, State Director, National Federation of Independent Business (NFIB), relayed that the NFIB supports HB 217 as being better than current statute, appreciates the work done on the bill, but concurs with some of the concerns expressed earlier. He opined that it is important that cruise ships not be required to list the names of other tour vendors that might be offering similar tours, and expressed favor with Version V's language that requires a cruise ship line to notify passengers that there might be other alternatives available at different prices - not that the other alternatives will be available at lower prices. He relayed that the NFIB does have concern, however, that Version V has reduced the commission disclosure threshold to 25 percent; the NFIB instead supports the 33 percent threshold provided for in CSHB 217(EDT).

MR. DeWITT opined that even Version V of HB 217 is substantively better than current law. The NFIB is anxious to see the aforementioned amendment regarding retail-wholesale language, he said, adding that he has never shopped with an eye towards what the retailer's markup rate is; rather, he shops with an eye towards what the retailer's retail price ultimately is. He offered his belief that the notion that sharing information about the difference between retail and wholesale price is helpful to the consumer has not been substantiated in the

marketplace. In conclusion, he too said that time is of concern given that the cruise ship season is about to start.

3:11:46 PM

JOSEPH W. GELDHOF relayed that he is one of the joint prime sponsors of the aforementioned ballot initiative pertaining to cruise ship taxation, regulation, and disclosure. He acknowledged that what he and his co-sponsor intended in sponsoring the ballot initiative has very little legal weight in terms of legislative intent, adding his belief that the only legitimate legislative intent that the courts would be looking at would be encompassed in the initiative's transmittal letter to the lieutenant governor. Also acknowledging that the legislature has the authority to amend a law adopted via ballot initiative, he opined that in this instance, the legislature should change the law that he helped write and enact. He elaborated by saying that the shoreside vendors in Alaska have articulated a concern which a lot of people who worked on the initiative believe should be corrected. How that concern gets addressed has been the source of a lot of heated discussion, but the goal of telling Alaskans that deliver flightseeing tours that they don't have to have the cruise ships disclose the commission that they receive, or the amount of the commission, is worthy of pursuing.

MR. GELDHOF said that Representative Holmes is to be commended for working through this issue and coming up with what he characterized as a realistic amendment - a compromise - to the current law that will work in the real world. He also pointed out that the president of Princess Tours, Charlie Ball, has been helpful in attempting to marshal support among those in the tour industry with various view points, and opined that Mr. Ball's views ought to be considered by the legislature. Mr. Geldhof concurred that there should be a threshold for commission disclosure, whether that threshold is 10 percent or higher, and that there should be disclosure regarding the fact that there are alternatives to particular tours available. On that point, he suggested that convention and visitors bureaus be responsible for listing specific alternatives, not the cruise ship industry. He also suggested that the committee change the penalty for violation from \$100 to \$1,000. Mr. Geldhof offered his belief that Mr. Ball would accept those changes, and concluded by saying that HB 217 needs to be passed and passed soon because local tour vendors need the relief proposed by the bill.

CHAIR RAMRAS indicated that he disagrees with all the concepts embodied in the ballot initiative.

MR. GELDHOF, in response to comments and a question, said he is not sorry to have included the disclosure provisions in the ballot initiative because he believes that markets work best when there is "as close as we can come to" perfect information being disclosed, and that such disclosure is particularly of benefit to the consumer. He added, "Our goal was not to set up an unworkable system that would punish or harm ...; it was to at least provide some information or cue consumers that there was a - frankly, in some cases, based on my knowledge - very significant commission." He offered that if one were to look at the mortgage-finance industry, for example, one would find that the federal government has required some form of disclosure regarding commission percentages.

MR. GELDHOF, in response to a question regarding whether lawyers should be required to disclose the range of fees that they might charge different clients, said:

I think there are many instances where - as a matter of good, sound public policy - consumers ... need to be cued that at the point of sale, the transaction costs are very high. And that's all we're trying to do, and I think Representative Holmes has come up with an approach that doesn't disclose the commission or the amount; ... [this approach] meets the needs of the vendors, here, but provides ... sort of perhaps a yellow flag in some situations that maybe there's reason to think that you might want to shop around. That's all we're saying.

REPRESENTATIVE LYNN pointed out that as a licensed real estate broker, he is required by law to disclose his commissions, which are negotiable.

VICE CHAIR DAHLSTROM, noting that constituents have told her that to alter the aforementioned ballot initiative would be to ignore the will of the people and that the people knew exactly what they were voting for, asked Mr. Geldhof how he would respond to constituents who demand that the legislature not alter the aforementioned ballot initiative.

MR. GELDHOF suggested that legislators could simply respond by saying:

We have preserved the spirit of disclosure - the requirements that consumers are protected - and we've avoided a situation where ... our local vendors may have had to disclose information they were reluctant to [disclose because it] ... may have interfered with their contractual relationships or their financial relationships with a very large industry

[3:26:42 PM](#)

JOHN DUNLAP, Manager, Allen Marine Tours, relayed that his company operates passenger vessels throughout Southeast Alaska and employs over 200 during the peak of the season, and that over 90 percent of his company's customers are cruise ship passengers. He said he believes that the disclosure language of Version V meets the intent of the voters better than the language in the ballot initiative, adding that he concurs with some of the points made earlier by prior speakers. He said he supports passage of HB 217 and the proposed amendments that have been referenced thus far. In conclusion, he thanked the sponsor for her work on the legislation.

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FREDERIC DRAKE, Owner, Snorkel Alaska, said he supports HB 217, adding that 100 percent of his customers have come from cruise ship shore excursion sales. He mentioned that at one point he was employed by a cruise ship line as a shore excursion manager and so he is familiar with that aspect of the industry as well. His company really relies on the cruise ships' ability to promote his company's tours, he said, adding "we give them a net rate we're happy with, they go ahead and mark it up to whatever they want, but I'm in support of that because they go through all the marketing, they print all the brochures, they have web sites, [and] they handle all of our sales." In conclusion, he said that his company supports HB 217 as being a way to address the problems with the ballot initiative.

[3:30:40 PM](#)

ROB SCHEER, Great Alaskan Lumberjack Show; Experience Alaska Tours, said he supports HB 217, Version V. Referring to the commission disclosure threshold, he explained that for his company's various products, it took about eight years to develop a price structure that allowed for a retail markup that warranted cruise line industry support of vendors such as himself. Therefore, that provision of the bill could give some

vendors an unfair market advantage and could result in dissuading passengers from participating in an excursion just because there is a markup in price. He said he supports lowering the commission disclosure threshold to 10 percent and notifying passengers that the tours are being offered as part of a wholesale-retail relationship. He surmised that such a low threshold would be triggered for almost all tours and so wouldn't create an unfair advantage for some vendors. In conclusion, he thanked the sponsor for her work on the bill, and offered his belief that the tour vendor industry does need relief from the problems raised by the ballot initiative.

3:35:04 PM

RON PECK, President and Chief Operating Officer, Alaska Travel Industry Association (AlaskaTIA), relayed that over 80 percent of the AlaskaTIA's membership is made up of visitor-related businesses with less than 100 employees. He opined that as currently written, the ballot initiative requires disclosure of confidential business information and poses a significant threat to a single sector of the tourism business. He indicated that he is in support of HB 217, adding that the AlaskaTIA has [adopted] a resolution in support of the bill as well. Referring to page 1, line 13, he suggested that the word "or" replace the word "and", because not all visitors bureaus have "referral" offices on site at the dock. In conclusion, Mr. Peck said the AlaskaTIA supports Mr. Hites comments regarding the wholesale-retail relationship, and urges the committee to move forward with the bill given that the cruise ship season is about to start.

3:37:31 PM

ALLAN TESCHE, Co-Owner, G Street House Bed and Breakfast, after noting that he sees hundreds of out-of-state visitors every year, many having come to Alaska on cruise ships, said he supports HB 217. He suggested, however, that members give further consideration to the word, "orally" as used on page 1, line 8, because a number of shore-based excursions are booked electronically onboard cruise ships, and so to require oral disclosure might prove cumbersome. With regard to the issue of the commission disclosure threshold, he surmised that it is up to the committee to determine what percentage that threshold should be, and that the original purpose of the ballot initiative was to provide passengers with the information that there is a markup in the price of the tours being offered on board the ship.

MR. TESCHE surmised that the question is whether Alaskans and small businesses are better off with the original language of the ballot initiative or with the language currently in HB 217. He opined that the initiative's language will pit shore-based operators against each other because confidential business information will be disclosed, and will force passengers to base almost all their decisions regarding excursions on price alone. Currently operators of shore-based businesses can negotiate private agreements with cruise ship lines, but they will not be allowed to do so under the ballot initiative's language, he opined, adding that the language in HB 217 [Version V] requires cruise ships to inform passengers that a mark up in price exists but does not go so far as to require the disclosure of confidential information.

MR. TESCHE, in response to the earlier question regarding how to respond to constituents who think changing a law adopted via ballot initiative is always a bad thing, suggested that legislators could respond by reminding constituents that ultimately the legislature is required to do the best job it can in implementing the will of the people and that the initiative's sponsors have indicated that there is a problem with the initiative's language. In conclusion, he surmised that the legislature is going to solve that problem in a way that still protects onshore operators, and again said he supports HB 217.

[3:41:45 PM](#)

JOHN FERGUSON, JC Penney Company, Inc., opined that the requirements outlined in the ballot initiative fly in the face of normal, free market pricing, and sets a precedent that could infringe upon all retail operations in Alaska. A cruise ship company is no different than any other retail venue, be it in a shopping mall or in an open-air market; goods and services are purchased at the wholesale market and resold at the retail market for profit. That profit margin is proprietary information that is not disclosed to the public or to other competitors in the industry, and so to require the disclosure of that information destroys the market process and usurps free trade and fair pricing. In conclusion, he said he applauds the legislature's attempts, via HB 217, at correcting the flaws embodied in the ballot initiative.

[3:43:39 PM](#)

BRUCE BUSTAMANTE, President and CEO, Anchorage Convention & Visitors Bureau (ACVB), after speaking a bit about his organization, relayed that the ACVB has passed a resolution in support of HB 217 because it views the disclosure language of the ballot initiative as being very damaging to Anchorage's independent businesses, both large and small. He concluded by saying that he appreciates the sponsor's efforts to address this issue, and urged passage of the bill.

VICE CHAIR DAHLSTROM closed public testimony on HB 217.

[3:46:21 PM](#)

CHAIR RAMRAS made a motion to adopt Amendment 1, which read [original punctuation provided]:

P.2, L.2 Delete "25" insert "20"

P.2, L.5 Delete "25" insert "20"

CHAIR RAMRAS offered his belief that Amendment 1 will capture all vendors, putting them on equal footing, and still respects the intent of the ballot initiative.

VICE CHAIR DAHLSTROM objected for the purpose of discussion.

REPRESENTATIVE HOLMES said she does not feel strongly about the proposed change, but wouldn't want to go below a threshold of 20 percent.

VICE CHAIR DAHLSTROM removed her objection, and announced that Amendment 1 was adopted.

[3:47:26 PM](#)

CHAIR RAMRAS made a motion to adopt Amendment 2, which, along with handwritten changes, read [original punctuation provided]:

P.1, L.8 - after "disclose" delete "both orally and in writing" insert "orally or in writing at the point of sale."

CHAIR RAMRAS said that Amendment 2 will address situations involving tickets that are sold on board ship via the Internet wherein passengers never speak with the person delivering the tickets. He offered his belief that Amendment 2 will make

commerce easier to execute while still respecting the will of the voters.

REPRESENTATIVE LYNN objected for the purpose of discussion.

[3:48:33 PM](#)

CLYDE (ED) SNIFFEN, JR., Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Anchorage), Department of Law (DOL), opined that Amendment 2 makes sense in that the language of the current statute was intended to require disclosure of commissions or paid promotions in an oral manner if the presentation [for the product] was given orally. And if the presentation [for the product] was only provided in a written format, then it would make sense to require the disclosure to be in writing as well. It would not make sense to require cruise ships to have someone waiting around to provide oral disclosure if there never was an oral presentation [of the product]. He mentioned that it would be his job to enforce the provisions of HB 217.

REPRESENTATIVE LYNN asked whether it would be sufficient to have the written disclosure regarding commissions in the same place as the written disclosure regarding visitors bureaus. He questioned how one would prove that oral disclosure ever occurred.

MR. SNIFFEN surmised that evidence of a lack of oral disclosure would have to come from the consumers, and acknowledged that confirming that an oral disclosure occurred can be problematic.

REPRESENTATIVE LYNN pointed out that if consumers didn't know that oral disclosure was required, they wouldn't know to complain.

REPRESENTATIVE HOLMES opined that if there is written material being presented, then the disclosure should also be in writing, and if the presentation is given orally, then the disclosure should also be given orally. She said she doesn't want to create extra work for cruise ship staff.

REPRESENTATIVE LYNN suggested that all disclosure should be in writing.

VICE CHAIR DAHLSTROM asked Representative Holmes whether she would be amenable to altering Amendment 2 to specify that disclosure [occur in the same fashion as the presentation].

REPRESENTATIVE HOLMES indicated that she would be.

REPRESENTATIVE LYNN, in response to a question, reiterated that the disclosure should be in writing, and then, if someone wanted to provide oral disclosure as well, that would be fine, but written disclosure should be sufficient.

CHAIR RAMRAS indicated that he would not be in favor of that amendment to Amendment 2.

REPRESENTATIVE LYNN argued that other information must already be disclosed in writing and so there shouldn't be a problem with requiring additional written disclosure.

REPRESENTATIVE LYNN expressed an interest in amending the language in the bill such that all disclosure occur in writing.

[3:55:17 PM](#)

REPRESENTATIVE COGHILL surmised that Amendment 2 could be altered in that fashion.

CHAIR RAMRAS [although no formal motion was made] said he would accept an amendment to Amendment 2 such that Amendment 2, as amended, would read:

P.1, L.8 - after "disclose" delete "both orally and in writing" insert "in writing at the point of sale."

[Amendment 2 was treated as amended.]

CHAIR RAMRAS said he is assuming that if a ticket is slipped under the passenger's stateroom door, the written disclosure would be as well.

REPRESENTATIVE LYNN opined that the passenger should see the written disclosure before the ticket is bought.

CHAIR RAMRAS said, "Unless you bought it online."

REPRESENTATIVE LYNN removed his objection.

VICE CHAIR DAHLSTROM asked whether there were any other objections to [Amendment 2, as amended]. There being none, Amendment 2, as amended, was adopted.

[3:57:14 PM](#)

CHAIR RAMRAS made a motion to adopt Amendment 3, which read [original punctuation provided]:

P.1, L.8 after "future" insert "public"

P.2, L.11 Insert a new Sec. 2 to read "For the purpose of this statute, a public port does not include a private destination resort."

REPRESENTATIVE HOLMES objected.

CHAIR RAMRAS explained that Amendment 3 would address the concern raised by Mr. Wysocki regarding Icy Straight Point.

REPRESENTATIVE HOLMES said she would be maintaining her objection, and explained that although she is sympathetic to Mr. Wysocki's concern, Amendment 3 would exempt cruise ships from having to disclose anything about Icy Straight Point. She characterized the change proposed by Amendment 3 as overbroad, and offered her understanding that Version V already contains language that will address Mr. Wysocki's concern.

CHAIR RAMRAS asked that Amendment 3 [be set aside]. There being no objection, [the motion was left pending].

[3:58:36 PM](#)

REPRESENTATIVE HOLMES made a motion to adopt Amendment 4, which read [original punctuation provided]:

Page 2, line 12

Insert new section 2:

"AS 45.50.474(c) is amended to read: (c) Each violation of this section constitutes an unfair trade practice under AS 45.50.471 [, AND SHALL RESULT IN A PENALTY OF NOT MORE THAN \$100 FOR EACH VIOLATION]"

Re-number as necessary

VICE CHAIR DAHLSTROM objected for the purpose of discussion.

REPRESENTATIVE HOLMES explained that Amendment 4 would address another unintended consequence resulting from the language of the ballot initiative. Prior to the adoption of the ballot initiative, violation of a statutory disclosure requirement

constituted an unfair trade practice, and the penalties for such were already defined in statute, but the initiative attempted to attach a specific penalty, and thus confused what it applied to and how it worked and actually lowered the penalty. Amendment 4 returns the statutory language of AS 45.50.474(c) to what it was before the ballot initiative was passed.

VICE CHAIR DAHLSTROM questioned whether, if Amendment 4 is adopted, it will take away the existing penalty.

MR. SNIFFEN said that Amendment 4 is a good amendment from a couple of perspectives. Concurring that prior to the adoption of the ballot initiative, penalties for violations of the unfair trade practices Act were already statutorily provided for - penalties ranging from \$1,000 to \$25,000 - he noted that there had been some indication that the ballot initiative's reference to a \$100 penalty should instead have been a reference to a \$1,000 penalty. Under Amendment 4, just as under the prior law, the court would have the discretion to assess a penalty of between \$1,000 and \$25,000 depending on the nature of the violation.

VICE CHAIR DAHLSTROM removed her objection, and asked whether there were any further objections. There being none, Amendment 4 was adopted.

[4:01:28 PM](#)

REPRESENTATIVE HOLMES made a motion to adopt Amendment 5, which read [original punctuation provided]:

Page 1, lines 9 to 10

Amend to read:

"1) That the onboard sale results in a commission paid by the shoreside vendor;"

Renumber as necessary

VICE CHAIR DAHLSTROM objected for the purpose of discussion.

REPRESENTATIVE HOLMES explained that Amendment 5 addresses the confusion resulting from the bill's current use of the term "paid promotion".

REPRESENTATIVE COGHILL offered his understanding that the term "commission" also creates some confusion.

REPRESENTATIVE HOLMES, after acknowledging that there is another proposed amendment forthcoming that addresses that language, withdrew Amendment 5.

[4:02:47 PM](#)

REPRESENTATIVE HOLMES made a motion to adopt Amendment 6, which read:

Page 1, line 5

Insert new section:

"AS 45.50.474 is amended to read: (a) A person may not conduct a promotion on board a cruise ship that mentions or features a business in a state port that has paid something of value for the purpose of having the business mentioned, featured, or otherwise promoted, unless the person conducting the promotion clearly and fully discloses orally and in all written materials used in the promotion that the featured businesses have paid to be included in the promotion. If the value paid by the business is a commission of more than 10% of any single sale, the disclosure shall also state that more than a 10% commission is being retained by the person or entity making the promotion, and that other alternatives may be available at a port of call; and the disclosure shall provide the address, Internet website address, and telephone number of any existing visitors bureaus at each future port of call. All such written notice of disclosure shall be in a type that is not less than 14-point typeface and in a contrasting color calculated to draw attention to the disclosure.

VICE CHAIR DAHLSTROM objected for the purpose of discussion.

REPRESENTATIVE HOLMES explained that Amendment 6 would put tour sales occurring in shoreside stores on the same footing as tour sales occurring on board vessels, except that the commission disclosure threshold shall be 10 percent. In response to a question, she offered her understanding that Amendment 6 would not affect the 20 percent commission disclosure threshold established via Amendment 1 for onboard sales.

VICE CHAIR DAHLSTROM removed her objection, and asked whether there were any further objections. There being none, Amendment 6 was adopted.

REPRESENTATIVE COGHILL noted that the existing statutory language being added to by Amendment 6 still makes reference to oral disclosure, and suggested that perhaps some conforming changes might need to be made.

REPRESENTATIVE HOLMES acknowledged that point.

[4:04:24 PM](#)

CHAIR RAMRAS made a motion to adopt Amendment 7, which read [original punctuation provided]:

P.1, L.9-10 Delete "paid promotion by a shoreside vendor" and insert "retail/wholesale relationship between the vessel operator and the shoreside vendor."

REPRESENTATIVE HOLMES objected for the purpose of discussion. She said she likes Amendment 7 because it more accurately reflects the relationship that exists, though it doesn't reflect that money is being retained by the cruise line.

REPRESENTATIVE HOLMES made a motion to amend Amendment 7 such that the words, "that results in a percentage of the sale retained by the cruise line" would be added after the word, "vendor". There being no objection, Amendment 7 was amended.

REPRESENTATIVE HOLMES removed her objection to Amendment 7, as amended.

VICE CHAIR DAHLSTROM asked whether there were any further objections. There being none, Amendment 7, as amended, was adopted.

[4:06:39 PM](#)

CHAIR RAMRAS turned attention back to Amendment 3 [text provided previously], and said that Icy Straight Point is a private port with nothing else available in the area; when a cruise ship docks at Icy Straight Point, "it is the tour."

REPRESENTATIVE HOLMES objected, and again offered her understanding that language currently in Version V will take care of the concern raised by Mr. Wysocki regarding Icy Straight Point. Specifically, language on page 1, line 14, says that information about "existing visitors bureaus" shall be disclosed; this language should ensure that disclosure regarding

visitors bureaus shall not be required at ports where no visitors bureau exists.

MR. SNIFFEN concurred with Representative Holmes's summation.

CHAIR RAMRAS pointed out that even still a problem could arise for Icy Straight Point if the City of Hoonah is deemed to be the port of call.

REPRESENTATIVE LYNN noted that testimony indicated that there might be other private ports established in the future, and so any exception carved out for Icy Straight Point would also have to be applied to them.

REPRESENTATIVE HOLMES reiterated her belief that the concern regarding Icy Straight Point has already been addressed via Version V of the bill.

[4:09:34 PM](#)

A roll call vote was taken. Representatives Coghill and Ramras voted in favor of Amendment 3. Representatives Holmes, Gruenberg, Dahlstrom, and Lynn voted against it. Therefore, Amendment 3 failed by a vote of 2-4.

CHAIR RAMRAS again declared a possible conflict of interest.

REPRESENTATIVE LYNN objected [thereby requiring Chair Ramras to vote].

[4:10:43 PM](#)

REPRESENTATIVE HOLMES moved to report the proposed CS for HB 217, Version 25-LS0696\V, Bannister, 4/19/07, as amended, out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, CSHB 217(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 4:11 p.m.