

SENATE BILL NO. 168

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Introduced: 4/4/03

Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to issuance and revocation of licenses for the importation, sale,
2 distribution, or manufacture of cigarettes and tobacco products; relating to a tax refund
3 or credit for unsaleable, returned, or destroyed tobacco products; relating to restrictions
4 on shipping or transporting cigarettes; relating to records concerning the sale of
5 cigarettes; amending and adding definitions relating to cigarette taxes; relating to the
6 payment of cigarette taxes; relating to penalties applicable to cigarette taxes; relating to
7 the definition of the wholesale price of tobacco products; relating to payment of cigarette
8 taxes through the use of cigarette tax stamps; relating to provisions making certain
9 cigarettes contraband and subject to seizure and forfeiture; relating to certain crimes,
10 penalties, and interest concerning tobacco taxes and sales; and providing for an effective
11 date."

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

1 * **Section 1.** AS 43.50.035 is amended to read:

2 **Sec. 43.50.035. Wholesaler-distributor license.** A person **outside of this**
 3 **state who sells cigarettes into this state and is not required to be licensed under**
 4 **AS 43.50.010** may **apply** [QUALIFY] for a wholesaler-distributor license [BY
 5 FURNISHING A GOOD AND SUFFICIENT SURETY BOND IN AN AMOUNT
 6 EQUAL TO TWICE THE AVERAGE MONTHLY RETURN AND IN NO CASE
 7 LESS THAN \$5,000, PAYABLE TO THE DEPARTMENT AND APPROVED BY
 8 THE DEPARTMENT OF LAW. IF A WHOLESALER-DISTRIBUTOR FAILS TO
 9 PAY THE CIGARETTE TAX WHEN DUE, THE BOND MAY BE FORFEITED
 10 AND THE LICENSE REVOKED]. The department **shall adopt reasonable**
 11 **regulations necessary for the collection of cigarette taxes on cigarette sales made**
 12 **by the** [MAY ISSUE PERMITS IN PLACE OF BONDS TO RESIDENT HOLDERS
 13 OF] wholesaler-distributor **licensee into this state and standards for**

14 **(1) application and issuance of the license; and**

15 **(2) refusal to issue the license** [LICENSES DOING BUSINESS
 16 WHOLLY IN THE STATE WHO PAY THE TAX BEFORE SHIPMENT].

17 * **Sec. 2.** AS 43.50.040 is amended to read:

18 **Sec. 43.50.040. Expiration of licenses.** A license issued under AS 43.50.010
 19 **or 43.50.035** expires on June 30 [,] following the date of issue. If a license is revoked,
 20 or the business for which the license is issued changes ownership or the licensee
 21 changes the place of business from the premises covered by the license, the licensee
 22 shall immediately return the license to the department. If the licensee moves the
 23 business to another location in the state, the license shall, upon the payment of a fee of
 24 50 cents, be reissued for the new location for the balance of the unexpired term.
 25 **Before a license issued under AS 43.50.010 or 43.50.035 expires, the** [THE]
 26 licensee **may apply to** [, ON APPLICATION TO THE DEPARTMENT
 27 ACCOMPANIED BY THE RENEWAL FEE, MAY, BEFORE THE EXPIRATION
 28 OF THE LICENSE,] renew the license for one year from the expiration date of the
 29 license. **The renewal fee required by AS 43.50.030 must accompany the**
 30 **application. The department shall adopt reasonable regulations that it considers**
 31 **necessary regarding the renewal of licenses.**

1 * **Sec. 3.** AS 43.50.070 is amended to read:

2 **Sec. 43.50.070. Suspension or revocation of or refusal to renew a license**
 3 **[REVOCAION OF LICENSES].** The department may suspend, [OR] revoke, **or**
 4 **refuse to renew** a license issued under **this chapter** [AS 43.50.010 - 43.50.180] (1)
 5 for a negligent violation of AS 11.76.100, 11.76.106, 11.76.107, or a violation of **this**
 6 **chapter** [AS 43.50.010 - 43.50.180] or a regulation of the department adopted under
 7 **this chapter** [AS 43.50.010 - 43.50.180]; (2) if a licensee ceases to act in the capacity
 8 for which the license was issued; or (3) if a **licensee** [MANUFACTURER,
 9 DISTRIBUTOR, OR WHOLESALE DISTRIBUTOR] negligently sells tobacco or
 10 products containing tobacco to a **person who is required to, but does not, hold a**
 11 **license endorsement under AS 43.70.075 or** [NONLICENSED RETAILER OR A
 12 RETAILER] whose license endorsement under AS 43.70.075 has been suspended. A
 13 person whose license is suspended or revoked may not sell cigarettes **or tobacco**
 14 **products,** or permit cigarettes **or tobacco products** to be sold, during the period of
 15 the suspension or revocation on the premises occupied or controlled by that person. A
 16 disciplinary proceeding or action is not barred or abated by the expiration, transfer,
 17 surrender, renewal, or extension of a license issued under **this chapter** [AS 43.50.010
 18 - 43.50.180]. The department shall comply with the provisions of **AS 44.62 (** [THE]
 19 Administrative Procedure Act), **except that a hearing officer of the department,**
 20 **rather than a hearing officer assigned under AS 44.62.350, may conduct hearings**
 21 [(AS 44.62)].

22 * **Sec. 4.** AS 43.50.070 is amended by adding a new subsection to read:

23 (b) In this section, "licensee" means a person licensed under AS 43.50.010 -
 24 43.50.180 or 43.50.300 - 43.50.390.

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

26 (a) There is levied an excise tax of 38 mills on each cigarette imported or
 27 acquired in the state. **The tax shall be paid through the use of stamps as provided**
 28 **in AS 43.50.500 - 43.50.695. The failure to pay the tax through the use of stamps**
 29 **does not relieve a person of the obligation to pay taxes due under this chapter.**
 30 **The person shall still pay the tax, and the tax is due on or before the end of the**
 31 **month following the month in which cigarettes were manufactured, imported,**

1 **acquired, or sold in this state** [EACH LICENSEE SHALL, AT THE TIME OF
 2 FILING THE RETURN REQUIRED BY AS 43.50.080, PAY TO THE
 3 DEPARTMENT THE EXCISE FOR THE CALENDAR MONTH COVERED BY
 4 THE RETURN, DEDUCTING FOUR-TENTHS OF ONE PERCENT OF THE
 5 TOTAL TAX DUE, WHICH THE LICENSEE SHALL RETAIN TO COVER THE
 6 EXPENSE OF ACCOUNTING AND FILING RETURNS]. Cigarettes upon which
 7 the excise is imposed are not again subject to the excise when acquired by another
 8 person.

9 * **Sec. 6.** AS 43.50.100(d) is amended to read:

10 (d) A person or licensee who is in control or possession of cigarettes contrary
 11 to **this chapter** [AS 43.50.010 - 43.50.180,] or who offers to sell or dispose of
 12 cigarettes to others for the purpose of resale without being licensed to do so is
 13 considered to have possession of the cigarettes as a consumer and is personally liable
 14 for the **cigarette taxes imposed by this chapter** [TAX], plus a penalty of 100 **percent**
 15 [PER CENT].

16 * **Sec. 7.** AS 43.50 is amended by adding a new section to read:

17 **Sec. 43.50.105. Restrictions on shipping or transporting cigarettes.** (a) A
 18 person engaged in the business of selling cigarettes may not ship or cause to be
 19 shipped cigarettes to a person in this state who is not

20 (1) licensed under this chapter or AS 43.70.075;

21 (2) an operator of a customs bonded warehouse under 19 U.S.C. 1311
 22 or 19 U.S.C. 1555; or

23 (3) an officer, employee, or agent of the United States or this state who
 24 is acting within the scope of employment as an officer, employee, or agent.

25 (b) A common or contract carrier may not knowingly transport cigarettes to a
 26 person in this state, unless the person (1) shipping the cigarettes is licensed under this
 27 chapter and provides the common or contract carrier with a copy of the shipper's
 28 current license issued by the department; and (2) receiving the cigarettes is a person
 29 described under (a)(1) - (3) of this section. If cigarettes are transported by a common
 30 or contract carrier to a home or residence, it is rebuttably presumed that the common
 31 or contract carrier knew that the person receiving the cigarettes was not a person

1 described under (a)(1) - (3) of this section.

2 (c) A person, other than a common or contract carrier, may not knowingly
3 transport cigarettes to a person in this state, unless the person receiving the cigarettes
4 is a person described under (a)(1) - (3) of this section.

5 (d) A person engaged in the business of selling cigarettes who ships or causes
6 to be shipped cigarettes to a person in this state shall plainly and visibly mark the
7 container or wrapping with the word "cigarettes" if the cigarettes are shipped in a
8 container or wrapping other than the cigarette manufacturer's original container or
9 wrapping.

10 (e) A person who violates the provisions of this section is guilty of a

11 (1) class A misdemeanor if the person unlawfully ships or transports at
12 least one but fewer than 1,000 cigarettes;

13 (2) class C felony if the person unlawfully ships or transports 1,000 or
14 more cigarettes.

15 (f) In addition to the criminal penalty under (e) of this section, the department
16 may assess a civil fine of not more than \$5,000 for each violation of this section.

17 * **Sec. 8.** AS 43.50.130(d) is amended to read:

18 (d) An invoice for the sale of cigarettes given or accepted by a licensee under
19 **this chapter** [AS 43.50.010 - 43.50.180] must state whether the **taxes** [TAX] imposed
20 by **this chapter have** [AS 43.50.010 - 43.50.180 HAS] been paid.

21 * **Sec. 9.** AS 43.50.170(7) is amended to read:

22 (7) "person" includes an individual, company, partnership, **limited**
23 **liability partnership**, joint venture, joint agreement, **limited liability company**,
24 association, mutual or otherwise, corporation, estate, trust, business trust, receiver,
25 trustee, syndicate, or political subdivision of this state, or combination acting as a unit;

26 * **Sec. 10.** AS 43.50.170 is amended by adding new paragraphs to read:

27 (11) "tobacco product" has the meaning given in AS 43.50.390;

28 (12) "wholesaler-distributor" means a person outside this state who
29 sells or distributes cigarettes into this state and who is not required to be licensed
30 under AS 43.50.010.

31 * **Sec. 11.** AS 43.50.190(b) is amended to read:

1 (b) The tax levied by this section is in addition to the tax levied by
 2 AS 43.50.010 - 43.50.180. The tax shall be administered and collected in the same
 3 manner as the tax levied by AS 43.50.010 - 43.50.180, except that receipts from the
 4 tax shall be deposited in the general fund. The penalties provided in AS 43.05 **and**
 5 **this chapter** apply to the tax levied in this section.

6 * **Sec. 12.** AS 43.50.320(f) is amended to read:

7 (f) The department may suspend, [OR] revoke, **or refuse to renew** a license
 8 issued under this section **as provided in AS 43.50.070** [IF THE LICENSEE
 9 VIOLATES A PROVISION OF AS 43.50.300 - 43.50.390 OR A REGULATION
 10 ADOPTED UNDER AS 43.50.370].

11 * **Sec. 13.** AS 43.50 is amended by adding a new section to read:

12 **Sec. 43.50.335. Tax credits and refunds.** The department shall adopt
 13 procedures for a refund or credit to a licensee of the tax paid for tobacco products that
 14 have become unfit for sale, are destroyed, or are returned to the manufacturer for
 15 credit or replacement if the licensee provides proof acceptable to the department that
 16 the tobacco products have not been and will not be consumed in this state.

17 * **Sec. 14.** AS 43.50.390(5) is repealed and reenacted to read:

18 (5) "wholesale price" means

19 (A) the established price for which a manufacturer sells a
 20 tobacco product to a distributor after deduction of a discount or other reduction
 21 received by the distributor for quantity or cash if the manufacturer's established
 22 price is adequately supported by bona fide arm's length sales as determined by
 23 the department; or

24 (B) the price, as determined by the department, for which
 25 tobacco products of comparable retail price are sold to distributors in the
 26 ordinary course of trade if the manufacturer's established price does not meet
 27 the standards of (A) of this paragraph.

28 * **Sec. 15.** AS 43.50 is amended by adding new sections to read:

29 **Article 5. Cigarette Tax Stamps.**

30 **Sec. 43.50.500. Tax payment by use of stamps.** A licensee shall pay the tax
 31 imposed under AS 43.50.090(a) and 43.50.190(a) through the use of stamps issued

1 under AS 43.50.500 - 43.50.700.

2 **Sec. 43.50.510. Stamp design; manner of affixing.** (a) The department shall
3 design and furnish stamps of sizes and denominations as determined by the
4 department.

5 (b) Notwithstanding the packaging requirements of AS 43.70.075(g)(1), a
6 stamp required under AS 43.50.500 - 43.50.700 must be affixed

7 (1) on the smallest package that will be handled, sold, used, consumed,
8 or distributed in this state; and

9 (2) in a denomination equal to the amount of tax due under this chapter
10 on the cigarettes in the package.

11 (c) A stamp required under AS 43.50.500 - 43.50.700 shall be affixed to the
12 bottom of each individual package of cigarettes in a manner so that the stamp cannot
13 be removed from the package without being mutilated or destroyed.

14 (d) For purposes of this section, a stamp is considered affixed only if more
15 than 80 percent of the stamp is attached to the individual package in accordance with
16 (c) of this section and regulations adopted by the department.

17 **Sec. 43.50.520. Stamp required before sale, distribution, or consumption.**

18 (a) Except as provided in AS 43.50.580, a licensee or the authorized agent or designee
19 of the licensee shall affix a stamp, in the manner required by AS 43.50.510, to each
20 package of cigarettes immediately upon the opening of the shipping container
21 containing the package and before sale, distribution, or consumption in this state.

22 (b) Except as provided in AS 43.50.580 and 43.50.610, a person may not
23 engage in the following activities in this state unless the package containing the
24 cigarettes is affixed with the required stamp:

25 (1) sell or distribute cigarettes to a person who is a consumer in this
26 state;

27 (2) acquire, hold, own, possess, or transport cigarettes for sale or
28 distribution in this state;

29 (3) import or cause to be imported cigarettes into this state for sale,
30 distribution, or consumption; or

31 (4) place or store cigarette packages in a vending machine in this state.

1 **Sec. 43.50.530. Sale of stamps.** (a) The department shall furnish stamps for
2 sale to licensees.

3 (b) The department may enter into agreements with financial institutions to
4 permit the sale of stamps by those institutions. The department shall make a list of
5 financial institutions authorized to sell stamps under this section available to the
6 public.

7 **Sec. 43.50.540. Purchase of and payment for stamps.** (a) A licensee shall
8 apply to the department or a financial institution authorized under AS 43.50.530(b) to
9 purchase stamps required by AS 43.50.500 - 43.50.700.

10 (b) A licensee may authorize an agent or designee to purchase stamps for the
11 licensee at a location where stamps are sold. The licensee's authorization of an agent
12 or designee must be in writing and must be signed by the licensee. The licensee shall
13 provide a copy of the authorization to the department. The authorization continues in
14 effect until the department receives the licensee's written notice of revocation of the
15 authorization.

16 (c) Except as otherwise provided in this subsection, each stamp shall be sold
17 to a licensee at its denominated value less the discount provided in this subsection.
18 The discount under this subsection is provided as compensation for affixing stamps to
19 packages as required by AS 43.50.500 - 43.50.700. The department may reduce or
20 eliminate the discount to a licensee under this subsection if the licensee fails to meet
21 the requirements of AS 43.50.500 - 43.50.700. The discount under this subsection is
22 equal to the sum of the amounts calculated using the following percentages of
23 denominated value of stamps purchased by a licensee under this section in a calendar
24 year:

25 (1) \$1,000,000 or less, three percent;

26 (2) the amount that is more than \$1,000,000 but not more than
27 \$2,000,000, two percent;

28 (3) the amount that is more than \$2,000,000 but not more than
29 \$5,000,000, 0.5 percent;

30 (4) the amount that is over \$5,000,000, zero percent.

31 (d) Payment for stamps shall be made at the time of purchase, except that the

1 department may permit a licensee to defer payments as provided in AS 43.50.550.

2 (e) The licensee or the licensee's agent or designee must obtain the stamps in
3 person from the department or a financial institution authorized to sell stamps under
4 AS 43.50.530(b). Alternatively, the licensee may request in writing that the stamps be
5 shipped or transported in a manner specified by the licensee that is acceptable to the
6 department. The department may accept only United States mail or common or
7 private carrier as a shipping or transportation method.

8 (f) Title to the stamps passes immediately to the licensee at the time the
9 stamps are obtained in person or, if the stamps are shipped or transported, at the time
10 the stamps are placed in the United States mail or received by the common or private
11 carrier. The licensee bears all costs associated with shipping or transporting the
12 stamps and all risks of possible loss or damage while in transit.

13 (g) Loss, destruction, or theft of stamps does not absolve the licensee of its
14 obligation to make payment for the stamps, including payment on a deferred-payment
15 basis under AS 43.50.550.

16 (h) For purposes of the discount provided in (c) of this section, "stamps
17 purchased by a licensee" includes stamps purchased by affiliated licensees.

18 **Sec. 43.50.550. Deferred-payment basis for stamps.** (a) A licensee may
19 apply to the department to purchase stamps on a deferred-payment basis. Upon
20 receipt of the application and the bond required under (b) of this section, the
21 department may set the maximum dollar amount of stamps that the licensee is
22 authorized to purchase on a deferred-payment basis in a calendar month.

23 (b) A licensee who submits an application for the purchase of stamps on a
24 deferred-payment basis shall post a bond acceptable to the department in an amount
25 equal to 200 percent of the maximum dollar amount of allowed monthly purchases
26 under this section as a condition of approval of the application.

27 (c) Amounts owing for stamps purchased on a deferred-payment basis in a
28 calendar month are due on or before the last day of the next calendar month. Payment
29 shall be made by a remittance acceptable to the department that is made payable to the
30 department.

31 (d) The department may designate the sales locations where the licensee may

1 make purchases of stamps on a deferred-payment basis and fix the dollar amount of
 2 purchases that the licensee may make under this section at each designated sales
 3 location each month.

4 **Sec. 43.50.560. Suspension of deferred-payment basis privilege.** The
 5 department may suspend, without prior notice, a licensee's privilege to purchase
 6 stamps on a deferred-payment basis or may reduce the monthly dollar amount of
 7 purchases the licensee may make under AS 43.50.550 if

8 (1) the licensee fails to pay for stamps when payment is due;

9 (2) the licensee's bond is cancelled or becomes void, impaired, or
 10 unenforceable;

11 (3) the department determines that the collection of an amount unpaid
 12 or due from the licensee under this chapter is jeopardized; or

13 (4) the licensee violates a state statute or regulation related to the
 14 collection of taxes under this chapter.

15 **Sec. 43.50.570. Interest.** A licensee who fails to pay an amount due for the
 16 purchase of stamps within the time required

17 (1) is considered to have failed to pay the cigarette taxes due under this
 18 chapter; and

19 (2) shall pay interest at the rate established under AS 43.05.225 from
 20 the date on which the amount became due until the date of payment.

21 **Sec. 43.50.580. Possession of unstamped cigarettes.** (a) Except as provided
 22 in (b) of this section and in AS 43.50.610, a person may not possess unstamped
 23 cigarettes in this state.

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

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

27 (2) unstamped cigarettes are necessary for the conduct of the licensee's
 28 business in making sales or distributions to an instrumentality of the federal
 29 government or an Indian tribal organization authorized by law to possess cigarettes not
 30 taxed under this chapter.

31 (c) At the time of shipping or delivering cigarettes to an instrumentality of the

1 federal government or an Indian tribal organization authorized by law to possess
 2 cigarettes not taxed under this chapter, a licensee shall make a duplicate invoice
 3 showing complete details of the shipment or other distribution and a statement
 4 indicating whether stamps were affixed to each cigarette package in accordance with
 5 AS 43.50.500 - 43.50.700. The licensee shall transmit the duplicate invoice to the
 6 department as an attachment to the monthly report required under AS 43.50.630.

7 (d) If a licensee who is authorized to possess unstamped cigarettes under (b)
 8 of this section fails to comply with the requirements of this section, the licensee is no
 9 longer authorized to and may not possess unstamped cigarettes under this section and
 10 is subject to the imposition of any applicable penalty under this title or other law.

11 (e) For purposes of (a) of this section, "person" does not include entities to
 12 whom sales or distributions are made as described in (b)(2) of this section.

13 **Sec. 43.50.590. Refunds or credits for unused stamps and for unsalable,**
 14 **destroyed, or certain returned cigarette packages.** (a) The department shall adopt
 15 procedures for a refund or credit to a licensee in the amount of the denominated value,
 16 less the discount given under AS 43.50.540, for

17 (1) unused or damaged stamps; or

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

22 (b) A refund or credit under (a) of this section may not be allowed for stamps
 23 affixed to cigarette packages in violation of this chapter or AS 45.53.

24 **Sec. 43.50.600. Stamps prohibited on cigarette packages not complying**
 25 **with federal and state laws.** A licensee or the licensee's authorized agent or designee
 26 may not affix a stamp to a cigarette package if the cigarettes

27 (1) may not be acquired, held, owned, imported, possessed, sold, or
 28 distributed in this state under AS 43.50.400; or

29 (2) are not in compliance with other state or federal laws.

30 **Sec. 43.50.610. Unstamped cigarettes as contraband; seizure.** Unstamped
 31 cigarettes found in this state are contraband and may be seized by the commissioner or

1 an agent or employee of the commissioner or by any peace officer of the state, unless

2 (1) the cigarettes are

3 (A) in the possession of a licensee or are in transit from outside
4 the state and are consigned to a licensee; and

5 (B) in the original and unopened shipping container; or

6 (2) possession of the unstamped cigarettes is not a violation of this
7 chapter.

8 **Sec. 43.50.620. Forfeiture and destruction of seized cigarettes.** Cigarettes
9 seized under AS 43.50.500 - 43.50.700 are forfeited to the state. After notice and an
10 opportunity for a hearing, the commissioner shall destroy the cigarettes forfeited under
11 this section.

12 **Sec. 43.50.630. Monthly reports; records retention; inspection of records.**

13 (a) On or before the last day of each calendar month, a licensee shall file the
14 following information for each place of business with the department, on a form or in
15 a format prescribed by the department:

16 (1) the quantity and brands of cigarettes manufactured, imported,
17 acquired, or sold in the state during the preceding calendar month;

18 (2) the number and dollar amount of stamps

19 (A) purchased during the preceding calendar month;

20 (B) affixed to cigarette packages during the preceding calendar

21 month;

22 (C) not affixed to cigarette packages and on hand at the end of
23 the preceding calendar month; and

24 (D) refunded or credited to a licensee under AS 43.50.590; and

25 (3) any other information that the department requires to carry out its
26 duties under this chapter.

27 (b) If a licensee ceases to manufacture, import, acquire, or sell cigarettes in
28 this state, the licensee shall immediately file the form required under (a) of this section
29 with the department, for the period ending with the cessation.

30 (c) All statements and other records required by AS 43.50.500 - 43.50.700
31 must be

1 (1) in a form or format prescribed by the department;
 2 (2) preserved by a licensee for a period of three years; and
 3 (3) available for inspection at any time upon oral or written demand by
 4 the department or its authorized agent.

5 (d) A summary of information filed under (a) of this section shall be prepared
 6 by the department and released to the public upon request.

7 **Sec. 43.50.640. Misconduct involving unstamped cigarettes or stamps in**
 8 **the first degree.** (a) A person commits the crime of misconduct involving unstamped
 9 cigarettes or stamps in the first degree if the person

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

11 (A) sells or distributes 1,000 or more unstamped cigarettes in a
 12 single transaction;

13 (B) owns or possesses 1,000 or more unstamped cigarettes with
 14 the intent to sell; or

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

17 (2) with reckless disregard that the stamp was previously affixed to
 18 another cigarette package;

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

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

21 (b) Misconduct involving unstamped cigarettes or stamps in the first degree is
 22 a class C felony.

23 **Sec. 43.50.650. Misconduct involving unstamped cigarettes or stamps in**
 24 **the second degree.** (a) A person commits the crime of misconduct involving
 25 unstamped cigarettes or stamps in the second degree if the person

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

27 (A) sells or distributes at least one but less than 1,000
 28 unstamped cigarettes in a single transaction;

29 (B) owns or possesses at least one but less than 1,000
 30 unstamped cigarettes, with intent to sell; or

31 (C) acquires, holds, transports, imports, or possesses at least

1 one but less than 10,000 unstamped cigarettes; or

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

5 (b) Misconduct involving unstamped cigarettes or stamps in the second degree
6 is a class A misdemeanor.

7 **Sec. 43.50.660. Construction of criminal statutes.** (a) The provisions of
8 AS 11.16, AS 11.81.600, 11.81.610, and 11.81.900 apply to AS 43.50.640 and
9 43.50.650.

10 (b) For purposes of AS 43.50.640 and 43.50.650, display of cigarettes by a
11 person, or possession other than in the original and unopened shipping container of
12 cigarettes by a person who holds a business license endorsement under AS 43.70.075,
13 is prima facie evidence of possession with intent to sell cigarettes. In this subsection,
14 "display" means to openly exhibit.

15 **Sec. 43.50.670. Unauthorized transfer of unaffixed stamps.** (a) A licensee
16 may not sell, exchange, or otherwise transfer stamps not affixed to a package of
17 cigarettes in accordance with this chapter to another person without the prior written
18 approval of the department.

19 (b) After notice and opportunity for a hearing, the department may assess a
20 civil fine of not less than \$1,000 nor more than \$10,000 for a violation of (a) of this
21 section. The fine assessed is in addition to any other penalty available under the law.

22 **Sec. 43.50.700. Definitions.** In AS 43.50.500 - 43.50.700, unless the context
23 otherwise requires,

24 (1) "affiliated licensees" means two or more licensees in which the
25 same person holds, directly or indirectly, at least a 50 percent ownership interest;

26 (2) "carton" means a box or container originating from the
27 manufacturer that contains packages of that manufacturer's cigarettes;

28 (3) "cigarette" has the meaning given in AS 43.50.170;

29 (4) "licensee" means a person licensed by the department under
30 AS 43.50.010 or 43.50.035 to sell, distribute, purchase, possess, or acquire cigarettes;

31 (5) "package" means the individual packet, box, or other container,

1 originating from the manufacturer, in which retail sales of cigarettes are normally
 2 made or intended to be made; "package" does not include containers that are cartons,
 3 cases, bales, or boxes that contain packages of cigarettes;

4 (6) "person" has the meaning given in AS 43.50.170;

5 (7) "shipping container" means the case, box, parcel, or other container
 6 in which cartons or packages of cigarettes are placed for shipment or transportation
 7 from one place to another; "shipping container" does not include a package in which
 8 retail sales of cigarettes are normally made or intended to be made;

9 (8) "stamp" means a stamp or other indicium that is

10 (A) printed, manufactured, or made under authorization of the
 11 department under this chapter;

12 (B) issued, sold, or circulated by the department; and

13 (C) used to pay the cigarette taxes levied under this chapter;

14 (9) "unstamped cigarettes" means a package containing cigarettes that
 15 is not affixed with the stamp required by AS 43.50.500 - 43.50.700.

16 * **Sec. 16.** AS 43.50.080 is repealed.

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

19 TRANSITION: REGULATIONS. Notwithstanding sec. 20 of this Act, the
 20 Department of Revenue may immediately proceed to adopt regulations necessary to
 21 implement the changes made by this Act. The regulations take effect under AS 44.62
 22 (Administrative Procedure Act), but not before the effective date of the respective statutory
 23 changes.

24 * **Sec. 18.** The uncodified law of the State of Alaska is amended by adding a new section to
 25 read:

26 TRANSITION: ACTIVITIES INVOLVING UNSTAMPED CIGARETTES
 27 THROUGH MARCH 31, 2004. (a) Notwithstanding the requirements of AS 43.50.500 -
 28 43.50.700, enacted by sec. 15 of this Act, a person may acquire, hold, own, import, possess,
 29 sell, distribute, or consume unstamped cigarettes in this state on or after January 1, 2004, and
 30 on or before March 31, 2004, if the cigarettes were in this state before January 1, 2004.

31 (b) In this section, "unstamped cigarettes" has the meaning given in AS 43.50.700,

1 enacted by sec. 15 of this Act.

2 * **Sec. 19.** Section 17 of this Act takes effect immediately under AS 01.10.070(c).

3 * **Sec. 20.** Except as provided in sec. 19 of this Act, this Act takes effect January 1, 2004.