

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON WAYS AND MEANS

April 2, 2004

7:05 a.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

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."

- MOVED CSHB 538(W&M) OUT OF COMMITTEE

HOUSE BILL NO. 537

"An Act relating to the levy, collection, and administration of sales and use taxes on tourism services; and providing for an effective date."

- HEARD AND HELD

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

BILL: HB 537

SHORT TITLE: TOURISM SALES AND USE TAXES

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) <Bill Hearing Postponed to Fri. 3/26>
03/26/04 (H) W&M AT 7:00 AM HOUSE FINANCE 519
03/26/04 (H) <Bill Hearing Postponed to 3/31/04>
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

WITNESS REGISTER

JOHANNA BALES, Excise Audit Manager

Tax Division

Department of Revenue (DOR)

Juneau, Alaska

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

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.

JOHN SHIVELY, Vice President
Government and Community Relations
Holland America
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 537.

KAREN REGINA, President and Chief Executive Officer
Alaska Hospital Alliance
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 537.

JACK REISS, Vice President for Operations
Aramark Parks & Resorts
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 537.

JOHN BINKLEY Owner,
Sternwheel Riverboats; Eldorado Gold Mine
Fairbanks, Alaska

POSITION STATEMENT: Testified in opposition to HB 537.

STEVE FRANK
Fairbanks, Alaska

POSITION STATEMENT: Testified in opposition to HB 537.

GARY MENDIVIL, Business Manager
Eaglecrest Ski Area
Juneau, Alaska

POSITION STATEMENT: Testified during the discussion of HB 537.

KEVIN BATTERS, General Manager
Hilton Hotel
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 537.

MARK HICKEY
American Cancer Society
Juneau, Alaska

POSITION STATEMENT: Testified in favor of HB 538.

ACTION NARRATIVE

TAPE 04-21, 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, Weyhrauch, Wilson, Gruenberg, Moses, and Ogg were present at the call to order. Representative Rokeberg arrived as the meeting was in progress. Representative Seaton was also in attendance.

HB 538-TOBACCO TAX; LICENSING; PENALTIES

Number 0145

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."

Number 0316

REPRESENTATIVE WEYHRAUCH moved to adopt the committee substitute (CS) for HB 538, Version 23-GH2116\H, Kurtz, 4/1/04, as the working document. There being no objection, Version H was before the committee.

CHAIR HAWKER explained that the language regarding "possession, barter, sell, or exchange" has been cleaned up. He said there also was a "raising of the bar" on the number of cigarettes that can be possessed. The language specifically addressed Sections 18 & 19, raising 1,000 to 5,000. In the drafting process it was identified that in Section 6 the 1,000 number needed to also be changed to 5,000. The amendment directed the drafters to incorporate conforming amendments as necessary.

REPRESENTATIVE GRUENBERG asked if he should offer that idea as an amendment.

CHAIR HAWKER asked Representative Gruenberg to defer making that amendment until later in the meeting.

Number 0600

CHAIR HAWKER moved to adopt Amendment 7, labeled 23-GH2116\H.1, Kurtz, 4/1/04l, which read:

Page 4, following line 19:

Insert a new bill section to read:

"* Sec. 15. AS 43.50.550(b) is amended to read:

(b) A licensee who submits an application for the purchase of stamps on a deferred-payment basis shall, as a condition of approval of the application, post a bond acceptable to the department in an amount equal to

(1) 200 percent of the maximum dollar amount of allowed monthly purchases under this section
; or

(2) 100 percent of the maximum dollar amount of allowed monthly purchases under this section if the licensee

(A) holds a license issued under AS 43.50.010 for a physical location in this state;
and

(B) has been in full compliance with the provisions of this title and regulations adopted under this title during the preceding 60 months [AS A CONDITION OF APPROVAL OF THE APPLICATION] ."

Renumber the following bill sections accordingly.

Number 0620

REPRESENTATIVE WEYHRAUCH objected for discussion purposes.

Number 0645

JOHANNA BALES, Excise Audit Manager, Tax Division, Department of Revenue (DOR), introduced herself.

CHAIR HAWKER asked Ms. Bales to explain Amendment 7.

MS. BALES replied that the amendment offers two ways to qualify for a deferred payment plan. The first way is to post a bond in the amount of 200 percent of the monthly purchases of tax stamps. The second way is to qualify is to post a bond for 100 percent [of monthly purchases], and in order to qualify for that, a physical location in the state is required. "You have to be in full compliance with the cigarette and tobacco products excise taxes and you had to have been a licensee and in full compliance for at least the previous five years," she explained. CHAIR HAWKER asked if 200 percent is current statute.

MS. BALES said that is correct.

CHAIR HAWKER asked if the proposal in the bill is to actually double the tobacco stamp tax rate.

MS. BALES said yes.

CHAIR HAWKER said that [Amendment 7] would provide an alternative for Alaska resident vendors to cut in half the amount of their bond. In other words, the bond amount would stay at the current rate, he added.

MS. BALES said that would be correct.

CHAIR HAWKER termed it a fair remedy at this time to alleviate the concerns heard from the industry.

REPRESENTATIVE GRUENBERG referred to line 14 [of Amendment 7] and asked if DOR would like the discretion to allow the posting of a bond without the 60-month condition of approval.

MS. BALES replied no, that the person would be required to have a five-year record. DOR feels that five years is appropriate, she said.

CHAIR HAWKER asked if the five-year rule would leave out anyone who has been in business in the state, currently.

MS. BALES replied that it would not. All of the taxpayers who are currently posting a bond have significantly more than five years of history with DOR, she added.

Number 1022

REPRESENTATIVE WEYHRAUCH said he thought Mr. Elerding's testimony from the previous hearing was especially good, and yesterday he spoke with Mr. Roger Shattuck who issues bonds as a business. Representative Weyhrauch asked what the effect of capping the bond would be on a business that continues to grow.

CHAIR HAWKER rephrased the question to say, "As a business continues to grow would their bonding requirement continue to grow even under this proposal?"

MS. BALES replied yes, the bond requirement would continue to grow as the business grows, even under this proposal. "Everyone needs to be made aware that, basically, the department would be floating one month of tax stamps on credit to these licensees. As their business grows, their bond will grow, and also their credit being extended will grow, as well," she noted.

REPRESENTATIVE WEYHRAUCH said he is going to look more closely at HB 538 as it goes through the House Labor and Commerce Standing Committee.

CHAIR HAWKER said that this provision would continue to merit effort, particularly by the House Labor and Commerce Standing Committee, as they address the industry complications.

Number 1159

REPRESENTATIVE SEATON asked for clarification on the wording "allowed monthly purchases." He wondered if there is a certain amount of stamps that is able to be purchased.

MS. BALES replied that DOR sets that amount after the bond is reviewed.

Number 1250

REPRESENTATIVE WEYHRAUCH removed his objection to adopting [Amendment 7]. There being no further objection, it was so ordered.

CHAIR HAWKER noted the arrival of Representative Rokeberg.

Number 1400

REPRESENTATIVE ROKEBERG moved to adopt Amendment 8, labeled 23-GH2116\D.2, Kurtz, 3/30/04, [and changed to conform to Version H and previously adopted amendments], which reads as follows:

Page 2, following line 26:

Insert a new bill section to read:

*** Sec. 6.** AS 43.50.090(d) is amended to read:

(d) The tax imposed under (a) of this section does not apply to the first 100 cigarettes imported by an individual for personal consumption during the calendar month or the first 600 cigarettes personally transported into the state by an individual for that individual's personal consumption during the calendar month."

Renumber the following bill sections accordingly.

Page 3, following line 28:

Insert a new bill section to read:

*** Sec. 12.** AS 43.50.190(c) is amended to read:

(c) The tax imposed under (a) of this section does not apply to the first 100 cigarettes imported by an individual for personal consumption during the calendar month or the first 600 cigarettes personally transported into the state by an individual for that individual's personal consumption during the calendar month."

Renumber the following bill sections accordingly.

Page 8, following line 16:

Insert a new bill section to read:

"* **Sec. 19.** AS 43.50.650(a) is amended to read:

(a) A person commits the crime of misconduct involving unstamped cigarettes or stamps in the second degree if the person

(1) with reckless disregard that the cigarettes are unstamped

(A) sells or distributes at least one but fewer than 5,000 unstamped cigarettes in a single transaction;

(B) owns or possesses at least one but fewer than 5,000 unstamped cigarettes, with intent to sell; [OR]

(C) acquires, holds, transports, imports, or possesses at least 601 [ONE] but fewer than 10,000 unstamped cigarettes; or

(D) acquires, holds, transports, imports, or possesses at least one but fewer than 601 unstamped cigarettes that are not for personal consumption; or

(2) is not licensed under this chapter or otherwise authorized by the department to possess stamps and possesses a stamp that is not affixed to a cigarette package."

Renumber the following bill sections accordingly.

REPRESENTATIVE WEYHRAUCH objected for discussion purposes.

CHAIR HAWKER noted that Amendment 8 was drafted to the D version of the bill and has been changed to conform to the H version. He asked the sponsor to make sure that the conforming adjustments are correct.

Number 1444

REPRESENTATIVE ROKEBERG suggested that Amendment 8 should be a conceptual amendment to make sure that the conforming is correct. He explained that under current law having five packages of cigarettes, or 100 cigarettes, constitutes a crime under Section 19, and it trips a requirement to pay taxes on cigarettes used for personal consumption in excess of 5 packages, or 100 cigarettes. He said his concern is for Alaskans who travel to other states and purchase cigarettes. He opined that these people should be able to import for their own personal consumption up to three cartons of cigarettes. He said it does not in any way change the obligation to pay taxes, and it is only intended to apply for transportation of cigarettes into the state for personal consumption.

REPRESENTATIVE WEYHRAUCH asked how many cigarettes are in a carton.

REPRESENTATIVE ROKEBERG replied that there are 200.

REPRESENTATIVE GRUENBERG referred to page 1 [Amendment 8] new Sections 6 and 12, and said that the underlined language looks like a substitution for the language that is already there. He suggested saying "to the first 600 cigarettes." He said he does not see any difference between the two phrases.

REPRESENTATIVE ROKEBERG said the word "or" makes a distinction between the two phrases. He referred to line 6 and said that "transported into the state" is the distinction.

REPRESENTATIVE GRUENBERG asked for clarification between "personally transported" and "transported," and for a reason why the distinction is important.

REPRESENTATIVE ROKEBERG replied that it is a policy call about which level of personal possession or importation is needed. He said it would be simpler to adopt the "600 cigarette rule." The intent is to make sure that the importation for personally consumed tobacco products does not trip any kind of criminal or other tax impositions.

REPRESENTATIVE GRUENBERG said that there are a number of people who do smoke and they have the right to do so. From a prosecutor's viewpoint it's going to be more difficult to prosecute because the focus is on how the cigarette got [to Alaska], he opined. He suggested just making the number 600.

REPRESENTATIVE ROKEBERG replied that having five packs as a trigger is not realistic. He requested DOR's opinion.

CHAIR HAWKER asked if DOR or DOL should address the issue. [The committee aide faxed copies of the amendments to Ms. Bales.]

Number 2135

CHAIR HAWKER referred to [Section 19 of proposed Amendment 8] and said that it looks like that section amends AS 43.50.650(a), which is language that originally came from a bill that was passed last year requiring the use of tax stamps. He noted that the amount of 1,000 has been raised to 5,000 in the previous amendment. He said that this is the section defining the crime of misconduct involving unstamped cigarettes at the low end. This is not the felony issue, he stated. "We've got more than one, but less than, now, 5,000 unstamped cigarettes and we're in fact selling these - reselling these - without stamps," he said. He asked Representative Rokeberg to explain [subparagraphs (C) and (D)].

REPRESENTATIVE ROKEBERG replied that in this particular criminal misconduct section, [subparagraph (C)] on line 11 changes from acquiring, holding, transporting, importing, or possessing at least one cigarette and raises it up to 601, but fewer than 10,000.

CHAIR HAWKER asked if it is conforming to the first page of the amendment where the bar is raised.

REPRESENTATIVE ROKEBERG replied that it conforms to the ability to possess, but it also raises the low-end trigger from one cigarette to 601 cigarettes.

REPRESENTATIVE SAMUELS noted that it appears in [subparagraph (D)] on page 2 [of Amendment 8], that when "imports" is added, the standard is changed.

REPRESENTATIVE ROKEBERG answered, "In terms of criminal prosecution"

REPRESENTATIVE SAMUELS said, "You owe the tax, but they can't do anything to you if you don't pay it."

REPRESENTATIVE ROKEBERG replied, "Right, for three cartons of cigarettes, right."

REPRESENTATIVE SAMUELS said he agrees, but he is starting to agree with Representative Gruenberg. If a person buys 100 cigarettes on the Internet and is liable for the tax, but there's absolutely no penalty ... [the language] should either be conformed or taken out of the second part, he opined.

REPRESENTATIVE ROKEBERG replied that he would not object to that. It is a policy call that's up to the committee, he added. He said his concern in this section has to do with criminality and importation.

Number 2521

REPRESENTATIVE GRUENBERG said he can't wait to get into a courtroom and ask, "Where did you get this cigarette?"

REPRESENTATIVE WILSON asked if changing 1,000 to 5,000 was a mistake originally and is now corrected.

CHAIR HAWKER said it was an amendment made in a previous committee meeting.

REPRESENTATIVE SAMUELS deferred to Ms. Bales, but suggested eliminating "imports".

REPRESENTATIVE ROKEBERG suggested talking to the attorney general about it. He asked Mr. Barnhill for his opinion on Section 19 [in Amendment 8], which deals with criminal misconduct and the change in the amount of cigarettes.

Number 2719

MICHAEL BARNHILL, Assistant Attorney General, Commercial/Fair Business Section, Civil Division, Department of Law (DOL), replied that in the first two provisions of the amendment there is a distinction between importation and personal transportation, which is not made on page 2 of the amendment. He said it may be easier to do what Representative Gruenberg suggested and make it a 601 threshold for everything.

REPRESENTATIVE ROKEBERG asked if DOL would ever take up a case dealing with one cigarette.

MR. BARNHILL said it is an issue for the criminal section to answer, and he opined it is highly unlikely that the criminal section would spend any enforcement time on three cartons of cigarettes.

REPRESENTATIVE WEYHRAUCH suggested that it may open the door to probable cause when the crime has been committed to open the door to a search or some issue related to that person's possession of cigarettes. He termed it a "seamless web" of criminal investigation prosecution.

CHAIR HAWKER asked Representative Rokeberg if the intention of Amendment 8 would be accomplished if, instead of adding the additional language, 100 is changed to 600 [on the first page] and then on page 2, [subparagraph (D)] is not added, and the change "601" is incorporated in [subparagraph (C)].

REPRESENTATIVE ROKEBERG said he would not object, subject to DOR's opinion on enforcement.

REPRESENTATIVE WEYHRAUCH removed his objection to the motion to adopt Amendment 8.

REPRESENTATIVE GRUENBERG maintained his objection. He said he does not want to see people "entering into a web, seamless or otherwise" for one cigarette.

MR. BARNHILL suggested that if the language on the first page is changed to "600", the language on the second page could be left as it is. "What the legislative drafter is trying to do here is distinguish between unstamped cigarettes that are used for personal consumption and unstamped cigarettes that are brought in not for personal consumption," he concluded.

Number 3000

REPRESENTATIVE SAMUELS moved to amend Amendment 8 as follows:

Page 1, lines 4 and 15
Change "100" to "600"
Delete the underlined language on lines 6-8
Delete the underlined language on lines 17-19

REPRESENTATIVE ROKEBERG objected. He said he wished to hear from DOR before moving forward. He requested that Ms. Bales comment on the amendment to Amendment 8, and Amendment 8 itself.

Number 3233

MS. BALES said that, in her opinion, the way that Representative Rokeberg's Amendment 8 reads makes more sense and causes better

protection of state revenues. If the change is made from 100 to 600 [cigarettes], which is 30 packs, someone who smokes a pack of cigarettes a day would be allowed to go on the Internet and avoid the entire state tax, she said. That would negate the whole reason why the tax is being raised to begin with, which is to make price effect consumption, she added.

REPRESENTATIVE SAMUELS withdrew his amendment to Amendment 8.

REPRESENTATIVE GRUENBERG, looking at page 2 [of Amendment 8], which deals with criminal prosecution, pointed out a problem in current law. "They can prosecute somebody, right now, for having one unstamped cigarette. That's a Class A misdemeanor. That penalty seems to me to be draconian," he said. He said [Amendment 8] says that if the cigarette is for sale, a person could be prosecuted for one unstamped cigarette, but if it's for personal consumption, the amount is 30 packs. He maintained that a whole group of Alaskans will be criminalized if page 2 is not amended. He said DOR may not like page 1 of the amendment, but asked for comments regarding page 2.

MS. BALES said she understands what Representative Gruenberg is saying, and noted that DOR has no objections to [Amendment 8]. She wondered if [subparagraph (D)] is even needed.

Number 3544

REPRESENTATIVE GRUENBERG moved to divide the question. He called page 1, Amendment 8a and page 2, Amendment 8b.

REPRESENTATIVE ROKEBERG objected. He suggested it would be easier to just amend [Amendment 8].

CHAIR HAWKER asked Ms. Bales to restate her opinion of page 1 of Amendment 8 without the proposed amendment to it. "Is page one of Conceptual Amendment 8 troublesome to you?" he asked.

MS. BALES said [DOR] has no problem with it. She said this is an area where [DOR's] enforcement efforts are not focused.

Number 3700

REPRESENTATIVE GRUENBERG withdrew his motion to divide the question and moved to amend Amendment 8 as follows:

Page 2

Delete new [subparagraph (D)]

REPRESENTATIVE ROKEBERG objected.

REPRESENTATIVE GRUENBERG said it is simpler for DOR if on line 11, "[ONE]" is changed to "601".

REPRESENTATIVE ROKEBERG said there is a distinction between [subparagraphs (C) and (D)], and he noted that in (C) the "loose cigarette" is gotten rid of. The actual possession of one isn't a criminal offense, but 601 is, and (D) is for personal consumption, he explained.

REPRESENTATIVE GRUENBERG said he understands that, but what he is saying is, "You're going to wind up with very small amounts of cigarettes potentially being criminalized and making the whole focus of the criminal prosecution, whether this one cigarette, or a pack of cigarettes was for yourself or somebody else." He said it would make it much simpler.

REPRESENTATIVE ROKEBERG said that the "loosey problem" is a big problem and [subparagraph (A)] prohibits that. The (C) language gets rid of the single cigarette, but the (D) language incorporates it, he said.

REPRESENTATIVE GRUENBERG replied that one is the sale transaction (A), and (B) is if you own or possess at least one, but fewer than 5,000, with intent to sell, which is very similar to (D). He asked why (D) is needed.

REPRESENTATIVE ROKEBERG asked for clarification from Mr. Barnhill.

MR. BARNHILL replied that Representative Gruenberg has a good point. Under (B) there has to be an intent to sell one, but fewer than 5,000. The distinction is, under (B) there has to be an intent to sell, and in order to prove intent under criminal law - that's a fairly high standard, he said. "Under (D) all that has to be proved is that they don't have an intent to sell, but they're not going to use it for personal consumption, so that's potentially a lower standard," he said.

Number 4057

REPRESENTATIVE OGG focused on the word "possesses", which he noted is not on page 1 [of Amendment 8]. He related:

And so what you're doing here is saying that people who happen to just possess, they're not the ones who brought the cigarettes into the state, they're not the

ones who transported it into the state, they're not the ones who imported it, they're the ones who just happened to possess it. Their friend gave them the pack. They're exempt.

REPRESENTATIVE OGG agreed that what Representative Rokeberg is suggesting covers it.

REPRESENTATIVE GRUENBERG said, looking at the difference between (D) and (B), the operative word is "possess" and argued that (B) is not needed.

Number 4314

REPRESENTATIVE GRUENBERG moved to amend Amendment 8 by deleting [subparagraph (B)].

Number 4424

CHAIR HAWKER repeated the motion and stated his objection.

REPRESENTATIVE ROKEBERG also objected.

A roll call vote was taken. Representatives Samuels and Gruenberg voted in favor of adopting the second amendment to Amendment 8. Representatives Weyhrauch, Kohring, Ogg, Moses, Wilson, Rokeberg, and Hawker voted against it. Therefore, the motion failed by a vote of 2-7.

REPRESENTATIVE GRUENBERG withdrew his objection.

REPRESENTATIVE WEYHRAUCH mentioned that there are a number of people in the state who barter for cigarettes. He asked if that would be considered the same kind of commercial transaction like a sale subject to prosecution.

CHAIR HAWKER remarked that Ms. Bales was no longer present to answer questions.

Number 4456

CHAIR HAWKER asked if there were any further objections to the motion to adopt Amendment 8. There being no objection, it was so ordered.

[CHAIR HAWKER set aside HB 538.]

HB 537-TOURISM SALES AND USE TAXES

TAPE 04-21, SIDE B

Number 4360

CHAIR HAWKER announced that the next order of business would be HOUSE BILL NO. 537, "An Act relating to the levy, collection, and administration of sales and use taxes on tourism services; and providing for an effective date."

CHAIR HAWKER opened public testimony on HB 537. He said that since the last meeting the committee has received the governor's transmittal letter of March 16, 2004, and Mr. Shively's letter.

Number 4241

JOHN SHIVELY, Vice President, Government and Community Relations, Holland America, said that most of his points are made in his letter to the committee. He noted that the governor's transmittal letter and [DOR] have indicated that \$19 million will be raised [from the tourist tax] this fiscal year and \$49 million thereafter, and he said that has not seen those calculations. He said that is something the committee and the cruise industry need to see because, "We don't know how they calculated those amounts." He emphasized that it is important for the committee to get answers [from DOR] to the questions he raised in the letter.

MR. SHIVELY stated that some of the problems raised are unique to the cruise industry because it sells about 90 percent of the cruises through travel agencies. "We don't know everything that they collect. In addition, the way this bill is written, if they bundle services like airline fares from Chicago to Seattle or Vancouver, and transfers and busses, all of that would be part of the tax. So you're really taxing things that are taking place out of the state," he said.

MR. SHIVELY emphasized that Alaska is in a very competitive position right now. The market share peaked in 1996 at about 9.5 percent and is under 8 percent, currently, due to competition from the Caribbean, Eastern Canada, Mexico, Hawaii, and Europe, he said. He noted that many people can now drive to a cruise and price is an issue. He opined that this tax will make the cruise more expensive, and that is not exclusively a "cruise bill", as mentioned earlier.

CHAIR HAWKER thanked Mr. Shively and said he would stand corrected if he did refer to it as a cruise bill, saying it would affect the whole travel industry in Alaska.

Number 4040

REPRESENTATIVE GRUENBERG, referring to the letter from Mr. Shively, asked about the paragraph on page 4, after question 11, which says, "These questions are not meant to be all-inclusive as we have not had enough time to thoroughly analyze the bill. He said that indicates that Mr. Shively may have further issues with the bill. Representative Gruenberg requested that Mr. Shively send the remainder of his concerns to the committee.

MR. SHIVELY said he would.

Number 3939

KAREN REGINA, President and Chief Executive Officer, Alaska Hospital Alliance, which includes the Alaska Hotel and Lodging Association, and the Alaska Restaurant and Beverage Association, shared her organization's reasons for opposing HB 537. She said she opposes targeted taxes on [the tourist industry] which are not earmarked exclusively for tourism marketing. She noted that the industry does contribute significantly to the state's economy, and should be part of the solution to solving the budget deficit. "To achieve that, we believe a broad-based solution is necessary, rather than an approach that unfairly targets specific industries and businesses. We also believe that a broad-based solution is achievable, in fact, to that end we support the governor's POMV [percent of market value] plan," she related.

MS. REGINA spoke of the bill's utilization of a tax mechanism that local regions rely on for tourism marketing, economic development, and local government. Tourism enhances the quality of life in Alaska in many ways, both directly and indirectly, and a bill such as this sends the wrong message, she opined. She pointed out that the tax is targeting businesses that are already paying local taxes. The hotel and lodging industry paid more than \$46 million in tax to local municipalities in 2002, she said. The cumulative impact of an additional 5 percent tax would bring the tax on hotels in many regions up to 13-17 percent. She repeated her organization's opposition to HB 537 and urged the committee to consider other more broad-based solutions.

Number 3628

JACK REISS, Vice President for Operations, Aramark Parks & Resorts, said his company operates the concessions and tours in Denali National Park and Preserve, as well as two lodges in the Denali corridor. He related that visitations to Denali are approximately 80 percent cruise line related, and over the past three years, visitation has been going down approximately 5 percent a year. He said that fewer tourists are venturing into the interior of Alaska for a variety of reasons. He stated his belief that this tax targets the tourism industry and will continue to deter travelers from going into interior Alaska. He called it, "Shooting the goose that lays the golden egg." Denali only operates about 120 days a year and most businesses rely on cruise line tourism, and this bill jeopardizes all business management in the Denali corridor, he concluded.

Number 3430

JOHN BINKLEY, Owner, Sternwheel Riverboats; Eldorado Gold Mine, said his businesses employ about 150 people. He said he has been very supportive of Governor Murkowski's drive to develop the resources in Alaska. Tourism is also a resource, he said, and he stated his opposition to HB 537 because of the effect that it has on the development of this resource. He compared tourism to other resources that bring new dollars from outside of the state into its economy. He urged the committee to not pass this legislation.

Number 3124

STEVE FRANK said that he is the owner of a small tourism business consisting of a hotel, restaurant, and RV park in Fairbanks. He stated that he is almost entirely dependant on visitors to support his business and the 100 jobs created by his business. He opined that HB 537 would cost jobs because less people will come to his business, and it does not seem appropriate to tax an industry that supports general government. He stated his support for a mechanism to enhance the economic development of tourism through SB 254, which is an industry self-assessment that would put money back into tourism marketing. A 5 percent tax, added to an 8 percent hotel tax, would make for a 13 percent tax, which will discourage people from booking tours to Alaska, he said.

Number 2657

GARY MENDIVIL, Business Manager, Eaglecrest Ski Area, spoke about his concerns with the definition section of HB 537. The language leaves a number of things open to interpretation, specifically in the definition of guided activities, which might be determined to include ski and snowboard lessons or field trips operated by local community groups or schools, he said. He described the ski industry in Alaska as one destination resort, Alyeska, six community ski areas, and four ski areas located on military bases.

Number 2452

KEVIN BATTERS, General Manager, Hilton Hotel, in stating his opposition to HB 537, said that his hotel relies on convention and tour business for the majority of its business throughout the year. This tax will make it extremely hard to continue to run the business effectively, he said. If there is a decrease in any of these areas, it will prevent Anchorage from becoming a year-round destination and it will decrease jobs, he opined.

CHAIR HAWKER closed public testimony.

[HB 537 was held over.]

HB 538-TOBACCO TAX; LICENSING; PENALTIES

Number 2305

CHAIR HAWKER announced the return 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 2228

REPRESENTATIVE ROKEBERG moved to adopt Amendment 9, labeled 23-GH2116\D.3, Kurtz, 3/30/04, which read:

Page 3, following line 28:

Insert a new bill section to read:

"* **Sec. 11.** AS 43.50.190 is amended by adding a new subsection to read:

(d) A portion of the annual proceeds of the tax levied under (a) of this section equal to the total

proceeds of the tax multiplied by the quotient of seven divided by 62 shall be deposited into the tobacco use education and cessation fund established in AS 37.05.580. This deposit shall be in addition to any sums deposited into the fund under AS 37.05.580(a)."

REPRESENTATIVE WEYHRAUCH objected for discussion purposes.

REPRESENTATIVE ROKEBERG stated his frustration over the allocation of resources from the Master Settlement Agreement. He said the intent of Amendment 9 is to provide sufficient amounts of money to fund the minimum amount of tobacco use education cessation as recommended by the Centers for Disease Control and Prevention (CDC), or approximately \$8 million. He emphasized that the state should provide funding to help those people who wish to stop smoking, if the tax is implemented. He noted that historically there has been a shortfall in the area of cessation education. When the Master Settlement Agreement was created, the state received about \$668 million over a period of 25 years, 80 percent of which has been spent on infrastructure in Alaska, leaving cessation education only partly funded, he related. He maintained, "Smokers deserve their fair share of the money to help them quit." It should be the public policy of the state, he added.

Number 1731

CHAIR HAWKER asked if the intent of [Amendment 9] is to direct approximately \$8 million into the tobacco education fund from the proceeds that this tax would raise.

REPRESENTATIVE ROKEBERG said that is correct. The net amount of the appropriations would be that amount, he added.

CHAIR HAWKER said it would continue into the general fund as was originally envisioned in the bill. The fiscal note proceeds of the tax are about \$35.3 million, and those proceeds would be multiplied by a factor of seven and then divided by 62, he calculated. He said that is about 11 percent or \$4 million. He asked what part of the calculation is missing.

REPRESENTATIVE ROKEBERG said his understanding is that it is about \$3.4 million against the current appropriation of \$4.6 million, which would yield \$8 million.

CHAIR HAWKER said he stands corrected in his understanding of the intent of Amendment 9. The intent is not to add \$8 million from this tax into the tobacco fund, but is to raise the aggregate annual contribution.

REPRESENTATIVE ROKEBERG replied, yes, enough to yield the minimum amount of approximately \$8 million.

CHAIR HAWKER asked if that could be done by diverting approximately \$4 million of the proceeds of this tax into the tobacco cessation fund.

REPRESENTATIVE ROKEBERG said that the problem is how to accomplish it in a bill that is not an appropriation bill.

Number 1444

REPRESENTATIVE OGG asked for clarification of [AS 37.05.580(a)]. He wondered why a percentage isn't used in [Amendment 9] instead of the "quotient language"

REPRESENTATIVE ROKEBERG said it is a good question and perhaps the drafters missed the intent of the amendment. He added that it is not a appropriation bill. He said he is trying to set public policy and would like more clarification of the amendment by Mr. Hickey [from the American Cancer Society].

REPRESENTATIVE GRUENBERG said he thinks it is a good amendment and he suggested adding a conceptual intent section to it.

REPRESENTATIVE ROKEBERG said he agrees with Representative Gruenberg that statutory intent language should be incorporated into the bill.

REPRESENTATIVE WEYHRAUCH suggested asking Mr. Hickey for input on the intent of the amendment.

Number 1017

MARK HICKEY, American Cancer Society, said he was asked by Representative Rokeberg to help with an amendment proposal to fund the program, but stated that his organization supports the bill even without [Amendment 9].

REPRESENTATIVE WEYHRAUCH asked what program Mr. Hickey is referring to.

MR. HICKEY replied, "The tobacco control program - the cessation, education program - [it] is Representative Rokeberg's intent is to fund that at a minimum recommended level of about \$8 million. The actual recommended guidelines from the Centers for Disease Control are about \$8.3 million."

REPRESENTATIVE WEYHRAUCH asked if the quotient of 7/62 is found somewhere else.

Number 0915

MR. HICKEY said that it was how the drafters wrote it. He explained, "In law today you have the tobacco use education cessation fund which was created three years ago, and the statute referenced, I believe, is AS 37.05.580. Currently, 20 percent of the Master Settlement payment goes into that annually." He said it is not a dedicated fund, but is intended to implement the program and the legislature has been very good at providing the money for it. The amount right now, the annual cash flow, is about \$4.4 million a year. This proposal will take an additional amount out of the general fund tax on cigarettes and put it into that fund and the amount works out to be about \$4.2 million of additional money based on DOR's own estimates, he explained. He related that the way it works is a cigarette tax increase will generate about a \$36 million tobacco tax increase. There are two pieces to the tobacco tax increase, \$30 million from the cigarette part and the rest from other tobacco products (OTP). One mill generates about \$600,000 in revenue right now. Seven mills would generate about \$4.2 million. "You would take seven mills, put it in this fund. At your discretion you can then appropriate it on an annual basis. And a dollar impact right now, today, is adding another \$4.2 million, so I would actually put \$8.6 million, using today's numbers, into that fund," he concluded.

REPRESENTATIVE WEYHRAUCH asked if that is where the seven came from.

MR. HICKEY said yes.

REPRESENTATIVE WEYHRAUCH asked where 62 came from.

MR. HICKEY replied that 62 is what the new mill rate would be with the dollar-a-pack increase. The mill rate right now is 12, he added.

REPRESENTATIVE WEYHRAUCH asked if there is any reason why it couldn't just be 11 percent or 11.4 percent and achieve the same objective.

Number 0644

MR. HICKEY said, "I think you could go that way. The main piece of this, and trying to find a way to meet Representative Rokeberg's desire, was to take advantage of the fund you've already set up, which is very clear as to what its purposes are for, and make available, at least in the front, a certain amount to get to the minimum, and then at your discretion you would be able to elect to appropriate that for the cessation program."

REPRESENTATIVE WEYHRAUCH asked if this provision would only be reasonably considered if the tobacco tax goes into effect, and wouldn't be a stand-alone provision.

MR. HICKEY said that is his understanding.

CHAIR HAWKER said that there are a couple of perils that the committee is facing. One is the dedication of funds issue, and the other is a concern that this is not an appropriations bill of itself. He asked Representative Gruenberg for his opinion.

REPRESENTATIVE GRUENBERG said he sees three parts to that solution: the intent of putting money into the fund, the drafting of the language in the text, and providing for a second intent provision as to what the fund should or should not be used for. He suggested addressing each of those issues separately.

MR. HICKEY addressed the last point and pointed out that existing law enacted in 2000 and sponsored by Representative Rokeberg, already deals with the Department of Health and Social Services' duties. "It tracks the recommendation from the coalition that I'm representing, as well as national recommendations, as to the pieces, counter marketing, cessation, enforcement - it goes through a list - and the fund already in place makes a connection that the purpose of the fund is to implement that program," he explained. He said that the fund is not viewed as a dedicated fund, but is a fund within the general fund at the legislature's discretion whether, on an annual basis, to follow what amounts to intent.

REPRESENTATIVE GRUENBERG suggested that the committee pass Amendment 9 with the suggestion to Representative Rokeberg and Mr. Hickey to "morph it" further.

REPRESENTATIVE ROKEBERG agreed. He said he has drafted a conceptual letter of intent to add to the bill, and he offered to work further with the various parties to achieve more clarity. He said he is a member of the next committee of referral.

REPRESENTATIVE GRUENBERG asked if Representative Rokeberg would offer [the letter of intent] before this committee.

Number 0010

REPRESENTATIVE ROKEBERG read the conceptual letter of intent [which later became Conceptual Amendment 11] as follows:

It is the intent of the legislature to provide aggregate funding to meet the minimum amount of tobacco control programs recommended by the Centers for Disease Control on tobacco taxes and the tobacco use and cessation fund establishing AS 37.05.580.

REPRESENTATIVE GRUENBERG suggested [adopting Amendment 9] and the letter of intent to be included in [HB 538].

TAPE 04-22, SIDE A

CHAIR HAWKER asked if the letter of intent should be added on to Amendment 9.

REPRESENTATIVE ROKEBERG said he will offer it as a separate amendment.

CHAIR HAWKER clarified that the discussion is leading toward passing Amendment 9, recognizing that it has some difficulties but the intent is there, and then offering the intent language as a separate amendment.

REPRESENTATIVE ROKEBERG said he wants to have the intent language included within the bill.

REPRESENTATIVE GRUENBERG removed his objection to Amendment 9. He suggested that the wording in the amendment be changed to language instead of figures.

REPRESENTATIVE ROKEBERG replied that it can't be figures because it is a moving target and it will be subject to appropriations. He termed it a policy statement.

CHAIR HAWKER noted that Representative Gruenberg's objection is maintained only for discussion purposes.

REPRESENTATIVE WILSON said she thinks that this particular tax is very important as a policy statement because it is as much a social and health issue as an economic issue.

Number 0211

REPRESENTATIVE OGG commended Representative Rokeberg [for the intent wording] because it gives purpose to the bill. Up until this concept was added, the bill had no purpose other than as a revenue device, he opined. He said he is very supportive of increasing a tobacco tax for the purpose of accomplishing [tobacco cessation] education, and not as just a revenue device.

REPRESENTATIVE GRUENBERG removed his objection to the motion to adopt Amendment 9.

REPRESENTATIVE WEYHRAUCH also removed his objection.

Number 0303

CHAIR HAWKER asked if there was any further objection to adopting Amendment 9. There being no objection, it was so ordered.

Number 0324

CHAIR HAWKER moved to adopt Amendment 10, which read [original punctuation provided]:

Page 2, Line 30
Delete [1,000]
Insert 5,000

REPRESENTATIVE SAMUELS objected for discussion purposes.

CHAIR HAWKER explained that the amendment further solidifies the conformity throughout the document by raising the 1,000-cigarette hurdle for various benchmarks to 5,000.

REPRESENTATIVE SAMUELS removed his objection.

CHAIR HAWKER asked if there was any further objection to the motion to adopt Amendment 10. There being no objection, it was so ordered.

Number 0425

REPRESENTATIVE ROKEBERG moved to adopt Conceptual Amendment 11, which read [original punctuation provided]:

It is the intent of the legislature to provide aggregate funding to meet the minimum amount of tobacco control programs recommended by the Center for Disease Control from tobacco taxes and the tobacco use and cessation fund establishing in AS 37.05.580.

CHAIR HAWKER objected for discussion purposes.

REPRESENTATIVE ROKEBERG said it is the intent section of the bill and he would like to have it as a conceptual amendment added to the bill itself as a statement of policy from the legislature.

CHAIR HAWKER removed his objection.

REPRESENTATIVE WEYHRAUCH mentioned that it should say "meet" instead of "met".

CHAIR HAWKER, hearing no further objections to the motion to adopt Conceptual Amendment 11, it was so ordered.

Number 0526

REPRESENTATIVE OGG offered [Conceptual Amendment 12] stating that the amount of tax increase conforms to the intent of [Conceptual] Amendment 11.

CHAIR HAWKER asked for clarification.

REPRESENTATIVE OGG said that the increase in the tax should only be enough to fund the amount stated in the intent language, which will decrease the total amount of tax raised.

CHAIR HAWKER objected.

REPRESENTATIVE GRUENBERG said he would appreciate first taking up the amendments that he plans to offer.

CHAIR HAWKER said [Conceptual Amendment 12] stands in order, but he assured Representative Gruenberg that [the committee] will get to all of the amendments. He repeated Conceptual Amendment 12, which is to reduce the amount of incremental tax imposed by this legislation to the amount necessary to comply with the intent language just passed.

REPRESENTATIVE OGG said that is clear enough.

REPRESENTATIVE WILSON asked if the total amount raised would be no more than \$8 million and it would go to tobacco cessation and there would be nothing left for the original purpose of the bill.

REPRESENTATIVE OGG replied yes.

REPRESENTATIVE GRUENBERG objected.

CHAIR HAWKER maintained his objection. A roll call vote was taken. Representatives Kohring and Ogg voted in favor of the motion to adopt Conceptual Amendment 12. Representatives Weyhrauch, Wilson, Samuels, Rokeberg, Gruenberg, and Hawker voted against it. Therefore, the motion to adopt Conceptual Amendment 12 failed by a vote of 2-6.

Number 0940

REPRESENTATIVE OGG responded that he wished to reconsider and withdraw [Conceptual Amendment 12].

CHAIR HAWKER accepted Representative Ogg's wish to reconsider and withdraw Conceptual Amendment 12.

Number 1000

REPRESENTATIVE GRUENBERG moved to adopt Amendment 12, labeled 23-GH2116\H.2, Kurtz, 4/1/04, which read:

Page 5, line 23:

Delete "AS 43.50.500 - 43.50.700"

Insert "AS 43.50.500 - 43.50.640 or 43.50.660 - 43.50.700"

Page 5, line 26:

Delete "AS 43.50.500 - 43.50.700"

Insert "AS 43.50.500 - 43.50.640 or 43.50.660 - 43.50.700"

Page 5, line 28 - 29:

Delete "AS 43.50.500 - 43.50.700"

Insert "AS 43.50.500 - 43.50.640 or 43.50.660 - 43.50.700"

Page 6, line 24 - 25:

Delete "or 43.50.650"

Page 7, line 22:

Delete "or 43.50.650"

REPRESENTATIVE GRUENBERG explained that he had the drafter technically conform the amendment to Representative Samuels' amendment, which was to make the forfeitures only apply in felony cases. He checked with Representative Samuels to make sure that he agreed with the amendment.

REPRESENTATIVE SAMUELS said that was the intent of the original amendment.

CHAIR HAWKER objected for discussion purposes. He asked for Mr. Barnhill's opinion of the amendment.

MR. BARNHILL said the amendment is fine.

CHAIR HAWKER removed his objection to the motion to adopt Amendment 12. There being no further objection, it was so ordered.

Number 1200

REPRESENTATIVE GRUENBERG moved to adopt Amendment 13, labeled 23-GH2116\H.3, Kurtz, 4/1/04, which read:

Page 7, line 26:

Delete "shall"

Insert "may"

Page 7, line 28, following "seized":

Insert "or to another municipality affected by the crime for which the property was forfeited. The state shall notify all municipalities affected by the crime of the forfeiture proceeding"

REPRESENTATIVE WEYHRAUCH objected.

REPRESENTATIVE GRUENBERG explained that this amendment also deals with the forfeiture provision of the bill. He said the amendment is about getting the property that is seized by the state to a municipality. It requires that the property must go to a municipality.

REPRESENTATIVE WEYHRAUCH asked if it could go to an unorganized borough.

REPRESENTATIVE GRUENBERG said yes, or they might want to keep it for the state if it is a valuable airplane needed for fish and game or something like that, he said. The second change is that it makes it possible for the property to go to the municipality it was seized in or to go to another municipality that was affected by the particular crime, he explained. It also requires the state to notify all of the relevant municipalities of the forfeiture proceeding.

REPRESENTATIVE WEYHRAUCH removed his objection. There being no further objection, Amendment 13 was adopted.

Number 1500

REPRESENTATIVE GRUENBERG moved to adopt Amendment 14, which read [original punctuation provided]:

Page 7, line 7: Insert new subsection (f) and re-letter subsections accordingly:

(f) The court may allow the owner of property that is subject to forfeiture under (a) of this section to redeem the property by paying an amount to be determined by the court to be the fair market value of the property.

CHAIR HAWKER objected for discussion purposes.

REPRESENTATIVE GRUENBERG explained that what this amendment does is allow the owner of the property to put up the fair market value in cash. It would save the state the cost of going through the auction process, he said.

Number 1553

REPRESENTATIVE ROKEBERG said this amendment causes a few complications. He asked if this means it should be the first right of refusal or first right of offer. He said there is an appraisal problem, also, about what is fair market value.

REPRESENTATIVE GRUENBERG said that could be determined by the court.

REPRESENTATIVE ROKEBERG noted that this would be called a first right of offer.

REPRESENTATIVE GRUENBERG said it would be a commercial appraisal.

CHAIR HAWKER removed his objection to the motion to adopt Amendment 14. There being no further objection, it was so ordered.

Number 1670

REPRESENTATIVE GRUENBERG moved to adopt Amendment 15, which read [original punctuation provided]:

Page 6, line 28 to Page 7, line 19: Amend subsections (e) and (f) as follows:

(e) The owner of property subject to forfeiture under (a) of this section is entitled to relief from the forfeiture in the nature of remission of the forfeiture if, in an action under (d) of this section, the owner shows that the owner

- (1) was not a party to the violation; and
- (2) had no actual knowledge or reasonable cause to believe that the property was used or was to be used in the violation of the law[; AND
- (3) HAD NO ACTUAL KNOWLEDGE OR REASONABLE CAUSE TO BELIEVE THAT THE PERSON COMMITTING THE VIOLATION HAD
 - (A) A CRIMINAL RECORD FOR VIOLATING THIS CHAPTER; OR
 - (B) COMMITTED OTHER VIOLATIONS OF THIS CHAPTER].

(f) A person other than the owner holding, or the assignee of, a lien, mortgage or conditional sales contract on, or the right to possession to property subject to forfeiture under (a) of this section is entitled to relief from the forfeiture in the nature

- of remission of the forfeiture if in an action under (d) of this section, the person shows that
- (1) the person was not a party to the violation;
and
 - (2) had no actual knowledge or reasonable cause to believe that the property was used or was to be used in the violation of the law[; AND
 - (3) HAD NO ACTUAL KNOWLEDGE OR REASONABLE CAUSE TO BELIEVE THAT THE PERSON COMMITTING THE VIOLATION HAD
 - (A) A CRIMINAL RECORD FOR VIOLATING THIS CHAPTER; OR
 - (B) COMMITTED OTHER VIOLATIONS OF THIS CHAPTER].

CHAIR HAWKER objected for discussion purposes.

REPRESENTATIVE GRUENBERG explained, "Right now it's an affirmative defense to the relief, if the owner shows that the owner wasn't a party to violation and had no actual knowledge or reasonable cause to believe that the property was used to be used in the violation." "Number three is the provision that caused me some problem," he added. The question would be whether the person had a knowledge of whether the perpetrator had a criminal record for violating the chapter or had ever committed any other violations of the chapter, he said. This is especially true for smaller communities, he opined. He said it seemed to reach too far and to not be fair, and that is why [Amendment 15] eliminates it. "You still have to show, to get out of it, that you weren't a party to it and you had no knowledge that this was going to be used in any violation, and that's the essence of what ought to be shown," he concluded.

REPRESENTATIVE ROKEBERG asked for input from DOL about the amendment.

Number 1907

MR. BARNHILL said what this does is lower the standard or threshold for an innocent owner, or for an innocent owner of a security interest in the property, to get remission. He said it is essentially a policy call.

REPRESENTATIVE SAMUELS asked if the standard is being lowered all that far.

MR. BARNHILL replied that it begs the question as to whether the person is just looking the other way.

REPRESENTATIVE WEYHRAUCH asked if it is the maker's intent to lower the threshold.

Number 2115

Representative Gruenberg said no. He said he is trying to address, particularly in small communities where people may have done something in their youth long ago, a situation where a person has no possible reason to believe that the car or airplane is being used illegally, but they do know that their friend was convicted of something long ago.

REPRESENTATIVE WEYHRAUCH suggested that due to the nature of the offense an expungement might be in order.

CHAIR HAWKER concurred with that idea. He noted that the language in [Amendment 15] is not exactly like the language in the bill. He referred to [page 7, line 1, of the bill] the words "did not have actual knowledge" as opposed to "had no actual knowledge" [in Amendment 15].

REPRESENTATIVE GRUENBERG said that should be taken care of by the drafter.

CHAIR HAWKER asked if Representative Gruenberg's intent is to demonstrate changes to Version H [of HB 538], rather than an attempt to rewrite the language.

REPRESENTATIVE GRUENBERG replied absolutely.

REPRESENTATIVE ROKEBERG suggested that it be a conceptual amendment.

Number 2255

CHAIR HAWKER said it is now Conceptual Amendment 15. He asked if [paragraph (3)] should be eliminated "as further establishing a bar to someone being asked to forfeit their property". He opined that it does seem like it is being lowered to a lesser standard, by eliminating the language in [paragraph (3)] and he said he is troubled by that.

REPRESENTATIVE GRUENBERG replied that he is trying to prevent an injustice and does not want to lower the bar.

He said, "In a small state like Alaska, we know a lot about our neighbors - this isn't a big state - and that doesn't mean you have any criminal intent at all, or any intent to violate the law. You just happen to know your neighbor."

REPRESENTATIVE WEYHRAUCH agreed.

REPRESENTATIVE ROKEBERG said he supports the amendment.

REPRESENTATIVE WILSON maintained her objection.

REPRESENTATIVE WEYHRAUCH stated that this is a conceptual amendment now, and he suggested that Representative Gruenberg is not offering Amendment 15 as written.

REPRESENTATIVE GRUENBERG clarified that the amendment deletes lines 16-19 on page 7, and it is not conceptual.

Number 2518

REPRESENTATIVE WILSON inquired if there is anyway to "come half-way between those two." She said she likes both sides of the issue, and does not want to see anyone in trouble who shouldn't be, but at the same time she said she does not want to see someone get away with something they shouldn't be getting away with. She asked if there is any middle ground.

MR. BARNHILL replied yes, a temporal aspect could be added to the language. He said that Representative Gruenberg's concern is that someone [committed a crime] 30 years ago, so language could be inserted to say "had no actual knowledge or reasonable cause to believe that the person committing the violation had within the last X number of years a criminal record for violating this chapter, or committed other violations of this chapter." He suggested a number could be picked, and "that would come half-way."

REPRESENTATIVE GRUENBERG said if [the committee] wished to do that it is fine, and he repeated that he is just trying to avoid an injustice.

Number 2700

REPRESENTATIVE WILSON related that she would like that [addition].

REPRESENTATIVE ROKEBERG suggested an amendment to the amendment could be made, similar to the alcohol statutes. For a DUI [driving under the influence] there is a look-back provision of 10 years for a felony, he explained. There is currently a bill that [has a look-back provision] for 15 years for a misdemeanor, he added. It would have to be decided if forfeiture is a felony or a misdemeanor first.

REPRESENTATIVE WEYHRAUCH asked if that is for driving under the influence.

REPRESENTATIVE ROKEBERG said that is correct.

CHAIR HAWKER asked Mr. Barnhill how he would craft [look-back language] into this amendment.

MR. BARNHILL suggested inserting the words "within the last X years".

REPRESENTATIVE GRUENBERG suggested five years.

REPRESENTATIVE WILSON suggested ten years.

REPRESENTATIVE GRUENBERG agreed [to ten years]. He suggested that the language say, "had, within the last 10 years,". He said, in place of the entire [Amendment 15], insert on line 17, page 7, the phrase ", within the last 10 years,". He said he considers this a friendly amendment.

MR. BARNHILL pointed out that the language also needed to be inserted on page 7, line 4.

REPRESENTATIVE GRUENBERG moved to adopt Amendment 15, rewritten as previously stated. He asked if the language needed to be inserted anywhere else.

MR. BARNHILL said he hopes not.

REPRESENTATIVE GRUENBERG asked that the drafter be allowed to put [the language] in anywhere else as needed, and he called Amendment 15 a conceptual amendment.

Number 2954

CHAIR HAWKER restated Conceptual Amendment 15. He asked Representative Gruenberg if a sidebar is required to explain the time certain in the last 10 years.

Number 3130

REPRESENTATIVE GRUENBERG replied, "It is the intent that the date of the previous conviction must be earlier than ten years before the date of this offense."

REPRESENTATIVE WILSON withdrew her objection to the motion to adopt Conceptual Amendment 15.

CHAIR HAWKER, hearing no further objection, announced that Conceptual Amendment 15, as rewritten, was adopted.

REPRESENTATIVE OGG noted that on page 5 of Version H, the terms "barter, or exchange" remain, when they should have been removed.

REPRESENTATIVE GRUENBERG asked if that is an amendment.

CHAIR HAWKER replied that it is a question, so far.

REPRESENTATIVE GRUENBERG suggested that Legislative Legal and Research Services look at it.

The committee took an at-ease from 9:15 a.m. to 9:18 a.m.

CHAIR HAWKER said that Legislative Legal and Research Services was directed to remove the words "barter or exchange", which still appear in Version H on page 5, lines 22, 25, and 26. He said that has not been correctly done so it will be requested again. He pointed out that the directive was in Amendment 4, which was adopted in a previous meeting.

REPRESENTATIVE GRUENBERG asked, in view of all of the amendments that have been offered, if the title needed to be expanded. He explained that some of the content of the bill relates to criminal statutes, also. He wondered if the language in the title covers that and asked that the title be conformed to the changes that [the committee] has made.

CHAIR HAWKER pointed out that the language regarding the tobacco cessation fund would also need to be incorporated into the title.

REPRESENTATIVE GRUENBERG emphasized, "We don't want it any broader than what we've done. We do not want an Act relating to cigarettes, or something like that."

CHAIR HAWKER echoed, "We would like a tight title conformance." He said that the committee would get a chance to review the final committee substitute before reporting the bill out of committee.

REPRESENTATIVE GRUENBERG also pointed out that the numbering of the amendments may have to be changed.

Number 3804

REPRESENTATIVE ROKEBERG expressed his thanks to Chair Hawker for his indulgence in the various amendments. He brought to the committee's attention another amendment concept which would grandfather in, prohibit any further taxation on tobacco by any political subdivisions, and reserve the rights for any further taxation to the state. He pointed out that at least three municipalities have an additional tobacco products tax. He opined it necessary to reserve certain areas of taxation for different political subdivisions so that there is a coordination of policy and impacts on markets and businesses. He said he would not appeal any current local taxes, but opined that [tobacco taxation] should be reserved for the state in the future.

REPRESENTATIVE GRUENBERG replied that he hopes Representative Rokeberg does not offer that amendment because it could be controversial, it is late in the session, and it might involve another referral to House Community and Regional Affairs Standing Committee.

Number 4004

REPRESENTATIVE WILSON said that because [the state] has eliminated revenue sharing to the municipalities, they are very limited in the ways that they can raise revenue. She stated her hesitation to take any options away from cities.

REPRESENTATIVE OGG also urged against such an amendment because some boroughs have "health powers" and use a tobacco tax to enhance revenues for that purpose. He said he would hate to discourage that. The taxing power by municipalities would be waived by the people who make the decision on their own public, which is a further check that is already in place, he opined.

CHAIR HAWKER said he finds Representative Rokeberg's arguments compelling. He said he is troubled by the perspective that all traditional revenue sources used by public entities should be reserved and given priority by cities, leaving the state with very little. He also agreed it is wise not to incorporate the amendment into this legislation.

Number 4310

REPRESENTATIVE WEYHRAUCH moved to report CSHB 538, Version 23-GH2116\H, Kurtz, 4/1/04, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE KOHRING objected. He spoke of several philosophical concerns with the bill. He said enforcement of existing laws should be looked at before raising taxes. He suggested that there is evidence that increasing the tax on tobacco in other states and countries resulted in more smuggling. Canadian studies reported a 40 percent increase of youth smoking as a result of a cigarette tax increase, so the tax was lowered in order to keep smuggled cigarettes away from kids, he related. He said he has not seen any compelling evidence that shows a decrease in youth smoking as a result of the tax increase in Alaska. Price elasticity is another concern, he stated. He opined that a \$2 increase in tax will not lead to a decrease in smoking. He termed tobacco use an individual responsibility, and suggested that parents should be the ones to discourage their children from smoking.

Number 4620

A roll call vote was taken. Representatives Weyhrauch, Wilson, Samuels, Rokeberg, Gruenberg, and Hawker voted in favor of reporting CSHB 538, as amended, out of committee. Representatives Kohring, Ogg, and Moses voted against it. Therefore, CSHB 538(W&M) was reported out of the House Special Committee on Ways and Means by a vote of 6-3.

TAPE 04-22, SIDE B

CHAIR HAWKER made closing announcements.

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Ways and Means meeting was adjourned at 9:30 a.m.