

CS FOR SENATE BILL NO. 368(FIN)

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

BY THE SENATE FINANCE COMMITTEE

Offered: 4/27/04

Referred: Rules

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to taxes on cigarettes and tobacco products, to tax stamps on
2 cigarettes, to forfeiture of cigarettes and of property used in the manufacture,
3 transportation, or sale of unstamped cigarettes, and to licenses and licensees under the
4 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9 * **Sec. 2.** AS 43.50.035 is repealed and reenacted to read: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, who is not required to be licensed under AS 43.50.010, and who wishes to

1 purchase stamps under this chapter shall 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, who fails to apply to purchase stamps**
13 **as required by AS 43.50.540(a), and who fails to pay the tax through the use of**
14 **stamps is not relieved** [THE FAILURE TO PAY THE TAX THROUGH THE USE
15 OF 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 **cigarettes** or causes **cigarettes** to be
27 brought [CIGARETTES] into the state **that are not purchased from a wholesaler-**
28 **distributor**;

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

30 (4) "distributor" means a person who brings cigarettes **that are not**
31 **purchased from a wholesaler-distributor**, or has cigarettes **that are not purchased**

1 **from a wholesaler-distributor** brought into the state, and who sells or distributes at
 2 least 75 **percent** [PER CENT] of the cigarettes to others for resale in the state;

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

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

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

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

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

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

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

16 (2) makes, manufactures, or fabricates a tobacco product in the state
 17 for sale in the state; [OR]

18 (3) ships or transports a tobacco product to a retailer in the state for
 19 sale by the retailer **or to an individual for personal consumption; or**

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

22 * **Sec. 10.** AS 43.50.320(a) is repealed and reenacted to read:

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

27 * **Sec. 11.** AS 43.50.320(b) is amended to read:

28 (b) The department, upon application and payment of a fee of \$50, shall issue
 29 a license for one year to a person who applies for a **distributor** license [UNDER (a)
 30 OF THIS SECTION]. **The department, upon application and payment of a fee of**
 31 **\$25, shall issue a license for one year to a person who applies for a buyer license.**

1 * **Sec. 12.** AS 43.50.320(d) is amended to read:

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

5 * **Sec. 13.** AS 43.50.320(e) is amended to read:

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

9 * **Sec. 14.** AS 43.50.330(a) is amended to read:

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

15 * **Sec. 15.** AS 43.50.390(2) is amended to read:

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

17 (A) licensed under AS 43.50.320; or

18 (B) exempted by AS 43.50.320(g) from licensing under

19 AS 43.50.320;

20 * **Sec. 16.** AS 43.50.390 is amended by adding a new paragraph to read:

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

23 * **Sec. 17.** AS 43.50.540(f) is amended to read:

24 (f) Title to the stamps passes immediately to the licensee at the time the
25 stamps are obtained in person or, if the stamps are shipped or transported, at the time
26 the stamps are placed in the United States mail or received by the common or private
27 carrier. The licensee bears all costs associated with shipping or transporting the
28 stamps. **The department may replace stamps lost or damaged in transit if the**
29 **licensee provides proof acceptable to the department verifying that the loss or**
30 **damage occurred while the stamps were in the possession of the shipping**
31 **company and the shipping company substantiates the loss or damage. Damaged**

1 **stamps must be returned to the department before the department may replace**
 2 **them** [AND ALL RISKS OF POSSIBLE LOSS OR DAMAGE WHILE IN
 3 TRANSIT].

4 * **Sec. 18.** AS 43.50.550(b) is amended to read:

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

8 **(1)** 200 percent of the maximum dollar amount of allowed monthly
 9 purchases under this section; **or**

10 **(2) 100 percent of the maximum dollar amount of allowed monthly**
 11 **purchases under this section if the licensee**

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

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

17 * **Sec. 19.** AS 43.50.580(b) is amended to read:

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

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

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

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

26 **(B) to customers outside the state and the licensee provides**
 27 **proof acceptable to the department that the licensee is properly licensed in**
 28 **the jurisdictions outside the state where the sales or distributions are**
 29 **made.**

30 * **Sec. 20.** AS 43.50.590(a) is amended to read:

31 (a) The department shall adopt procedures for a refund or credit to a licensee

1 in the amount of the denominated value, less the discount given under AS 43.50.540,
2 for

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

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

8 **(3) stamps affixed to cigarette packages that are sold or**
9 **distributed outside the state if the licensee provides proof acceptable to the**
10 **department that the cigarettes have not been and will not be consumed in this**
11 **state and the licensee is properly licensed in the jurisdictions outside the state**
12 **where the sales or distributions are made.**

13 * **Sec. 21.** AS 43.50 is amended by adding a new section to read:

14 **Sec. 43.50.625. Forfeiture of other property.** (a) The following are subject
15 to forfeiture:

16 (1) material and equipment used in the manufacture, sale, offering for
17 sale, possession for sale, barter, or exchange of cigarettes for goods and services in
18 this state in violation of AS 43.50.500 - 43.50.700;

19 (2) aircraft, vehicles, or vessels used to transport or facilitate the
20 transportation of cigarettes manufactured, sold, offered for sale, possessed for sale, or
21 bartered or exchanged for goods and services in this state in violation of AS 43.50.500
22 - 43.50.700;

23 (3) money, securities, negotiable instruments, or other things of value
24 used in financial transactions derived from activity prohibited under AS 43.50.500 -
25 43.50.700.

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

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

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

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

8 (c) Within 30 days after a seizure under this section, the Department of Public
9 Safety shall make reasonable efforts to ascertain the identity and whereabouts of any
10 person holding an interest, or an assignee of a person holding an interest, in the
11 property seized, including a right to possession, or a lien, mortgage, or conditional
12 sales contract. The Department of Public Safety shall notify the person ascertained to
13 have an interest in the seized property of the impending forfeiture, and, before
14 forfeiture, the Department of Law shall publish, once a week for four consecutive
15 calendar weeks, a notice of the impending forfeiture in a newspaper of general
16 circulation in the judicial district in which the seizure was made, or if a newspaper is
17 not published in that judicial district, in a newspaper published in the state and
18 distributed in that judicial district.

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

20 (1) upon conviction of a person for a violation of AS 43.50.640 or
21 43.50.650; or

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

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

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

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

30 (3) did not have actual knowledge or reasonable cause to believe that
31 the person committing the violation had

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

2 (B) committed other violations of this chapter.

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

8 (1) was not a party to the violation subjecting the property to
9 forfeiture;

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

12 (3) did not have actual knowledge or reasonable cause to believe that
13 the person committing the violation had

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

15 (B) committed other violations of this chapter.

16 (g) In an in rem forfeiture proceeding brought under (d)(2) of this section, it is
17 not a defense that a criminal proceeding is pending or has resulted in conviction or
18 acquittal of a person charged with violating AS 43.50.640 or 43.50.650.

19 (h) Property forfeited under this section shall be placed in the custody of the
20 commissioner of public safety for disposition according to an order entered by the
21 court. The court shall order destroyed any property forfeited under this section that is
22 harmful to the public and shall order any property forfeited under this section that was
23 seized in a municipality to be transferred to the municipality in which the property was
24 seized. Other property shall be ordered sold and the proceeds used for payment of
25 expenses of the proceedings for forfeiture and sale, including expenses of seizure,
26 custody, and court costs. The remainder of the proceeds shall be deposited in the
27 general fund.

28 (i) Upon conviction of a person for a violation of AS 43.50.640 or 43.50.650,
29 if an aircraft, vehicle, or vessel is subject to forfeiture under (a) of this section, subject
30 to remission to innocent parties under this section, the court shall order the forfeiture
31 of

1 (1) the aircraft to the state;

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

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

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

5 (C) has a prior conviction for violation of AS 43.50.640 or
6 43.50.650.

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

9 (1) the vehicle or vessel is the sole means of transportation for a family
10 residing in a village;

11 (2) the members of the family

12 (A) would be entitled to remission under this section if they
13 were owners of or held security interests in the vehicle or vessel; or

14 (B) were unable as a practical matter to stop the violation of
15 this chapter making the vehicle or vessel subject to forfeiture; and

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

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

22 (l) In this section, "village" means a community of less than 1,000 persons
23 located off the interconnected state road system.

24 * **Sec. 22.** AS 43.50.710 is amended by adding a new subsection to read:

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

29 * **Sec. 23.** AS 43.50.720 is amended to read:

30 **Sec. 43.50.720. Sale at less than cost; with gift or concession.** In all
31 advertisements, offers for sale, or sales involving two or more items when at least one

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

9 * **Sec. 24.** AS 43.50.760(b) is amended to read:

10 (b) The presumptive wholesale and presumptive retail cost of cigarettes as
 11 determined by the department [FROM THE MANUFACTURER'S PRICE LIST] is
 12 considered competent evidence in a court action or proceeding as tending to prove
 13 actual cost to the wholesaler or retailer complained against. A party against whom the
 14 presumptive wholesale or presumptive retail cost as determined by the department is
 15 introduced in evidence has the right to offer evidence tending to prove any inaccuracy
 16 of the presumptive wholesale or presumptive retail cost or any statement of facts that
 17 would impair its probative value.

18 * **Sec. 25.** AS 43.50.770 is amended to read:

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

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

25 **Sec. 43.50.800. Presumptions applicable to determination of cost.** (a) The
 26 actual cost of cigarettes to a wholesaler is presumed for purposes of AS 43.50.710 -
 27 43.50.849 to be the presumptive wholesale cost as calculated by the department plus
 28 an amount equal to four and one-half percent of the presumptive wholesale cost to
 29 account for business costs. For purposes of this section, the presumptive wholesale
 30 cost is the manufacturer's list price, less trade discounts, plus the full face value of all
 31 cigarette taxes.

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

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

20 * **Sec. 27.** AS 43.50.790(a)(3), 43.50.849(1), 43.50.849(6), and 43.50.849(7) are repealed.

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

23 **TRANSITION: FLOOR STOCK TAX FOR CERTAIN CIGARETTES IN THE**
 24 **STATE ON THE EFFECTIVE DATE OF THIS ACT.** (a) Notwithstanding any other
 25 provision to the contrary, a floor stock tax is imposed at 12:01 a.m. on the effective date of
 26 this Act upon every person in control or possession of cigarettes for sale or distribution in the
 27 state that were taxed at the rate in effect before the effective date of this Act. The floor stock
 28 tax is the difference between the tax computed on each cigarette as provided in AS 43.50.190,
 29 as amended by sec. 8 of this Act, on the effective date of this Act and the tax actually paid on
 30 each cigarette as required by AS 43.50.190 as it read on the day before the effective date of
 31 this Act. The person subject to the floor stock tax under this section must provide proof that

1 the tax required by AS 43.50.190, as it read on the day before the effective date of this Act, on
2 each cigarette was previously paid or the tax actually paid on each cigarette is considered to
3 be zero.

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

9 * **Sec. 29.** This Act takes effect July 1, 2004.