

SENATE BILL NO. 368

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 3/19/04

Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to taxes on cigarettes and tobacco products; relating to tax stamps on**
2 **cigarettes; relating to forfeiture of cigarettes and of property used in the manufacture,**
3 **transportation, or sale of unstamped cigarettes; relating to licenses and licensees under**
4 **the Cigarette Tax Act; and providing for an effective date."**

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

6 * **Section 1.** AS 43.50.030(d) is amended to read:

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

9 * **Sec. 2.** AS 43.50.035 is repealed and reenacted to read:

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

13 (b) A person outside of this state who sells or distributes cigarettes into this
14 state, is not required to be licensed under AS 43.50.010, and wishes to purchase

1 stamps under this chapter, must be licensed as a wholesaler-distributor.

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

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

6 (2) refusal to issue the license.

7 * **Sec. 3.** AS 43.50.090(a) is amended to read:

8 (a) There is levied an excise tax of 38 mills on each cigarette imported or
9 acquired in the state. The tax shall be paid through the use of stamps as provided in
10 AS 43.50.500 - 43.50.700. **A person who imports or acquires cigarettes in the**
11 **state upon which a stamp required by this chapter has not been affixed in**
12 **accordance with AS 43.50.500 - 43.50.700, fails to apply to purchase stamps as**
13 **required by AS 43.50.540(a), and fails to pay the tax through the use of stamps is**
14 **not relieved** [THE FAILURE TO PAY THE TAX THROUGH THE USE OF
15 STAMPS DOES NOT RELIEVE A PERSON] of the obligation to pay taxes due
16 under this chapter. The person shall still pay the tax, and the tax is due on or before
17 the end of the month following the month in which cigarettes were manufactured,
18 imported, acquired, or sold in this state. Cigarettes upon which the excise is imposed
19 are not again subject to the excise when acquired by another person.

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

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

24 * **Sec. 5.** AS 43.50.170(3) is amended to read:

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

28 * **Sec. 6.** AS 43.50.170(4) is amended to read:

29 (4) "distributor" means a person who brings cigarettes **that are not**
30 **purchased from a wholesaler-distributor**, or has cigarettes **that are not purchased**
31 **from a wholesaler-distributor** brought into the state, and who sells or distributes at

1 least 75 per cent of the cigarettes to others for resale in the state;

2 * **Sec. 7.** AS 43.50.170(12) is amended to read:

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

6 * **Sec 8.** AS 43.50.190(a) is amended to read:

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

9 * **Sec. 9.** AS 43.50.300 is amended to read:

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

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

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

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

19 * **Sec. 10.** AS 43.50.540(f) is amended to read:

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

31 * **Sec. 11.** AS 43.50.580(b) is amended to read:

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

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

4 (2) unstamped cigarettes are necessary for the conduct of the licensee's
5 business in making sales or distributions (i) to an instrumentality of the federal
6 government or an Indian tribal organization authorized by law to possess cigarettes not
7 taxed under this chapter; or (ii) to customers outside the state and the licensee
8 provides proof acceptable to the department that it is properly licensed in the
9 jurisdictions outside the state where the sales or distributions are made.

10 * **Sec. 12.** AS 43.50.590(a) is amended to read:

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

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

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

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

24 * **Sec. 13.** AS 43.50.610 is amended by adding a new subsection to read:

25 (b) Cigarettes seized under AS 43.50.500 - 43.50.700 are forfeited to the state.
26 After notice and an opportunity for a hearing, the commissioner shall destroy the
27 cigarettes forfeited under this section.

28 * **Sec. 14.** AS 43.50.620 is repealed and reenacted to read:

29 **Sec. 43.50.620. Forfeiture of other property.** (a) The following are subject
30 to forfeiture:

31 (1) material and equipment used in the manufacture, sale, offering for

1 sale, possession for sale, barter, or exchange of cigarettes for goods and services in
2 this state in violation of AS 43.50.500 - 43.50.700;

3 (2) aircraft, vehicles, or vessels used to transport or facilitate the
4 transportation of cigarettes manufactured, sold, offered for sale, possessed for sale, or
5 bartered or exchanged for goods and services in this state in violation of
6 AS 43.50.500 - 43.50.700;

7 (3) money, securities, negotiable instruments, or other things of value
8 used in financial transactions derived from activity prohibited under AS 43.50.500 -
9 43.50.700.

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

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

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

19 (3) there is probable cause to believe that the property is subject to
20 forfeiture under (a) of this section; property seized under this paragraph may be held
21 for no more than 48 hours unless an order of forfeiture is issued by the court before the
22 end of that time period.

23 (c) Within 30 days after a seizure under this section, the Department of Public
24 Safety shall make reasonable efforts to ascertain the identity and whereabouts of any
25 person holding an interest, or an assignee of a person holding an interest, in the
26 property seized, including a right to possession, or a lien, mortgage, or conditional
27 sales contract. The Department of Public Safety shall notify the person ascertained to
28 have an interest in the seized property of the impending forfeiture, and before
29 forfeiture the Department of Law shall publish, once a week for four consecutive
30 calendar weeks, a notice of the impending forfeiture in a newspaper of general
31 circulation in the judicial district in which the seizure was made, or if no newspaper is

1 published in that judicial district, in a newspaper published in the state and distributed
2 in that judicial district.

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

4 (1) upon conviction of a person for a violation of AS 43.50.640 or
5 43.50.650; or

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

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

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

12 (2) had no actual knowledge or reasonable cause to believe that the
13 property was used or was to be used in violation of the law; and

14 (3) had no actual knowledge or reasonable cause to believe that the
15 person committing the violation had

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

17 (B) committed other violations of this chapter.

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

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

25 (2) had no actual knowledge or reasonable cause to believe that the
26 property was used or was to be used in violation of the law; and

27 (3) had no actual knowledge or reasonable cause to believe that the
28 person committing the violation had

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

30 (B) committed other violations of this chapter.

31 (g) It is no defense in an in rem forfeiture proceeding brought under (d)(2) of

1 this section that a criminal proceeding is pending or has resulted in conviction or
2 acquittal of a person charged with violating AS 43.50.640 or 43.50.650.

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

12 (i) Upon conviction of a person for a violation of AS 43.50.640 or 43.50.650
13 the court, if an aircraft, vehicle, or vessel is subject to forfeiture under (a) of this
14 section, and subject to remission to innocent parties under this section, shall order the
15 forfeiture of

16 (1) the aircraft to the state;

17 (2) the vehicle or vessel to the state if the defendant

18 (A) has a prior felony conviction for a violation of AS 11.41;

19 (B) is on felony probation or parole; or

20 (C) has a prior conviction for violation of AS 43.50.640 or
21 43.50.650.

22 (j) Notwithstanding (i) of this section, a court is not required to order the
23 forfeiture of a vehicle or vessel if the court determines that

24 (1) it is the sole means of transportation for a family residing in a
25 village;

26 (2) either

27 (A) the members of the family would be entitled to remission
28 under this section if they were owners of or held security interests in the
29 vehicle or vessel; or

30 (B) if the members of the family would not be entitled to
31 remission, they were unable as a practical matter to stop the violation of this

1 chapter making the vehicle or vessel subject to forfeiture; and

2 (3) the court can impose conditions that will effectively prevent the
3 defendant's use of the vehicle or vessel.

4 (k) The title to a vehicle or vessel, forfeited to the state under this section may
5 be transferred by the state to a municipality or the local governing body of a village
6 for official use by the municipality or village, on condition that the vehicle or vessel
7 not be available for use by the defendant.

8 (l) As used in this section, "village" means a community of less than 1,000
9 persons located off the interconnected state road system.

10 * **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

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

23 (b) A person subject to the floor stock tax under this section shall file a report on a
24 form prescribed by the Department of Revenue and pay the tax to the Department of Revenue
25 no later than 30 days after the effective date of this Act. The penalty, interest, and taxpayer
26 remedy provisions of AS 43.05 apply to the floor stock tax under this section.

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

29 REVISOR'S INSTRUCTION. The revisor of statutes is instructed to change the
30 heading of AS 43.50.610 from "Unstamped cigarettes as contraband; seizure" to "Unstamped
31 cigarettes as contraband; seizure; forfeiture."

1 * **Sec. 17.** This Act takes effect July 1, 2004.