

CS FOR SENATE BILL NO. 168(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 4/28/03

Referred: Finance

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

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 and penalties for shipping or transporting cigarettes; relating to records concerning
5 the sale of cigarettes; amending and adding definitions relating to cigarette taxes;
6 relating to the payment of cigarette taxes; relating to penalties applicable to cigarette
7 taxes; relating to the definition of the wholesale price of tobacco products; relating to
8 payment of cigarette taxes through the use of cigarette tax stamps; relating to provisions
9 making certain cigarettes contraband and subject to seizure and forfeiture; relating to
10 certain crimes, penalties, and interest concerning tobacco taxes and stamps; relating to
11 cigarette sales; and providing for an effective date."

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

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

3 SHORT TITLE. AS 43.50.710 - 43.50.849, enacted in sec. 17 of this Act, may be
4 known as the Unfair Cigarette Sales Act.

5 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 INTENT OF AS 43.50.710 - 43.50.849. It is the intent of AS 43.50.710 - 43.50.849,
8 enacted in sec. 17 of this Act, to

9 (1) encourage fair and honest competition and to safeguard the public against
10 unfair, dishonest, deceptive, destructive, and fraudulent business practices existing in
11 transactions involving the sale of, offer to sell, or inducement to sell cigarettes in the
12 wholesale and retail trades in the state;

13 (2) prohibit the advertising, offering for sale, or sale of cigarettes below cost
14 in the wholesale or retail trades with the intent of injuring competitors or destroying or
15 substantially lessening competition as an unfair and deceptive trade practice; and

16 (3) promote the general welfare and public interest through the prohibition of
17 unfair cigarette sales.

18 * **Sec. 3.** AS 43.50.035 is amended to read:

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

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

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

3 * **Sec. 4.** AS 43.50.040 is amended to read:

4 **Sec. 43.50.040. Expiration of licenses.** A license issued under AS 43.50.010
5 **or 43.50.035** expires on June 30 [,] following the date of issue. If a license is revoked,
6 or the business for which the license is issued changes ownership or the licensee
7 changes the place of business from the premises covered by the license, the licensee
8 shall immediately return the license to the department. If the licensee moves the
9 business to another location in the state, the license shall, upon the payment of a fee of
10 50 cents, be reissued for the new location for the balance of the unexpired term.
11 **Before a license issued under AS 43.50.010 or 43.50.035 expires, the** [THE]
12 licensee **may apply to** [, ON APPLICATION TO THE DEPARTMENT
13 ACCOMPANIED BY THE RENEWAL FEE, MAY, BEFORE THE EXPIRATION
14 OF THE LICENSE,] renew the license for one year from the expiration date of the
15 license. **The renewal fee required by AS 43.50.030 must accompany the**
16 **application. The department shall adopt reasonable regulations that it considers**
17 **necessary regarding the renewal of licenses.**

18 * **Sec. 5.** AS 43.50.070 is amended to read:

19 **Sec. 43.50.070. Suspension or revocation of or refusal to renew a license**
20 **[REVOCAION OF LICENSES].** The department may suspend, [OR] revoke, **or**
21 **refuse to renew** a license issued under **this chapter** [AS 43.50.010 - 43.50.180] (1)
22 for a negligent violation of AS 11.76.100, 11.76.106, 11.76.107, or a violation of **this**
23 **chapter** [AS 43.50.010 - 43.50.180] or a regulation of the department adopted under
24 **this chapter** [AS 43.50.010 - 43.50.180]; (2) if a licensee ceases to act in the capacity
25 for which the license was issued; or (3) if a **licensee** [MANUFACTURER,
26 DISTRIBUTOR, OR WHOLESALE DISTRIBUTOR] negligently sells tobacco or
27 products containing tobacco to a **person who is required to, but does not, hold a**
28 **license endorsement under AS 43.70.075 or** [NONLICENSED RETAILER OR A
29 RETAILER] whose license endorsement under AS 43.70.075 has been suspended. A
30 person whose license is suspended or revoked may not sell cigarettes **or tobacco**
31 **products,** or permit cigarettes **or tobacco products** to be sold, during the period of

1 the suspension or revocation on the premises occupied or controlled by that person. A
 2 disciplinary proceeding or action is not barred or abated by the expiration, transfer,
 3 surrender, renewal, or extension of a license issued under **this chapter** [AS 43.50.010
 4 - 43.50.180]. The department shall comply with the provisions of **AS 44.62 ([THE]**
 5 **Administrative Procedure Act), except that a hearing officer of the department,**
 6 **rather than a hearing officer assigned under AS 44.62.350, may conduct hearings**
 7 [(AS 44.62)].

8 * **Sec. 6.** AS 43.50.070 is amended by adding a new subsection to read:

9 (b) In this section, "licensee" means a person licensed under AS 43.50.010 -
 10 43.50.180 or 43.50.300 - 43.50.390.

11 * **Sec. 7.** AS 43.50.090(a) is amended to read:

12 (a) There is levied an excise tax of 38 mills on each cigarette imported or
 13 acquired in the state. **The tax shall be paid through the use of stamps as provided**
 14 **in AS 43.50.500 - 43.50.700. The failure to pay the tax through the use of stamps**
 15 **does not relieve a person of the obligation to pay taxes due under this chapter.**
 16 **The person shall still pay the tax, and the tax is due on or before the end of the**
 17 **month following the month in which cigarettes were manufactured, imported,**
 18 **acquired, or sold in this state** [EACH LICENSEE SHALL, AT THE TIME OF
 19 FILING THE RETURN REQUIRED BY AS 43.50.080, PAY TO THE
 20 DEPARTMENT THE EXCISE FOR THE CALENDAR MONTH COVERED BY
 21 THE RETURN, DEDUCTING FOUR-TENTHS OF ONE PERCENT OF THE
 22 TOTAL TAX DUE, WHICH THE LICENSEE SHALL RETAIN TO COVER THE
 23 EXPENSE OF ACCOUNTING AND FILING RETURNS]. Cigarettes upon which
 24 the excise is imposed are not again subject to the excise when acquired by another
 25 person.

26 * **Sec. 8.** AS 43.50.100(d) is amended to read:

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

1 [PER CENT].

2 * **Sec. 9.** AS 43.50 is amended by adding a new section to read:

3 **Sec. 43.50.105. Restrictions on shipping or transporting cigarettes.** (a) A
4 person who is not licensed under this chapter may not ship or cause to be shipped
5 cigarettes to a person in this state unless the person receiving the cigarettes is

6 (1) licensed under this chapter;

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

9 (3) an instrumentality of the federal government or an Indian tribal
10 organization authorized by law to possess cigarettes not taxed under this chapter.

11 (b) A person who is licensed under this chapter may not ship or cause to be
12 shipped cigarettes to a person in this state unless the person receiving the cigarettes

13 (1) is licensed under this chapter;

14 (2) holds a tobacco endorsement under AS 43.70.075;

15 (3) is an operator of a customs bonded warehouse under 19 U.S.C.
16 1311 or 19 U.S.C. 1555; or

17 (4) is an instrumentality of the federal government or an Indian tribal
18 organization authorized by law to possess cigarettes not taxed under this chapter.

19 (c) A common or contract carrier may not knowingly transport cigarettes to a
20 person in this state unless the person

21 (1) shipping the cigarettes is licensed under this chapter and provides
22 the common or contract carrier with a copy of the person's current license issued by
23 the department and the person receiving the cigarettes is a person described under
24 (b)(1) - (4) of this section; or

25 (2) receiving the cigarettes is a person described under (a)(2) or (3) of
26 this section or is licensed under this chapter and provides the common or contract
27 carrier with a copy of the person's current license issued by the department.

28 (d) If the cigarettes are transported by a common or contract carrier to a home
29 or residence, it is rebuttably presumed that the common or contract carrier knew that
30 the person receiving the cigarettes was not a person described under (b)(1) - (4) of this
31 section.

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

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

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

9 (1) class A misdemeanor if the person unlawfully ships, causes to be
10 shipped, or transports at least one but fewer than 1,000 cigarettes;

11 (2) class C felony if the person unlawfully ships, causes to be shipped,
12 or transports 1,000 or more cigarettes.

13 (h) In addition to the criminal penalty under (g) of this section, the department
14 may assess a civil fine of not more than \$5,000 for each violation of this section.

15 * **Sec. 10.** AS 43.50.130(d) is amended to read:

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

19 * **Sec. 11.** AS 43.50.170(7) is amended to read:

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

24 * **Sec. 12.** AS 43.50.170 is amended by adding new paragraphs to read:

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

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

29 * **Sec. 13.** AS 43.50.190(b) is amended to read:

30 (b) The tax levied by this section is in addition to the tax levied by
31 AS 43.50.010 - 43.50.180. The tax shall be administered and collected in the same

1 manner as the tax levied by AS 43.50.010 - 43.50.180, except that receipts from the
 2 tax shall be deposited in the general fund. The penalties provided in AS 43.05 **and**
 3 **this chapter** apply to the tax levied in this section.

4 * **Sec. 14.** AS 43.50.320(f) is amended to read:

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

9 * **Sec. 15.** AS 43.50 is amended by adding a new section to read:

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

15 * **Sec. 16.** AS 43.50.390(5) is repealed and reenacted to read:

16 (5) "wholesale price" means

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

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

26 * **Sec. 17.** AS 43.50 is amended by adding new sections to read:

27 **Article 5. Cigarette Tax Stamps.**

28 **Sec. 43.50.500. Tax payment by use of stamps.** A licensee shall pay the tax
 29 imposed under AS 43.50.090(a) and 43.50.190(a) through the use of stamps issued
 30 under AS 43.50.500 - 43.50.700.

31 **Sec. 43.50.510. Stamp design; manner of affixing.** (a) The department shall

1 design and furnish stamps of sizes and denominations as determined by the
2 department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (1) \$1,000,000 or less, three percent;

24 (2) the amount that is more than \$1,000,000 but not more than
25 \$2,000,000, two percent;

26 (3) the amount that is over \$2,000,000, zero percent.

27 (d) Payment for stamps shall be made at the time of purchase, except that the
28 department may permit a licensee to defer payments as provided in AS 43.50.550.

29 (e) The licensee or the licensee's agent or designee must obtain the stamps in
30 person from the department or a financial institution authorized to sell stamps under
31 AS 43.50.530(b). Alternatively, the licensee may request in writing that the stamps be

1 shipped or transported in a manner specified by the licensee that is acceptable to the
2 department. The department may accept only United States mail or common or
3 private carrier as a shipping or transportation method.

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 and all risks of possible loss or damage while in transit.

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

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

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

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

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

27 (d) The department may designate the sales locations where the licensee may
28 make purchases of stamps on a deferred-payment basis and fix the dollar amount of
29 purchases that the licensee may make under this section at each designated sales
30 location each month.

31 **Sec. 43.50.560. Suspension of deferred-payment basis privilege.** The

1 department may suspend, without prior notice, a licensee's privilege to purchase
 2 stamps on a deferred-payment basis or may reduce the monthly dollar amount of
 3 purchases the licensee may make under AS 43.50.550 if

- 4 (1) the licensee fails to pay for stamps when payment is due;
- 5 (2) the licensee's bond is cancelled or becomes void, impaired, or
 6 unenforceable;
- 7 (3) the department determines that the collection of an amount unpaid
 8 or due from the licensee under this chapter is jeopardized; or
- 9 (4) the licensee violates a state statute or regulation related to the
 10 collection of taxes under this chapter.

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

- 13 (1) is considered to have failed to pay the cigarette taxes due under this
 14 chapter; and
- 15 (2) shall pay interest at the rate established under AS 43.05.225 from
 16 the date on which the amount became due until the date of payment.

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

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

- 21 (1) the licensee posts a surety bond in an amount satisfactory to the
 22 department to ensure performance of its duties under this chapter; and
- 23 (2) unstamped cigarettes are necessary for the conduct of the licensee's
 24 business in making sales or distributions to an instrumentality of the federal
 25 government or an Indian tribal organization authorized by law to possess cigarettes not
 26 taxed under this chapter.

27 (c) At the time of shipping or delivering cigarettes to an instrumentality of the
 28 federal government or an Indian tribal organization authorized by law to possess
 29 cigarettes not taxed under this chapter, a licensee shall make a duplicate invoice
 30 showing complete details of the shipment or other distribution and a statement
 31 indicating whether stamps were affixed to each cigarette package in accordance with

1 AS 43.50.500 - 43.50.700. The licensee shall transmit the duplicate invoice to the
2 department as an attachment to the monthly report required under AS 43.50.630.

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

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

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

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

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

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

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

26 **Sec. 43.50.610. Unstamped cigarettes as contraband; seizure.** Unstamped
27 cigarettes found in this state are contraband and may be seized by the commissioner or
28 an agent or employee of the commissioner or by any peace officer of the state, unless

29 (1) the cigarettes are

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

1 (B) in the original and unopened shipping container; or
 2 (2) possession of the unstamped cigarettes is not a violation of this
 3 chapter.

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

8 **Sec. 43.50.630. Monthly reports; records retention; inspection of records.**
 9 (a) On or before the last day of each calendar month, a licensee shall file the
 10 following information for each place of business with the department, on a form or in
 11 a format prescribed by the department:

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

14 (2) the number and dollar amount of stamps

15 (A) purchased during the preceding calendar month;

16 (B) affixed to cigarette packages during the preceding calendar
 17 month;

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

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

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

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

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

28 (1) in a form or format prescribed by the department;

29 (2) preserved by a licensee for a period of three years; and

30 (3) available for inspection at any time upon oral or written demand by
 31 the department or its authorized agent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (C) acquires, holds, transports, imports, or possesses at least
28 one but less than 10,000 unstamped cigarettes; or

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

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

3 **Sec. 43.50.660. Construction of criminal statutes.** (a) The provisions of
4 AS 11.16, AS 11.81.600, 11.81.610, and 11.81.900 apply to AS 43.50.640 and
5 43.50.650.

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

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

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

18 **Sec. 43.50.700. Definitions.** In AS 43.50.500 - 43.50.700, unless the context
19 otherwise requires,

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

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

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

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

27 (5) "package" means the individual packet, box, or other container,
28 originating from the manufacturer, in which retail sales of cigarettes are normally
29 made or intended to be made; "package" does not include containers that are cartons,
30 cases, bales, or boxes that contain packages of cigarettes;

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

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

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

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

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

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

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

12 **Article 6. Unfair Cigarette Sales.**

13 **Sec. 43.50.710. Sale at less than cost; rebate in price.** (a) A wholesaler or
 14 retailer may not, with intent to injure competitors or destroy or substantially lessen
 15 competition,

16 (1) advertise, offer to sell, or sell, at retail or wholesale, cigarettes at
 17 less than actual cost to the wholesaler or retailer; or

18 (2) offer a rebate in price, give a rebate in price, offer a concession of
 19 any kind, or give a concession of any kind or nature in connection with the sale of
 20 cigarettes.

21 (b) A retailer may not induce or attempt to induce or procure or attempt to
 22 procure

23 (1) the purchase of cigarettes at a price less than the actual cost to a
 24 wholesaler;

25 (2) a rebate or concession of any kind or nature in connection with the
 26 purchase of cigarettes.

27 (c) Evidence of advertisement, offering to sell, or sale of cigarettes by a
 28 wholesaler or retailer at less than actual cost, or evidence of an offer of a rebate in the
 29 price, the giving of a rebate in price, offer of a concession, or the giving of a
 30 concession of any kind or nature in connection with the sale of cigarettes, or the
 31 inducing, attempt to induce, the procuring, or the attempt to procure the purchase of

1 cigarettes at a price less than actual cost to a wholesaler or retailer is prima facie
2 evidence of intent to injure competitors and to destroy or substantially lessen
3 competition.

4 (d) A wholesaler or retailer who violates the provisions of this section is guilty
5 of a class B misdemeanor.

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

16 **Sec. 43.50.730. Sale to another wholesaler.** When one wholesaler sells
17 cigarettes to another wholesaler, the seller is not required to include the actual cost of
18 the selling wholesaler. Upon resale to a retailer, the purchasing wholesaler is required
19 to include the actual cost of the purchasing wholesaler or the actual cost of the selling
20 wholesaler, whichever is greater, in the selling price.

21 **Sec. 43.50.740. Sales at price to meet competition.** (a) A wholesaler may
22 advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price
23 of a competitor who is rendering the same type of service and is selling the same
24 article at cost to a competing wholesaler. A retailer may advertise, offer to sell, or sell
25 cigarettes at a price made in good faith to meet the price of a competitor who is selling
26 the same article at cost to a competing retailer.

27 (b) In the absence of proof of the actual cost to a competing wholesaler or the
28 competing retailer, actual cost may be presumed to be the presumptive wholesale cost
29 to the wholesaler or the presumptive retail cost to the retailer as determined by the
30 department from the manufacturer's price list.

31 (c) A manufacturer whose product is sold in the state directly or through an

1 intermediary shall provide the department with a current price list for all brands of
2 cigarettes of the manufacturer and shall notify the department at least 10 days before a
3 price increase takes effect.

4 **Sec. 43.50.750. Contracts in violation of law are illegal.** A contract, express
5 or implied, made by a person in violation of the provisions of AS 43.50.710 -
6 43.50.849 is illegal and void.

7 **Sec. 43.50.760. Determination of cost.** (a) In determining actual cost to the
8 wholesaler or retailer, a court shall consider as establishing the cost evidence tending
9 to show that a wholesaler or retailer complained against under a provision of
10 AS 43.50.710 - 43.50.849 purchased the cigarettes involved in the complaint at a
11 fictitious price, or upon terms, in a manner, or under invoices, in a manner that
12 conceals the true cost, discounts, or terms of purchase. The court shall also consider
13 evidence of the normal, customary, and prevailing terms and discounts in connection
14 with other sales of a similar nature in the state.

15 (b) The presumptive wholesale and presumptive retail cost of cigarettes as
16 determined by the department from the manufacturer's price list is considered
17 competent evidence in a court action or proceeding as tending to prove actual cost to
18 the wholesaler or retailer complained against. A party against whom the presumptive
19 wholesale or presumptive retail cost as determined by the department is introduced in
20 evidence has the right to offer evidence tending to prove any inaccuracy of the
21 presumptive wholesale or presumptive retail cost or any statement of facts that would
22 impair its probative value.

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

28 **Sec. 43.50.780. Injunction.** (a) The department or a person injured by a
29 violation or who would suffer from any threatened violation of AS 43.50.710 -
30 43.50.849 may maintain an action to prevent, restrain, or enjoin the violation or
31 threatened violation. If, in the action, a violation or threatened violation of

1 AS 43.50.710 - 43.50.849 is established, the court may enjoin and restrain or
 2 otherwise prohibit the violation or threatened violation, and the court shall assess the
 3 costs of reasonable attorney fees against the defendant. In the action, it is not
 4 necessary that actual damages to the plaintiff be alleged or proved, but, if actual
 5 damages are alleged and proved, the plaintiff, in addition to injunctive relief and costs,
 6 including reasonable attorney fees, may recover actual damages.

7 (b) If injunctive relief is not requested or required, a person injured by a
 8 violation of AS 43.50.710 - 43.50.849 may maintain an action for damages in the
 9 appropriate court.

10 **Sec. 43.50.790. Administration of AS 43.50.710 - 43.50.849.** (a) The
 11 department

12 (1) shall administer AS 43.50.710 - 43.50.849;

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

15 (3) may determine the basic cost of cigarettes to a wholesaler or
 16 retailer from information obtained from a manufacturer;

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

20 (b) The Department of Community and Economic Development may, after
 21 reasonable notice and hearing, revoke or suspend a license issued under AS 43.70.075
 22 to a person who refuses or neglects to comply with a provision of AS 43.50.710 -
 23 43.50.849.

24 **Sec. 43.50.800. Presumptions applicable to determination of cost.** (a) For
 25 purposes of AS 43.50.710 - 43.50.849,

26 (1) the basic cost of cigarettes is equal to the lower of the two
 27 following amounts:

28 (A) the invoice cost of cigarettes to the wholesaler or retailer
 29 less all trade discounts except customary discounts for cash, plus the full face
 30 value of any tax that may be required by this chapter if not already included in
 31 the invoice cost of the cigarettes to the wholesaler or retailer; or

1 (B) the lowest replacement cost of cigarettes to the wholesaler
2 or retailer, within 30 days before the date of sale, in the quantity last
3 purchased, within or before the 30-day period, less all trade discounts except
4 customary discounts for cash, plus the full face value of any tax that may be
5 required by this chapter if not already included in the invoice cost of the
6 cigarettes to the wholesaler or retailer;

7 (2) the actual cost to the wholesaler is equal to the basic cost of the
8 cigarettes acquired by the wholesaler plus the cost of doing business by the
9 wholesaler, as evidenced by the standards and methods of accounting regularly
10 employed by the wholesaler, and includes labor costs, rent, depreciation, selling costs,
11 maintenance of equipment, delivery costs, all types of licenses, taxes, insurance, and
12 advertising;

13 (3) in the absence of proof of a lesser or higher cost of doing business
14 by the wholesaler making the sale, the cost of doing business by the wholesaler is
15 presumed to be four and one-half percent of the basic cost of the cigarettes to the
16 wholesaler; a fraction of a cent used in computing the cost of doing business shall be
17 rounded off to the next highest cent;

18 (4) the actual cost to the retailer is equal to the basic cost of the
19 cigarettes plus the cost of doing business by the retailer; the cost of doing business
20 may be proven by the standards and methods of accounting regularly employed by the
21 retailer and must include labor costs, rent, depreciation, selling costs, maintenance of
22 equipment, delivery costs, all types of licenses, taxes, insurance, and advertising;

23 (5) in the absence of proof of a lesser or higher cost of doing business
24 by the retailer making the sale, the cost of doing business by the retailer is presumed to
25 be six percent of the basic cost of cigarettes to the retailer; a fraction of a cent used in
26 computing the cost of doing business shall be rounded off to the next highest cent.

27 (b) In the absence of proof of a lesser or higher actual cost to the

28 (1) wholesaler, the actual cost is presumed to be the presumptive
29 wholesale cost as determined by the department; and

30 (2) retailer, the actual cost is presumed to be the presumptive retail
31 cost as determined by the department.

1 (c) In the absence of the manufacturer's list price for a particular brand of
 2 cigarettes, the department may determine the presumptive wholesale cost or the
 3 presumptive retail cost of the cigarettes from the average price of cigarettes for other
 4 similar brands for which the department has the manufacturer's list price.

5 **Sec. 43.50.849. Definitions.** In AS 43.50.710 - 43.50.849,

6 (1) "basic wholesale cost" means the manufacturer's list price less trade
 7 discounts, except discounts for cash, plus the full face value of any tax required by this
 8 chapter;

9 (2) "cigarette" has the meaning given in AS 43.50.170;

10 (3) "department" means the Department of Revenue;

11 (4) "direct-buying retailer" has the meaning given in AS 43.50.170;

12 (5) "person" has the meaning given in AS 43.50.170;

13 (6) "presumptive retail cost" means the presumptive wholesale cost
 14 plus six percent of the presumptive wholesale cost;

15 (7) "presumptive wholesale cost" means the basic wholesale cost plus
 16 four and one-half percent of the basic wholesale cost;

17 (8) "retailer" has the meaning given in AS 43.50.170 and includes a
 18 person licensed or required to be licensed as a direct-buying retailer under this chapter
 19 and a person who holds or is required to hold a license endorsement under
 20 AS 43.70.075;

21 (9) "sale" has the meaning given in AS 43.50.170;

22 (10) "sell at retail," "sale at retail," or "retail sales" means a sale for
 23 consumption or use made in the ordinary course of trade or usual conduct of the
 24 seller's business;

25 (11) "sell at wholesale," "sale at wholesale," or "wholesale sales"
 26 means a sale made in the ordinary course of trade or usual conduct by a wholesaler to
 27 a retailer for the purpose of resale;

28 (12) "wholesaler" means a person licensed or required to be licensed
 29 under AS 43.50.010 or AS 43.50.035 and who sells cigarettes to a retailer for the
 30 purpose of resale.

31 * **Sec. 18.** AS 43.50.080 is repealed.

1 * **Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

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

8 * **Sec. 20.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 TRANSITION: ACTIVITIES INVOLVING UNSTAMPED CIGARETTES
11 THROUGH MARCH 31, 2004. (a) Notwithstanding the requirements of AS 43.50.500 -
12 43.50.700, enacted by sec. 17 of this Act, a person may acquire, hold, own, import, possess,
13 sell, distribute, or consume unstamped cigarettes in this state on or after January 1, 2004, and
14 on or before March 31, 2004, if the cigarettes were in this state before January 1, 2004.

15 (b) In this section, "unstamped cigarettes" has the meaning given in AS 43.50.700,
16 enacted by sec. 17 of this Act.

17 * **Sec. 21.** Section 19 of this Act takes effect immediately under AS 01.10.070(c).

18 * **Sec. 22.** Except as provided in sec. 21 of this Act, this Act takes effect January 1, 2004.