

**ALASKA STATE LEGISLATURE**  
**HOUSE JUDICIARY STANDING COMMITTEE**

April 26, 2002

1:55 p.m.

**MEMBERS PRESENT**

Representative Norman Rokeberg, Chair  
Representative Jeannette James  
Representative John Coghill  
Representative Kevin Meyer

**MEMBERS ABSENT**

Representative Scott Ogan, Vice Chair  
Representative Ethan Berkowitz  
Representative Albert Kookesh

**COMMITTEE CALENDAR**

SENATE BILL NO. 339

"An Act increasing fines for certain criminal offenses."

- HEARD AND HELD

HOUSE BILL NO. 429

"An Act relating to certain licenses for the sale of tobacco products; relating to tobacco taxes and sales and cigarette tax stamps; relating to provisions making certain cigarettes contraband and subject to seizure and forfeiture; relating to certain crimes, penalties, and interest concerning tobacco taxes and sales; relating to notification regarding a cigarette manufacturer's noncompliance with the tobacco product Master Settlement Agreement or related statutory provisions and to confiscation of the affected cigarettes; and providing for an effective date."

- HEARD AND HELD

**PREVIOUS ACTION**

BILL: SB 339

SHORT TITLE: INCREASE CRIMINAL FINES

SPONSOR(S): FINANCE

Jrn-Date	Jrn-Page		Action
02/20/02	2264	(S)	READ THE FIRST TIME -

Jrn-Date	Jrn-Page		Action
			REFERRALS
02/20/02	2264	(S)	FIN
03/15/02		(S)	FIN AT 9:00 AM SENATE FINANCE 532
03/15/02		(S)	Moved Out of Committee
03/15/02		(S)	MINUTE(FIN)
03/18/02	2449	(S)	FIN RPT 2DP 4NR
03/18/02	2449	(S)	DP: DONLEY, WARD; NR: GREEN, AUSTERMAN,
03/18/02	2449	(S)	HOFFMAN, LEMAN
03/18/02	2449	(S)	FN1: INDETERMINATE(LAW)
03/18/02	2449	(S)	FN2: INDETERMINATE(ADM)
03/25/02		(S)	RLS AT 10:30 AM FAHRENKAMP 203
03/25/02		(S)	MINUTE(RLS)
03/25/02	2518	(S)	RULES TO CALENDAR 3/25/02
03/25/02	2519	(S)	READ THE SECOND TIME
03/25/02	2519	(S)	ADVANCED TO THIRD READING UNAN CONSENT
03/25/02	2519	(S)	READ THE THIRD TIME SB 339
03/25/02	2519	(S)	PASSED Y17 N2 A1
03/25/02	2520	(S)	ELTON NOTICE OF RECONSIDERATION
03/27/02	2545	(S)	RECON TAKEN UP - IN THIRD READING
03/27/02	2545	(S)	PASSED ON RECONSIDERATION Y16 N4
03/27/02	2547	(S)	TRANSMITTED TO (H)
03/27/02	2547	(S)	VERSION: SB 339
04/01/02	2733	(H)	READ THE FIRST TIME - REFERRALS
04/01/02	2733	(H)	JUD, FIN
04/26/02		(H)	JUD AT 1:30 PM CAPITOL 120

BILL: HB 429

SHORT TITLE: TOBACCO TAXATION; LICENSING

SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
02/15/02	2282	(H)	READ THE FIRST TIME - REFERRALS
02/15/02	2282	(H)	L&C, JUD, FIN
02/15/02	2282	(H)	FN1: (REV)
02/15/02	2282	(H)	GOVERNOR'S TRANSMITTAL LETTER
04/03/02		(H)	L&C AT 3:15 PM CAPITOL 17
04/03/02		(H)	Heard & Held
04/03/02		(H)	MINUTE(L&C)

04/08/02		(H)	L&C AT 3:15 PM CAPITOL 17
04/08/02		(H)	Scheduled But Not Heard
04/10/02		(H)	L&C AT 3:15 PM CAPITOL 17
04/10/02		(H)	Heard & Held MINUTE(L&C)
04/15/02		(H)	L&C AT 3:15 PM CAPITOL 17
04/15/02		(H)	Moved CSHB 429(L&C) Out of Committee MINUTE(L&C)
04/17/02	2969	(H)	L&C RPT CS(L&C) NT 1DP 2DNP 4NR
04/17/02	2969	(H)	DP: CRAWFORD; DNP: MEYER, KOTT;
04/17/02	2969	(H)	NR: ROKEBERG, HAYES, HALCRO, MURKOWSKI
04/17/02	2970	(H)	FN1: (REV)
04/17/02	2970	(H)	REFERRED TO JUDICIARY
04/26/02		(H)	JUD AT 1:30 PM CAPITOL 120

**WITNESS REGISTER**

MARILYN WILSON, Staff  
to Senator Dave Donley  
Senate Finance Committee  
Alaska State Legislature  
Capitol Building, Room 506  
Juneau, Alaska 99801

POSITION STATEMENT: Presented SB 339 on behalf of the Senate Finance Committee, sponsor.

LINDA WILSON, Deputy Director  
Public Defender Agency (PDA)  
Department of Administration  
900 West 5th Avenue, Suite 200  
Anchorage, Alaska 99501-2090

POSITION STATEMENT: Provided comments during discussion of SB 339.

NEIL SLOTNICK, Deputy Commissioner  
Treasury Division  
Department of Revenue (DOR)  
PO Box 110405  
Juneau, Alaska 99811-0405

POSITION STATEMENT: Presented HB 429 on behalf of the administration.

JOHANNA BALES, Revenue Auditor V

Department of Revenue (DOR)  
550 West 7th Avenue, Suite 500  
Anchorage, Alaska 99501

POSITION STATEMENT: During discussion of HB 429 responded to questions.

JAYNE ANDREEN, Tobacco Prevention and Control Program  
Division of Public Health  
Department of Health & and Social Services (DHSS)  
PO Box 110616

Juneau, Alaska 99811-0616

POSITION STATEMENT: Provided a comment during discussion of HB 429.

JOHN AYERS, Chairman  
Chief Executive Officer  
Keystone Distribution Service, Inc.  
2320 North Post Road  
Anchorage, Alaska 99501

POSITION STATEMENT: Provided comments during discussion of HB 429 and suggested an amendment.

TOMAS T. ANDERSON, Owner  
Alaska Strategic Consultants  
PO Box 240714  
Anchorage, Alaska 99524-0714

POSITION STATEMENT: Provided comments during discussion of HB 429.

BOBBY SCOTT, Jan's Distributing, Inc.  
1807 West 47th Avenue  
Anchorage, Alaska 99517

POSITION STATEMENT: Provided comments during discussion of HB 429.

#### **ACTION NARRATIVE**

TAPE 02-56, SIDE A  
Number 0001

CHAIR NORMAN ROKEBERG called the House Judiciary Standing Committee meeting to order at 1:55 p.m. Representatives Rokeberg, James, Coghill, and Meyer were present at the call to order.

SB 339 - INCREASE CRIMINAL FINES

Number 0038

CHAIR ROKEBERG announced that the first order of business would be SENATE BILL NO. 339, "An Act increasing fines for certain criminal offenses."

Number 0065

MARILYN WILSON, Staff to Senator Dave Donley, Senate Finance Committee, Alaska State Legislature, said on behalf of the Senate Finance Committee, sponsor, that SB 339 increases maximum criminal fines that may be imposed on an individual or organization for certain criminal offenses. The maximum criminal fine amounts for an individual have not been increased since the revision of the Alaska Criminal Code in 1978 - 24 years ago. The maximum criminal fine amounts for an organization have not been increased since 1990. She noted that the fine amounts [proposed by SB 339] are not mandatory; they would simply become the maximum fine allowed, and judges would retain their discretion to set the fines based on the conditions surrounding individual offenses. Most criminals will not be able to pay the higher of these increased fines, but those that can pay, should pay. She expressed the hope that increasing the maximum allowable fines will help deter crime. Additionally, she noted, these higher fines will help reimburse the state for the costs of the criminal justice system.

CHAIR ROKEBERG, referring to the chart provided by the sponsor comparing current fines with those proposed by SB 339, asked why the particular amounts proposed in SB 339 were chosen.

MS. MARILYN WILSON indicated that those amounts were chosen as a result of researching what other states have as their maximum fines.

CHAIR ROKEBERG noted that the maximum fine in Texas for [an unclassified felony] is \$10,000, but in Kansas [an unclassified felony] carries a \$500,000 fine.

REPRESENTATIVE MEYER asked if there are any statistics showing "how many people actually pay these fines." He said he has heard that with regard to "driving while intoxicated" (DWI) fines, if fines are set too high, people just don't pay them. He pondered whether, by keeping the fines reasonable, more of them would be paid.

MS. MARILYN WILSON said that according to the court system, approximately 30 to 33 percent of criminal fines are collected.

Number 0327

REPRESENTATIVE MEYER ventured that raising the fines will not increase the collection rate.

MS. MARILYN WILSON pointed out that SB 339 pertains to criminal fines, not motor vehicle fines.

REPRESENTATIVE JAMES observed that perhaps this is an issue for which statistics alone will not bear out. She offered that there could possibly be some increase in the amount collected, though perhaps not proportionate to the increase in the fines. She indicated that perhaps the increase in fines would act as a deterrent for some people, though perhaps not for the majority of people intent on committing crimes, since penalties are not foremost on peoples' minds when they are breaking the law. She posited that the increase in fines might result in more money to the state, though for those people who do not currently pay their fines, the increase won't make any difference.

REPRESENTATIVE MEYER asked whether SB 339 would help fill the fiscal gap.

MS. MARILYN WILSON pointed out that the fiscal notes are indeterminate.

REPRESENTATIVE JAMES surmised that increasing the fines will not increase the cost of collections; thus it is to the state's advantage to attempt to collect more whenever possible.

CHAIR ROKEBERG indicated that the Department of Law (DOL) is attempting to be more aggressive in its collection of [criminal fines]. He surmised that even the increase in misdemeanor fines will result in more revenue.

REPRESENTATIVE JAMES agreed. She also pointed out that with the pending upgrade of the court systems' computer system, collection of fines and surcharges should increase.

REPRESENTATIVE MEYER asked what happens to the cash confiscated during drug busts.

REPRESENTATIVE JAMES posited that although she is not sure how it is accounted for, such money is probably forfeited, and if it

is counted as a forfeited asset, it is probably not applied to fines owed.

CHAIR ROKEBERG said he assumes such money winds up in the general fund (GF) eventually.

Number 0658

LINDA WILSON, Deputy Director, Public Defender Agency (PDA), Department of Administration, testified via teleconference, and after mentioning that she does not know the answer to Representative Meyer's question regarding money confiscated during drug busts, said that generally the PDA is not in favor of legislation that increases fines. She noted, however, that this particular bill will not have much of an impact on the PDA's clientele, since whether the fine is \$75,000 or \$500,000, it is still an unreachable amount, as was stated by the sponsor's representative. She also mentioned, however, that [increasing fines] can have a trickledown effect in that judges might be influenced by the larger maximums into imposing higher fines compared to what is currently being imposed. If so, the PDA's clientele would be affected by SB 339.

MS. LINDA WILSON mentioned that [increasing fines] can result in petitions to revoke probation and parole for nonpayment of a fine. Generally those petitions are not filed alone; she explained that if there is another violation, it can bring those in as well. She said that according to her understanding of conversations she's had with "the probation people," they generally do not file petitions just for a nonpayment of fine. To summarize, she said that although generally the PDA opposes such measures, SB 339 will probably not have a big effect on PDA's clientele, other than its effect on petitions to revoke probation and parole.

CHAIR ROKEBERG asked who files petitions to revoke. The courts or the DOL?

MS. LINDA WILSON said that it is generally done by the DOL; the probation/parole officer files the petition to revoke, either in front of the parole board, if it is parole that is being revoked, or in court, if it is probation that is being revoked. She added that petitions can be filed simultaneously in both places for the same conduct if the person is on both parole and probation. In response to a question, she reiterated that generally petitions are not filed solely on nonpayment of a fine.

CHAIR ROKEBERG, noting that no one else wished to testify on SB 339, closed the public testimony and announced that SB 339 would be held over.

HB 429 - TOBACCO TAXATION; LICENSING

Number 0892

CHAIR ROKEBERG announced that the next order of business would be HOUSE BILL NO. 429, "An Act relating to certain licenses for the sale of tobacco products; relating to tobacco taxes and sales and cigarette tax stamps; relating to provisions making certain cigarettes contraband and subject to seizure and forfeiture; relating to certain crimes, penalties, and interest concerning tobacco taxes and sales; relating to notification regarding a cigarette manufacturer's noncompliance with the tobacco product Master Settlement Agreement or related statutory provisions and to confiscation of the affected cigarettes; and providing for an effective date." [Before the committee was CSHB 429(L&C).]

Number 0915

NEIL SLOTNICK, Deputy Commissioner, Treasury Division, Department of Revenue (DOR), presented HB 429 on behalf of the administration. He said that HB 429 will require adherence of a stamp on cigarette packages, showing that the tax on those cigarettes has in fact been paid. He brought forth a pack of cigarettes with the aforementioned stamp affixed. He relayed that 46 other states require stamps on cigarette packs, and that the reason for this requirement is that without the stamp, one package of cigarettes looks just like another and the departments of revenue in those states have a great deal of difficulty enforcing the tax statutes. He said:

If we receive a complaint that a retailer's distributing untaxed cigarettes, and we send our investigators out into the field, they have no way of knowing whether any particular package of cigarettes has had the tax paid or not. They can make a buy, they can ask to look at invoices, but, again, it's very difficult to distinguish because one invoice can list various cigarettes and ... there's no serial number, there's no tracking - obviously - for the kind of volume that we do with cigarettes. And that means that that retailer can either sell those cigarettes at

below market price, which then defeats the whole point of having the tax statute, or they can keep the difference, and then the law-abiding retailers are the ones who are hurt as a consequence because their competition can make more money on the cigarettes.

Now, do we think that smuggling is a major problem in this state? The answer is no, we don't think so. But, again, we have no way knowing without having the ability to track the cigarettes in which "the stamps have been paid." Well, we do track them; we know how much tax money we're receiving. And ... obviously it's been in steep decline since we had a tax increase back in '97, and we think a great deal of that is due to the fact that fewer cigarettes are being consumed in this state because of the increase in tax. We do know there is some sale of untaxed cigarettes; we have had a couple enforcement actions, ... but it really takes a great deal of luck for those to work without having the ability to trace the tax paid by the stamp.

Number 1089

MR. SLOTNICK continued:

What we have seen, however, is two other states that recently adopted a stamp Act, and they had a tremendous recovery of additional tax as a consequence of requiring the stamp. One of those was Hawaii, which, like us, doesn't have any contiguous border states where the tax was much cheaper so that there could be influx of either untaxed or lower-tax-paid cigarettes. Hawaii is just like [Alaska]; there is no contiguous border states. And yet after they adopted their tax increase and then subsequently waited a year to adopt the stamp Act, their tobacco-tax stamp increased their collection of revenue by 25 percent. Michigan, which has border states, had a similar experience - not nearly that dramatic; I believe that was about a 12 percent increase in tax revenue when they adopted a requirement of stamping.

We do not anticipate - here in this state - anywhere near that level of revenue increase; we don't think we have that level of contraband cigarette problem.... One of the things, though, that I want to emphasize is, we don't want to see that kind of problem develop.

Clearly there is an "arbitrage opportunity" here, given that we have a tobacco tax of [\$1] a pack; there are states out there that have much lower tobacco tax than that. That creates an "arbitrage opportunity" for the kind of operatives that Hawaii saw or that Michigan saw or [that] were working in their states at the time of their tobacco tax increases. We don't want that to occur here, and we don't think it's occurred yet, and we don't want it to happen. And the only way that we can really enforce our statutes is to have the stamp on the cigarettes.

Once we get that, then we can have the assistance of law enforcement personnel, whether it's village public safety officers [VPSOs] or municipal or state police officers, or [the] Department of Health & Social Services [DHSS] has a tobacco inspection program - youth tobacco program; they can be trained to look for the stamp, as well as [others]: our gaming investigators or other state investigators, for example, with the Department of [Community and Economic Development].

Number 1224

MR. SLOTNICK went on to say:

One thing I would like to explain ... would be the fiscal note. Now, the way this bill is written, ... [it] does allow for a discount for the wholesalers who would be ... charged with the applying of the stamp; they would have to purchase the stamp from the state, and then they would apply it themselves - they'd open the "package" of cigarettes, apply the stamp - and then ship them out to the various retailers. Obviously that's going to cost them; they're going to have to have personnel to do that. We recognize that, and so we have provided a discount back to them, in this bill, to cover some but not all of their costs, because we think they should share in the cost because they will be the beneficiaries - they are the law-abiding wholesalers ... - if there are additional sales as a consequence of having the stamp.

But I will say to it's strictly a policy matter as to how large that discount should be. What we have done here is we've recognized that there are economies of

scale, that the larger wholesalers are going to be able to buy more automated equipment, [and] have lower costs for application. And, as a consequence, we don't want to change the market dynamics that exist right now, so what we've done is given a greater discount for all wholesalers on their first purchases, and then it gradually ... lessens down where, at the end, they would have no discount.

MR. SLOTNICK concluded:

I will point out that Hawaii not only has no discount, they actually charge ... for sale of the stamp. Other states have a more generous discount than what the [DOR] has proposed here, but we think this is a very fair compromise for recognizing that this is going to create a burden on wholesalers, but at the same time there should be a benefit to them. But it's a policy call that this committee could address; the previous committee actually did address that and did change the discount structure to more closely reflect the economies of scale that the larger wholesalers do receive in stamping.

Number 1343

REPRESENTATIVE MEYER opined that perhaps tax revenue from tobacco sales is going down because people are now buying their tobacco products from other sources such as the Internet, other states, or military bases. He remarked that applying stamps will only assist the DOR in tracking wholesalers, and that there would still be no way of knowing whether an individual bought cigarettes from other sources.

MR. SLOTNICK said he would tend to agree that's accurate. On the other hand, he remarked, the DOR feels that the decline in revenues can be explained, for the most part, by the fact that cigarette consumption has fallen off throughout the United States as a whole, and by the increase in the tobacco tax. These two factors, rather than smuggling, are most likely responsible for the decrease in revenues, although the DOR is aware that there are untaxed cigarette sales taking place, he added. He also said:

There is a federal law that doesn't even kick into place unless you have a stamp requirement. There's the federal "contraband cigarette Act," under which

the Bureau of [Alcohol, Tobacco and Firearms (ATF)] would come to our assistance and ... enforce a federal law which makes it a felony to transport unstamped cigarettes across a state line. Well, if we don't have a stamp Act, we can't use that [federal] law.

MR. SLOTNICK said that the ATF is very good at providing assistance with tobacco-tax law enforcement, but without legislation such as HB 429, the state cannot call upon the ATF for assistance.

REPRESENTATIVE MEYER asked what happens when people purchase cigarettes through friends that work on military bases. Would those cigarettes have to be stamped, or would they be exempt from "stamping," he also asked.

MR. SLOTNICK indicated that those cigarettes would be exempt from taxation, although military bases are required to price their cigarettes within 90 percent of the prevailing state price.

Number 1528

JOHANNA BALES, Revenue Auditor V, Department of Revenue (DOR), testified via teleconference. She said:

As far as the military bases are concerned, we do receive information from manufacturers that show the levels of cigarettes that they import and sell in the state, and since the tax increase went into effect in October of '97, they have also seen a decline in the number of cigarettes that they sell, because the military has mandated that their products have to be sold [for] at least 90 percent of the market value in the surrounding community. So, we do not see a problem at all with the military bases.

REPRESENTATIVE MEYER expressed interest in receiving information about cigars and smokeless tobacco. He asked whether it would be possible to put stamps on those products as well, noting that it can't be known whether a problem with those products exists unless a stamp is also required for those products.

MR. SLOTNICK agreed. He noted, however, that under current law, there is no requirement to pay tax on other tobacco products imported by an individual; thus the DOR is not actually losing revenue on those products. That's not true of cigarettes,

however; if an individual imports cigarettes, the tax is still due.

REPRESENTATIVE MEYER indicated that he would prefer not to give a discount for applying the stamp, with the understanding that the cost would simply be passed on to consumers. He noted that the discount provision was included in the current version of HB 429 so that individual Alaska wholesalers won't be put at a disadvantage.

MR. SLOTNICK agreed. He said that another reason for including the discount provision is that the DOR didn't want to have a tax increase that wasn't clearly labeled as such. "To our mind, it's a policy call that the legislature could make, but we're going to come forward with a bill that's relatively close to tax neutral to the consumer, and then leave it to the legislature to decide whether you should pass that cost on or not," he added.

Number 1702

REPRESENTATIVE JAMES recalled that she raised many of these same issues during the original hearings on the tobacco tax increase. She mentioned that one of those issues dealt with requiring the stamp to be applied in such a way that it could not be salvaged and applied to a different pack of cigarettes. She asked whether it would be possible to have the stamp applied by the cigarette manufacturers before the product is sold to the wholesalers. She indicated that what she has heard is that although cigarette use in general is down, cigarette use among youth is increasing, particularly among young girls. She then asked for a response to her comments.

MS. BALES said:

As far as the stamping is concerned, the way that works is, manufactures do not stamp. That would be [Philip Morris U.S.A. ("Philip Morris"), Brown & Williamson Tobacco Corporation ("Brown & Williamson"), R.J. Reynolds Tobacco Company ("R.J. Reynolds")]. What they do is they sell their product to the distributors, and then wherever that distributor is conducting business or wherever they're shipping cigarettes, they will stamp for each particular state. We do have distributors in Alaska who purchase direct from the manufacturer, and so those distributors in the state would be required to do the stamping for Alaska. Or, if it was a distributor that's licensed

in Alaska to do business that has a presence or does business in other states, they would be stamping as well for Alaska, possibly out of state, maybe in Washington or wherever they have their stamping equipment right now.

I have been told by [Costco Wholesale Corporation ("Costco")] that if we were to have a stamp, that they would more than likely stamp within the state. Now, one of the reasons ... it wouldn't be good for a distributor ... in the state to try to purchase from someone out of state that's already stamping, is because then you've already inserted another middleman in the whole process, and our distributors, then, wouldn't be buying direct from the manufacturers, and the price of their cigarettes would go up for them as well. So that's the way the stamping works.

Number 1891

REPRESENTATIVE JAMES remarked that they oughtn't to care how much it costs distributors to buy cigarettes. On the issue of requiring a stamp, she noted that the state doesn't subsidize other businesses in their efforts to meet state requirements regarding product identification; therefore, the state shouldn't subsidize the cigarette [industry] either.

MS. BALES, on that point, added that Hawaii actually charges their distributors 1.7 percent to pay for the costs that the state incurs to have those stamps manufactured. So that always is an option, she noted. On the issue of who is smoking, she said it is hard to tell; she added that the DOR doesn't have any demographic data that would show which age groups are smoking more and which are smoking less. She remarked that [the DOR] occasionally gets information from out of state companies regarding individuals within the state who get their cigarettes shipped to them, and with that information, the DOR attempts to collect tax from those individuals. She mentioned that the DHSS has conducted surveys which indicate that in many cases, people have either quit smoking or have cut back. She relayed that from information obtained from a few vendors that comply with federal reporting laws, the DOR is aware of approximately 1,000 individuals who have purchased cigarettes through the mail. She pointed out that one of the advantages of requiring a stamp, as is proposed in HB 429, is that the DOR would then be able to confiscate unstamped cigarettes on the spot, whereas currently,

even if the DOR knows and can prove that the tax has not been paid, it has no ability to seize the cigarettes.

REPRESENTATIVE JAMES said she supports requiring a stamp on cigarettes, adding that she did not know why such a provision was not instituted at the time of the tax increase. She remarked that she doesn't have any interest in allowing a discount for affixing the stamps. "If that's the rule, they should just do it," she opined. She mentioned that her staff has done research and found that cigarettes can be purchased by the case on the Internet, and that she is aware that when people travel outside of Alaska, they purchase cigarettes and bring them back home. She also surmised that since the military is required to charge close to market value, the military probably makes a fair amount of money reselling cigarettes.

Number 2037

JAYNE ANDREEN, Tobacco Prevention and Control Program, Division of Public Health, Department of Health & and Social Services (DHSS), said simply that she is available to answer questions, and then shared an anecdotal story about someone's cat who ordered cigarettes over the Internet, didn't even use the cat's own credit card to pay for the cigarettes, and did receive those cigarettes.

Number 2055

JOHN AYERS, Chairman, Chief Executive Officer, Keystone Distribution Service, Inc. ("Keystone"), testified via teleconference. He explained that Keystone is a public warehouse that currently houses the cigarette inventory from R.J. Reynolds, Philip Morris, and Brown & Williamson for a number of distributors in Anchorage including Costco. On the issue of how allowing the stamp to be applied out of state would affect his company, he said that contrary to what Ms. Bales has indicated, Costco provides the stamping in Kirkland [Washington] for five states and has specifically told Keystone that it would stamp cigarettes destined for Alaska in Kirkland rather than Alaska. This could result in a yearly loss of revenue for Keystone of approximately \$250,000, and, hence, Keystone would have to reduce staff.

MR. AYERS suggested amending HB 429 to include a requirement that stamping be done in Alaska. He opined that such a requirement would add both revenue and jobs in the state. In response to a question, he indicated that with such a

requirement, he would not expect the state to provide a discount for the cost of stamping.

Number 2150

TOMAS T. ANDERSON, Owner, Alaska Strategic Consultants, testified via teleconference noting that he is "working with Jan's Distributing [Inc.] on this issue." He remarked that HB 429 appears to be unwarranted, since the DOR cannot provide any statistics to substantiate its concerns. He said that statements made by the DOR - that it "has no way of knowing" - alarm distributors and suggest that the problems are just speculative. He opined that the approach taken via HB 429 will cost more money than it will generate. Referring to AS 43.50.090(c), which exempts military "exchange, commissary, or ship's stores" from taxes, he remarked that this still provides people with a way to avoid paying taxes when purchasing bulk cigarettes.

MR. ANDERSON also pointed out that proposed Sec. 43.50.580 offers an exemption to certain entities such as Indian tribal organizations, and opined that such a potential loophole might enable a Native corporation to take undue advantage. He reiterated his belief that claims by the DOR are merely speculation, adding that many of the variables are undefined. After mentioning that he is not in favor of HB 429, he said he agrees with Mr. Ayers's suggestion that the bill should require that the stamps be applied in Alaska. In response to a question, he indicated that he is in favor of the discount provision.

Number 2353

BOBBY SCOTT, Jan's Distributing, Inc. ["Jan's"], testified via teleconference. He noted that his company is a "direct buy customer" serving Anchorage, Wasilla, Eagle River, Fairbanks, Homer, Nikiski, and some Bush communities. He said that he is concerned about whether the two additional employees mentioned in the DOR's fiscal note will be sufficient for enforcement of the stamp program, and if not, then the fiscal note needs to reflect more personnel.

TAPE 02-56, SIDE B  
Number 2400

MR. SCOTT remarked that although his company experienced a decline in sales when the tax increase first took effect, sales

have since improved to the point that last year Jan's paid just under \$2 million in taxes on tobacco products and yet, in comparison, Jan's is one of the smaller distributors in Alaska. He indicated that he questions whether there has really been such a decline in tax revenue that it warrants legislation such as HB 429. In response to a question, he confirmed that he would rather HB 429 did not become law.

REPRESENTATIVE JAMES questioned whether, particularly during a budget crunch, hiring two additional people to enforce a stamp program will engender additional revenues for the state. She opined that the provisions of HB 429 ought to have been instituted at the same time as the tobacco tax increase. She indicated that she, too, has concerns about potential loopholes.

MR. AYERS pointed out that one of the hidden costs to Alaskan distributors and wholesalers "is the time to pay" and is tied in with whether Keystone continues to be a warehouse on behalf of the manufacturers. He said, "Like liqueur, you don't get a lot of float on how long you can take to pay for the product; typically on cigarettes it's ten days." Thus, when a company places an order with a manufacturer, that order gets sent to Keystone, for example, which then delivers the product to the distributor, whose "clock starts when that order" gets to Keystone; if, on the other hand, the cigarettes are stamped out of state, "the clock starts" that much sooner, and the distributor would loss anywhere from five to seven of those ten days. He warned that although the cash flow implications have not yet been quantified, they will affect distributors financially.

REPRESENTATIVE JAMES asked whether insurance costs for wholesalers have risen because of the increase in tobacco tax.

MR. AYERS said that Keystone did not experience any increase in insurance costs as a result of that tax increase, but mentioned that perhaps distributors or transportation companies might have.

MR. SCOTT indicated that his insurance costs did go up, adding that he would have to research that information and get the exact figures to the committee at a later date. He also mentioned that bonding costs have increased as well because of the increase in tobacco tax.

Number 2154

REPRESENTATIVE MEYER said he did not like HB 429; he said, however, that if it is adopted, he would like it to contain a requirement that the stamping be done in Alaska. He asked whether it would be possible to institute such a requirement.

MR. SLOTNICK said that both the DOR and the Department of Law (DOL) have looked at that issue and have concluded that, legally, it would be a very tenuous proposition. He posited that the courts would view such a requirement as "protectionist legislation in violation of the commerce clause," which will not allow a state to use its taxing authority to favor in-state commerce over out-of-state commerce.

CHAIR ROKEBERG closed the public hearing. [HB 429 was held over.]

#### **ADJOURNMENT**

Number 2083

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:49 p.m.