

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

April 9, 2003

3:29 p.m.

**MEMBERS PRESENT**

Representative Tom Anderson, Chair  
Representative Bob Lynn, Vice Chair  
Representative Nancy Dahlstrom  
Representative Carl Gatto  
Representative Norman Rokeberg  
Representative Harry Crawford  
Representative David Guttenberg

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 234

"An Act relating to brewpubs, and continuing the existence of the Alcoholic Beverage Control Board; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 224

"An Act relating to a tobacco product manufacturer's compliance with certain statutory requirements regarding cigarette sales; and providing for an effective date."

- MOVED HB 224 OUT OF COMMITTEE

HOUSE BILL NO. 195

"An Act relating to coverage offered under an individual policy of health care insurance; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

**PREVIOUS ACTION**

BILL: HB 234

SHORT TITLE: BREWPUBS; ABC BOARD

SPONSOR(S): REPRESENTATIVE(S) MCGUIRE

Jrn-Date	Jrn-Page		Action
04/02/03	0739	(H)	READ THE FIRST TIME - REFERRALS
04/02/03	0739	(H)	L&C, FIN
04/09/03		(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 224

SHORT TITLE:CIGARETTE SALES REQUIREMENTS  
 SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
03/28/03	0673	(H)	READ THE FIRST TIME - REFERRALS
03/28/03	0673	(H)	L&C, FIN
03/28/03	0673	(H)	FN1: ZERO(LAW)
03/28/03	0673	(H)	FN2: ZERO(REV)
03/28/03	0673	(H)	GOVERNOR'S TRANSMITTAL LETTER
04/09/03		(H)	L&C AT 3:15 PM CAPITOL 17

**WITNESS REGISTER**

REPRESENTATIVE LESIL McGUIRE  
 Alaska State Legislature  
 Juneau, Alaska

POSITION STATEMENT: As sponsor of HB 234, presented the proposed committee substitute.

GLEN BRADY, President  
 Silver Gulch Brewing; President  
 Alaska CHARR (Cabaret Hotel Restaurant & Retailers Association)  
 Fairbanks, Alaska

POSITION STATEMENT: Testified against the changes for brewpubs in Sections 2 and 3 of HB 234.

MATT JONES  
 Moose's Tooth  
 Anchorage, Alaska

POSITION STATEMENT: Testified in favor of HB 234.

GARY KLOPFER, Owner  
 Snow Goose Restaurant  
 Sleeping Lady Brewing Company  
 Anchorage, Alaska

POSITION STATEMENT: Testified in favor of aspects of HB 234, advocating removing all production caps for breweries.

BOB KLEIN, Chairman

Alcoholic Beverage Control Board  
Department of Revenue  
Anchorage, Alaska

POSITION STATEMENT: Commented on the history of alcohol industry legislation during the hearing on HB 234.

JUANITA HENSLEY, Special Assistant  
Office of the Commissioner  
Department of Public Safety  
Juneau, Alaska

POSITION STATEMENT: Explained the amendments to HB 234 that would move the ABC board from the Department of Revenue to the Department of Public Safety.

PAT DAVIDSON, Legislative Auditor  
Division of Legislative Audit  
Legislative Budget and Audit Committee  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: During the hearing on HB 234, explained the recommendations from the most recent legislative sunset audit on the ABC board.

DOUG GRIFFIN, Director  
Alcoholic Beverage Control Board  
Department of Revenue,  
Anchorage, Alaska

POSITION STATEMENT: During the hearing on HB 234, explained the investigation of gambling on licensed premises.

MIKE BARNHILL, Assistant Attorney General  
Commercial Section  
Civil Division (Juneau)  
Department of Law  
Juneau, Alaska

POSITION STATEMENT: Presented HB 224 on behalf of the administration.

JOHANNA BALES, Revenue Auditor  
Department of Revenue  
Anchorage, Alaska

POSITION STATEMENT: Testified in favor of HB 224 for the Department of Revenue; explained that she enforces aspects of the Tobacco Master Settlement Agreement.

#### **ACTION NARRATIVE**

**TAPE 03-31, SIDE A**

Number 0001

**CHAIR TOM ANDERSON** called the House Labor and Commerce Standing Committee meeting to order at 3:29 p.m. Representatives Anderson, Dahlstrom, Gatto, Rokeberg, Crawford, and Guttenberg were present at the call to order. Representative Lynn arrived as the meeting was in progress.

HB 234-BREW PUBS; ABC BOARD

Number 0058

CHAIR ANDERSON announced that the first order of business would be HOUSE BILL NO. 234, "An Act relating to brewpubs, and continuing the existence of the Alcoholic Beverage Control Board; and providing for an effective date."

Number 0083

REPRESENTATIVE ROKEBERG moved to adopt committee substitute (CS) for HB 234, Version 23-LS0862\I, Ford, 4/4/03, as the working document. There being no objection, Version I was before the committee.

Number 0103

REPRESENTATIVE LESIL MCGUIRE, Alaska State Legislature, explained that HB 234 is a reauthorization of the Alcoholic Beverage Control (ABC) Board, which regulates the alcoholic beverage dispensary industry. House Bill 234 extends the sunset on the board, recognizing that it has served its function well. The Joint Committee on Legislative Budget and Audit (LB&A) conducted a recent audit of the ABC board, and one audit recommendation is incorporated in Section 1. She said this section amends AS 04.06.110 [Peace officer powers] by removing language which previously authorized the board to investigate prostitution, gambling, and other related offenses. She said it was the position of LB&A that this activity was beyond the scope of the ABC board.

Number 0232

REPRESENTATIVE MCGUIRE noted that Section 2 of HB 234 would change the amount that brewpubs are allowed to manufacture. Another provision in Section 3 allows a brewpub, for example,

the Moose's Tooth [in Anchorage], to sell beer in the form of growlers in quantities of five gallons or less to an individual. The current law gives an unfair advantage of one business over another because it states that beer must be brewed on the premises in order to allow the sale of growlers with food. She said that must have been an oversight. She said the point of Sections 2 and 3 is the recognition of a free market. The sunset provision of the bill will extend the board's life until June 30, 2006. The legislature has a precedent of extending the ABC board in three-year increments, requiring another LB&A audit and legislative action.

Number 0460

REPRESENTATIVE ROKEBERG said its important for committee members to understand that Section 3 was brought about by an anomaly in the law that really applies to only one business in Alaska. The Nineteenth legislature passed a law [creating a type of liquor license] that was repealed in succeeding years. The brewpub license requires that the brewing apparatus be on the same premise as the beverage dispensary license. In this one instance, the brewery was separate from the licensed premises, and that has caused a lot of problems. When there was a change in the growler amount last year, it was probably a drafting error. This is why Sections 2 and 3 in the CS look so similar, but there is a slight difference.

Number 0597

REPRESENTATIVE GUTTENBERG noted that Sections 1 and 4 are addressed in the LB&A audit but questioned why Sections 2 and 3 on brewpubs are not covered in a separate bill.

REPRESENTATIVE McGUIRE said all the policy changes to the ABC Board are relevant and fit within the title of the bill.

Number 0664

REPRESENTATIVE GATTO questioned if Sections 2 and 3 affect only one business. He suggested that when the [law] was written, it didn't address a specific operator, it was written as an idea, and that the operator and the law finally collided.

REPRESENTATIVE ROKEBERG clarified that Sections 2 and 3 of the bill are almost identical in affect, on page 2, starting on line 24, subsection (d), that language is unlike the rest of the statute because of the circumstances. When the legislature

revised the type of license, it grandfathered in several businesses under those licenses, so when the law was [later] rewritten, the legislature had to create that special subsection. He acknowledged that he wrote the language.

REPRESENTATIVE GATTO repeated his question, saying he did not understand the history of the language.

Number 790

REPRESENTATIVE ROKEBERG explained that the legislature created a brewpub license in statute, then later created the tavern license. Six licensees received these tavern licenses. Later, the legislature prohibited these tavern licenses, but grandfathered in these businesses, so the legislature had to write the law around these grandfathered businesses. After that, the legislature required these businesses to get a beverage dispensary license to wipe this whole thing out. But there still remains an anomalous situation under the statute. He said he has an idea of how to fix the confusion and do away with all these legal distinctions. He wants to bring fairness and clarity to the issue.

REPRESENTATIVE McGUIRE responded to Representative Gatto's question. She said the language in Section 3 was specifically drafted on the advice of a particular lobbyist to include a specific business. She said she looks at the issue as a policy maker. If the law is going to be fair, it ought not be based on one small technicality of one business. The language [in the law] was drafted to exclude that business from the marketplace.

Number 0988

REPRESENTATIVE ROKEBERG clarified that the existing law was drafted to [mitigate] the problems of the business. The legislature was changing its policy, and it had to grandfather those businesses in so they could continue to operate. He said her decision to remove sections from the law is a policy call.

REPRESENTATIVE GUTTENBERG said the law may have been directed at one business, but when the playing field changes, other businesses come into play, and the competitive nature of the market changes.

REPRESENTATIVE McGUIRE said she favors businesses competing for ideas and products. She does not want to craft legislation that

excludes or provides unfair advantage to one business over another.

Number 1077

REPRESENTATIVE CRAWFORD noted that the Department of Public Safety delivered amendments before the meeting, and he brought the amendments to the attention of the sponsor.

REPRESENTATIVE MCGUIRE said she will consider the department's amendments and will respond at the committee's next meeting when the bill is heard again.

Number 1184

GLEN BRADY, President, Silver Gulch Brewing; President, Alaska CHARR (Cabaret Hotel Restaurant & Retailers Association), testified against Sections 2 and 3 of HB 234. He described the brewpub issue as a nuisance issue; it comes up every year. He said he agreed with the sponsor's statements about the value of the Alcoholic Beverage Control Board and the significance of Sections 1 and 4 in HB 234. He reviewed the three-tier system in Alaska law which heavily regulates the manufacture, distribution, and retail sale of alcoholic beverages. He said businesses in the industry support the board as an appropriate mechanism to collect taxes and enforce regulations. But by integrating two tiers of the system - production and retail - the legislature is creating the potential for the "tied house" system in Britain, he warned. He said he favors competition, however, AS 04.11.450 [Prohibited financial interest] specifically excludes him, a brewery owner, from having a financial interest in a retail establishment. The law does not permit him to do what these two [brewpub] licensees are trying to do. He said it's incorrect to say that HB 234 levels the playing field. He said he chose to be a brewery; he could have chosen to be a brewpub; they are fundamentally different business operations. He described Moose's Tooth and Glacier Brewhouse as great businesses, that between the two of them, have 500 employees. He explained that he produces as much beer as both of them and has three employees. That should underline the fundamental difference of the two types of businesses, he said. He said there's enough room in the marketplace for breweries and brewpubs alike. But HB 234 allows a brewpub to act like a brewery, which is inappropriate for several reasons, he said. He added that it's unfair competition; it shortcuts two tiers of the three-tier system; it will make regulation of beverage alcohol more difficult; and it benefits two operators

to the exclusion of all others. Even other Anchorage brewpubs are not in favor of this bill, he said. He asserted that the entire industry - package store owners, bar owners, restaurant owners, breweries, and other brewpubs - are not in favor of HB 234. It is special interest legislation at its worst, he said. He said his letter to the committee lays out a complicated issue that has a long history and many facets. The situation has many significant ramifications that aren't obvious in the simple deletion of a section [of the law].

Number 1437

REPRESENTATIVE ROKEBERG said this is the old ABC board Christmas tree battleground. He referred to AS 04.11.450. He said he'd like to fix this law, once and for all. He said it might be easier to fix the law and allow Mr. Brady as a brewer to also own a restaurant.

MR. BRADY replied that he and other brewery owners formulated their business plans, found capital and took risk, and chose to develop a different type of business. He said he does not want to be in the bar and restaurant business; it's an entirely different business. That provision is the framework for the three-tier system.

REPRESENTATIVE ROKEBERG said that during the "tavern wars," the clause was added that restricted a brewery's ability to enter into any other business. The law established a different type of license which has since been taken off the books. Now the issue is brewpubs and how can they do wholesale business, he said. The more produce they sell wholesale, the more they compete with the breweries. He summarized Mr. Brady's position that because of the three-tiered system, he should be treated differently because he's a wholesale manufacturer and the brewpubs are retailers.

Number 1587

MR. BRADY clarified that his issue is not the brewpub's production cap. When legislation raised the production cap from 75,000 to 150,000 gallons, the stated purpose was to meet the demand of the on-premise pub. He said he believes that was a misrepresentation of the brewpubs' intentions. His issue is not how much beer brewpubs sell in their pubs; he said they should be allowed to sell as much beer as they can within existing regulations in their retail facilities. The crux of the issue has always been, why are the brewpubs competing with the

breweries [in the wholesale market]. To allow breweries to open restaurants is not a true compromise.

Number 1645

REPRESENTATIVE ROKEBERG said he is considering removing that distinction [between brewpubs and breweries] thereby allowing breweries to have retail premises. He also noted the possibility of doing away with all caps and limitations. For three of the last four years, the brewpubs have come back to the legislature, and he said he's tired of it.

Number 1691

REPRESENTATIVE MCGUIRE said that it's important that these businesses keep coming back. If a citizen believes a policy is wrong, the person will continue to return to lawmakers to get the situation changed. She clarified that this is not special interest legislation; it falls within her right as a lawmaker to look at existing state policies. She said she is interested in Representative Rokeberg's idea of a compromise which would eliminate the distinction [between brewpubs and breweries]. The policy arguments behind the law are not going to go away, she said. She objected to statements about the other parties' motives. She said she never heard the two brewpubs promise that if last year's law was passed, they would be satisfied.

MR. BRADY explained that he competes with breweries in an extremely competitive marketplace. Railway Brewing Company, one of the four licensees with a brewery-restaurant combination license, went out of business a few years back. The Moose's Tooth bought that equipment at auction. Last year, when the issue was raising the production cap, Moose's Tooth could have started another brewpub attached to its other dispensary license and doubled its own cap. However, he stated, it's cheaper to hire a lobbyist and change the law than it is to comply with existing law.

Number 1867

REPRESENTATIVE MCGUIRE stated that government should not create barriers so that businesses have to hire lobbyists to overcome the law so they can participate in the marketplace. She said the ABC board does have an important role, and regulations regarding safety matters are important. The time for this distinction [between brewpubs and breweries] is here and gone.

MR. BRADY said it boils down to the value of the three-tier system.

Number 1915

REPRESENTATIVE GATTO confirmed with Mr. Brady that when he started his business, there was a set of laws in place, which have since changed and which have created a disadvantage for him and other breweries. He said that HB 234 takes away the protections that were in place for the breweries.

REPRESENTATIVE McGUIRE responded that the legislature changes laws all the time. She said that legislators are policymakers; times change, and the conditions change in all types of industries and occupations. That's why one legislature cannot bind a future legislature.

REPRESENTATIVE GUTTENBERG asked what happens to the market if HB 234 passes.

Number 2010

MR. BRADY replied that he is out in the market competing for retail space on shelves and for tap handle space in bars and restaurants. That is how he derives his income. House Bill 234 allows a brewpub to go into the marketplace in an unrestricted manner and subsidize the sale of its beer. He said he cannot afford to give beer away because that is his [profit] margin; he has no other income to offset those marketing expenses. A brewpub is primarily a retail establishment; it has income from other sources - food service, on premise sales. When brewpubs go into the marketplace, they go in with a tremendous advantage because they can offset this expense and call it a marketing expense because they derive their income from retail sales. Having tap handles out in the market is a very effective marketing tool. He said he shouldn't be competing with them in that arena. If HB 234 doesn't pass, it's not going to hurt brewpubs, but it will hurt him and other brewery owners tremendously, he said.

REPRESENTATIVE ROKEBERG asked Mr. Brady if the brewpubs will be hurt if they don't get a raise in their caps.

MR. BRADY said that they have thrived under previous laws; he said he thinks they would continue to thrive.

REPRESENTATIVE ROKEBERG asked him as a representative of CHARR for the group's opinion. He said that the restaurant license was added [to state law] in 1996, but now the legislature has to look at the beverage dispensary license too because of brewpubs.

MR. BRADY replied that brewery restaurants are in competition with holders of beverage dispensary licenses. He said CHARR members have seen the value of their dispensary licenses eroded significantly by other legislation. It's tough times for everybody in the industry, he said.

Number 2190

MATT JONES, Moose's Tooth, Anchorage, explained that in 1996 he received a restaurant license and a brewery license. At that time, he could have purchased any number and combination of restaurant licenses and brewery licenses. He said there were no production caps on brewing beer, and there were no restrictions on either wholesale or retail sales. After he received his license, this changed. His company was frozen where it was; it could only own one restaurant and one brewery, and from that point on, there's a long history. He said from the very beginning, his business used the proper channels and applied for and was awarded the proper licenses that had no restrictions on wholesale or retail. The law was changed on him. Currently he owns a brewpub that consists of a retail side - the restaurant - and the brewing side. Before legislative changes last year, he had a 75,000-gallon production cap with no restrictions. Last year, legislation changed the production cap from 75,000 to 150,000 gallons, basically doubling it, but froze the wholesale level at the 2001 figure, which for the Moose's Tooth was 15,000 gallons. The legislature doubled his production cap but locked him in at his 2001 figures, which was about 10 percent of what he could produce. His company wants the legislature to allow the Moose's Tooth to sell more on the wholesale market. Generally, if a [another] state has a production cap on a brewpub, it lets that business owner decide whether that product is sold wholesale or retail.

Number 2353

MR. JONES discussed the issue of growlers. In his business, the restaurant and the brewery are separated by some distance. The original brewpub language allowed him to sell beer to a person on the premises, a retail transaction.

**TAPE 03-31, SIDE B**

MR. JONES said when the law was rewritten, it prohibited his company from selling quantities of beer out of his retail [restaurant], the Moose's Tooth in midtown Anchorage; he could only sell beer from the brewery at Ship Creek. This puts his business at a disadvantage to other brewpubs. The growler clause in HB 234 attempts to address this issue.

MR. JONES addressed the allowable level of wholesale activity. He said he is asking the legislature to return to the earlier law, allowing each brewpub to decide what it does with its production cap, whether wholesale or retail.

CHAIR ANDERSON handed the gavel to Representative Rokeberg.

Number 2317

REPRESENTATIVE GUTTENBERG asked Mr. Jones about when the state required him to have an alcohol beverage license. Didn't Mr. Jones argue then that he didn't want to be a bar, that he wanted to be a brewery or a different type of business?

MR. JONES replied that the Moose's Tooth has a full liquor license; it can sell hard liquor under a beverage dispensary license. However, the restaurant still only serves beer and wine. When it first opened, he wanted to run a pizzeria, sell beer and wine, and brew his own beer. He said the Moose's Tooth is far from a [typical] bar. Food along with beer is the primary formula for his business.

NUMBER 2260

REPRESENTATIVE ROKEBERG asked if the timing of the opening his business was unfortunate.

MR. JONES confirmed that four or five companies in Anchorage obtained restaurant and brewery licenses at the same time, but his is the only business where the brewery is located apart from the restaurant. He explained that occurred in order to comply with Anchorage municipal code that states that only incidental distribution can be done out of the business; moving kegs must be located in an industrial area. So he located the brewery in Ship Creek in order to comply with the municipal code.

Number 2206

REPRESENTATIVE ROKEBERG pointed out that Mr. Jones, because of the separation of his restaurant and brewery, is a victim of the laws that evolved over the years. That's why the legislature drafted legislation that grandfathered his situation, to do as little harm to his business as possible. He noted that the grandfathering law was drafted after his situation occurred, not in [advance].

Number 2167

GARY KLOPFER, Owner, Snow Goose Restaurant, Sleeping Lady Brewing Company, said he is testifying because this issue continues to come up, and the bills that pass don't clear it up; they just make it worse. Years ago, he decided to start with a restaurant license and a brewery license. Part of that decision was financial; he didn't want to run a bar because buying a liquor license is expensive for a new business. Several other businesses followed suit. He attempted to open his restaurant/brewery, then the legislature stepped in, more out of fear than fact, to stop this type of license from existing anymore. All of these businesses were stopped in their tracks. So every year, when the legislature makes changes, its usually against one party or another, which is unfair, he noted. He said he favors going back and making the field level for everybody, so that everybody can compete; it's unfair now. His friends who own breweries - if they want to run a beer garden in the summer and sell hamburgers, they can't do it. They're restricted from doing that by [statute]. That's unfortunate, he said. Then they look at him, who can sell as many hamburgers as he wants and can also wholesale his beer. Its not fair, he said.

Number 2190

MR. KLOPFER said that raising the production cap is ridiculous. If the parties that operate breweries are successful, why wouldn't the state want them to continue to grow, he asked. He recommended removing the 150,000-gallon cap completely. He suggested that breweries be allowed to buy any other license they desire, so they can compete. Anytime the legislature creates artificial boundaries, somebody's toes get stepped on, he said. He said these businesses are good for the state and the cities; they all employ people. The legislature should encourage business, not discourage it, he added.

Number 1967

REPRESENTATIVE ROKEBERG said he is trying to find a long-term solution. He confirmed that Mr. Klopfer has a brewpub with a beverage dispensary license and that he's covered by the gallon restrictions on his wholesale and retail sales. If the legislature chose to change the economic interest prohibitions, it would still have to deal with the gallon caps to make it a completely level playing field. That would allow brewpubs to produce as much as a brewery.

MR. KLOPFER said he could live with that, providing that the breweries could also do the same thing, buy a restaurant license and have a beer garden, or sell liquor if they want. It would be unfair if he could do it but the breweries couldn't.

REPRESENTATIVE ROKEBERG said changing the economic interest provision in current law [AS 04.11.450, Prohibited financial interest] would help Mr. Jones but it wouldn't help Mr. Klopfer regarding the issue of production caps. He surmised that to make the playing field truly level, the legislature would have to do both: remove the production caps and remove the economic restrictions. He added that would be difficult to do politically.

Number 1891

REPRESENTATIVE GUTTENBERG asked Mr. Klopfer if there is any restriction preventing him from opening another brewery and using the same brand name.

MR. KLOPFER replied yes, because under current law, once he owns a liquor license, it's illegal to buy a brewery license.

REPRESENTATIVE ROKEBERG pointed out that this is an example of the economic interest barrier he's been talking about.

MR. KLOPFER said that's correct. The state could require that he buy another license - and make more money on the additional license.

Number 1837

REPRESENTATIVE CRAWFORD recalled that during the debate last year on this law, the legislature was concerned about opening up [the field] to competition from Miller or Budweiser that might buy large restaurants or beer gardens, thereby damaging Alaska's homegrown businesses. Is that still part of the debate, he asked.

MR. KLOPFER replied that he's not sure that national competition was the argument. The issue was more that the legislature create a level playing field for Alaskans [in the brewing business]. He said the real crux of the issue was when alcohol - the beverage dispensary license - entered the picture. He said he thinks its against federal statutes for Budweiser or Miller to own liquor licenses. That used to be the Chinese Wall that separated the different licenses, he said. This bill essentially states that brewpubs are also de facto breweries, which means that brewpubs own beverage dispensary licenses and breweries too.

Number 1753

REPRESENTATIVE CRAWFORD said the 150,000-gallon limit was small enough that Miller and Budweiser and the other large national beers would be excluded from coming in and competing against Alaska's small homegrown breweries and brewpubs. If its not part of the debate anymore, perhaps the legislature needs to open this issue of production limits. He said he is looking for suggestions.

MR. KLOPFER said he doesn't understand why restaurant/brewery combinations have been outlawed. If businesses in Homer or Girdwood have a successful microbrewery operation, it's ludicrous for the state to say they can't have a beer garden or sell hamburgers during the tourist season.

Number 1690

BOB KLEIN, Chairman, Alcoholic Beverage Control Board, Department of Revenue, referred to Representative Crawford's comment about the past debate involving national breweries. The restriction on breweries against owning other licenses precedes the entire brewpub debate or any legislation, he said. The restriction was instituted initially to prevent what is known in the industry as "tied-houses." An example of a "tied-house" would be Budweiser opening retail establishments throughout the state and only allowing their product to be sold there. Excesses have occurred in the history of the industry, he said, and there was an attempt in Title 4, [Alcoholic Beverages,] of state law to prevent that from happening in Alaska. He said the ABC board prefers not to take a position on the brewpub issue and will carry out the legislature's law through regulations. He acknowledged that the brewpub issue is a very confusing one.

Trying to resolve it through regulation by the board is the wrong approach, he said.

MR. KLEIN explained that the ABC board met last week and unfortunately, the board had an earlier version of HB 234 that did not contain the committee substitute's Section 1 [that removes certain police powers from the board]. He said the board disagreed with the original recommendation by LB&A that ABC staff should not investigate violations of gambling or prostitution laws on licensed premises. Basically, he said, the ABC board is there [visiting the licensed facilities]. It has demonstrated that it can and does a good job, and if the ABC board doesn't do it, it just doesn't get done, he said. It's not as if the ABC board is enforcing gambling laws throughout the state; it's only on licensed premises.

MR. KLEIN said that the board is pleased to be extended to 2006, per Section 4 of HB 234.

Number 1560

REPRESENTATIVE ROKEBERG reiterated that the ABC board does not agree with Section 1 of HB 234, [which removes the investigation of prostitution and gambling from the board' purview]. Regarding the economic interest prohibitions, AS 04.11.450, he asked Mr. Klein to offer his personal opinion on how these prohibitions are part of the three-tiered system.

Number 1514

MR. KLEIN said the issue is the public interest being served by not allowing tied-houses in the state, by not allowing large breweries to cross that line. He said if the state is concerned about the big guys coming in and exercising undo influence, then perhaps removing the restriction of cross-ownership from breweries and or brewpubs that produce less than a given amount might answer all the questions. He said he sees no objection to Silver Gulch Brewing owning a restaurant; it makes sense. When the whole brewpub issue came before the ABC board, members questioned whether it's important where a retail product was manufactured. He said the elements of alcoholic beverage control are: is it legally obtained, is it sold in a controlled environment, and is it sold to the proper customers, in other words, not to minors or inebriates. The rest of it should be a level playing field.

MR. KLEIN, at the request of Representative Rokeberg, explained that a "tied-house" dates back to England when there were excesses by breweries and attempts to control the marketing and pricing of products. He answered questions from Representative Gatto about the components of the three-tiered system. He said the system begins with the producer - or the distiller, brewer, or importer. The second tier is the wholesaler, and the third tier is the retailer, which consist of bars, package stores, and restaurants. The ABC board deals with the industry as an entity.

REPRESENTATIVE GATTO asked if there are any problems if the producers, wholesalers, and retailers are the same entity.

MR. KLEIN said that would not be a problem for the ABC board.

Number 1344

REPRESENTATIVE CRAWFORD asked if Mr. Klein could comment on the amendments proposed by the Department of Public Safety.

MR. KLEIN said he had not seen the amendments.

Number 1302

JUANITA HENSLEY, Special Assistant to the Commissioner, Office of the Commissioner, Department of Public Safety, referred to the governor's Executive Order No. 110, now before the legislature. This executive order moves the ABC board from the Department of Revenue to the Department of Public Safety. After reviewing the recommendations of the legislative audit, the department proposed some changes through amendments to HB 234, basically to make it easier for the department to assist the industry and the board. The first change would place the board and its employees in the Department of Public Safety. She noted that the ABC board has not seen these amendments, and she apologized that the department has not had the chance to talk to the board.

Number 1205

MS. HENSLEY said another change would add two additional members to the board, the commissioner of the Department of Public Safety and the commissioner from either the Department of Revenue or the Department of Health and Social Services, since they deal with alcohol issues. The terms of these members would last as long as the tenure of the commissioner. The third

change is to have the director of the ABC board serve at the pleasure of the governor, as is the case with many other Alaska boards and commissions. The final change deals with removing the investigation of prostitution and gambling violations from the board's purview. She said that prostitution and gambling issues involving alcohol establishments certainly should be reviewed by the investigators, but it's a process that should include vice cops. The department would work directly with the ABC investigators, who would work closely with local police or the Alaska State Troopers. She said the department asked the committee to consider the proposed amendments, all or in part.

Number 1051

REPRESENTATIVE GATTO commented that HB 234 is becoming an omnibus bill.

MS. HENSLEY, in response to a question by Representative Rokeberg, said the legislature must act on the executive order by a resolution before May 5. The effective date of the transfer from the Department of Revenue to the Department of Public Safety is July 1.

REPRESENTATIVE ROKEBERG noted that there was no recommendation in the legislative audit to place the commissioners of the Departments of Public Safety or Revenue on the ABC board.

Number 0981

MS. HENSLEY noted that other boards and commissions include department commissioners. She stated that there was a reference in the audit to the Alaska Criminal Justice Assessment Commission recommendation [in its May 2000 report] to add two more members to the board. Since the board would be placed in the Department of Public Safety, it would be good to have the commissioner serve on the board, she said.

REPRESENTATIVE ROKEBERG commented that the ABC board is quasi-judicial in nature and not like a typical board. He said he doesn't agree with adding commissioners to the board.

REPRESENTATIVE GUTTENBERG questioned the amount of time a commissioner has available to serve on such a board and noted that the amendment does not provide for the commissioner's designee to serve in the commissioner's place.

MS. HENSLEY suggested changing the department's amendment to include "commissioner or commissioner designee."

Number 0869

REPRESENTATIVE ROKEBERG confirmed that increasing the number of members on the board increases the number required for a quorum. He asked why the department objects to ABC investigators acting on illegal activities.

MS. HENSLEY replied that they are peace officers but not fully-commissioned officers.

REPRESENTATIVE GUTTENBERG asked if cases have been dismissed because of improper procedures by the investigators.

MS. HENSLEY said she did not know. She said this move of the ABC board from the Department of Revenue to the Department of Public Safety would align enforcement functions within state government. The Department of Public Safety enforces the same alcohol laws.

Number 0677

PAT DAVIDSON, Legislative Auditor, Division of Legislative Audit, Legislative Budget and Audit Committee, Alaska State Legislature, stated that the audit that was conducted [on the ABC board] recommended a three-year extension; a four-year extension is the rule of thumb [for most boards]. The audit identified numerous areas of needed improvements, and so recommended a three-year extension so that there can be timely follow-up. Some of the issues are operational in nature and some, addressed in the committee substitute to HB 234, are statutory in nature. When the legislature directed the board to investigate gambling and prostitution, it substantially increased the mission of the ABC board, but the funding did not increase. She said the focus of the board shifted away from regulatory actions to enforcement actions. The board was not issuing timely notices of violations. The auditors determined that the original mission of the ABC board was being hampered by this expansion. The audit recommended the legislature reevaluate whether it wanted the board to do this kind of work. The executive order that moves the board into the Department of Public Safety aligns it more closely with law enforcement. The investigator could alert law enforcement officials to suspicious activities and then return to other work, for example, making sure that licensees are not selling alcohol to minors. The

audit concluded that the gambling and prostitution investigations were diluting the focus of the ABC board, she said.

Number 0635

MS. DAVIDSON discussed the audit's second recommendation regarding the increase in the number of members on the board. During the sunset period, the audit noted that there was a problem keeping members on the board and getting them appointed through the governor's office. This five-member board is particularly structured between industry and public members. When the new appointments or reappointments are not timely, that balance is affected and the board can't get its work done in a timely manner, she said. The Alaska Criminal Justice Assessment Commission made 21 alcohol recommendations, and two were addressed to the ABC board. The recommendations proposed increasing members of the board, one from the public health or medical community, and the second from law enforcement. The commission stated that having those two additional points of view on the board would better protect the public's interest. So that would increase the board to seven members: two industry members, three public members, and two additional public members with a particular focus.

Number 0407

DOUG GRIFFIN, Director, Alcoholic Beverage Control Board, Department of Revenue, said the board has not been consulted or briefed on the amendments from the Department of Public Safety. He said he was not prepared to comment on them.

REPRESENTATIVE ROKEBERG explained that Chair Anderson intends to hold HB 234 over for additional consideration.

Number 0375

MR. GRIFFIN explained that the legislature gave the ABC board the task of investigating gambling and prostitution activities [on licensed premises] four years ago. He said that the ABC board has done this work historically. Almost all the gambling cases on licensed premises over the last 25 years have been investigated by ABC staff. He said the cases brought forward by ABC investigators are not all prosecuted, not because of poor investigation work, but because the district attorney's (DA) office makes choices every day about resources and whether they want to pursue a gambling case. Gambling is a low level,

victimless crime. Sometimes the DAs refuse a criminal prosecution because they know that the ABC board can take administrative action to suspend or fine a licensee for this activity. Even for administrative violations, the penalties can be severe. He said the Department of Law has noted that these investigations fall outside the ABC board's statute, even though it is an activity done on licensed premises. So the ABC board needs a statutory change to allow it to do things like legally serve a search warrant. The gambling cases are not complex; if they are complex, ABC staff bring in other law enforcement personnel. Most of the cases don't interest the local law enforcement or State Troopers; they have higher priorities.

Number 0186

MR. GRIFFIN stated that a licensee who allows gambling gains an unfair advantage over someone who follows the law. Gambling is clearly an issue of competition between licensed premises at the retail tier. The authority to do investigations has not added to the ABC's burden, he said; it actually makes legal an activity which the ABC board has historically done. If the ABC board doesn't do it, its not going to get done, he stated. The ABC board really does object to this audit recommendation. The ABC board is very likely to come across gambling activities in the course of doing other work. Staff know the bartenders, have the contacts, get the tips. It was asked whether we have dropped the ball or lost a case because we're inept at doing this. We haven't, you won't be able to find it. It's a very good question. The audit attempts to keep the ABC investigators focused entirely on administrative matters.

**TAPE 03-32, SIDE A**

Number 0010

MR. GRIFFIN continued that there's a lot of low-level misdemeanor activity that is appropriate for the ABC board to address. "We are addressing it, we have historically addressed it, and I think we should be able to continue to address it," he said. He added that the ABC board supports the [sunset] extension in HB 234. He said the board is functioning as it was designed to function and is doing a very good job. He noted that the legislative auditor sent questionnaires to various user groups. He invited members to review the responses that came back from the board's clients - from police departments, from licensees, and from community councils. He said those responses clearly demonstrate that the board is doing a good job for the citizens.

Number 0149

REPRESENTATIVE ROKEBERG asked if he preferred a four-year sunset extension to a three-year extension.

Number 0162

MR. GRIFFIN said yes. He said he agreed with the auditors that some operational things needed improvement - upgrading the database and tightening office procedures. He said the board is working on those and will have them addressed in short order. A lack of funding and staff turnover are partly responsible, he said. Moving the board to the Department of Public Safety will involve some very major changes. The ABC board is an independent board and quasi-judicial. He expressed concern about diluting the board's power and undermining its unique nature and reasons why it was created.

REPRESENTATIVE ROKEBERG asked if he had any comments on the gallonage issue.

Number 0307

MR. GRIFFIN said he started work as the director about the time this issue started. There's no question that it has been very frustrating for legislators and for breweries. It's frustrating that the players haven't been able to come up with quite the right solution. Everyone has his or her own definition about what a level playing field is, he said. He added that he hopes the legislature can find an equitable solution and put the issue to rest, once and for all.

Number 0397

REPRESENTATIVE ROKEBERG announced that HB 234 will be held over for future consideration.

HB 224-CIGARETTE SALES REQUIREMENTS

Number 0450

REPRESENTATIVE ROKEBERG, acting chair, announced that the final order of business would be HOUSE BILL NO. 224, "An Act relating to a tobacco product manufacturer's compliance with certain statutory requirements regarding cigarette sales; and providing for an effective date."

MIKE BARNHILL, Assistant Attorney General, Commercial Section, Civil Division (Juneau), Department of Law, testified on behalf of the administration, presenting HB 224. He explained that the bill helps the state protect its revenues derived under the Master Settlement Agreement (MSA). Alaska and 45 other states entered into the MSA with the tobacco manufacturers in 1998.

MR. BARNHILL explained that under the settlement agreement, Alaska's revenues are reduced in certain circumstances. To avoid those reductions, Alaska enacted an NPM (non-participating manufacturers) statute, AS 45.53, in 1999, and actively enforces the statute. Unfortunately, he stated, it's difficult to enforce the statute because the tobacco manufacturer that is failing to comply may be a small manufacturer located in a far-flung jurisdiction, such as India or the Philippines. Alaska has, on occasion, filed suit against a tobacco manufacturer in India, hiring a process server to serve the summons and complaint in India, and has ultimately obtained a default judgment. But that's the difficult way of [enforcing the statute], he said.

Number 0575

MR. BARNHILL stated that in 2001, Alaska enacted AS 45.53.145 [Notification of noncompliance; confiscation of noncomplying cigarettes], and other states followed suit. Last summer, the National Association of Attorneys General set up a working group to design uniform legislation that all states could enact, and House Bill 224 is the product of that [model legislation].

MR. BARNHILL stated that HB 224 creates a directory of [tobacco manufacturing] companies that have complied, either by signing onto the Master Settlement Agreement or by depositing the required amounts of escrow under AS 45.53. If the tobacco manufacturers certify that they have [deposited the required escrow], they get on the list; companies need to certify annually. Their cigarettes can then be sold in Alaska. House Bill 224 also provides for penalties for noncompliance. It provides a process by which the Department of Law can serve a summons and complaint against a tobacco manufacturer that has failed to comply, not by hiring a process server and serving in India, as Alaska has done in the past, but by serving the complaint on the commissioner of the Department of Community and Economic Development.

Number 0685

REPRESENTATIVE DAHLSTROM asked how much is the escrow from a [nonparticipating manufacturer] tobacco company.

MR. BARNHILL replied that it changes every year, but in 2001, the escrow was approximately 1.5 cents per cigarette.

Number 0703

REPRESENTATIVE ROKEBERG asked what he knew about the ability of Altria Group [the parent company of Philip Morris] to pay [money owed under the Master Settlement Agreement]. He also asked the ramifications to Alaska's budget if Philip Morris does not pay.

MR. BARNHILL said he hasn't seen the confidential financial data about Altria Group's ability to pay. He said Alaska is expecting a [tobacco settlement] payment next week of \$17.6 million, of which Philip Morris would pay 50 percent. Because the State of Alaska securitized 80 percent of these revenues, the ultimate impact to the general fund would be a loss of \$1.7 million if Altria Group does not pay.

Number 0797

JOHANNA BALES, Revenue Auditor, Department of Revenue, explained that she currently runs the tobacco tax program. She also enforces certain provisions of the Master Settlement Agreement. She said HB 224 will definitely be helpful in enforcement responsibilities, especially with foreign manufacturers that are very difficult to track down. This legislation is extremely important, and she stated that the department supports it.

Number 0884

REPRESENTATIVE ROKEBERG, noting no additional witnesses, closed the public hearing on HB 224.

Number 0888

REPRESENTATIVE DAHLSTROM moved to report HB 224 out of committee with individual recommendations and the two accompanying zero fiscal notes. There being no objection, HB 224 was reported from the House Labor and Commerce Standing Committee.

**ADJOURNMENT**

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:17 p.m.