

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

April 18, 2001

3:15 p.m.

**MEMBERS PRESENT**

Representative Lisa Murkowski, Chair  
Representative Andrew Halcro, Vice Chair  
Representative Kevin Meyer  
Representative Pete Kott  
Representative Norman Rokeberg  
Representative Harry Crawford  
Representative Joe Hayes

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 225

"An Act relating to municipal taxation of alcoholic beverages and increasing the alcoholic beverage tax rates."

- MOVED CSHB 225(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 228

"An Act relating to the offense of selling or giving tobacco to a minor, to the accounting of fees from business license endorsements for tobacco products, to the disclosure of certain confidential cigarette and tobacco product information, to notification regarding a cigarette manufacturer's noncompliance with the tobacco product Master Settlement Agreement, to business license endorsements for sale of tobacco products, to citations and penalties for illegal sales of tobacco products; and providing for an effective date."

- MOVED CSHB 228(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 157

"An Act relating to trust companies and providers of fiduciary services; amending Rules 6 and 12, Alaska Rules of Civil Procedure, Rule 40, Alaska Rules of Criminal Procedure, and Rules 204, 403, 502, 602, and 611, Alaska Rules of Appellate Procedure; and providing for an effective date."

- BILL HEARING POSTPONED TO 4/19/01

**PREVIOUS ACTION**

BILL: HB 225

SHORT TITLE:ALCOHOLIC BEVERAGE TAX

SPONSOR(S): REPRESENTATIVE(S)MURKOWSKI

Jrn-Date	Jrn-Page		Action
03/30/01	0789	(H)	READ THE FIRST TIME - REFERRALS
03/30/01	0789	(H)	L&C, FIN
04/03/01	0830	(H)	COSPONSOR(S): HUDSON
04/09/01		(H)	L&C AT 3:15 PM CAPITOL 17
04/09/01		(H)	Heard & Held MINUTE(L&C)
04/10/01		(H)	L&C AT 3:00 PM CAPITOL 120
04/10/01		(H)	Heard & Held MINUTE(L&C)
04/11/01		(H)	L&C AT 3:15 PM CAPITOL 17
04/11/01		(H)	Heard & Held
04/11/01		(H)	MINUTE(L&C)
04/18/01		(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 228

SHORT TITLE:SALE OF TOBACCO PRODUCTS

SPONSOR(S): REPRESENTATIVE(S)HARRIS

Jrn-Date	Jrn-Page		Action
04/02/01	0809	(H)	READ THE FIRST TIME - REFERRALS
04/02/01	0809	(H)	L&C, JUD, FIN
04/03/01	0831	(H)	COSPONSOR(S): HUDSON, MURKOWSKI
04/17/01	1021	(H)	COSPONSOR(S): KERTTULA
04/18/01	1053	(H)	COSPONSOR(S): CRAWFORD
04/18/01		(H)	L&C AT 3:15 PM CAPITOL 17

**WITNESS REGISTER**

JOHN MANLY, Staff  
to Representative John Harris  
Alaska State Legislature  
Capitol Building, Room 513  
Juneau, Alaska 99801

POSITION STATEMENT: Testified on behalf of the sponsor of HB 228.

ELMER LINDSTROM, Special Assistant  
Office of the Commissioner  
Department of Health & Social Services  
PO Box 110601  
Juneau, Alaska 99811  
POSITION STATEMENT: Testified on HB 228.

EDWIN SASSER, Project Coordinator  
Division of Public Health  
Department of Health & Social Services  
PO Box 110630  
Juneau, Alaska 99811  
POSITION STATEMENT: Answered questions on HB 228.

MICHAEL LIVINGSTON, Detective  
Anchorage Police Department  
4501 South Bragaw  
Anchorage, Alaska 99507  
POSITION STATEMENT: Testified on HB 228.

DAN BRANCH, Assistant Attorney General  
Commercial Section  
Civil Division (Juneau)  
Department of Law  
PO Box 110300  
Juneau, Alaska 99811  
POSITION STATEMENT: Answered questions on HB 228.

JOHANNA BALES, Revenue Auditor  
Tax Division  
Department of Revenue  
550 west 7th Street  
Anchorage, Alaska 99501  
POSITION STATEMENT: Answered questions on HB 228.

JENNIFER STRICKLER, Administrative Officer  
Division of Occupational Licensing  
Department of Community & Economic Development  
PO Box 110806  
Juneau, Alaska 99811  
POSITION STATEMENT: Answered questions on HB 228.

**ACTION NARRATIVE**

TAPE 01-59, SIDE A  
Number 0001

CHAIR LISA MURKOWSKI called the House Labor and Commerce Standing Committee meeting to order at 3:15 p.m. Members present at the call to order were Representatives Murkowski, Halcro, Crawford, and Hayes. Representatives Meyer, Kott, and Rokeberg joined the meeting as it was in progress.

HB 225-ALCOHOLIC BEVERAGE TAX

CHAIR MURKOWSKI announced that the first order of business would be HOUSE BILL NO. 225, "An Act relating to municipal taxation of alcoholic beverages and increasing the alcoholic beverage tax rates."

CHAIR MURKOWSKI reminded members that during the last hearing [April 11] there was a motion to reconsider after a successful vote to move the bill out of committee. That reconsideration motion, she said, was out of order. The only thing [the committee] had failed to do was [sign the committee report].

Number 0166

CHAIR MURKOWSKI announced that CSHB 225(L&C) moved from the House Labor and Commerce Standing Committee.

HB 228-SALE OF TOBACCO PRODUCTS

CHAIR MURKOWSKI announced that the final order of business would be HOUSE BILL NO. 228, "An Act relating to the offense of selling or giving tobacco to a minor, to the accounting of fees from business license endorsements for tobacco products, to the disclosure of certain confidential cigarette and tobacco product information, to notification regarding a cigarette manufacturer's noncompliance with the tobacco product Master Settlement Agreement, to business license endorsements for sale of tobacco products, to citations and penalties for illegal sales of tobacco products; and providing for an effective date."

Number 0286

JOHN MANLY, Staff to Representative John Harris, Alaska State Legislature, came forth on behalf of the sponsor of HB 228. He stated that this came to Representative Harris's attention as he was doing the Department of Health & Social Services budget. [The state], he said, is being thwacked by the federal government for \$1.5 million in the drug-and-alcohol block grants because the tobacco-sales-to-minors [rate] is too high. The

federal government sets a target of about 20 percent of sales to minors; however, Alaska is running about 61 percent in the Bush, and about one third in the urban areas.

MR. MANLY explained that, essentially, HB 228 increases the penalties that would be paid by the owner of the business who holds the endorsement on the business license to sell tobacco products. Representative Harris has asked for relatively hefty fines in that regard; therefore, they are set between \$1,000 and \$5,000. In addition, the department currently has the option to suspend the endorsement so the business can't sell tobacco products for a certain amount of time - up to 45 days. Those suspensions, [with this bill] would be set at 20 days for the first offense, 45 days for the second, and 90 days for the third.

MR. MANLY informed the committee that the bill makes a number of other changes. The most significant one concerns the cost of the tobacco endorsement for a business license. Currently, it is \$25 for a two-year endorsement, whether it is for a mom-and-pop shop or a big chain store. This bill proposes to change that to \$100 for a two-year endorsement per outlet. He stated that this makes it easier to enforce a suspension of an endorsement, and to keep track of violations. He added that there are other minor parts of the bill, such as in Sections 3 and 4, that have to do with the Department of Revenue's tracking of the compliance with the tobacco settlement that all the states have entered into.

Number 0657

CHAIR MURKOWSKI asked whether [the legislature] is currently being penalized for not being in compliance.

MR. MANLY responded that the budget for this coming fiscal year has \$1.5 million deducted from the drug and alcohol abuse grant. He said this is based on compliance checks that were done in 1999. He remarked that presuming the legislature will approve the attached fiscal notes and put \$481,000 into tobacco enforcement, the federal government will relieve the legislature of the penalty for this year.

CHAIR MURKOWSKI asked whether the \$481,000 is over and above what [the legislature] has currently put in the operating budget for tobacco prevention or cessation programs.

MR. MANLY answered that it is in addition to what the legislature had spent in the last fiscal year.

Number 0749

REPRESENTATIVE HALCRO said he is only concerned that the bill will not solve the problem unless there is a substantial investment in enforcement. He asked Mr. Manly whether he has had discussions with any of the departments about how to apply the money to enforcement, and about increasing ABC [Alcohol Beverage Control] enforcement.

MR. MANLY responded that to his knowledge that has not been discussed. He stated that the bulk of this money would be used to contract with local law enforcement to increase the checks.

Number 0861

ELMER LINDSTROM, Special Assistant, Office of the Commissioner, Department of Health & Social Services [DHSS], came forth and stated that this legislation is an important issue facing the department. He referred to a PowerPoint presentation [hard copy provided in the committee packets] and stated that this provides a good deal of introductory information on the impact of tobacco on [Alaska and Alaskans]. The latter sections, he said, go into specific discussion of the enforcement issues.

CHAIR MURKOWSKI referred on page 7 [of the presentation] to the statistic, "Between 1988 and 1996, the percentage of teenagers taking up the habit jumped 73 percent." She asked Mr. Lindstrom whether the [department's] statistical evaluation only goes through 1996, and whether there have been efforts that have decreased the incidence of teenage smoking.

MR. LINDSTROM responded that these numbers are from the Center for Disease Control [and Prevention] (CDC). He said he is guessing that they probably came from the youth risk-behavior surveys that are done by most states.

Number 0994

EDWIN SASSER, Project Coordinator, Division of Public Health, Department of Health & Social Services [DHSS], came forth and stated that the bulk of the numbers in the [PowerPoint presentation] are CDC numbers, with a couple of exceptions.

CHAIR MURKOWSKI asked whether it's not that there isn't information after 1996, but that was just the period of time the survey was taking things into account.

MR. SASSER responded that it was the period of time that there were solid numbers the department felt were recordable.

MR. LINDSTROM referred to a description of what a comprehensive tobacco control program ought to look like [the bottom of page 10, continuing to page 12]. He noted that it includes a number of components such as community tobacco-prevention programs, chronic-disease programs, school prevention programs, an enforcement component, counter-marketing, statewide programs, smoking cessation programs, surveillance and evaluation systems, and an administrative system to make it all work. Unfortunately, he said, the department does not have sufficient resources in its comprehensive tobacco control program to do the job that needs to be done on each one of these elements. He explained that the enforcement component is part of the comprehensive program. It is unique, he said, because it is the one element by its very nature that relies on the state to perform. The advice from everyone working in tobacco control in the absence of fully funding the tobacco control program has been that enforcement is not regarded as the highest priority. That is backed up by the CDC.

MR. LINDSTROM referred to page 13 [of the presentation] and explained that the federal Synar [amendment requires] "enforcement of state-level minors' access laws" to decrease sales to persons under the age of 18 to less than 20 percent. This is done by annual statewide inspection surveys that accurately measure the effectiveness of enforcement efforts. The department then reports annually to the U.S. Secretary of Health and Human Services. The penalty for noncompliance is the reduction of the substance abuse block grant - treatment dollars for people who are alcohol abusers or who abuse other controlled substances.

Number 1190

MR. LINDSTROM remarked that he has been frustrated over the last year. On the one hand, the federal government, which controls tobacco, says, "You need a comprehensive program, but if you don't have enough money, enforcement isn't really the top priority." On the other hand, another federal agency "holds a gun" and says, "Unless you make enforcement a priority, we are going to hold hostage your alcohol treatment dollars." He

expressed that the people who are responsible for administering the substance abuse programs don't wake up in the morning feeling that tobacco control is their first priority. Likewise, people in public health really aren't tied to the desires and needs of the substance abuse community and the federal law that governs them.

CHAIR MURKOWSKI surmised that [the legislature] is in compliance in that [the department] conducts the annual survey, but is not in compliance with getting the numbers to the level the U.S. Secretary of Health and Human Services wants.

MR. LINDSTROM responded in the affirmative, but noted that over the last four or five years the methodology that [the department] has used has changed from year to year. For example, one year [the department] had access to some federal Food and Drug Administration dollars, which thought it was in the business of regulating tobacco until the U.S. Supreme Court ruled that it really didn't have jurisdiction.

Number 1317

MR. LINDSTROM referred to slide 35, which gives a picture of what the enforcement program looks like. If a clerk in a retail outlet sells tobacco to a minor and is found guilty of that offense, the finding of guilt is supposed to go from the court system to the Division of Occupational Licensing. The end point is the suspension of that retailer's ability to sell tobacco to anyone for up to 45 days for a first offense and up to 90 days for a second offense. The problem, he said, is that there are many agencies and people that need to be involved in different parts of the process to get from point A to point B. He explained that the Division of Alcoholism and Drug Abuse is responsible for generating the sample of outlets to be inspected. The Division of Public Health has been responsible for contracting with local law enforcement. If a tobacco sale is made, a citation will be issued, and it will then go into the court system. The court system has to be counted on to send the material on to the Division of Occupational Licensing, and the division has to be counted on to pursue the suspension.

Number 1434

MR. LINDSTROM remarked that with the exception of the tobacco prevention and control people within the Division of Public Health, none of these other agencies "wake up every morning going, 'I know that one of my top priorities, one of my missions

in life, is to enforce the state tobacco control ordinance.'" He added that it doesn't surprise him that the "tobacco sales to minors" law does not rise to the top as something that local law enforcement would do. Likewise, he said, the Division of Occupational Licensing is primarily a revenue-generator and was never conceived as a regulatory mechanism.

CHAIR MURKOWSKI asked how the Division of Occupational Licensing became involved in the first place.

MR. LINDSTROM responded that he has not researched how that came about. However, the underlying law has been on the books for many years, and has only sporadically been used. The first significant efforts, he said, were during the negotiations for the tobacco settlement when the Department of Law made a conscious decision to pursue a number of these citations. The [department's] task today, he said, is to put in place a real system that will keep working over time without special care and attention on the part of a particular commissioner.

MR. LINDSTROM remarked that there was a reference to the fiscal penalties and said [the state] was found in noncompliance for federal fiscal year 2000; the basis of that noncompliance is on [page] 15. Of the outlets surveyed last fall in the more remote areas - communities with fewer than 9 outlets - 61 percent of the time the youths were successful in buying tobacco; in communities with 9 to 49 outlets, it was 40 percent of the time; and in the major cities - Anchorage, Juneau, Fairbanks, and Ketchikan - it was 26 percent of the time. The bottom line is that [minors] are buying tobacco at an unacceptably high rate.

MR. LINDSTROM reported that [Alaska] was found in noncompliance for federal fiscal year 1999 and appealed. Before the appeal could run its course, Congress, several months ago, passed an alternative penalty. The federal government said, "We will not take \$1.5 million of your substance abuse treatment money if, effective July of 2001, you demonstrate that you can put new resources into the tobacco enforcement program [of] approximately \$481,000." He noted that those are the funds reflected in the fiscal note.

Number 1664

CHAIR MURKOWSKI asked what could be done now in terms of training clerks about the sale of tobacco products.

MR. LINDSTROM responded that historically very little has been done by the state. That is a significant component of the fiscal note, and some of the additional resources will be used for vendor education and training. He remarked that he knows there is a training program that Philip Morris or someone in the industry has made available to retailers.

MR. SASSER remarked that the We Card program is a consortium of tobacco company money. As part of a settlement in Juneau, a curriculum was prepared whereby the Division of Public Health worked out, as part of the settlement for vendors who had sold tobacco products to youths, having their penalty reduced by going through a vendor education program. He stated that it is a pretty good curriculum, and it is adaptable to a statewide application as part of tobacco enforcement now. He added that he thinks businesses and clerks deserve knowing upfront how much damage they can do to their boss, to their business, and to themselves by inadvertently or volitionally selling tobacco to youth.

CHAIR MURKOWSKI asked whether the state sends out a fact sheet when a person renews his or her endorsement.

MR. SASSER responded that every vendor who had an endorsement prior to the year 2000 in the state has received at least one packet. The division has since passed out letters to those who passed and failed the last Synar checks.

Number 1825

REPRESENTATIVE MEYER stated that this is a subject of interest to him. He said it seems to him that the clerks should know that what they are selling is different from a candy bar. He remarked that he is wondering if 20 days for the first offense is enough, because it is so hard to catch businesses that are selling to minors. He added that it would seem to him that there should be periodic "stings." In terms of a vending machine, he said he thinks they should be in the vision of the clerk or the owner. He asked whether [Alaska] still has federal money coming to the local municipalities for the stings, and whether the division would support a stiffer penalty for first offenses.

MR. LINDSTROM responded that to his knowledge no funding goes directly to municipalities from the federal government for this effort. In the past, he said, there have been federal dollars coming through [DHSS]. He remarked that under the current law,

the first penalty could be up to 45 days and the second offense could be up to 90 days. He said he thinks from the department's perspective, the certainty of the penalty is at least as important as the duration. He added that he doesn't believe [the department] would object if it were a mandatory 45 days on the first offense, but it should be fixed. In addition, he said, the bill also includes something that isn't in current law, which is the fine to the retailer - \$1,000 - for the first offense.

CHAIR MURKOWSKI asked whether each vending machine would have to have a separate endorsement.

Number 2135

MR. LINDSTROM responded that the entity that actually owns the vending machines must have an endorsement, and there is an endorsement required for the people who are responsible to see that nobody accesses that particular machine. For example, if a person owns a bowling alley and had a cigarette machine on the premises, the bowling alley must have an endorsement and would be held responsible if kids are accessing that machine. At the same time, the person who owns the machine also has to have an endorsement.

MR. SASSER added that in the bill, it is very difficult to have a penalty assessed for a vending machine company, because [someone from the company] would have to have placed the machine either too close to a door or in a place where 17-year-olds or 18-year-olds can access it. While there is a provision in the bill for a vending machine company to lose its endorsement, it would be very rare that would be the case. The responsibility for observing the sales made on a daily basis from that machine falls to the place that contracted with the vendor, he indicated.

CHAIR MURKOWSKI asked, if the bowling alley [clerk] consistently looks the other way when kids purchase cigarettes from the machine, whether this bill allows for the vending machine to be pulled from the premise.

MR. SASSER responded that if the vending machine company has negligently placed the machine, then its endorsement is at risk. If the bowling alley negligently supervised the machine, then it loses its endorsement; during the time the endorsement is suspended, the machine is either locked up or removed.

CHAIR MURKOWSKI asked whether there are two endorsements in one establishment: the endorsement on the vending machine that's held by the vending machine owner, and the endorsement to the premises to have the vending machine.

MR. SASSER answered that the vending machine company has only one endorsement statewide, no matter how many machines [the company] places.

Number 2246

REPRESENTATIVE HAYES asked how many incidents would have to happen for a business [with a vending machine] to be [considered] negligent.

MR. SASSER answered that the youth would have to be on the premises where he or she is not supposed to be, in order to buy from the vending machine. For example, the only time a bowling alley could have a vending machine would be if there were a bar. Incidental purchases, he said, are rare in those circumstances.

REPRESENTATIVE ROKEBERG asked what the financial impact would be if the bill failed to pass.

MR. LINDSTROM responded that the impact on the tobacco program is nil; the impact on the substance abuse alcohol treatment program is \$1.5 million.

Number 2333

MICHAEL LIVINGSTON, Detective, Anchorage Police Department, testified via teleconference. He shared with the committee how he became involved in this issue. He stated:

It started back in the 1980s when I would drive by high schools [and] there would be a large number of kids outside smoking. I'd ask them where they get their cigarettes from, and they would tell me, "About any store in Anchorage."

I wanted to begin doing tobacco stings, but my department basically said, "No, the timing's not right." Back in 1997 the State of Alaska was considering suing the tobacco industry and the tobacco industry filed a preemptive lawsuit saying, "You can't sue us." It was about that time, the attorney general's office got a hold of the chief of police,

and the chief of police got a hold of me and asked me to start doing stings.

Since 1997, ... I have written probably more tickets for sale of tobacco to minors than any other police officer in the state of Alaska. I've testified in more criminal cases with defense attorneys, probably more than any other police officer in Alaska. I've talked with many store clerks, I've talked with many tobacco license owners. So when I talk about tobacco, I feel that my information is based upon a great deal of experience. ... Quite frankly, by now I was hoping that the problem would be taken care of, but obviously it is not.

DETECTIVE LIVINGSTON continued:

I am in support of almost all of the provisions, except for any attempts to amend Title 11. Title 11 is not [broken]; Title 11 works very well right now. The changes on the surface that are being proposed appear to be good changes. I am in support of progressive discipline; however, I can't help but wonder whether or not the proposed changes are legal. ...

Number one, [AS] 11.76.100 is a violation. The maximum fine under Title 11 for any violation is \$300. So, if you attempt to amend the law and increase the fine to anything over \$300, I can't help but wonder whether or not that law will be challenged and determined to be unconstitutional and improper.

Number two, is it necessary? Of all the citations that I've issued or supervised the issuance [of] by other police officers, there's been only one case out of at least 100 citations where there were repeat offenders. Typically, it's not the tobacco license owner who actually does the sale. Typically, it's the clerk and typically, from one time to the next, it's a different clerk. In summary, I would request that you leave Title 11 alone.

I would like to comment just briefly on the 20-day suspension. On the surface, initially, I was in opposition of that, because I do believe in harsh punishment for repeat offenders. However, over the

years I've spoken with many owners of tobacco licenses, and I think one thing we need to do is make certain that we're being fair to them.

TAPE 01-59, SIDE B  
Number 2459

DETECTIVE LIVINGSTON continued and stated that he thinks a 20-day suspension is fairer than a 45-day suspension. He commented:

Those of us who have been around in law enforcement since the 1980s remember ... the situation with alcohol vendors. We would try to get the people who owned the liquor licenses to get their clerks to stop selling alcohol to minors. And back then, the response we got was, "There's such a high turnover with alcohol clerks that we don't have the time to train them." And it wasn't until a crisis occurred that that situation was finally addressed. It took the liquor store clerk here in Anchorage to sell alcohol to a minor. That minor got drunk and got behind the wheel of a car, and then went out and got in an accident where people died. And the police found that receipt in that car. And it was not until then that TAM (Techniques of Alcohol Management) was mandated in Alaska. ...

I advocate that the State of Alaska implement a system in which tobacco vendors - all tobacco vendors, not just the license owner but the clerks - must also go through some sort of training. And I know that it's going to take a crisis before we finally take action, but, quite frankly, we are in a crisis right now. We've got more and more kids smoking, especially Alaskan Native kids. Twenty percent of the general population of kids smoke. ... We're getting whacked by the federal government for \$1.5 million. And if those first two crises don't get our attention, there's a third crises on the horizon that's looming, and that's the suspension of more and more tobacco licenses.

Back in 1997 it was the mom-and-pop stores that were selling tobacco to minors. Today it is no longer the mom-and-pop stores; we suspended their licenses [and] they're behaving today. It's no longer the grocery

stores; they're behaving. Who's taking their place?  
It's the gas stations. ...

We're running a backward system in Alaska: we're waiting until the violation occurs. We need to run a forward system: we need to mandate that all clerks [and] all tobacco license owners get training beforehand. And I think that's going to be a big step toward taking care of the problem.

We need to get those companies involved in the process. For example, [since] back in 1997 when the Fred Meyer store was cited, they have been very, very progressive in taking care of the situation. They police themselves. They do their own tobacco compliance checks with secret shoppers out of Portland, Oregon, and when a clerk sells tobacco to one of their secret shoppers, they get an arrest. They either train, retrain, or terminate that employee. When a clerk does not sell the tobacco to the secret shopper, they would award that person. ... When I send my kids into Fred Meyer here in Anchorage, they don't sell to us anymore. I would even support mandating laws in Alaska to make it so that clerks and tobacco license owners need to get that training upfront, so it's no longer a backward system.

Number 2320

REPRESENTATIVE HAYES stated that it sounds as if Detective Livingston is a "one-man gang" in Anchorage checking for people who are selling [tobacco] to minors. He asked who is funded in other areas of the state to do these types of checks.

DETECTIVE LIVINGSTON responded that there are more police officers in Anchorage involved in the program. In general, he said, it started out at the request of the Office of the Attorney General; there was funding from the [federal] Food and Drug Administration and the State of Alaska. He remarked that he would like to see more involvement from the State of Alaska's enforcement division. He said he is not aware of one state trooper or one VPSO (village public safety officer) who is involved in the program. In some of the tiny villages, 100 percent of the stores have sold to minors.

REPRESENTATIVE HAYES asked, if [the committee] passes the bill, whether there would be enough folks out in the field to actually

make headway in regard to stopping minors from buying cigarettes.

DETECTIVE LIVINGSTON replied that there are enough people; they just need to understand why it's such an important issue. He said he doesn't think people know there is a possible \$1.5 million "fine."

Number 2226

REPRESENTATIVE ROKEBERG, in reference to Detective Livingston's testimony regarding Title 11, stated that he is concerned about how that is implemented currently under AS 11.76.100(d). He asked, if an employee makes the sale, whether he or she could be punished by a \$300 fine.

DETECTIVE LIVINGSTON responded that he was correct.

REPRESENTATIVE ROKEBERG remarked that the bill reads that the person making the sale also owns the business license and endorsement. He asked Detective Livingston how he currently handles the distinction between the violation by a business and the violation by an employee.

DETECTIVE LIVINGSTON answered that currently, if the employee or clerk sells tobacco to a minor, he or she is cited for a sale of tobacco to a minor. He added that about 99.9 percent of the past cases have involved a clerk and not the tobacco license owner; therefore, he said he doesn't think the changes to Title 11 are necessary.

Number 2147

MR. LINDSTROM stated that he thinks an alternative would be to delete [the fines] from AS 11.76.100 and integrate them into the civil penalties under AS 43.70.075(d) [page 7, Section 7 continuing on to page 4].

REPRESENTATIVE ROKEBERG asked whether there are any other federal requirements the [legislature] needs to be in conformance with.

MR. LINDSTROM responded that he would have to defer to the sponsor. He noted that this provision was not a suggestion from the division.

MR. MANLY remarked that Representative Harris wanted to make the fines fairly stiff. He said there was some discussion that came up when going through this. For example, when commercial fishing violations become too high, they are no longer just fines but heavier criminal offenses. He said he doesn't think Representative Harris would have a problem if they were moved into AS 43.70; it would probably make more sense for them to be there anyway.

REPRESENTATIVE ROKEBERG asked Mr. Lindstrom whether [DHSS] has any administrative proceedings that assess fines under the APA [Administrative Procedure Act].

MR. LINDSTROM responded that the administration of these civil fines is not within his department; it is within the Division of Occupational Licensing [Department of Community & Economic Development]. He said he knows that [the Division of Occupational Licensing's and DHSS'] desire, should [the committee] move the bill, is for some certainty that it is a \$1,000 fine or a \$5,000 fine, to minimize the potential of endless administrative hearings, appeals, and all the costs that go with that.

Number 1982

REPRESENTATIVE ROKEBERG asked Detective Livingston whether he thinks those levels of fines would be fair, and if there should be civil fines mandated.

DETECTIVE LIVINGSTON responded that he would urge a great deal of caution, because when criminal sanctions mingle with civil sanctions, it can get extremely complicated. Above all, he would ask if it is necessary. Right now the clerk is cited under Title 11, and if he or she is convicted, then the tobacco license [owner] is looking at a suspension of the license, which really gets the license owner's attention. He stated that there needs to be more consistency; instead of checks every four years, they need to be done more regularly. The long-term solution, in his opinion, is writing laws that mandate that all tobacco licensees and tobacco clerks be trained before they can sell tobacco.

REPRESENTATIVE ROKEBERG asked Detective Livingston whether he has ever cited the same clerk or the same business more than once.

DETECTIVE LIVINGSTON answered that he has cited the same clerk more than once. One happened to also be the tobacco license owner; however, it was determined that the he could not legally sell tobacco at all in his location. Typically, he said, it is a different clerk.

REPRESENTATIVE ROKEBERG suggested creating a misdemeanor for a multiple offender because of the \$300 violation cap.

DETECTIVE LIVINGSTON responded that he knows there have been laws that have been proposed in the past for a second [offense] to be a misdemeanor and for a third offense to be a felony. He said in general [those cases] are going to be very rare.

REPRESENTATIVE ROKEBERG suggested raising the violation cap to \$500.

Number 1811

DETECTIVE LIVINGSTON replied that typically store clerks who actually get the \$300 fine are not highly paid; therefore, the fine does get their attention. He remarked that the enforcement just needs to be consistent.

CHAIR MURKOWSKI referred to the noncompliance survey results and stated that it is troubling that communities with less than nine outlets have a 61 percent noncompliance rate. These are the towns where everyone knows everyone. She remarked that she is making the logical jump that people don't care what the rule is and will sell cigarettes to anybody, regardless of whether they know the person. She asked Detective Livingston for his opinion on how to deal with the smaller communities.

DETECTIVE LIVINGSTON responded that it was disturbing for him, too, when he went out to some of the tiny places. He said he thinks part of the reason [the percentage] is better in Anchorage is because citations have been issued and the word has been getting out, whereas the chance of someone out in a remote village actually getting a ticket seems to be pretty small. He remarked that one of the best ways to get the numbers reduced in Alaska is to work with the big gas stations.

Number 1611

DAN BRANCH, Assistant Attorney General, Commercial Section, Civil Division (Juneau), Department of Law, testified via teleconference. In regard to Section 1 of the bill, which would

amend AS 11.76.100(d), he stated that he is not prepared to totally explore the constitutionality of the proposed changes. He said it is true that a violation is generally a \$300 fine; however, he isn't sure that having a higher penalty for this one particular statute would cause a conflict. The fact that the fine for a person with two prior [convictions] who is also the owner of the tobacco endorsement is \$5,000 creates concerns, because generally if punishment is mandated for an offense in the form of a fine, it is high enough to be considered criminal by the court system.

CHAIR MURKOWSKI stated that as the bill is drafted, a citation is written up but the person receiving the citation is not required to sign the notice. She asked Mr. Branch whether there is any problem with adequate notice to the individual who receives the citation. Essentially, she said, the citation is issued to the person who sold [the tobacco] but the entity that holds the endorsement is the one that is ultimately punished if the endorsement is pulled. She asked whether there are noticing problems.

MR. BRANCH responded that he doesn't believe so. He stated that the citation provisions in Section 11 are designed to give the folks at [DHSS] the authority to require the clerk to appear in court. The notice that is provided through the citation form is to the clerk or to the person who actually sold the tobacco. The fact that they don't have to sign it is not significant, because they will receive a copy of it. He added that it is basically the same approach as when police officers summons individuals to court for violations. The tobacco endorsement holder will receive notice of intent to suspend the tobacco endorsement.

Number 1286

REPRESENTATIVE ROKEBERG referred to page 6, line 27, which states, "AS 44.62 (Administrative Procedure Act) does not apply to a hearing under this section", and asked Mr. Branch whether that is typical statutory construction - to exempt the hearing officers from the APA and allow the department to draft its own regulation.

MR. BRANCH responded that it is not uncommon to have such an approach. The APA provides the standards for administrative review. This particular bill, he said, provides quite a bit of structure. It sets out provisions for how the administrative hearing will be conducted and for how the commissioner will

consider adopting or rejecting the decision. There is then an opportunity to appeal. The bill is designed to streamline the administrative process, which makes the penalties mandatory as opposed to discretionary. He added that he thinks it is appropriate to have this particular bill provide that, instead of having the APA structures apply. By law, any regulations promulgated would have to be consistent with the statutes under which they are implemented.

Number 1132

REPRESENTATIVE ROKEBERG asked Mr. Branch, if [the committee] were to delete the \$1,000 to \$5,000 fines in the criminal section of Section 1, whether the provisions found under the hearing procedures [subsection (p) on page 6] allowing for a fine of up to \$250 a day in a civil penalty, not to exceed \$5,000, would give a hearing officer the ability to assess a fine of any amount up to \$5,000.

MR. BRANCH responded that that provision would give the hearing officer the authority to impose a fine for violating paragraph (2) of AS 43.70.075, which requires that there be a sign posted on the premises. He remarked that if the [committee] wanted to move the fine from Section 1 into a civil context, the more appropriate way to do that would be to put it in subsection (d) or AS 43.70.075, as Mr. Lindstrom suggested.

REPRESENTATIVE ROKEBERG stated that Mr. Lindstrom also indicated that he'd prefer to see a stipulated nondiscretionary fine level.

MR. BRANCH responded that he thinks that is reasonable, given that the goal is to streamline the process. There needs to be a streamlined process in order to punish violations of the fine.

REPRESENTATIVE ROKEBERG asked, if the fines are mandated, why there would be a hearing.

MR. BRANCH answered that if the person who is fined doesn't think there should be a fine, he or she is entitled to a hearing. From the department's point of view, if the endorsement holder doesn't ask for a hearing, then there won't be one.

REPRESENTATIVE ROKEBERG stated that it seems to him that it's at the discretion of the hearing officer to assess the fine. He

said, "It could be a distinction between Safeway and mom and pop about what the amount of fine might be appropriate."

Number 0881

MR. MANLY commented that the fines [his office] has come up with are not particularly arbitrary; Representative Harris wants to have some fairly hefty fines. He said he agrees that a \$1,000 fine might hit a mom and pop [store] a lot harder than it would a Safeway; however, if the endorsements are separated out per location, Safeway could lose the endorsement for a store and not be able to sell tobacco for 20 days.

REPRESENTATIVE ROKEBERG stated that he agrees with Detective Livingston about removing the penalties from Title 11 and putting any civil penalty under AS 43. He suggested having default minimum penalties with ranges and letting the hearing officer hear the testimony.

MR. LINDSTROM responded that that could be a possibility; however, he is concerned that the \$481,000 in new resources will be spent a whole lot more on hearing officers and attorneys than on enforcement.

REPRESENTATIVE ROKEBERG stated that if he was facing a \$5,000 fine, he would be more interested in litigating it than defaulting on it.

Number 0722

CHAIR MURKOWSKI remarked that if she understands what Representative Rokeberg is saying, he is going to choose to litigate, yet he is suggesting that these penalties be set. She remarked that perhaps it needs to be more difficult to appeal these mandatory fines. She added that Representative Rokeberg had made a point that there needs to be some flexibility when a mom-and-pop shop that has fouled up a couple of times, since when the gas station appears to be the big violator, the \$2,000 fine is meaningless.

DETECTIVE LIVINGSTON stated, "On the other hand, I think that the suspension of their endorsement might have a bigger impact on them than it would on a mom and pop."

REPRESENTATIVE ROKEBERG remarked that there's nothing discretionary with the way the bill is drafted; there is the suspension and the fine. It certainly doesn't provide any

leeway in terms of meting out what presumably would be a fair and equitable punishment, he added.

Number 0463

CHAIR MURKOWSKI referred to Section 4 and asked Ms. Bales from the Department of Revenue whether the destruction of the cigarettes or the return to the manufacturer is required by the MSA [Master Settlement Agreement].

JOHANNA BALES, Revenue Auditor, Tax Division, Department of Revenue, testified via teleconference that it is not required. She explained that the Department of Revenue is charged with tracking product into Alaska from manufacturers who are not obligated to the Master Settlement Agreement. The majority of those manufacturers are located out of the country. In 1999 only 3 of those 23 manufacturers could comply with the state law under the Master Settlement Agreement. Because of the fact that the manufacturers are out of the country, it causes a little bit of a jurisdiction problem in trying to prohibit the sale of that product. This section, she said, would prohibit the distributors within the state to sell the product, until those manufacturers come into compliance with state statutes.

CHAIR MURKOWSKI asked whether the licensee is currently free to sell the product.

MS. BALES answered yes. She said under the statutes that were part of the Master Settlement Agreement, the Department of Law has to sue those noncomplying manufacturers, and would have to win in a lawsuit two years in a row. At that point, sale of the product can be prohibited in the state for two years.

CHAIR MURKOWSKI asked what happens to the licensee if, after the 31st day, he or she hasn't destroyed the cigarettes or returned them to the manufacturer.

MS. BALES responded that [the department] would confiscate the cigarettes. Of course, she said, [the licensee] would be out whatever he or she paid for the cigarettes and paid in state taxes.

CHAIR MURKOWSKI asked whether there is no penalty if [the licensee] tried to sell those cigarettes.

MS. BALES responded that she was correct.

Number 0127

CHAIR MURKOWSKI asked whether, if she opened up a little grocery store and decided to sell tobacco products, she would have to apply for an endorsement through the Division of Occupational Licensing.

JENNIFER STRICKLER, Administrative Officer, Division of Occupational Licensing, Department of Community & Economic Development, testified via teleconference that she was correct.

CHAIR MURKOWSKI asked, when her endorsement comes, whether she would receive anything telling her what her obligations are as a vendor of tobacco products.

MS. STRICKLER responded that if Chair Murkowski makes an application for her initial business license, she would specify on the application that she wishes to obtain a tobacco endorsement as well. At the time [the division] issues the license, the business license will specify "authorized for tobacco sale." Following [issuance of] the license itself, the division mails out a sign, currently required in statute, which needs to be posted conspicuously at the place of sale.

TAPE 01-60, SIDE A

CHAIR MURKOWSKI surmised that if she were renewing her license, she would only get the endorsement and wouldn't get any information with regard to her obligations.

MS. STRICKLER responded that she was correct.

REPRESENTATIVE ROKEBERG asked Ms. Strickler whether she envisions having an investigator to review compliance, and what the compliance would relate to.

Number 0076

MS. STRICKLER answered that currently [the division] has funding from DHSS for investigator services. The investigator acts upon notices of convictions that [the division] gets from the courts. So far, there are three businesses on the list. The investigator does the legal footwork to put the suspensions into place. In response to a further question, she said currently [the division] has an investigator who is funded in part by DHSS to do that.

REPRESENTATIVE ROKEBERG asked Ms. Strickler whether most of the hearing officers in the Division of Occupational Licensing follow APA procedure, or if they have separate procedures.

MS. STRICKLER answered that to her knowledge [the division's] hearing officer follows the APA.

REPRESENTATIVE ROKEBERG asked whether those hearing officers normally have a certain amount of discretion in assessing any civil penalties.

MS. STRICKLER stated that she doesn't know.

CHAIR MURKOWSKI asked Ms. Strickler how long the tobacco endorsement has been \$25.

Ms. STRICKLER answered that it has been set at \$25 since the tobacco endorsement program went into effect around 1990 or 1992.

REPRESENTATIVE HAYES asked why [the committee] is changing the price from \$25 to \$100.

MS. STRICKLER responded that it is her understanding that it is an attempt to attain more revenues to support the enforcement efforts.

Number 0315

MR. MANLY remarked that the main idea was to generate more revenue and to make the endorsement be a little more commensurate with the activity that it involves.

REPRESENTATIVE HAYES asked Mr. Manly whether he has talked to other folks who would be affected by this.

MR. MANLY answered no.

MR. LINDSTROM added that [DHSS] wants to make the enforcement program as self-supporting as it could be. He remarked that many people get the tobacco endorsement on their business license and don't even sell tobacco, which lead [DHSS] to believe that the \$25 is trivial.

REPRESENTATIVE HAYES suggested that under Mr. Lindstrom's logic, if some of those folks aren't even selling tobacco and they

think \$100 is too high, then [DHSS] would lose money. He asked Mr. Manly whether he has thought of using tobacco settlement money as an avenue.

MR. MANLY responded that he thinks Representative Harris would like to put more tobacco settlement money into tobacco sales enforcement; however, there have been higher priorities in the [DHSS] budget.

CHAIR MURKOWSKI asked whether the sale of single cigarettes is still allowed.

REPRESENTATIVE ROKEBERG responded that it was outlawed two years ago.

Number 0625

REPRESENTATIVE ROKEBERG made a motion to adopt conceptual Amendment 1, to delete Section 1, which leaves the penalty at \$300.

REPRESENTATIVE MEYER objected for discussion purposes. He asked what the rationale is for wanting to remove it.

DETECTIVE LIVINGSTON responded that [Title 11] is not "broken."

CHAIR MURKOWSKI added that Detective Livingston had suggested that if it was going to remain, it should be in the civil section rather than the criminal section.

REPRESENTATIVE MEYER withdrew his objection.

CHAIR MURKOWSKI announced that there being no further objection, conceptual Amendment 1 was adopted.

REPRESENTATIVE ROKEBERG remarked that [the goal was] "not to exceed penalties for the endorsement holders who have repeated violations, but give the hearing officer some discretion to mete that out." On the other hand, he said, the department wants to keep the [fiscal] note down by having more stipulated amounts. He said he thinks that can be accomplished by having a not-less-than-an-amount, and for the range to be up to \$5,000.

CHAIR MURKOWSKI asked Representative Rokeberg whether he thinks, with having this range be a minimum of \$1,000 to a maximum of \$5,000, that a mom-and-pop shop would appeal it in order to stay away from the \$5,000 fine.

REPRESENTATIVE ROKEBERG responded that currently, if someone has been convicted more than once in the past 24 months, it is a mandated \$5,000 fine.

Number 0843

MR. MANLY reiterated that the sponsor wanted to make the penalties as stiff as the legislature would allow. He said the sponsor got pretty [upset] with the fact that since the [state] is so out of compliance, it is costing \$1.5 million.

CHAIR MURKOWSKI asked, if the language from Section 1 was put into Section 7, whether that would accomplish what Representative Harris is seeking.

REPRESENTATIVE ROKEBERG asked whether the range could be cut. He suggested having ranges of \$500 to \$1,000, \$1,000 to \$2,000, and \$2,500 to \$5,000; thus the hearing officer could have some discretion. He asked Mr. Lindstrom whether he thought that would generate more hearings.

Number 0951

MR. LINDSTROM responded that one of the principal goals of this legislation from [DHSS's] perspective is to minimize the possibility of the limited enforcement dollars being "chewed up" through endless appeals.

CHAIR MURKOWSKI said she likes that [the fine] is a known amount.

REPRESENTATIVE ROKEBERG asked whether the fines could be cut in half and put in the civil section.

REPRESENTATIVE KOTT pointed out that under Section 11 of the bill, DHSS is given citation authority if there is probable cause to believe that a person has violated AS 11.76.100, [AS 11.76.]106, and [AS 11.76.]107. He added that AS 11.76.107 is failure to supervise the vending machines, and established in that is a \$300 fine. He suggested [the sections should conform].

Number 1176

REPRESENTATIVE ROKEBERG made a motion to adopt conceptual Amendment 2, to take the lines on page 1, line 13, through page

2, line 8, and insert them into the civil liability section, Section 7 on page 3. He added that the \$1,000 fine should be cut to \$500 if the person has not been previously convicted; the \$2,000 fine should be cut to \$1,000; and the \$2,500 fine should be cut to \$5,000 if [the person has been convicted] more than once in the past 24 months.

CHAIR MURKOWSKI objected for the purposes of discussion. If the range in [paragraph] (4) is \$2,500 to \$5,000, she said, there won't be any certainty. She added that she would be hesitant to give ranges.

REPRESENTATIVE ROKEBERG removed the ranges from conceptual Amendment 2. He remarked, "We're back to mom and pop versus big [corporation] again."

CHAIR MURKOWSKI responded that the answer to that is, "You can still go after the endorsement."

REPRESENTATIVE ROKEBERG remarked that the reason he likes the discretion is because the hearing officer could take the circumstances into account.

CHAIR MURKOWSKI agreed, but said she thinks the point is to avoid having to go to the hearing officer in the first place.

REPRESENTATIVE ROKEBERG remarked that that was one reason why he was lowering the fines.

Number 1327

CHAIR MURKOWSKI said she would remove her objection if conceptual Amendment 2 is to take the language in Section 1, beginning on line 13, and reduce it from \$1,000 to \$500; from \$2,000 to \$1,000; and from \$5,000 to \$2,500.

REPRESENTATIVE KOTT objected. He stated, "If you're going to tinker with that, you've got to tinker with [AS 11.76.107]."

REPRESENTATIVE ROKEBERG remarked that he thinks the testimony was that the endorsement holder is responsible for the vending machine; therefore, it is the endorsement holder, not the vending machine owner, who would be fined. He asked Representative Kott why he objected.

REPRESENTATIVE KOTT stated, "If you've contracted with a vendor, you have the endorsement [and] you've got an employee that's

supposed to be supervising or watching that vending machine all the time. If he doesn't, then the fine kicks in. If there is probable cause, then [DHSS] issues a citation,"

CHAIR MURKOWSKI asked whether that is the same thing as in Section 1(d)(1), which is not being changed.

MR. MANLY remarked that he thinks Chair Murkowski is right. The \$300 fine applies to the clerk who sells [the tobacco], not to the endorsement holder.

REPRESENTATIVE KOTT withdrew his objection.

Number 1517

CHAIR MURKOWSKI announced that there being no further objection, conceptual Amendment 2 was adopted.

REPRESENTATIVE ROKEBERG stated that he is still troubled by why the APA should not apply on page 6, lines 27 to 28.

MR. LINDSTROM answered that he believes it is the preceding section [above line 27] that specifies how the hearing officer may consider how a hearing is conducted for this particular purpose.

MR. BRANCH agreed with Mr. Lindstrom and stated that subsection (m) would set out a "series of burden of proofs" instructing the hearing officer on what issues should be considered during the hearing. The intent, he said, is not to deny a respondent the opportunity to have a fair hearing, but to recognize that there's a different structure because of the provisions that can be considered during the hearing.

Number 1636

MR. LINDSTROM pointed out that the fiscal note submitted by DHSS is basically all-inclusive. It includes the funds that will be RSAed (reimbursement services agreement) to the Department of Law in its fiscal note and to the Department of Community & Economic Development in its fiscal note. Every dollar that is additional to what [the department] currently anticipates for the hearing proceedings is a dollar that comes out of the program elsewhere in the [DHSS] fiscal note. That includes vendor education and contracts with law enforcement [agencies].

REPRESENTATIVE KOTT remarked that what is being determined is probable cause that the person did not reasonably monitor [the machine]. He asked who is going to be doing these investigations and issuing the citations.

MR. SASSER answered that the majority of the law enforcement activity will still be by sworn police officers. He said he is anticipating that the same groups of police officers that have been used and trained over the years will be involved.

REPRESENTATIVE KOTT stated that the minority of those citations would then be issued by the department. He asked who within the department would be issuing those citations.

MR. SASSER responded that if the youth is successfully able to buy out of a vending machine, which would represent either the negligence or the state of mind that the statute is discussing, there would be no way to establish probable cause or failure to monitor. Mr. Sasser said he, as a retired law enforcement officer, would have the statutory authority to do that within the Division of Public Health.

REPRESENTATIVE KOTT asked, if a machine is in a bar, the sprinkler system goes off, the bartender walks in another room, and a kid under 19 comes in and purchases [tobacco], whether [the bartender] would fall within that category.

Number 1852

MR. SASSER responded:

In the world of law enforcement, we make those decisions every day about ... what's reasonable community policing. ... In this world of sales of tobacco to youth [there are] plenty of opportunities to cite vendors. A small percentage of the vendors who sold tobacco to youth last year received citations; the rest received letters indicating that a sale was made on a certain date and ... the description of the clerk who did that. ...

It's our intent to be fair in every respect and to resolve doubt in the vendor's favor when possible. In a case where a youth buys from a vending machine - which is extremely rare, by the way - it's not part of the normal Synar survey checks. ... First of all, the youth is buying an age-restricted product in an age-

restricted environment. So they are not even supposed to be on the premises. They are supposed to be 21 to be there and 19 to purchase the tobacco product. So there are really two opportunities there. I could cite or an ABC officer could cite for different things.

REPRESENTATIVE KOTT asked whether a person under 19 could be in a bar with a parent.

MR. SASSER responded that there could be a circumstance in which a child could have access to a vending machine in an age-restricted environment. He added that his hope [with the Division of Public Health] having the authority is to work with the VPSOs in the rural communities for both vendor education issues and reduction of sale. Right now, he said, no matter how many jurisdictions he contracts with, it is very difficult to get into some of the communities [in Western Alaska].

REPRESENTATIVE HAYES asked how many incidents a year have to occur in order to lose the federal monies.

MR. SASSER answered that he doesn't believe there is a specific number. He stated that it is interesting because it is not known how many outlets there are in the state. Hopefully, as a result of this bill, [they will be known], because each one will have an endorsement. [Until now the department] has found out who is selling by looking at the 1,800 or so endorsements that [the Division] of Occupational Licensing has; subtracting those that have no intention of ever selling tobacco; subtracting those that are out of state and whose home office is in Nashville, for example, but with 30 outlets in Alaska; and collecting data from all of the officers over the last four years who have walked from door to door and know who is selling. That comes out to be about 400 business. Of those, [the department] wants fewer than 20 percent to sell [to minors].

Number 2063

REPRESENTATIVE HAYES asked whether there can only be 20 percent illegal sales from the 400 businesses to get the federal funding.

MR. SASSER responded that those are roughly the numbers being discussed.

REPRESENTATIVE HAYES stated that if there are 70 communities that have no law enforcement, where everybody knows everybody and people are buying cigarettes, the numbers will bump up. However, there won't be any money for police.

MR. SASSER replied that one tool this bill provides is statutory authority for [DHSS] to write citations in those villages where it traditionally does not have contract officers available, or which are outside [the officer's] jurisdiction and the officer does not feel comfortable writing citations. That is one of the main reasons, he said, that statutory authority for [the Division of Public Health] is so useful.

REPRESENTATIVE HAYES asked, if [DHSS] issues citations, who does the follow-up. He said there are places in Alaska without law enforcement, and he thinks that could present more of a problem in the long run.

REPRESENTATIVE ROKEBERG pointed out that he thinks one of the problems with enforcement in the state, particularly in the smaller communities, is that everybody knows everybody else. He said the case could be made that providing this authority is positive, because the local people could be reluctant to actually enforce the law.

Number 2213

REPRESENTATIVE MEYER made a motion to adopt conceptual Amendment 3, on page 4, line 1, to change the 20 days to 30 days.

REPRESENTATIVE ROKEBERG objected. He stated that according to Detective Livingston, it used to be 45 days, and that he could live with 20 days.

CHAIR MURKOWSKI asked Mr. Manly whether the current statute doesn't address any suspension if a person has not been convicted previously, but only if the person has.

MR. MANLY answered in the affirmative.

CHAIR MURKOWSKI clarified that this would mean the first time a person gets caught, [the endorsement] is suspended.

MR. MANLY remarked that it is also discretionary on the part of the department; it may suspend for not more than 45 days. This would make it mandatory rather than discretionary.

REPRESENTATIVE ROKEBERG asked Mr. Manly whether, because of the discretion, there was a typical amount of time meted out.

MR. Manly responded that he doesn't know.

MR. SASSER remarked that he has seen a memorandum of agreement as low as 3 days and that 20 days is fairly common.

REPRESENTATIVE MEYER stated that currently it obviously is not working, because businesses are still selling to minors. The only way to get a business's attention is to withdraw the license. He said he doesn't think "up to 20 days" is adequate.

Number 2430

REPRESENTATIVE ROKEBERG withdrew his objection.

REPRESENTATIVE HAYES objected for the purpose of discussion. He said his problem with the amount of days is that it seems the business is being punished for an employee's mistake.

TAPE 01-60, SIDE B

REPRESENTATIVE ROKEBERG said the person has to be the endorsement holder for the fine but not necessarily for [the suspension].

Number 2453

REPRESENTATIVE MEYER remarked that businesses are responsible for their employees, and the business manager needs to make sure the employees are adequately trained. He suggested it needs to be stressed that this is a serious offense.

REPRESENTATIVE ROKEBERG indicated he thinks the most slack should be given "up front" regarding the employee. He said there is an inconsistency with enforcement right now, and with the change there will be a mandatory \$500 fine and a suspension of the endorsement.

REPRESENTATIVE MEYER stated that if employees are trained to simply just check identifications, they have nothing to worry about. He said the numbers he has read indicated that if a person does not start [smoking] until after age 19, there is a 90 percent chance he or she never will start.

REPRESENTATIVE CRAWFORD shared that when he takes his kids to school, he sees 40 to 50 kids down the hill, and a large majority are smoking cigarettes. He said he would like to cut off as many ways for them to get cigarettes as possible. He believes this bill is a good first step, he said, and that a three-day suspension with a \$300 fine is not a sufficient deterrent.

Number 2274

REPRESENTATIVE HAYES said while he supports the bill, he still feels [the committee] is being awfully harsh on businesses.

REPRESENTATIVE CRAWFORD mentioned that he has listened to previous testimony that many times [businesses] just receive a letter. He remarked that he doesn't think [law enforcement] tries to fine [businesses] on the first offense.

CHAIR MURKOWSKI noted that the sentence on page 4, line 1, goes on to say "if the person has not been previously convicted of violating AS 11.76.100, 11.76.106, or 11.76.107". She clarified that [AS 11.76.]100 is selling or giving tobacco to a minor, [AS 11.76.]106 is selling tobacco outside controlled access, and [AS 11.76.]107 is failure to supervise a cigarette vending machine. She asked whether a person who has never been previously convicted would be subject to this.

MR. MANLY responded that she was correct.

CHAIR MURKOWSKI said her hesitancy with changing it to 30 days is that right now there is no education. She offered her belief that businesses don't even get anything from the Division of Occupational Licensing. She said her attitude is, if a person has been informed as to what the consequences are, he or she shouldn't have a "free shot."

REPRESENTATIVE HALCRO noted that he thinks the Division of Occupational Licensing does give something out.

CHAIR MURKOWSKI asked whether it is minimal.

Number 1967

MR. LINDSTROM remarked that it truly is minimal. He added that part of [DHSS's] plan with the additional resources is to do a lot more in the way of vendor education.

REPRESENTATIVE HALCRO asked what people receive currently when they get their tobacco licenses.

MR. LINDSTROM answered that he understood from the testimony from the Division of Occupational Licensing that [business owners] get several copies of the sign that cites the statute and says, "You may not sell to minors."

REPRESENTATIVE HALCRO stated that they are given notification of the law, then.

CHAIR MURKOWSKI agreed, but stated:

I don't have a set of these in my home to refer to and find out what AS 11.76.105 is. I think that we need to do a better job of telling people, "You will lose your right to sell a product for 20 days, first time around, or 45 days if you fail to pay attention." I think we need to be very clear in what the consequences are."

Number 1955

A roll call vote was taken. Representative Meyer voted in favor of adopting conceptual Amendment 3. Representatives Kott, Rokeberg, Crawford, Hayes, and Murkowski voted against it. [Representative Halcro was absent for the vote.] Therefore, conceptual Amendment 3 failed by a vote of 1-5.

Number 1953

REPRESENTATIVE ROKEBERG made a motion to adopt conceptual Amendment 4, that upon issuance of an endorsement, copies and explanations of the penalties will be provided.

REPRESENTATIVE KOTT objected for the purposes of offering a friendly amendment to reduce the \$100 amount [in Section 6] to \$50. He said he thinks \$100 is too much. According to Mr. Lindstrom, many people aren't even using their endorsements.

REPRESENTATIVE HAYES objected to Representative Kott's [friendly amendment].

CHAIR MURKOWSKI commented that she thinks [the two amendments] should be separate.

REPRESENTATIVE ROKEBERG stated that he is not accepting Representative Kott's friendly amendment.

Number 1831

CHAIR MURKOWSKI also objected to the amendment to conceptual Amendment 4. She asked whether this is \$100 every other year.

MR. MANLY answered that she was correct.

REPRESENTATIVE KOTT remarked that that's his point. He said it is the same as a business license. He withdrew his amendment to conceptual Amendment 4.

Number 1790

CHAIR MURKOWSKI announced that there being no further objection, conceptual Amendment 4 was adopted.

REPRESENTATIVE KOTT made a motion to adopt conceptual Amendment 5, to reduce the amount [of the endorsement] from \$100 to \$50.

REPRESENTATIVE ROKEBERG objected.

CHAIR MURKOWSKI asked how much a business license costs.

REPRESENTATIVE KOTT responded that he thinks it is \$50 every two years.

REPRESENTATIVE ROKEBERG suggested changing the endorsement to \$75.

REPRESENTATIVE KOTT responded that the number of endorsements has already been increased. He said he thinks if it is \$75 people will start "falling off" who would otherwise continue paying.

REPRESENTATIVE MEYER stated that the reason people are getting [endorsements] now is because [the endorsements] are so cheap. He said he thinks the people who will pay \$100 will be the ones who really intend to sell tobacco and tobacco products. However, he does think the price should be different from that for a regular business license, he added, because those people are selling a very dangerous, controlled, addictive substance.

Number 1712

MR. LINDSTROM remarked that he believes a business license is \$25. This is qualitatively different from the business license fee. One of the problems is that the Division of Occupational Licensing has not regarded itself as being in the regulatory business, and yet it is now being asked to do that by virtue of the tobacco endorsement. The department thinks it will be fine if those who don't currently sell tobacco no longer get the tobacco endorsement, he said. It will make it easier to figure out who does sell tobacco. He added that this is a substantial program; it is only appropriate, given how frequently retailers are selling tobacco to minors, that they pay for a significant portion of the cost of regulating those folks.

CHAIR MURKOWSKI asked whether [the department] is estimating that about 400 Alaska businesses sell tobacco.

MR. LINDSTROM responded that the 400 figure was roughly the sample size under the Synar protocol. The number of people on the registry at the Division of Occupational Licensing is about 1,800.

CHAIR MURKOWSKI asked, if this bill passes and every Williams gas station has to have an endorsement for each outlet, how many more endorsements there would be.

MR. LINDSTROM answered that he doesn't have the numbers. The change in revenues is \$100,000, but [the Division of Occupational Licensing] is suspicious of how many additional [endorsements] would be picked up because everyone has to have an endorsement. [The division is] equally unsure of how many people are going to "drop off" now that [the endorsements cost] \$100.

CHAIR MURKOWSKI surmised that if there are approximately 1,800 endorsements already, [the Division of Occupational Licensing] is assuming that the endorsements purchased are at 1,000 locations.

MR. LINDSTROM remarked that he doesn't know the detailed calculations that were made.

Number 1531

REPRESENTATIVE HAYES said he agrees with the amendment because he fears the mom-and-pop [stores will ask] what they are getting for this big increase.

CHAIR MURKOWSKI asked Mr. Lindstrom whether, essentially, [the bill] is trying to cover the increased costs of enforcement.

MR. LINDSTROM responded that it [covers] about a quarter of it.

A roll call vote was taken. Representatives Hayes, Kott, and Rokeberg voted in favor of adopting conceptual Amendment 5. Representatives Crawford, Meyer, and Murkowski voted against it. [Representative Halcro was absent for the vote.] Therefore, conceptual Amendment 5 failed by a vote of 3-3.

Number 1421

REPRESENTATIVE ROKEBERG made a motion to move HB 228, as amended, out of committee with individual recommendations and the attached fiscal notes. There being no objection, CSHB 228(L&C) moved 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 6:05 p.m.