

**CS FOR HOUSE BILL NO. 538(L&C)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 4/28/04

Referred: 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11 \* **Sec. 5.** AS 43.50.035 is repealed and reenacted to read: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 **600**  
 8 **cigarettes personally transported into the state by an individual for that**  
 9 **individual's personal consumption** [100 CIGARETTES IMPORTED BY AN  
 10 INDIVIDUAL FOR 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 **600**  
 15 **cigarettes personally transported into the state by an individual for that**  
 16 **individual's personal consumption** [100 CIGARETTES IMPORTED BY AN  
 17 INDIVIDUAL FOR 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 8.9 percent of the total proceeds of the tax shall be deposited into the tobacco  
 21 use education and cessation fund established in AS 37.05.580. This deposit shall be in  
 22 addition to any sums deposited into the fund under AS 37.05.580(a).

23 \* **Sec. 17.** AS 43.50.300 is amended to read:

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

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

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

31 (3) ships or transports a tobacco product to a retailer in the state for

1 sale by the retailer.

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

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

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

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

18 **(1) 200 percent of the maximum dollar amount of allowed monthly**  
 19 **purchases under this section ; or**

20 **(2) 100 percent of the maximum dollar amount of allowed monthly**  
 21 **purchases under this section if the licensee**

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

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

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

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

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

31 (2) unstamped cigarettes are necessary for the conduct of the licensee's

1 business in making sales or distributions

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

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

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

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

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

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

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

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

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

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

31 (2) aircraft, vehicles, or vessels used to transport or facilitate the

1 transportation of cigarettes manufactured, sold, offered for sale, or possessed for sale  
2 in this state in violation of AS 43.50.500 - 43.50.640 or 43.50.660 - 43.50.700;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (B) committed other violations of this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (a) A person commits the crime of misconduct involving unstamped cigarettes

1 or stamps in the second degree if the person

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

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

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

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

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

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

15 \* **Sec. 25.** AS 43.50.710 is amended by adding a new subsection to read:

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

20 \* **Sec. 26.** AS 43.50.720 is amended to read:

21 **Sec. 43.50.720. Sale at less than cost; with gift or concession.** In all  
22 advertisements, offers for sale, or sales involving two or more items when at least one  
23 of the items is cigarettes at a combined price, and in all advertisements, offers for sale,  
24 or sales involving the giving of any gift, concession, or coupon of any kind in  
25 conjunction with the sale of cigarettes, the wholesaler's or retailer's combined selling  
26 price may not be below the actual cost to the wholesaler or the actual cost to the  
27 retailer, respectively, of the total of all articles, products, commodities, gifts, and  
28 concessions included in the transactions, except that, if any articles, products,  
29 commodities, gifts, or concessions are not cigarettes, the **actual** [BASIC] cost shall be  
30 determined as provided under AS 43.50.800.

31 \* **Sec. 27.** AS 43.50.760(b) is amended to read:

1 (b) The presumptive **actual** [WHOLESALE AND PRESUMPTIVE RETAIL]  
 2 cost of cigarettes as determined by the department **under AS 43.50.800** [FROM THE  
 3 MANUFACTURER'S PRICE LIST] is considered competent evidence in a court  
 4 action or proceeding as tending to prove actual cost to the wholesaler or retailer  
 5 complained against. A party against whom the presumptive wholesale or presumptive  
 6 retail cost as determined by the department is introduced in evidence has the right to  
 7 offer evidence tending to prove any inaccuracy of the presumptive wholesale or  
 8 presumptive retail cost or any statement of facts that would impair its probative value.

9 \* **Sec. 28.** AS 43.50.770 is amended to read:

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

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

16 (a) The department

17 (1) shall administer AS 43.50.710 - 43.50.849;

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

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

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

26 \* **Sec. 30.** AS 43.50.800 is repealed and reenacted to read:

27 **Sec. 43.50.800. Presumptions applicable to determination of cost.** (a) The  
 28 actual cost of cigarettes to a wholesaler is presumed for purposes of AS 43.50.710 -  
 29 43.50.849 to be the presumptive wholesale cost as calculated by the department plus  
 30 an amount equal to four and one-half percent of the presumptive wholesale cost to  
 31 account for business costs. For purposes of this section, the presumptive wholesale

1 cost is the manufacturer's list price, less trade discounts, plus the full face value of all  
2 cigarette taxes.

3 (b) The actual cost of cigarettes to a retailer is presumed for purposes of  
4 AS 43.50.710 - 43.50.849 to be the presumptive wholesale cost as calculated by the  
5 department under (a) of this section, plus an amount equal to six percent of the  
6 presumptive wholesale cost to account for business costs.

7 (c) A wholesaler or retailer that wishes to advertise, offer to sell, or sell  
8 cigarettes at less than the presumptive actual cost to the wholesaler or retailer as  
9 calculated under (a) or (b) of this section must first obtain approval from the  
10 department. The department may grant approval only if the wholesaler or retailer  
11 provides proof satisfactory to the department that the wholesaler or retailer's actual  
12 cost is lower than presumed. Approval for cigarette sales at less than the presumptive  
13 actual cost as determined under (a) or (b) of this section may not be granted for a  
14 period longer than one year. In reviewing proof of actual wholesale or retail cost, the  
15 department may consider the costs reflected on the actual invoice, but may not  
16 consider cash discounts. In reviewing proof of actual business costs, the department  
17 may consider the standards and methods of accounting regularly employed, and must  
18 include labor costs, rent, depreciation, selling costs, maintenance of equipment,  
19 delivery costs, all types of licenses, taxes, insurance, advertising, preopening  
20 expenses, provision for impaired assets and closing costs, interest expenses, and  
21 provision for merger and restructuring expenses.

22 \* **Sec. 31.** AS 43.50.740(b), 43.50.849(1), 43.50.849(6), and 43.50.849(7) are repealed.

23 \* **Sec. 32.** The uncodified law of the State of Alaska is amended by adding a new section to  
24 read:

25 TRANSITION: FLOOR STOCK TAX FOR CERTAIN CIGARETTES IN THE  
26 STATE ON THE EFFECTIVE DATE OF THIS ACT. (a) Notwithstanding any other  
27 provision to the contrary, a floor stock tax is imposed at 12:01 a.m. on the effective date of  
28 this Act upon every person in control or possession of cigarettes for sale or distribution in the  
29 state that were taxed at the rate in effect before the effective date of this Act. The floor stock  
30 tax is the difference between the tax computed on each cigarette as provided in AS 43.50.190,  
31 as amended by sec. 14 of this Act, on the effective date of this Act and the tax actually paid

1 on each cigarette as required by AS 43.50.190 as it read on the day before the effective date of  
2 this Act. The person subject to the floor stock tax under this section must provide proof that  
3 the tax required by AS 43.50.190, as it read on the day before the effective date of this Act, on  
4 each cigarette was previously paid or the tax actually paid on each cigarette is considered to  
5 be zero.

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

12 \* **Sec. 33.** This Act takes effect July 1, 2004.