

**HOUSE CS FOR SENATE BILL NO. 1001(FIN) am H(ct rule fld)**

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; and providing for an effective date."**

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

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

12 INTENT. It is the intent of the legislature to provide aggregate funding to meet the

1 minimum amount of tobacco control programs recommended by the United States  
 2 Department of Health and Human Services, Centers for Disease Control and Prevention, from  
 3 tobacco taxes and other revenue sources accounted for in the tobacco use education and  
 4 cessation fund established in AS 37.05.580.

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

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

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

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

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

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

14 \* **Sec. 5.** AS 43.50.035 is repealed and reenacted to read:

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

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

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

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

26 (2) refusal to issue the license.

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

28 (a) There is levied an excise tax of 38 mills on each cigarette imported or  
 29 acquired in the state. The tax shall be paid through the use of stamps as provided in  
 30 AS 43.50.500 - 43.50.700. **A person who imports or acquires cigarettes in the**  
 31 **state upon which a stamp required by this chapter has not been affixed in**

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

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

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

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

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

17 (1) is licensed under this chapter;

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

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

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

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

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

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

29 (1) shipping the cigarettes is licensed under this chapter and, **before**  
 30 **shipment,** provides the common or contract carrier with a copy of the person's current  
 31 license issued by the department and **an affidavit from the intended recipient**

1 **certifying that** the person receiving the cigarettes is a person described under **(b)(1) -**  
 2 **(5)** [(b)(1) - (4)] of this section; or

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

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

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

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

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

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

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

18 (1) class A misdemeanor if the person unlawfully ships, causes to be  
 19 shipped, or transports at least one but fewer than **5,000** [1,000] cigarettes;

20 (2) class C felony if the person unlawfully ships, causes to be shipped,  
 21 or transports **5,000** [1,000] or more cigarettes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12       \* **Sec. 22.** AS 43.50.500 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 be forfeited, stating the violation and the date and place of seizure. Seizure without a  
2 court order may be made if

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

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

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

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

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

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

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

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

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

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

31 (3) did not have actual knowledge or reasonable cause to believe that

1 the person committing the violation had, within the last 10 years,

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

3 (B) committed other violations of this chapter.

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

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

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

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

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

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

19 (B) committed other violations of this chapter.

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

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

1 seizure, custody, and court costs. The remainder of the proceeds shall be deposited in  
2 the general fund.

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

7 \* **Sec. 29.** AS 43.50.640(a) is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 **(D) acquires, holds, transports, imports, or possesses at**

1                    **least one but fewer than 601 unstamped cigarettes that are not for**  
 2                    **personal consumption; or**

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

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

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

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

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

14                  \* **Sec. 33.** AS 43.50.720 is amended to read:

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

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

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

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

4 \* **Sec. 35.** AS 43.50.770 is amended to read:

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

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

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

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

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

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

29 (b) The presumptive actual cost of cigarettes to a retailer is, for purposes of  
 30 AS 43.50.710 - 43.50.849, the presumptive actual cost of cigarettes to the wholesaler  
 31 as calculated by the department under (a) of this section, plus an amount equal to six

1 percent of the presumptive actual cost of cigarettes to the wholesaler to account for  
2 business costs.

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

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

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

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

30 (2) to the extent that the tobacco product manufacturer establishes that  
31 the amount that it was required to place into escrow **on account of units sold in the**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 \* **Sec. 44.** (This section did not receive the affirmative vote of two-thirds of the members of  
 14 each house of the legislature required by art. IV, sec. 15, Constitution of the State of Alaska.)

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

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

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

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

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

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

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

31 **CONDITIONAL EFFECT.** (a) Section 39 of this Act takes effect only if

1 AS 45.53.020(b)(2), as amended in sec. 38 of this Act, is held by a court of competent  
2 jurisdiction to be unconstitutional.

3 (b) Section 40 of this Act takes effect only if AS 45.53.020(b)(2), as amended in sec.  
4 38 and in sec. 39 of this Act, are held by a court of competent jurisdiction to be  
5 unconstitutional.

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

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

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

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

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

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

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