

CS FOR HOUSE BILL NO. 538(W&M)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE SPECIAL COMMITTEE ON WAYS AND MEANS

Offered: 4/7/04

Referred: Labor and Commerce, Finance

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to taxes on cigarettes and tobacco products, to tax stamps on**
2 **cigarettes, to forfeiture of cigarettes and of property used in the manufacture,**
3 **transportation, facilitation of transportation, possession, offering for sale, or sale of**
4 **unstamped cigarettes, to accounting for and use of part of the proceeds of the additional**
5 **cigarette tax, and to licenses and licensees under the Cigarette Tax Act; and providing**
6 **for an effective date."**

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

8 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
9 to read:

10 INTENT. It is the intent of the legislature to provide aggregate funding to meet the
11 minimum amount of tobacco control programs recommended by the United States
12 Department of Health and Human Services, Centers for Disease Control and Prevention, from
13 tobacco taxes and other revenue sources accounted for in the tobacco use education and

1 cessation fund established in AS 37.05.580.

2 * **Sec. 2.** AS 43.50.030(a) is amended to read:

3 (a) For each license issued to a manufacturer, and for each renewal, the fee is
4 **\$50** [\$5].

5 * **Sec. 3.** AS 43.50.030(c) is amended to read:

6 (c) For each license issued to a vending machine operator, and for each
7 renewal, the fee is **\$50** [\$25].

8 * **Sec. 4.** AS 43.50.030(d) is amended to read:

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

11 * **Sec. 5.** AS 43.50.035 is repealed and reenacted to read:

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

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

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

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

23 (2) refusal to issue the license.

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

25 (a) There is levied an excise tax of 38 mills on each cigarette imported or
26 acquired in the state. The tax shall be paid through the use of stamps as provided in
27 AS 43.50.500 - 43.50.700. **A person who imports or acquires cigarettes in the**
28 **state upon which a stamp required by this chapter has not been affixed in**
29 **accordance with AS 43.50.500 - 43.50.700, who fails to apply to purchase stamps**
30 **as required by AS 43.50.540(a), and who fails to pay the tax through the use of**
31 **stamps is not relieved** [THE FAILURE TO PAY THE TAX THROUGH THE USE

1 OF STAMPS DOES NOT RELIEVE A PERSON] of the obligation to pay taxes due
 2 under this chapter. The person shall still pay the tax, and the tax is due on or before
 3 the end of the month following the month in which cigarettes were manufactured,
 4 imported, acquired, or sold in this state. Cigarettes upon which the excise is imposed
 5 are not again subject to the excise when acquired by another person.

6 * **Sec. 7.** AS 43.50.090(d) is amended to read:

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

11 * **Sec. 8.** AS 43.50.105(g) is amended to read:

12 (g) A person who violates the provisions of this section is guilty of a

13 (1) class A misdemeanor if the person unlawfully ships, causes to be
 14 shipped, or transports at least one but fewer than **5,000** [1,000] cigarettes;

15 (2) class C felony if the person unlawfully ships, causes to be shipped,
 16 or transports **5,000** [1,000] or more cigarettes.

17 * **Sec. 9.** AS 43.50.105 is amended by adding a new subsection to read:

18 (i) A person who violates the provisions of this section is jointly and severally
 19 liable for the taxes imposed by AS 43.50.090 and 43.50.190. To the fullest extent
 20 permitted by the Constitution of the United States, a person who violates the
 21 provisions of this section is required to collect the taxes and pay them to the
 22 department.

23 * **Sec. 10.** AS 43.50.170(1) is amended to read:

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

27 * **Sec. 11.** AS 43.50.170(3) is amended to read:

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

1 * **Sec. 12.** AS 43.50.170(4) is amended to read:

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

6 * **Sec. 13.** AS 43.50.170(12) is amended to read:

7 (12) "wholesaler-distributor" means a person outside this state who
 8 sells or distributes cigarettes into this state, [AND] who is not required to be licensed
 9 under AS 43.50.010, **and who is licensed under AS 43.50.035.**

10 * **Sec. 14.** AS 43.50.190(a) is amended to read:

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

13 * **Sec. 15.** AS 43.50.190(c) is amended to read:

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

18 * **Sec. 16.** AS 43.50.190 is amended by adding a new subsection to read:

19 (d) A portion of the annual proceeds of the tax levied under (a) of this section
 20 equal to the total proceeds of the tax multiplied by the quotient of seven divided by 62
 21 shall be deposited into the tobacco use education and cessation fund established in
 22 AS 37.05.580. This deposit shall be in addition to any sums deposited into the fund
 23 under AS 37.05.580(a).

24 * **Sec. 17.** AS 43.50.300 is amended to read:

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

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

30 (2) makes, manufactures, or fabricates a tobacco product in the state
 31 for sale in the state; or

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

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

4 (f) Title to the stamps passes immediately to the licensee at the time the
5 stamps are obtained in person or, if the stamps are shipped or transported, at the time
6 the stamps are placed in the United States mail or received by the common or private
7 carrier. The licensee bears all costs associated with shipping or transporting the
8 stamps. **The department may replace stamps lost or damaged in transit if the
9 licensee provides proof acceptable to the department verifying that the loss or
10 damage occurred while the stamps were in the possession of the shipping
11 company and the shipping company substantiates the loss or damage. Damaged
12 stamps must be returned to the department before the department may replace
13 them** [AND ALL RISKS OF POSSIBLE LOSS OR DAMAGE WHILE IN
14 TRANSIT].

15 * **Sec. 19.** AS 43.50.550(b) is amended to read:

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

19 **(1) 200 percent of the maximum dollar amount of allowed monthly**
20 **purchases under this section ; or**

21 **(2) 100 percent of the maximum dollar amount of allowed monthly**
22 **purchases under this section if the licensee**

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

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

28 * **Sec. 20.** AS 43.50.580(b) is amended to read:

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

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

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

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

6 (B) to customers outside the state and the licensee provides
7 proof acceptable to the department that the licensee is properly licensed in
8 the jurisdictions outside the state where the sales or distributions are
9 made.

10 * **Sec. 21.** AS 43.50.590(a) is amended to read:

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

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

15 (2) stamps affixed to cigarette packages that have become unfit for use
16 or sale, are destroyed, or are returned to the manufacturer for credit or replacement if
17 the licensee provides proof acceptable to the department that the cigarettes have not
18 been and will not be consumed in this state; or

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

24 * **Sec. 22.** AS 43.50 is amended by adding a new section to read:

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

29 (1) material and equipment used in the manufacture, sale, offering for
30 sale, or possession for sale of cigarettes in this state in violation of AS 43.50.500 -
31 43.50.640 or 43.50.660 - 43.50.700;

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

4 (3) money, securities, negotiable instruments, or other things of value
5 used in financial transactions derived from activity prohibited under AS 43.50.500 -
6 43.50.640 or 43.50.660 - 43.50.700.

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

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

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

16 (3) there is probable cause to believe that the property is subject to
17 forfeiture under (a) of this section; property seized under this paragraph may be held
18 for not more than 48 hours unless an order of forfeiture is issued by the court before
19 the end of that time period.

20 (c) Within 30 days after a seizure under this section, the Department of Public
21 Safety shall make reasonable efforts to ascertain the identity and whereabouts of any
22 person holding an interest, or an assignee of a person holding an interest, in the
23 property seized, including a right to possession, or a lien, mortgage, or conditional
24 sales contract. The Department of Public Safety shall notify the person ascertained to
25 have an interest in the seized property of the impending forfeiture, and, before
26 forfeiture, the Department of Law shall publish, once a week for four consecutive
27 calendar weeks, a notice of the impending forfeiture in a newspaper of general
28 circulation in the judicial district in which the seizure was made, or if a newspaper is
29 not published in that judicial district, in a newspaper published in the state and
30 distributed in that judicial district.

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

1 (1) upon conviction of a person for a violation of AS 43.50.640; or
2 (2) upon judgment by the superior court in a proceeding in rem that the
3 property was used in a manner subjecting it to forfeiture under (a) of this section.

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

7 (1) was not a party to the violation;
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 (f) The court may allow the owner of property that is subject to forfeiture
15 under (a) of this section to redeem the property by paying an amount determined by
16 the court to be the fair market value of the property.

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

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

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

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

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

29 (B) committed other violations of this chapter.

30 (h) It is not a defense in an in rem forfeiture proceeding brought under (d)(2)
31 of this section that a criminal proceeding is pending or has resulted in conviction or

1 acquittal of a person charged with violating AS 43.50.640.

2 (i) Property forfeited under this section shall be placed in the custody of the
3 commissioner of public safety for disposition according to an order entered by the
4 court. The court shall order destroyed any property forfeited under this section that is
5 harmful to the public and may order any property forfeited under this section that was
6 seized in a municipality to be transferred to the municipality in which the property was
7 seized or to another municipality affected by the crime for which the property was
8 forfeited. The state shall notify all municipalities affected by the crime of the
9 forfeiture proceeding. Other property shall be ordered sold and the proceeds used for
10 payment of expenses of the proceedings for forfeiture and sale, including expenses of
11 seizure, custody, and court costs. The remainder of the proceeds shall be deposited in
12 the general fund.

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

17 * **Sec. 23.** AS 43.50.640(a) is amended to read:

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

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

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

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

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

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

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

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

31 * **Sec. 24.** AS 43.50.650(a) is amended to read:

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

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

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

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

8 (C) acquires, holds, transports, imports, or possesses at least
9 601 [ONE] but fewer than 10,000 unstamped cigarettes; or

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

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

16 * **Sec. 25.** The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

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

30 (b) A person subject to the floor stock tax under this section shall file a report not
31 later than the last day of the month in which this Act takes effect on a form prescribed by the

1 Department of Revenue and pay the tax to the Department of Revenue in six sequential
2 monthly installments. The first installment shall be paid not later than the last day of the
3 month in which this Act takes effect. The penalty, interest, and taxpayer remedy provisions
4 of AS 43.05 apply to the floor stock tax under this section.

5 * **Sec. 26.** This Act takes effect July 1, 2004.