

HOUSE CS FOR SENATE BILL NO. 1001(FIN) am H

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SPECIAL SESSION

BY THE HOUSE FINANCE COMMITTEE

Amended: 6/24/04

Offered: 6/24/04

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

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to restrictions on shipping or transporting cigarettes; relating to taxes**
2 **on cigarettes and tobacco products, to tax stamps on cigarettes, to forfeiture of cigarettes**
3 **and of property used in the manufacture, transportation, facilitation of transportation,**
4 **possession, offering for sale, or sale of unstamped cigarettes, to accounting for and use of**
5 **part of the proceeds of the additional cigarette tax, and to licenses and licensees under**
6 **the Cigarette Tax Act; relating to unfair cigarette sales; relating to supersedeas bonds in**
7 **certain tobacco-related litigation; relating to the tobacco product Master Settlement**
8 **Agreement; amending Rules 204 and 205, Alaska Rules of Appellate Procedure; and**
9 **providing for an effective date."**

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

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

1 INTENT. It is the intent of the legislature to provide aggregate funding to meet the
 2 minimum amount of tobacco control programs recommended by the United States
 3 Department of Health and Human Services, Centers for Disease Control and Prevention, from
 4 tobacco taxes and other revenue sources accounted for in the tobacco use education and
 5 cessation fund established in AS 37.05.580.

6 * **Sec. 2.** AS 43.50.030(a) is amended to read:

7 (a) For each license issued to a manufacturer, and for each renewal, the fee is
 8 \$50 [\$5].

9 * **Sec. 3.** AS 43.50.030(c) is amended to read:

10 (c) For each license issued to a vending machine operator, and for each
 11 renewal, the fee is \$50 [\$25].

12 * **Sec. 4.** AS 43.50.030(d) is amended to read:

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

15 * **Sec. 5.** AS 43.50.035 is repealed and reenacted to read:

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

19 (b) A person outside of this state who sells or distributes cigarettes into this
 20 state, who is not required to be licensed under AS 43.50.010, and who wishes to
 21 purchase stamps under this chapter is required to be licensed as a wholesaler-
 22 distributor.

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

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

27 (2) refusal to issue the license.

28 * **Sec. 6.** AS 43.50.090(a) is amended to read:

29 (a) There is levied an excise tax of 38 mills on each cigarette imported or
 30 acquired in the state. The tax shall be paid through the use of stamps as provided in
 31 AS 43.50.500 - 43.50.700. A person who imports or acquires cigarettes in the

1 **state upon which a stamp required by this chapter has not been affixed in**
 2 **accordance with AS 43.50.500 - 43.50.700, who fails to apply to purchase stamps**
 3 **as required by AS 43.50.540(a), and who fails to pay the tax through the use of**
 4 **stamps is not relieved** [THE FAILURE TO PAY THE TAX THROUGH THE USE
 5 OF STAMPS DOES NOT RELIEVE A PERSON] of the obligation to pay taxes due
 6 under this chapter. The person shall still pay the tax, and the tax is due on or before
 7 the end of the month following the month in which cigarettes were manufactured,
 8 imported, acquired, or sold in this state. Cigarettes upon which the excise is imposed
 9 are not again subject to the excise when acquired by another person.

10 * **Sec. 7.** AS 43.50.090(d) is amended to read:

11 (d) The tax imposed under (a) of this section does not apply to the first **400**
 12 **cigarettes personally transported into the state by an individual for that**
 13 **individual's personal consumption** [100 CIGARETTES IMPORTED BY AN
 14 INDIVIDUAL FOR PERSONAL CONSUMPTION] during the calendar month.

15 * **Sec. 8.** AS 43.50.105(b) is amended to read:

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

18 (1) is licensed under this chapter;

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

20 (3) is an operator of a customs bonded warehouse under 19 U.S.C.
 21 1311 or 19 U.S.C. 1555; [OR]

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

24 **(5) is an individual 19 years of age or older receiving the cigarettes**
 25 **for personal consumption and the tax imposed on the cigarettes under this**
 26 **chapter has been paid.**

27 * **Sec. 9.** AS 43.50.105(c) is amended to read:

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

30 (1) shipping the cigarettes is licensed under this chapter and, **before**
 31 **shipment,** provides the common or contract carrier with a copy of the person's current

1 license issued by the department and **an affidavit from the intended recipient**
 2 **certifying that** the person receiving the cigarettes is a person described under **(b)(1) -**
 3 **(5)** [(b)(1) - (4)] of this section; or

4 (2) receiving the cigarettes is a person described under (a)(2) or (3) of
 5 this section or is licensed under this chapter and, **before receipt,** provides the common
 6 or contract carrier with a copy of the person's current license issued by the department.

7 * **Sec. 10.** AS 43.50.105(d) is amended to read:

8 (d) If the cigarettes are transported by a common or contract carrier to a home
 9 or residence, it is rebuttably presumed that the common or contract carrier knew that
 10 the person receiving the cigarettes was not a person described under **(b)(1) - (5)** [(b)(1)
 11 - (4)] of this section, **unless the person shipping the cigarettes has satisfied the**
 12 **requirements in (c)(1) of this section.**

13 * **Sec. 11.** AS 43.50.105(e) is amended to read:

14 (e) A person, other than a common or contract carrier, may not knowingly
 15 transport cigarettes to a person in this state, unless the person receiving the cigarettes
 16 is a person described under **(b)(1) - (5)** [(b)(1) - (4)] of this section.

17 * **Sec. 12.** AS 43.50.105(g) is amended to read:

18 (g) A person who violates the provisions of this section is guilty of a
 19 (1) class A misdemeanor if the person unlawfully ships, causes to be
 20 shipped, or transports at least one but fewer than **5,000** [1,000] cigarettes;
 21 (2) class C felony if the person unlawfully ships, causes to be shipped,
 22 or transports **5,000** [1,000] or more cigarettes.

23 * **Sec. 13.** AS 43.50.105 is amended by adding a new subsection to read:

24 (i) A person who violates the provisions of this section is jointly and severally
 25 liable for the taxes imposed by AS 43.50.090 and 43.50.190. To the fullest extent
 26 permitted by the Constitution of the United States, a person who violates the
 27 provisions of this section is required to collect the taxes and pay them to the
 28 department.

29 * **Sec. 14.** AS 43.50.170(1) is amended to read:

30 (1) "buyer" means a person who imports or acquires cigarettes for the
 31 person's own consumption from any source other than a manufacturer, distributor,

1 direct-buying retailer, [OR] retailer, or wholesaler-distributor;

2 * **Sec. 15.** AS 43.50.170(3) is amended to read:

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

7 * **Sec. 16.** AS 43.50.170(4) is amended to read:

8 (4) "distributor" means a person who brings cigarettes that are not
9 purchased from a wholesaler-distributor, or has cigarettes that are not purchased
10 from a wholesaler-distributor brought, into the state, and who sells or distributes at
11 least 75 percent [PER CENT] of the cigarettes to others for resale in the state;

12 * **Sec. 17.** AS 43.50.170(12) is amended to read:

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

16 * **Sec. 18.** AS 43.50.190(a) is repealed and reenacted to read:

17 (a) There is levied an excise tax on each cigarette imported or acquired in this
18 state,

19 (1) after December 31, 2004, but before July 1, 2006, 42 mills;

20 (2) after June 30, 2006, but before July 1, 2007, 52 mills;

21 (3) after June 30, 2007, 62 mills.

22 * **Sec. 19.** AS 43.50.190(c) is amended to read:

23 (c) The tax imposed under (a) of this section does not apply to the first **400**
24 cigarettes personally transported into the state by an individual for that
25 individual's personal consumption [100 CIGARETTES IMPORTED BY AN
26 INDIVIDUAL FOR PERSONAL CONSUMPTION] during the calendar month.

27 * **Sec. 20.** AS 43.50.190 is amended by adding a new subsection to read:

28 (d) A portion of the annual proceeds of the tax levied under (a) of this section
29 equal to 8.9 percent of the total proceeds of the tax shall be deposited into the tobacco
30 use education and cessation fund established in AS 37.05.580. This deposit shall be in
31 addition to any sums deposited into the fund under AS 37.05.580(a).

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

2 **Sec. 43.50.200. Nonparticipating manufacturer equity excise tax.** (a)

3 There is levied an excise tax of 12.5 mills on each cigarette imported or acquired in
4 this state from a nonparticipating manufacturer.

5 (b) The tax levied by this section is in addition to the taxes levied by
6 AS 43.50.010 - 43.50.190. The tax shall be administered and collected in the same
7 manner as the taxes levied by AS 43.50.010 - 43.50.180, except that receipts from the
8 tax shall be deposited in the general fund. The penalties provided in AS 43.05 and this
9 chapter apply to the tax levied in this section.

10 (c) In this section, "nonparticipating manufacturer" means a tobacco product
11 manufacturer as defined in AS 45.53.100 that is not a participating manufacturer as
12 that term is defined in sec. II(jj) of the Master Settlement Agreement.

13 * **Sec. 22.** AS 43.50.500 is amended to read:

14 **Sec. 43.50.500. Tax payment by use of stamps.** A licensee shall pay the tax
15 imposed under AS 43.50.090(a), [AND] 43.50.190(a), and 43.50.200 through the use
16 of stamps issued under AS 43.50.500 - 43.50.700.

17 * **Sec. 23.** AS 43.50.530 is amended by adding a new subsection to read:

18 (c) The department may limit the number of stamps sold to a licensee during
19 the three months immediately preceding the effective date of a tax increase under
20 AS 43.50.090, 43.50.190, or 43.50.200 to minimize the amount of cigarette
21 stockpiling by a licensee. The department may not set the limit of stamps that a
22 licensee may purchase during that three-month period below an amount equal to three
23 times the average monthly stamp purchases made by the licensee during the 12-month
24 period immediately preceding that three-month period.

25 * **Sec. 24.** AS 43.50.540(f) is amended to read:

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

1 damage occurred while the stamps were in the possession of the shipping
 2 company and the shipping company substantiates the loss or damage. Damaged
 3 stamps must be returned to the department before the department may replace
 4 them [AND ALL RISKS OF POSSIBLE LOSS OR DAMAGE WHILE IN
 5 TRANSIT].

6 * **Sec. 25.** AS 43.50.550(b) is amended to read:

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

10 (1) 200 percent of the maximum dollar amount of allowed monthly
 11 purchases under this section ; or

12 (2) 100 percent of the maximum dollar amount of allowed monthly
 13 purchases under this section if the licensee

14 (A) holds a license issued under AS 43.50.010 for a physical
 15 location in this state; and

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

19 * **Sec. 26.** AS 43.50.580(b) is amended to read:

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

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

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

1 * **Sec. 27.** AS 43.50.590(a) is amended to read:

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

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

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

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

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

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

20 (1) material and equipment used in the manufacture, sale, offering for
21 sale, or possession for sale of cigarettes in this state in violation of AS 43.50.500 -
22 43.50.640 or 43.50.660 - 43.50.700;

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

26 (3) money, securities, negotiable instruments, or other things of value
27 used in financial transactions derived from activity prohibited under AS 43.50.500 -
28 43.50.640 or 43.50.660 - 43.50.700.

29 (b) Property subject to forfeiture under this section may be actually or
30 constructively seized under an order issued by the superior court upon a showing of
31 probable cause that the property is subject to forfeiture under this section.

1 Constructive seizure is effected upon posting a signed notice of seizure on the item to
 2 be forfeited, stating the violation and the date and place of seizure. Seizure without a
 3 court order may be made if

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

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

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

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

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

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

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

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

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

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

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

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

4 (B) committed other violations of this chapter.

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

8 (g) A person other than the owner holding, or the assignee of, a lien,
9 mortgage, or conditional sales contract on, or the right to possession, of property
10 subject to forfeiture under (a) of this section is entitled to relief from the forfeiture in
11 the nature of remission of the forfeiture if, in an action under (d) of this section, the
12 person shows that the person

13 (1) was not a party to the violation subjecting the property to
14 forfeiture;

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

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

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

20 (B) committed other violations of this chapter.

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

24 (i) Property forfeited under this section shall be placed in the custody of the
25 commissioner of public safety for disposition according to an order entered by the
26 court. The court shall order destroyed any property forfeited under this section that is
27 harmful to the public and may order any property forfeited under this section that was
28 seized in a municipality to be transferred to the municipality in which the property was
29 seized or to another municipality affected by the crime for which the property was
30 forfeited. The state shall notify all municipalities affected by the crime of the
31 forfeiture proceeding. Other property shall be ordered sold and the proceeds used for

1 payment of expenses of the proceedings for forfeiture and sale, including expenses of
 2 seizure, custody, and court costs. The remainder of the proceeds shall be deposited in
 3 the general fund.

4 (j) 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 * **Sec. 29.** AS 43.50.640(a) is amended to read:

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

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

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

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

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

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

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

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

22 * **Sec. 30.** AS 43.50.650(a) is amended to read:

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

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

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

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

30 (C) acquires, holds, transports, imports, or possesses at least
 31 601 [ONE] but fewer than 10,000 unstamped cigarettes; or

1 **(D) acquires, holds, transports, imports, or possesses at**
 2 **least one but fewer than 601 unstamped cigarettes that are not for**
 3 **personal consumption; or**

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

7 * **Sec. 31.** AS 43.50.700(9) is amended to read:

8 (9) "unstamped cigarettes" means a package containing cigarettes that
 9 is not affixed with the stamp required by AS 43.50.500 - 43.50.700 **or is affixed with**
 10 **a stamp in a denomination less than the tax levied under this chapter.**

11 * **Sec. 32.** AS 43.50.710 is amended by adding a new subsection to read:

12 (e) Nothing in this section prohibits a manufacturer from offering promotions
 13 to a wholesaler or a retailer if the wholesale promotion is the same for all participating
 14 wholesalers and the retail promotion is the same for all participating retailers.

15 * **Sec. 33.** AS 43.50.720 is amended to read:

16 **Sec. 43.50.720. Sale at less than cost; with gift or concession.** In all
 17 advertisements, offers for sale, or sales involving two or more items when at least one
 18 of the items is cigarettes at a combined price, and in all advertisements, offers for sale,
 19 or sales involving the giving of any gift, concession, or coupon of any kind in
 20 conjunction with the sale of cigarettes, the wholesaler's or retailer's combined selling
 21 price may not be below the actual cost to the wholesaler or the actual cost to the
 22 retailer, respectively, of the total of all articles, products, commodities, gifts, and
 23 concessions included in the transactions, except that, if any articles, products,
 24 commodities, gifts, or concessions are not cigarettes, the **actual** [BASIC] cost shall be
 25 determined as provided under AS 43.50.800.

26 * **Sec. 34.** AS 43.50.760(b) is amended to read:

27 (b) The presumptive **actual** [WHOLESALE AND PRESUMPTIVE RETAIL]
 28 cost of cigarettes as determined by the department **under AS 43.50.800** [FROM THE
 29 MANUFACTURER'S PRICE LIST] is considered competent evidence in a court
 30 action or proceeding as tending to prove actual cost to the wholesaler or retailer
 31 complained against. A party against whom the presumptive **actual** [WHOLESALE

1 OR PRESUMPTIVE RETAIL] cost as determined by the department is introduced in
 2 evidence has the right to offer evidence tending to prove any inaccuracy of the
 3 presumptive **actual** [WHOLESALE OR PRESUMPTIVE RETAIL] cost or any
 4 statement of facts that would impair its probative value.

5 * **Sec. 35.** AS 43.50.770 is amended to read:

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

11 * **Sec. 36.** AS 43.50.790(a) is amended to read:

12 (a) The department

13 (1) shall administer AS 43.50.710 - 43.50.849;

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

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

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

22 * **Sec. 37.** AS 43.50.800 is repealed and reenacted to read:

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

30 (b) The presumptive actual cost of cigarettes to a retailer is, for purposes of
 31 AS 43.50.710 - 43.50.849, the presumptive actual cost of cigarettes to the wholesaler

1 as calculated by the department under (a) of this section, plus an amount equal to six
 2 percent of the presumptive actual cost of cigarettes to the wholesaler to account for
 3 business costs.

4 (c) A wholesaler or retailer that wishes to advertise, offer to sell, or sell
 5 cigarettes at less than the presumptive actual cost to the wholesaler or retailer as
 6 calculated under (a) or (b) of this section must first obtain approval from the
 7 department. The department may grant approval only if the wholesaler or retailer
 8 provides proof satisfactory to the department that the wholesaler or retailer's actual
 9 cost is lower than presumed. Approval for cigarette sales at less than the presumptive
 10 actual cost as determined under (a) or (b) of this section may not be granted for a
 11 period longer than one year. In reviewing proof of actual wholesale or retail cost, the
 12 department may consider the costs reflected on the actual invoice, but may not
 13 consider cash discounts. In reviewing proof of actual costs, the department may
 14 consider the standards and methods of accounting regularly employed, and must
 15 include labor costs, rent, depreciation, selling costs, maintenance of equipment,
 16 delivery costs, all types of licenses, taxes, insurance, advertising, preopening
 17 expenses, provision for impaired assets and closing costs, interest expenses, and
 18 provision for merger and restructuring expenses. The department shall adopt
 19 regulations to determine the actual costs for the wholesaler and retailer for the
 20 purposes of AS 43.50.710 - 43.50.849.

21 * **Sec. 38.** AS 45.53.020(b) is amended to read:

22 (b) A tobacco product manufacturer that places money into escrow under
 23 (a)(2) of this section is entitled to receive the interest or other appreciation on such
 24 money as earned. Such money itself shall be released from escrow only under the
 25 following circumstances:

26 (1) to pay a judgment or settlement on a released claim brought against
 27 such tobacco product manufacturer by this state or a releasing party located or residing
 28 in this state; the funds shall be released from escrow under this paragraph in the order
 29 in which they were placed into escrow and only to the extent and at the time necessary
 30 to make payments required under the judgment or settlement;

31 (2) to the extent that the tobacco product manufacturer establishes that

1 the amount that it was required to place into escrow **on account of units sold in the**
 2 **state** in a particular year was greater than the **Master Settlement Agreement**
 3 **payments, as determined under sec. IX(i) of the Master Settlement Agreement,**
 4 **including, after final determination of all adjustments, payments that the**
 5 **manufacturer would have been required to make on account of those units had it**
 6 **been a participating manufacturer** [STATE'S ALLOCABLE SHARE OF THE
 7 TOTAL PAYMENTS THAT THE MANUFACTURER WOULD HAVE BEEN
 8 REQUIRED TO MAKE IN THAT YEAR UNDER THE MASTER SETTLEMENT
 9 AGREEMENT HAD IT BEEN A PARTICIPATING MANUFACTURER, AS SUCH
 10 PAYMENTS ARE DETERMINED UNDER SEC. IX(i)(2) OF THE MASTER
 11 SETTLEMENT AGREEMENT AND BEFORE ANY OF THE ADJUSTMENTS OR
 12 OFFSETS DESCRIBED IN SEC. IX(i)(3) OF THAT AGREEMENT OTHER THAN
 13 THE INFLATION ADJUSTMENT], the excess shall be released from escrow and
 14 revert back to that tobacco product manufacturer; or

15 (3) to the extent not released from escrow under (1) or (2) of this
 16 **subsection** [SUBSECTIONS], funds placed into escrow shall be released from escrow
 17 and revert back to the tobacco product manufacturer 25 years after the date on which
 18 they were placed into escrow.

19 * **Sec. 39.** AS 45.53.020(b) is repealed and reenacted to read:

20 (b) A tobacco product manufacturer that places money into escrow under
 21 (a)(2) of this section is entitled to receive the interest or other appreciation on such
 22 money as earned. Such money itself shall be released from escrow only under the
 23 following circumstances:

24 (1) to pay a judgment or settlement on a released claim brought against
 25 such tobacco product manufacturer by this state or a releasing party located or residing
 26 in this state; the funds shall be released from escrow under this paragraph in the order
 27 in which they were placed into escrow and only to the extent and at the time necessary
 28 to make payments required under the judgment or settlement;

29 (2) to the extent not released from escrow under (1) of this subsection,
 30 funds placed into escrow shall be released from escrow and revert back to the tobacco
 31 product manufacturer 25 years after the date on which they were placed into escrow.

1 * **Sec. 40.** AS 45.53.020(b) is repealed and reenacted to read:

2 (b) A tobacco product manufacturer that places money into escrow under
3 (a)(2) of this section is entitled to receive the interest or other appreciation on such
4 money as earned. Such money itself shall be released from escrow only under the
5 following circumstances:

6 (1) to pay a judgment or settlement on a released claim brought against
7 such tobacco product manufacturer by this state or a releasing party located or residing
8 in this state; the funds shall be released from escrow under this paragraph in the order
9 in which they were placed into escrow and only to the extent and at the time necessary
10 to make payments required under the judgment or settlement;

11 (2) to the extent that the tobacco product manufacturer establishes that
12 the amount that it was required to place into escrow in a particular year was greater
13 than the state's allocable share of the total payments that the manufacturer would have
14 been required to make in that year under the master settlement agreement had it been a
15 participating manufacturer, as such payments are determined under sec. IX(i)(2) of the
16 master settlement agreement and before any of the adjustments or offsets described in
17 sec. IX(i)(3) of that agreement other than the inflation adjustment, the excess shall be
18 released from escrow and revert back to that tobacco product manufacturer; or

19 (3) to the extent not released from escrow under (1) or (2) of this
20 subsection, funds placed into escrow shall be released from escrow and revert back to
21 the tobacco product manufacturer 25 years after the date on which they were placed
22 into escrow.

23 * **Sec. 41.** AS 45.53 is amended by adding a new section to read:

24 **Sec. 45.53.050. Stays pending appeal in civil cases.** (a) Except as provided
25 in (b) of this section, in order to secure and protect the money to be received as a result
26 of the Master Settlement Agreement, in civil tobacco-related litigation under any legal
27 theory involving a signatory, a successor of a signatory, or an affiliate of a signatory to
28 the Master Settlement Agreement, the supersedeas bond to be furnished in order to
29 stay the execution of the judgment during the entire course of appellate review shall be
30 set in accordance with applicable laws or court rules, except that the total bond that is
31 required of all appellants collectively may not exceed \$100,000,000, regardless of the

1 value of the judgment.

2 (b) If an appellee proves by a preponderance of the evidence that an appellant
3 is dissipating assets to avoid the payment of a judgment, a court may require the
4 appellant to post a bond in an amount up to the full amount of the judgment.

5 * **Sec. 42.** The uncodified law of the State of Alaska enacted in sec. 4, ch. 48, SLA 1997, is
6 repealed and reenacted to read:

7 Sec. 4. AS 43.50.190(a) is repealed and reenacted to read:

8 (a) There is levied an excise tax on each cigarette imported or acquired in this
9 state,

10 (1) after December 31, 2004, but before July 1, 2006, 77.5 mills;

11 (2) after June 30, 2006, but before July 1, 2007, 87.5 mills;

12 (3) after June 30, 2007, 97.5 mills.

13 * **Sec. 43.** AS 43.50.740(b), 43.50.849(1), 43.50.849(6), and 43.50.849(7) are repealed.

14 * **Sec. 44.** The uncodified law of the State of Alaska is amended by adding a new section to
15 read:

16 **INDIRECT COURT RULE AMENDMENT.** AS 45.53.050, added by sec. 41 of this
17 Act, has the effect of changing Rules 204 and 205, Alaska Rules of Appellate Procedure, by
18 limiting the court's discretion to determine the amount of a supersedeas bond in certain cases.

19 * **Sec. 45.** The uncodified law of the State of Alaska is amended by adding a new section to
20 read:

21 **APPLICABILITY.** Section 41 of this Act applies to all cases pending on or filed on
22 or after the effective date of this Act.

23 * **Sec. 46.** The uncodified law of the State of Alaska is amended by adding a new section to
24 read:

25 **SEVERABILITY.** Under AS 01.10.030, if any provision of this Act or the application
26 of it to any person or circumstance is held invalid, the remainder of this Act and the
27 application to other persons or circumstances are not affected.

28 * **Sec. 47.** The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

30 **REVISOR'S INSTRUCTIONS.** The revisor of statutes is instructed to change the
31 heading of Article 2 in AS 43.50 from "Additional Cigarette Tax" to "Additional Cigarette

1 Taxes."

2 * **Sec. 48.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 **CONDITIONAL EFFECT.** (a) Section 39 of this Act takes effect only if
5 AS 45.53.020(b)(2), as amended in sec. 38 of this Act, is held by a court of competent
6 jurisdiction to be unconstitutional.

7 (b) Section 40 of this Act takes effect only if AS 45.53.020(b)(2), as amended in sec.
8 38 and in sec. 39 of this Act, are held by a court of competent jurisdiction to be
9 unconstitutional.

10 * **Sec. 49.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 **CONDITIONAL EFFECT.** AS 45.53.050, added by sec. 41 of this Act, takes effect
13 only if sec. 44 of this Act receives the two-thirds majority vote of each house required by art.
14 IV, sec. 15, Constitution of the State of Alaska.

15 * **Sec. 50.** Section 1 this Act takes effect July 1, 2004.

16 * **Sec. 51.** If sec. 39 of this Act takes effect under sec. 48(a) of this Act, it takes effect on
17 the day after the date of a final order or decision by a court of competent jurisdiction holding
18 AS 45.53.020(b)(2), as amended in sec. 38 of this Act, to be unconstitutional.

19 * **Sec. 52.** If sec. 40 of this Act takes effect under sec. 48(b) of this Act, it takes effect on
20 the day after the date of a final order or decision by a court of competent jurisdiction holding
21 AS 45.53.020(b)(2), as amended in sec. 39 of this Act, to be unconstitutional.

22 * **Sec. 53.** Sections 8 - 11 of this Act take effect immediately under AS 01.10.070(c).

23 * **Sec. 54.** Except as provided in sec. 53 of this Act, this Act takes effect January 1, 2005.