

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

February 16, 2011

3:21 p.m.

MEMBERS PRESENT

Representative Kurt Olson, Chair
Representative Craig Johnson, Vice Chair
Representative Dan Saddler
Representative Steve Thompson
Representative Lindsey Holmes

MEMBERS ABSENT

Representative Paul Seaton
Representative Bob Miller

COMMITTEE CALENDAR

HOUSE BILL NO. 125

"An Act moving the Alcoholic Beverage Control Board to the Department of Commerce, Community, and Economic Development and relating to duties of that department; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 125

SHORT TITLE: ALCOHOLIC BEVERAGE CONTROL BOARD

SPONSOR(S): RULES BY REQUEST OF LEG BUDGET & AUDIT

01/26/11	(H)	READ THE FIRST TIME - REFERRALS
01/26/11	(H)	L&C, FIN
02/09/11	(H)	L&C AT 3:15 PM BARNES 124
02/09/11	(H)	Heard & Held
02/09/11	(H)	MINUTE(L&C)
02/16/11	(H)	L&C AT 3:15 PM CAPITOL 106

WITNESS REGISTER

BERNIE KARL, General Manager
Chena Hot Springs Resort
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 125.

KATE BURKHART, Executive Director
Alaska Mental Health Board
Governor's Advisory Board on Alcoholism and Drug Abuse (ABADA)
Department of Health and Social Services (DHSS)
Juneau, Alaska
POSITION STATEMENT: Testified during the discussion of HB 125.

BELEN COOK, Public Member, Board of Directors
Alcoholic Beverage Control Board (ABC Board)
Cordova, Alaska
POSITION STATEMENT: Testified in opposition to HB 125.

LARRY HACKENMILLER, Member
Interior, Alaska Cabaret, Hotel, Restaurant, and Retailer's
Association (CHARR)
Fairbanks, Alaska
POSITION STATEMENT: Testified during the discussion of on HB
125.

DAVE LAMBERT, Owner
Greyhound Lounge
Fairbanks, Alaska
POSITION STATEMENT: Testified during the discussion of HB 125.

DICK ELLSWORTH, Owner
Ivory Jacks Bar and Restaurant
Fairbanks, Alaska
POSITION STATEMENT: Testified during the discussion of HB 125.

BILL BISHOP, Owner
Mecca Lounge
Kodiak, Alaska
POSITION STATEMENT: Testified in support of HB 125.

BOB KLINE, Industry Member;
Chair; Alcoholic Beverage Control Board (ABC Board)
Director of Sales, Brown Jug Stores
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 125.

MIKE GORDAN, Owner
Chilkoot Charlies
Anchorage, Alaska
POSITION STATEMENT: Testified during the discussion of HB 125.

BOB WINN, General Manager

Blues Central Chef's Inn
Anchorage, Alaska

POSITION STATEMENT: Testified during the discussion of HB 125.

JEFF JESSEE, Chief Executive Officer
Alaska Mental Health Trust Authority (AMHTA)
Anchorage, Alaska

POSITION STATEMENT: Testified during the discussion of HB 125.

WILLIAM DEVINY, Administrator
Loyal Order of Moose Lodge
Delta Junction, Alaska

POSITION STATEMENT: Testified during the discussion of HB 125.

BILL BUBBEL, Owner
Pump House Restaurant and Saloon
Fairbanks, Alaska

POSITION STATEMENT: Testified during the discussion of HB 125.

CRYSTAL SHOENROCK, Owner
Nikiski Bar; Secretary,
Cabaret, Hotel, Restaurant & Retailers Association (CHARR)
Nikiski, Alaska

POSITION STATEMENT: Testified during the discussion of HB 125.

BERNADETTE BRADLEY, Owner
Bradley House
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 125.

SYLVIA VILLAMIDES, Director
Alaska Cabaret, Hotel, Restaurant, and Retailer's Association
(CHARR)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 125.

DURAN POWELL, General Manager
Chilkoot Charlies
Anchorage, Alaska

POSITION STATEMENT: Testified during the discussion of HB 125.

MICHELLE POWELL, Bartender
Anchorage, Alaska

POSITION STATEMENT: Testified during the discussion of HB 125.

SHARON WHYTAL, Nurse; Coordinator
Southern Kenai Peninsula (SKP), Communities Project

Homer, Alaska

POSITION STATEMENT: Testified in opposition to HB 125.

SHIRLEY GIFFORD, Executive Director
Alcoholic Beverage Control Board (ABC Board)
Department of Public Safety (DPS)
Anchorage, Alaska

POSITION STATEMENT: Testified during the discussion of HB 125.

ACTION NARRATIVE

[3:21:25 PM](#)

CHAIR KURT OLSON called the House Labor and Commerce Standing Committee meeting to order at 3:21 p.m. Representatives Olson, Johnson, Saddler, and Thompson were present at the call to order. Representative Holmes arrived as the meeting was in progress.

HB 125-ALCOHOLIC BEVERAGE CONTROL BOARD

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CHAIR OLSON announced that the only order of business would be HOUSE BILL NO. 125, "An Act moving the Alcoholic Beverage Control Board to the Department of Commerce, Community, and Economic Development and relating to duties of that department; and providing for an effective date."

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BERNIE KARL, General Manager, Chena Hot Springs Resort, related his support for support of HB 125. He said he supports relocating the Alcoholic Beverage Control Board (ABC Board) to the Department of Commerce, Community & Economic Development (DCCED) since it is more appropriate for licensing. He described a sting operation that took place at his business at Chena Hot Springs Resort. Although his establishment passed the sting inspection, the officer appeared upset, he said. He recalled testimony given last week that referred to licensees as dubious miscreants. He said he takes offense to that description. He stated that 99.99 percent of the people in the liquor business in the state are just good people just like you. They are trying to make a living and are doing the best job they can to add to the state's economy. He stated that more people have not expressed concern since they fear reprisal. He remarked that he is motivated to work by his debt load and he

works hard. Not only were the investigators upset that his establishment passed the sting they were really upset that everyone had their credentials in order. The officers decided that the liquor store was not properly located so it should be shut down. He reported that he bought the liquor store from the state. He related that the officer said rules are different for the state than for the private sector. The investigator then performed a compliance check on the ice museum, which had previously been approved, he said.

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MR. KARL described the investigator conducted a compliance check for the ice museum even though the ABC Board investigator/officers were on premise to conduct a sting operation. He offered his belief that they will do anything to "bring you down, anything." He subsequently received a certified letter that he needed to close his "illegal bar" during his busiest time. Yet, he remarked he had previously submitted paperwork, which was approved. He emphasized he did not get the due process of law. Instead, the ABC Board simply sent a letter to close him down during his busiest season. He supported the ABC Board moving to the Department of Commerce, Community & Economic Development (DCCED). He reported that his establishment has an excellent record.

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MR. KARL disagreed with the ABC Board being located in the Department of Public Safety (DPS), which does not make sense to him. He acknowledged Ms. Gifford is trying her best to make things better. He recalled testimony that the ABC Board's policy is not to perform sting operations at the same time compliance checks are conducted. He offered his belief the investigators want everyone to be treated like criminals and "we're not criminals." We take great offense to being considered as criminals, he stated. He suggested that the ABC Board should focus on education and join with the Cabaret, Hotel, and Restaurant & Retailer's Association (CHARR) to conduct education on alcohol to elementary students. He said that they should teach third graders why they should not drink. He offered his experience in teaching third grade students recycling and the effectiveness in doing so. He reported that his [recycling] business grows at about 100 percent a year without him conducting any advertising. He recalled a student once asked him if body parts could be recycled and he showed him that he is an organ donor. He stressed the importance of

education and emphasized that the ABC Board should be working with CHARR. He offered to copy his file for the committee.

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KATE BURKHART, Executive Director, Alaska Mental Health Board, Governor's Advisory Board on Alcoholism and Drug Abuse (ABADA), Department of Health and Social Services (DHSS), stated she is speaking on behalf of the Governor's Advisory Board on Alcoholism and Drug Abuse (ABADA). She related that although the ABADA is located within the Department of Health and Social Services (DHSS) that she was not speaking on behalf of the DHSS, but for the ABADA. The ABADA does not support moving the ABC Board from the DPS to DCCED due to what the board perceives as potential outcomes. She expressed her appreciation for everyone involved in this conversation. This is not an issue of "good guys and bad guys," nor is this an issue of whether alcohol is good or bad. The issue is to identify where the ABC Board can continue to fulfill its statutory duties to the best possible degree and continue to make progress in the issues identified as areas for needed improvement. She recalled the LB&A's audit of the ABC Board outlined concerns and recommendations for improvement. She expressed concern that a potential move could retard or halt the ABC Board's improvements. The ABC Board controls not just licensing but the manufacturer, barter, possession, and sale of alcoholic beverages in Alaska. That duty is assigned to statutorily, but is not a duty undertaken solely by the ABC Board. Alcohol retailers invest time and money to ensure responsible sales are made to youth or adults. Many retailers have strong histories of responsible sales practices and community efforts to promote responsible consumption. Those efforts should not be minimized. However, as the 2009 data indicates not all retailers are at the same level of compliance with the law. She remarked that retailers are not the only source of alcohol for underage youth. While retailers do provide a source of alcohol, improper purchases by adults is also a problem. The ABC Board has the responsible to oversee, identify, and address those issues with "shoulder taps." She pointed out that home liquor cabinets and bootlegging also provide youth with access to alcohol.

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MS. BURKHART related what evokes intense rhetoric over this issue are the social problems that stem from the misuse and abuse of alcoholic beverages. She reiterated that it is the misuse and abuse of alcohol that causes the problems and not the

alcohol. The problem is not the retailers, but the way that alcohol is used. Alaska's rate of alcohol-induced deaths is three times the national average. Nationally, one third of suicide victims test positive for alcohol. In Alaska, the limited data shows 44 percent of suicide deaths test positive for alcohol use. The state ranks 11th for binge drinking, and in 2009, 22 percent of high school students surveyed report binge drinking in the past month. The American Medical Association reports that underage drinking is a factor in nearly half of all teen car crashes. Teen car crashes are the leading cause of death among teenagers. Youth who begin drinking under the age 14 are more likely to develop dependence. In Alaska, nearly 20,000 adults are dependent on alcohol.

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MS. BURKHART related that in 2007, a series of town hall meetings were held in a number of communities, including Anchorage, Fairbanks, Juneau, Valdez, Galena, Yakutat, Nome, and Sitka. Stakeholders identified the importance of compliance checks and a robust system as one of the tools necessary to prevent underage drinking. At the same time the Alaska Highway Safety Office (AHSO) worked with stakeholders to develop its strategic highway safety plan. These stakeholders also reached the same conclusions as ABADA. In 2009, a new series of town hall meetings were held in 22 communities, whose goal was to reduce and curb underage drinking. Both plans emphasized the need for strong compliance checks as one tool to address underage drinking.

MS. BURKHART expressed concern about the proposed relocation of the ABC Board to the DCCED as proposed in HB 125. The ABADA reviewed states in which the alcoholic beverage control boards were located in non law enforcement agencies. It compared states in which the alcoholic control boards are located in law enforcement agencies to five other states. Alaska, Idaho, Delaware, and New Jersey are states whose boards are located in law enforcement agencies. States in which ABC boards are located in non-law enforcement agencies include Colorado, Georgia, Kansas, Mississippi, and Missouri. The ABADA also reviewed youth survey data on alcohol use and the rate of alcohol teen car crash fatalities. In both instances, where the ABC Board was located in non-law enforcement agencies, the indication of youth alcohol use increased. These states also had higher lifetime alcohol use reported, sometimes ranging as much as six percent higher than Alaska's rate. They also reported 3 to 10 percent higher rates of youth drinking under

the age of 13, and 1 to 7 percent reported drinking alcohol at least once in the last month. Since 1995, Alaska has been able to decrease youth alcohol use. She reported Alaska's survey discovered reductions in the number of respondents who reported alcohol use. She elaborated that 13.5 percent less youth reported any lifetime use of alcohol, almost 20 percent less indicated any alcohol use before the age of 13, almost 15 percent less had engaged in alcohol use in the past 30 days, and 10 percent less reported binge drinking. She reviewed the rate of alcohol rate for car crashes. The national fatality rate for crashes that involved youth under the age of 21 is 2 deaths per 100,000. In Alaska, the rate was 1.4 deaths per 100,000. The fatality rate for states whose ABC board was located within a law enforcement agency fell at the national average or below, while the fatality rate for states whose ABC board was located in a non-law enforcement agency was higher, she said.

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MS. BURKHART emphasized that for these reasons, the ABADA is concerned about the proposed move. The ABADA suggested the need for better communication and collaboration between the retail industry and the ABC Board. It is important to note the industry has a lot to offer in this area, she said. Further, the ABADA has had the benefit of partnering with CHARR and its affiliates on fetal alcohol spectrum disorder prevention efforts. Additionally, the ABADA encouraged increased collaboration between the ABC Board and retailers to take advantage of ideas and strengths from both sides of the issues. She concluded by expressing concern that moving the responsibility of the ABC Board to another agency could halt progress to improve the ABC Board's performance and could result in detrimental changes to areas in which the state has seen progress.

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BELEN COOK, Public Member, Alaska Beverage Control Board (ABC Board), Board of Directors, stated she has served for two years as the public member and since March also represents the rural seat for the ABC Board, since she also fits that category. She related her perspective, given her limited experience on the board. She testified in opposition to HB 125. She has not observed retailers who come before the board view the ABC Board as "out to get them." She recalled hearing the board has been more open and that the ABC Board has its "ducks in a row." When Kotzebue decided to go "wet" the ABC Board held its meeting in

Anchorage. One board member suggested the ABC Board travel to Kotzebue for the next meeting. In response to Chair Olson, after conferring with Ms. Gifford, Ms. Cook clarified that Kotzebue is "damp" not "wet." She explained the ABC Board held its next meeting in Kotzebue. The city manager and members commented during the public comment period with praise. Those who commented stated they could talk to Ms. Gifford and actually reach a "real person" to ask questions and that it had been a pleasure to work with staff. She reported that the public reported that the ABC Board's staff had gone out of their way to assist them. She used that as an example of how the ABC Board works. She expressed concern that it would be disruptive to move the board to the DCCED.

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LARRY HACKENMILLER, Member, stated that the Interior Chapter of CHARR supports moving the ABC Board to the DCCED since this represents more of the original mandate. At its August Legislative Budget and Audit Committee hearing the ABC Board provided testimony that indicated it plans to continue with enforcement duties no matter where the ABC Board is located. The DPS also related that changing the department oversight would not impact its joint support for enforcement compliance conducted with the ABC Board. The ABC Board is a quasi-judicial body that holds hearings and issues citations. He recalled that the changes that allow its officers to carry weapons and function more in the public safety role did not previously work so the Department of Revenue revoked the specific firearm authority. He acknowledged that the ABC Board investigators will be carrying weapons again. He said that would not change under the DCCED. He reiterated one key point to remember is that enforcement operations will still occur. Sting operations are based more on funding and are not specifically department related. He turned to non-compliance issues. He offered his belief that retailers cannot hire perfect people and sometimes one or two instances of serving underage youth will happen. He detailed how sting operations work, such that an underage person attempts to buy alcohol and if he/she is not served, the minor presents a card that the server passes the test. He wondered when a bartender is apprehended why the officer does not subsequently check the clientele to determine whether any additional minors are being served since the goal of a sting is to prevent minor consuming.

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MR. HACKENMILLER offered one solution. One means of reducing serving minors, particularly if the belief is that this is rampant, would be for the investigator conducting a sting or compliance check to also check identification cards of patrons. He reported that CHARR provides training for staff with respect to minors on premises. In Anchorage, a civil penalty is imposed. Still, approximately 300 minors attempt to buy alcohol each year, perhaps because kids may view the process as a rite of passage. He reiterated his reasons for supporting HB 125, includes that the move would not affect the ABC Board's enforcement effort and the ABC Board has independent administrative authority regardless of which department it resides in. He concluded, "And I think the move is a proper move."

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DAVE LAMBERT, Greyhound Lounge, said he is a retailer who owns two beverage dispensary licenses. Over the years he thinks he has been treated like a criminal, which has improved since Ms. Gifford has been the executive director since retailers can obtain answers to their questions. He offered his belief that the ABC Board is located in the wrong department. He recalled that DPS offers a 20 year retirement, which would benefit the ABC Board staff. He questioned if the DPS was the proper department for the enforcement reasons, why other enforcement or licensing functions are not also housed in DPS, such as the Department of Environmental Conservation's enforcement and licensing investigators. None of the other departments with enforcement powers are located in public safety, he stated. He emphasized the importance of employees' education. He concluded that some people are anti-alcohol. He pointed out that the young teenagers and pre-teens are not buying at establishments so the solution is better achieved through education.

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DICK ELLSWORTH, Owner, Ivory Jacks Bar and Restaurant, stated that he has an off premise and an on premise license, along with a restaurant. He said he agrees with Larry Hackenmiller and Dave Lambert's testimony.

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BILL BISHOP, Owner, Mecca Lounge, stated that he brings 50 years experience in management in the beverage retail industry. He has previously served as chair of the ABC Board. He asked to

testify in support for HB 125. The beverage industry deals with the public which can be difficult, he stated. He related that 25 years ago the ABC Board had three or four investigators and when a problem arose the owner had to explain the issue to the ABC Board. At the time, when investigators conducted compliance checks they checked everything. He said he appreciated that attention to detail as an owner. Currently, the ABC Board's investigators are law enforcement officers who only seem to be interested in writing citations. He related that if an employer forgets to renew his/her Techniques of Alcohol Management® (TAM®) card, the officer will write a ticket. These citations are misdemeanors so the employee/employer must appear in court and probably would need to hire a lawyer for representation. He stressed that no one wants to work under the current conditions. As time has passed and administrations have changed things have "gotten out of hand. It is bad for the industry. It is bad for business. It is time for a change." He reported that Kodiak has its own liquor association. The liquor association conducts training sessions and CHARR helps train members. When issues arise, the association helps owners deal with them. He emphasized that his business supports his community, including sports for children and scholarships. He urged members to support HB 125. He said, "This is an honorable thing to do and the right thing to do for our beverage industry and businesses. Thank you."

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BOB KLINE, Industry Member; Chair; Alcoholic Beverage Control Board (ABC Board), Director of Sales, Brown Jug Stores, stated he has served for 14 years on the ABC Board for several governors, including former Governor Steve Cowper and Governor Sean Parnell. He related that he has experienced the ABC Board while it was housed in the DOR and the DPS. He said he is proud of the ABC Board and he is especially proud its executive director, Ms. Gifford. The board has well trained and dedicated enforcement staff and has an effective enforcement record. He says he would take exception that the ABC Board would relax its efforts in the event HB 125 passes. He also serves as Chair of the Governmental Affairs Committee for CHARR. He recalled testimony on compliance checks and assures members that the ABC Board staff works hard to ensure that compliance checks are fair. He stated that the motivation for the move to the DCCED is one of perception as the public perceive the ABC Board's role is to apprehend lawbreakers. While there may be some "bad apples" the hospitality industry is a huge group of hard working people. The DPS is in the business of catching criminals while

the DCCED is in the business of helping businesses grow, he stated. Finally, he serves as the Director of Sales for Brown Jug Stores, which operates 20 stores in Anchorage and the Mat-Su. He finds it offensive to hear comments that the Alaska State Troopers (AST) would not be interested in enforcement if the ABC Board moves. He related he has worked with the AST to develop a database, which is a cooperative effort between the AST and beverage retailers. Brown Jug has a long history of providing information on bootleggers. He concluded that he strongly supports HB 125.

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MIKE GORDAN, Owner, Chilkoot Charlies, stated that he was elected twice to the city council and borough assembly prior to unification. He is one of 55 people in Anchorage that have hardcover of the charter of the Municipality of Anchorage with his name embossed on the cover. He related he is an Eagle Scout and past president of the downtown Rotary Club. He has served on many boards and has served twice on the ABC Board by two different governors, serving for 10 years, including as Chair. He mentions his accomplishments because he does not appreciate being described as a member of "a small group of miscreant licensees." The only violation he has had in 41 years involved a catering permit issue for a not-for-profit business. He said most of his tenure on the ABC Board was while it was under the purview of the DOR. He pointed out that he was serving as board chair when Governor Murkowski moved the ABC Board to the DPS. He emphasized he was not consulted about the move. He stated he did not like it but came to dislike it even more. He offered his belief that having three public members and an attorney serving on the board was already problematic. The problem, in his view, was that the new board had little empathy for honest hard working business people or what it was like to run a small business or meet a payroll. Additionally, the new board had no concept of the cost of being officially closed down for a week or longer. He said that draconian punitive punishment was meted out without a thought for the damage being done or the precedent the actions set. He offered his belief that the string of precedent set has created irreparable harm to licensees.

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MR. GORDON related that the old board was every bit as hard on irresponsible operators but had the common sense to differentiate between crooks and honest licensees. He said, "In the eyes of the new board we're all the same." He also said

that the old board would never have dealt with the issue of an expired Techniques of Alcohol Management® (TAM®) card, which would have been referred to an investigator, who in turn would have told the licensee to get the card renewed or "face the consequences." Currently, the investigator "busts the licensee or employee" who must face the board and the business risks closure for a first offense of an expired TAM® card, which is an administrative matter. He said, "I saw businesses during the last months I was chairman of the board closed down for a week for a first offense of serving a minor with no previous infractions for 40 years. I was shocked." Not long after the transfer he was summoned to the commissioner's office related to the ABC Board's operation and to replace the ABC Board's director. The outcome resulted in a memo outlining any ABC Board issues, which were subsequently corrected. The executive director remained, but the relationship was "rocky after that." He related the next commissioner indicated the governor did not want an industry person to chair the ABC Board even though the chair had always been an industry member. He further said, "My reaction was to continue doing my job. I thought that if the governor wanted me to step down, she could tell me or remove me for that manner. I was the appointed chairman of a quasi-judicial body and did not answer to the commissioner." He related that not long after his business had a series of compliance checks, including a visit at 11 a.m. with a minor attempting to buy liquor, which is an unlikely time for a minor

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MR. GORDON described a sting in which an older looking girl came into his bar during the bartender change from the day to night shift change, just prior to his security guard's arrival for the evening. Two bartenders served the girl. The first bartender was exonerated, after spending \$27,000 in costs and the other had the charges dropped to a misdemeanor charge not involving AS 04. He offered his belief that this represented a trap. The bartender made a mistake, which is not a crime. Customers later witnessed the investigator and the minor "high fiving it outside of the bar afterwards." He subsequently resigned from the ABC Board. He said, "I was wearing a target on my back and I was unwilling to sacrifice my business for a non-paying civic duty job." Several years later, in August 2010, an investigator brought a minor to his bar three times in 45 days and finally one of the bartenders served the minor. After an expenditure of \$10,000 in legal fees and numerous postponements that case was dismissed. The bartender quit, although she who was one of his best bartenders and had worked for him for 15 years. He read

correspondence from Director Gifford, "It does not appear the reason for the dismissal had anything to do with the merits of the case. As you know the result of a criminally prosecutable case does not automatically affect administrative notice of violation." He related his surprise when the ABC Board did not seem to recognize the court's dismissal. The case appeared to be active and was still under investigation. He subsequently received a letter explaining that duplicate licensees would not be included in the pool of random compliance checks after an investigator had conducted five compliance checks at his establishment. He concluded by stating that the ABC Board director should be willing to do the job no matter what division the agency is housed. He reiterated that it should make any difference to the director as to which agency the ABC Board resides.

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BOB WINN, General Manager, Blues Central Chef's Inn, stated that it seems as though a more punitive attitude has gradually happened since the ABC Board has been housed in the DPS. He said he thought bringing the ABC Board back to the DCCED would help bring the emphasis back to the business community. He concluded that it would be greatly appreciated if the move occurred.

[4:15:37 PM](#)

JEFF JESSEE, Chief Executive Officer, Alaska Mental Health Trust Authority (AMHTA), said there is no question that licensees and applicants of services for the ABC Board are entitled to be treated with respect and dignity and should have their concerns addressed. He said he understands that Ms. Gifford has prepared a matrix which lays out ways in which an applicant or licensee can have their concern be addressed. This ranges from more informal approaches, including contacting a supervisor during enforcement or licensing issues. The director's e-mail and phone number is also available so licensees and applicants can contact her directly. The ABC Board's agenda allows specific time for industry to testify to address concerns during public comment. Additionally, an individual can complain via the DPS website on any unresolved issues. Finally, complaints can be made to the state Ombudsman's office, which provides an independent review on an issue. He emphasized the importance for licensees to take advantage of the due process available to have their concerns properly addressed. He offered his belief that discussing where the ABC Board resides avoids the main

issue. He recalled previous testimony about the cost of underage drinking in the state that totals over \$360 million. Representative Johnson asked whether that was considered a success. We certainly do not consider that to be a success. He referred to a chart in members' packets on the rate of illegal sales of alcohol to minors compared to tobacco sales to minors.

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MR. JESSEE said, "It's quite disturbing to me that the rate of illegal sales to minors has consistently been higher than the rate of illegal sales of tobacco to minors." If anything alcohol sales to minors should be less than tobacco sales. This rate of illegal sales is at these levels even though a photo lineup of potential purchasers are shown to ABC Board members and if any pictures that indicate the person appears to be 21, the photos are not used. He pointed out that he wasn't aware that it is illegal to sell to a minor who looks less than 21 years of age. He wondered if those minors who appear to be 21 were not excluded if the rate of sales to minors would be higher. He stressed that the ABC Board, the industry, and others should collaborate to find ways to reduce alcohol sales to minors. He concluded, "This, in my view is a public policy issue that needs to be addressed and not a game of musical chairs of trying to move the agency between Revenue to DPS and off to Commerce. We've got to get to these underlying issues that are eating away at the fabric of our society."

[4:21:02 PM](#)

WILLIAM DEVINY, Administrator, Loyal Order of Moose Lodge, stated that he thinks the ABC Board belongs in the DCCED to provide education, training, and business support for Alaska's beverage retailers. He explained that members must be 21, have a current membership card to purchase anything. He said that issuing bogus membership cards is in violation of the lodge bylaws and federal regulations for not-for-profit organizations. He concluded that he has always allowed peace officers access to facilities and the ABC Board comes in "at will." He said, "We don't serve alcohol to our kids."

[4:22:32 PM](#)

BILL BUBBEL, Owner, Pump House Restaurant and Saloon, stated he has been licensee and restaurateur for 33 years. He has experienced the changes in the ABC Board. He recalled the board had an office in Fairbanks with an administrator. Licensees

could obtain help in filling out forms. The ABC Board investigator would come into the licensed facilities to check the operations and would point out things the owner needed to take care of in an administrative fashion. Problems were dealt with, he said. Over time it's become more restrictive. Instead of one person performing compliance checks, the office moved to the AST. The Fairbanks ABC Board person is never available so any administrative help is obtained by calling the Anchorage office. He offered his belief that the ABC Board has become, from a service standpoint, almost a non-entity since the AST has locked doors. He emphasized that it has become a police atmosphere and makes a difference in the staff's attitude. He acknowledged that in Fairbanks, the staff person is good person, but his actions are directed by the ABC board. He related that now licensees would likely receive a citation. He characterized the relationship as difficult. He pointed out that licensees face a huge risk for a licensee to "do anything stupid like letting individuals get drunk on the premises or allowing underage people to come in and drink." He stated that licensees are cognizant of the risk and provide training to their employees in order to follow the rules.

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MR. BUBBELL offered his belief that the industry does a pretty good job to address the problem of serving underage minors. Unfortunately the problem is bigger than the industry. He acknowledged problems exist with drunk driving and underage drinking, but if all the bars were shut down it would not dramatically change statistics since "booze" is available and people will figure out how to get it. Underage drinking statistics have improved substantially in his view. He recommended moving the ABC Board to the DCCED since it would return the function to more of an administrative function since the problem is more of a social problem. The ABC Board, CHARR and licensees could better address the issues through education rather than to condemn licensees. He also thought the dialogue would be open rather than critical. He has observed sting operations in which the licensee misreads the license. He stated that the most important thing on a person's identification is the date of birth and it is very tiny. He recalled that CHARR is making that recommendation, which he thought could help solve the problems. A tremendous amount of money is being spent on enforcement issues. He related that other people have testified and raised his concerns. He said he supported the ABC Board becoming more of an administrative role

and to work to develop better relationships, which may help to make progress with that approach over time.

[4:28:35 PM](#)

CRYSTAL SHOENROCK, Owner, Nikiski Bar, Secretary, Cabaret, Hotel, Restaurant & Retailers Association CHARR, related that everyone in the industry should have TAM® card. She related that she provides a designated driver for any large functions, or she will pay for a cab. She said that her establishment definitely does not serve underage children. She related that she has had "a sting operation" performed and that she passed. She offered her belief that instead of catching thieves and vandals that the troopers are sitting around the bars. She related a scenario in which she called for assistance but they wouldn't come since the bartender would not go to the parking lot and obtain the license number and information on the car. She supported her bartender's decision not to leave her post and risk bodily harm. She supported moving the ABC Board to DCCED. She would like the AST to focus on personal property crimes.

[4:31:24 PM](#)

BERNADETTE BRADLEY, Owner, Bradley House, Anchorage, stated that she has never received a citation but she has the impression that the ABC Board is always trying to catch her doing something wrong. She has practiced due diligence in her business. She stated neither she nor her staff is perfect. She said that while director Gifford testified all is well with the ABC Board, she disagreed. Something is amiss, she stated. She related that as past president of the Old Seward/Oceanview Community Council, she received notification of two package store licensees coming to Huffman. The ABC Board failed to realize that Mo's O'Brady's Irish Pub is a full beverage dispensary, and Tap Root restaurant and bar no longer operates in the area since it moved to Spenard. She forewarned the owner that the city councils may protest his license since the notice read that it would be a package store. He contacted the ABC Board to let them know of their error. She related that the improper information put the owner's business unnecessarily at risk. Last August, the council directed her to obtain a copy of a licensing file but the ABC Board could not find the licensing file. She offered her belief that this never happened prior to DPS being the oversight agency. The ABC Board officers previously worked side by side with owners to better understand what the owners had to contend with and the investigators arrested minors without criminalizing the owner. She attributed her training to the

period prior to the ABC Board being housed at the DPS. She contended that DPS has good intentions in how it administers licensees, but it is from a police officer's point of view. She says she is a business owner, not a criminal. The ABC Board does not need to spend valuable tax dollars on someone like her. She thinks the DCCED would have figured this out long before this and focused the state's efforts on teaching owners how not to get a notice of violation and to use the police on the few problem licensees. She offered her support for HB 125, to move the ABC Board to the DCCED and to allow law enforcement to perform law enforcement duties. She would like the DCCED and the beverage industry to rebuild their relationship so she can focus on her business and help the state's economy grow without fear.

[4:35:10 PM](#)

SYLVIA VILLAMIDES, Director, Alaska Cabaret, Hotel, Restaurant, and Retailer's Association (CHARR), stated the Anchorage CHARR has over 350 members including some multiple licensees. She offered her belief that the beverage retailers are viewed as a bad group of people. In Anchorage, the ABC Board has faced any problems with enforcement officers, but licensees are not against compliance checks or enforcement efforts. They are just against the methods use. She related a scenario in which a few months ago, downtown bars were hit with an abundance of compliance checks. She offered that problems can be resolved with community education. At this time licensees are treated as criminals. The beverage industry does not seek to serve minors or support drunks on premises. The industry helped draft increased civil penalties for minors in conjunction with Senator Kevin Meyer and with his assistance increased the civil penalties. Additionally, in conjunction with the Alaska Highway Safety Office, the CHARR has helped develop the "Off the Road Program" designed to assist people get home if the person feels he/she has had too much to drink. The program is free to patrons. The CHARR also helps bar operators with the civil penalty process. The CHARR does not represent the bar operator in court, but will help them with paperwork. She concluded that the beverage industry does not want any minors in their premises.

[4:38:31 PM](#)

DURAN POWELL, General Manager, Chilkoot Charlies, stated that he has worked in the beverage and hospitality industry for over 30 years. He offered his belief that sting operations are

conducted differently in Alaska than in other states. He explained that the U.S. Department of Justice has developed national standards. He remarked that one of the ABC Board investigators was not familiar with the national standards. He acknowledged that minors used in sting operations are now screened. However, many minors being used are minorities and it is difficult to determine their ages. He described one black minor who was bald was used during a sting operation and the underage minor appeared to be about 27 years old. At the time the bartender carded two prior customers, but she thought the sting minor was 27 years old so the bartender failed the compliance check. Using the national standard, stings are designed for the bartender to reasonably pass. In Alaska, the officers use one of the 245 obscure federal identification instead of the standard state driver's license or identification. The problem with the obscure identification, such as a military dependent's identification (ID) contains three dates: the date of issue, the date of expiration, and the date of birth. These dates are listed in the same type style, which is confusing to clerks. Additionally, the investigator waits until the shift changes. A few bartenders have been changing their bank out. He stated that Chilkoot Charlies arrests over 100 minors a year at their establishments. He expressed dismay that when a bartender fails one compliance check, the bar is not given any consideration for its good record. Chilkoot Charlies bar contains 64 video cameras, metal detectors on the front door, barbed wire on the fences, and alarms on all the doors. He said, "We're just a hair away from operating a prison. We're supposed to be a hospitality operation. If someone tries hard enough, the bar owner is the one to suffer. His bar has 80 employees that all lose their job for a week when one bartender has a TAM card that fails, he said. He pointed out that he is characterizing the tone of the ABC Board. There is no mercy or understanding. He recalled the owner of Hogg Brothers got cited once in 30 or more years of operation. Her business was closed for a week and she decided it was not worth it. He said, "She hung it up. She sold her business. She walked away. She was so disgusted with the process she got ground up in." The state could eliminate a lot of problems by designing the sting so the clerk has an opportunity to pass instead of designing the sting for failure and the operator faces a two-week closure and is closed.

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MICHELLE POWELL, Bartender, stated that she has been a professional bartender for sixteen years. She said she would

like to see the ABC Board moved to the DCCED. She reiterated she worked for 16 years in a licensed establishment. She related she has witnessed a change in the tone of the ABC Board in the last six years from a cooperative nature to a less cooperative one. She described a personal scenario. In 2006, she said she was an unsuspecting victim of a sting operation. The investigator waited 15 minutes for the shift change, brought in a minor who appeared to be 25. She was the only person served. It did matter to the officer that she had a good record for previously detecting minors by checking identifications and credit cards. Nor did it matter that the establishment arrested at least one minor per weekend. She once identified a mother and had her arrested for giving her 15-year-old daughter a beer. She was familiar with AS 04 so she knew if she did not fight the charge that she would face a felony charge for a second offense. She said she did not knowingly or willingly serve a minor. Eleven months later, in trial, she was found not guilty by a jury. The experience was emotionally exhausting and the financial cost to keep her career intact cost \$27,000. She recalled hearing how sting processes have changed and how productive and cooperative the ABC Board's relationship is with the AST and other law enforcement. However, she asked about the relationship the ABC Board has with the hospitality industry. She believed a significant change in the ABC Board's attitude would happen by relocating the ABC Board from the DPS to the DCCED.

[4:45:47 PM](#)

SHARON WHYTAL, Nurse; Coordinator, Southern Kenai Peninsula (SKP), Communities Project, related that she has served as a public health nurse for 17 years. Currently, she is working to coordinate a needs assessment on behalf of the Southern Kenai Peninsula called the Communities Project, which she described as a partnership of about 50 organizations. The group conducted over 100 community interviews with 1,400 surveys. The needs assessment identified substance abuse as a top community concern. Additionally, it identified that teenagers, in particular found our communities give a mixed message about appropriate use of alcohol and drugs. The SKP's Community Project opposes HB 125 since the project's focus is on prevention, which also relies on support of law enforcement to promote positive values and healthy choices in our communities. She offered her belief that moving ABC Board will weaken law enforcement efforts to reduce minor's access to alcohol. It would also be costly and disruptive to the efficient operation of the agencies. She related her understanding that problems

happen that cause problems for individuals in the industry, but also believe the compliance check program operates well in random selection of licensees. She stated that the goals set FY 2007 would not likely be met if the ABC Board is relocated. She urged members to oppose HB 125.

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CHAIR OLSON, after first determining no one else wished to testify, closed public testimony on HB 125.

[4:48:28 PM](#)

SHIRLEY GIFFORD, Executive Director, Alcoholic Beverage Control Board (ABC Board), Department of Public Safety (DPS) answered a question raised at an earlier hearing. She responded to an earlier question by Representative Seaton, with respect to the ABC Board's access to Alaska Public Safety Information Network (APSIN) computer system. She said she erroneously testified that that she did not think the ABC Board would have access to APSIN due to the DPS's firewall. She related she was mistaken, that the ABC Board investigators will still have access to the system. One question not yet resolved is the type of case management. Currently, the ABC Board uses the system, but the DPS will switch to an Alaska Records Management System by the end of summer. She anticipated if that occurs that the ABC Board may incur a one-time license fee of \$7,200, if it is not under the DPS.

[4:50:04 PM](#)

MS. GIFFORD responded to an earlier question by Representative Miller, who previously asked for a comparison between compliance checks for the period of time that the ABC Board was under the DOR. She was not able to locate the statistics under DOR. She recalled the structure was different since the funds to conduct compliance checks were distributed to local police departments. She left the Soldotna Police Department in 2003, at the time the ABC Board switched to the DPS. She offered her belief that the department hired a person specifically to perform compliance checks, in part, to ensure the detailed records were kept to comply with the federal reporting requirements. She reported that investigator Hamilton began working for the agency in August 2005. She concluded that the ABC Board does not have any statistics available for comparison purposes.

MS. GIFFORD said she appreciated Mr. Jesse's comments on improved complaint procedures. She said copies are in members' packets. She said she hopes the process will assist the hospitality industry by providing other avenues to address their concerns. She offered her assurance that she wants to collaborate with the industry. She related her understanding that the industry would like to attack the problem of underage parties. She stated that she attended the Anchorage Police Department's school resource officer's meeting to discuss underage parties. She pointed out that with four investigators that the ABC Board is limited in what it can accomplish. She has a pool of grant funds for compliance checks. She stressed that she believes in compliance checks. She also recalled the hospitality industry also believes in compliance checks, which are necessary to ensure that people are not selling alcohol to underage persons.

[4:53:25 PM](#)

MS. GIFFORD recalled the UAA conducted research in 2007, which highlighted \$320 million as the cost of underage drinking. In terms of the total cost, the state is 39th in the nation, but in terms of cost per youth capita, Alaska ranks number 1 in the nation, which is twice the cost of other states.

MS. GIFFORD reviewed the 2010 National Alcohol Beverage Control Association's (NABCA) survey book. She reported that the vast majority of other ABC Boards, 19, are housed under public safety organizations including attorney general, homeland security, or law enforcement offices. Approximately 18 others are independent organizations or commissions, 10 boards were housed under the revenue departments and two, Florida and Rhode Island, were under organizations that were similar to the DCCED. The national average of 22 states success rates for compliance checks was 80 percent. Subtracting Florida's 11 percent success for compliance checks increased the figure to 84 percent. She commented that Florida is under business regulation.

MS. GIFFORD offered to respond to any complaints, but cautioned that her answers may be answers that people don't always want to hear. She reported that her position is to assist the ABC Board in controlling the manufacture, sales, possession, and barter of alcohol beverages. She welcomed an interpretation of her duties. She attested that she and her staff are doing the best job they can, but she acknowledged there is room for improvement. She recently developed an eight-page survey to gain feedback. She works with 1,800 licensees. She hears

accolades, but she and her staff are not perfect. It is not her goal to shut businesses down but to hold licensees accountable to the statutes and regulations. She recalled Mr. Karl's testimony and she identified her investigator conducted the visit to Chena Hot Springs. She offered to provide additional details on the compliance check.

[4:59:01 PM](#)

REPRESENTATIVE SADDLER asked how much effort the ABC Board's investigators spend on enforcement, education, and business assistance, such as helping with signage.

MS. GIFFORD responded that the ABC Board has four investigators and an enforcement unit supervisor. One investigator conducts compliance checks, two investigators conduct inspections, and one investigator works about 75 percent to provide assistance and the remaining 25 percent on compliance. The vast majority of the ABC Board's staff work is focused on ensuring that licensed premises are in good operation and follow the statutes in AS 04. She related that compliance checks and enforcement represent one portion of the job and licensing provides another function.

[HB 125 was held over.]

[5:00:45 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:00 p.m.