

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

February 14, 2007

3:07 p.m.

MEMBERS PRESENT

Representative Kurt Olson, Chair
Representative Mark Neuman, Vice Chair
Representative Carl Gatto
Representative Gabrielle LeDoux
Representative Jay Ramras
Representative Robert L. "Bob" Buch
Representative Berta Gardner

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 108

"An Act extending the termination date for the Board of Marine Pilots; and providing for an effective date."

- MOVED CSHB 108(L&C) 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."

- MOVED CSHB 49(L&C) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 108

SHORT TITLE: BOARD OF MARINE PILOTS

SPONSOR(s): LABOR & COMMERCE

01/25/07	(H)	READ THE FIRST TIME - REFERRALS
01/25/07	(H)	L&C, FIN
02/14/07	(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
01/29/07	(H)	Heard & Held
01/29/07	(H)	MINUTE(L&C)
02/05/07	(H)	L&C AT 3:00 PM CAPITOL 17
02/05/07	(H)	-- Meeting Canceled --
02/14/07	(H)	L&C AT 3:00 PM CAPITOL 17

WITNESS REGISTER

CAPTAIN ROBERT WINTER, Pilot
Southeast Alaska Pilots Association
Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 108.

RICK URION, Director
Division of Corporations, Business, and Professional Licensing,
Juneau Office
Department of Commerce, Community, & Economic Development
(DCCED)
Juneau, Alaska
POSITION STATEMENT: Testified during the hearing on HB 108.

AL CLOUGH, Deputy Commissioner
Department of Commerce, Community, & Economic Development
(DCCED);
Chairman, Board of Marine Pilots
Juneau, Alaska
POSITION STATEMENT: Testified in Support of HB 108.

PAT DAVIDSON, Legislative Auditor
Legislative Audit Division
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Testified and answered questions during the
hearing on HB 108.

PAUL FUHS, Lobbyist
for Southwest Alaska Pilots
Juneau, Alaska
POSITION STATEMENT: Testified during the hearing on HB 108.

HEATH HILYARD, Staff
to Representative Carl Gatto

Alaska State Legislature
Juneau, Alaska

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

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

POSITION STATEMENT: Answered questions during the hearing on HB 49.

HUGH ASHLOCK, Partner
Dimond Center, LLC,
Anchorage, Alaska

POSITION STATEMENT: Testified during the hearing on HB 49.

ACTION NARRATIVE

CHAIR KURT OLSON called the House Labor and Commerce Standing Committee meeting to order at [3:07:14 PM](#). Representatives Gardner, Neuman, Buch, LeDoux, and Olson were present at the call to order. Representatives Gatto and Ramras arrived as the meeting was in progress.

HB 108-BOARD OF MARINE PILOTS

CHAIR OLSON announced that the first order of business would be HOUSE BILL NO. 108, "An Act extending the termination date for the Board of Marine Pilots; and providing for an effective date."

[3:07:53 PM](#)

CAPTAIN ROBERT WINTER, Pilot, Southeast Alaska Pilots Association, said that he is in support of HB 108. He encouraged the committee to pass the bill as it is currently written.

[3:08:34 PM](#)

REPRESENTATIVE NEUMAN made a motion to adopt CSHB 108, Version 25-LS0445\C, as the working document. There being no objection, Version C was before the Committee.

[3:08:55 PM](#)

RICK URION, Director, Division of Corporations, Business, and Professional Licensing, Juneau Office, Department of Commerce, Community, & Economic Development (DCCED), stated that he is in favor of HB 108. During the auditing process, many questions were brought up. He opined that these were answered "satisfactorily."

CHAIR OLSON and Representative Neuman pointed out that Version C extends the sunset date to 2013.

MR. URION stated that he has "reservations about extending the dates." He explained that from time to time, statutes need minor revisions, which are difficult to address without a sunset review. If this date is extended, it will be more difficult to address the aforementioned issues as they come up. In response to a question from Chair Olson, he explained that the eight year sunset date was recently implemented. Prior to this, all extensions were four years.

[3:11:14 PM](#)

REPRESENTATIVE GARDNER referring to the [sponsor statement], pointed out that the extension is recommended by the Division of Legislative Audit.

MR. URION opined that the extension "makes less work" for the Division.

[3:11:32 PM](#)

REPRESENTATIVE LEDOUX asked how many times the Board of Marine Pilots ("Board") has been extended. Additionally, she inquired as to how many of these extensions have dealt with other concerns as well as the extension.

MR. URION replied that he is not sure how many times the board has been extended. The sunset review has been in effect for 30 years. In response to additional questions, he stated that boards often have unforeseen issues that need to be dealt with. When these issues come up, the legislature is asked to amend the law; however the Board of Marine Pilots has no problems at this time.

[3:13:28 PM](#)

REPRESENTATIVE NEUMAN asked if the regulatory changes can be brought to the Administrative Regulation Review Committee.

MR. URION replied that the changes would be statutory, rather than regulatory. He explained that regulations can not be made without permissive statutory language.

MR. URION, in response to a question from Representative Neuman, explained that board members serve limited terms which are "staggered." Additionally, the members serve at the will of the Governor.

[3:14:48 PM](#)

AL CLOUGH, Deputy Commissioner, Department of Commerce, Community, & Economic Development (DCCED); Chairman, Board of Marine Pilots ("Board"), stated that the Board supports Version C. He explained that the statute which governs the Board "went through an extensive rewrite" around 10 years ago. The majority of changes are regulatory; however there are also statutory issues that require attention.

[3:16:02 PM](#)

REPRESENTATIVE GATTO commented that this seems pretty "straight-forward." He inquired as to the future of statutory changes.

MR. CLOUGH surmised that larger ships or changing traffic patterns may result in statutory changes. The board may not have regulatory authority to deal with the various issues that may come up. In response to additional questions, he explained that homeland security is becoming more of an issue for the Board, and is taken seriously. He does not anticipate that the Board will request a statutory change to deal with the pilots' method of getting on or off ships. However, he is unable to say for sure. The U.S. Coast Guard is considering these issues, and the Board is involved in discussions regarding ship and port security.

[3:19:11 PM](#)

MR. CLOUGH, in response to a question from Representative Neuman, stated that in regard to the extension, he is speaking on behalf of the Board. The Board has not debated this issue "in any great detail." He stated that his personal opinion "would be the longer, the better," although he understands the intent behind a shorter date. In response to an additional

question, he explained that the Board maintains the ability to come before the legislature or the Administration to make requests for legislation.

[3:21:42 PM](#)

PAT DAVIDSON, Legislative Auditor, Legislative Audit Division, Alaska State Legislature, explained that sunset audits are required by statute and must be made available to the committees considering the extensions. She explained that two years ago, the statute regarding extensions was changed from "a period not to exceed four years" to "a period not to exceed eight years." The four year audits were too expansive, and resulted in "very few statutory change recommendations." The Boards are health, safety, and welfare boards, and would be a "high enough priority for the legislature" to make any necessary changes. In regard to the Board of Marine Pilots, she said, there were operational concerns, such as drug testing. She explained that "administrative tightening" was needed. In addition, investigative backup for the marine pilot coordinator was also needed. The Board uses a peer review as a way to ensure continued competency. Interviews and surveys of marine pilots have shown that this is not viewed as "particularly effective" as a method of showing continued competence. The Division recommends that this be reevaluated. In addition, rate-setting is a concern. Most occupational boards do not deal with this. The Board has an equal number of marine pilots and industry representatives. However, due to the ethics act, marine pilots may recuse themselves, while industry members may not. Thus, the balance is not maintained. This concern resulted in the six year recommendation. In response to a question, she agreed that she is comfortable with the six year recommendation.

REPRESENTATIVE GATTO asked if a marine pilot has ever failed a drug test, and if so, inquired as to the penalty.

MS. DAVIDSON replied that during the course of the most recent audit, there were no drug test failures. She explained that the Division is concerned with the method used to select individuals for testing, adding that this concern is administrative in nature. While the Coast Guard is "on top" of drug testing, the Board is not "on top" of the testing program.

[3:27:51 PM](#)

PAUL FUHS, Lobbyist for Southwest Alaska Pilots, explained that the Southwest Pilots bring liquefied natural gas (LNG) tankers

into Valdez, and handle cruise ships, as well as a variety of other vessels. Previously, there were "huge battles" between the industry and marine pilots. The state requires that companies retain pilots, which results in "an unusual labor relations situation." The board has two pilots, two industry members, and three public members. He explained that if there is a disagreement regarding tariffs, the pilots and industry members "cancel each other out," and the decision is made by the public members. He then explained this process. He opined that this works well as long as the public members appointed are "truly public members."

MR. FUHS encouraged the committee to consider a "longer term" extension, as this provides stability. He added that a shorter term may result in attempts to "sneak" items in while the issue is being considered by the legislature. There is a heightened consideration of terrorism. All of the pilot boards and the majority of the industry are members of the Marine Exchange of Alaska, and vessels are tracked on a continuous basis. This information is reported to the U.S. Coast Guard. In addition, a marine distress signaling system is in place. In regard to a question from Chair Olson, he explained that if a marine pilot makes a mistake, he or she can be fired immediately. He pointed out that marine pilots must attend a three or four year training, must keep up with all changes, and are tested on a regular basis.

[3:32:31 PM](#)

REPRESENTATIVE NEUMAN moved to report CSHB 108, Version 25-LS0445\C out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 108(L&C) was reported from the House Labor and Commerce Standing Committee.

HB 49-GIFT CARDS

[3:34:08 PM](#)

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."

[3:34:18 PM](#)

HEATH HILYARD, Staff to Representative Carl Gatto, Alaska State Legislature, joint prime sponsor of HB 49, noted that a committee substitute has been drafted to address concerns brought up at the previous hearing.

3:35:03 PM

REPRESENTATIVE NEUMAN moved to adopt CSHB 49, Version 25-LS0263\M, Bannister, 2/6/07, as the working document. There being no objection, Version M was before the Committee.

MR. HILYARD explained that Section 1 of Version M substitutes "gift card" for "gift certificate." These two terms are now interchangeable, and "gift certificate" is removed from statute. Section 2 contains a technical change, amending AS 34.45.760(8) to reflect the definition of "gift card" found in AS 45.45.940. Section 3 amends AS 34.45.760(11) by adding "gift cards" to the list of items included under "intangible property." Section 4 stipulates that gift cards do not have an expiration date. In addition, this section excludes gift cards awarded under a loyalty or promotional program, cards donated to non-profit organizations, and "open universe" cards. This section refines the definition of "device" to clarify that this does not apply to telephone calling cards. Finally, Section 4 alters the definition of "gift cards" to remove references to "purchaser" or "recipient." All refund requirements have been removed.

3:38:52 PM

REPRESENTATIVE RAMRAS relayed a concern regarding local tenants in a mall setting. Referring to Section 4(a)(1), he inquired as to what effect this would have on small, independent businesses.

MR. HILYARD replied that all property, regardless of the [expiration] date must still be turned over to Unclaimed Property after three years. He surmised that small, local retailers carry a greater likelihood of going out of business, which creates a concern for the consumer.

REPRESENTATIVE GATTO, speaking as a joint prime sponsor of HB 49, commented that a retailer may be inclined to send a letter reminding the consumer of the remaining value of the gift card. He opined that this would make both parties "winners."

3:44:22 PM

REPRESENTATIVE RAMRAS questioned whether HB 49 would preclude retailers from conducting free enterprise.

MR. HILYARD replied that "in a broad sense," HB 49 does preclude this. However, he opined that exempting cards issued under promotional or royalty programs offers flexibility to businesses.

REPRESENTATIVE RAMRAS commented that gift cards contain specific provisions which are an agreement between the purchaser and the seller. He said "I hate to see government, on principle, insert itself into a free enterprise transaction between a purchaser and seller." The expiration date is a condition of transaction. He opined that businesses may not want to have gift cards that last in perpetuity. He questioned whether this condition should be the "privilege of the retailer," and the "privilege of the buyer ... to consummate that transaction." He opined that the conditions between the buyer and the seller should not be a concern of the recipient of the gift card.

REPRESENTATIVE GATTO replied that the retailer may still offer a refund for the dollar value of the card, after it has reached its expiration. He pointed that the intent of HB 49 is to protect consumers who are not aware that it is against the law [for gift cards to have an expiration date].

[3:50:19 PM](#)

REPRESENTATIVE GARDNER offered her understanding that a gift card with an expiration date would still become unclaimed property if not redeemed, and asked if this is correct.

MR. HILYARD replied that he is unable to answer this. He clarified that "open universe" cards may be used at a number of retailers, and are not specific to large retailers.

REPRESENTATIVE RAMRAS commented that while the intent behind HB 49 is good, it does not include protection for small businesses. He opined that the government should not attempt to protect consumers in all situations, and business owners are entitled to run businesses "the way that they see fit."

[3:55:22 PM](#)

REPRESENTATIVE NEUMAN stated that he shares these concerns, and pointed out that bartering also occurs. He expressed concern regarding the effect the aforementioned gift card requirements

may have on bookkeeping. He opined that if a business owner wants to offer a gift card with a 2-year expiration date, he or she has the right to do so. In response to a question from Representative Gatto, he commented that if the business is required to refund the value of a gift card, it must then keep the purchaser's name and contact information "on the books". This is a "good" and "workable" suggestion. However, this adds an additional burden to businesses.

REPRESENTATIVE RAMRAS offered his understanding that it is legal to "use or lose" leave time that is accrued. He reiterated his earlier statement regarding businesses' gift card policies. In response to a question from Representative Gatto, he explained that his business sells and gives away gift certificates. Those that are given away have blackout and expiration dates.

4:00:39 PM

MR. HILYARD pointed out that in the original bill, the gift cards had an expiration date of 7 years, which was changed in response to concerns. He opined that an expiration date of three years or more is more appropriate.

REPRESENTATIVE NEUMAN asked if the gift cards may be cashed in for monetary value.

MR. HILYARD replied this is up to the individual retailer. In response to an additional question, he offered his understanding that this is included in current law.

4:04:04 PM

REPRESENTATIVE BUCH opined that more specific definitions would make it easier to regulate each gift card according to purpose and use, and suggested that this be considered.

REPRESENTATIVE GARDNER offered her understanding that currently, a gift certificate that is used for promotional purposes or donated may expire. HB 49 applies to gift certificates purchased at face value. She reiterated her understanding that even if a gift certificate expires, any unclaimed portion must be turned over to Unclaimed Property. The merchant does not keep the unclaimed funds. She surmised that this does not happen often, adding that those merchants who understand the current law do not oppose the expiration date prohibition.

REPRESENTATIVE RAMRAS suggested that Section 4(a)(1) be amended to include the following conceptual amendment "unless there is a specific date of expiration set and agreed upon between the buyer and seller, which may or may not have an effect on the recipient of the gift card." He stated that he does not want to "encroach on the rights of the business owner, in [an] attempt to protect the consumer...."

[4:08:57 PM](#)

CHAIR OLSON commended the sponsor for changes made in Version M. However, he said "it appears to me, that we're trying to protect people from themselves, and from their own actions." He surmised that Version M would not move through the legislative process, [without further revisions].

[4:09:56 PM](#)

RACHEL LEWIS, Unclaimed Property Section, Tax Division, Department of Revenue (DOR), explained that currently, regardless of whether or not a gift card expires, any unredeemed funds must be turned over to Unclaimed Property. She stated that an exchange of money for goods and services is a "contractual obligation." Payroll checks and health insurance reimbursements are other types of unclaimed property.

[4:12:54 PM](#)

REPRESENTATIVE NEUMAN asked if a gift card purchased from a franchise that goes out of business can be redeemed at a different franchise.

MS. LEWIS replied that she is unsure; however, when a business dissolves, any unredeemed gift certificates are turned over to Unclaimed Property. In response to an additional question, she explained that currently, the state is holding approximately \$58,000 in unclaimed gift certificates. She opined that electronic gift cards are easier to buy and redeem, which has resulted in the current concern. In response to a question from Representative Gardner, she reiterated that all unclaimed gift cards and gift certificates must be turned over to Unclaimed Property, regardless of whether there is an expiration date. The Unclaimed Property office has a computer system which uses tracking numbers to track any gift certificates or gift cards, if the name of the holder is unknown. In response to an additional question, she stated that the unclaimed property must be turned in [three years] from the date of the sale.

CHAIR OLSON inquired as to the current compliance rate.

MS. LEWIS replied that she is unsure.

[4:17:05 PM](#)

REPRESENTATIVE RAMRAS thanked Ms. Lewis for her testimony.

REPRESENTATIVE NEUMAN commented that he agrees with the intent of the legislation.

REPRESENTATIVE GATTO commented that the intent of HB 49 is to protect consumers that are "too trusting," adding that the unredeemed amount may be small, which provides an opportunity for proprietors to take advantage of consumers. He inquired as to the process used for gift cards that are turned in to Unclaimed Property if the owner is unknown.

MS. LEWIS replied that the business turns in a report listing all available information, which is then entered in to a searchable database. This database is available on the internet, and is linked to a national database. In response to a question from Representative Gatto, she explained that if the dollar amount of the unclaimed property is \$100 or more, the company is required to send a letter to the last known address of the individual, to inform him or her that the unclaimed property is available.

[4:24:51 PM](#)

HUGH ASHLOCK, Partner, Dimond Center, LLC, stated that he is concerned about how this would affect small businesses in Alaska. He offered his understanding that HB 49 is aimed at larger corporations, and opined that it would add an additional burden to small business. There are fewer small, privately owned businesses in Alaska every year. Allowing businesses to include a two year expiration date would help with accounting.

REPRESENTATIVE RAMRAS noted that he shares these concerns. He asked what changes would make this less of a burden on small businesses, while honoring the intent of the sponsor.

[4:29:10 PM](#)

MR. ASHLOCK suggested that companies be required to print a warning on the gift card, or on company literature. He opined

that gift cards are a tool to bring customers into stores, adding that he does not like to see gift cards go down in value as a result of fees. He agreed that customers need to be protected.

[4:31:43 PM](#)

REPRESENTATIVE GARDNER inquired as to how many locally owned businesses in the Dimond Center Mall have gift certificates with expiration dates.

MR. ASHLOCK replied that does not have this information. While national chains have provisions regarding gift certificates, locally owned businesses do not. Family owned business sales are difficult to track.

REPRESENTATIVE GARDNER offered her understanding that 17 states currently do not allow expiration dates on cash-value gift cards. She opined that this is not "nearly as problematic as it might seem."

MR. ASHLOCK reiterated that this would be a large burden on locally owned businesses, and again suggested a two-year expiration date.

REPRESENTATIVE GARDNER reiterated that regardless of whether an expiration date is allowed, any unused portion of a gift certificate must be turned over to unclaimed property after three years. She opined that HB 49 provides businesses with additional flexibility by prohibiting expiration dates.

REPRESENTATIVE GATTO, in response to a question, stated that he would like to move the bill through the committee process. He added that he would be willing to address members' concerns.

[4:37:06 PM](#)

REPRESENTATIVE RAMRAS moved to report CSHB 49, Version 25-LS0263\M out of committee with individual recommendations and the accompanying fiscal notes.

[4:37:22 PM](#)

REPRESENTATIVE NEUMAN objected. He requested that certain concerns be addressed prior to moving the bill from committee.

[4:37:45 PM](#)

MR. HILYARD, referring to Section 4(a)(1), suggested removing "and," and inserting "or." Referring to Section 4(a)(2), he suggested removing "issuance" and inserting "[expiration]."

REPRESENTATIVE NEUMAN agreed that printing the expiration date would be helpful.

[4:39:40 PM](#)

REPRESENTATIVE RAMRAS inquired as to the sponsor's position on the aforementioned changes.

REPRESENTATIVE GATTO replied that he is not in favor of changing the bill in this manner.

[4:42:19 PM](#)

REPRESENTATIVE NEUMAN withdrew his objection.

CHAIR OLSON noted that there was no further objection. Therefore, CSHB 49(L&C) was reported from the House Labor and Commerce Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at [4:42:49 PM](#).