

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON WAYS AND MEANS

March 24, 2004

7:05 a.m.

MEMBERS PRESENT

Representative Mike Hawker, Chair
Representative Bruce Weyhrauch, Vice Chair
Representative Vic Kohring
Representative Dan Ogg
Representative Ralph Samuels
Representative Peggy Wilson
Representative Max Gruenberg
Representative Carl Moses

MEMBERS ABSENT

Representative Norman Rokeberg

OTHER LEGISLATORS PRESENT

Representative Paul Seaton

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. 493

"An Act relating to adoption and revision of a long-term fiscal plan for the State of Alaska."

- SCHEDULED BUT NOT HEARD

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

WITNESS REGISTER

WILLIAM CORBUS, Commissioner
Office of the Commissioner
Department of Revenue (DOR)
Juneau, Alaska

POSITION STATEMENT: Encouraged positive consideration of HB 538.

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

POSITION STATEMENT: Explained HB 538 and answered questions on behalf of DOR.

MICHAEL BARNHILL, Assistant Attorney General
Commercial/Fair Business Section
Civil Division
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Testified during the discussion of HB 538 and answered questions on behalf of DOL.

JOEL GILBERTSON, Commissioner
Office of the Commissioner
Department of Health and Social Services (DHSS)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 538 and answered questions on behalf of DHSS.

JOHN MIDDAUGH, M.D.
Chief of Epidemiology
Division of Public Health
Department of Health and Social Services
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 538 and answered questions.

BOB URATA, M.D., Board Member
Pacific Mountain Affiliate
American Heart Association

Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 538.

MIKE ELERDING, Owner
Northern Sales
Ketchikan, Alaska
POSITION STATEMENT: Testified during the discussion of HB 538.

TIM SCHRAGE, Operations Manager
Brown Jug
Anchorage, Alaska
POSITION STATEMENT: Testified during the discussion of HB 538.

EMILY NENON, Alaska Advocacy Manager
American Cancer Society
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 538.

MARIAH WARREN
Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 538.

STEVE WARREN, Member
Alaska Tobacco Control Alliance
Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 538.

PAT LUBY, Advocacy Director
AARP
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 538.

KATTARYNA STILES
Alaska Native Health Board
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 538.

JENNIFER APP, Alaska Advocacy Director
American Heart Association
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 538.

BILL BOUWENS, Tobacco Educator
Alaska Native Medical Center
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 538.

JOELLE HALL

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 538.

SHELLEY WALLACE

Dillingham, Alaska

POSITION STATEMENT: Testified in support of HB 538.

JEAN MARIE CRUMB, Chair-elect

Alaska Tobacco Control Alliance

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 538.

CAROLINE RENNER

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 538.

ACTION NARRATIVE

TAPE 04-15, SIDE A

Number 0001

CHAIR MIKE HAWKER called the House Special Committee on Ways and Means meeting to order at 7:05 a.m. Representatives Hawker, Samuels, Kohring, Wilson, Moses, and Ogg were present at the call to order. Representatives Weyhrauch and Gruenberg arrived as the meeting was in progress. Representative Seaton was also present.

HB 538-TOBACCO TAX; LICENSING; PENALTIES

Number 0157

CHAIR HAWKER 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."

CHAIR HAWKER announced, due to an error regarding public notice, that no action on the bill will be taken today and public testimony will be extended until Friday.

Number 0231

WILLIAM CORBUS, Commissioner, Office of the Commissioner, Department of Revenue (DOR), introduced HB 538 on behalf of the Office of the Governor. The governor, in the 2005 budget, specified a need for over \$100 million for new revenue enhancements and has suggested this tobacco tax bill as part of the solution, he said. He urged the committee to positively consider HB 538.

Number 0400

JOHANNA BALES, Excise Audit Manager, Tax Division, Department of Revenue, mentioned that she has been the program manager for cigarette and tobacco tax since 1997. She explained that [in HB 538] the cigarette tax would increase from \$1 to \$2 for a pack of 20 cigarettes. For other tobacco products (OTP), the tax would increase from 75 percent to 100 percent of the wholesale cost. The cigarette tax increase in the past was dedicated to the school fund, but this time all of the increase will go to the general fund, she said.

MS. BALES related that the cigarette tax is fairly old and has been around since 1949. Some technical corrections were needed to avoid double taxation, she said. As an example, she indicated, "If I were to hold a buyer's license and bring product in, the definition of a buyer says that I have to pay tax unless I buy from another licensee, and it defines those licensees; however, it left out our licensees that we have that are from out of state."

Number 0559

MS. BALES explained that the bill would allow, during enforcement, the state to seize assets that are used in the commission of a crime that violates the Cigarette Tax Act. That provision is currently not in place, and only cigarettes that are unstamped can be seized, she noted. The language in the bill comes directly from Title 4, the Alcoholic Beverage Control Board statutes, which says assets can be seized when used to violate those provisions, she said.

MS. BALES went on to say that another significant part of the bill would institute a floor stock tax, the difference between the old and new tax rates on the date of enactment. In 1997 there was no floor stock tax, and there were significant amounts of stockpiling and losses estimated to be \$7 million in revenue because retailers and distributors brought in large quantities of cigarettes to avoid paying tax at the new rate. Those

savings were not passed along to the consumer, and there were multiple complaints. She pointed out that most states and the federal government have floor stock taxes when they institute new taxes.

Number 0809

MS. BALES remarked that there will need to be an aggressive enforcement program in place to curb black-marketing, bootlegging, and Internet sales due to the large increase in the tax. She pointed out that Alaska will not have the highest tax. Rhode Island will have a \$2.45 per pack tax beginning July 1, and New Jersey's tax is \$2.05 per pack. Since the tax is a large increase, an incentive for bootlegging and black-marketing, aggressive enforcement will be needed to protect revenues and businesses that are complying with the law.

CHAIR HAWKER noted the presence of Representatives Weyhrauch and Gruenberg.

Number 0937

REPRESENTATIVE SAMUELS asked if there are minimum amounts regarding confiscated property.

MS. BALES answered that there are some minimum amounts, but they are very low. Importing less than 1,000 cigarettes is a Class A misdemeanor, importing 1000 or more cigarettes is a Class C felony and would subject the person to seizure of their property, she related. She noted the bill has provisions that state, if the vehicles are in villages and are the sole means of transportation, they would not be seized.

CHAIR HAWKER announced that Mike Barnhill from (DOL) is available to answer questions about the bill.

Number 1100

REPRESENTATIVE GRUENBERG requested that Mr. Barnhill come forward to testify because the bill would not be going to the House Judiciary Standing Committee, and he said he has concerns about the forfeiture provisions.

Number 1156

MICHAEL BARNHILL, Assistant Attorney General, Commercial/Fair Business Section, Civil Division, Department of Law (DOL), introduced himself.

REPRESENTATIVE GRUENBERG asked if Internet sales are clearly covered under this bill.

MS. BALES replied that they are. She reported that the cigarette tax statutes were enacted in 1949, and the taxes were levied on the importation of cigarettes for sale or personal consumption, which would include cigarettes purchased from the Internet.

REPRESENTATIVE GRUENBERG inquired, "What about the person who is selling cigarettes [on the Internet]?"

MS. BALES said the person who imports pays the tax, and [Alaska] has limited ability to go after out-of-state sellers because of jurisdictional problems. [Alaska] only has jurisdiction over the in-state purchaser. She noted that there are federal laws that require the out-of-state seller to provide information to the state regarding the sales made to individuals and others in the state, but those federal laws are violated constantly. She said it is an area where, with federal help, violators could be prosecuted.

Number 1336

CHAIR HAWKER requested that Ms. Bales explain the difference between cigarettes and OPT.

MS. BALES defined cigarettes as anything that is wrapped in paper, and, under excise tax laws, if cigarettes are imported for sale or personal consumption, the tax is levied on import. Other tobacco products (OTP) are cigars, snuff, chew, and loose-leafed tobacco, and are covered by a different area of statute. The tax on OTP is levied when product is brought into the state for sale, but there is no tax on product that is brought into the state for consumption, she said.

CHAIR HAWKER noted that is a point that will be addressed again later in the meeting.

Number 1443

REPRESENTATIVE GRUENBERG inquired if someone who uses the Internet to buy cartons of cigarettes would know to fill out a

tax form. He asked, practically, what would happen in that case.

MS. BALES responded that this is an issue that has been addressed since the last tax increase, and assessments to over 1,000 individuals who have purchased cigarettes through the mail by Internet mail order have been sent out. She said Representative Gruenberg's point is well taken about the additional seizure provisions and how that would work. She explained:

Generally, in practice, what we've done, we've received information showing that they've brought product into the state, and we've sent out assessments. We, by law, are required to charge interest, but we have some discretion in charging penalties. We've agreed to waive penalties if they'll come forward and pay the tax and interest. It's a great educational tool.

MS. BALES continued to say that when a tax is raised or instituted, there are businesses in the state that are in compliance, and if people are forced to buy out of state and not pay the tax, those businesses are harmed. She noted that this is an argument for aggressive enforcement.

Number 1650

REPRESENTATIVE GRUENBERG asked how the individual Alaskan will know to pay the tax and how much it is.

MS. BALES replied there will be public notices and retailers will post notices.

REPRESENTATIVE GRUENBERG asked how the person will know how to pay the tax.

MS. BALES said the person could contact DOR to get the information and, also, could look at the website. Public notices have contact numbers, she added.

REPRESENTATIVE GRUENBERG related that last year, during testimony on the sales tax, there was discussion about the difficulty merchants would have in collecting the tax. He raised the issue that now, potentially, every smoking Alaskan is being asked to go through a fairly complicated process of

getting forms and then remitting the tax. He asked Ms. Bales how widespread evasion of this tax would be prevented.

MS. BALES responded that it is a problem area, but that this law has been on the books since 1949, and individuals have already been required to obtain a license, fill out forms, and pay taxes to DOR for a product that has been brought into the state. When DOR discovers that people have made purchases over the Internet, letters are sent, forms are given out, and education is provided for a long-standing law.

Number 1945

REPRESENTATIVE GRUENBERG asked how many packs 1,000 cigarettes is and then said, "Fifty packs." He questioned if someone bought 50 packs and inadvertently didn't pay the tax, would they be committing a felony.

MS. BALES replied that is correct.

REPRESENTATIVE GRUENBERG opined that the amount is pretty steep, and not that many people are obeying the law.

MS. BALES said Representative Gruenberg's point is well taken, but stated some people say they are not aware of the tax, when, in fact, they are. She argued that the responsibility is on the people to become aware of the taxes they are subject to.

Number 2000

CHAIR HAWKER asked for clarification whether the bill is changing the classification of the offense.

MS. BALES answered that it does not.

CHAIR HAWKER offered that many of the issues being raised by Representative Gruenberg are items at issue under current statute that are not being addressed by this bill, as well.

MS. BALES agreed.

REPRESENTATIVE GRUENBERG asked if anyone has ever been prosecuted for a felony [for cigarette tax evasion].

MS. BALES replied, one person.

REPRESENTATIVE GRUENBERG asked if it was recently.

MS. BALES said yes, there was a felony conviction against an individual who brought in cigarettes on multiple occasions, even after being given notice of a first offense. The tax interest and penalties were well over \$500,000, she said.

Number 2147

REPRESENTATIVE WILSON asked what the tax increase on 5 cartons of cigarettes would be.

MS. BALES replied \$100, at the new rate.

REPRESENTATIVE WILSON asked how much a pack of cigarettes would cost.

MS. BALES said the average cost right now is \$4.50 a pack.

REPRESENTATIVE WILSON said [with the increase in tax] it would be \$5.50 a pack, which is quite a bit of money, especially if people are reselling them. She asked what would happen to an industrious 16-year-old who decides to buy cigarettes over the Internet and resells them.

MS. BALES said it is a good question, and explained that on the first offense, the first step is to give notice and assess the tax and penalties. Generally, she said, there have not been repeat offenders.

Number 2452

CHAIR HAWKER questioned Ms. Bales on some of the technical aspects of the bill. He referred to page 1, [line 8] where it says the license issued to a direct-buying retailer is increased to \$50. He noted, when looking at the statute this provision affects, there are a number of categories of license fees: a manufacturer, a distributor, a vending machine operator, direct-buying retailer, and personal use or buyer's license. Leaving out the personal use category, under current statute, the manufacturer has a \$5 license, the distributor-wholesaler has a \$50 license, the vending machine operator has a \$25 license, and the direct-buying retailer has a \$25 license. He remarked that the only category that is being raised in the bill is the direct-buying license, and he wondered if Ms. Bales has considered making all commercial categories consistent at a \$50 level. He asked how other states handled commercial licenses.

MS. BALES replied that Alaska license fees are minimal compared to other states. She said the reason DOR considered raising only direct-buying retail licenses is, because of the cigarette stamp tax, there are long-standing licensees who have the direct-buying retail license that will no longer be selling cigarettes, but who will be continuing to import OTP for sale. The OTP license is \$50, so there is now a class of direct-buying retailers who will have to buy that license. She said this will level the playing field, and, also, there is no significant difference between a wholesale distributor license and a direct-buying retail license because they all make cigarette sales in the state. She said Representative Hawker's point is well taken because any effort to make the fees equal makes sense.

Number 2807

CHAIR HAWKER predicted an amendment to that issue would be forthcoming. He asked when the floor tax would be assessed, due, and payable.

MS. BALES replied that under the language in the bill, any person who makes sales of cigarettes in the state would have to take an inventory on the effective date of the act and remit the difference in tax to the department within 30 days.

CHAIR HAWKER remarked that it could be a substantial amount for retailers who have commercial quantities on hand.

MS. BALES agreed it could be.

CHAIR HAWKER asked if DOR might consider phasing in the floor stock tax payments over a period of time.

MS. BALES stated there would be no opposition from DOR over that possibility, adding that DOR does not want the floor stock tax to be a hindrance to anyone's business.

CHAIR HAWKER related that [phasing in] would also be considered at a later time [for a possible amendment]. He asked for clarification on the forfeiture provisions and wondered if they mirrored the provisions currently in place for alcohol violations in the state.

Number 3000

MR. BARNHILL responded that [the forfeiture provisions in HB 538] don't mirror the [alcohol violation provisions], but are

very similar. He mentioned that DOL began with AS 04.16.220 and worked to update those provisions, adding enhancements.

MS. BALES noted that the forfeiture provisions would not apply to individuals that bring product into the state for personal consumption, and only apply to businesses that do resale.

Number 3131

REPRESENTATIVE GRUENBERG asked Mr. Barnhill if there are constitutional problems with taxing out-of-state vendors.

MR. BARNHILL spoke about nexus, the power of the state to tax extraterritorial entities. If a company is selling cigarettes over the Internet, and has no physical presence in the state, and all they do is direct cigarettes through the stream of commerce, the state has no power to access a tax over that entity, he reported.

REPRESENTATIVE GRUENBERG asked Mr. Barnhill if he is familiar with the provision in the California code that extends "their long-arm statute" to the maximum extent permitted under the Constitution.

MR. BARNHILL said Alaska has the same "long-arm statute."

REPRESENTATIVE GRUENBERG asked Mr. Barnhill what he thought about having a provision in [HB 538] which would allow the tax to reach to the maximum extent permitted under the Constitution, so that the manufacturers can be taxed, rather than making felons out of Alaskans.

MR. BARNHILL responded that he is not sure it is necessary, because under current law there already is the ability to go to that extent.

Number 3414

REPRESENTATIVE GRUENBERG asked Mr. Barnhill to elaborate on the issue of nexus.

MR. BARNHILL said he didn't know what else to say.

CHAIR HAWKER opened public testimony.

Number 3441

REPRESENTATIVE OGG asked Ms. Bale if the states that didn't have a forfeiture provision, and have instituted one, showed an increase in compliance.

MS. BALES said she has no knowledge of that information.

REPRESENTATIVE OGG asked how people who purchase by Internet are discovered.

Number 3525

MS. BALES answered that federal assistance is required because there is a long-standing federal law called the Jenkins Act which requires out-of-state sellers who ship cigarettes to provide information to the taxing authority in the state where those cigarettes end up. It gives the name of the person who purchased the product, where it was shipped, and the number of cigarettes. She explained that DOR has used that law and has worked with the [United States Attorney General's Office] to get that information from the seller.

REPRESENTATIVE OGG asked if federal law requires people who are selling tobacco products to file a form that shows they are entering into a state's taxable commerce.

MS. BALES replied that there are rampant violations of the Jenkins Act, so DOR looks for cases where it is known that an out-of-state seller has shipped cigarettes into the state. The [Alcohol and Tobacco Tax Trade Bureau] provides assistance and has jurisdiction over those laws, she said.

REPRESENTATIVE OGG asked, "So, you're after both the out-of-state supplier, on the federal side, and the in-state purchaser?"

MS. BALES said that is correct. She added, "There have been two recent state court cases in federal court where the federal court has stated that the state has the ability to sue, in federal court, those interstate sellers, out of state, to obtain that documentation."

Number 3722

REPRESENTATIVE WEYHRAUCH asked what the public policy basis for having a tax like this is, and whether it is to discourage smoking or gain revenues. He asked why tobacco is being singled out, and what the public is being told.

Number 3749

MR. CORBUS replied that the bill has a revenue factor and is trying to discourage smoking.

REPRESENTATIVE WEYHRAUCH said that is what he figured.

CHAIR HAWKER called on Commissioner Gilbertson to testify.

Number 3847

JOEL GILBERTSON, Commissioner, Office of the Commissioner, Department of Health and Social Services (DHSS), responding to Representative Weyhrauch's question, said that one of the driving reasons for supporting this legislation is because of the public health impact of tobacco use in Alaska. He mentioned a new report done by the Epidemiology Section of the Division of Public Health that would soon be available to the committee called Tobacco in the Greatland: A Portrait of Alaska's Leading Cause of Death. He relayed:

Tobacco use in the state of Alaska is our leading public health threat, and it's also our number one cause of death, disability, and chronic illness in this state. Historically, we have seen, through a number of econometric studies and also work by our department, that the increasing in revenues - tax - on tobacco products is an effective policy tool in improving public health around tobacco consumption. In Alaska increased tobacco tax has already been associated with a drastic reduction in tobacco utilization. In 1997 when the tobacco tax was raised, [until] 2002, we saw a 30 percent decline in tobacco utilization attributed to the tax being implemented.

Increasing the unit price for tobacco is a very effective tool, as I mentioned, in terms of controlling utilization of tobacco products, but it's most effective amongst youth. A \$1 per pack cigarette tax increase will directly help the state in reducing the utilization of tobacco products by minors. We have seen a precipitous decline in tobacco consumption amongst minors - 50 percent since 1995. We did a youth risk behavior survey in 1995 that was statistically valid. We did another one in 2003, and in those studies we've seen almost a 50 percent

decline in utilization of tobacco products. We believe a further drop in use of tobacco rates will occur as a result of this tax increase, and we believe it will lead to a 15 percent decline from current levels, which will translate into 1,800 lives saved from the effects of premature death due to tobacco utilization.

Number 4020

COMMISSIONER GILBERTSON continued:

As I said, increasing the tobacco product tax is an effective tool. It's also an effective tool for adults. It's estimated that the increase cost of purchasing cigarettes from this tax increase will lead to 3,500 adult smokers in the state of Alaska finally quitting the addiction of tobacco. We also will see from that, 800 individuals whose lives will be saved from a smoking-related death. There are other vulnerable populations. From this tax we would expect to see, in terms of smoking decreases by expectant mothers, 850 babies being spared from exposure to maternal smoking.

As we look at where there are health disparities continuing to exist in the state of Alaska, [one exists] largely between the Alaska Native population and the general population. We believe that Alaska Natives will have the most to gain from this tax increase. We see, right now, that Alaska Natives smoke at almost twice the average of the state's general population, and we also see, amongst high school students, that Alaska Native smoking prevalence is four times that of other students. An increase tax will disproportionately provide an additional benefit to lower income brackets which sometimes tend to be most at risk for these health diseases.

The Campaign for Tobacco Free Kids did an analysis, and their assumption is that within five years the health care savings from pregnancies and births that have damage resulting from tobacco product consumption, will save the state \$1.6 million, and that, in terms of fewer smoking-related heart attacks and strokes, the savings would be \$1.8 million. But the long-term health care savings from adult and youth

smoking declines would be \$146 million, and that's not just to the State of Alaska, but also in terms of overall health care costs in the state.

Number 4254

COMMISSIONER GILBERTSON continued to say that the previous tax raised \$47 million, and this tax increase will raise over \$30 million. A study in 1997 of the actual cost of tobacco to the state found \$133 million in tobacco-related medical expenditures and \$137 million of lost productivity because of tobacco-related illness and death, he related. There were 17 econometric studies done on the effect of price increases on tobacco use, and every study found a decrease of use with an increase in tax, a 1.5 to 4 percent decline for every 10 percent increase in the tax. He termed the tax an appropriate tool to help make inroads on the greatest public health threat in the state.

Number 4438

CHAIR HAWKER asked Ms. Bales to join Commissioner Gilbertson to answer questions. He asked them about the revenue changes of \$35.5 million per year on a linear basis going forward in the fiscal note, and wondered if they had considered the elasticity in the market that this increase would generate. He asked them to reconcile the fiscal note.

MS. BALES responded that they did consider elasticity, and \$35.5 million is the average between the lowest and highest elasticity. She said they did factor in the reductions of smoking due to the increased price.

Number 4606

CHAIR HAWKER asked if Commissioner Gilbertson's estimates are in line with what is being used for high and low estimates.

MS. BALES replied that they are in line.

CHAIR HAWKER asked if they had discussed this issue previously.

MS. BALES replied that they hadn't, but the information about price elasticity in the revenue is widely distributed by DOR.

COMMISSIONER GILBERTSON added that these are well-published and generally-accepted econometric studies on the correlation between tobacco consumption and the increase in tobacco tax.

CHAIR HAWKER requested documentation that the fiscal note is based on agreement of the parameters of the elasticity model.

TAPE 04-15, SIDE B

REPRESENTATIVE WEYHRAUCH asked Commissioner Gilbertson, "Given the data you've cited, why not introduce a bill that outlaws cigarettes?"

Number 4600

COMMISSIONER GILBERTSON said he responds from a public health perspective and believes that tobacco consumption does not bring much to society and causes tremendous damage as the number one health threat in Alaska. He pointed out that it is not against the law to consume tobacco products and said, "We believe that the \$1 increase in tax is an appropriate step towards discouraging tobacco product consumption in the state."

CHAIR HAWKER asked Representative Weyhrauch if that was an appropriate answer.

REPRESENTATIVE WEYHRAUCH replied that he didn't know why "we're nickel and diming it up to where we're going to go," and suggested Alaska be "number one."

Number 4439

REPRESENTATIVE SAMUELS mentioned other sin taxes, and compared the small amount of drinkers that drive to the larger number of social drinkers. He asked if it was similar in the health-care arena where there are a small number of smokers with high-dollar claims.

COMMISSIONER GILBERTSON suggested Dr. Middaugh answer that question because he has done studies on both alcohol and tobacco conditions.

Number 4328

JOHN MIDDAUGH, M.D., Chief of Epidemiology, Division of Public Health, Department of Health and Social Services, replied that there certainly is a smaller number of individuals who smoke and have more serious, adverse health consequences that account for a greater cost in terms of medical care and lost productivity. He said it is not a one-to-one relationship, but all smokers

increase their risk of different adverse health effects and also contribute to the exposure of nonsmokers to second-hand smoke.

REPRESENTATIVE SAMUELS said he was trying to compare smoking to alcohol where a small number of drinkers create problems. He asked if every smoker is going to have a health problem.

DR. MIDDAUGH replied that the question is an excellent one, but it can't be simply answered because it is not possible to predict which individuals who are heavy smokers will have health problems. He mentioned George Burns as an example of a life-long smoker who suffered no health-related problems. He related that most individuals will have some level of adverse health consequences, and some will have devastating and early consequences. Science is not yet able to predict who those individuals will be, he noted. Individuals who smoke and then stop, substantially reduce their future risks, he said.

Number 4049

REPRESENTATIVE OGG, following Commissioner Gilbertson's suggestion to raise the tax one more dollar, said that would put [Alaska] at the top [of those states charging a tobacco tax]. He suggested there may be an increase of out-state-purchases by habitual smokers, and inquired if Mr. Gilbertson has any records from other states to show what happens when taxes are raised in neighboring states. He offered an example of growing up in Maine where there was a fairly heavy tax, but New Hampshire had no tax, and so people would go there to purchase cigarettes.

COMMISSIONER GILBERTSON deferred to DOR to answer the question. He related that in Alaska it is more expensive to travel to another state to purchase cigarettes.

Number 3917

MS. BALES responded to Representative Ogg's question by stating that there are widespread problems with that issue when certain states have raised their taxes. For example, she noted that in New York City the tax is \$1.50 a pack, the state tax is \$1.50, and in less than five hours a person could drive to Virginia where the tax is 2.5 cents a pack. New York has had severe smuggling problems, she said. In Alaska, "in five hours you're still in Alaska, but in two days you can be in Whitehorse, Yukon, and in Canada you have to look at the combination of their federal and provincial taxes," she explained. That tax is

\$2.91 a pack, whereas, currently in Alaska, the tax rate is \$1.81 a pack. If there is an increase of \$1, it would still be cheaper to purchase cigarettes in Alaska, she concluded. A greater concern to Alaska is mail-order fraud, she pointed out, when a common carrier knowingly ships cigarettes into the state to someone who is not properly licensed. Part of the stamp legislation that became effective in January has provisions for shipping restrictions, which is an enforcement tool. Aggressive enforcement is the answer, she emphasized.

REPRESENTATIVE OGG said a lot of people travel from Alaska to other states and may purchase large quantities of cigarettes on their trips. He suggested having the amount of tax increase be similar in value to the price in states most frequented by Alaskans, like Washington, in order to prevent a new class of criminals from being created. He asked why the tax is so high.

COMMISSIONER GILBERTSON replied that there is an incremental health benefit for each percent of tax increase, so a \$1 increase is twice as effective as a 50-cent increase. He said the bill is a strong effort to address the number one public health threat in the state.

Number 3532

REPRESENTATIVE WILSON said the health aspect is very important. She related that after she studied the health ramifications of smoking, even as a nurse, she was surprised at the size of the problem in lost work productivity. She read, "Cancer is currently the second leading cause of death to all Alaskans and the leading cause of death for Alaska Natives." She remarked that more Alaska Native teens smoke [than all other races].

CHAIR HAWKER asked what Representative Wilson was citing.

REPRESENTATIVE WILSON replied it is a letter from the American Cancer Society [in the committee members' packets]. She continued to read:

Research shows that one-third of all cancers are tobacco-related and almost all tobacco-users first become addicted as children. By increasing the state's tobacco tax, it is a known correlation to reducing youth smoking, and 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.

REPRESENTATIVE WILSON referred to the State of Alaska Epidemiology Bulletin and read:

Tobacco attributable disease in Alaska accounts for approximately 600 deaths per year, more than five times as many caused by motor vehicle crashes, and nearly 100 times as many deaths as those caused by AIDS, and 120 lives are lost each year because of secondhand smoke.

REPRESENTATIVE WILSON next quoted in part from the Alaska Tobacco Control Alliance letter:

Alaska has had tremendous success rate in reducing youth smoking. Increasing the tobacco tax is a sound public health decision. Affects on youth consumption are, it decreases by 15 percent youth smoking, increases the total number of youth alive today who will not become smokers, like 9,000 of them. The number of youth alive today saved from premature smoking-caused death, almost 3,000.

REPRESENTATIVE WILSON emphasized that the key fact is that adults do not start smoking, children do, and virtually all smokers today started before they were 19 years old. The future smokers of Alaska are our children, she concluded.

Number 3100

BOB URATA, M.D., Board Member, Pacific Mountain Affiliate, American Heart Association, explained that he is a family doctor practicing in Juneau. He stated that the mission of the Pacific Mountain Affiliate is to reduce death and disability from heart disease and stroke by 25 percent by 2010. He said the purpose of his testimony is to give examples from his practice this past year of tobacco-related diseases. He mentioned that he has been in practice since 1984 and has known these people for many years.

DR. URATA described several of his patients:

A man in his eighties who has smoked for 65 years, beginning at age 18. He quit in 1999, and among his diseases are carotid artery disease which required him to have an endarterectomy, which is a roto-rooter to clean out his arteries. He also had an abdominal

aneurysm which is a ballooning of the big aorta, the big vessel that goes down to the legs. He had that repaired. He also then developed, in 1999, one in his chest called a thoracic aortic aneurysm. That was treated with medicines. Then, earlier this year, we discovered that he had right lung cancer that had spread throughout his body and he's currently dying from that.

A 77-year-old man who smoked for 45 years, since 18 years of age - he quit in 1989. He has had coronary disease that required balloon angioplasty twice, in 1989 and in 2001. He also had lung cancer and emphysema diagnosed in 1995 and then another cancer in his left lung in 1996. But, he has continued to be a survivor due to good medical care. He now has problems with walking and shortness of breath from these cigarette-related disabilities.

A 61-year-old man who smoked for 40 years. He started at 18 years of age and quit in the year 2000. He had a stroke in 1990 and he had a heart attack and balloon angioplasty in 2000. He currently is disabled, paralyzed on the right side, living at home, though.

A 77-year-old woman who smoked two packs a day for 35 years. She started at age 17 and quit in 1978 but then developed left lung cancer in 2001 and then the next year they found cancer in her left kidney, which is a cancer that is associated with smoking. She currently lives in a nursing home because of these disabilities.

We have a younger woman, 49-years-old, who smoked a pack a day for 20 years since she was 27, and she quit when she was discovered to have left lung cancer that traveled to her brain. She currently can't work and has seizure disorder.

And, finally, I have a 66-year-old gentleman who smoked for 32 years - since about age 25. He currently still smokes, he can't quit, and, as a result, he has had an acute heart attack, and had a balloon angioplasty in 1994, and then in 2002 he had a coronary bypass. He also has had a small stroke in 1998 and in 2000, and in currently - in late 2003 - we

discovered him to have colon cancer. He's continuing to undergo chemotherapy.

DR. URATA said he hopes these examples show that smoking can be a very devastating disease, and he emphasized that it doesn't just affect one organ system, but multiple organ systems. Modern medical care helps people survive, but can't make them whole again, he said. He related:

Smoking increases the risk to stroke, sudden cardiac death, heart attacks, aortic aneurysms, and peripheral vascular disease. Smoking is responsible for 85 percent of lung cancers that occur. It is also associated with ten different cancers: mouth, throat, larynx, esophagus, stomach, pancreas, cervix, kidney, urethra, and bladder. It also accounts for 30 percent of all cancer deaths.

The biggest thing that we can do is to prevent our young people from ever starting to smoke. You've heard statistics that describe how effectively the price of cigarettes reduces consumption. In order to reduce total consumption of cigarettes, we have to prevent the smoking habit from starting and that is why we target the teenagers. I believe that this bill will help reduce new teenage smokers. I hope you will support this bill because I believe it will lead to a healthier and more productive Alaska.

Number 2525

REPRESENTATIVE WILSON thanked Dr. Urata for bringing examples for the committee to hear, and spoke of her own personal experience with her father who smoked for 50 years and quit when he was 65. Eight years later he died from emphysema at age 72. She said her brother died last year at 52 from smoking-related cancers. She restated her strong feelings about this issue.

DR. URATA, in response to Representative Weyhrauch's comment about outlawing cigarettes, said if the cigarette was a new product and had to go through the Food and Drug Administration (FDA), it would never be approved because of the fact that it causes so much cancer. He maintained that because of the current political climate, cigarettes will never be eliminated, but legislation such as this bill can make it harder for people to start smoking.

Number 2336

REPRESENTATIVE MOSES asked if the use of marijuana has the same adverse health effects as tobacco.

DR. URATA said he isn't sure, but, personally, he is opposed to its use. He mentioned he has read studies that show that marijuana can cause problems, but he has never read anything that says it causes cancer.

REPRESENTATIVE MOSES said Unalaska recently had a drug bust and \$20,000 worth of marijuana was confiscated. He wondered if it makes sense to legalize marijuana, although he said he wouldn't advocate for it.

DR. URATA had no comment.

CHAIR HAWKER drew the committee's attention to written documents in their packets prepared by Mike Elerding from Northern Sales.

Number 2140

MIKE ELERDING, Owner, Northern Sales, explained that even though 47 percent of his business is with cigarettes and OTP, he is not opposed, in principle, to HB 538 because he recognizes the health risks associated with tobacco products. He also said he agrees with the idea to restrict youth access to these products and that the price increase in the bill would act as a deterrent to youth smoking. He asked the committee to remember that tobacco is a legal adult product and adults have the right to make independent decisions. He said he does not want government or other well-intentioned groups telling him what to do. He said he thinks it is appropriate for the government to tax tobacco products, but that the degree of taxation and unintended consequences of the proposed tax are the issues. As a licensed dealer of tobacco goods, he stated his concern about the unintended consequences of the bill.

MR. ELERDING explained that he has been selling cigarettes and OTP, as well as paying and collecting the excise tax, since 1962. Last year alone, he stated, his business paid \$4 million in tobacco tax. He spoke of October 1997 when the state raised the tax from \$2.90 to \$10.00 a carton and there were a number of unintended consequences. The first consequence was a problem with break-ins causing an additional need for security measures at a cost to the business, and the second consequence was an increase in the carrying costs of inventory, which meant an

increase in the line of credit, costs of carrying accounts receivable, and insurance. Last year his business worked with DOR to facilitate the cigarette tax stamp legislation which had a bonding requirement consequence. He said it was difficult to secure a bond from the insurance company. Now he said he has a \$1 million bond secured, but the higher tax would require a \$2 million bond to be secured which will be very difficult.

MR. ELERDING related, "Like it or not, we're partners with the state in collecting and remitting the tax to the state," he said. He emphasized that the state is collecting and making much more money on the sale of tobacco products than private industry in Alaska is. He stated a concern about the OTB tax, a 75 percent excise tax which is charged, at present, to tobacco distributors doing business within the state, and not to mail order businesses or Internet companies. He said it is impossible for Alaska distributors to compete under these terms.

Number 1540

MR. ELERDING says he believes that this tax will cause Alaska distributors to seek alternate sources of supply through the Internet and other non-traditional distribution channels, which will cause more tax evasion and bootlegging. He said he supports the state's increasing its enforcement efforts and the hiring of six new enforcement staff. He stated his intent to work with the state to insure that he is in compliance with Alaska tax laws and that youth access is restricted.

CHAIR HAWKER thanked Mr. Elerding for his continuing efforts to work with the state on this matter. He said he is committed to working with DOR to clean up the major issues mentioned: OTP mail order, bonding, and floor tax.

Number 1320

TIM SCHRAGE, Operations Manager, Brown Jug, shared his concerns about HB 538. He spoke of his business's zero tolerance policy of selling alcohol and tobacco products to minors. He opined that the tax increase will drive consumers to underground retail channels such as the Internet, and the state has not been effective in collecting taxes on such sales. In Anchorage there is a wholesale municipal tax on top of the cigarette tax which forces people to drive to the [Matanuska-Susitna Valley] to buy cigarettes, he said. He predicted there will be new jobs in trafficking illegal "grey market" cigarettes, which are made to look like popular brands, and noted that the potential for

profit is huge. He expressed lack of confidence in the state's ability to manage bootlegging and illegal smoke shops. He said it is his understanding that illegal tobacco is the number one product seized by the U.S. Custom Service.

MR. SCHRAGE related other concerns about the economic impacts of the tax on businesses. He said the potential impact of an additional \$1 to the floor tax will cause his company to pay over \$200,000 for inventory for the rest of his economic career. He said he also pays a retail floor tax to the city of Anchorage, and an increase in the cost of inventory increases the insurance cost. He maintained that this tax increase will not solve the fiscal problems and will increase criminal activity.

CHAIR HAWKER thanked Mr. Schrage for his testimony and noted that his written document is included in the record.

Number 0754

EMILY NENON, Alaska Advocacy Manager, American Cancer Society, said she is based in Anchorage and has been in Alaska all of her adult life.

CHAIR HAWKER mentioned that Ms. Nenon's materials were also included in the members' packets.

MS. NENON said the issue at hand is not a complicated one. The American Cancer Society's mission is to eliminate cancer as a major health problem by preventing cancer, saving lives, and diminishing suffering from cancer, she said. One-third of all cancers are tobacco related, and smoking accounts for at least 30 percent of all cancer deaths, she related. She said, "What it really boils down to is, whose brother is it? Whose mother is it?" She called tobacco use a pediatric epidemic; it's kids who start smoking. When the price of tobacco increases, kids and pregnant women are the first ones affected, and that's where [this bill] can start making a difference on this issue, she said.

MS. NENON submitted testimony from the American Lung Association.

CHAIR HAWKER replied if it is not in the packet he will make certain it gets into the record.

MS. NENON pointed out that Alaskans recognize that [cigarette smoking] is a problem, and that there is a link between increasing tobacco taxes and saving lives, as reported in a survey done in February. Over two-thirds of Alaskans support this increase in tobacco tax.

CHAIR HAWKER asked if the survey was a voluntary survey.

MS. NENON replied that it was a statistically valid survey done by a group called QEV Analytics based in Washington, D.C., and the results were consistent across the country and contained no surprises. She said the issue of Internet sales - black-marketing - is a big red herring in this committee meeting. She suggested the committee get a copy of Tobacco in the Greatland: A Portrait of Alaska's Leading Cause of Death and check out page 100 which explains where people buy their tobacco. It says that only 4 percent of adult smokers reported that they bought cigarettes over the Internet, through mail order, or through other 800-number sources over the past year. She reported that 90 percent of adults who smoke say they usually buy cigarettes within their community, while 98 percent buy them in Alaska. Most smokers want to quit and they buy their cigarettes one pack at a time, she pointed out, and 34 percent get them from convenience stores or gas stations, 25 percent from grocery stores, and 7 percent from liquor or drug stores. She said there is also the issue of Internet sales that was addressed in the tobacco tax stamp bill last year, and she hopes that DOR will address further the measures they are taking to stem that tide. She emphasized that the tide she is most interested in stemming is the tremendous health care cost and burden on the state by allowing the tobacco epidemic to continue. "It's killing our kids and we can't let that happen," she concluded.

Number 0032

MARIAH WARREN identified herself as born in Alaska and a full-time college student working part-time at a supermarket in Juneau. In her experience in both of those venues, she said it is very apparent that there is a direct link between the cost of cigarettes and who's smoking. She shared a story about a young woman who came into the store to purchase cigarettes who said, "I wish they would raise the tax. If they get just a little more expensive, I'm going to have to quit."

TAPE 04-16, SIDE A

MS. WARREN continued to say that selling cigarettes is her least favorite part of working in retail because her employers are making a profit from "dealing in death."

Number 0116

STEVE WARREN, Member, Alaska Tobacco Control Alliance, said he has worked to help people stop smoking his whole life. He said, "We have to face up to the fact that the tobacco industry, despite their claiming that they are selling a legal product for adults, are working very hard at addicting our children." He thanked the committee for their past actions in helping reduce the rate that teens are smoking by 50 percent. The new \$1 per pack tax increase will reduce teen tobacco use, despite what is being said to distract from that issue. "Every other kid that we can help keep from starting smoking is going to be saved from a premature death from that addiction," he pointed out.

Number 0326

PAT LUBY, Advocacy Director, AARP, related that AARP is the largest organization of grandparents in the world. He said he is confident that no grandparents would be happy to know that their grandchildren have started to smoke. Many AARP members smoke, or used to smoke, and know how difficult it is to quit. If raising the cost of tax on cigarettes helps prevent Alaska's youth from starting to smoke, [AARP] is very strongly in favor [of the bill], he said. He said [AARP] is very impressed with the data in the governor's transmittal letter indicating that Alaska Natives, and particularly Alaska Native high school students, smoke at much higher rates than non-Native populations. He strongly recommended that some of the money generated by the tax increase be used to target cessation efforts for Native smokers, especially Native youth. He called the bill good economic policy and good health policy that makes sense and is fair. On behalf of AARP, he strongly recommended the passage of HB 538.

CHAIR HAWKER said the letter Mr. Luby faxed to the committee has been included in the packet.

Number 0449

KATTARYNA STILES, Alaska Native Health Board, characterized this bill as important legislation because it will save lives, raise money, and reduce health care costs. She said she appreciates Commissioner Gilbertson's comments that Alaska Natives have the

most to gain by passage of this legislation. She explained that, according to the [2003 Youth Risk Behavior Survey], 55 percent of Alaska Native youth smoke, and measures need to be taken to keep tobacco out of the hands of Native youth. Raising the price of cigarettes and tobacco products so that kids can't afford them would be a tremendous step in the right direction, she remarked. She mentioned that another serious problem is that 29 percent of pregnant Alaska Native women smoke, which causes devastating health effects to the unborn children. In western Alaska, that figure goes up to 57 percent, she said. She concluded by saying that the estimated annual cost of smoking to the Alaska Native health care system is \$48 million, and this bill will save money by reducing health care costs as well as generate money and save lives.

Number 0713

JENNIFER APP, Alaska Advocacy Director, American Heart Association, reported that the American Heart Association is a national voluntary health agency whose mission is to reduce disability and death from cardiovascular disease and stroke, and it strongly supports this bill. Smoking is the leading preventable cause of cardiovascular disease in Alaska and is responsible for one out of every five deaths in the state. The Alaska public subsidizes the significant cost associated with smoking of over \$260 million a year. These expenses don't include health costs caused by exposure to second-hand smoke, spit tobacco, pipes, or cigars. Other non-health care costs from tobacco include property loss from smoking-related fires. She noted that the Anchorage fire department reported that every house fire in the past year was caused by a burning cigarette. The cost of smoking to the public is about \$6.38 per pack, she said. She called the bill a "win, win, win" situation.

Number 1123

BILL BOUWENS, Tobacco Educator, Alaska Native Medical Center, said in October 1997, when the first tobacco tax went into effect, his classes were very full. He said the purpose of the bill is to prevent youth from starting to smoke. As an Alaska Native he said he has seen the effects of smoking on his people. He said his dad quit smoking 24 years ago, but currently has lung cancer. He urged the passage of this bill to help prevent youth from starting to smoke.

Number 1250

JOELLE HALL, mother of two, said she is able to testify today because her mother is taking care of the kids. She stated her support for the increase in the tobacco tax on behalf of all of the parents who couldn't testify today. She urged the committee to keep children in mind when debating the bill. She said that talking to kids about smoking is an effective way to prevent smoking. She spoke in strong support of the bill asking the committee to implement public health policy to help parents prevent their kids from smoking

Number 1522

SHELLEY WALLACE said she is shocked by the number of kids who use tobacco in Dillingham and Bristol Bay. She said she has no grandparents because of tobacco. "Stopping our kids from starting is the most important thing we can do," she said. She urged passage of the bill.

CHAIR HAWKER replied that there are members of the committee from Ms. Wallace's area who understand what she is saying about the problem of youth smoking in rural Alaska.

Number 1649

JEAN MARIE CRUMB, Chair-elect, Alaska Tobacco Control Alliance (ATCA), spoke as a life-long Alaskan and Alaska Native, and reported that ATCA is a coalition of health care providers representing over 200 organizations and individuals. She encouraged support of HB 538, saying, "There is no single action that you could take to protect the health of Alaskans than to raise the tobacco tax." She related her opinion that if this legislation were to pass, fewer young people would begin smoking, fewer babies would die of Sudden Infant Death Syndrome [SIDS], and more adults would quit. She urged passage of the bill.

Number 1816

CAROLINE RENNER said she was born and raised in Alaska and spoke of her personal experience both in Anchorage and when working in Bethel. She spoke about developing nicotine dependence treatment programs around the state in primary health care centers and in clinics. She said an unknown factor is how many children are using tobacco because children younger than middle school are not surveyed about their tobacco use, which she said is of great concern. She also discussed her concern about prenatal exposure to nicotine and said that those babies are

more likely to become addicted. She mentioned a paper she has written in Preventive Medicine about children as young as three becoming addicted to tobacco. She asked the committee to pass the bill and save lives.

Number 2148

CHAIR HAWKER asked if there was any more public testimony.

Number 2248

REPRESENTATIVE OGG asked Commissioner Gilbertson if he would provide a graph to show the relationship between the tax and the consumption rate in Alaska, similar to the graph provided by the National Center for Tobacco Free Kids in the packet.

CHAIR HAWKER said it would be requested.

[HB 538 was heard and held.]

[HB 493 was scheduled but not heard.]

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Ways and Means meeting was adjourned at 9:05 a.m.