

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

January 29, 2007

3:07 p.m.

MEMBERS PRESENT

Representative Carl Gatto
Representative Gabrielle LeDoux
Representative Jay Ramras
Representative Berta Gardner
Representative Kurt Olson, Chair

MEMBERS ABSENT

Representative Bob Buch
Representative Mark Neuman, Vice Chair

COMMITTEE CALENDAR

HOUSE BILL NO. 34

"An Act relating to sales of wine by a winery licensee."

- MOVED HB 34 OUT OF COMMITTEE

HOUSE BILL NO. 49

"An Act relating to credit memos, gift certificates, and gift cards, and to unclaimed property; and making a violation of certain gift card prohibitions an unlawful trade practice."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 34

SHORT TITLE: SALES BY WINERY LICENSEE

SPONSOR(S): REPRESENTATIVE(S) LEDOUX

01/16/07	(H)	PREFILE RELEASED 1/5/07
01/16/07	(H)	READ THE FIRST TIME - REFERRALS
01/16/07	(H)	L&C, FIN
01/29/07	(H)	L&C AT 3:00 PM CAPITOL 17

BILL: HB 49

SHORT TITLE: GIFT CARDS

SPONSOR(S): REPRESENTATIVE(S) GATTO, GARDNER, SEATON, GRUENBERG

01/16/07 (H) PREFILE RELEASED 1/5/07
01/16/07 (H) READ THE FIRST TIME - REFERRALS
01/16/07 (H) L&C, FIN
01/29/07 (H) L&C AT 3:00 PM CAPITOL 17

WITNESS REGISTER

CHRISTINE MARASIGAN, Staff
to Representative LeDoux
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 34 on behalf of Representative LeDoux, sponsor.

STEVE THOMSEN, Owner
Alaska Wilderness Wines
Kodiak, Alaska

POSITION STATEMENT: Testified in favor of HB 34.

DOUGLAS "DOUG" GRIFFIN, Director
Alcoholic Beverage Control Board ("ABC Board")
Department of Public Safety (DPS)
Anchorage, Alaska

POSITION STATEMENT: Answered questions during hearing on HB 34.

HEATH HILYARD, Staff
to Representative Gatto
Alaska State Legislature

POSITION STATEMENT: Presented HB 49 on behalf of Representative Gatto, sponsor.

RACHEL LEWIS, Project Coordinator
Unclaimed Property Section
Juneau Office
Tax Division
Department of Revenue (DOR)
Juneau, Alaska

POSITION STATEMENT: Answered questions during hearing on HB 49.

GLEN PETERSON, CARRS/Safeway
Anchorage, Alaska

POSITION STATEMENT: Offered comments during hearing on HB 49.

JOE GULLEY, CARRS/Safeway
Anchorage, Alaska

POSITION STATEMENT: Testified during hearing on HB 49.

DAVID DURRANT, Vice President
of Legal Affairs & Corporate Council
Black Hawk Network
Pleasanton, CA

POSITION STATEMENT: Testified during hearing on HB 49.

STEVE CLEARY, Executive Director
Alaska Public Interest Research Group (AkPIRG)
Anchorage, Alaska

POSITION STATEMENT: Testified during hearing on HB 49.

ACTION NARRATIVE

CHAIR KURT OLSON called the House Labor and Commerce Standing Committee meeting to order at [3:07:24 PM](#). Representatives Gatto, LeDoux, Ramras, Gardner, and Olson were present at the call to order.

HB 34-SALES BY WINERY LICENSEE

CHAIR OLSON announced that the first order of business would be HOUSE BILL NO. 34 "An Act relating to sales of wine by a winery licensee."

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CHRISTINE MARASIGAN, Staff to Representative LeDoux, Alaska State Legislature, began by stating that HB 34 encourages wine production in Alaska. Alaskan wineries are small "mom and pop" businesses. The intention of HB 34 is to create a level playing field, in order for in-state wineries to compete with those out-of-state.

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REPRESENTATIVE GARDNER commented that HB 34 "makes a lot of sense." She inquired as to whether the sponsor is aware of any private organizations in opposition to the bill.

MS. MARASIGAN replied that there is concern regarding the phone and internet sale of alcohol. She opined that this is a "very valid" concern; however, research done [by the Federal Trade Commission] on the recent supreme court decision regarding "interstate" wine sales versus "intrastate" wine sales, has shown that the purchase of wine by minors is unlikely.

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REPRESENTATIVE GATTO offered his understanding that currently, five gallons or less may be sold on the premises or to a person out-of-state. HB 34 would allow off-premises sales to persons within the state of Alaska. Referring to a small winery in Kodiak, he commented that HB 34 would allow a person to call the aforementioned winery and order a bottle of wine to be shipped.

MS. MARASIGAN replied that this is correct.

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STEVE THOMSEN, Owner, Alaska Wilderness Wines, stated that he is in favor of HB 34, adding that it "would be a great help." In regard to a previous question regarding out-of-state sales, he stated that currently, this is not allowed. He said "The state has said they won't prosecute it ... but ... nobody will ship it, because it is technically still against the law."

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CHAIR OLSON offered his understanding that a person can purchase wine on the premises and take it home; however, if more wine is requested later, legal shipment of the wine is unavailable.

MR. THOMSEN replied that this is correct. He explained that the current language states that in order for the sale to occur, the individual must be "on the licensed premises."

REPRESENTATIVE GATTO noted that the bill contains references to "more than five gallons," along with "not more than five gallons." He requested clarification regarding the problem that is occurring.

MR. THOMSEN replied that "not more than five gallons" applies to individual buyers, while "more than five gallons" applies to a person who holds a liquor license, such as a liquor distributor.

REPRESENTATIVE GATTO brought attention to the use of "or" in line 13 of the bill, and opined that this would not be limited to "licensed individuals."

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MR. THOMSEN replied that according to federal law, this would still only apply to licensed individuals.

REPRESENTATIVE GATTO commented that HB 34 only applies to state law. He asked for clarification as to whether federal law allows the sale of more than five gallons to an individual who does not hold a liquor license.

MR. THOMSEN replied that the Alcoholic Beverage Control Board ("ABC Board") has interpreted this to mean "only licensees."

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DOUGLAS "DOUG" GRIFFIN, Director, Alcoholic Beverage Control Board ("ABC Board"), Department of Public Safety (DPS), in regard to the aforementioned question, agreed that the language is confusing. He explained that usually, quantities over five gallons would be to a wholesaler, and is not for personal use. He stated that "licensed under this title" refers to a person licensed in the state of Alaska, while "or in another state or country" would apply to a person licensed in another state or country. He stated that the current law is "somewhat archaic." The concern regarding the sale of alcohol to underage persons is not a concern due to the nature of the product, as well as the price. The wines that will be made in Alaska are unlikely to be considered by underage drinkers.

MR. GRIFFIN stated that there is also concern regarding the shipment of alcohol to "dry" communities. He explained that there are laws allowing package stores to ship by written orders, adding that the ABC Board works with package stores to ensure that they are aware of the communities they may not ship product to. This information would also be shared with the wineries, he said. He opined that the winery products are "less likely to be attractive" to a person attempting to get alcohol to a "dry" community. The ABC Board has no objection to HB 34.

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REPRESENTATIVE RAMRAS said:

I always appreciate it when the ABC Board is contributing to the economic development of our communities, and making it easier for us to conduct commerce, within the parameters and boundaries that we set. And whenever we venture into these - more vague areas, where the line is blurred, I appreciate both the sponsor and the ABC Board helping to clarify that. So that ... all parties who are parcel to the economic transaction can participate and keep it clean.

MR. GRIFFIN commented that this is one situation where the government is playing "catch up" with the industry as it grows.

REPRESENTATIVE GATTO pointed out that HB 34 does not change line 13, with reference to "another state or country." He stated that this has been allowed and will continue to be allowed. He asked if this is the ABC Boards interpretation.

MR. GRIFFIN agreed that this is correct.

REPRESENTATIVE GATTO asked whether the ABC Board feels there should be reference to "legal age to purchase."

MR. GRIFFIN replied that this is a drafting issue. He pointed out that other provisions in Title 4 contain restrictions regarding "legal age to purchase," although it is possible to insert the aforementioned language into HB 34 for emphasis. He added that the ABC Board would not have a problem with this.

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MS. MARASIGAN agreed that it is currently illegal for a person less than 21 years of age to purchase alcohol in the state of Alaska. In addition, the statutes affecting breweries and brewpubs do not reemphasize this restriction.

REPRESENTATIVE GATTO inquired as to whether every state prohibits the sale of alcohol to individuals who are less than 21 years of age.

MS. MARASIGAN offered her understanding that this is correct.

MR. GRIFFIN agreed that this is correct. He said "in the area of alcohol law, that's one area that's fairly uniform. Which is ... pretty unusual."

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REPRESENTATIVE GARDNER moved to report HB 34 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 34 was reported out of the House Labor and Commerce Standing Committee.

HB 49-GIFT CARDS

CHAIR OLSON announced that the final order of business would be HOUSE BILL NO. 49, "An Act relating to credit memos, gift certificates, and gift cards, and to unclaimed property; and making a violation of certain gift card prohibitions an unlawful trade practice."

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REPRESENTATIVE GATTO, speaking as the sponsor of HB 49, explained that gift cards are often purchased as a more convenient gifting option. He relayed an example of an elderly person who chooses to purchase a gift card for his or her granddaughter. These gift cards often have a "dormancy fee" which is deducted monthly from the remaining balance, as well as an "activation fee" of \$5 or more. Additionally, some cards may include expiration dates which do not conform to Alaska's unclaimed property laws. The intent of HB 49 is to protect consumers from unnecessary fees, in addition to maintaining purchasing power.

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REPRESENTATIVE RAMRAS voiced support for HB 49. He commented that this issue affects all consumers, regardless of age.

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MR. HILYARD, Staff to Representative Gatto, Alaska State Legislature, in response to a question from Representative LeDoux, explained that two different types of gift cards exist. The first is an "electronic gift certificate," which contains a "pre-loaded" amount, and works in the same way as a paper gift certificate. The second type is a "credit logo" card, which works like a credit card. These are issued by banks, and contain a specified amount that can be used in various locations. The electronic gift certificates do not typically have activation or dormancy fees, which are more common with credit logo cards.

REPRESENTATIVE LEDOUX offered her understanding that prepaid phone cards also expire. She inquired as to why this was not included in HB 49.

MR. HILYARD replied that the focus was gift cards, therefore this was not considered.

REPRESENTATIVE RAMRAS stated that, as a small business owner, he receives at least one solicitation per month offering to convert paper gift certificates to electronic form. While he has not chosen to pursue this, many features are available. His business sold \$50,371 in gift certificates during the month of December [2006], while redeeming \$8,611 worth of gift certificates. He explained that in January or February, this is reversed, with more guests redeeming gift certificates. He noted that the gift certificates do not expire, although they do have an "issuance date."

REPRESENTATIVE GATTO, in regard to airline miles, offered his understanding that 50 percent are never redeemed. He commented that Alaska Airlines does not have an expiration date for its mileage plan. He surmised that a "fair amount" of gift cards are never redeemed. This, he said, becomes a "gift to the seller."

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REPRESENTATIVE GARDNER pointed out that under current law, unclaimed property belongs to the state. The value of any unredeemed gift cards should, she said, revert back to the state. The state would then attempt to find the original owner. She opined that "this never happens." She suggested that the bill be amended to address this issue.

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RACHEL LEWIS, Project Coordinator, Unclaimed Property Section, Juneau Office, Tax Division, Department of Revenue (DOR), explained that the state acts as a custodian, holding unclaimed property until the owner or the owner's heir is located. The Unclaimed Property Section ("Unclaimed Property") currently holds the following: bank accounts, un-cashed payroll checks, insurance reimbursement, stocks, mutual funds, cashiers and travelers checks, and estate distributions. Last year, she said, there was \$58 billion in gift card sales in the United States, of which an estimated 5-10 percent will never be used. In addition, around \$8 billion in gift cards will either expire, be misplaced, or will simply not be redeemed. Approximately 45 percent of adults have purchased gift cards within the last year, she said. There are various reasons for purchasing gift cards, and they are used for many different types of purchases. Currently, she said, 10 states are working on gift card legislation. Last year, 19 states addressed gift cards. She

expressed concern with removing language from the Unclaimed Property Act.

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CHAIR OLSON inquired as to how much unclaimed property is recovered.

MS. LEWIS replied that \$58 thousand in unclaimed gift cards has been recovered.

REPRESENTATIVE LEDOUX questioned why the consumer would purchase a gift card rather than simply writing a check.

MS. LEWIS replied that many consumers find gift cards to be more appropriate.

REPRESENTATIVE GATTO opined that giving a child a gift card is easier, as the parent does not have to go to the bank in order to cash it.

CHAIR OLSON asked what percentage of the total unclaimed property were unclaimed gift cards.

MS. LEWIS replied that she does not have this information. However, the current year has resulted in \$6.6 million in unclaimed property thus far. She added that oftentimes, gift certificates are "bypassed" during the reporting cycle. In response to an additional question, she agreed that gift cards do not account for a very large percentage of unclaimed property.

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GLEN PETERSON, District Manager, CARRS/Safeway, commented that as one of the largest sellers of gift cards in Alaska, CARRS/Safeway recognizes and shares the states interest in consumer protection.

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JOE GULLEY, District Manager, CARRS/Safeway, explained that CARRS/Safeway issues its own gift cards, as well as "third-party" gift cards; however, no "closed universe" gift cards with expiration dates are sold. Gift cards are generally defined as "instruments that contain value that may be redeemed for goods and services sold by the retailer, which includes cards used by

the purchaser or by another person to whom the card was given." Referring to Section 3(f)(2)(A), he expressed concern that the seller and issuer of the card would not know whether the card was purchased for personal use or as a gift for another person. In addition, he expressed concern with the new definition of "gift card" versus the definition of "gift certificate," which is removed by the bill. In regard to the new definition for "gift card," he stated that this does not address "re-loadable" cards.

MR. GULLEY then brought attention to Section 3(e). This section, he said, does not specify a fixed amount, and would therefore "impose a substantial administrative burden on all parties associated." He surmised that this is taken from Massachusetts state law, which many states have used as a reference, including Washington State. He explained that currently, CARRS/Safeway follows the Washington state law, which requires that cash be refunded at the request of the cardholder, if the remaining gift card value is less than \$5. He opined that consumers are better protected when state laws are consistent. If the original card value was less than \$50, this would require cash redemption at lower levels than CARRS/Safeway currently offers. He stated that this would "potentially harm" the card holder. Additionally, he reiterated that the purchaser of the card is "not necessarily the final ... user of the card," which is not addressed in the bill.

MR. GULLEY expressed concern regarding the treatment of paper gift certificates in [Section 2(11)(A)], in addition to the "interplay" between the aforementioned section and [Section 2(11)(B)(iv)]. Moving on, he stated that HB 49 does not differentiate between "open universe" cards and "closed universe" cards. He explained that "open universe" cards may be redeemed at locations other than those appearing on the face of the card, while "closed universe" cards may not. Other states, he said, have addressed expiration date issues with regard to the difference between the aforementioned cards. Finally, he said "Consumers ultimately vote with their dollars, and if a business does not treat their customers ethically and correctly, they will certainly not get very many votes, and most likely will not be in business in the future." CARRS/Safeway, he said, is available to assist with research and interpretation as to how these changes may affect the end-user. He stated that CARRS/Safeway wishes to protect the consumers of Alaska.

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MR. HILYARD expressed willingness to work with CARRS/Safeway and address any concerns in order to "craft a better bill."

CHAIR OLSON stated his intention to hold the bill in order to allow any concerns to be addressed.

REPRESENTATIVE GARDNER requested to see Mr. Gulley's written testimony, in order to address specific concerns.

MR. GULLEY agreed to make this information available to the committee.

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DAVID DURRANT, Vice President of Legal Affairs & Corporate Council, Black Hawk Network, explained that Black Hawk Network is a subsidiary of Safeway which handles third-party gift cards, in addition to prepaid instrument distribution. He stated that any gift card which does not have an expiration date or dormancy fee, will remain open "for the life of the card." This, he said, is one concern regarding the interplay between the provisions mentioned by the previous speaker. He stated that he is familiar with the laws of many states, and would be willing to work with legislators to craft a bill which takes the best provisions from each. He noted that over the 2006 holiday season, abuse of gift cards was reported by the press. While consumer protection is important, it is also important for consumers to have a satisfactory experience.

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MR. DURRANT, in response to a question from Representative Ramras, stated that the 90 percent rule included in Section 3 would "tend to be administratively burdensome," as this may require the card issuer to track the amount of funds remaining on the card. This would be a challenge if the card was "re-loadable," rather than having a fixed denomination. "Open universe" cards are oftentimes not fixed denomination cards. He explained that if a card does not have a fixed denomination, this would require the seller to track any additional funds "loaded" on. He stated that the \$5 rule which is currently applied in Washington State "protects the consumer well," in addition to being "easy to administer."

REPRESENTATIVE RAMRAS stated that this is more difficult for smaller businesses, adding that this may become more of a problem when "trying to reconcile the day's activity." He

suggested that the 90 percent rule be removed or a fixed dollar amount be used.

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REPRESENTATIVE LEDOUX inquired as to whether the lack of expiration date would pose a problem to businesses.

MR. DURRANT replied that this would not be a problem. When there is no expiration date, this liability is carried on the books.

REPRESENTATIVE GATTO, in regard to the 90 percent payback requirement, opined that it would be "in the merchants best interest" to refund cards with small percentages, as these are unlikely to be redeemed. He asked if this would be considered beneficial.

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MR. DURRANT replied that it is possible to do "split-tender" transactions. He explained that this allows the customer to use the remainder of the card to make a partial payment, using another form of payment to make up the difference. This, he said, would be the ideal approach. He reiterated that using a fixed dollar amount would be preferable to a percentage.

REPRESENTATIVE GATTO clarified that the payback requirement was intended to help the businesses by allowing small amounts to be "taken off the books."

MR. DURRANT, in response, explained that if a gift card is purchased and given as a gift, there would be no mechanism by which to identify the holder of the card, until it is presented in a store for a purchase. Therefore, the business would be unable to refund small amounts until this occurred.

REPRESENTATIVE GATTO said "I'm trying to make it easy for the merchant to zero out a card that has too little value, that might be carried around in perpetuity, because no one will want to carry it around."

REPRESENTATIVE RAMRAS stated that his business currently has \$98 thousand in gift certificates on the books. This number, he said, increases by about \$5,000 per year, with 90-95 percent redemption. A credit of \$60 thousand was inherited from the

previous owner, which was carried over because the aforementioned gift certificates do not expire. He said:

We don't want to redeem a card that has a fractional amount left on it. We want that guest to come back. ...Studies ... show [that] people ... no matter what increment they have, ... are going to spend a little bit more than the face value of the [gift cards]. And frankly, that's what the business community wants. ... And if you leave a fractional amount, then for us, it's a little bit like you're going back out with a coupon.

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STEVE CLEARY, Executive Director, Alaska Public Interest Research Group (AkPIRG), stated that HB 49 is a "good step towards consumer protection for Alaskans." He cited a recent Washington Post article, which stated that almost \$25 billion in gift cards had been sold. This article also pointed out various problems with fees, many of which were previously mentioned. He referred to a study by the Montgomery County, Maryland Office of Consumer Protection, titled "Gift Cards 2006: Retail Cards Continue to Improve (with Prodding); Bank Cards Still Have Problems," which compares the various types of gift cards, and stated that he would forward this to the committee. This study shows that, in general, stores have a better policy than banks, which typically have fees. The following fees may apply: dormancy, latency, administrative, periodic fees, and service fees. He also pointed out information regarding 18 other states that have recently passed similar legislation, which is contained in members' packets. He said "I'm excited to see Alaska taking this step, and ... it's good to see that the business community isn't ... against this bill." He commented that while some areas need further clarification, both for consumers and businesses, the basis of the bill is "what everybody wants." If consumers lose money on cards purchased for a certain value, regardless of the amount, this will add up to money that consumers should be receiving.

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REPRESENTATIVE GATTO inquired as to whether gift cards that will never be used can be given to non-profit organizations, to be cashed in for the value of the card.

MR. CLEARY replied that non-profits often have silent auctions using donated gift certificates, although he is unsure whether these can be cashed in for the dollar value.

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MS. LEWIS explained that under the Unclaimed Property Act, if a gift certificate is not used within three years, this must be turned over to the state.

REPRESENTATIVE GATTO asked if the issuer of the gift certificate is required by law to turn the gift certificate over to the state.

MS. LEWIS replied yes.

REPRESENTATIVE LEDOUX asked if a consumer who did not wish to use a gift certificate is able to wait three years and then turn the gift certificate in to Unclaimed Property for a refund.

MS. LEWIS replied that this is correct.

REPRESENTATIVE LEDOUX asked whether this actually occurs.

MS. LEWIS replied that consumers often call regarding gift certificates that are not being honored. She explained that a phone call to the retailer typically takes care of the issue.

REPRESENTATIVE LEDOUX asked if the business has to turn the gift certificate over, or if the consumer is able to do this.

MS. LEWIS replied that the consumer is able to turn in the gift certificate.

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REPRESENTATIVE GATTO asked whether a person who spends \$300 on a "lifetime oil change" promotion at an automobile repair and service garage which closed shortly thereafter would be able to turn this in to Unclaimed Property for a refund.

MS. LEWIS replied that this would not apply.

REPRESENTATIVE GARDNER inquired as to what steps are taken, should the merchant decline to cooperate. In addition, she asked how often this law is enforced.

MS. LEWIS replied that the first step is to make a phone call to the merchant requesting that the certificate be honored. She stated that in her experience, this has worked each time. The next step, she said, would be to send a certified letter informing the merchant that the gift certificate is reportable as unclaimed property, and that interest and penalties may be assessed.

CHAIR OLSON announced his intention to hold bill until next week in order for conceptual amendments to be addressed.

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ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at [4:20:17 PM](#).