

**SB**

**368**

**SFIN**

**FILE**

# SENATE FINANCE COMMITTEE REPORT

REPORTED OUT  
APR 26 2004  
SENATE FINANCE  
COMMITTEE

DATE: 3/26/04

FURTHER:

DATE TURNED IN TO OFFICE: 26 April 2004

Finance Committee considered

SENATE BILL NO. 368

## SB 368 TOBACCO TAX; LICENSING; PENALTIES

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

and recommends:

- be replaced with \_\_\_\_\_ CS SB 368 (FIN)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

**Senate Bill:**  
 Same Title  
 New Title

**House Bill:**  
 Same Title  
 Technical Title Change  
 New Title w/ SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero.	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
Public Safety	1/9/04	2004			#2
Revenue	1/15/04	828.1			#1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
<i>[Signature]</i>			/	
<i>[Signature]</i>		✓		
<i>[Signature]</i>				✓
<i>[Signature]</i>	✓			
<i>[Signature]</i>	X			
COCHAIR: <i>[Signature]</i>		✓		
COCHAIR: <i>[Signature]</i>			/	

APR 26 2004

SENATE FINANCE  
COMMITTEE

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: SB 368  
(S) Publish Date: 3/19/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
Title Cigarette and Tobacco Products RDU Revenue Programs & Services  
Tax Increase Component Tax Division  
Sponsor Rules  
Requester Governor Component No. 2476

**Expenditures/Revenues (Thousands of Dollars)**

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	466.1	466.1	466.1	466.1	466.1	466.1
Travel	60.0	60.0	60.0	60.0	60.0	60.0
Contractual	248.0	246.8	246.8	246.8	246.8	246.8
Supplies	6.0	6.0	6.0	6.0	6.0	6.0
Equipment	48.0	0.0	0.0	0.0	0.0	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>828.1</b>	<b>778.9</b>	<b>778.9</b>	<b>778.9</b>	<b>778.9</b>	<b>778.9</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )	35,500.0	35,500.0	35,500.0	35,500.0	35,500.0	35,500.0
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF	617.7	568.5	568.5	568.5	568.5	568.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>828.1</b>	<b>778.9</b>	<b>778.9</b>	<b>778.9</b>	<b>778.9</b>	<b>778.9</b>

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time	6	6	6	6	6	6
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Bill Language: This bill will increase the cigarette tax from \$1 per pack of twenty cigarettes to \$2 per pack and the tobacco products tax (OTP) from 75% to 100% of the wholesale cost. This bill will also institute a floor stock tax on existing cigarette inventories held for sale in an attempt to reduce the amount of stockpiling of cigarettes on the effective date. In an attempt to reduce the amount of cigarette smuggling and tax evasion, this bill will also allow the Department of Public Safety to seize and dispose of equipment, vehicles, monies and other assets used in activities which violate the cigarette and tobacco products statutes.  
(cont. on page 2)

Prepared by: Johanna Bales Phone 269-6628  
Division: Tax Division Date/Time 1/15/04 5:23 PM  
Approved by: Steve Porter, Deputy Commissioner Date 1/15/2004  
Agency: Department of Revenue

FISCAL NOTE #1

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. SB 368

ANALYSIS CONTINUATION

**Assumptions:** The Department of Revenue (DOR) will have primary enforcement responsibility for the cigarette and tobacco products excise tax program. However, DOR will work with the Department of Public Safety (DPS) and Department of Law (DOL) as part of a task force responsible for cigarette tax stamp enforcement in the state. DPS, at the request of DOR, will provide investigative support through a reimbursable services agreement (RSA). The amount of this RSA has been estimated by DPS. Their estimate is attached. Monies for the RSA are included in the Contractual costs requested in this fiscal note. This fiscal note does not include additional costs that may be incurred by DOL as a result of this legislation. From information obtained from other states with cigarette tax rates of \$1.50 to \$2.05 per pack, DOR expects that the increase in the tax rates will result in a significant increase in incidents of cigarette smuggling and tax evasion.

**Program Summary:** DOR will conduct periodic inspections of cigarette and tobacco products licensees as well as retailers who hold tobacco endorsements with the Department of Community and Economic Development for unstamped cigarettes. In addition, DOR will be the primary contact for complaints from the public and compliant retailers regarding unstamped cigarettes. DOR will work with DPS and DOL to develop cases against cigarette smugglers, including seizing unstamped product and assets used in activities that violate the cigarette and tobacco products statutes. DOR will prepare assessments for unstamped cigarettes and untaxed cigarettes and OTP imported into the state by individuals for personal use and/or resale and work with federal agencies to stop out-of-state entities, specifically Internet sellers, from shipping cigarettes into the state in violation of existing statutes.

**Positions:** DOR expects that it will need 6 additional positions, 1 Revenue Auditor Supervisor II, 2 Investigator III's, 1 Revenue Auditor III, 1 Accounting Technician III and 1 Appeals Officer (Revenue Auditor V), to manage the workload of the task force; conduct investigations, prepare assessments, and work appeals filed in disputes involving assessments, seized cigarettes, and seized assets. These six positions, along with the two existing investigator positions already assigned to tobacco cases, will represent DOR as part of the task force explained above. DOR estimates the total cost of these additional positions to be \$466,100 each year.

**Other Operating Expenditures:** (1) Travel - DOR estimates it will need \$60,000 for travel costs for investigators to conduct routine inspections of the approximate 1,600 known cigarette retail establishments throughout the state each year. DOR estimates that each investigator will need to conduct, at a minimum, ten separate inspections/investigations in villages within the state each year to insure an effective enforcement program and respond to complaints from the public of unstamped product. (2) Contractual - Contractual costs in the amount of \$248,000 in the first year and \$246,800 each year thereafter are primarily to fund an RSA between DOR and DPS and for the lease, operation and maintenance of two vehicles to be used by investigators to conduct inspections/investigations in the Anchorage, Mat-Su and Kenai Peninsula areas of the state where most cigarette retail establishments are located. Investigators must be able to respond to complaints of unstamped product quickly and perform unscheduled inspections of retail establishments on an ongoing basis. Contractual costs also include leasing office space and providing phone service for 6 additional employees and renting storage facilities for seized cigarettes and other assets. (3) Supplies - DOR estimates \$1,000 per each FTE each year (a total of \$6,000) for supplies needed to perform the duties of these positions. (4) Equipment - DOR expects equipment expense of \$8,000 per FTE (a total of \$48,000) in the first year for computers, telephones, cubicle parts, software, and other one-time purchases of office equipment needed to perform the duties of these positions.

**Revenue:** DOR estimates cigarette and tobacco products revenues to increase between \$33 and \$38 million each year. However, DOR believes these revenues will be much smaller unless we institute an aggressive investigation and enforcement program. Although we believe the provision for cigarette tax stamps, which took effect January 1, 2004, will be an effective tool in enforcement of the cigarette excise tax, its success depends upon aggressive enforcement. Even at \$1.00 per pack, the incentive for smuggling and tax evasion is great. At \$2.00 per pack, it will be much more attractive. An aggressive enforcement program will help protect the projected revenue increase.

APR 26 2004

SENATE FINANCE  
COMMITTEE

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: SB 368  
(S) Publish Date: 3/19/04

Revision: Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Public Safety  
Title: Cigarette and Tobacco Products Tax Increase RDU: Alaska State Troopers  
Sponsor: Rules Committee Component: Alaska Bureau of Alcohol and Drug Enforcement  
Requester: Governor Component No.: 2745

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	171.4	171.4	171.4	171.4	171.4	171.4
Travel	20.0	20.0	20.0	20.0	20.0	20.0
Contractual	15.0	15.0	15.0	15.0	15.0	15.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>206.4</b>	<b>206.4</b>	<b>206.4</b>	<b>206.4</b>	<b>206.4</b>	<b>206.4</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1007 Interagency Receipts	206.4	206.4	206.4	206.4	206.4	206.4
<b>TOTAL</b>	<b>206.4</b>	<b>206.4</b>	<b>206.4</b>	<b>206.4</b>	<b>206.4</b>	<b>206.4</b>

Estimate of any current year (FY2004) cost: 0.0  
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill will increase the cigarette tax from \$1 per pack of twenty cigarettes to \$2 per pack and the tobacco products tax (OTP) from 75% to 100% of the wholesale cost. This bill also provides for the Department of Public Safety to seize and dispose of assets used in illegal activities related to tobacco product statutes.

The Department of Public Safety at the request of the Department of Revenue, Tax Division will provide investigative support through a reimbursable services agreement (RSA). This fiscal note requests funding for the equivalent of two full-time investigators, field travel, training, communication and vehicle usage. The use of those investigative assets will be coordinated between the two agencies and reimbursed on actual cost.

Prepared by: Lieutenant Al Storey Phone 269-4532  
Division: Alaska State Troopers Date/Time 1/9/04 3:45 PM  
Approved by: Commissioner William Tandeske Date 1/9/2004  
Agency: Department of Public Safety

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 24, 2004

**SUBJECT:** "Presumptive retail cost" in CSSB 368(FIN), Draft Version "I"

**TO:** Senator Gary Wilken  
Attn: Sheila Peterson

**FROM:** Kathryn L. Kurtz *mf for KK*  
Legislative Counsel

REPORTED OUT

APR 26 2004

SENATE FINANCE  
COMMITTEE

Enclosed is a draft CS requested by Robin Paul; Ms. Paul has asked us to deliver this CS to you.

As I discussed with your staff and Mr. Mike Barnhill of the Attorney General's office yesterday on the telephone, this draft contains the potential for future confusion. It repeals the definitions of "presumptive wholesale cost" and "presumptive retail cost" in section 27, but it still uses the phrase "presumptive wholesale and presumptive retail cost" three times in sec. 24, AS 43.50.760(b). We recommend substituting a different phrase in this section to more closely correspond to the repeal and related changes in AS 43.50.800, such as "actual cost as determined by the department under AS 43.50.800."

If you do not wish to abandon the use of the phrase "presumptive wholesale and presumptive retail cost" in AS 43.50.760(b), we would recommend at least inserting a reference to AS 43.50.800, since the terms are no longer defined in the definition section and the user of the statutes might not otherwise refer to AS 43.50.800.

We have not changed sec. 24 from the  $\nabla$  version, at the instruction of Ms. Peterson reflecting the wishes of Mr. Barnhill, but we encourage you to consider making the changes noted above for the sake of clarity.

KLK:med  
04-453.med

Enclosure

Submitted after bill reported  
from Committee - to be  
addressed in House

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: SB368CS-DPS-ABADE-4-26-04  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Public Safety  
Title Act relating to tax on cigarettes RDU Alaska State Troopers  
Component Bureau of Alcohol and Drug Enforce.  
Sponsor (S) Rules  
Requester S. Finance Component No. 2745  
Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	171.4	171.4	171.4	171.4	171.4	171.4
Travel	20.0	20.0	20.0	20.0	20.0	20.0
Contractual	15.0	15.0	15.0	15.0	15.0	15.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>206.4</b>	<b>206.4</b>	<b>206.4</b>	<b>206.4</b>	<b>206.4</b>	<b>206.4</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)	206.4	206.4	206.4	206.4	206.4	206.4
<b>TOTAL</b>	<b>206.4</b>	<b>206.4</b>	<b>206.4</b>	<b>206.4</b>	<b>206.4</b>	<b>206.4</b>

Estimate of any current year (FY2004) cost: 0.0  
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
This legislation will increase the cigarette tax from \$1 per pack of twenty to \$2 per pack and the other tobacco products (OTP) tax from 75% to 100% of the wholesale costs. The Department of Public Safety (DPS) will be required to seize and dispose of assets used in illegal activities related to tobacco product statutes.  
  
The DPS will provide investigative support to the Department of Revenue (DOR) through a reimbursable services agreement (RSA). The DPS estimates the services of two full-time investigators and associated field travel, training, communication and vehicle usage will be needed to implement this legislation. The use of these investigative assets and any, as yet unidentified expenses associated with cigarette tax stamp enforcement, will be coordinated between the two agencies and reimbursed at actual cost.  
  
The tobacco tax revenues used to fund this enforcement effort are included in the contractual services line of the DOR's fiscal note.

added from f/n #2

Prepared by: Lt. Al Storey Phone 907-269-4532  
Division: Alaska State Troopers Date/Time 4/26/04 11:43 AM  
Approved by: Commissioner William Tandeske Date 4/26/2004  
Agency: Department of Public Safety

Sheila-

What do you  
want to do about  
SB 368 changes  
recommended by  
Kathryn Kurtz?  
Want me to hold  
bill here?

No - we will pass  
Kathryn Kurtz ~~amendment~~  
memo  
along + let another cmte  
handle it - there is

disagreement among  
lawyers :



Official Business

# Alaska State Senate

## Senate Finance Committee

Mail Stop 3100  
State Capitol  
Juneau, Alaska 99801-1182

### FAX COVER SHEET

DATE: 26 April 2004 TIME: 10:40 am

TO: Legal Services

NUMBER OF PAGES, INCLUDING COVER SHEET: 1

FROM: MINDY ROWLAND  
SENATE FINANCE COMMITTEE SECRETARY  
PHONE: 465-4935  
FAX: 465-2187

NOTES: Final Please  
CS SB 368 (FIN) 23-GS2116\I  
Kurtz 4/23/04

no changes

Call if any questions

*The Mundy*



Official Business

# Alaska State Senate

## Senate Finance Committee

Mail Stop 3100  
State Capitol  
Juneau, Alaska 99801-1182

### FAX COVER SHEET

DATE: 4/23/04 TIME: 3:50 PM

TO: LEGAL

NUMBER OF PAGES, INCLUDING COVER SHEET: 3

FROM: ROBIN PAUL  
SENATE FINANCE CMTE. ASST. SECRETARY  
PHONE: 465-2618  
FAX: 465-2187

NOTES: 2 Corrections to CS SB 368 (FIN)  
work draft 23-G-32116/D

Pls. make the Two attached corrections  
& provide another work draft. (This bill will  
be heard again Monday 4/26/04 at 9 AM)

*Thank You!*  
*Robin*

2 changes:

P. 4, line 22 change "distributor"  
to "licensee"

P. 3, line 23, change (i) to (g)

*Any Questions*  
*Please Call!*  
*Thanks!*

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

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

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

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

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

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

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

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

16 (2) "licensee" means a distributor or buver who is  
17 (A) licensed under AS 43.50.320; or  
18 (B) exempted by AS 43.50.320(g) from licensing under  
19 AS 43.50.320;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LYNNE  
4/22/04  
2:25pm

from  
Corrections  
2

4/26/04



Robin-NewCS "I"  
for SB368 - I  
asked legal to  
send it to me on  
Saturday

23-GS2116D  
Kurtz  
4/22/04

CS FOR SENATE BILL NO. 368(FIN)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:  
Referred:

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

A BILL  
FOR AN ACT ENTITLED

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

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

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

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

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

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

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



1 purchase stamps under this chapter shall be licensed as a wholesaler-distributor

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

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

6 (2) refusal to issue the license.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (2) "licensee" means a distributor or buyer who is  
17 (A) licensed under AS 43.50.320; or  
18 (B) exempted by AS 43.50.320(g) from licensing under  
19 AS 43.50.320;

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

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

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

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

*Numbered  
as  
Section  
11  
in  
Amend #1*

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Sec.  
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Amend #2*

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Sec 13  
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Amend #  
2*

*(i) is missing due to  
drafting change*

*original language  
RESUB*

L

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Amend #7

Section deleted per Amend #7

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- (1) the seizure is incident to a valid arrest or search;
- (2) the property subject to seizure is the subject of a prior judgment in favor of the state; or
- (3) there is probable cause to believe that the property is subject to forfeiture under (a) of this section; property seized under this paragraph may be held for not more than 48 hours unless an order of forfeiture is issued by the court before the end of that time period.

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

- (d) Property subject to forfeiture under (a) of this section may be forfeited
  - (1) upon conviction of a person for a violation of AS 43.50.640 or 43.50.650; or
  - (2) upon judgment by the superior court in a proceeding in rem that the property was used in a manner subjecting it to forfeiture under (a) of this section.

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

- (1) was not a party to the violation;
- (2) did not have actual knowledge or reasonable cause to believe that the property was used or was to be used in violation of the law; and
- (3) did not have actual knowledge or reasonable cause to believe that the person committing the violation had

*retained not deleted as requested in Amendment # 5*

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- (A) a criminal record for violating this chapter; or
- (B) committed other violations of this chapter.

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

- (1) was not a party to the violation subjecting the property to forfeiture;
- (2) did not have actual knowledge or reasonable cause to believe that the property was used or was to be used in violation of the law; and
- (3) did not have actual knowledge or reasonable cause to believe that the person committing the violation had *retained, not deleted as specified in Amend #5*

- (A) a criminal record for violating this chapter; or
- (B) committed other violations of this chapter.

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

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

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

1 (1) the aircraft to the state;

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

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

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

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

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

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

11 (2) the members of the family

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

} #1  
-  
language to be changed

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

*Language changed to b*

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

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

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

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

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

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

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

Amend.  
#5  
language  
is not  
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have due  
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Amend  
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language  
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Official Business

# Alaska State Senate

## Senate Finance Committee

Mail Stop 3100  
State Capitol  
Juneau, Alaska 99801-1182

### FAX COVER SHEET

DATE: 4/21/04 TIME: 11:30 am

TO: LEGAL

NUMBER OF PAGES, INCLUDING COVER SHEET: 14

FROM: ROBIN PAUL  
SENATE FINANCE CMTE. ASST. SECRETARY  
PHONE: 465-2618  
FAX: 465-2187

NOTES: Need A Finance Committee  
CS DRAFT pls.  
to SB 368 Version 23-G-52116/A  
with six attached Amendments  
Incorporated as follows:  
Amendment #2  
Amendment #3  
Amendment #4  
Amendment #5  
Amendment #6  
Amendment #7

*Thank You!  
Robin*

SENATE FINANCE  
COMMITTEE

ADOPTED

Amendment Number: #5

Bill Number: SB 368

Sponsor: Wilken Date: 4/21/04

Logged In By: Robin

23-GS2116A.3  
Kurtz  
4/21/04

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR WILKEN

TO: SB 368

1 Page 1, line 14, following "state,":

2 Insert "who"

3

4 Page 1, line 14, following "and":

5 Insert "who"

6

7 Page 2, line 1, following "chapter":

8 Delete ", must"

9 Insert "shall"

10

11 Page 2, line 3:

12 Delete "disrtibutions"

13 Insert "distributions"

14

15 Page 2, line 12, following "43.50.700,":

16 Insert "who"

17

18 Page 2, line 13, following "and":

19 Insert "who"

20

21 Page 2, line 26:

22 Delete "brings or causes to be brought cigarettes"

23 Insert "brings cigarettes or causes cigarettes to be brought [CIGARETTES]"

23-GS2116\A.3

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2 Page 3, line 1:

3 Delete "per cent"

4 Insert "percent [PER CENT]"

5

6 Page 3, line 5, following "AS 43.50.010<sub>4</sub>":

7 Delete "but"

8 Insert "and"

9

10 Page 3, line 24, following "stamps":

11 Insert " : "

12

13 Page 3, lines 24 - 25:

14 Delete "[AND ALL RISKS OF POSSIBLE LOSS OR DAMAGE WHILE IN  
15 TRANSIT]."

16

17 Page 3, line 30, following "them":

18 Delete " ; "

19 Insert "[AND ALL RISKS OF POSSIBLE LOSS OR DAMAGE WHILE IN  
20 TRANSIT]."

21

22 Page 4, line 5:

23 Delete "(i)"

24 Insert "(A)"

25

26 Page 4, line 7:

27 Delete "(ii)"

28 Insert "(B)"

29

30 Page 4, line 8:

31 Delete "it"

23-GS2116A.3

- 1           Insert "the licensee"
- 2
- 3   Page 5, line 21:
- 4           Delete "no"
- 5           Insert "not"
- 6
- 7   Page 5, line 28, following "and":
- 8           Insert ","
- 9
- 10   Page 5, line 29, following "forfeiture":
- 11          Insert ","
- 12
- 13   Page 5, line 31:
- 14          Delete "no"
- 15          Insert "a"
- 16          Following "is":
- 17                 Insert "not"
- 18
- 19   Page 6, line 12:
- 20          Delete "had no"
- 21          Insert "did not have"
- 22
- 23   Page 6, line 14:
- 24          Delete "had no"
- 25          Insert "did not have"
- 26
- 27   Page 6, line 15:
- 28          Delete "had"
- 29
- 30   Page 6, line 16, following "(A)":
- 31          Insert "had"

23-GS2116A.3

- 1
- 2 Page 6, line 19:
- 3 Delete the second occurrence of "to"
- 4 Insert "of"
- 5
- 6 Page 6, line 22, following "that":
- 7 Insert "the person"
- 8
- 9 Page 6, line 23, following "(1)":
- 10 Delete "the person"
- 11
- 12 Page 6, line 25:
- 13 Delete "had no"
- 14 Insert "did not have"
- 15
- 16 Page 6, line 27:
- 17 Delete "had no"
- 18 Insert "did not have"
- 19
- 20 Page 6, line 28:
- 21 Delete "had"
- 22
- 23 Page 6, line 29, following "(A)":
- 24 Insert "had"
- 25
- 26 Page 6, line 31:
- 27 Delete "no"
- 28 Insert "not a"
- 29
- 30 Page 7, line 12, following "43.50.650":
- 31 Insert ",,"

23-GS2116A.3

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2 Page 7, line 13:

3 Delete "the court,"

4

5 Page 7, line 14:

6 Delete "and"

7 Following the second occurrence of "section,":

8 Insert "the court"

9

10 Page 7, line 24:

11 Delete "it"

12 Insert "the vehicle or vessel"

13

14 Page 8, line 4:

15 Delete ", "

16

17 Page 8, line 8:

18 Delete "As used in"

19 Insert "In"

20

21 Page 8, line 17, following "AS 43.50.190":

22 Insert ", as amended by sec. 8 of this Act,"

23

24 Page 8, line 25:

25 Delete "no"

26 Insert "not"

27

28 Page 8, line 30:

29 Delete "heading"

30 Insert "catchline"

SENATE FINANCE COMMITTEE  
4 / 21 / 2003 COMMITTEE ACTION

Bill Number	SB 368		
Amendment	# 5		
Motion			
<u>Motion by</u>	Wilken		
<u>Objection by</u>			
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Stevens			
Senator Bunde			
Senator Dyson			
Senator Hoffman			
Senator Olson			
Co-Chair Green			
Co-Chair Wilken			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	ADOPTED		

SENATE FINANCE  
COMMITTEE  
Amendment Number: #6  
Bill Number: SB 368  
Sponsor: Wilken Date: 4/21/04  
Logged In By: Robin

ADOPTED

4/20/04

J. Bales

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR WILKEN

TO: SB 368

1 Page 8, following line 9:

2 Insert new bill sections to read:

3 **\*\* Sec. 15.** AS 43.50.710 is amended to add a new subsection to read:

4 (c) Nothing in this section prohibits a manufacturer from offering promotions to a  
5 wholesaler or a retailer provided the wholesale promotion is the same for all participating  
6 wholesalers and the retail promotion is the same for all participating retailers.

7 **\* Sec. 16.** AS 43.50.770 is amended to read:

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

12 **\* Sec. 17.** AS 43.50.800 is repealed and reenacted to read:

13 (a) For purposes of AS 43.50.710—43.50.849, actual cost is presumed to be

14 (1) for wholesalers, the presumptive wholesale cost as determined by the  
15 department plus the costs of doing business which is presumed to be four and  
16 one-half percent of the presumptive wholesale cost; for purposes of this section  
17 presumptive wholesale cost is manufacturer's list price, less trade discounts,  
18 plus the full face value of all cigarette taxes;

19 (2) for retailers, the presumptive retail cost is the presumptive wholesale cost plus  
20 the costs of doing business which is presumed to be six percent of the presumptive  
21 wholesale cost.

1 (b) (1) A wholesaler or retailer shall request prior approval from the department to  
2 establish an actual cost that is less than presumed in (a) of this section. The  
3 department may grant such approval only upon provision of proof satisfactory to  
4 the department regarding the wholesaler's or retailer's presumptive costs set forth  
5 in (a) of this section. Approval for cigarette sales at less than the actual cost  
6 authorized under this subsection may not be granted for a period longer than one  
7 year.

8 (2) In making the determinations under this subsection the department

9 (i) with respect to the presumptive wholesale cost or presumptive retail cost,  
10 may consider the costs reflected on the actual invoice, but may not consider  
11 cash discounts;

12 (ii) with respect to the wholesaler's or retailer's presumed costs of doing  
13 business, may consider the standards and methods of accounting regularly  
14 employed, and must include labor costs, rent, depreciation, selling costs,  
15 maintenance of equipment, delivery costs, all types of licenses, taxes,  
16 insurance, advertising, preopening expenses, provision for impaired assets and  
17 closing costs, interest expense, and provision for merger and restructuring  
18 expenses. The department shall implement regulations to determine the  
19 wholesaler's and retailer's costs of doing business for purposes of this section.  
20

21 \* Sec. 17. AS 43.50.790(a)(3), and AS 43.50.849(1), (6), and (7) are repealed."  
22

23 Renumber following bill sections accordingly.

SENATE FINANCE COMMITTEE  
4/21/2005 ~~COMMITTEE ACTION~~

Bill Number	SB 3128		
Amendment	#10		
Motion	to adopt		
<u>Motion by</u>	Wilken		
<u>Objection by</u>	✓ Wilken		
<u>Removed</u>	✓		
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Stevens			
Senator Bunde			
Senator Dyson			
Senator Hoffman			
Senator Olson			
Co-Chair Green			
Co-Chair Wilken			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	ADOP TED		

SENATE FINANCE  
COMMITTEE

Amendment Number: # 2

Bill Number: SB 368

Sponsor: Bunde Date: 4/20/04

Logged In By: Robin

ADOPTED  
4/21

4/15/04

J. Bales

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR BUNDE

TO: SB 368

1 Page 3, line 16:

2 Delete "or"

3 Insert "[OR]"

4

5 Page 3, line 18, following "retailer":

6 Insert "or to an individual for personal consumption; or

7 (4) brings, or causes to be brought, a tobacco product into the state

8 from outside the state for personal consumption"

9

10 Page 3, following line 18:

11 Insert new bill sections to read:

12 "\* Sec. 10. AS 43.50.320 is repealed and reenacted to read:

13 **Sec. 43.50.320. Licensing.** (a) Except as provided in (i) of this section, a person

14 must be licensed as a distributor by the department if the person engages in an activity

15 described in AS 43.50.300(1) – (3) or as a buyer if the person engages in an activity

16 described in AS 43.50.300(4).

1 (b) The department, upon application and payment of a fee of \$50, shall issue a  
2 license for one year to a person who applies for a distributor license under (a) of this  
3 section.

4 (c) The department, upon application and payment of a fee of \$25, shall issue a  
5 license for one year to a person who applies for a buyer license under (a) of this section.

6 (d) The department may refuse to issue a license under this section if there is  
7 reasonable cause to believe the information submitted in the application is false or  
8 misleading and is not made in good faith.

9 (e) A distributor license issued under this section must include the name and  
10 address of the licensee, the type of business to be conducted, and the year for which the  
11 license is issued.

12 (f) The department may renew a distributor license issued under this section for a  
13 fee of \$50.

14 (g) The department may renew a buyer license issued under this section for a fee  
15 of \$25.

16 (h) The department may suspend, revoke, or refuse to renew a license issued under  
17 this section as provided in AS 43.50.070.

18 (i) A license required by this section is in addition to any other license required by  
19 law, except that a person who is licensed under AS 43.50.010 – 43.50.180 is exempt from  
20 the licensing requirements of this section.

21 (j) A license issued under this section is not assignable or transferable, except that  
22 in the case of death, bankruptcy, receivership, or incompetency of the licensee, or if the

1 business of the licensee is transferred to another by operation of law, the department may  
2 extend the license for a limited time to the executor, administrator, trustee, receiver, or  
3 the transferee.

4 \*Sec. 11. AS 43.50.330(a) is amended to read:

5 **AS 43.50.330. Returns.** (a) On or before the last day of each calendar month, a  
6 licensee shall file a return with the department. The return must state the number or  
7 amount of tobacco products sold or imported for personal consumption by the licensee  
8 during the preceding calendar month, the selling or purchase price of the tobacco  
9 products, and the amount of tax imposed on the tobacco products.

10 \* Sec. 12. AS 43.50.390(2) is amended to read:

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

12 (A) licensed under AS 43.50.320; or

13 (B)exempted by AS 43.50.320(i)[(g)] from licensing under AS 43.50.320;

14 \* Sec. 13. AS 43.50.390 is amended by adding a new subsection to read:

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

17

18 Renumber the following bill sections accordingly.

SENATE FINANCE COMMITTEE  
4 / 21 / 2004 COMMITTEE ACTION

Bill Number	SB 368		
Amendment	# 2		
Motion	to adopt		
<u>Motion by</u>	Bunde		
<u>Objection by</u>	(Green)		
<u>Removed</u>	✓		
<u>Second Objection by</u>			
<u>Committee Member</u>	<u>Y</u>	<u>Vote</u>	<u>N</u>
Senator Olson			
Senator Stevens			
Senator Bunde			
Senator Dyson			
Senator Hoffman			
Co-Chair Green			
Co-Chair Wilken			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	AD		

Amendment Number: # 3

Bill Number: SB 368

23-GS2116A.2

Sponsor: Wilken Date: 4/21/04

Kurtz

Logged In By: Robin

4/20/04

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR WILKEN

TO: SB 368

1 Page 3, following line 30, insert a new bill section to read:

2 "\* Sec. 11. AS 43.50.550(b) is amended to read:

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

6 (1) 200 percent of the maximum dollar amount of allowed monthly  
7 purchases under this section ; or

8 (2) 100 percent of the maximum dollar amount of allowed monthly  
9 purchases under this section if the licensee

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

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

15

16 Renumber the following bill sections accordingly.

SENATE FINANCE COMMITTEE  
4 / 21 / 2005 COMMITTEE ACTION

Bill Number	SB 368		
Amendment	#3		
Motion	to adopt		
<u>Motion by</u>	Wilken		
<u>Objection by</u>	✓ Wilken		
<u>Removed</u>	✓		
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Stevens			
Senator Bunde			
Senator Dyson			
Senator Hoffman			
Senator Olson			
Co-Chair Green			
Co-Chair Wilken			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	ADOPTE		

SENATE FINANCE  
COMMITTEE

ADOPTED

Amendment Number: # 7

Bill Number: SB 368

Sponsor: Wilken Date: 4/21/04

Logged In By: Robin

23-GS2116A.5  
Kurtz  
4/21/04

AMENDMENT

OFFERED IN THE SENATE

TO: SB 368

1 Page 4, lines 24 - 27:

2 Delete all material.

3

4 Renumber the following bill sections accordingly.

5

6 Page 4, line 28:

7 Delete "AS 43.50.620 is repealed and reenacted"

8 Insert "AS 43.50 is amended by adding a new section"

9

10 Page 4, line 29:

11 Delete "Sec. 43.50.620"

12 Insert "Sec. 43.50.625"

13

14 Page 7, line 30:

15 Delete "if"

16

17 Page 7, lines 30 - 31:

18 Delete "would not be entitled to remission, they"

19

20 Page 8, lines 27 - 31:

21 Delete all material.

22

23 Renumber the following bill section accordingly.

**LEGAL SERVICES****DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mall Stop 3101State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 320**MEMORANDUM**

April 21, 2004

**SUBJECT:** Forfeiture Provision of SB 368  
(Work Order No. 23-GS2116(A))

**TO:** Senator Gary Wilken  
Attn: Sheila Peterson

**FROM:** Kathryn L. Kurtz *KL*  
Legislative Counsel

*Amendment  
#7*

Enclosed is an amendment with recommended changes to the forfeiture provisions of SB 368. These changes are intended to make the forfeiture provisions relating to cigarettes easier to locate and understand than they are in the current version of SB 368.

**Reusing Numbers**

In the current version of SB 368, sec. 13 takes the content of the current AS 43.50.620, which provides for forfeiture of seized cigarettes, and renumbers it as AS 43.50.610(b). Sec. 16 directs the revisor to change the catchline of AS 43.50.610 accordingly. Sec. 14 re-uses the AS 43.50.620 section number to cover forfeiture of property other than cigarettes.

As a rule, we do not re-use section numbers, because it can cause confusion for readers of the statutes later on who see a citation to a statute on one subject, and then look up that section only to find that it addresses a different subject entirely. Amendment A.5 would leave AS 43.50.610 and 43.50.620 as is, and assign a new section number, AS 43.50.625, to the new forfeiture provision.

**Clarifying Village Family Forfeiture Provision**

To make the material on page 7, line 30 - page 8, line 1 easier to read, the amendment deletes some unnecessary words. This change is strictly to make the provision read more smoothly; I do not believe it changes the effect of the provision.

KLK:mdr  
04-173.mdr

Enclosure

SENATE FINANCE COMMITTEE  
4 / 2 / 2005 COMMITTEE ACTION

2<sup>nd</sup>  
 Motion  
 on this  
 Amendment

Bill Number	SB 368		
Amendment	#7		
Motion	to adopt		
<u>Motion by</u>	Wilken		
<u>Objection by</u>	Green		
<u>Removed</u>	✓		
<u>Second Objection by</u>			
<u>Committee Member</u>	<u>Y</u>	<u>Vote</u>	<u>N</u>
Senator Hoffman			
Senator Olson			
Senator Stevens			
Senator Bunde			
Senator Dyson			
Co-Chair Green			
Co-Chair Wilken			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	ADOPTED		

SENATE FINANCE COMMITTEE  
4/21/2003 COMMITTEE ACTION

1st  
 Motion  
 on this  
 Amendment

Bill Number	SB 3128		
Amendment	# 7		
Motion	to adopt		
<u>Motion by</u>	Wilken		
<u>Objection by</u>	Wilken		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Hoffman			
Senator Olson			
Senator Stevens			
Senator Bunde			
Senator Dyson			
Co-Chair Green			
Co-Chair Wilken			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>			

WITHDRAWN

SENATE FINANCE  
COMMITTEE

ADOPTED

Amendment Number: #4  
Bill Number: SB 368  
Sponsor: Wilken Date: 4/21/04  
Logged In By: Robin

23-GS2116A.1  
Kurtz  
4/20/04

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR WILKEN

TO: SB 368

1 Page 8, line 17, following "AS 43.50.190":

2 Insert ", as amended by sec. 8 of this Act,"

3

4 Page 8, line 25:

5 Delete "no later than 30 days after the effective date of this Act"

6 Insert "in six sequential monthly installments. The first installment shall be paid not

7 later than the last day of the month in which this Act takes effect"

SENATE FINANCE COMMITTEE  
4 / 21 / 2003 COMMITTEE ACTION

Bill Number	SB 368		
Amendment	#4		
Motion	to adopt		
<u>Motion by</u>	Wilken		
<u>Objection by</u>	Wilken		
<u>Removed</u>	✓		
<u>Second Objection by</u>			
<u>Committee Member</u>	<u>Y</u>	<u>Vote</u>	<u>N</u>
Senator Olson			
Senator Stevens			
Senator Bunde			
Senator Dyson			
Senator Hoffman			
Co-Chair Green			
Co-Chair Wilken			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	ADOP TED		

Not OFFERED  
SENATE FINANCE  
COMMITTEE  
Amendment Number: #1  
Bill Number: SB 368  
Sponsor: Wilken Date: 4/5/04  
Logged In By: Mindy

AMENDMENT

To: SB 368

Page 8, following line 9:

Insert new bill sections to read:

Sponsored by  
Senator Wilken by request

**\*\* Sec. 15.** AS 43.50.710 is amended by adding a new subsection to read:

(e) A wholesaler or retailer may not sell cigarettes at less than the presumptive cost to the wholesaler or retailer unless the wholesaler or retailer receives prior approval from the department. The department may not grant prior approval for sale of cigarettes at less than the presumptive cost as described under this subsection, unless the wholesaler or retailer provides proof satisfactory to the department that the wholesaler's or retailer's actual cost is less than the presumptive cost for that wholesaler or retailer. Approval for cigarette sales at less than the presumptive cost authorized under this subsection may not be granted for a period longer than one year.

**\* Sec. 16.** AS 43.50.800(a) is amended to read:

(a) For purposes of AS 43.50.710 - 43.50.849,

(1) the basic cost of cigarettes is equal to the [LOWER OF THE TWO FOLLOWING AMOUNTS]:

(A) [THE] invoice cost of cigarettes to the wholesaler [OR RETAILER], less any off-invoice allowance required to be passed on to the retailer [ALL TRADE DISCOUNTS INCLUDING CUSTOMARY DISCOUNTS FOR CASH ACTUALLY TAKEN, PLUS THE FULL FACE VALUE OF ANY TAX THAT MAY BE REQUIRED BY THIS CHAPTER IF NOT ALREADY INCLUDED IN THE INVOICE COST OF THE CIGARETTES TO THE WHOLESALER OR RETAILER]; and [OR]

(B) invoice cost of cigarettes to the retailer [THE LOWEST REPLACEMENT COST OF CIGARETTES TO THE WHOLESALER OR RETAILER, WITHIN 30 DAYS BEFORE THE DATE OF SALE, IN THE QUANTITY LAST PURCHASED, WITHIN OR BEFORE THE 30-DAY PERIOD, LESS ALL TRADE DISCOUNTS INCLUDING CUSTOMARY DISCOUNTS FOR CASH ACTUALLY TAKEN, PLUS THE FULL FACE VALUE OF ANY TAX THAT MAY BE REQUIRED BY THIS CHAPTER IF NOT ALREADY INCLUDED IN THE INVOICE COST OF THE CIGARETTES TO THE WHOLESALER OR RETAILER];

(2) the actual cost to the wholesaler is equal to the presumptive cost determined by the department under (b) of this section;

(3) [IN THE ABSENCE OF PROOF OF A LESSER OR HIGHER COST OF DOING BUSINESS BY THE WHOLESALER MAKING THE SALE,] the cost of doing business by the wholesaler is presumed to be four and one-half percent of the basic cost of the cigarettes to the wholesaler; a fraction of a cent used in computing the cost of doing business shall be rounded off to the next highest cent;

(4) the actual cost to the retailer is equal to the lower of

(A) the basic cost of the cigarettes plus the cost of doing business by the retailer; the cost of doing business may be proven by regular [THE] standards and methods of accounting [REGULARLY EMPLOYED BY THE RETAILER] and must include labor costs, rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance, and advertising; or

(B) the presumptive cost determined by the department under (b) of this section;

(5) in the absence of proof of a lesser or higher cost of doing business by the retailer making the sale, the cost of doing business by the retailer is presumed to be six percent of the basic cost of cigarettes to the retailer; a fraction of a cent used in computing the cost of doing business shall be rounded off to the next highest cent.”

Renumber the following bill sections accordingly.

SENATE FINANCE COMMITTEE **FAILED**

Amendment Number: # 8  
Bill Number: SB 368  
Sponsor: Hoffman Date: 4/2/04  
Logged In By: Robin

AMENDMENT

OFFERED TO SENATE FINANCE  
TO: SB 368

BY: Senator Hoffman

ADD INTENT LANGUAGE

It is the intent of Legislature that twenty percent of the funds collected under this legislation is allocated to education/cessation programs.

SENATE FINANCE COMMITTEE  
4 12/1/2009 COMMITTEE ACTION

Bill Number	SB 3108		
Amendment	#58		
Motion	to adopt		
<u>Motion by</u>	Hoffman		
<u>Objection by</u>	Hoffman		
<u>Removed</u>	✓		
<u>Second Objection by</u>	Green		
<u>Committee Member</u>	<u>Y</u>	<u>Vote</u>	<u>N</u>
Senator Olson	✓		
Senator Stevens	✓		
Senator Bunde			~✓
Senator Dyson	—		—
Senator Hoffman	✓		
Co-Chair Green			✓
Co-Chair Wilken			✓
<u>Tally</u>			
Yea	3		
Nay	3		
Absent			
<u>MOTION</u>	FAILS		

WITHDRAWN  
SENATE FINANCE

Conceptual COMMITTEE  
Amendment Number: # 9

Bill Number: SB 368

Sponsor: GREEN Date: 4/21/04

Locked In By: Robin

Conceptual  
Amendment

Sponsored by Green

Increase tax to \$10 per  
pack  
tax and call it

a punitive tax.

Withdrawn

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

### Tax Division

FRANK MURKOWSKI, GOVERNOR

□ State Office Building  
PO Box 110420  
Juneau, AK 99811-0420  
907.465.2320

☒ 550 W Seventh, Suite 500  
Anchorage, AK 99501-3566  
907.269.6620

[www.tax.state.ak.us](http://www.tax.state.ak.us)

## STATE TOBACCO TAXES & REVENUES

### Analysis of Tobacco Taxes Per Fund Before and After Proposed Increases

#### Tax Components

<b>Cigarette Tax</b>	<u>Current Law</u>	<u>With SB 368</u>
Number of Taxable Cigarettes <sup>(1)</sup>	804,000,000	737,000,000
AS 43.50.090(a) – School Fund	\$.76 (38 mills)	\$.76 (38 mills)
AS 43.50.190(a) – General Fund	\$.24 (12 mills)	\$1.24 (62 mills)
<b>Other Tobacco Products Tax</b>		
Wholesale price of tobacco products <sup>(2)</sup>	\$8,933,333	\$8,793,749
AS 43.50.300 – General Fund	75% of wholesale price	100% of wholesale price

#### Revenue Components (Annual Basis)\*

<b>Cigarette Tax</b>	<u>Current Law</u>	<u>With SB 368</u>
AS 43.50.090(a) – School Fund	\$30.6 million	\$28 million
AS 43.50.190(a) – General Fund	\$9.6 million	\$45.7 million
<b>Other Tobacco Products Tax</b>		
AS 43.50.300 – General Fund	\$6.7 million	\$8.7 million
<b>Total Tobacco Taxes Revenue</b>	<b>\$46.9 million</b>	<b>\$82.4 million</b>

<sup>(1)</sup>Assumes an 8.3% decrease in total cigarette consumption.

<sup>(2)</sup>Assumes a 1.5% decrease in total other tobacco products consumption.

\*Sources: Fall 2003 Revenue Sources Book (Fy 2005 Projected)  
DOR SB 368 Fiscal Note

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

### Tax Division

FRANK MURKOWSKI, GOVERNOR

State Office Building  
PO Box 110420  
Juneau, AK 99811-0420  
907.465.2320

550 W Seventh, Suite 500  
Anchorage, AK 99501-3566  
907.269.6620

[www.tax.state.ak.us](http://www.tax.state.ak.us)

April 1, 2004

The Honorable Tom Anderson  
House of Representatives  
Alaska State Legislature  
Alaska State Capitol  
Juneau, AK 99801-1182

Dear Representative Anderson:

Thank you for your recent inquiry regarding the enforcement of the Cigarette Sales Act. The Cigarette Sales Act prohibits distributors and retailers from selling cigarettes below cost. Cost is defined as the amount a distributor or retailer paid for the cigarettes, less trade discounts and cash discounts actually taken, as reflected on their purchase invoice, plus their cost of doing business. Cash and trade discounts can and do vary by company. Cash discounts tend to differ between distributors more than trade discounts. Cash discounts are based on volumes of cigarettes purchased and timely payment. Therefore, larger distributors are generally provided larger cash discounts.

In lieu of calculating actual cost of doing business, a distributor or retailer may sell their cigarettes at the presumptive minimum price as posted by the Tax Division. The presumptive minimum price for cigarettes sold at wholesale is the manufacturer's list price plus 4.5% of the manufacturer's list price. The presumptive minimum price for cigarettes sold at retail is the wholesale presumptive minimum price plus 6% of the wholesale presumptive minimum price. Since cash and trade discounts vary by company, the presumptive minimum prices posted by the Tax Division do not include these discounts unless they are given to all distributors or all retailers.

As stated in my letter to you dated January 28, 2004, the presumptive minimum price is not the mandated price at which cigarettes must be sold. The presumptive minimum price posted on the Tax Division's website is a guideline based on the manufacturer's list price. Wholesalers and retailers may sell below this price if they can prove that their actual cost of doing business is less than the presumptive minimum price. Since the presumptive minimum price does not include trade or cash discounts given to particular wholesalers or retailers, it is highly likely that most distributors and retailers can sell below the presumptive minimum price and not violate the

The Honorable Tom Anderson

April 1, 2004

Page 2

Cigarette Sales Act. The presumptive minimum price also does not reflect the cost of cigarettes for those businesses that opt to calculate their own actual cost of doing business.

Currently, the Department of Revenue enforces the Cigarette Sales Act on a complaint and inspection basis. Any business that sells below the minimum price as reported by the public or revealed during an inspection, will be required to support their cost of doing business. To date, the Department has investigated all complaints of businesses selling cigarettes below the presumptive minimum price and has found no violations of the Cigarette Sales Act.

Thank you again for your interest in this legislation. If you have any further questions regarding this legislation and its enforcement, please contact me at (907) 269-6628.

Sincerely,



Johanna Bales  
Revenue Auditor

cc: Steve Porter  
Deputy Commissioner  
Alaska Department of Revenue

Mike Barnhill  
Assistant Attorney General  
Alaska Department of Law

Raney Investments, Inc.  
Dba Value Liquor Stores  
3 Stores to Serve You

Value Liquor #1  
601 W. Dimond Blvd  
Anchorage, Alaska

Value Liquor #3  
7141 Jewel Lake Road  
Anchorage, Alaska

Value Liquor #4  
11580 Old Seward Hwy  
Anchorage, Alaska

April 19, 2004

To: Senators Wilken and Green and Members of the Senate Finance Committee

Our family has owned and operated small businesses in Anchorage for nearly forty years. We are writing to express our strong opposition to SB 368 which would boost Alaska's tax on cigarettes by \$1 per pack.

We believe it is unfair to single out one industry and one product for excessive taxation. Any decision to bring in new revenues to the state should be in the form of an overall fiscal plan that spreads the tax burden equitably. Our state currently has neither an income nor a sales tax, but under SB 368 Alaska would have a second highest tax rate on cigarettes in the country, much higher than other western states.

In addition, raising taxes this high will drive purchasers to the internet, where no state taxes are collected, and would hurt law abiding businesses like ours. This bill also envisions more smuggling and illegal trafficking in cigarettes, as a result of the new, high taxes. Sales will certainly decrease in the normal retail operations like ours, but you will see a huge increase in sales and purchasing in the black and gray market.

People will pay taxes if they think they are fair, but when they are unfair and designed to punish, people react differently. I think Alaskans will go to great lengths to avoid paying \$2 per pack in state taxes.

Please resist any plan to single out one product and consider the fairness of your decisions. SB 368 will have serious consequences that you should consider.

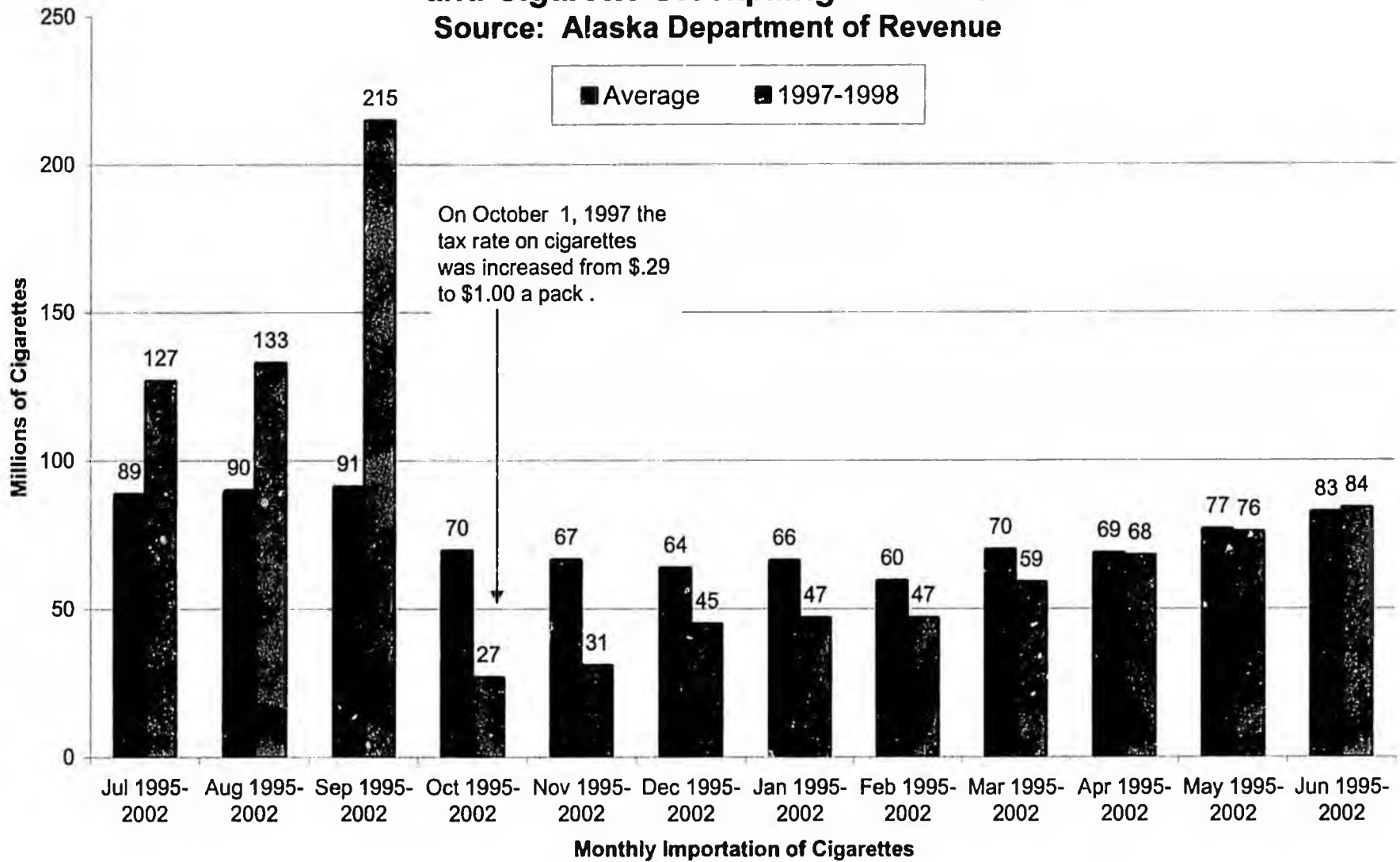
Sincerely,

Arlene and  
Arlene and Carroll Raney  
Value Liquor

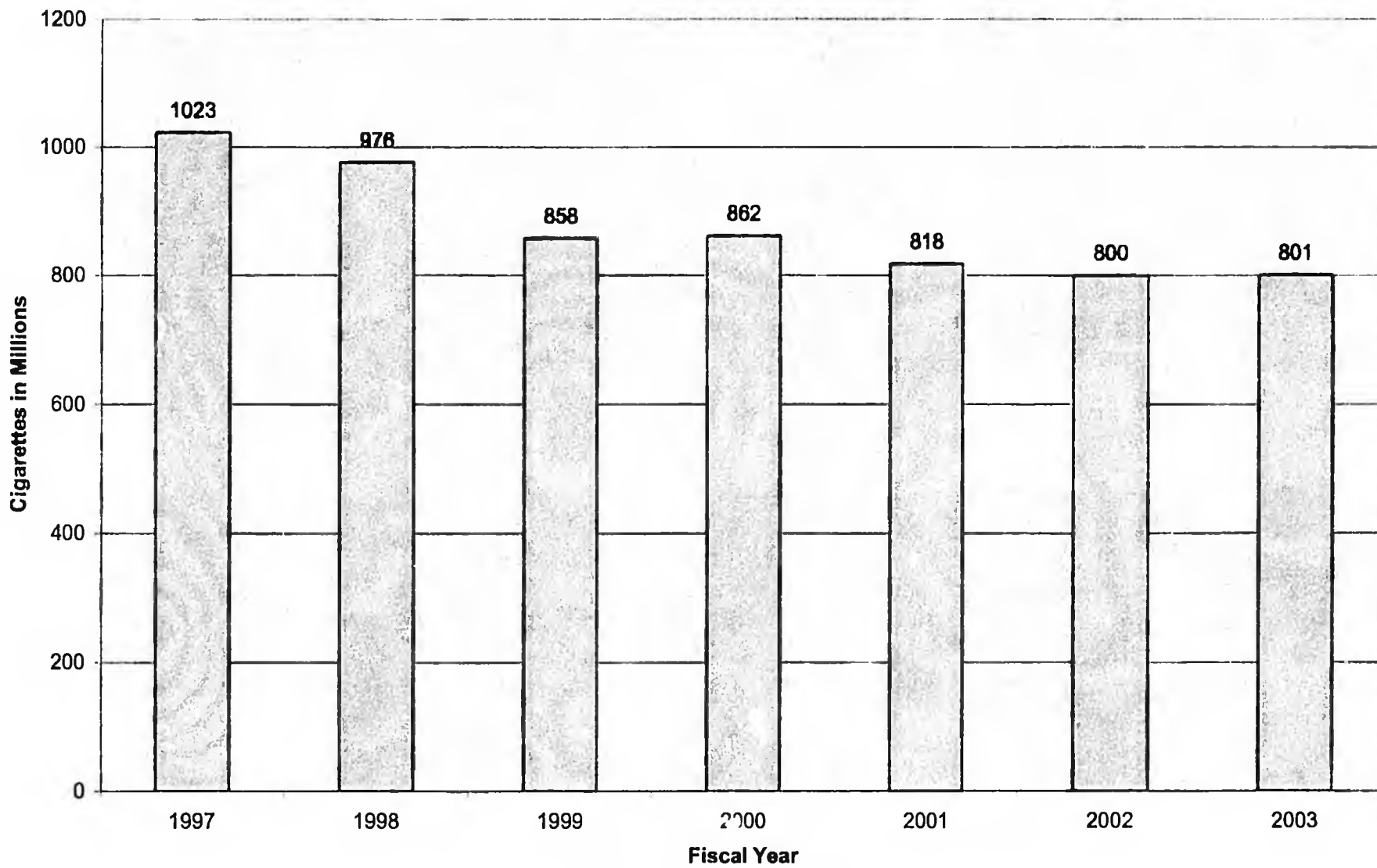


## Cigarette Importations FY 1996 - FY 2002 and Cigarette Stockpiling in FY 1998

Source: Alaska Department of Revenue



### Alaska Reported Taxable Cigarettes



*distributed by  
ms. Bales, DOR  
4/21/04*

Joel Michael, Legislative Analyst  
651-296-5057

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## **The Unfair Cigarette Sales Act**

The Minnesota Unfair Cigarette Sales Act (UCSA) requires cigarettes to be sold at minimum prices. The act has the effect of raising cigarette prices and increasing the margins of wholesalers and retailers. This information brief describes how the Minnesota UCSA works, the laws in other states, and the likely economic effects of the UCSA. An appendix also describes the law, enacted in 2000, that requires UCSA prices to be used for certain gray market cigarettes.

---

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<b>The Minnesota Unfair Cigarette Sales Act</b> .....	<b>3</b>
How the Act Works .....	3
Administrative Responsibilities under the Act .....	7
Minimum Cigarette Pricing Laws in Other States .....	10
The Purpose of the Law .....	13
Economic Effects of the Unfair Cigarette Sales Act .....	15
<b>Appendix: Special Minimum Pricing Rules for Gray Market Cigarette Sales</b> .....	<b>19</b>

This publication can be made available in alternative formats upon request. Please call 651-296-6753 (voice); or the Minnesota State Relay Service at 1-800-627-3529 (TTY) for assistance. Many House Research Department publications are also available on the Internet at: [www.house.leg.state.mn.us/hrd/hrd.htm](http://www.house.leg.state.mn.us/hrd/hrd.htm).

Provided by Mr. John Bitney, representing distributors

## Overview

**How the Act Works.** The Unfair Cigarette Sales Act (UCSA) prohibits wholesalers and retailers from selling cigarettes "below cost." The act establishes a presumption that wholesalers' costs are 4.5 percent of invoice prices and that retailers' costs are 8 percent of the invoice prices. In combination, the act presumes a 12.9 percent total mark-up. Wholesalers and retailers may use lower mark-ups, if they can prove their actual selling costs are lower. However, wholesalers must file with the Department of Revenue (DOR) before doing so. Few wholesalers do so and, by most accounts, retailers generally charge the statutory mark-ups.

**Administrative Responsibilities under the Act.** DOR is responsible for administering and enforcing the UCSA. The costs of administration are offset by fees charged to cigarette wholesalers.

**Minimum Cigarette Pricing Laws in Other States.** Nearly half of the other states (24) have similar laws, although most of these states (15) have lower percentage mark-ups. Seven states have general fair trade laws, but no separate law for cigarettes. A substantial number of states (18) do not regulate cigarette prices.

**Purpose of the law.** The stated purpose of the act is to prevent unfair competition from sales below cost. In practice, it restricts common sales techniques and much price competition. The act has been supported by anti-smoking advocates because it raises the price of cigarettes.

**Economic Effects of the UCSA.** Based on standard principles of microeconomic theory, the UCSA likely:

- Raises cigarette prices
- Reduces Minnesota sales of cigarettes
- Increases the profits of wholesalers and retailers of cigarettes, particularly smaller sellers with higher cost structures
- Is regressive, since it redistributes income from smokers to owners of wholesale and retail outlets
- Magnifies or increases the burden of federal and state cigarette excise taxes on consumers, since the statutory percentage mark-ups are based on amounts that include the excise taxes
- Has increased the cost to smokers of the legal settlements of state-filed lawsuits against cigarette manufacturers, since these settlements are generally paid by increased cigarette prices which are subject to the act's percentage mark-ups

## The Minnesota Unfair Cigarette Sales Act

### How the Act Works

The Minnesota Unfair Cigarette Sales Act is a “fair trade” law that sets minimum permissible prices for wholesale and retail sales of cigarettes. The purpose of the act, according to its terms, is to prevent wholesalers and retailers from selling cigarettes below cost and, thus, to “have the intent or effect of injuring a competitor, destroying or lessening competition[.]”<sup>1</sup> Selling below cost, according to the act’s purpose statement, is “an unfair and deceptive business practice” and “an unfair method of competition.”<sup>2</sup>

### **Minimum prices of cigarettes under the act are determined under a series of percentage mark-ups of manufacturers’ or wholesalers’ prices.**

The act specifies the minimum prices for cigarettes under a series of percentage mark-ups. The following chart shows how the calculations are made. These percentages are presumptions; a retailer or wholesaler may deviate from them if its actual costs are lower. However, a wholesaler must pre-file documentation with DOR before charging based on lower actual costs.<sup>3</sup> Retailers are not required to pre-file, but the act provides that actual costs are determined by cost surveys.<sup>4</sup> These procedures are discussed in more detail below.

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<sup>1</sup> Minn. Stat. § 325D.30 (1998).

<sup>2</sup> *Id.*

<sup>3</sup> See Minn. Stat. § 325D.32, subd. 10(c) (1998).

<sup>4</sup> Minn. Stat. § 325D.38, subd. 2 (1998).

### Calculation of Minimum Cigarette Sale Prices

manufacturer's gross invoice price (excluding manufacturer's discounts for timely payment and stamping)		
+		
excise tax		
=		
basic cost of cigarettes		
+		
4% mark-up	or	wholesaler's actual cost of doing business (documentation substantiating this must be filed with DOR)
+		
0.5% mark-up	or	actual cartage costs, if paid by wholesaler
=		
minimum wholesale price		
+		
8% of gross invoice cost to retailer	or	retailer's actual cost of doing business
=		
minimum retail price		

The net result (if wholesaler and retailer charge the presumed percentage mark-ups) is that minimum retail price equals 12.9 percent of the sum of the manufacturer's invoice price and federal and state excise taxes. The minimum mark-up does not equal the sum of the wholesalers' and retailers' mark-ups, since they must be multiplied by each other.<sup>5</sup> Also, if the cigarettes were

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<sup>5</sup> Expressing it algebraically, if  $p$  is the manufacturer's price and  $t$  is the federal and state excise taxes, the wholesaler's minimum price equals  $(p + t) + 0.045(p + t)$  or  $1.045(p + t)$ . The retailer's mark-up, then, applies to this amount. The retail price equals  $1.045(p + t) + 0.8(1.045(p + t))$  or  $1.129(p + t)$ . Thus, the total presumed mark-up equals 12.9 percent.

purchased in distressed sale type circumstances (e.g., bankruptcy, forced sales, and other sales outside of the ordinary channels of trade), retailers and wholesalers may not use invoice prices in these computations.<sup>6</sup>

**The act addresses special situations by exempting some sales of cigarettes and by subjecting other commodities to minimum pricing, if they are sold in combination with cigarettes.**

The act exempts:

- Isolated sales
- A *bona fide* sale to close out a business of selling cigarettes
- Sales of defective, imperfect, or damaged cigarettes<sup>7</sup>

If dealers sell cigarettes at a combined price with another good or service, the minimum pricing rules then apply to other commodities and these commodities cannot be sold below actual cost.<sup>8</sup> This is intended to prevent tying of cigarettes with another commodity to effectively avoid the minimum pricing rules. Thus, dealers cannot sell a combination of cigarettes and some other product as a "loss leader."

**Retailers and wholesalers may use actual costs instead of the statutory percentages; this is, apparently, rarely done.**

As indicated in the flow chart, the act authorizes wholesalers and retailers to use their actual costs, rather than the presumed statutory mark-ups. However, the act imposes barriers to doing so.

For a wholesaler to use this actual cost option, it must submit to the Commissioner of Revenue "documentation substantiating the actual cost of the cigarettes *before* selling at actual cost."<sup>9</sup> The wholesaler may only begin selling at actual cost, if 15 days have passed and the Commissioner of Revenue has not requested additional documentation. New documentation must be filed each year, if the wholesaler wishes to continue using the actual cost option. Furthermore, any time the basic cost of cigarettes to the wholesaler increases, new documentation must be re-filed. The basic cost of cigarettes changes whenever one of three events occur:

- the manufacturer increases prices
- the federal excise tax increases
- the state excise tax increases

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<sup>6</sup> Minn. Stat. § 325D.39 (1998).

<sup>7</sup> Minn. Stat. § 325D.36 (1998).

<sup>8</sup> Minn. Stat. § 325D.34 (1998).

<sup>9</sup> Minn. Stat. § 325D.32, subd. 10(c) (1998) [Emphasis added].

Excise tax increases are sporadically enacted. But manufacturers have tended, in recent years, to regularly increase prices. For example, manufacturers increased prices twice in calendar year 1998 and once in calendar year 1999.<sup>10</sup> Each of these would require a wholesaler seeking to use the actual cost option to file new documentation and wait (at least) 15 days to implement the actual cost-based pricing for the cigarettes on which the manufacturer increased prices.<sup>11</sup>

The law is not exactly clear what elements must be taken into account in determining a wholesaler's actual costs. Recognized statistical and cost accounting must be used. The statute contains a list of costs including:

without limitation, labor, rent, depreciation, sales costs, compensation, maintenance of equipment, cartage, licenses, taxes, insurance, or other expenses.<sup>12</sup>

Filing to use actual costs may also subject the wholesaler's proprietary information on costs and pricing strategies to disclosure to its competitors. Information filed under the UCSA is generally public information under the Government Data Practices Act.<sup>13</sup> A district court has held that certain cost and pricing information qualify as a "trade secret" and are not subject to public disclosure.<sup>14</sup>

According to DOR, over the years, only a handful of wholesalers typically file with DOR to use actual pricing information. At the present time, only one wholesaler has filed to use actual costs. (The pending dispute over whether this filing information is subject to public disclosure has likely affected the willingness to file.) However, in response to the one filing, 38 other wholesalers have filed to meet the prices of the one wholesaler that did file.

Retailers are not required to pre-file documentation in using actual cost pricing.<sup>15</sup> They are,

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<sup>10</sup> This is based on filings with DOR. The major manufacturers tend to increase their prices together. For example, filings were made by on August 27, 1999, by Philip Morris U.S.A., R. J. Reynolds, Brown & Williamson Tobacco, and Lorillard Tobacco Company, and three days later on August 30, 1999, by Liggett Group Inc. All of the increases (except for specialty brands) were for an identical amount of \$9 per thousand. A similar pattern prevailed for the other increases.

<sup>11</sup> Minn. Stat. § 325D.32, subd. 10(c) (1998).

<sup>12</sup> Minn. Stat. § 325D.38, subd. 2 (1998).

<sup>13</sup> Minn. Stat. ch. 13.

<sup>14</sup> *Supervalu v. Smith*, Ramsey County Dist. Ct., No. 62-C9-99-010390 (Aug. 24, 2000). The period for appeal of this decision remains open. The court decision effectively reverses an advisory opinion issued by the Commissioner of Administration that under the circumstances involved in *Supervalu*, the information was not a non-public trade secret. Minn. Dept. of Administration, Advisory Opinion 99-035 (Oct. 26, 1999).

<sup>15</sup> Compare Minn. Stat. § 325D.32, subd. 10(c) (1998) with Minn. Stat. § 325D.32, subd. 11(1998) (wholesalers' statute includes filing requirement, while retailers' statute does not).

however, subject to the same rules of proof of actual costs that apply to wholesalers. Thus, charging less than the percentage mark-ups subjects a retailer to the threat of civil liability, if the retailer is unable to prove under the act's standards that its actual costs justified the lower mark-up.

Wholesalers and retailers may lower their prices to meet the price of a competitor, but only if the lower price is a legal price.<sup>16</sup> This authority cannot be used to lower prices to those of cigarettes that are exempt from the act's restrictions (e.g., business liquidation sales and sales of defective products). Wholesalers are required to file a written notice of their intent to meet a competitor's price with the Commissioner of Revenue.<sup>17</sup> The wholesaler cannot lower its price if the Commissioner of Revenue notifies the wholesaler that the price was not a legal price. For a retailer to use this authority to meet a lower price, a survey apparently must be done to determine if the price is a legal price. This survey would document lowest costs for the trading area.<sup>18</sup>

### **Administrative Responsibilities under the Act**

**The Department of Revenue administers the act; the cost of administration is indirectly paid by cigarette wholesalers.**

Various state agencies have been responsible for administering the UCSA since its enactment in 1961.<sup>19</sup> DOR now administers the act, a duty which it has carried out since 1979.<sup>20</sup> A natural question is why a tax administrative agency is charged with administering and enforcing a fair

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<sup>16</sup> Minn. Stat. § 325D.37 (1998).

<sup>17</sup> Minn. Stat. § 325D.37, subd. 3 (1998).

<sup>18</sup> Minn. Stat. §§ 325D.37; 325D.38 (1998).

<sup>19</sup> The original act charged the Department of Business Development (now Trade and Economic Development) with administrative responsibility for the act. 1961 Laws, spec. sess., ch. 35, § 13, codified at Minn. Stat. § 326.76 (1961). The 1967 Legislature transferred a number of the duties of that department to the attorney general. 1967 Laws, ch. 302, §§ 1, 2. The legislature also modified the UCSA, including the administrative responsibilities. 1967 Laws, ch. 600, § 12. The effect of the reassignment of responsibilities to the attorney general was apparently construed to include the responsibility for the UCSA. *See* Minn. Stat. § 325.77 (1967) (codifying the two laws as transferring the duties to the attorney general). In 1969, administrative responsibility was transferred to the Commissioner of Taxation. 1969 Laws, ch. 759, §§ 4, 5. In 1973, administrative authority was transferred yet again, to the commerce commission and its chair. 1973 Laws, ch. 607, §§ 3 - 6. The 1978 Legislature did not transfer the administrative authority, but simply repealed the commerce commission's duties. 1978 Laws, ch. 793, § 98. This effectively left the act as self-enforcing or by private actions. After a one-year hiatus in 1979, the legislature required the Commissioner of Revenue to administer and enforce the provisions of the act. 1979 Laws, ch. 303, art. 10, § 4.

<sup>20</sup> The statutory language of the UCSA simply refers to "the commissioner." It does not define or specify which commissioner is referred to. The statutory section specifying the Commissioner of Revenue's powers directs the commissioner to administer and enforce the act. Minn. Stat. § 270.06(20).

trade law.<sup>21</sup> One possible answer is that the legislature considered the department's expertise in administering the excise taxes on cigarettes and its ongoing relationships with cigarette wholesalers that pay the excise taxes. This expertise and knowledge of the industry may have been thought to make DOR the most efficient and effective state agency to administer the law.

**Mandatory administrative responsibilities.** The act requires the department to:

- Review and (implicitly) substantiate the accuracy of submissions by wholesalers seeking to charge lower mark-ups than the statute's presumption<sup>22</sup>
- Inform wholesalers who seek to meet prices of competitors whether the price is a legal price<sup>23</sup>
- Regularly publish presumed legal prices in the State Register<sup>24</sup>
- Collect the distributor fees<sup>25</sup>

**Other powers.** The act gives the department authority in administering the act to:

- Deny a distributor or subjobber a license to sell cigarettes for violations of the act<sup>26</sup>
- Revoke a distributor's or subjobber's authority to apply tax stamps to cigarettes following an administrative proceeding<sup>27</sup>

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<sup>21</sup> Administration of a fair trade law and, in particular, its application to retailers and others who are not cigarette excise taxpayers would not seem to be a natural responsibility for DOR. The department's primary responsibilities are administration and collection of taxes, as well as payment of state aid to local governments. See Minn. Stat. § 270.06 (1998). By contrast, administration of the most of the laws regulating trade practices is in the Department of Commerce (insurance, financial institutions, and securities) or the Office of Attorney General (general trade practice laws). See, e.g., Minn. Stat. § 8.31 (assigning administrative responsibilities for various trade practice laws to the attorney general).

<sup>22</sup> Minn. Stat. § 325D.32, subd. 10(c) (1998).

<sup>23</sup> Minn. Stat. § 325D.37 (1998).

<sup>24</sup> Minn. Stat. § 325D.371 (1998). These prices will need to be published each time the basic cost of cigarettes changes. This occurs when the manufacturer raises prices or when the federal or state excise tax increases. The law requires the prices to be published at least every ten months, even if one of these events does not occur.

<sup>25</sup> Minn. Stat. § 325D.415 (1998).

<sup>26</sup> Minn. Stat. § 325D.33, subd. 5 (1998).

<sup>27</sup> Minn. Stat. § 325D.33, subd. 6 (1998).

- Impose and collect administrative penalties for violations of the act<sup>28</sup>
- Conduct investigations to determine compliance with the act<sup>29</sup>

The law imposes fees on cigarette distributors to recoup the cost of administering the act. These fees equal \$2,500 per year for a distributor with more than \$2 million in cigarette tax collections and \$1,200 for all other distributors. In fiscal year 1998, these fees generated \$91,800 and \$123,500 in fiscal year 1999. These fees are deposited in the general fund. Although they are imposed to recover the cost of administering the act, they do not automatically go to DOR. As part of the process of developing a budget, the legislature appropriates money for the function of administering the act based on the legislature's determination of the appropriate expenditures for that function. In any given year, this may not equal the revenue yield from the distributor's fee.

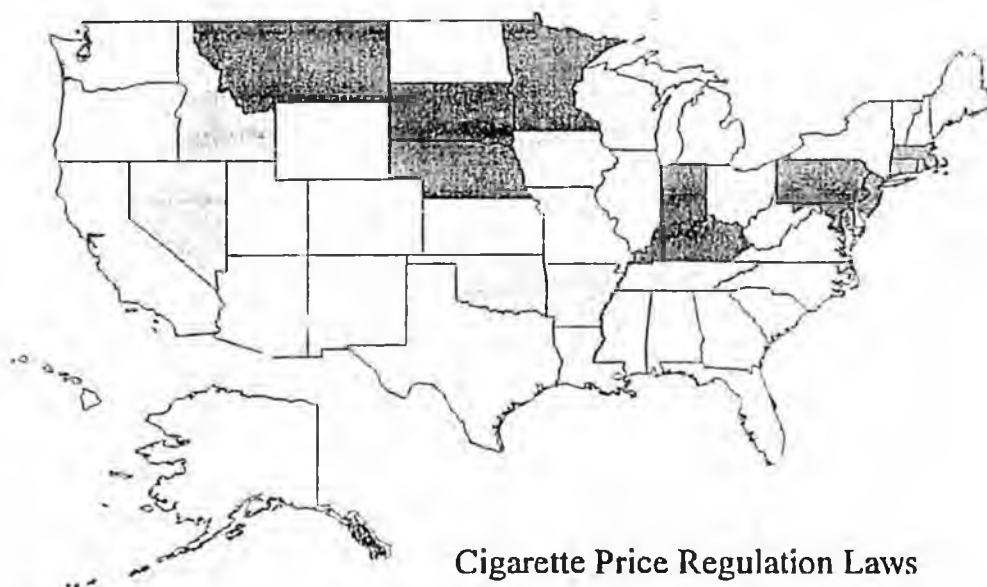
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<sup>28</sup> Minn. Stat. § 325D.33, subd. 8 (1998).





<sup>29</sup> Minn. Stat. § 325D.405 (1998).

## Minimum Cigarette Pricing Laws in Other States

Including Minnesota, 25 states have laws prohibiting the sale of cigarettes below cost or requiring sales at a minimum price. Seven states (California, Colorado, Michigan, North Dakota, South Carolina, West Virginia, and Wyoming) have general fair trade laws that prohibit sale of cigarettes (along with other goods) below the seller's cost. The District of Columbia prohibits secret discounts or payments in the sales of cigarettes that are not generally available to all sellers. In 18 states, cigarette prices are determined by free market forces. The map displays which states have minimum pricing laws, general fair trade laws, or do not regulate cigarette prices.



Cigarette Price Regulation Laws

	No law
	General unfair trade law
	UCSA minimum mark-up < 10%
	UCSA minimum mark-up > 10%

Some of the details of these laws are set forth in the table below. As can be seen from the table, Minnesota's presumed minimum price is among the higher of the states with these laws. A few states have higher minimum price presumptions than Minnesota (e.g., Massachusetts, Connecticut, Montana, Nebraska, New Jersey, and Maryland). South Dakota and Indiana have the same presumed minimum price as Minnesota. Other states have lower presumptions, some of them quite a bit lower.

Three bordering states, Iowa, South Dakota, and Wisconsin, have minimum cigarette pricing laws. Minnesota's other border state, North Dakota, does not have a minimum pricing law, but a general trade practices law applies.

**State Statutes Requiring Minimum Pricing of Cigarettes**

State	Minimum Mark-up*			Penalties**
	Wholesale	Retail	Total	
Arkansas	2.75%	6.00%	8.92%	\$500 fine; injunctive relief; revoke/suspend license
California	General unfair trade practices law			
Connecticut	6.50%	8.00%	15.02%	
Colorado	General unfair trade practices law			
Delaware	5.00%	None	5.00%	\$1,000 for first offense, \$5,000 for subsequent; injunctive relief; suspend/revoke license
District of Columbia	Prohibits secret payments and discounts			Injunctive relief; treble damages; suspend/revoke license
Idaho	2.00%	6.00%	8.12%	Misdemeanor \$500 fine, 6 months
Indiana	4.50%	8.00%	12.86%	Injunctive relief
Iowa	3.00%	6.00%	9.18%	Misdemeanor; injunctive relief; suspend/revoke license
Kentucky	2.75%	8.00%	10.97%	\$1,000 fine; injunctive relief
Louisiana	2.00%	6.00%	8.12%	Suspend permit
Maine	2.00%	6.00%	8.12%	Injunctive relief, treble damages
Maryland	5.00%	8.00%	13.40%	Injunctive relief; suspend/revoke license
Massachusetts	5%	25.00%	28.44%	\$500 fine
Michigan	General unfair trade practices law			
Minnesota	4.50%	8.00%	12.86%	Treble damages; injunctive relief
Mississippi	2.00%	6.00%	8.12%	\$500 fine; injunctive relief
Montana	5.75%	10.00%	16.33%	\$500 fine; injunctive relief
Nebraska	4.75%	8.00%	13.13%	Class V misdemeanor; suspend/revoke license; injunctive relief
Nevada	Wholesalers may not sell below cost			\$50 fine per violation

State Statutes Requiring Minimum Pricing of Cigarettes (cont.)

State	Minimum Mark-up*			Penalties**
	Wholesale	Retail	Total	
New Jersey	6.00%	8.00%	14.48%	\$1,000 fine; injunctive relief; suspend/revoke license
New York	May not sell below cost			Injunctive relief; suspend/revoke license
North Dakota	General unfair trade practices law			
Ohio	2.00%	6.00%	8.12%	Suspend/revoke license
Oklahoma	2.75%	6.00%	8.92%	\$500 fine; injunctive relief; suspend/revoke license
Pennsylvania	4.00%	6.00%	10.24%	Agency discretion
Rhode Island	May not sell below cost			Suspend/revoke permit
South Carolina	General unfair trade practices law			
South Dakota	4.50%	8.00%	12.86%	Injunctive relief; suspend/revoke license
Tennessee	none	8.00%	8.00%	\$250 first violation, \$500, second, \$1,000, subsequent; injunctive relief; suspend/revoke license
West Virginia	General unfair trade practice law			
Wisconsin	3.00%	6.00%	9.18%	Injunctive relief, treble damages
Wyoming	General unfair trade practice law			
<p>* In most states the minimum mark-up is a presumption and applies against the "basic cost of cigarettes." This is usually defined as the lower of the invoice amount or the cost of replacement. Since the mark-up is a presumption, the wholesaler or retailer may sell at a lower price, if it files sufficient evidence that its actual costs are lower than the presumption.</p> <p>** Penalties in addition to the presumed availability of compensatory monetary damages.</p>				

## The Purpose of the Law

Two purposes are commonly cited for the UCSA:

- **Protecting wholesale and retail cigarette sellers from “unfair” competition**
- **Reducing smoking**

**Protecting cigarette sellers.** The UCSA explicitly states its purpose is to prevent “injuring a competitor, destroying or lessening competition” through “unfair competition[.]”<sup>30</sup> In operation, the law does not encourage competition, but rather protects the margins and profits of some cigarette sellers. The law restricts competition by prohibiting standard sales techniques used in the retail and wholesale businesses. Normal competition in the retail marketplace almost inherently “injures” competitors by capturing sales that the other sellers would make.

The law does not prohibit competition *per se*, but restricts it to specific types of competition. In practice, it appears to have two effects:

- **The act restricts techniques typically used by new entrants and businesses attempting aggressively to increase their market shares through price competition.** Two standard competitive techniques—“loss leaders” to attract customers to a store and temporary sales at a loss to attract market share—are prohibited by the act. Both the techniques are most commonly used by new businesses or by businesses that are seeking to expand their market shares. Thus, the law appears intended to protect existing sellers from these standard practices of new entrants and sellers aggressively attempting to increase their market share through price competition.<sup>31</sup>
- **Low-cost sellers are disadvantaged.** By creating a presumption that the sales below statutory percentage mark-ups are “below cost” and in violation of the law, the act burdens low-cost sellers. These sellers can sell below these statutory presumption, if they can prove their costs are lower. But the law imposes burdens on them to do so. For wholesalers, this is a bureaucratic and procedural burden. They must file proof with DOR before charging lower than the statutory percentages. This increases their costs, imposes delays, and potentially subjects cost information to public scrutiny, as well as making it difficult to use this option. Retailers are not subject to these bureaucratic requirements, but may still be deterred from selling below the statutory presumptions. Doing so subjects them to potential lawsuits by competitors and state enforcement actions in which they would be required to prove (under uncertain standards) that they were not selling below cost.

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<sup>30</sup> Minn. Stat. § 325D.30 (1998).

<sup>31</sup> One can observe that if these standards were applied across all markets that most of the sales practices of the consumer-oriented e-commerce sector would have been illegal.

Thus, the act appears designed mainly to protect sellers of cigarettes with higher cost structures from price competition from new entrants and sellers with low-cost structures (e.g., large discount operations). The laws main beneficiaries are convenience stores, small grocery stores, and other smaller sellers of cigarettes. The milk price regulation law<sup>32</sup> is the only other Minnesota law that requires minimum prices.<sup>33</sup> The milk price laws is generally thought to serve income distribution effects—i.e., by most accounts, it is intended to raise the incomes of dairy farmers. The purpose of the UCSA appears to be similar, i.e., to redistribute income to small cigarette sellers with high-cost structures. Testimony before the legislature in opposition to proposals to repeal or limit the UCSA generally tends to bear this out; the focus of the opposition has come from owners of convenience and other small stores that make significant cigarette sales.

**Reducing smoking.** Although not reflected in the act's purpose statement, during legislative debates the law has been supported on the basis that it raises cigarette prices and, thereby, reduces smoking. Since studies show that cigarette sales decline with increases in prices and since the act has the effect of increasing cigarette prices, it likely does reduce smoking.<sup>34</sup> This is likely an unintended side effect of the law; its principal purpose is to protect high-cost, small sellers of cigarettes. More direct ways to use government programs to reduce smoking would include anti-smoking campaigns or raising the excise tax.<sup>35</sup>

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<sup>32</sup> Minn. Stat. §§ 32.70 - 32.745 (1998). This law prohibits selling below the amount the wholesaler or retailer paid for the product. Minn. Stat. §§ 32.70, subd 2; 32.72 (1998). The law does not require selling costs to be included in the price, as the UCSA does. One could argue that the minimum wage law imposes a minimum price regulation (i.e., wages are a price for work). It is clear that the minimum wage is intended to serve income distribution purposes—i.e., to help raise the incomes of low-wage workers.

<sup>33</sup> The restraint of trade law prohibits selling below cost, but it also requires having a purpose of "injuring a competitor or destroying competition" before such a sale is illegal. Minn. Stat. § 325D.04 (1998). This purpose requirement effectively allows selling below cost to establish market share, as a loss leader to attract customers to a store, and other common techniques used by retailers and wholesalers.

<sup>34</sup> See the discussion in the text below on the elasticity of cigarette purchases and a guess as to the effect of the act on amount of cigarette purchases in note 40.

<sup>35</sup> An excise tax increase would be more a uniform mechanism for raising cigarette prices than the UCSA which affects sellers differentially depending upon their cost structures. It would also permit the revenue to be rebated to low-income individuals to offset the regressivity of the excise tax. This could be done through an existing mechanism, such as the working family (earned income) credit or the property tax refund.

## Economic Effects of the Unfair Cigarette Sales Act

The UCSA has several likely overall or general economic effects. It:

- **Raises cigarette prices**
- **Reduces Minnesota sales of cigarettes**
- **Increases the profits of wholesalers and retailers of cigarettes**
- **Is regressive, redistributing income from smokers to owners of wholesale and retail outlets**

The UCSA, in effect, sets minimum prices which may be charged to purchasers of cigarettes. These minimum price requirements deviate from prices that otherwise would be set by the private market. This type of price regulation is an unusual form of government intervention in the private market. Most prices are determined by factors of supply and demand. The government regulates prices in a few circumstances. Most of these involve cases in which it is believed that the forces of private competition will not set appropriate prices because of market failure. In almost all cases, these government regulations involve setting *maximum* prices, such as price regulations of public utility rates.<sup>36</sup> These situations involve instances where the regulation reduces the cost to consumers of the good or service. By contrast, the UCSA involves a situation where a *minimum* price is mandated. Thus, the UCSA has the opposite effect; it increases the prices that cigarettes smokers pay, all other things being equal.

The UCSA has some important economic effects. Some of these potential effects are suggested in the bulleted items below. This analysis is based on standard microeconomic principles and assumes that the market for retailing and wholesaling cigarettes is a perfectly competitive market.<sup>37</sup> The assertions are not based on empirical research and actual effects may differ, but economic theory suggests that these basic relationships are likely to hold.<sup>38</sup>

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<sup>36</sup> The purpose of these regulations of maximum prices is to prevent firms from setting prices that would earn "monopoly profits." These interventions in the market are generally justified by concerns of efficiency (e.g., without regulation of maximum prices, consumers' preferences for utility services would be under-served; too little electricity or gas would be purchased and we'd all be worse off as a result) or income distribution (e.g., poor people would have to pay too much of their incomes for utility services).

<sup>37</sup> Even if the market is not perfectly competitive, the results are likely to be about the same. The assumption that these markets are or are close to being perfectly competitive seems reasonable. On the retail side especially, there are a large number of sellers, none of whom have a dominant share. Furthermore, there is relative ease of entry for both wholesalers and retailers (e.g., capital and information requirements are low). The business of manufacturing cigarettes appears, by contrast, to be an oligopoly. Evidence for this includes: the small number of firms, the large capital requirements, and the lockstep pricing patterns by the industry. This fact may raise a question as to whether state minimum pricing laws tend to divert profits from the manufacturers to wholesalers and retailers, if their requirements (and effects on the quantity purchased) enter into the oligopoly's pricing decisions. This potential effect is ignored in the text.

<sup>38</sup> The author is unaware of any empirical economic research on the effect of minimum cigarette pricing laws. Research has been done on the effects of cigarette excise taxes and, as noted later in the text, special excise taxes are fairly similar policy instruments to the UCSA. The main differences between the two are: (1) the

- **Retail and wholesale prices of cigarettes will be higher.** Consumers pay more for cigarettes than they otherwise would. This follows naturally from the legal requirement of a minimum price requirement.
- **Fewer cigarettes will be sold in Minnesota.** This flows from the first point, that the act increases cigarette prices. A standard economic principle is the downward sloping demand curve: As prices increase, the quantity of the good or service consumed declines. Because of the addictive nature of tobacco, the demand for cigarettes has traditionally be thought to be relatively inelastic (i.e., not very responsive to price). However, the demand is not completely inelastic; the quantity purchased does drop with price increases.<sup>39</sup> Thus, the increase in price mandated by the act will decrease cigarette consumption. A reasonable guess might be that the act reduces consumption by 2 percent.<sup>40</sup>
- **The act generally will increase the profits of retailers and wholesalers of cigarettes.** These range from convenience stores and grocery stores to cigarette distributors. Of course, not all competitors will be affected equally. Sellers with lower cost structures will lose some of their advantages. For example, smokers may be more likely to purchase individual packs from a convenience store, rather than being sure to purchase larger quantities (e.g., cartons or multiple cartons) from a discounter, such as a large grocery store or discount club. The act will narrow or may even eliminate the price difference between these different types of retailers. As a result, these lower cost retailers will make larger profit margins on their sales, but will make fewer sales. The net result probably is lower total profits for these low-cost sellers.
- **The UCSA likely will redistribute income from lower to higher income individuals.** This point follows from the fact that the act increases the price of

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revenue from the excise tax is retained by the government, rather than going to the firms engaged in the cigarette trade, and (2) excise taxes are imposed at a uniform rate, while the effect of the minimum pricing laws will vary from seller to seller depending upon how much the price they would charge differs from the law's required minimum.

<sup>39</sup> Standard estimates of the overall elasticity ranges from -0.3 to -0.5. See U.S. Dept. of Health and Human Services, *Reducing Tobacco Use: A Report of the Surgeon General 322-37* (2000) (summarizing the empirical studies). Studies summarized in the Surgeon General's Report show elasticities ranging from -0.14 to -1.12. Most of the elasticities center around -0.4. An elasticity measures the change in consumption for a 1 percent change in price. Thus, an elasticity of -0.4 implies that a 1 percent increase in the price of cigarettes would result in a drop in consumption of 0.4 percent.

<sup>40</sup> This guess is based on an assumption that the UCSA results in a 5 percent increase in overall cigarette prices (i.e., slightly less than one-half of the mandated statutory mark-up) and that the price elasticity is -0.4 percent. The elasticity is the mid-point of the range of elasticities summarized in the Surgeon General's Report. See note 39. It should be noted that DOR traditionally has used a much lower elasticity of -0.1 or -0.2 in preparing revenue estimates for excise tax increases. The effect of the act on average mark-ups is only a guess. Given the relatively thin margins in the grocery business and testimony by convenience store owners that cigarettes provide a large share of their profits, it seems plausible and, perhaps, may be on the low side.

cigarettes, while increasing the profits of retailers and wholesalers. The price increase is distributed regressively. Cigarettes are not normal goods; the amount individuals spend on them does not increase with income. Cigarettes purchased constitute a larger share of the incomes of low-income smokers. By contrast, the profits of retailers and wholesalers tend to go to more affluent individuals.<sup>41</sup> In this sense, it is fair to think of the effects of the act as similar to a state-imposed excise tax, the revenues from which are mainly distributed to owners of retail and wholesale stores that sell cigarettes. The overall effect is likely to make the income distribution more regressive.

- **The act creates an incentive to purchase cigarettes at locations outside its jurisdiction.** Because of its price effects, the act creates an incentive for smokers to seek ways to avoid its effects. This can be done by making purchases at Indian reservations or in neighboring states (e.g., North Dakota) where similar laws do not apply. This effect of diverting purchases has been a widely recognized effect of state excise taxes.<sup>42</sup> The act, to the extent that minimum pricing does not apply at other locations, has a similar effect. Thus, the incentive to make purchases on Indian reservations or in other states may increase somewhat.

#### **The UCSA magnifies the effect of state and federal excise tax increases.**

Aside from the general economic effects of the UCSA, it interacts with the state and federal excise taxes on cigarettes. The minimum mark-ups under the act are calculated from the "basic cost of cigarettes." This amount is the combination of the manufacturer's price *plus* the state and federal excise taxes. As a result, when the state increases the excise tax, this automatically requires an increase in retail and wholesale prices equal to not just the amount of the excise tax, but also the minimum mark-up under the UCSA. As described above, Minnesota's minimum mark-up equals 12.9 percent. Thus, if the federal or state government were to increase the excise tax by 10 cents per pack, the act would require the retail price to rise by 11 cents per pack. Absent the act's requirements, one would expect that the price increase from an excise tax would

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<sup>41</sup> A small part of the increased revenue to retailers and wholesalers probably goes to employees and other suppliers of those firms, rather than to profits. This assumes that (1) the part of the return on the higher productivity of workers in lower cost retailers and wholesalers goes to the firm's owners, rather than the workers, and (2) more wages are paid to workers for retailers and wholesalers because the act redistributes more sales to higher cost retailers. In essence, the act results in more workers and employees being employed by retailers and wholesalers of cigarettes.

<sup>42</sup> See, e.g., Jerry G. Thursby and Marie C. Thursby, "Interstate Cigarette Bootlegging: Extent, Revenue Losses, and Effects of Federal Intervention," 53 Nat. Tax J. 59 (2000); Patrick Fleener, "How Excise Tax Differentials Affect Interstate Smuggling and Cross-Border Sales of Cigarettes in the United States," Tax Foundation (Oct. 1998).

be limited to the amount of the tax. Instead, actual price effects are larger. This apparently occurs and is observable in national data.<sup>43</sup>

This effect could be eliminated by changing the law to base the percentage mark-ups on the manufacturer's invoice prices, excluding federal and state excise taxes. The percentage presumptions could be adjusted to prevent this from having an immediate effect on the minimum presumptions under the act.

**Similarly, the UCSA magnifies the effect of manufacturer's price increases.**

Manufacturer's price increases have the same effects as excise tax increases; they automatically result in larger wholesale and retail mark-ups in absolute dollar terms. Thus, when the industry increased prices to pay for settlement of lawsuits filed by the states, these increases were automatically marked up by sellers who do not base their mark-ups on actual costs. Since the price hikes to pay for the state settlements were large (exceeding a dollar per pack), the UCSA essentially added a dime or more to the cost of the settlement to smokers. This, of course, benefitted wholesalers and retailers and offset their declining profits resulting from the reduced sales caused by the higher prices.

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<sup>43</sup> Various studies have observed this effect and suggested various theories for it. See, e.g., Jeffrey E. Harris, "The 1983 Increase in the Federal Cigarette Excise Tax," 1 *Tax Policy and the Economy* 87-111 (1987) (suggesting oligopolistic pricing). None of them, however, suggest that minimum pricing laws, such as the UCSA, are responsible.

## Appendix: Special Minimum Pricing Rules for Gray Market Cigarette Sales

The 2000 Legislature enacted a law that imposes minimum pricing rules on a special class of cigarettes—U.S. brand cigarettes manufactured in a foreign country or manufactured in the United States for sale in a foreign country.<sup>1</sup> This law is not part of the UCSA, although it refers to and requires UCSA minimum prices to apply. Moreover, it was enacted to address a problem that is distinctly different than that addressed by the UCSA—i.e., efforts by cigarette wholesalers to avoid the manufacturers' price increases used to fund the settlement agreements with the states. Because of the similarities to the UCSA, this appendix briefly describes the problem the law was designed to address and the provisions of the 2000 law.

### The Problem

The origins of the minimum price law lie in the price increases imposed by cigarette manufacturers to pay for settlement of the state-filed lawsuits. During the late 1990s, the tobacco companies settled lawsuits filed by state governments over the companies' liability for medical and related costs paid by the states that were caused by smoking. In order to pay for these settlements, cigarette manufacturers imposed a series of substantial price increases. The sum of these price increases, attributable to the settlements, exceeded \$1 per pack of 20 cigarettes.

U.S. manufacturers make and sell their U.S. brand cigarettes in foreign markets. Some of these cigarettes are manufactured in the United States and exported; others are manufactured in foreign countries by subsidiaries of the companies or licensees of the U.S. companies. When the manufacturers increased their domestic prices to pay for the state lawsuits, they did not similarly increase their prices in foreign markets. Their reasons for not doing so seem obvious. The foreign competitors of U.S. manufacturers would not have increased their prices, since they were not paying U.S. damage or settlement awards. If the U.S. companies had raised their prices in international markets (essentially spreading the cost of U.S. settlements across all their markets), their cigarettes would not be price competitive with foreign brands. Their local competitors in international markets would have had a significant price advantage.<sup>2</sup> The net result is a two-tier price structure for U.S. brand cigarettes: one price for the domestic or U.S. market and another (significantly lower) for international markets.<sup>3</sup>

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<sup>1</sup> 2000 Laws, ch. 496, § 2, subd. 1(c), to be codified at Minn. Stat. § 325D.421, subd. 1(c).

<sup>2</sup> In some cases, licensing agreements (with companies that manufacture and market their products in foreign countries) may have prevented them from doing so. This matters little; even if they could have done so legally, it would not have been a sensible business or marketing decision.

<sup>3</sup> Manufacturers also contend that the U.S. brands manufactured for sale in foreign countries have different formulations and, as a result, are different products (e.g., have different tastes and so forth). It is unclear to what extent this actually distinguishes the products and would affect consumers' willingness to buy them.

This situation created an opportunity for brokers or wholesalers to buy U.S. brand cigarettes that were intended for sale in foreign countries at the lower prices. The brokers would then resell them in the United States. This would defeat the manufacturers' efforts to maintain their two-tier price structures and to pass the full cost of the legal settlements onto U.S. smokers. The initial efforts focused on cigarettes manufactured in the United States for export. The brokers purchased this product (ideally) before it actually left the United States. This minimized transportation costs and any problems of freshness in the cigarettes. These U.S. brand cigarettes manufactured in the United States for export came to be called "gray market" cigarettes, referring to the fact that they had been manufactured for sale outside the United States. A change in federal law prohibited this practice<sup>4</sup> and the brokers turned to foreign manufactured cigarettes.

To stem the problem of gray market cigarettes, manufacturers contractually prohibited wholesalers from buying cigarettes directly from the manufacturer if they also purchased these gray market cigarettes. This prevented the large mainline wholesalers from selling these gray market cigarettes.

The practice also had the potential to affect payments under the settlement agreements. Under Minnesota's settlement, the payments from the tobacco companies were pegged to domestic sales (not Minnesota sales, but national sales). The multi-state settlement agreement is similar. As a result, sales of cigarettes manufactured for sale in foreign countries (whether manufactured in the United States or a foreign country) would not be counted in determining the companies' obligations under the settlements. Since the Minnesota market is a very small share of the total domestic market, gray market cigarettes sold in Minnesota were unlikely to have much of an effect on payments to Minnesota. However, manufacturers (who sought to maintain their two-tiered price structure) and wholesalers (who were prohibited by contracts with manufacturers from participating in the gray market) sought a legislative resolution of this issue

### **Description of the Law**

To address this situation, Laws 2000, chapter 496, imposes special minimum pricing rules for cigarettes that:

- Were first sold in the Minnesota market after January 1, 1998;<sup>5</sup> and
- Have trademarks, trade dress, and trade names that are confusingly similar to cigarettes that were sold in the Minnesota market before January 1, 1998.

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<sup>4</sup> 26 U.S.C. § 5754(a).

<sup>5</sup> The approach of tying the minimum pricing rules to cigarettes marketed after January 1, 1998 was adopted to avoid explicitly and exclusively imposing these special rules on foreign products or products moving in foreign commerce. By the nature of the situation, this law applies only to foreign cigarettes or U.S. cigarettes that were first exported. Under the foreign commerce clause, a law that was restricted to and imposed disadvantageous rules exclusively on a foreign product would likely be unconstitutional. The federal power over foreign commerce is nearly exclusive. See, e.g., *Zschernig v. Miller*, 389 U.S. 429 (1969).

These cigarettes must be sold at minimum prices that apply under the UCSA to the brands of cigarettes that were sold in Minnesota before January 1, 1998. This provision, in effect, requires gray market cigarettes and U.S. brand cigarettes that are manufactured outside of the United States to be priced equivalently to their U.S. counterparts. In effect, it legally mandates the manufacturer's two-tiered pricing structure by requiring UCSA pricing calculations to be made based on the manufacturer's invoice price for *domestic* cigarettes (not gray market or foreign cigarettes).

This law is enforced only by private causes of action for injunctive or other equitable relief or damages. A successful plaintiff may also recover attorney fees. The court may treble actual damages, if it finds the violation is "egregious." For minimum pricing violations, the court may award exemplary damages to a plaintiff equal to the amount charged below the permitted minimum price. Violations are also misdemeanors.



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April 4, 2004

Senator Gary Wilken  
Alaska State Senate  
State Capitol Building- Room 518  
Juneau, AK 99801

RE: SB 368 An Act Relating to Taxes on Cigarettes & Tobacco Products

Dear Senator Wilken

The purpose of this letter is to express my concern regarding the above referenced bill. While we are a state licensed wholesale tobacco distributor we neither promote nor encourage tobacco consumption. We do however, offer cigarettes and tobacco products for sale to our state licensed customers who choose to sell these products. In compliance with state law we collect and remit tobacco excise tax to the State. Last year we collected and paid the state in excess of \$4,000,000 in tobacco excise tax. Our business is impacted by tobacco legislation. We want to make sure that as state licensed tobacco dealers that we participate in the public process during legislative deliberations considering tobacco issues and taxation.

I understand that HB 538 is a companion bill to SB 368. During committee hearings in the House Ways & Means committee several amendments were offered to HB 538, which addressed concerns that we had regarding this measure. However, when consulting BASIS for the latest version of HB 538 I did not find an updated version of the bill with the committee amendments. Two amendments that were offered in the House, which are critical to the continued economic viability of our enterprise, are as follows:

1. Bonding Requirements. Alaska distributors are required to post a 200% bond to insure payment to the DOR of all tobacco excise tax. A doubling of the state excise tax from \$1.00 per pack to \$2.00 per pack will effectively require distributors to double their performance bond. Due to conditions in the Alaska insurance market performance bonds are difficult to obtain. We need the state to put limits on the bonding requirement to insure that we will be able to comply with state law.
2. Floor Tax: The language in SB 538 mandates that a floor tax will be imposed on tobacco dealers based on inventory on hand after passage of this bill. The payment of this tax is due 30 days after the effective date of this measure. By proposing a doubling of the excise tax the state will severely test the price elasticity of tobacco purchases. My belief is that "in-state" tobacco purchases will immediately and dramatically decline in the short term after the passage of this measure. The result is that distributors would not have a means to collect and remit the floor tax in a timely manner. The state either needs to extend the due date or eliminate the floor tax altogether.

Doubling the cigarette excise tax will provide ample incentive for Alaska consumers to seek out alternate distribution channels to source cigarettes at a cheaper price. Many, perhaps most of the



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alternate distribution channels will transfer the responsibility to remit the state excise tax to the consumer. It is highly unlikely that average consumer will be aware that Alaska law requires the consumer to remit state excise tax on the importation of cigarettes. The end result will be as follows:

1. The state will not collect the cigarette excise taxes due
2. Alaska businesses charged with assessing the tax will loose sales
3. The consumer will be rewarded with lower cigarette costs.

Effective enforcement of Alaska's tobacco laws must discourage smuggling and tax evasion by consumers and licensed business operators, alike. The penalty phase of tax enforcement must be sufficient to discourage both the consumer and the business entity from evading the state excise tax.

In my opinion the state needs to hold the individual to the same standard that the law is requiring businesses to operate under. If the penalty phase of this measure differentiates the incidental violation of the law by the consumer versus a violation of the law by a business then the state is encouraging individuals to find non-licensed distribution channels to evade state tobacco excise taxes. Tax evasion and illegal bootlegging of these products harms both the state and legitimate business interests. The whole concept that higher tax rates discourage consumption would be lost if the state exempts the consumer from remitting excise tax on cigarettes they purchase from out of state vendors or internet providers. AS 43.50.190.c contemplates the innocent consumer who inadvertently imports cigarettes into the state and exempts the consumer who imports 100 cigarettes per month from paying the state excise tax. This provision is sufficient to accommodate incidental importation of cigarettes by a consumer and contemplation of any higher exemption is a gross disservice to Alaska's licensed tobacco businesses and state tax revenues.

SB 538 proposes to increase the OTP (other tobacco products i.e. cigars) tax from 75% to 100% of the wholesale list price. There is a problem with how the OTP tax is currently administered and collected. If a non-licensed out of state seller of OTP sells cigars to an Alaskan consumer the state excise tax is not paid and no law has been broken. This loophole puts Alaska licensed distributors at a price disadvantage and more importantly it denies the state the ability to collect excise tax on these products. The state needs to require the importer of OTP to pay the tobacco excise tax and treat the importation of OTP just like they treat the importation of cigarettes. The DOR fiscal note attached to SB 538 acknowledges that at the current tax rate the incentive for smuggling and tax evasion is great and based on a significant tax increase the incentive to cheat will be that much more attractive. Our position is that if the state fails to close the loophole on the collection of OTP tax the proposed tax increase will only drive consumers to alternate distribution channels for these products thereby assuring the state and business of lost revenues. We are opposed to any OTP tax increase and feel that the state can increase revenues by leaving the tax rate at its current 75% level and closing the existing loophole in state law.

Finally, in my opinion SB 368 could be strengthened and improved if the Senate Finance Committee offered two amendments to this bill. The first amendment would be for the State of Alaska to issue a moratorium on local governments ability to assess excise taxes on tobacco products. Currently the communities of Juneau, Anchorage, and Fairbanks impose a municipal excise tax on cigarettes and OTP. The jurisdictional issue allowing local governments to tax these products limits the states ability



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to set policy in matters regarding tobacco legislation. I would like to request the Senate Finance committee issue an amendment to SB 368 proposing a moratorium on further taxation of tobacco products by local governments. The second amendment would be offered on behalf of Alaska based wholesale distributors and would strengthen the language from last year's passage of SB 168. Based on the Governor's transmittal letter of 3/16/04 it is inconceivable to me that the state continues to allow the practice of using a pricing scheme to promote the consumption of cigarettes based on below cost or at cost sales of cigarette products. On behalf of Alaska-based distributors we have been working on draft language for an amendment that would ban this practice. We will be able to present this amendment to you for consideration before the weeks end.

We are not opposed to a reasonable tax increase in the tobacco excise tax; we just want to make sure that we are going to be able to live with the changes contemplated by this legislation. There are presently many laws on the books that if enforced and prosecuted will act as a deterrent to prevent under age access to cigarettes. I urge the legislature to exercise caution and restraint before unleashing another round of exorbitant taxes on Alaska's adult smokers. I will be out of town for the Senate Finance Committee hearing scheduled for 4/5/04. However, I will be listening to the committee deliberations via the live video stream from KTOO and can be reached at 206-850-5250 if you have any questions or require additional information. My hope is that you can express my concerns to the committee regarding this measure and that we can work together to amend this bill. Thank you for your consideration.

Sincerely yours,

Michael J. Elcriding  
President



April 4, 2004

The Honorable Lyda Green, Co-Chair  
Senate Finance Committee  
Alaska Capitol, Room 516  
Juneau, AK 99801-1182

The Honorable Gary Wilken, Co-Chair  
Senate Finance Committee  
Alaska Capitol, Room 518  
Juneau, AK 99801-1182

RE: SB 368 (Governor Mukowski) - Support

Dear Co-Chairs Green and Wilken:

On behalf of the AARP members in Alaska, we ask that you and your colleagues on the Senate Finance Committee support SB 368, the proposal by Governor Murkowski to increase the tobacco tax for cigarettes and other tobacco products.

As the Governor's transmittal letter clearly points out, the cost of smoking-related illnesses to the Alaska state budget far outweighs the revenue from the current taxes. Indeed, the tax increase proposed in SB 368 will still fall far below government costs.

Tobacco companies will argue that tobacco taxes are regressive because they take a higher percentage of income from low-income people. It is AARP's position that increased tobacco taxes that discourage consumption of harmful commodities serve a useful social purpose. In addition, the funds brought in from tobacco taxes are less regressive if they are used to finance programs such as health care for those with low incomes, e.g., Medicaid.

AARP recently sent a copy of a survey of Alaskans over age 18 to you and your colleagues in the Legislature. Although we asked about a 50 cents per pack increase in our survey, admittedly below the Governor's \$1.00 per pack increase, 56% strongly supported it and another 15% somewhat supported the tax increase. Other AARP research indicates that the public overall does object less to tobacco taxes because they are a tax that can be avoided.

We encourage an appropriate amount of the new revenue from this tax increase be applied to smoking-cessation programs. As the Governor points out, Alaska Native adults and high school students are much more likely to use tobacco than

non-Natives. AARP recommends special targeted cessation efforts in our Native community, particularly for Native youth.

We are aware that, if the tax partnered with cessation programming is successful, this will be a diminishing revenue stream. Unfortunately tobacco tax increases will not provide a "magic pill" to make the fiscal gap disappear. AARP still encourages you and your colleagues to aggressively pursue a comprehensive solution to our fiscal problems.

SB 368 does provide a part of the solution to our fiscal problems. Even more importantly, it provides a significant solution to at least part of Alaska citizens' health problems.

AARP recommends an "AYE" vote on SB 368.

Should you have any questions about our position, please feel free to contact Marie Darlin (907.586.3637), Coordinator of the AARP Capital City Task Force; Patrick Luby (907.762.3314), AARP Legislative Representative; or me (907.245.5259).

Thank you for your consideration.

Sincerely,



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CC: Vice-Chair Con Bunde  
Senator Fred Dyson  
Senator Ben Stevens  
Senator Lyman Hoffman  
Senator Donny Olson  
Governor Frank Murkowski  
Marie Darlin  
Patrick Luby

State of Alaska  
Epidemiology



# Bulletin

Recommendations  
and  
Reports

Department of Health and Social Services  
Joel Gilbertson, Commissioner

Division of Public Health  
Doug Bruce, Director

Section of Epidemiology  
John Middaugh, MD, Editor

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November 4, 2003

## Youth Tobacco Use Falls

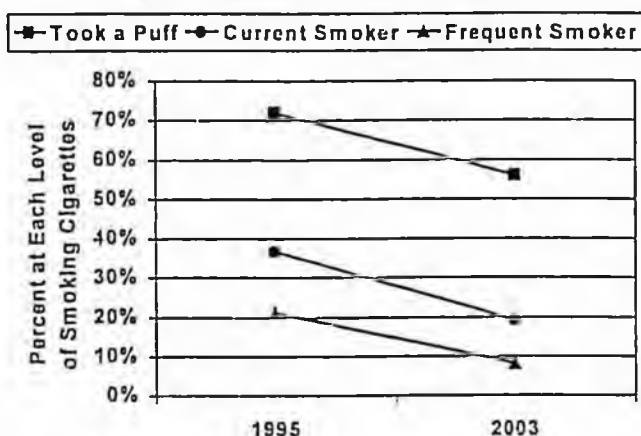
Results From the  
2003 Youth Risk Behavior Survey

Smoking among Alaskan high school students has been cut in half since 1995, according to results of the 2003 Youth Risk Behavior Survey (YRBS).

Only 19 percent of the state's high school students say they have smoked at least one cigarette in the past month, down from 37 percent in 1995 (Figure 1). Frequent smoking, in which students report using cigarettes on at least 20 days in the previous month, fell from 21 percent in 1995 to just 8 percent. Just 56 percent of high school youth say they have even taken a single puff on a cigarette, down from 72 percent in 1995.

Figure 1. Percentage of High School Youth Who Ever Took a Puff or Are Current or Frequent Smokers By Year, Alaska YRBS, 2003

	1995	2003
Took a Puff	72%	56%
Current Smoker	37%	19%
Frequent Smoker	21%	8%



"Took a Puff" = took at least a puff of a cigarette in lifetime; "Current Smoker" = smoked on at least 1 out of the last 30 days; "Frequent Smoker" = smoked on at least 20 out of the last 30 days

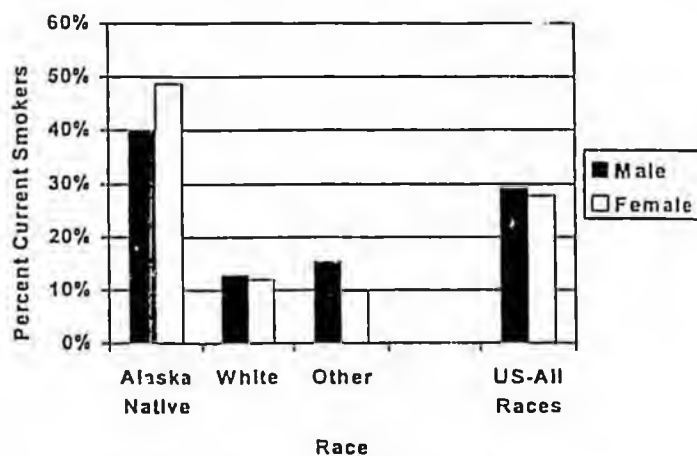
The YRBS, conducted jointly in Alaska by the Department of Health and Social Services and the Department of Education and Early Development, was administered to 1,500 Alaskan high school students who were randomly chosen from nearly every school district in the state. The 2003 YRBS is the first statistically valid statewide health survey of Alaskan youth since 1995.

While smoking rates have declined overall, the YRBS shows that smoking among Alaska Native youth far exceeds that seen in all other races. Approximately 49 percent of Alaska Native females and 40 percent of Alaska Native males say they have smoked at least once during the previous month (Figure 2). About one in five Alaska Native students of both sexes report smoking at least 20 days per month.

Figure 2. Percentage of High School Youth Who Are Current Smokers, By Sex and Race  
Alaska YRBS (2003); US YRBS (2001)

	Alaska Native	White	Other Race
Male	40%	13%	15%
Female	49%	12%	10%

US YRBS, 2001 (all races)  
males = 29%, females = 28%

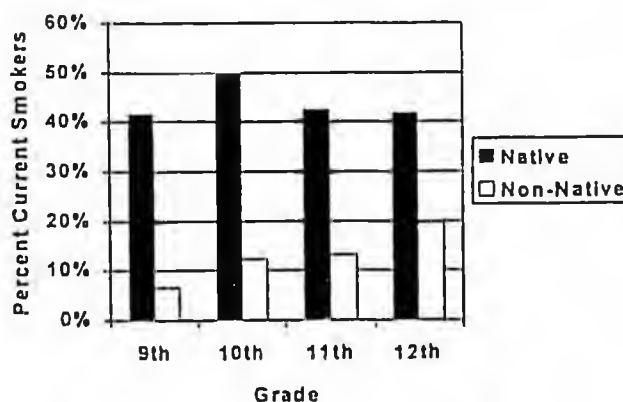


"Current Smoker" = smoked on at least 1 out of the last 30 days

Smoking among Alaska Native youth surpasses that of non-native youth at every grade level (Figure 3). While the likelihood of smoking increases among non-native youths as they progress through high school, it is already near maximum levels by the 9<sup>th</sup> grade among Alaska Natives.

Figure 3. Percentage of High School Youth Who Are Current Smokers By Race and Grade  
Alaska YRBS, 2003

	9th	10th	11th	12th
Native	42%	50%	42%	42%
Non-Native	7%	12%	13%	20%



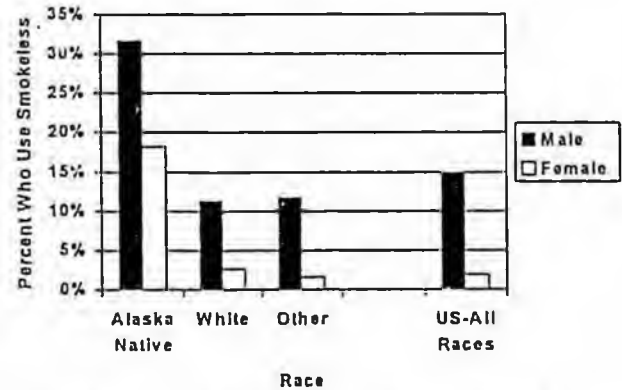
"Current Smoker" = smoked on at least 1 out of the last 30 days

The YRBS also shows that about 11 percent of Alaskan youth have used smokeless tobacco in the previous month. Smokeless tobacco use is especially high among Alaska Natives, where rates among boys are double the national average and rates among girls are nine times higher than the national norm (Figure 4).

Figure 4. Percentage of High School Youth Who Use Smokeless Tobacco, By Sex and Race  
Alaska YRBS (2003), US YRBS (2001)

	Alaska Native	White	Other Race
Male	32%	11%	12%
Female	18%	3%	2%

US YRBS, 2001 (all races)  
males = 15%, females = 2%

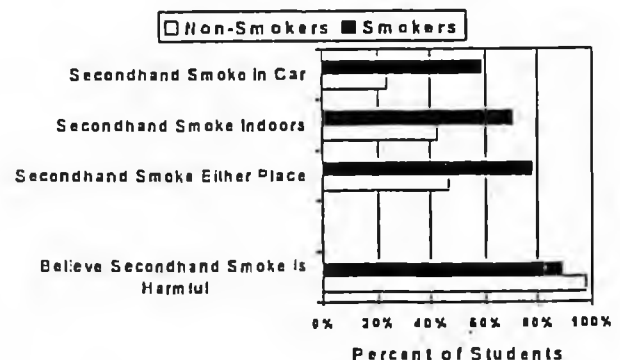


"Use Smokeless Tobacco" = used any smokeless tobacco product on at least 1 of the last 30 days

The YRBS confirms that youth exposure to environmental tobacco smoke in Alaska remains high, despite increased restrictions on smoking in public places. Nearly 50 percent of Alaskan youth who do not smoke say they have been exposed in the past week to secondhand smoke inside of buildings or cars (Figure 5). More than 95 percent of youth say they believe that secondhand smoke is harmful. This view was even expressed by 89 percent of those who smoke.

Figure 5. Percentage of High School Smokers and Non-Smokers Exposed to Secondhand Smoke in Past Week  
Alaska YRBS, 2003

	Non-Smokers	Smokers
Secondhand Smoke in Car	24%	59%
Secondhand Smoke Indoors	43%	70%
Secondhand Smoke Either Place	47%	78%
Believe Secondhand Smoke is Harmful	98%	89%



Other findings from the 2003 YRBS bring to light important social and behavioral risk factors associated with youth smoking:

- Students who report that their parents never talk to them about school are almost twice as likely to smoke as students whose parents do talk with them about school (32 percent vs. 18 percent).
- Students who get mostly C's or worse in school are four times as likely to smoke as those who get mostly A's (32 percent vs. 8 percent).
- Students who do not participate in after-school activities are almost twice as likely to smoke as students who participate in one or more such activities per week (26 percent vs. 14 percent).
- Students older than 16 years of age who smoke are twice as likely to have used alcohol in the past month, and are four times as likely to have used marijuana during that time, compared to those who do not smoke (70 percent vs. 36 percent, and 62 percent vs. 16 percent, respectively.)
- Students older than 16 years of age who smoke are three times as likely to have ever used inhalants, and four times as likely to have ever tried cocaine, heroin, methamphetamine or ecstasy, compared to those who do not smoke (24 percent vs. 8 percent, and 43 percent vs. 11 percent, respectively.)
- Students older than 16 years of age who smoke are almost twice as likely to have had sex in the previous three months, compared to those who do not smoke (55 percent vs. 29 percent).
- Students who smoke are twice as likely to have been in a physical fight in the past year, and four times as likely to have been driving while intoxicated during the past 30 days, compared to those who do not smoke (46 percent vs. 22 percent, and 28 percent vs. 7 percent, respectively).

The steep drop in youth smoking was achieved after Alaska invested heavily in a comprehensive tobacco prevention and control program. This program thrives on the strong partnership between state government and the Alaska Tobacco Control Alliance, whose members include the Alaska Native Health Board, the American Cancer Society, the American Heart Association, and the American Lung Association of Alaska.

Components of the state tobacco program include:

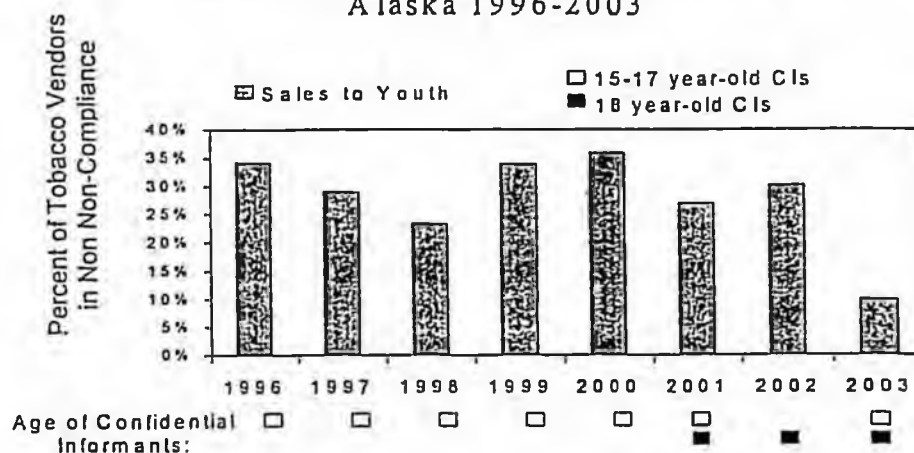
- An aggressive anti-tobacco media campaign aimed especially at curbing tobacco use by youth.
- A statewide excise tax designed to put tobacco products out of the reach of kids by boosting the price of cigarettes by \$1 per pack.
- Community-based advocacy programs that discourage the initiation of tobacco use by youth and promote the enactment of local ordinances that reduce environmental tobacco smoke exposure.
- Renewed efforts to reduce illegal sales of tobacco to youth through improved vendor training and increased enforcement actions across Alaska.

Last year, undercover sting operations found that more than 30 percent of Alaskan tobacco outlets were unlawfully selling cigarettes and other tobacco products to minors. During 2003, illegal sales to youth fell to 10 percent (Figure 6). Clean indoor air ordinances are now in force in Anchorage,

Juneau, Bethel, Barrow, Dillingham, Kenai and Soldotna. Many other smaller communities have adopted informal non-smoking policies.

Figure 6. Illegal Tobacco Sales to Youth and Age of Confidential Informants Alaska 1996-2003

Percent of Tobacco Vendors in Non-Compliance	
1996	34%
1997	29%
1998	24%
1999	34%
2000	36%
2001	27%
2002	30%
2003	10%



Tobacco-attributable disease in Alaska accounts for approximately 600 deaths per year, more than five times as many deaths as those caused by motor vehicle crashes, and nearly 100 times as many deaths as those caused by AIDS. Of the death toll due to tobacco, 120 lives are lost each year because of secondhand smoke. Beyond this, tobacco use accounts for more than \$260 million in direct and indirect medical costs in Alaska each year.

The persistently high levels of smoking among Alaska Native youth do not bode well for reducing racial disparities in the burden of chronic disease in Alaska. Lung cancer mortality among Alaska Natives, once rare, now exceeds that of non-natives (Figures 7 and 8). The high levels of smokeless tobacco use among Alaska Native youth are also worrisome, as continued use into adulthood will increase the likelihood of developing oral cancers, periodontal disease and other disorders.

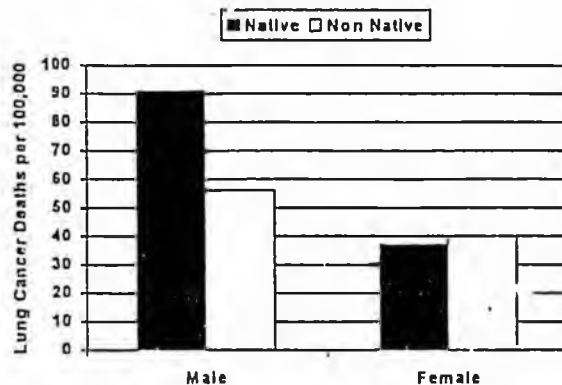
Reductions in youth smoking are critical in decreasing the long-term burden of heart disease, stroke, cancer and other chronic diseases in Alaska. Approximately three-quarters of smokers initiate tobacco use as adolescents.<sup>1</sup> Young people who are refusing to use tobacco today are unlikely to start smoking later in life.

Investments in tobacco prevention and control programs have a strong effect on reducing tobacco use, as long as programs can continue to dedicate significant and sustained resources to prevention activities.<sup>2</sup> Alaska currently spends approximately \$5.2 million per year on tobacco prevention and control, including \$3.1 million provided by the 1998 Master Settlement Agreement between states and the tobacco industry. This total falls short of the \$8.1 million minimum budget recommended by the federal Centers for Disease Control and Prevention for Alaska, and is well below the CDC's recommended spending level of \$16.5 million.

Figure 7. Lung Cancer Mortality Rates (per 100,000) by Race and Sex Alaska 1996-1999

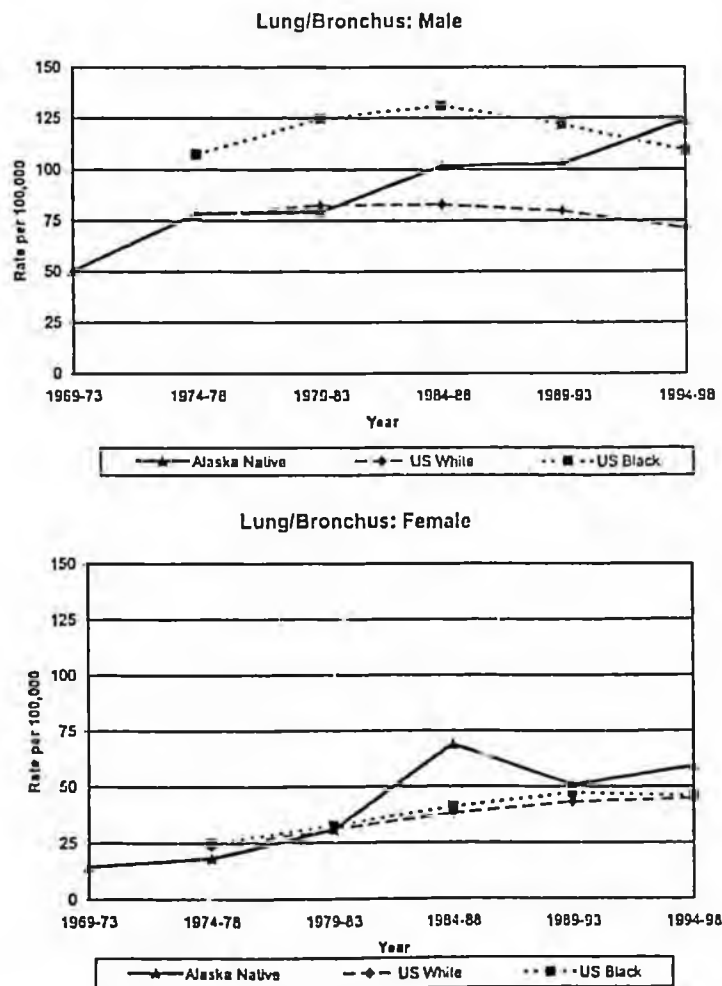
	Male	Female
Native	91.0	37.2
Non-Native	56.1	39.9

Data Source: Alaska Cancer Registry



Data Source: Alaska Cancer Registry

Figure 8. Cancer of Lung/Bronchus Average Annual Age-Adjusted Cancer Incidence Rates Alaska Natives 1969-1998 and US 1974-1997



(This figure provided by the Alaska Native Tribal Health Consortium Alaska Native Tumor Registry.)

<sup>1</sup> Substance Abuse and Mental Health Services Administration. (2003). *Results from the 2002 National Survey on Drug Use and Health: National Findings* (Office of Applied Studies, NHSDA Series H-22, DHHS Publication No. SMA 03-3836). Rockville, MD.

<sup>2</sup> Farrelly MC, Pechacek TF, Chaloupka FJ. The impact of tobacco control program expenditures on aggregate cigarette sales: 1981-2000. *J Health Economics*. 2003;22:843-859.

State of Alaska  
Epidemiology



# Bulletin

Recommendations  
and  
Reports

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Anchorage, AK 99524-0249

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# STATE OF ALASKA

## DEPARTMENT OF REVENUE

### Tax Division

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SB 368  
Senate Finance Committee  
April 5, 2004  
9:00 a.m.

#### Testimony of Johanna Bales, Revenue Auditor

Thank you Mr. Chairman. My name is Johanna Bales. I am employed by the Alaska Department of Revenue as a Revenue Auditor in the Tax Division. I am the program manager of the Tax Division's cigarette and tobacco products excise tax program. I am pleased to testify on behalf of the administration in support of SB 368, the bill before you.

For a period of time, Alaska's current excise tax rate on cigarettes and other tobacco products (OTP) was the highest in the nation. After a flurry of legislative activity in other states, Alaska's excise tax rate on cigarettes is now the 12<sup>th</sup> highest and the excise tax rate on OTP is the 3<sup>rd</sup> highest. Currently, the highest excise tax rate on cigarettes is New Jersey's rate of \$2.05 per pack of 20. However, effective July 1, 2004, Rhode Island's tax rate is scheduled to increase to \$2.45 per pack of 20. The highest excise tax rate on OTP is Washington's rate of 129% of the wholesale price. At the current excise tax rate, Alaska's fiscal year revenues from cigarette and tobacco products are approximately \$40 million and \$6.5 million, respectively.

Although Alaska receives nearly \$47 million in cigarette and tobacco products tax revenues, this amount doesn't even begin to cover the economic and social costs associated with smoking-related illnesses. The Centers for Disease Control (CDC) estimates that smoking-attributable direct medical expenditures in Alaska in 1998 were \$132 million. More recent data indicates that these numbers are on the rise. Therefore, smoking-related costs in Alaska are believed to be significantly higher than \$132 million each year.

If Alaska's cigarette excise tax was doubled to \$2.00 per pack of 20 cigarettes (\$.10 per cigarette) and the OTP tax was increased to 100% of the wholesale cost, Alaska would rank number 3 and number 2 in total taxes charged on cigarettes and OTP, respectively as compared to the other states. If the cigarette and tobacco products excise taxes were increased as proposed in the attached bill, Alaska can expect to see an increase in cigarette and OTP excise taxes of \$33 to \$38 million each year. Estimated total cigarette and tobacco tax revenues would then be between \$80 and \$84 million each year. Even at these levels, cigarette and tobacco tax revenues would not cover smoking-related costs in Alaska. However, this tax increase proposal is a step in the right direction in offsetting some of these costs. Furthermore, discouraging smoking

through a tax increase will improve the economic health of our society as a whole which, in turn, will decrease smoking-related costs in Alaska in the future.

Although we estimate cigarette and tobacco products revenues would increase between \$33 and \$38 million each year, we can expect revenues to be much smaller unless we institute an aggressive investigation and enforcement program. Although we believe the provision for cigarette tax stamps, which took effect January 1, 2004, will be an effective tool in enforcement of the cigarette excise tax, its success depends upon aggressive enforcement. Even at \$1.00 per pack, the incentive for smuggling and tax evasion is great. At \$2.00 per pack, it would be much more attractive. Therefore, in addition to increasing the tax rate, this bill would allow the Departments of Revenue and Public Safety to seize and dispose of equipment, vehicles, monies and other assets used in cigarette smuggling and tax evasion activities. We believe these types of seizures will make cigarette smuggling and tax evasion less attractive and protect State revenues.

This bill will also institute a floor stock tax on all existing cigarette inventories held in the state for sale. This portion of the bill will require all cigarette distributors and retailers to take an inventory of their cigarettes on the effective date of the statute and pay the difference between the old tax rate and the new tax rate to the Department of Revenue within 30 days. When the tax rate on cigarettes increased in 1997, a significant number of retailers stockpiled large amounts of cigarettes prior to the tax rate increase. We estimate that over 200 million cigarettes were stockpiled resulting in lost revenues to the state of approximately 7 million dollars. (See the attached chart that illustrates cigarette stockpiling that took place in 1997.) On October 1, 1997, the effective date of the increase, instead of passing the tax savings on to the consumer, most of the retailers increased their prices to reflect the increased tax rate, a tax they never paid to the State. They then blamed their price increase on the tax rate increase. The Department of Revenue received many complaints from consumers who realized that these retailers were, in essence, pocketing state revenues. Most other states and the federal government institute a floor stock tax on the date of a tax rate increase which is paid by all entities engaged in the sale of cigarettes. This provision will not prohibit individuals from stockpiling cigarettes for personal consumption.

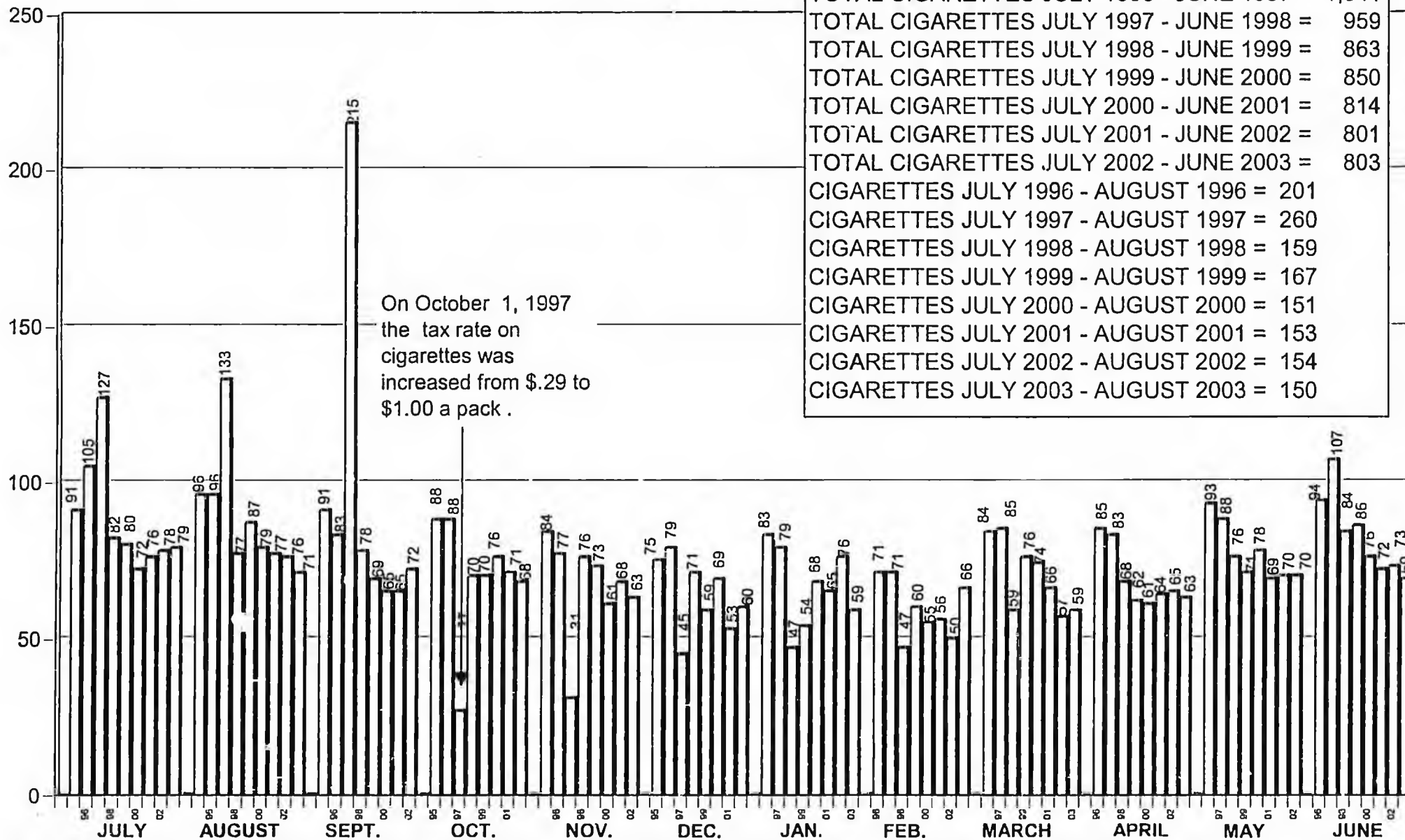
In addition to the tax stamp provisions, the bill would also make several changes to improve the cigarette licensing statutes.

The Department of Revenue urges your support of this important bill. It will enhance compliance with the state's revenue laws while providing an important public health benefit.

I would be happy to answer any questions the committee might have. Thank you.

ALASKA DEPARTMENT OF REVENUE  
TAX DIVISION

NUMBER OF TAXABLE CIGARETTES: ACTUALS JULY 1995 - AUGUST 2003  
MILLIONS OF CIGARETTES



TOTAL CIGARETTES JULY 1995 - JUNE 1996 =	1,035
TOTAL CIGARETTES JULY 1996 - JUNE 1997 =	1,041
TOTAL CIGARETTES JULY 1997 - JUNE 1998 =	959
TOTAL CIGARETTES JULY 1998 - JUNE 1999 =	863
TOTAL CIGARETTES JULY 1999 - JUNE 2000 =	850
TOTAL CIGARETTES JULY 2000 - JUNE 2001 =	814
TOTAL CIGARETTES JULY 2001 - JUNE 2002 =	801
TOTAL CIGARETTES JULY 2002 - JUNE 2003 =	803
CIGARETTES JULY 1996 - AUGUST 1996 =	201
CIGARETTES JULY 1997 - AUGUST 1997 =	260
CIGARETTES JULY 1998 - AUGUST 1998 =	159
CIGARETTES JULY 1999 - AUGUST 1999 =	167
CIGARETTES JULY 2000 - AUGUST 2000 =	151
CIGARETTES JULY 2001 - AUGUST 2001 =	153
CIGARETTES JULY 2002 - AUGUST 2002 =	154
CIGARETTES JULY 2003 - AUGUST 2003 =	150

On October 1, 1997  
the tax rate on  
cigarettes was  
increased from \$.29 to  
\$1.00 a pack .

CAUTION: COMPARISONS SHOULD BE DONE WITH CARE BECAUSE OF THE EXTENSIVE STOCKPILING THAT TOOK PLACE FROM JUNE - SEPTEMBER 1997. ADDITIONALLY, THESE NUMBERS ARE SUBJECT TO CHANGE DUE TO LATE OR AMMENDED RETURNS.



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## Chicago cigarette tax second highest

Tax hike aimed at helping smokers quit

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Story  
Tools

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CHICAGO, Illinois (AP) -- An 82-cent-a-pack county tax increase on cigarettes went into effect Thursday, bringing the per-pack cost to about \$6 -- the second highest in the nation.

New York state last year increased its cigarette tax to \$1.50 per pack, and New York City imposed another \$1.50 tax, bringing the cost there to more than \$7.

County and health officials hope the increase, approved by the Cook County Board in February, will encourage people to stop -- and prevent children from starting.

The hike will also help the county: The combination of federal, county and city taxes will add \$2.53 to the cost of a pack. The county's portion is \$1.

"I'm convinced that we will save many thousands of kids and adults from smoking," said Cook County Commissioner Robert Maldonado.

He says he'll consider another hike later this year.

Tobacco giant Philip Morris USA Inc. warned of "unintended consequences."

"Over the past two years, as a record number of states have sought to address budget issues by using increases in excise taxes, there's been an increase of illegal or contraband activity in cigarette sales," spokeswoman Jamie Drogin said.

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Provided by the Dept. of Revenue

# STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

FRANK H. MURKOWSKI, GOVERNOR

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JUNEAU, ALASKA 99811-0300  
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FAX: (907)465-2539

March 23, 2004

The Honorable Con Bunde, Chairman  
Senate Labor & Commerce Committee  
Alaska State Legislature

Re: SB 368  
Tobacco Tax; Licensing; Penalties  
Sectional Analysis

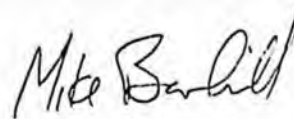
Dear Senator Bunde:

Enclosed is the Sectional Analysis for SB 368.

Sincerely,

GREGG D. RENKES  
ATTORNEY GENERAL

By:



Michael A. Barnhill  
Assistant Attorney General

MAB:ame

Enclosure

cc w/enc.: Mike Tibbles, Office of the Governor  
Randy Ruaro, Office of the Governor

**Sectional Analysis**

SENATE BILL NO. 368  
"AN ACT RELATING TO TOBACCO TAX; LICENSING; PENALTIES"

SECTIONAL ANALYSIS  
OFFICE OF THE ATTORNEY GENERAL

- Section 1: Increases the cigarette license fee for direct-buying retailers from \$25 to \$50. This increase makes the license fee the same for distributors and direct-buying retailers who are engaged in substantially similar activities.
- Section 2. This section is a technical correction to the wholesaler-distributor cigarette license type. This correction ensures that in-state individuals and retailers are not double taxed on product that is sold to them by an entity holding a wholesaler-distributor license.
- Section 3. This section requires unlicensed entities that bring cigarettes into the state upon which a tax stamp is not affixed to pay the cigarette excise tax and remit it to the department each month.
- Section 4. This section is a technical correction to the definition of a "buyer" that ensures that an individual bringing cigarettes into the state that were purchased from a licensed wholesaler-distributor are not again subject to tax.
- Section 5. This section is a technical correction to the definition of "direct-buying retailer" that ensures that a retailer bringing cigarettes into the state that were purchased from a licensed wholesaler-distributor are not again subject to tax.
- Section 6. This section is a technical correction to the definition of "distributor" that ensures that a distributor bringing cigarettes into the state that were purchased from a

licensed wholesaler-distributor are not again subject to tax.

Section 7. This section is a technical correction to the definition of "wholesaler-distributor" that ensures that entities outside the state who make sales of cigarettes into the state are properly licensed.

Section 8. This section increases the tax on cigarettes by 50 mills or \$1.00 per pack of 20.

Section 9. This section increases the tax on other tobacco products from 75% to 100% of the wholesale cost.

Section 10. This section allows licensees to apply for a credit for cigarette tax stamps that were lost or damaged in transit.

Section 11. This section allows in-state cigarette licensees to maintain unstamped cigarette inventories if the licensee is in the business of making cigarette sales to customers outside the state and the licensee is properly licensed in the other states where it makes sales.

Section 12. This section allows in-state cigarette licensees to claim a credit for cigarette tax stamps affixed to packages of cigarettes that are sold outside the state provided the licensee is properly licensed in the other states where it makes sales and the licensee provides proof acceptable to the department that the stamped cigarettes were not consumed in Alaska.

Section 13. This section provides that unstamped cigarettes that are seized are forfeited to the state and shall be destroyed by the state.

Section 14. This section allows the seizure of assets used in the sale or transport of cigarettes that are sold in the state in violation of the cigarette tax act. This section further

outlines the types of assets that may be seized, procedures for seizing assets, and procedures for the disposition of assets seized.

Section 15. This section requires that a floor stock tax be paid by all persons in control or possession of cigarettes for resale at the effective date of this bill. A floor stock tax is the difference between the tax paid at the old and new tax rates. The floor stock tax will apply to cigarettes only. The floor stock tax is due no later than 30 days after the effective date of this bill.

Section 16. This section is a technical correction to the heading of AS 43.50.610.

Section 17. The section defines the effective date of this legislation as July 1, 2004.

Statistics, Rankings and Other Relating Documents

# CAMPAIGN For TOBACCO-FREE Kids®

## STATE CIGARETTE TAX INCREASES & STATE TOBACCO SETTLEMENT REVENUES

An increase to a state's cigarette tax will have no direct or significant effect on the annual amounts the state is receiving in tobacco-settlement payments.

**No State Tax Offset Provision in the Settlement Agreements.** There is nothing in the agreements that reduces state settlement payments because of state cigarette tax increases.<sup>\*</sup>

**State Cigarette Tax Increase's and the Volume Adjustment.** The state tobacco settlements include a volume adjustment that reduces the cigarette companies' payments to the states whenever the four major companies' nationwide cigarette sales decline below pre-settlement levels. While a state's cigarette tax increase can substantially reduce smoking within its borders, its effect on nationwide cigarette sales -- and on the volume adjustment -- is much weaker. Even California and New York, the two biggest states, account, respectively, for only 5.9 and 4.2 percent of total U.S. cigarette sales. Smaller states account for much less, such as Idaho (0.4%), Iowa (1.2%) and North Dakota (0.2%). Even the lowest-tax tobacco states (which typically have high smoking rates and sometimes serves as sources for interstate cigarette smuggling) account for quite small portions of total U.S. pack sales -- e.g., North Carolina (3.8%), Kentucky (2.7%), and Virginia (3.2%). Even if one of the very biggest states increased its cigarette tax enough to reduce smoking in that state by 25 percent (which would require a tax increase of more than \$2.00 per pack), that would reduce nationwide cigarette sales and each state's future settlement revenues by only about one percent or so.<sup>†</sup> Some of the smallest states could actually eliminate all smoking within their borders without having any significant effect on the volume adjustment.

**State Cigarette Tax Increases Produce Significant State Benefits.** State cigarette tax increases always increase state excise tax revenues, reduce smoking (especially among kids and low-income families), and reduce the state's smoking-caused healthcare costs.<sup>‡</sup> That means the big winners will be the states that reduce their smoking rates more sharply than the overall national decline: they will get the same reductions to their settlement payments as other states but enjoy above-average smoking-reduction benefits and cost savings.

National Center for Tobacco-Free Kids, May 1, 2003 | Eric Lindblom

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<sup>\*</sup> The federal offset provision in the state tobacco settlements -- which provided that settlement payments to the states would be reduced on a dollar-for-dollar basis if the states received any new funds from a federal cigarette tax increase -- is no longer operative..

<sup>†</sup> Numerous studies have established that for every ten percent a state tax increase raises the average price of a pack of cigarettes in the state it will also reduce overall cigarette consumption in the state by about four percent. See, e.g., Chaloupka, F. J., "Macro-Social Influences: The Effects of Prices and Tobacco Control Policies on the Demand for Tobacco Products," *Nicotine and Tobacco Research* (2000), and other price studies at <http://tiqer.uic.edu/~fjc>. The volume adjustment reduces state settlement receipts by roughly 98% of any declines in the nationwide cigarette sales of the four major cigarette companies since before the settlement.

<sup>‡</sup> See, e.g., Campaign for Tobacco-Free Kid fact sheets, *Raising State Tobacco Taxes Always Increases State Revenues and Always Reduces Tobacco Use and State Cigarette Tax Rates and Projected Benefits from Increasing Them*, <http://tobaccofreekids.org/research/factsheets>. For more information and Campaign factsheets on state tobacco-tax increases, see <http://tobaccofreekids.org/reports/prices>.

# CAMPAIGN For TOBACCO-FREE Kids®

## BENEFITS FROM A CIGARETTE TAX INCREASE IN ALASKA

Current State Cigarette Tax: 1 Dollar Per Pack (12th among all states)

Smoking-caused costs in state per taxed pack sold: \$6.38

Average retail price per pack: \$4.34 (state share from excise and sales taxes: \$1.00)

Total state Medicaid program smoking costs each year: \$60 million

State cigarette tax revenue each year: \$40.4 million (2002)

Last Alaska Cigarette Tax Increase: 10/01/97

### Projected Benefits From Increasing the State Cigarette Tax By 1 Dollar Per Pack

- New state cigarette tax revenues each year: \$30.7 million
- New sales tax revenues: State has no sales tax.
- Pack sales decline in state: -4.6 million
- Percent decrease in youth smoking: 15.0%
- Increase in total number of kids alive today who will not become smokers: 9,100
- Number of current adult smokers in the state who would quit: 4,500
- Number of smoking-affected births avoided over next five years: 1,300
- Number of current adult smokers saved from smoking-caused death: 900
- Number of kids alive today saved from premature smoking-caused death: 2,900
- 5-Year healthcare savings from fewer smoking-affected pregnancies & births: \$1.6 million
- 5-year healthcare savings from fewer smoking-caused heart attacks & strokes: \$1.8 million
- Long-term healthcare savings in state from adult & youth smoking declines: \$146.3 million

These projections provide careful estimates of the new revenues and public health benefits the state would obtain from the cigarette tax increase above and beyond what it would get if it does not raise the tax. These projections are fiscally conservative because they include a generous adjustment for lost state pack sales (and tax revenues) from new tax avoidance efforts after the tax increase by continuing in-state smokers. The projections are also based on research findings that a 10% cigarette price increase reduces youth smoking rates by 6.5%, adult rates by 2%, and total consumption by 4%, and assume that the state tax will keep up with inflation. Nevertheless, cigarette tax increases both reduce smoking levels and increase state revenues because the increased tax per pack brings in more new revenue than is lost from the decrease in the number of packs sold. Sales tax rate is 0.0%. Kids stopped from smoking and dying are from all kids alive today. Long-term savings accrue over lifetimes of persons who stop smoking or never smoke because of tax increase.

**Sources.** Chaloupka, F, "Macro-Social Influences: Effects of Prices and Tobacco Control Policies on the Demand for Tobacco Products," *Nicotine & Tobacco Research*, 1999, and other price studies at <http://tigger.uic.edu/~fic> and [www.uic.edu/orqs/impactteen](http://www.uic.edu/orqs/impactteen). Orzechowski & Walker, *Tax Burden on Tobacco*, 2002. USDA Economic Research Service, [www.ers.usda.gov/Briefing/tobacco](http://www.ers.usda.gov/Briefing/tobacco). State tax offices. Farrelly, M. et al., "Cigarette Smuggling Revisited," U.S. Centers for Disease Control & Prevention (CDC), in press. CDC, *State Highlights 2002: Impact and Opportunity, April 2002*, [www.cdc.gov/tobacco/StateHighlights.htm](http://www.cdc.gov/tobacco/StateHighlights.htm). Miller, P., et al., "Birth and First-Year Costs for Mothers and Infants Attributable to Maternal Smoking," *Nicotine & Tobacco Research* 3(1): 25-35, February 2001. Lightwood, J. & S. Glantz, "Short-Term Economic and Health Benefits of Smoking Cessation - Myocardial Infarction and Stroke," *Circulation* 96(4): 1089-1096, August 19, 1997, <http://circ.ahajournals.org/cgi/content/full/96/4/1089>. Hodgsen, T., "Cigarette Smoking and Lifetime Medical Expenditures," *The Millbank Quarterly* 70(1), 1992. U.S. Census. Nat'l Center for Health Statistics.

For more information, see the Campaign fact sheets -- including *Raising State Tobacco Taxes Always Reduces Tobacco Use (& Always Increases State Revenues)* -- at <http://tobaccofreekids.org/research/factsheets/index.php?CategoryID=18> and <http://tobaccofreekids.org/reports/prices>.

National Center for Tobacco-Free Kids 10.30.03 / Eric Lindblom, October 30, 2003

# CAMPAIGN For TOBACCO-FREE Kids®

## 2003 STATE CIGARETTE EXCISE TAX RATES & RANKINGS

Overall All States' Average: 73.5 cents per pack  
 Major Tobacco States' Average: 12.4 cents per pack  
 Other States' Average: 81.7 cents per pack

State	Tax	Rank
Alabama	16.5	47th
Alaska	100	13th
Arizona	118	12th
Arkansas	59	27th
California	87	19th
Colorado	20	43rd
Connecticut	151	3rd
Delaware	55	30th
DC	100	13th
Florida	33.9	41st
Georgia	37	38th
Hawaii <sup>1</sup>	130	8th
Idaho <sup>2</sup>	57	28th
Illinois	98	17th
Indiana	55.5	29th
Iowa	36	39th
Kansas	79	21st
Kentucky	3	50th

State	Tax	Rank
Louisiana	36	39th
Maine	100	13th
Maryland	100	13th
Massachusetts	151	3rd
Michigan	125	10th
Minnesota <sup>3</sup>	48	35th
Mississippi	18	45th
Missouri	17	46th
Montana	70	23rd
Nebraska	64	25th
Nevada	80	20th
New Hampshire	52	34th
New Jersey	205	1st
New Mexico	91	18th
New York	150	5th
North Carolina	5	49th
North Dakota	44	36th
Ohio	55	30th

State	Tax	Rank
Oklahoma	23	42nd
Oregon	128	9th
Pennsylvania	135	7th
Rhode Island	171	2nd
South Carolina	7	48th
South Dakota	53	33rd
Tennessee	20	43rd
Texas	41	37th
Utah	69.5	24th
Vermont	119	11th
Virginia	2.5	51st
Washington	142.5	6th
West Virginia	55	30th
Wisconsin	77	22nd
Wyoming	60	26th
Puerto Rico	123	NA
Guam	100	NA
Northern Marianas	175	NA

<sup>1</sup> 10-cents added 7/1/04. Reverts to \$1 7/1/06.

<sup>2</sup> Reverts to 28 cents 7/1/05.

<sup>3</sup> Has an 83-cents rate that applies only to the brands of small manufacturers that are not part of the state tobacco settlement.

The many states and U.S. territories that have implemented or passed new cigarette increases since January 2002 are in bold type. New York City increased its local cigarette tax from eight cents to \$1.50 per pack, effective 7/1/02, and several localities in VA and elsewhere have increased their cigarette tax rates, as well. Hawaii has passed an additional 10-cent increase that goes into effect in 2004; and Alabama has sent a 14.5 cents increase, effective October 1st, 2003, to the state's voters to approve or reject. The median tax rate is now 60 cents per pack.

Tobacco States are KY, VA, NC, SC, GA, TN. States' average includes DC, but not U.S. territories Puerto Rico, Guam, or Northern Marianas. Also including Puerto Rico (which has a larger U.S. population than more than 20 states and DC) raises the state average to 74.5 cents per pack and the non-tobacco state average to 82.6 cents. Federal cigarette tax is 39 cents per pack. From the beginning of 1998 through 2002, the major cigarette companies increased the prices they charge by more than \$1.25 per pack (but also instituted aggressive retail-level discounting for competitive purposes and to reduce related consumption declines). In January 2003, Philip Morris instituted a "temporary" 65-cent per pack price cut for four of its major brands to replace its retail-level discounting and fight sales losses to deep discount brands. The U.S. Centers for Disease Control & Prevention estimates that smoking-caused health costs nationwide total \$7.18 per pack sold in the United States.

The average price for a pack of cigarettes nationwide is roughly \$3.65 (including statewide sales taxes but not local cigarette or sales taxes, other than NYC's \$1.50 per pack cigarette tax), with considerable state-to-state differences because of different state tax rates, and different manufacturer, wholesaler, and retailer pricing and discounting practices. AK, DE, MT, NH & OR have no state sales tax at all; CO has a state sales tax but it does not apply to cigarettes; and AL, GA & MO (unlike the rest of the states) do not apply their state sales tax to that portion of retail cigarette prices that represents the state's cigarette excise tax.

Sources: Orzechowski & Walker, *Tax Burden on Tobacco*, 2002; media reports; Economic Research Service, U.S. Department of Agriculture, *Tobacco Briefing Room Website*, <http://www.ers.usda.gov/Briefing/tobacco>.

For additional information see the Campaign's website at <http://tobaccofreekids.org/reports/prices>.

National Center for Tobacco-Free Kids, January 8, 2004 / Eric Lindblom

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# CAMPAIGN For TOBACCO-FREE Kids®

## STATE CIGARETTE TAX RATES & RANK, DATE OF LAST INCREASE, ANNUAL PACK SALES & REVENUES, AND RELATED DATA

30 states, DC, and Puerto Rico have implemented or passed higher cigarette tax rates since 1/1/2002, but 14 states have not increased their tax for at least ten years, five of those have not increased their tax since the 1980s, and Kentucky and Virginia have not made any increase for more than 30 years. As time passes, inflation erodes the real value of state tobacco tax rates and revenues, as they account for increasingly small portions of the total retail price of a pack of cigarettes. Cigarette tax increases can quickly restore state tobacco tax revenues to historical levels or higher -- while also reducing state smoking levels and related costs and saving lives.

Overall State Average: 70.5 cents per pack. Major Tobacco State Average: 12.4 cents per pack. Other State Average: 78.2 cents per pack.

State	Cigarette Tax Per Pack	National Rank (1 = high)	Date of Last State Tax Increase	FY 2002 Cigarette Pack Sales (millions)	FY 2002 Cigarette Tax Revenue (millions)	Retail Price Per Pack With All Taxes*	CDC State Smoking Costs Per Pack Sold	Adult Smokers	Youth Smoking Rate	Adult Smoking Rate	Adult Smoking Rank (1=low)
<i>All States</i>	\$0.70.5 avg.	///	///	20.4 billion	\$8.4 billion	\$3.72	\$7.18	48 million	28.1%	22.8%	///
Alabama	\$0.16.5	47th	7/1/84	378.5	\$61.7	\$3.15	\$7.33	794,359	23.7%	23.9%	30
Alaska	\$1.00	12th	10/1/97	40.4	\$40.4	\$4.34	\$6.38	113,852	33.9%	26.1%	44
Arizona	\$1.18	11th	11/26/02	276.1	\$158.6	\$4.44	\$8.35	809,192	19.0%	21.5%	12
Arkansas	\$0.59	26th	6/1/03	234.8	\$76.8	\$3.70	\$6.46	510,216	34.7%	25.6%	40
California	\$0.87	19th	1/1/99	1,234.90	\$1,065.2	\$4.11	\$11.38	4,234,953	21.6%	17.2%	2
Colorado	\$0.20	43rd	7/1/86	292.6	\$56.2	\$3.01	\$6.21	716,904	25.3%	22.4%	19
Connecticut	\$1.51	1st	3/15/03	227.4	\$149.8	\$4.74	\$9.16	533,286	25.6%	20.8%	8
Delaware	\$0.55	29th	7/31/03	113.4	\$27.0	\$2.98	\$4.32	147,842	24.2%	25.1%	38
Washington, DC	\$1.00	12th	1/1/03	25.4	\$16.3	\$4.14	\$16.02	95,070	14.7%	20.8%	9
Florida	\$0.33.9	41st	7/1/90	1,277.30	\$426.3	\$3.33	\$8.26	2,775,609	19.0%	22.5%	22
Georgia	\$0.37	37th	4/1/71	666.2	\$76.5	\$3.01	\$6.38	1,426,081	23.7%	23.7%	29
Hawaii	\$1.30	7th	7/1/03	62.6	\$62.6	\$4.57	\$10.15	188,649	24.5%	20.6%	7
Idaho	\$0.57	27th	6/1/03	83.6	\$23.4	\$3.38	\$6.03	182,210	19.1%	19.7%	3
Illinois	\$0.98	17th	7/1/02	885.2	\$464.3	\$4.02	\$8.53	2,165,027	34.0%	23.6%	27
Indiana	\$0.55.5	28th	7/1/02	742.1	\$110.3	\$3.52	\$5.14	1,239,174	31.6%	27.5%	47
Iowa	\$0.36	38th	6/1/91	249.7	\$88.0	\$3.22	\$6.40	486,776	32.7%	22.2%	15
Kansas	\$0.79	20th	1/1/03	208.8	\$47.9	\$3.75	\$6.98	438,544	26.1%	22.2%	16
Kentucky	\$0.03	50th	7/1/70	572.5	\$16.0	\$2.89	\$4.88	941,508	40.0%	30.9%	51
Louisiana	\$0.36	38th	7/1/02	433.3	\$98.1	\$3.21	\$7.57	805,796	33.3%	24.8%	37
Maine	\$1.00	12th	10/1/01	102.4	\$94.1	\$4.12	\$8.46	233,684	24.8%	24.0%	32
Maryland	\$1.00	12th	6/1/02	301	\$202.7	\$3.95	\$10.03	839,287	23.7%	21.3%	10
Massachusetts	\$1.51	1st	7/24/02	354	\$269.0	\$4.82	\$12.52	955,260	26.0%	19.7%	4
Michigan	\$1.25	9th	8/1/02	780.1	\$577.3	\$4.34	\$7.70	1,887,068	27.6%	25.7%	41
Minnesota	\$0.43	34th	7/1/92	352.8	\$166.1	\$3.49	\$7.22	806,434	28.9%	22.2%	17
Mississippi	\$0.18	45th	6/1/85	261.5	\$44.0	\$3.15	\$6.96	525,646	23.6%	25.4%	39
Missouri	\$0.17	46th	10/1/93	558.3	\$92.0	\$2.94	\$6.37	1,079,387	30.3%	25.9%	42
Montana	\$0.70	22nd	5/1/03	67.3	\$11.7	\$3.49	\$6.86	147,197	28.5%	21.9%	13

\* Pack prices reflect the temporary 65-cent reduction in Marlboro and three other brands initiated in January 2003 by Philip Morris, but they do not fully reflect retail-based discounting and promotions by the major cigarette companies.

State Cigarette Tax Rates & Rank, Date of Last Increase And Related Data / 2

State	Cigarette Tax Per Pack	National Rank (1 = high)	Date of Last State Tax Increase	FY 2002 Cigarette Pack Sales (millions)	FY 2002 Cigarette Tax Revenue (millions)	Retail Price Per Pack With All Taxes	CDC State Smoking Costs Per Pack Sold	Adult Smokers	Youth Smoking Rate	Adult Smoking Rate	Adult Smoking Rank (1=low)
Nebraska	\$0.64	24th	10/1/02	132.4	\$43.5	\$3.82	\$7.19	257,248	29.0%	20.4%	5
Nevada	\$0.35	40th	7/1/89	173.1	\$58.8	\$3.26	\$6.64	401,344	25.2%	27.0%	46
New Hampshire	\$0.52	33rd	7/1/99	166.7	\$84.1	\$3.33	\$4.63	223,220	25.3%	24.1%	34
New Jersey	\$1.50	3rd	7/1/02	495.2	\$391.5	\$4.64	\$9.69	1,347,607	24.5%	21.3%	11
New Mexico	\$0.91	18th	7/1/03	95.4	\$19.5	\$3.98	\$7.75	313,203	36.2%	23.9%	31
New York	\$1.50	3rd	4/3/02	884.4	\$1,052.8	\$5.65	\$12.83	3,343,006	26.8%	23.4%	26
North Carolina	\$0.05	49th	8/1/91	806.6	\$38.8	\$3.02	\$5.90	1,576,084	27.8%	25.9%	43
North Dakota	\$0.44	35th	7/1/93	43.4	\$19.1	\$3.52	\$7.82	106,379	35.3%	22.1%	14
Ohio	\$0.55	29th	7/1/02	1,101.00	\$257.3	\$3.51	\$6.66	2,344,750	33.4%	27.7%	48
Oklahoma	\$0.23	42nd	6/1/87	352.8	\$57.1	\$3.09	\$6.01	736,789	24.0%	28.8%	50
Oregon	\$1.28	8th	11/1/02	231.3	\$155.0	\$3.80	\$7.58	527,849	22.0%	20.5%	6
Pennsylvania	\$1.00	12th	7/15/02	1,067.40	\$320.1	\$3.95	\$7.50	2,221,373	27.6%	24.6%	36
Rhode Island	\$1.50	3rd	7/1/03	79.1	\$78.1	\$4.65	\$8.15	192,119	24.8%	24.0%	33
South Carolina	\$0.07	48th	7/1/77	396.2	\$25.4	\$3.00	\$6.52	786,621	36.0%	26.2%	45
South Dakota	\$0.53	32nd	4/1/03	57.1	\$17.5	\$3.49	\$6.84	123,692	33.0%	22.4%	20
Tennessee	\$0.20	43rd	7/13/02	593.6	\$75.3	\$3.26	\$7.01	1,046,946	32.4%	24.4%	35
Texas	\$0.41	36th	7/1/90	1,244.30	\$497.5	\$3.49	\$7.79	3,367,139	24.7%	22.5%	23
Utah	\$0.69.5	23rd	5/6/02	91	\$<7.1	\$3.73	\$5.99	201,425	8.3%	13.3%	1
Vermont	\$1.19	10th	7/1/03	57	\$24.5	\$4.11	\$6.18	103,332	23.7%	22.4%	21
Virginia	\$0.02.5	51st	9/1/66	662.1	\$15.0	\$2.95	\$5.57	1,201,557	NA	22.5%	24
Washington	\$1.42.5	6th	1/1/02	269.5	\$306.6	\$4.82	\$10.25	989,943	28.0%	22.6%	25
West Virginia	\$0.55	29th	5/1/03	199.5	\$32.6	\$3.37	\$7.02	396,478	39.2%	28.2%	49
Wisconsin	\$0.77	21st	10/1/01	403.3	\$288.8	\$3.89	\$7.14	942,801	27.1%	23.6%	28
Wyoming	\$0.60	25th	7/1/03	46.1	\$5.1	\$3.50	\$5.27	81,010	28.4%	22.2%	18
USA/U.S. Gov't	39	///	1/1/02	21.25 billion	\$7.0 billion	\$3.72	\$7.18	49 million	28.5%	22.8%	NA

Sources: CDC, *State Highlights 2002: Impact and Opportunity*, April 2002, [www.cdc.gov/tobacco/StateHighlights.htm](http://www.cdc.gov/tobacco/StateHighlights.htm). Orzechowski & Walker, *Tax Burden on Tobacco*, 2002. Smoking costs per pack sold = CDC estimates of state smoking-caused health costs and lost productivity per taxed packs sold in each state in 2001. Youth smoking rates most recent available; in bold type from the Youth Tobacco Surveillance (YTS); in italics from state-specific surveys; and in regular type from Youth Risk Behavioral Surveillance (YRBS). Because of different surveys and years, youth-smoking rankings cannot be done. From the start of 1998 to the end of 2001, the major cigarette companies increased their prices by more than \$1.25 per pack. Major tobacco states are KY, VA, NC, SC, GA, TN. State averages do not include Puerto Rico (which is larger than more than 20 states & DC, based on population). Taxed Pack Sales include all cigarette sales on which cigarette taxes were collected. Total USA pack sales include sales of cigarettes on which federal but not state taxes are collected (e.g., sales to Indian Tribes and military bases) and includes sales in Puerto Rico and other U.S. territories not listed above. Cigarette prices include federal and state cigarette taxes and state sales taxes but not local cigarette or sales taxes (unless they are uniform throughout the state), except for New York City, which contains roughly half the population of NY State and increased its local tax from 8 cents to \$1.50 per pack 7/1/02. AK, DE, MT, NH & OR have no state sales tax; CO has a sales tax but it does not apply to cigarettes; and AL, GA & MO do not apply their sales tax to the portion of retail cigarette prices that is the state's cigarette excise tax.

For more information on state cigarette taxes and the benefits from increasing them, see the Campaign's website at <http://tobaccofreekids.org/reports/prices>. For more state-specific data, see the Campaign website at: <http://tobaccofreekids.org/reports/settlements> and <http://tobaccofreekids.org/research/factsheets>.

National Center for Tobacco-Free Kids, June 26, 2003 / Eric Lindblom

# CAMPAIGN For TOBACCO-FREE Kids®

## RAISING CIGARETTE TAXES REDUCES SMOKING, ESPECIALLY AMONG KIDS (AND THE CIGARETTE COMPANIES KNOW IT)

The cigarette companies have opposed tobacco tax increases by arguing that raising cigarette prices would not reduce adult or youth smoking. But the companies' internal documents, disclosed in the tobacco lawsuits, show that they know very well that raising cigarette prices is one of the most effective ways to prevent and reduce smoking, especially among kids.

- RJ Reynolds: *If prices were 10% higher, 12-17 incidence [the percentage of kids who smoke] would be 11.9% lower.*<sup>1</sup>
- Philip Morris: *It is clear that price has a pronounced effect on the smoking prevalence of teenagers, and that the goals of reducing teenage smoking and balancing the budget would both be served by increasing the Federal excise tax on cigarettes.*<sup>2</sup>
- Philip Morris: *Jeffrey Harris of MIT calculated . . . that the 1982-83 round of price increases caused two million adults to quit smoking and prevented 600,000 teenagers from starting to smoke. . . . We don't need to have that happen again.*<sup>3</sup>
- Philip Morris: *A high cigarette price, more than any other cigarette attribute, has the most dramatic impact on the share of the quitting population. . . . price, not tar level, is the main driving force for quitting.*<sup>4</sup>

The companies have even publicly admitted the effectiveness of tax increases to deter smoking in their required filings with the U.S. Securities and Exchange Commission.

- Philip Morris: *[I]ncreases in excise and similar taxes have had an adverse impact on sales of cigarettes. Any future increases, the extent of which cannot be predicted, could result in volume declines for the cigarette industry.* [10-Q Report, May 11, 2001.]
- Loews/Lorillard Tobacco: *Significant increases in federal and state excise taxes on cigarettes . . . have, and are likely to continue to have, an adverse effect on cigarette sales.* [Loews (parent corporation of the Lorillard cigarette company) 10-K Report, March 31, 1999.]
- R.J. Reynolds: *[S]ubstantial increases in state and federal excise taxes on cigarettes. . . have had and will likely continue to have an adverse effect on cigarette sales.* [10-Q Report, August 1, 2001.]

### Economic Research On Cigarette Tax Increases Reducing Smoking

Numerous economic studies in peer-reviewed journals have documented that cigarette tax or price increases reduce both adult and underage smoking. The general consensus is that every 10 percent increase in the real price of cigarettes will reduce overall cigarette consumption by approximately three to five percent and reduce the number of kids who smoke by about six or seven percent.<sup>5</sup> Research studies have also made the following related findings:

- Among all adults or all youths, cigarette price increases work even more effectively to prevent and reduce smoking among males, Blacks, Hispanics, and lower-income persons.<sup>6</sup>
- Higher taxes on spit tobacco reduce its use, particularly among young males.<sup>7</sup>

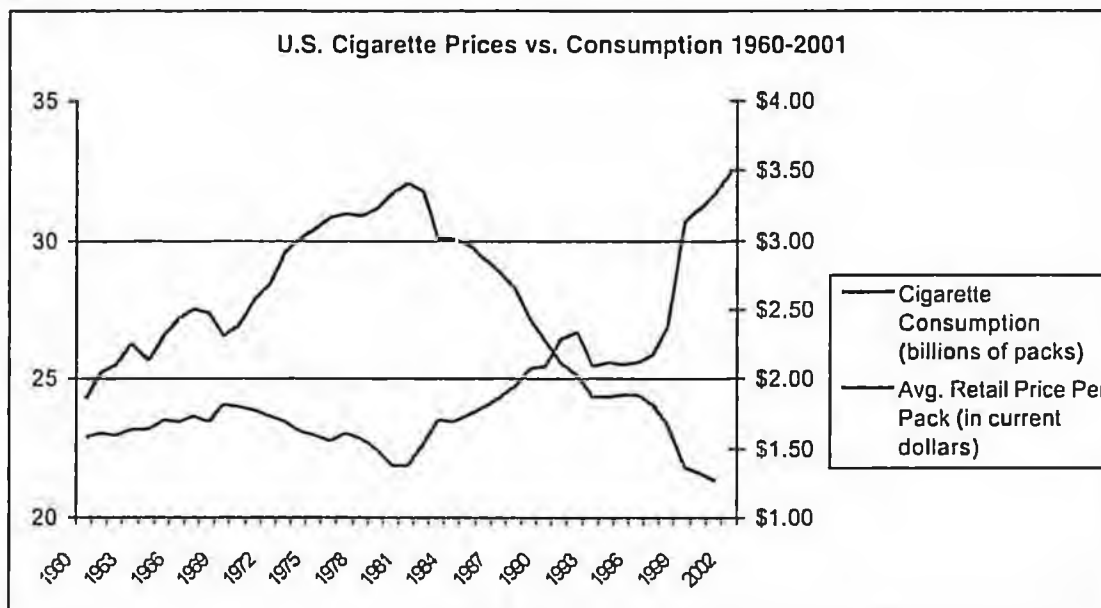
- Kids do not smoke more marijuana if they reduce their cigarette smoking. In fact, cigarette price increases not only reduce youth smoking but also reduce both the number of kids who smoke marijuana and the amount of marijuana consumed by continuing regular users.<sup>8</sup>

#### Expert Conclusions on Cigarette Prices and Smoking Levels

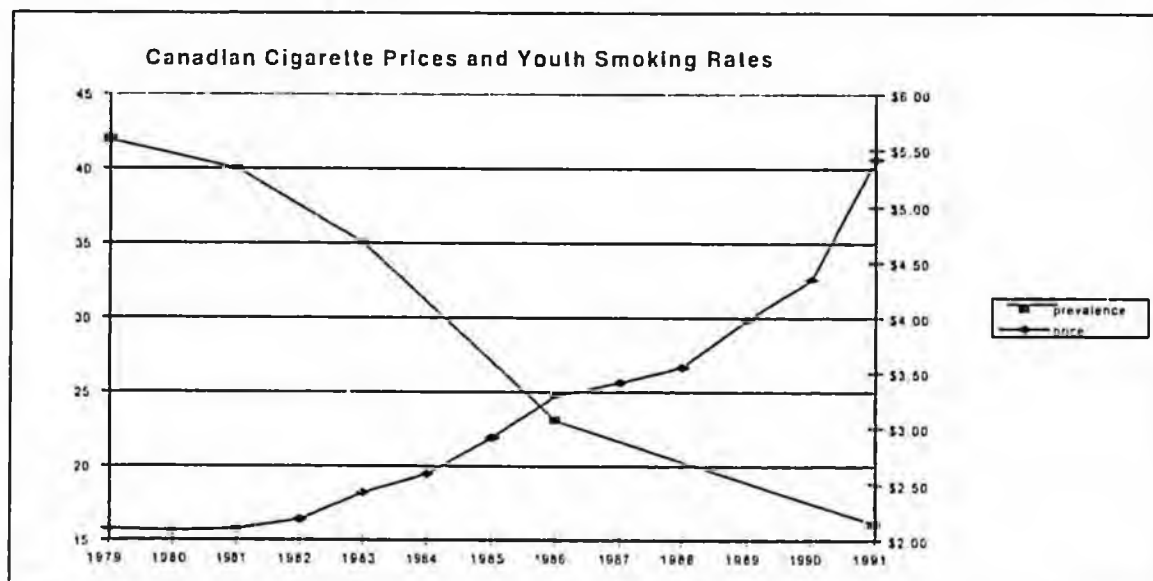
- The 2000 U.S. Surgeon General's Report, *Reducing Tobacco Use*, found that increasing the price of tobacco products would decrease the prevalence of tobacco use, particularly among kids and young adults, and that tobacco tax increases would lead to "substantial long-term improvements in health." From its review of existing research, the report concluded that raising tobacco taxes is one of the most effective tobacco prevention and control strategies.<sup>9</sup>
- The 1999 World Bank report *Curbing The Tobacco Epidemic: Governments and the Economics of Tobacco Control* carefully evaluated existing research and data, worldwide, and concluded that "the most effective way to deter children from taking up smoking is to increase taxes on tobacco. High prices prevent some children and adolescents from starting and encourage those who already smoke to reduce their consumption."<sup>10</sup>
- Wall Street tobacco industry analysts have long recognized the powerful role increased cigarette taxes and rising cigarette prices play in reducing U.S. smoking levels. For example, a December 1998 "Sensitivity Analysis on Cigarette Price Elasticity" by Credit Suisse First Boston Corporation settled on a "conservative" estimate that cigarette consumption will decline by four percent for every 10 percent increase in price.
- In its 1998 report, *Taking Action to Reduce Tobacco Use*, the National Academy of Sciences' Institute of Medicine concluded that "the single most direct and reliable method for reducing consumption is to increase the price of tobacco products, thus encouraging the cessation and reducing the level of initiation of tobacco use."<sup>11</sup>
- A National Cancer Institute Expert Panel reported in 1993 that "a substantial increase in tobacco excise taxes may be the single most effective measure for decreasing tobacco consumption," and "an excise tax reduces consumption by children and teenagers at least as much as it reduces consumption by adults."

#### Increasing U.S. Cigarette Prices and Declining Consumption

Although there are many other factors involved, comparing the trends in cigarette prices and overall U.S. cigarette consumption from 1970 to 2001 shows that there is a strong correlation between increasing prices and decreasing consumption (see chart below). While U.S. cigarette prices are largely controlled by the cigarette companies' price-setting decisions, from 1970 to 2002, the federal tax on cigarettes also increased from eight cents to 39 cents per pack and the average state cigarette tax increased from 11 to 44 cents per pack. Without these federal and state tax increases, U.S. cigarette prices would be much lower and U.S. smoking levels would be much higher.



**The Canadian Experience.** From 1979 to 1991 real prices in Canada increased from \$2.09 to \$5.42 and smoking among 15 to 19 year olds fell from 42 to 16 percent. As the President of the Canadian Tobacco Manufacturers Council then admitted to a legislative committee, "there is no question that consumption is down measurably over the last five years, and there is no question in our minds that taxes have been a significant factor."<sup>12</sup> But when Canada subsequently reduced its cigarette taxes (to reduce tax-avoidance smuggling supported by the cigarette companies), youth smoking immediately increased for the first time in nearly fifteen years.<sup>13</sup>



For more information, please go to the Campaign's special website page on tobacco taxes at <http://tobaccofreekids.org/reports/prices>

- <sup>1</sup> R.J. Reynolds Executive D. S. Burrows, "Estimated Change In Industry Trend Following Federal Excise Tax Increase" RJR Document No. 501988846 -8849, September 20, 1982, [www.rjrdocs.com](http://www.rjrdocs.com).
- <sup>2</sup> Philip Morris Research Executive Myron Johnston, "Teenage Smoking and the Federal Excise Tax on Cigarettes," PM Document No. 2001255224, September 17, 1981, [www.pmdocs.com](http://www.pmdocs.com).
- <sup>3</sup> Philip Morris Executive Jon Zoler, "Handling An Excise Tax Increase," PM Document No. 2022216179, September 3, 1987, [www.pmdocs.com](http://www.pmdocs.com).
- <sup>4</sup> Philip Morris Executive Claude Schwab, "Cigarette Attributes and Quitting," PM Doc. 2045447810, March 4, 1993, [www.pmdocs.com](http://www.pmdocs.com).
- <sup>5</sup> See, e.g., Tauras, J., et al., "Effects of Price and Access Laws on Teenage Smoking Initiation: A National Longitudinal Analysis," Bridging the Gap Research, ImpacTeen, April 24, 2001, and other price studies at [www.uic.edu/orgs/impacteen](http://www.uic.edu/orgs/impacteen). Chaloupka, F., "Macro-Social Influences: The Effects of Prices and Tobacco Control Policies on the Demand for Tobacco Products," *Nicotine and Tobacco Research*, 1999, and other price studies at <http://tigger.uic.edu/~fic>; Chaloupka, F. & R. Pacula, *An Examination of Gender and Race Differences in Youth Smoking Responsiveness to Price and Tobacco Control Policies*, National Bureau of Economic Research, Working Paper 6541, April 1998, <http://tigger.uic.edu/~fic>. Emery, S., et al., "Does Cigarette Price Influence Adolescent Experimentation?," *Journal of Health Economics* 20:261-270, 2001. Evans, W. & L. Huang, *Cigarette Taxes and Teen Smoking: New Evidence from Panels of Repeated Cross-Sections*, working paper, April 15, 1998, [www.bsos.umd.edu/econ/evans/wrkpap.htm](http://www.bsos.umd.edu/econ/evans/wrkpap.htm). Harris, J. & S. Chan, "The Continuum-of-Addiction: Cigarette Smoking in Relation to Price Among Americans Aged 15-29," *Health Economics Letters* 2(2) 3-12, February 1998, [www.mit.edu/people/ieffrey](http://www.mit.edu/people/ieffrey).
- <sup>6</sup> See, e.g., U.S. Centers for Disease Control and Prevention (CDC), "Responses to Cigarette Prices By Race/Ethnicity, Income, and Age Groups - United States 1976-1993," *Morbidity and Mortality Report (MMWR)* 47(29): 605-609 July 31, 1998, [www.cdc.gov/mmwr](http://www.cdc.gov/mmwr); Chaloupka & Pacula.
- <sup>7</sup> Chaloupka, F., J. Tauras & M. Grossman, "Public Policy and Youth Smokeless Tobacco Use," *Southern Economic Journal* 64(2): 503-16, October 1997, <http://tigger.uic.edu/~fic>.
- <sup>8</sup> Chaloupka, F., et al., *Do Higher Cigarette Prices Encourage Youth to Use Marijuana?*, National Bureau of Economic Research, Working Paper No. 6939, February 1999, <http://tigger.uic.edu/~fic>. Farrelly, M., et al., "The Joint Demand for Cigarettes and Marijuana: Evidence from the National Household Surveys on Drug Abuse," *Journal of Health Economics* 20: 51-68, 2001. See, also, Campaign for Tobacco Free Kids fact sheet, *Smoking and Other Drug Use*, <http://tobaccofreekids.org/research/factsheets/pdf/0106.pdf>.
- <sup>9</sup> Available at [www.cdc.gov/tobacco/sorpage.htm](http://www.cdc.gov/tobacco/sorpage.htm).
- <sup>10</sup> Available at <http://www1.worldbank.org/tobacco/reports.htm>.
- <sup>11</sup> Available at [www.nap.edu/books/0309060389/html/index.html](http://www.nap.edu/books/0309060389/html/index.html).
- <sup>12</sup> Bill Neville, President, Canadian Tobacco Manufacturers Council, testifying before Legislative Committee F on Bill C-10, *An Act to Amend the Excise Tax Act and the Excise Act*, September 26, 1991.
- <sup>13</sup> Canadian Cancer Society, et al., *Surveying the Damage: Cut Rate Tobacco Products and Public Health in the 1990s*, October 1999, [www.nsr-aadnf.ca/english/oct99taxrep.html](http://www.nsr-aadnf.ca/english/oct99taxrep.html).

## CRAIN'S NEW YORK BUSINESS

High tax fuels black market in cigarettes  
Agencies crack down on smugglers

By Arne Michaud

Published on March 08, 2004

Like the prohibition on alcohol in 1920s America, the high tax on cigarettes in New York City is giving rise to a vast network of illegal sales, complete with gangland-style violence.

Cigarettes are not banned here, of course, but at \$7.50-plus for a pack, they are prohibitively expensive for many smokers. To feed smokers' habits, bootleggers—from petty criminals to organized gangs and even terrorist organizations such as Hezbollah—are bringing cigarettes into the state and successfully evading the tax penalties.

"We're paying a lot of attention to this," says Gary McCarthy, deputy commissioner with the New York Police Department. "It's a black market people are moving into, and we have to squeeze it as hard as we can."

If there's any doubt about cigarette sales going underground, tax collection figures tell the tale. Legitimate vendors sold only 11.1 million packs in New York City last January, compared with 30.4 million packs in January 2002. Because the city collects \$1.50 on each pack sold, versus 8 cents prior to the July 2002 tax hike, monthly tax revenue increased to \$16.7 million this past January from \$2.4 million in January 2002. However, state tax revenue declined so much that the state and city together lost \$5.6 million in monthly revenue during the same period.

Much of that decline is probably not due to smuggling—studies show that 4% of smokers will quit for every 10% rise in the cost of cigarettes. But there is plenty of evidence that people who haven't quit are getting their nicotine fix illegally.

Mike Patel says cigarette sales are down by half at his newsstand at Broadway and Chambers Street. "If they increase the tax again, we're out of business," says Mr. Patel, who watches teenagers sell cigarettes from plastic grocery bags near his stand. "They come with two bags full and sell them for \$5."

Some criminal sales are more blatant than others. People may not know that Internet cigarette purchases are illegal if buyers don't pay the appropriate taxes. Or that loading up on a few cartons at tax-free Indian reservations upstate or on Long Island is illegal for non-Indians, even though the governor is refusing to enforce the law.

### Gang rivalry

At a much higher criminal level, bootleggers drive to Virginia and North Carolina, where they load up car trunks and trailers with cheap cigarettes that can net them \$7,000 to \$140,000 a trip. Police believe the smuggling may be fueling street gang rivalries. The NYPD attributes two Brooklyn homicides and two shootings late last year to cigarette turf battles.

The lucrative trade is attracting organized crime and terrorism groups. Two years ago, 10 members of Hezbollah were arrested in Charlotte, N.C., and convicted of using proceeds from cigarette smuggling to aid the organization.

"Since then, we have stepped up our enforcement quite a bit," says Joseph Green, senior special agent for the federal Bureau of Alcohol, Tobacco, Firearms and Explosives in New York.

The ATF seized 12,000 cases in New York—more than 2 million cigarettes—in a sting operation in the city last fall. Many were run up from Virginia; others were manufactured for export from the United States but were diverted back here. Counterfeit cigarettes are also being flown in from China, where they are packaged to look like well-known brands, such as Marlboro and Newport.

"Either the black market gets stopped, or we are going to have no legitimate distribution in the city of New York," says Leonard Schwartz, owner of Global Wholesale Co. in Brooklyn, which distributes cigarettes to stores. Mr. Schwartz, who also serves as chairman of the Wholesale Marketers Association, says he has had to lay off 15% of his workforce since the new city tax was enacted.

Small businesses are under so much pressure to make up for the losses that they are turning to illegal purchasing themselves. Sen. Frank Padavan, R-Bellerose, and Assemblyman Jeff Klein, D-Bronx, have introduced twin bills in the state Legislature that would reward wholesalers for turning in businesspeople who make suspicious cutbacks in their cigarette orders. Mayor Michael Bloomberg is pressing for the earliest possible passage of the bills.

### **Sting operations**

The city's Department of Finance has hired a new head of enforcement, Carlton Butler, to run sting operations to nab illegal sellers. He is formalizing relationships with agencies such as the ATF, the NYPD, the state police and the sheriff's office.

But some people aren't thrilled with the stepped-up enforcement. "I'm outraged that they're creating new task forces," says E.J. McMahon, a senior fellow at the Manhattan Institute, a conservative think tank. "I don't want them keeping an eye out for illegal cigarette sellers; I want them watching the guys with suitcases with nuclear bombs."

All signs point to the bootlegging problem growing worse. City Finance Commissioner Martha Stark says that sellers are becoming more sophisticated, especially in the use of the Internet. Illegal distributors are said to be setting up home delivery routes.

Police, who are charging first-time offenders with a misdemeanor, expect that once criminals are caught for the second time and face felony charges, others will be deterred. "Over the course of time, we anticipate getting more bang out of the buck for these arrests," the NYPD's Mr. McCarthy says.

Mr. Green of the ATF predicts more violence as well. "The black market has continued to thrive and expand," he says. "Anywhere the criminal organizations have a potential to make a lot of money, the potential for violence increases."

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**INCREASED TAX = INCREASED PROBLEMS WITH COUNTERFEIT PRODUCTS**

**Firm sees red over counterfeit smokes – New York Times, March 4, 2003**

As cigarette taxes increase, U.S. Customs officials see more production of counterfeit products...

Because by U.S. Customs inspectors confirm that the problem is getting worse. Last year, Customs intercepted about 13 million packs of contraband smokes - mostly counterfeits - a fourfold increase over 2000. Most were seized at Los Angeles-Long Beach harbor, the gateway for Asian trade.

As the top-selling cigarette in the U.S., with a 37% market share, Marlboro naturally has been the favorite target of counterfeiters. According to a Southern California tobacco dealer who did not want to be identified, a recent joke within the cigarette trade was that "there was probably more Chinese product in California than there was Philip Morris product."

Because sales of counterfeits also mean lost taxes, the problem has aligned the interests of tobacco firms and federal and state revenue agencies. In California, the knockoffs typically carry phony tax stamps. Each counterfeit pack represents a loss of \$1.26, comprising California's cigarette tax of 67 cents and the federal excise tax of 39 cents. According to the state Legislative Analyst's Office, California is losing \$130 million to \$270 million a year to various tobacco tax-avoidance schemes.

**Lawmakers discuss raising tobacco taxes – Associated Press, February 5, 2003**

When North Dakota was considering a tax increase of 35 cents per pack...

Opponents say raising tobacco taxes could result in people bringing in cigarettes from states with cheaper taxes, buying them on American Indian reservations or buying them on the Internet without paying any taxes.

"It will make very honest people become little crooks," said Vicki Wegner, a spokeswoman for the North Dakota Council of Churches.

**Two suspected cigarette smugglers funded Hezbollah, U.S. says – Associated Press, February 5, 2003**

Smugglers find profitable market in Michigan...

Two men accused in a cigarette trafficking ring have been charged with funneling contraband profits to the Islamic-militant group Hezbollah, federal authorities say. The two were among 11 people charged in an indictment with buying cigarettes in North Carolina and an Indian reservation in New York, then bringing them back to Michigan to be resold.

The government linked the conspiracy to Mohamed Hammoed, the suspected leader of a Hezbollah cell who was convicted in North Carolina last June of helping run a ring that sent cigarette-smuggling profits to the Lebanese group.

**Eleven indicted on cigarette racketeering charges – Associated Press, February 4, 2003**

High cigarette taxes in Michigan lead to cigarette smuggling...

Eleven people accused of buying and selling contraband cigarettes in order to evade Michigan taxes have been indicted on racketeering charges, federal authorities announced Tuesday.

In separate documents, prosecutors allege some of those charged donated profits from the cigarette trafficking to the militant group Hezbollah, a U.S.-designated terrorist organization in Lebanon.

The indictment unsealed Tuesday charges each of the 11 with conspiracy to commit a pattern of racketeering activity, including contraband cigarette trafficking, possession of counterfeit cigarette tax stamps, credit card fraud, money laundering, arson and witness tampering.

The defendants are accused of buying cigarettes in North Carolina and the Catsaugue Indian Reservation in New York, then bringing them to Michigan to be resold, according to U.S. Attorney Jeffrey Collins and the Bureau of Alcohol,

Updated 12/16/2002

**Tobacco and Firearms.** Cigarette taxes are \$12.50 per carton in Michigan and 50 cents per carton in North Carolina. Cigarettes are not taxed on the reservation.

### **Smokers shouldn't make up shortfall - Atlanta Journal & Constitution, January 18, 2003**

#### As Georgia considers a 45-cent tax hike...

What happens to the majority of smokers who don't kick the habit or cut their smoking in half in response to the tax increases? They either pay higher prices, turn to the black market or cross the border to buy cheaper cigarettes, as Canadian smokers did.

More than a decade ago, Canada introduced a \$5-per-pack (\$3.72 in U.S. dollars) tax on cigarettes. In response, an estimated 30 percent of cigarettes smoked in Canada were smuggled in and sold for about half the price of legal cigarettes. Cigarette smuggling created a hardship for the owners of small stores who relied on cigarette revenue and it became an additional burden for law enforcement. Consequently, Canada eventually cut its cigarette tax in order to collect revenues.

If Georgia's proposed 58-cent-per-pack tax takes effect, a one-pack-per-day smoker could save some \$168 annually by purchasing cigarettes north of the border, or better yet, over the Internet. If just 10 percent of Georgia's 1.34 million adult smokers decided to cross the border or order cigarettes online, the state would actually bring in millions of dollars less than it is proposing under the cigarette "sin tax" hike.

### **Want Wanna cheap smokes? - Wall Street Journal, December 13, 2002**

#### Cigarettes become hot item on New York's black market as excise taxes increase

"...cigarettes, cigarettes," he chants under his breath to passerby. Customers slip him \$5 bills and he gives each a green-and-white pack of smokes.

Ave's business is untaxed cigarettes smuggled in from other states, and he boasts he can sell 50 packs a night. "I go for shopping areas, wherever there's a large crowd," the 26-year-old says. "I make a good profit, enough to pay my bills."

The black market has spread across the city. In Brooklyn, a landlord, fearing drug pushers were in the neighborhood, called police. The "pushers" turned out to be (black market) cigarette vendors.

"There are a lot of entrepreneurs and opportunists out there," says Michael Brooks, the deputy inspector who commands the New York Police Department's vice-enforcement division. "There's more activity because of all the money that can be made."

[Edgar] Domenech (head of the ATF's New York field office) predicts an increase in competition among criminal groups to control the trade in untaxed cigarettes. "And competition in any illegal activity results in some shape or form of criminal violence," he says.

### **Up in smokes: Cigarettes no cash cow for N.Y.; Higher tax has smokers buying tobacco elsewhere - Binghamton, NY Press & Sun-Bulletin, November 25, 2002**

#### New York's cigarette smuggling increases as cigarette taxes are increased...

In the last two months, New York's Tax Department has announced four arrests for bootlegging or possessing illegal cigarettes. A Schenectady YMCA worker, charged with selling illegal cigarettes on the job, was caught with 208 cartons. Two Dutchess County men were caught with three times as many cartons, selling them from gas stations. A Rockland County man, who authorities say had been dealing illegal tobacco to retailers, was arrested outside a Spring Valley convenience store with 2,440 cigars in the back of his car.

"Smuggling has existed for some time, but it's gotten more lucrative," [Jim] Cahin (director of the New York Association of Convenience Stores) said.

### **Tobacco is gold on black market - Baltimore Sun, November 24, 2002**

#### Crime and smuggling rise as demand for cigarettes on the black market...

A court case filed in New York last month tells a gripping story involving terrorists and drug traffickers, Swiss banks and the Russian mob, the Italian Mafia and money launderers.

Updated 10/1/02

Prosecutors said they confiscated more than 1,200 cartons of mock Marlboros that were smuggled from Cuba to Queens to avoid city and state taxes of \$3 per pack.

**Scum up in uptown, officials blast cigarette smuggling ring - New York, September 28, 2002**

After attack: looks up a 100-mile-a-year smuggling and counterfeit cigarette ring...

"In the wake of the increase in New York's cigarette tax, a torrent of untaxed cigarettes - including fakes purporting to be popular brands such as Marlboro and Marlboro Lights - has been pouring into New York City," said Queens District Attorney Richard Brown.

**\$200M lost to cigarette smuggling yearly; city, state tax shortfall from gang & internet sales - New York Daily News, September 23, 2002**

Smugglers' profits rise, and state, city tax revenues fall...

Freelance smugglers, organized crime and Internet sources are flooding New York's neighborhoods with cheap cigarettes that would bring the city and state upward of \$200 million a year in losses on the legitimate market.

The boom in underground cigarettes was touched off by the July increase in city taxes...according to government officials and tobacco wholesalers.

"When it comes to smuggling and counterfeit stamps, traditional organized crime is involved, terrorist groups are involved and street gangs are involved," said John Dugan, the ATF's area supervisor for industry operations. "How the profit margin is tremendous," he said.

One morning last week, three stores in a four-block area in Bedford-Stuyvesant, Brooklyn were busted by agents of the Finance Department's tax enforcement division for selling untaxed cigarettes.

**Illegal tobacco transport targeted; arrest rate rises with tax increase - The Washington Times, September 23, 2002**

Law enforcement sees rise in arrests due to smuggling...

Maryland is setting a record pace for tobacco-smuggling arrests, having charged 42 persons with the crime since the fiscal year began July 1.

The increased pace of arrests coincides with an increase in Maryland's tobacco tax.

[Maryland's] comptroller [William Donald Schafer] has linked tobacco to terrorist groups. "We know that some of the money used by smugglers is directly passed on to terrorist organizations," Mr. Schafer said last month.

Three weeks after the September 11 terrorist attacks on the World Trade Center and the Pentagon, Mr. Schafer said he believed there was some connection between cigarette smugglers and terrorist groups.

He said the terrorists who bombed the World Trade Center in 1993 had sold cigarettes illegal to partially finance that attack.

**Revenue-craving governments have long been addicted to nicotine, drawing in tax revenue while breathing out moral plaudits about liberating the community from lethal addiction - The Business, September 22, 2002**

New York's high cigarette tax leads to smuggling from neighboring states...

Another unintended consequence of the tax has been a sharp increase in bootleggers who have been making a nice living out of transporting cigarettes from low-tax states in the south to high-tax states in the northeast.

Authorities recently arrested 17 people accused of smuggling cigarettes to raise money for the terrorist Hezbollah by earning as much as \$10,000 with each workload.

It is not cocaine or heroin or guns or explosives, but cigarettes.

### **Cigarette smuggler helps federal agents follow money trail to Islamic group Hezbollah – Fort St. Louis, Fort Pierce (Florida) Tribune, November 18, 2002**

#### Counterfeit cigarette tax stamps lead to arrests of smugglers...

The trap that snared Heissam Nashar as he charged plazas at Lambert Field was intended to stop drug runners. As it turned out, the nervous, sweating traveler who attracted police attention three years ago had no narcotics; the contraband in his luggage was instead almost \$700,000 worth of cigarette tax stamps that police presumed were counterfeit.

### **St. Louis bust leads police to Charlotte Hezbollah ring – Associated Press, November 18, 2002**

#### Terrorists find easy funding source in smuggled cigarettes and counterfeit tax stamps...

Heissam Nashar, 38, a native of Lebanon who lives in North Carolina, was running fraudulent cigarette tax stamps, rather than drugs. After authorities started questioning him, he gave them the names of other people of Lebanese heritage who he said were smuggling cigarette stamps to raise money for Hezbollah.

This June, Nashar appeared in a heavily guarded courtroom in Charlotte to testify against two men he implicated, brothers Mohamed and Chawki Hammoud.

[Kenneth] Bell [the assistant U.S. attorney who prosecuted the case] said the Hammoud brothers and eight defendants who pleaded guilty had at times sent as many as three vans of cigarettes a week to Michigan, reaping a profit of up to \$12,000 per van.

### **Counterfeit Terror: Feds track sales of counterfeit goods, money to terror groups – Associated Press, October 24, 2002**

#### Counterfeit products, including contraband cigarettes, fund terror organizations...

Officials said the schemes span the globe, but there is direct evidence that some counterfeit products are being imported from overseas and sold directly in the United States, with the proceeds from Americans going back to terror groups. Counterfeit sales are believed to have reached into the millions of dollars, officials said.

[The] Trainer [a former Customs Service official who now heads the International Anti-counterfeiting Coalition in Washington] said current estimates are that sales of counterfeit goods account for 5 percent to 7 percent of worldwide trade, possibly as much as a half-trillion dollars a year.

### **Thieves apparently drive through door, take smokes – Toledo Blade, October 21, 2002**

#### Charged in three cases expensive cigarettes for retailers...

Toledo police are investigating a burglary...in which a vehicle apparently smashed through the front door and thieves stole 250 cartons of cigarettes.

Mr. Jamal [store manager and co-owner] said suspects took a large case that contained the cigarette cartons and drove off...he estimated the damage to the store at about \$20,000.

### **Bogus buds pinched in Queens – New York Daily News, September 28, 2002**

#### After prices soared \$7 per pack, fake cigarette makers' scheme...

Already under siege from sky-high prices, smokers got another dose of bad news yesterday – some of the brand-name cigarettes they are buying are actually fakes.

"I never believed in my wildest dreams that I'd be standing before you with hundreds of cartons of counterfeit cigarettes," said Queens District Attorney Richard Brown as he posed before a large table covered with fake Marlboros.

**Hiding tobacco tax won't solve budget deficit - Cape Cod Times, September 18, 2002**

When California officials propose a cigarette tax increase...

With California facing a Grand-Democratic budget deficit of \$24 billion, Gov. Gray Davis and his Democratic allies in the State Legislature have fallen back on a brain-trust fanny of tax increases. The top-liner of the year ahead, however, has got to be the proposed massive hike in the state tobacco tax, which should be labeled the "Tax Avoidance and Smuggling Promotion Act."

Before they bank on all those additional tax revenues, Davis and Weason should look at the huge problems currently being experienced by states and countries with high tobacco taxes.

New York smokers have gone to great lengths to avoid the high tobacco taxes. For instance, many tobacco consumers travel to Indian reservations in the state where, because of Indian sovereignty rights, cigarettes can be sold minus state and local taxes.

In a delicious irony, then, much of the revenues that Davis and Weason expect from their tobacco tax increase may go up in smoke.

**Cigarette smugglers find Virginia's low tax tempting - Virginian-Pilot, September 16, 2002**

Maryland officials catch a smuggling ring - running cigarettes from Virginia to New York...

The U.S. Customs Service says profits from cigarette smuggling now rival those from trafficking in illegal drugs. And no state is a more tempting target for the traffickers than Virginia.

The operation was profitable at every step of the process, said Dale Irwin, assistant director of field enforcement in the Maryland comptroller's office, which investigated the case. "The retailer was making money in Virginia. The guy taking them into Maryland was making money. The guy who was taking them to New York was making money. And the person who eventually sold them over the counter was making money," Irwin said.

Irwin estimates that 90 percent of the seized cigarettes came from Virginia. New York City authorities estimate that 60 percent of cigarette smuggled into the city originate in Virginia. "This is organized crime," Irwin said. "We've had some information come back to us from reliable sources that there have been warehouses where people had semi-automatic machine guns guarding their product."

**State gets tough on cigarette tax, threatens smokers dodging \$1 charge - Pittsburgh Post-Gazette, August 30, 2002**

Youth access cigarettes via the Internet...

Parent/teacher officials are learning what their counterparts in other states have known for years: People will buy cheaper cigarettes over the Internet, from neighboring states, or from Indian reservations that sell tax-free cigarettes to avoid paying high taxes.

"The Internet is a great resource, but some individuals are using it to thwart Pennsylvania tax law," said State Revenue Secretary Larry P. Williams.

"Our main goal in increasing Pennsylvania's tax on cigarettes was to discourage our children from smoking," Williams said. "If children have access to purchasing tobacco products over the Internet, it defeats the purpose."

**Smokes 'em if you can afford 'em - Daily Ticonderoga, August 27, 2002**

An increased nicotine tax raises the price of cigarettes to \$10...

Where there is a will to procure a desired product at a lower cost, there is always a way. Luckily for smokers, the free market and legal loopholes have allowed them to circumvent suffocating government legislation and find cigarettes for very low prices.

In addition to the Texas tradition of hopping the border to grab some cheap smokes in Matamoros or Ciudad Juarez, smoke shops on beach resort towns have become more popular with smokers as word gets out that one can buy cartons for less than \$20.

It is estimated that \$1.5 billion in federal and state cigarette taxes goes collected every year (due to smuggling).

Cracking down on cigarette smuggling could also be seen as corollary to the terror war. In July, 17 men were arrested on charges of cigarette smuggling. Authorities also alleged that proceeds from the smuggling ring were being funneled to the terror organization Hezbollah.

### **Cigarettes top burglars' list at city stores - Toledo Blade, August 20, 2002**

As taxes on cigarettes rise, crime against retailers who sell cigarettes increases...

Den Ridd is tired of the heists. Two of his Toledo convenience stores have been broken into this month. The object of the burglars' desires isn't money, but cartons of cigarettes.

"They're taking out garbage bags and laundry baskets full of them," Toledo police Detective Felix Parra said.

### **New Yorkers finding ways to circumvent high cigarette taxes - CBS News, August 20, 2002**

When officials claim that cigarette taxes help curb smoking and improve public health...

The city (New York) claims sales have been cut in half, but have they? Just because they're reporting selling half as many cigarettes doesn't mean people are smoking half as many cigarettes. Perhaps all it means is that smokers have become more enterprising in their efforts to beat the tax. Which brings us to these agents, making markets across the city that are selling illegal cigarettes lacking the proper New York tax stamp.

### **Is taxing tobacco good public policy? No; Snuff-out cigarette tax hike - The San Diego Union-Tribune, August 16, 2002**

Crime and youth access to tobacco may increase with cigarette tax increases...

California lawmakers should reject as fools gold the proposed huge increase in cigarette taxes. I (Robert Shepherd, New York) spent 25 years in New York State government as a cop, a prosecutor and the top enforcement official for tobacco taxes, and I know first-hand what such a high tax will bring: crime, cheap cigarettes easily available to youth and unemployment.

Perhaps the most egregious problem with a tax increase of this magnitude is that it will end up making cheap cigarettes available to kids - the direct opposite of what the proponents claim. With an overwhelming proliferation of smuggling, cheap cigarettes will be available...on many street corners. Smugglers never ask for ID.

The lesson is clear from New York to California: when governments try to tax behavior in order to change behavior, they wind up losing revenue and hurting the innocent.

### **Burning locust steam The Apple - butt-leggers sell illicit cigs under cops' noses - New York Post, August 16, 2002**

Smuggled cigarettes hurt local businesses...

Mayor Bloomberg may have helped raise the price of a pack of cigarettes to \$7.60 and the City Council may be trying to ban smoking everywhere, but The Post found that it is easy to buy cheap cigarettes from illegal vendors at numerous locations across the city.

Popular brands can be bought on the streets for as little as \$5 a pack - \$2 to \$3 less than tax-stamped packs being offered by stores and bodegas complying with the city and state's 6-week-old tax slug, which went from 8 cents a pack to \$1.50.

"An increase in bootlegging is just what we predicted," Richard Lipitz, a spokesman for a city coalition of small-business owners, said. "What you're seeing is only the tip of the iceberg, but this iceberg is going to sink scores of neighborhood ethnic business tobacco is a traffic-builder for them."

The NYPD said many illegal cigarette sellers are small-business operators who are hard to catch. Police sources say their hands are tied in dealing with repeat offenders...because current laws don't really address street sellers buying low-tax cigarettes.

"There's no real punishment," one source said. "Usually, they pay a fine and go right back out there."

### **Cigarette Catches Increase as taxes rise - Associated Press, July 24, 2002**

#### Cigarette tax increases lead to increased theft and smuggling in New Jersey...

New Jersey police say the kind of smash-and-grab robberies that usually take place at jewelry stores are happening where cigarettes are sold. And federal tax enforcement officials report that hijackings of tractor-trailers transporting cartons of smokes around the country are on the rise.

"Where we've seen an increase in taxes, we've seen an increase in diversion," said Special Agent Joseph Green of the Bureau of Alcohol, Tobacco and Firearms.

The ATF only deals with cases involving the theft or smuggling of more than 60,000 cigarettes and investigations conducted by the agency nationally have swelled from six in 1998 to 97 so far this year.

### **Cigarette tax impacting smuggling, online sales - Associated Press, July 21, 2002**

#### After Ohio raises cigarette tax, officials pressure for crackdown...

"It's not unusual for someone to buy \$100,000 in cigarettes and turn that into \$150,000 or \$160,000," said Chris Tardis, a Bureau of Alcohol, Tobacco and Firearms agent in Cincinnati. "It's mind-boggling how profitable it is."

"Obviously it creates opportunities to make some money illegally," said Gary Gudmundson, spokesman for the Department of Taxation. "There will undoubtedly be people who see it as an opportunity they can't pass up."

### **States brace for cigarette backlash - Associated Press, July 14, 2002**

#### After several states increase cigarette taxes, authorities begin bracing for more aggressive smuggling...

Those unwilling or unable to kick the habit are left with several options - legal, quasi-legal or illegal - for getting a nicotine hit without a tax hit.

Those who choose the illegal route are often successful. The Bureau of Alcohol, Tobacco and Firearms estimates state and federal authorities lose more than \$1.5 billion annually in evaded cigarette taxes.

The ATF concentrates on major interstate smuggling - operations involving at least 60,000 cigarettes. The workload has increased steadily in recent years; ATF now has about 150 active cigarette-smuggling cases.

"There's no question some large-scale organized crime gangs are involved," said ATF spokesman John D'Angelo. "Not only are these criminals depriving state and federal governments of tax revenue, they're using their profits for other criminal activity."

### **The state of cigarette taxation - Chicago Tribune, May 4, 2002**

#### Nearly 30 states are poised to raise or reinstate cigarette taxes, raising revenue while the MW breaks...

Higher tobacco taxes are expected to create problems for many states because of increased cigarette smuggling and the proliferation of more than 100 internet cigarette sales operations such as 40cents.com and Smokecheap.com, where smokers can buy their favorite brands without paying state taxes. The result, according to tax and budget analysts, is that many states likely won't collect the amount of money they have forecast to balance their budgets. The amount of uncollected revenue could run into the billions of dollars.

Cigarette smuggling has long been a revenue drain for some states and cities. In Oregon, the cigarette tax is 88 cents, offering an attractive alternative to Washington. New York Mayor Michael Bloomberg said smuggling costs his city \$60 million a year in lost tax revenues. The lure of buying cigarettes in Virginia, where the tax is 2.5 cents, will almost certainly increase because Maryland raised the tax to \$1 per pack, from 66 cents.

A report from Forrester Research Inc. said Internet retailers that operate on Indian reservations "are not overjoyed to collect state sales or excise taxes; 67 percent of the top online tobacco retailers are located on Indian reservations."

### **In wake of state cigarette tax hike, officials brace for more bootlegging - Albany Times Union, April 29, 2002**

After the first month of a NY state cigarette tax increase to \$1.50 per pack implemented 4/1/02...

Drug dealers can make more than \$20 a carton by purchasing cigarettes from distributors in states like Virginia and North Carolina and reselling them in this (NY) state.

New Yorkers have been driving across state lines in large numbers to buy cigarettes since the new tax took effect April 1, officials said. Store owners in New York border states that have lower cigarette taxes are reporting brisk sales.

For those not making the trip, smugglers can be the answer. Often, corrupt vendors will bring back untaxed cigarettes and sell them in their own stores in New York for full price, pocketing the profit and the sales tax.

### **A pack of profits from tobacco - North Jersey.com, April 14, 2002**

Tax increases lead to smuggling...

In 1996, a year after the last cigarette tax increase went into effect in New Jersey, law enforcement authorities seized 16,486 cartons of illegal cigarettes worth \$504,851, the largest haul over the last five years.

### **300G cigarette heist foiled - New York Daily News, February 23, 2002**

Detectives caught suspects who allegedly stole \$300,000 worth of cigarettes...

Investigators got a tip that the suspects planned to sell the cigarettes yesterday outside a storage facility on W. 230<sup>th</sup> St. for about \$15 a carton - a steep discount from the estimated retail price of about \$40.

### **Some New Yorkers fume, others see merit in cigarette tax hike - Bloomberg News, February 15, 2002**

New York tax hike won't prevent people from smoking - people will go elsewhere to purchase cigarettes...

Prudential Securities analyst Robert Campagnino, who follows the tobacco industry, says he sees Bloomberg's tax increase "having no impact" on cigarette sales, if enacted. "With all due respect to the mayor, it's a pretty silly idea," he said. "In New York, where everyone is 10 minutes away from a place outside the city, anyone can leave the city, buy their cigarettes and come back in. It creates a powerful incentive to smuggle cigarettes."

Campagnino said a tax increase "would create a huge business for those who sell cigarettes by mail order or over the Internet. They would be major beneficiaries of a tax like this."

### **Cigarette taxes yield 2nd-hand hit crime - Portland Oregonian, January 22, 2002**

Black market sales generated by high cigarette taxes in Washington...

A van stuffed with 8,000 untaxed cartons is worth up to \$57,000 more in Washington than it is in Idaho. Legal cigarette sales were already costing Washington an estimated \$100 million in lost annual revenues before the 60-cent tax hike on Jan. 1.

Updated 1/21/2008

W. Carter Mitchell, who oversees Washington's 14-agent tobacco tax-evasion unit, looks like a man bracing for a hurricane. His agents tell him there are already signs of increased smuggling... "The day that thing [the cigarette tax] passed, we said 'Oh boy, this is going to be a real mess.'"

Cigarette smuggling exploded in Maryland after the state's cigarette tax climbed to 68 cents a pack in 1968. Vans and trucks full of illegal cigarettes suddenly started rolling into the state from neighboring Virginia, which has the lowest tax in the country - 2.5 cents a pack.

Similar market upheavals rocked California after it doubled its cigarette tax to 87.5 cents a pack on Jan. 1, 1968. Taxable sales fell by more than 25 percent. State officials now estimate California loses \$300 million a year to the black market.

### **Cigarette scam uncovered- Newsday, January 18, 2002**

New York cigarette smuggling operation busted due to heightened airport security...

Authorities say it is increasingly common for criminals to buy cigarettes in states or countries where they are cheaper, and have less or no taxes, and sell them to New York merchants. Friday at the ranch home, authorities recovered 3,489 cartons of Chinese cigarettes destined for delivery to numerous merchants, Brown said.

# The New York Times

6 Are Charged With Selling Millions of Counterfeit Marlboros  
By William Glaberson  
February 21, 2003

Federal prosecutors in Brooklyn charged six men yesterday with importing millions of counterfeit Marlboro cigarettes from China and selling them through tax-free businesses on the upstate Seneca Indian reservation.

But while prosecutors described an ambitious plot, they portrayed the suspects as luckless. According to documents filed in court, Customs Service agents infiltrated the group, turned two of its members into informants, and then bugged, wiretapped, videotaped and followed the men during almost every phase of their operation. In at least one instance, the agents used a helicopter.

The Customs Service said the men imported 35 million counterfeit cigarettes, with an estimated retail value of about \$10 million. The service's special agent in charge, John C. Varone, said criminals had been drawn by the huge profits that could be made from such cigarettes, imitations of name brands packaged to look authentic.

According to the prosecutors, the men brought five shipments of cigarettes into New Jersey ports during a two-year period that ended in 2002. The prosecutors said cases of the ersatz Marlboro and Marlboro Light cigarettes were hidden in shipping containers behind boxes of plastic kitchen pots.

The prosecutors said three of the men sold the cigarettes through two smoke shops on the Seneca's Cattaraugus Reservation, south of Buffalo, and on a Web site, [Smokencheap.com](http://Smokencheap.com). The three were identified as Scott Snyder, 40, who lives on the reservation, and Donald Deland, 42, and Timothy Farnham, 37, who live near it.

The prosecutors said two brothers from Queens, Simon Moshel, 52, and Michael Moshel, 47, arranged to import the cigarettes, assisted by a Brooklyn man, Robert Berardelli, 51. The Moshel brothers were also charged with importing counterfeit Duracell batteries.

Mr. Farnham was the only one of the six men not arrested yesterday.


A sworn statement by the customs agent who infiltrated the group, Rod Khattabi, described the undercover operation, which appeared to leave suspects with very little privacy. He said he posed as a trucker who would transport the cigarettes. He also said a house in Nassau County belonging to two informants and a Brooklyn warehouse used by the group to store the cigarettes were outfitted with surveillance equipment.

The agents taped at least 200 meetings and telephone calls, the court documents said, adding that one videotape captured Mr. Berardelli taking a cigarette out of a shipment and smoking it.

Opposition and/or Concern



## Memorandum

DATE: March 23, 2004  
TO: House Ways and Means – Senate Labor and Commerce  
FROM: Timothy J. Schrage, *Operations Manager*   
SUBJECT: *Opposed to HB 538 -- SB 368*

The proposed increased excise tax on tobacco products is unfounded and just another hand aid approach to increasing revenues. The current tax is among the highest when compared to other Western states such as Montana (70 cents per pack), Idaho (57 cents per pack) and Wyoming (60 cents per pack).

Adding another \$1.00 per pack will jeopardize future revenues to the State through a reduction in annual payments from the Master Settlement Agreement, and loss of tax revenues from illegal internet and counterfeit tobacco purchases. In addition it will increase the competitive disadvantage of local retailers who legally compete with large national chains and tax exempt Military installations.

It is time for Alaska to realize that it is "the richest poor State in the Union". We have billions of dollars in the bank, no limits on spending, declining oil revenues, all while focusing on pennies and letting dollars fall through the cracks of government. *Our Legislature and Governor need to wake up and realize that targeting Alaskans with head taxes, sin taxes, and user fees is like a millionaire not purchasing cup of coffee in the morning to save for retirement!* We need real fiscal solutions that include spending limits, utilization of Permanent Fund earnings, and the elimination of entitlement programs before imposing more taxes on average Alaskans who least afford it.

*Alaska's Retailer of Fine Wines, Spirits, and Beer*  
*PO Box 190027 Anchorage, Alaska 99519-0027*  
*Phone (907) 563-3815 Fax (907) 562-3130*



March 23, 2004

To: Members of the Senate Labor and Commerce Committee

*I am writing to oppose SB368 for the following reasons:*

- *Alaska would have the second highest tax in the country after New Jersey at \$2.05; Other western state taxes: Montana, 70 cents; Idaho, 57 cents; Oregon, \$1.28; Washington, \$1.425; Wyoming, 60 cents; Utah, 69.5 cents*
- *Purchasers would shift to buying cigarettes over the Internet, where no state taxes are collected; Alaskan retail businesses would be harmed*
- *Higher cigarettes taxes would lead to more smuggling of tobacco products to avoid taxation and more illegal trafficking of counterfeit product*
- *Using cigarette taxes to balance the state budget is bad fiscal policy; cigarette taxes are an unstable and inequitable way to raise revenues*
- *Higher taxes would threaten payments to the state under the Master Settlement Agreement; annual payments are tied to the sales volume of the major "participating" manufacturers, and when purchasing shifts to products not covered under that agreement or to illegal products, those payments will fall.*

*Please don't take the easy way out by singling out one group of Alaskans for higher taxes. We deserve a more equitable solution to our budget problems.*

*Sincerely,*

A handwritten signature in cursive script that reads "George Kallas".

*George Kallas*

Letters of Support



A I A S K A  
TOBACCO CONTROL ALLIANCE

March 21, 2004

Dear Committee Chairs

The Alaska Tobacco Control Alliance (ATCA) is pleased to provide this letter of support for HB 538 and SB 368 which will increase Alaska's tobacco tax by \$1.00 per pack.

ATCA was formed in 1992 to encourage, coordinate and support effective methods of controlling and preventing tobacco use for the purpose of increasing the years of healthy life for all Alaskans by reducing disease caused by tobacco use. ATCA'S vision is a tobacco-free Alaska. ATCA has over 200 statewide members consisting of educators, health professionals, government agencies, private businesses, parents and others are committed to this cause.

In January 2004, the ATCA Board met and agreed to support an increase in Alaska's tobacco tax. An increase in the tobacco tax is an important part of overall tobacco control program.

Alaska has had tremendous success in reducing youth smoking; we can continue the trend by raising the cost of cigarettes and maintaining our effective tobacco control programming. An increase in the tobacco tax is a sound public health decision. With an increase in the tax, we will prevent thousands of Alaskan youth from picking up their first cigarette.

Affects on youth consumption are projected to be

- Percent decrease in youth smoking: approximately 15.0%
- Increase in total number of youth alive today who will not become smokers: 9,100
- Number of youth alive today saved from premature smoking-caused death: 2,900

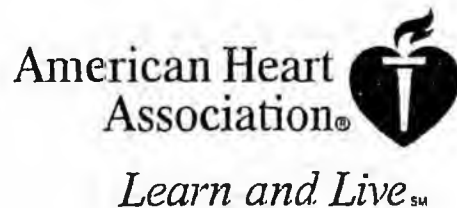
Creating barriers to youth smoking is good for public health. Smoking is a pediatric disease. Adults do not start smoking, children do. Virtually all today's smokers started before they were 19 years old. Effectively run tobacco control programs can help these adult smokers quit, but we need to stem the tide of future smokers. The future smokers of Alaska are our children. This tobacco tax increase will save thousands of lives and aid in the further decline of the number of kids who smoke in Alaska today.

In behalf of the Alaska Tobacco Control Alliance and its 200 members around the state, I urge you to pass these bills and give Alaska a powerful tool in the battle against youth smoking.

Sincerely,

ATCA Chair

For more information, see the Campaign fact sheets -- including *Raising State Tobacco Taxes Always Reduces Tobacco Use (& Always Increases State Revenues)* -- at <http://tobaccofreekids.org/research/factsheets/index.php?CategoryID=18> and <http://tobaccofreekids.org/reports/prices>.



March 21, 2004

Dear Committee Chairs:

The American Heart Association is pleased to provide this letter of support for HB 538 and SB 368, legislation that would increase Alaska's cigarette tax by \$1.00 per pack and increase the excise tax levied on other tobacco products by 33%.

The American Heart Association strongly supports significant increases in tobacco taxes because research from around the country has demonstrated time and again that as cigarettes get more expensive, fewer children start to smoke and adults are more likely to quit. As virtually all smokers become addicted before age 19, fewer children starting to smoke will have significant future public health benefits in Alaska. Smoking remains the leading preventable cause of cardiovascular disease, and it is also the leading preventable cause of death in Alaska, responsible for one out of every five deaths in our state. Although Alaska has had tremendous success in reducing youth smoking, we must strive to continue this exciting trend by raising the cost of cigarettes and maintaining our effective tobacco control programming.

Every state that has significantly increased its tobacco tax has enjoyed substantial increases in revenue while also reducing smoking rates. While Alaska will still not have the highest tax in the nation, the proposed increases will go a long way toward saving lives and generating revenue. Not only will the proposed taxes generate over \$35 million each year, but as increased prices translate into fewer people smoking, it will also eventually help decrease the more than \$130 million that Alaska spends each year on health care expenditures directly related to tobacco.

Very rarely do revenue measures and public health messages overlap so significantly. The American Heart Association asks for your support of this important piece of legislation – your commitment to increase the tobacco tax will help save thousands of Alaskan lives.

Thank you,

A handwritten signature in black ink, appearing to read "Jennifer App", is located below the "Thank you," text.

Jennifer App  
Alaska Advocacy Director  
American Heart Association



March 22, 2004

Senator Con Bunde, Chair  
Senate Labor and Commerce Committee  
State Capitol, Room 506  
Juneau, AK 99801-1182

Dear Chairman Bunde:

The American Cancer Society is pleased to support SB 368, which increases the state's tobacco tax. The Society recognizes tobacco taxes as one of the most effective ways to reduce youth smoking and save lives. We have seen evidence of this fact across the nation as well as here in Alaska. There is no longer any doubt that tobacco taxes are a proven means to reduce tobacco use and save lives.

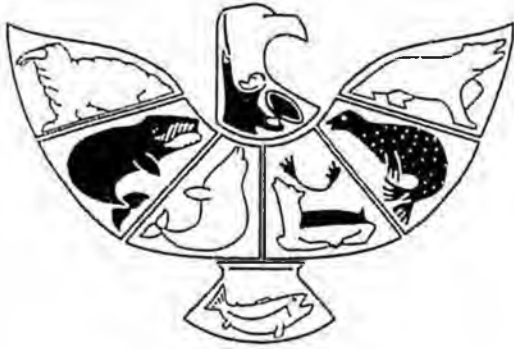
The mission of the American Cancer Society is to eliminate cancer as a major health problem by preventing cancer, saving lives, and diminishing suffering from cancer. We also recognize the devastating impact of cancer on Alaskans. Cancer is currently the second leading cause of death for all Alaskans and the leading cause of death for Alaska Natives. Research shows that one-third of all cancers are tobacco-related and almost all tobacco-users first become addicted as children. By increasing the state's tobacco tax, with its known correlation to reducing youth smoking, we are taking a critical step in stemming the tide of rising health care costs to the state and needless death and disability in our communities.

The American Cancer Society urges the legislature to adopt this critical public health measure to save lives and protect the health of our children.

Sincerely,

A handwritten signature in black ink, appearing to read "Emily E. Nenon", with a long horizontal line extending to the right.

Emily E. Nenon  
Alaska Advocacy Manager



# Alaska Native Health Board

3700 Woodland Drive, Suite 500  
Anchorage, Alaska 99517

Phone: (907) 562-6006  
FAX: (907) 563-2001

March 22, 2004

The Honorable Senator Con Bunde  
Senate Labor and Commerce Committee  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801

Dear Chairman Bunde,

The Alaska Native Health Board supports the Governor's proposal to increase the tobacco tax by \$1.00 per pack and urges you to pass SB 368 out of the Senate Labor & Commerce Committee.

Health care expenditures directly related to smoking cost Alaskans \$132 million dollars per year. Our current tax covers only half of those costs. From an economic perspective the decision is simple – raise the tax. But the issue at hand is not just an economic one, it's about the well being of Alaskans. It's about protecting kids and saving lives.

We made great strides toward protecting our youth from the hazards of smoking when we increased the tobacco tax in 1997. Since that time, we have reduced the number of kids who smoke by nearly half. But we still have a lot of work to do. In rural Alaska, for example, we have an excessively high prevalence of both youth and adult smoking rates. The best thing we can do to change this statistic is to help prevent kids from ever picking up that first cigarette – increasing the cost of smoking is an effective tool to prevent youth initiation.

Among all age groups, tobacco consumption is the leading cause of preventable death. Though we have made progress in decreasing tobacco consumption in Alaska, increasing tobacco taxes is a proven way to further reduce tobacco consumption among people who already smoke.

We recognize that a tobacco tax alone won't stop the devastation caused by tobacco use in Alaska. The Alaska Native Health Board is also working on other measures such as local smokefree workplace policies, community education, and prevention strategies to help reduce the destruction caused by tobacco. An increase in Alaska's tobacco tax will go a long way to enhancing our efforts and the efforts of many other health organizations across the state with the goal of reducing death and disease caused by tobacco.

**Protect Kids. Save lives. Support a \$1.00 a pack tobacco tax increase.**

Best regards,

  
Kattaryna Stiles  
Tobacco Policy Coordinator

ALEUTIAN/PRIPILOF ISLANDS ASSOCIATION  
ARCTIC SLOPE NATIVE ASSOCIATION  
BRISTOL BAY AREA HEALTH CORPORATION  
CHUGACHMIUT  
COPPER RIVER NATIVE ASSOCIATION  
EASTERN ALEUTIAN TRIBES  
KETCHIKAN INDIAN COMMUNITY  
VALDEZ NATIVE TRIBE

MANILAO ASSOCIATION  
METLAKATLA INDIAN COMMUNITY  
MT. SANFORD TRIBAL CONSORTIUM  
NATIVE VILLAGE OF EKLUTNA  
NATIVE VILLAGE OF TYONEK  
NINILCHIK TRADITIONAL COUNCIL  
KODIAK AREA NATIVE ASSOCIATION

NORTON SOUND HEALTH CORPORATION  
SELDOVIA VILLAGE TRIBE  
SOUTH CENTRAL FOUNDATION  
SOUTHEAST ALASKA REGIONAL HEALTH CONSORTIUM  
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Fax: (907) 565-5587

March 22, 2004

Senator Con Bunde  
Chair, Senate Labor & Commerce  
State Capitol  
Juneau, Alaska 99811

Re: HB 538 and SB 368 -- Increasing the State Tobacco Tax

Dear Chairman Bunde:

The American Lung Association of Alaska is pleased to support the above referenced bills. These measures represent a win, win, win solution for Alaska that reduces smoking, raises much-needed revenue and has strong support from voters. It's no wonder 33 states have increased cigarette taxes since January 1, 2002.

Studies show that higher cigarette taxes are one of the most effective ways to reduce smoking among both youth and adults. A Department of Revenue study shows Alaska's tobacco consumption dropped substantially in response to the 1997 tobacco price increase. Among younger children the report estimated a 30 percent reduction in smoking. The 1997 tax, as part of a comprehensive tobacco control program has contributed to the 50 percent reduction in high school smoking rates since 1995.

At the same time the 1997 tobacco tax increase generated approximately 30 million per year in new state revenue. The 2004 tax would generate approximately 36 million per year in new unrestricted revenue.

There is strong public support for substantially increased state tobacco taxes. A recent poll completed for *Alaskans for Tobacco-Free Kids* by QEV Analyt ICS shows 67 percent support among Alaskan voters for a \$1.00 per pack increase in tobacco taxes.

Despite the great progress, tobacco remains the leading cause of preventable death in Alaska while costing the state hundreds of millions of dollars in increased health care costs and lost worker productivity. These are large "hidden costs" presently borne by the general non-smoking public and private businesses.

Tobacco use in Alaska costs the general public approximately \$6.38 per pack. Increasing the state tobacco tax to \$2 per pack would only recoup a small portion of these costs.

This measure would save thousands of Alaska lives, reduce health care costs and generated much needed revenue. All measures of success the American Lung Association of Alaska can enthusiastically support.

Sincerely,

Christie Garbe, CEO  
American Lung Association of Alaska



March 24, 2004

The Honorable Con Bunde, Chair  
Senate Labor and Commerce Committee  
Alaska Capitol, Room 506  
Juneau, Alaska 99801-1182

RE: SB 368 (Governor Murkowski)—Support

Dear Chair Bunde:

On behalf of the AARP members in Alaska, we ask that you and your colleagues on the Senate Labor and Commerce Committee support SB 368, the proposal by Governor Murkowski to increase the tobacco tax for cigarettes and other tobacco products.

As the Governor's transmittal letter clearly points out, the cost of smoking-related illnesses to the Alaska state budget far outweighs the revenue from the current taxes. Indeed, the tax increase proposed in SB 368 will still fall far below government costs.

Tobacco companies will argue that tobacco taxes are regressive because they take a higher percentage of income from low-income people. It is AARP's position that increased tobacco taxes that discourage consumption of harmful commodities serve a useful social purpose. In addition, the funds brought in from tobacco taxes are less regressive if they are used to finance programs such as health care for those with low incomes, e.g., Medicaid.

AARP recently sent a copy of a survey of Alaskans over age 18 to you and your colleagues in the Legislature. Although we asked about a 50 cents per pack increase in our survey, admittedly below the Governor's \$1.00 per pack increase, 56% strongly supported it and another 15% somewhat supported the tax increase. Other AARP research indicates that the public overall does object less to tobacco taxes because they are a tax that can be avoided.

We encourage an appropriate amount of the new revenue from this tax increase be applied to smoking-cessation programs. As the Governor points out, Alaska Native adults and high school students are much more likely to use tobacco than non-Natives. AARP recommends special targeted cessation efforts in our Native community, particularly for Native youth.

We are aware that, if the tax partnered with cessation programming is successful, this will be a diminishing revenue stream. Unfortunately tobacco tax increases will not provide a

"magic pill" to make the fiscal gap disappear. AARP still encourages you and your colleagues to aggressively pursue a comprehensive solution to our fiscal problems.

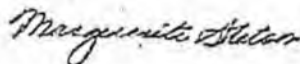
SB 368 does provide a part of the solution to our fiscal problems. Even more importantly, it provides a significant solution to at least part of Alaska citizens' health problems.

AARP recommends an "AYE" vote on SB 368.

Should you have any questions about our position, please feel free to contact Marie Darlin (907.586.3637), Coordinator of the AARP Capital City Task Force; Patrick Luby (907.762.3314), AARP Legislative Representative; or me (907.245.5259).

Thank you for your consideration.

Sincerely,



Marguerite Stetson  
AARP Alaska  
State Coordinator for Advocacy  
3009 Northwood Street  
Anchorage, AK 99517-1871  
907.245.5259 voice  
907.245.5279 fax  
[ffmas@aurora.uaf.edu](mailto:ffmas@aurora.uaf.edu)

CC: Vice-Chair Ralph Seekins  
Senator Gary Stevens  
Senator Bettye Davis  
Senator Hollis French  
Governor Frank Murkowski  
Marie Darlin  
Patrick Luby

FRANK H. MURKOWSKI  
GOVERNOR  
GOVERNOR@GOV.STATE.AK.US



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

SB 368  
P.O. Box 110001  
JUNEAU, ALASKA 99811-0001  
(907) 465-3500  
FAX (907) 465-3532  
WWW.GOV.STATE.AK.US

March 16, 2004

The Honorable Gene Therriault  
President of the Senate  
Alaska State Legislature  
State Capitol, Room 111  
Juneau, AK 99801-1182

Dear President Therriault:

Under the authority of article III, section 18 of the Alaska Constitution, I am transmitting a bill that would increase the cigarette excise tax from five cents per cigarette to ten cents per cigarette. The tax on "other tobacco products" such as smokeless tobacco would be increased from 75 percent to 100 percent of the wholesale cost.

This bill provides the multiple benefits of saving Alaskan lives, reducing health related expenditures, and raising state revenue. Increasing the price of tobacco is one of the most effective ways of reducing tobacco use, especially among youths. It is well substantiated that as the price of cigarette increases, rates of smoking decline. As youths are especially sensitive to such price increases, we can expect the proposed \$1.00 per pack cigarette tax increase will add to the 50 percent drop in youths smoking rates we have seen in Alaska since 1995. A further drop in youths smoking rates of just 15 percent from current levels would translate into 1,800 lives saved from premature death due to tobacco addiction among Alaska high school students alive today.

Among current adult smokers, 3,500 will quit smoking because of the tax, and of those, 800 will be saved from a smoking-caused death. Smoking among expectant mothers would also be reduced significantly, resulting in 850 babies being spared from exposure to maternal smoking while in utero during the next five years. The impact of tobacco taxes on health is not unprecedented in Alaska. Within a year of the implementation of the \$1.00 per pack cigarette tax in October 1997, the number of cigarettes consumed in Alaska had dropped by 15 percent, and sales have not rebounded since then.

Alaska Natives should particularly see the benefits from reduced smoking. While smoking rates are declining within the U.S. general population, the rate of smoking is unchanged among Alaska Native adults and, at 44 percent, is almost double that of non-Natives. Currently, 44 percent of

The Honorable Gene Therriault  
March 16, 2004  
Page 2

Alaska Native high school students smoke, almost four times the rate among non-Native students. One-third of Alaska Native high school boys use smokeless tobacco, as do one-sixth of their female counterparts. Use of smokeless tobacco among Alaska Native girls is nine times higher than the national rate. Lung cancer, the leading cause of cancer deaths, is increasing at an alarming rate among Alaska Natives of both sexes. Cardiovascular disease, including heart disease and stroke, is also linked with tobacco use, and kills approximately 120 Alaska Natives each year.

In addition to the devastating health impacts, smoking is a fiscal disaster for Alaska. The state receives nearly \$47 million in cigarette and other tobacco product tax revenues, but this amount doesn't even begin to cover the economic and social costs associated with smoking-related illnesses. The Centers for Disease Control and Prevention (CDCP) estimates that in 1998 the cost for direct medical expenses attributed to smoking-related disease and death in Alaska was nearly \$133 million. In addition, CDCP estimates Alaska's total cost of lost productivity due to early tobacco-related deaths in 2001 was \$137 million.

Alaska can expect to see fiscal savings relatively soon following implementation of this proposed tax. Within five years, the health care savings from fewer smoking affected pregnancies and births will amount to \$1.6 million, according to the Campaign for Tobacco-Free Kids. This group estimates that the savings in the state from fewer smoking-related heart attacks and strokes will be \$1.8 million, and the long-term health care savings from adult and youth smoking declines will be \$146.3 million.

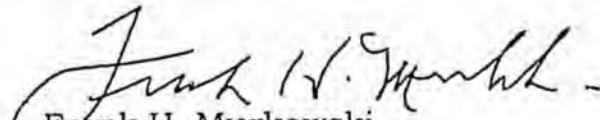
While saving in medical and lost-productivity expenditures, the proposed tax would also generate an estimated \$35.5 million in new tax revenues for the state annually. In addition, an estimated \$350,000 in new revenues will be generated for those municipalities in the state that levy a sales tax on the retail price of cigarettes.

With cigarette taxes at \$2.00 a pack, there will be incentive for tax evasion and smuggling. The new tobacco tax stamp, as passed into law last year, will help address this issue by serving to identify illegal cigarettes. To further advance this enforcement effort, my proposed bill allows the Department of Public Safety to seize and dispose of equipment, vehicles, money, and other assets used in cigarette smuggling and tax evasion activities. These types of seizures will make cigarette smuggling and tax evasion less attractive and protect state revenues.

The Honorable Gene Therriault  
March 16, 2004  
Page 3

Given the health impact, cost savings, and revenue to be generated from the proposed tobacco tax, I urge your support for this legislation.

Sincerely yours,

  
Frank H. Murkowski  
Governor

Enclosure

SENATE FINANCE COMMITTEE

SIGN-IN

SB 368-TOBACCO TAX; LICENSING; PENALTIES

NAME: Johanna Beles Subject/Bill No: SB 368  
Co./Dept./Title: Dept. of Revenue Phone: 269-6628  
Address: 550 W 7th Street 500, Ancl 99501 Zip: \_\_\_\_\_  
Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_  
Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_  
Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_  
Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_  
Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_  
Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_  
Do you wish to testify?  Yes  No  Respond To Questions

SENATE FINANCE COMMITTEE

SIGN-IN

SB 368-TOBACCO TAX; LICENSING; PENALTIES

✓ NAME: Mike Elending Subject/Bill No: SB 368  
Co./Dept./Title: Northern Sales Co. Phone: 907-225-5040  
Address: Box 8112, Iktchikow, AK Zip: 99901  
Do you wish to testify?  Yes  No  Respond To Questions

✓ NAME: Johanna Bales Subject/Bill No: SB 368  
Co./Dept./Title: Revenue Phone: 269-6628  
Address: 530 W. 2<sup>nd</sup> Suite 500 Anch., AK Zip: 99501  
Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_  
Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_  
Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_  
Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_  
Do you wish to testify?  Yes  No  Respond To Questions

**SITE: ANCHORAGE**

**COMMITTEE: SFIN**

**DATE: 4-21-04**

**SUBJECT OF MEETING or BILL #**

**SB 368**

**UPDATE #:**

**PRINT YOUR NAME**

**COMMUNITY**

**REPRESENTING/AFFILIATION**

**DO YOU WANT**

**TESTIFY**

**Y or N**

✓ Eli Schoenberg	Anchorage	Goldenview MS	Y-SB 368
✓ Annie Sneed	Anchorage	Goldenview MS	Y-SB 368
✓ Aleena Jobe	Anchorage	GUMS	Y-SB 368
✓ Kyle Stersle	Anchorage	Goldenview MS	Y-SB 368
✓ Marin Chambers	Anchorage	GUMS	Y-SB 368
✓ Jessica Faust	Anchorage	GUMS	Y-SB 368
✓ Russell Johnston	Anchorage	Goldenview MS	Y-SB 368
✓ Cody Floerchinger	Anchorage	GUMS	Y-SB 368
✓ Morgane Evans-Voigt	Anchorage	GUMS	Y-SB 368
✓ Samantha Novak	Anchorage	Goldenview MS	Y-SB 368
✓ Emily Nenon	Anchorage	American Cancer Society	Ans ? SB 368

SENATE FINANCE COMMITTEE

SIGN-IN

SB 368-TOBACCO TAX; LICENSING; PENALTIES

NAME: Doris Robbins Subject/Bill No: SB 368  
Co./Dept./Title: Vol. w/ Juniper Clean Air/At <sup>San</sup> ~~Flora~~ <sub>Free Ride</sub> Phone: 907-364-3267  
Address: POB 21011 Juniper Zip: 99802  
Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_  
Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_  
Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_  
Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_  
Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_  
Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_  
Do you wish to testify?  Yes  No  Respond To Questions





