

1 IN THE

House

BY

WAYS & MEANS COMM.

House BILL NO. 72

2
3 IN THE LEGISLATURE OF THE TERRITORY OF ALASKA

4 TWENTY-SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act levying an excise tax on the sale,
7 consumption and use of cigarettes; defin-
8 ing certain terms; providing for the
9 licensing of certain persons handling
10 cigarettes; providing for the disposition
11 of revenue; establishing certain penalties
12 for violations; and repealing Chapter 42,
13 SLA 1949, as amended."

14 BE IT ENACTED BY THE LEGISLATURE OF THE TERRITORY OF ALASKA:

15 Section 1. SHORT TITLE. This Act shall be known and
16 may be cited as the "Cigarette Tax Act."

17 Section 2. DEFINITIONS. The following words, terms,
18 and phrases, when used in this Act, shall, for the purpose of
19 this Act, have the meanings respectively ascribed to them in this
20 section.

21 (a) "Cigarette" means and includes any roll for smok-
22 ing made wholly or in part of tobacco, irrespective of the size
23 or shape and irrespective of the tobacco being flavored, adulter-
24 ated or mixed with any other ingredient, the wrapper or cover of
25 which is made of paper or any other substance or material, except
26 tobacco.

27 (b) "Person" means and includes any individual, com-
28 pany, partnership, joint venture, joint agreement, association,
29 mutual or otherwise, corporation, estate, trust, business trust,

1 receiver or trustee appointed by any state or federal court or >
2 otherwise, syndicate, or any political subdivision of this state,
3 or combination acting as a unit in the plural or singular number.

4 (c) "Manufacturer" means any person who, by in-
5 dustrial art or otherwise, makes, fashions, or produces cigarettes
6 for sale to distributors or other persons as defined in this Act.

7 (d) "Distributor" means any person, wherever resident
8 or located, who brings cigarettes or causes cigarettes to be
9 brought into this Territory, and who sells or distributes at
10 least 75 per cent of all such cigarettes to others for the pur-
11 pose of resale within the Territory.

12 (e) "Direct-buying retailer" means any person, where-
13 ever resident or located, who is engaged in the sale of ciga-
14 rettes at retail in this Territory, and who brings or causes such
15 cigarettes to be brought into the Territory.

16 (f) ^{single} "Consumer" means and includes any person who im-
17 ports or acquires cigarettes for his own consumption from any
18 source other than a manufacturer, distributor, ^{or} direct-buying
19 retailer, ~~or retailer.~~

20 (g) "Licensee" means any person licensed under this
21 Act.

22 (h) "Place of business" means and includes any place
23 where cigarettes are sold, or where cigarettes are brought or
24 kept for the purpose of sale or consumption, including, so far as
25 applicable, any vessel, vehicle, airplane, train, ~~or cigarette~~
26 ~~vending machine.~~

27 (i) "Retailer" means any person in this Territory who
28 is engaged in the business of selling cigarettes at retail.

29 (j) "Sale" or "Sales" means sales, barter, exchanges,

p. 2, line 16: delete "consumer" insert "buyer"

p. 2, line 18: insert comma following word "distributor" and strike word "or"

p. 2, line 19: following "retailer" insert as follows: ", or retailer."

p. 2, line 25: insert word "or" immediately preceding word "train", and following word "train" strike ", or cigarette vending machine"

1 and every other manner, method or form of transferring the
2 ownership of personal property from one person to another. >

3 (k) "Tax Commissioner" means the Tax Commissioner of
4 the Territory of Alaska.

5 (l) "Territory" means the Territory of Alaska.

6 Section 3. LICENSE. No person shall sell, purchase,
7 possess or acquire cigarettes as a manufacturer, distributor,
8 direct-buying retailer, vending machine operator, or consumer,
9 without first having obtained the appropriate license for that
10 purpose as prescribed by this Act. The Commissioner, upon prop-
11 er application and payment of the applicable fee herein provided,
12 shall issue a license to each manufacturer, distributor, direct-
13 buying retailer, vending machine operator, or consumer. The
14 Commissioner shall make such reasonable rules and regulations as
15 he may deem necessary respecting the application for and the
16 issuance of such licenses. The Commissioner may refrain from the
17 issuance of any license under this Act where he has reasonable
18 cause to believe that the applicant has willfully withheld
19 information requested of him for the purpose of determining the
20 eligibility of the applicant to receive a license, or where he
21 has reasonable cause to believe that information submitted in the
22 application is false or misleading and is not made in good faith.
23 Any license authorized or required by this Act shall be in
24 addition to any other license which may be required by law.

25 Section 4. SEPARATE LICENSES. Where a person
26 operates more than one place of business, whether temporary or
27 established, the person must obtain a separate license for each
28 such place of business. Any person licensed only as a manu-
29 fasturer, distributor, direct-buying retailer, vending machine

p. 3, line 8: delete "consumer" insert "buyer"

p. 3, line 13: delete "consumer" insert "buyer"

p. 3, line 28: after word "business" insert following: "; provided, that a person operating one or more cigarette vending machines shall be deemed to have only one place of business for licensing purposes."

operator, or ~~consumer~~^{operator}, shall not operate in any other capacity except that for which he is licensed unless the appropriate license or licenses therefor are first secured. Each license shall be exhibited at the place of business for which it is issued and in such manner as may be prescribed by the Commissioner.

Section 5. PROHIBITION OF GAMBLING SALES. The use of any device or game of chance to aid, promote, or induce sales or purchases of cigarettes, or the giving of any cigarettes in connection with any device or game of chance, is prohibited.

Section 6.⁵ LICENSE FEES. For each license issued to a manufacturer, and for each renewal therefor, there shall be paid to the Commissioner a fee of \$5.

For each license issued to a distributor, and for each renewal therefor, there shall be paid to the Commissioner a fee of ~~\$100.~~ ^{\$50.}

For each license issued to a vending machine operator, and for each renewal therefor, there shall be paid to the Commissioner a fee of ~~\$100.~~ ^{\$25.}

For each license issued to a direct-buying retailer, and for each renewal therefor, there shall be paid to the Commissioner a fee of \$25.

For each license issued to a ~~consumer~~^{operator}, and for each renewal therefor, there shall be paid to the Commissioner a fee of \$25.

No license shall be issued to any person except upon the payment of the fee therefor, any statute or exemption to the contrary notwithstanding.

Section 7.⁶ EXPIRATION OF LICENSES. Each license

p. 4, line 1: delete "consumer" insert "buyer"

p. 4, line 5: strike section 5 in its entirety and renumber succeeding sections accordingly

p. 4, line 16: strike "\$100" and insert in lieu thereof "\$50"

p. 4, line 19: strike figure 100 and insert in lieu thereof the figure
25

p. 4, line 23: delete "consumer" insert "buyer"

operator, or ~~consumer~~, shall not operate in any other capacity except that for which he is licensed unless the appropriate license or licenses therefor are first secured. Each license shall be exhibited at the place of business for which it is issued and in such manner as may be prescribed by the Commissioner.

Section 5. PROHIBITION OF GAMBLING SALES. The use of any device or game of chance to aid, promote, or induce sales or purchases of cigarettes, or the giving of any cigarettes in connection with any device or game of chance, is prohibited.

Section 6. LICENSE FEES. For each license issued to a manufacturer, and for each renewal therefor, there shall be paid to the Commissioner a fee of \$5.

For each license issued to a distributor, and for each renewal therefor, there shall be paid to the Commissioner a fee of ~~\$100.~~ \$50.

For each license issued to a vending machine operator, and for each renewal therefor, there shall be paid to the Commissioner a fee of ~~\$100.~~ \$25.

For each license issued to a direct-buying retailer, and for each renewal therefor, there shall be paid to the Commissioner a fee of \$25.

For each license issued to a ~~consumer~~, and for each renewal therefor, there shall be paid to the Commissioner a fee of \$25.

No license shall be issued to any person except upon the payment of the fee therefor, any statute or exemption to the contrary notwithstanding.

Section 7. EXPIRATION OF LICENSES. Each license

p. 4, line 1: delete "consumer" insert "buyer"

p. 4, line 6: strike section 5 in its entirety and renumber succeeding sections accordingly

p. 4, line 16: strike "\$100" and insert in lieu thereof "\$50"

p. 4, line 19: strike figure 100 and insert in lieu thereof the figure
25

p. 4, line 23: delete "consumer" insert "buyer"

1 issued under Section 3 shall expire on the 30th day of June,
2 next succeeding the date of issue, unless sooner revoked by the
3 Commissioner, as provided in Section 10, or unless the business
4 with respect to which such license was issued shall change owner-
5 ship or the licensee shall remove his business from the premises
6 covered by the license. In any of such cases the licensee shall
7 immediately return it to the Commissioner. If the licensee re-
8 moves his business to another location within the Territory, the
9 license with respect to the former place of business shall, upon
10 the payment of a fee of 50¢, be reissued for the new location for
11 the balance of the unexpired term. The licensee, on application
12 to the Commissioner accompanied by the applicable fee prescribed
13 in Section 6, may, before the expiration date of the license
14 then held by him, renew his license for a further period of one
15 year from the expiration date of his license.

16 Section 8. ⁷ TRANSFER OF LICENSES. No license shall be
17 assignable or transferable, except as otherwise herein provided,
18 but in the case of the death, bankruptcy, receivership, or in-
19 competency of the licensee, or if for any reason the business of
20 the licensee shall devolve upon another by operation of law, the
21 Commissioner may, at his discretion, extend said license for a
22 limited time to the executor, administrator, trustee, receiver,
23 or other person upon whom the business has devolved.

24 Section 9. ⁸ REFUNDS. No refund of the license fee shall
25 be paid to any person upon the surrender or revocation of any
26 license except for a license fee paid or collected in error. In
27 the event a license is lost, destroyed, or defaced, a duplicate
28 license may be obtained upon payment of a fee of 50¢.

29 Section 10. ⁹ REVOCATION OF LICENSES. The Commissioner

1 may suspend or revoke any or all licenses of any licensee who
2 violates any of the provisions of this Act, or any rule or regu-
3 lation of the Commissioner made pursuant thereto, or of a
4 licensee who has ceased to act in the capacity for which the
5 license was issued. No person whose license has been suspended
6 or revoked shall sell cigarettes or permit cigarettes to be sold,
7 during the period of such suspension or revocation, on the
8 premises occupied by him or upon other premises controlled by
9 him or others or in any other manner or form whatever. No
10 disciplinary proceeding or action shall be barred or abated by
11 the expiration, transfer, surrender, renewal or extension of any
12 license issued under the provisions of this Act. Any licensee
13 whose license has been suspended or revoked hereunder may
14 petition the Commissioner, within twenty days after such suspen-
15 sion or revocation, for a hearing thereon and for re-issuance of
16 the license. The Commissioner shall promptly grant such hearing,
17 fix the time and place thereof, and notify the petitioner thereof
18 in writing. If no such petition is filed within the period
19 allowed, the suspension or revocation shall become final for such
20 period as may have been fixed by the Commissioner.

21 Section 11.¹⁰ RETURNS. Every licensee shall, on or be-
22 fore the 15th day of each calendar month, file with the
23 Commissioner, on a form prescribed by the Commissioner, a return,
24 under the penalties of perjury, for each place of business
25 maintained. The return shall state the number of cigarettes
26 manufactured, imported, or acquired, from any source whatever
27 by such licensee during the preceeding calendar month, and such
28 return shall contain or be accompanied by such other information
29 as the Commissioner may require. If a licensee ceases to import

1 or acquire cigarettes, he shall forthwith file with the
2 Commissioner such a return for the period ending with such
3 cessation.

4 Section 12. TAX IMPOSED. There is hereby levied an
5 excise tax of 2½ mills on each cigarette imported or acquired in
6 this Territory. Each licensee shall, at the time of filing the
7 return required by Section 11 of this Act, pay to the
8 Commissioner this excise for each cigarette imported or acquired
9 during the calendar month covered by the return: Provided, that
10 cigarettes with respect to which the excise under this Act has
11 once been imposed shall not be again subject to this excise when
12 subsequently acquired by another person. It is the intent and
13 purpose of this section to provide for the collection of this
14 excise from the person who first acquires the cigarettes in this
15 Territory.

16 Section 13. CIVIL PENALTIES. If upon the examination
17 of a return filed under the provisions of this Act, or from other
18 information obtained by the Commissioner, it appears that a tax
19 or penalty has been paid less than that properly due, the
20 Commissioner shall assess against the licensee filing the return
21 such additional amount found to be due and may add thereto
22 interest at the rate of 6 per cent per ANNUUM from
23 the respective due dates of such additional amount until paid.
24 The Commissioner shall notify said licensee by mail of the
25 additional amount, and the same shall become due and shall be
26 paid within 10 days from the date of the notice, or within such
27 further time as the Commissioner may provide. If it appears
28 that the amount paid exceeds that properly due, the excess so
29 paid may be credited against a subsequent tax or shall be

1 refunded if requested by the taxpayer. If any part of the
2 deficiency is due to a fraudulent intent to evade the payment of
3 the tax imposed by this Act, there shall be added as a penalty
4 50% of such deficiency, and in such a case, the whole of the
5 tax unpaid, together with the penalty, shall become due and shall
6 be paid as provided above. Any person or licensee in control or
7 in possession of any cigarettes contrary to any provisions of
8 this Act, or who offers to sell or dispose of any cigarettes to
9 others for the purpose of resale without being licensed to do so
10 under this Act, shall be deemed to have possession of such
11 cigarettes as a consumer and shall be personally liable for the
12 tax imposed by this Act; plus a penalty of 100%. If any person
13 fails or refuses to file a return or pay the tax required to be
14 paid under this Act, the Commissioner shall proceed to determine
15 the tax due from such information ^A as the Commissioner can obtain
16 and shall assess the tax so determined against such a person and
17 shall notify him by mail of the amount thereof. Such tax shall
18 become due and payable, together with a penalty of 25% of the
19 amount assessed, 20 days from the date of the issuance of the
20 notice.

21 ^B Section 14. HEARINGS. Any person having been issued
22 a notice of additional taxes, delinquent taxes, interest or
23 penalties, assessed by the Commissioner, may, within 20 days after
24 the issuance of the original notice of the amount thereof,
25 petition the Commissioner in writing for a hearing thereon and a
26 correction of the amount of the assessment. The petition shall
27 set forth the reasons why the hearing should be granted and the
28 amount of the tax, interest or penalties, if any, which the
29 petitioner believes to be due. The Commissioner shall promptly

1 grant such hearing, fix the time and place thereof, and notify
2 the petitioner thereof by mail. If no such petition is filed
3 within the 20-day period, the assessment covered by the notice
4 shall become final. Any licensee aggrieved by the decision of
5 the Commissioner and who has paid, under protest, the amount of
6 taxes, interest, and penalties found due by the Commissioner may
7 bring an action, in the District Court in the Judicial Division
8 in which the licensee is carrying on the business for which the
9 tax is imposed, to recover the amount of the tax alleged to have
10 been unlawfully imposed upon him. Such action shall be
11 commenced within 90 days after payment of such tax, interest and
12 penalties so imposed.

13 Section 15. ¹⁴ LIEN. The specific tax herein imposed, in
14 addition to the interest and penalties provided in this act and
15 costs that may accrue, shall be a lien in favor of the Territory
16 against all property and rights of property, both real and
17 personal, then owned or afterwards acquired by any person or
18 persons, firm, association or corporation, liable therefor, to
19 secure the payment of such tax, interest, penalties and costs,
20 which lien shall attach to the property from and after the date
21 that any report upon which the specific tax is computed is re-
22 quired by this act to be filed. In the event that the proceeds
23 of the property levied upon and sold under the provisions of this
24 Act shall be insufficient to pay in full the lien established by
25 this Act together with other tax liens, the net proceeds re-
26 covered shall be applied pro rata to the satisfaction of all such
27 tax liens.

28 Section 16. ¹⁷ RECORDS. Every licensee under this act
29 shall keep a complete and accurate record of all cigarettes

1 manufactured, purchased, or otherwise acquired. Such records,
2 except in the case of a manufacturer, shall include a written
3 statement containing the name and address of both the seller
4 and the purchaser, the date of delivery, the quantity of cigar-
5 ettes, the trade name and brand thereof and the price paid for
6 each brand of cigarettes purchased. Such other records shall be
7 kept by the licensee as the Commissioner may reasonably prescribe.
8 All statements and other records required by this section shall
9 be in such form as the Commissioner shall prescribe, shall be
10 preserved for a period of 3 years, and shall be offered for
11 inspection at any time upon oral or written demand by the
12 Commissioner or his authorized agent. No licensee under this
13 Act shall issue or accept any written statement which falsely
14 indicates the name of the customer, the type of merchandise, the
15 price, the discounts, or the terms of sale. There shall not be
16 inserted in any invoice given or accepted by any licensee any
17 statement which makes the invoice a false record, wholly or in
18 part, of the transaction represented therein, nor shall there be
19 withheld from any invoice given or accepted by any licensee any
20 statements which properly should be included therein, so that in
21 the absence of such statements the invoice does not truly reflect
22 the transaction involved. Every invoice for the sale of cigar-
23 ettes given or accepted by a licensee under this Act shall state
24 therein whether the tax imposed by this Act has been paid.

25 Section 17^{1/2} DISPOSITION OF PROCEEDS. The proceeds
26 derived from the payment of taxes, fees and penalties, provided
27 for under this Act, and the license fees received by the
28 Commissioner, shall be paid into a Territorial fund entitled:
29 "School Fund", and shall be used for the exclusive purpose of

1 rehabilitation, construction and repair of Alaska's school
2 facilities, and may be used for costs of insurance on buildings
3 comprising such facilities during the periods of such rehabilita-
4 tion, construction and repair and for the life of any such
5 building.

6 Section 18. RULES AND REGULATIONS. The Commissioner
7 shall administer the provisions of this Act, and it is hereby
8 made the duty of the Commissioner to collect, supervise, and
9 enforce the collection of all taxes and penalties that may be
10 due under the provisions of this Act. The Commissioner shall
11 also have the power and authority to make and publish rules and
12 regulations, not inconsistent with this Act, in conformity with
13 the laws of this Territory, necessary and advisable for its
14 detailed administration, to enforce the provisions thereof, and
15 to collect the taxes, fees and penalties herein imposed.

16 Section 19. CRIMINAL PENALTIES.

17 (a) Any person who shall file, or cause to be filed,
18 with the Commissioner any false or fraudulent report or state-
19 ment, or shall aid or abet another in so filing any false or
20 fraudulent report or statement, with the intent to defraud the
21 Territory or evade the payment of any tax, penalty, or interest,
22 or any part thereof, which shall be due pursuant to the pro-
23 visions of this Act, and any person who shall knowingly swear
24 to or affirm any false or fraudulent statement with intent to
25 evade the payment of any tax imposed by this Act, or who, being
26 under oath, shall testify falsely at any hearing held pursuant
27 to the provisions of this Act, shall be guilty of a misdemeanor
28 and, upon conviction thereof, shall be fined not more than \$1000,
29 or imprisoned not more than one year, or both, at the discretion

1 of the court.

2 (b) Any person who violates any of the provisions of
3 this Act, otherwise than hereinabove specified, shall be guilty
4 of a misdemeanor and be liable to a fine of not more than \$250
5 for each separate offense.

6 Section 20. ¹¹ SEVERABILITY. The provisions of this Act
7 shall be severable and if for any reason any sentence, clause, or
8 section hereof shall be determined to be ^{unlawful} unconstitutional, the
9 same shall not be held to effect any other section, or sections,
10 or provisions herewith.

11 Section 21. ¹¹ REPEALS. Chapter 42, Session Laws of
12 Alaska 1949, as amended by Chapter 81, Session Laws of Alaska
13 1951, Chapter 112, Session Laws of Alaska 1951, and Chapter 34,
14 Session Laws of Alaska 1953, are hereby repealed.

15 Section 22. ¹¹ This Act shall be in effect on and after
16 July 1, 1955.

p. 12, line 8: strike word "unconstitutional" and insert in lieu thereof the word "unlawful"
