

MINUTES
SENATE FINANCE COMMITTEE
April 21, 2004
9:10 AM

TAPES

SFC-04 # 88, Side A
SFC 04 # 88, Side B
SFC 04 # 89, Side A

CALL TO ORDER

Co-Chair Gary Wilken convened the meeting at approximately 9:10 AM.

PRESENT

Senator Gary Wilken, Co-Chair
Senator Lyda Green, Co-Chair
Senator Con Bunde, Vice Chair
Senator Ben Stevens
Senator Lyman Hoffman
Senator Donny Olson
Senator Fred Dyson

Also Attending: SENATOR RALPH SEEKINS; JOHANNA BALES, Excise Audit Manager, Tax Division, Department of Revenue; MIKE ELERDING, President and Owner, Northern Sales Company of Alaska; MIKE BARNHILL, Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Juneau), Department of Law; KEITH TEEL, Attorney with Covington & Burling

Attending via Teleconference: From Anchorage: JAMES BRENNAN, Attorney, representing Anchorage Taxicab Permit Owners Association; ELI SCHOENBERG, Project Citizen Student, Golden View Middle School; ANNIE SNEED, Project Citizen Student, Golden View Middle School; ALEENA JOBE Project Citizen Student, Golden View Middle School; KYLE STERSLE, Project Citizen Student, Golden View Middle School; MARIN CHAMBERS, Project Citizen Student, Golden View Middle School; JESSICA FAUST, Project Citizen Student, Golden View Middle School; RUSSELL JOHNSTON, Project Citizen Student, Golden View Middle School; CODY FLOERCHINGER, Project Citizen Student, Golden View Middle School; MORGANE EVANS-VOIGT, Project Citizen Student, Golden View Middle School; SAMANTHA NOVAK, Project Citizen Student, Golden View Middle School; From Anchorage: EMILY NENON, Alaska Advocacy

Manager, American Cancer Society

SUMMARY INFORMATION

HB 347-EXEMPT TAXIS FROM VEHICLE RENTAL TAX

The Committee rescinded previous action on an amendment and held the bill in Committee.

SB 368-TOBACCO TAX; LICENSING; PENALTIES

The Committee heard from the Department of Revenue, the Department of Law, and the industry. Six amendments were adopted; one amendment failed to be adopted; and one amendment was withdrawn from consideration. The bill was held in Committee.

SB 307-APPEAL BONDS: TOBACCO SETTLEMENT PARTIES

The Committee heard from the sponsor and the industry. The bill was held in Committee.

SB 311-INSURANCE & WORKERS' COMPENSATION SYSTEM

This bill was scheduled but not heard.

AT EASE 9:12 AM / 9:13 AM

#hb347

HOUSE BILL NO. 347

"An Act exempting taxicabs from the passenger vehicle rental tax; and providing for an effective date."

This was the second hearing for this bill in the Senate Finance Committee.

Co-Chair Wilken explained that this legislation would exempt taxicabs from the passenger vehicle rental tax by removing them from the definition of a passenger vehicle. He reminded that this tax, which specified that a ten-percent vehicle would be imposed on the rental and lease of passenger vehicles, was enacted during the previous Legislative Session. He informed the Committee that the fiscal "unintended consequence" of adopting Amendment #1 during the first hearing on this bill was a \$400,000 decrement to the budget.

Amendment #1: This amendment changes the bill's title to read as follows.

"An Act exempting taxicabs and certain other motor vehicles from the passenger vehicle rental tax; and providing for an effective date."

In addition, the amendment deletes, in Section 1, subsection (2)(E), the word "or" on page two, line two and inserts language on page two, line three following the word "taxicab." This language would read as follows.

(E) a taxicab, [or]
(f) a vehicle that is used exclusively for the hauling or delivery of cargo;

Furthermore, the amendment inserts new language in Sec. 2, page two, line seven following "taxicabs" as follows.

IMPLEMENTATION. The Department of Revenue shall refund any tax collected and remitted to the department under AS 43.52.010 - 43.52.099 on the rental of taxicabs and other rentals that are exempt from the passenger vehicle rental tax because of the amendments to AS 43.52.099(2) made by sec.1 of this Act for rentals made on or after January 1, 2004,...

New Text Underlined [DELETED TEXT BRACKETED]

Co-Chair Green moved to rescind the March 9, 2004 Committee action of adopting Amendment #1.

There being no objection, the Committee action of adopting Amendment # 1 was RESCINDED.

Co-Chair Wilken specified, therefore, that HB 347, Version 23-LS1311\D is before the Committee.

JAMES BRENNAN, Attorney, representing Anchorage Taxicab Permit Owners Association, testified via teleconference from Anchorage and commented that he is available to answer questions. He noted that a copy of his April 7, 2004 letter [copy on file], addressed to Senator Wilken is included in Members' packets.

Senator Olson asked the Association's position on the legislation.

Mr. Brennan responded that the Association "is strongly in favor" of this legislation as the tax "accidentally" imposed a burden on taxicab drivers. He explained that the sponsor of the tax legislation that was adopted the previous year, were unaware that, "imbedded in the Anchorage taxicab industry" was a rental

arrangement in which independent drivers rent their taxicab vehicle from "an operator," who maintains the taxicab and pays for such things as liability insurance. Therefore, he continued, the taxicab drivers rent the vehicle and are therefore subject to the ten-percent tax. Furthermore, he detailed that these rentals are considered daily rentals. He shared that there are 158 general permits and that a taxicab could be rented out for both a day shift and night shift. In all cases, he continued, the taxicab drivers are local Anchorage residents. He stated that it came to "a shock" to the bill's sponsor, Representative Pete Kott, and to the Department of Revenue that these drivers would be subject to this tax. Therefore, he urged that this legislation be adopted to remove this burden from taxicab drivers.

Co-Chair Wilken surmised therefore, that the testifier is "strongly in favor" of the legislation.

Mr. Brennan concurred.

The bill was HELD in Committee.

#sb368

SENATE BILL NO. 368

"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."

This was the second hearing for this bill in the Senate Finance Committee.

Co-Chair Wilken explained that the Senate Rules Committee sponsors this legislation by request of the Governor, Frank Murkowski. He stated that the legislation would increase the cigarette tax from one dollar per pack of twenty cigarettes to two dollars per pack. Furthermore, he informed that the Tobacco Products tax would increase from 76 percent to 100 percent of the wholesale cost.

JOHANNA BALES, Program Manager, Cigarette and Tobacco Products Excise Tax and Revenue Auditor, Tax Division, Department of Revenue, noted that she would respond to questions that arose during the first hearing on this bill.

Senator Bunde informed the Members that on teleconference are

students from Anchorage's Golden View Middle School, who are participating in a public interest issue school project named "Project Citizen." As part of the project, he noted, the students elected to research and testify regarding this tobacco tax bill, as "it is a public policy issue that is important to our State" and to communities. He shared that Golden View Middle School is located within the Anchorage district he represents.

ELI SCHOENBERG, Project Citizen Student, Golden View Middle School, testified via teleconference from Anchorage and shared that "Project Citizen" is a civic education program that allows students to work on a policy or issue that would affect the students and their community. He stated that the issue chosen by the students was tobacco enforcement; particularly focusing on minors' access to tobacco and solutions to counteract the problem. He stated that this tobacco tax legislation was chosen, as it was determined that "this was the best chance to solve the problem and save lives for generations to come."

Senator Hoffman, noting that this tax would generate a "substantial" amount of money for the State, asked the testifier whether a portion of these funds should be earmarked to support advertising campaigns geared to prevent kids from smoking.

Mr. Schoenberg responded in the affirmative.

ANNIE SNEED, Project Citizen Student, Golden View Middle School, testified via teleconference from Anchorage and avowed that this bill could save lives. She referenced statistics generated by Tobacco Free Kids that indicate that enactment of this legislation would save 2,900 youth from premature smoking related deaths. She calculated that this would equate to one percent of the population of the Municipality of Anchorage's population or to the entire student population of Anchorage's Service High School.

ALEENA JOBE Project Citizen Student, Golden View Middle School, testified via teleconference from Anchorage and pointed out that were the cigarette tax raised by one dollar per pack, the State would save, over a five-year period, \$1.6 million as the result of fewer smoking related pregnancy and birth complications. This money, she continued, would then be available to support other State programs.

Senator Hoffman asked the testifier whether a portion of the anticipated revenue should be used to discourage teenagers from smoking.

Ms. Jobe responded in the affirmative.

KYLE STERSLE, Project Citizen Student, Golden View Middle School, testified via teleconference from Anchorage and informed the Committee that "the State Medicaid program currently spends \$60 million on smokers" and smoking related health problems each year. Were this legislation adopted, he declared, less money would be required to address associated health care costs. He noted that the additional revenue generated from this tax could be used to provide for the balance of Medicaid expenses.

MARIN CHAMBERS, Project Citizen Student, Golden View Middle School, testified via teleconference from Anchorage and declared that the number of smokers would decrease were a one-dollar per pack tax increase to occur. She shared that Governor Murkowski stated that 3,500 current smokers would quit smoking, and as a result, 800 lives would be saved. She also quoted the Governor as saying that within the first year of the current one-dollar a pack tax implementation, the number of cigarettes consumed in the State, declined by 15-percent and still has not risen to its pre-tax level. She noted that numerous legislators and health organizations such as the American Heart Association and the American Cancer Society support increasing this tax level.

JESSICA FAUST, Project Citizen Student, Golden View Middle School, testified via teleconference from Anchorage and urged that this legislation be adopted as, she noted, the Alaska Tobacco Control Alliance estimates that were the tax to increase, there would be a 15-percent decrease in youth smokers. She attested that this reduction would result in 15 out of 100 youth having fewer tobacco related illnesses in the future. She also noted that a reduction in the number of people who smoke would reduce the \$130 million that is, according to the American Heart Association, spent annually on tobacco health related illnesses. Furthermore, she noted that the proposed tax increase would generate in excess of \$35 million per year. She concluded that increasing the price of cigarettes would be the most effective approach to lowering the number of youth smokers. She urged the Committee to pass this legislation by noting, "that adults don't start smoking, kids do."

Senator Hoffman asked the testifier whether she would support using a portion of the \$35 million generated by the tax increase for anti-smoking advertising messages directed at youth.

Ms. Faust responded that she would support using a portion of the funds for an advertising campaign as well as for education.

RUSSELL JOHNSTON, Project Citizen Student, Golden View Middle School, testified via teleconference from Anchorage and stated

that, in addition to generating more revenue for the State, an increased tobacco tax would further reduce the number of youth smokers as attested by the decline in youth smokers that occurred after the one-dollar a pack tax was implemented. He urged that a portion of the money be used to support teen smoking prevention enforcement, were the legislation enacted.

CODY FLOERCHINGER, Project Citizen Student, Golden View Middle School, testified via teleconference from Anchorage and pointed out that the "immediate problem" is that currently there is no penalty imposed upon an underage person who attempts to purchase tobacco. Therefore, he urged the Committee to consider implementing legislation such as a penalty of up to a \$300 fine were an underage person to do so. He attested that this would make a difference. He also suggested that some of the revenue generated by this proposed tax be used to support enforcement efforts associated with the "purchase attempt" legislation. He declared that teen smoking is a serious issue, and that a purchase attempt violation combined with the higher price per pack would further efforts to control teen smoking.

MORGANE EVANS-VOIGT, Project Citizen Student, Golden View Middle School, testified via teleconference from Anchorage and addressed the argument that imposing a cigarette tax is un-Constitutional "as it prohibits and represses the smokers rights" by stating that, while a smoker has rights, so does the rest of the population. Continuing, she stated that people who make the choice to smoke should assume the consequences of their decision. She declared that non-smokers' health should not be negatively affected by smokers' second-hand smoke. She stated that this bill, by reducing the number of people who smoke, would assist non-smokers with their right to live healthier lives.

SAMANTHA NOVAK, Project Citizen Student, Golden View Middle School, testified via teleconference from Anchorage and thanked the Committee for allowing the students to present their testimony. She urged the Committee to consider the concerns brought forward today.

Senator Bunde voiced appreciation for the organization and thought that has been exerted by these students.

Senator Hoffman voiced support for using a portion of the money that might be generated by this bill to support tobacco prevention efforts. He concluded that the students, rather than desiring the State to use all the money, would support some of the funding going toward prevention efforts to assist in reducing teen smoking.

Co-Chair Wilken pointed out that SB 368, Version 23-GS2116\A, is

before the Committee.

Amendment #1: This amendment proposes to insert a new bill section on page eight, line nine, as follows.

*Sec. 15. AS 43.50.710 is amended by adding a new subsection to read:

(e) A wholesaler or retailer may not sell cigarettes at less than the presumptive cost to the wholesaler or retailer unless the wholesaler or retailer receives prior approval from the department. The department may not grant prior approval for sale of cigarettes at less than the presumptive cost as described under this subsection, unless the wholesaler or retailer provides proof satisfactory to the department that the wholesaler's or retailer's actual cost is less than the presumptive cost for the wholesaler or retailer. Approval for cigarette sales at less than the presumptive cost authorized under this subsection may not be granted for a period longer than one year.

*Sec. 16. AS 43.50.800(a) is amended to read:(a) For purposes of AS 43.50.710-43.50.849,

(1) the basic cost of cigarettes is equal to the [LOWER OF THE TWO FOLLOWING AMOUNTS];

(A)[THE} invoice cost of cigarettes to the wholesaler [OR RETAILER}, less any off-invoice allowance required to be passed on to the retailer [ALL TRADE DISCOUNTS INCLUDING CUSTOMARY DISCOUNTS FOR CASH ACTUALLY TAKEN, PLUS THE FULL FACE VALUE OF ANY TAX THAT MAY BE REQUIRED BY THIS CHAPTER IF NOT ALREADY INCLUDED IN THE INVOICE COST OF THE CIGARETTES TO THE WHOLESALER OR RETAILER]; and [OR]

(B) invoice cost of cigarettes to the retailer [THE LOWEST REPLACEMENT COST OF CIGARETTES TO THE WHOLESALER OR RETAILER, WITHIN 30 DAYS BEFORE THE DATE OF SALE, IN THE QUANTITY LAST PURCHASED, WITHIN OR BEFORE THE 30-DAY PERIOD, LESS ALL TRADE DISCOUNTS INCLUDING CUSTOMARY DISCOUNTS FOR CASH ACTUALLY TAKEN, PLUS THE FULL FACE VALUE OF ANY TAX THAT MAY BE REQUIRED BY THIS CHAPTER IF NOT ALREADY INCLUDED IN THE INVOICE COST OF THE CIGARETTES TO THE WHOLESALER OR RETAILER];

(2) the actual cost to the wholesaler is equal to the presumptive cost determined by the department under (b) of this section.

(3) IN THE ABSENSE OF PROOF OF A LESSER OR HIGHER COST OF DOING BUSINESS BY THE WHOLESALER MAKING THE SALE,] the cost of doing business by the wholesaler is presumed to be four and one-half percent of the basic cost of the cigarettes to the wholesaler; a fraction of a cent used in computing the cost of doing business shall be rounded off to the next highest cent;

(4) the actual cost to the retailer is equal to the lower

of

(A) the basic cost of the cigarettes plus the cost of doing business by the retailer; the cost of doing business may be proven by regular [THE] standards and methods of accounting [REGULARLY EMPLOYED BY THE RETAILER] and must include labor costs, rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance, and advertising; or

(B) The presumptive cost determined by the department under (b) of this section;

(5) In the absence of proof of a lesser or higher cost of doing business by the retailer making the sale, the cost of doing business by the retailer is presumed to be six percent of the basic cost of cigarettes to the retailer; a fraction of a cent used in computing the cost of doing business shall be rounded off to the next highest cent.

New Text Underlined [DELETED TEXT BRACKETED]

Co-Chair Wilken noted that Amendment # 1, which he had sponsored, by request, would not be offered for consideration.

Amendment #2: This amendment proposes to change language in the bill as follows.

On page three, line 16, the word "or" is deleted and replaced with "[OR]"

In addition, the amendment inserts the following language on page three, line 18 following "retailer".

"or to an individual for personal consumption; or
(4) brings, or causes to be brought, a tobacco product into the state from outside the state for personal consumption.

Furthermore, this amendment would insert a new bill section on page three, following line 18 as follows.

*Sec. 10. AS 43.50.320 is repealed and reenacted to read:

Sec. 43.50.320. Licensing. (a) Except as provided in (i) of this section, a person must be licensed as a distributor by the department if the person engages in an activity described in AS 43.50.300(1) - (3) or as a buyer if the person engages in an activity described in AS 43.50.300(4).

(b) The department, upon application and payment of a fee of \$50, shall issue a license for one year to a person who applies for a distributor license under (a) of this section.

(c) The department, upon application and payment of a fee

of \$25, shall issue a license for one year to a person who applies for a buyer license under (a) of this section.

(d) The department may refuse to issue a license under this section if there is reasonable cause to believe the information submitted in the application is false or misleading and is not made in good faith.

(e) A distributor license issued under this section must include the name and address of the licensee, the type of business to be conducted, and the year for which the license is issued.

(f) The department may renew a distributor license issued under this section for a fee of \$50.

(g) The department may renew a buyer license issued under this section for a fee of \$25.

(h) The department may suspend, revoke, or refuse to renew a license issued under this section as provided in AS 43.50.070.

(i) A license required by this section is in addition to any other license required by law, except that a person who is licensed under AS 43.50.010-43.50.180 is exempt from the licensing requirements of this section.

(j) A license issued under this section is not assignable or transferable, except that in the case of death, bankruptcy, receivership, or incompetency of the licensee, or if the business of the licensee is transferred to another by operation of law, the department may extend the license for a limited time to the executor, administrator, trustee, receiver, or the transferee.

* Sec 11. AS 43.50.330(a) is amended to read:

AS 43.50.330. Returns. (a) On or before the last day of each calendar month, a licensee shall file a return with the department. The return must state the number or amount of tobacco products sold or imported for personal consumption by the licensee during the preceding calendar month, the selling or purchase price of the tobacco products, and the amount of tax imposed on the tobacco products.

*Sec. 12. AS 43.50.390(2) is amended to read:

(2) "licensee" means a distributor or buyer who is
(A) licensed under AS 43.50.320; or
(B) exempted by AS 43.50.320(i)(g) from licensing under AS 43.50.320;

*Sec. 13. AS 43.50.390 is amended by adding a new subsection to read:

(6) "buyer" means a person who imports tobacco products for the person's own consumption from any source other than a distributor.

New Text Underlined [DELETED TEXT BRACKETED]

Senator Bunde moved for the adoption of Amendment #2.

Co-Chair Green objected for discussion.

Senator Bunde explained that this amendment would require people who transport tobacco products into the State for distribution, via such methods as mail order or Internet purchases, be licensed. This, he continued, would ensure that the tobacco tax would be paid and that Alaskan distributors would be protected from out-of-State entities. He asserted that when taxes rise, these types of sales increase as people attempt to circumvent price increases.

Ms. Bales informed the Committee that the Department of Revenue supports this amendment, as it would serve to protect both the revenue stream to the State as well as in-State businesses that could be harmed by people choosing to purchase out-of-State. She noted that, while it is currently "not illegal" for Alaskans to purchase tobacco products out-of-State or via the Internet, this situation does allow those people to avoid paying the State tax imposed on those products and, thereby, she continued, reducing revenue to the State as well as diverting those sales from local retailers.

Ms. Bales shared that the primary reason the Department supports this amendment is the fact that since the Tobacco Master Settlement Agreement (MSA) was approved, there has been an influx of new businesses introducing such things as "'little cigars' which do not meet the definition of cigarettes for tax purposes." Continuing, she noted that while these products could meet the definition for MSA payments, they would not qualify unless the State were to tax them. Those tobacco manufacturers who did not sign the MSA agreement, she explained, agreed upon this tax condition guideline. She displayed a product that is currently being offered as "a substitute for cigarettes," and she noted that while it looks like a cigarette in that it is filtered, machine made, and smoked like a cigarette, it is less expensive and non-taxable because, it is "wrapped in tobacco and not in paper." Therefore, she stressed, while the intent of this legislation is to increase prices in order to encourage people to quit smoking, that objective is being circumvented by products such as this that "are becoming much more prevalent."

Ms. Bales stated that someone could purchase these "little cigars" over the Internet for approximately ten to twenty dollars a carton less than cigarettes. She voiced that the Department is concerned as it has observed that these products are replacing cigarette usage. She disclosed that a similar brand called "Prime Time

Cigarettes," which is sold in the State as a cigar, is advertised on its website as being "just like a cigarette." She also noted that roll-your-own tobacco kits are available in the State for approximately \$26 including the other Tobacco Products tax (OTP). These kits, she attested, allow someone to make their own cigarettes at a significantly lower price than were one to purchase a pack of cigarettes. She noted that the kit could be purchased via the Internet for \$15. This purchase, she continued, would not be subject to the State tax as tobacco products imported for individual consumption are currently legally exempt from the tax. She attested that new products are continually being developed to circumvent the tax, and she attested that the only method with which to address this trend "is to make individuals who bring products into the State for personal consumption, liable for taxes."

Senator Bunde asked whether this amendment would apply to smokeless tobacco.

Ms. Bales verified that it would.

Co-Chair Green asked whether all the language in Section 10, as specified in the amendment, is new language.

Ms. Bales responded that not all of the language in that section is new. She clarified that the language in the section applying to a \$25 buyer license is new in that it would require those who would import other tobacco products for personal consumption to purchase a buyer license. She stated that currently this requirement is limited to people who import cigarettes for personal consumption.

Co-Chair Green questioned the reason for this change being presented in the amendment in this format rather than the traditional manner of deleting or adding language into existing wording. That method, she attested, makes new language more easily identifiable.

Ms. Bales further pointed out that new language in the amendment includes "or as a buyer if the person engages in an activity described in AS 43.50.300(4)" which is the section regarding importation of a tobacco product for personal consumption that would be inserted were this amendment adopted.

Ms. Bales continued that subsection (c) of the amendment, which pertains to the \$25 buyer license fee, is a new section as is subsection (g) that refers to license renewal.

Co-Chair Green commented that were the entire section new language,

she would have required a line-by-line review; however, she continued, as the new sections are limited, this discussion would suffice.

Senator Hoffman inquired to the cost of implementing subsection (c) of the amendment.

Ms. Bales understood that the costs would be "very minimal". Upon further questioning from Senator Hoffman, she stated that there would be no additional expense associated with the section, because, she continued, no one has of yet purchased a buyer license to import cigarettes for personal consumption. This is the case, she attested, because when the cost of the license is factored in, most people decide to purchase from an in-State distributor.

Senator Hoffman asked how someone would be aware that a buyer license would be required.

Ms. Bales responded that the Department would be required to educate the public regarding this requirement.

Senator Hoffman asked for confirmation that the expenses associated with the education process to include the application process, advertising, and enforcement, would incur minimal expense.

Ms. Bales responded that while there would be some additional enforcement required where the other tobacco products are concerned, the Department does not feel that additional funding would be necessary as these things are currently in place for cigarettes.

Senator Hoffman stated that while the expenses would be minimal in comparison to the projected \$35 million in new revenue that the tax would raise, he could not agree that the expense would be considered minimal to the Senate Finance Committee, who, he attested has argued over \$35,000 amounts. Therefore, he stated there is concern regarding how much money would be required to implement this requirement.

Co-Chair Wilken understood the expense to range from "minimal to zero." Continuing, he stated that a more detailed fiscal note could be developed, as the bill progresses, were the concern to continue.

Co-Chair Green removed her objection.

Senator Olson understood that the alternate products exemplified would be subject to the tax were Amendment #2 adopted.

Ms. Bales affirmed. She stated that while these products are currently taxable when purchased in the State, this amendment would ensure that they would be subject to the tax when imported into the State.

There being no further objection, Amendment #2 was ADOPTED.

AS 43.50.330. Returns. (a) On or before the last day of each calendar month, a licensee shall file a return with the department. The return must state the number or amount of tobacco products sold or imported for personal consumption by the licensee during the preceding calendar month, the selling or purchase price of the tobacco products, and the amount of tax imposed on the tobacco products.

Co-Chair Green asked whether language in Sec. 11, AS 43.50.330 (a) on page three, line seven, specifically means that the products being imported would be for the licensee's personal consumption.

Ms. Bales responded that were a licensee to import items for personal consumption, they would be required to report the quantity and value of the product imported in order for the tax to be calculated. She stated that a licensee who imports products for resale would also be required to report this information.

Co-Chair Green asked for verification that there are licensees who import only for personal consumption.

Ms. Bales responded that there have been people, "in the past under the cigarette tax," who were licensed in this regard; however, she reiterated, once they realized that paying the tax increased the price to a comparable level at which they could buy it locally, they did not renew their licenses.

Co-Chair Green asked for further explanation regarding the report individual licensees must file.

Ms. Bales stated that all licensees "are required to file a monthly return and report your activity of importation of product for sale, and in this case, for personal consumption." She stated that this language "mirrors" the existing requirements for cigarette tax licensees. She furthered that these returns are required because they provide information necessary to determine the tax that should be remitted to the Department.

Amendment #3: This amendment would insert a new bill section into the bill on page three, following line 30 as follows.

Sec. 11. 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].

New Text Underlined [DELETED TEXT BRACKETED]

Co-Chair Wilken moved for the adoption of the amendment and objected for discussion. He stated that Members' packets contain an April 4, 2004 letter [copy on file] he had received from Mike Elerding, an operator of a wholesale distribution company in Ketchikan, who, he noted, has assisted "in defining" this legislation and who would be commenting on how some of the proposed amendments would effect the business community.

Ms. Bales explained the amendment in that, under current law, when a licensee such as a wholesale distributing company, purchases cigarette tax stamps, they have the option of either paying for the stamps upfront and thereby eliminating the requirement to post a bond or they could defer payment to the end of the following month in which they purchased the tax stamp. In this latter case, she continued, it is required that a bond equating to 200 percent of the amount of the cigarette tax stamps being purchased be posted. She explained that this bonding level is required because two month's worth of cigarette tax stamps could be purchased in this scenario "before the first payment would be due." She stated that this 200-percent bond "is actually 100 percent of what you owe."

Ms. Bales noted that were the cigarette tax stamp rate increased there is concern among the distributors that "the bonding requirement would be difficult for them to obtain." Therefore, she noted, they have requested that the Department lower the bonding requirement to 100 percent of the amount being purchased. This, she explained, would equate "to 100 percent of one month and the Department would extend credit to them for the purchase for the second month of cigarette tax stamps."

Ms. Bales continued that in order for this scenario to occur, the licensee would be required "to be in good standing with the Department for the previous five years and also have physical presence in the State." She concluded that the Department, "at this time, is comfortable" with Amendment #3.

Senator Olson asked regarding the cost of the bond.

MIKE ELERDING, President and Owner, Northern Sales Company of Alaska, responded that a nine-month, one million dollar bond costs his company \$3,500. Continuing, he noted that rather than the cost being a factor, it is the availability of the bond that is the issue as currently, he noted, the insurance market is "a little bit jittery about Alaska in general and the availability of bonding in particular for in-State distributors is difficult to get." Therefore, he summarized, were the bonding requirement to double, the ability to secure a bond "would more difficult."

Co-Chair Wilken removed his objection.

There being no further objection, Amendment #3 was ADOPTED.

Amendment #4: This amendment inserts ", as amended by sec. 8 of this Act," following "AS 43.50.190" on page eight, line 17.

In addition, this amendment deletes, in Sec. 8 on page eight, line 25, the language "no later than 30 days after the effective date of this Act" and inserts "in six sequential monthly installments. The first installment shall be paid not later than the last day of the month in which this Act takes effect."

Co-Chair Wilken moved for the adoption of Amendment #4, and objected for explanation. He noted that this amendment would address the floor tax.

Ms. Bales stated that SB 368, Version "A", states that a distributor or retailer must conduct an inventory on the date the bill becomes effective and remit the difference between the new tax rate and the old tax rate within 30 days of that date. This amendment, she noted, would allow those entities to remit the difference in six monthly installments in order to alleviate the burden of one lump sum cash payment. She stated that the Department "is comfortable" with Amendment #4.

Mr. Elerding noted that, while the industry supports the amendment, it would prefer that the section of the bill pertaining to the floor stock tax be deleted. [NOTE: The testifier's reference to Section 25 is in error as there is no Section 25 in Version A;

however, the floor stock tax is addressed in Section 15 of the bill.] He acknowledged that wholesalers and retailers did stockpile cigarettes in 1997 before the State cigarette tax was increased from \$2.90 to ten dollars per carton. However, he stated that since that time, the cost of cigarettes has escalated due to excise taxes and the cost of goods as well as the fact that cigarettes have increasingly become a target of counter fitters and bootleggers. These circumstances, he continued, have resulted in tobacco manufacturers tightly controlling "the distribution and supply of cigarettes in the retail trade." He shared that due to cigarette supply constraints, when his company recently opened a facility in Anchorage, they were unable to acquire sufficient quantities of cigarettes to meet demand. Therefore, he concluded, the marketplace is different from that experienced in 1997, as tobacco manufacturers are not "allowing wholesalers and/or retailers to buy additional product." Therefore, he assured that the opportunity to stockpile would be difficult.

Mr. Elerding also suggested that the Legislature approve an "immediate or shortly thereafter" effective date were the bill enacted as, he communicated, following the bill's passage in 1997 there was a six to eight month effective date delay that allowed stockpiling to occur. He stated that an immediate effective date would further negate the stockpiling concern.

Mr. Elerding commented that the State has further control in regards to the stockpiling concern by the fact that it, as the seller of the tax stamps, would be able to monitor suspicious activity, based on the quantities of stamps being purchased. He disclosed that as a result of the 1997 cigarette tax increase, Alaska-based distributors' costs of carrying inventory and the level of accounts receivables increased by approximately one-third, bonding requirements increased, and security on facilities had to be increased because cigarettes became a target of theft.

SFC 04 # 88, Side B 09:58 AM

Mr. Elerding requested therefore that the floor stock tax be eliminated in order to allow distributors "to gain a little bit of capital, to increase our ability to carry the inventory, carry the receivables, and cover the other costs." He characterized distributors as partners with the State in that they collect the excise tax, and he stressed that elimination of the floor stock tax would enable distributors to continue "to be strong, viable economic partners with the State."

Co-Chair Wilken removed his objection.

There being no further objection, Amendment #4 was ADOPTED.

Amendment #5: This technical amendment proposes the following changes.

On page one, line 14, following "state" insert "who"; on page one, line 14, following "and", insert "who"; on page two, line one, following "chapter" delete ", must" and insert "shall"; on page two. Line three, delete "distributions" and insert "distributions"; on page two, line 12, following "43.50.700," insert "who"; on page two, line 13, following "and" insert "who"; on page two, line 26, delete "brings or causes to be brought cigarettes" and insert "brings cigarettes or causes cigarettes to be brought [CIGARETTES]"; on page three, line one delete "per cent" and insert "percent [PER CENT]"; on page three, line five, following "AS 43.50.010," delete "but" and insert "and"; on page three, line 24, following "stamps" insert "."; on page three, lines 24-25 delete "[AND ALL RISKS OF POSSIBLE LOSS OR DAMAGE WHILE IN TRANSIT]."; on page three, line 30, following "them" delete "." and insert "[AND ALL RISKS OF POSSIBLE LOSS OR DAMAGE WHILE IN TRANSIT]."

In addition, this amendment changes the following language: on page four, line five, delete "(i)" and insert "(A)"; on page four, line seven delete "ii" and insert "(B)"; on page four line eight delete "it" and insert "the licensee"; on page five, line 21 delete "no" and insert "not"; on page five, line 28, following "and" insert ","; on page five, line 29 following "forfeiture" insert ","; on page five, line 31 delete "no" and insert "a" and following "is" insert "not"; on page six, line 12 and line 14 delete "had no" and insert "did not have"; on page six, line 15 delete "had"; and on page six, line 16, following "(A)" insert "had".

Furthermore, this amendment changes the following language: on page six, line 19 delete the second occurrence of "to" and insert "of"; on page six, line 22, following "that" insert "the person"; on page six, line 23 following "I" delete "the person"; on page six, lines 25 and 27 delete "had no" and insert "did not have"; on page six, line 28 delete "had"; on page six, line 29, following "(A)" insert "had"; on page six, line 31 delete "no" insert "not a"; on page seven, line 12, following "43.50.650" insert ","; on page seven, line 13 delete "the court"; on page seven, line 14 delete "and" and following the second occurrence of "section" insert "the court"; on page seven, line 24, delete "it" and insert "the vehicle or vessel"; on page eight, line four delete ","; on page eight, line eight delete "As used in" and insert "in"; on page eight, line 17 following "AS 43.50.190" insert ", as amended by sec. 8 of this

Act,"; on page eight, line 25, delete "no" and insert "not"; and on page eight, line 30 delete "heading" and insert "catchline".

Co-Chair Wilken moved for the adoption of technical Amendment #5.

There being no objection, Amendment #5 was ADOPTED.

Amendment #6: This amendment inserts new bill sections on page eight, line nine that read as follows.

*Sec. 15. AS 43.50.710 is amended to add a new subsection to read:

(e) Nothing in this section prohibits a manufacturer from offering promotions to a wholesaler or a retailer provided the wholesale promotion is the same for all participating wholesalers and the retail promotion is the same for all participating retailers.

*Sec. 16. AS 43.50.770 is amended to read:

In establishing the actual [BASIC] cost of cigarettes to a wholesaler or retailer, the invoice cost [OR THE ACTUAL COST] of cigarettes purchased at a forced, bankrupt, or closeout sale, or other sale outside the ordinary channels of trade may not be used.

*Sec. 17. AS 43.50.800 is repealed and reenacted to read:

(a) For purposes of AS 43.50.7104-43.50.849, actual cost is presumed to be

(1) for wholesalers, the presumptive wholesale cost as determined by the department plus the costs of doing business which is presumed to be four and one-half percent of the presumptive wholesale cost; for purposes of this section presumptive wholesale cost is manufacturer's list price, less trade discounts, plus the full face value of all cigarette taxes;

(2) for retailers, the presumptive retail cost is the presumptive wholesale cost plus the costs of doing business which is presumed to be six percent of the presumptive wholesale cost.

(b)(1) A wholesaler or retailer shall request prior approval from the department to establish an actual cost that is less than presumed in (a) of this section. The department may grant such approval only upon provision of proof satisfactory to the department regarding the wholesaler's or retailer's presumptive costs set forth in (a) of this section. Approval for cigarette sales at less than the actual cost authorized under this subsection may not be granted for a period longer than one year.

(2) In making the determinations under this subsection the department

(i) with respect to the presumptive wholesale cost or presumptive retail cost, may consider the costs reflected on the actual invoice, but may not consider cash discounts;

(ii) with respect to the wholesaler's or retailer's presumed costs of doing business, may consider the standards and methods of accounting regularly employed, and must include labor costs, rents, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance, advertising, preopening expenses, provision for impaired assets and closing costs, interest expense, and provision for merger and restructuring expenses. The department shall implement regulations to determine the wholesaler's and retailer's costs of doing business for purposes of this section.

*Sec. 17. AS 43.50.790(a) (3), and AS 43.50.849(1), (6), and (7) are repealed.

Co-Chair Wilken moved for the adoption of Amendment #6, and objected for explanation. He stated that this amendment pertains to minimum pricing.

Ms. Bales characterized minimum pricing "as a very convoluted issue." She stated that, in 2003, the Legislature adopted SB 168 that was sponsored by Senator Bunde and specified that distributors and retailers could not sell cigarettes in the State, below cost. This amendment, she noted, attempts to refine that bill's language and address issues that the Department of Revenue and the industry have identified since that bill became effective. Continuing, she shared that SB 168 directed the Department to post on their Internet website a minimum wholesale and retail cigarette price "based on the manufacturer's list price less any trade discounts" that a manufacturer provides to all their wholesalers. The resulting amount, she continued, is then multiplied by cost of doing business factor of 4.5 percent for wholesalers or six percent for retailers. In conclusion, she noted that were a distributor or retailer to sell cigarettes at the website's posted prices, they would not be in violation of the law. In lieu of selling at that price, she continued, a distributor or retailer could provide information indicating that their cost of doing business is less than the level used by the Department. She stated that the Department's issue with the current language is that a business is not required to obtain approval to sell at a price lower than the posted price. This amendment, she declared would require that an entity receive prior approval from the Department before selling product at a lower price. She noted that the amendment would also

disallow the "customary discounts for cash" factor from the calculation. She noted that 65 percent of the 25 states that have minimum pricing laws do not allow customary discounts for cash in their determination.

Ms. Bales expressed that the price regulation serves to maintain a high price on cigarettes, which, she noted, would support the overall goal of reducing smoking. In addition, she declared that the minimum pricing component also provides an even playing field for distributors. She concluded that the Department is comfortable with the amendment.

Senator Bunde voiced support for the amendment as he stated that it would allow small retailers to compete with large national stores.

Mr. Elerding voiced support for the amendment and acknowledged the efforts of the Department of Law and the Department of Revenue in developing the appropriate language. He agreed with Senator Bunde's comments and noted that allowing cigarette prices to be lowered as an incentive to increase purchases would be contrary to the Governor's intent and the State's efforts to decrease consumption by raising the price, as furthered in SB 368. Therefore, he voiced strong support for the amendment.

Co-Chair Green asked whether other products are subject to this sort of arrangement.

Ms. Bales affirmed that this particular statute does address cigarettes, however, she was unaware as to whether "there are specific laws that target other specific products." However, she noted that the State does have an unfair trade practice statute that specifies that no commodity could be sold at a price "with the intent to injure competition."

Co-Chair Wilken removed his objection.

There being no further objection, Amendment #6 was ADOPTED.

Mr. Elerding referred Amendment #2, and declared that the amendment would serve to close an existing loophole through which an out-of-State entity could sell products to Alaskans much cheaper than a licensed entity such as his would be able to sell it due to the fact that un-licensed, out-of-state entities are not be obligated to pay the Alaska tax. The amendment therefore, he attested, would allow Alaskan businesses to compete on a level playing field with out-of-state distributors who are not otherwise subject to Alaska tax. He voiced strong support for Amendment #2.

Mr. Elerding also commented that, under current law, a person who imports 100 cigarettes or less per month is exempt from the excise tax. He concurred that this is a sufficient quantity. He noted however, that there has been discussion in the House of Representatives' companion bill to SB 368 that would raise this "incidental" limit to 600. This he communicated would equate to three cartons. He stated that the industry views this as setting as "very dangerous precedent," as allowing the consumer to purchase that quantity, exempt from the State tax, would serve to defeat the purpose of the bill as people would purchase quantity via the Internet and/or buy cigarettes directly. He clarified that the House bill does contain language that would require the consumer to personally transport the product from out-of-state to in-State; however, he warned that "a liberal interpretation of this language" might result in a broadening scope of the consumer's ability to import those products. He urged strong language to be included to clarify that component if it were adopted. He also urged that the current limit of 100 cigarettes be maintained.

Amendment #7: This amendment deletes Sec.13 on page four, lines 24-27. The language being deleted reads as follows.

Sec. 13. AS 43.50.610 is amended by adding a new subsection to read:

(b) Cigarettes seized under AS 43.50.500 - 43.580.700 are forfeited to the state. After notice and an opportunity for a hearing, the commissioner shall destroy the cigarettes forfeited under this section.

In addition, on page four, line 28, "AS 43.50.620 is repealed and reenacted" is deleted and replaced with "AS 43.50 is amended by adding a new section"; on page four, line 29, "Sec.43.50.620" is deleted and replaced with "Sec. 43.50.625"; on page four, line 30, "if" is deleted; and on page four, lines 30 and 31, "would not be entitled to remission, they" is deleted.

Finally, the amendment deletes Section 16, in its entirety. The language being deleted is located on page eight, lines 27 through 31 and reads as follows.

Sec. 16. The uncodified law of the State of Alaska is amended by adding a new section to read:

REVISOR'S INSTRUCTION. The revisor of statutes is instructed to change the heading of AS 43.50.610 from "Unstamped cigarettes as contraband; seizure" to "Unstamped cigarettes as contraband; seizure; forfeiture."

Co-Chair Wilken moved for the adoption of Amendment #7 and objected

for explanation.

Co-Chair Wilken noted that this amendment is recommended by Legislative Legal Services in order to clarify the forfeiture section of the bill in order to make it easier to read and conform to Alaska statutes. He noted that the Department of Revenue has not had an opportunity to review this amendment.

Therefore, Co-Chair Wilken offered to withdraw the motion in order to provide the Department of Revenue time to review the amendment.

There being no objection, Amendment #7 was WITHDRAWN.

Amendment #8: This amendment adds intent language to the bill as follows.

It is the intent of Legislature that twenty percent of the funds collected under this legislation is allocated to education/cessation programs.

Senator Hoffman moved for the adoption of Amendment #8 and objected for explanation.

Senator Hoffman stated that during the first hearing on this legislation, it was noted that the Administration opposes additional funding for cessation programs. However, he stated that were the Legislature "to really be interesting in lowering consumption of cigarettes, we need to put our money where our mouths are." He acknowledged that the Committee has heard testimony stating that increasing the price of cigarettes would result in "a drastic reduction in cigarette consumption." However, he pointed out that the "Cigarette Importation FY 1996 - FY 2002 and Cigarette Stockpiling in FY 1998" chart [copy on file] depicts that while the quantities initially decreased, the amount has continued to rise since that time as people who tried to stop smoking or tried to limit their smoking due to the expense, failed and began to smoke again.

Senator Hoffman also stated that people stockpiling cigarettes in anticipation of the tax increase in 1997, was also a factor in the chart's numbers. Continuing, he declared that while price might be a deterrent, such things as advertising campaigns must be used to reinforce people's decisions to refrain from smoking. He stated that this amendment "is intent language only" in that it would specify the intent to use a portion of the revenue for education, and would not be required to be a component of the law. He opined that the students in "Project Citizen" desire this course of action. Therefore, he stated that rather than just increasing

revenue, the Legislature should use that revenue "to really have an impact on the reduction of cigarette consumption."

Co-Chair Green voiced her objection to the amendment by stating that she has "witnessed" the end result of other "intent languages that have been added to taxation on various products." She stated, "that it ends up being the expectation, and the campaign, and the entire conversation that goes on from that time forward." She stressed that Legislators "have a huge task, every year" of determining a budget based on priorities, and furthermore, she continued, "while some might personally feel that a tobacco education program" is important, "it is not the only thing that we need to consider." She also voiced being "conflicted" in that the aforementioned chart "could be interpreted in many ways." She stated, therefore, that were the price of tobacco a critical factor in affecting a person's behavior, and were the educational efforts of the Alaska Tobacco Alliance and other entities being successful, then the chart should reflect a continuing decline and the need to fund further advertising campaigns should be diminishing.

Co-Chair Green stated that "the hope" of a tax increase is that it would cause people to buy less tobacco and therefore, "change behavior." She asked whether any calculations have been done to support this position.

Ms. Bales stated that Senator Hoffman has interpreted the chart in a manner which was not intended. She stated that the chart has been provided to reflect what monthly average consumption has been from 1997 through 2003 in that it indicates that consumption is higher in the summer months than other months. The graph lines, she continued, portray the difference incurred by the tax increase and the stockpiling activity. She stated that, "the chart was prepared to support the Department's position that we would like a floor stock tax so that the State," rather than the distributors, would benefit from receipt of the tax on floor stock.

Ms. Bales stated that another chart titled "Alaska Reported Taxable Cigarettes" [copy on file] has been provided that reflects that the tax implemented in 1997 has resulted in a 22-percent decrease in taxable cigarettes consumed in the State. She informed that it is anticipated that this proposed tax increase would result in an additional eight-to-ten percent reduction. She apologized for the confusion associated with the first chart and stated that the "Alaska Reported Taxable Cigarettes" chart better reflects the decline in consumption, by year.

Co-Chair Green asked for verification that the one-dollar per pack increase would be expected to result in a further eight to ten

percent decrease in consumption. She suggested that the Committee amend this bill to implement an eight to ten dollar per pack tax and call it a punitive tax. She stated that she would propose this as Amendment #9.

Co-Chair Wilken stated that Co-Chair Green's amendment would be addressed upon conclusion of action on Amendment #8.

Senator Olson voiced his support of Amendment #8. He stated that were the Legislature to be serious about curbing tobacco use, then support of "effective" education programs should be continued.

Senator Hoffman removed his objection. He noted that while the adoption of this amendment and the spending of money on cessation programs might negate the ability to generate \$35 million as reflected in the fiscal notes, the "underlying motive" of this legislation is to stop people from smoking cigarettes and smokeless tobacco; specifically to prevent "newcomers" from joining in the smoking arena. He urged the members "to adopt these words that are not law."

Co-Chair Wilken objected to the amendment for sake of discussion.

Senator B. Stevens asked how much money is currently spent on cessation efforts.

Ms. Bales responded that currently "20 percent of the Tobacco Master Settlement agreement payments go the Tobacco Use Education and Cessation Fund." She stated that this equates to approximately \$5 million per year. She voiced the understanding that the Department of Health and Social Services and the United States Social Services have estimated that the State should spend approximately \$8 million each year on these efforts.

Senator B. Stevens asked for confirmation that currently five million dollars is spent and that the national and Department recommendation is that eight million be spent.

Ms. Bales concurred, and furthered that this is the level suggested by the Center for Disease Control (CDC).

Senator B. Stevens asked whether that number is based on the State's population and the level of cigarette sales.

Ms. Bales replied that it is.

Senator B. Stevens whether this "would be an additional seven to the five."

Senator Hoffman affirmed and further argued that were the State "to be at the upper end of the taxation level," it should also be at the upper end of the efforts to curb smoking.

Co-Chair Green recalled that, "the greatest expense the State bears currently is in the Medicaid arena, in the funds that are paid" to support of health care and assistance for those who smoked "in their earlier life." She asserted, "we spend more than 20 percent of our budget, in total...in that one line item. "

Co-Chair Green stated that the Department of Health and Social Services does not support the level of funding recommended by the CDC.

Senator Olson asked for confirmation that the eight million dollar recommendation was issued by the CDC.

Ms. Bales affirmed and stated that it is presented on the CDC website.

Senator Olson noted that, contrary to this information, he had received information from the American Cancer Society that the CDC has recommended \$16 million be spent. He noted that currently \$4.89 million is spent on cessation programs.

EMILY NENON, Alaska Advocacy Manager, American Cancer Society, testified via teleconference from Anchorage, and stated that "the CDC recommends a minimum level of funding for a comprehensive tobacco control program in Alaska to be \$8.1 million" with an optimum level to be \$16.5 million. She stressed that the American Cancer Society "recognizes that the tobacco tax has value in and of itself." [NOTE: Due to coughing, her remaining remarks were indiscernible.]

Senator Bunde stated that while recognizing that letters of intent usually have a short life span per the administrations' historical record in this regard, there has been "considerable discussion in the past as to how much money Alaska's various health organizations could absorb and use productively." He opined that this concern should be part of the funding equation. He also echoed Co-Chair Green's comments regarding "the major cost" incurred to the State's Medicaid program as a result of smoking, and communicated that this is his typical response to people who say that they are an adult engaging in a legal activity. He stated that his argument would be "disarmed" were someone to indemnify the State from the health costs incurred by use of tobacco. However, were this not to occur, he continued, this letter of intent would probably have a short

life span and frequent arguments would continue in favor of providing the Legislature with sufficient budgeting flexibility "to address issues as they ebb and flow" in the State. He concluded by stating that he is not in favor of the letter of intent even were it to have a longer life span that one usually has.

Senator Hoffman acknowledged that the State does receive money and funds for tobacco cessation; however, he continued some of those funds are used by the Department of Health and Social Services to address smoking related illnesses. He noted that the line item for tobacco prevention control in the House of Representatives proposed FY 05 budget is \$4.424 million, and the Senate's is \$4.58 million. These numbers, he calculated are at the fifty percent mark of the DCD recommendation of \$8.8 million and 25-percent of the optimum \$16 million level. He reiterated that were the Legislature "truly interested in deterring smoking," this amendment should be adopted.

A roll call was taken on the motion.

IN FAVOR: Senator Olson, Senator B. Stevens, and Senator Hoffman

OPPOSED: Senator Bunde, Co-Chair Green, and Co-Chair Wilken

ABSENT: Senator Dyson

The motion FAILED (3-3-1)

Amendment #8 FAILED to be adopted.

Amendment #7: This amendment deletes Sec.13 on page four, lines 24-27. The language being deleted reads as follows.

Sec. 13. AS 43.50.610 is amended be adding a new subsection to read:

(b) Cigarettes seized under AS 43.50.500 - 43.580.700 are forfeited to the state. After notice and an opportunity for a hearing, the commissioner shall destroy the cigarettes forfeited under this section.

In addition, on page four, line 28, "AS 43.50.620 is repealed and reenacted" is deleted and replaced with "AS 43.50 is amended by adding a new section"; on page four, line 29, "Sec.43.50.620" is deleted and replaced with "Sec. 43.50.625"; on page four, line 30, "if" is deleted; and on page four, lines 30 and 31, "would not be entitled to remission, they" is deleted.

Finally, the amendment deletes Section 16, in its entirety. The language being deleted is located on page eight, lines 27 through

31 and reads as follows.

Sec. 16. The uncodified law of the State of Alaska is amended by adding a new section to read:

REVISOR'S INSTRUCTION. The revisor of statutes is instructed to change the heading of AS 43.50.610 from "Unstamped cigarettes as contraband; seizure" to "Unstamped cigarettes as contraband; seizure; forfeiture."

Co-Chair Wilken noted that Amendment #7, having to do with forfeiture, is again before the Committee for consideration.

MIKE BARNHILL, Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Juneau), Department of Law, stated that this amendment addresses some drafting issues in that the forfeiture provision, AS 43.56.20, that exclusively addresses cigarettes was rolled into 43.50.625. Continuing, he noted that Legislative Council suggests that that provision remain as it currently is, and therefore, he contended, this amendment would delete the language in the bill that moves that section. He advised that this would be acceptable to the Department of Law. The other language being addressed in this amendment, he continued, is located in Section 14, subsection (j) on page seven, which addresses the provision of forfeiture "regarding relief from mandatory forfeiture." He stated that Legislative Council is suggesting "minor word changes that would enhance the clarity of the statute." He stated that the Department does not object to this change.

Mr. Barnhill continued that the last change proposed in Amendment #7 would delete language on page eight of the bill, which would instruct the reviser to rename the heading from "Unstamped Cigarettes as Contraband Seizure to Unstamped Cigarettes as Contraband Seizure/Forfeiture." He stated that this is conforming language and that the Department is not opposed to this change.

Co-Chair Green asked whether Section 14, regarding forfeiture provisions, beginning on page four, line 28 is new language.

Sec. 14. AS 43.50.620 is repealed and reenacted to read:

Sec. 43.50.620. Forfeiture of other property. (a) The following are subject to forfeiture.

(1) material and equipment used in the manufacture, sale, offering for sale, possession for sale, barter, or exchange of cigarettes for goods and services in this state in violation of AS 43.50.500 - 43.50.700;

(2) aircraft, vehicles, or vessels used to transport or facilitate the transportation of cigarettes manufactured,

sold, offered for sale, possessed for sale, or bartered or exchanged for goods and services in this state in violation of AS 43.50.500 - 43.50.700;

(3) money, securities, negotiable instrument, or other things of value used in financial transactions derived from activity prohibited under AS 43.50.500 - 43.50.700.

(b) Property subject to forfeiture under this section may be actually or constructively seized under an order issued by the superior court upon a showing of probable cause that the property is subject to forfeiture under this section. Constructive seizure is effected upon posting a signed notice of seizure on the item to be forfeited, stating the violation and the date and place of seizure. Seizure without a court order may be made if

(1) the seizure is incident to a valid arrest or search;

(2) the property subject to seizures is the subject of a prior judgment in favor of the state; or

(3) there is probable cause to believe that the property is subject to forfeiture under (1) of this section; property seized under this paragraph may be held for no more than 48 hours unless an order of forfeiture is issued by the court before the end of that time period.

(c) Within 30 days after a seizure under this section, the Department of Public Safety shall make reasonable efforts to ascertain the identity and whereabouts of any person holding an interest, or an assignee of a person holding an interest, in the property seized, including a right to possession, or a lien, mortgage, or conditional sales contract. The Department of Public Safety shall notify the person ascertained to have an interest in the seized property of the impending forfeiture, and before forfeiture the Department of Law shall publish, once a week for four consecutive calendar weeks, a notice of the impending forfeiture in a newspaper of general circulation in the judicial district in which the seizure was made, or if no newspaper is published in that judicial district, in a newspaper published in the state and distributed in that judicial district.

(d) Property subject to forfeiture under (a) of this section may be forfeited

(1) upon conviction of a person for a violation of AS 43.50.640 or 43.50.650; or

(2) upon judgment by the superior court in a proceeding in rem that the property was used in a manner subjecting it to forfeiture under (a) of this section.

(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;

(2) had no actual knowledge or reasonable cause to believe that the property was used or was to be used in 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 persons shows that

(1) the person was not a party to the violation subjecting the property to forfeiture;

(2) had no 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;

(g) It is no defense in an in rem forfeiture proceeding brought under (d)(2) of this section that a criminal proceeding is pending or has resulted in conviction or acquittal of a person charged with violating AS 43.50.640 or 43.50.650.

(h) Property forfeited under this section shall be placed in the custody of the commissioner of public safety for disposition according to an order entered by the court. The court shall order destroyed any property forfeited under this section that is harmful to the public and shall order any property forfeited under this section that was seized in a municipality to be transferred to the municipality in which the property was seized. Other property shall be ordered sold and the proceeds used for payment of the expenses of the proceeding for forfeiture and sale, including expenses of seizure, custody, and court costs. The remainder of the proceeds shall be deposited in the general fund.

(i) Upon conviction of a person for violation of AS 43.50.640 or 43.50.650 the court, if an aircraft, vehicle, or vessel is subject to forfeiture under (a) of this section, and subject to remission to innocent parties under this section, shall order the forfeiture of

(1) the aircraft to the state;

(2) the vehicle or vessel to the state if the defendant

(A) has a prior felony conviction for a violation of AS 11.41;

(B) is on felony probation or parole; or

(C) has a prior conviction for violation of AS 43.50.640 pr 43.50.650.

(j) Notwithstanding (i) of this section, a court is not required to order the forfeiture of a vehicle or vessel if the court determines that

(1) it is the sole means of transportation for a family residing in a village;

(2) either

(A) the members of the family would be entitled to remission under this section if they were owners of or held security interests in the vehicle or vessel; or

(B) if the members of the family would not be entitled to remission, they were unable as a practical matter to stop the violation of this chapter making the vehicle or vessel subject to forfeiture; and

(3) the court can impose conditions that will effectively prevent the defendant's use of the vehicle or vessel,

(k) The title to a vehicle or vessel, forfeited to the state under this section may be transferred by the state to a municipality or the local governing body of a village for official use by the municipality or village, on condition that the vehicle or vessel not be available for use by the defendant.

(i) As used in this section, "village" means a community of less than 1,000 persons located off the interconnected state road system.

Mr. Barnhill responded that Section 14 is this new section addressed by Legislative Council. He stated that existing language regarding cigarettes, as currently specified in AS 43.50.620, would remain as is.

Co-Chair Green asked for clarification as to whether a forfeiture provision had been in effect prior to this.

Mr. Barnhill responded that there currently exists a forfeiture provision pertinent to the forfeiture of cigarettes only. This bill, he continued, "would expand that language to include assets used in trafficking cigarettes."

Co-Chair Green voiced objection to the amendment.

Senator Olson voiced concern regarding the forfeiture of expensive transportation assets; specifically aircraft, helicopters and boats that are used in areas of the State that are not connected by a road system. He asked what types of provisions are included in the bill to provide safeguards in this arena; specifically to address common carrier aircraft concerns that they might be "unduly inhibited if they for some reason are charged with transportation of tobacco products."

Mr. Barnhill responded that this is a valid concern. He shared that the Alaska Supreme Court addressed the issue of forfeiture several years prior in a case titled State vs. Wilder. This case, he noted involved a hunter who while aerial hunting in a Cessna airplane and violated the hunting laws, and consequently, the State seized the aircraft. Continuing, he noted that the Cessna financing corporation who had a security interest in the airplane protested the forfeiture. The Court, he continued, ruled that the corporation had a Constitutional right to be protected from forfeiture. He shared that "ever since that case, all forfeiture statutes in the State have been drafted to protect the rights of innocent owners, including rights of interested owners with security interest in assets. This bill, he assured, has the provisions to protect innocent owners as well as a village situation where a family might rely on a mode of transportation. He stressed that, "even if the forfeiture is supposed to be mandatory, this bill provides for relief from mandatory forfeiture." He stressed that the intention of this forfeiture provision "is to go after the bad guys, the traffickers of un-stamped cigarettes that are doing it for resale...that are criminally trying to make a business out of this."

Senator Olson understood to whom the bill is intended to target; however, he voiced concern for the unintended circumstance in which some innocent person's aircraft might be "red-tagged," and therefore unavailable. He understood that that person is not protected.

Mr. Barnhill responded that an innocent person is protected and that the likelihood that their aircraft would get red-tagged by the Department of Public Safety "is very small." However, he communicated that were their aircraft red-tagged, there are provisions through which they could get their property back "if indeed they are innocent."

Senator Olson continued that their innocence would be decided by a court, however, if an aircraft were red-tagged, it would therefore be unavailable for perhaps sixty days.

Mr. Barnhill, reiterating that Senator Olson's concerns are valid,

pointed out that provisions on page five, lines ten through 22, of Section 14, subsection (3) (b) specify that before an asset could be seized, the Department of Public Safety must appear before a Court and establish that there is probable cause to seize the asset. He stated that this is the same standard that is in place to obtain a search warrant. Therefore, he stressed, the Court must be convinced that there is probable cause. He understood that forfeitures are relatively rare as there has been, he recalled, only twelve in the past year. He stated that there are provisions in the bill pertaining to grabbing property without a court order but that the Department of Public Safety would be required to go to the Court within 48-hours of the seizure and present probable cause. Therefore, he concluded that provisions are in place to address Senator Olson's concerns.

Senator Bunde asked whether this forfeiture provision is similar to those in place regarding illegal alcohol activity.

Mr. Barnhill stated that "this provision was patterned after the alcohol forfeiture provision" and improved upon.

Senator Bunde opined that were this the case, it would not be abused.

Co-Chair Green asked whether the transportation of un-stamped cigarettes might differ from the alcohol forfeiture provision as it addresses "the importation of a product into an area where it is illegal to bring the product into the area."

Mr. Barnhill responded that both would be violations of the law "to which the remedy of forfeiture is available."

Co-Chair Wilken clarified that this is a technical amendment to the law rather than a change in the forfeiture provision.

Mr. Barnhill concurred.

Co-Chair Green removed her objection.

There being no further objection, Amendment #7 was ADOPTED.

Conceptual Amendment #9: This amendment would impose a ten-dollar a pack tax.

Chair Green moved for the adoption of Amendment #9. She stated that "were the purpose of this legislation to stop all consumption of tobacco products" and result "in a tobacco-free State" then this amendment should be adopted, as, she stated, a one-dollar tax

increase would not accomplish that goal. She characterized this legislation "as a punitive tax" as it is designed to change behavior.

There being no objection, Co-Chair Green WITHDREW her amendment.

Co-Chair Wilken stated that a committee substitute would be drafted that would incorporate the amendments.

SFC 04 # 89, Side A 10:46 AM

Co-Chair Wilken asked regarding the decision to alter the percentage of revenue breakout for the School Fund and the general fund.

Ms. Bales responded that the revenue allocation formula is a policy call of the Administration. She understood that the entire 1997 tax increase was allocated to the School Fund, which is a dedicated fund. She also understood that the reason for allocating funding into the general fund is to allow those monies to be used for broader uses such as Medicare reimbursement and possibly as Senator Hoffman has proposed, to the tobacco use, education, and cessation fund. She noted that she had developed a worksheet titled "Taxes and Revenues" [copy on file] for the Committee.

Co-Chair Wilken asked that information be provided to counter his suggestion to switch the revenue for the general fund to the School Fund.

Ms. Bales agreed to provide this information.

Co-Chair Wilken ordered the bill HELD in Committee.

Senator Bunde, in response to Co-Chair Wilken's question regarding whether the revenue generated from this legislation could be dedicated to the School Fund voiced the understanding that the cigarette tax was identified as a special fund for the School Fund prior to Statehood and therefore is grandfathered in as such. However, he noted that the other tobacco products tax could not be dedicated in this manner.

Ms. Bales confirmed his remarks.

Co-Chair Wilken understood therefore that the "Taxes and Revenues" chart appropriately depicts the breakout of the School Fund, as it exists under current law compared to that proposed in this

legislation. He thanked Senator Bunde for the explanation.

#sb307

CS FOR SENATE BILL NO. 307(JUD)

"An Act relating to the amount of the bond required to stay execution of a judgment in civil litigation involving a signatory, a successor of a signatory, or an affiliate of a signatory to the tobacco product Master Settlement Agreement during an appeal; amending Rules 204 and 205, Alaska Rules of Appellate Procedure; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

Co-Chair Wilken explained that this bill, which is sponsored by the Senate Judiciary Committee, would establish "a \$100 million limit on the appeal bond" that the State requires tobacco Master Settlement Agreement signatories to "post to stay of payment in regard to a Court judgment."

SENATOR RALPH SEEKINS, Chair, Senate Judiciary Committee, voiced that he is not associated in any manner with the tobacco industry and therefore has no conflict of interest in this regard. He explained that this bill relates to tobacco product Master Settlement Agreement (MSA), which provides millions of dollars to Alaska as well as to 45 other participatory states. He cautioned that the continuing receipt of those funds is being jeopardized "by huge settlements and judgments that have been awarded against the tobacco companies" that fund the settlement. Continuing, he explained, "that defendants facing large judgment almost always have the right to appeal them" and oftentimes, their appeal is successful in either reducing the level of the judgment or negating it. "In order to stay the execution" of a judgment on appeal," he continued, "the defendant must post an appeal bond "that usually equals the amount of the judgment." He disclosed that other states have enacted regulations placing limits on the amount of the appeal bond.

Senator Seekins informed that the appeal bond required in Alaska is "ordinarily the amount of the judgment remaining unsatisfied, plus appeal costs and interest." This bill, he explained would instill "a \$100 million dollar limit on the appeal bond that MSA signatories must post to stay the execution of any future judgment."

Senator Seekins clarified that this bond limit would not alter any

other existing component in law including such things as how a trial is conducted or who might win or lose a lawsuit, and it does not affect plaintiff's rights to fully collect a judgment were it upheld on appeal. Furthermore, he stressed that provisions in the bill would allow the court "to require a bond amount up to the value of the judgment" were it determined that "the appellant were dissipating his assets to avoid paying a judgment."

Senator Seekins declared that were this legislation adopted, Alaska would join with 30 other states that have enacted similar efforts in order to protect the continuation of the Master Settlement Agreement payments.

Co-Chair Wilken noted that CS SB 307(JUD), Version 23-LS1609\I is before the committee. He pointed out this version differs from the original bill in that it would increase the level of the required bond from \$25 million to \$100 million.

Senator Seekins concurred.

Co-Chair Wilken pointed out that Members' packets contain a spreadsheet titled "Enacted Appeal Bond Legislation" [copy on file] that denotes other states' legislative action regarding the appeal bond limit and a handout titled "Alaska Should Join Other State To Limit The Size Of Appeal Bonds and Protect Its Tobacco Settlement Revenues," [copy on file], both of which have been provided by the Covington & Burling law firm.

KEITH TEEL, Attorney with Covington & Burling, a Washington D.C. law-firm representing the four principal payers of the MSA: Philip Morris USA, R.J. Reynolds, Lorillard Tobacco Company, and Brown & Williamson Tobacco Corporation, noted that while Senator Seekins is correct in that 46 states are participants in the MSA, the remaining four states had established individual settlement agreements with the tobacco companies prior to the MSA. Therefore, he clarified that all 50-states are receiving settlement agreement payments.

Mr. Teel communicated that the MSA awards eight billion dollars annually to the fifty States "and would do so into perpetuity." He clarified that by perpetuity he means that the payments would continue, "as long as states are around and the companies are around and solvent." He warned however, that the litigation issue has surfaced since the inception of the MSA. This issue, he communicated, consists of such things as class action law suits "which have proven to be particularly troublesome" at the trial level. He noted that twelve of these class action lawsuits have gone to trail, and he noted that the Engle case in Florida resulted

in an award of \$145 billion, and he stated that, as part of the due process rights afforded in this country, the tobacco companies appealed that judgment. However, he noted that difficulty could arise were a plaintiff to request, as is their right, an immediate start to the payment of the judgment. This payment, he communicated could transpire via such means as attaching the plaintiff's bank account, "and basically taking its working capital." Therefore, he noted, plaintiffs "who get hit" with these types of large judgments often choose to put a stay on the execution of these payments. Avenues to do this, he disclosed, would be to file a supersedeas, or appeal, bond or, he noted a notice to appeal without a bond as is permissible in some states. He reviewed the history of appeal bonds, and stated that, in Alaska, the amount of the appeal bond would equate to the amount of the judgment plus interest and appeal costs.

Mr. Teel disclosed that "the problem" with the appeal bond is that, in the Florida case for instance, the cost of the bond amounted to \$181 million. Some bond expenses, he declared, could result in bankruptcy and ultimately a company's going out of business. Were a company unable to afford to post a bond in the amount determined by the Court, he attested, that company could be forced to file for bankruptcy in order to stop the plaintiff from taking its assets during the appeal. He disclosed that, "the problem with being driven into bankruptcy is that it impacts all kinds of things," including the company's payment obligations. He noted that the Florida case, which took more than three years to appeal, was important to the companies as the judgment was ultimately reduced to zero. He also noted that had Florida Legislature not reduced its limit on the appeals bond prior to the judgment, the companies might have been forced into bankruptcy, which would have prohibited any MSA payments.

Mr. Teel stressed that absent a limitation on the expenses associated with appeal bonds, the ability of companies to pay MSA payments would be interrupted. Therefore, he attested, legislation such as this is important.

Mr. Teel referred the Committee to the aforementioned spreadsheet depicting legislation that states have adopted to address the appeal bond situation. Some states, he noted, have expanded the legislation to apply to other types of appeals. He warned that, without addressing this situation in Alaska, were a class action lawsuit to transpire and result in a multi-billion dollar verdict, a negative impact could arise.

Mr. Teel stressed that the goal of this legislation is to limit the amount of the appeal bond "under State law and to avoid a

bankruptcy situation that might impair" the State or the company's finances rather than to affect any other aspect of the litigation process. He noted that the only opposition that has been presented during the bill's committee process has been from public health groups who were concerned that this legislation would protect the industry from liability. This concern, he communicated, is misplaced as due process allows the right to appeal.

Mr. Teel pointed out that were MSA payers driven into bankruptcy and thereby placing MSA payments in jeopardy, the State might suffer a huge fiscal impact during the appeal process. He stressed that adoption of the legislation would incur no fiscal impact to the State.

Senator Olson commented that it appears that the plaintiffs in the Florida class action lawsuit suffered "a disservice" by the action of the Florida court to reduce the \$145 billion judgment to zero.

Mr. Teel agreed that at the end of the appeal process, a lot of people ended up with zero. However, he reiterated that the appeals process is very important to defendants dealing with class action lawsuits, particularly those dealing with personal injury situations such as the Florida case. He noted that there are tremendous law requirements involved in getting a class action suit properly certified. He noted that the duration of that trial was one year at a cost of millions of dollars.

Co-Chair Wilken ordered the bill HELD in Committee.

#

ADJOURNMENT

Co-Chair Gary Wilken adjourned the meeting at 11:06 AM