

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

April 29, 2002

3:20 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Pete Kott

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 274(L&C)

"An Act relating to issuance of a locum tenens permit for a physician or osteopath; and providing for an effective date."

- MOVED HCS CSSB 274(L&C) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 215(FIN)

"An Act relating to licensing common carriers to dispense alcoholic beverages; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 512

"An Act relating to cigarette sales; and providing for an effective date."

- HEARD AND HELD

PREVIOUS ACTION

BILL: SB 274

SHORT TITLE:PHYSICIANS' LOCUM TENENS PERMITS

SPONSOR(S): SENATOR(S) OLSON

Jrn-Date	Jrn-Page		Action
02/01/02	2090	(S)	READ THE FIRST TIME - REFERRALS

02/01/02	2090	(S)	L&C
02/12/02		(S)	L&C AT 1:30 PM BELTZ 211
02/12/02		(S)	Heard & Held
02/12/02		(S)	MINUTE(L&C)
02/28/02		(S)	L&C AT 1:30 PM BELTZ 211
02/28/02		(S)	Moved CS(L&C) Out of Committee
02/28/02		(S)	MINUTE(L&C)
03/01/02	2338	(S)	L&C RPT CS 5DP SAME TITLE
03/01/02	2338	(S)	DP: STEVENS, AUSTERMAN, DAVIS, LEMAN,
03/01/02	2338	(S)	TORGERSON
03/01/02	2338	(S)	FN1: ZERO(CED)
04/10/02	2710	(S)	RULES TO CALENDAR 4/10/02
04/10/02	2712	(S)	READ THE SECOND TIME
04/10/02	2712	(S)	L&C CS ADOPTED UNAN CONSENT
04/10/02	2712	(S)	ADVANCED TO THIRD READING UNAN CONSENT
04/10/02	2712	(S)	READ THE THIRD TIME CSSB 274(L&C)
04/10/02	2713	(S)	PASSED Y19 N- E1
04/10/02	2713	(S)	EFFECTIVE DATE(S) SAME AS PASSAGE
04/10/02	2718	(S)	TRANSMITTED TO (H)
04/10/02	2718	(S)	VERSION: CSSB 274(L&C)
04/10/02		(S)	RLS AT 10:30 AM FAHRENKAMP 203
04/10/02		(S)	MINUTE(RLS)
04/11/02	2877	(H)	READ THE FIRST TIME - REFERRALS
04/11/02	2877	(H)	L&C
04/26/02		(H)	L&C AT 3:15 PM CAPITOL 17
04/26/02		(H)	Heard & Held
04/26/02		(H)	MINUTE(L&C)
04/29/02		(H)	L&C AT 3:15 PM CAPITOL 17

BILL: SB 215

SHORT TITLE:COMMON CARRIER LIQUOR LICENSE
SPONSOR(S): SENATOR(S) COWDERY

Jrn-Date	Jrn-Page		Action
04/30/01	1357	(S)	READ THE FIRST TIME - REFERRALS
04/30/01	1357	(S)	TRA, FIN
01/22/02		(S)	TRA AT 1:30 PM BUTROVICH 205
01/22/02		(S)	Moved CS(TRA) Out of Committee

01/22/02		(S)	MINUTE(TRA)
01/23/02	2017	(S)	TRA RPT CS 3DP 2NR SAME TITLE
01/23/02	2017	(S)	DP: COWDERY, WILKEN, TAYLOR;
01/23/02	2017	(S)	NR: WARD, ELTON
01/23/02	2017	(S)	FN1: (REV)
03/04/02		(S)	FIN AT 9:00 AM SENATE FINANCE 532
03/04/02		(S)	Scheduled But Not Heard
03/05/02		(S)	FIN AT 9:00 AM SENATE FINANCE 532
03/05/02		(S)	Moved CS(FIN) Out of Committee
03/05/02		(S)	MINUTE(FIN)
03/06/02	2382	(S)	FIN RPT CS 5DP 3NR SAME TITLE
03/06/02	2382	(S)	DP: KELLY, HOFFMAN, WILKEN, WARD,
03/06/02	2382	(S)	LEMAN; NR: DONLEY, GREEN, OLSON
03/06/02	2383	(S)	FN2: (REV)
03/26/02		(S)	RLS AT 11:00 AM FAHRENKAMP 203
03/26/02		(S)	MINUTE(RLS)
04/19/02	2858	(S)	RULES TO CALENDAR 4/19/02
04/19/02	2859	(S)	READ THE SECOND TIME
04/19/02	2859	(S)	FIN CS ADOPTED UNAN CONSENT
04/19/02	2859	(S)	ADVANCED TO THIRD READING UNAN CONSENT
04/19/02	2860	(S)	READ THE THIRD TIME CSSB 215(FIN)
04/19/02	2860	(S)	PASSED Y14 N4 E1 A1
04/19/02	2860	(S)	EFFECTIVE DATE(S) SAME AS PASSAGE
04/19/02	2863	(S)	TRANSMITTED TO (H)
04/19/02	2863	(S)	VERSION: CSSB 215(FIN)
04/22/02	3058	(H)	READ THE FIRST TIME - REFERRALS
04/22/02	3058	(H)	L&C, FIN
04/29/02		(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 512

SHORT TITLE: UNFAIR CIGARETTE SALES
SPONSOR(S): FINANCE

Jrn-Date	Jrn-Page		Action
03/26/02	2684	(H)	READ THE FIRST TIME - REFERRALS
03/26/02	2684	(H)	L&C, JUD, FIN

03/26/02	2684	(H)	REFERRED TO LABOR & COMMERCE
04/26/02		(H)	L&C AT 3:15 PM CAPITOL 17
04/26/02		(H)	Heard & Held MINUTE(L&C)
04/26/02		(H)	MINUTE(L&C)
04/29/02		(H)	L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

JEFF BULLOCH

Alaska State Medical Association
4107 Laurel Street
Anchorage, Alaska 99508

POSITION STATEMENT: During discussion of SB 274, offered a language change for the committee's consideration.

SENATOR DONNY OLSON

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Spoke as the sponsor of SB 274.

CATHERINE REARDON, Director

Division of Occupational Licensing
Department of Community & Economic Development
PO Box 110806
Juneau, Alaska 99811-0806

POSITION STATEMENT: During discussion of CSSB 274(L&C), answered questions.

DON SMITH, Staff

to Senator John Cowdery
Senate Transportation Standing Committee
Alaska State Legislature
Capitol Building, Room 101
Juneau, Alaska 99801

POSITION STATEMENT: Presented CSSB 215(FIN) on behalf of the sponsor, Senator Cowdery.

BILL MACKAY, Vice President

Public and Government Affairs
Alaska Airlines - Seattle
(No address provided)

POSITION STATEMENT: Discussed the reasons why Alaska Airlines urges passage of [CSSB 215(FIN)].

DOUGLAS GRIFFIN, Director

Alcoholic Beverage Control Board

Department of Revenue
550 W 7th Avenue, Suite 540
Anchorage, Alaska 99501-3510

POSITION STATEMENT: Urged the committee to pass [CSSB 215(FIN)].

NEIL SLOTNICK, Deputy Commissioner
Office of the Commissioner
Department of Revenue
PO Box 110405

Juneau, Alaska 99811-0405
POSITION STATEMENT: Testified on CSSB 512, Version F, and related that the department does not urge the committee to pass it out of committee.

MIKE ELERDING, President
Northern Sales Company of Alaska, Inc.
PO Box 8112

Ketchikan, Alaska 99901
POSITION STATEMENT: Testified in support of HB 512.

BOB GALOSICH, Vice President
Wholesale Operations
Alaska Commercial Company
Frontier Expeditors
3555 E 76th Avenue
Anchorage, Alaska 99518

POSITION STATEMENT: During discussion of HB 512, related the differences one must consider between retail and wholesale.

BOBBY SCOTT
Jan's Distributors
1802 W 47th
Anchorage, Alaska 99517

POSITION STATEMENT: Testified on HB 512.

CYNTHIA DRINKWATER, Assistant Attorney General
Fair Business Practices Section
Civil Division (Anchorage)
Department of Law
1031 W 4th Avenue, Suite 200
Anchorage, Alaska 99501-1994

POSITION STATEMENT: Expressed concern that HB 512 is anti-competitive and unnecessary.

ACTION NARRATIVE

TAPE 02-68, SIDE A
Number 0001

CHAIR LISA MURKOWSKI called the House Labor and Commerce Standing Committee meeting to order at 3:20 p.m. Representatives Murkowski, Halcro, Meyer, and Crawford were present at the call to order. Representatives Rokeberg and Hayes arrived as the meeting was in progress.

SB 274-PHYSICIANS' LOCUM TENENS PERMITS

CHAIR MURKOWSKI announced that the first order of business would be CS FOR SENATE BILL NO. 274(L&C), "An Act relating to issuance of a locum tenens permit for a physician or osteopath; and providing for an effective date."

Number 0158

REPRESENTATIVE HALCRO moved to adopt Version 22-LS1393\L, Lauterbach, 4/29/02, as the working document. There being no objection, Version L was before the committee.

CHAIR MURKOWSKI reminded committee members that at the last hearing of CSSB 274(L&C) there was concern with regard to the language in Section 2 requiring that the locum tenens permits "shall" be extended for an additional 60 days. The language in Section 2 has been expanded in Version L so that it says: "the board may refuse to grant a license under AS 08.64.240". Version L also adds paragraphs (2)-(4) under Section 3 in order to provide greater public safety by specifying the items to be obtained in a background check.

Number 0325

JEFF BULLOCH, Alaska State Medical Association, informed the committee that representatives from the association spoke with the sponsor and suggested that on page 2, line 10, the language "or its designee" be deleted. Therefore, a denial would go before the full board where due process would occur and the person being denied would be allowed to be present.

CHAIR MURKOWSKI asked if the sponsor is comfortable with the amendments encompassed in Version L.

Number 0399

SENATOR DONNY OLSON, Alaska State Legislature, speaking as the sponsor of SB 274, said that he agreed with the majority of Version L. However, the [focus] of the bill is directed at rural Alaska where there have been difficulties obtaining and holding replacement physicians. With regard to the language on page 2, line 10, Senator Olson expressed concern with denials for extensions. Therefore, he suggested that the language "or its designee" be deleted from page 2, line 10. In response to Representative Halcro, Senator Olson specified that normally the designee is the executive director. Deleting the aforementioned language would move away from personality difficulties.

CHAIR MURKOWSKI pointed out that the language "or its designee" is also found on line 17 of page 2. Therefore, she asked if Senator Olson would like the language deleted in that location as well.

SENATOR OLSON answered, "Not at this point."

CHAIR MURKOWSKI directed attention to page 2, line 26, which requires a "completed application form and the fee required for licensure under this chapter." She recalled that at the last hearing there was discussion regarding at what point should the locum tenens physician obtain licensure in Alaska versus relying on the locum tenens permit. She asked if the language on page 2, line 26, is acceptable.

SENATOR OLSON said that he agrees that those staying in Alaska indefinitely or permanently should have a permanent license. However, there are exceptions. For instance, there may be cases in which individuals may have difficulties obtaining a fully certified diploma.

Number 0920

REPRESENTATIVE ROKEBERG asked if the language on page 2, line 26 was part of the amendment he made at the last hearing.

CHAIR MURKOWSKI replied yes. She recalled that Representative Rokeberg had requested that references to various background checks should be included. The clearance report from the U.S. Drug Enforcement Administration (DEA) was added because [the Division of Occupational Licensing] sent an e-mail saying that it [wasn't mentioned because the representative from the division didn't think of it at the time]. In further response to Representative Rokeberg, Chair Murkowski said that her notes

reflect discussion of [inserting] the language on page 2, line 26.

REPRESENTATIVE ROKEBERG remarked that paragraph (4) forces the [locum tenens permit holder] to make the application.

CHAIR MURKOWSKI said that her notes reflect that [the committee] wanted to encourage full-time active licensure after 180 days [in state on a locum tenens permit].

REPRESENTATIVE ROKEBERG pointed out that there is a 240-day limitation now, which [with the language in Version L] seems to exceed the 240-day limitation. If one wanted a 30-day extension beyond the 240 days, then the individual would have to apply for licensure.

CHAIR MURKOWSKI said she believes that is correct.

REPRESENTATIVE ROKEBERG remarked that he wasn't sure why that would be done.

SENATOR OLSON commented that if a person is in the state for 240 days and requests an extension, then the individual should apply for full licensure.

REPRESENTATIVE ROKEBERG questioned whether paragraphs (1)-(3) are necessary if [paragraph (4)] is included.

CHAIR MURKOWSKI reminded everyone that [at the last hearing] there was discussion of an individual who had been [practicing] in the state for almost 240 days and the individual had decided to practice in Alaska. However, the individual was going to miss a window for application and would not be able to practice [while obtaining full licensure] without the inclusion of Section 3. Chair Murkowski recalled that Representative Rokeberg had wanted to ensure that the necessary checks had occurred if indefinite extensions were going to be allowed.

REPRESENTATIVE ROKEBERG agreed. He said that if subsection (f) is limited to what Chair Murkowski described, then that would be acceptable so long as the sponsor viewed it as acceptable.

SENATOR OLSON said that he didn't have a problem with that. However, he suggested checking with the executive director [of ASMA] or someone from the Division of Occupational Licensing in order to be sure that there isn't something he is unaware of.

MR. BULLOCH related that after reviewing the CS, ASMA felt that Section 3 was fine.

Number 1300

REPRESENTATIVE HALCRO moved that the committee adopt Amendment 1, which reads as follows:

Page 2, line 10,
Delete "or its designee"

REPRESENTATIVE ROKEBERG objected. He pointed out that on page 1, line 5, the legislation refers to a "member of the board" whereas Section 2 (e) refers to "the board", which he viewed as problematic.

REPRESENTATIVE HALCRO pointed out that because the legislation outlines that only the board can grant a request for an extension. He related his belief that only the board should be allowed to grant a temporary permit. In response to Representative Meyer, Representative Halcro confirmed that the language "executive secretary" on page 1, line 5, would have to be deleted.

CHAIR MURKOWSKI reminded the committee that there was a due process concern in that if there was going to be a denial of an extension, then the individual who made the request should have the opportunity to present to the board the reasons why the permit should be continued. That concern was the reasoning behind deleting "or its designee", she explained. In response to Representative Rokeberg, Chair Murkowski confirmed that the board or its designee could make the initial extension. Only upon denial was due process a concern.

REPRESENTATIVE ROKEBERG maintained his objection. He related his understanding that the initial permit under Sections 1 and 2 can be granted by the board, a member of the board, or its executive secretary. The 60-day extension can be granted by the board or its designee. However, only the board can hand down a refusal to grant an extension.

REPRESENTATIVE HALCRO asked if there is any due process protecting an individual who is denied an initial permit.

SENATOR OLSON related his understanding that denial of [an initial permit application] can be taken to the full board for reconsideration.

CHAIR MURKOWSKI surmised then that this language would be consistent with what's currently in statute. She specified that the intent is to provide due process when there is denial of a permit during any point in the process. She explained that the board can deny an extension but a designee of the board cannot because denial of the permit gets into the previously discussed issue of due process.

REPRESENTATIVE HALCRO, in response to comments by Representative Rokeberg, explained that Amendment 1 accomplishes what Representative Rokeberg wants because only the board can refuse to grant a request for an extension. Once one is given a license and returns for renewal or extension, the board or its designee can grant the extension. However, if the designee denies the extension request, then the due process is going before the board at its next meeting.

REPRESENTATIVE ROKEBERG disagreed.

Number 1905

CATHERINE REARDON, Director, Division of Occupational Licensing, Department of Community & Economic Development, testified via teleconference. Ms. Reardon explained that the Alaska State Medical Board and the Division of Occupational Licensing are under the Administrative Procedures Act. Therefore, both entities are required to provide the right to appeal or contest a board action. A denial of a permit, license, or right always triggers the right to appeal.

REPRESENTATIVE ROKEBERG asked if the [locum tenens physician] would be allowed to practice pending the appeal.

MS. REARDON said the [locum tenens physician] would not be allowed to practice pending the appeal if the initial permit had expired. In further response to Representative Rokeberg, Ms. Reardon explained that the appeal would be to the board, which almost always delegates the actual hearing to the hearing officer and considers the hearing officer's proposed decision. Although the board has the option of hearing the case, it rarely does so. Ms. Reardon turned to Sections 2 and 3 of [Version L] and stressed that two different types of extensions are being addressed.

REPRESENTATIVE ROKEBERG pointed out that Section 3 refers to the essential medical services extension. Representative Rokeberg

questioned why the language "or its designee" would need to be deleted on page 2, line 10, when there is already a statutory right of appeal to the board.

CHAIR MURKOWSKI related her understanding that leaving in the aforementioned language would place the designee in the position of granting or denying a permit, although the permittee would have the right to appeal to the board.

MS. REARDON agreed with Chair Murkowski's understanding. She surmised that the policy question is whether to delegate or designate a denial or whether such a decision should be made by the board itself. She pointed out that the boards don't have to delegate or designate these decisions.

REPRESENTATIVE ROKEBERG maintained his objection because the language is adequate and waiting for an actual board meetings could take some time. The designee of the board is specified because the [denial] is an administrative function.

CHAIR MURKOWSKI asked if the sponsor, having heard Ms. Reardon's comments, had anything to add.

SENATOR OLSON acknowledged that Representative Rokeberg has some valid concerns. However, deletion of the language "or its designee" moves away from frivolous rejections and allows the board to make the decision for the refusal. Although the board holds quarterly meetings, there are provisions to hold teleconferences when someone feels strongly that someone should be refused. The difficulty with [waiting for quarterly meetings] is that there is a period of time in which the applicant or permittee isn't of use to anyone because of the inability to work and thus is an added burden on the facility with which the individual works.

The committee took an at-ease in order for Chair Murkowski to pass the gavel to Vice Chair Halcro.

VICE CHAIR HALCRO asked Senator Olson if he supported the deletion of the language "or its designee" from the legislation.

SENATOR OLSON replied yes.

Number 2260

REPRESENTATIVE ROKEBERG pointed out that a telephonic board meeting would be required for a 60-day extension. He asked if

this board can take action on a telephonic basis when the issue is a refusal of a permit.

MS. REARDON replied yes. In further response to Representative Rokeberg, Ms. Reardon said that she was comfortable with the removal of the aforementioned language.

REPRESENTATIVE ROKEBERG asked if Ms. Reardon would like to provide the drafter freedom to craft the language rather than having a limited amendment.

MS. REARDON said she wasn't sure what the language would look like.

TAPE 02-68, SIDE B

MS. REARDON expressed concern that if language describing the permit denial process is inserted, there could be unforeseen consequences.

REPRESENTATIVE ROKEBERG removed his objection but maintained his discomfort with the language, which he said should be cleaned up.

There being no objection, Amendment 1 was adopted.

Number 2327

REPRESENTATIVE MEYER moved to report HCS CSSB 274, Version 22-LS1393\L, Lauterbach, 4/29/03, as amended out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, HCS CSSB 274(L&C) was reported from the House Labor and Commerce Standing Committee.

The committee took a brief at-ease.

SB 215-COMMON CARRIER LIQUOR LICENSE

VICE CHAIR HALCRO announced that the next order of business would be CS FOR SENATE BILL NO. 215(FIN), "An Act relating to licensing common carriers to dispense alcoholic beverages; and providing for an effective date."

DON SMITH, Staff to Senator John Cowdery, Senate Transportation Standing Committee, Alaska State Legislature, informed the committee that Senator Cowdery introduced SB 215 primarily at the request of Alaska Airlines. The committee packet should

include documents that outlines the current process. Mr. Smith related the belief that this legislation would reduce administrative and clerical burden to the common carriers and would lower the fees. The major user of this legislation has now up to 102 licensed aircraft, although the vast majority of those airplanes aren't flying in Alaska air space. Mr. Smith explained that CSSB 215(FIN) would change the procedure such that the first ten licenses would cost \$1,000 each, after which each license would be \$100 per license. He concluded by urging the committee's support of CSSB 215(FIN).

Number 2205

BILL MACKAY, Vice President, Public and Government Affairs, Alaska Airlines - Seattle, testified via teleconference. Mr. MacKay provided the following testimony:

Alaska Airlines has requested the current licensing requirements for common carrier beverage dispensary licenses be modified for two reasons. First, to simplify the requirement so that additional aircraft will not require an entirely new application process involving filing out the application, supplying supporting exhibits, posting and publishing the application for a license. Alaska [Airlines] and the [Alcohol Beverage Control] Board agree that modifying the statute to simplify obtaining additional common carry licenses will reduce the clerical and administrative work for both Alaska Airlines and the board and is therefore in the public interest.

Secondly, Alaska Airlines would like the fees reduced. Alaska [Airlines] currently has 102 aircraft in its fleet and plans to add additional aircraft each year. The growth of the fleet substantially exceeds the growth of our interstate flying. The company does not have an effective means of limiting the aircraft that serve Alaska to a select few. And instead operates all of its aircraft in the state, often to enable us to provide us single plane service to [and] from cities in Alaska to cities south or east of Seattle. Recent examples are our new routes to Washington, D.C., Boston, and Denver. Since every aircraft must be separately licensed with the current law and every license costs Alaska Airlines \$450 a year, that's a \$700 biannual fee plus \$200 license fee. The license fees have become quite high and will continue to

escalate at a faster rate than the company's interstate flying will escalate. Alaska only operates a small portion of our fleet on interstate routes on any given day. In addition, it should be noted that none of the other major airlines serving Alaska, with the possible exception of Delta, obtain Alaska liquor licenses since they do not operate interstate. Alaska [Airlines] believes that it pays substantially more for common carrier licenses than any other licensee in the state. And it seems fair to us to reduce the fees to more accurately reflect the cost to the board of issuing licenses and the interstate presence that Alaska [Airlines] actually has. If the proposed bill becomes law, Alaska [Airlines] will still pay fees far in excess of fees we pay in any other state, and rightfully so because of our interstate flying.

Number 2099

DOUGLAS GRIFFIN, Director, Alcoholic Beverage Control Board (ABC), Department of Revenue, testified via teleconference. Mr. Griffin informed the committee that the board was initially approached by Alaska Airlines a few years ago. Alaska Airlines is in unique situation, and licensing all of its airlines seems like a bit of overkill. From an equity standpoint, this legislation does make sense. Therefore, the ABC Board does support it even though there is some cost. The way the legislation is currently structured it would take a few more years before any other company would be impacted. The administrative "fix" is found on page 2, line 1, which allows the licenses to move to the same biennial cycle. Mr. Griffin reiterated the ABC Board's support of the legislation, and he noted that the legislature and the state should be aware that this legislation will cost some revenue. Mr. Griffin concluded by urging the committee to pass the legislation.

REPRESENTATIVE ROKEBERG referred to a document with the heading "SB 215 - License Renewal Breakdown".

MR. GRIFFIN said that document was a way in which to determine which companies would be impacted by this legislation. He said he wasn't sure whether [that document] was part of the latest fiscal note reflecting the Senate version. Basically, no other company has enough rail cars, buses, or other vehicles that would fall under the common carrier category impacted by this bill. Mr. Griffin pointed out that another unique aspect of Alaska Airlines is that it pays for a full year of licenses

because it operates year round. Therefore, those tourism companies only pay for half the year due to their seasonal operations; thus it will be quite some time before those entities are impacted.

Number 1920

REPRESENTATIVE ROKEBERG asked if the current requirements require each vehicle, boat, aircraft, or railway buffet car to be licensed as a common carrier.

MR. GRIFFIN replied yes. If any of the aforementioned operate between two Alaska ports, the entity has to obtain a common carrier license. This lead to the notion mentioned earlier of placing all of an entities rail cars, for example, on the same renewal cycle. He characterized that provision as a win-win provision.

REPRESENTATIVE MEYER related his understanding that ERA is on contract with Alaska Airlines. Therefore, he asked whether ERA would have to obtain its own liquor license or would ERA fall under the umbrella of Alaska Airlines.

MR. GRIFFIN answered that ERA is licensed separately. He said he wasn't sure that ERA still provided alcoholic beverage service, but when it did the company was licensed separately.

REPRESENTATIVE MEYER acknowledged that this is a minor cost when compared to the cost of running an aircraft. However, he pondered whether giving a break to the planes that Alaska Airlines flies intrastate would be create an advantage over those carriers that only fly within the state.

VICE CHAIR HALCRO related that he didn't believe any of the in-state carriers serve alcohol and those wouldn't need a common carrier license.

MR. GRIFFIN pointed out that there has to be a flight attendant to serve the alcohol and many of the in-state carriers don't have flight attendants and thus, by extension, don't serve alcohol. Mr. Griffin remarked that Alaska Airlines is a different order of magnitude [when compared to in-state carriers].

VICE CHAIR HALCRO, upon determining that no one else wished to testify, closed public testimony and announced that CSSB 215(FIN) would be held until Chair Murkowski returned.

HB 512-UNFAIR CIGARETTE SALES

VICE CHAIR HALCRO announced that the last order of business would be HOUSE BILL NO. 512, "An Act relating to cigarette sales; and providing for an effective date."

The committee took an at-ease from 4:27 p.m. to 4:28 p.m.

VICE CHAIR HALCRO reminded the committee that Version 22-LS1646\F, Ford, 4/26/02, had been adopted [on April 26, 2002] and thus Version F was before the committee.

Number 1712

NEIL SLOTNICK, Deputy Commissioner, Office of the Commissioner, Department of Revenue, testified via teleconference. Mr. Slotnick specified that HB 512 isn't legislation from the Department of Revenue, although it certainly impacts the department. This legislation provides the department with the authority to enforce the Unfair Cigarette Sales Act. Mr. Slotnick informed the committee that the committee substitute (CS) was drafted because the original legislation contained many technical problems with the licensing scheme. Mr. Slotnick thanked the sponsor and Mike Elerding, Northern Sales, for working on the CS. However, Mr. Slotnick noted that there are additional technical problems with [Version F] that may result in additional conceptual amendments to achieve technical accuracy. Mr. Slotnick pointed out that the Department of Revenue does not urge that this legislation be passed out of committee. This legislation maintains a minimum price for cigarette sales in the state. Mr. Slotnick stressed, "This is not a revenue measure. We, the Department of Revenue, are given the mandate to enforce this act but it is not a tax act, it is not a revenue act. There will be costs associated with the passage of this act." However, there is no funding source connected with this legislation, he pointed out. This legislation deals with a program that addresses alleged unfair business practices, which falls outside of the Department of Revenue's mandate, opined Mr. Slotnick.

Number 1565

MIKE ELERDING, President, Northern Sales Company of Alaska, Inc., testified via teleconference. Mr. Elerding provided the following testimony:

There are 25 states in the union and the District of Columbia that have specific legislation dealing with Unfair Cigarette Sales practices. House Bill 512 identifies and addresses predatory pricing practices and would end unfair cigarette practices in Alaska. The intent of the legislation is three-fold:

1. To end predatory pricing practices with regard to selling cigarettes at or below cost.
2. To create a level playing field for competition for the sale and distribution of tobacco products in Alaska.
3. To reduce youth access to cigarettes by ending below cost sales of cigarettes.

The climate in cigarette sales has changed dramatically over the years. Due to efforts of the health service community, the American Cancer Society and, bolstered by the Master Settlement Agreement, government, business and the public as a whole have come to recognize that cigarettes are a commodity with which there are associated certain health risks and, as such, must be marketed and sold in a manner different from the common "free enterprise" products. These changes reflect a philosophical change toward more control of how commerce in cigarette [sales] is conducted and how to prevent youth access, together with the philosophy of assisting the legitimate business interest in complying with tobacco laws without losing the ability to sell these products.

In Alaska the manufacturer's list price on a carton of cigarettes is the same for every wholesale distributor regardless of the volume purchased. The current manufacturer's list price for a carton of full revenue cigarettes is \$27.64. The state of Alaska collects \$10.00 in excise tax for every carton, bringing the [basic] wholesale cost on a carton of cigarettes to \$37.64. The Department of Revenue receives a copy of every manufacturers invoice for each carton of cigarettes imported into the state. These invoice copies assure the state that licensed wholesalers are remitting the appropriate amount of excise tax to the state. And based on these invoice copies the department can verify that the invoice cost on cigarettes is the same for all wholesalers

The actual retail price on a carton of cigarettes can range anywhere from the mid thirty dollar range to the high forties. Today in Ketchikan you can buy a carton of Marlboro's at retail from a large national chain store for \$35.15, which is \$2.49 below the manufacturer's list price to wholesale. Large Multi-state chain stores are employing predatory pricing practices by using price promotions on cigarettes to attract store traffic. The result of these pricing practices is to keep the cost on a carton of cigarettes artificially low.

Large national chain stores can absorb the cost of selling cigarettes below cost because they are looking to make a sale on a TV or VCR to a consumer who comes in to purchase the cheap cigarette prices. Tobacco wholesalers do not have the luxury of making up for low margin sales by selling high end consumer goods. And these predatory pricing practices by the large multi-state operators are injuring fair competition in the wholesale distribution community. And one unintended consequence of this pricing practice is that by keeping the cost of cigarettes artificially low it provides greater access to these products by underage consumers.

The question you have to ask yourself is "are cigarettes the type of commodity that should be marketed and promoted in Alaska on the basis of price?" Based on the fact that we are among one of the few states charging the highest cigarette excise taxes in the nation, I suspect that the answer is ... that Alaska does not advocate the marketing of cigarettes based on price.

The passage of HB 512 will create a new law that will mandate minimum price requirements for cigarettes at wholesale and retail. This law will minimize the potential for wholesalers and retailers to reduce the price of these products as a means of marketing cigarettes to minors. And it creates a level playing field for Alaska based wholesale distributors by ending predatory pricing practices of large multi-state operators.

The department of revenue had some initial reservations regarding this legislation however, we

have worked closely with representatives from the Department and I believe that the legislation in its current form addresses most or all of their concerns.

I urge your support of HB 512 and ask for a favorable recommendation from this committee.

[original punctuation provided]

Number 1363

REPRESENTATIVE ROKEBERG asked if stores such as Costco could receive shipments from its outside distributions warehouses and bypass any Alaskan wholesalers.

MR. ELERDING pointed out that anyone selling cigarettes in the state must be licensed by the state. He emphasized that the manufacturer's list price on a carton of cigarettes is the same for any wholesaler doing business [in the nation]. In further response to Representative Rokeberg, Mr. Elerding specified that manufacturers don't have promotions lowering the list price.

REPRESENTATIVE ROKEBERG informed the committee that recently he purchased a five-pack of Marlboros in which he received two packs free for the price of five.

MR. ELERDING said that's a contract arrangement whereby the manufacturer was under a contract with a retail store which will provide a buy-down for those products. Those buy-downs are available to all retail outlets. Mr. Elerding highlighted his point that he could purchase cigarettes from Wal-Mart at a cheaper price than he could from the manufacturer. Therefore, he questioned whether cigarettes are being promoted as a loss leader and are the sale cigarettes being promoted at a reduced price. He said he wasn't sure that is what the state would support in terms of the state's policy and practice on the sale of cigarettes.

Number 1203

REPRESENTATIVE MEYER related his understanding that large companies are doing with cigarettes the same thing that can be done with various other items being sold. He noted that it's common for large companies to use loss leaders.

MR. ELERDING agreed, but pointed out that cigarettes and tobacco are controlled products that have laws with regard to the

consumption of tobacco. "My question is does Alaska really want to endorse price promotions ... with tobacco products as a means of getting people in the store to buy other products." He further pointed out that as the price of tobacco is lowered, the product becomes more available to underage consumers.

REPRESENTATIVE MEYER disagreed because underage consumers should not purchase the tobacco to begin with, which is why the law to place tobacco products behind the counter was passed. Representative Meyer asked if Mr. Elerding would recommend extending this to all tobacco products and alcohol.

MR. ELERDING said that this legislation deals specifically with cigarettes, which he supports. However, he recognized that there are disparities in how tobacco products are taxed in the state as an in-state distributor versus a mail order distributor.

REPRESENTATIVE MEYER related that a Brown & Williamson representative had expressed concern that retailers were being paid by Phillip Morris in order to obtain prime shelf space.

MR. ELERDING clarified that HB 512 addresses both the wholesale cost and the retail price of a carton of cigarettes by mandating minimum prices. The Brown & Williamson issue is one regarding the display of products and how Phillip Morris controls contracts for buy-downs. If one participates in the Brown & Williamson program, then the Phillip Morris buy-down isn't available. He noted that Phillip Morris sells the most tobacco products.

Number 0983

BOB GALOSICH, Vice President, Wholesale Operations, Alaska Commercial Company, Frontier Expeditors, testified via teleconference. He informed the committee that Alaska Commercial Company operates Frontier Expeditors. Mr. Galosich related that Frontier Expeditors is in agreement with Mr. Elerding's statements. With regard to loss leaders, Mr. Galosich pointed out that loss leader pricing is a retail issue not a wholesale issue. He explained that there are two ways to go to market. There is either the high:low philosophy that uses loss leaders and the margins are picked up from other items or the every day low pricing scheme. Both ways can be used because there is a broad line products. Therefore, the large box retailers with wholesale buying privileges employ 0 percent to draw folks in the store and use 14 percent on general

merchandise, which is where the profit is made. However, wholesalers are typically in the specialty business with short lines of distribution that are generally competitive lines that don't allow variance in profit. Furthermore, the [wholesalers] have a very fine margin on which to operate. Therefore, there is no level playing field. Mr. Galosich pointed out that with issues of pricing, one must compare retail versus retail and wholesale versus wholesale because the two operate and go to market differently. In conclusion, Mr. Galosich reminded the committee that the intent of HB 512 is to place wholesalers and retailers on a level playing field with everyone making [some profit] in the end.

Number 0836

BOBBY SCOTT, Jan's Distributors, testified via teleconference. He noted that he has e-mailed his comments to the committee. Mr. Scott turned to the issue of the buy-down at the retail level. He related his understanding, after speaking with his RJ Reynolds's contact, that in the states with a minimum sale law the promotions for buying down go away. Therefore, some of the aforementioned concerns may be eliminated.

REPRESENTATIVE ROKEBERG directed attention to page 6, line 11, Section 43.50.560 and inquired as to the meaning of paragraph (3).

MR. SCOTT explained that if a carton of cigarettes costs \$5 to everyone then the \$10 tax would be added to that, totaling \$15. From that total, a 4 percent mark up would be added to the price.

REPRESENTATIVE ROKEBERG asked whether the mark up would be 5.5 percent due to the cartage. Furthermore, he asked whether there would be a cost differential due to the location of the store.

MR. SCOTT answered no. In further response to Representative Rokeberg, Mr. Scott explained that the cartage prices would be the same as well because it represents the cost to deliver the product to store level. He confirmed that the cost to deliver the product to the premises is absorbed in the 4.5 percent.

REPRESENTATIVE ROKEBERG inquired as to how the 4.5 percent reflect the current types of mark up on average. He asked, "Is that approximately what your mark ups are currently?"

MR. SCOTT replied no.

REPRESENTATIVE ROKEBERG related his understanding that there can only be a mark up of only 4 or 4.5 percent under this legislation.

MR. SCOTT emphasized that the [aforementioned mark up] isn't being obtained now. [The current mark up] is a little less than half [4.5 percent]. In further response to Representative Rokeberg, Mr. Scott confirmed that everyone in wholesale would have to [mark up] 4 percent and thus the playing field would be level and whatever one chooses to sell above the 4.5 percent is up to the individual [business]. The 4.5 percent is a threshold that an entity can't go below.

Number 0457

CYNTHIA DRINKWATER, Assistant Attorney General, Fair Business Practices Section, Civil Division (Anchorage), Department of Law, testified via teleconference. Ms. Drinkwater expressed concern that HB 512 is anti-competitive and unnecessary. The intent of the legislation is to address predatory pricing. However, there are statutes addressing this at the state and federal levels. Ms. Drinkwater turned attention to page 2, line 5, where Section 43.50.460 specifies the prohibited conduct and the penalties for such. She also directed attention to page 5, line 15, Section 43.50.540, which specifies the remedies for the violations. She explained that Alaska's anti-trust provisions allow for an injured person to bring an action seeking injunctive relief. If the defendant's conduct was shown to be wilful, the injured person is entitled to treble damages. Alaska law also provides for criminal penalties as well, although the current statutes are stricter.

MS. DRINKWATER said that the case law on predatory pricing makes it clear that anti-trust laws are established not to prevent competitive price-cutting but to address conduct that goes beyond that. The Supreme Court has, on numerous occasions, emphasized that simple below cost pricing isn't enough to equate anti-trust violations. Anti-trust laws are in place for the protection of competition not for the protection of competitors. Therefore, anti-trust laws are intended to promote and maintain legitimate price competition. Because the courts have been skeptical of predatory pricing claims, she suggested that businesses may be seeking an alternative or means to circumvent the established statutory law and case law. Therefore, HB 512 would make it easier for a plaintiff to obtain injunctive relief for damages while shifting the burden from private parties using

the judicial process to resolve disputes. Ms. Drinkwater noted that although [Version F] makes this less expensive for the Department of Revenue, [tape changes]...

TAPE 02-69, SIDE A

MS. DRINKWATER continued by pointing out that there are still costs involved for the department in following the requirements of [HB 512]. [Version F] has a provision that would allow DCED to spend or revoke licenses of retailers who have tobacco endorsements. Therefore, there is the potential for 1,700 tobacco endorsements to be subject to action if the retailers were found to be in violation of the provisions of the statute and thus there could be a huge administrative expense related to HB 512. Ms. Drinkwater reiterated that this bill is unnecessary due to the already existing laws addressing predatory pricing.

VICE CHAIR HALCRO announced that HB 512 would be held over and public testimony would not be closed.

ADJOURNMENT

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