

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

April 21, 2004

3:30 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 538

"An Act relating to taxes on cigarettes and tobacco products; relating to tax stamps on cigarettes; relating to forfeiture of cigarettes and of property used in the manufacture, transportation, or sale of unstamped cigarettes; relating to licenses and licensees under the Cigarette Tax Act; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 331

"An Act relating to federal requirements for governmental plan and other qualifications for the teachers' retirement system, the public employees' retirement system, and the judicial retirement system; and providing for an effective date."

- MOVED CSHB 331(STA) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 538

SHORT TITLE: TOBACCO TAX; LICENSING; PENALTIES

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

03/18/04	(H)	READ THE FIRST TIME - REFERRALS
03/18/04	(H)	W&M, L&C, FIN

03/24/04 (H) W&M AT 7:00 AM HOUSE FINANCE 519
03/24/04 (H) Heard & Held
03/24/04 (H) MINUTE(W&M)
03/26/04 (H) W&M AT 7:00 AM HOUSE FINANCE 519
03/26/04 (H) Heard & Held
03/26/04 (H) MINUTE(W&M)
03/31/04 (H) W&M AT 7:00 AM HOUSE FINANCE 519
03/31/04 (H) Heard & Held
03/31/04 (H) MINUTE(W&M)
04/02/04 (H) W&M AT 7:00 AM HOUSE FINANCE 519
04/02/04 (H) Moved CSHB 538(W&M) Out of Committee
04/02/04 (H) MINUTE(W&M)
04/07/04 (H) W&M RPT CS(W&M) NT 4DP 2DNP 1NR 2AM
04/07/04 (H) DP: SAMUELS, GRUENBERG, WILSON, HAWKER;
04/07/04 (H) DNP: KOHRING, MOSES; NR: WEYHRAUCH;
04/07/04 (H) AM: ROKEBERG, OGG
04/21/04 (H) L&C AT 3:15 PM CAPITOL 17

BILL: HB 331

SHORT TITLE: RETIREMENT:TEACHERS/JUDGES/PUB EMPLOYEES

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

05/21/03 (H) READ THE FIRST TIME - REFERRALS
05/21/03 (H) STA, L&C, FIN
03/30/04 (H) STA AT 8:00 AM CAPITOL 102
03/30/04 (H) <Bill Hearing Postponed to 4/1/04>
04/01/04 (H) STA AT 8:00 AM CAPITOL 102
04/01/04 (H) Scheduled But Not Heard
04/06/04 (H) STA AT 8:00 AM CAPITOL 102
04/06/04 (H) Heard & Held
04/06/04 (H) MINUTE(STA)
04/14/04 (H) STA AT 8:00 AM CAPITOL 102
04/14/04 (H) Moved CSHB 331(STA) Out of Committee
04/14/04 (H) MINUTE(STA)
04/15/04 (H) STA RPT CS(STA) NT 3DP 1NR
04/15/04 (H) DP: HOLM, LYNN, WEYHRAUCH; NR: COGHILL
04/19/04 (H) L&C AT 3:15 PM CAPITOL 17
04/19/04 (H) Heard & Held
04/19/04 (H) MINUTE(L&C)
04/21/04 (H) L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

JOEL GILBERTSON, Commissioner
Department of Health and Social Services
Juneau, Alaska

POSITION STATEMENT: Presented HB 538 and answered questions.

JOHANNA BALES, Excise Audit Manager
Tax Division
Department of Revenue
Anchorage, Alaska

POSITION STATEMENT: Explained provisions in HB 538 and proposed amendments.

ELIZABETH LUCAS, State President
AARP
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 538.

DOÑA WILLIAMS
Teens Against Tobacco Use (TATU)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 538.

MICHELLE TOOHEY, Director of Public Advocacy
American Lung Association of Alaska
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 538.

MICHAEL J. ELERDING, Owner
Northern Sales Company of Alaska, Inc.
Ketchikan, Alaska

POSITION STATEMENT: Testified on HB 538; spoke about the effects of adopted and proposed amendments on his business.

DAN BOONE
Homer, Alaska

POSITION STATEMENT: Urged passage of HB 538.

DARWIN BIWER
Anchorage Cabaret Hotel Restaurant & Retailers Association
(CHARR)

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 538, emphasizing the need for education instead.

EMILY E. NENON, Alaska Advocacy Manager
American Cancer Society
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 538.

VERA JAMES
Alaska Native Health Board (ANHB)

Anchorage, Alaska

POSITION STATEMENT: Conveyed ANHB's support for HB 538 and cited statistics relating to Alaska Native youth.

BOYD McFAIL

Anchorage, Alaska

POSITION STATEMENT: Testified that he doesn't favor the tax increase in HB 538; agreed with the need for education and requested an exemption for premium cigars and pipe tobacco.

PATRICIA SENNER, Family Nurse Practitioner

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 538.

ACTION NARRATIVE

TAPE 04-46, SIDE A

Number 0001

CHAIR TOM ANDERSON called the House Labor and Commerce Standing Committee meeting to order at 3:30 p.m. Representatives Anderson, Gatto, and Rokeberg were present at the call to order; Representatives Crawford and Guttenberg arrived shortly thereafter. Representatives Dahlstrom and Lynn arrived as the meeting was in progress.

HB 538-TOBACCO TAX; LICENSING; PENALTIES

[Contains discussion pertaining to SB 368, the companion bill]

CHAIR ANDERSON announced that the first order of business would be HOUSE BILL NO. 538, "An Act relating to taxes on cigarettes and tobacco products; relating to tax stamps on cigarettes; relating to forfeiture of cigarettes and of property used in the manufacture, transportation, or sale of unstamped cigarettes; relating to licenses and licensees under the Cigarette Tax Act; and providing for an effective date." [HB 538 was sponsored by the House Rules Standing Committee by request of the governor; before the committee was CSHB 538(W&M).]

Number 0100

JOEL GILBERTSON, Commissioner, Department of Health and Social Services, presented HB 538, a \$1-a-pack increase in the tobacco tax that is part of the governor's fiscal package. Increasing tobacco-product excise taxes is an effective tool in reducing tobacco consumption and health impacts, he told members.

Calling tobacco the number-one health threat facing the state, he said it's a leading cause of disability, illness, and death. Since the tax increase in 1997, when the "\$1 per pack" was implemented, five years of data have shown a 30 percent decline in cigarette consumption in Alaska. He lauded this accomplishment of the previous legislature and the advocates who worked for that increase.

COMMISSIONER GILBERTSON pointed out that young people especially stand to gain from this legislation. Increasing the unit price for tobacco products is one of the most effective ways to prevent young Alaskans from beginning to smoke, he said, noting that individuals usually begin smoking at an early age, thereby starting a lifelong addiction. Highlighting the sensitivity of youths to price increases, he predicted a \$1-a-pack increase will add to the 50 percent decline in smoking by youths seen since the 1995 Youth Risk Behavior Survey, which he called a statistically valid survey, and the 2003 survey completed year.

COMMISSIONER GILBERTSON reported that in the last calendar year, through stepped-up enforcement of the Synar program, a decline occurred from 30.2 percent to 10 percent in terms of illegal sales to minors. A further 15 percent drop in youth-smoking rates expected from this legislation would translate to 1,800 lives saved from premature death due to tobacco consumption.

Number 0290

COMMISSIONER GILBERTSON said increasing the price of tobacco products is an effective public health and policy tool to increase the health of adult Alaskans as well. He predicted the result that 3,500 adult smokers will finally choose to quit and avail themselves of cessation services provided by the State of Alaska and in partnership with the [Alaska] Tobacco Control Alliance (ATCA). For every 3,500 smokers who quit, he said, an estimated 800 will be saved from smoking-related deaths.

COMMISSIONER GILBERTSON noted that vulnerable populations include infants who are subjected to in utero exposure to high nicotine levels; he suggested that smoking by expectant mothers would be reduced significantly by this legislation, resulting in 850 babies spared from such exposure in the next five years.

COMMISSIONER GILBERTSON also predicted a great impact among Alaska Natives, who experience a 44 percent smoking rate. Noting that the Alaska Native Health Board and the Alaska Native Tribal Health Consortium support this legislation for that

reason, he reported having worked cooperatively through the tribal organizations and the ATCA to target programs towards the Native community. He remarked, "We need to do more, and we will do more going into the future, but this legislation will help the Native population disproportionately, ... another reason why this is good legislation."

COMMISSIONER GILBERTSON cited a 1998 study that showed \$133 million in tobacco-related medical expenditures in Alaska because of tobacco consumption, as well as \$137 million in lost productivity just from deaths - not including breaks, disability, or illness. Noting the large number of econometric studies on the relationship between price and tobacco use, he said, "We've looked at the 17 largest, and in each one of them it did show a correlation between increasing cost of tobacco products and decreased utilization. We expect that to continue with this legislation." He informed members that Ms. Bales from the Department of Revenue would address other aspects including enforcement provisions and the fiscal note.

Number 0466

REPRESENTATIVE GATTO asked whether this is a revenue measure or relates more to the effects on children, for example. He said he thinks this is a good idea and could have an enormous positive effect on unborn children and in helping to protect toddlers from secondhand smoke, which is sufficient reason for him to support the bill. However, he cautioned about possible unintended health consequences for teenagers who give up smoking and then may take up some other dangerous and bad habit.

COMMISSIONER GILBERTSON replied that he hadn't seen a single study suggesting that a price-related decrease in use by minors has done anything but improve their health status, although he acknowledged there could be something he wasn't aware of. He brought attention to a chart that shows a direct correlation between tobacco price and consumption from 1990 to 2003, with a health-status increase for young Alaskans and the general population. He offered to provide further information as well.

Number 0691

REPRESENTATIVE ROKEBERG asked what the administration's position is on Section 16, page 4, which he'd added in the House Special Committee on Ways and Means to increase money going to the smoking education and cessation fund by perhaps \$4.2 million, to fully fund it to levels recommended by the Centers for Disease

Control and Prevention (CDC). He noted that he had amendments to clarify that language.

COMMISSIONER GILBERTSON apologized that he hadn't been at that hearing and thus hadn't seen the language as it moved forward; he related his preference for getting back to Representative Rokeberg with a more official response from the administration. Noting that funds are appropriated in the budget annually by the legislature for tobacco-control programs, he acknowledged that Alaska and some other states fund this at a lower level than recommended by CDC, but claimed tremendous success for the program nonetheless. He elaborated:

We've seen precipitous declines in the consumption of tobacco products in both adult and youth. We've seen good access to cessation services, including the operation of a toll-free hotline and cessation services, investments in partnerships with the tribal health consortium, with Southcentral Foundation, Native organizations. I think we're succeeding.

COMMISSIONER GILBERTSON acknowledged that the question of whether more dollars could be invested and have a positive impact on the community is a legitimate one.

Number 0868

REPRESENTATIVE ROKEBERG returned to Representative Gatto's question of whether this is a revenue measure or intended to decrease tobacco use. He submitted that the history of tobacco taxation in Alaska is checkered, and voiced concern that under the master settlement agreement, funded by a 45-cent-per-pack assessment by the smokers themselves, some \$668 million was provided, which may have been adjusted over the years. Relating his understanding that the initial grant was an enormous amount of money, he said the legislature saw fit to take 80 percent, "securitize it, and build roads with it." He added:

I think we did the right thing because of the discounted value of the dollar and what we got out of it. However, we're using some \$4 million of that money, basically, to go towards our smoking-cessation program, which was, in fact, part of the agreement that was made with the tobacco companies originally. So we've been short-funding that from the get go. We had a tremendous amount of debate when we last increased this tax by 71 cents. And at that time,

just to get the legislature to buy into it, we've got to dedicate it to ... the statehood constitutional ... dedicated fund, to schools.

REPRESENTATIVE ROKEBERG reiterated that he'd like to know the administration's position on this, and expressed hope that it would be a supportive one.

Number 0974

COMMISSIONER GILBERTSON acknowledged that this legislation would generate much-needed revenue for the state and the general fund, but said the administration, and the governor in particular, put this forward after consulting in December with the [Alaska] Tobacco Control Alliance, to improve public health and reduce tobacco consumption. He said he believes the administration sees this as a win-win situation for the State of Alaska.

REPRESENTATIVE ROKEBERG responded that he was glad to have the governor on board, but clarified that he himself was asking, as a matter of public policy, to have adequate funding given to those people who need it, the smokers who are paying for this. Citing statistics that show more than 70 percent of current smokers wish to quit, he suggested the need to provide a helping hand and put this money where it's supposed to go.

COMMISSIONER GILBERTSON noted that the master settlement agreement and other funds that came in were largely driven by states' responding to health care costs of tobacco-related illnesses associated with the Medicaid program; that was the reason for the litigation, and the State of Alaska continues to carry a large cost in its Medicaid program, well over \$60 million a year associated with tobacco-related illnesses. He added that while this administration hasn't proposed using a portion of the 20 percent that remains for Medicaid services, that's what the legislature chose to do last year with the (indisc.-coughing). So there are multiple purposes of those funds, he concluded.

Number 1126

REPRESENTATIVE CRAWFORD remarked that he believes it's OK to get more money from this because of all the money it costs the state through Medicaid and other programs. However, he said, it seems if the goal is to have fewer young people start to smoke, the best method is to raise the age to 21. He mentioned legislation he'd been trying to put forward for a couple of years; spoke in

favor of putting a [tax] of a dollar a pack, or more, on cigarettes; and asked why the age shouldn't be raised to 21.

REPRESENTATIVE CRAWFORD turned attention to Section 7, page 3, lines 7-10, and observed that it raises to three cartons a month the amount of cigarettes that can be brought to Alaska from out of state. He said this seems to be a big loophole for Internet sales and so forth.

REPRESENTATIVE ROKEBERG pointed out that it's an amendment he'd made. He said he could explain it after the commissioner responded to the earlier concern.

COMMISSIONER GILBERTSON offered to sit down and talk with Representative Crawford about his aforementioned legislation, saying he hadn't been aware of it.

CHAIR ANDERSON suggested the committee wouldn't address that in this bill unless there was an amendment.

COMMISSIONER GILBERTSON opined that the most effective intervention relating to tobacco consumption nationwide has been increasing the price of the product. He said this is an effective public health tool as constructed. He acknowledged, however, that raising the age also would decrease consumption among a certain population. As for the second concern, he said Johanna Bales of the Department of Revenue could address it.

REPRESENTATIVE ROKEBERG offered to speak to it also.

Number 1293

REPRESENTATIVE CRAWFORD related that from what he'd read, the most effective thing to keep people from starting to smoke is to delay it until later in life. He opined that raising the age has been shown to be as effective as raising the price.

COMMISSIONER GILBERTSON agreed that raising the initial age for legally purchasing tobacco products does decrease consumption. Across the "general spread of tobacco consumers," however, he said increasing the price of tobacco is the most effective public health intervention tool for decreasing consumption. He said that's why the department and "the advocates" have been promoting this [legislation].

CHAIR ANDERSON remarked that the irony is how many 19- to 21-year-olds smoke, which might cut the fiscal note in half if the

amendment passes. He suggested it would be interesting to hear which the administration would support.

Number 1361

REPRESENTATIVE ROKEBERG responded to Representative Crawford's earlier question [on Section 7, page 3, lines 7-10]. He clarified that it was intended to allow only for actual personal transportation by someone flying in to the state, for example, not for Internet sales or anything else. He explained that under current law, a person is a misdemeanor who brings in more than five packs of cigarettes. He said bad laws that can't be enforced shouldn't be on the books.

REPRESENTATIVE CRAWFORD asked, "If you can't enforce five packs, how can you enforce three cartons?" He questioned having it on the books at all.

REPRESENTATIVE ROKEBERG replied that there has to be an amendment on the Internet sales only. This is only for personal interstate transportation.

REPRESENTATIVE CRAWFORD replied that it seems [there are laws] limiting interstate transportation of liquor. He asked: So why not limit cigarettes?

REPRESENTATIVE ROKEBERG answered, "We did. We just raised the limit, is all." He said the difference in what constitutes criminal activity is the amount: five packs of cigarettes or three cartons.

CHAIR ANDERSON announced that there would be more opportunity to debate this at the next hearing.

Number 1440

REPRESENTATIVE GUTTENBERG referred to Representative Crawford's comments about the age limit and said it's not a cessation issue, but relates to not starting [to smoke]. As to having the revenue decrease, he remarked, "In the end, that's the ideal."

CHAIR ANDERSON set aside HB 538 temporarily.

HB 331-RETIREMENT:TEACHERS/JUDGES/PUB EMPLOYEES

CHAIR ANDERSON announced that the next order of business would be HOUSE BILL NO. 331, "An Act relating to federal requirements

for governmental plan and other qualifications for the teachers' retirement system, the public employees' retirement system, and the judicial retirement system; and providing for an effective date." [HB 331 was sponsored by the House Rules Standing Committee by request of the governor; before the committee was CSHB 331(STA).]

CHAIR ANDERSON asked whether anyone wished to testify. [There was no response.] He noted that the bill had been heard a couple of days before.

Number 1463

REPRESENTATIVE DAHLSTROM said she'd been reviewing this and knows the request by the governor's office pertaining to removal of Village Public Safety Officers (VPSOs) from the program was because of something that came from an Internal Revenue Service (IRS) audit. She asked what the state is doing to encourage participation in the VPSO program. She offered her belief that the original intent in "adding that" was to help retain VPSOs in their positions, which are hard to fill. She asked whether anyone present or on teleconference could address this.

CHAIR ANDERSON asked whether Melanie Millhorn of the Department of Administration or anyone else was on teleconference. [There was no response.] He suggested holding the bill until the next meeting.

Number 1511

REPRESENTATIVE ROKEBERG said he appreciated Representative Dahlstrom's question, but opined that it has nothing to do with the bill; it has to do with recruiting VPSOs, not IRS rulings and the status of Alaska's statutes.

CHAIR ANDERSON agreed, but indicated he'd hold the bill if a member had a concern relating to its passage.

REPRESENTATIVE DAHLSTROM said she wouldn't object to moving the bill, but thought it was a relevant question because, to her understanding, that was the intent of the original makers of the bill years ago.

CHAIR ANDERSON suggested Representative Dahlstrom's staff could talk to Ms. Millhorn, who could answer in the next committee of referral.

REPRESENTATIVE DAHLSTROM agreed to that.

Number 1558

REPRESENTATIVE ROKEBERG moved to report [CSHB 331(STA)] out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 331(STA) was reported from the House Labor and Commerce Standing Committee.

HB 538-TOBACCO TAX; LICENSING; PENALTIES

[Contains discussion of SB 368, the companion bill]

CHAIR ANDERSON returned attention to HOUSE BILL NO. 538, "An Act relating to taxes on cigarettes and tobacco products; relating to tax stamps on cigarettes; relating to forfeiture of cigarettes and of property used in the manufacture, transportation, or sale of unstamped cigarettes; relating to licenses and licensees under the Cigarette Tax Act; and providing for an effective date."

Number 1575

JOHANNA BALES, Excise Audit Manager, Tax Division, Department of Revenue, noted that she is the program manager for the cigarette and tobacco products excise tax. She referred to written testimony she'd provided and informed members that she would address the bill analysis in committee packets. Ms. Bales explained that this bill raises the cigarette tax from \$1 to \$2 a pack, and raises the other tobacco products tax from 75 percent to 100 percent of the wholesale price.

MS. BALES said this also makes technical corrections to the Cigarette Tax Act and the "other tobacco products tax" Act. For example, there was disparity between what licensees pay for their licenses; with this legislation, anyone who brings this product into the state for resale would pay a \$50 license fee, and thus those who paid the lower fee of \$25 would now pay \$50. However, an individual with a license to bring cigarettes in for personal consumption would still pay \$25. Furthermore, because of the chance for double taxation, technical corrections were made to the definitions of license types to ensure that someone who purchases from a licensee doesn't have to pay the tax; this relates primarily to out-of-state licensees.

MS. BALES reported that there'd been brief discussion about Representative Rokeberg's amendment, already included in

[CSHB 538(W&M)], to increase the limit for transporting cigarettes into the state from 100 to 600 cigarettes. Also, there are proposed changes in the misdemeanor and criminal penalties; the threshold is raised so an individual must bring in a higher amount of cigarettes before it justifies a felony provision versus a misdemeanor. She said the Department of Law had gone through this, and now the Act is in compliance with other felony provisions in statute.

MS. BALES noted that another section had been discussed briefly. Mentioning 11.2 percent of annual cigarette taxes that would be deposited into the general fund, she said the legislature would be directed to appropriate those amounts to the tobacco-use education and cessation fund; it is estimated this 11.2 percent will amount to about \$5.1 million a year.

Number 1738

MS. BALES further noted that technical corrections are being made to tax-stamp legislation passed last session. If a licensee purchases tax stamps but those stamps are lost in transit, the department will replace those, provided it gets "adequate documentation from the carrier" that those stamps have been lost. She said this had been a big problem for some licensees.

MS. BALES advised that, currently, licensees who purchase cigarette tax stamps on a deferred-payment basis must post a bond equal to 200 percent of the monthly purchases, which results in 100 percent coverage, since someone can make two months' purchases before having to make the first payment. Language in the bill would allow licensees who've been in the state for five years, who have a physical presence, and who have been "a good taxpayer" for five years to post a 100 percent bond. Thus the Department of Revenue would basically be extending credit for "the other 100 percent" for a period of one month. That had been an issue with some of the distributors, she noted.

MS. BALES pointed out that some provisions allow licensees to maintain some unstamped inventory in the state if they are making sales out of state and they provide information showing that they are properly licensed in those other jurisdictions to pay taxes in those jurisdictions. Furthermore, there are forfeiture provisions in the bill such that if a person has a felony violation in cigarette trafficking, unstamped cigarettes

can be seized, as well as assets used in the commission of that crime.

Number 1837

MS. BALES addressed a provision relating to a floor-stock tax to be paid on the effective date of the Act. She explained:

A floor-stock tax is the difference between ... the tax rate on the effective date, which is \$2 a pack, and the current tax rate of \$1 a pack, and that all distributors and retailers would have to pay to the department, in six monthly installments, that difference in revenue.

MS. BALES noted that committee packets contain information showing that in 1997, when there was no floor-stock tax, an estimated \$7 million was lost in cigarette-tax revenues. Furthermore, complaints had been received from consumers. She explained that consumers and distributors, primarily the latter, had stockpiled. But instead of passing those savings on to consumers, [the distributors] had basically pocketed state revenues. She said most other states have a floor-stock tax. Noting that she'd highlighted the finer points of the bill, Ms. Bales offered to answer questions.

Number 1879

REPRESENTATIVE ROKEBERG returned attention to his amendment on page 4 [Section 16, added in the House Special Committee on Ways and Means]. He mentioned putting it into terms of a percentage of total proceeds and asked Ms. Bales whether that would add the needed clarification or whether she had other recommendations.

MS. BALES provided her understanding that the way that allocation was done, it puts more money into the tobacco-use education and cessation fund than was intended.

REPRESENTATIVE ROKEBERG suggested Ms. Bales work with him and his staff, saying there was a draft. He added, "The intention is to make that the accurate amount, and reflect that."

Number 1930

REPRESENTATIVE ROKEBERG turned attention to language regarding the personal transportation of 600 cigarettes. He asked whether

Ms. Bales recommended deleting the preceding wording about the first 100 cigarettes.

MS. BALES affirmed that. She specified it's on page 3, Section 7, beginning on line 7 [and also in Section 15]. Current language says the cigarette tax doesn't apply to the first 100 cigarettes imported by an individual for personal consumption [during the calendar month].

REPRESENTATIVE ROKEBERG asked whether the implication would be "by any method."

Number 1983

MS. BALES answered in the affirmative, but noted there are cigarette-shipping restrictions that someone importing through the mail would be in violation of. She said:

So we would recommend removing this sentence that says "the first 100 cigarettes" and leaving in the amendment that was offered by Representative Rokeberg [included in CSHB 538(W&M)] of "the first 600 cigarettes personally transported". That would alleviate any confusion of people thinking, ... "I can mail in 100 cigarettes, but I can also personally transport 600." And really what we're trying to say is that ... 600 is the maximum amount that you can personally, ... physically on your person, carry into the state.

MS. BALES specified that the suggestion was to remove that language in Sections 7 and 15.

REPRESENTATIVE ROKEBERG asked, then, whether the thrust would be to allow personal transportation of a limited amount of cigarettes monthly, but that any other importation such as via the Internet would be strictly prohibited.

MS. BALES affirmed that.

REPRESENTATIVE ROKEBERG asked, "Is there an amount there?"

MS. BALES answered that it's zero under current statute.

REPRESENTATIVE ROKEBERG, noting that Representative Crawford had expressed concerns, said he wanted to make sure there was an

understanding. He requested confirmation that the department doesn't object to the limit of 600 for personal importation.

Number 2040

MS. BALES replied:

We do not object to that. And the main reason is our focus in the past for cigarette-tax enforcement has not been on the personal transportation in someone's luggage. ... It would be prohibitively expensive and invasive for us to go to the airport and check people's luggage. Our focus and area of concern is with the Internet, and that has been a big problem for us.

REPRESENTATIVE ROKEBERG added, "Or if there's other methods of major commercial-type importation of contraband."

MS. BALES concurred.

REPRESENTATIVE ROKEBERG noted that current statute [limits it] to five packs of cigarettes. Since importation of six packs would be a class A [misdemeanor under the bill], he remarked, "Bad law."

Number 2071

REPRESENTATIVE CRAWFORD said he'd rather have the amount be one carton and remove the "monthly" part. He explained:

If you don't have any way of enforcing this, why would you put in there "monthly"? ... You don't know how many trips up and down you made. You could still be breaking the law because ... you brought in 600 ... cigarettes last week. So it seems kind of ambiguous to me just to put "monthly", that you must have a limit for that time and that time alone. ... I would think that three cartons of cigarettes ... is a lot to bring in, because ... you could make lots of trips.

REPRESENTATIVE CRAWFORD asked for an explanation if the foregoing is wrong.

REPRESENTATIVE ROKEBERG suggested the average smoker probably smokes a carton a week. Mentioning one year in jail and a

\$10,000 fine for someone who brings in two weeks' worth, he said it makes no sense.

CHAIR ANDERSON turned to public testimony, requesting that people limit testimony to two minutes in order to hear from as many as possible.

Number 2153

ELIZABETH LUCAS, State President, AARP, noting that she is a volunteer, told the committee:

AARP is entirely in support of House Bill 538. Research tells us and the governor's transmittal letter clearly states that a higher tobacco tax will help prevent our youth from beginning to smoke. It will also help some current smokers stop.

AARP is the largest organization of grandparents in the world. We smile when we see our grandkids play sports, and we smile when they come proudly home with a good report card. We enjoy our grandkids. I am confident that no Alaskan grandparent smiles when they learn that one of their grandchildren has started to smoke. Some AARP members smoke; many AARP members used to smoke and know how difficult it is to quit. If raising the [cost of a] pack of cigarettes helps prevent any of Alaska's grandchildren from starting to smoke, we are strongly in favor of it.

We were concerned with the data in the governor's transmittal letter indicating that Alaska Natives, and especially Alaska Native high school students, smoke at a much higher rate than the non-Native population. We strongly recommend that some of the new revenue coming to state government ... from this tax increase be used to target cessation efforts to Native smokers and, in particular, to our Native youth.

House Bill 538 is good economic policy, and it's good health policy. It makes sense and it's fair. AARP recommends a "yes" vote on House Bill 538.

Number 2236

REPRESENTATIVE LYNN asked whether it would be discriminatory to give revenue to one group of Alaskans more than another.

MS. LUCAS responded, "Targeting a certain group brings to mind that they have the most ability to be susceptible. And so if that is true, then ... I would think that ... the money would be geared toward them because they are ... at a higher risk." In response to Chair Anderson, she said, "If we could use some of this money to actually work ... on the cessation efforts toward this particular group, I would think that that would be [good]."

REPRESENTATIVE LYNN suggested it has shades of racial profiling.

MS. LUCAS replied that she doesn't see it as such, but sees it as [assisting] someone who needs some help.

Number 2318

DOÑA WILLIAMS, Teens Against Tobacco Use (TATU), informed the committee that she is an active participant in TATU and attends Juneau-Douglas High School. She said since the recent \$1-a-pack tax, she has seen a lot of high school students stop smoking because they don't want to continue to "raise the money to support their habits." It also deters younger students from starting. "Our whole group is in support of this Act," she concluded.

CHAIR ANDERSON asked whether some students also say it doesn't matter what the cost is, because they really like to smoke.

MS. WILLIAMS replied that she's sure some students do, but said most of her friends have quit smoking, for example.

Number 2360

REPRESENTATIVE GUTTENBERG referred to Representative Gatto's earlier question with regard to whether teens may turn to other things if the price of cigarettes rises. He asked Ms. Williams whether she has seen evidence of this.

MS. WILLIAMS replied that she couldn't say. She indicated most of her friends [who smoked] were actually more acquaintances because of their habit.

TAPE 04-46, SIDE B

Number 2375

REPRESENTATIVE LYNN thanked Ms. Williams for being a witness against this terrible habit.

Number 2360

MICHELLE TOOHEY, Director of Public Advocacy, American Lung Association of Alaska, told members:

I'm honored to speak today in support of House Bill 538, increasing the state tobacco tax. For the American Lung Association of Alaska, tobacco taxes are strictly a public health issue. Studies show that the higher cigarette taxes are, the more effective they are - the most effective way to reduce smoking among youth and adults, and Alaska's own experience proves the point: less addiction, less disease, less suffering, less premature death, lower health care costs to private businesses and to government program.

There are few, if any, more important measures that could be identified to document success. We are heartened by your willingness to consider increasing the tobacco tax. We see it as a huge step in the fight against tobacco addiction in our state, a cause the American Lung Association of Alaska enthusiastically supports.

Number 2318

REPRESENTATIVE ROKEBERG observed that three municipalities, to his knowledge - Anchorage, Fairbanks, and Juneau - have their own tobacco taxes in Alaska. He asked whether Ms. Toohey's organization has a position on restricting additional municipal taxation and leaving this as a state issue.

MS. TOOHEY replied:

Representative Rokeberg, we appreciate your position on disallowing municipalities to increase the tax even further. But in general ... we are opposed to any sort of a preemption on a local level, not only for taxes but other provisions such as, potentially, clean-indoor-air ordinances which could be ... preempted on a local level.

Number 2265

MICHAEL J. ELERDING, Owner, Northern Sales Company of Alaska, Inc., noted that he and his wife are owners of this small wholesale-distribution company in Southeast Alaska. He said:

We are partners with the state, and we are the state's tax-collection arm. Last year we collected and remitted to the state over \$4 million ... in tobacco excise tax. And so it's very important for us to be concerned when the state is enacting policy regarding tobacco laws and tobacco taxes. So it's important that ... we be involved and ... pay attention.

I've prepared ... testimony with two pages regarding anticipated and other amendments that have been offered to this bill. I'll be as brief as I can reviewing those. First, I'd like to thank the Department of Revenue and the Department of Law for their working late in the night last night to draft ... what we're calling ... fair-trade legislation. And basically, the ... governor's transmittal [letter for the bill] indicates that this is not a revenue measure, but more ... a health measure; it's a cessation measure that ... would stop smoking.

That being the case, it's inconsistent for state policy to allow retailers and other wholesale distributors to use predatory pricing practices to sell cigarettes at below cost, ... or a predatory pricing method. And, therefore, we support an amendment which would ban the practice of allowing distributors and retailers from using predator pricing ... schemes to promote the sale of cigarettes. The amendment repeals and reenacts the language in Alaska Statute 43.50.800 and strengthens existing state law to that effect.

Number 2203

MR. ELERDING addressed the tax on other tobacco products as follows:

The Senate today introduced ... an amendment that would close a loophole that allows nonlicensed Alaska distributors to sell tobacco products, be it Copenhagen and/or other non-cigarette products, into the state without being required to pay the state excise tax. ... The example is that ... [a]

manufacturer or a representative in Florida can sell a ... can of Copenhagen or chew to [an] Alaska consumer for \$10. But if this law passes, the excise tax would be 100 percent, so ... the tax for ... that can of chew ... would also be \$10. So, basically, our ... cost right out of the box would be \$20, whereas the competitor who is in Florida doing business through mail order or Internet would have a cost of \$10. ...

Alaska businesses are at a distinct ... disadvantage because ... we're paying the tax; ... the non-Alaska business is not required to pay the tax. ... Alaska businesses lose on that, the state loses because they're not collecting the excise tax, and the governor's intention of trying to ... reduce ... tobacco consumption is lost because the price incentive to reduce consumption goes out the window when you give somebody a \$10 incentive, or a 100 percent incentive, for not paying the tax to purchase those products.

MR. ELERDING explained reasons for wanting to delete the entire floor tax:

The Department of Revenue spoke about a floor-tax amendment. We support ... the amendment offered in the [House Special Committee on Ways and Means], which would provide for a six-month phase-in of paying ... the floor tax.

However, we prefer that the committee delete Section 25 of [HB 538], which would delete the entire floor tax. And the reason for that is there's a lot of changes from this time ... versus 1997, when the state enacted ... the increase in tax from \$2.90 [per carton] to \$10.00. And the first one is that, due to a higher frequency of black-market and ... counterfeit cigarettes, bootleggers and others ... have made the tobacco companies be much more strict in terms of their distribution of tobacco products. So, as a result, we're on allocation on a weekly basis, and we can't purchase cigarettes just ... at our will; they tell us how much we can buy and when we can buy it. ... So there's a limitation on what we can buy.

Number 2093

MR. ELERDING continued:

Secondly, part of the problem last time was there was about a six-month or eight-month phase-in lead time between when the law was enacted and when the effective date of that measure came in, which provided plenty of time for people like myself ... to stockpile some cigarettes.

And finally, the state has more than a modicum of control about ... how this tax is collected, because right now ... the mechanism for the state to collect the tax is through the sale of the stamp. ... If I were to try and stockpile ... stamps, I'd have to go to the state window to purchase those stamps; the state would know ... and be able to monitor what kind of stockpiling effort takes place. ...

If you take a look at what happened ... the last time, if I had not stockpiled some cigarettes ... I would have a very difficult time being in the cigarette business because one-third ... of the amount that we stockpiled went to paying for increased costs and additional carrying costs of our inventory; the other part went for increased costs of carrying our accounts receivable; and, ... for the first time since 1960, ... our buildings in Sitka and in Juneau had break-ins, ... and the targets of those break-ins were theft of cigarette products, so we had to implement new security measures and we also had to have higher insurance. ...

So, basically, our position as a tobacco distributor is that this is a one-time opportunity for us to get a little "bump" in capital ... to cover the increased costs of carrying cigarettes, as a result of state action, which is increasing ... the cost of cigarettes, again, because of the tax.

Number 2052

MR. ELERDING discussed concerns about Representative Rokeberg's previous amendment and reasons for wanting an exemption in the neighborhood of 200 cigarettes. He said:

The last measure I'd like to speak to is the personal exemption. Representative Rokeberg had ... submitted

an amendment to increase the exemption from ... 100 cigarettes to 600 cigarettes. Our concern is that ... that's a pretty substantial increase. And, really, our other concern is that ... the transportation of the cigarettes ... in the amendment indicates that it must be transported by the consumer on his person.

Our concern is that there could be a more liberal interpretation of that, which would broaden the scope of that, thereby allowing the consumers ... to bring in, through other transportation methods, more product. And, really, the whole intent of this legislation is to make sure that the state ... is increasing the cost of cigarettes to reduce consumption.

By increasing the exemption, ... you're eliminating that incentive to have those people stop smoking. Basically, you've said, "We're going to allow this exemption, ... which will take away the incentive for them to stop smoking." ... We want to make sure that the language is tight. And I've heard comments on that today, which makes me feel better, but we also feel ... [an] exemption in the neighborhood of 200 cigarettes, which is one carton of cigarettes, would be much more reasonable ... and equitable, and something that we could support.

CHAIR ANDERSON informed Mr. Elerding that there'd be discussion of the amendment at the next hearing; he mentioned minimum pricing and Section 25 and suggested that Mr. Elerding be available to answer questions then.

Number 1960

DAN BOONE, Homer, testified in support of HB 538. He told members:

I believe this tax is supported by approximately 80 percent of Alaskans. It will raise approximately \$35 million annually. It will reduce the number of cigarettes sold and the number of smokers. It will also reduce the number of teenagers that start smoking. And, in the long run, it will reduce state Medicaid expenses.

I fail to see a problem with this proposal other than it is called a tax. It probably should be called a user fee. Currently, the State of Alaska has a Medicaid burden for tobacco-related illnesses in excess of \$130 million annually. The current tobacco tax brings in about \$45 million, with another \$25 million coming from the master settlement agreement, for a total of \$70 million.

Even with the estimated \$35-million user-fee increase, the State of Alaska will still be subsidizing Medicaid for tobacco-related illnesses by more than \$25 million a year. For a state with a looming fiscal problem, it would only seem prudent to eliminate all unnecessary expenses or collect appropriate fees from those incurring the expenses.

Tobacco is a legal product, and people do have the right to choose. But if they choose to smoke, they should also be willing to accept the financial responsibility for the consequences of that choice. Therefore, I strongly urge you to support and pass House Bill 538.

Number 1879

DARWIN BIWER, Anchorage Cabaret Hotel Restaurant & Retailers Association (CHARR), testified in opposition to HB 538. He voiced concern that raising the tax on cigarettes an additional dollar will make them a unique item. Although not a smoker himself, he cautioned that teenagers will go to the schools with a carton of cigarettes stolen from a relative, for example, and kids will buy these cigarettes because they seem special.

MR. BIWER emphasized that education is the only way to keep people from starting to smoke or to get them to stop. Referring to Representative Rokeberg's comments about the tobacco settlement, he said 80 percent [of that settlement money] hadn't gone where it was supposed to - towards education that would provide a better means to deter smoking.

Number 1767

EMILY E. NENON, Alaska Advocacy Manager, American Cancer Society, referred members to a letter she'd submitted [in support of HB 538] and read from the second-to-last paragraph, "By increasing the state's tobacco tax, with its known

correlation to reducing youth smoking, we are taking a critical step in stemming the tide of rising health care costs to the state and needless death and disability in our communities."

Number 1725

VERA JAMES, Alaska Native Health Board (ANHB), informed members that she was speaking for ANHB as a whole; now representing 229 federally recognized tribal communities within Alaskan, ANHB was established in 1968 as a nonprofit organization and advocates on health care issues that may impact Native people and their culture. Noting that ANHB had sent a letter in support of HB 538 for reasons given in recent testimony by others, Ms. James also pointed out that 44 percent of Alaska Native high school students continue to smoke, even though tobacco use by high school students nationwide is declining.

Number 1670

BOYD McFAIL, Anchorage, spoke on his own behalf, saying he feels this tax increase isn't a good way to go. He agreed with [Mr. Biwer] that education is the way to stop teens from starting to smoke cigarettes. He also asked that there be a tax exemption on premium cigars and pipe tobacco [sold exclusively in tobacco shops]. He remarked, "You don't see teenagers out there smoking cigars or pipes, and if you do see a teenager out there smoking a pipe, it's most likely that the product that they're smoking is not a tobacco product."

MR. McFAIL pointed out that that premium cigars sold exclusively in tobacco shops had been able to generate state revenue, and said he'd sent information about revenue from one store to Representative Dahlstrom's office the previous night; he noted that until 1999, this one store had paid almost \$26,000 to the state for sales of cigars or pipe tobacco. He explained:

After that tax went into effect, the revenue that was generated for the state went down. The popularity, though, of smoking the cigars and pipes did not go down. The only thing that happened was people started to import their stuff ... from other ... tobacco stores outside of the state.

MR. McFAIL predicted that if the previous trend had continued, this one shop would now pay an estimated \$60,000 in revenue to the state this year. Saying cigars and pipe tobacco aren't smoked in the same way [as cigarettes] and don't have chemicals

added, as happens with cigarettes, chewing tobacco, or snuff, Mr. McFail again requested an exemption [from the tax in Section 17] for premium cigars or pipe tobacco sold exclusively in tobacco shops.

Number 1513

PATRICIA SENNER, Family Nurse Practitioner, Anchorage, testified in support of HB 538, noting that she works with teenagers. [Ms. Senner had also sent a letter of support on behalf of the Alaska Nurses Association.] She explained that her interest in this bill is to increase the price of cigarettes in an effort to discourage their use by young people. She also spoke in favor of dedicating a portion of the proceeds from this tax for continued anti-smoking campaigns and smoking-cessation programs. She said:

I feel a two-pronged approach is very important in reducing smoking. Unfortunately, a large portion of the homeless youth I work with smoke. Many of them started at a very young age because their parents let them have access to cigarettes. Though current programs haven't stopped these youths from smoking, I know that it has greatly decreased their consumption rates.

One of the most common requests for services at my clinic is for assistance in quitting smoking. Medicaid - and, I'm sure, private insurance as well - does not pay for nicotine patches, which is about \$50 for a three-week set of patches. It'd be extremely helpful to these poor youth to have access to products and programs that could help them improve their health and their lives.

MS. SENNER noted that a lot of these kids also use marijuana; she suggested it would be nice if there were some way to tax that as well. Ms. Senner requested passage of this bill.

CHAIR ANDERSON closed public testimony and noted that amendments would be addressed at the next hearing. [HB 538 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:40 p.m.