

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8072

10950 HOUSE LABOR & COMMERCE

\* **Section 1. LEGISLATIVE INTENT.** It is the intent of the Alaska Legislature that this Act provide a cost effective method of enforcing the construction contractor licensing provisions of existing law by creating administrative civil penalties that can be imposed on individuals who fail to register as construction contractors as required by law.

\* **Sec. 2.** AS 08.18.118 is repealed and reenacted to read:

**Sec. 08.18.118. Citation imposing civil penalty and procedure.**

(a) In addition to and notwithstanding the citation authority established under AS 08.01.102 and 08.01.103, the department may issue a written citation imposing a civil penalty to a person who violates AS 08.18.011 or 08.18.025. Following issuance of a citation imposing a civil penalty, the department shall provide the person an opportunity for a hearing before a department hearing officer. A decision of a hearing officer under this subsection may be appealed to the appropriate court.

—(b) The time specified in the notice to appear on a citation issued under this section must be at least 10 days, not including weekends and holidays, after the issuance of the citation, unless the person cited requests an earlier hearing.

—(c) The Department of Community and Economic Development and the Department of Labor and Workforce Development are responsible for the issuance of books containing appropriate citations, and each shall maintain a record of each book issued and each citation contained in it. Each department shall require and retain a receipt for every book issued to an employee of that department.

\* **Sec. 3.** AS 08.18.119 is amended to read:

**Sec. 08.18.119. Failure to obey citation.** Unless the citation has been voided or otherwise dismissed by the magistrate, judge, or prosecutor, a person who without lawful justification or excuse fails to appear before a department hearing officer or in court to answer a citation issued under this chapter, regardless of the disposition of the charge for which the citation was issued, is guilty of a class B misdemeanor.

\* **Sec. 4.** AS 08.18.141(a) is amended to read:

(a) A contractor, home inspector, or person acting in the capacity of a contractor or home inspector who knowingly violates AS 08.18.011 or 08.18.025 and who has (1) not previously committed a violation shall pay a civil penalty of \$100; (2) one prior violation shall pay a civil penalty of \$300; (3) two or more prior violations is guilty of a class B misdemeanor. A person who violates another provision of this chapter is guilty of a violation punishable under AS 12.

\* **Sec. 5.** AS 08.18.161(8) is amended to read:

(8) work on one project under one or more contracts, the aggregate contract price of which for labor and materials and all other items is less than \$10,000; this exemption does not apply when the work is only a part of a larger or major operation, whether undertaken by the same or a different contractor, or when the work is divided into

contracts of amounts less than \$10,000 for the purpose of evasion of this chapter or otherwise; this exemption does not apply to a person who advertises or puts out a sign or card or other device that might indicate to the public that the person is a contractor, or that the person is qualified to engage in the contracting business; a contractor who performs work priced at \$1,000 [\$2,500] or more, under this exemption, shall nevertheless keep in force public liability and property damage insurance with coverage in at least the amounts set out in AS 08.18.101;

**HB**

**545**



**HB 545 -- Work Draft 23-GH2150\D (Bannister)**

Amendment #1

By Rep. Rokeberg

Page 1, line 9      Delete "five" and insert "ten"

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB 545  
 () Publish Date: 3/25/2004

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
 Title A bill relating to the State Procurement Code RDU Leases  
lease and contract extensions... Component Leases  
 Sponsor Rules  
 Requester Governor Component No. 81

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

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Various in all state agencies						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill would provide lease and contract extensions for real property up to a maximum extension of 10 years if a minimum cost saving of at least five percent below market rates on the rent due under the lease are achieved; or a contract for goods or services for up to a maximum extension of five years if a minimum cost savings of at least five percent may be achieved on the price established in the contract. While the bill allows for greater flexibility and greater potential savings, it is not possible to quantify them. No additional funds will be necessary as a result of this bill.

Prepared by: Vern Jones, Chief Procurement Officer  
 Division: General Services  
 Approved by: Mike Miller, Commissioner  
 Agency: Administration

Phone 465-5684  
 Date/Time 4/6/04 4:27 PM  
 Date 4/6/2004

23-GH2150\D  
Bannister  
4/15/04

**CS FOR HOUSE BILL NO. 545( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-THIRD LEGISLATURE - SECOND SESSION**

**BY**

**Offered:**  
**Referred:**

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

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to time extensions under the State Procurement Code for real property**  
2 **leases; and providing for an effective date."**

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

4 **\* Section 1.** AS 36.30.083 is repealed and reenacted to read:

5 **Sec. 36.30.083. Lease extensions authorized.** (a) Notwithstanding any other  
6 provision of this chapter, the department, the Board of Regents of the University of  
7 Alaska, the legislative council, or the court system may extend a real property lease  
8 that is entered into under this chapter for up to 10 years if a minimum cost savings of  
9 at least five percent below the market rental value of the real property at the time of  
10 the extension would be achieved on the rent due under the lease. The market rental  
11 value must be established by a real estate broker's opinion of the rental value or by an  
12 appraisal of the rental value.

13 (b) The department, the University of Alaska, the court system, and the  
14 Legislative Affairs Agency shall submit individually an annual report to the

1 Legislative Budget and Audit Committee detailing the leases extended and the cost  
2 savings achieved by that entity under (a) of this section. The reports are due  
3 August 31 of each year.

4 \* Sec. 2. The uncodified law of the State of Alaska is amended by adding a new section to  
5 read:

6 APPLICABILITY. Notwithstanding the changes made by sec. 1 of this Act, the state  
7 agencies affected by this Act may continue to act on or consider a provision of a solicitation,  
8 notice of intent to award, or response to solicitation made before the effective date of sec. 1 of  
9 this Act, to the extent that the provision is not inconsistent with a provision of sec. 1 of this  
10 Act.

11 \* Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to  
12 read:

13 FIRST LEASE EXTENSION REPORT. Notwithstanding AS 36.30.083(b), as  
14 repealed and reenacted by sec. 1 of this Act, the first lease extension report under  
15 AS 36.30.083(b) is due August 31, 2005, and must cover fiscal year 2005.

16 \* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

FRANK H. MURKOWSKI  
GOVERNOR  
GOVERNOR@GOV.STATE.AK.US



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

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JUNEAU, ALASKA 99811-0001  
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HB 545

March 24, 2004

The Honorable Pete Kott  
Speaker of the House  
Alaska State Legislature  
State Capitol, Room 208  
Juneau, AK 99801-1182

Dear Speaker Kott:

Under the authority of article III, section 18 of the Alaska Constitution, I am transmitting a bill relating to the extension of terms for leases and terms for contracts for goods and services under the State Procurement Code.

This bill would make several changes to the State Procurement Code. Section one of the bill would authorize the state to negotiate lease rate reductions on existing leases in exchange for certain term extensions when favorable lease rates are available. The current process only authorizes lease extensions if the property owner agrees to either (1) reduce the lease rate by ten percent and perform modifications to bring the property into Americans with Disabilities Act compliance, or (2) reduce the lease rate by 15 percent. The problem is, the current process does not take into account whether the current lease rate is already below market. Due to market conditions and current lease rates, this high discount is often not acceptable to property owners.

Many of our current lease rates are already below market and leave the lessor unwilling to meet the 10 or 15 percent reduction to extend the lease. In fact, only a small percentage of lease extensions have been negotiated under the existing provisions. The only option left for the state is to issue a new request for proposals. Often this results in additional moving costs and market rates, which can represent a substantial increase in costs to the state.

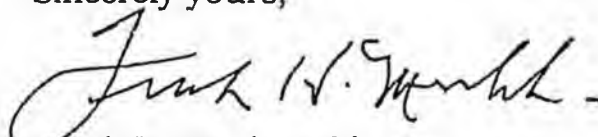
The method proposed in this bill would ensure that the state receives the best value for its leasing dollars. Lease extensions would only be authorized where the rates are a minimum of five percent below market. This would allow the state to maintain its presence in leases which are already well below market rates. Additional savings beyond the five percent would be negotiated depending on a number of factors such as location, current market value, existing vacancies, and market trends.

The Honorable Pete Kott  
March 24, 2004  
Page 2

The bill also would authorize term extensions for up to five years for contracts for goods and services provided a minimum cost savings of at least five percent could be achieved on the price of the goods or services as set in the current contract. Under present law, at the end of the contract term, contracts for goods or services must be resolicited through a competitive process or a new contract awarded based upon alternative procurement methods regardless of price reductions that may be offered by the contractor if the contract were extended.

I urge your prompt and favorable action on this measure.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Frank H. Murkowski". The signature is written in a cursive style with a long horizontal stroke at the end.

Frank H. Murkowski  
Governor

Enclosure

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
Bill Version: HB 545  
(H) Publish Date: 3/25/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
Title A bill relating to the State Procurement Code RDU Leases  
lease and contract extensions... Component Leases  
Sponsor Rules  
Requester Governor Component No. 81

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

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Various in all state agencies						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill would provide lease and contract extensions for real property up to a maximum extension of 10 years if a minimum cost saving of at least five percent below market rates on the rent due under the lease are achieved; or a contract for goods or services for up to a maximum extension of five years if a minimum cost savings of at least five percent may be achieved on the price established in the contract. The bill also exempts real property leases from disability related preferences. While the bill allows for greater flexibility and greater potential savings, it is not possible to quantify them. No additional funds will be necessary as a result of this bill.

Prepared by: Vern Jones, Chief Procurement Officer  
Division General Services  
Approved by: Mike Miller, Commissioner  
Agency Administration

Phone 465-5684  
Date/Time 2/25/04 9:19 AM  
Date 2/25/2004

# Memorandum

Department of Administration  
Office of the Commissioner

**To:** Representative Tom Anderson  
**Attention:** Josh Applebee

**Date:** April 13, 2003

**From:** Kevin Jardell  
Assistant Commissioner  
Department of Administration

**Phone:** 465-2200

**Subject:** Lease Negotiations

Lease extensions under the current law (AS 36.30.083) require a minimum 15% discount from the current lease rate. DOA's proposed change would require a minimum 5% discount from a market rate.

In the past, DOA leases consisted of a constant rental rate throughout the life of the lease. This was unduly costly for the state, since initial construction and tenant improvements (TI) of office buildings are generally financed and amortized only over the initial lease period, not the optional renewal periods. The state was effectively paying multiple times for one-time costs.

Several years ago, DOA changed this practice by requiring lessors to identify up front construction and TI costs from ongoing rental rates and bid them separately. This generally results in declining costs in the option periods, because the rates for option periods no longer include amortized construction and TI costs. A net present value calculation is applied to ensure the state considers the time value of money when awarding leases.

Given this change, we can not expect to gain significant savings in the future under AS 36.30.083. For example:

A lease could be established at a market rate of \$2.20/sf (Class A, downtown Anchorage) for the initial 9 year period of a lease, dropping to \$0.98/sf for each of the two, five year renewal periods. It would be impossible to negotiate a 15% reduction to a lease rate of \$0.98/sf when the market rate for the space is \$2.20/sf.

As more and more older leases are replaced by those with the new cost model, the requirement of a minimum reduction of 15% below the current lease rate will effectively prevent us from achieving any negotiated savings.

KJ/aw

**HB**

**1001**

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB 1001  
 (H) Publish Date: 6/22/04

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

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

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

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

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

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

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill will increase the cigarette tax from \$1 per pack of twenty to \$2 per pack and the other tobacco products (OTP) tax from 75% to 100% of the wholesale costs. The Department of Public Safety (DPS) will be required to seize and dispose of assets used in illegal activities related to tobacco products statutes.

The DPS will provide investigative support to the Department of Revenue through a reimbursable services agreement. The DPS estimates the services of two full-time investigators and associated field travel, training, communication and vehicle usage will be needed to implement this legislation. The use of these investigative assets and any, as yet unidentified expenses associated with cigarette tax stamp enforcement, will be coordinated between the two agencies and reimbursed at actual cost.

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

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
 Bill Version: HB 1001  
 (H) Publish Date: 6/22/04

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

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

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

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

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>	<b>29,100.0</b>	<b>35,000.0</b>	<b>35,000.0</b>	<b>35,000.0</b>	<b>35,000.0</b>	<b>35,000.0</b>
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**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: 0.0

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

**POSITIONS**

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

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

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

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

(cont. on page 2)

Prepared by: Johanna Bales Phone 269-6628  
 Division: Tax Division Date/Time 6/15/04 9:53 AM  
 Approved by: Steve Porter, Deputy Commissioner Date 6/15/2004  
 Agency: Department of Revenue

**ANALYSIS CONTINUATION**

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

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

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

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

**Revenue:** DOR estimates cigarette and tobacco products revenues to increase between \$33 and \$37 million each year. However, DOR believes these revenues will be much smaller unless we institute an aggressive investigation and enforcement program. Although we believe the provision for cigarette tax stamps, which took effect January 1, 2004, will be an effective tool in enforcement of the cigarette excise tax, its success depends upon aggressive enforcement. Even at \$1.00 per pack, the incentive for smuggling and tax evasion is great. At \$2.00 per pack, it will be much more attractive. An aggressive enforcement program will help protect the projected revenue increase.

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: LL170-DHSS-DPH-06-22-04  
 ( ) Publish Date: \_\_\_\_\_  
 Dept. Affected: Health & Social Services  
 RDU Public Health  
 Component Tobacco Prevention and Control

Revision Date/Time (Note if correction): \_\_\_\_\_  
 Title TOBACCO TAXES AND RELATED MATTERS

Sponsor (RLS) BY REQUEST OF THE GOVERNOR

Requester \_\_\_\_\_ Component No. 2384

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

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual		2,600.0	2,600.0	2,600.0	2,600.0	2,600.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims		1,400.0	1,400.0	1,400.0	1,400.0	1,400.0
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>4,000.0</b>	<b>4,000.0</b>	<b>4,000.0</b>	<b>4,000.0</b>	<b>4,000.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES (0)</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1037 GF/Mental Health						
1168 Tobacco Educ/Cess Fund		4,000.0	4,000.0	4,000.0	4,000.0	4,000.0
Other(Specify Type-do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>4,000.0</b>	<b>4,000.0</b>	<b>4,000.0</b>	<b>4,000.0</b>	<b>4,000.0</b>

Estimate of any current year (FY2004) cost: \_\_\_\_\_  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Funding for the Tobacco Control Program is authorized and appropriated by the Alaska Legislature each year. The Legislature established the Tobacco Use Education and Cessation Fund as AS 37.05.580, and a portion of Tobacco Master Settlement Agreement revenues are deposited into the Tobacco Fund in April of each year to support the Tobacco Control Program. The program faced a serious cash flow problem in FY04 that continues as it heads into FY05. The Department of Health and Social Services projects that the fund will have only \$397,000 of carry forward revenue at the start of FY05. The FY 2005 budget passed by the legislature authorized a budget of \$4,669,200. The projected \$4,300,000 Master Settlement revenue will not be deposited to the (continued next page)

Prepared by: Sherry Hill, Special Assistant Phone 465-1618  
 Division Office of the Commissioner Date/Time 06/21/2004  
 Approved by: Joel S. Gilbertson, Commissioner Date 06/22/2004  
 Agency Department of Health and Social Services

FISCAL NOTE

FN #

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. LL170-DHSS-DPH-06-22-04

ANALYSIS CONTINUATION

Analysis Continued:

State until April 2005. As a result, the program will have to "borrow" from other Public Health programs in the interim to allow the Tobacco Control program to operate. This can be seen in the attached table showing Cash Flow without Tobacco Tax as a negative cash flow from July 2004 until April 2005 (attachment A).

Passing the proposed increase in tobacco excise taxes and including the proposed provision that 8.9 percent of the total proceeds of the tax shall be deposited into the Tobacco Use Education and Cessation Fund established in AS 37.05.580 will fix the existing cash flow problem as well as increase prevention funding. This fiscal note reflects an increase of \$4,000,000 Tobacco Education/Cessation Fund spending authorization for the Tobacco Prevention and Control component of the Public Health RDU. Additional authorization of this amount will result in expanded tobacco program activities as well as allow for sufficient carryforward to support program activities in the next fiscal year until Master Settlement revenues are deposited. See attached table showing cash flow with Tobacco Tax (attachment B).

These funds will also help offset a projected decrease in the Tobacco Master Settlement Agreement revenues, according to the latest forecast by the National Association of Attorneys General. This fiscal note also assumes that the current authorization for \$500,000 Tobacco Education/Cessation Fund in the Community Health Grants component would be switched to General Funds in the FY06 budget. If this does not occur, the funds available to the Tobacco Prevention and Control component would be reduced by \$500,000 to remain within the projected revenues. The net increase to the Tobacco Prevention and Control component will be approximately \$3,330,000. See attachment C for summary of Tobacco Program revenues and authorization.

The increased spending authorization is based on the Department of Revenue's projection that the amount of cigarette tax revenue deposited into the Tobacco Use Education and Cessation Fund would be \$4,000,000 annually. All revenues are reported on the Department of Revenue fiscal note.

Critical to the ongoing fiscal integrity of the program will be action by the legislature every year to provide for carry forward of unexpended Tobacco Use Education and Cessation Funds from the current State Fiscal Year to the following one. Because the Master Settlement revenues are not deposited until April each year, legislative action to authorize carry forward is essential so the State can avoid a negative cash flow situation.

The State Tobacco Control Program develops its annual management plan every year depending on the level of appropriations authorized by the legislature. The Tobacco Control Program staff, Alaska Division of Public Health (ADPH), work on an on-going basis closely with members of the Alaska Tobacco Control Alliance (ATCA) to monitor the burden of

FISCAL NOTE  
FN #

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. LL170-DHSS-DPH-06-22-04

ANALYSIS CONTINUATION  
Analysis Continued:

tobacco on Alaskans, evaluate existing program activities, assess "Best Practices Guidelines" from the National Centers for Disease Control and Prevention, and identify new opportunities to target prevention programs. Working together, the ATCA and Tobacco Control Program staff develops detailed recommendations to the Director, ADPH and Commissioner, Department of Health and Social Services for allocating appropriated resources.

If the legislature passes the proposed tobacco excise tax increase and authorizes 8.9 percent of annual proceeds to be deposited to the Tobacco Use Education and Cessation Fund, then the program will be able to significantly increase prevention program activities. To do so, the Tobacco Control Program staff will meet with our colleagues of the Alaska Tobacco Control Alliance to plan for ramping up the program beginning in FY06. We propose maintaining program spending in FY05 at the currently authorized level of \$4,669,200. This will allow the program to achieve a positive cash flow situation in FY05 with adequate funding to carry forward in FY06 to assure a continued positive cash flow.

We propose a FY06 and FY07 budget at a level of \$7,500,000 with an annual carry forward of \$2,600,000. This level of funding will protect the program from negative cash flow. This will bring us closer to, the Center for Disease Control's Best Practices minimum recommended expenditure level of \$8,100,000. Actual revenues and expenditures will be monitored to possibly allow for increased program funding to this recommended level in FY08 or beyond.

See attachments A-E.

**Tobacco Use, Education and Cessation Fund Cash Flow Without Tobacco Tax**

<b>FY05</b>	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June	FY05 Total
Projected Carryforward of Revenue from FY04	397.0												397.0
Dept of Law Estimated Tobacco Settlement Deposit to Tobacco Educ/Cess Fund *										4,300.0			4,300.0
Projected Monthly Expenditures **	531.0	257.2	257.2	689.4	235.4	235.4	627.0	235.4	235.4	622.0	302.9	312.9	4,541.2
Cash Balance in Tobacco Fund w/out Tax ***	(134.0)	(391.2)	(648.4)	(1,337.8)	(1,573.2)	(1,808.6)	(2,435.6)	(2,671.0)	(2,906.4)	771.6	468.7	155.8	

<b>FY06</b>	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June	FY06 Total
Projected Carryforward from FY05	155.8												155.8
Dept of Law Estimated Tobacco Settlement Deposit to Tobacco Educ/Cess Fund *										3,500.0			3,500.0
Projected Monthly Expenditures **	427.5	207.1	207.1	555.0	189.5	189.5	504.8	189.5	189.5	500.7	243.8	251.9	3,655.8
Cash Balance in Tobacco Fund w/out Tax ***	(271.7)	(478.7)	(685.8)	(1,240.8)	(1,430.3)	(1,619.8)	(2,124.5)	(2,314.0)	(2,503.5)	495.7	251.9	(0.0)	

<b>FY07</b>	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June	FY07 Total
Projected Carryforward from FY06	(0.0)												(0.0)
Dept of Law Estimated Tobacco Settlement Deposit to Tobacco Educ/Cess Fund *										3,500.0			3,500.0
Projected Monthly Expenditures **	409.3	198.2	198.2	531.3	181.4	181.4	483.2	181.4	181.4	479.4	233.5	241.2	3,500.0
Cash Balance in Tobacco Fund w/out Tax ***	(409.3)	(607.5)	(805.7)	(1,337.0)	(1,518.5)	(1,699.9)	(2,183.1)	(2,364.6)	(2,546.0)	474.6	241.2	(0.0)	

\* Dept of Law revenue estimate based on the National Association of Attorneys General estimate for Alaska's Master Settlement Revenues. The official Dept of Revenue forecast for FY05 is \$4.4 million.

\*\* Projected Monthly Expenditures based on normal cash flow for grants/contracts/staff costs. FY05 total expenditures based on current program management plan. FY06 & FY07 total expenditures equal to total revenue projected for year. These projections also assume that Tobacco Educ/Cess Funding for Community Health Grants (\$500.0 in FY05) is switched to GF in FY06 budget, leaving all Tobacco Funds in direct support of the Tobacco Program.

\*\*\* No payments can be made from the Tobacco Use, Education and Cessation Fund when there is zero or negative cash balance. When a negative balance is shown above, another source of funding must be utilized until a revenue deposit is made into the Tobacco Educ/Cess Fund. This would likely delay the scheduled monthly expenditures and possibly impact the total expenditure level in the Tobacco Control Program.

**Tobacco Use, Education and Cessation Fund Cash Flow With Proposed Tobacco Tax Receipts**

<b>FY05</b>	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June	FY05 Total
Projected Carryforward of Revenue from FY04	397.0												397.0
Dept of Law Estimated Tobacco Settlement Deposit to Tobacco Educ/Cess Fund *										4,300.0			4,300.0
Projected Cigarette Tax Deposits to Tobacco Educ/Cess Fund**					379.2	377.1	341.5	267.3	300.5	293.7	329.7	293.3	2,582.3
<b>Total Monthly Tobacco Educ/Cess Fund Revenue</b>	<b>397.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>379.2</b>	<b>377.1</b>	<b>341.5</b>	<b>267.3</b>	<b>300.5</b>	<b>4,593.7</b>	<b>329.7</b>	<b>293.3</b>	<b>7,279.3</b>
Projected Monthly Expenditures ***	546.0	264.4	264.4	708.8	242.0	242.0	644.7	242.0	242.0	639.5	311.4	321.7	4,669.2
<b>Cash Balance in Tobacco Fund with Tax ****</b>	<b>(149.0)</b>	<b>(413.4)</b>	<b>(677.9)</b>	<b>(1,386.7)</b>	<b>(1,249.5)</b>	<b>(1,114.5)</b>	<b>(1,417.6)</b>	<b>(1,392.4)</b>	<b>(1,333.9)</b>	<b>2,020.3</b>	<b>2,638.5</b>	<b>2,610.1</b>	

<b>FY06</b>	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June	FY06 Total
Projected Carryforward from FY05	2,610.1												2,610.1
Dept of Law Estimated Tobacco Settlement Deposit to Tobacco Educ/Cess Fund *										3,500.0			3,500.0
Projected Cigarette Tax Deposits to Tobacco Educ/Cess Fund**	286.6	348.9	374.3	407.9	379.2	377.1	341.5	267.3	300.5	293.7	329.7	293.3	4,000.0
<b>Total Monthly Tobacco Educ/Cess Fund Revenue</b>	<b>2,896.7</b>	<b>348.9</b>	<b>374.3</b>	<b>407.9</b>	<b>379.2</b>	<b>377.1</b>	<b>341.5</b>	<b>267.3</b>	<b>300.5</b>	<b>3,793.7</b>	<b>329.7</b>	<b>293.3</b>	<b>10,110.1</b>
Projected Monthly Expenditures ***	877.6	425.1	425.1	1,139.3	389.0	389.0	1,030.2	389.0	389.0	1,028.0	500.6	517.1	7,505.1
<b>Cash Balance in Tobacco Fund with Tax ****</b>	<b>2,019.1</b>	<b>1,943.0</b>	<b>1,892.2</b>	<b>1,160.7</b>	<b>1,150.9</b>	<b>1,130.0</b>	<b>444.3</b>	<b>322.5</b>	<b>234.0</b>	<b>2,999.7</b>	<b>2,828.8</b>	<b>2,605.0</b>	

<b>FY07</b>	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June	FY07 Total
Projected Carryforward from FY06	2,605.0												2,605.0
Dept of Law Estimated Tobacco Settlement Deposit to Tobacco Educ/Cess Fund *										3,500.0			3,500.0
Projected Cigarette Tax Deposits to Tobacco Educ/Cess Fund**	286.6	348.9	374.3	407.9	379.2	377.1	341.5	267.3	300.5	293.7	329.7	293.3	4,000.0
<b>Total Monthly Tobacco Educ/Cess Fund Revenue</b>	<b>2,891.6</b>	<b>348.9</b>	<b>374.3</b>	<b>407.9</b>	<b>379.2</b>	<b>377.1</b>	<b>341.5</b>	<b>267.3</b>	<b>300.5</b>	<b>3,793.7</b>	<b>329.7</b>	<b>293.3</b>	<b>10,105.0</b>
Projected Monthly Expenditures ***	877.6	425.1	425.1	1,139.3	389.0	389.0	1,036.2	389.0	389.0	1,027.9	500.6	517.1	7,505.0
<b>Cash Balance in Tobacco Fund with Tax ****</b>	<b>2,014.0</b>	<b>1,937.9</b>	<b>1,887.1</b>	<b>1,155.7</b>	<b>1,145.9</b>	<b>1,133.9</b>	<b>439.2</b>	<b>317.5</b>	<b>228.9</b>	<b>2,094.7</b>	<b>2,823.8</b>	<b>2,600.0</b>	

\* Dept of Law revenue estimate based on the National Association of Attorneys General estimate for Alaska's Master Settlement Revenues. The official Dept of Revenue forecast for FY05 is \$4.4 million.

\*\* Cigarette Tax Deposits based on Dept of Revenue estimate with 2 month lag after effective date of tax bill before first deposit made to Tobacco Educ/Cess Fund.

\*\*\* Projected Monthly Expenditures based on normal cash flow for grants/contracts/staff costs. FY05 total expenditures based on total authorized by Legislature. FY06 & FY07 total expenditures assume a cash balance in the Fund at the end of the fiscal year sufficient to maintain positive cash flow in the Tobacco Educ/Cess Fund until the Master Settlement deposit the following April. These projections also assume that Tobacco Educ/Cess Funding for Community Health Grants (\$500.0 in FY05) is switched to GF in FY06 budget, leaving all Tobacco Funds in direct support of the Tobacco Program.

This projection does not show expenditures equal to the CDC recommended minimum Tobacco Prevention and Control Program of \$8.1 million for Alaska. However, if expansion of the Tobacco Program in FY06 is slower than projected, this would result in additional carryforward (in excess of \$2.6 million as shown), which could potentially allow for increased program expenditures in future years.

\*\*\*\* No payments can be made from the Tobacco Use, Education and Cessation Fund when there is zero or negative cash balance. When a negative balance is shown above in FY05, another source of funding must be utilized until a revenue deposit is made into the Tobacco Educ/Cess Fund.

Proposed FY06-07 Tobacco Education/Cessation Fund Budgets/Revenues with Tobacco Tax

	Tobacco Use, Education and Cessation Fund
<b><i>FY2005 Conference Committee Tobacco Educ/Cess Fund Budget:</i></b>	
Public Health: Tobacco Prevention and Control	3,315.3
Public Health: Epidemiology	242.7
Public Health: Community Health Grants	500.0
Behavioral Health: Behavioral Health Admin (Enforcement)	611.2
<b>Total FY2005 Budget</b>	<b>4,669.2</b>
<b><i>FY2005 Revenues:</i></b>	
Dept of Law revenue estimate from Nat'l Assoc of Attorneys General *	4,300.0
Carryforward of FY04 Revenue	397.0
Cigarette Tax Deposits to Tobacco Fund (Estimated to be Rcvd by June 30, 2005)	2,582.3
<b>Total Estimated FY2005 Revenue</b>	<b>7,279.3</b>
<b>Net Revenue Available to Carryforward to FY06</b>	<b>2,610.1</b>

\* Dept of Revenue Spring 2004 Revenue Forecast is \$4.4 million. Dept of Law reports that the National Assoc of Attorneys General that administer the settlement are forecasting a decrease in revenues in FY05-06.

	Tobacco Use, Education and Cessation Fund
<b><i>FY2006 Proposed Tobacco Educ/Cess Fund Budget: **</i></b>	
Public Health: Tobacco Prevention and Control (current funding)	3,315.3
Public Health: Tobacco Prevention and Control (net effect of decrease in Master Settlement revenue) ***	(670.3)
Public Health: Tobacco Prevention and Control (proposed increase)	4,000.0
Public Health: Epidemiology	245.0
Behavioral Health: Behavioral Health Admin (Enforcement)	615.0
<b>Total Proposed FY2006 Budget</b>	<b>7,505.0</b>
<b><i>FY2006 Revenues</i></b>	
Dept of Law Revenue Estimate from Nat'l Assoc of Attorneys General	3,500.0
Carryforward of FY05 Revenue	2,610.1
Cigarette Tax Deposits to Tobacco Fund (Estimated to be Rcvd 7/1/05-6/30/06)	4,000.0
<b>Total Estimated FY2006 Revenue</b>	<b>10,110.1</b>
<b>Net Revenue Available to Carryforward to FY07</b>	<b>2,605.1</b>

\*\* FY06 and FY07 Proposed Budgets are based on eliminating Tobacco Educ/Cess funding from the Community Health Grants component by replacing that source with General Funds (\$500.0).

\*\*\* The latest revenue estimates from the Nat'l Assoc of Attorneys General forecast a decrease in Tobacco Settlement revenue. This decrease in expenditure authority keeps the DHSS program in balance with the total revenue anticipated.)

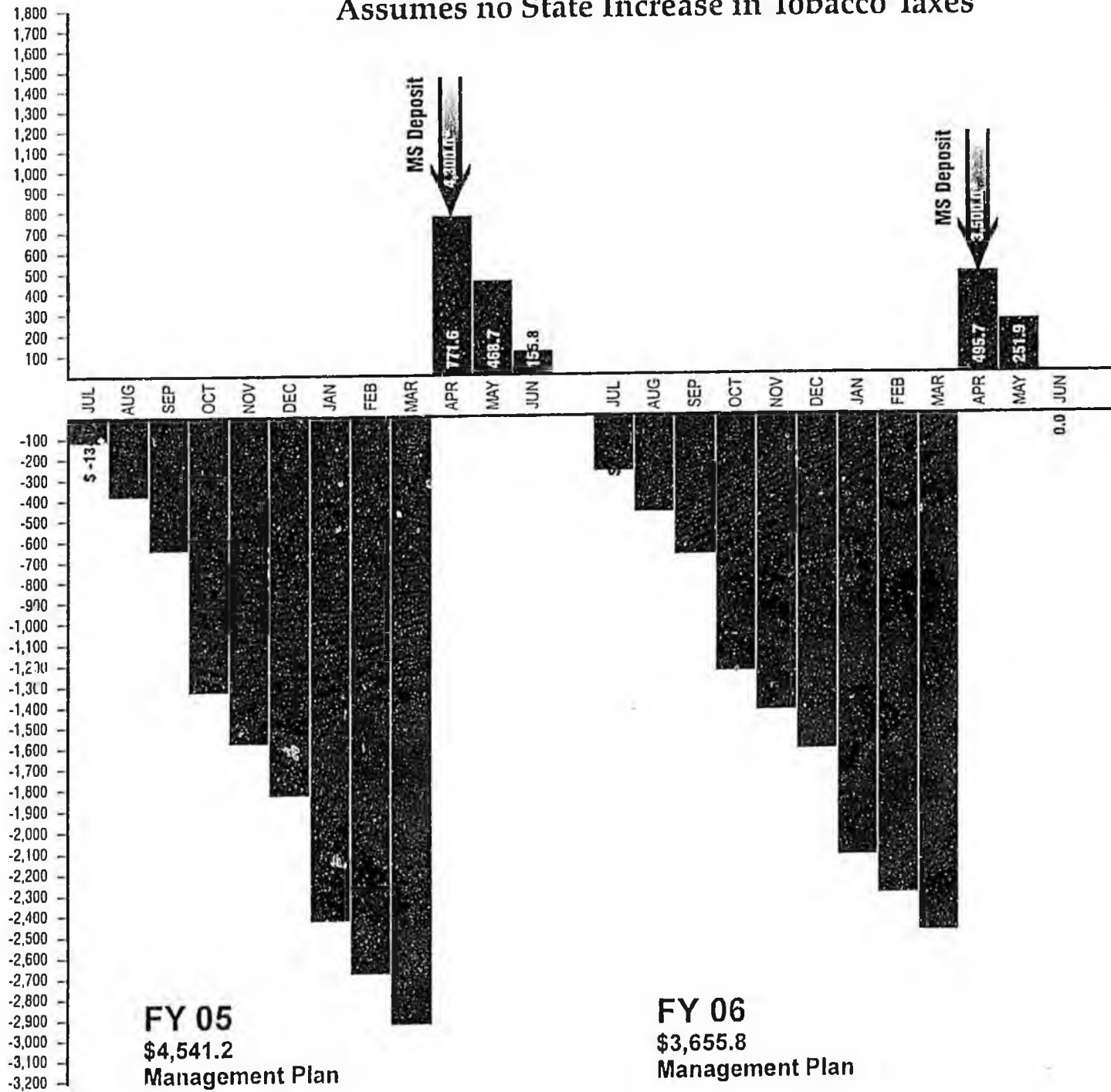
	Tobacco Use, Education and Cessation Fund
<b><i>FY2007 Proposed Tobacco Educ/Cess Fund Budget: **</i></b>	
Public Health: Tobacco Prevention and Control (current funding)	3,315.3
Public Health: Tobacco Prevention and Control (net effect of decrease in Master Settlement revenue) ***	(670.3)
Public Health: Tobacco Prevention and Control (proposed FY06 Tobacco Tax increase)	4,000.0
Public Health: Epidemiology	245.0
Behavioral Health: Behavioral Health Admin (Enforcement)	615.0
<b>Total Proposed FY2007 Budget</b>	<b>7,505.0</b>
<b><i>FY2007 Revenues</i></b>	
Dept of Law Revenue Estimate from Nat'l Assoc of Attorneys General	3,500.0
Carryforward of FY06 Revenue	2,605.1
Cigarette Tax Deposits to Tobacco Fund (Estimated to be Rcvd 7/1/06-6/30/07)	4,000.0
<b>Total Estimated FY2006 Revenue</b>	<b>10,105.1</b>
<b>Net Revenue Available to Carryforward to FY08</b>	<b>2,600.1</b>

\*\* FY06 and FY07 Proposed Budgets are based on eliminating Tobacco Educ/Cess funding from the Community Health Grants component by replacing that source with General Funds (\$500.0).

\*\*\* The latest revenue estimates from the Nat'l Assoc of Attorneys General forecast a decrease in Tobacco Settlement revenue. This decrease in expenditure authority keeps the DHSS program in balance with the total revenue anticipated.)

# Tobacco Revenue Cash Flow 2005-06

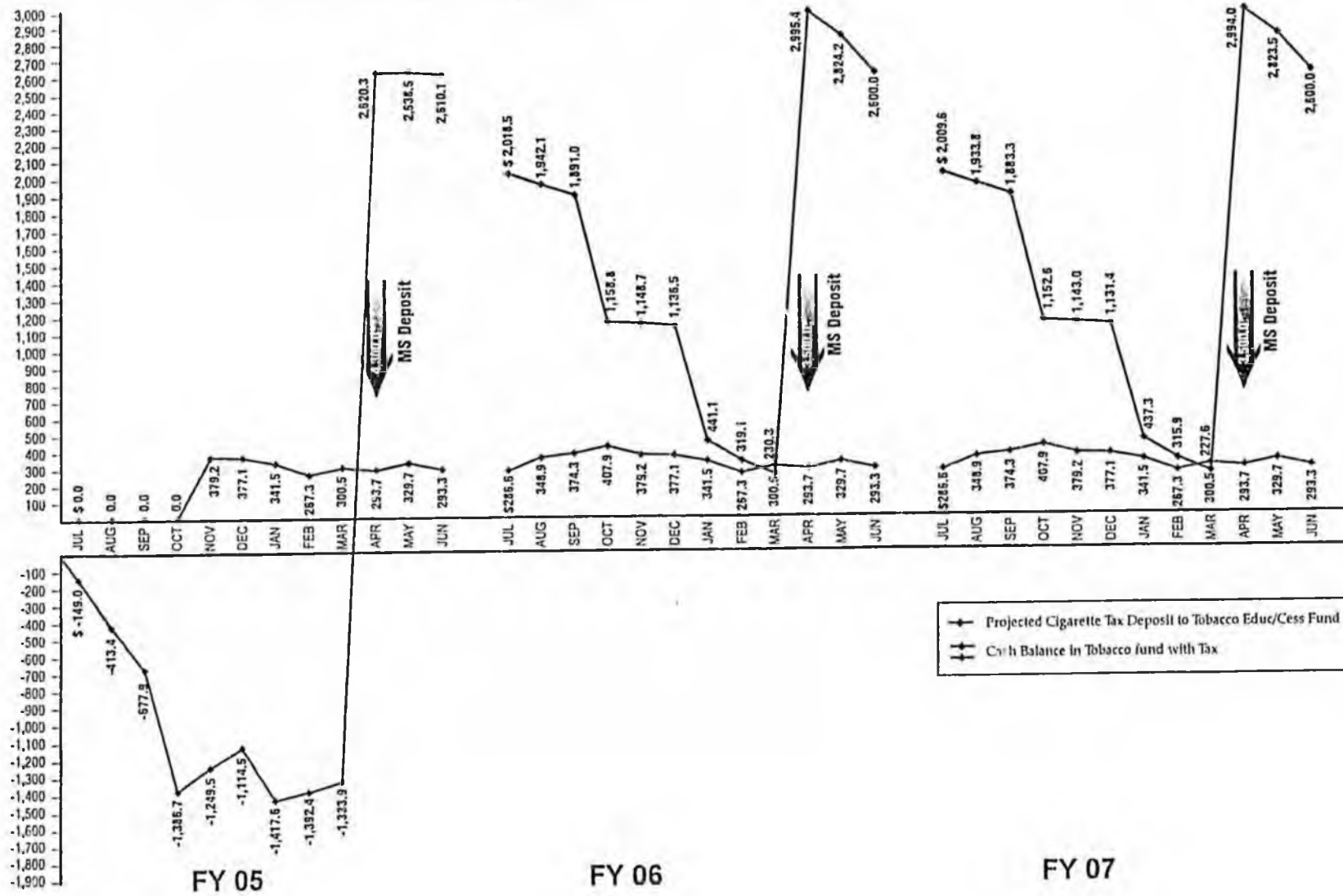
Assumes no State Increase in Tobacco Taxes



**FY 05**  
**\$4,541.2**  
**Management Plan**

**FY 06**  
**\$3,655.8**  
**Management Plan**

## Tobacco Revenue Cash Flow 2005-07 with State Increase in Tobacco Tax



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June 21, 2004

The Honorable Pete Kott  
Speaker of the House  
Alaska State Legislature  
State Capitol, Room 208  
Juneau, AK 99801-1182

Dear Speaker Kott:

Under the authority of article III, section 18 of the Alaska Constitution, I am transmitting a bill that increases the cigarette excise tax by \$1.00 a pack and makes other changes in our current statutes. The tax on "other tobacco products" such as smokeless tobacco would be increased from 75 percent to 100 percent of the wholesale cost.

Passage of these tax increases is supported by the health benefits alone. Tobacco is the number one preventable cause of death, disability, and chronic illness in Alaska. It is public health enemy number one. I want these tax increases to reduce consumption of tobacco products in Alaska. Such a decrease will benefit adult smokers who decide to quit, teenagers and pre-teens who decide to quit or not start smoking, and Alaskans that choose not to smoke but suffer the ill effects of second hand smoke.

Current estimates are that passage of the cigarette tax should result in a 15 percent drop in illegal teen smoking. A 15 percent drop in youth smoking rates from current levels translates into 1,800 lives saved from premature death due to tobacco addiction. My hope is that even more Alaska teens decide not to try smoking or break their addiction to cigarettes.

Among current adult smokers, 3,500 will quit smoking because of the tax, and of those, 800 will be saved from a smoking-caused death. Smoking among expectant mothers would also be reduced significantly; resulting in 850 babies being spared from exposure to maternal smoking prior to delivery during the next five years.

Alaska Natives should particularly benefit from reduced smoking. While smoking rates are declining within the U.S. general population, the rate of smoking is unchanged among Alaska Native adults and, at 44 percent, is

The Honorable Pete Kott  
June 21, 2004  
Page 2 of 2

almost double that of non-Natives. Currently, 44 percent of Alaska Native high school students smoke almost four times the rate among non-Native students. Lung cancer, the leading cause of cancer deaths, is increasing at an alarming rate among Alaska Natives of both sexes. Cardiovascular disease, including heart disease and stroke, is also linked with tobacco use, and kills approximately 120 Alaska Natives each year.

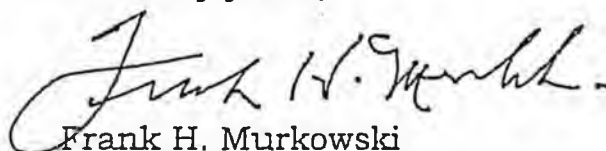
In order to ensure we achieve these health benefits, I have included language that earmarks part of the tax revenues for the smoking education, tobacco use prevention, and tobacco control program. At the level I have included, Alaska would become one of five states that fund tobacco cessation programs at or above the level recommended by the Centers for Disease Control.

I have also included a significant increase in the tax on smokeless tobacco. Other forms of tobacco such as chew or cigars also present serious risks to the health of users. For example, smokeless tobacco users may be up to twice as likely as non-users to die from heart disease and other cardiovascular conditions due to increased blood pressure.

There is also an important fiscal benefit in this bill. The new revenues generated by the tax increases will help reimburse a portion of the approximately \$270 million in annual costs for direct medical expenses and lost productivity attributed to tobacco use in Alaska. The financial burden all Alaskans are stuck with because some Alaskans smoke should be reduced. This bill targets users and asks them to pay a bit more of the costs they impose on all Alaskans. I believe many Alaskans would argue they should not be stuck with any costs for someone else's voluntary choice to use a dangerous product.

Given the health impact, cost savings, and revenue to be generated from the proposed tobacco tax, I urge your support for this legislation.

Sincerely yours,



Frank H. Murkowski  
Governor

Enclosure

## Special Session Tobacco Tax Bill

### Sectional Analysis Departments of Revenue and Law

- Sections 1, 16:** Section 1 outlines the intent by the legislature to provide funding for tobacco control programs at the minimum level recommended by the U.S. Department of Health and Human Services from tobacco tax revenues collected by the state. Section 16 implements this intent by taking 8.9% of annual cigarette tax revenues levied under AS 43.50.190(a) to be deposited into the tobacco use education and cessation fund.
- Sections 2-4:** These sections raise the various cigarette license fees to \$50—to make them the same as the current license fee for distributors.
- Sections 5, 10-13:** These sections make technical corrections to the wholesaler-distributor cigarette license type. They also ensure that in-state individuals and retailers are not double-taxed on product that is sold to them by an entity holding a wholesaler-distributor license.
- Section 6:** This section requires unlicensed entities that bring cigarettes into the state upon which a tax stamp is not affixed to pay the cigarette excise tax and remit it to the department each month.
- Sections 7 and 15:** These sections exempt the first 400 cigarettes (2 cartons) that an individual personally transports into the state each month from the cigarette tax.
- Section 8:** This section changes the definition of a class A misdemeanor for violations of the cigarette shipping restrictions from one but fewer than 1,000 cigarettes to one but fewer than 5,000 cigarettes. This section also changes the definition of a class C felony for violations of the shipping restrictions from 1,000 or more cigarettes to 5,000 or more cigarettes. The intention in raising the threshold for a class C felony is to make it consistent with the current threshold for a class C felony theft, which requires the value of the property or services to be at least \$500. The tax that would be due on 5,000 cigarettes under this bill would be \$500.
- Section 9:** This section makes a person who shipped cigarettes to Alaska in violation of our cigarette shipping restrictions jointly and severally

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

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

- Section 27:** This section allows licensees with a physical location in the state and who have been in full compliance with cigarette tax statutes for the preceding 5 years to reduce their bond requirement from 200% to 100% of their monthly purchases of tax stamps when payment is made on a deferred payment basis.
- Section 28:** This section allows in-state cigarette licensees to maintain unstamped cigarette inventories if the licensee is in the business of making cigarette sales to customers outside the state and the licensee is properly licensed in the other states where it makes sales.
- Section 29:** This section allows in-state cigarette licensees to claim a credit for cigarette tax stamps affixed to packages of cigarettes that are sold outside the state provided the licensee is properly licensed in the other states where it makes sales and the licensee provides proof acceptable to the department that the stamped cigarettes were not consumed in Alaska.
- Section 30:** This is the forfeiture section which allows seizure of assets used by a person when the person commits, supported by a showing of probable cause, the crime of misconduct involving unstamped cigarettes in the first degree under AS 43.50.640. This section further outlines the types of assets that may be seized, procedures to be used to seize such assets, and procedures to be used in disposing of seized assets.
- Section 31:** This section changes the definition of misconduct involving unstamped cigarettes in the first degree from sales of or possession with intent to sell 1,000 or more unstamped cigarettes to sales of or possession with intent to sell 5,000 or more unstamped cigarettes.
- Section 32:** This section changes the definition of misconduct involving unstamped cigarettes in the second degree from sales of one but fewer than 1,000 unstamped cigarettes to sales of one but fewer than 5,000 unstamped cigarettes and from possession of one but fewer than 10,000 unstamped cigarettes to possession of 401 but fewer than 10,000 unstamped cigarettes. This section also includes importation or possession of one but fewer than 401 unstamped cigarettes as misconduct involving unstamped cigarettes in the second degree if the cigarettes are not possessed for personal consumption.

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

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

**Section 41:**

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

CSSB 368 Version I.A (As passed by Senate)	CSHB 538 Version S (House L&C)	Special Session Tobacco Tax Bill (Draft)
	Section 1. This section outlines the intent by the legislature to provide funding to tobacco control programs at minimum levels recommended by the U.S. Department of Health and Human Services from tobacco tax revenues collected by the state.	Section 1. This section outlines the intent by the legislature to provide funding to tobacco control programs at minimum levels recommended by the U.S. Department of Health and Human Services from tobacco tax revenues collected by the state.
	Section 2. This section increases the cigarette license fee for manufacturers from \$5 to \$50.	Section 2. This section increases the cigarette license fee for manufacturers from \$5 to \$50.
	Section 3. This section increases the cigarette license fee for vending machine operators from \$25 to \$50.	Section 3. This section increases the cigarette license fee for vending machine operators from \$25 to \$50.
Section 1. This section increases the cigarette license fee for direct-buying retailers from \$25 to \$50. This increase makes the license fee the same for distributors and direct-buying retailers who are engaged in substantially similar activities.	Section 4. This section increases the cigarette license fee for direct-buying retailers from \$25 to \$50. This increase makes the license fee the same for distributors and direct-buying retailers who are engaged in substantially similar activities.	Section 4. This section increases the cigarette license fee for direct-buying retailers from \$25 to \$50. This increase makes the license fee the same for distributors and direct-buying retailers who are engaged in substantially similar activities.
Section 2. This section is a technical correction to the wholesaler-distributor cigarette license type. This correction ensures that in-state individuals and retailers are not double taxed on product that is sold to them by an entity holding a wholesaler-distributor license.	Section 5. This section is a technical correction to the wholesaler-distributor cigarette license type. This correction ensures that in-state individuals and retailers are not double taxed on product that is sold to them by an entity holding a wholesaler-distributor license.	Section 5. This section is a technical correction to the wholesaler-distributor cigarette license type. This correction ensures that in-state individuals and retailers are not double taxed on product that is sold to them by an entity holding a wholesaler-distributor license.
Section 3. This section requires unlicensed entities that bring cigarettes into the state upon which a tax stamp is not affixed to pay the cigarette excise tax and remit it to the department each month.	Section 6. This section requires unlicensed entities that bring cigarettes into the state upon which a tax stamp is not affixed to pay the cigarette excise tax and remit it to the department each month.	Section 6. This section requires unlicensed entities that bring cigarettes into the state upon which a tax stamp is not affixed to pay the cigarette excise tax and remit it to the department each month.
	Section 7. This section allows individuals to personally transport up to 600 cigarettes (3 cartons) each month without incurring cigarette tax liability imposed by AS 43.50.090.	Section 7. This section allows individuals to personally transport up to 400 cigarettes (2 cartons) each month without incurring cigarette tax liability imposed by AS 43.50.090.

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

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

CSSB 368 Version I.A (As passed by Senate)	CSHB 538 Version S (House L&C)	Special Session Tobacco Tax Bill (Draft)
	state's shipping law, even if such shippers have no physical presence in the state.	state's shipping law, even if such shippers have no physical presence in the state.
Section 4. This section is a technical correction to the definition of a "buyer" that ensures that an individual bringing cigarettes into the state that were purchased from a licensed wholesaler-distributor are not again subject to tax.	Section 10. This section is a technical correction to the definition of a "buyer" that ensures that an individual bringing cigarettes into the state that were purchased from a licensed wholesaler-distributor are not again subject to tax.	Section 10. This section is a technical correction to the definition of a "buyer" that ensures that an individual bringing cigarettes into the state that were purchased from a licensed wholesaler-distributor are not again subject to tax.
Section 5. This section is a technical correction to the definition of "direct-buying retailer" that ensures that a retailer bringing cigarettes into the state that were purchased from a licensed wholesaler-distributor are not again subject to tax.	Section 11. This section is a technical correction to the definition of "direct-buying retailer" that ensures that a retailer bringing cigarettes into the state that were purchased from a licensed wholesaler-distributor are not again subject to tax.	Section 11. This section is a technical correction to the definition of "direct-buying retailer" that ensures that a retailer bringing cigarettes into the state that were purchased from a licensed wholesaler-distributor are not again subject to tax.
Section 6. This section is a technical correction to the definition of "distributor" that ensures that a distributor bringing cigarettes into the state that were purchased from a licensed wholesaler-distributor are not again subject to tax.	Section 12. This section is a technical correction to the definition of "distributor" that ensures that a distributor bringing cigarettes into the state that were purchased from a licensed wholesaler-distributor are not again subject to tax.	Section 12. This section is a technical correction to the definition of "distributor" that ensures that a distributor bringing cigarettes into the state that were purchased from a licensed wholesaler-distributor are not again subject to tax.
Section 7. This section is a technical correction to the definition of "wholesaler-distributor" that ensures that entities outside the state who make sales of cigarettes into the state are properly licensed.	Section 13. This section is a technical correction to the definition of "wholesaler-distributor" that ensures that entities outside the state who make sales of cigarettes into the state are properly licensed.	Section 13. This section is a technical correction to the definition of "wholesaler-distributor" that ensures that entities outside the state who make sales of cigarettes into the state are properly licensed.
Section 8. This section increases the tax on cigarettes by 50 mills or \$1.00 per pack of 20. The increase in this tax will all go into the general fund.	Section 14. This section increases the tax on cigarettes by 50 mills or \$1.00 per pack of 20. The increase in this tax will all go into the general fund.	Section 14. This section increases the tax on cigarettes by 50 mills or \$1.00 per pack of 20. The increase in this tax will all go into the general fund.
	Section 15. This section allows individuals to personally transport up to 600 cigarettes (3 cartons) each month without incurring cigarette tax liability imposed by AS 43.50.190.	Section 15. This section allows individuals to personally transport up to 400 cigarettes (2 cartons) each month without incurring cigarette tax liability imposed by AS 43.50.190.

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

CSSB 368 Version I.A (As passed by Senate)	CSHB 538 Version S (House L&C)	Special Session Tobacco Tax Bill (Draft)
Section 15. This section changes the definition of "licensee" in the tobacco products statutes to include the new "buyer" license type.		Section 24. This section changes the definition of "licensee" in the tobacco products statutes to include the new "buyer" license type.
Section 16. This section provides a definition for "buyer" in the tobacco products statutes.		Section 25. This section provides a definition for "buyer" in the tobacco products statutes.
Section 17. This section allows a licensee to request that the department replace cigarette tax stamps that were lost or damaged in transit.	Section 18. This section allows a licensee to request that the department replace cigarette tax stamps that were lost or damaged in transit.	Section 26. This section allows a licensee to request that the department replace cigarette tax stamps that were lost or damaged in transit.
Section 18. This section allows licensees with a physical location in the state and who have been in full compliance with cigarette tax statutes for the preceding 5 years to reduce their bond requirement from 200% to 100% of their monthly purchases of cigarette tax stamps when payment is made on a deferred payment basis.	Section 19. This section allows licensees with a physical location in the state and who have been in full compliance with cigarette tax statutes for the preceding 5 years to reduce their bond requirement from 200% to 100% of their monthly purchases of stamps when payment is made on a deferred payment basis.	Section 27. This section allows licensees with a physical location in the state and who have been in full compliance with cigarette tax statutes for the preceding 5 years to reduce their bond requirement from 200% to 100% of their monthly purchases of stamps when payment is made on a deferred payment basis.
Section 19. This section allows in-state cigarette licensees to maintain unstamped cigarette inventories if the licensee is in the business of making cigarette sales to customers outside the state and the licensee is properly licensed in the other states where it makes sales.	Section 20. This section allows in-state cigarette licensees to maintain unstamped cigarette inventories if the licensee is in the business of making cigarette sales to customers outside the state and the licensee is properly licensed in the other states where it makes sales.	Section 28. This section allows in-state cigarette licensees to maintain unstamped cigarette inventories if the licensee is in the business of making cigarette sales to customers outside the state and the licensee is properly licensed in the other states where it makes sales.
Section 20. This section allows in-state cigarette licensees to claim a credit for cigarette tax stamps affixed to packages of cigarettes that are sold outside the state provided the licensee is properly licensed in the other states where it makes sales and the licensee provides proof acceptable to the department that the stamped cigarettes were not consumed in Alaska.	Section 21. This section allows in-state cigarette licensees to claim a credit for cigarette tax stamps affixed to packages of cigarettes that are sold outside the state provided the licensee is properly licensed in the other states where it makes sales and the licensee provides proof acceptable to the department that the stamped cigarettes were not consumed in Alaska.	Section 29. This section allows in-state cigarette licensees to claim a credit for cigarette tax stamps affixed to packages of cigarettes that are sold outside the state provided the licensee is properly licensed in the other states where it makes sales and the licensee provides proof acceptable to the department that the stamped cigarettes were not consumed in Alaska.

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

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

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

State of Alaska  
Epidemiology



# Bulletin

Recommendations  
and  
Reports

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November 4, 2003

## Youth Tobacco Use Falls

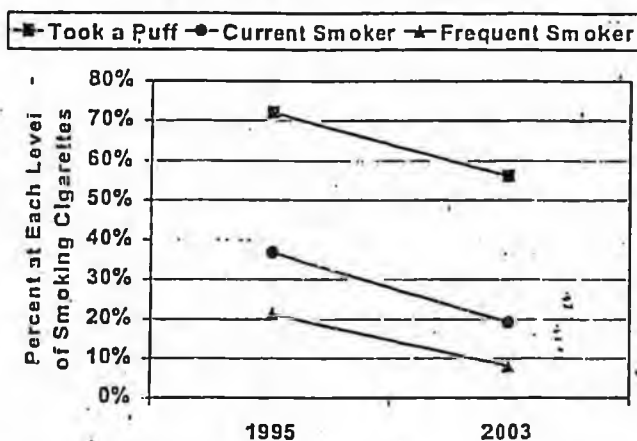
Results From the  
2003 Youth Risk Behavior Survey

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

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

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

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



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

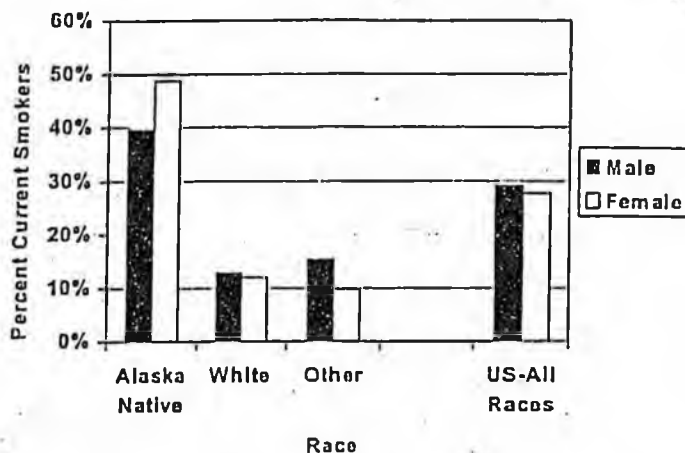
The YRBS, conducted jointly in Alaska by the Department of Health and Social Services and the Department of Education and Early Development, was administered to 1,500 Alaskan high school students who were randomly chosen from nearly every school district in the state. The 2003 YRBS is the first statistically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

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

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

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

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

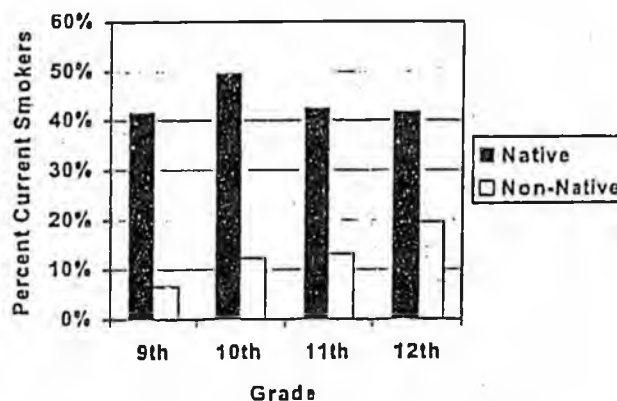


"Current Smoker" = smoked on at least 1 out of the last 30 days

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

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

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

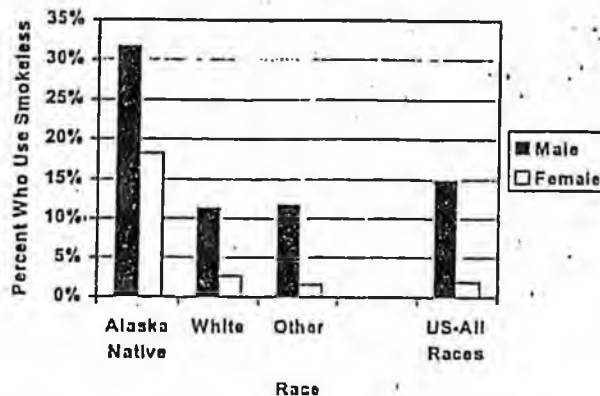


"Current Smoker" = smoked on at least 1 out of the last 30 days

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

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

	Alaska Native	White	Other Race
Male	32%	11%	12%
Female	18%	3%	2%
US YRBS, 2001 (all races) males = 15%, females = 2%			

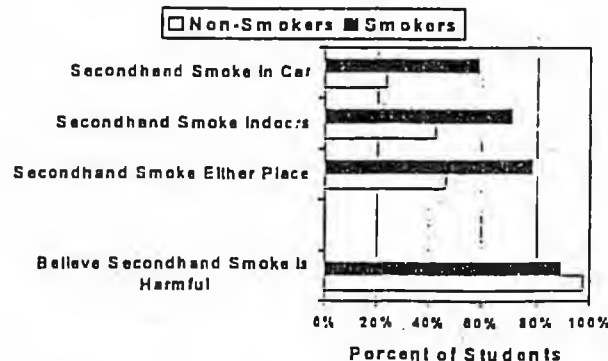


"Use Smokeless Tobacco" = used any smokeless tobacco product on at least 1 of the last 30 days

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

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

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



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

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

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

Components of the state tobacco program include:

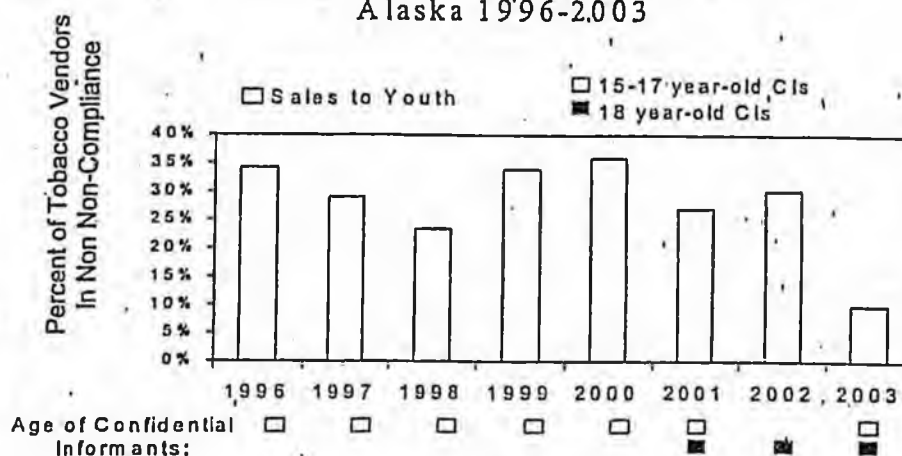
- An aggressive anti-tobacco media campaign aimed especially at curbing tobacco use by youth.
- A statewide excise tax designed to put tobacco products out of the reach of kids by boosting the price of cigarettes by \$1 per pack.
- Community-based advocacy programs that discourage the initiation of tobacco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

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

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

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

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



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

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

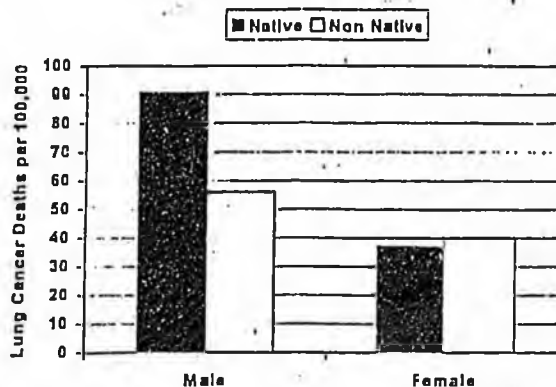
Reductions in youth smoking are critical in decreasing the long-term burden of heart disease, stroke, cancer and other chronic diseases in Alaska. Approximately three-quarters of smokers initiate tobacco use as adolescents.<sup>1</sup> Young people who are refusing to use tobacco today are unlikely to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

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

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

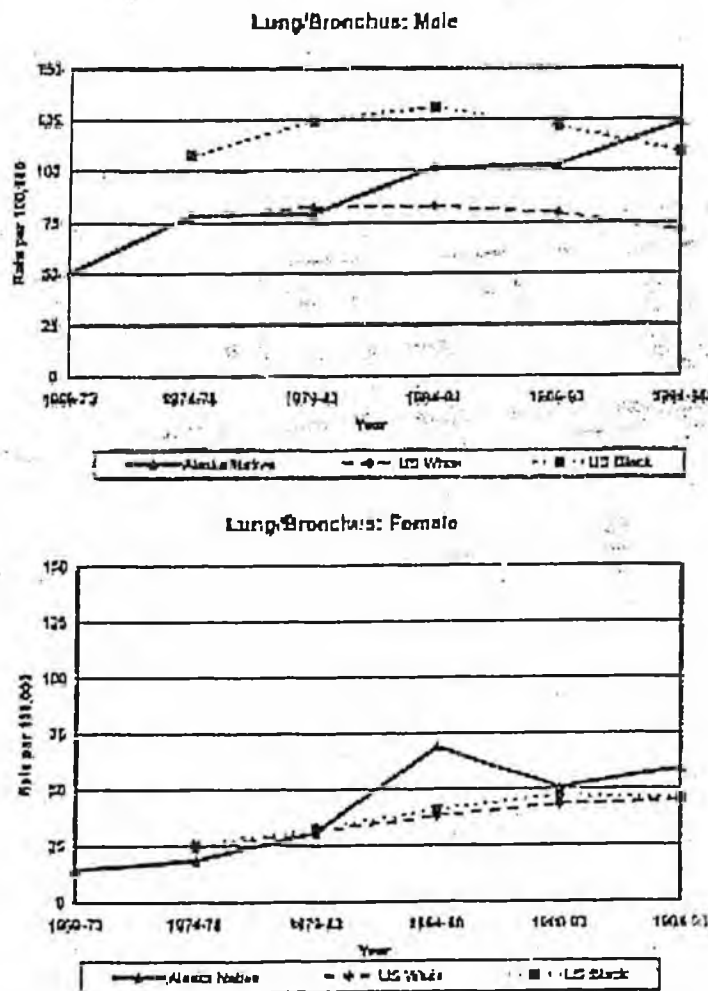
	Male	Female
Native	91.0	37.2
Non-Native	56.1	39.9

Data Source: Alaska Cancer Registry



Data Source: Alaska Cancer Registry

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



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

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

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

State of Alaska  
Epidemiology



# Bulletin

Recommendations  
and  
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# CAMPAIGN For TOBACCO-FREE Kids®

## BENEFITS FROM A CIGARETTE TAX INCREASE IN ALASKA

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

Smoking-caused costs in state per taxed pack sold: \$6.38  
Average retail price per pack: \$4.34 (state share from excise and sales taxes: \$1.00)

Total state Medicaid program smoking costs each year: \$60 million  
State cigarette tax revenue each year: \$40.4 million (2002)

Last Alaska Cigarette Tax Increase: 10/01/97

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

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

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

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

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

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

# CAMPAIGN FOR TOBACCO-FREE KIDS®

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

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

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

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

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

### Economic Research On Cigarette Tax Increases Reducing Smoking

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

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

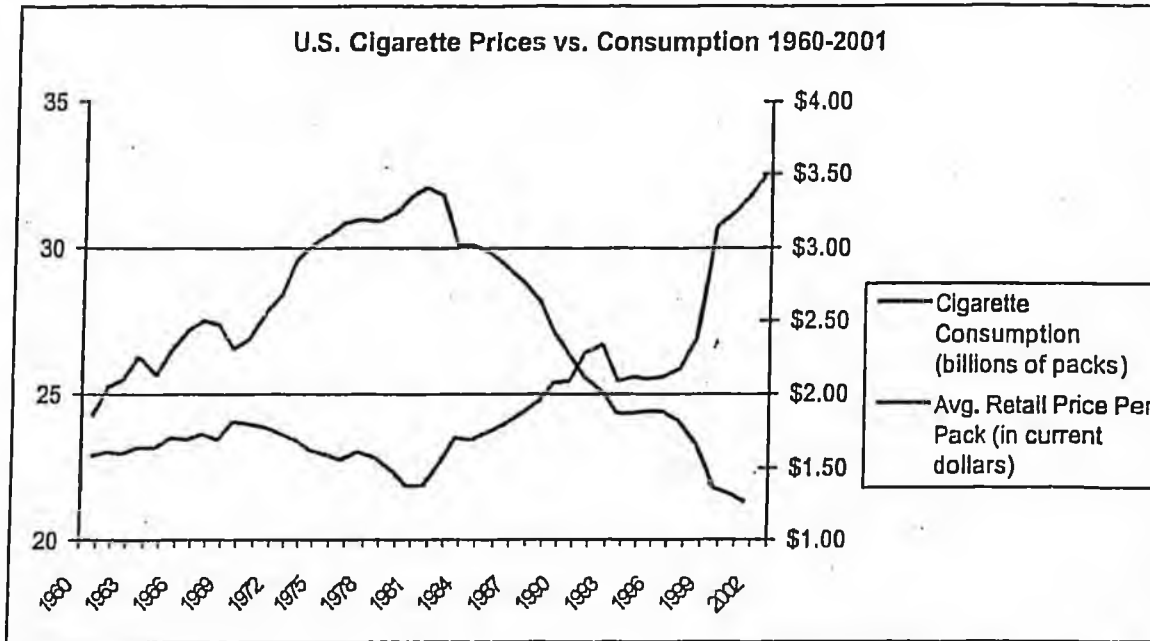
- Kids do not smoke more marijuana if they reduce their cigarette smoking. In fact, cigarette price increases not only reduce youth smoking but also reduce both the number of kids who smoke marijuana and the amount of marijuana consumed by continuing regular users.<sup>8</sup>

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

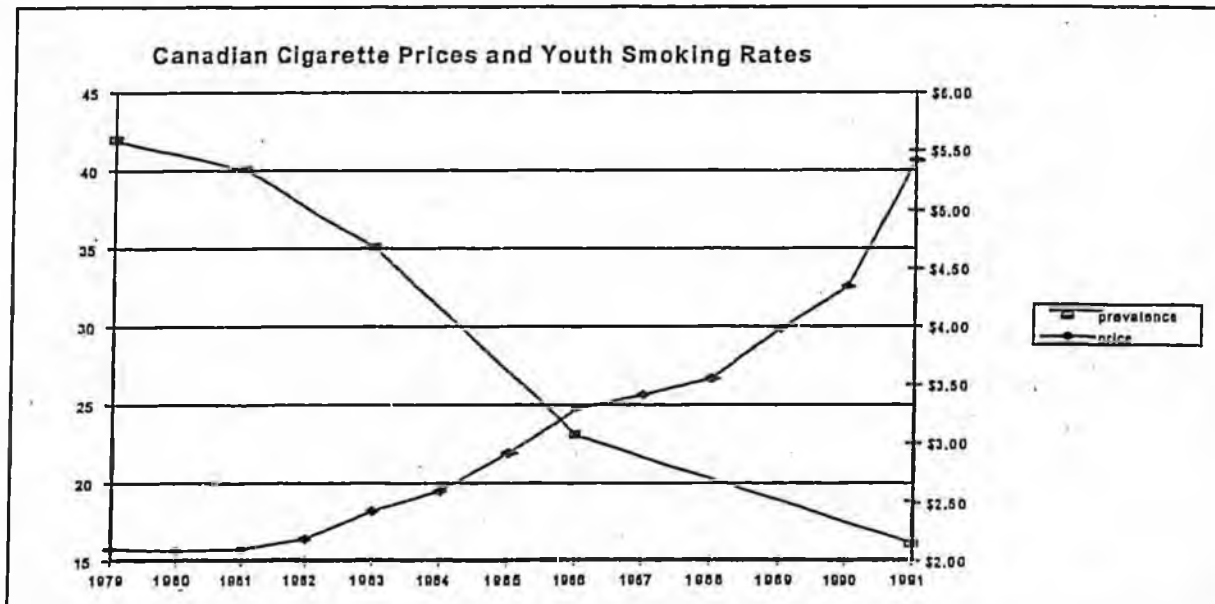
- The 2000 U.S. Surgeon General's Report, *Reducing Tobacco Use*, found that increasing the price of tobacco products would decrease the prevalence of tobacco use, particularly among kids and young adults, and that tobacco tax increases would lead to "substantial long-term improvements in health." From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

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

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



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



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

<sup>1</sup> R.J. Reynolds Executive D. S. Burrows, "Estimated Change In Industry Trend Following Federal Excise Tax Increase" RJR Document No. 501938846 -8849, September 20, 1982, [www.rjtdocs.com](http://www.rjtdocs.com).

<sup>2</sup> Philip Morris Research Executive Myron Johnston, "Teenage Smoking and the Federal Excise Tax on Cigarettes," PM Document No. 2001255224, September 17, 1981, [www.pmdocs.com](http://www.pmdocs.com).

<sup>3</sup> Philip Morris Executive, Jon Zoler, "Handling An Excise Tax Increase," PM Document No. 2022216179, September 3, 1987, [www.pmdocs.com](http://www.pmdocs.com).

<sup>4</sup> Philip Morris Executive Claude Schwab, "Cigarette Attributes and Quitting," PM Doc. 2045447810, March 4, 1993, [www.pmdocs.com](http://www.pmdocs.com).

<sup>5</sup> See, e.g., Tauras, J., et al., "Effects of Price and Access Laws on Teenage Smoking Initiation: A National Longitudinal Analysis," Bridging the Gap Research, ImpacTeen, April 24, 2001, and other price studies at [www.uic.edu/orgs/impacteen](http://www.uic.edu/orgs/impacteen). Chaloupka, F., "Macro-Social Influences: The Effects of Prices and Tobacco Control Policies on the Demand for Tobacco Products," *Nicotine and Tobacco Research*, 1999, and other price studies at <http://tigger.uic.edu/~fic>; Chaloupka, F. & R. Pacula, *An Examination of Gender and Race Differences in Youth Smoking Responsiveness to Price and Tobacco Control Policies*, National Bureau of Economic Research, Working Paper 6541, April 1998), <http://tigger.uic.edu/~fic>. Emery, S., et al., "Does Cigarette Price Influence Adolescent Experimentation?," *Journal of Health Economics* 20:261-270, 2001. Evans, W. & L. Huang, *Cigarette Taxes and Teen Smoking: New Evidence from Panels of Repeated Cross-Sections*, working paper, April 15, 1998, [www.bsos.umd.edu/econ/evans/wrkpap.htm](http://www.bsos.umd.edu/econ/evans/wrkpap.htm). Harris, J. & S. Chan, "The Continuum-of-Addiction: Cigarette Smoking in Relation to Price Among Americans Aged 15-29," *Health Economics Letters* 2(2) 3-12, February 1998, [www.mit.edu/people/jeffrey](http://www.mit.edu/people/jeffrey).

<sup>6</sup> See, e.g., U.S. Centers for Disease Control and Prevention (CDC), "Responses to Cigarette Prices By Race/Ethnicity, Income, and Age Groups - United States 1976-1993," *Morbidity and Mortality Weekly Report (MMWR)* 47(29): 605-609 July 31, 1998, [www.cdc.gov/mmwr](http://www.cdc.gov/mmwr). Chaloupka & Pacula, April 1998.

<sup>7</sup> Chaloupka, F., J. Tauras & M. Grossman, "Public Policy and Youth Smokeless Tobacco Use," *Southern Economic Journal* 64(2): 503-16, October 1997, <http://tigger.uic.edu/~fic>.

<sup>8</sup> Chaloupka, F., et al., *Do Higher Cigarette Prices Encourage Youth to Use Marijuana?*, National Bureau of Economic Research, Working Paper No. 6939, February 1999, <http://tigger.uic.edu/~fic>. Farrelly, M., et al.; "The Joint Demand for Cigarettes and Marijuana: Evidence from the National Household Surveys on Drug Abuse," *Journal of Health Economics* 20: 51-68, 2001. See, also, Campaign for Tobacco Free Kids fact sheet, *Smoking and Other Drug Use*, <http://tobaccofreekids.org/research/factsheets/pdf/0106.pdf>.

<sup>9</sup> Available at [www.cdc.gov/tobacco/sqrpage.htm](http://www.cdc.gov/tobacco/sqrpage.htm).

<sup>10</sup> Available at <http://www1.worldbank.org/tobacco/reports.htm>.

<sup>11</sup> Available at [www.nap.edu/books/0309060389/html/index.html](http://www.nap.edu/books/0309060389/html/index.html).

<sup>12</sup> Bill Neville, President, Canadian Tobacco Manufacturers Council, testifying before Legislative Committee F on Bill C-10, *An Act to Amend the Excise Tax Act and the Excise Act*, September 26, 1991.

<sup>13</sup> Canadian Cancer Society, et al., *Surveying the Damage: Cut Rate Tobacco Products and Public Health in the 1990s*, October 1999, [www.nsr-aadf.ca/english/oct95taxrep.html](http://www.nsr-aadf.ca/english/oct95taxrep.html).

# CAMPAIGN FOR TOBACCO-FREE Kids<sup>®</sup>

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

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

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

State	Cigarette Tax Per Pack	National Rank (1 = high)	Date of Last State Tax Increase	FY 2002 Cigarette Pack Sales (millions)	FY 2002 Cigarette Tax Revenue (millions)	Retail Price Per Pack With All Taxes	CDC State Smoking Costs Per Pack Sold	Adult Smokers	Youth Smoking Rate	Adult Smoking Rate	Adult Smoking Rank (1=low)
All States	\$0.70.5 avg.	///	///	20.4 billion	\$8.4 billion	\$3.72	\$7.18	48 million	28.1%	22.8%	///
Alabama	\$0.16.5	47th	7/1/84	378.5	\$61.7	\$3.15	\$7.33	794,359	23.7%	23.9%	30
Alaska	\$1.00	12th	10/1/97	40.4	\$40.4	\$4.34	\$6.38	113,852	33.9%	26.1%	44
Arizona	\$1.18	11th	11/26/02	276.1	\$158.6	\$4.44	\$8.35	809,192	19.0%	21.5%	12
Arkansas	\$0.59	26th	6/1/03	234.8	\$76.8	\$3.70	\$6.46	510,216	34.7%	25.6%	40
California	\$0.87	19th	1/1/99	1,234.90	\$1,065.2	\$4.11	\$11.38	4,234,953	21.6%	17.2%	2
Colorado	\$0.20	43rd	7/1/86	292.6	\$56.2	\$3.01	\$6.21	716,904	25.3%	22.4%	19
Connecticut	\$1.51	1st	3/15/03	227.4	\$149.8	\$4.74	\$9.16	533,286	25.6%	20.8%	8
Delaware	\$0.55	29th	7/31/03	113.4	\$27.0	\$2.98	\$4.32	147,842	24.2%	25.1%	38
Washington, DC	\$1.00	12th	1/1/03	25.4	\$16.3	\$4.14	\$16.02	95,070	14.7%	20.8%	9
Florida	\$0.33.9	41st	7/1/90	1,277.30	\$426.3	\$3.33	\$8.26	2,775,609	19.0%	22.5%	22
Georgia	\$0.37	37th	4/1/71	666.2	\$76.5	\$3.01	\$6.38	1,426,081	23.7%	23.7%	29
Hawaii	\$1.30	7th	7/1/03	62.6	\$62.6	\$4.57	\$10.15	188,649	24.5%	20.6%	7
Idaho	\$0.57	27th	6/1/03	83.6	\$23.4	\$3.38	\$6.03	182,210	19.7%	19.7%	3
Illinois	\$0.98	17th	7/1/02	885.2	\$464.3	\$4.02	\$8.53	2,165,027	34.0%	23.6%	27
Indiana	\$0.55.5	28th	7/1/02	742.1	\$110.3	\$3.52	\$5.14	1,239,174	31.6%	27.5%	47
Iowa	\$0.36	38th	6/1/91	249.7	\$88.0	\$3.22	\$6.40	486,776	32.7%	22.2%	15
Kansas	\$0.79	20th	1/1/03	208.8	\$47.9	\$3.75	\$6.98	438,544	26.1%	22.2%	16
Kentucky	\$0.03	50th	7/1/70	572.5	\$16.0	\$2.89	\$4.88	941,508	40.0%	30.9%	51
Louisiana	\$0.36	38th	7/1/02	433.3	\$98.1	\$3.21	\$7.57	805,796	33.3%	24.8%	37
Maine	\$1.00	12th	10/1/01	102.4	\$94.1	\$4.12	\$8.46	233,684	24.8%	24.0%	32
Maryland	\$1.00	12th	6/1/02	301	\$202.7	\$3.95	\$10.03	839,287	23.7%	21.3%	10
Massachusetts	\$1.51	1st	7/24/02	354	\$269.0	\$4.82	\$12.52	955,260	26.0%	19.7%	4
Michigan	\$1.25	9th	8/1/02	780.1	\$577.3	\$4.34	\$7.70	1,887,068	27.6%	25.7%	41
Minnesota	\$0.48	34th	7/1/92	352.8	\$166.1	\$3.49	\$7.22	806,434	28.9%	22.2%	17
Mississippi	\$0.18	45th	6/1/85	261.5	\$44.0	\$3.15	\$6.96	525,646	23.6%	25.4%	39
Missouri	\$0.17	46th	10/1/93	558.3	\$92.0	\$2.94	\$6.37	1,079,387	30.3%	25.9%	42
Montana	\$0.70	22nd	5/1/03	67.3	\$11.7	\$3.49	\$6.86	147,197	28.5%	21.9%	13

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

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

State	Cigarette Tax Per Pack	National Rank (1 = high)	Date of Last State Tax Increase	FY 2002 Cigarette Pack Sales (millions)	FY 2002 Cigarette Tax Revenue (millions)	Retail Price Per Pack With All Taxes	CDC State Smoking Costs Per Pack Sold	Adult Smokers	Youth Smoking Rate	Adult Smoking Rate	Adult Smoking Rank (1=low)
Nebraska	\$0.64	24th	10/1/02	132.4	\$43.5	\$3.82	\$7.19	257,248	29.0%	20.4%	5
Nevada	\$0.35	40th	7/1/89	173.1	\$58.8	\$3.26	\$6.64	401,344	25.2%	27.0%	46
New Hampshire	\$0.52	33rd	7/1/99	166.7	\$84.1	\$3.33	\$4.63	223,220	25.3%	24.1%	34
New Jersey	\$1.50	3rd	7/1/02	495.2	\$391.5	\$4.64	\$9.69	1,347,607	24.5%	21.3%	11
New Mexico	\$0.91	18th	7/1/03	95.4	\$19.5	\$3.98	\$7.75	313,203	36.2%	23.9%	31
New York	\$1.50	3rd	4/3/02	884.4	\$1,052.8	\$5.65	\$12.83	3,343,006	26.8%	23.4%	26
North Carolina	\$0.05	49th	8/1/91	806.6	\$30.8	\$3.02	\$5.90	1,576,084	27.8%	25.9%	43
North Dakota	\$0.44	35th	7/1/93	43.4	\$19.1	\$3.52	\$7.82	106,379	35.3%	22.1%	14
Ohio	\$0.55	29th	7/1/02	1,101.00	\$257.3	\$3.51	\$6.66	2,344,750	33.4%	27.7%	48
Oklahoma	\$0.23	42nd	6/1/87	352.8	\$57.1	\$3.09	\$6.01	736,789	24.0%	28.8%	50
Oregon	\$1.28	8th	11/1/02	231.3	\$155.0	\$3.80	\$7.58	527,849	22.0%	20.5%	6
Pennsylvania	\$1.00	12th	7/15/02	1,067.40	\$320.1	\$3.95	\$7.50	2,221,373	27.6%	24.6%	36
Rhode Island	\$1.50	3rd	7/1/03	79.1	\$78.1	\$4.65	\$8.15	192,119	24.8%	24.0%	33
South Carolina	\$0.07	48th	7/1/77	396.2	\$25.4	\$3.00	\$6.52	786,621	36.0%	26.2%	45
South Dakota	\$0.53	32nd	4/1/03	57.1	\$17.5	\$3.49	\$6.84	123,692	33.0%	22.4%	20
Tennessee	\$0.20	43rd	7/15/02	593.6	\$75.3	\$3.26	\$7.01	1,046,946	32.4%	24.4%	35
Texas	\$0.41	36th	7/1/90	1,244.30	\$497.5	\$3.49	\$7.79	3,367,139	24.7%	22.5%	23
Utah	\$0.69.5	23rd	5/6/02	91	\$47.1	\$3.73	\$5.99	201,425	8.3%	13.3%	1
Vermont	\$1.19	10th	7/1/03	57	\$24.5	\$4.11	\$6.18	103,332	23.7%	22.4%	21
Virginia	\$0.02.5	51st	9/1/66	662.1	\$15.0	\$2.95	\$5.57	1,201,557	NA	22.5%	24
Washington	\$1.42.5	6th	1/1/02	269.5	\$306.6	\$4.82	\$10.25	989,943	28.0%	22.6%	25
West Virginia	\$0.55	29th	5/1/03	199.5	\$32.6	\$3.37	\$7.02	396,478	39.2%	28.2%	49
Wisconsin	\$0.77	21st	10/1/01	408.3	\$288.8	\$3.89	\$7.14	942,801	27.1%	23.6%	28
Wyoming	\$0.60	25th	7/1/03	46.1	\$5.1	\$3.50	\$5.27	81,010	28.4%	22.2%	18
USA/U.S. Gov't	39	///	1/1/02	21.25 billion	\$7.0 billion	\$3.72	\$7.18	49 million	28.5%	22.8%	NA

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

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



June 22, 2004

The Honorable Pete Kott  
Speaker of the House of Representatives  
716 W. 4<sup>th</sup> Ave.  
Anchorage, AK 99501

Dear Speaker Kott:

The American Cancer Society strongly supports the governor's call to pass a full and immediate one-dollar per pack increase in Alaska's cigarette tax, along with an accompanying increase in the non-cigarette tobacco product tax, during the special session.

The Society recognizes tobacco taxes as one of the most effective ways to reduce youth smoking and save lives. We have seen evidence of this fact across the nation as well as here in Alaska. There is no longer any doubt that tobacco taxes are a proven means to reduce tobacco use and save lives. Now is the time to act on this crucial policy issue.

The mission of the American Cancer Society is to eliminate cancer as a major health problem by preventing cancer, saving lives, and diminishing suffering from cancer. We clearly recognize the devastating impact of cancer on Alaskans. Cancer is currently the second leading cause of death for all Alaskans and the leading cause of death for Alaska Natives. Research shows that one-third of all cancers are tobacco-related and almost all tobacco-users first become addicted as children. By increasing the state's tobacco tax, with its known correlation to reducing youth smoking, we are taking a critical step in stemming the tide of rising health care costs to the state and needless death and disability in our communities.

The American Cancer Society urges the legislature to adopt this critical public health measure as soon as possible to save lives and protect the health of our children.

Sincerely,

A handwritten signature in black ink, appearing to read "Emily E. Nenon", with a long horizontal line extending to the right.

Emily E. Nenon  
Alaska Advocacy Manager



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ASSOCIATION<sup>®</sup>**  
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June 22, 2004

Representative Pete Kott  
State Capitol, Room 208  
Juneau, AK 99801-1182

Fax: 907-465-2819

Re: Increasing the State Tobacco Tax

Dear Representative Kott:

The American Lung Association of Alaska is pleased to support Governor Murkowski's bill to raise Alaska's Tobacco Tax. This measure represents a win, win, win solution for Alaska that reduces smoking, raises much-needed revenue and has strong support from voters.

Studies show that higher cigarette taxes are one of the most effective ways to reduce smoking among both youth and adults. A Department of Revenue study shows Alaska's tobacco consumption dropped substantially in response to the 1997 tobacco price increase. Among younger children the report estimated a 30 percent reduction in smoking.

At the same time the 1997 tobacco tax increase generated approximately 30 million per year in new state revenue. The 2004 \$1 tax increase would generate approximately 36 million per year.

There is strong public support for substantially increased state tobacco taxes. A recent poll completed for Alaskans for Tobacco-Free Kids shows 67 percent support among Alaskan voters for a \$1.00 per pack increase in tobacco taxes.

The tobacco tax increase would save thousands of Alaska lives, reduce health care costs and generate much needed revenue. All measures of success the American Lung Association of Alaska can enthusiastically support.

Sincerely,

Christie Garbe, CEO  
American Lung Association of Alaska

**HB**

**1002**

## WORKERS' COMPENSATION REFORM BILL

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

#### Premiums, benefits paid, and claim costs rising.

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

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

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

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

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

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

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

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

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

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

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

New workers' compensation fraud provisions.

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

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

Appeals Commission too expensive.

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

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

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

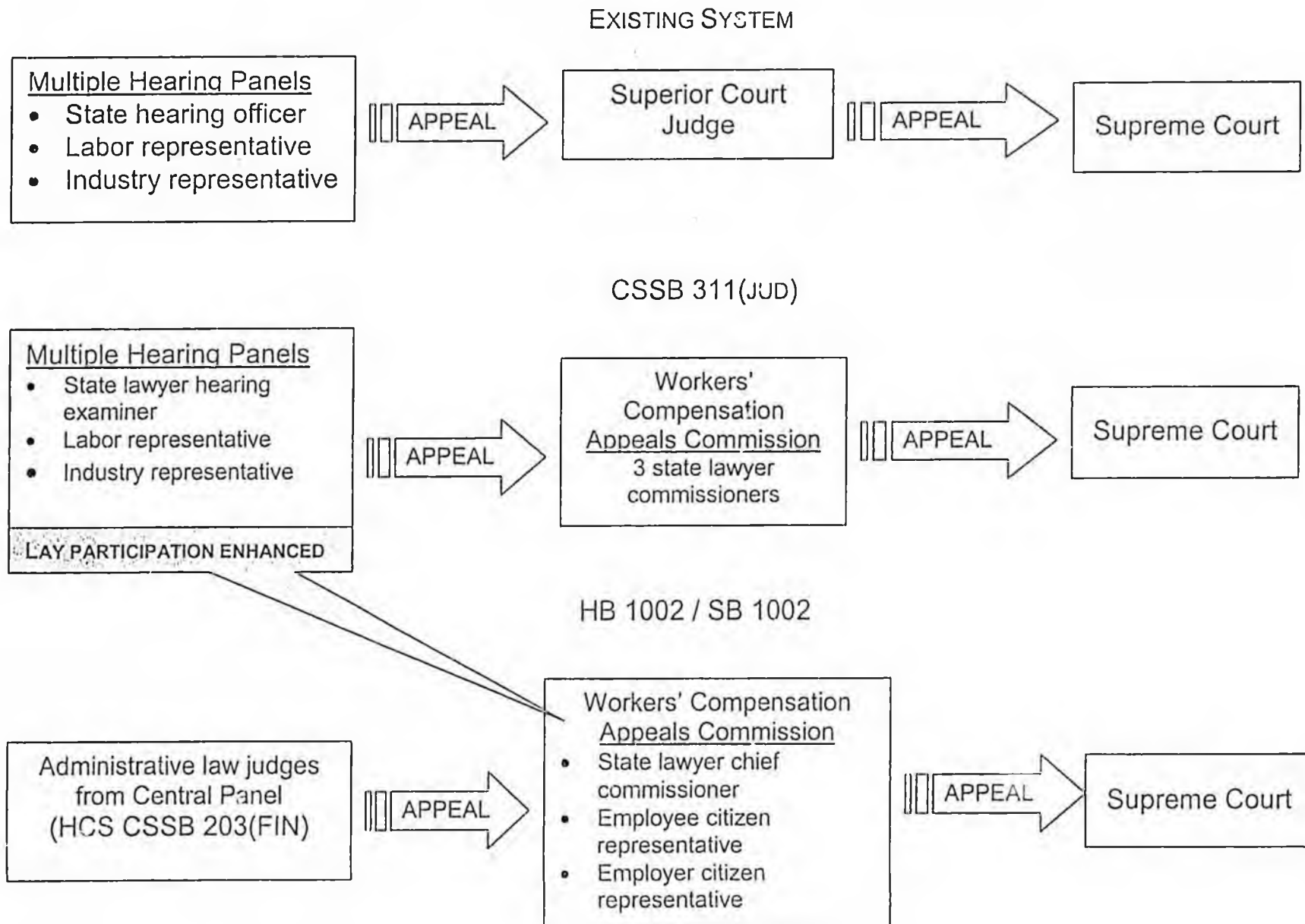
Commission Members should be vetted by Alaska Judicial Council.

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

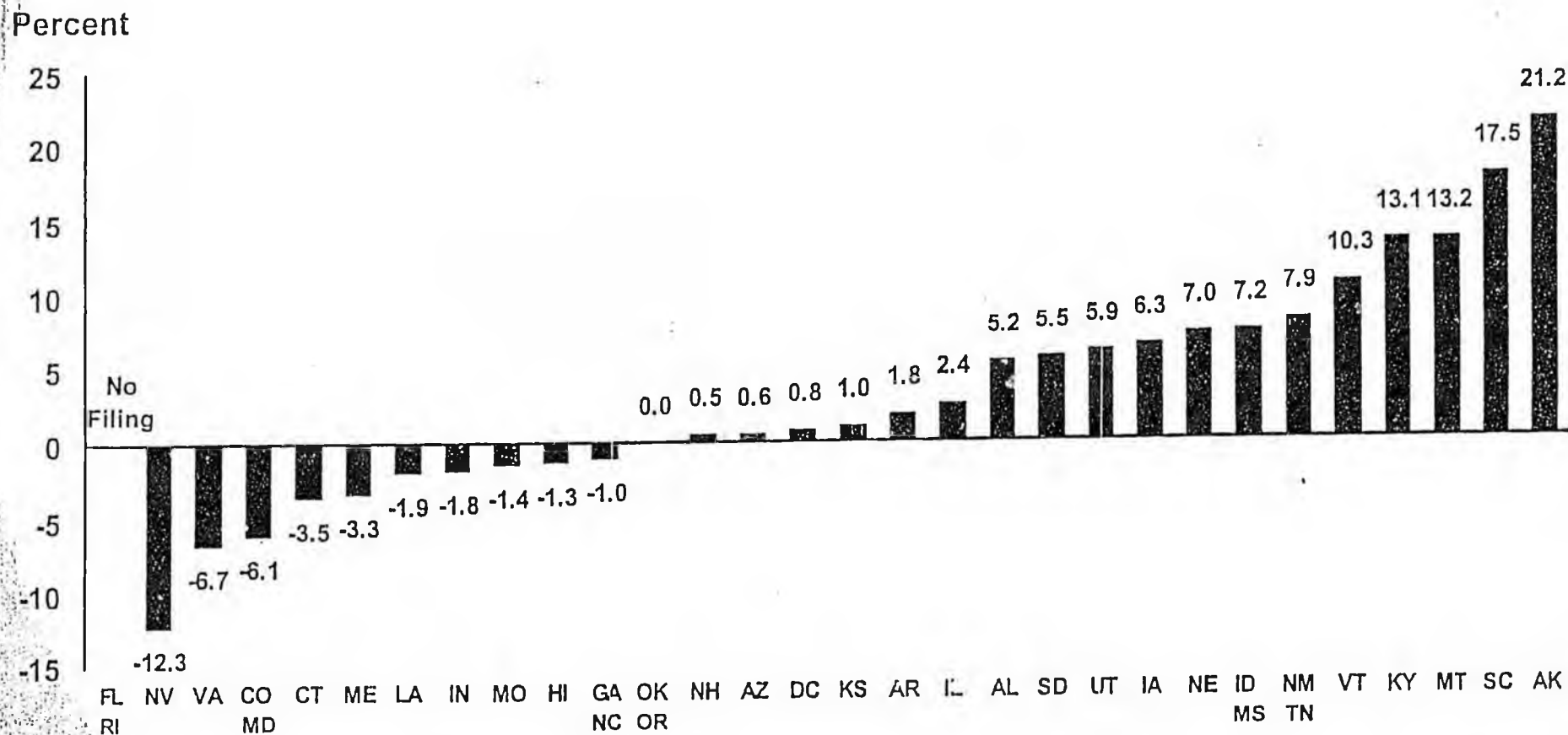
## SIGNIFICANT DIFFERENCES BETWEEN CSSB 311(JUD) AND SB 1002

1. Disputed claim hearings before single administrative law judge (ALJ) from Office of Administrative Hearings, instead of Workers' Compensation Board panel of hearing officer and two lay members (labor & industry).
  - ALJs will have specific expertise in worker's compensation.
  - ALJs in the independent Office of Administrative Hearings in Department of Administration created by SB 203, not the Appeals Commission in Department of Labor.
  - Effective date of new system moved forward to July 1, 2005 to match that of the Office of Administrative Appeals.
2. Appeals Commission remains, but with new role and influence for employee and employer representatives.
  - Instead of 3 full-time attorneys, there is only one full-time attorney, serving as chair.
  - Chair at lower pay (Range 27A-F, \$76,248-91,200), with restrictions on outside employment and political position.
  - Four citizen members added: 2 representing employees, 2 representing employers.
  - Appeals are heard by panels of 3: one employee representative, one employer representative and the attorney member.
  - Citizen members receive maximum of \$200/day for time spent in hearing appeals and other duties.
  - Panel, including 2 citizen members, may exercise *de novo* review of ALJ decisions.
3. New provisions allow Director of Division of Workers' Compensation to investigate fraud by claimants, medical providers and other industry participants, give immunity to those who report fraud to authorities in good faith and enhance civil remedies for fraud.
4. New provisions provide protection for payment of continuing periodic payments to injured employee during appeal (Olson Logging case).
5. New provisions require insurers to make deposits to cover their share of Assigned Risk Pool loss reserves to be used in situations of insolvent insurer.
6. New provisions require Assigned Risk Pool to operate on self-funding basis calculated on three-year average.

## SUMMARY OF WORKERS' COMPENSATION REFORM PROPOSALS



# Current NCCI Voluntary Market Approved Rate/Loss Cost Changes



Proposed Workers' Compensation Reform Bill  
Section by Section Analysis

This legislation substantially reforms the workers' compensation system. This year, workers compensation premiums increased by an average of 21% for all types of employers. Premiums for 17 types of employers, including child care and hospital non-professionals went up over 50%. This legislation addresses claim costs by bringing consistency and speed to contested cases. This should benefit both employers and employees. The legislation does not change benefits paid to injured Alaskan workers.

This legislation also makes changes to the agency that protect workers compensation recipients from nonpayment by insolvent insurers, and protects employers who purchased insurance from liability in case of insurer nonpayment.

The present system of administering the workers' compensation act, AS 23.30, is replaced with a new system that divides adjudication of claims and petitions arising under the act from the executive functions of administration, investigation, and enforcement. The Alaska Workers' Compensation Board, (board) composed of seven panels of volunteer members and the Commissioner of Labor and Workforce Development, is removed. Its administration, investigation, and enforcement powers are transferred to a director of a division of worker's compensation. The board's claim hearing functions are transferred to independent administrative law judges (ALJs) in the office of administrative appeals in the Department of Administration. This conforms the workers' compensation system to that recently adopted by the Twenty-Third Alaska State Legislature in HCS CSSB 203(FIN).

This legislation also changes the process of adjudication to encourage more consistency in legal interpretation and increase the speed and accessibility of appellate review. Cases are heard first by ALJs, with expertise in workers' compensation. The Workers' Compensation Appeals Commission provides administrative review in place of the Superior Court. The Commission, composed of a chair with legal experience in workers' compensation, and four citizen members evenly divided between representatives of employers and employees, acts as an administrative appellate body with broad powers of review. The commission's decisions will be published and are binding. The commission's decisions may be appealed directly to the Supreme Court, without review by the Superior Court.

This legislation gives the director strong new enforcement tools and direct power to administer, investigate, and enforce obligations created by the workers' compensation laws. These include new civil penalties against uninsured employers, subpoena powers, the power to examine employer books, the power investigate fraud, the

Section by Section Analysis  
Proposed Workers' Compensation Reform Bill

power to intervene in disputed cases and the power to file an appeal. The director will be able to engage in informal dispute resolution outside the adjudication system, and, in aid of that function, has the power to order independent medical examinations to resolve differences between medical providers.

In addition to fundamental structural changes, this legislation contains other systemic improvements. Provisions are made for summary disposition of cases, such as where there is no jurisdiction or where there are no disputes of material fact. Compensation paid to non-residents is capped at the rate that would be paid if the recipient resided in Alaska. Provisions are included that would allow stop work orders to be issued and civil penalties to be assessed against uninsured employers on short notice where the employment contains hazards that could reasonably be expected to immediately cause an employee death or serious physical harm. Finally, adjusters and risk managers are required to report fraud and persons reporting fraud are granted immunity for good faith reports.

Because the workers' compensation act is lengthy, and the board is responsible for or involved in almost all aspects of the current workers' compensation system, this legislation contains a large number of what are essentially conforming amendments, replacing the board with the director, an ALJ, or the commission, as the function requires.

Provisions giving effect to the workers' compensation system reorganization may be found in Sections 11, 12, 59, 60, 63-66, 108-110 and 112. Provisions related to new enforcement tools may be found at Sections 39, 40, 42, 84, 85, 98 and 99. Other changes to current workers' compensation procedures (other than reassignment of function) may be found in Sections 14, 39-40, 42, and 59. Provisions important to insurance restructuring, the Assigned Risk Pool, and Alaska Insurance Guaranty Association are found in Sections 1-7 and 111. The cap on benefits paid to out of state residents is in Section 87.

**Section 1** is a declaration of legislative intent to reform the workers' compensation insurance system to ensure payment of benefits when an insurer becomes insolvent, expand representation of workers compensation on the Alaska Insurance Guaranty Association, and reduce the costs of workers' compensation premiums to employers. This declaration of intent applies only to the first seven sections of this act.

**Section 2** amends AS 08.18.101(1) to remove a reference to the board and transfers the authority to issue certificates of self-insurance from the board to the director of the division of workers' compensation.

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Proposed Workers' Compensation Reform Bill

**Section 3** creates a new statutory provision, AS 21.09.090(e) which provides that insurers that transact workers' compensation insurance in this state must maintain in the state a special deposit of cash or securities for the protection of persons in Alaska covered under workers' compensation insurance. The insurer must maintain this special deposit as long as there is any outstanding liability for workers' compensation. If an insurer is unable to pay workers' compensation because it is an insolvent insurer, the deposit will be immediately available to the Alaska Insurance Guaranty Association for continuation of claims benefits to eligible workers. This revision provides additional financial protection for Alaskan workers in the event that workers' compensation insurer becomes insolvent and unable to pay claims.

**Section 4** creates a new statutory provision, AS 21.09.095 which provides that insurers who transact workers' compensation insurance in this state must maintain in the state a special deposit equal to the insurer's assumed workers' compensation assigned risk pool loss reserves. This provision requires insurers to collateralize their quota share of loss reserves from the Assigned Risk Pool. The director of insurance shall make funds from the pool available to fund an insurer's obligations to the pool in the event that the insurer becomes insolvent or otherwise fails to satisfy its workers' compensation assigned risk pool obligations.

**Section 5** amends AS 21.24.130(d) to make a technical change regarding the special deposit described in Section 3 above, indicating it is not subject to an order transferring it to a receiver.

**Section 6** creates a new statutory provision, AS 21.39.155(d) requiring the Assigned Risk Pool to operate on a self-funding basis on a three-year moving average basis.

**Section 7** repeals and reenacts AS 21.80.050 relating to the board of governors of the Alaska Insurance Guaranty Association. The composition of the board of governors of the Alaska Insurance Guaranty Association is modified by this provision to include representatives from management, labor and a licensed insurance provider, agent, broker or manager. This change will expand the expertise of the board of governors to address workers' compensation issues. Section 107 below provides for the transition of the terms of the members of the current board of governors.

**Section 8** amends AS 23.30.05.067(a)(1)(B) to remove a reference to the board and to replace the board by the director of the division of workers compensation as the recipient of reports. This amendment conforms to the amendment to AS 23.30.155(m) at Section 82 below.

**Section 9** amends AS 23.05.067(e) to include fees received by the commission in those fees deposited in the workers' safety and compensation account. It also adds new language to permit the legislature to appropriate funds to the commission

and for administration and adjudication of claims and petition arising under AS 23.30.

**Section 10** codifies a statement of legislative intent relating to the workers' compensation system. This declaration draws upon previous uncodified statements of legislative intent and adds language regarding the fair, careful and rational examination of evidence.

**Section 11** repeals and reenacts AS 23.30.005. It creates, within the Department of Labor and Workforce Development, a Division of Workers' Compensation and a director of the Division, appointed by the commissioner. The director must have three years experience in the field of workers' compensation. The section gives the director general powers and duties regarding administration, regulation, investigation and enforcement of the workers' compensation laws and system. The department has the power to adopt regulations proposed by the director, instead of the board, regarding medical care and rehabilitation providers. This provision transfers certain administrative duties previously assigned to the board to the director, including the obligation to notify the state, or a political subdivision of the state, if it revokes a contractor's self-insurance certificate.

**Section 12** adds three new statutory provisions. The first, AS 23.30.007, establishes a new workers' compensation appeals commission within the Department of Labor and Workforce Development, with jurisdiction to hear all administrative appeals arising under the workers' compensation act. The commission consists of five members, appointed for staggered terms of five years, appointed by the governor and confirmed by a majority of the legislature. The governor may make appointments to fill vacancies in the same manner for the completion of the vacant term. A majority of the members is a quorum. Four members are citizen members, compensated for their service at \$200/day. The citizen members are equally drawn from those who represent the employees and those who represent the employers. All members must be residents of Alaska for five years preceding appointment, no convicted of a felony, and not convicted of a misdemeanor related to workers' compensation. In addition to these qualifications, the Chair must be licensed to practice law in Alaska and have five years experience of workers' compensation law. The chair is a full time exempt service employee paid at Range 27. All members shall take the oath of office. Reasons for removal by the Governor of a commission member are set out, as well as an opportunity to respond to the Governor's charges. Reasons for removal include: misconduct in office, ethical violations, conviction of a felony, conviction of a misdemeanor regarding workers' compensation, inability to serve or handle the caseload, incompetence, etc. A panel of two citizen members (one employee representative and one employer representative) and the chair will hear

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appeals. To conduct other business, the chair and equal numbers of employee and employer representatives must be present. Reasons for disqualification for conflicts are set out in detail, as well as a general disqualification if the member is unable to fair, impartial, and unbiased toward an appeal participant. If the chair is disqualified, or unavailable for more than ten days, the commissioner of labor may appoint a chair *pro tem*. The commission must be housed separately from the division to mark the separation of the judicial process in the workers' compensation system from the administrative and enforcement process.

Section 12 also, in the new statutory provision AS 23.30.008, sets out the powers and duties of the new workers' compensation appeals commission and, in AS 23.30.009, the powers and duties of the chair of the commission. The commission replaces the superior court as the body hearing administrative appeals in the workers' compensation system, and its decisions will be binding and have the force of legal precedence. The commission's decisions are final and conclusive, except that the Supreme Court may review the commission's decisions. The commission indexes and publicizes its formal decisions. The commission has the power to adopt regulations drafted and proposed by the chair, as well as rules of procedure for hearings and appeals, to adopt an official seal, and generally to carry out the powers and duties expressly granted or necessarily implied by the Act. The commission shall award attorney fees to successful appellants, but, as currently is the rule, attorney fees may not be awarded against an employee unless the appeal was frivolous, unreasonable or taken in bad faith.

The chair of the commission exercises general supervision of the office of the commission. The chair has the power to employ and supervise staff, assign work, and members to hearing panels, establish a time management system, manage the calendar of hearings and prepare the annual budget of the commission. The chair must prepare and make public an annual report of the commission's performance. The chair is barred from other employment and may not hold any other public or tribal office, nor hold office or position in a political party.

**Section 13** amends AS 23.30.011(c), which relates to extraterritorial coverage of workers injured outside Alaska while working for Alaska employers or while under contract formed in Alaska. It removes references to the board and reassigns powers and duties to the division. Certificates of insurance issued by other states must be filed in the division instead of the board. The director replaces the board as the appointed out of state employer's agent for service of process. The director, instead of the board, shall serve notice of claims. Evidence of self-insurance must satisfy the director, instead of the board; and, the director

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may require the out of state employer to file satisfactory security to cover the amount of a claim.

- Section 14** amends AS 23.30.012 relating to settlement of claims. It divides the current statute into two subsections. It removes references to the board and transfers from the board to the director the power to approve the form of settlements. It requires that settlements be filed in the division. A new provision requires that in cases where workers are not represented by an attorney licensed to practice in this state, or where a beneficiary is a minor, the settlement must be reviewed by an administrative law judge (ALJ) and may be approved when it is in the best interests of the worker or beneficiary. The ALJ may hold a hearing and require an impartial medical examination. This is a change from current law, which requires all workers, regardless of representation or circumstances, to obtain board permission and approval to settle their claims.
- Section 15** amends AS 23.30.015(b), which relates to assignments of rights to recover damages against third parties. It removes references to the board, changes the place to file compensation orders from the board to the commission, and conforms the statute language to modern use.
- Section 16** amends AS 23.30.015(e). It removes references to the board and transfers the power to determine the attorney fee offset in third party settlements from the board to an administrative law judge. It modernizes the statute language and assigns the director the duty to prepare a schedule of present values for determining third-party settlement offsets.
- Section 17** amends AS 23.30.015(j) to remove references to the board, to change the recipient of notice of a third party action for damages from the board to the division, and to require additional notice to the commission if a hearing has been requested in the workers' compensation case.
- Section 18** amends AS 23.30.025(a) to remove references to the board and to change the place where insurance company policy forms are filed from the board to the division.
- Section 19** amends AS 23.30.030(5) relating to effective dates of policy termination by cancellation. It removes references to the board and reassigns the receipt of notice of termination from the board to the division.
- Section 20** amends AS 23.30.030(6) relating to the power to make orders or awards against employers, insurers, or both. It removes references to the board and reassigns making the order or award from the board to an administrative law judge.
- Section 21** amends AS 23.30.040(a) relating to administration of the second injury fund, which is reassigned from the commissioner to the director. Also, it removes

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references to the board and reassigns the power to order payments from the fund from the board to the administrative law judge.

**Section 22** amends AS 23.30.040(d) relating to refund of a payment made into the second injury fund. It removes references to the board and reassigns the power to direct a refund from the board to the director.

**Section 23** amends AS 23.30.041(a) to remove references to the board and reassign employment of the reemployment benefits administrator and authorization for his staff from the board to the director.

**Section 24** amends AS 23.30.041(b) to remove references to the board and reassign from the board to the department the adoption of regulations implementing the reemployment benefits section and setting standards for rehabilitation specialists.

**Section 25** amends AS 23.30.041(d) to remove references to the board and reassign from the board to an administrative law judge the power to review the decisions of the reemployment benefits administrator.

**Section 26** amends AS 23.30.041(h) to remove references to the board and to include a physician appointed by the director, instead of by the board, as a possible source of a prediction of medical stability for a reemployment plan.

**Section 27** amends AS 23.30.041(j) to modernize statute language, remove references to the board, and replace board with an administrative law judge as the reviewer of reemployment benefits administrator decisions on rehabilitation plans.

**Section 28** amends AS 23.30.041(o) to remove reference to the board and replace the board with an administrative law judge as the reviewer of decisions made by the reemployment benefits administrator on non-cooperation by an employee.

**Section 29** amends AS 23.30.041(p) to remove references to the board. It replaces the board with the director as the holder of a public meeting to select a proposed date on which a new edition of the US Department of Labor's Dictionary of Occupational Titles shall be implemented. The department replaces the board as the agency selecting the date proposed and the director replaces the board as the person giving notice of the selected date.

**Section 30** amends AS 23.30.041(q) to remove references to the board and replace the board with the division as the agency receiving filed waivers of rehabilitation benefits and serving notices of the waivers. The amendment also replaces the board with the director as the agency proscribing or approving the form of such waivers.

**Section 31** amends AS 23.30.045(d) relating to the requirement that awardees of contracts from the state or political subdivisions of the state have workers' compensation insurance. The amendment removes references to the board

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and changes the agency that furnishes proof of insurance from the board to the division, and the agency that grants certificates of self-insurance from the board to the director, conforming to Section 13 above.

**Section 32** amends AS 23.30.045(e) relating to the obligations of contracting agencies of the state or political subdivision of the state if a contractor has lost coverage. The amendment removes references to the board and replaces the board with the director as the agency notifying the state or political subdivision of the revocation of self-insurance, conforming to Section 13 above.

**Section 33** amends AS 23.30.065 to remove references to the board and to replace the board with the division as the agency with the power to require and inspect employer records of injury.

**Section 34** amends AS 23.30.070(a) to remove references to the board and to replace the board with the division as the agency where employer reports of injury to or death of an employee are filed and which may require certain information in reports of injury or death.

**Section 35** amends AS 23.30.070(b) to modernize language, to remove references to the board, to replace the board with the division as the agency where supplemental reports of the employee's condition are filed, and to replace the board with the director as the agency with power to require such reports.

**Section 36** amends AS 23.30.070(d) to remove references to the board and to provide that compliance with the reporting requirements of the section are met by mailing to the division instead of the board.

**Section 37** amends AS 23.30.070(f) to remove references to the board, to replace the board with an administrative law judge, who after a hearing, may require an employer to pay the penalties for failure or refusal to report as provided by this section.

**Section 38** amends AS 23.30.075 to remove references to the board, to replace the board with the division as the agency which must be provided satisfactory proof of financial ability to pay compensation and as the source of the copy of the certificate of self-insurance. The director replaces the board as the agency that may exercise discretion to require acceptable security, indemnity or bond from an employer to secure payment of compensation liabilities.

**Section 39** amends AS 23.30.080(d) regarding proceedings to obtain stop work orders against uninsured employers. The amendment provides that the director may petition for a stop work order, replacing the general grant of authority of the board to issue a stop work order. The hearing must be held within 20 days after service of the director's petition. The hearing to be held on short notice if the director presents evidence that a hazard in the employment constitutes a danger that could reasonably be expected to cause an employee of the

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uninsured employer death or serious physical harm. The administrative law judge must issue a decision within seven days of the hearing. Finally, the amendment removes references to the board and transfers the power to assess a civil penalty from the board to an administrative law judge.

**Section 40** creates two new statutory provisions relating to penalties against uninsured employers. AS 23.30.080(e) authorizes the director to petition an administrative law judge to order a civil penalty of \$100 for each uninsured employee for each day the employee is employed without coverage. The penalty is payable to the state. As in AS 23.30.080(d) relating to stop work orders, failure to file evidence of insurance with the division would create a rebuttable presumption of failure to insure. In addition, as in 23.30.080(d), time periods for proceedings are shortened. The hearing must be held within 20 days of service of the director's petition on the employer and a civil penalty hearing may be held on short notice if the director presents evidence that a hazard in the employment constitutes a danger that could reasonably be expected to cause an employee of the uninsured employer death or serious physical harm. A decision must be issued within seven days of the hearing. AS 23.30.080(f) authorizes the director to declare an employer in default if the employer fails to pay a civil penalty under subsection 080(d) (failing to comply with a stop work order, \$1000 per day) or subsection 080(f) (failure to insure employee \$100 per employee per day) within seven days of the date ordered. Upon filing a certified copy of the penalty order and a declaration of default with the clerk of the superior court, the court shall enter judgment for default. The attorney general, as requested by the director, shall take appropriate action to collect on the default judgment, and a writ of execution may be issued on the judgment. The person against whom the judgment is issued may seek court review of the judgment as allowed by the Civil Rules.

**Section 41** amends AS 23.30.085(a) relating to filing evidence of compliance with workers' compensation insurance requirements. The amendment removes references to the board, replaces the board with the division as the agency with which evidence is filed and which may provide copies of the certificate of self-insurance. The amendment also replaces the board with the director as the person who prescribes the form of evidence of insurance.

**Section 42** amends AS 23.30.090 to remove reference to the board and substitute the director for the board as the agency that issues certificates of self-insurance. This section adds a provision for a hearing conducted by an administrative law judge before revocation of self-insurance certificates, within 20 days of service of the petition for revocation on the employer. The administrative law judge must issue a proposed decision within 14 days. The director may amend, adopt or reject the administrative law judge's proposed decision. This shortens the existing period for decisions in these cases.

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**Section 43** amends AS 23.30.090 to add a new statutory provision, AS 23.30.090(b), that testimony in a self-insurance revocation hearing shall be recorded but not transcribed unless further review is initiated.

**Section 44** amends AS 23.30.095(a) to conform language to modern usage. It also removes references to the board and replaces the board with an administrative law judge as reviewer of employee claims for medical benefits beyond two years from the date of injury, and authority for continued care or treatment.

**Section 45** amends AS 23.30.095(c) relating to reports and claims for medical treatment by removing references to the board and reassigning its functions. This section replaces the board with the division as the agency that receives filed physician reports; replaces the board with the director as the agency that approves the form for reports; and, replaces board with an administrative law judge as the agency that decides to excuse failure to give notice and makes awards of medical benefits. This section also transfers authority to make regulations from the board to the director, who proposes regulations, and the department, which adopts the proposed regulations.

**Section 46** amends AS 23.30.095(d) to remove references to the board and transfer authority from the board to an administrative law judge to order suspension of payment of compensation during a period of unreasonable refusal to obtain medical treatment.

**Section 47** amends AS 23.30.095(e) relating to independent medical examinations. It removes references to the board and transfers from the board to an administrative law judge the authority to make orders for medical examinations, suspend or forfeit compensation during a period of refusal to attend an examination. The director is given authority to order autopsies in cases of death, in view of the necessary speed associated with such orders. It also modernizes the language of the statute and conforms it to current usage.

**Section 48** amends AS 23.30.095(f) relating to regulation of fees charged for medical treatment. The amendment removes references to the board. It transfers authority to regulate charges for medical treatment to the department and adopt, by regulation, fee schedules. It transfers to the director authority to determine usual, customary and reasonable fees in the community and propose fee schedules to the department for adoption.

**Section 49** amends AS 23.30.095(h) to remove references to the board and replaces the board with the division as the place pleadings and physician reports are filed. The amendment also modernizes language in the statute to current usage.

**Section 50** amends AS 23.30.095(j) to remove references to the board and to reassign from board to the director authority to appoint a medical services review committee or contract with organizations to assist and advise the director,

instead of the board, in matters respecting medical care under the workers' compensation act.

- Section 51** amends AS 23.30.095(k) to remove references to the board and transfers authority to the director to require a second independent medical examination from a list maintained by the director. The report of the examination is sent to the division instead of the board.
- Section 52** amends AS 23.30.100(a) to remove a reference to the board and substitute the division as the recipient of notice of an injury or death. The amendment also modernizes the statute language.
- Section 53** amends AS 23.30.100(c) to remove reference to the board and substitute the division's office as the recipient of filed notices of injury or death.
- Section 54** amends AS 23.30.100(d) to remove references to the board and to transfer authority to an administrative law judge to determine that an employer has not been prejudiced by failure to give notice or to excuse the failure to give notice. The amendment also modernizes the language of the statute.
- Section 55** amends AS 23.30.105(a) to remove references to the board and transfers to an administrative law judge the authority to determine if an employee who fails to file a claim within the time allowed by the statute has full right to claim compensation, time limitations notwithstanding.
- Section 56** amends AS 23.30.107 to remove references to the board and to replace the board with the division as the agency where a petition for protective order must be filed and where workers' compensation files are maintained. The amendment also replaces the board with the division, the commission and the office of administrative hearings as agencies that may release records as provided by the statute and replaces the board with the commission, the director or an administrative law judge as authorized to discuss records in a decision and order.
- Section 57** amends AS 23.30.108(a) to remove a reference to the board and replace the board with the division as the agency where a petition is filed. The amendment also conforms language to correct usage. This section also amends AS 23.30.108(b) to remove references to the board and substitute the administrative law judge, assigned at the request of the office of the commission, for board as the agency scheduling prehearing conferences, and replacing the board's designee with an administrative law judge as the person conducting the prehearing conference. In addition, the division is required to notify the commission of petitions for protective orders. Finally, this section amends AS 23.30.108(c) to authorize an administrative law judge, instead of the board's designee, to direct parties to release or produce documents and make rulings on discovery matters. It creates a new provision for an expedited

review of an administrative law judge's discovery rulings by the commission and sets deadlines for response to a petition for review by the commission.

**Section 58** amends AS 23.30.110 to remove references to the board throughout the statute and to transfer certain powers and duties to administrative law judges in the office of administrative hearings and the office of the commission. The amendment also adds petitions to the statute to regularize procedure for claims and petitions into a single process, and adds the phrase "opposing party" to include persons other than the employer who require service of a claim or petition. This section substitutes service by certified mail for registered mail. It provides that the office of the commission is the place to file an affidavit of readiness for hearing. An administrative law judge, instead of the board or board designee, is authorized to conduct pre-hearing conferences, plan discovery and other preliminary matters, and set a reasonable hearing date if a party opposes a hearing request. An administrative law judge, instead of the board, shall schedule unopposed hearing requests within 60 days, and give notice to the parties. This section transfers authority to prescribe controversion forms from the board to the director. This section also transfers authority to make decisions and grant continuances from the board to the administrative law judge. The word "parties" replaces "claimant and employer" as persons who may present evidence at a hearing. In addition to the authority to award benefits, the amendment adds authority to dismiss a claim, after an employee's death. Finally, the language of the statute is conformed to current usage.

**Section 59** creates two new statutory provisions, AS 23.30.110(i) and (j), which authorize the dismissal of certain claims before a hearing on the merits and the grant of summary decisions in certain instances. Dismissal of claims, described in AS 23.30.110(i), may occur when the claim is for relief that cannot be granted under the workers' compensation act, there is a lack of jurisdiction over the subject of the claim or the person requesting dismissal, there is improper service of the claim, the claim has not been prosecuted or a hearing not requested within two years as required by the statute, or, the claim is barred by a statute of limitation. If defects in jurisdiction, service or the requested relief are cured within 60 days, the order of dismissal may be vacated. Grant of summary decision on petition, authorized in AS 23.30.110(j), is permitted at any time if an administrative law judge determines that all reasonable discovery has been made on the issues presented in the petition, and the record shows there is no genuine issue of material fact and the petitioner is entitled to a decision as a matter of law. The administrative law judge may file a compensation order in favor of the petitioner if the summary decision disposes of all issues in the claim regarding the petitioner. This provision establishes a means of obtaining final rulings on matters of law where the facts are not