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10895 HOUSE JUDICIARY

avoiding payment of state tobacco taxes using this method of purchase. Proposed AS 43.50.105 contained in Section 7 of SB 168 addresses these problems by placing restrictions on shipping or transporting cigarettes, while still allowing shipments to entities holding licenses or endorsements.

To ensure that tobacco taxes are paid, the entity shipping the cigarettes must either be licensed under this chapter, be shipping to an entity licensed under this chapter, or be shipping to an entity that does not need to be licensed under this chapter (like Tribes or the federal government). Further, to ensure that youth are not able to access cigarettes through mail order or the internet, all shipments must go to either a person licensed under the chapter, to a person that holds a tobacco endorsement under AS 43.50.075, to an operator of a customs warehouse, or to the federal government or an Indian Tribe.

To make sure that shipments of cigarettes do not occur directly to unlicensed or unendorsed entities, the bill requires that all cigarettes that are shipped to or within Alaska be clearly marked as "cigarettes." The bill also requires common or contract carriers to ensure that the party receiving the cigarettes is entitled to receive them under the provisions of the chapter if the cigarettes are shipped to a home or residence.

The bill allows legitimate commerce to continue unimpeded, while closing the loophole on shipments of cigarettes to individual parties – allowing the state to more easily collect taxes and making sure that individual consumers cannot access cigarettes without an age verification process.

Thank you for this opportunity to testify, and I would be happy to do my best to answer any questions that you may have.

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

### Tax Division

FRANK MURKOWSKI, GOVERNOR

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Juneau, AK 99611-0420  
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SB 168

Senate Labor and Commerce Committee

April 15, 2003

1:30 p.m.

Testimony of Johanna Bales, Revenue Auditor

Thank you Mr. Chairman. My name is Johanna Bales. I am employed by the Alaska Department of Revenue as a Revenue Auditor in the Tax Division. I am the program manager of the Tax Division's cigarette and tobacco products excise tax program. I am pleased to testify on behalf of the administration in support of SB 168, the bill before you.

On October 1, 1997, Alaska increased its tobacco tax rate on cigarettes from 29 cents per pack to one dollar per pack. The impetus for the tax increase was to promote public health. Simply put, it was believed that if cigarettes were more expensive, fewer people would smoke. And in particular, it was hoped that the increase in cost would result in fewer young people taking up the unhealthy habit in the first place.

The tobacco tax increase has had a significant effect on the sale of taxable cigarettes in Alaska. In the five fiscal years before the tax increase, cigarette sales averaged 53 million packs per year. In the first four complete fiscal years since the increase, cigarette sales averaged 42 million packs per year – a drop of more than 20 percent. Although much of this decrease can be attributed to reduced smoking, we also believe that an unknown quantity of untaxed cigarettes are being imported into the state. Under existing statute, however, it is difficult to track just how many untaxed cigarettes are coming into Alaska. We are aware, however, that individuals and businesses have purchased untaxed cigarettes through the Internet.

The Department has obtained information from three Internet/mail order vendors identifying more than 1,000 individuals who have purchased cigarettes through the mail. From these three vendors alone, the Department estimates that it has lost in excess of \$600,000 in cigarette tax revenues over a 13-month period. The Department is also aware of over 20 other Internet cigarette vendors who have sold cigarettes into Alaska. Attempts by the Department to obtain information about these sales have proven futile. The General Accounting Office, in a report dated August 2002, identified 122 Internet cigarette vendors and indicated that these types of businesses are largely responsible for state cigarette tax revenue losses.

The Department of Revenue believes that a very simple measure – a tax stamp on each package – would help close our borders to the importation of untaxed cigarettes. This bill would require that a stamp be affixed to each pack of cigarettes to show that the tax has been paid. It is anticipated that the stamps would be heat-applied, making them difficult to illegally re-use and difficult to counterfeit. The colorful stamp would be easily recognizable so that the Department of Revenue personnel, law enforcement agents, and consumers would immediately know whether the tax had been paid on any given pack of cigarettes.

The bill also would place considerable weight behind the state's ability to enforce the requirement of a stamp. The bill would give the Department of Revenue and law enforcement agencies the authority to seize and destroy unstamped cigarettes. It also would impose significant civil penalties and criminal liability upon violators.

Other states, many of which have much lower cigarette taxes than Alaska, have long recognized the benefit of a tax stamp on cigarettes. At this time, 46 states require a stamp on cigarettes. This bill draws from the statutes and experience of those other states. Other states that recently adopted a cigarette tax stamp program have found that the stamps significantly increased their tax revenue. Michigan reported an 8.7 percent increase in cigarette tax revenue in the first year of its program 1999 and has seen upwards of 12 percent since then. Hawaii – a state that, like ours, doesn't have bordering states, but does have a high tax rate – indicates an amazing 50 percent increase in tax collection in the first two years of their stamping program, 2001 and 2002.

Although these results from other states are encouraging, we do not have a reliable basis to predict the size of the effect of cigarette tax stamps here in Alaska. Given that cigarette tax revenue is about \$40 million per year, however, each 1 percent increase in tax collected would raise about \$400,000 per year.

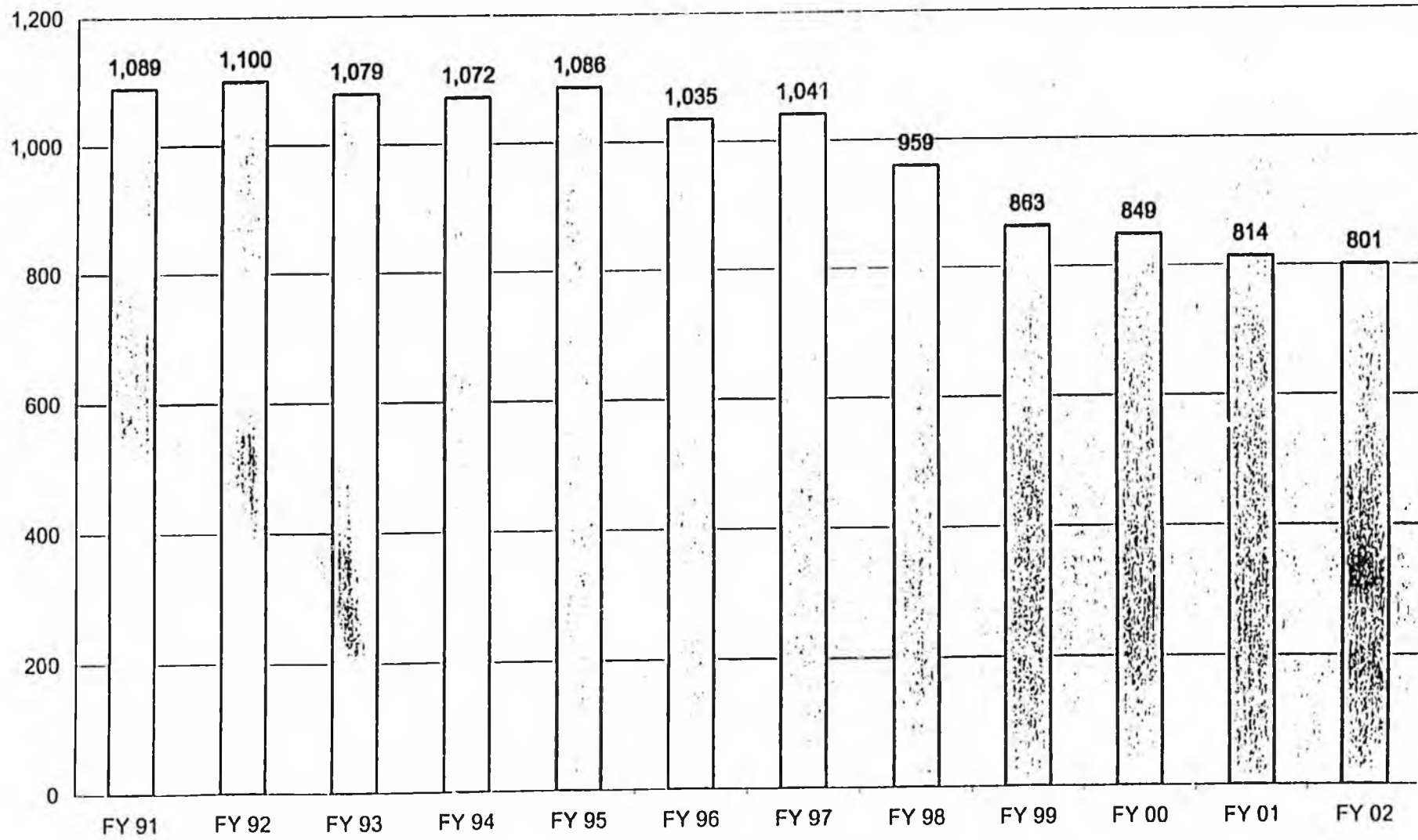
Stamps do not come free and distributors will incur costs when affixing stamps to individual packs of cigarettes. In recognition of the cost, the bill would provide a graduated discount for distributors to help offset the costs of affixing stamps. It is estimated, however, that a 1.5 percent increase in tax revenue would cover the increased costs of a stamping program including the discount offered to distributors.

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

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

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

### Taxable Cigarettes FY 91 - FY 02

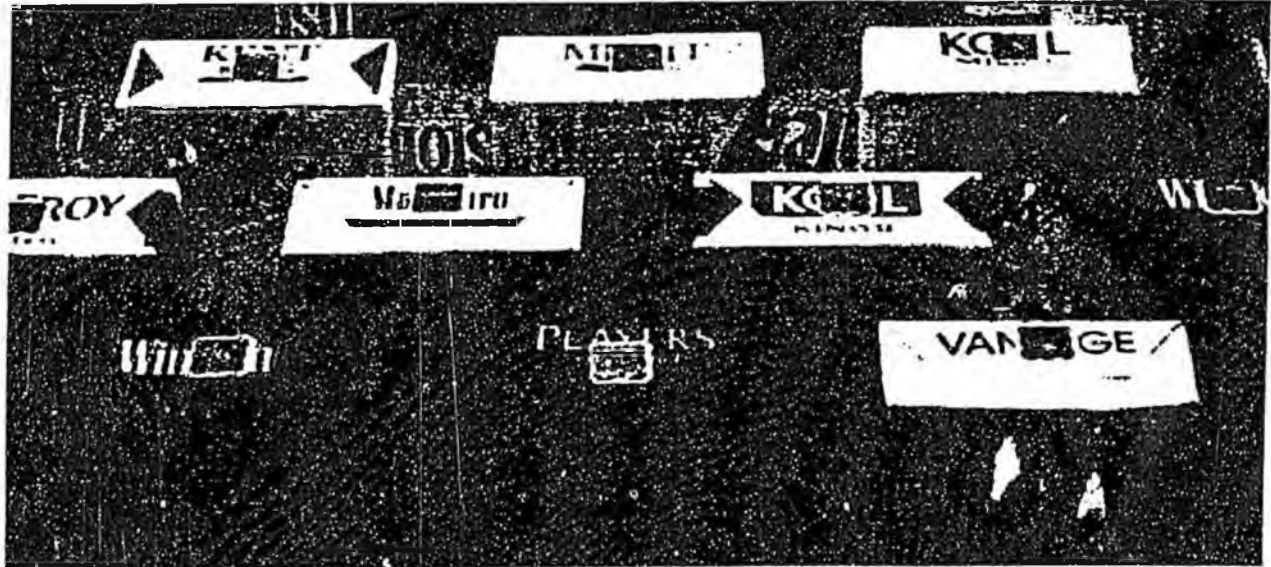


□ Cigarettes in Millions

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# STATE OF ALASKA

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL

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PHONE (907) 465-3600  
FAX (907) 465-2539

February 21, 2003

The Honorable Con Bunde  
State Capitol  
Room 501  
Juneau, AK 99801-1182

Re: Tobacco Stamp Legislation

Dear Senator Bunde:

You have asked whether legislation requiring that a tax stamp be affixed on all tobacco products packages sold in Alaska would help the state enforce its tobacco tax laws. I believe it would.

Alaska is one of the few states without a tax stamp law. States with such a law have found that it increases the amount of tobacco tax revenue collected by making it more difficult to bring untaxed cigarettes into the state. Michigan received an additional 8.7% in tobacco tax revenue the year following passage of a stamp bill. Hawaii enjoyed a 25% jump in tobacco tax revenues.

A tax stamp bill would send a message to Alaskans that purchasing untaxed cigarettes over the Internet is illegal. Many may be under the mistaken belief that the practice is legal. Tobacco stamp legislation would give them notice that it is not. This alone could lessen the burden of enforcing the tobacco tax provisions.

To be effective, a tax stamp bill would have to give the Department of Revenue and law enforcement officers authority to seize and destroy unstamped cigarettes and impose significant penalties and civil liability on violators.

Sincerely,



Gregg D. Renkes  
Attorney General

# CORRECTION

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State of Alaska

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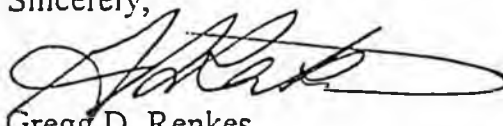
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Sincerely,



Gregg D. Renkes  
Attorney General

**Subject: FW: Lawsuit against internet tobacco sales**

**Date: Thu. 03 Apr 2003 09:57:22 -0900**

**From: Mark Hickey <mshickey@gci.net>**

**To: Jane Alberts <Jane\_Alberts@Legis.state.ak.us>**

FYI

Mark

-----Original Message-----

**From: Eric Myers [mailto:ericm@alaska.net]**

**Sent: Wednesday, April 02, 2003 1:55 PM**

**To: Jenna App; Mark Hickey**

**Subject: FW: Lawsuit against internet tobacco sales**

FYI. Just interesting... I think this validates the need to address the internet/mail order issue in the tax stamp bill. /Eric

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**Calif. sues Internet firms over cigarette sales**

*Last Updated: 2003-04-02 12:17:27 -0400 (Reuters Health)*

LOS ANGELES (Reuters) - The state of California filed lawsuits against five Internet companies on Tuesday, accusing them of selling cigarettes to minors and failing to pay state excise taxes.

The state Attorney General's office said Dirt Cheap Cigarettes, Inc. of Missouri; smokin 4 less and LLP Enterprises/CigOutlet of Virginia; Cyco.net Inc. of New Mexico; and eSmokes of Florida were caught in sting operations in which investigators allowed minors to use their parents' credit cards to get cigarettes.

The civil lawsuits, filed in San Diego Superior Court, ask a judge to penalize the e-tailers a total of \$1 million and to prohibit them from selling cigarettes to customers younger than 18.

"They have to do more than just ask whether the buyer is over 18," Attorney General's office spokesman Tom Dresslar said. "There are all sorts of steps they could take to make sure minors aren't buying cigarettes."

The states of Washington and Oregon filed similar lawsuits on Tuesday, and were expected to be joined by a number of other states in the coming days, Dresslar said.

The lawsuit accuses the companies of purposely undermining the state's efforts to reduce smoking by minors by refusing to verify customers' ages or require a signature upon delivery.

About 2,000 minors begin smoking every day in California alone, and 80 percent of those early smokers develop regular habits, the lawsuit said.

One-third of smokers who pick up the habit as minors will die of a tobacco-related disease, according to the lawsuit.

The legal action also attempts to collect a portion of the estimated \$53.9 million allegedly owed California by out-of-state tobacco vendors who fail to pay excise tax on their sales to Californians.

Officials at Dirt Cheap Cigarettes, which calls itself "The Last Refuge of the Persecuted Smoker," could not be reached immediately for comment, but its Web site cautions buyers to "please be 18+ to shop with us, we care about the law."

On its Web site, eSmokes.com says it requires proof that buyers are at least 21 and possess a valid driver's license and credit card to purchase cigarette products. It also advises that buyers are responsible for complying with local laws regarding out-of-state cigarette purchases.

Officials at smokin 4 less, Cyco.net, Inc. and CigOutlet.com could not be reached for comment, but each of their

Web sites contain warnings that buyers should be over 18. CigOutlet's site advises buyers that they are responsible for "all taxes applicable to their State, City and/or County."

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# CAMPAIGN For TOBACCO-FREE Kids®

## INTERNET SALES OF TOBACCO PRODUCTS – REACHING KIDS & EVADING TAXES –

The ongoing increase in internet sales of tobacco products is a major challenge to public health efforts to reduce smoking and other tobacco use. By failing to do adequate age verification, the sharply growing number of websites selling tobacco products make it easier and cheaper for kids to buy cigarettes. They also offer smokers a way to avoid paying state tobacco and sales taxes, thereby keeping cigarette prices down and smoking levels up.<sup>1</sup>

### Internet Cigarette Sales Are Growing

There are currently about 200 U.S. websites and 200 foreign-based websites that sell cigarettes to U.S. smokers – up from approximately 40 domestic internet sellers of cigarettes in early 2000.<sup>2</sup> According to a recent report by Prudential Securities, Inc., internet vendors currently sell roughly two percent of all cigarettes consumed in the United States, or more than 400 million packs per year, and internet cigarette sales are likely to triple within the next three years.<sup>3</sup> A study by Forrester Research, Inc. (a private consulting firm) projects that internet cigarette sales will grow even more rapidly and account for 14% of the total U.S. market by 2005, or roughly \$5 billion in sales.<sup>4</sup>

### Tax Avoidance via Internet Sales

Internet cigarette prices are much lower than cigarette prices in regular bricks-and-mortar retail outlets because internet prices almost never include the cigarette excise taxes and sales taxes charged by the customers' home states. These low prices make internet cigarettes attractive to both adult and underage smokers, and help to boost overall smoking levels. In addition, the inability of states to collect the applicable state taxes that are legally owed on these cigarettes and other tobacco products sold over the internet is reducing state revenues by millions of dollars each year.

Internet sellers usually buy the cigarettes they sell in a low-tax state (e.g., VA, KY, or NC, which have state cigarette tax rates of only 2½, 3, and 5 cents per pack, respectively) or purchase them free from any state tax (e.g., by selling cigarettes obtained outside the United States free of any U.S. state or federal taxes, or obtained in the United States but still free of state tax because they are meant to be sold only to members of Indian tribes on Indian lands). The internet vendors then sell these cigarettes to smokers in higher-tax states, typically without collecting those states' taxes or making any reports of those sales to the states' tax collection officials (as required by the federal Jenkins Act).<sup>5</sup> Offshore websites that sell U.S. brands manufactured overseas or manufactured in the U.S. and exported for foreign sale, can also into violate federal laws requiring payment of applicable federal and state taxes on imported cigarettes.

- According to a recent report by the U.S. General Accounting Office (GAO), information posted on more than three quarters of all internet-selling website explicitly indicate that they do not comply with the Federal Jenkins Act, and state efforts to prompt compliance by internet sellers have not been successful.<sup>6</sup>

- A study by Forrester Research Inc. estimates that because of internet cigarette sales the states lost as much as \$200 million in state tobacco tax revenues in 2001 and may lose as much as \$1.4 billion in 2005.<sup>7</sup>

#### Youth Access to Tobacco Products Sold on the Internet

Effective safeguards against kids being able to purchase cigarettes via the internet are almost non-existent. While many internet websites post notices that sales to persons under 18 are illegal or not allowed, very few do anything at all to make sure such sales do not happen.

- A study in the *American Journal of Public Health* reports that almost 20% of cigarette-selling websites do not even say anything about sales to minors being prohibited. More than half require only that the buyer say they are of legal age (e.g., by clicking on a "I am Over Age 18" button), another 15% require only that the buyer type in their date of birth, and only 7% require any driver's license information.<sup>8</sup>
- While some internet vendors claim that credit card use, by itself, is an adequate safeguard against underage purchases, many kids have access to credit cards and the credit card companies (which specifically market credit cards for kids) have firmly stated that credit cards are not appropriate for age verification. Moreover, more than two-thirds of websites selling tobacco products also accept money orders or checks.<sup>9</sup>
- Attorneys general from at least 15 states have conducted internet stings and found that children as young as 9 years of age were easily able to purchase tobacco products. A sting operation in New York found that 24 of 26 web sites sold to minors working with the New York City Department of Consumer Affairs.<sup>10</sup>
- In a recent study published in the *Tobacco Control* journal, kids sent in orders to internet cigarette vendors, providing a money order for the purchase but no proof of age, and only 14% of the orders were rejected because of the lack of proof of age.<sup>11</sup>

While existing studies show that a relatively small percentage of kids have been purchasing cigarettes through the internet, increased youth purchases are likely given the lack of effective obstacles to youth purchases and the growing differences between low internet prices and regular retail prices for cigarettes. Increased youth internet purchases are also likely in those states and localities with effective enforcement efforts to stop illegal sales by bricks and mortar retailers. In addition, internet cigarette sales typically require a two-carton minimum purchase, which suggests that many high school and middle school buyers of internet cigarettes serve as suppliers of low-cost cigarettes to other kids.

The most recent data currently available is from surveys done in 2000, which indicate that approximately 1.4 percent of high school smokers purchased their last pack from the internet, as did one percent of middle school smokers, at that time.<sup>12</sup> These percentages refer only to the percentage of youth smokers that purchased their last pack from the internet, ignoring those who purchased their last pack elsewhere but have previously made internet cigarette purchases. Nevertheless, these percentages still amount to well over 50,000 children in the U.S. buying tobacco products on the internet two years ago. Another study done in the 1999-2000 school year found that 2.2 percent of kids under 18 in California who were current smokers (or more than 10,000 kids) reported trying to buy cigarettes over the internet.<sup>13</sup>

Since these two studies collected their data, roughly 25 million more U.S. households have gained internet access. In fact, U.S. Census data shows that from 1999 to 2001 (the last year for which data is currently available) the percentage of U.S. households with internet access has increased from 26.2% to 50.5%, with households with kids more likely to have internet access than households without kids.<sup>14</sup> At the same time, the numbers of kids who have used the internet or made purchases on it has also grown substantially; and there has been substantial additional growth since 2001. Given the overall increases in internet access and internet purchases, especially among kids, it is likely that youth purchases of tobacco products on the internet have gone up, as well.

#### Other Problems with Internet Tobacco Sales

- Only a bit more than one quarter of all cigarette-selling websites display the U.S. Surgeon General's health warnings.<sup>15</sup>
- Besides failing to comply with the federal Jenkins Act and state laws requiring age verification prior to sale, internet sellers of tobacco products also typically fail to comply with state laws requiring all retail sellers of tobacco products to obtain licenses prior to making any sales in the states or with various other laws and regulations that regular bricks-and-mortar retailers in the states cannot avoid as readily.
- Because internet vendors of tobacco products are usually located out of state – or even out of the country – it is very difficult for state officials to enforce the state laws that apply to the internet sellers. In addition, many internet sellers of tobacco products are based on Indian Lands and run by Indian Tribes, which makes it difficult, if not impossible, for states to obtain jurisdiction over any such internet vendors that violate the law in either state or federal court.
- The many difficulties faced by states that wish to enforce their laws that apply to internet tobacco product sales is compounded by the federal government's failure, to date, to enforce the Jenkins Act against the many internet sellers that not only fail to comply but flaunt their noncompliance.<sup>16</sup>

National Center for Tobacco-Free Kids, November 13, 2002 | Eric Lindblom

#### For More Information

Campaign website's special report on internet tobacco sales: <http://tobaccofreekids.org/reports/internet>

Campaign factsheet, *Tobacco Product Marketing on the Internet*:  
<http://tobaccofreekids.org/research/factsheets/index.php?CategoryID=23>

<sup>1</sup> See Connolly, G., "Smokes and cyberspace: a public health disaster in the making," *Tobacco Control* 10:299 (Winter), December, 2001, <http://tc.bmjournals.com/cgi/content/full/10/4/299>; Cohen, J, et al., "Tobacco commerce on the internet: a threat to comprehensive tobacco control," *Tobacco Control* 10: 364-367 (Winter), December, 2001, <http://tc.bmjournals.com/cgi/content/abstract/10/4/364>.

<sup>2</sup> Prudential Financial, *Buying Cigarettes Over the Internet*, Research Report, Consumer Staples/Tobacco, September 24, 2002; Bryant, JR, et al., "Online Sales: Profit Without Question," *Tobacco Control* 11: 226-27, September, 2002, <http://tc.bmjournals.com/cgi/content/abstract/11/3/226> [citing Noack D, "Utah recruits kids to buy smokes online. Proposed laws would plug loopholes," *Salt*

Lake City, February 2000]. See, also, Ribisl, KM, et al., "Web sites selling cigarettes: how many are there in the USA and what are their sales practices?," *Tobacco Control* 10: 352-359 (Winter), December, 2001, <http://tc.bmjournals.com/cgi/content/abstract/10/4/352>.

<sup>3</sup> Prudential Financial, *Buying Cigarettes Over the Internet*, September 24, 2002.

<sup>4</sup> Rubin, R. et al., *Online Tobacco Sales Grow, States Lose*, Forrester Research, Inc., April 27, 2001, <http://www.forrester.com/ER/Research/Brief/Excerpt/0.1317.12253.00.html>

<sup>5</sup> The Jenkins Act, 15 USC 375 et seq., is available at <http://www4.law.cornell.edu/uscode/15/ch10A.html>.

<sup>6</sup> U.S. General Accounting Office, *Internet Cigarette Sales: Giving ATF Investigative Authority May Improve Reporting and Enforcement*, GAO-02-743, August 9, 2002, <http://www.gao.gov/new.items/d02743.pdf>.

<sup>7</sup> Rubin, R. et al., *Online Tobacco Sales Grow, States Lose*, Forrester Research, Inc., April 27, 2001.

<sup>8</sup> Ribisl, K, et al., "Are the Sales Practices of Internet Cigarette Vendors Good Enough to Prevent Sales to Minors?," *American Journal of Public Health* 92(6): 940-41, June 2002, <http://www.ajph.org/content/vol92/issue6/index.shtml>.

<sup>9</sup> Unger, JB, et al., "Are adolescents attempting to buy cigarettes on the internet?," *Tobacco Control* 10: 360-63 (Winter), December, 2001, <http://tc.bmjournals.com/cgi/content/abstract/10/4/360> [citing Kim AE, et al., "Sales practices of Internet cigarette vendors: Are they adequate to prevent minors from buying cigarettes online?," Roundtable presented at the Annual Meeting and Convention of the American Public Health Association, Boston, Massachusetts, November 2000].

<sup>10</sup> Unger, JB, et al., "Are adolescents attempting to buy cigarettes on the internet?," *Tobacco Control* 10: 360-63 (Winter), December, 2001 [citing Sherer R, "States crack down on Web tobacco sales," *The Christian Science Monitor*, November 8, 2000 & ABC News, "Getting smokes online: Children buying cigarette with click of mouse," March 6, 2001, <http://www.abcnews.com>.

<sup>11</sup> Rubin, R. et al., *Online Tobacco Sales Grow, States Lose*, Forrester Research, Inc., April 27, 2001.

<sup>12</sup> U.S. Centers for Disease Control and Prevention (CDC), *Youth Tobacco Surveillance – United States, 2000*, CDC Surveillance Studies, *MMWR* 50(SS-4), November 2, 2001, Table 23, <http://www.cdc.gov/mmwr/PDF/ss/ss5004.pdf> [according to CDC, the seemingly related national YTS internet data in Table 22 of the 2000 YTS is completely inaccurate and unusable because of survey and formatting problems].

<sup>13</sup> Unger, JB, et al., "Are adolescents attempting to buy cigarettes on the internet?," *Tobacco Control* 10: 360-63 (Winter), December, 2001, <http://tc.bmjournals.com/cgi/content/abstract/10/4/360>.

<sup>14</sup> Economics and Statistics Administration & National Telecommunications and Information Administration, U.S. Department of Commerce, *A Nation Online: How Americans Are Expanding Their Use Of The Internet*, February 2002, <http://www.ntia.doc.gov/ntiahome/dn/index.html>.

<sup>15</sup> Ribisl, KM, et al., "Web sites selling cigarettes: how many are there in the USA and what are their sales practices?," *Tobacco Control* 10: 352-359, December, 2001, <http://tc.bmjournals.com/cgi/content/abstract/10/4/352>.

<sup>16</sup> U.S. General Accounting Office, *Internet Cigarette Sales: Giving ATF Investigative Authority May Improve Reporting and Enforcement*, GAO-02-743, August 9, 2002, <http://www.gao.gov/new.items/d02743.pdf>.

Provided by Sen. Bunde



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Wednesday, Feb 25

Special Report  
**Internet**  
Tobacco Sales

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Updated: 11.18.02

The ongoing increase in Internet sales of tobacco products is a major challenge to public health efforts to reduce smoking and other tobacco use. By failing to do adequate age verification, the sharply growing number of websites selling tobacco products make it easier and cheaper for kids to buy cigarettes. They also offer smokers a way to avoid paying state tobacco and sales taxes, thereby keeping cigarette prices down and smoking levels up.

**The Problem**

Up from only a handful in the late 1990's, more than 200 Web sites in the U.S. and many more based overseas sell tobacco products. Internet tobacco sales are growing rapidly and will account for 14 percent of the total U.S. market by 2005, according to a recent Prudential Securities report. One in five cigarette-selling Web sites do not even say that sales to minors are prohibited, and more than half require only that the buyers say they are of legal age, according to an upcoming study in the American Journal of Public Health. Three-quarters of all Internet tobacco sellers explicitly say that they will not report cigarette sales to tax collection officials, thus violating Federal law, according to the U.S. General Accounting Office. States lose as much as \$200 million annually in uncollected tobacco taxes through Internet sales, according to a study by Forrester Research Inc., a private research firm.

**Campaign Releases and Statements**

**Statement:** Public Health Groups Support New Bill by Congressmen Meehan and Hansen to Curb Internet Cigarette Sales To Kids and Reduce Evasion of Cigarette Taxes (Nov 13 2002)

**Release:** Campaign Praises Visa For Taking Strong Action to Stop Illegal Internet Tobacco Sales to Kids, Urges Other Credit Card Companies to Follow Suit (Oct 29 2002)

**Related Factsheets and Resources**

[Internet Sales of Tobacco Products: Reaching Kids & Evading Taxes](#)

[Tobacco Product Marketing on the Internet](#)

[Additional Resources on Internet Tobacco Sales](#)

**Legislation**

[H.R. 5724](#)  
The Tobacco Free Internet for Kids Act of 2002

overture



12-13-14 May  
The 6th Internet Marketing  
Conference & Expo  
Leading event for all the Internet  
marketing know-how

If The most  
informative  
conference you  
will attend it

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1. **Discount Cigarettes at Senecasmokes.com**  
Buy all your favorite brands at discount prices. Native American online smoke shop. Quality customer service for four years.  
[www.senecasmokes.com](http://www.senecasmokes.com) (sponsored listing)
2. **Cigarette Sale at eSmokes**  
Online Tobacco Award winner 4 years in a row. Value cigarettes from \$9.99 and premium from \$24.99. Reward incentives and rebates. Fast shipping, coupons accepted. Win a Caribbean cruise.  
[www.esmokes.com](http://www.esmokes.com) (sponsored listing)
3. **Discount Cigarettes: Smokes-Spirits.com**  
We carry a full line of premium, generic, imported and extra-value cigarettes at discounted sale prices. Over 3,000 tobacco-related items. Discount cigarettes start at \$9.99. Come and save.  
[www.smokes-spirits.com](http://www.smokes-spirits.com) (sponsored listing)
4. **Danny's Tobacco Online Shop**  
Choose from your favorite brands of cigarettes. We also carry other products like chewing and pipe tobacco. \$5 fixed shipping cost on all orders.  
[www.dannystobacco.com](http://www.dannystobacco.com) (sponsored listing)
5. **Cigarette Sale from \$8.50 Per Carton**  
Discount prices on tax free cigarettes shipped fresh from the NY Allegheny Indian reservation. Speedy shipping with no minimum order. Satisfaction guarantee.  
[www.alleganytrail.com](http://www.alleganytrail.com) (sponsored listing)
6. **Indian Smokes Online - Cigarettes Online**  
Indian Smokes Online offers all major, generic, and value brand cigarettes at a tax free discounted price. So stop paying those high retail prices and start saving with Indian Smokes Online!  
[www.indiansmokesonline.com](http://www.indiansmokesonline.com) (sponsored listing)
7. **Cigarettes on Sale at KYCigarettes**  
Marlboro, Winston, Camel, \$24.99 No thrills, just low prices. Cartons starting at \$9.50. Huge selection of over 70 different brands in stock. \$6 fixed shipping and handling on all orders.  
[www.kycigarettes.com](http://www.kycigarettes.com) (sponsored listing)
8. **Discount Cigarettes at Tobacco For Less**  
Buy cigarettes at discount prices. Cigarettes starting at \$9.99 a carton.  
[tobaccoforless.com](http://tobaccoforless.com) (sponsored listing)

9. **Nativeblend: Cigarette Sale**  
Over 100 cigarette and tobacco brands at deep discounts. \$5.00 off your 1st order, 30-day guarantee on all orders, free sample cigarettes and more from an industry leader. Affiliate.  
[www.nativeblend.net](http://www.nativeblend.net) ([sponsored listing](#))
10. **Cheap Cigarettes**  
Order discount cigarettes using our secure and confidential site. No minimum order. No hidden shipping charges. 30-day money back guarantee. We ship within 24 hours and deliver worldwide.  
[cigarette-deals.com](http://cigarette-deals.com) ([sponsored listing](#))
11. **Cheap American Cigs at Smokeexpress.net**  
Get your fresh high-quality cigarettes at discount prices we carry  
· Marlboro, salem, Camel, Winston, virginia slims and much much more check us out.  
[www.smokeexpress.net](http://www.smokeexpress.net) ([sponsored listing](#))
12. **Cigarette Advertising Collectibles**  
You can find cigarette advertising collectibles right here. With over 5 million items on sale every day, you can find what interests you at the world's online marketplace - eBay.  
[www.ebay.com](http://www.ebay.com) ([sponsored listing](#))
13. **Unbeatable Prices on Premium Cigarettes!**  
USA Smokes brings you the best in premium and discount tobacco products at the lowest prices! For a limited time, purchase seven cartons on one order and get a free magazine subscription!  
[www.usasmokes.com](http://www.usasmokes.com) ([sponsored listing](#))
14. **Huge Cigarette Sale**  
Our huge stock insures a quick delivery to you. If you don't see it, contact us and we will make every effort to get it. Manufacturer coupons accepted. Free offer on this site.  
[www.cigarettesamerica.com](http://www.cigarettesamerica.com) ([sponsored listing](#))
15. **Free Shipping. All Brands to All States**  
Free shipping including Hawaii and Alaska plus a free lighter with every order. Buy all the premium brands at excellent prices. 30 day money-back guarantee.  
[www.securemachines.com](http://www.securemachines.com) ([sponsored listing](#))

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# Big Indian Smokeshop

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Cigarette Brands

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Tobacco Brands

- [Price Shop](#)
- [Special Sales Items](#)
- [Smokeless Tobacco](#)
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- [Miscellaneous](#)

Search

In

All Categories

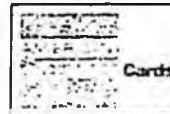
## Welcome to the Big Indian Smoke Shop

Cigarette sales to persons under the age of 18 are illegal except in Alabama, Alaska, and Utah where the legal age to purchase cigarettes is 19.

If this is your first visit to Big Indian Smokeshop please read our [FAQ](#).

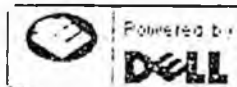
\*\*\* There is a five item minimum order on this site \*\*\*  
Due to shipping constraints we need to raise the minimum item order for Alaska and Hawaii to 10 cartons.

We Accept



Surgeon General's Warning: Smoking Causes Lung Cancer, Emphysema, And May Complicate Pregnancy

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# Big Indian Smokeshop

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## Big Indian FAQ

1. Where is Big Indian Smokeshop located?
  - A. We are located in Seneca Indian Territory.
2. Will I pay tax on products from this site?
  - A. All products are shipped tax free to your door.
3. Are we required to supply state government with sales and customer information?
  - A. We do not report sales or customer information to any state government.
4. What is your privacy policy?
  - A. All customer information is kept totally confidential.
5. How long should I expect to wait for shipment?
  - A. Most orders will ship the next business day.
6. Is there a minimum order?
  - A. There is a 5 item minimum order for cigarettes and/or tobacco products.
7. How fresh is your product?
  - A. All tobacco and cigarettes are ordered daily to insure freshness.
8. What shipping methods do you utilize?
  - A. All orders are shipped via UPS or USPS.
9. What are your shipping charges?
  - A. 1-19 cartons \$1.50 per carton, 20-99 cartons \$1.00 per carton, 100-299 cartons free shipping, premium cigars 1-5 boxes \$6.00, 6 boxes and up free.

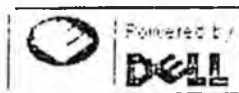
For USPS Priority Mail 5-19 cartons is \$2.50 per carton, 20-99 cartons is \$1.00 per carton and 100-299 cartons shipping is free.

10. I am a first time customer. Why do you ship only to the billing address on my credit card?

A. In order to combat credit card fraud, our company must ship orders to the billing address of first time customers.

Need further assistance call 1-800-898-9040 or email [customerservice@bigindian.com](mailto:customerservice@bigindian.com)

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Big Indian Smoke Shop is a family owned and operated business located on the Seneca Nation of Indians. The Big Indian has been in operation since 1996 and provides over fifty jobs for native and non-native employees alike. In addition to the Internet and mail-order operation the Big Indian also has one of the largest retail facilities on the Seneca Indian Territory. We pride ourselves on customer service and reliability. Big Indian Smoke Shop is a proud member of the Better Business Bureau. The Seneca Nation of Indians is a sovereign nation with its own tribal government to make its own laws and manage its own affairs and commerce. Seneca territory is free from state intervention and reporting requirements. That is to say that Seneca owned businesses do not file any reports with any state!

## Opinion of Council

Commerce on Indian Territories in New York is beyond the reach of state taxing authorities when a transaction for the sale of goods takes place on such territories. That is to say, the sales tax of a particular jurisdiction, whether the state of New York or such other state to which a product may be shipped, may not be imposed when the payment for the product and the consummation of the transaction takes place on the territory. The basis for such opinion is the longstanding recognition of the sovereignty of Indian tribes and nations, which extends to those conducting business on Indian nations with the authority of the tribal government. Accordingly, shipments of tobacco products to locations outside of New York are legal transactions so long as the closing of the transaction (i.e. payment) takes place on the Indian Territory from which the product originates. For further legal information please contact us at 1-800-898-9040 and ask to have a complete brief mailed to your attention.



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All Categories

## Premium

<a href="#">Barclay</a> \$30.45	<a href="#">Belair</a> \$30.45	<a href="#">Ber</a> \$30
<a href="#">Camel</a> \$30.45	<a href="#">Capri</a> \$30.45	<a href="#">Car</a>
<a href="#">Century</a> \$30.45	<a href="#">Chesterfield</a> \$30.45	<a href="#">Cor</a>
<a href="#">Eve</a> \$19.45	<a href="#">Jade</a> \$20.45	<a href="#">Kar</a>
<a href="#">Kent</a> \$30.45	<a href="#">Kool</a> \$22.25	<a href="#">L &amp;</a>
<a href="#">Lark</a> \$30.45	<a href="#">Lucky Strike</a> \$30.45	<a href="#">Mai</a>
<a href="#">Max</a> \$30.45	<a href="#">Merit</a> \$30.45	<a href="#">Mo:</a>
<a href="#">Multifilter</a> \$30.45	<a href="#">Newport</a> \$22.75	<a href="#">No:</a>
<a href="#">Omni</a> \$24.45	<a href="#">Pall Mall</a> \$30.45	<a href="#">Par</a>
<a href="#">Plavers</a> \$30.45	<a href="#">Salem</a> \$30.45	<a href="#">Sar</a>
<a href="#">Satin</a> \$30.45	<a href="#">Tareyton</a> \$30.45	<a href="#">Trit</a>
<a href="#">True</a> \$30.45	<a href="#">Vantage</a> \$30.45	<a href="#">Vir:</a>
<a href="#">Winston</a> \$30.45		

## Generic

<a href="#">Basic</a> \$21.20	<a href="#">Cambridge</a> \$27.85	<a href="#">D</a>
<a href="#">Generic Pall Mall</a> \$19.45	<a href="#">GPC</a> \$19.45	<a href="#">M</a>
<a href="#">Malibu</a> \$19.95	<a href="#">Misty</a> \$19.45	<a href="#">M</a>
<a href="#">Montclair</a> \$20.20	<a href="#">Natural Blend</a> \$20.20	<a href="#">O</a>
<a href="#">Riviera</a> \$17.30	<a href="#">Sonoma</a> \$20.20	<a href="#">S</a>
<a href="#">Viceroy</a> \$17.45		

## Value

<a href="#">Bronco</a> \$12.00	<a href="#">Chancellor</a> \$10.70	<a href="#">Co</a>
<a href="#">Cowboys</a> \$11.75	<a href="#">Double Diamond</a> \$12.10	<a href="#">Eu</a>
<a href="#">Exact</a> \$11.85	<a href="#">GT One</a> \$11.75	<a href="#">Le:</a>
<a href="#">Lidgett Select</a> \$14.75	<a href="#">Market</a> \$11.85	<a href="#">Mi:</a>
<a href="#">Niagara</a> \$11.00	<a href="#">Opal</a> \$13.45	<a href="#">Pri</a>
<a href="#">Pyramid</a> \$16.35	<a href="#">Roger</a> \$13.55	<a href="#">Se</a>
<a href="#">Sincerely Yours</a> \$14.70	<a href="#">Smokin Joe's</a> \$11.85	<a href="#">Sp</a>
<a href="#">Unify</a> \$11.05	<a href="#">USA Gold</a> \$17.30	<a href="#">Wa</a>
<a href="#">Yours</a> \$14.70		

## Import/Specialty

American Spirit \$31.05

Djarum \$31.90

Dunhill \$36.25

Nat Sherman \$35.80

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## Welcome to eSmokes.com

**Domestic, Foreign, & Discount Cigarettes, Premium and Machine Made Cigars** - eSmokes provides the greatest selection of discount Cigarettes, Cigars and Tobacco products on the web. Discount Cigarettes & Cigars prices will save you money! For cheap and discount cigarettes of all the best, generic, and value brands. Our website is designed to make your cigarette & cigar shopping experience convenient & secure. Our customer service is available 7 days per week & is the best you will find anywhere on the internet. eSmokes.com has been voted the #1 Online Cigarette Retailer 5 years in a row!

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- » [Generic Brands](#)
- » [Value Brands](#)
- » [Specials](#)
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- » [Smokeless](#)
- » [Premium Cigars](#)
- » [Near Primer](#)
- » [Machine Made Cigars](#)
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- » [Repeat Order](#)
- » [Update Account](#)
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Voted "Best Online Cigarette Retailer" 5 years in a row!

TOBACCO AWARDS  
CIGARETTE 2003



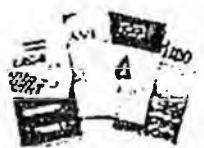
**Premium Cigarettes**  
From: \$24.99  
American made cigarettes at discount prices!

[Browse Premium](#)



**Generic Cigarettes**  
From: \$19.59  
Wide selection of cheap cigarettes online!

[Browse Generic](#)



**Value Cigarettes**  
From: \$10.99  
Great selection of discount cigarettes online!

[Browse Value](#)



**Foreign / Specialty Cigarettes**  
The widest selection and lowest prices!

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**Premium Cigars**  
The world's finest cigars at incredible prices!

[NEW Premium Cigars](#)



**Machine Made Cigars**  
Value and quality from the world's finest tobacco makers!

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**Smokeless Products**  
Best price, selection & freshness you will find online!

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**Specialty Products**  
Rolling Papers, Zippo, Pens and much more!

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YOU MUST BE 21 YEARS OF AGE OR OLDER TO PURCHASE TOBACCO PRODUCTS FROM eSmokes.com. All new accounts will be required to provide a valid government issued picture ID and signature when receiving their initial delivery.

SURGEON GENERAL'S WARNING: Cigarette Smoking Causes Cancer and Complicates Pregnancy.

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Win a Sony 4 Plasma Flat Screen TV!  
A brilliant picture screen 30.5" thick! The grand prize held on Sept 15th 2003. Enter your email at below.

ENTER



Special Savings  
Click Here for



**CIGARETTES ONLY.COM**  
*Your Friend In The Cigarette Business!*



You must be at least 18 years old to purchase cigarettes from our on-line store.



Please select an option below and acknowledge that you are at least 18 years old...

**YES**

I am older than 18 years old

**NO**

I am not older than 18 years old

**Free Shipping**  
**on Orders of 5 Cartons or More**

**CIGARETTESONLY.COM**

Your Friend In The Cigarette Business!



**FREE SHIPPING**  
on orders of 5 cartons or more  
including Hawaii & Alaska



<b>Specials</b>	
GT One -	\$12.50
Native -	\$10.95
Seneca -	\$12.95
Usa Gold -	\$17.50

## FAQ

**Is online ordering safe?**

Yes, very safe. Your confidential information is encrypted when sent to us via the internet. It is very difficult if not impossible to break the encryption code. Additionally, we do not store your credit card information on our database, you must submit it every time.

**If I give you my name and address, do you pass that information on to someone else?**

Never, the information you give us online is confidential. We do not sell or share our customer list with anyone. NWNP processes the orders and the credit card payments and does not report any sales activity to any State taxing authority and they are not required to do so.

**Isn't mailing cigarettes illegal?**

If you are at least 18 years of age, and the cigarettes you are purchasing are for personal use only, it is perfectly legal to have cigarettes mailed to you.

**Why are the cigarettes at cigarettesonly.com so cheap?**

Cigarettesonly.com is shipping from the Seneca Indian Reservation in upstate New York. As a Seneca Indian owned business, there are no state taxes.

**How will I know that you have received my order?**

We will send you a confirmation E-mail to let you know that your order was received and is being processed.

**How long will it take to receive my order?**

All orders are shipped via UPS or US Priority Mail within 48 hours. Please allow 4-7 business days for delivery.

**What are the minimum and maximum order quantities?**

You can order a minimum of 1 carton at a time. The Maximum legal limit is 149 cartons per day.

**Can I change my order at any time?**

Orders are processed typically the same day they are placed. We can change an order only if it has not been shipped out yet.

**What is your return policy?**

We have a 30 day satisfaction guarantee. You can return any unopened items for any reason and we will exchange the product or give a refund for the cost of the product. Customer is responsible for shipping charges. CigarettesOnly is responsible for shipping charges if the return is a result of our error.

**Where do I send my Check or Money Order?**

**\*\* When sending a money order or a personal check, please include a copy of a valid ID\*\*.**

NWNP  
PO Box 246  
Brant, NY 14027-0246

\*Make Checks payable to NWNP

**\*\* When sending a money order or a personal check, please include a copy of a valid ID\*\*.**

**Where do I send my returns?**

Cigarettesonly.com  
C/O NWNP  
1525 Cayuga Road

Irving, NY 14081

**What are your shipping charges?**

Our shipping rates to the U.S. including Hawaii and Alaska:

- 1-4 items \$6.00 Total
- 5 items or more FREE
- A charge of \$13.50 up to 4 cartons. \$1.50 per each additional carton for 3-day UPS shipping.
- A charge of \$16.00 up to 4 cartons. \$1.50 per each additional carton for 2-day UPS shipping.
- A charge of \$31.00 up to 4 cartons. \$1.50 per each additional carton for Next Day UPS shipping.

**Do you ship outside of the United States?**

No, Currently we do not ship internationally.

**Can I get my cigarettes delivered anywhere?**

We can only ship to your credit card's billing address. If there is a different address you would like us to ship to, please have it added to your card. Upon delivery we request a signature by an adult.

**If I do not wish to use my credit card, or I do not have a credit card, can I still place an order with CigarettesOnly.com?**

At this moment we only accept credit card (Master Card, Visa, American Express and Discover) since we can only ship to your credit cards billing address. If there is a different address you would like us to ship to, please have it added to your card.

**What if I am having trouble placing an order?**

Our shopping system is very simple, but if for any reason you have trouble placing orders please send us an email at [orders@cigarettesonly.com](mailto:orders@cigarettesonly.com) and someone will contact you for further assistance.

**What about State Taxes?**

Online tobacco shops that are located on Native American lands are not required to charge state cigarette taxes or report sales to state tax departments.

**Why do cigarettes cost so much?**

The increase in cigarette prices in recent years is due mainly to two things: (1) high state cigarette taxes and (2) the multibillion dollar tobacco settlement against the major cigarette manufacturers.

**How are the duty-free cigarettes different than premium cigarettes?**

Duty-Free cigarettes are cigarettes manufactured in the US with the intention to be exported in international markets. For this reason the tobacco blend used might be different to meet the consumers' taste and the package might include other promotional offers different than the ones popular in the US such as Marlboro miles.

**Tar and nicotine yields**

Each year the Federal Trade Commission publishes a report about the tar, nicotine, and carbon monoxide yields of various brands. The report contains information about 1252 domestic brands. Of these the lowest in tar are Carlton, Cambridge, Merit, and Now. The highest in tar are all nonfilter versions of Basic, Camel, Chesterfield, Commander, Lucky Strike, Old Gold, Pyramid, and Tareyton.

To view the report you can go to <http://www.ftc.gov/bcp/menu-tobac.htm>. This report is in "pdf" form, so you need to be able to download pdf files to read it.

**Are there any legal or privacy issues I should know about?**

~~Yes~~, there are several issues to be aware of when purchasing tobacco products. Please read our [Legal](#) and [Privacy](#) policies.

ON ONE SITE, THIS IS THE SITE http://www.ubored.com

YOU ARE LINKED TO IF YOU PRESS BUTTON THAT SAYS YOU ARE UNDER 18...

U Bored?

BORED, NOTHING TO DO?

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- NEW** [Online-Sweepstakes](#) - Collection of thousands of sweepstakes going on every day
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- NEW** [CandyStand](#) - One of the greatest Shockwave arcade sites on the net. With games such as billiards, snowboarding, solitaire, and trivia, this site will keep you busy for days.
- NEW** [MyFree Jokes, Jokes, Jokes Daily Mailing List](#) - Join My Free, and you'll get 3 new jokes sent straight everyday. Make sure to uncheck anything you don't want and check Jokes, Jokes Daily
- NEW** [Stick Figure Death Theatre](#) - Watch stick figures fight to the death.
- NEW** [Xiao Xiao](#) - This site has all the Xiao Xiao movies made by Zhu, the greatest stick figure movie you must see for all stick figure fighting fans.
- NEW** [Yatta Trivia](#) - Choose between General, Movie, Music, and Football Trivia
- NEW** [GoodQuotes.com](#) - proverbs, bumper stickers, silly quotes, Murphy's laws, gravest mistranslations, celebrity quotes, answering machine messages, famous last words and more.
- NEW** [CrazyThoughts.com](#) - A funny list of life's unanswered questions.
- NEW** [Oxymoronlist.com](#) - The largest list of oxymorons (contradictory words) ever collected.
- NEW** [Maximum Exposure](#) - Watch real life videos of accidents: stupid stunts, motorcycle explosions, skateboarding, car crashes, animal bites, rescues, sky dives, police chase, extreme sports, fights, and more. Click on the Max X Hits button for their archive of
- NEW** [Shockwave.com](#) - This site has the greatest number of shockwave games on the net.
- NEW** [TeenOffers.com](#) - Free stuff for teens: video games, cd's, magazines, contests, beer posters, and more. Only lists free offers that don't have minimum age requirements.
- NEW** [iWon.com](#) - Win up to \$10,000 each weekday, or \$25 million on tax day, just for an engine. Each search you do gives you a free entry into the prize drawing. To win, you must be a resident and 13 years of age or older.
- NEW** [MonitorCamera.com](#) - Take your photo online for free. Because of a new breakthrough technology, you can now take a picture of yourself using your computer monitor. No software needed.
- NEW** [UKEvents](#) - has lots of free software and games to while away those boring hours.
- NEW** [IsATard](#) - This site as well as its sister sites, is devoted to getting a chuckle out of you. This site is strictly meant as entertainment and not as any form of degradation to others.

### Jokes

- [Cyber Parodies](#) - Listen to funny song parodies for free on the Internet
- [Funsci](#) - Index for Fun Science Gallery, the site for the amateur scientist
- [Embarrassing Moments](#) - Embarrassing funny true stories about dating, relationships, functions, office work, college campus life, student life
- [Jokes](#) - The premiere FREE joke and humor related site on the internet. Search an enormous database
- [Free Jokes By E-Mail](#) - Subscribe for free to daily email magazines such as Laff A D

Abby (Advice), Daily Horoscopes, Pet Connection, Entertainment Today, Bizarre News (WWF, WCW & NWO), Film & TV Quotes, Time Capsules (Significant Events in History), The Daily Recipe, & Quote of the Day

FunJokes.com - Fun, family conscious jokes sent to your mailbox each weekday

FunnyMail.Com - Links to humorous web pages, insults, top 10 lists, jokes, juvenile, funny stuff.

Send Free Virtual Insults

LaughNet - thousands of jokes, cartoons, song parodies, software pranks, funny photos and more.

Joke-Lists.com - Get the Best of the Best Joke Emails on the Net. These Joke Lists come every day so try them all and keep only the Funniest Funnies. Don't forget to order your Mousepad when you visit.

Jokes-Plus.com - Get your weekly Joke Email and More. Each week we send you a Download of the Week, FREE Trial or Demo software of the Week, Cool Site of the Week and of course 1 or 2 Jokes of the Week.

Strange Reports - Play practical jokes on your friends and family using our free online

Pollcaster - Vote on your favorite topics and see how other people voted: movies, dating, TV, sports, politics, etc.

Blibs - You can browse 1000's of stories that our users have created. Rate the ones you like and send your results to your friends

News of the Weird - News of the Weird is the longest-running, most widely-read biz news feature in the United States. A weekly column based upon this site appears in newspapers in the U.S. and Canada.

Daily Confessions - read confessions posted from naughty web surfers.

The \$95,093.35 check - On a whim, Patrick Combs deposited into his bank's ATM machine those "fake" checks you get in a junk mail letter, never expecting it to get cashed. But they did cash it. That was only the beginning of his fascinating true story. Hear his story beginning to end.

MysteryNet - read and solve a new mystery on-line weekly.

The Darwin Awards - True stories of stupid things people do that got them killed.

The Stupid Page - Check out our true funny stories about stupid people, silly signs and product warnings.

RocketMan - The Legend of the Rocket Car - A long, fascinating, and possibly true story of guys who attach a jet engine to their car

Java Arcade Games - online versions of the arcade classics Breakout, Pacman, Asteroids and more.

Yahoo Games - Play games online for free with other web surfers: Chess, Checkers, Backgammon, Bridge, Gin, Go Fish, Poker, Fantasy Football, Fantasy Baseball, Stock Challenge, and more.

Brain of Brian - Useless facts, funny philosophies, silly games, comical quotes, trivia lists, madlibs, and more!

Puzzability - Follow the cup of coffee to find twisted crossword, word game, and picture puzzles to check out the weekly and daily games.

Brain-Teasers - Find a list of 15 interactive puzzles here. More dependant on logic than on word dexterity.

Guess The Name - Guess The Name - Think of a TV show or Movie name, and our computer will guess it by asking you some simple questions

to guess it by asking you some simple questions

OliverBot - Chat with Oliver, the friendly chatterbot

Jigsawland - Jigsaw Land - Solve jigsaw puzzles online. Hundreds of jigsaws to choose from.

Play Mash - Remember the MASH (Mansion-Apartment-Shack-House) game you used to play when you were a little kid. to predict what your life would be like when you grow up? Now online

Play RPS - Play the game of rock, paper, scissors online. This game is also known as SnapBubbles - If you like popping real bubble wrap, try this online version

LemonadeGame - Setup an online lemonade stand and see how much lemonade you sell. The weather forecast for each day, you decide how much to charge per cup and how many to buy.

Cybercones - Create a virtual ice cream cone or hot fudge sundae for yourself, or email it to a friend.

PrizeWinner - Win free prizes by playing video games online. The better you play, the more PrizeWinner.com Prize Bucks you earn towards prizes like CD's, videos, digital camcorders, video games, DVD's, boomboxes, toys, vacations, and more.

PCGame - pc game games free cheat cheats demos links sites faq find search ask download faq chat news video FPS action adventure flight racing tomb raider kingpin hunter hitman

The Densa Quiz - Take a very clever 12 question test to see how smart you are.

Tests, Tests, Tests - Dozens of online tests that you can take for free: personality, IQ, career, stress, lifestyle, dating, and many others.

Daily trivia contests with cash prizes! - \$100 weekly cash prize for Trivia quizzes (USA) Take our quizzes, complete them, and get entered into our weekly drawing. The more you play, the more chances you get.

Test Your Brain Power! - Test your mental powers on crosswords, riddles, word puzzles and IQ quizzes for FREE PRIZES!

Travel Quiz - Travel Trivia @ Travel Notes. Ten travel-related questions to test how much you know about the world we live in. Get them all right to enter the Hall of Fame and qualify for the grand prize!

Fun-e-Cards - Free electronic greeting cards and animated musical fun pages for friends, family, Christmas, romance, and many special occasions

Teen Freebies - Free stuff for the younger generation: free magazines, free music, free games, free catalogs, free contests, and much more. Check back often because this site is frequently updated with new offers.

TheFreeSite - Offers the Web's largest collection of free services and free products. 1000+ free games, counters, Webmaster freebies, affiliate programs, chat freebies, digital products, freebies, free fonts, graphics, guestbook

Catalog Request - Free mail order catalogs. Over 300 catalogs available: gifts, electronics, travel, clothing, entertainment, hobbies, automotive, and more.

Hundreds of Free Product Samples - you can get over the Internet: videos, calling cards, food, perfumes, magazines, clothing, and more.

Free Electronic Greeting Cards - Over 1700 to choose from.

Send a free digital postcard

Postage4Free - If you hate paying .33 cents every time you want to mail a letter then

Digital Films - Make your own animated movie for free online. Choose a background, animated actions, dialog, introduction, and ending credits. Put your name as the producer of the movie to your friends

ColoringSite - Color hundreds of fun pictures for free with our online coloring books

ColorMeSite - Color hundreds of fun pictures for free with our online coloring books!

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Sweepstakes Online - Thousands of Sweepstakes and Contest Listings. Win Prizes. S promotion and development services

FREE Resort Stay! give away every day! - We give away a resort stay every day for to three children who receive free lodging, pampering, and perks at their choice from the USA and CA.

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The Cam Beat - A One-Stop Cam Directory featuring top WebCams around the world

Beach Cam - Live web cam from Venice Beach, California, updated every 10 minute

THE AMAZING FISH CAM! - Check out The Continuously Refreshing Fish Cam

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BigCelebrities - BigCelebrities.com offers information on over 15,000 famous celeb actresses, musicians, supermodels, TV stars, movie stars, athletes, and comedians. W latest hollywood gossip and entertainment news

Ecrush - Offers many ways to improve your love life: find out online if someone you on you (with no risk of rejection), ask a question to The Advice Girl, find out which \*NSYNC is your soulmate, browse the Web's largest collection of pick-up lines, or h horror dates.

I bet you will - A reality type game show that proves people will do anything for mor the IBYW crew bargains with innocent bystanders and talks them into outrageous ch eating an entire jar of Mayonnaise in 3 minutes or seeing who can hold out the longe: their pants.

Poll Caster - Create your own polls on subjects like movies, music, dating and more, them to your friends to take. Or, vote on hundreds of different polls already on the sit a new Pentium 4 computer just for voting.

Video Parodies - Watch funny music videos online

Hot Concerts - Watch full length concert videos of your favorite bands for free over David Gray, The Go-Go's, Lit, Everlast, Outkast, The Bangles, Duran Duran, Motley Huey Lewis & the News, Public Enemy, and more

Slang Site - Is a dictionary of slang, webspeak, made up words, and colloquialisms. I listings, or submit your own slang words to our site

Funology - the science of having fun! Funology.com is the premiere online destinatio want to have fun.

Phones Snell - What does your phone number spell?

Internet Anagram Server - Check out this fun Internet Anagram page. See how name: rearranged

The Onion - One of the most popular news satire sites on the net. Always good for a

NeoPets - The greatest Virtual Pet Site on the Internet. With your help, we intend to of virtual pet owners, and offer cool things such as games, auctions, shops, postcards more. Best of all, it's completely FREE!

Television Without Pity - Did you miss an episode of your favorite TV show? Find e each week on popular TV shows: Survivor, The Practice, X-Files, West Wing, Buffy Dawson's Creek, Ed, Felicity, and many more.

Amused - Exploring the Internet to bring you the Ultimate Guide to Wasting Time

A fun Zone - If you've got some time on your hands, A Fun Zone is sure to entertain! offers an absolutely enormous archive of fun stuff.

Kiss this Guy - The Archive of Misheard Lyrics is the Internet's largest database of pop songs. Browse by song name or artist, or submit your own

Money Origami - illustrated instructions for making several origami designs out of d

Hot or Not? - Look at photos of men and women and rate them on a scale of one to your own picture to be rated by others.

Do You Watch TV? - If you had your choice, vote on which character you would want from popular TV shows: Seinfeld, Scooby Doo, The Brady Bunch, Buffy the Vampire Friends, Happy Days, Dawson's Creek, Ally McBeal, ER, and more.

Crazymages.com - A web site full of cool images to keep you amazed and entertained. simulator, watch virtual fireworks, see the birth of a galaxy, play with fractals, and m

The Nutrition Calculator - Enter a food such as "Big Mac" or "Chocolate Chip Cook the exact nutrition content such as calories, fat, protein, carbohydrates, etc. The calculator has 20,000 foods, including products you buy at the supermarket and fast food chains: Big Wendy's, McDonald's, Pizza Hut, Taco Bell and more.

Free Palm Readings and Free Handwriting Analysis

Emode - Self-testing psychology site. Includes tests on personality, IQ, relationships, health. Also provides a celebrity matchmaker

Facts on Farts and Scoop on Poop - Learn the answers to every question ever asked about subjects.

Jumontheshark.com - Find out when people think popular TV shows started to go bad: Brady Bunch, The X-Files, ER, Seinfeld, Buffy, Ally McBeal, Beverly Hills 90210, and more

Birthday Database - Search over 135 million birth records for the Birthdate of someone. If you have the date, you can also register

Online Bubblewrap - If you like playing with real bubble wrap, try this online version

Database of Song Lyrics - Find the words to over 120,000 songs.

Farts.Com - Fart of the day, fart mart, fart jokes and stories, sound files, and general

Webcrawler Search Vovour - See the keywords that people type into the Webcrawler in realtime as they are typed.

The Cave of Magic - This simple online card trick will amaze you.

Are You Owed Unclaimed Money? - You may be owed unclaimed money by the government. The FindCash database of over 11 million names for FREE to see if your name is on it can come from such sources as old bank accounts, wills, insurance, tax refunds, and former employers.

Movies - Hundreds of movie reviews, previews, trailers, and all the latest news.

E OnLine! - Celebrity Gossip, Interviews, and Entertainment News

Virtual Flowers - Send a free virtual flower bouquet.

Top 10 Lists - Thousands of top 10 lists of web sites in every imaginable category.

What does your phone number spell?

Twisted Tunes- Listen to over 50 funny song parodies in realtime right over your ear  
Up (Windows 95), What If God Smoked Cannabis?, Hand In A Light Socket, and m  
radio morning DJ Bob Rivers.

Metacrawler- Search all of the major search engines at once! Yahoo, Lycos, Infoseek  
Excite, Alta Vista, and more.

The Death Clock- check out your death day and watch the seconds slip through you  
All Music - A music database listing over 470,000 albums, over 155,000 album review  
3,100,000 individual tracks, over 43,000 artist biographies, and more than 235,000 art  
album covers

Love Calculator - Calculates the chance on a successful relationship between two peo

Hamster Blast - a parody of hamsterdance.com.

Assassin - The dumber people think you are, the more surprised they'll be when you  
page is all in good fun, we don't intend any harm towards anyone. The first page cont  
for pop-icons popular enough to warrant them. page two contains individual missions  
celebrities. Enjoy!

STATE EXCISE TAX RATES ON CIGARETTES  
(January 1, 2003)

STATE	TAX RATE (c per pack)	RANK	STATE	TAX RATE (c per pack)	RANK
Alabama (1)	16.5	45	Nebraska	64	22
Alaska	100	11	Nevada	35	31
Arizona	118	9	New Hampshire	52	25
Arkansas (2)	34	32	New Jersey	150	2
California	87	18	New Mexico	21	38
Colorado	20	39	New York (1)	150	2
Connecticut	111	10	North Carolina	5	49
Delaware	24	36	North Dakota	44	27
Florida	33.9	33	Ohio	55	24
Georgia	12	46	Oklahoma	23	37
Hawaii	120	8	Oregon	128	6
Idaho	28	35	Pennsylvania	100	11
Illinois (1)	98	16	Rhode Island	132	5
Indiana	55.5	23	South Carolina	7	48
Iowa	36	29	South Dakota	33	34
Kansas (3)	70	20	Tennessee (1) (2)	20	39
Kentucky (2)	3	50	Texas	41	28
Louisiana	36	29	Utah	69.5	21
Maine	100	11	Vermont	93	17
Maryland	100	11	Virginia (1)	2.5	51
Massachusetts	151	1	Washington	142.5	4
Michigan	125	7	West Virginia	17	43
Minnesota	48	26	Wisconsin	77	19
Mississippi	18	41	Wyoming	12	46
Missouri (1)	17	43	Dist. of Columbia	100	11
Montana	18	41			
			U. S. Median	48.0	

*Illinois state not  
MAJOR tax by  
1¢ a pack.*

Source: Compiled by FTA from various sources

(1) Counties and cities may impose an additional tax on a pack of cigarettes in AL, 1c to 6c; IL, 10c to 15c; MO, 4c to 7c; NYC \$1.50; TN, 1c; and VA, 2c to 15c.

(2) Dealers pay an additional enforcement and administrative fee of 0.1c per pack in KY and 0.05c in TN. In AR, a \$1.25/1,000 cigarette fee is imposed.

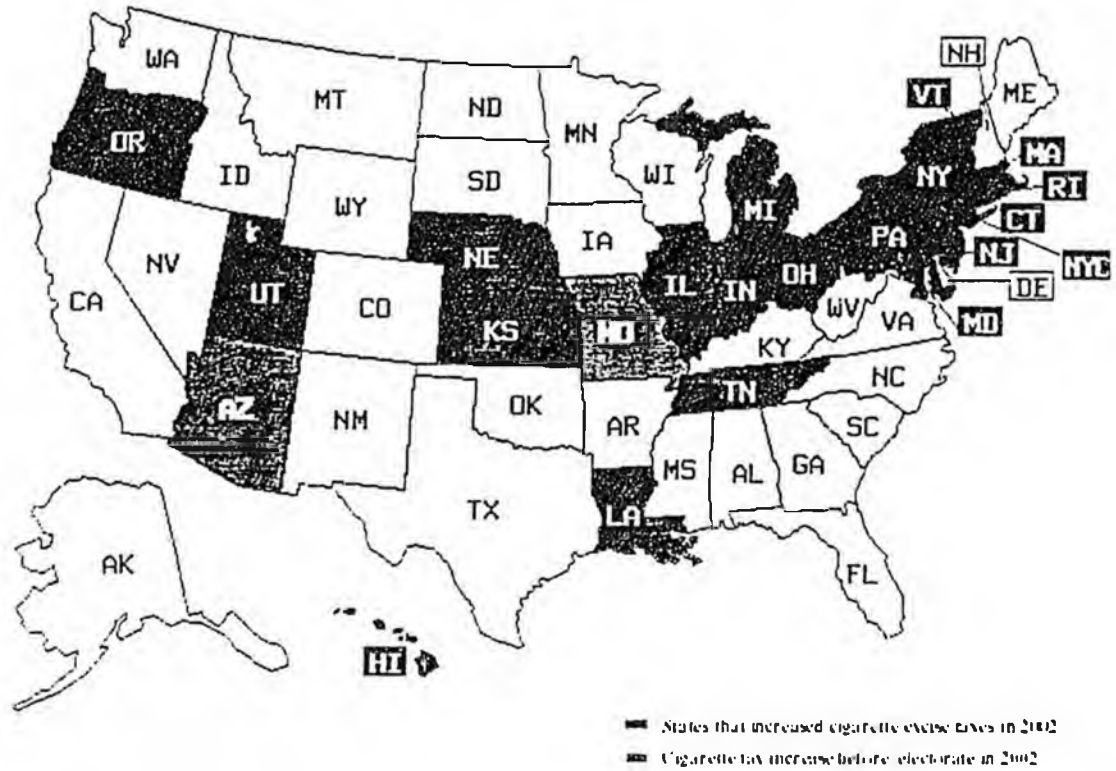
(3) On 7/1/03, the tax rate is scheduled to increase to 79c in KS, and \$1.19 in VT.

Provided by Sen. Bunde

# Cigarette Tax Increases 2002 - 2003

[click here to see detail](#)

Cigarette Increases Enacted in 2002  
(October 2002)



	Increase	New Rate/ Pack of	Effective
	Per Pack	20	Date
Arizona	\$0.58	\$1.15	11/25/2002
Arkansas	\$0.04	\$0.34	7/1/2001
Connecticut	\$0.61	\$1.11	4/3/2002
Connecticut	\$0.40	\$1.51	3/15/2003
District of Columbia	\$0.35	\$1.00	1/1/2003
Hawaii	\$0.20	\$1.20	10/1/2002
Hawaii	\$0.20	\$1.40	7/1/2004
Illinois	\$0.40	\$0.98	7/1/2002
Indiana	\$0.40	\$0.555	7/1/2002
Kansas	\$0.46	\$0.70	7/1/2002
Kansas	\$0.09	\$0.79	7/1/2003
Louisiana	\$0.04	\$0.24	8/1/2000
Louisiana	\$0.12	\$0.36	8/1/2002
Maine	\$0.26	\$1.00	6/1/2001
Maryland	\$0.34	\$1.00	7/1/2002
Massachusetts	\$0.75	\$1.51	7/25/2002
Michigan	\$0.50	\$1.25	8/1/2002
Nebraska	\$0.30	\$0.64	10/1/2002
New Jersey	\$0.70	\$1.50	7/1/2002
New Mexico	\$0.70	\$0.91	7/1/2003
New York City	\$1.42	\$1.50	7/2/2002
New York State	\$0.55	\$1.11	3/1/2000
New York State	\$0.39	\$1.50	4/3/2002
Ohio	\$0.31	\$0.55	7/1/2002
Oregon	\$0.60	\$1.28	11/1/2002
Pennsylvania	\$0.69	\$1.00	7/15/2002
Rhode Island	\$0.32	\$1.32	5/1/2002
South Dakota	\$0.20	\$0.53	3/18/2003
Tennessee	\$0.07	\$0.20	7/15/2002
Utah	\$0.18	\$0.695	5/6/2002
Vermont	\$0.49	\$0.93	7/1/2002
Vermont	\$0.26	\$1.19	7/1/2003
Washington	\$0.60	\$1.44	1/1/2002
West Virginia	\$0.38	\$0.55	5/1/2003
Wisconsin	\$0.18	\$0.77	10/1/2001
Wyoming	\$0.48	\$0.60	7/1/2003
U.S. Median*		\$0.48	1/1/2003

\*Includes increase effective in 2002.

Source: Compiled by FTA from various sources.

**INFORMATION BRIEF**  
**Minnesota House of Representatives**  
**Research Department**  
600 State Office Building  
St. Paul, MN 55155

September 2000

Joel Michael, Legislative Analyst  
651-296-5057

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## **The Unfair Cigarette Sales Act**

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

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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).

437-247-5920

## 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

11 55 22.15  
44 20

## 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

<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 rying 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 speciality 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.

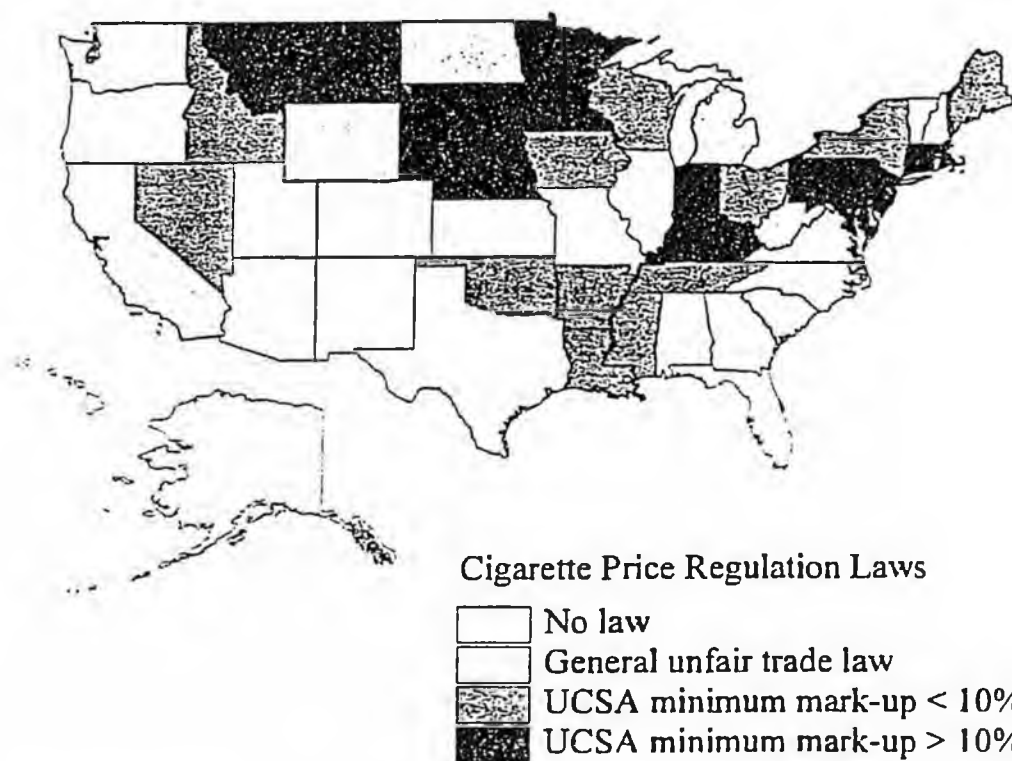
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<sup>28</sup> Minn. Stat. § 325D.33, subd. 8 (1998).

<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.



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	2.75%	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 Fleenor, "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.

## The Toll of Tobacco in Alaska

### Tobacco Use in Alaska

High school students who smoke	<b>33.9% (15,000)</b>
Male high school students who use smokeless or spit tobacco	<b>20.9% (females use much lower)</b>
Kids (under 18) who become new daily smokers each year	<b>2,200</b>
Kids exposed to secondhand smoke at home	<b>47,000</b>
Packs of cigarettes bought or smoked by kids each year	<b>3.0 million</b>
Adults in Alaska who smoke	<b>25.0% (105,000)</b>

National youth smoking rates have declined somewhat since 1997, but remain at historically high levels. According to the National Youth Tobacco Survey, 28.4% of all U.S. high school kids smoke and 11.6% of high school males use spit tobacco. Adult smoking rates have decreased gradually since the 1980s, and 23.3% of U.S. adults now smoke.

### Deaths in Alaska From Smoking

Adults who die each year from their own smoking	<b>440</b>
Kids now under 18 and alive in Alaska who will ultimately die prematurely from smoking	<b>19,500</b>
Adults, children, & babies who die each year from others' smoking (secondhand smoke & pregnancy smoking)	<b>80 to 150</b>

Smoking kills more people than alcohol, AIDS, car crashes, illegal drugs, murders, and suicides combined -- and thousands more die from other tobacco-related causes -- such as fires caused by smoking (more than 1,000 deaths/year nationwide) and smokeless tobacco use. No good estimates are currently available, however, for the number of Alaska citizens who die from these other tobacco-related causes, or for the much larger numbers who suffer from tobacco-related health problems each year without actually dying.

### Smoking-Caused Monetary Costs in Alaska

Annual health care costs in Alaska directly caused by smoking	<b>\$132 million</b>
- Portion covered by the state Medicaid program	<b>\$60 million</b>
Residents' state & federal tax burden from smoking-caused government expenditures	<b>\$572 per household</b>
Smoking-caused productivity losses in Alaska	<b>\$129 million</b>

Amounts do not include health costs caused by exposure to secondhand smoke, smoking-caused fires, spit tobacco use, or cigar and pipe smoking. Other non-health costs from tobacco use include residential and commercial property losses from smoking-caused fires (more than \$500 million per year nationwide); extra cleaning and maintenance costs made necessary by tobacco smoke and litter (about \$4+ billion nationwide for commercial establishments alone); and additional productivity losses from smoking-caused work absences, smoking breaks, and on-the-job performance declines and early termination of employment caused by smoking-caused disability or illness (dollar amount listed above is just from productive work lives shortened by smoking-caused death).

### Tobacco Industry Influence in Alaska

Annual tobacco industry marketing expenditures nationwide	<b>\$9.7 billion</b>
Estimated portion spent for Alaska marketing each year	<b>\$21.4 million</b>

Published research studies have found that kids are three times more sensitive to tobacco advertising than adults and are more likely to be influenced to smoke by cigarette marketing than by peer pressure, and that one-third of underage experimentation with smoking is attributable to tobacco company advertising.

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Alaskans for Tobacco-Free Kids

[Fwd: Hawaii Info]

**Subject:** [Fwd: Hawaii Info]  
**Date:** Thu, 27 Feb 2003 08:08:06 -0900  
**From:** Larry Persily <Larry\_Persily@revenue.state.ak.us>  
**Organization:** Department of Revenue  
**To:** Karen L Mccarthy <karen\_mccarthy@legis.state.ak.us>

Karen,

Our tobacco tax auditor gathered the following information from Hawaii, which instituted a tax stamp in 2001. We thought you and the senator would find it interesting.

Larry

---

**Subject:** Hawaii Info  
**Date:** Thu, 27 Feb 2003 08:09:32 -0900  
**From:** Johanna Bales <Johanna\_Bales@revenue.state.ak.us>  
**Organization:** State of Alaska - Department of Revenue  
**To:** Larry Persily <Larry\_Persily@revenue.state.ak.us>  
**CC:** Larry Meyers <larry\_meyers@revenue.state.ak.us>, Toni R Thomas <toni\_thomas@revenue.state.ak.us>

Larry,

Yesterday, I spoke with Earl Hoke, an Asst. AG in Hawaii who heads up their cigarette stamp enforcement unit. As you probably know, Hawaii increased its cigarette excise tax rate to \$1.00 per pack in 1998. The following year, they passed legislation for a stamp which took effect on 1/1/2001. Hawaii cigarette tax revenues for 1999 - 2002 (calendar years) were as follows:

1999	\$39,697,384	(no stamp - tax at \$.05 per cigarette)
2000	\$40,770,139	(no stamp - tax at \$.05 per cigarette)
2001	\$61,282,238	(stamp - tax @ \$.05 per cigarette)
2002	\$64,892,155	(stamp - in Oct, 2002 tax rate increased to \$.06 per cigarette)

Incredibly, Hawaii shows a whopping 50% increase in cig tax revenues between 2000 and 2001. Hawaii does, however, have a very aggressive enforcement program. The unit that Earl heads up is staffed with 11 people; 3 attorneys, 5 investigators, 1 secretary, 1 paralegal, and 1 auditor. As well as stamp enforcement, they also enforce the tobacco Master Settlement Agreement (MSA) and the sale of gray market cigarettes. They do not sell the stamps or do anything else with the excise tax program. Those functions are handled by Hawaii's Department of Revenue. Earl's unit is funded by the first \$350,000 of MSA payments and 1.5% of the 1.7% stamp fee that is charged their distributors. Unlike all other states, Hawaii actually charges their distributors 1.7% of the value of the stamps. All other states give a discount.

I thought you might find this interesting.

Johanna

### Ranking of State Funding for Tobacco Prevention

State	FY 2003 Current Annual Funding	CDC's Annual Funding Recommendation (\$Millions)	Percent of CDC's Minimum Recommendation	Current Rank	Jan. 2002 Rank
Maine	\$15.17 million	11.19 - 25.35	Within CDC Guidelines	1	3
Minnesota	\$37.55 million	28.62 - 74.01	Within CDC Guidelines	2	5
Mississippi	\$20 million	18.79 - 46.80	Within CDC Guidelines	3	4
Maryland	\$30 million	30.30 - 78.60	Within CDC Guidelines	4	12
Hawaii	\$10.25 million	10.78 - 23.45	95.1 %	5	27
Indiana	\$32.5 million	34.78 - 95.80	93.4%	6	6
Arkansas	\$16.39 million	17.91 - 46.45	91.6%	7	7
Pennsylvania	\$52 million	65.57 - 184.76	79.3%	8	14
Washington	\$26.24 million	33.34 - 89.38	78.7%	9	18
Virginia	\$22.2 million	38.87 - 106.85	66.7%	10	21
New Jersey	\$30 million	45.07 - 121.33	66.5%	11	11
Vermont	\$5.2 million	7.91 - 15.94	65.8%	12	10
Arizona	\$18.27 million	27.79 - 71.10	65.7%	13	2
Alaska	\$5 million	8.09 - 16.51	61.7%	14	28
Colorado	\$15 million	24.55 - 63.26	61.2%	15	19
Delaware	\$5 million	8.63 - 18.46	58.1%	16	13
California	\$88.35 million	165.10 - 442.40	53.5%	17	8
Nebraska	\$7 million	13.31 - 31.04	52.6%	18	17
Oregon	\$11.09 million	21.13 - 52.84	52.6%	19	16
Wisconsin	\$15.5 million	31.16 - 82.38	49.7%	20	20
Florida	\$37.5 million	78.33 - 221.26	47.8%	21	29
Utah	\$7 million	15.23 - 33.38	46.1%	22	26
Georgia	\$19.07 million	42.59 - 114.34	44.8%	23	22
Ohio	\$27 million	61.74 - 173.68	43.8%	24	31
New York	\$40 million	95.83 - 269.30	41.8%	25	24
West Virginia	\$5.85 million	14.16 - 35.37	41.2%	26	25
Wyoming	\$3 million	7.38 - 14.40	40.5%	27	28
New Mexico	\$5 million	13.71 - 31.95	36.5%	28	30
South Dakota	\$2.93 million	8.69 - 18.21	33.7%	29	34
Rhode Island	\$3.3 million	9.89 - 21.91	33.4%	30	32
Nevada	\$4.28 million	13.48 - 32.99	31.7%	31	33
North Dakota	\$2.5 million	8.16 - 16.55	30.5%	32	35
Louisiana	\$8 million	27.13 - 71.43	29.5%	33	47
New Hampshire	\$3 million	10.89 - 24.77	27.5%	34	37
Iowa	\$5.08 million	19.35 - 48.71	26.3%	35	22
Illinois	\$12 million	64.91 - 179.05	18.5%	36	9
North Carolina	\$6.2 million	42.59 - 118.63	14.6%	37	51
Massachusetts	\$4.8 million	35.24 - 92.76	13.6%	38	1
Texas	\$12.5 million	103.29 - 284.74	12.11%	39	39
Kentucky	\$3 million	25.09 - 69.90	12.0%	40	36
Idaho	\$1.27 million	11.04 - 24.09	11.6%	41	40
Oklahoma	\$2.45 million	21.83 - 56.31	11.2%	42	41
South Carolina	\$2 million	23.91 - 62.01	8.4%	43	42
Montana	\$384,000	9.36 - 19.68	4.1%	44	43
Kansas	\$500,000	18.05 - 44.69	2.8%	45	44
Connecticut	\$575,000	21.24 - 53.90	2.7%	46	45
Alabama	\$360,000	26.74 - 71.24	1.4%	47	46
Michigan	\$0	54.80 - 154.56	0.0%	51	51
Missouri	\$0	32.77 - 91.36	0.0%	51	51
Tennessee	\$0	32.23 - 89.08	0.0%	51	51
Washington, DC	\$0	7.48 - 14.57	0.0%	51	51

*Alaskans for Tobacco-Free Kids*

A Division



# MEYERCORD REVENUE

Providing Innovative Solutions For Protecting Revenue Worldwide

## FUSON System

Meyercord Revenue offers industrial and government clients a wide range of high security solutions to protect consumers and tax revenues from counterfeits. Since the 1920s, we have designed counterfeit applications including cigarette tax stamps, motor vehicle registration and inspection labels and product authentication seals.

## Tax Stamp Equipment

## Stamp Order Request



Our secure facility is centrally located in metropolitan Chicago where we provide superior products and services that will meet and exceed your expectations. Meyercord Revenue's impressive list of anti-counterfeit solutions provide solutions to all of your product authentication needs.

## Secure Facility

Our competencies include specialized web printing producing high quality stamps and applying unique coating chemistries. Meyercord Revenue's equipment include the use of proprietary security taggants and the resource equipment necessary to quickly apply these products accurately at scale.

## Literature Download

## Newsletter Archive

Meyercord Revenue's layered overt and covert security features are field proven. They continue to manufacture over 20 billion security indicia images a year. Our Fuson system is specified by over 100 municipalities and is responsible for maximizing the annual collection of tax revenue worth over \$8.4 billion dollars.

## Mission Statement

## Contact Us

## ITW Link

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Meyercord Business - Tax Stamp Equipment



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For more than half a century Meyercord has been designing and manufacturing tax and fee indicia

Whether requiring a fully automatic stamping system or semi-automatic line, Meyercord cigarette s

Accessory equipment includes in-line and off-line cigarette case cutters and case packers. An exp

**Nationwide Field Service**

Meyercord's specially trained technicians are dedicated to keeping the equipment in the finest work

(Return to Equipment Page 1

## 'A' Type Manual Stamping Machine

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### Machine Features

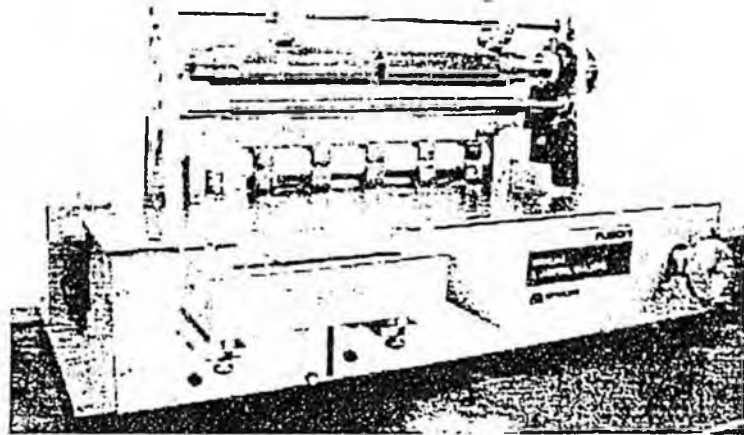
- Easy to operate - no special training or skills required.
- Stamps Regular, King, 100mm and 120mm cartons.
- Easily handles soft and box packs.
- The heater bar applies 10 Meyercord fuson stamps to a carton with one single motion.
- Front mounted glue pot for convenient resealing.
- Dependable, clean and quiet operation.
- Compact and portable. Can be operated on any sturdy table or work area.
- Reduces carton damages and labor costs; increases production.

### Specifications

**Dimensions:** Length - 20"  
                  Height - 11"  
                  Width - 10"

**Weight:** 40 lbs.

**Electrical Requirements:**  
120VAC; 20 AMPS



[Return to Equipment Page](#)

## Automatic Tax Stamping Machine

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### Features

The automatic line provides maximum efficiency and production speed for the distributor whose d stamping large quantities of cigarettes hour after hour, day after day.

An operator places unopened cartons on a continuous belt that feeds the cigarettes automatically thr stamping operation, which includes carton opening, flap folding, stamp application, flap sealing and

Stamped and sealed cartons are transferred automatically to a special table where a second opera emptied half cases.

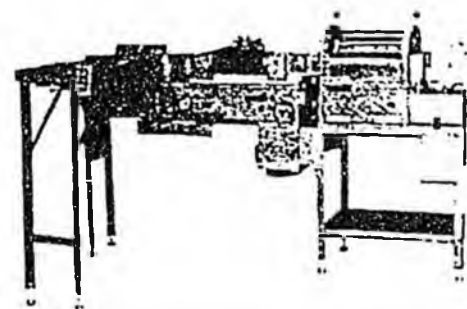
### Specifications

**Dimensions:** Length - 13'6"  
Width - 3'11"

**Electrical  
Requirements:** 120VAC; 30 AMPS

**Output:** 80-100 Cartons Per Minute

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[\(Return to Equipment Page\)](#)

## Linear Stamp Machine

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### Machine Features

- No operator adjustments for carton size changes, regular to 120mm.
- Programmable Logic Controller (PLC) equipped with state-of-the-art heating control.
- LCD screen with readouts for monitoring of most operations.
- Fully Automatic carton sizing, flap opening, stamping, bluing and closing operations.
- Heavy duty construction with industrial grade components.
- Improved stamping operation using standard stamp rolls.
- Automatic height adjustments minimizes carton and pack damage.
- Linear iron movement maximizes stamp transfer quality and virtually eliminates chopping.
- Eliminates iron heat variations and pack damage due to high heat conditions.
- Easy access to machine assemblies and controls for fast repairs and troubleshooting.

### Specifications

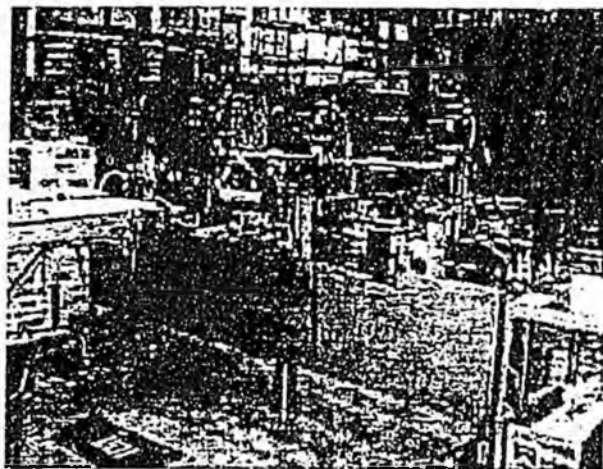
**Dimensions:** Length - 128"  
Height - 65" (74" with covers raised)  
Width - 68"

**Weight:** 1200 lbs.

**Electrical Requirements:** 120 volts; 30 amps

**Air Requirements:** 90 PSI at 1.7CFM

**Cycle Speed:** 40-48 CPM



May 1, 2003

Senate Finance Committee  
Alaska State Senate  
State Capitol, Room 518  
Juneau, AK 99801

RE: SB 168 Tobacco Tax Stamp Legislation

Dear Committee Members:

On behalf of Alaskan based wholesale tobacco distributors we would like to thank the Senate Labor and Commerce Committee for their deliberation and approval of SB 168, the Tobacco Tax Stamp bill. We were especially pleased that Senator Bunde was willing to support the inclusion of language providing for an Unfair Cigarette Sales Act as part of SB 168.

We support SB 168 (Labor & Commerce) as passed by the committee and we would ask the Senate Finance Committee to schedule this bill for consideration as soon as possible.

Alaska is one of only four states in the union that does not have a tobacco tax stamp. The implementation of a tax stamp will effectively stop the illegal importation of cigarettes into Alaska and will enhance state revenue. Alaska tobacco distributors will see an increase in sales as product presently being diverted to black market supply channels finds its way back into the legal supply chain through state-licensed distributors.

Alaska tobacco distributors routinely perform tax collection and reporting duties in support of their remittance to the State for the tobacco excise tax. In addition to the services already provided to the state the financial burden of the new tax stamp will also fall to the distributors. SB 168 provides Alaska licensed distributors with a much-earned discount for the purchase and application of the tobacco stamp. While the discount is beneficial, it supplants the current commission paid to distributors for services performed and the discount alone will not cover the cost of stamping for Alaska-based distributors.

SB 168 addresses the concerns of Alaska-based distributors with the inclusion of an Unfair Cigarette Sales Act. This measure would prohibit the sale of cigarettes below cost and is similar to legislation on the books in 25 other states. The prohibition of below-cost cigarette sales strengthens Alaska's stance on restricting youth access to tobacco products. The measure is vitally important to Alaska-based distributors because in addition to the youth access issue it creates a level playing field for those of us competing against large, national multi-state chain stores who are selling cigarettes at or below cost.

The Department of Revenue has estimated that for every 1% increase in cigarette tax collections the state will increase revenue by \$400,000. Several years ago when Michigan implemented a tax stamp they experienced an 8% growth in cigarette collections. Even if Alaska experiences only a modest 4% growth in tax collections the state should realize \$1,600,000 in revenue growth.

We believe that SB 168 is good legislation for the following reasons:

1. The state will experience an increase in tobacco tax collections
2. Alaska tobacco distributors will see increased business as black market distribution channels are shut down.
3. Alaska-based tobacco distributors will be able to compete on a level playing field with large out-of-state distributors employing predatory pricing practices.
4. Youth access to cigarettes will be further restricted as the State tightens control on the sale of below-cost sales of cigarettes.

On behalf of Alaska-based tobacco distributors we respectfully request that the Senate Finance Committee schedule this bill for a hearing as soon as possible and vote in support of this measure.

Thank you for your consideration.

Sincerely yours,

Bob Galosich  
Vice President of Wholesale Operations  
Alaska Commercial Company

Michael J. Elerding  
President  
Northern Sales Company of Alaska

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

### *Tax Division*

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SB 168  
House Judiciary  
May 15, 2003  
1:00 p.m.

#### Testimony of Johanna Bales, Revenue Auditor

Thank you Madam Chair. My name is Johanna Bales. I am employed by the Alaska Department of Revenue as a Revenue Auditor in the Tax Division. I am the program manager of the Tax Division's cigarette and tobacco products excise tax program. I am pleased to testify on behalf of the administration in support of SB 168, the bill before you.

On October 1, 1997, Alaska increased its tobacco tax rate on cigarettes from 29 cents per pack to one dollar per pack. The impetus for the tax increase was to promote public health. Simply put, it was believed that if cigarettes were more expensive, fewer people would smoke. And in particular, it was hoped that the increase in cost would result in fewer young people taking up the unhealthy habit in the first place.

The tobacco tax increase has had a significant effect on the sale of taxable cigarettes in Alaska. In the five fiscal years before the tax increase, cigarette sales averaged 53 million packs per year. In the first four complete fiscal years since the increase, cigarette sales averaged 42 million packs per year – a drop of more than 20 percent. Although much of this decrease can be attributed to reduced smoking, we also believe that an unknown quantity of untaxed cigarettes are being imported into the state. Under existing statute, however, it is difficult to track just how many untaxed cigarettes are coming into Alaska. We are aware, however, that individuals and businesses have purchased untaxed cigarettes through the Internet.

The Department has obtained information from three Internet/mail order vendors identifying more than 1,000 individuals who have purchased cigarettes through the mail. From these three vendors alone, the Department estimates that it has lost in excess of \$600,000 in cigarette tax revenues over a 13-month period. The Department is also aware of over 20 other Internet cigarette sellers who have sold cigarettes into Alaska. Attempts by the Department to obtain information about these sales have proven futile. The General Accounting Office, in a report dated August 2002, identified 122 Internet cigarette vendors and indicated that these types of businesses are largely responsible for state cigarette tax revenue losses.

The Department of Revenue believes that a very simple measure – a tax stamp on each package – would help close our borders to the importation of untaxed cigarettes. This bill would require that a stamp be affixed to each pack of cigarettes to show that the tax has been paid. It is anticipated that the stamps would be heat-applied, making them difficult to illegally re-use and difficult to counterfeit. The colorful stamp would be easily recognizable so that the Department of Revenue personnel, law enforcement agents, and consumers would immediately know whether the tax had been paid on any given pack of cigarettes.

The bill also would place considerable weight behind the state's ability to enforce the requirement of a stamp. The bill would give the Department of Revenue and law enforcement agencies the authority to seize and destroy unstamped cigarettes. It also would impose significant civil penalties and criminal liability upon violators. It would also allow the Department to seek the aid of the Federal government in prosecuting individuals and businesses who ship large quantities of unstamped cigarettes into the state, thereby violating the Contraband Cigarette Trafficking Act (CCTA). Without a tax stamp, the CCTA does not apply.

Other states, many of which have much lower cigarette taxes than Alaska, have long recognized the benefit of a tax stamp on cigarettes. At this time, 46 states require a stamp on cigarettes. This bill draws from the statutes and experience of those other states. Other states that recently adopted a cigarette tax stamp program have found that the stamps significantly increased their tax revenue. Michigan reported an 8.7 percent increase in cigarette tax revenue in the first year of its program, 1999 and has seen upwards of 12 percent since then. Hawaii – a state that, like ours, doesn't have bordering states, but does have a high tax rate – indicates an amazing 50 percent increase in tax collection in the first two years of their stamping program, 2001 and 2002.

Although these results from other states are encouraging, we do not have a reliable basis to predict the size of the effect of cigarette tax stamps here in Alaska. Given that cigarette tax revenue is about \$40 million per year, however, each 1 percent increase in tax collected would raise about \$400,000 per year.

Stamps do not come free and distributors will incur costs when affixing stamps to individual packs of cigarettes. In recognition of the cost, the bill would provide a graduated discount for distributors to help offset the costs of affixing stamps. It is estimated, however, that a 1.5 percent increase in tax revenue would cover the increased costs of a stamping program including the discount offered to distributors.

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

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

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

SB

175



# ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair  
Rep. Tom Anderson, Vice-Chair  
Rep. John Coghill  
Rep. Jim Holm  
Rep. Ralph Samuels  
Rep. Les Gara  
Rep. Max Gruenberg



State Capitol, Room 120  
Juneau, AK 99801-1182  
(907) 465-4990  
Fax (907) 465-6592

## House Judiciary Committee

### Memorandum

**To:** Leg. Legal  
**From:** Vanessa Tondini, Committee Aide  
House Judiciary Committee  
**Date:** May 18, 2003  
**Re:** CS Request

---

Please create a final draft House Judiciary Committee Substitute for work order # 23-LS0908\U.A, CSSB 175 (JUD) (efd fld), incorporating the attached two amendments. The bill was passed out of committee today and will be on the House floor this afternoon. I have also written the changes into the attached copy of the bill for clarification of the amendments.

If you have any questions, please call me at 4990. Thank you!

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

A#1: P.4.L.2  
insert  
"installation"

FPHLS

Amendment # 2 - Passes

P.3, L. 2-3

delete "injury, death, or damage  
was not the result of an inherent  
risk of the sports or recreational  
activity that was provided"  
After "if the"

insert: "requirement was the proximate  
cause of the injury, death, or damage"

Amendment # 3 - Passes

P.3, L.12

\* After "sport"  
delete "of"  
and insert "or"

CS FOR SENATE BILL NO. 175(JUD)(efd fld)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Amended: 5/14/03  
Offered: 5/9/03

Sponsor(s): SENATOR SEEKINS

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil liability for inherent risks in sports or recreational activities."

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

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

5 FINDINGS AND INTENT. (a) The legislature finds that

6 (1) all sports or recreational activities involve inherent risks that provide the  
7 challenge and excitement that entice people to participate in those activities;

8 (2) people should accept the risks inherent in sports or recreational activities  
9 and be responsible for injuries and damages resulting from those inherent risks;

10 (3) the state has a legitimate interest in maintaining the economic viability of  
11 the sports or recreational activities industry by discouraging claims based on injuries and  
12 damages resulting from risks inherent in sports or recreational activities;

13 (4) providers of sports or recreational activities should not be required to alter  
14 the challenge and excitement of the activities by controlling risks inherent in the activities;  
15 and

1 (5) the liability of providers of sports or recreational activities should be  
2 limited to negligence that is not associated with the inherent risks of sports or recreational  
3 activities.

4 (b) It is the intent of this Act to

5 (1) limit or eliminate the liability of a provider of a sports or recreational  
6 activity to a participant in the activity when an injury or damage caused by or to the  
7 participant is the result of risks inherent in the activity; and

8 (2) encourage the broad construction of the Act to shield providers of sports or  
9 recreational activities from liability for injuries and damages caused by the inherent risks of  
10 sports or recreational activities.

11 \* Sec. 2. AS 05.25.040 is amended to read:

12 **Sec. 05.25.040. Owner's civil liability.** Except as provided under  
13 AS 09.65.290, the [THE] owner of a boat is liable for injury or damage caused by the  
14 negligent operation of the owner's boat whether the negligence consists of a violation  
15 of a state statute or the failure to exercise ordinary care in the operation of the boat as  
16 the rules of the common law require. The owner is not liable, however, unless the  
17 boat is used with the owner's express or implied consent. It is presumed that the boat  
18 is being operated with the knowledge and consent of the owner if, at the time of the  
19 injury or damage, it is under the control of the owner's spouse, father, mother, brother,  
20 sister, son, daughter, or other member of the owner's immediate family. This chapter  
21 does not relieve any other person from a liability that the person would otherwise  
22 incur and does not authorize or permit recovery in excess of injury or damage actually  
23 incurred.

24 \* Sec. 3. AS 09.65 is amended by adding a new section to read:

25 **Sec. 09.65.290. Civil liability for sports or recreational activities.** (a) A  
26 person who participates in a sports or recreational activity assumes the inherent risks  
27 in that sports or recreational activity and is legally responsible for all injuries or death  
28 to the person or other persons and for all damage to property that results from the  
29 inherent risks in that sports or recreational activity.

30 (b) This section does not require a provider to eliminate, alter, or control the  
31 inherent risks within the particular sports or recreational activity that is provided.

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(c) This section does not apply to a civil action based on the  
(1) negligence of a provider if the ~~injury, death, or damage~~ <sup>negligence was the proximate cause</sup> was not the  
~~result of an inherent risk of the sports or recreational activity that was provided;~~ <sup>of the</sup> or <sup>injury, death</sup>

(2) design or manufacture of sports or recreational equipment or  
products or safety equipment used incidental to or required by a sports or recreational  
activity.

(d) Nothing in this section shall be construed to conflict with or render as  
ineffectual a liability release agreement between a person who participates in a sports  
or recreational activity and a provider.

(e) In this section,

(1) "inherent risks" means those dangers or conditions that are  
characteristic of, intrinsic to, or an integral part of a sport <sup>or</sup> recreational activity;

(2) "provider" means a person or a federal, state, or municipal agency  
that promotes, offers, or conducts a sports or recreational activity, whether fo: pay or  
otherwise;

(3) "sports or recreational activity"

(A) means a commonly understood sporting activity, whether  
undertaken with or without permission, including baseball, softball, football,  
soccer, basketball, hockey, bungee jumping, parasailing, bicycling, hiking,  
swimming, skateboarding, horseback riding and other equine activity, dude  
ranching, mountain climbing, river floating, whitewater rafting, canoeing,  
kayaking, hunting, fishing, backcountry trips, mushing, backcountry or  
helicopter-assisted skiing, alpine skiing, nordic skiing, snowboarding,  
telemar'ing, snow sliding, snowmobiling, off-road and all-terrain vehicle use;

(B) does not include

(i) boxing contests, sparring or wresting matches or  
exhibitions that are subject to the requirements of AS 05.10;

(ii) activities involving the use of devices that are  
subject to the requirements of AS 05.20; or

(iii) skiing or sliding activities at a ski area that are  
subject to the requirements of AS 05.45.

GARA

Amendment \* withdrawn

Delete p. 3 line 2-3

Insert "inherent risk of the sports or recreational activity that was provided, except insofar as the provider was negligent."

GARA

Amendment \* 2 - withdrawn

Insert at p. 3 line 1

~~Delete p. 3 line 2-3~~

(d) Immunity under this section shall apply if the injury is the result of the ~~inherent~~ inherent risk of the sports or recreational activity that was provided, except insofar as the provider was negligent, and the negligence caused the injury. "

& renumber subsections accordingly

Amendment ~~\*\*\*~~

withdrawn  
by 6/1/2009

e. This section does not apply if the cause of action is based upon the failure of a professionally designed sports arena to have or utilize normal safety equipment designed to protect patrons who purchase tickets to watch sporting events.

# ALASKA STATE SENATE



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**Senator Ralph Seekins**  
District D

## **SB 175 Sponsor Statement**

### **Civil Liabilities for Commercial Recreational Activities**

Alaska has many recreational opportunities to offer outdoor enthusiasts. Visitors from all over the world, along with in-state recreationalists, enjoy commercial activities such as river rafting, guided hiking, snowboarding and sport fishing to name a few. Yet, the high cost of liability insurance presents a significant barrier to these enterprises, the vast majority of which are small Alaska-based companies.

Without exception, participation in outdoor recreational activities carries with it a degree of inherent risk. Senate Bill 175 adds the presumption that a participant accepts the inherent risks of a commercial recreation activity and as such has played a role in any damages resulting from that inherent risk.

This legislation will decrease uncertainties regarding the legal responsibilities for injuries and encourage the continued viability of responsible businesses that offer commercial recreational activities to the public. Existing legal uncertainties have resulted in high liability insurance costs, which are prohibitive, especially for smaller businesses.

This Bill will help avoid unfair and unreasonable claims that make it difficult to provide recreational and outdoor activities that are closely identified with the Alaska lifestyle and have come to be expected by visitors looking for exceptional experiences.

CS FOR SENATE BILL NO. 175(JUD)(efd fld)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Amended: 5/14/03

Offered: 5/9/03

Sponsor(s): SENATOR SEEKINS

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil liability for inherent risks in sports or recreational activities."

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

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

5 FINDINGS AND INTENT. (a) The legislature finds that

6 (1) all sports or recreational activities involve inherent risks that provide the  
7 challenge and excitement that entice people to participate in those activities;

8 (2) people should accept the risks inherent in sports or recreational activities  
9 and be responsible for injuries and damages resulting from those inherent risks;

10 (3) the state has a legitimate interest in maintaining the economic viability of  
11 the sports or recreational activities industry by discouraging claims based on injuries and  
12 damages resulting from risks inherent in sports or recreational activities;

13 (4) providers of sports or recreational activities should not be required to alter  
14 the challenge and excitement of the activities by controlling risks inherent in the activities;  
15 and