

AMENDMENT #1

Wilken, Bunde

OFFERED IN THE SENATE

TO: HB 503

1 Page 1, line 1, following "relating to":

2 Insert "taxes on cigarettes and tobacco products, to tax stamps on cigarettes, to
3 forfeiture of cigarettes and of property used in the manufacture, transportation,
4 facilitation of transportation, possession, offering for sale, or sale of unstamped
5 cigarettes, to unfair cigarette sales, and to licenses and licensees under the Cigarette Tax
6 Act;"

7

8 Page 1, line 3:

9 Insert new bill sections to read:

10 **** Section 1.** AS 43.50.030(d) is amended to read:

11 (d) For each license issued to a direct-buying retailer, and for each renewal,
12 the fee is **\$50** [\$25].

13 *** Sec. 2.** AS 43.50.035 is repealed and reenacted to read:

14 **Sec. 43.50.035. Wholesaler-distributor license.** (a) A person outside of this
15 state who sells or distributes cigarettes into this state and is not required to be licensed
16 under AS 43.50.010 may apply for a wholesaler-distributor license.

17 (b) A person outside of this state who sells or distributes cigarettes into this
18 state, who is not required to be licensed under AS 43.50.010, and who wishes to
19 purchase stamps under this chapter shall be licensed as a wholesaler-distributor.

20 (c) The department shall adopt reasonable regulations necessary for the
21 collection of cigarette taxes on cigarette sales or distributions made by a wholesaler-
22 distributor licensee into this state and standards for

23 (1) application and issuance of the license; and

1 (2) refusal to issue the license.

2 * **Sec. 3.** AS 43.50.090(a) is amended to read:

3 (a) There is levied an excise tax of 38 mills on each cigarette imported or
4 acquired in the state. The tax shall be paid through the use of stamps as provided in
5 AS 43.50.500 - 43.50.700. **A person who imports or acquires cigarettes in the**
6 **state upon which a stamp required by this chapter has not been affixed in**
7 **accordance with AS 43.50.500 - 43.50.700, who fails to apply to purchase stamps**
8 **as required by AS 43.50.540(a), and who fails to pay the tax through the use of**
9 **stamps is not relieved** [THE FAILURE TO PAY THE TAX THROUGH THE USE
10 OF STAMPS DOES NOT RELIEVE A PERSON] of the obligation to pay taxes due
11 under this chapter. The person shall still pay the tax, and the tax is due on or before
12 the end of the month following the month in which cigarettes were manufactured,
13 imported, acquired, or sold in this state. Cigarettes upon which the excise is imposed
14 are not again subject to the excise when acquired by another person.

15 * **Sec. 4.** AS 43.50.170(1) is amended to read:

16 (1) "buyer" means a person who imports or acquires cigarettes for the
17 person's own consumption from any source other than a manufacturer, distributor,
18 direct-buying retailer, [OR] retailer, **or wholesaler-distributor;**

19 * **Sec. 5.** AS 43.50.170(3) is amended to read:

20 (3) "direct-buying retailer" means a person who is engaged in the sale
21 of cigarettes at retail in this state, and who brings **cigarettes** or causes **cigarettes** to be
22 brought [CIGARETTES] into the state **that are not purchased from a wholesaler-**
23 **distributor;**

24 * **Sec. 6.** AS 43.50.170(4) is amended to read:

25 (4) "distributor" means a person who brings cigarettes **that are not**
26 **purchased from a wholesaler-distributor,** or has cigarettes **that are not purchased**
27 **from a wholesaler-distributor** brought into the state, and who sells or distributes at
28 least 75 **percent** [PER CENT] of the cigarettes to others for resale in the state:

29 * **Sec. 7.** AS 43.50.170(12) is amended to read:

30 (12) "wholesaler-distributor" means a person outside this state who
31 sells or distributes cigarettes into this state, [AND] who is not required to be licensed

1 under AS 43.50.010, **and who is licensed under AS 43.50.035.**

2 * **Sec. 8.** AS 43.50.190(a) is amended to read:

3 (a) There is levied an excise tax of **62** [12] mills on each cigarette imported or
4 acquired in this state.

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

6 **Sec. 43.50.300. Excise tax levied.** An excise tax is levied on tobacco
7 products in the state at the rate of **100** [75] percent of the wholesale price of the
8 tobacco products. The tax is levied when a person

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

11 (2) makes, manufactures, or fabricates a tobacco product in the state
12 for sale in the state; [OR]

13 (3) ships or transports a tobacco product to a retailer in the state for
14 sale by the retailer **or to an individual for personal consumption; or**

15 **(4) brings, or causes to be brought, a tobacco product into the state**
16 **from outside the state for personal consumption.**

17 * **Sec. 10.** AS 43.50.320(a) is repealed and reenacted to read:

18 (a) Except as provided in (g) of this section, a person engaging in an activity
19 described in AS 43.50.300(1) - (3) must be licensed by the department as a distributor,
20 and a person engaging in an activity described in AS 43.50.300(4) must be licensed as
21 a buyer.

22 * **Sec. 11.** AS 43.50.320(b) is amended to read:

23 (b) The department, upon application and payment of a fee of \$50, shall issue
24 a license for one year to a person who applies for a **distributor** license [UNDER (a)
25 OF THIS SECTION]. **The department, upon application and payment of a fee of**
26 **\$25, shall issue a license for one year to a person who applies for a buver license.**

27 * **Sec. 12.** AS 43.50.320(d) is amended to read:

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

31 * **Sec. 13.** AS 43.50.320(e) is amended to read:

1 (e) The department may renew a **distributor** license issued under this section
2 for a fee of \$50. **The department may renew a buyer license issued under this**
3 **section for a fee of \$25.**

4 * **Sec. 14.** AS 43.50.330(a) is amended to read:

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

10 * **Sec. 15.** AS 43.50.390(2) is amended to read:

11 (2) "licensee" means a distributor **or buyer** who is

12 (A) licensed under AS 43.50.320; or

13 (B) exempted by AS 43.50.320(g) from licensing under

14 AS 43.50.320;

15 * **Sec. 16.** AS 43.50.390 is amended by adding a new paragraph to read:

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

18 * **Sec. 17.** AS 43.50.540(f) is amended to read:

19 (f) Title to the stamps passes immediately to the licensee at the time the
20 stamps are obtained in person or, if the stamps are shipped or transported, at the time
21 the stamps are placed in the United States mail or received by the common or private
22 carrier. The licensee bears all costs associated with shipping or transporting the
23 stamps. **The department may replace stamps lost or damaged in transit if the**
24 **licensee provides proof acceptable to the department verifying that the loss or**
25 **damage occurred while the stamps were in the possession of the shipping**
26 **company and the shipping company substantiates the loss or damage. Damaged**
27 **stamps must be returned to the department before the department may replace**
28 **them** [AND ALL RISKS OF POSSIBLE LOSS OR DAMAGE WHILE IN
29 TRANSIT].

30 * **Sec. 18.** AS 43.50.550(b) is amended to read:

31 (b) A licensee who submits an application for the purchase of stamps on a

1 deferred-payment basis shall, as a condition of approval of the application, post a
2 bond acceptable to the department in an amount equal to

3 (1) 200 percent of the maximum dollar amount of allowed monthly
4 purchases under this section; or

5 (2) 100 percent of the maximum dollar amount of allowed monthly
6 purchases under this section if the licensee

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

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

12 * **Sec. 19.** AS 43.50.580(b) is amended to read:

13 (b) A licensee may possess unstamped cigarettes in this state if

14 (1) the licensee posts a surety bond in an amount satisfactory to the
15 department to ensure performance of its duties under this chapter; and

16 (2) unstamped cigarettes are necessary for the conduct of the licensee's
17 business in making sales or distributions

18 (A) to an instrumentality of the federal government or an
19 Indian tribal organization authorized by law to possess cigarettes not taxed
20 under this chapter; or

21 (B) to customers outside the state and the licensee provides
22 proof acceptable to the department that the licensee is properly licensed in
23 the jurisdictions outside the state where the sales or distributions are
24 made.

25 * **Sec. 20.** AS 43.50.590(a) is amended to read:

26 (a) The department shall adopt procedures for a refund or credit to a licensee
27 in the amount of the denominated value, less the discount given under AS 43.50.540,
28 for

29 (1) unused or damaged stamps; [OR]

30 (2) stamps affixed to cigarette packages that have become unfit for use
31 or sale, are destroyed, or are returned to the manufacturer for credit or replacement if

1 the licensee provides proof acceptable to the department that the cigarettes have not
2 been and will not be consumed in this state; or

3 (3) stamps affixed to cigarette packages that are sold or
4 distributed outside the state if the licensee provides proof acceptable to the
5 department that the cigarettes have not been and will not be consumed in this
6 state and the licensee is properly licensed in the jurisdictions outside the state
7 where the sales or distributions are made.

8 * Sec. 21. AS 43.50 is amended by adding a new section to read:

9 **Sec. 43.50.625. Forfeiture of other property.** (a) Upon a showing of
10 probable cause that a person has committed the crime of misconduct involving
11 unstamped cigarettes or stamps in the first degree under AS 43.50.640, the following
12 are subject to forfeiture:

13 (1) material and equipment used in the manufacture, sale, offering for
14 sale, or possession for sale of cigarettes in this state in violation of AS 43.50.500 -
15 43.50.640 or 43.50.660 - 43.50.700;

16 (2) aircraft, vehicles, or vessels used to transport or facilitate the
17 transportation of cigarettes manufactured, sold, offered for sale, or possessed for sale
18 in this state in violation of AS 43.50.500 - 43.50.640 or 43.50.660 - 43.50.700;

19 (3) money, securities, negotiable instruments, or other things of value
20 used in financial transactions derived from activity prohibited under AS 43.50.500 -
21 43.50.640 or 43.50.660 - 43.50.700.

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

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

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

31 (3) there is probable cause to believe that the property is subject to

1 forfeiture under (a) of this section; property seized under this paragraph may be held
2 for not more than 48 hours unless an order of forfeiture is issued by the court before
3 the end of that time period.

4 (c) Within 30 days after a seizure under this section, the Department of Public
5 Safety shall make reasonable efforts to ascertain the identity and whereabouts of any
6 person holding an interest, or an assignee of a person holding an interest, in the
7 property seized, including a right to possession, or a lien, mortgage, or conditional
8 sales contract. The Department of Public Safety shall notify the person ascertained to
9 have an interest in the seized property of the impending forfeiture, and, before
10 forfeiture, the Department of Public Safety shall publish, once a week for four
11 consecutive calendar weeks, a notice of the impending forfeiture in a newspaper of
12 general circulation in the judicial district in which the seizure was made, or if a
13 newspaper is not published in that judicial district, in a newspaper published in the
14 state and distributed in that judicial district.

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

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

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

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

22 (1) was not a party to the violation;

23 (2) did not have actual knowledge or reasonable cause to believe that
24 the property was used or was to be used in violation of the law; and

25 (3) did not have actual knowledge or reasonable cause to believe that
26 the person committing the violation had, within the last 10 years,

27 (A) a criminal record for violating this chapter; or

28 (B) committed other violations of this chapter.

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

1 (g) A person other than the owner holding, or the assignee of, a lien,
2 mortgage, or conditional sales contract on, or the right to possession of property
3 subject to forfeiture under (a) of this section is entitled to relief from the forfeiture in
4 the nature of remission of the forfeiture if, in an action under (d) of this section, the
5 person shows that the person

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

8 (2) did not have actual knowledge or reasonable cause to believe that
9 the property was used or was to be used in violation of the law; and

10 (3) did not have actual knowledge or reasonable cause to believe that
11 the person committing the violation had, within the last 10 years,

12 (A) a criminal record for violating this chapter; or

13 (B) committed other violations of this chapter.

14 (h) It is not a defense in an in rem forfeiture proceeding brought under (d)(2)
15 of this section that a criminal proceeding is pending or has resulted in conviction or
16 acquittal of a person charged with violating AS 43.50.640.

17 (i) Property forfeited under this section shall be placed in the custody of the
18 commissioner of public safety for disposition according to an order entered by the
19 court. The court shall order destroyed any property forfeited under this section that is
20 harmful to the public and may order any property forfeited under this section that was
21 seized in a municipality to be transferred to the municipality in which the property was
22 seized or to another municipality affected by the crime for which the property was
23 forfeited. The state shall notify all municipalities affected by the crime of the
24 forfeiture proceeding. Other property shall be ordered sold and the proceeds used for
25 payment of expenses of the proceedings for forfeiture and sale, including expenses of
26 seizure, custody, and court costs. The remainder of the proceeds shall be deposited in
27 the general fund.

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

1 * **Sec. 22.** AS 43.50.640(a) is amended to read:

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

4 (1) with reckless disregard that the cigarettes are unstamped

5 (A) sells or distributes 5,000 [1,000] or more unstamped
6 cigarettes in a single transaction;

7 (B) owns or possesses 5,000 [1,000] or more unstamped
8 cigarettes with the intent to sell; or

9 (C) acquires, holds, transports, imports, or possesses 10,000 or
10 more unstamped cigarettes; or

11 (2) with reckless disregard that the stamp was previously affixed to
12 another cigarette package[;]

13 (A) affixes a previously used stamp to a cigarette package; or

14 (B) possesses, sells, or distributes a previously used stamp.

15 * **Sec. 23.** AS 43.50.650(a) is amended to read:

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

18 (1) with reckless disregard that the cigarettes are unstamped

19 (A) sells or distributes at least one but fewer than 5,000 [1,000]
20 unstamped cigarettes in a single transaction;

21 (B) owns or possesses at least one but fewer than 5,000
22 [1,000] unstamped cigarettes, with intent to sell; or

23 (C) acquires, holds, transports, imports, or possesses at least
24 one but fewer than 10,000 unstamped cigarettes; or

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

28 * **Sec. 24.** AS 43.50.710 is amended by adding a new subsection to read:

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

1 retailers.

2 * **Sec. 25.** AS 43.50.720 is amended to read:

3 **Sec. 43.50.720. Sale at less than cost; with gift or concession.** In all
4 advertisements, offers for sale, or sales involving two or more items when at least one
5 of the items is cigarettes at a combined price, and in all advertisements, offers for sale,
6 or sales involving the giving of any gift, concession, or coupon of any kind in
7 conjunction with the sale of cigarettes, the wholesaler's or retailer's combined selling
8 price may not be below the actual cost to the wholesaler or the actual cost to the
9 retailer, respectively, of the total of all articles, products, commodities, gifts, and
10 concessions included in the transactions, except that, if any articles, products,
11 commodities, gifts, or concessions are not cigarettes, the **actual** [BASIC] cost shall be
12 determined as provided under AS 43.50.800.

13 * **Sec. 26.** AS 43.50.760(b) is amended to read:

14 (b) The presumptive **actual** [WHOLESALE AND PRESUMPTIVE RETAIL]
15 cost of cigarettes as determined by the department **under AS 43.50.800** [FROM THE
16 MANUFACTURER'S PRICE LIST] is considered competent evidence in a court
17 action or proceeding as tending to prove actual cost to the wholesaler or retailer
18 complained against. A party against whom the presumptive **actual** [WHOLESALE
19 OR PRESUMPTIVE RETAIL] cost as determined by the department is introduced in
20 evidence has the right to offer evidence tending to prove any inaccuracy of the
21 presumptive **actual** [WHOLESALE OR PRESUMPTIVE RETAIL] cost or any
22 statement of facts that would impair its probative value.

23 * **Sec. 27.** AS 43.50.770 is amended to read:

24 **Sec. 43.50.770. Determination of cost of cigarettes purchased outside of**
25 **ordinary channels of trade.** In establishing the **actual** [BASIC] cost of cigarettes to
26 a wholesaler or retailer, the invoice cost [OR THE ACTUAL COST] of cigarettes
27 purchased at a forced, bankrupt, or closeout sale, or other sale outside the ordinary
28 channels of trade may not be used.

29 * **Sec. 28.** AS 43.50.790(a) is amended to read:

30 (a) The department

31 (1) shall administer AS 43.50.710 - 43.50.849;

1 (2) may adopt regulations relating to the administration and
2 enforcement of AS 43.50.710 - 43.50.849;

3 (3) may determine the actual [BASIC] cost of cigarettes to a
4 wholesaler or retailer as provided in AS 43.50.800 [FROM INFORMATION
5 OBTAINED FROM A MANUFACTURER];

6 (4) may, after reasonable notice and hearing, revoke or suspend a
7 license issued under AS 43.50.010 or 43.50.035 to a person who refuses or neglects to
8 comply with a provision of AS 43.50.710 - 43.50.849.

9 * **Sec. 29.** AS 43.50.800 is repealed and reenacted to read:

10 **Sec. 43.50.800. Presumptions applicable to determination of cost.** (a) The
11 presumptive actual cost of cigarettes to a wholesaler is, for purposes of AS 43.50.710 -
12 43.50.849, the presumptive wholesale cost as calculated by the department plus an
13 amount equal to four and one-half percent of the presumptive wholesale cost to
14 account for business costs. For purposes of this section, the presumptive wholesale
15 cost is the manufacturer's list price, less trade discounts, plus the full face value of all
16 cigarette taxes.

17 (b) The presumptive actual cost of cigarettes to a retailer is, for purposes of
18 AS 43.50.710 - 43.50.849, the presumptive actual cost of cigarettes to the wholesaler
19 as calculated by the department under (a) of this section, plus an amount equal to six
20 percent of the presumptive actual cost of cigarettes to the wholesaler to account for
21 business costs.

22 (c) A wholesaler or retailer that wishes to advertise, offer to sell, or sell
23 cigarettes at less than the presumptive actual cost to the wholesaler or retailer as
24 calculated under (a) or (b) of this section must first obtain approval from the
25 department. The department may grant approval only if the wholesaler or retailer
26 provides proof satisfactory to the department that the wholesaler or retailer's actual
27 cost is lower than presumed. Approval for cigarette sales at less than the presumptive
28 actual cost as determined under (a) or (b) of this section may not be granted for a
29 period longer than one year. In reviewing proof of actual wholesale or retail cost, the
30 department may consider the costs reflected on the actual invoice, but may not
31 consider cash discounts. In reviewing proof of actual costs, the department may

1 consider the standards and methods of accounting regularly employed, and must
2 include labor costs, rent, depreciation, selling costs, maintenance of equipment,
3 delivery costs, all types of licenses, taxes, insurance, advertising, preopening
4 expenses, provision for impaired assets and closing costs, interest expenses, and
5 provision for merger and restructuring expenses. The department shall adopt
6 regulations under which the wholesaler's and retailer's actual costs are determined for
7 purposes of AS 43.50.710 - 43.50.849."
8

9 Renumber the following bill sections accordingly.

10
11 Page 3, following line 22:

12 Insert new bill sections to read:

13 **"* Sec. 33.** The uncodified law of the State of Alaska enacted in sec. 4, ch. 48, SLA 1997,
14 is repealed and reenacted to read:

15 Sec. 4. AS 43.50.190(a) is repealed and reenacted to read:

16 (a) There is levied an excise tax of 97.5 mills on each cigarette imported or acquired
17 in this state.

18 * **Sec. 34.** AS 43.50.740(b), 43.50.849(1), 43.50.849(6), and 43.50.849(7) are repealed."
19

20 Renumber the following bill sections accordingly.

21
22 Page 3, line 25:

23 Delete "Section 2"

24 Insert "Section 31"
25

26 Page 3, line 26:

27 Delete "sec. 1"

28 Insert "sec. 30"
29

30 Page 3, line 28:

31 Delete "Section 3"

1 Insert "Section 32"

2 Delete "sec. 1"

3 Insert "sec. 30"

4

5 Page 3, line 29:

6 Delete "sec. 2"

7 Insert "sec. 31"

8

9 Page 3, line 30:

10 Delete all material.

11 Insert a new bill section to read:

12 "* **Sec. 36.** The uncodified law of the State of Alaska is amended by adding a new section
13 to read:

14 TRANSITION: FLOOR STOCK TAX FOR CERTAIN CIGARETTES IN THE
15 STATE ON THE EFFECTIVE DATE OF THIS SECTION. (a) Notwithstanding any other
16 provision to the contrary, a floor stock tax is imposed at 12:01 a.m. on the effective date of
17 this section upon every person in control or possession of cigarettes for sale or distribution in
18 the state that were taxed at the rate in effect before the effective date of this section. The floor
19 stock tax is the difference between the tax computed on each cigarette as provided in
20 AS 43.50.190, as amended by sec. 8 of this Act, on the effective date of this section and the
21 tax actually paid on each cigarette as required by AS 43.50.190 as it read on the day before
22 the effective date of this section. The person subject to the floor stock tax under this section
23 must provide proof that the tax required by AS 43.50.190, as it read on the day before the
24 effective date of this section, on each cigarette was previously paid or the tax actually paid on
25 each cigarette is considered to be zero.

26 (b) A person subject to the floor stock tax under this section shall file a report on a
27 form prescribed by the Department of Revenue and pay the tax to the Department of Revenue
28 in six sequential monthly installments. The first installment shall be paid not later than the
29 last day of the month in which this section takes effect. The penalty, interest, and taxpayer
30 remedy provisions of AS 43.05 apply to the floor stock tax under this section."
31

1 Renumber the following bill sections accordingly.

2

3 Page 3, line 31:

4 Delete "sec. 2"

5 Insert "sec. 31"

6 Delete "sec. 4(a)"

7 Insert "sec. 35(a)"

8

9 Page 4, line 2:

10 Delete "sec. 1"

11 Insert "sec. 30"

12

13 Page 4, line 3:

14 Delete "sec. 3"

15 Insert "sec. 32"

16 Delete "sec. 4(b)"

17 Insert "sec. 35(b)"

18

19 Page 4, line 5:

20 Delete "sec. 2"

21 Insert "sec. 31"

22

23 Page 4, following line 5:

24 Insert a new bill section to read:

25 "* **Sec. 39.** Except as provided in secs. 37 and 38 of this Act, this Act takes effect July 1,

26 2004. "