

**ALASKA LEGISLATURE**

**2462**

**HOUSE and SENATE FINANCE COMMITTEE FILES, 2003-2004**

28

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

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

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

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

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

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

\* Sec. 32. AS 43.50.650(a) is amended to read:

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

(1) with reckless disregard that the cigarettes are unstamped

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

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

(C) acquires, holds, transports, imports, or possesses at least 401 [ONE] but fewer than 10,000 unstamped cigarettes; or

(D) acquires, holds, transports, imports, or possesses at least one but fewer than 401 unstamped cigarettes that are not for personal consumption: or

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

\* Sec. 33. AS 43.50.710 is amended by adding a new subsection to read:

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

1 \* Sec. 34. AS 43.50.720 is amended to read:

2           **Sec. 43.50.720. Sale at less than cost; with gift or concession.** In all  
3 advertisements, offers for sale, or sales involving two or more items when at least one  
4 of the items is cigarettes at a combined price, and in all advertisements, offers for sale,  
5 or sales involving the giving of any gift, concession, or coupon of any kind in  
6 conjunction with the sale of cigarettes, the wholesaler's or retailer's combined selling  
7 price may not be below the actual cost to the wholesaler or the actual cost to the  
8 retailer, respectively, of the total of all articles, products, commodities, gifts, and  
9 concessions included in the transactions, except that, if any articles, products,  
10 commodities, gifts, or concessions are not cigarettes, the actual [BASIC] cost shall be  
11 determined as provided under AS 43.50.800.

12 \* Sec. 35. AS 43.50.760(b) is amended to read:

13           (b) The presumptive actual [WHOLESALE AND PRESUMPTIVE RETAIL]  
14 cost of cigarettes as determined by the department under AS 43.50.800 [FROM  
15 MANUFACTURER'S PRICE LIST] is considered competent evidence in a court  
16 action or proceeding as tending to prove actual cost to the wholesaler or retailer  
17 complained against. A party against whom the presumptive actual [WHOLESALE  
18 OR PRESUMPTIVE RETAIL] cost as determined by the department is introduced in  
19 evidence has the right to offer evidence tending to prove any inaccuracy of the  
20 presumptive actual [WHOLESALE OR PRESUMPTIVE RETAIL] cost or any  
21 statement of facts that would impair its probative value.

22 \* Sec. 36. AS 43.50.770 is amended to read:

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

28 \* Sec. 37. AS 43.50.790(a) is amended to read:

29           (a) The department

30                   (1) shall administer AS 43.50.710 - 43.50.849;

31                   (2) may adopt regulations relating to the administration and

1 enforcement of AS 43.50.710 - 43.50.849;

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

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

8 \* Sec. 38. AS 43.50.800 is repealed and reenacted to read:

9 Sec. 43.50.800. Presumptions applicable to determination of cost. (a) The  
10 presumptive actual cost of cigarettes to a wholesaler is, for purposes of AS 43.50.710 -  
11 43.50.849, the presumptive wholesale cost as calculated by the department plus an  
12 amount equal to four and one-half percent of the presumptive wholesale cost to  
13 account for business costs.

14 (b) The presumptive actual cost of cigarettes to a retailer is, for purposes of  
15 AS 43.50.710 - 43.50.849, the presumptive actual cost of cigarettes to the wholesaler  
16 as calculated by the department under (a) of this section, plus an amount equal to six  
17 percent of the presumptive actual cost of cigarettes to the wholesaler to account for  
18 business costs.

19 (c) A wholesaler or retailer that wishes to advertise, offer to sell, or sell  
20 cigarettes at less than the presumptive actual cost to the wholesaler or retailer as  
21 calculated under (a) or (b) of this section must first obtain approval from the  
22 department. The department may grant approval only if the wholesaler or retailer  
23 provides proof satisfactory to the department that the wholesaler or retailer's actual  
24 cost is lower than presumed. Approval for cigarette sales at less than the presumptive  
25 actual cost as determined under (a) or (b) of this section may not be granted for a  
26 period longer than one year. In reviewing proof of actual wholesale or retail cost, the  
27 department may consider the costs reflected on the actual invoice, but may not  
28 consider cash discounts. In reviewing proof of actual costs, the department may  
29 consider the standards and methods of accounting regularly employed, and must  
30 include labor costs, rent, depreciation, selling costs, maintenance of equipment,  
31 delivery costs, all types of licenses, taxes, insurance, advertising, preopening

1 expenses, provision for impaired assets and closing costs, interest expenses, and  
2 provision for merger and restructuring expenses. The department shall adopt  
3 regulations to determine the wholesaler's and retailer's actual costs for purposes of  
4 AS 43.50.710 - 43.50.849.

5 (d) For purposes of this section, the presumptive wholesale cost is the  
6 manufacturer's list price, less trade discounts, plus the full face value of all cigarette  
7 taxes.

8 \* Sec. 39. AS 43.50.740(b), 43.50.849(1), 43.50.849(6), and 43.50.849(7) are repealed.

9 \* Sec. 40. The uncodified law of the State of Alaska is amended by adding a new section to  
10 read:

11 TRANSITION: FLOOR STOCK TAX FOR CERTAIN CIGARETTES IN THE  
12 STATE ON THE EFFECTIVE DATE OF SECS. 2 - 39 OF THIS ACT. (a) Notwithstanding  
13 any other provision to the contrary, a floor stock tax is imposed at 12:01 a.m. on the effective  
14 date of secs. 2 - 39 of this Act upon every person in control or possession of cigarettes for sale  
15 or distribution in the state that were taxed at the rate in effect before the effective date of secs.  
16 2 - 39 of this Act. The floor stock tax is the difference between the tax computed on each  
17 cigarette as provided in AS 43.50.190(a), as amended by sec. 14 of this Act, on the effective  
18 date of secs. 2 - 39 of this Act and the tax actually paid on each cigarette as required by  
19 AS 43.50.190(a) as it read on the day before the effective date of secs. 2 - 39 of this Act. The  
20 person subject to the floor stock tax under this section must provide proof that the tax required  
21 by AS 43.50.190(a), as it read on the day before the effective date of secs. 2 - 39 of this Act,  
22 on each cigarette was previously paid or the tax actually paid on each cigarette is considered  
23 to be zero.

24 (b) A person subject to the floor stock tax under this section shall file a report not  
25 later than the last day of the month in which secs. 2 - 39 of this Act take effect on a form  
26 prescribed by the Department of Revenue and pay the tax to the Department of Revenue in six  
27 sequential monthly installments. The first installment shall be paid not later than the last day  
28 of the month in which secs. 2 - 39 of this Act take effect. The penalty, interest, and taxpayer  
29 remedy provisions of AS 43.05 apply to the floor stock tax under this section.

30 \* Sec. 41. The uncodified law of the State of Alaska is amended by adding a new section to  
31 read:

1           TRANSITION: REGULATIONS. The Department of Revenue may proceed to adopt  
2 regulations necessary to implement the changes made by secs. 2 - 40 of this Act. The  
3 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the  
4 effective date of secs. 2 - 40 of this Act.

5       \* Sec. 42. Section 41 of this Act takes effect immediately under AS 01.10.070(c).

6       \* Sec. 43. Except as provided in sec. 42 of this Act, this Act takes effect September 1,  
7 2004.



# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: LL#04-0170  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
Title Cigarette and Tobacco Products Tax Increase RDU Revenue Programs & Services  
Component Tax Division  
Sponsor Governor  
Requester Rules 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 ( )	29,100.0	35,000.0	35,000.0	35,000.0	35,000.0	35,000.0
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	828.1	778.9	778.9	778.9	778.9	778.9
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)

**Cigarette and Tobacco Products Tax Increase - Bill Analysis (December 24, 2003)**

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 6/15/04 9:53 AM  
Approved by: Steve Porter, Deputy Commissioner Date 6/15/2004  
Agency Department of Revenue

## FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. LL#04-0170

### 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. 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 \$37 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.

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: 0170-DPS-ABADE-6-14-04  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_  
Title: Act Relating to Tobacco Tax  
Sponsor: Rules Committee  
Requester: Governor  
Dept. Affected: Public Safety  
RDU: Alaska State Troopers  
Component: Bureau of Alcohol and Drug Enforcement  
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 bill 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 products statutes.

The DPS will provide investigative support to the Department of Revenue through a reimbursable services agreement. 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.

Prepared by: Captain Al Storey Phone 269-5682  
Division: Alaska State Troopers Date/Time 6/14/04 9:26 AM  
Approved by: Commissioner William Tandeske Date 6/14/2004  
Agency: Department of Public Safety

SECTIONAL

## Special Session Tobacco Tax Bill

### Sectional Analysis Departments of Revenue and Law

- Sections 1, 16:** Section 1 outlines the intent by the legislature to provide funding for tobacco control programs at the minimum level recommended by the U.S. Department of Health and Human Services from tobacco tax revenues collected by the state. Section 16 implements this intent by taking 8.9% of annual cigarette tax revenues levied under AS 43.50.190(a) to be deposited into the tobacco use education and cessation fund.
- Sections 2-4:** These sections raise the various cigarette license fees to \$50—to make them the same as the current license fee for distributors.
- Sections 5, 10-13:** These sections make technical corrections to the wholesaler-distributor cigarette license type. They also ensure 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 6:** 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.
- Sections 7 and 15:** These sections exempt the first 400 cigarettes (2 cartons) that an individual personally transports into the state each month from the cigarette tax.
- Section 8:** This section changes the definition of a class A misdemeanor for violations of the cigarette shipping restrictions from one but fewer than 1,000 cigarettes to one but fewer than 5,000 cigarettes. This section also changes the definition of a class C felony for violations of the shipping restrictions from 1,000 or more cigarettes to 5,000 or more cigarettes. The intention in raising the threshold for a class C felony is to make it consistent with the current threshold for a class C felony theft, which requires the value of the property or services to be at least \$500. The tax that would be due on 5,000 cigarettes under this bill would be \$500.
- Section 9:** This section makes a person who shipped cigarettes to Alaska in violation of our cigarette shipping restrictions jointly and severally

liable for cigarette taxes to the fullest extent permitted by the U.S. Constitution.

- Section 14:** This section increases the tax on cigarettes by 50 mills or \$1.00 per pack of 20 cigarettes. The increase in this tax will go into the general fund.
- Section 17:** This section increases the tax on other tobacco products from 75% to 100% of the wholesale cost and also levies the tax on other tobacco products sold or imported into the state for personal consumption.
- Section 18:** This section requires that individuals that import other tobacco products into the state must have a license as a "buyer".
- Section 19:** This section requires that a fee of \$25 must be paid for a tobacco products "buyer" license
- Section 20:** This section requires distributors to provide information about the type of tobacco business they are conducting to the Department of Revenue.
- Section 21:** This section allows distributors and buyers to renew their tobacco products license each year for a fee of \$50 and \$25, respectively.
- Section 22:** This section requires individuals who import tobacco products for personal consumption to file a return each month indicating the amount and purchase price of the tobacco products and the tax due on those tobacco products.
- Section 23:** This section changes the definition of a "distributor" to include entities that sell cigarettes to individuals for personal consumption.
- Section 24:** This section changes the definition of "licensee" in the tobacco products statute to include the new buyer license type.
- Section 25:** This section provides a definition for "buyer" in the tobacco products statutes.
- Section 26:** This section allows a licensee to request that the department replace cigarette tax stamps that were lost or damaged in transit.

**Section 27:**

This section allows licensees with a physical location in the state and who have been in full compliance with cigarette tax statutes for the preceding 5 years to reduce their bond requirement from 200% to 100% of their monthly purchases of tax stamps when payment is made on a deferred payment basis.

**Section 28:**

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 29:**

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 30:**

This is the forfeiture section which allows seizure of assets used by a person when the person commits, supported by a showing of probable cause, the crime of misconduct involving unstamped cigarettes in the first degree under AS 43.50.640. This section further outlines the types of assets that may be seized, procedures to be used to seize such assets, and procedures to be used in disposing of seized assets.

**Section 31:**

This section changes the definition of misconduct involving unstamped cigarettes in the first degree from sales of or possession with intent to sell 1,000 or more unstamped cigarettes to sales of or possession with intent to sell 5,000 or more unstamped cigarettes.

**Section 32:**

This section changes the definition of misconduct involving unstamped cigarettes in the second degree from sales of one but fewer than 1,000 unstamped cigarettes to sales of one but fewer than 5,000 unstamped cigarettes and from possession of one but fewer than 10,000 unstamped cigarettes to possession of 401 but fewer than 10,000 unstamped cigarettes. This section also includes importation or possession of one but fewer than 401 unstamped cigarettes as misconduct involving unstamped cigarettes in the second degree if the cigarettes are not possessed for personal consumption.

- Section 33:** This section allows manufacturers to offer cigarette promotions in the state provided the promotion offered at the wholesale level is the same for all wholesalers who participate in the promotion and the promotion offered at the retail level is the same for all retailers who participate in the promotion.
- Section 34:** This section makes a technical change to AS 43.50.720 so that the language in that statute conforms to the changes made in section 38 of this bill.
- Section 35:** This section makes a technical change to AS 43.50.760(b) so that the language in that statute conforms to the changes made in section 38 of this bill.
- Section 36:** This section makes a technical change to AS 43.50.770 so that the language in that statute conforms to the changes made in section 38 of this bill.
- Section 37:** This section makes a technical change to AS 43.50.790(a) so that the language in that statute conforms to the changes made in section 38 of this bill.
- Section 38:** This section changes the calculation of cost of cigarettes as defined in the Unfair Cigarette Sales Act that went into effect January 1, 2004 as the result of the passage last session of SB 168. The Unfair Cigarette Sales Act prohibits all cigarette wholesalers and retailers from selling cigarettes below cost. This section modifies the Unfair Cigarette Sales Act by prohibiting wholesalers and retailers from reducing their cost by cash discounts received from the manufacturers. This section also requires wholesalers and retailers to obtain prior approval from the Department of Revenue before selling cigarettes at a cost below the amount posted by the Department of Revenue.
- Section 39:** This section repeals sections of the Unfair Cigarette Sales Act that conflict with the new language inserted in section 38.
- Section 40:** 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 rate and the tax due at the new tax rate. The floor stock tax applies to cigarettes only. The floor stock tax must be remitted to

the Department of Revenue in six sequential monthly installments with the first installment due no later than 30 days after the effective date of this bill. The floor stock tax is needed to reduce the amount of stockpiling by retailers and distributors and the windfall they will get by collecting, but not paying, tax at the new rate on the stockpiled cigarettes.

Section 41: This section provides an effective date of September 1, 2004.

BACKUP

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

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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Volume No. 7 Number 4  
November 4, 2003

## Youth Tobacco Use Falls

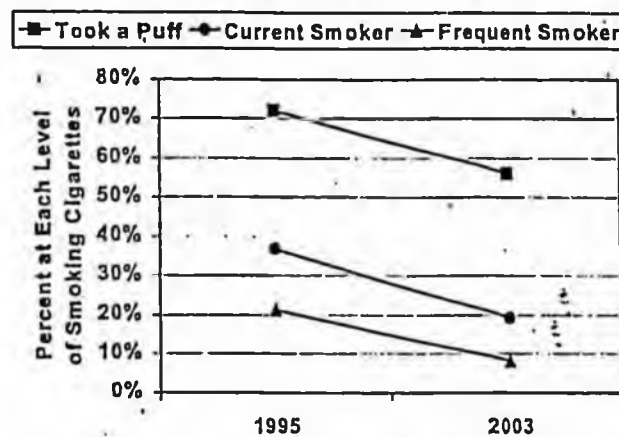
Results From the  
2003 Youth Risk Behavior Survey

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

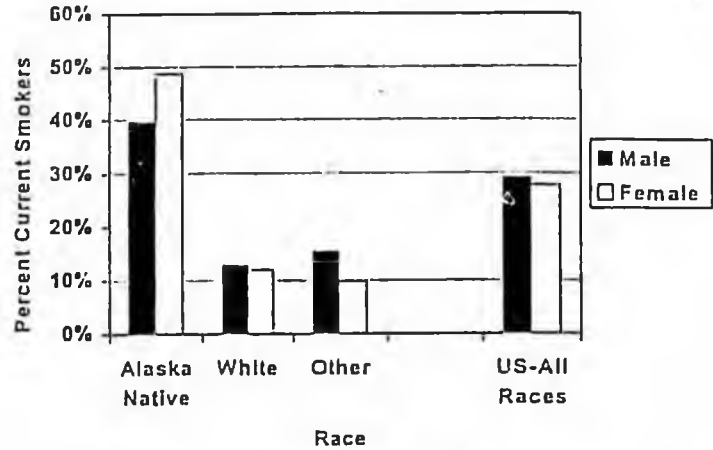
The YRBS, conducted jointly in Alaska by the Department of Health and Social Services and the Department of Education and Early Development, was administered to 1,500 Alaskan high school students who were randomly chosen from nearly every school district in the state. The 2003 YRBS is the first statistically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

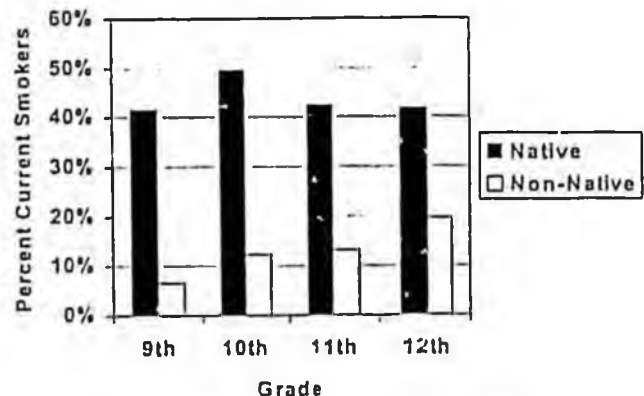


"Current Smoker" = smoked on at least 1 out of the last 30 days

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%



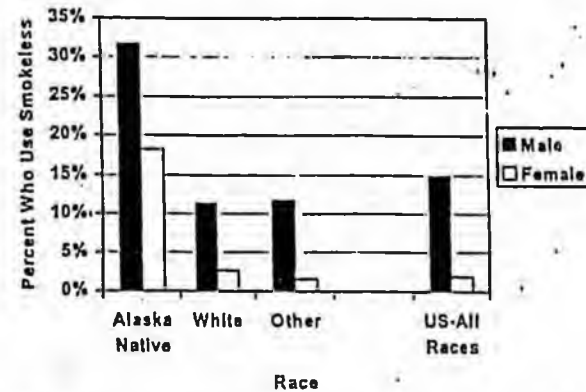
"Current Smoker" = smoked on at least 1 out of the last 30 days

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%

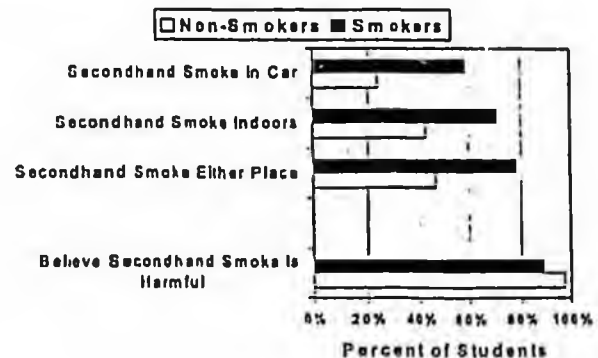


"Use Smokeless Tobacco" = used any smokeless tobacco product on at least 1 of the last 30 days

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:

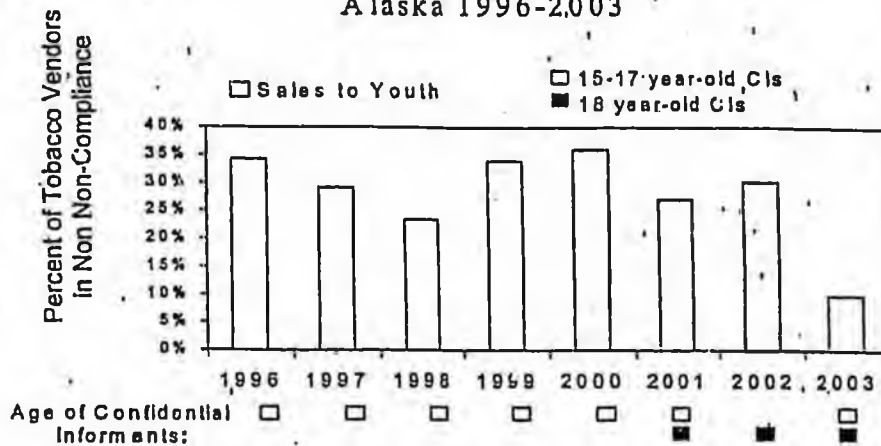
- An aggressive anti-tobacco media campaign aimed especially at curbing tobacco use by youth.
- A statewide excise tax designed to put tobacco products out of the reach of kids by boosting the price of cigarettes by \$1 per pack.
- Community-based advocacy programs that discourage the initiation of tobacco 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.

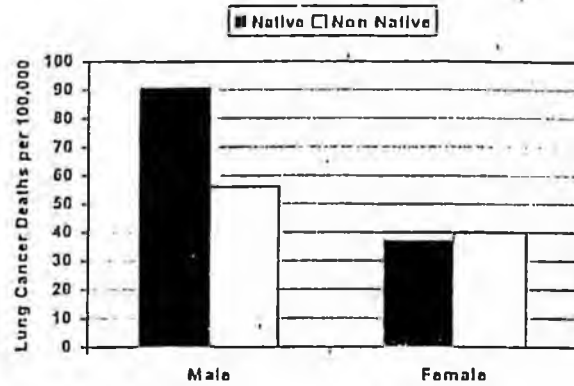
Reductions in youth smoking are critical in decreasing the long-term burden of heart disease, stroke, cancer and other chronic diseases in Alaska. Approximately three-quarters of smokers initiate tobacco use as adolescents.<sup>1</sup> Young people who are refusing to use tobacco today are unlikely to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

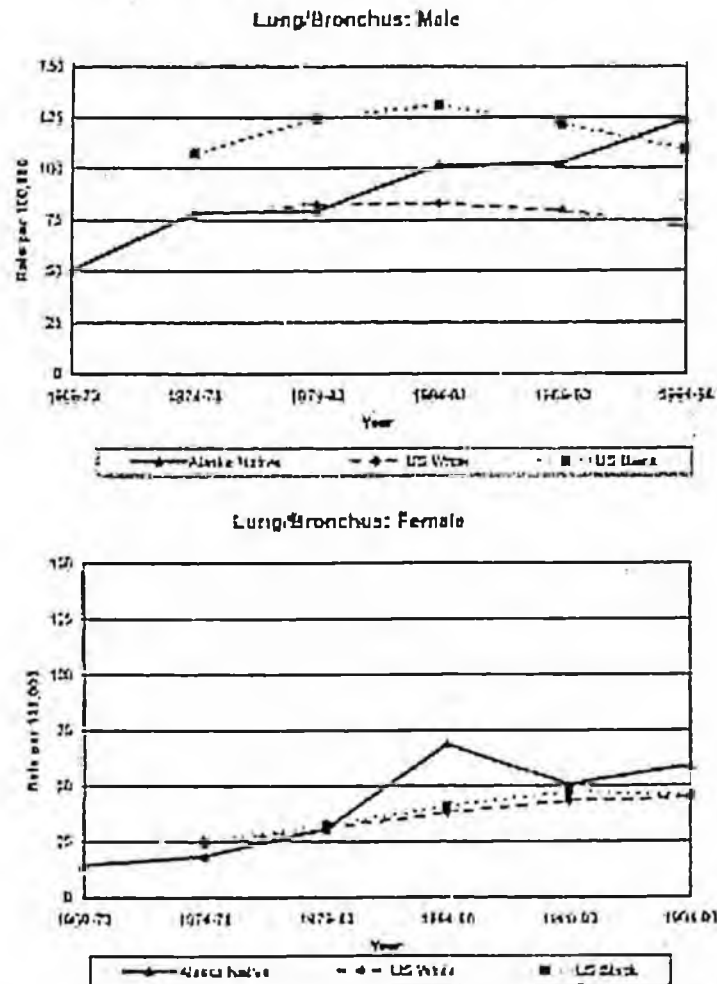
	Male	Female
Native	91.0	37.2
Non-Native	56.1	39.9

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 M J, 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

State of Alaska, Section of Epidemiology  
PO Box 240249  
Anchorage, AK 99524-0249

PRSR STD  
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ANCHORAGE, AK  
PERMIT NO. 1034

CSSB 368 Version I.A (As passed by Senate)	CSHB 538 Version S (House L&C)	Special Session Tobacco Tax Bill (Draft)
	Section 1. This section outlines the intent by the legislature to provide funding to tobacco control programs at minimum levels recommended by the U.S. Department of Health and Human Services from tobacco tax revenues collected by the state.	Section 1. This section outlines the intent by the legislature to provide funding to tobacco control programs at minimum levels recommended by the U.S. Department of Health and Human Services from tobacco tax revenues collected by the state.
	Section 2. This section increases the cigarette license fee for manufacturers from \$5 to \$50.	Section 2. This section increases the cigarette license fee for manufacturers from \$5 to \$50.
	Section 3. This section increases the cigarette license fee for vending machine operators from \$25 to \$50.	Section 3. This section increases the cigarette license fee for vending machine operators from \$25 to \$50.
Section 1. This section 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 4. This section 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 4. This section 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 5. 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 5. 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 6. 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 6. 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 7. This section allows individuals to personally transport up to 600 cigarettes (3 cartons) each month without incurring cigarette tax liability imposed by AS 43.50.090.	Section 7. This section allows individuals to personally transport up to 400 cigarettes (2 cartons) each month without incurring cigarette tax liability imposed by AS 43.50.090.

Comparison of CS SB 368, version I.A to CS HB 538, version S, & Special Session Draft Legislation  
 Prepared: June 7, 2004, 11:45 AM

CSSB 368 Version I.A (As passed by Senate)	CSHB 538 Version S (House L&C)	Special Session Tobacco Tax Bill (Draft)
	<p>Section 8. This section changes the definition of a class A misdemeanor for violations of the cigarette shipping restrictions from one but fewer than 1,000 cigarettes to one but fewer than 5,000 cigarettes. This section changes the definition of a class C felony for violations of the cigarette shipping restrictions from 1,000 or more cigarettes to 5,000 or more cigarettes. The intention in raising the threshold for the class C felony is to make it consistent with the threshold for C felony theft (theft in the 2<sup>nd</sup> degree), which requires a value of \$500. The tax due on 5,000 cigarettes under this bill would be \$500.</p>	<p>Section 8. This section changes the definition of a class A misdemeanor for violations of the cigarette shipping restrictions from one but fewer than 1,000 cigarettes to one but fewer than 5,000 cigarettes. This section changes the definition of a class C felony for violations of the cigarette shipping restrictions from 1,000 or more cigarettes to 5,000 or more cigarettes. The intention in raising the threshold for the class C felony is to make it consistent with the threshold for C felony theft (theft in the 2<sup>nd</sup> degree), which requires a value of \$500. The tax due on 5,000 cigarettes under this bill (\$1.00 per pack increase) would be \$500.</p>
	<p>Section 9. This section provides that any person who violates the cigarette shipping restrictions is jointly and severally liable for the cigarette excise taxes and is required, as permitted by the U.S. Constitution, to collect and remit the cigarette excise taxes to the department. This section will enhance the ability of the Department to collect taxes from out-of-state sellers who violate the state's shipping laws. Current U.S. Supreme Court precedent (<i>Quill Corp. v. North Dakota</i>) requires some in-state physical presence before states can impose excise tax collection requirements on sellers. At some point in the future, however, Congress may overrule the <i>Quill</i> decision or the Court may reconsider it, at which point the State will be in a position to be able to collect tobacco taxes from out-of-state sellers that violate the</p>	<p>Section 9. This section provides that any person who violates the cigarette shipping restrictions is jointly and severally liable for the cigarette excise taxes and is required, as permitted by the U.S. Constitution, to collect and remit the cigarette excise taxes to the department. This section will enhance the ability of the Department to collect taxes from out-of-state sellers who violate the state's shipping laws. Current U.S. Supreme Court precedent (<i>Quill Corp. v. North Dakota</i>) requires some in-state physical presence before states can impose excise tax collection requirements on sellers. At some point in the future, however, Congress may overrule the <i>Quill</i> decision or the Court may reconsider it, at which point the State will be in a position to be able to collect tobacco taxes from out-of-state sellers that violate the</p>

CSSB 368 Version I.A (As passed by Senate)	CSHB 538 Version S (House L&C)	Special Session Tobacco Tax Bill (Draft)
	state's shipping law, even if such shippers have no physical presence in the state.	state's shipping law, even if such shippers have no physical presence in the state.
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 10. 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 10. 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 11. 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 11. 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 12. 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 12. 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 13. 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 13. 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. The increase in this tax will all go into the general fund.	Section 14. This section increases the tax on cigarettes by 50 mills or \$1.00 per pack of 20. The increase in this tax will all go into the general fund.	Section 14. This section increases the tax on cigarettes by 50 mills or \$1.00 per pack of 20. The increase in this tax will all go into the general fund.
	Section 15. This section allows individuals to personally transport up to 600 cigarettes (3 cartons) each month without incurring cigarette tax liability imposed by AS 43.50.190.	Section 15. This section allows individuals to personally transport up to 400 cigarettes (2 cartons) each month without incurring cigarette tax liability imposed by AS 43.50.190.

Comparison of CS SB 368, version I.A to CS HB 538, version S, & Special Session Draft Legislation

Prepared: June 7, 2004, 11:45 AM

CSSB 368 Version I.A (As passed by Senate)	CSHB 538 Version S (House L&C)	Special Session Tobacco Tax Bill (Draft)
	Section 16. This section requires 8.9% of annual cigarette tax revenues levied under AS 43.50.190(a) to be deposited in the tobacco use education and cessation fund.	Section 16. This section requires 8.9% of annual cigarette tax revenues levied under AS 43.50.190(a) to be deposited in the tobacco use education and cessation fund.
Section 9. This section increases the tax on other tobacco products from 75% to 100% of the wholesale cost <b>and also levies the tax on other tobacco products sold or imported into the state for personal consumption.</b>	Section 17. This section increases the tax on other tobacco products from 75% to 100% of the wholesale cost.	Section 17. This section increases the tax on other tobacco products from 75% to 100% of the wholesale cost <b>and also levies the tax on other tobacco products sold or imported into the state for personal consumption.</b>
Section 10. This section requires that individuals that import other tobacco products into the state must have a license as a "buyer".		Section 18. This section requires that individuals that import other tobacco products into the state must have a license as a "buyer".
Section 11. This section requires that a fee of \$25 must be paid for a tobacco products "buyer" license.		Section 19. This section requires that a fee of \$25 must be paid for a tobacco products "buyer" license.
Section 12. This section requires distributors to provide information about the type of tobacco business they are conducting to the Department of Revenue.		Section 20. This section requires distributors to provide information about the type of tobacco business they are conducting to the Department of Revenue.
Section 13. This section allows distributors and buyers to renew their tobacco products license each year for a fee of \$50 and \$25, respectively.		Section 21. This section allows distributors and buyers to renew their tobacco products license each year for a fee of \$50 and \$25, respectively.
Section 14. This section requires individuals who import tobacco products for personal consumption to file a return each month indicating the amount and purchase price of the tobacco products and the tax due on those tobacco products.		Section 22. This section requires individuals who import tobacco products for personal consumption to file a return each month indicating the amount and purchase price of the tobacco products and the tax due on those tobacco products.
		Section 23. This section changes the definition of a "distributor" to include entities that sell cigarettes to individuals for personal consumption.

CSSB 368 Version I.A (As passed by Senate)	CSHB 538 Version S (House L&C)	Special Session Tobacco Tax Bill (Draft)
Section 15. This section changes the definition of "licensee" in the tobacco products statutes to include the new "buyer" license type.		Section 24. This section changes the definition of "licensee" in the tobacco products statutes to include the new "buyer" license type.
Section 16. This section provides a definition for "buyer" in the tobacco products statutes.		Section 25. This section provides a definition for "buyer" in the tobacco products statutes.
Section 17. This section allows a licensee to request that the department replace cigarette tax stamps that were lost or damaged in transit.	Section 18. This section allows a licensee to request that the department replace cigarette tax stamps that were lost or damaged in transit.	Section 26. This section allows a licensee to request that the department replace cigarette tax stamps that were lost or damaged in transit.
Section 18. This section allows licensees with a physical location in the state and who have been in full compliance with cigarette tax statutes for the preceding 5 years to reduce their bond requirement from 200% to 100% of their monthly purchases of cigarette tax stamps when payment is made on a deferred payment basis.	Section 19. This section allows licensees with a physical location in the state and who have been in full compliance with cigarette tax statutes for the preceding 5 years to reduce their bond requirement from 200% to 100% of their monthly purchases of stamps when payment is made on a deferred payment basis.	Section 27. This section allows licensees with a physical location in the state and who have been in full compliance with cigarette tax statutes for the preceding 5 years to reduce their bond requirement from 200% to 100% of their monthly purchases of stamps when payment is made on a deferred payment basis.
Section 19. 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 20. 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 28. 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 20. 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 21. 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 29. 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.

Comparison of CS SB 368, version I.A to CS HB 538, version S, & Special Session Draft Legislation  
 Prepared: June 7, 2004, 11:45 AM

CSSB 368 Version I.A (As passed by Senate)	CSHB 538 Version S (House L&C)	Special Session Tobacco Tax Bill (Draft)
<p>Section 21. This section allows for the seizure of assets used by a person when the person commits, or the state has probable cause to believe that the person has committed, a 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 after they are seized. This section further provides that assets used as sole transportation in a village cannot be seized.</p>	<p>Section 22. This section allows for the seizure of assets used by a person when the person commits, or the state has probable cause to believe that the person has committed, the felony of misconduct involving unstamped cigarettes or stamps in the first degree. This section further outlines the types of assets that may be seized, procedures for seizing assets, and procedures for the disposition of assets after they are seized.</p>	<p>Section 30. This section allows for the seizure of assets used by a person when the person commits, or the state has probable cause to believe that the person has committed, the felony of misconduct involving unstamped cigarettes or stamps in the first degree. This section further outlines the types of assets that may be seized, procedures for seizing assets, and procedures for the disposition of assets after they are seized.</p>
<p>Section 22. This section changes the definition of misconduct involving unstamped cigarettes in the first degree from sales of or possession with intent to sell 1,000 or more unstamped cigarettes to sales of or possession with intent to sell 5,000 or more unstamped cigarettes.</p>	<p>Section 23. This section changes the definition of misconduct involving unstamped cigarettes in the first degree from sales of or possession with intent to sell 1,000 or more unstamped cigarettes to sales of or possession with intent to sell 5,000 or more unstamped cigarettes.</p>	<p>Section 31. This section changes the definition of misconduct involving unstamped cigarettes in the first degree from sales of or possession with intent to sell 1,000 or more unstamped cigarettes to sales of or possession with intent to sell 5,000 or more unstamped cigarettes.</p>
<p>Section 23. This section changes the definition of misconduct involving unstamped cigarettes in the second degree from sales of, or possession with the intent to sell, one but fewer than 1,000 unstamped cigarettes to sales of, or possession with the intent to sell, one but fewer than 5,000 unstamped cigarettes.</p>	<p>Section 24. This section changes the definition of misconduct involving unstamped cigarettes in the second degree from sales of one but fewer than 1,000 unstamped cigarettes to sales of one but fewer than 5,000 unstamped cigarettes and from possession of one but fewer than 10,000 unstamped cigarettes to possession of <u>601</u> but fewer than 10,000 unstamped cigarettes. This section also includes importation or possession of one but fewer than <u>601</u> unstamped cigarettes as misconduct involving unstamped cigarettes in the first degree if the cigarettes are not possessed for personal consumption.</p>	<p>Section 32. This section changes the definition of misconduct involving unstamped cigarettes in the second degree from sales of one but fewer than 1,000 unstamped cigarettes to sales of one but fewer than 5,000 unstamped cigarettes and from possession of one but fewer than 10,000 unstamped cigarettes to possession of <u>401</u> but fewer than 10,000 unstamped cigarettes. This section also includes importation or possession of one but fewer than <u>401</u> unstamped cigarettes as misconduct involving unstamped cigarettes in the first degree if the cigarettes are not possessed for personal consumption.</p>

CSSB 368 Version I.A (As passed by Senate)	CSHB 538 Version S (House L&C)	Special Session Tobacco Tax Bill (Draft)
Section 24. This section allows manufacturers to offer cigarette promotions in the state provided the promotion offered at the wholesale level is the same for all wholesalers who participate in the promotion and the promotion offered at the retail level is the same for all retailers who participate in the promotion.	Section 25. This section allows manufacturers to offer cigarette promotions in the state provided the promotion offered at the wholesale level is the same for all wholesalers who participate in the promotion and the promotion offered at the retail level is the same for all retailers who participate in the promotion.	Section 33. This section allows manufacturers to offer cigarette promotions in the state provided the promotion offered at the wholesale level is the same for all wholesalers who participate in the promotion and the promotion offered at the retail level is the same for all retailers who participate in the promotion.
Section 25. This section makes a technical change to AS 43.50.720 so that the language in that statute conforms to changes made in Section 28 of this bill.	Section 26. This section makes a technical change to AS 43.50.720 so that the language in that statute conforms to changes made in Section 30 of this bill.	Section 34. This section makes a technical change to AS 43.50.720 so that the language in that statute conforms to changes made in Section 38 of this bill.
Section 26. This section makes a technical change to AS 43.50.760(b) so that the language in that statute conforms to changes made in Section 28 of this bill.	Section 27. This section makes a technical change to AS 43.50.760(b) so that the language in that statute conforms to changes made in Section 30 of this bill.	Section 35. This section makes a technical change to AS 43.50.760(b) so that the language in that statute conforms to changes made in Section 38 of this bill.
Section 27. This section makes a technical change to AS 43.50.770 so that the language in that statute conforms to changes made in Section 28 of this bill.	Section 28. This section makes a technical change to AS 43.50.770 so that the language in that statute conforms to changes made in Section 30 of this bill.	Section 36. This section makes a technical change to AS 43.50.770 so that the language in that statute conforms to changes made in Section 38 of this bill.
	Section 29. This section makes a technical change to AS 43.50.790(a) so that the language in that statute conforms to changes made in Section 30 of this bill.	Section 37. This section makes a technical change to AS 43.50.790(a) so that the language in that statute conforms to changes made in Section 38 of this bill.
Section 28. This section changes the calculation of cost of cigarettes as defined in the Unfair Cigarette Sales Act that went into effect January 1, 2004 as the result of the passage last session of SB 168. The Unfair Cigarette Sales Act prohibits all cigarette wholesalers and retailers from selling	Section 30. This section changes the calculation of cost of cigarettes as defined in the Unfair Cigarette Sales Act that went into effect January 1, 2004 as the result of the passage last session of SB 168. The Unfair Cigarette Sales Act prohibits all cigarette wholesalers and retailers from selling	Section 38. This section changes the calculation of cost of cigarettes as defined in the Unfair Cigarette Sales Act that went into effect January 1, 2004 as the result of the passage last session of SB 168. The Unfair Cigarette Sales Act prohibits all cigarette wholesalers and retailers from selling

Comparison of CS SB 368, version I.A to CS HB 538, version S, & Special Session Draft Legislation  
 Prepared: June 7, 2004, 11:45 AM

CSSB 368 Version I.A (As passed by Senate)	CSHB 538 Version S (House L&C)	Special Session Tobacco Tax Bill (Draft)
<p>cigarettes below cost. This section modifies the Unfair Cigarette Sales Act by prohibiting wholesalers and retailers from reducing their cost by cash discounts received from manufacturers. This section also requires wholesalers and retailers to obtain prior approval from the Department of Revenue before selling cigarettes at a cost below the amount posted by the Department of Revenue.</p>	<p>cigarettes below cost. This section modifies the Unfair Cigarette Sales Act by prohibiting wholesalers and retailers from reducing their cost by cash discounts received from the manufacturers. This section also requires wholesalers and retailers to obtain prior approval from the Department of Revenue before selling cigarettes at a cost below the amount posted by the Department of Revenue.</p>	<p>cigarettes below cost. This section modifies the Unfair Cigarette Sales Act by prohibiting wholesalers and retailers from reducing their cost by cash discounts received from the manufacturers. This section also requires wholesalers and retailers to obtain prior approval from the Department of Revenue before selling cigarettes at a cost below the amount posted by the Department of Revenue.</p>
<p>Section 29. This section repeals sections of the Unfair Cigarette Sales Act that conflict with the new language inserted in Section 28.</p>	<p>Section 31. This section repeals sections of the Unfair Cigarette Sales Act that conflict with the new language inserted in Section 30.</p>	<p>Section 39. This section repeals sections of the Unfair Cigarette Sales Act that conflict with the new language inserted in Section 38.</p>
<p>Section 30. 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 rate and the tax due at the new tax rate. The floor stock tax applies to cigarettes only. The floor stock tax must be remitted to the Department of Revenue in six sequential monthly installments with the first installment due no later than 30 days after the effective date of this bill. The floor stock tax is needed to reduce the amount of stockpiling by retailers and distributors and the windfall they will get by collecting, but not paying, tax at the new rate on the stockpiled cigarettes.</p>	<p>Section 32. 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 rate and the tax due at the new tax rate. The floor stock tax applies to cigarettes only. The floor stock tax must be remitted to the Department of Revenue in six sequential monthly installments with the first installment due no later than 30 days after the effective date of this bill. The floor stock tax is needed to reduce the amount of stockpiling by retailers and distributors and the windfall they will get by collecting but not paying tax at the new rate on the stockpiled cigarettes.</p>	<p>Section 40. 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 rate and the tax due at the new tax rate. The floor stock tax applies to cigarettes only. The floor stock tax must be remitted to the Department of Revenue in six sequential monthly installments with the first installment due no later than 30 days after the effective date of this bill. The floor stock tax is needed to reduce the amount of stockpiling by retailers and distributors and the windfall they will get by collecting but not paying tax at the new rate on the stockpiled cigarettes.</p>
<p>Section 31. The section provides an effective date of July 1, 2004.</p>	<p>Section 33. The section provides an effective date of July 1, 2004.</p>	<p>Section 41. The section provides an effective date of September 1, 2004.</p>

# 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://ligger.uic.edu/~fjc> and [www.uic.edu/oras/impacteen](http://www.uic.edu/oras/impacteen). 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>. Hodgson, 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<sup>TM</sup>

## 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>

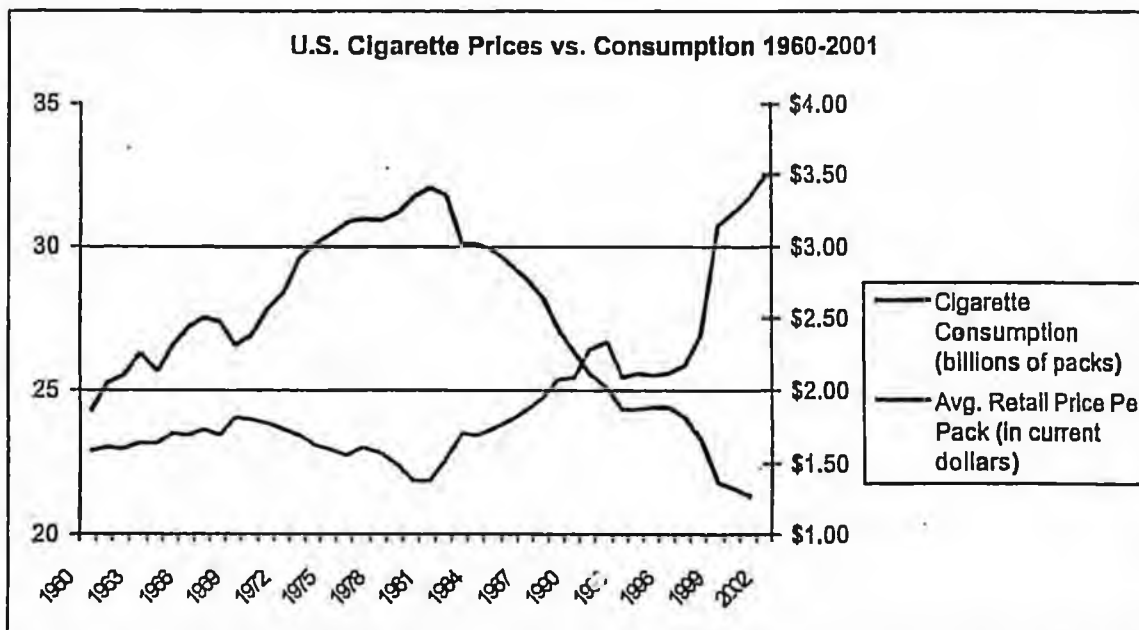
- Kids do not smoke more marijuana if they reduce their cigarette smoking. In fact, cigarette price increases not only reduce youth smoking but also reduce both the number of kids who smoke marijuana and the amount of marijuana consumed by continuing regular users.<sup>8</sup>

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

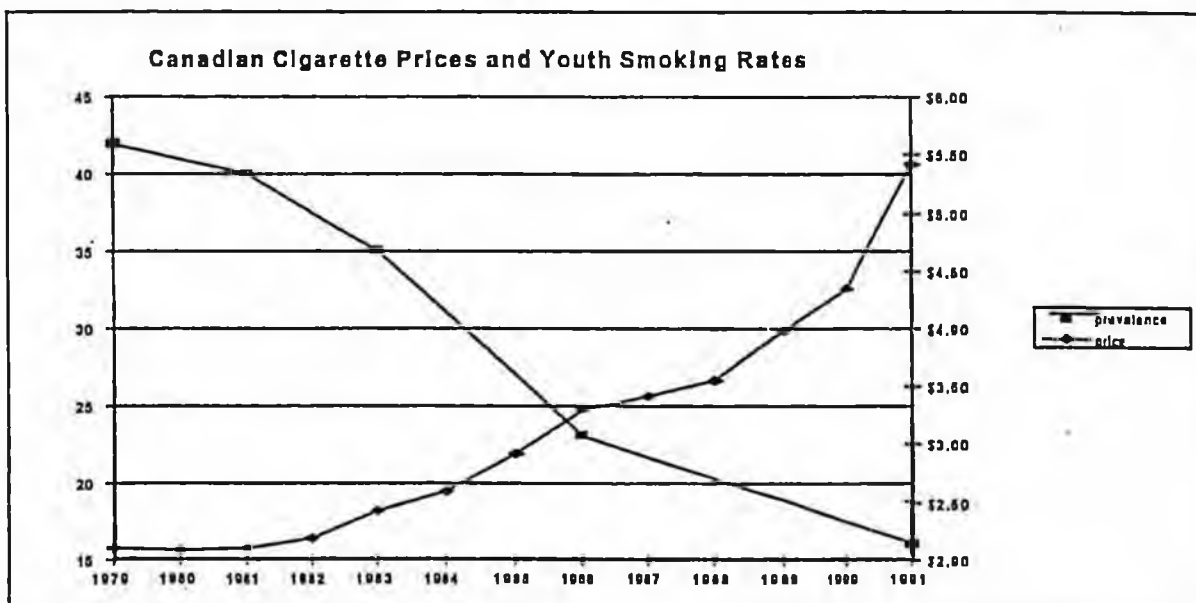
- The 2000 U.S. Surgeon General's Report, *Reducing Tobacco Use*, found that increasing the price of tobacco products would decrease the prevalence of tobacco use, particularly among kids and young adults, and that tobacco tax increases would lead to "substantial long-term improvements in health." From 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.rjtdocs.com](http://www.rjtdocs.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://tiqer.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://tiqer.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/jeffrey](http://www.mit.edu/people/jeffrey).

<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 Weekly Report (MMWR)* 47(29): 605-609 July 31, 1998, [www.cdc.gov/mmwr](http://www.cdc.gov/mmwr); Chaloupka & Pacula, April 1998.

<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://tiqer.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://tiqer.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/sqrpage.htm](http://www.cdc.gov/tobacco/sqrpage.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 Rates Tobacco Products and Public Health in the 1990s*, October 1999, [www.nsr-a-dnf.ca/english/oct99taxrep.html](http://www.nsr-a-dnf.ca/english/oct99taxrep.html).

# CAMPAIGN for TOBACCO-FREE Kids<sup>TM</sup>

## 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)
All States	\$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	\$0.48	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	658.3	\$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 85-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*

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 (in 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	7/15/02	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	\$47.1	\$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	408.3	\$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>.

WORKERS'

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## WORKERS' COMPENSATION REFORM BILL

### A MEASURED RESPONSE TO INCREASED CLAIM COSTS AND INSURANCE PREMIUMS IMPACTING ALASKAN BUSINESSES AND WORKERS

Premiums, benefits paid, and claim costs rising.

- In 2002 Alaska workers' compensation benefits and claims costs exceeded \$ 210 million, including \$11 million in legal fees and costs.
- From 1997-2002 the insurance companies in the Alaska workers' compensation market paid out an average of \$1.24 in benefits and claim costs for each dollar in premiums collected.
- This year average workers compensation premiums increased 21% but premiums for 17 types of workers went up over 50%. (The increases exceeding 50% affect workers in positions such as hospital non-professional, household appliance installation & repair, day nurseries, child care & day camps, barber shops and hair salons, building & property management, and geophysical seismic exploration.)

Bill does not change benefits paid to injured workers residing in Alaska, while capping payments to outside residents at the Alaska rate.

- No change to compensation rates or benefits, including rehabilitation and medical benefits.
- Compensation rates for total disability paid to non-residents capped at the rate they would receive if residing in Alaska.

Bill addresses claim costs and speeds final determination of workers' entitlement to benefits by making initial adjudication of disputed claims and subsequent appeals process more efficient.

- Disputed claims heard and resolved by single administrative law judge (ALJ) rather than current 3-member Board panel. ALJs' availability increases flexibility for scheduling hearings.
- ALJs will be required to have special expertise and will be employed by the independent Office of Administrative Hearings created by SB 203.
- Initial appeals will be heard by a five member Appeals Commission, rather than individual Superior Court judges. To minimize administrative costs, and maintain citizen participation, the Commission is composed of four citizen members (2 from labor, 2 from industry) and one full-time, experienced attorney serving as Chair. A panel consisting of the Chair plus one industry and one labor member will hear appeals. The Chair will administer the Commission and advise the members on the law.
- The Commission has 90 days to decide an appeal; half the time allowed the Superior Court. Record preparation costs and delays (sometimes a year or more over the six months appeal time limitation in Superior Court) will be decreased. Commission can also schedule hearings more rapidly than the Superior Court.
- Specific provisions insure Commission impartiality, including prohibiting political activity by the Chair and prohibiting conflicts of interest of the members.

**Claim costs and benefit entitlement uncertainty reduced by increasing consistency and predictability of appeal decisions and making them legal precedent.**

- Single Commission with expertise plus citizen participation will decide all appeals. Appeals decided by a single entity, rather than dozens of different Board hearing panels and Superior Court judges, will increase predictability and consistency in the interpretation and application of the law.
- Commission decisions are binding legal precedent (unlike current Superior Court decisions) and may be appealed directly to the Alaska Supreme Court.

**Insurance code amendments strengthen insurance Guaranty Fund and Assigned Risk Pool for protection of employers, insurers, and workers.**

- Workers' compensation insurers required to deposit special cash or securities to provide protection beyond the Insurance Guaranty Association.
- Assigned Risk Pool made self-funding by lifting the surcharge cap.
- Assigned Risk Pool loss reserves collateralized.

**Active, accountable and experienced Division Director given new enforcement tools to protect employers and workers by enforcing insurance requirements & investigating fraud.**

- Takes enforcement power and responsibilities of the Board and gives them to experienced Workers' Compensation Division Director with:
  - Investigation powers, including subpoena and record inspection;
  - Power to intervene in hearings directly;
  - Power to make decisions affecting enforcement; and
  - New powers to investigate fraud.
- Director may seek new penalty (up to \$100/day/uninsured employee) against uninsured employers and obtain default judgment in faster, streamlined process to stop defaulting employers from leaving the state and their liabilities behind.

**New workers' compensation fraud provisions.**

- Persons who report fraud are given immunity for good faith reports and reports from workers' compensation industry are required if fraud is known.
- Fraud claims cover health care providers, insurers and other industry participants, not just employee claimants.

#### **COMPLAINTS REGARDING PRIOR LEGISLATION (SB 311) ADDRESSED**

**Appeals Commission too expensive.**

- Only one full-time Commissioner.
- Administrative costs are reduced.

**Appeals Commission *de novo* review power reduces influence of lay members.**

- Lay members added to Appeals Commission exercise *de novo* review of hearing officers.
- Lay members at appellate level give greater influence on outcomes than current system.

**Commission Members should be vetted by Alaska Judicial Council.**

- Unconstitutional intrusion on executive branch appointment powers in violation of separation of powers doctrine and Article 3, Section 26 of the Alaska Constitution.

BILL

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SPECIAL SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act providing for a special deposit for workers' compensation insurers; relating to  
2 assigned risk pools and workers' compensation insurers; relating to the board of  
3 governors of the Alaska Insurance Guaranty Association; stating the intent of the  
4 legislature, and setting out limitations, concerning the interpretation, construction, and  
5 implementation of workers' compensation laws; relating to restructuring the Alaska  
6 workers' compensation system; eliminating the Alaska Workers' Compensation Board;  
7 establishing a division of workers' compensation within the Department of Labor and  
8 Workforce Development and assigning certain Alaska Workers' Compensation Board  
9 functions to the division and the Department of Labor and Workforce Development;  
10 establishing a Workers' Compensation Appeals Commission; assigning certain functions  
11 of the Alaska Workers' Compensation Board to the Workers' Compensation Appeals  
12 Commission and the office of administrative hearings; relating to agreements that

1 discharge workers' compensation liability; providing for administrative law judges in  
 2 workers' compensation proceedings; relating to workers' compensation awards; relating  
 3 to an employer's failure to insure and keep insured or provide security; providing for  
 4 appeals from compensation orders; relating to workers' compensation proceedings;  
 5 providing for supreme court jurisdiction of appeals from the Workers' Compensation  
 6 Appeals Commission; providing for a maximum amount for the cost-of-living  
 7 adjustment for workers' compensation benefits; providing for administrative penalties  
 8 for employers uninsured or without adequate security for workers' compensation;  
 9 relating to fraudulent acts or false or misleading statements in worker's compensation;  
 10 and providing for an effective date."

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

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

14 **LEGISLATIVE INTENT.** It is the intent of the legislature by secs. 3 - 7 of this Act

15 (1) to reform the workers' compensation system in Alaska to ensure the  
 16 continued payment of benefits in the event of an insurer insolvency;

17 (2) to give parties affected by the insolvency of a workers' compensation  
 18 insurer a voice on the board of governors of the Alaska Insurance Guaranty Association; and

19 (3) to reduce the overall costs of workers' compensation premiums to  
 20 employers.

21 \* Sec. 2. AS 08.18.101 is amended to read:

22 **Sec. 08.18.101. Insurance required.** Each applicant, at the time of applying  
 23 for registration or upon renewal of registration, shall file with the commissioner  
 24 satisfactory evidence that the applicant has in effect

25 (1) to the extent required under AS 23.30, workers' compensation  
 26 insurance that is purchased from a private insurer who is admitted to do business in the  
 27 state and that shows coverage in this state, appropriate employee classifications, and

2 rates applicable in this state, or a valid workers' compensation self-insurance  
 3 certificate issued by the director of the division of workers' compensation  
 4 [ALASKA WORKERS' COMPENSATION BOARD]; and

5 (2) public liability and property damage insurance covering the  
 6 applicant's contracting operations in this state in the sum of not less than \$20,000 for  
 7 damage to property, \$50,000 for injury, including death, to any one person, and  
 8 \$100,000 for injury, including death, to more than one person.

9 \* Sec. 3. AS 21.09.090 is amended by adding a new subsection to read:

10 (e) In addition to any other deposit required under this section, an insurer who  
 11 transacts workers' compensation insurance in this state shall maintain in the state a  
 12 special deposit of cash or securities eligible for deposit under AS 21.24.030 in an  
 13 amount not less than the basic capital or surplus required of an insurer under  
 14 AS 21.09.070 for the protection of persons in this state covered under workers'  
 15 compensation insurance. The insurer shall maintain the deposit under this subsection  
 16 in this state as long as there is any outstanding liability of the insurer for workers'  
 17 compensation in this state. If the insurer is unable to pay workers' compensation  
 18 claims due under AS 23.30 because the insurer is an insolvent insurer, upon the  
 19 director's request, the deposit is immediately available to the Alaska Insurance  
 20 Guaranty Association (AS 21.80) for continuation of claims benefits to eligible  
 21 workers. In this subsection, "insolvent insurer" has the meaning given in  
 22 AS 21.80.180.

23 \* Sec. 4. AS 21.09 is amended by adding a new section to read:

24 **Sec. 21.09.095. Deposit requirement for workers' compensation insurers.**

25 (a) An insurer of workers' compensation shall maintain with an in-state bank  
 26 approved by the director a separate deposit equal to the insurer's assumed Alaska  
 27 workers' compensation assigned risk pool loss reserves, as determined by the  
 28 designated plan administrator, for all years and ceded under the joint and several quota  
 29 share reinsurance agreements through which workers' compensation insurers reinsure  
 30 risks in the Alaska workers' compensation assigned risk pool. The deposit shall be  
 31 maintained as secured collateral for the benefit of other insurers in their capacity as  
 joint and several reinsurers of the Alaska workers' compensation assigned risk pool.

1 (b) Upon becoming an insolvent insurer or upon otherwise failing to timely  
 2 satisfy its Alaska workers' compensation assigned risk pool obligations, the insurer's  
 3 deposit under this section shall be retained as secured collateral under the control of  
 4 the director. The director shall make funds from the deposit available to the  
 5 designated plan administrator as needed to fund the insurer's obligations to the Alaska  
 6 workers' compensation assigned risk pool.

7 (c) The deposit required under this section must consist of cash and  
 8 investment assets approved by the director under the regulatory authority in  
 9 AS 21.21.420.

10 (d) In this section,

11 (1) "Alaska workers' compensation assigned risk pool" means the  
 12 assigned risk pool established for workers' compensation under AS 21.39.155;

13 (2) "designated plan administrator" means the person appointed by the  
 14 director to operate the workers' compensation assigned risk pool;

15 (3) "insolvent insurer" has the meaning given in AS 21.80.180.

16 \* Sec. 5. AS 21.24.130(d) is amended to read:

17 (d) Except as provided in AS 21.09.090(e), if [IF] the insurer is subject to  
 18 delinquency proceedings as defined in AS 21.78, upon the order of a court of  
 19 competent jurisdiction, the director shall yield the assets and securities held on deposit  
 20 to the receiver, conservator, rehabilitator, or liquidator of the insurer, or to any other  
 21 properly designated official or officials who succeed to the management and control of  
 22 the insurer's assets.

23 \* Sec. 6. AS 21.39.155 is amended by adding a new subsection to read:

24 (d) Rates for the workers' compensation assigned risk pool shall be established  
 25 and maintained at a level that will ensure, to the greatest extent practicable, that the  
 26 workers' compensation assigned risk pool will operate on a self-funding financial  
 27 basis. For purposes of this subsection, "operate on a self-funding financial basis"  
 28 means that the workers' compensation assigned risk pool shall charge rates based upon  
 29 a combination of voluntary loss costs, administrative expenses, servicing carrier  
 30 allowances, catastrophe and other reinsurance expenses, contingencies, and all other  
 31 factors in AS 21.39.030 that are approved by the director, so as to be self-funding

during any consecutive three-year period, on a moving average basis.

\* Sec. 7. AS 21.80.050 is repealed and reenacted to read:

Sec. 21.80.050. Board of governors. (a) The board of governors of the association consists of nine members appointed by the director. Terms are established in the plan of operation of the association. Membership of the board of governors consists of

- (1) four members who represent member insurers;
- (2) two members who represent employers;
- (3) two members who represent labor;
- (4) one member who represents licensees.

(b) Members appointed shall serve staggered three-year terms and may be removed for cause by the director.

(c) Within 90 days after a vacancy occurs on the board, the director shall fill the vacancy for the remaining period of the term of the vacating member.

(d) In appointing a member insurer to the board, the director shall consider, among other things, whether all member insurers are fairly represented.

(e) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of governors.

\* Sec. 8. AS 23.05.067(a) is amended to read:

(a) Each insurer providing workers' compensation insurance and each employer who is self-insured or uninsured for purposes of AS 23.30 in this state shall pay an annual service fee to the department for the administrative expenses of the state for workers' safety programs under AS 18.60 and the workers' compensation program under AS 23.30 as follows:

(1) for each employer,

(A) except as provided in (b) of this section, the service fee shall be paid each year to the department at the time that the annual report is required to be filed under AS 23.30.155(m) or (n); and

(B) the service fee is 2.9 percent of all payments reported to the director of the division of workers' compensation [ALASKA WORKERS' COMPENSATION BOARD] under AS 23.30.155(m) or (n), except second

1 injury fund payments; and

2 (2) for each insurer, the director of the division of insurance shall,  
3 under (e) of this section, deposit from funds received from the insurer under  
4 AS 21.09.210 a service fee of 1.82 percent of the direct premium income for workers'  
5 compensation insurance received by the insurer during the year ending on the  
6 preceding December 31, subject to all the deductions specified in AS 21.09.210(b).

7 \* Sec. 9. AS 23.05.067(e) is amended to read:

8 (e) Annual service fees and civil penalties collected under this section and  
9 fees collected by the Workers' Compensation Appeals Commission shall be  
10 deposited in the workers' safety and compensation administration account in the state  
11 treasury. Under AS 37.05.146(c), the Workers' Compensation Appeals  
12 Commission fees, service fees, and civil penalties shall be accounted for separately,  
13 and appropriations from the account are not made from the unrestricted general fund.  
14 The legislature may appropriate money from the account for expenditures by the  
15 department for necessary costs incurred by the department in the administration of the  
16 workers' safety programs contained in AS 18.60 and of the Alaska Workers'  
17 Compensation Act contained in AS 23.30. The legislature may appropriate money  
18 from the account for expenditures by the department for necessary costs  
19 incurred by the Workers' Compensation Appeals Commission, and by the  
20 department or the office of administrative hearings in the Department of  
21 Administration (AS 44.64.010) for the administration of adjudication of claims  
22 and petitions arising under AS 23.30. Nothing in this subsection creates a dedicated  
23 fund or dedicates the money in the account for a specific purpose. Money deposited in  
24 the account does not lapse at the end of a fiscal year unless otherwise provided by an  
25 appropriation.

26 \* Sec. 10. AS 23.30 is amended by adding a new section to read:

27 Sec. 23.30.001. Intent of the legislature and construction of chapter. It is  
28 the intent of the legislature that

29 (1) this chapter be interpreted so as to ensure the quick, efficient, fair,  
30 and predictable delivery of indemnity and medical benefits to injured workers at a  
31 reasonable cost to the employers who are subject to the provisions of this chapter;

2 (2) workers' compensation cases shall be decided on their merits  
except where otherwise provided by law;

3 (3) this chapter may not be construed by the courts in favor of a party;

4 (4) hearings in workers' compensation cases shall be impartial and fair  
5 to all parties and that all parties shall be afforded due process and an opportunity to be  
6 heard and for their arguments and evidence to be fairly considered;

7 (5) evidence shall be carefully and rationally examined and, except in  
8 the application of the presumption in AS 23.30.120(a), doubt as to the substance of  
9 evidence may not be interpreted in favor of one party or the other.

10 \* Sec. 11. AS 23.30.005 is repealed and reenacted to read:

11 Sec. 23.30.005. Alaska workers' compensation division; duties of  
12 department; regulations; notice of revocation of self-insurance. (a) There is  
13 established in the Department of Labor and Workforce Development a division of  
14 workers' compensation. The commissioner shall appoint the director of the division.  
15 The director shall have at least three years' experience in the field of workers'  
16 compensation.

17 (b) The director is responsible to the commissioner for the execution of the  
18 duties and responsibilities imposed by this chapter and the regulations adopted under  
19 this chapter. The director shall

20 (1) direct and supervise the administrative, technical, investigative, and  
21 enforcement activities of the division of workers' compensation;

22 (2) develop, in cooperation with others, programs for the improvement  
23 of the workers' compensation system;

24 (3) prepare regulations, consistent with the responsibilities of the  
25 division under this chapter, that are required to implement and administer this chapter  
26 for adoption by the department;

27 (4) notify employees, employers, physicians, and rehabilitation  
28 specialists of their rights and obligations under this chapter;

29 (5) perform other lawful acts necessary to carry out the purposes of  
30 this chapter.

31 (c) The department shall adopt rules for the periodic selection, retention, and

1 removal of rehabilitation specialists and physicians under AS 23.30.041 and  
2 23.30.095.

3 (d) The department may adopt regulations concerning the medical care  
4 provided for in this chapter and, except as committed to the authority of the Workers'  
5 Compensation Appeals Commission, may adopt regulations to carry out the provisions  
6 of this chapter.

7 (e) The director shall notify the contracting agency of the state or of a political  
8 subdivision of the state when it revokes the self-insurance certificate of an employer  
9 holding a contract with the state or a political subdivision of the state.

10 \* Sec. 12. AS 23.30 is amended by adding new sections to read:

11 **Sec. 23.30.007. Workers' Compensation Appeals Commission.** (a) There  
12 is established in the Department of Labor and Workforce Development the Workers'  
13 Compensation Appeals Commission. The commission has jurisdiction to hear appeals  
14 from final decisions and orders of administrative law judges and the director under this  
15 chapter. Jurisdiction of the commission is limited to administrative appeals arising  
16 under this chapter.

17 (l) The commission consists of five members appointed by the governor and  
18 confirmed by a majority of the members of the legislature in joint session. The  
19 members shall be appointed as follows:

20 (1) a member appointed as chair who meets the requirements of (c)(2)  
21 of this section;

22 (2) two members who, because of their employment or affiliations,  
23 may be classified as a representative of employees covered by this chapter;

24 (3) two members who, because of their employment or affiliations,  
25 may be classified as a representative of employers covered by this chapter.

26 (c) To be eligible for appointment under this section

27 (1) the member must

28 (A) be a citizen of the United States;

29 (B) be a resident of the state for the five years preceding the  
30 appointment; and

31 (C) have not been convicted of either a

(i) felony; or

(ii) misdemeanor related to workers' compensation;

(2) the chair must

(A) meet the criteria specified in (1) of this subsection;

(B) be licensed to practice law in this state and be a member in good standing with the Alaska Bar Association; and

(C) have engaged in the active practice of law for at least five years with experience in workers' compensation in this state.

(d) A member may act and receive compensation under this section from the date of appointment until confirmation or rejection by the legislature.

(e) The term of service on the commission is five years. A member may be reappointed so long as the reappointment complies with the provisions of this section.

(f) The chair of the commission is in the exempt service under AS 39.25.110 and shall receive a monthly salary that is not less than Step A nor more than Step F of Range 27 of the salary schedule in AS 39.27.011(a) for Anchorage, Alaska.

(g) A vacancy arising in the commission shall be filled by appointment by the governor and confirmed by a majority of the members of the legislature in joint session. Except as provided in AS 39.05.080(4), an appointee selected to fill a vacancy shall hold office for the unexpired term of the member whose vacancy is filled. A vacancy in the commission does not impair the authority of a quorum of members to exercise all the powers and perform all the duties of the commission.

(h) An appeal to the commission shall be heard and decided by a three-member panel of the commission. An appeal panel shall consist of the chair of the commission and two members of the commission assigned by the chair, one member classified as representing employees, and one member classified as representing employers. At other meetings to conduct commission business, the number of commission members classified as representing employees must equal the number of commission members classified as representing employers. The chair of the commission and two representative members of the commission, one classified as representing employees and one classified as representing employers, constitutes a quorum.

1 (i) A member of the commission may be removed from office by the governor  
2 for good cause. To be removed for cause, a member of the commission shall be given  
3 a copy of the charges and afforded an opportunity to be heard in person or by counsel  
4 in the member's own defense upon not less than 10 days' notice. If the member is  
5 removed for cause, the governor shall file with the lieutenant governor a complete  
6 statement of all charges made against the member, the governor's findings on the  
7 charges, and the record of any proceedings. In this subsection, "good cause" includes

- 8 (1) misconduct in office or violation of AS 39.52;
- 9 (2) conviction of a felony;
- 10 (3) conviction of a misdemeanor related to workers' compensation;
- 11 (4) inability to serve, neglect of duty, incompetence, unjustified failure  
12 to handle the caseload assigned, or similar nonfeasance of office; and
- 13 (5) failure to continue to meet the requirements of this section relating  
14 to qualification for office.

15 (j) Representative members are entitled to compensation in the amount of  
16 \$200 a day for each day spent in actual hearing of appeals or on authorized official  
17 business incidental to their duties, and to transportation and per diem as provided by  
18 law. Compensation shall be paid pro rata for each portion of a day spent in actual  
19 hearing of appeals or on authorized official business.

20 (k) A member of the commission may not hear an appeal under this chapter if

21 (1) a party is an employee or was, in the past seven years, an employee  
22 of the commission member or of a business that employs the commission member,  
23 this paragraph does not apply to the chair of the commission when the State of Alaska  
24 is or was the employer of a party;

25 (2) a party is a member or was, in the past seven years, a member of  
26 the same union or employee association as the commission member;

27 (3) a party has a contractual relationship with the commission member,  
28 a business that employs the commission member, or a union or employee association  
29 of which the commission member is a member;

30 (4) the commission member is unable to be fair, impartial, and  
31 unbiased toward the appeal participants; or

(5) participation in the appeal is a violation of AS 39.52.

2 (l) If the chair of the commission is unable to hear an appeal for reasons of  
3 absence or illness in excess of 10 days, or for reasons set out in (k) of this section, the  
4 commissioner of the department shall appoint a person who meets the qualifications of  
5 this section to serve as chair to hear the appeal as chair pro tem. The person shall  
6 receive the compensation provided in (j) of this section. Appointment of a chair pro  
7 tem does not require legislative confirmation.

8 (m) Each member of the commission, before entering upon the duties of  
9 office, shall take and subscribe to the oath prescribed for principal officers of the state.

10 (n) The offices of the commission shall be physically separate from the offices  
11 of the division.

12 **Sec. 23.30.008. Powers and duties of the commission.** (a) The commission  
13 shall be the exclusive and final authority for the hearing and determination of all  
14 questions of law and fact arising under this chapter in those matters that have been  
15 appealed to the commission, except for an appeal to the Alaska Supreme Court. The  
16 commission may not have jurisdiction in any case that does not arise under this  
17 chapter or in any criminal case. On any matter taken to the commission, the decision  
18 of the commission is final and conclusive, unless appealed to the Alaska Supreme  
19 Court, and shall stand in lieu of the order of the director or the administrative law  
20 judge from which the appeal was taken. Unless reversed by the Alaska Supreme  
21 Court, decisions of the commission shall have the force of legal precedent.

22 (b) The commission, in its administrative capacity, shall maintain, index, and  
23 make available for public inspection the final administrative decisions and orders of  
24 the commission and of the director and administrative law judges. To promote  
25 consistency among legal determinations, the chair of the commission may review and  
26 circulate among the other members of the relevant commission appeal panel the drafts  
27 of the panel's formal decisions and decisions upon reconsideration. The drafts are  
28 confidential documents and are not subject to disclosure.

29 (c) The chair of the commission shall draft and propose, and the commission  
30 in its administrative capacity may adopt, regulations implementing the commission's  
31 authority and duties under this chapter, including rules of procedure and evidence for

1 proceedings before the commission and, after consulting with the chief administrative  
2 law judge, in workers' compensation proceedings under AS 23.30.080, 23.30.090, and  
3 23.30.110, and for the adjudication of all claims and petitions and appeals under this  
4 chapter. The provisions of AS 44.62 (Administrative Procedure Act) apply to the  
5 adoption of regulations by the commission.

6 (d) In an appeal, the commission shall award a successful party reasonable  
7 costs and, if the party is represented by an attorney, attorney fees that the commission  
8 determines to be fully compensatory and reasonable. However, the commission may  
9 not make an award of attorney fees against an injured worker unless the commission  
10 finds that the worker's position on appeal was frivolous or unreasonable or the appeal  
11 was taken in bad faith.

12 (e) The commission, in its administrative capacity, may adopt and alter an  
13 official seal and do all things necessary, convenient, or desirable to carry out the  
14 powers expressly granted or necessarily implied in this chapter.

15 **Sec. 23.30.009. Powers and duties of the chair of the commission.** (a) The  
16 chair of the commission shall exercise general supervision over the office of the  
17 commission and over appeals, and shall direct the administrative functions of the  
18 commission. The chair of the commission shall serve as the executive officer of the  
19 commission and shall have authority in all administrative matters relating to the  
20 members. The chair may

21 (1) employ and supervise commission staff and appoint a commission  
22 clerk;

23 (2) establish and implement a time management system for the  
24 commission members and staff and manage the calendar of appeals;

25 (3) assign the work of the commission members and staff so that  
26 appeals are resolved as expeditiously and competently as possible;

27 (4) receive petitions and claims and other materials for hearings  
28 conducted by the office of administrative hearings (AS 44.64.010);

29 (5) advise and cooperate with the chief administrative law judge of the  
30 office of administrative hearings (AS 44.64.010) to develop appropriate procedures for  
31 maintenance and transfer of hearing files and the preservation and transfer of records

on appeal; and

2 (6) prepare an annual budget of the commission.

3 (b) The chair of the commission shall preside over hearings and arguments on  
4 appeals. The chair of the commission shall ensure that all functions of the commission  
5 are performed with due regard for the rights of all parties and consistent with the  
6 orderly and prompt resolution of appeals. The chair of the commission shall rule on  
7 questions of procedure and advise the representative members of the commission on  
8 matters of law.

9 (c) The chair of the commission shall, not later than March 15 of each year,  
10 make available to the public and file with the lieutenant governor, a report regarding  
11 the commission, including data regarding time periods between initial receipt and final  
12 decisions on appeals.

13 (d) The chair of the commission shall devote full time to the duties of the chair  
14 of the commission and may not engage in any other employment or business. The  
15 chair of the commission may not hold any other office or position under the United  
16 States, this state, any municipality or political subdivision of this state, or any tribal  
17 government or corporation. The chair of the commission may not hold office or  
18 position in a partisan political organization or party.

19 \* Sec. 13. AS 23.30.011(c) is amended to read:

20 (c) If an employee is entitled to the benefits of this chapter by reason of an  
21 injury sustained in this state in employment by an employer who is domiciled in  
22 another state and who has not secured the payment of compensation as required by  
23 this chapter, the employer or the employer's carrier may file with the division  
24 [BOARD] a certificate, issued by the commission or agency of the other state having  
25 jurisdiction over workers' compensation claims, certifying that the employer has  
26 secured the payment of compensation under the workers' compensation law of the  
27 other state and that, with respect to that injury, the employee is entitled to the benefits  
28 provided under that law. In that event,

29 (1) the filing of the certificate shall constitute an appointment by the  
30 employer or the employer's carrier of the director [BOARD] as the employer's agent  
31 for acceptance of the service of process in a proceeding brought by the employee or

1 the employee's dependents to enforce the employee's or their rights under this chapter  
2 on account of the injury;

3 (2) the director [BOARD] shall send to the employer or carrier, by  
4 registered or certified mail to the address shown on the certificate, a true copy of any  
5 notice of claim or other process served on the director by the employee or the  
6 employee's dependents in any proceeding brought to enforce the employee's or their  
7 rights under this chapter;

8 (3) if the employer is a qualified self-insurer under the workers'  
9 compensation law of the other state, the employer, upon submission of evidence  
10 satisfactory to the director [BOARD] of the employer's ability to meet the employer's  
11 liability to the employee under this chapter, shall be considered to be a qualified self-  
12 insurer under this chapter;

13 (4) if the employer's liability under the workers' compensation law of  
14 another state is insured, the employer's carrier, as to the employee or the employee's  
15 dependents only, shall be considered to be an insurer authorized to write insurance  
16 under and be subject to this chapter; however, unless its contract with the employer  
17 requires it to pay an amount equivalent to the compensation benefits provided by this  
18 chapter, its liability for income benefits or medical and related benefits may not  
19 exceed the amounts of the benefits for which the insurer would have been liable under  
20 the workers' compensation law of the other state;

21 (5) if the amount for which the employer's insurance is liable under (3)  
22 and (4) of this subsection is less than the total of the compensation benefits to which  
23 the employee is entitled under this chapter, the director [BOARD] may, if the  
24 director [IT] considers it necessary, require the employer to file security satisfactory  
25 to the director [BOARD] to secure the payment of benefits due the employee or the  
26 employee's dependents under this chapter; and

27 (6) upon compliance with the preceding requirements of this  
28 subsection, the employer, as to the employee only, shall be considered to have secured  
29 the payment of compensation under this chapter.

30 \* Sec. 14. AS 23.30.012 is amended to read:

31 Sec. 23.30.012. Agreements in regard to claims. (a) At any time after

2 death, or after 30 days subsequent to the date of the injury, the employer and the  
 3 employee or the beneficiary or beneficiaries, as the case may be, have the right to  
 4 reach an agreement in regard to a claim for injury or death under this chapter [IN  
 5 ACCORDANCE WITH THE APPLICABLE SCHEDULE IN THIS CHAPTER], but  
 6 a memorandum of the agreement in a form prescribed by the director [BOARD] shall  
 7 be filed with the division [BOARD]. Otherwise, the agreement is void for any  
 8 purpose. Except as provided in (b) of this section, an agreement filed with the  
 9 division discharges the liability of the employer for the compensation,  
 10 notwithstanding the provisions of AS 23.30.130, 23.30.160, and 23.30.245, and is  
 11 enforceable as a compensation order.

12 (b) If the claimant or beneficiary is not represented by an attorney  
 13 licensed to practice in this state, or the beneficiary is a minor, the division shall  
 14 request review of the agreement by an administrative law judge. If approved by  
 15 an administrative law judge [THE BOARD], the agreement is enforceable the same  
 16 as an order or award of an administrative law judge [THE BOARD] and discharges  
 17 the liability of the employer for the compensation notwithstanding the provisions of  
 18 AS 23.30.130, 23.30.160, and 23.30.245. The agreement shall be approved by an  
 19 administrative law judge [THE BOARD] only when the terms conform to the  
 20 provisions of this chapter and, if it involves or is likely to involve permanent  
 21 disability, an administrative law judge [THE BOARD] may require an impartial  
 22 medical examination and a hearing in order to determine whether or not to approve the  
 23 agreement. A [THE BOARD MAY APPROVE] lump-sum settlement may be  
 24 approved [SETTLEMENTS] when it appears to be to the best interest of the  
 25 employee or beneficiary or beneficiaries.

26 \* Sec. 15. AS 23.30.015(b) is amended to read:

27 (b) Acceptance of compensation under [AN AWARD IN] a compensation  
 28 order filed with the office of the commission [BY THE BOARD] operates as an  
 29 agreement to the employer of all rights of the person entitled to compensation and the  
 30 personal representative of a deceased employee to recover damages from the third  
 31 person unless the person or representative entitled to compensation commences an  
 action against the third person within one year after an order [AWARD].

1 \* Sec. 16. AS 23.30.015(e) is amended to read:

2 (e) An amount recovered by the employer under an assignment, whether by  
3 action or compromise, shall be distributed as follows:

4 (1) the employer shall retain an amount equal to

5 (A) the expenses incurred by the employer with respect to the  
6 action or compromise, including [A] reasonable attorney fees [FEE]  
7 determined by an administrative law judge [THE BOARD];

8 (B) the cost of all benefits actually furnished by the employer  
9 under this chapter;

10 (C) all amounts paid as compensation and second injury  
11 [SECOND-INJURY] fund payments, and, if the employer is self-insured or  
12 uninsured, all service fees paid under AS 23.05.067;

13 (D) the present value of all amounts payable later as  
14 compensation, computed from a schedule prepared by the director [BOARD];  
15 and the present value of the estimated cost of all benefits to be furnished later  
16 under AS 23.30.095 [AS ESTIMATED BY THE BOARD]; the amounts so  
17 computed and estimated shall [TO] be retained by the employer as a trust fund  
18 to pay compensation and the cost of benefits as they become due and to pay  
19 any finally remaining excess sum to the person entitled to compensation or to  
20 the representative; and

21 (2) the employer shall pay any excess to the person entitled to  
22 compensation or to the representative of that person.

23 \* Sec. 17. AS 23.30.015(j) is amended to read:

24 (j) Notice of the commencement of an action against a third party shall be  
25 given to the division [BOARD] and to all interested parties within 30 days. If a  
26 request for a hearing under AS 23.30.110 has been filed, notice of the  
27 commencement of the action shall also be filed with the commission.

28 \* Sec. 18. AS 23.30.025(a) is amended to read:

29 (a) An insurer may not enter into or issue a policy of insurance under this  
30 chapter until its policy form has been submitted to and approved by the director of the  
31 division of insurance. The director of the division of insurance may not approve the

2 policy form of an insurance company until the company files with it the certificate of  
 3 the director of the division of insurance showing that the company is authorized to  
 4 transact the business of workers' compensation insurance in the state. The filing of a  
 5 policy form by an insurance company with the division of workers' compensation  
 6 [BOARD] for approval constitutes, on the part of the company, a conclusive and  
 7 unqualified acceptance of the provisions of this chapter [,] and an agreement by it to  
 8 be bound by them.

9 \* Sec. 19. AS 23.30.030(5) is amended to read:

10 (5) A termination of the policy by cancellation is not effective as to the  
 11 employees of the insured employer covered by it until 20 days after written notice of  
 12 the termination has been received by the division [BOARD]. If the employer has a  
 13 contract with the state or a home rule or other political subdivision of the state, and the  
 14 employer's policy is cancelled due to nonpayment of a premium, the termination of the  
 15 policy is not effective as to the employees of the insured employer covered by it until  
 16 20 days after written notice of the termination has been received by the contracting  
 17 agency, and the agency has the option of continuing the payments on behalf of the  
 18 employer in order to keep the policy in force. If, however, the employer has secured  
 19 insurance with another insurance carrier, cancellation is effective as of the date of the  
 20 new coverage.

21 \* Sec. 20. AS 23.30.030(6) is amended to read:

22 (6) All claims for compensation, death benefits, physician's fees,  
 23 nurse's charges, hospital services, hospital supplies, medicines, prosthetic devices,  
 24 transportation charges to the nearest point where adequate medical facilities are  
 25 available, and burial expenses [,] may be made directly against either the employer or  
 26 the insurer, or both, and the order or award of an administrative law judge [THE  
 27 BOARD] may be made against either the employer or the insurer or both.

28 \* Sec. 21. AS 23.30.040(a) is amended to read:

29 (a) There is created a second injury fund, administered by the director  
 30 [COMMISSIONER]. Money in the second injury fund may only be paid for the  
 31 benefit of those persons entitled to payment of benefits from the second injury fund  
 under this chapter. Payments from the second injury fund must be made by the

1        director [COMMISSIONER] in accordance with the orders [AND AWARDS] of an  
2        administrative law judge [THE BOARD].

3        \* Sec. 22. AS 23.30.040(d) is amended to read:

4                (d) The director [BOARD] may refund a payment made into the second  
5        injury fund if the employer or insurance carrier shows that it made the payment by  
6        mistake or inadvertence, or if it shows there existed at the time of the death of the  
7        employee a beneficiary entitled to benefits under AS 23.30.215.

8        \* Sec. 23. AS 23.30.041(a) is amended to read:

9                (a) The director [BOARD] shall select and employ a reemployment benefits  
10       administrator. The director [BOARD] may authorize the administrator to select and  
11       employ additional staff. The administrator is in the partially exempt service under  
12       AS 39.25.120.

13       \* Sec. 24. AS 23.30.041(b) is amended to read:

14                (b) The administrator shall

15                        (1) enforce regulations adopted by the department [BOARD] to  
16       implement this section;

17                        (2) recommend regulations for adoption by the department [BOARD]  
18       that establish performance and reporting criteria for rehabilitation specialists;

19                        (3) enforce the quality and effectiveness of reemployment benefits  
20       provided for under this section;

21                        (4) review on an annual basis the performance of rehabilitation  
22       specialists to determine continued eligibility for delivery of rehabilitation services;

23                        (5) submit to the department, on or before May 1 of each year, a report  
24       of reemployment benefits provided under this section for the previous calendar year;  
25       the report must include a general section, sections related to each rehabilitation  
26       specialist employed under this section, and a statistical summary of all rehabilitation  
27       cases, including

28                                        (A) the estimated and actual cost of each active rehabilitation  
29       plan;

30                                        (B) the estimated and actual time of each rehabilitation plan;

31                                        (C) a status report on all individuals completing or terminating

a reemployment benefits program including a return to work date;

(D) the cost of reemployment benefits;

(6) maintain a list of rehabilitation specialists who meet the qualifications established under this section;

(7) promote awareness among physicians, adjusters, injured workers, employers, employees, attorneys, training providers, and rehabilitation specialists of the reemployment program established in this subsection.

\* Sec. 25. AS 23.30.041(d) is amended to read:

(d) Within 30 days after the referral by the administrator, the rehabilitation specialist shall perform the eligibility evaluation and issue a report of findings. The administrator may grant up to an additional 30 days for performance of the eligibility evaluation upon notification of unusual and extenuating circumstances and the rehabilitation specialist's request. Within 14 days after receipt of the report from the rehabilitation specialist, the administrator shall notify the parties of the employee's eligibility for reemployment preparation benefits. Within 10 days after the decision, either party may seek review of the decision by requesting a hearing under AS 23.30.110. The hearing shall be held within 30 days after it is requested. The administrative law judge [BOARD] shall uphold the decision of the administrator except for abuse of discretion on the administrator's part.

\* Sec. 26. AS 23.30.041(h) is amended to read:

(h) Within 90 days after the rehabilitation specialist's selection under (g) of this section, the reemployment plan must be formulated and approved. The reemployment plan must require continuous participation by the employee and must maximize the usage of the employee's transferable skills. The reemployment plan must include at least the following:

(1) a determination of the occupational goal in the labor market;

(2) an inventory of the employee's technical skills, transferable skills, physical and intellectual capacities, academic achievement, emotional condition, and family support;

(3) a plan to acquire the occupational skills to be employable;

(4) the cost estimate of the reemployment plan, including provider

1 fees; and the cost of tuition, books, tools [,] and supplies, transportation, temporary  
2 lodging, or job modification devices;

3 (5) the estimated length of time that the plan will take;

4 (6) the date that the plan will commence;

5 (7) the estimated time of medical stability as predicted by a treating  
6 physician or by a physician who has examined the employee at the request of the  
7 employer or the director [BOARD], or by referral of the treating physician;

8 (8) a detailed description and plan schedule;

9 (9) a finding by the rehabilitation specialist that the inventory under (2)  
10 of this subsection indicates that the employee can be reasonably expected to  
11 satisfactorily complete the plan and perform in a new occupation within the time and  
12 cost limitations of the plan; and

13 (10) a provision requiring that, after a person has been assigned to  
14 perform medical management services for an injured employee, the person shall send  
15 written notice to the employee, the employer, and the employee's physician explaining  
16 in what capacity the person is employed, whom the person represents, and the scope of  
17 the services to be provided.

18 \* Sec. 27. AS 23.30.041(j) is amended to read:

19 (j) The employee, rehabilitation specialist, and the employer shall sign the  
20 reemployment benefits plan. If the employer and employee fail to agree on a  
21 reemployment plan, either party may submit a reemployment plan for approval to the  
22 administrator; the administrator shall approve or deny a plan within 14 days after the  
23 plan is submitted; within 10 days after [OF] the decision, either party may seek  
24 review of the decision by requesting a hearing under AS 23.30.110; an  
25 administrative law judge [THE BOARD] shall uphold the decision of the  
26 administrator unless evidence is submitted supporting an allegation of abuse of  
27 discretion on the part of the administrator; an administrative law judge [THE  
28 BOARD] shall render a decision within 30 days after completion of the hearing.

29 \* Sec. 28. AS 23.30.041(o) is amended to read:

30 (o) Upon the request of either party, the administrator shall decide whether the  
31 employee has not cooperated as provided under (n) of this section. A hearing before

2 the administrator shall be held within 30 days after it is requested. The administrator  
3 shall issue a decision within 14 days after the hearing. Within 10 days after the  
4 administrator files the decision, either party may seek review of the decision by  
5 requesting a hearing under AS 23.30.110; an administrative law judge [THE  
6 BOARD] shall uphold the decision of the administrator unless evidence is submitted  
7 supporting an allegation of abuse of discretion on the part of the administrator; an  
8 administrative law judge [THE BOARD] shall render a decision within 30 days after  
9 completion of the hearing.

9 \* Sec. 29. AS 23.30.041(p) is amended to read:

10 (p) When the United States Department of Labor publishes a new edition,  
11 revision, or replacement for the "Selected Characteristics of Occupations Defined in  
12 the Revised Dictionary of Occupational Titles" referred to in (e) of this section, the  
13 director [BOARD] shall, not later than 90 days after the last day of the month in  
14 which the new edition, revision, or replacement standard is published, hold an open  
15 meeting under AS 44.62.310 to select the proposed date on which the new edition,  
16 revision, or replacement standard will be implemented to make all eligibility  
17 determinations required under (e) of this section. The date selected by the  
18 department [BOARD] for implementing the new edition, revision, or replacement  
19 standard may not be later than 90 days after the last day of the month in which the new  
20 edition, revision, or replacement standard is published. After the meeting, the  
21 director [BOARD] shall issue a public notice announcing the date selected by the  
22 department. The requirements of AS 44.62.010 - 44.62.300 do not apply to the  
23 selection or announcement of the date under this subsection.

24 \* Sec. 30. AS 23.30.041(q) is amended to read:

25 (q) Notwithstanding AS 23.30.012, after medical stability has been determined  
26 and a physician has predicted that the employee may have a permanent impairment  
27 that may cause the employee to have permanent physical capacities that are less than  
28 the physical demands of the employee's job at the time of injury, an employee may  
29 waive any benefits or rights under this section, including an eligibility evaluation and  
30 benefits related to a reemployment plan. To waive any benefits or rights under this  
31 section, an employee must file a statement under oath with the division [BOARD] to

1 notify the parties of the waiver and to specify the scope of benefits or rights that the  
2 employee seeks to waive. The statement must be on a form prescribed or approved by  
3 the director [BOARD]. The division [BOARD] shall serve the notice of waiver on  
4 all parties to the claim within 10 days after filing. The waiver is effective upon service  
5 to the party. A waiver effective under this subsection discharges the liability of the  
6 employer for the benefits or rights contained in this section. The waiver may not be  
7 modified under AS 23.30.130.

8 \* Sec. 31. AS 23.30.045(d) is amended to read:

9 (d) A contract may not be awarded by the state or a home rule or other  
10 political subdivision of the state unless the person to whom the contract is to be  
11 awarded has submitted to the contracting agency proof, furnished by the insurance  
12 carrier, of current coverage by workers' compensation insurance from an insurance  
13 company or association authorized to transact the business of workers' compensation  
14 insurance in this state or proof, furnished by the division [BOARD], of a current  
15 certificate of self-insurance from the director [BOARD]. The person to whom the  
16 contract is awarded shall keep the workers' compensation insurance policy in effect  
17 during the life of the contract with the state or political subdivision. If the state or the  
18 political subdivision of the state fails to obtain proof of coverage or self-insurance or  
19 to protect itself under (e) of this section, and an employee of the contractor is injured  
20 during the term of the contract, the state or the political subdivision is liable for  
21 workers' compensation to the employee if the employee is unable to recover from the  
22 employer because of the employer's lack of financial assets. The state or the political  
23 subdivision is not liable, however, to the employee for workers' compensation if the  
24 employee can recover from the employer under (a) and (b) of this section.

25 \* Sec. 32. AS 23.30.045(e) is amended to read:

26 (e) When a contracting agency of the state or a political subdivision receives  
27 notice that the workers' compensation insurance policy of an employer to whom the  
28 agency has awarded a contract has been cancelled due to nonpayment of a premium,  
29 without being replaced by a comparable policy, the agency may either terminate the  
30 contract with the employer or continue the premium payments on behalf of the  
31 employer in order to keep the policy in force during the life of the agency's contract.

2 If the agency chooses to keep the policy in force, it may deduct its payments from the  
 3 contract price or bring an action against the employer to recover the amount of the  
 4 payments. When the contracting agency receives notice that the director [BOARD]  
 5 has revoked a certificate of self-insurance held by a person to whom a contract has  
 6 been awarded, the agency may terminate the contract. This subsection does not limit  
 7 the causes of action or remedies that the state or political subdivision may have against  
 the employer.

8 \* Sec. 33. AS 23.30.065 is amended to read:

9       Sec. 23.30.065. Employer's record of injuries. An employer shall keep a  
 10 record in respect of an injury to an employee. The record must contain the  
 11 information of disease, other disability, or death with [IN] respect to an injury that the  
 12 division [BOARD] requires, and must be available to inspection by the division  
 13 [BOARD] or by a state authority at the times and under the conditions that the  
 14 department [BOARD] prescribes by regulation.

15 \* Sec. 34. AS 23.30.070(a) is amended to read:

16       (a) Within 10 days from the date the employer has knowledge of an injury or  
 17 death or from the date the employer has knowledge of a disease or infection, alleged  
 18 by the employee or on behalf of the employee to have arisen out of and in the course  
 19 of the employment, the employer shall send to the division [BOARD] a report setting  
 20 out

21               (1) the name, address, and business of the employer;

22               (2) the name, address, and occupation of the employee;

23               (3) the cause and nature of the alleged injury or death;

24               (4) the year, month, day, and hour when and the particular locality  
 25 where the alleged injury or death occurred; and

26               (5) the other information that the division [BOARD] may require.

27 \* Sec. 35. AS 23.30.070(b) is amended to read:

28       (b) Additional reports with [IN] respect to the injury and to the condition of  
 29 the employee shall be sent by the employer to the division [BOARD] at the times and  
 30 in the manner that the director [BOARD] prescribes.

31 \* Sec. 36. AS 23.30.070(d) is amended to read:

1 (d) Mailing of the report and copy to the division [BOARD] in a stamped  
2 envelope, within the time prescribed in (a) or (b) of this section, is compliance with  
3 this section.

4 \* Sec. 37. AS 23.30.070(f) is amended to read:

5 (f) An employer who fails or refuses to send a report required of the employer  
6 by this section or who fails or refuses to send the report required by (a) of this section  
7 within the time required shall, if so required by an administrative law judge after a  
8 hearing [THE BOARD], pay the employee or the legal representative of the employee  
9 or other person entitled to compensation by reason of the employee's injury or death  
10 an additional award equal to 20 percent of the amounts that were unpaid when due.  
11 The award shall be against either the employer or the insurance carrier, or both.

12 \* Sec. 38. AS 23.30.075 is amended to read:

13 Sec. 23.30.075. Employer's liability to pay. (a) An employer under this  
14 chapter, unless exempted, shall either insure and keep insured for the employer's  
15 liability under this chapter in an insurance company or association duly authorized to  
16 transact the business of workers' compensation insurance in this state, or shall furnish  
17 the division [BOARD] satisfactory proof of the employer's financial ability to pay  
18 directly the compensation provided for. If an employer elects to pay directly, the  
19 director [BOARD] may, in the director's [ITS] discretion, require the deposit of an  
20 acceptable security, indemnity, or bond to secure the payment of compensation  
21 liabilities as they are incurred.

22 (b) If an employer fails to insure and keep insured employees subject to this  
23 chapter or fails to obtain a certificate of self-insurance from the division [BOARD],  
24 upon conviction, the court shall impose a fine of \$10,000 and may impose a sentence  
25 of imprisonment for not more than one year. If an employer is a corporation, all  
26 persons who, at the time of the injury or death, had authority to insure the corporation  
27 or apply for a certificate of self-insurance, and the person actively in charge of the  
28 business of the corporation shall be subject to the penalties prescribed in this  
29 subsection and shall be personally, jointly, and severally liable together with the  
30 corporation for the payment of all compensation or other benefits for which the  
31 corporation is liable under this chapter if the corporation at that time is not insured or

qualified as a self-insurer.

2 \* Sec. 39. AS 23.30.080(d) is amended to read:

3 (d) If an employer fails to insure or provide security as required by  
4 AS 23.30.075, the director [BOARD] may petition to issue a stop order prohibiting  
5 the use of employee labor by the employer until the employer insures or provides  
6 security as required by AS 23.30.075. The failure of an employer to file evidence of  
7 compliance as required by AS 23.30.085 creates a rebuttable presumption that the  
8 employer has failed to insure or provide security as required by AS 23.30.075. The  
9 petition shall be filed in the office of the commission. An administrative law  
10 judge shall hear the petition within 20 days after service of the petition on the  
11 employer. If the director presents evidence with the petition that hazards in the  
12 employment constitute a danger that could reasonably be expected to  
13 immediately cause an employee death or serious physical harm, the petition may  
14 be heard on shortened notice. The administrative law judge shall issue a decision  
15 on the petition within seven days after the hearing. If an employer fails to comply  
16 with a stop order issued under this section, an administrative law judge [THE  
17 BOARD] shall assess a civil penalty of \$1,000 a [PER] day. The employer may not  
18 obtain a public contract with the state or a political subdivision of the state for three  
19 years following the violation of the stop order.

20 \* Sec. 40. AS 23.30.080 is amended by adding new subsections to read:

21 (e) If an employer fails, refuses, or neglects to insure or provide security as  
22 required by AS 23.30.075(a), the director may petition to order payment of a civil  
23 penalty to the state of an amount up to \$100 for each employee for each day an  
24 employee is employed while the employer is uninsured or does not provide the  
25 security required by AS 23.30.075(a). The failure of an employer to file evidence of  
26 compliance as required by AS 23.30.085 creates a rebuttable presumption that the  
27 employer has failed to obtain and keep insurance or provide security as required by  
28 AS 23.30.075(a). The petition shall be filed in the office of the commission. An  
29 administrative law judge shall hear the petition within 20 days after service of the  
30 petition on the employer. If the director presents evidence with the petition that  
31 hazards in the employment constitute a danger that could reasonably be expected to

1 immediately cause an employee death or serious physical harm, the petition may be  
2 heard on shortened notice. The administrative law judge shall issue a decision on the  
3 petition within seven days after the hearing.

4 (f) If an employer fails to pay a civil penalty ordered under (d) or (e) of this  
5 section within seven days after the date of service of the order upon the employer, the  
6 director may declare the employer in default. The director shall file a certified copy of  
7 the penalty order and declaration of default with the clerk of the superior court. The  
8 court shall, upon the filing of the copy of the order and declaration, enter judgment for  
9 the amount declared in default if it is in accordance with law. Anytime after a  
10 declaration of default, the attorney general, when requested to do so by the director,  
11 shall take appropriate action to assure collection of defaulted payment. Review of the  
12 judgment may be had as provided under the Alaska Rules of Civil Procedure. Final  
13 proceedings to execute the judgment may be had by writ of execution.

14 \* Sec. 41. AS 23.30.085(a) is amended to read:

15 (a) An employer subject to this chapter, unless exempted, shall initially file  
16 evidence of compliance with the insurance provisions of this chapter with the division  
17 [BOARD], in the form prescribed by the director [IT]. The employer shall also give  
18 evidence of compliance within 10 days after the termination of the employer's  
19 insurance by expiration or cancellation. These requirements do not apply to an  
20 employer who has certification from the division [BOARD] of the employer's  
21 financial ability to pay compensation directly without insurance.

22 \* Sec. 42. AS 23.30.090 is amended to read:

23 Sec. 23.30.090. Self-insurance certificates. If an employer has complied  
24 with the provisions of this chapter relating to self-insurance and has paid annual  
25 service fees assessed under AS 23.05.067, the director [BOARD] shall issue the  
26 employer a certificate that shall remain in force for a period fixed by the director  
27 [BOARD]. The director [BOARD] may, upon at least 10 days' notice and a hearing,  
28 revoke a self-insurance certificate upon satisfactory proof that an employer is no  
29 longer entitled to it. The hearing shall be conducted by an administrative law  
30 judge within 20 days after service of the director's notice. Within 14 days after  
31 the hearing, the administrative law judge shall make a proposed decision to the

director. who may adopt. amend. or reject it in the director's discretion. After  
 2 revocation, the director [BOARD] may grant a new certificate to an employer, upon  
 3 the employer's petition and satisfactory proof of the employer's financial ability as  
 4 provided in this chapter. An employer authorized as a self-insurer shall provide  
 5 claims facilities through its own staffed adjusting facilities located within the state, or  
 6 independent, licensed, resident adjusters with power to effect settlement within the  
 7 state.

\* Sec. 43. AS 23.30.090 is amended by adding a new subsection to read:

(b) All testimony given before an administrative law judge under this section  
 10 shall be recorded, but need not be transcribed unless further review is initiated.  
 11 Hearings shall be open to the public.

\* Sec. 44. AS 23.30.095(a) is amended to read:

(a) The employer shall furnish medical, surgical, and other attendance or  
 14 treatment, nurse and hospital service, medicine, crutches, and apparatus for the period  
 15 that [WHICH] the nature of the injury or the process of recovery requires, not  
 16 exceeding two years from and after the date of injury to the employee. However, if  
 17 the condition requiring the treatment, apparatus, or medicine is a latent one, the two-  
 18 year period runs from the time the employee has knowledge of the nature of the  
 19 employee's disability and its relationship to the employment and after disablement. If  
 20 [IT SHALL BE ADDITIONALLY PROVIDED THAT, IF] continued treatment or  
 21 care or both beyond the two-year period is indicated, the injured employee has the  
 22 right of review by an administrative law judge [THE BOARD]. The administrative  
 23 law judge [BOARD] may authorize continued treatment or care or both as the process  
 24 of recovery may require. When medical care is required, the injured employee may  
 25 designate a licensed physician to provide all medical and related benefits. The  
 26 employee may not make more than one change in the employee's choice of attending  
 27 physician without the written consent of the employer. Referral to a specialist by the  
 28 employee's attending physician is not considered a change in physicians. Upon  
 29 procuring the services of a physician, the injured employee shall give proper  
 30 notification of the selection to the employer within a reasonable time after first being  
 31 treated. Notice of a change in the attending physician shall be given before the

1 change.

2 \* Sec. 45. AS 23.30.095(c) is amended to read:

3 (c) A claim for medical or surgical treatment [,] or treatment requiring  
4 continuing and multiple treatments of a similar nature is not valid and enforceable  
5 against the employer unless, within 14 days following treatment, the physician or  
6 health care provider giving the treatment or the employee receiving it furnishes to the  
7 employer and the division [BOARD] notice of the injury and treatment, preferably on  
8 a form prescribed by the director [BOARD]. An administrative law judge [THE  
9 BOARD] shall, however, excuse the failure to furnish notice within 14 days when the  
10 administrative law judge [IT] finds it to be in the interest of justice to do so, and the  
11 administrative law judge [IT] may, upon application by a party in interest, make an  
12 award for the reasonable value of the medical or surgical treatment so obtained by the  
13 employee. When a claim is made for a course of treatment requiring continuing and  
14 multiple treatments of a similar nature, in addition to the notice, the physician or  
15 health care provider shall furnish a written treatment plan if the course of treatment  
16 will require more frequent outpatient visits than the standard treatment frequency for  
17 the nature and degree of the injury and the type of treatments. The treatment plan  
18 shall be furnished to the employee and the employer within 14 days after treatment  
19 begins. The treatment plan must include objectives, modalities, frequency of  
20 treatments, and reasons for the frequency of treatments. If the treatment plan is not  
21 furnished as required under this subsection, neither the employer nor the employee  
22 may be required to pay for treatments that exceed the frequency standard. The  
23 director shall propose and the department [BOARD] shall adopt regulations  
24 establishing standards for frequency of treatment.

25 \* Sec. 46. AS 23.30.095(d) is amended to read:

26 (d) If at any time during the period the employee unreasonably refuses to  
27 submit to medical or surgical treatment, an administrative law judge [THE BOARD]  
28 may by order suspend the payment of further compensation while the refusal  
29 continues, and no compensation may be paid at any time during the period of  
30 suspension, unless the circumstances justified the refusal.

31 \* Sec. 47. AS 23.30.095(e) is amended to read:

2 (e) The employee shall, after an injury, at reasonable times during the  
3 continuance of the disability, if requested by the employer or when ordered by an  
4 administrative law judge [THE BOARD], submit to an examination by a physician  
5 or surgeon of the employer's choice authorized to practice medicine under the laws of  
6 the jurisdiction in which the examination occurs, furnished and paid for by the  
7 employer. The employer may not make more than one change in the employer's  
8 choice of a physician or surgeon without the written consent of the employee.  
9 Referral to a specialist by the employer's physician is not considered a change in  
10 physicians. An examination requested by the employer not less than 14 days after  
11 injury, and every 60 days thereafter, shall be presumed to be reasonable, and the  
12 employee shall submit to the examination without further request or order by an  
13 administrative law judge [THE BOARD]. Unless medically appropriate, the  
14 physician shall use existing diagnostic data to complete the examination. Facts  
15 relative to the injury or claim communicated to or otherwise learned by a physician or  
16 surgeon who may have attended or examined the employee [,] or who may have been  
17 present at an examination are not privileged, either in the hearings provided for in this  
18 chapter or an action to recover damages against an employer who is subject to the  
19 compensation provisions of this chapter. If an employee refuses to submit to an  
20 examination provided for in this section, the employee's rights to compensation shall  
21 be suspended until the obstruction or refusal ceases, and the employee's compensation  
22 during the period of suspension may, in the discretion of an administrative law judge  
23 [THE BOARD] or the court determining an action brought for the recovery of  
24 damages under this chapter, be forfeited. In [THE BOARD IN] any case of death, the  
25 director may order [REQUIRE] an autopsy at the expense of the party requesting the  
26 autopsy. An autopsy may not be held without notice first being given to the widow or  
27 widower or next of kin if they, reside in the state or their whereabouts can be  
28 reasonably ascertained, of the time and place of the autopsy and reasonable time and  
29 opportunity given the widow or widower or next of kin to have a representative  
30 present to witness the autopsy. If adequate notice is not given, the findings from the  
31 autopsy may be suppressed on petition [MOTION] made to an administrative law  
judge [THE BOARD] or to the superior court, as the case may be.

1 \* Sec. 48. AS 23.30.095(f) is amended to read:

2 (f) All fees and other charges for medical treatment or service shall be subject  
3 to regulation by the department [BOARD] but may not exceed usual, customary, and  
4 reasonable fees for the treatment or service in the community in which it is rendered,  
5 as determined by the director [BOARD]. An employee may not be required to pay a  
6 fee or charge for medical treatment or service. The director shall propose and the  
7 department [BOARD] shall adopt updated usual, customary, and reasonable medical  
8 fee schedules at least once each year.

9 \* Sec. 49. AS 23.30.095(h) is amended to read:

10 (h) Upon the filing with the division [BOARD] by a party in interest of an  
11 application or other pleading, all parties to the proceeding must immediately, or in any  
12 event within five days after service of the pleading, send to the division [BOARD] the  
13 original signed reports of all physicians relating to the proceedings that [WHICH]  
14 they may have in their possession or under their control, and copies of the reports shall  
15 be served by the party immediately on any [THE] adverse party. There is a  
16 continuing duty on all [THE] parties to [SO] file and serve all the reports during the  
17 pendency of the proceeding.

18 \* Sec. 50. AS 23.30.095(j) is amended to read:

19 (j) The director [BOARD] may appoint a medical services review committee,  
20 or contract with an existing organization in the state or another state, to assist and  
21 advise the director [BOARD] in matters involving the appropriateness, necessity, and  
22 cost of medical and related services provided under this chapter.

23 \* Sec. 51. AS 23.30.095(k) is amended to read:

24 (k) In the event of a medical dispute regarding determinations of causation,  
25 medical stability, ability to enter a reemployment plan, degree of impairment,  
26 functional capacity, the amount and efficacy of the continuance of or necessity of  
27 treatment, or compensability between the employee's attending physician and the  
28 employer's independent medical evaluation, the director [BOARD] may require that a  
29 second independent medical evaluation be conducted by a physician or physicians  
30 selected [BY THE BOARD] from a list established and maintained by the director  
31 [BOARD]. The cost of an examination and medical report shall be paid by the

2 employer. The report of an independent medical examiner shall be furnished to the  
 3 division [BOARD] and to the parties within 14 days after the examination is  
 4 concluded. A person may not seek damages from an independent medical examiner  
 5 caused by the rendering of an opinion or providing testimony under this subsection,  
 except in the event of fraud or gross incompetence.

6 \* Sec. 52. AS 23.30.100(a) is amended to read:

7 (a) Notice of an injury or death with [IN] respect to which compensation is  
 8 payable under this chapter shall be given within 30 days after the date of such injury  
 9 or death to the division [BOARD] and to the employer.

10 \* Sec. 53. AS 23.30.100(c) is amended to read:

11 (c) Notice shall be given to the division [BOARD] by delivering it or sending  
 12 it by mail addressed to the division's [BOARD'S] office, and to the employer by  
 13 delivering it to the employer or by sending it by mail addressed to the employer at the  
 14 employer's last known place of business. If the employer is a partnership, the notice  
 15 may be given to a partner, or, if a corporation, the notice may be given to an agent or  
 16 officer upon whom legal process may be served or who is in charge of the business in  
 17 the place where the injury occurred.

18 \* Sec. 54. AS 23.30.100(d) is amended to read:

19 (d) Failure to give notice does not bar a claim under this chapter

20 (1) if the employer, an agent of the employer in charge of the business  
 21 in the place where the injury occurred, or the carrier had knowledge of the injury or  
 22 death and an administrative law judge [THE BOARD] determines that the employer  
 23 or carrier has not been prejudiced by failure to give notice;

24 (2) if an administrative law judge [THE BOARD] excuses the failure  
 25 on the ground that, for some satisfactory reason, notice could not be given;

26 (3) unless objection to the failure is raised before an administrative  
 27 law judge [THE BOARD] at the first hearing of a claim for compensation with [IN]  
 28 respect to the injury or death.

29 \* Sec. 55. AS 23.30.105(a) is amended to read:

30 (a) The right to compensation for disability under this chapter is barred unless  
 31 a claim for it is filed within two years after the employee has knowledge of the nature

1 of the employee's disability and its relation to the employment and after disablement.  
 2 However, the maximum time for filing the claim in any event other than arising out of  
 3 an occupational disease shall be four years from the date of injury, and the right to  
 4 compensation for death is barred unless a claim [THEREFOR] is filed within one year  
 5 after the death, except that, if payment of compensation has been made without an  
 6 award on account of the injury or death, a claim may be filed within two years after  
 7 the date of the last payment of benefits under AS 23.30.041, 23.30.180, 23.30.185,  
 8 23.30.190, 23.30.200, or 23.30.215. In [IT IS ADDITIONALLY PROVIDED THAT,  
 9 IN] the case of latent defects pertinent to and causing compensable disability, the  
 10 injured employee has the full right to claim compensation as shall be determined by  
 11 an administrative law judge [THE BOARD], time limitations notwithstanding.

12 \* Sec. 56. AS 23.30.107 is amended to read:

13 Sec. 23.30.107. Release of information. (a) Upon written request, an  
 14 employee shall provide written authority to the employer, carrier, rehabilitation  
 15 specialist, or reemployment benefits administrator to obtain medical and rehabilitation  
 16 information relative to the employee's injury. The request must include notice of the  
 17 employee's right to file a petition for a protective order with the division [BOARD]  
 18 and must be served by certified mail to the employee's address on the notice of injury  
 19 or by hand delivery to the employee. This subsection may not be construed to  
 20 authorize an employer, carrier, rehabilitation specialist, or reemployment benefits  
 21 administrator to request medical or other information that is not applicable to the  
 22 employee's injury.

23 (b) Medical or rehabilitation records in an employee's file maintained by the  
 24 division or held by the commission or the office of administrative hearings  
 25 (AS 44.64.010) [BOARD] are not public records subject to public inspection and  
 26 copying under AS 40.25. This subsection does not prohibit

27 (1) the reemployment benefits administrator, the division, the office of  
 28 the commission, the office of administrative hearings (AS 44.64.010) [BOARD], or  
 29 the department from releasing medical or rehabilitation records in an employee's file,  
 30 without the employee's consent, to a physician providing medical services under  
 31 AS 23.30.095(k) or 23.30.110(g), a party to a claim filed by the employee, or a

governmental agency; or

2 (2) the quoting or discussing of medical or rehabilitation records  
3 contained in an employee's file during a hearing on a claim for compensation [,] or in  
4 a decision and order of the administrative law judge, the director, or the  
5 commission [BOARD].

6 \* Sec. 57. AS 23.30.108 is amended to read:

7 Sec. 23.30.108. Prehearing conferences [PREHEARINGS] on discovery  
8 matters; objections to requests for release of information; sanctions for  
9 noncompliance. (a) If an employee objects to a request for written authority under  
10 AS 23.30.107, the employee must file a petition with the division [BOARD] seeking a  
11 protective order within 14 days after service of the request. If the employee fails to  
12 file a petition and fails to deliver the written authority as required by AS 23.30.107  
13 within 14 days after service of the request, the employee's rights to benefits under this  
14 chapter are suspended until the written authority is delivered.

15 (b) If a petition seeking a protective order is filed, the division shall promptly  
16 notify the commission, and the commission clerk shall, within seven days, request  
17 assignment of an administrative law judge and [BOARD] shall set a prehearing  
18 conference with the administrative law judge to occur within 21 days after the  
19 filing date of the petition. At a prehearing conference conducted by an  
20 administrative law judge [THE BOARD'S DESIGNEE], the administrative law  
21 judge [BOARD'S DESIGNEE] has the authority to resolve disputes concerning the  
22 written authority. If the administrative law judge [BOARD OR THE BOARD'S  
23 DESIGNEE] orders delivery of the written authority and if the employee refuses to  
24 deliver it within 10 days after being ordered to do so, the employee's rights to benefits  
25 under this chapter are suspended until the written authority is delivered. During any  
26 period of suspension under this subsection, the employee's benefits under this chapter  
27 are forfeited unless an administrative law judge [THE BOARD], or the court  
28 determining an action brought for the recovery of damages under this chapter,  
29 determines that good cause existed for the refusal to provide the written authority.

30 (c) At a prehearing conference on discovery matters conducted by an  
31 administrative law judge [THE BOARD'S DESIGNEE], the administrative law

1 judge [BOARD'S DESIGNEE] shall direct parties to sign releases or produce  
 2 documents, or both, if the parties present releases or requests for documents that are  
 3 likely to lead to admissible evidence relative to an employee's injury. If a party  
 4 refuses to comply with an order by an administrative law judge [THE BOARD'S  
 5 DESIGNEE OR THE BOARD] concerning discovery matters, an administrative law  
 6 judge [THE BOARD] may impose appropriate sanctions in addition to any forfeiture  
 7 of benefits, including dismissing the party's claim, petition, or defense. A party may  
 8 petition the commission for expedited review of an order of an administrative law  
 9 judge on discovery matters within seven days after the date of service of the  
 10 challenged order, and a party opposing the petition shall respond within seven  
 11 days after service of the petition. The commission shall determine whether to  
 12 grant or deny a petition for review within 10 days after a response is due. If [A  
 13 DISCOVERY DISPUTE COMES BEFORE] the commission grants a petition  
 14 [BOARD] for expedited review of a discovery determination by an administrative  
 15 law judge [THE BOARD'S DESIGNEE], the commission [BOARD] may not  
 16 consider any evidence or argument that was not presented to the administrative law  
 17 judge [BOARD'S DESIGNEE], but shall determine the issue solely on the basis of the  
 18 written record. The decision by the commission [BOARD] on a discovery dispute  
 19 shall be made within 30 days. The commission [BOARD] shall uphold an  
 20 administrative law judge's [THE DESIGNEE'S] decision except when the  
 21 administrative law judge's [BOARD'S DESIGNEE'S] determination is an abuse of  
 22 discretion.

23 \* Sec. 58. AS 23.30.110 is amended to read:

24 Sec. 23.30.110. Procedure on claims and petitions. (a) Subject to the  
 25 provisions of AS 23.30.105, a claim for or petition relating to compensation or  
 26 benefits or both may be filed with the division [BOARD] in accordance with its  
 27 regulations at any time after the first seven days of disability following an injury, or at  
 28 any time after death, and an administrative law judge [THE BOARD] may hear and  
 29 determine all questions with [IN] respect to the claim or petition. AS 44.64.060 does  
 30 not apply to hearings under this section.

31 (b) Within 10 days after a claim or petition is filed, the division [BOARD], in

2 accordance with its regulations, shall notify the opposing party, employer, and any  
 3 other person, other than the claimant or petitioner, whom the director [BOARD]  
 4 considers an interested party that a claim or petition has been filed. The notice may  
 5 be served personally [UPON THE EMPLOYER OR OTHER PERSON,] or sent by  
 6 certified [REGISTERED] mail.

7 (c) Before a hearing is scheduled, the party seeking a hearing shall file with  
 8 the office of the commission a request for a hearing together with an affidavit stating  
 9 that the party has completed necessary discovery, has obtained necessary evidence,  
 10 and is prepared for the hearing. Within seven days after filing of a request for  
 11 hearing, the commission clerk shall request the chief administrative law judge  
 12 appointed under AS 44.64.010 to assign an administrative law judge for the  
 13 hearing. An opposing party shall have 10 days after the hearing request is filed to file  
 14 a response. If a party opposes the hearing request, an administrative law judge  
 15 [THE BOARD OR A BOARD DESIGNEE] shall, within 30 days after [OF] the filing  
 16 of the opposition, conduct a pre-hearing conference, plan the timing and sequence of  
 17 discovery and other preliminary matters, and set a reasonable hearing date. If  
 18 opposition is not filed, the administrative law judge shall schedule a hearing not  
 19 [A HEARING SHALL BE SCHEDULED NO] later than 60 days after the receipt of  
 20 the hearing request. The administrative law judge [BOARD] shall give each party at  
 21 least 10 days' notice of the hearing, either personally or by certified mail. After a  
 22 hearing has been scheduled, the parties may not stipulate to change the hearing date or  
 23 to cancel, postpone, or continue the hearing, except for good cause as determined by  
 24 the administrative law judge. The hearing shall be before an administrative law  
 25 judge unless otherwise provided by this chapter [BOARD]. After completion of  
 26 the hearing, the administrative law judge [BOARD] shall close the hearing record.  
 27 If a settlement agreement is reached by the parties less than 14 days before the  
 28 hearing the parties shall appear at the time of the scheduled hearing to state the terms  
 29 of the settlement agreement. Within 30 days after the hearing record closes, the  
 30 administrative law judge [BOARD] shall file a written [ITS] decision. If the  
 31 employer controverts a claim on a director-prescribed [BOARD-PRESCRIBED]  
 controversion notice and the employee does not request a hearing within two years

1 following the filing of the controversion notice, the claim is denied.

2 (d) At the hearing, the parties [CLAIMANT AND THE EMPLOYER] may  
3 each present evidence with [IN] respect to the claim or petition and may be  
4 represented by any person authorized in writing for that purpose.

5 (e) The order of the administrative law judge rejecting the claim or petition,  
6 or making the award, referred to in this chapter as a compensation order, shall be filed  
7 in the office of the commission [BOARD], and a copy of it shall be sent by certified  
8 [REGISTERED] mail to the parties [CLAIMANT AND TO THE EMPLOYER] at  
9 the last known address of each.

10 (f) An award of compensation for disability or an order dismissing a claim  
11 may be made after the death of an injured employee.

12 (g) An injured employee claiming or entitled to compensation shall submit to  
13 the physical examination by a duly qualified physician that an administrative law  
14 judge [WHICH THE BOARD] may require. The place or places shall be reasonably  
15 convenient for the employee. The physician or physicians as the employee, employer,  
16 or carrier may select and pay for may participate in an examination if the employee,  
17 employer, or carrier so requests. Proceedings shall be suspended and no compensation  
18 may be payable for a period during which the employee refuses to submit to  
19 examination.

20 (h) The filing of a hearing request under (c) of this section suspends the  
21 running of the two-year time period specified in (c) of this section. However, if the  
22 employee subsequently requests a continuance of the hearing and the request is  
23 granted [APPROVED BY THE BOARD], the granting of the continuance renders the  
24 request for hearing inoperative, and the two-year time period specified in (c) of this  
25 section continues to run again from the date of an administrative law judge's [THE  
26 BOARD'S] notice to the employee of [THE BOARD'S GRANTING OF] the  
27 continuance and of its effect. If the employee fails to again request a hearing before  
28 the conclusion of the two-year time period in (c) of this section, the claim is denied.

29 \* Sec. 59. AS 23.30.110 is amended by adding new subsections to read:

30 (i) An order dismissing a claim in whole or in part may be made before a  
31 hearing on the merits of the claim when (1) the claim requests relief if it cannot be

2 granted under this chapter; (2) there is a lack of jurisdiction over the subject matter of  
 3 the claim or the person under this chapter; (3) division process or service of process  
 4 was insufficient; (4) the claim has not been prosecuted or a hearing was not requested  
 5 within the time allowed in (c) of this section; or (5) the claim is barred by a statute of  
 6 limitation. If, within 60 days after service of an order dismissing a claim under (1) -  
 7 (3) of this subsection, the defects stated in the order are cured, the dismissal may be  
 8 vacated. Otherwise, the order of dismissal is a final compensation order.

9 (j) At any time, a party may petition for a summary decision on all or part of a  
 10 claim. The administrative law judge shall grant the petition if (1) the administrative  
 11 law judge finds all reasonable discovery has been made on the issues presented; and  
 12 (2) the record shows that there is no genuine issue of any material fact and that the  
 13 petitioner is entitled to a decision as a matter of law. The administrative law judge  
 14 may file a compensation order in favor of the petitioner if the administrative law  
 15 judge's summary decision adjudicates all issues in the claim with respect to the  
 16 petitioner.

\* Sec. 60. AS 23.30 is amended by adding new sections to read:

17 Sec. 23.30.112. Administrative law judges. (a) Unless otherwise provided  
 18 in this chapter, hearings on claims and petitions shall be conducted by an  
 19 administrative law judge. In addition to the qualifications provided in AS 44.64.040,  
 20 an administrative law judge conducting hearings or other proceedings under this  
 21 chapter must have at least three years of experience in this state in the field of workers'  
 22 compensation law or in a similar field of practice.

23 (b) An administrative law judge for the purposes of this chapter may

24 (1) subpoena witnesses, administer or cause to be administered oaths,  
 25 and order production of parts of the books and records of the parties to a proceeding or  
 26 other records, documents, or papers that relate to questions in dispute; the superior  
 27 court, on application of the administrative law judge under AS 44.62.590, shall  
 28 enforce the attendance and testimony of witnesses and the production and examination  
 29 of books, papers, and records;

30 (2) direct a physician or hospital rendering medical treatment or  
 31 service under this chapter to furnish to the division periodic reports of treatment or

1 services on forms prescribed by the division;

2 (3) arrange to have hearings held by the commission, officer, or  
3 tribunal having authority to hear cases arising under the workers' compensation law of  
4 any other state, of the District of Columbia, or of any territory of the United States,  
5 when a proceeding in this state so requires; the testimony and proceedings at the  
6 hearing shall be reported to the commission and are a part of the record in the case;  
7 evidence taken at the hearing is subject to rebuttal upon final hearing under this  
8 chapter.

9 **Sec. 23.30.113. Hearings before an administrative law judge. (a)**

10 Notwithstanding any contrary provision of law, hearings under this chapter before an  
11 administrative law judge are to be conducted as provided in AS 23.30.110 and this  
12 section, or as otherwise provided under this chapter. Other proceedings under this  
13 chapter before an administrative law judge are to be conducted as provided in this  
14 chapter or in regulations adopted under this chapter.

15 (b) In conducting a hearing under this chapter, an administrative law judge is  
16 not bound by common law or statutory rules of evidence or by technical or formal  
17 rules of procedure, except as provided by this chapter and the regulations of the  
18 commission. The hearing may be conducted in the manner designed to best ascertain  
19 the rights of the parties. In proceedings before administrative law judges, the  
20 administrative adjudication procedures of AS 44.62 (Administrative Procedure Act)  
21 do not apply, except that AS 44.62.410(b), 44.62.460(a) - (d), 44.62.470, 44.62.480,  
22 44.62.510, and 44.62.590 shall apply to proceedings under this chapter. Declarations  
23 of a deceased employee concerning the injury with respect to which the investigation  
24 or inquiry is being made or the hearing conducted shall be received in evidence and  
25 are, if corroborated by other evidence, sufficient to establish the injury.

26 (b) The administrative law judge shall preside over hearings of claims and  
27 petitions under this chapter and perform all other functions in an impartial manner  
28 with due regard for the rights of all parties and the facts and the law, and consistent  
29 with the orderly and prompt dispatch of proceedings under this chapter. The  
30 administrative law judge shall rule on questions of procedure, the admission and  
31 exclusion of evidence, and make rulings on matters of law.