

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

April 15, 2003

1:32 p.m.

MEMBERS PRESENT

Senator Con Bunde, Chair
Senator Ralph Seekins, Vice Chair
Senator Gary Stevens
Senator Bettye Davis
Senator Hollis French

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 180

"An Act establishing the Safety Code Task Force; and providing for an effective date."

HEARD AND HELD

SENATE CS FOR CS FOR HOUSE BILL NO. 118(L&C)

"An Act relating to the transportation and sale of certain commercially caught fish by an agent of a commercial fishing permit holder and to the sale of fish; and providing for an effective date."

MOVED SCS CSHB 118(L&C) OUT OF COMMITTEE

SENATE BILL NO. 111

"An Act relating to the submission of payroll information by contractors and subcontractors performing work on a public construction contract; and providing for an effective date."

MOVED CSSB 111(L&C) OUT OF COMMITTEE

SENATE BILL NO. 114

"An Act increasing the fee for a state business license; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 168

"An Act relating to issuance and revocation of licenses for the importation, sale, distribution, or manufacture of cigarettes and tobacco products; relating to a tax refund or credit for unsaleable, returned, or destroyed tobacco products; relating to restrictions on shipping or transporting cigarettes; relating to records concerning the sale of cigarettes; amending and adding definitions relating to cigarette taxes; relating to the payment of cigarette taxes; relating to penalties applicable to cigarette taxes; relating to the definition of the wholesale price of tobacco products; relating to payment of cigarette taxes through the use of cigarette tax stamps; relating to provisions making certain cigarettes contraband and subject to seizure and forfeiture; relating to certain crimes, penalties, and interest concerning tobacco taxes and sales; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 156

"An Act relating to the posting and giving of certain warnings about drinking alcohol during pregnancy when selling or dispensing pregnancy testing kits, birth control devices, or birth control prescriptions."

MOVED SB 156 OUT OF COMMITTEE

PREVIOUS ACTION

SB 180 - No previous action to record.

HB 118 - See Labor and Commerce minutes dated 4/8/03.

SB 111 - See Labor and Commerce minutes dated 3/25/03 and 4/10/03.

SB 114 - See Labor and Commerce minutes dated 3/18/03, 4/10/03.

SB 168 - No previous action to record.

SB 156 - No previous action to record.

WITNESS REGISTER

Senator Gene Therriault
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of SB 180.

Mr. Sam Kito, III
Alaska Professional Design Council
PO Box 21192
Juneau AK 99801
POSITION STATEMENT: Commented on SB 180.

Mr. Dick Cattanach, Executive Director
Association of General Contractors
8005 Schoon St.
Anchorage AK 99518
POSITION STATEMENT: Supported SB 180.

Mr. Gary Powell
State of Alaska Fire Marshall
Division of Fire Prevention
Department of Public Safety
PO Box 111200
Juneau, AK 99811-1200
POSITION STATEMENT: Commented on SB 180.

Mr. Colin Maynard, Structural Engineer
510 L St. No. 200
Anchorage AK 99501
POSITION STATEMENT: Commented on SB 180.

Mr. Dennis Michel, President
Mechanical Contractors Association
PO Box 72991
Fairbanks AK 99707
POSITION STATEMENT: Supported SB 180.

Mr. Dave Peet
Director of Training
Plumbers and Pipefitters, Local 375
PO Box 82257
Fairbanks AK 99708
POSITION STATEMENT: Supported SB 180.

Mr. John Knabe
3029 Riverview Dr.
Fairbanks AK 99709
POSITION STATEMENT: Supported SB 180.

Mr. Gene Rutland, Executive Director
Mechanical Contractors of Alaska
PO Box 74796

Fairbanks AK 99707

POSITION STATEMENT: Supported SB 180.

Mr. Jim Laiti, Business Agent
Plumbers and Pipe Fitters, Local 375
3568 Geraghty
Fairbanks AK 99709

POSITION STATEMENT: Supported SB 180.

Mr. Bill Sager, Executive Director
Mechanical Contractors of Fairbanks
650 9th Ave.
Fairbanks AK 99701

POSITION STATEMENT: Supported SB 180.

Commissioner Greg O'Claray
Department of Labor & Workforce
Development
PO Box 21149
Juneau, AK 99802-1149

POSITION STATEMENT: Supported SB 111.

Mr. Rick Urion, Director
Division of Occupational Licensing
Department of Community & Economic Development
PO Box 110800
Juneau, AK 99811-0800

POSITION STATEMENT: Commented on SB 114.

Ms. Jane Alberts
Staff to Senator Bunde
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Commented on SB 168 for the sponsor.

Mr. Michael Elerding
Northern Sales of Company of Alaska
5351 Shaune
Juneau AK 99801

POSITION STATEMENT: Opposed SB 168.

Mr. Bob Galosich, Vice President
Wholesale Operations, Frontier Expeditors
Alaska Commercial Company
No address provided

POSITION STATEMENT: Commented on SB 168.

Ms. Johanna Bales, Auditor
Department of Revenue
PO Box 110400
Juneau, AK 99811-0400
POSITION STATEMENT: Supported SB 168.

Ms. Jennifer App, Alaska Advocacy Director
American Heart Association
POSITION STATEMENT: Supported SB 168.

ACTION NARRATIVE

TAPE 03-21, SIDE A

SB 180-SAFETY CODE TASK FORCE

CHAIR CON BUNDE called the Senate Labor and Commerce Standing Committee meeting to order at 1:32 p.m. Present were Senators Davis, Seekins and French. He announced SB 180 to be up for consideration.

SENATOR THERRIAULT, sponsor of SB 180, said this measure clarifies the method by which the Legislature adopts and oversees codes in the State of Alaska. He originally introduced legislation to change certain segments of the code adoption system but found himself in the middle of a long-standing turf battle between code writers, code administrators, departments, etcetera, so he asked that a Safety Code Task Force be assembled to recommend how these issues might be resolved. The task force would have broad representation and an advisory panel to inform members on how proposals would work within the state administration. In addition, two amendments have been proposed that broaden the instructions in the resolution.

SENATOR THERRIAULT explained that currently, the Department of Labor oversees some codes and the Department of Public Safety oversees others. The first proposed amendment makes one state agency responsible for adopting and administering the codes.

SENATOR SEEKINS moved to adopt Amendment 1, which reads as follows.

23-LS0928\A.1
Bannister
12/11/03

A M E N D M E N T 1

OFFERED IN THE SENATE

TO: SB 180

Page 2, line 1:

Delete "construction mechanical contractors"

Insert "the mechanical construction industry"

Page 2, line 2:

Delete "construction electrical contractors"

Insert "the electrical construction industry"

Page 2, line 3:

Delete "construction plumbing contractors"

Insert "the plumbing construction industry"

There were no objections and it was adopted.

SENATOR SEEKINS moved to adopt Amendment 2, which reads as follows.

23-LS0928\A.2

Bannister

12/11/03

A M E N D M E N T 2

OFFERED IN THE SENATE

TO: SB 180

Page 2, line 4, following "shall":

Insert "(1)"

Page 2, line 5, following "state":

Insert "; and

(2) discuss and make recommendations on having one state agency responsible for the adoption and administration of all safety codes"

There were no objections and Amendment 2 was adopted.

SENATOR THERRIAULT explained that Amendment 2 instructs the task force to not only look at one set of codes for the state to adopt, but suggests designating one single agency to oversee them. He pointed out that Amendment 1 makes language changes on

page 2, lines 1 - 3, to broaden the membership requirements. He added that the Professional Design Council wants the membership to be expanded and the code compliance folks from the different municipalities want their people to be on the task force. However, if the task force gets too big, it would become unwieldy and jeopardize good decisions. He believes the suggested structure is balanced between the international code and the uniform code and the governor, the president and the speaker as appointees (swing votes).

MR. SAM KITO, III, Alaska Professional Design Council, said his written testimony was in members' packets. He summarized that the Council is interested in making sure this task force has the necessary knowledge and expertise to make qualified decisions.

MR. KITO said the two sets of codes need to be compared against each other for their applicability to any given situation and that's the problem.

SENATOR FRENCH said the bill calls for a report to be issued by the first day of the second regular session and asked if that is a reasonable timeframe.

MR. KITO said he thought it could be done, but that's why they want to make sure the people who are on the task force have knowledge of the technical aspects of the code so they don't have to go through a steep learning curve.

MR. DICK CATTANACH, Executive Director, Association of General Contractors, said this bill is a good step and encouraged the committee to deal with SB 180 favorably.

MR. GARY POWELL, State Fire Marshall, said the Department of Public Safety understands the complexity of the issues. He offered to help the committee work on the makeup of the Safety Code Task Force. He said the department feels that a number of disciplines are not represented on the task force, notably a representative from the fire fighting community. Fire codes play a crucial role in the construction and life of a building. Fire codes provide the means to protect occupants, the structure, the contents, and the first responders in case of an emergency. He noted there was no representation from the oil and gas industry either. He told members:

The future codes adopted in this state play a crucial role in the ability of Alyeska Pipeline Services to accomplish their plans for a strategic complete

configuration. Every production facility on the North Slope will be affected to some degree, as the codes that we currently adopt have no provisions for those types of facilities....

MR. POWELL said building owners needed to be represented as well. They should have a voice in how a place is constructed and maintained after occupancy, which would affect the general public.

SENATOR FRENCH asked him if there are significant differences between the fire codes in the international building code and the uniform code.

MR. POWELL replied that currently the uniform fire code is being incorporated into the NFPA building code because it's a better fit than with the international building code.

MR. COLIN MAYNARD said he is a structural engineer as well as Chair of the Anchorage Building Board. He said that he is the person who came up with the task force idea and he likes the proposed amendments, but does not like language about the state adopting "a family of codes." He also thought people from different industries could be added. At a minimum, the task force needs one architect, one structural engineer and one mechanical engineer to deal with the substantial technical issues between the two [codes] and it needs the equivalent membership from the construction community.

MR. DENNIS MICHEL, President, Mechanical Contractors Association, said that SB 180 is a reasonable compromise and he supports the amendments. He believes SB 180 might be a good way to resolve the issues that affect the livelihoods of mechanical contractors. He noted, "We have to have a seat to make sure the best interests of the State of Alaska [are] represented."

MR. DAVE PEET, Patrick Mechanical, said he is also a contractor in Fairbanks. He said the reason they are discussing this issue now is because the contractors were left out of the process the last time.

MR. JOHN KNABE, Director of Training, Plumbers and Pipe Fitters, Local 375, said he is also chairman of the Plumbers Examining Board and that he is in strong support of SB 180. He pointed out, "The recent controversy concerning code adoption is a good example of the need for this bill."

MR. GENE RUTLAND, Executive Director, Mechanical Contractors of Alaska, supported SB 180 as amended and commented:

The process of code adoption by regulation is flawed and needs reformation.... While there is a public comment period, that department has the sole discretion as to what weight they place on the public comment. After that department declares that a regulation is adopted, it has the force of law - all without legislative action. Even when your own Administrative Regulation Review Committee holds a hearing and by letter asks the department to delay implementation of the regulation, that department can and has refused to comply. The task force with the make up as proposed in SB 180 would come up with recommendations for safety code adoption that will have broad-based support in the Alaska construction community.

MR. JIM LAITI, business agent, Plumbers and Pipe Fitters, Local 375, supported SB 180 as amended.

MR. BILL SAGER, Executive Director, Mechanical Contractors of Fairbanks, said he is also the owner of Chandlers Plumbing and Heating, and that the controversy over codes has been going on for years. He believes the task force is a good step in the right direction and he supports SB 180 as amended.

CHAIR BUNDE thanked everyone who testified and said the committee would set the bill aside for further work.

CSHB 118(RES)am-TRANSPORTATION OF COMMERCIAL FISH

CHAIR BUNDE announced CSHB 118(RES)am to be up for consideration.

SENATOR SEEKINS moved to pass SCS CSHB 118(L&C) from committee with individual recommendations.

A roll call vote was taken. SENATORS SEEKINS, STEVENS, FRENCH, DAVIS and BUNDE voted yea, and SCS CSHB 118(L&C) moved from committee.

SB 111-PUBLIC CONSTRUCTION PROJECT REQUIREMENTS

CHAIR BUNDE announced SB 111 to be up for consideration.

SENATOR SEEKINS moved to adopt the CS SB 111(L&C), Version H, as the working document before the committee. There were no objections and it was so ordered.

COMMISSIONER GREG O'CLARAY, Department of Labor and Workforce Development, supported the committee substitute (CS) to SB 111. It meets the Associated General Contractors' concerns with respect to withholding payment as a result of a subcontractor's tardiness.

SENATOR SEEKINS said he noticed on page 3 that there was a new definition under "public construction."

COMMISSIONER O'CLARAY said that was an amendment by Representative Rokeberg who was concerned about tenant improvements in a public building. He felt that smaller contractors should be permitted to bid on that work without being subject to the prevailing wage rate. The limitation on those contracts is less than \$100,000.

SENATOR SEEKINS said he thought the language basically says that any alteration or redecorating that costs less than \$100,000 would not be subject to the Davis Bacon Act. The commissioner agreed.

SENATOR SEEKINS further said that tenants could be departments of the state and not necessarily private tenants. The commissioner indicated that is correct.

CHAIR BUNDE commented that some folks in the union were not very happy about that section.

MR. DICK CATTANACH commented that he had talked with the Department of Labor about the committee substitute and the provision covering public construction under \$100,000 is common practice.

SENATOR FRENCH asked if that figure used to be closer to \$2,000 to \$5,000. He asked if a dollar figure had ever been set below which a prevailing wage didn't have to be paid.

MR. CATTANACH responded that statutes deal with that for public contracts, but the amendment addresses alterations and repairs undertaken by the tenant.

SENATOR SEEKINS said that the prevailing wage doesn't necessarily equate to a union contract wage. He stated that the bill is not making a preference for union or nonunion labor.

MR. CATTANACH agreed and explained that the prevailing rate is established by the state on all state contracts. Frequently, on small jobs, the union pays labor less. He didn't mean to infer that this was a union versus nonunion issue.

SENATOR SEEKINS asked if he knew of any state-owned buildings that are leased to private individuals.

CHAIR BUNDE responded that the Atwood Building has private tenants.

COMMISSIONER O'CLARAY added that the "Spam Can" in Juneau has private tenants.

SENATOR SEEKINS moved to pass CSSB 111(L&C), Version H, from committee with individual recommendations.

The roll was called. SENATORS FRENCH and DAVIS voted nay. Senator French said he wanted time to work on the \$100,000 figure. SENATORS STEVENS, SEEKINS and BUNDE voted yea; and CSSB 111(L&C) passed from committee.

SB 114-INCREASE BUSINESS LICENSE FEE

CHAIR BUNDE announced SB 114 to be up for consideration.

SENATOR SEEKINS moved to adopt CSSB 114(L&C), Version D, as the working document before the committee. There were no objections and it was so ordered.

MR. RICK URION, Director, Division of Occupational Licensing, said the one problem with the way this bill is worded is its use of the past tense and the issue of whether a person had the employees in the previous year. If language were in the present tense, employers could project how many employees they would have in future years.

TAPE 03-21, SIDE B

SENATOR SEEKINS said the committee could address the first year startup issue by saying, "did not have or does not anticipate employing more than."

CHAIR BUNDE assigned a subcommittee of Senator Seekins and Senator French to work on further clarification and said he would bring SB 114 up at the next meeting.

SB 168-CIGARETTE SALE/DISTRIBUTION

CHAIR BUNDE announced SB 168 to be up for consideration. He said it occurred to him that some people are probably circumventing the tobacco tax laws, putting legitimate businesses at a disadvantage. While he doesn't use tobacco products, he doesn't want legitimate businesses to be disadvantaged by people who are scofflaws. He said it is a matter of fairness to Alaska businesses to prevent the bootlegging of tobacco and the only way to do that is with a tobacco stamp.

SENATOR FRENCH asked if the increase in the tobacco tax has led to any reduction in smoking.

CHAIR BUNDE said information he has received has indicated yes. He had a conversation with a tobacco distributor this morning who said it is now his contention that use by young people goes down as the price goes up.

SENATOR FRENCH asked if the criminal portions of the bill would be referred to the district attorney's office.

CHAIR BUNDE said that is his understanding.

SENATOR FRENCH asked if any additional money is available for prosecutors.

CHAIR BUNDE said the bill has an indeterminate fiscal note, but there is speculation that there will be a half million dollars of additional income.

MS. JANE ALBERTS, staff to Chair Bunde, said that Joanna Bales from the Department of Revenue could also address that question.

SENATOR SEEKINS interrupted to say that he had a few more questions. He asked if the chair's intent was to establish minimum wholesale and retail prices.

CHAIR BUNDE replied that would become part of the discussion. He is in the process of deciding what is best for the state.

SENATOR SEEKINS said he would support that concept, simply because he believes that anything that makes tobacco more

expensive has some affect on the amount that is used and has a direct affect on the health of any of the users.

MR. MIKE ELERDING, President, Northern Sales Company of Alaska, said Northern Sales is a tobacco wholesale distribution company founded in Juneau in 1960 that operates four distribution warehouses in Southeast Alaska and one in Kodiak. The company provides full-time year-round employment for 90 Alaska residents and, in 2002, tobacco and cigarette sales represented approximately 47% of its overall sales volume. He commented:

In 2002, we imported 375,000 cartons of cigarettes into the state of Alaska and paid state excise tax in excess of \$3,750,000. Cigarettes and tobacco products are an integral part of our business. The legislation proposed under SB 168 would require wholesale distributors licensed to sell in Alaska to place a tax stamp on each pack of cigarettes imported into the state. The rationale for the tax stamp is to give the state a tool to ban illegal importation of cigarettes and to enforce the collection of the excise tax on all cigarette and tobacco products imported into the state.

The problem with the proposed legislation is that the state is placing an additional burden of tax collection through its implementation of a tax stamp on to a wholesale distributor without addressing competitive issues that put Alaska-based wholesale distributors at a competitive disadvantage over predatory pricing practices of large multi-state chain stores who are selling cigarettes at or below cost.

Owing to the unique logistics involved in supplying our geographic market area, we have to set up and establish a stamping operation in Alaska in order to comply with the provisions of this proposed legislation. The cost of operating the stamping operation would create additional costs over and above the scheduled discounts offered for reimbursement and stamping in the proposed legislation. Because of competitive forces operating in the market place, we would not be able to add the cost of the stamping operation to cover our increased cost and still remain competitive and because our existing margin on cigarettes and tobacco products is so thin, we would

not be able to absorb the cost created by this tax stamping operation and remain profitable.

The problem for Northern Sales and other similarly situated Alaska-based wholesale distributors is that we would have to amortize the cost of the stamping operation over our 375,000 cartons of cigarettes. Large multi-state chain stores that sell millions of cartons of cigarettes have regional stamping centers located in the Lower 48. Because of large volumes of cigarettes, these companies move through their regional stamping centers. They are more efficiently amortizing the operating cost of the stamping operation outside the state of Alaska. To pass this legislation as presently structured will put Alaska-based wholesale distributors in an untenable position because we would not be able to recover the increased cost of the tax stamping operation. The end result would be the lost revenue to our company and a loss of full-time Alaskan jobs. Once these jobs are gone, they would not return because there is no incentive for the multi-state chain stores to re-locate regional tax stamping centers to Alaska.

As a cigarette distributor in Alaska, I support the concept of providing the state with a tool to stem the illegal importation of cigarettes and to provide a level playing field for tobacco distributors by insuring that all the distributors are paying the state excise tax. However, I believe that as proposed, SB 168 will create a competitive disadvantage for Alaska-based wholesalers. There is a need for tax stamping cigarettes, but until legislation addresses the predatory pricing practices of large multi-state operators, the passage of SB 168 will only serve to undermine the financial health of my company and transfer jobs from Alaska companies to companies operating in the Lower 48.

In my opinion, SB 168 could be remedied by the addition of a minimum price provision, which would result in the following benefits.

1. End predatory pricing practices by selling cigarettes at or below cost.

2. Create a level playing field for competition for the sale and distribution of tobacco products in Alaska.
3. Reduce the sale of cigarettes by ending low cost sales of cigarettes to Alaska's youth.

There are 25 states, plus the District of Columbia, that currently have minimum price laws on the books. This is specific legislation dealing with tobacco distribution and unfair cigarette sales practices.

The climate in cigarette sales has changed dramatically over the years, due to efforts of the health care community [and] the American Cancer Society. Bolstered by the Master Settlement Agreement, government, business and the public as a whole have come to recognize that cigarettes are a commodity with which are associated certain health risks and, as such, must be marketed and sold in a manner different from common free enterprise products. These changes reflect a philosophical change toward more control of how commerce in cigarette sales is conducted and how to prevent youth access together with the philosophy of assisting legitimate business interests in complying with tobacco laws without losing the ability to sell these products.

At present, there are many retailers in Alaska using cigarettes largely to attract customers. Large national chain stores can absorb the cost of selling cigarettes below cost because they are going to make up any shortfall on the sale of cigarettes by selling a TV or VCR to the consumer who comes into their store, in part, because of the cheap cigarette pricing. Tobacco wholesalers do not have the luxury of making up for low margin sales by selling high-end consumer goods....

MR. ELERDING said that an unintended consequence of selling cigarettes below cost is that it creates greater access to under-age consumers.

SENATOR FRENCH asked him if he would support this legislation if it had a minimum price provision in it.

MR. ALERDING replied that he would be a huge cheerleader of this legislation if there was a minimum price or unfair practices condition on it.

MR. BOB GALOSICH, Vice President, Frontier Expeditors, said his company sells tobacco in rural Alaska and is in much the same position as Mr. Elerding (Northern Sales). Frontier sells about 250,000 cartons per year. He said there is one other small distributor roughly the same size, Jans Distributing, who is in general agreement with them on this issue. He pointed out that the fiscal note assumes 4 to 5 million cartons of cigarettes are sold annually; the small Alaskan businesses represent about 20% of that volume. He supported all of the statements in Mr. Elerding's testimony. He said the three distributors would support a tax bill as long as the unfair pricing practices issues were addressed in the form of the amendment he had with him. It is based on the information used by the Minnesota House of Representatives when it created their Unfair Cigarette Sales Act. In addition, it lists all the states that have stamps.

CHAIR BUNDE asked him what the larger distributors have to say about minimum price.

MR. GALOSICH responded that is a difficult question, but they certainly wouldn't be in favor of it.

CHAIR BUNDE said he understood that some companies get kickbacks for strategically placing cigarettes so they can be sold cheaper.

MR. GALOSICH replied at the wholesale level, there is a discount given to the distributor for paying electronically, but it's been 2.75%. He stated:

Believe me, it's not much when you look at the cost of a carton of cigarettes and assume that a distributor has to inventory between a quarter of a million and a million dollars in inventory. Many of you are business people and if you had to carry that kind of dollar in inventory and run your business in a 2% to 4% gross margin, it would be very difficult to do...We want to at least cover our costs so that we can satisfy our customer, which is why we are in the business. We sell as a distributor; we don't necessarily choose the items. The customer tells us which items they want to buy; we put those items in.... This, at least, gives the small Alaskan company an opportunity to be on a

level playing field with the big guys and take care of the consumer for as long as they want to be taken care of in this fashion.

SENATOR STEVENS asked if the larger distributors pay substantially less than he does so that in the end he would be raising their profit margin considerably.

MR. GALOSICH replied that they pay the same for a carton of cigarettes that he pays. If there were no unfair pricing amendment added, the large suppliers who already tax stamp in other states, where they already have equipment and staff, would simply channel inventory there before it comes to Alaska to get stamped. They have the advantage of offsetting their loss on the tobacco sale by higher profits on other consumables.

MS. JOHANNA BALES, auditor, Department of Revenue, said that she is the program manager for the cigarette and tobacco excise tax program. The department is interested in this bill and has tried to get the tax stamp legislation passed for the last couple of sessions. She said Senator Bunde pretty much covered all of the comments she had and she would submit those in writing to the committee.

She said prior to the tax rate increase in October 1997, the average number of cigarette packs sold in the state that they collected tax on was about \$53 million. After the tax increase, that dropped to about 40 million packs each year and approximately a \$10 to \$13 million loss in revenue loss. It's difficult to say how much of that decrease is from people who either quit smoking or have cut back or are bootlegging. She said it's probably a combination of both.

She informed them that the department had attempted to enforce the tax increase, but it's very difficult to do without a tax stamp. Even checking invoices doesn't allow the department to determine which cartons they cover. She said the department has information indicating that bootlegging is going on. It has a database of 1,000 individuals who purchased tobacco products through the mail. Individuals are treated no differently than retailers or distributors under Alaska's current statute. Anyone who imports cigarettes into the state, whether it's for personal consumption or resale, is required to pay the tax. The department has found at least one retailer who is responsible for over 50% of the cigarettes that are brought into the state. The department calculated that the state lost close to \$500,000 from that one vendor over a 13-month period.

MS. BALES said that currently, over 122 vendors sell cigarettes on the Internet. She has identified about 20 other vendors who sell cigarettes in the state and has sent letters asking for information, which they are required to give under federal law. But, those vendors are not going to provide any information if there is no enforcement. She said the department's enforcement capabilities are limited because the companies are out-of-state.

MS. BALES said another reason this bill is important is that the current statute has no seizure provisions. The only thing she can do right now is count and walk out the door and send an assessment. At this time, 46 other states have a cigarette tax stamp. Kentucky, which has a tax rate of \$.03 per pack, has a tax stamp; Virginia has a rate of \$.2.5; Hawaii raised its tax rate to \$1 per pack and it took Hawaii two years to institute a tax stamp. That tax is enforced by the attorney general's office and he told her that the tax revenue increased from \$40 million to \$61 million in one year. The second year Hawaii saw \$64 million.

She said that a 1.5% increase in revenue will cover all program costs for additional enforcement, the cost to purchase and sell stamps and the cost of an investigator and revenue auditor. She stated, "Everything after that is gravy."

MS. JENNIFER APP, American Heart Association, testified on behalf of Alaskans for Tobacco-Free Kids and the Tobacco Policy Coalition, which includes the Heart Association, the American Lung Association of Alaska, the American Cancer Society and the Alaska Native Health Board. She supported previous testimony and added if a tax were in place, there would be a more precise number to track the actual decrease in usage. They also support the tax stamp because it would decrease the ability of people and businesses to avoid paying the tax and it would help keep cigarettes out of the hands of our youth. She had written testimony, which she submitted to the committee after reading it.

SENATOR STEVENS asked if Indian tribes can receive cigarettes that are not taxed in this state.

MS. APP replied that Metlakatla and Klawock are the only two, because of their land status.

SENATOR STEVENS said he was asking because of the situation in Oregon and Washington where tribes are selling untaxed cigarettes to people outside the tribe.

MS. APP said she wasn't aware of that happening here.

SENATOR STEVENS asked what is stopping that from happening in Alaska.

SENATOR SEEKINS said there is no sovereign country in Alaska, but in the Lower 48, Indians take advantage of their sovereign lands to be able to sell cigarettes without paying taxes.

MS. APP added this bill would deal with that problem. If a tribe were to develop that shipping process (to mail order to other communities in Alaska), this bill requires them to ship to a licensed tobacco entity.

CHAIR BUNDE said in Yakima, Washington, someone could drive onto the reservation and buy the product. The cops could stop you when you drive off, but it's a lot of work.

SENATOR FRENCH asked if 46 states have this stamp and Internet vendors make their money by beating the stamp, how are they able to proliferate.

MS. APP replied that she thought that was the impetus behind legislation like this.

MS. BALES said she thought this legislation was earmarked towards the distributors, those who bring product in and resell it. Other states do have problems with Internet sales and there is a federal law called the Contraband Cigarette Tracking Act, which states that it is illegal to ship a certain number of cigarettes through interstate commerce period. However, that law only applies in states that have a tax stamp. Currently, if large shipments of cigarettes were found coming into Alaska, the state could not ask for federal help because it doesn't have a stamp. She said the department sent out assessments to all 1,000 Internet buyers and their response was based on their knowledge of the fact that they didn't have to pay because Alaska has no tax stamp. She thought this would definitely provide an incentive.

TAPE 03-22, SIDE A

CHAIR BUNDE asked what the penalty was.

MS. BALES said without the tax stamp, this legislation does not replace or change who the taxpayer is under current statute. You are required to have a license with the Department of Revenue before you bring product into the state.

She said there is 100% penalty for not having a license. You have to pay the tax as well as any interest that may have accrued. The product is taken and the department could go forward with criminal charges of tax evasion if they want to do so.

CHAIR BUNDE thanked everyone for their help with this bill and said he would bring it up after further work.

SB 156-PREGNANCY ALCOHOL WARNING

CHAIR BUNDE announced SB 156 to be up for consideration.

SENATOR DYSON, sponsor, said that prenatal alcohol poisoning has been a scourge to this state. He said Alaska has the distinction of leading the nation. He gave credit to Karen Perdue and Diane Castro for expanding treatment in the state so far in the last 5.5 years. However, more needs to be done for prevention. He said that 30% of our OB-GYNs don't know that any amount of alcohol is always dangerous to a pregnant woman. The damage is irreversible. Some experts in the state think that 60-70% of our prison population may have prenatal alcohol poisoning issues. He stated, "The social impact is immense."

SB 156 requires a pharmacist handling birth control devices and pregnancy tests to also hand out a warning about Fetal Alcohol Syndrome (FAS) and to post a sign. He asked pharmacists and drug manufacturers how they could do it easily and they are very sympathetic. One pharmacist said he would put a sticker on everything. The Department of Law didn't think there would be a problem with enforcement and there should be no cost to the state.

CHAIR BUNDE said there would be a cost to the pharmacies if they put a sticker on everything and asked if that cost would be absorbed in the cost of the product.

SENATOR DYSON replied yes, but producing a sticker is very easy. He noted the pharmacists would just have to pull stickers up on their computer and print them.

CHAIR BUNDE asked if he had thought about expanding the bill to require any place that treats pregnant women to post a sign.

SENATOR DYSON said he hadn't thought of that, but it is a good idea.

SENATOR FRENCH asked if this bill was meant to cover the sale of condoms.

SENATOR DYSON replied yes.

SENATOR SEEKINS moved to pass SB 156 from committee with individual recommendations. There were no objections and it was so ordered.

CHAIR BUNDE adjourned the meeting at 3:17 p.m.