

CS FOR SENATE BILL NO. 13(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 2/14/97
Referred: Finance

Sponsor(s): SENATORS SHARP, Ellis

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to taxes on cigarettes and tobacco products, and to the filings
2 of returns for and the use of the proceeds of those taxes; and providing for an
3 effective date."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** LEGISLATIVE FINDINGS. The legislature finds that

6 (1) the first two and one-half mills of the tax on cigarettes supports the "school
7 fund," a pre-Statehood dedicated fund the proceeds of which are to be used only for the
8 construction and maintenance of public school facilities and for closely related purposes;

9 (2) as reported in the Alaska Constitutional Convention Proceedings, the
10 delegates to Alaska's Constitutional Convention, while favoring a general prohibition against
11 dedicated funds, authorized an exception in order to permit the continuance of a dedication
12 for special purposes in effect on the date of ratification of the proposed state constitution;

13 (3) in debate about the provision, key members of the convention committee
14 that developed its language, defending the exception, related that the provision was drafted

1 so that the rate of taxation that supported a dedicated fund could be changed by law without
2 affecting the status of the dedication;

3 (4) the attorney general, in a 1959 opinion, concluded that the legislature was
4 without power to raise or lower the dedication by increasing or decreasing the rate of a tax
5 or license fee;

6 (5) while the intent of the constitutional framers has weight in determining the
7 intent of the Constitutional Convention and has influenced the legislature in its decision to
8 increase the rate of the tax on cigarettes dedicated for deposit to the "school fund," a final
9 resolution of the question rests with the courts, which may find that any change made by the
10 legislature in the rate of taxation of cigarettes eliminates the dedicated status of the "school
11 fund" as an exception to the dedicated fund prohibition; and

12 (6) it is in the best interests of the state that the tax on cigarettes be increased,
13 but that provision for the increase in the rate of the state's tax on cigarettes shall be made in
14 the alternative so that, in the event a court makes a final determination that adjustment of the
15 rate of the tax that supports a dedicated fund eliminates the dedication, the tax will return to
16 its current rate, its dedication for school facility related purposes may continue, and the
17 increased levy shall instead be deposited into the general fund for the uses and purposes
18 otherwise described in this Act.

19 * **Sec. 2. LEGISLATIVE INTENT.** It is the intent of the legislature that, of the tax
20 revenue derived

21 (1) from the amendment to the cigarette tax made by sec. 5 of this Act, the
22 amount obtained be deposited into the school fund (AS 43.50.140) and used as required by
23 that section for state support of elementary and secondary education;

24 (2) from the amendment contingently made to the cigarette tax by sec. 7 of this
25 Act, subject to appropriation by the legislature, the amount obtained be deposited into the
26 school construction savings fund, an endowment trust fund, with the income to be used for
27 state support of elementary and secondary education; and

28 (3) from the amendment made to the tobacco tax by sec. 9 of this Act, subject
29 to appropriation, the amount obtained be used to establish and maintain an aggressive anti-
30 tobacco campaign targeting children, to be administered by the Department of Health and
31 Social Services, and be used to establish and maintain a program of pass-through grants to

1 municipalities to detect and prosecute those who sell or otherwise supply tobacco to children,
2 to be administered by the Department of Public Safety.

3 * **Sec. 3.** AS 37.13 is amended by adding a new section to article 2 to read:

4 **Sec. 37.13.320. Corporation to manage school construction savings fund.**

5 The corporation shall manage the school construction savings fund subject to
6 AS 37.13.120.

7 * **Sec. 4.** AS 37.14 is amended by adding a new section to read:

8 **Article 2A. School Construction Savings Fund.**

9 **Sec. 37.14.175. School construction savings fund established.** (a) The
10 school construction savings fund is established as a separate endowment trust of the
11 state. The principal of the school construction savings fund consists of legislative
12 appropriations to it, including those made under AS 43.50.190(c), and amounts
13 transferred from the fund's income to the fund's principal sufficient to offset the
14 effects of inflation on fund principal during the fiscal year.

15 (b) The school construction savings fund shall be held and invested by the
16 Alaska Permanent Fund Corporation subject to AS 37.13.120.

17 (c) The earnings from the school construction savings fund shall be accounted
18 for separately. Subject to appropriation, after transfer from income earnings to the
19 fund's principal of an amount sufficient to offset the effects of inflation on fund
20 principal during the fiscal year, the remaining income may be used for a purpose
21 described in AS 43.50.140. This section is not intended to create a dedication in
22 violation of art. IX, sec. 7, Constitution of the State of Alaska.

23 * **Sec. 5.** AS 43.50.090(a) is amended to read:

24 (a) There is levied an excise tax of 52 1/2 [TWO AND ONE-HALF] mills on
25 each cigarette imported or acquired in the state. Each licensee shall, at the time of
26 filing the return required by AS 43.50.080, pay to the department the excise for the
27 calendar month covered by the return, deducting **three-tenths of** one percent of the
28 total tax due, which the licensee shall retain to cover the expense of accounting and
29 filing returns. Cigarettes upon which the excise is imposed are not again subject to the
30 excise when acquired by another person.

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

1 (a) There is levied an excise tax of **two and one-half** [52 1/2] mills on each
2 cigarette imported or acquired in the state. Each licensee shall, at the time of filing
3 the return required by AS 43.50.080, pay to the department the excise for the calendar
4 month covered by the return, deducting three-tenths of one percent of the total tax due,
5 which the licensee shall retain to cover the expense of accounting and filing returns.
6 Cigarettes upon which the excise is imposed are not again subject to the excise when
7 acquired by another person.

8 * **Sec. 7.** AS 43.50.190 is amended to read:

9 **Sec. 43.50.190. Additional tax levy on cigarettes.** (a) There is levied an
10 excise tax of **62** [12] mills on each cigarette imported or acquired in this state.

11 (b) The tax levied by this section is in addition to the tax levied by
12 AS 43.50.010 - 43.50.180. The tax shall be administered and collected in the same
13 manner as the tax levied by AS 43.50.010 - 43.50.180, except that receipts from the
14 tax shall be deposited in the general fund **and may be appropriated by the**
15 **legislature as provided by (c) of this section.** The penalties provided in AS 43.05
16 apply to the tax levied in this section.

17 * **Sec. 8.** AS 43.50.190 is amended by adding a new subsection to read:

18 (c) The tax collected under (a) of this section that is deposited into the general
19 fund shall be accounted for separately in an account called the "school construction
20 savings transfer account." The legislature may appropriate from the "school
21 construction savings transfer account" to the school construction savings fund
22 established in AS 37.14.175. The deposit required and appropriation authorized by this
23 section are not intended to create a dedication in violation of art. IX, sec. 7,
24 Constitution of the State of Alaska.

25 * **Sec. 9.** AS 43.50.300 is amended to read:

26 **Sec. 43.50.300. Excise tax levied.** An excise tax is levied on tobacco products
27 in the state at the rate of **100** [25] percent of the wholesale price of the tobacco
28 products. The tax is levied when a person

29 (1) brings, or causes to be brought, a tobacco product into the state
30 from outside the state for sale;

31 (2) makes, manufactures, or fabricates a tobacco product in the state

1 for sale in the state; or

2 (3) ships or transports a tobacco product to a retailer in the state for
3 sale by the retailer.

4 * **Sec. 10.** AS 43.50.330(b) is amended to read:

5 (b) The licensee shall remit with the return the tax due under AS 43.50.300
6 for the month covered by the return, after deducting **three-tenths of** one percent of the
7 tax due, which the licensee shall retain to cover the expense of accounting and filing
8 the return.

9 * **Sec. 11.** AS 43.50 is amended by adding a new section to read:

10 **Sec. 43.50.365. Tax adjustment.** (a) The amounts in AS 43.50.090(a), in
11 AS 43.50.190(a), and in AS 43.50.300 change, as provided in this section, according
12 to and to the extent of changes in the Consumer Price Index for all urban consumers
13 for the Anchorage Metropolitan Area compiled by the Bureau of Labor Statistics,
14 United States Department of Labor. The index for January of 1998 is the reference
15 base index.

16 (b) The amounts change on July 1 of each even-numbered year in an amount
17 equal to the percentage of change, calculated to the nearest whole percentage point,
18 between the index for January of that year and the most recent index used to change
19 the amount in AS 43.50.300. However, the amounts do not change if the amounts
20 required by this section are those currently in effect as a result of earlier application
21 of this section.

22 (c) If the index is revised, the percentage of change is calculated on the basis
23 of the revised index. If a revision of the index changes the reference base index, a
24 revised reference base index is determined by multiplying the reference base index
25 applicable by the rebasing factor furnished by the United States Bureau of Labor
26 Statistics. If the index is superseded, the index referred to in this section is the one
27 represented by the Bureau of Labor Statistics as reflecting most accurately changes in
28 the purchasing power of the dollar for Alaska consumers.

29 * **Sec. 12.** AS 43.50 is amended by adding a new section to read:

30 **Sec. 43.50.380. Notice.** At the time of a change under AS 43.50.365 in the
31 amount of a tax, the department shall promptly give public notice of the change. The

1 department shall also provide notification of a change to all persons licensed under this
2 chapter.

3 * **Sec. 13.** CONDITIONAL EFFECT OF CERTAIN SECTIONS. Sections 3, 4, and 6 - 8
4 of this Act take effect only if

5 (1) a court enters a final judgment that the amendment made to
6 AS 43.50.090(a) by sec. 5 of this Act changing the rate of taxation on cigarettes violates the
7 prohibition set out in art. IX, sec. 7, Constitution of the State of Alaska, against dedication of
8 the proceeds of a state tax or license; and

9 (2) either the time for appeal of that judgment expires or, if an appeal is taken,
10 the court enters a final order in the appeal that AS 43.50.090(a), as amended by sec. 5 of this
11 Act, violates art. IX, sec. 7, Constitution of the State of Alaska.

12 * **Sec. 14.** CONDITIONAL RETROACTIVITY OF CERTAIN PROVISIONS. If secs. 6
13 and 7 of this Act take effect under sec. 13 of this Act, then the amendments to
14 AS 43.50.090(a) and 43.50.190(a) made by secs. 6 and 7 of this Act are retroactive to
15 October 1, 1997, and the revenue derived from the levy of mills per cigarette of the tax levied
16 under AS 43.50.090(a), as amended by sec. 5 of this Act, for cigarettes sold after
17 October 1, 1997, that exceeds two and one-half mills shall be credited to the tax levied under
18 AS 43.50.190(a), as amended by sec. 7 of this Act.

19 * **Sec. 15.** Sections 1, 2, 5, and 9 - 12 of this Act take effect October 1, 1997.

20 * **Sec. 16.** If secs. 3, 4, and 6 - 8 of this Act take effect under sec. 13 of this Act, they take
21 effect on the later of (1) the date a court enters a final judgment that the amendment made to
22 AS 43.50.090(a) by sec. 5 of this Act changing the rate of taxation on cigarettes violates the
23 prohibition set out in art. IX, sec. 7, Constitution of the State of Alaska, against dedication of
24 the proceeds of a state tax or license, and (2) the expiration of any time for appeal of that
25 judgment, or upon entry of a final order in the appeal that AS 43.50.090(a), as amended by
26 sec. 5 of this Act, violates art. IX, sec. 7, Constitution of the State of Alaska. The attorney
27 general shall promptly notify the lieutenant governor and the revisor of statutes of a judgment
28 described in this section.