

**ALASKA LEGISLATURE**

**2750**

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

376

**SB**

**368**

**SFIN**

**FILE**

# SENATE FINANCE COMMITTEE REPORT

REPORTED OUT  
APR 26 2004  
SENATE FINANCE  
COMMITTEE

DATE: 3/26/04

FURTHER:

DATE TURNED IN TO OFFICE: 26 April 2004

Finance Committee considered

SENATE BILL NO. 368

## SB 368 TOBACCO TAX; LICENSING; PENALTIES

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

and recommends:

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

**Senate Bill:**  
 Same Title  
 New Title

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

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero.	FN#

**PREVIOUS FISCAL NOTE(S):**

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

APPROPRIATION - no fiscal note

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

APR 26 2004

SENATE FINANCE  
COMMITTEE

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

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

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

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

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

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

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

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

Estimate of any current year (FY2004) cost: 0.0

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

**POSITIONS**

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

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

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

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

FISCAL NOTE #1

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. SB 368

ANALYSIS CONTINUATION

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

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

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

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

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

APR 26 2004

SENATE FINANCE  
COMMITTEE

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

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

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

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

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

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

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

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

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

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

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

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

# LEGAL SERVICES

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

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

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

## MEMORANDUM

April 24, 2004

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

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

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

REPORTED OUT

APR 26 2004

SENATE FINANCE  
COMMITTEE

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

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

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

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

KLK:med  
04-453.med

Enclosure

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

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

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

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

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

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

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

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

added from f/n #2

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

Sheila-

What do you  
want to do about  
SB 368 changes  
recommended by

Kathryn Kurtz?

Want me to hold  
bill here?

No - we will pass

Kathryn Kurtz ~~amendment~~  
memo

along + let another cmte  
handle it - there is

disagreement among  
lawyers :



Official Business

# Alaska State Senate

## Senate Finance Committee

Mail Stop 3100  
State Capitol  
Juneau, Alaska 99801-1182

### FAX COVER SHEET

DATE: 26 April 2004 TIME: 10:40 am

TO: Legal Services

NUMBER OF PAGES, INCLUDING COVER SHEET: 1

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

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

no changes

Call if any questions

*The Mundy*



Official Business

# Alaska State Senate

## Senate Finance Committee

Mail Stop 3100  
State Capitol  
Juneau, Alaska 99801-1182

### FAX COVER SHEET

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

TO: LEGAL

NUMBER OF PAGES, INCLUDING COVER SHEET: 3

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

NOTES: 2 Corrections to CS SB 368 (FIN)  
work draft 23-G-S 2116/D

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

*Thank You!*  
*Robin*

2 changes:

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

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

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

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LYNNE  
4/22/04  
2:25pm

from  
Corrections  
2

4/26/04



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

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

BY THE SENATE FINANCE COMMITTEE

Offered:  
Referred:

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

A BILL  
FOR AN ACT ENTITLED

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

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

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

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

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

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

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



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

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

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

6 (2) refusal to issue the license.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Numbered  
as  
Section  
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in  
Amend #1*

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Amend #2*

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Sec 13  
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Amend #  
2*

*(i) is missing due to  
drafting change*

*original language  
RESUB*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Amend  
#7

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

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

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

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

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

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

*retained not deleted as requested in Amendment # 5*

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

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

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

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

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

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

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

- 1 (1) the aircraft to the state;  
2 (2) the vehicle or vessel to the state if the defendant  
3 (A) has a prior felony conviction for a violation of AS 11.41;  
4 (B) is on felony probation or parole; or  
5 (C) has a prior conviction for violation of AS 43.50.640 or  
6 43.50.650.

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

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

11 (2) the members of the family

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

} #1  
 -  
 language to be changed

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

*Language changed to b*

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

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

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

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

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

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

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

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

# Alaska State Senate

## Senate Finance Committee

Mail Stop 3100  
State Capitol  
Juneau, Alaska 99801-1182

### FAX COVER SHEET

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

TO: LEGAL

NUMBER OF PAGES, INCLUDING COVER SHEET: 14

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

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

*Thank You!  
Robin*

SENATE FINANCE  
COMMITTEE

ADOPTED

Amendment Number: #5

Bill Number: SB 368

Sponsor: Wilken Date: 4/21/04

Logged In By: Robin

23-GS2116A.3  
Kurtz  
4/21/04

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR WILKEN

TO: SB 368

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

2 Insert "who"

3

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

5 Insert "who"

6

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

8 Delete ", must"

9 Insert "shall"

10

11 Page 2, line 3:

12 Delete "disrtibutions"

13 Insert "distributions"

14

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

16 Insert "who"

17

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

19 Insert "who"

20

21 Page 2, line 26:

22 Delete "brings or causes to be brought cigarettes"

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

23-GS2116\A.3

1

2 Page 3, line 1:

3 Delete "per cent"

4 Insert "percent [PER CENT]"

5

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

7 Delete "but"

8 Insert "and"

9

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

11 Insert " : "

12

13 Page 3, lines 24 - 25:

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

16

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

18 Delete " : "

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

21

22 Page 4, line 5:

23 Delete "(i)"

24 Insert "(A)"

25

26 Page 4, line 7:

27 Delete "(ii)"

28 Insert "(B)"

29

30 Page 4, line 8:

31 Delete "it"

23-GS2116A.3

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

23-GS2116A.3

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

23-GS2116A.3

1

2 Page 7, line 13:

3 Delete "the court,"

4

5 Page 7, line 14:

6 Delete "and"

7 Following the second occurrence of "section,":

8 Insert "the court"

9

10 Page 7, line 24:

11 Delete "it"

12 Insert "the vehicle or vessel"

13

14 Page 8, line 4:

15 Delete ", "

16

17 Page 8, line 8:

18 Delete "As used in"

19 Insert "In"

20

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

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

23

24 Page 8, line 25:

25 Delete "no"

26 Insert "not"

27

28 Page 8, line 30:

29 Delete "heading"

30 Insert "catchline"

SENATE FINANCE COMMITTEE  
4 / 21 / 2003 COMMITTEE ACTION

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

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

ADOPTED

4/20/04

J. Bales

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR WILKEN

TO: SB 368

1 Page 8, following line 9:

2 Insert new bill sections to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

23 Renumber following bill sections accordingly.

SENATE FINANCE COMMITTEE  
4/21/2005 COMMITTEE ACTION

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

SENATE FINANCE  
COMMITTEE

Amendment Number: # 2

Bill Number: SB 368

Sponsor: Bunde Date: 4/20/04

Logged In By: Robin

ADOPTED  
4/21

4/15/04

J. Bales

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR BUNDE

TO: SB 368

1 Page 3, line 16:

2 Delete "or"

3 Insert "[OR]"

4

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

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

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

8 from outside the state for personal consumption"

9

10 Page 3, following line 18:

11 Insert new bill sections to read:

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

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

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

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

16 described in AS 43.50.300(4).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (A) licensed under AS 43.50.320; or

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

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

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

17

18 Renumber the following bill sections accordingly.

SENATE FINANCE COMMITTEE  
4 / 21 / 2004 COMMITTEE ACTION

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

Amendment Number: # 3

Bill Number: SB 368

23-GS2116A.2

Sponsor: Wilken Date: 4/21/04

Kurtz

Logged In By: Robin

4/20/04

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR WILKEN

TO: SB 368

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

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

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

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

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

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

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

15

16 Renumber the following bill sections accordingly.

SENATE FINANCE COMMITTEE  
4 / 21 / 2005 COMMITTEE ACTION

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

SENATE FINANCE  
COMMITTEE

ADOPTED

Amendment Number: # 7  
Bill Number: SB 368  
Sponsor: Wilken Date: 4/21/04  
Logged In By: Robin

23-GS2116A.5  
Kurtz  
4/21/04

AMENDMENT

OFFERED IN THE SENATE

TO: SB 368

1 Page 4, lines 24 - 27:

2 Delete all material.

3

4 Renumber the following bill sections accordingly.

5

6 Page 4, line 28:

7 Delete "AS 43.50.620 is repealed and reenacted"

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

9

10 Page 4, line 29:

11 Delete "Sec. 43.50.620"

12 Insert "Sec. 43.50.625"

13

14 Page 7, line 30:

15 Delete "if"

16

17 Page 7, lines 30 - 31:

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

19

20 Page 8, lines 27 - 31:

21 Delete all material.

22

23 Renumber the following bill section accordingly.

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

April 21, 2004

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

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

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

*Amendment  
#7*

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

**Reusing Numbers**

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

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

**Clarifying Village Family Forfeiture Provision**

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

KLK:mdr  
04-173.mdr

Enclosure

SENATE FINANCE COMMITTEE  
4 / 2 / 2005 COMMITTEE ACTION

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

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

SENATE FINANCE COMMITTEE  
4/21/2003 COMMITTEE ACTION

1st  
 Motion  
 on this  
 Amendment

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

WITHDRAWN

SENATE FINANCE  
COMMITTEE

ADOPTED

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

23-GS2116A.1  
Kurtz  
4/20/04

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR WILKEN

TO: SB 368

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

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

3

4 Page 8, line 25:

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

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

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

SENATE FINANCE COMMITTEE  
4 / 21 / 2003 COMMITTEE ACTION

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

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

AMENDMENT

To: SB 368

Page 8, following line 9:

Insert new bill sections to read:

Sponsored by  
Senator Wilken by request

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

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

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

(a) For purposes of AS 43.50.710 - 43.50.849,

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

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

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

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

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

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

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

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

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

Renumber the following bill sections accordingly.

SENATE FINANCE COMMITTEE **FAILED**

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

AMENDMENT

OFFERED TO SENATE FINANCE  
TO: SB 368

BY: Senator Hoffman

ADD INTENT LANGUAGE

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

SENATE FINANCE COMMITTEE  
4 12/1/2009 COMMITTEE ACTION

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

WITHDRAWN  
SENATE FINANCE

Conceptual COMMITTEE  
Amendment Number: #9

Bill Number: SB 368

Sponsor: Green Date: 4/21/04

Locked In By: Robin

Conceptual  
Amendment

Sponsored by Green

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

a punitive tax.

Withdrawn

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

### Tax Division

FRANK MURKOWSKI, GOVERNOR

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

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

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

## STATE TOBACCO TAXES & REVENUES

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

#### Tax Components

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

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

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

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

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

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

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

### Tax Division

FRANK MURKOWSKI, GOVERNOR

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

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

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

April 1, 2004

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

Dear Representative Anderson:

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

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

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

The Honorable Tom Anderson

April 1, 2004

Page 2

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

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

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

Sincerely,



Johanna Bales  
Revenue Auditor

cc: Steve Porter  
Deputy Commissioner  
Alaska Department of Revenue

Mike Barnhill  
Assistant Attorney General  
Alaska Department of Law

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

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

Value Liquor #3  
7141 Jewel Lake Road  
Anchorage, Alaska

Value Liquor #4  
11580 Old Seward Hwy  
Anchorage, Alaska

April 19, 2004

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

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

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

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

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

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

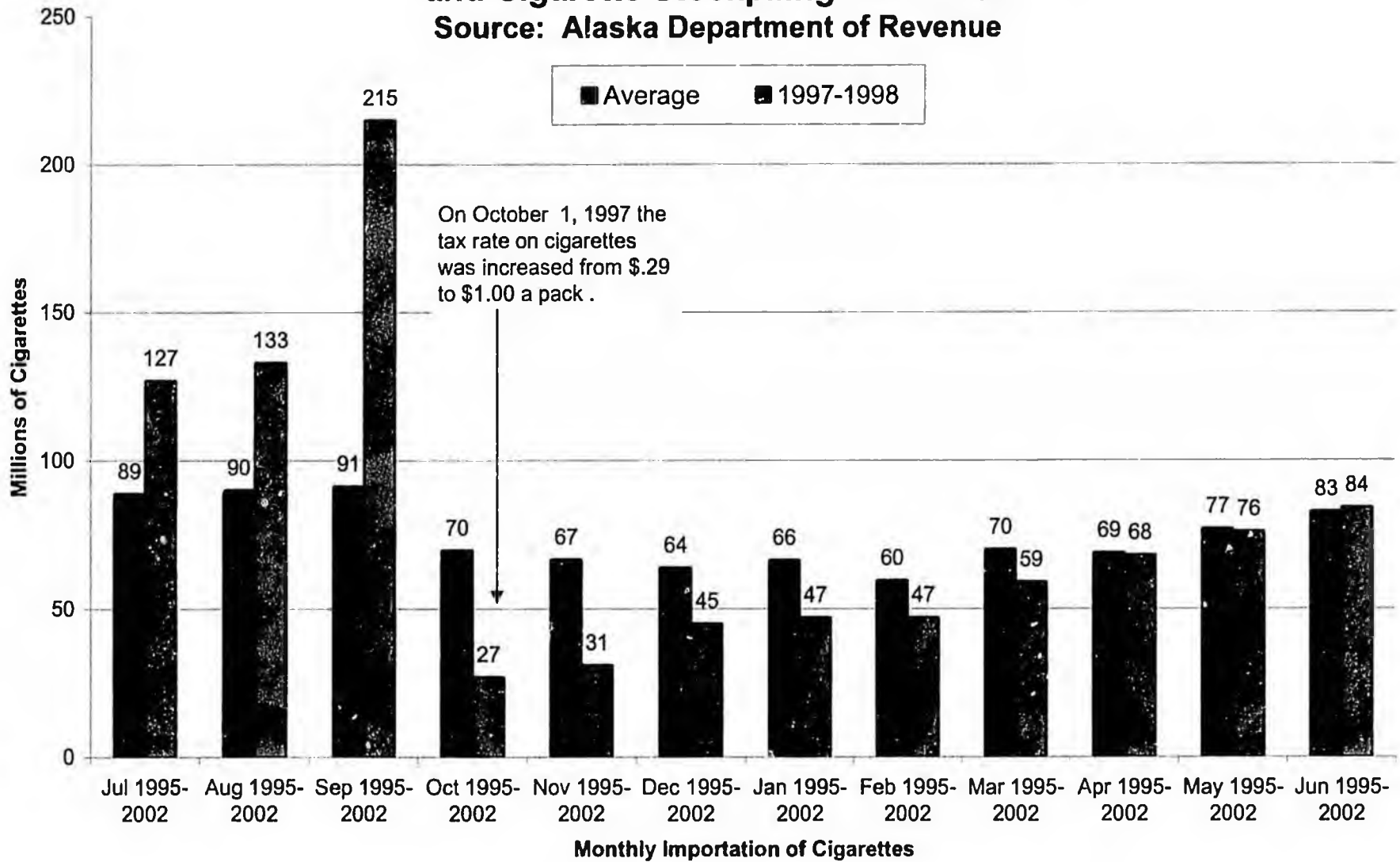
Sincerely,

Arlene and  
Arlene and Carroll Raney  
Value Liquor

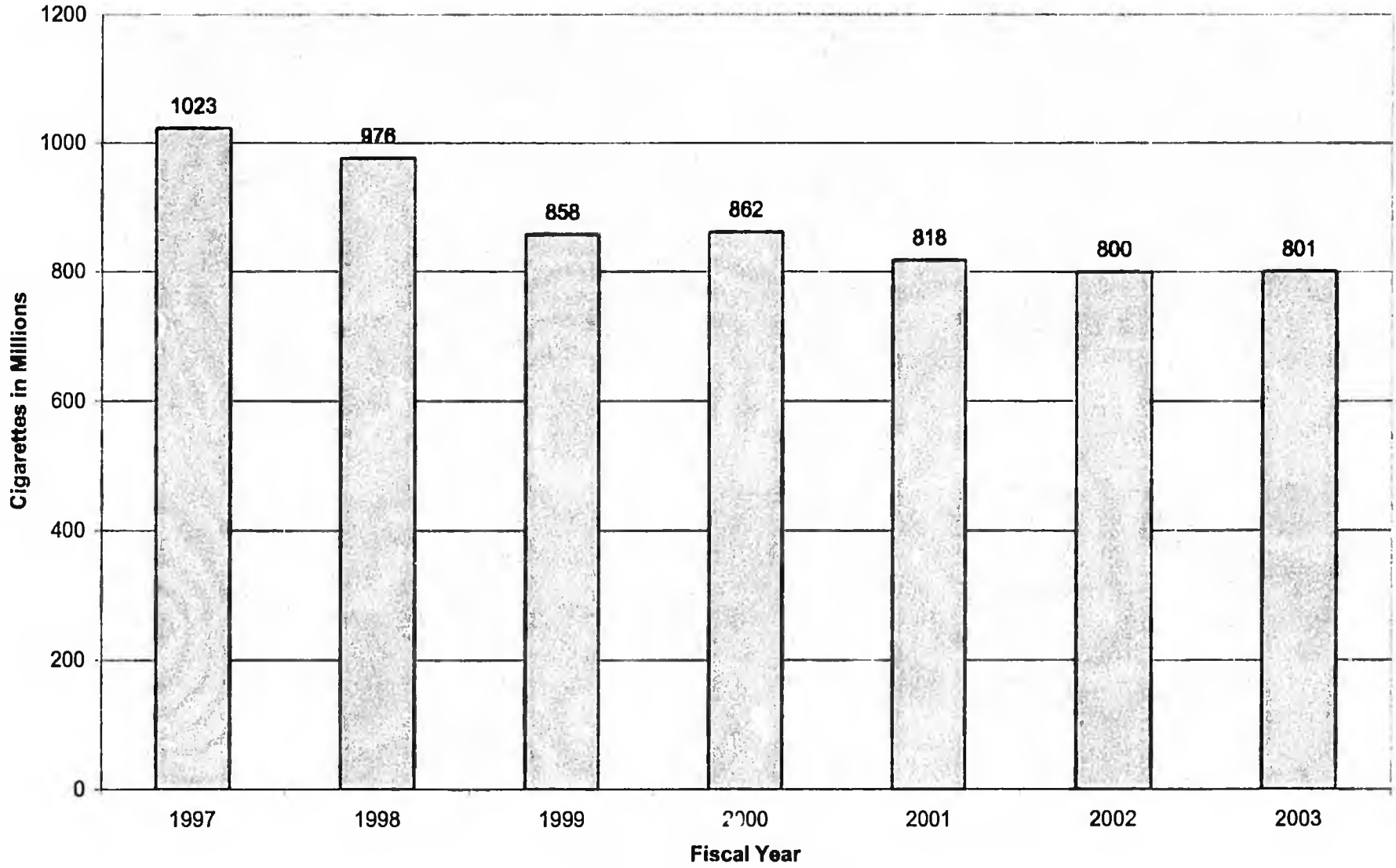


## Cigarette Importations FY 1996 - FY 2002 and Cigarette Stockpiling in FY 1998

Source: Alaska Department of Revenue



### Alaska Reported Taxable Cigarettes



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

Joel Michael, Legislative Analyst  
651-296-5057

---

## **The Unfair Cigarette Sales Act**

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

---

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Overview .....	2
<b>The Minnesota Unfair Cigarette Sales Act</b> .....	<b>3</b>
How the Act Works .....	3
Administrative Responsibilities under the Act .....	7
Minimum Cigarette Pricing Laws in Other States .....	10
The Purpose of the Law .....	13
Economic Effects of the Unfair Cigarette Sales Act .....	15
<b>Appendix: Special Minimum Pricing Rules for Gray Market Cigarette Sales</b> .....	<b>19</b>

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

Provided by Mr. John Bitney, representing distributors

## Overview

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

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

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

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

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

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

## The Minnesota Unfair Cigarette Sales Act

### How the Act Works

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

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

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

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

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

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

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

### Calculation of Minimum Cigarette Sale Prices

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

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

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

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

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

The act exempts:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

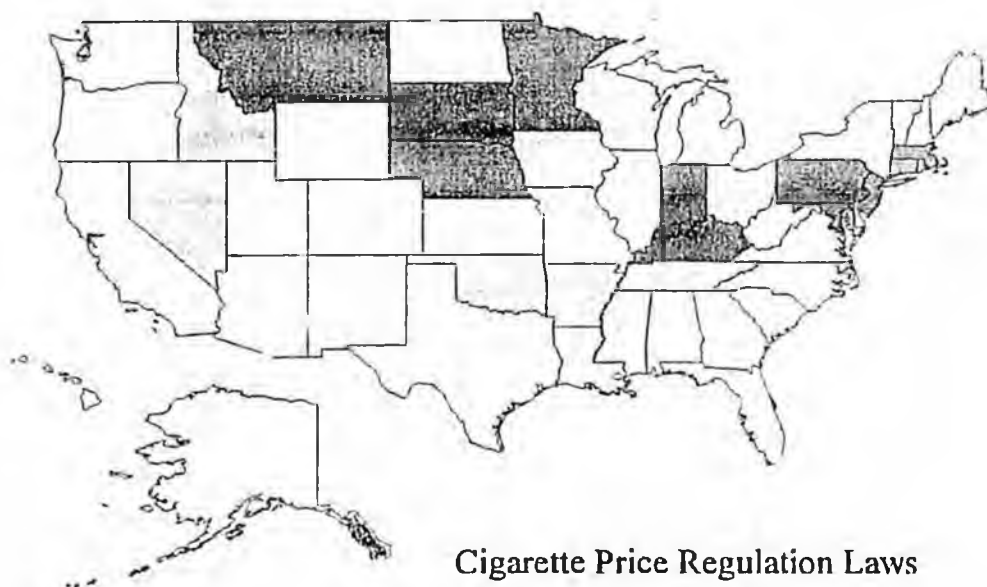
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<sup>28</sup> Minn. Stat. § 325D.33, subd. 8 (1998).





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

## Minimum Cigarette Pricing Laws in Other States

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



Cigarette Price Regulation Laws

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

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

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

**State Statutes Requiring Minimum Pricing of Cigarettes**

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

State Statutes Requiring Minimum Pricing of Cigarettes (cont.)

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

## The Purpose of the Law

Two purposes are commonly cited for the UCSA:

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

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

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

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

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

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

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

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

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

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

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

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

## Economic Effects of the Unfair Cigarette Sales Act

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### The Problem

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

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

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

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

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

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

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

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

### **Description of the Law**

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

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

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<sup>4</sup> 26 U.S.C. § 5754(a).

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

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

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



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April 4, 2004

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

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

Dear Senator Wilken

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

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

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

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



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

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

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

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

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

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



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

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

Sincerely yours,

Michael J. Elcriding  
President



April 4, 2004

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

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

RE: SB 368 (Governor Mukowski) - Support

Dear Co-Chairs Green and Wilken:

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

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

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

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

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