

**HOUSE BILL NO. 1001**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SPECIAL SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 6/22/04

Referred: Labor and Commerce, Finance

**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, possession, or sale of unstamped cigarettes, to accounting for and use of**  
4 **part of the proceeds of the additional cigarette tax, and to licenses and licensees under**  
5 **the Cigarette Tax Act; relating to unfair cigarette sales; and providing for an effective**  
6 **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11 \* **Sec. 5.** AS 43.50.035 is repealed and reenacted to read: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 **400**  
 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 **400**  
 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) Notwithstanding (b) of this section, a portion of the annual proceeds of the  
 20 tax levied under (a) of this section equal to 8.9 percent of the total proceeds of the tax  
 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 **or to an individual for personal consumption; or**

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

5 \* **Sec. 18.** AS 43.50.320(a) is repealed and reenacted to read:

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

10 \* **Sec. 19.** AS 43.50.320(b) is amended to read:

11 (b) The department, upon application and payment of a fee of \$50, shall issue  
12 a license for one year to a person who applies for a **distributor** license [UNDER (a)  
13 OF THIS SECTION]. **The department, upon application and payment of a fee of**  
14 **\$25, shall issue a license for one year to a person who applies for a buyer license.**

15 \* **Sec. 20.** AS 43.50.320(d) is amended to read:

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

19 \* **Sec. 21.** AS 43.50.320(e) is amended to read:

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

23 \* **Sec. 22.** AS 43.50.330(a) is amended to read:

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

29 \* **Sec. 23.** AS 43.50.390(1) is amended to read:

30 (1) "distributor" means a person who

31 (A) brings, or causes to be brought, a tobacco product into the

1 state from outside the state for sale;

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

4 (C) ships or transports a tobacco product to a retailer in the  
5 state for sale by the retailer **or to an individual for personal consumption**;

6 \* **Sec. 24.** AS 43.50.390(2) is amended to read:

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

8 (A) licensed under AS 43.50.320; or

9 (B) exempted by AS 43.50.320(g) from licensing under  
10 AS 43.50.320;

11 \* **Sec. 25.** AS 43.50.390 is amended by adding a new paragraph to read:

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

14 \* **Sec. 26.** AS 43.50.540(f) is amended to read:

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

26 \* **Sec. 27.** AS 43.50.550(b) is amended to read:

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

30 **(1)** 200 percent of the maximum dollar amount of allowed monthly  
31 purchases under this section; **or**

1                   **(2) 100 percent of the maximum dollar amount of allowed monthly**  
 2                   **purchases under this section if the licensee**

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

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

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

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

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

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

14                               **(A)** to an instrumentality of the federal government or an  
 15                   Indian tribal organization authorized by law to possess cigarettes not taxed  
 16                   under this chapter; **or**

17                               **(B) to customers outside the state and the licensee provides**  
 18                   **proof acceptable to the department that the licensee is properly licensed in**  
 19                   **the jurisdictions outside the state where the sales or distributions are**  
 20                   **made.**

21 \* **Sec. 29.** AS 43.50.590(a) is amended to read:

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

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

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

30                               **(3) stamps affixed to cigarette packages that are sold or**  
 31                   **distributed outside the state if the licensee provides proof acceptable to the**

1 **department that the cigarettes have not been and will not be consumed in this**  
 2 **state and the licensee is properly licensed in the jurisdictions outside the state**  
 3 **where the sales or distributions are made.**

4 \* **Sec. 30.** AS 43.50 is amended by adding a new section to read:

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

9 (1) material and equipment used in the manufacture, sale, offering for  
 10 sale, or possession for sale of cigarettes in this state in violation of AS 43.50.500 -  
 11 43.50.640 or 43.50.660 - 43.50.700;

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

15 (3) money, securities, negotiable instruments, or other things of value  
 16 used in financial transactions derived from activity prohibited under AS 43.50.500 -  
 17 43.50.640 or 43.50.660 - 43.50.700.

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

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

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

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

31 (c) Within 30 days after a seizure under this section, the Department of Public

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

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

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

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

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

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

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

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

23 (A) been convicted of violating this chapter; or

24 (B) committed other violations of this chapter.

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

28 (g) A person other than the owner holding, or the assignee of, a lien,  
 29 mortgage, or conditional sales contract on, or the right to possession of property  
 30 subject to forfeiture under (a) of this section is entitled to relief from the forfeiture in  
 31 the nature of remission of the forfeiture if, in an action under (d) of this section, the

1 person shows that the person

2 (1) was not a party to the violation subjecting the property to  
3 forfeiture;

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

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

8 (A) been convicted of violating this chapter; or

9 (B) committed other violations of this chapter.

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

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

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

28 \* **Sec. 31.** AS 43.50.640(a) is amended to read:

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

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

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

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

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

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

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

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

11 \* **Sec. 32.** AS 43.50.650(a) is amended to read:

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

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

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

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

19 (C) acquires, holds, transports, imports, or possesses at least  
20 401 [ONE] but fewer than 10,000 unstamped cigarettes; or

21 **(D) acquires, holds, transports, imports, or possesses at**  
22 **least one but fewer than 401 unstamped cigarettes that are not for**  
23 **personal consumption; or**

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

27 \* **Sec. 33.** AS 43.50.710 is amended by adding a new subsection to read:

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

1 \* **Sec. 34.** AS 43.50.720 is amended to read:

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

12 \* **Sec. 35.** AS 43.50.760(b) is amended to read:

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

22 \* **Sec. 36.** AS 43.50.770 is amended to read:

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

28 \* **Sec. 37.** AS 43.50.790(a) is amended to read:

29           (a) The department

30                       (1) shall administer AS 43.50.710 - 43.50.849;

31                       (2) may adopt regulations relating to the administration and

1 enforcement of AS 43.50.710 - 43.50.849;

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

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

8 \* **Sec. 38.** AS 43.50.800 is repealed and reenacted to read:

9 **Sec. 43.50.800. Presumptions applicable to determination of cost.** (a) The  
10 presumptive actual cost of cigarettes to a wholesaler is, for purposes of AS 43.50.710 -  
11 43.50.849, the presumptive wholesale cost as calculated by the department plus an  
12 amount equal to four and one-half percent of the presumptive wholesale cost to  
13 account for business costs.

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

19 (c) A wholesaler or retailer that wishes to advertise, offer to sell, or sell  
20 cigarettes at less than the presumptive actual cost to the wholesaler or retailer as  
21 calculated under (a) or (b) of this section must first obtain approval from the  
22 department. The department may grant approval only if the wholesaler or retailer  
23 provides proof satisfactory to the department that the wholesaler or retailer's actual  
24 cost is lower than presumed. Approval for cigarette sales at less than the presumptive  
25 actual cost as determined under (a) or (b) of this section may not be granted for a  
26 period longer than one year. In reviewing proof of actual wholesale or retail cost, the  
27 department may consider the costs reflected on the actual invoice, but may not  
28 consider cash discounts. In reviewing proof of actual costs, the department may  
29 consider the standards and methods of accounting regularly employed, and must  
30 include labor costs, rent, depreciation, selling costs, maintenance of equipment,  
31 delivery costs, all types of licenses, taxes, insurance, advertising, preopening

1 expenses, provision for impaired assets and closing costs, interest expenses, and  
 2 provision for merger and restructuring expenses. The department shall adopt  
 3 regulations to determine the wholesaler's and retailer's actual costs for purposes of  
 4 AS 43.50.710 - 43.50.849.

5 (d) For purposes of this section, the presumptive wholesale cost is the  
 6 manufacturer's list price, less trade discounts, plus the full face value of all cigarette  
 7 taxes.

8 \* **Sec. 39.** AS 43.50.740(b), 43.50.849(1), 43.50.849(6), and 43.50.849(7) are repealed.

9 \* **Sec. 40.** The uncodified law of the State of Alaska is amended by adding a new section to  
 10 read:

11 TRANSITION: FLOOR STOCK TAX FOR CERTAIN CIGARETTES IN THE  
 12 STATE ON THE EFFECTIVE DATE OF SECS. 2 - 39 OF THIS ACT. (a) Notwithstanding  
 13 any other provision to the contrary, a floor stock tax is imposed at 12:01 a.m. on the effective  
 14 date of secs. 2 - 39 of this Act upon every person in control or possession of cigarettes for sale  
 15 or distribution in the state that were taxed at the rate in effect before the effective date of secs.  
 16 2 - 39 of this Act. The floor stock tax is the difference between the tax computed on each  
 17 cigarette as provided in AS 43.50.190(a), as amended by sec. 14 of this Act, on the effective  
 18 date of secs. 2 - 39 of this Act and the tax actually paid on each cigarette as required by  
 19 AS 43.50.190(a) as it read on the day before the effective date of secs. 2 - 39 of this Act. The  
 20 person subject to the floor stock tax under this section must provide proof that the tax required  
 21 by AS 43.50.190(a), as it read on the day before the effective date of secs. 2 - 39 of this Act,  
 22 on each cigarette was previously paid or the tax actually paid on each cigarette is considered  
 23 to be zero.

24 (b) A person subject to the floor stock tax under this section shall file a report not  
 25 later than the last day of the month in which secs. 2 - 39 of this Act take effect on a form  
 26 prescribed by the Department of Revenue and pay the tax to the Department of Revenue in six  
 27 sequential monthly installments. The first installment shall be paid not later than the last day  
 28 of the month in which secs. 2 - 39 of this Act take effect. The penalty, interest, and taxpayer  
 29 remedy provisions of AS 43.05 apply to the floor stock tax under this section.

30 \* **Sec. 41.** The uncodified law of the State of Alaska is amended by adding a new section to  
 31 read:

1           TRANSITION: REGULATIONS. The Department of Revenue may proceed to adopt  
2 regulations necessary to implement the changes made by secs. 2 - 40 of this Act. The  
3 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the  
4 effective date of secs. 2 - 40 of this Act.

5       \* **Sec. 42.** Section 41 of this Act takes effect immediately under AS 01.10.070(c).

6       \* **Sec. 43.** Except as provided in sec. 42 of this Act, this Act takes effect September 1,  
7 2004.