

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11232 SENATE LABOR & COMMERCE

1           been and will not be consumed in this state.

2           (b) A refund or credit under (a) of this section may not be allowed for stamps  
3           affixed to cigarette packages in violation of this chapter or AS 45.53.

4           **Sec. 43.50.600. Stamps prohibited on cigarette packages not complying**  
5           **with federal and state laws.** A licensee or the licensee's authorized agent or designee  
6           may not affix a stamp to a cigarette package if the cigarettes

7                   (1) may not be acquired, held, owned, imported, possessed, sold, or  
8                   distributed in this state under AS 43.50.400; or

9                   (2) are not in compliance with other state or federal laws.

10           **Sec. 43.50.610. Unstamped cigarettes as contraband; seizure.** Unstamped  
11           cigarettes found in this state are contraband and may be seized by the commissioner or  
12           an agent or employee of the commissioner or by any peace officer of the state, unless

13                   (1) the cigarettes are

14                           (A) in the possession of a licensee or are in transit from outside  
15                   the state and are consigned to a licensee; and

16                           (B) in the original and unopened shipping container; or

17                   (2) possession of the unstamped cigarettes is not a violation of this  
18           chapter.

19           **Sec. 43.50.620. Forfeiture and destruction of seized cigarettes.** Cigarettes  
20           seized under AS 43.50.500 - 43.50.700 are forfeited to the state. After notice and an  
21           opportunity for a hearing, the commissioner shall destroy the cigarettes forfeited under  
22           this section.

23           **Sec. 43.50.630. Monthly reports; records retention; inspection of records.**

24           (a) On or before the last day of each calendar month, a licensee shall file the  
25           following information for each place of business with the department, on a form or in  
26           a format prescribed by the department:

27                   (1) the quantity and brands of cigarettes manufactured, imported,  
28                   acquired, or sold in the state during the preceding calendar month;

29                   (2) the number and dollar amount of stamps

30                           (A) purchased during the preceding calendar month;

31                           (B) affixed to cigarette packages during the preceding calendar

1 month;

2 (C) not affixed to cigarette packages and on hand at the end of  
3 the preceding calendar month; and

4 (D) refunded or credited to a licensee under AS 43.50.590; and

5 (3) any other information that the department requires to carry out its  
6 duties under this chapter.

7 (b) If a licensee ceases to manufacture, import, acquire, or sell cigarettes in  
8 this state, the licensee shall immediately file the form required under (a) of this section  
9 with the department, for the period ending with the cessation.

10 (c) All statements and other records required by AS 43.50.500 - 43.50.700  
11 must be

12 (1) in a form or format prescribed by the department;

13 (2) preserved by a licensee for a period of three years; and

14 (3) available for inspection at any time upon oral or written demand by  
15 the department or its authorized agent.

16 (d) A summary of information filed under (a) of this section shall be prepared  
17 by the department and released to the public upon request.

18 **Sec. 43.50.640. Misconduct involving unstamped cigarettes or stamps in**  
19 **the first degree.** (a) A person commits the crime of misconduct involving unstamped  
20 cigarettes or stamps in the first degree if the person

21 (1) with reckless disregard that the cigarettes are unstamped

22 (A) sells or distributes 1,000 or more unstamped cigarettes in a  
23 single transaction;

24 (B) owns or possesses 1,000 or more unstamped cigarettes with  
25 the intent to sell; or

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

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

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

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

1 (b) Misconduct involving unstamped cigarettes or stamps in the first degree is  
2 a class C felony.

3 **Sec. 43.50.650. Misconduct involving unstamped cigarettes or stamps in**  
4 **the second degree.** (a) A person commits the crime of misconduct involving  
5 unstamped cigarettes or stamps in the second degree if the person

6 (1) with reckless disregard that the cigarettes are unstamped

7 (A) sells or distributes at least one but less than 1,000  
8 unstamped cigarettes in a single transaction;

9 (B) owns or possesses at least one but less than 1,000  
10 unstamped cigarettes, with intent to sell; or

11 (C) acquires, holds, transports, imports, or possesses at least  
12 one but less than 10,000 unstamped cigarettes; or

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

16 (b) Misconduct involving unstamped cigarettes or stamps in the second degree  
17 is a class A misdemeanor.

18 **Sec. 43.50.660. Construction of criminal statutes.** (a) The provisions of  
19 AS 11.16, AS 11.81.600, 11.81.610, and 11.81.900 apply to AS 43.50.640 and  
20 43.50.650.

21 (b) For purposes of AS 43.50.640 and 43.50.650, display of cigarettes by a  
22 person, or possession other than in the original and unopened shipping container of  
23 cigarettes by a person who holds a business license endorsement under AS 43.70.075,  
24 is prima facie evidence of possession with intent to sell cigarettes. In this subsection,  
25 "display" means to openly exhibit.

26 **Sec. 43.50.670. Unauthorized transfer of unaffixed stamps.** (a) A licensee  
27 may not sell, exchange, or otherwise transfer stamps not affixed to a package of  
28 cigarettes in accordance with this chapter to another person without the prior written  
29 approval of the department.

30 (b) After notice and opportunity for a hearing, the department may assess a  
31 civil fine of not less than \$1,000 nor more than \$10,000 for a violation of (a) of this

1 section. The fine assessed is in addition to any other penalty available under the law.

2 **Sec. 43.50.700. Definitions.** In AS 43.50.500 - 43.50.700, unless the context  
3 otherwise requires,

4 (1) "affiliated licensees" means two or more licensees in which the  
5 same person holds, directly or indirectly, at least a 50 percent ownership interest;

6 (2) "carton" means a box or container originating from the  
7 manufacturer that contains packages of that manufacturer's cigarettes;

8 (3) "cigarette" has the meaning given in AS 43.50.170;

9 (4) "licensee" means a person licensed by the department under  
10 AS 43.50.010 or 43.50.035 to sell, distribute, purchase, possess, or acquire cigarettes;

11 (5) "package" means the individual packet, box, or other container,  
12 originating from the manufacturer, in which retail sales of cigarettes are normally  
13 made or intended to be made; "package" does not include containers that are cartons,  
14 cases, bales, or boxes that contain packages of cigarettes;

15 (6) "person" has the meaning given in AS 43.50.170;

16 (7) "shipping container" means the case, box, parcel, or other container  
17 in which cartons or packages of cigarettes are placed for shipment or transportation  
18 from one place to another; "shipping container" does not include a package in which  
19 retail sales of cigarettes are normally made or intended to be made;

20 (8) "stamp" means a stamp or other indicium that is

21 (A) printed, manufactured, or made under authorization of the  
22 department under this chapter;

23 (B) issued, sold, or circulated by the department; and

24 (C) used to pay the cigarette taxes levied under this chapter;

25 (9) "unstamped cigarettes" means a package containing cigarettes that  
26 is not affixed with the stamp required by AS 43.50.500 - 43.50.700.

27 \* **Sec. 16.** AS 43.50.080 is repealed.

28 \* **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to  
29 read:

30 **TRANSITION: REGULATIONS.** Notwithstanding sec. 20 of this Act, the  
31 Department of Revenue may immediately proceed to adopt regulations necessary to

1 implement the changes made by this Act. The regulations take effect under AS 44.62  
2 (Administrative Procedure Act), but not before the effective date of the respective statutory  
3 changes.

4 \* **Sec. 18.** The uncodified law of the State of Alaska is amended by adding a new section to  
5 read:

6       TRANSITION: ACTIVITIES INVOLVING UNSTAMPED CIGARETTES  
7 THROUGH MARCH 31, 2004. (a) Notwithstanding the requirements of AS 43.50.500 -  
8 43.50.700, enacted by sec. 15 of this Act, a person may acquire, hold, own, import, possess,  
9 sell, distribute, or consume unstamped cigarettes in this state on or after January 1, 2004, and  
10 on or before March 31, 2004, if the cigarettes were in this state before January 1, 2004.

11       (b) In this section, "unstamped cigarettes" has the meaning given in AS 43.50.700,  
12 enacted by sec. 15 of this Act.

13 \* **Sec. 19.** Section 17 of this Act takes effect immediately under AS 01.10.070(c).

14 \* **Sec. 20.** Except as provided in sec. 19 of this Act, this Act takes effect January 1, 2004.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
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STATE OF ALASKA

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## MEMORANDUM

April 15, 2003

**SUBJECT:** Importation and sale of cigarettes CSSB 168 ( ) Draft Version "H"

**TO:** Senator Con Bunde  
Attn: Jane

**FROM:** Michael F. Ford  
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

**Section 1.** Amends existing provisions of law relating to wholesaler-distributor licenses.

**Section 2.** Amends existing provisions of law relating to expiration of certain licenses for cigarette sales.

**Section 3.** Amends existing provisions of law relating to suspension or revocation or refusal to renew certain licenses for cigarette sales.

**Section 4.** Adds a definition of "licensee" for purposes of suspension or revocation or refusal to renew certain licenses for cigarette sales.

**Section 5.** Requires that the cigarette tax imposed under AS 43.50.090 be paid by the use of stamps as provided under AS 43.50.500 - 43.50.695.

**Section 6.** Amends existing provisions of law relevant to unlicensed possession or sale of cigarettes.

**Section 7.** Imposes restrictions and penalties on shipping or transporting cigarettes, applicable to both licensees and nonlicensed persons.

**Section 8.** Amends certain provisions of law relevant to cigarette sales records.

**Section 9.** Amends the definition of "person" to include a limited liability company for purposes of AS 43.50.010 - 43.50.190.

**Section 10.** Adds certain definitions applicable to AS 43.50.010 - 43.50.190.

**Section 11.** Specifies that the penalties in AS 43.50 apply to the tax imposed under AS 43.50.190.

**Section 12.** Provides that for a license issued under AS 43.50.320, the department can refuse to renew the license as provided under AS 43.50.070.

**Section 13.** Provides for tax credits and refunds applicable to the tax imposed under AS 43.50.300.

**Section 14.** Adds certain definitions applicable to AS 43.50.010 - 43.50.190.

**Section 15.** Adds new sections relating to cigarette tax stamps as follows:

- Sec. 43.50.500 - Requires licensees to pay certain cigarette taxes by use of stamps.
- Sec. 43.50.510 - Adds provisions relating to design and use of cigarette tax stamps.
- Sec. 43.50.520 - Requires stamps be affixed before sale, distribution or consumption of cigarettes.
- Sec. 43.50.530 - Requires the Department of Revenue to furnish stamps to licensees and allows agreements with financial institutions for sale of stamps.
- Sec. 43.50.540 - Adds provisions relating to sale of stamps, including sales location, price, title of stamps, and loss, destruction, or theft of stamps.
- Sec. 43.50.550 - Adds provisions relating to deferred payment of stamps.
- Sec. 43.50.560 - Adds provisions relating to suspension of the privilege to purchase stamps on a deferred basis.
- Sec. 43.50.570 - Specifies that a licensee who pays for stamps must also pay interest.
- Sec. 43.50.580 - Adds provisions relating to possession of unstamped cigarettes.
- Sec. 43.50.590 - Adds provisions relating to refunds or credits for unused stamps and for unsalable, destroyed, or certain returned cigarette packages.
- Sec. 43.50.600 - Prohibits stamps on cigarette packages not in compliance with federal and state law.
- Sec. 43.50.610 - Allows the state to seize certain unstamped cigarettes.
- Sec. 43.50.620 - Provides for forfeiture and destruction of contraband cigarettes.
- Sec. 43.50.630 - Adds provisions relating to importation, distribution, and sale of cigarettes, including monthly reports, and records inspection.
- Sec. 43.50.640 - Creates a class C felony involving illegal sale or distribution of certain unstamped cigarettes or illegal use of stamps.
- Sec. 43.50.650 - Creates a class A misdemeanor involving illegal sale or distribution of certain unstamped cigarettes or illegal use of stamps.
- Sec. 43.50.660 - Adds provisions concerning the application of certain other criminal provisions illegal sale or distribution of cigarettes.

Senator Con Bunde  
April 15, 2003  
Page 3

Sec. 43.50.670 - Prohibits unauthorized transfer of stamps and creates a civil penalty.  
Sec. 43.50.700 - Definitions.

**Section 16.** Repeals a provision of law relating to reports required of licensees who manufacture, sell, or distribute cigarettes.

**Section 17.** Transition provision relating to regulations of the Department of Revenue.

**Section 18.** Transition provision relating to use, import, sale, or distribution of unstamped cigarettes.

**Section 19.** Effective date for sec. 17.

**Section 20.** Effective date for all sections, except sec. 17.

MFF:med  
03-396.med

Scenario 1 - (language in existing SB 168)  
3% discount on first \$1,000,000 in stamps purchased  
2% discount on next \$1,000,000 in stamps purchased  
.5% discount on next \$3,000,000 in stamps purchased  
0% discount on purchases over \$5,000,000

Scenario 2 -  
3% discount on first \$1,000,000 in stamps purchased  
0% discount on purchases over \$1,000,000

Scenario 3 -  
2% discount on first \$1,000,000 in stamps purchased  
1% discount on next \$1,000,000 in stamps purchased  
.5% discount on next \$3,000,000 in stamps purchased  
0% discount on purchases over \$5,000,000

Scenario 4 -  
3% discount on first \$1,000,000 in stamps purchased  
2% discount on next \$1,000,000 in stamps purchased  
0% discount on purchases over \$2,000,000

Scenario 5 -  
3% discount on first \$500,000 in stamps purchased  
2% discount on next \$1,000,000 in stamps purchased  
0% discount on purchases over \$1,500,000

|            | Estimated<br>Cost to Licensee per Pack |                       |                      | Estimated Cost to<br>State for Discount <sup>(4)</sup> |
|------------|--|-----------------------|----------------------|--|
|            | Small <sup>(1)</sup>                   | Medium <sup>(2)</sup> | Large <sup>(3)</sup> |  |
| Scenario 1 | \$ 0.013                               | \$ 0.010              | \$ 0.009             | \$ 316,000.00  |
| Scenario 2 | \$ 0.013                               | \$ 0.020              | \$ 0.013             | \$ 141,000.00  |
| Scenario 3 | \$ 0.023                               | \$ 0.018              | \$ 0.011             | \$ 160,405.00  |
| Scenario 4 | \$ 0.013                               | \$ 0.012              | \$ 0.011             | \$ 251,000.00  |
| Scenario 5 | \$ 0.015                               | \$ 0.018              | \$ 0.013             | \$ 159,000.00  |

<sup>(1)</sup> Small licensee is a licensee that purchases 600,000 or less in stamps each year.

<sup>(2)</sup> Medium licensee is a licensee that purchases an average of 2,500,000 stamps each year.

<sup>(3)</sup> Large licensee is a licensee that purchases an average of 9,000,000 stamps each year.

<sup>(4)</sup> Takes into account the loss of the .4% discount which would be repealed by SB 168.

# DISCOUNTS

## DISCOUNTS ON CIGARETTE TAX STAMP PURCHASES

| State and tax rate in ¢          | Percent <sup>(a)</sup> | Discounts Per case <sup>(b)</sup> | State and tax rate in ¢         | Percent <sup>(a)</sup> | Discounts Per case <sup>(b)</sup> |
|----------------------------------|------------------------|-----------------------------------|---------------------------------|------------------------|-----------------------------------|
| Alabama (16.5)                   | 7.50                   | \$ 7.425                          | Nebraska (64)                   | 3.40                   | 13.056                            |
| Alaska (\$1.00) <sup>(c)</sup>   | .40                    | 2.40                              | Nevada (35)                     | 3.00                   | 6.30                              |
| Arizona (\$1.18) <sup>(j)</sup>  |                        |                                   | New Hampshire (52)              |                        |                                   |
| first \$36,000                   | 4.00                   | 13.92                             | first \$500,000                 | 2.750                  | 8.58                              |
| next \$36,000                    | 3.00                   | 10.44                             | next 500,000                    | 2.375                  | 7.41                              |
| over \$72,000                    | 2.00                   | 6.96                              | over 1,000,000                  | 2.000                  | 6.24                              |
| Arkansas (34)                    | 3.80                   | 7.752                             | New Jersey (\$1.50)             | 1.125                  | 10.125                            |
| California (87)                  | 0.85                   | 4.437                             | New Mexico (21)                 |                        |                                   |
| Colorado (20)                    | 4.00                   | 4.80                              | first \$30,000                  | 4.00                   | 5.04                              |
| Connecticut (\$1.11)             | 1.00                   | 6.66                              | next \$30,000                   | 3.00                   | 3.78                              |
| Delaware (24)                    | 2.14 <sup>(d)</sup>    | 3.08                              | New York (\$1.50)               |                        |                                   |
| District of Col. (\$1.00)        | 2.00                   | 12.00                             | first \$5,611,200               | 0.3696                 | 3.56                              |
| Florida (33.0) <sup>(l)</sup>    | 2.00                   | 2.88                              | over \$5,611,200                | 0.2625                 | 2.36                              |
| Georgia (12)                     | 3.00                   | 2.16                              | No. Carolina (5) <sup>(c)</sup> | 4.00 <sup>(e)</sup>    | 1.20                              |
| Hawaii (\$1.20) <sup>(c)</sup>   | 0.00                   | 0.00                              | No. Dakota (44) <sup>(c)</sup>  | 1.00                   | 2.64 <sup>(i)</sup>               |
| Idaho (28)                       | 5.00                   | 8.40                              | max per month:                  |                        | \$100.00                          |
| Illinois (98)                    |                        |                                   | Ohio (55)                       | 1.80                   | 5.94                              |
| first \$3,000,000                | 1.75                   | 6.09                              | Oklahoma (23)                   | 4.00                   | 5.52                              |
| additional                       | 1.5                    | 5.22                              | Oregon (\$1.28)                 | 0.004 <sup>(m)</sup>   | 2.40                              |
| Indiana (55.5)                   | 1.20                   | 3.996                             | Pennsylvania (\$1.00)           | 1.25                   | 7.50                              |
| Iowa (36) <sup>(g)</sup>         | 2.00                   | 4.32                              | Rhode Island (\$1.32)           | 1.25                   | 9.90                              |
| Kansas (79)                      | 0.80                   | 3.792                             | So. Carolina (7)                | 3.50                   | 1.47                              |
| Kentucky (3)                     | 9.09                   | 1.636                             | So. Dakota (33)                 | 3.50                   | 6.93                              |
| Louisiana (36)                   | 6.00                   | 12.96                             | Tennessee (20)                  |                        |                                   |
| Maine (\$1.00)                   | 2.50                   | 15.00                             | first 3,000 cases               | 2.75                   | 3.30                              |
| Maryland (\$1.00)                | 0.82                   | 4.92                              | next 3,000 cases                | 2.50                   | 3.00                              |
| Massachusetts (\$1.51)           | N/A <sup>(k)</sup>     | 1.85 <sup>(h)</sup>               | next 9,000 cases                | 2.25                   | 2.70                              |
| Michigan (\$1.25) <sup>(c)</sup> | 1.5                    | 11.25                             | over 15,000 cases               | 1.75                   | 2.10                              |
| Minnesota (48)                   |                        |                                   | Texas (41)                      | 3.00                   | 7.38                              |
| first \$1.5 Million              | 1.00                   | 2.88                              | Utah (69.5)                     | 4.00                   | 16.68                             |
| additional                       | 0.60                   | 1.728                             | Vermont (93)                    | 1.50                   | 8.37                              |
| Mississippi (18)                 | 6.4444                 | 6.96                              | Virginia (2-1/2)                | 10.00                  | 1.50                              |
| Missouri (17)                    | 3.00                   | 3.06                              | Washington (\$1.425)            | 0.0042 <sup>(f)</sup>  | 3.60                              |
| Montana (18)                     |                        |                                   | West Virginia (17)              | 4.00                   | 4.08                              |
| first 2,580 cart.                | 6.00                   | 6.48                              | Wisconsin (77)                  | 1.60                   | 7.39                              |
| next 2,580                       | 4.00                   | 4.32                              | Wyoming (12)                    | 6.00                   | 4.32                              |
| over 5,160                       | 3.00                   | 3.24                              |                                 |                        |                                   |

- (a) Of indicia par value.
- (b) Of 600 packs.
- (c) Return system of collection.
- (d) 0.003 per stamp.
- (e) Discount of 4% of total State tax imposed.
- (f) \$6.00 per 1,000 stamps.
- (g) Discount on a per case basis only.
- (h) For a case of cigarettes, the discount is set at \$1.85.
- (i) Maximum discount is \$100.00 per month.
- (j) Purchases over \$165,000 lose all discounts on the first \$72,000 worth of stamps per month.
- (k) Twenty-five and one-half mills per cigarette (permanent). Plus any amount by which the federal excise tax on cigarettes is less than 8 mills.
- (l) The tax division allow agents and wholesalers a discount of 2% on indicia purchases calculated on the basis of 24¢ per pack for any amount purchased.
- (m) Discount per stamp.

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

### Tax Division

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SB 168

Senate Labor and Commerce Committee

April 15, 2003

1:30 p.m.

#### Testimony of Johanna Bales, Revenue Auditor

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

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

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

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

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

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

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

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

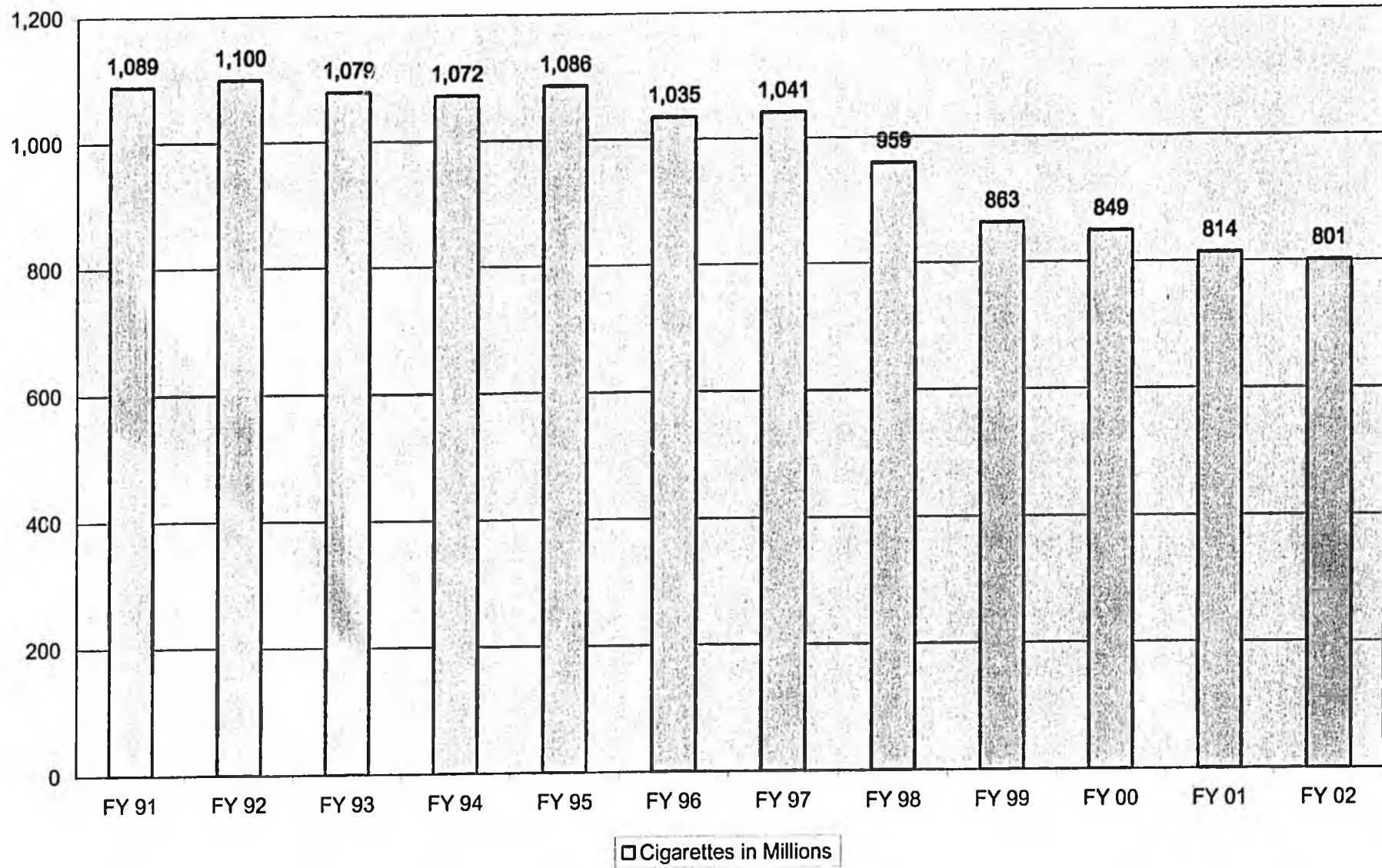
Stamps do not come free and distributors will incur costs when affixing stamps to individual packs of cigarettes. In recognition of the cost, the bill would provide a graduated discount for distributors to help offset the costs of affixing stamps. It is estimated, however, that a 1.5 percent increase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

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

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

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

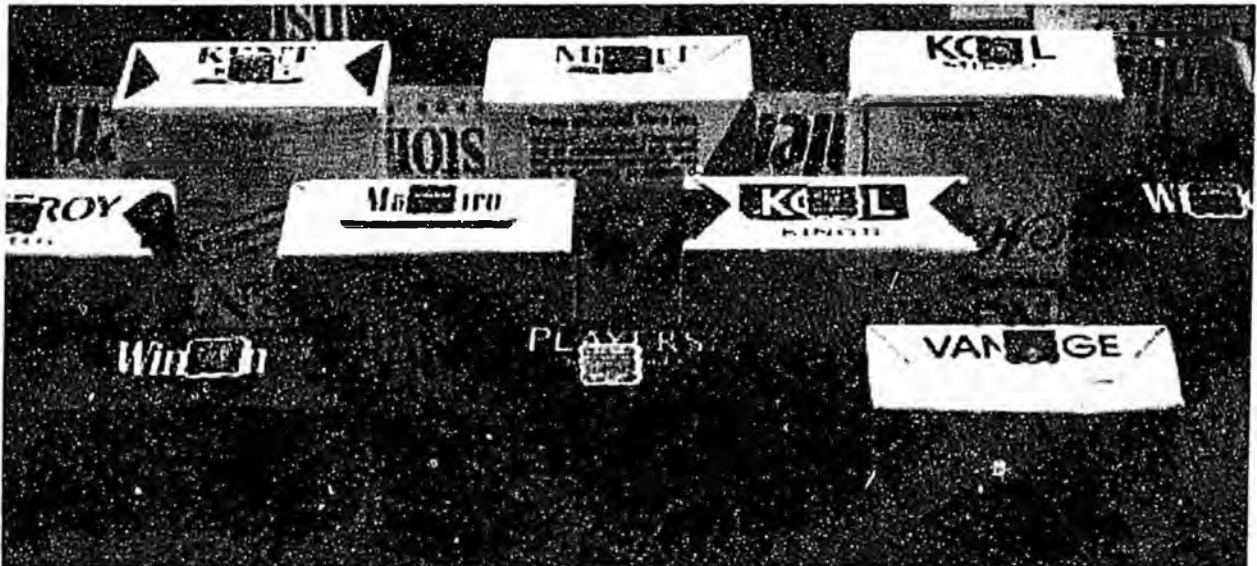
### Taxable Cigarettes FY 91 - FY 02



# FUSON®

## System of Choice for Tax Indicia and Product Authentication

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**Testimony in Support of SB 168**  
**Alaskans for Tobacco-Free Kids**

Good afternoon Mr. Chairman and member of the committee. My name is Jennifer App, and I'm the Advocacy Director for the American Heart Association. I'm testifying today on behalf of Alaskans for Tobacco Free Kids, a youth tobacco policy coalition that included the Heart Association, the American Lung Association of Alaska, the American Cancer Society and the Alaska Native Health Board. We support Senate Bill 168 because the bill will do two important things:

- (1) It will decrease the ability of individuals and businesses to illegally avoid the current tobacco tax, and
- (2) It will help keep cigarettes out of the hands of youth.

The ongoing increase in internet and mail order sales of cigarettes is a major challenge to public health efforts to reduce smoking. Non-face-to-face sales will account for 14% of all tobacco sales by 2005. By failing to require adequate age verification, the sharply growing number of mail order and websites selling cigarettes makes it easier and cheaper for kids to buy cigarettes. The mail order offers and websites also offer smokers a way to avoid paying state tobacco taxes, thereby keeping cigarette prices down and smoking levels up, and depriving the state of a legitimate source of revenue. It is estimated that a state can lose millions annually in uncollected tobacco taxes through internet and mail order sales.

The changes proposed in SB 168 are changes that will help solve these problems. First, the bill requires entities that hold a tobacco license to pay tobacco taxes through a stamp program. This change makes it far more difficult for businesses to avoid paying the tobacco tax because compliance with the requirement and evidence of payment of the tax will be immediately visible on every pack of cigarettes. Alaska is just one of a couple of states that does not have a tax stamp requirement in place.

While the tax stamps would help solve the tobacco tax evasion issue, the stamps alone do not help solve the existing youth access or tax evasion problems through use of the internet or mail order purchasing. Right now, consumers in Alaska buy cigarettes through mail order and the internet without any legitimate age verification process. Although clearly obligated under current law to pay state tobacco taxes, many individuals are also

avoiding payment of state tobacco taxes using this method of purchase. Proposed AS 43.50.105 contained in Section 7 of SB 163 addresses these problems by placing restrictions on shipping or transporting cigarettes, while still allowing shipments to entities holding licenses or endorsements.

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

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

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

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

2003

U April 14,

Testimony to Alaska Legislature  
Senate Labor and Commerce Committee

Senate Bill #168

Chairman Bunde and Ladies and Gentlemen of the committee

My name is Mike Elerding and I am president and owner of Northern Sales Company of Alaska (NSC). Northern Sales Co. is a wholesale distribution company founded in Juneau in 1960. We operate four (4) distribution warehouses in SE Alaska and a distribution warehouse in Kodiak. Our company provides full time, year round employment for 90 Alaska residents.

In 2002 cigarettes and tobacco products represented approximately 47 of our overall sales volume. In 2002 we imported 375,000 cartons of cigarettes into the state and we paid state excise tax in excess of \$3,750,000. Cigarettes and tobacco products are an integral part of our business.

The legislation proposed under SB 168 would require wholesale distributors licensed to sell cigarettes in Alaska to place a tax stamp on each pack of cigarettes imported into the state. The rationale for the tax stamp is to give the state a tool to ban the illegal importation of cigarettes and to enforce the collection of the excise tax on all cigarettes and tobacco products imported into the state. The problem with the proposed legislation is that the state is placing an additional burden of tax collection through the implementation of a tobacco stamp onto the wholesale distributor without addressing competitive issues which puts Alaska based wholesale distributors at a competitive disadvantage to the predatory pricing practices of large multi-state chain stores who are selling cigarettes below cost.

Owing to the unique logistics involved in supplying our geographic market area we would have to set up and establish 4 separate stamping operations in order to comply with the provisions in this proposed legislation. The cost of operating these stamping operations would create additional costs over and above the scheduled discount offered as reimbursement for stamping as proposed in this legislation. Because of competitive forces operating in the market place we would not be able to add the cost of the stamping operation to cover our increased costs and remain competitive. And because our existing margin on cigarettes and tobacco products is so thin we would not be able to absorb the increased costs created by the tax stamping operations and remain profitable.

The problem for Northern Sales and other similarly situated Alaskan based wholesale distributors is that we have to amortize the cost of a stamping operation over a relatively small number of carton sales. Large multi-state chain stores who sell millions of cartons have existing stamping operations in regional centers located in the lower 48. Because of the large volume of cigarettes these companies move through their regional stamping centers they are able to more efficiently amortize the operating cost of the stamping operation outside the state of Alaska.

The passage of this legislation as presently structured would put Alaska based wholesale distributors in an untenable position because we would not be able to

recover the increased costs of the tax stamping operation. The end result would be a loss of revenue to our company and a loss of full time Alaskan jobs. Once these jobs were gone they would not return because there is no incentive for the multi-state chain store to relocate their efficient regional stamping operations to Alaska.

As a cigarette distributor in Alaska, I support the concept of providing the state with a tool to stem the illegal importation of cigarettes and to provide a level playing field for tobacco distributors by insuring that all distributors are paying the state excise tax. However I believe that as proposed SB 168 will create a competitive disadvantage for Alaska based wholesalers. There is a need for tax stamping of cigarettes, but until the legislation addresses the predatory pricing practices of large multi-state operators the passage SB168 will only serve to undermine the financial health of my company and transfer jobs from Alaska to companies operating in the lower 48.

In my opinion SB 168 could be remedied by the addition of a minimum price provision which would result in the following benefits:

End predatory pricing practices with regard to selling cigarettes at or below cost

Create a level playing field for competition for the sale and distribution of tobacco in Alaska

Reduce youth access to cigarettes by ending below cost sales of cigarettes.

There are 25 states in the union plus the District of Columbia that currently have minimum price laws on their books. This is specific legislation dealing with tobacco distribution and unfair cigarette sales practices.

The climate in cigarette sales has changed dramatically over the years. Due to efforts of the health service community, the American Cancer Society and bolstered by the Master Settlement Agreement, government, business and the public as a whole have come to recognize that cigarettes are a commodity with which are associated certain health risks and as such, must be marketed and sold in a manner different from the common "free enterprise" products. These changes reflect a philosophical change toward more control of how commerce in cigarette sales is conducted and how to prevent youth access together with the philosophy of assisting the legitimate business interest in complying with tobacco laws without losing the ability to sell these products.

At present there are many retailers in Alaska using cigarettes as a loss leader to attract customers. Large national chain stores can absorb the cost of selling cigarettes below cost because they are going to make up any short fall on the sale of cigarettes by selling a TV or a VCR to a consumer who comes into their store in part because of the cheap cigarette prices. Tobacco wholesalers do not have the luxury of making up for low margin sales by selling high end consumer goods. And these predatory pricing practices are injuring fair competition in the wholesale distribution community. In addition one unintended consequence of this pricing practice is that by keeping the cost of cigarettes artificially low is that it provides greater access to these products by underage consumers.

The question you have to ask yourself is "are cigarettes the type of commodity that should be marketed and promoted in Alaska on the basis of price?" Based on the fact that we are among the elite few states who charge a tobacco excise tax in excess of \$10.00 per carton I suspect that the answer is, that Alaska does not advocate the marketing of cigarettes based on below cost pricing. And that



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

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Joel Michael, Legislative Analyst  
651-296-5057

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## **The Unfair Cigarette Sales Act**

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

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## Overview

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

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

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

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

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

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

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## The Minnesota Unfair Cigarette Sales Act

### How the Act Works

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

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

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

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

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

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

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

### Calculation of Minimum Cigarette Sale Prices

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

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

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

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

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

The act exempts:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

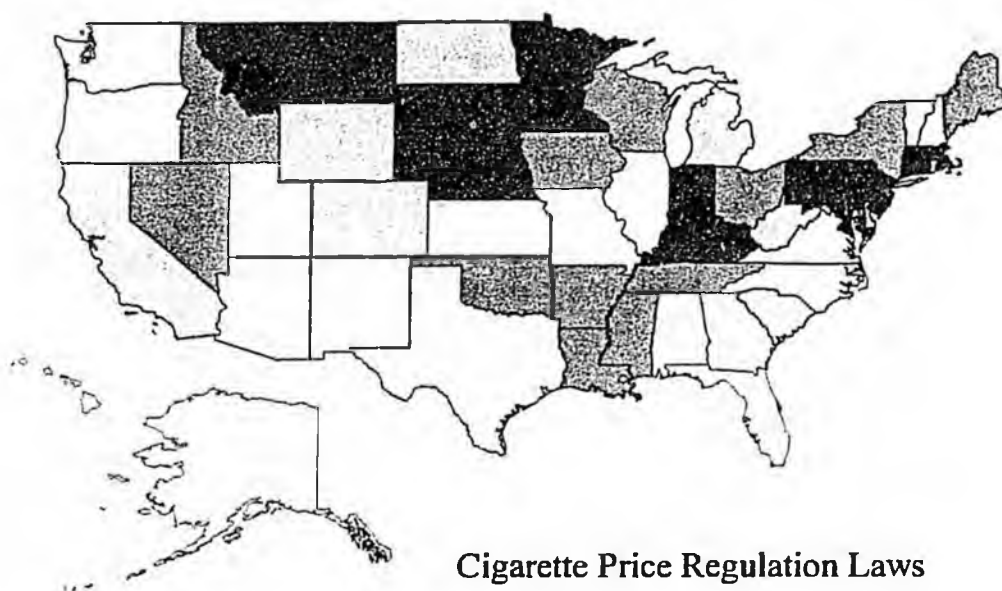
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<sup>28</sup> Minn. Stat. § 325D.33, subd. 8 (1998).





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

## Minimum Cigarette Pricing Laws in Other States

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



Cigarette Price Regulation Laws

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

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

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

**State Statutes Requiring Minimum Pricing of Cigarettes**

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

**State Statutes Requiring Minimum Pricing of Cigarettes (cont.)**

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

## The Purpose of the Law

Two purposes are commonly cited for the UCSA:

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

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

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

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

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

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

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

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

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

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

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

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

## Economic Effects of the Unfair Cigarette Sales Act

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### The Problem

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

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

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

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

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

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

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

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

#### Description of the Law

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

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

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<sup>4</sup> 26 U.S.C. § 5754(a).

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

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

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

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April 18, 2003

Senator Ralph Seekins  
State Capital, Room 125  
Juneau, AK 99801-1182

Re: Senate Bill No. 175

Dear Senator Seekins:

I write regarding Senate Bill No. 175 which you apparently introduced on April 7, 2003. We understand that Senate Bill No. 175 is an attempt to revive a similar bill (CSHB 319) which failed to become law last session. We also understand that this bill has now been referred to Senate Labor & Commerce and Judiciary, chaired respectively by Senators Bunde and yourself. We are writing because of grave concerns over the language of Senate Bill No. 175 and the likely additional liability exposures which will befall commercial recreational operators if this bill is passed using the current proposed language.

By way of some explanation, I will let you know that a primary piece of my law practice is recreational liability defense. I am currently representing the two primary insurers underwriting liability coverage in the recreational area in Alaska. I represent numerous recreational operators, including Heli-ski companies, rafting companies, sea kayak companies, lodges, flight-seeing tour operators, etc. Very simply, I do a lot of work in this area and have become articulate in the nuances of the law regarding recreational operators. I speak on a regular basis throughout the State of Alaska, and speak at a National level on this topic. I just last week returned from speaking at the first inaugural Recreational Law and Liability Conference which was held in Vail, Colorado. Attached you will a copy of the agenda from that meeting. The point of reciting some of my background is simply to convey that, this is an area of law which I know extremely well.

I received a copy of Senate Bill No. 175 while I was in Colorado last week participating in the recreational law conference. I was, quite frankly, dismayed and very worried once I saw the bill. It is unclear to me which constituency may be pushing for this bill, though I understand that the Alaska Tourism Industry Association may have expressed an interest in seeing legislation passed

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in Alaska strengthening recreation providers defenses against litigation. The following information should provide your offices, the Senate and some of your constituents with information on inherent risk statutes and on the problems with the language proposed in Senate Bill No. 175.

#### Inherent Risk Statutes and Doctrine

Certainly, over the last 20 years or so, a number of the recreation oriented states have enacted statutes defining the inherent risk doctrine involved in recreational activities. This doctrine is sometimes referred to as "primary assumption of risk." Many of the statutes which have been passed cover a single activity because it is simply easier to list or discuss what would be considered an "inherent risk" to an individual activity. A few states, namely Wyoming, Vermont and Pennsylvania have drafted recreational safety acts which cover all recreational activities. (See also, discussion on Hawaii statute, below.) There is currently an inherent risk type bill pending in front of the Montana Legislature. I have attached for your review both the Wyoming Act and the bill pending in front of the Montana Legislature. These Acts generally define inherent risk, but do not include exhaustive lists of risks or lists of provider duties.

I can tell you, when the above referenced Acts were passed, many people questioned whether the courts in those states would be willing to use those Acts to summarily dismiss applicable cases. Subsequent to the passage of these Acts, the Wyoming court has, in just a couple of cases that we are aware of, been willing to use the Act to support summary dismissal in a horseback riding and in a snowboard injury case. The horseback riding case was appealed to the 10<sup>th</sup> Circuit, which upheld the Wyoming court's dismissal. It is important to note, however, that, where the Wyoming Act is drawn broadly to cover all recreational activities, the litigants in the case were required to hire expert witnesses to provide testimony on the issue of whether the injury in question (plaintiff alleged that the trail riding company negligently failed to properly tighten or cinch his saddle, so that his saddle flipped and he was injured) was, in fact, an inherent risk of horseback or trail riding. See, Cooperman v. Matt David, dba Wyoming Rivers & Trails, 214 F.3d 1162 (10<sup>th</sup> Cir. 2000). In other words, broadly drawn Acts which cover all recreational activities often times create issues of fact regarding inherent risks; where there is an issue of fact, the duty issue or the issue of whether something is actually an inherent risk must be decided by a fact finder, either a Judge or a jury. See also, Estate of Adam Horschman, et al v. Jackson Hole Mountain Resort Corp.,) 200 F. Supp. 2d 1329 (D.Wyo. 2002) in which the U.S. District Court used the Wyoming Act to support summary dismissal of the case against Jackson Hole, finding that a snowboarder's fatal injuries were caused by an inherent risk of the activity. What I am trying to convey is that, where the question of whether a certain risk is inherent to an activity or not becomes a question of fact, it can substantially delay or prevent summary judgment or dismissal of cases. As such, we know of only these cases where

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the statute(s) supported summary disposal of recreational type cases; and, even in these cases, expert or outside testimony was required to establish the inherent nature of the risk.

Quite frankly, it is worth noting that the majority of states do not have inherent risk type legislation. The reason for this is that the common law created the inherent risk doctrine and current case law, from studied courts, perpetuates the doctrine quite nicely. In fact, the general common law dictates that recreation providers have no duty to protect participants from the inherent risks of recreational activities, and therefore no corresponding liability to participants for injury or loss resulting from those inherent risks. As you will, or should recognize, there are four essential legal elements to establishing a cause of action for negligence. These elements include duty, breach, causation and damage. If the inherent risk doctrine establishes that there is no duty present in an inherent risk type situation, a participant will not be able to make out a cause of action for negligence.

The primary assumption of risk doctrine, often referred to as the inherent risk doctrine, provides generally that individual participants assume the inherent risks of recreational activities and all liability or responsibility for injuries resulting from those risks. Alternatively, providers of recreational activities have no duty, ergo no responsibility, to protect participants from the inherent risks and dangers of recreational activities. Inherent risks generally fall into two categories: one, those risks that are essential characteristics of a recreational activity and which the participants desire to confront: e.g., moguls, steep grades, exciting white water; and two, those undesirable risks which simply exist, e.g., falling rock, avalanches, or sudden severe weather changes. Much of this is covered in a wonderful law review article authored by an attorney who is not only a very good friend of mine, but whom I hold in the highest regard. See, Recreational Injuries and Inherent Risks, Wyoming Land and Water Review 1998, Catherine Hansen-Stamp.

#### Problems with Language Proposed in Senate Bill No. 175

Reviewing the language proposed in Senate Bill No. 175, against both the Wyoming Act and the Act being proposed in Montana, reveals a number of things. First, Section 05.50.010, states that participation in a commercial recreational activity constitutes acceptance of the inherent risks of that recreational activity. The bill then goes on, at Section 05.50.020 to find that a person who accepts an inherent risk of a commercial recreational activity is contributorily negligent to the extent they are injured, die or suffer property damage. The essential flaw in these two sections is that, whoever drafted this bill, apparently completely fails to understand the nature of the inherent risk doctrine. Where the proposed Senate Bill No. 175 attempts to establish contributory negligence against a person who accepts an inherent risk, this is simply nonsensical. Since the doctrine of inherent risk establishes that there is no duty, and therefore no negligence, there literally can be no contributory negligence.

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In addition, Section 05.50.030 and Section 05.50.040, attempt to establish the responsibilities of both the participants and of the operators of commercial recreational activities. Again, this is an essential failure to understand the inherent risk doctrine; the drafter of this language appears to be blurring the line between inherent risk and negligence. Where Senate Bill No. 175 sets specific responsibilities for both participants and operators, it not only fails to comprehend the inherent risk doctrine, it creates significant additional legal exposure to commercial recreational operators. In other words, where this bill, if enacted into law, would provide a statutory or codified set of responsibilities, it would create a per se style of liability. It is difficult to imagine a court, faced with the conflict of a statutory style responsibility and the private contractual release document between a recreational participant and a recreational operator, having any choice but to find under the established law. As they are written now, the sections under Senate Bill No. 175 which attempt to establish responsibilities: one, actually function to negate the inherent risk doctrine; two, expose recreational operators to a per se or statutory style of liability (negligence) which would likely negate the release contracts currently being used and three, would likely affect insurance coverage of recreational operators as very few standard CGL type policies provide coverage for intentional, reckless or per se type conduct. This is particularly true given Section 05.50.060, which states that a commercial recreational operator who violates one of these sections is negligent and civilly liable to the extent that injury or damage is caused. Additionally, where the responsibilities of the operator include explaining to the participant the fundamental inherent risks of the activity, this appears to be in direct conflict with the responsibility of the participant to learn about and expressly accept the risks of the activities.

I cannot emphasize strongly enough the effect of this type of language on potential insurance coverage and on establishing per se type of liability. I would urge you to consider the effect of a statute similar to your proposed bill passed by the Hawaiian Legislature in 1998. See, Hawaii Rev. Stat. §663-1.54 (1998). After a 1991 incident in which a tourist to Hawaii died paragliding, recreational activity providers saw increased litigation and rising insurance premiums. As a result, they banded together to lobby the Hawaii Legislature to enact a bill forcing the courts to recognize releases for negligent liability. Ironically, the statute enacted, which defines specific duties for the providers and the patrons, not only fell short of its goal, but has placed recreational providers in a much more endangered legal position. The Hawaii statute, just like your Senate Bill No. 175, defines duties of both parties, allows only inherent risks to be waived and leaves open the question of whether a risk is inherent. The legal effect of all of this has been terrible, to say the least, for Hawaiian recreation providers. Please review the Winter 1999 University of Hawaii Law Review article entitled Recreational Activity Liability in Hawaii: Are Waivers Worth the Paper on Which they Are Written?

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In striking contrast to the Hawaiian style legislation, in 1989, when the Wyoming Legislature passed the Recreation Safety Act, the structure of the Act (like similar Acts in Vermont and Pennsylvania) did not provide a list of inherent risks or a list of provider/participant duties. The basis for not providing a list of inherent risks or list of provider/participant duties was that, the Wyoming Act is what we term a "judicial approach." Under a judicial approach, a Judge determines whether the risk causing injury is inherent and hence, whether the provider owes a legal duty. The intent is that the Act will not establish responsibilities or duties as your proposed Senate Bill No. 175 very clearly does, and will not establish per se liability. The Wyoming Act leaves the question of whether a particular alleged risk is an inherent risk to the Judiciary. See, my discussion above, at page 2, however, which points out that, the judicial approach bills, even though stronger, still often delay summary dismissal of recreational cases.

By contrast, individual type inherent risk statutes which deal with a single recreational activity, like Ski Safety Acts, Equine Safety Acts, etc. provide comprehensive lists of the inherent risks of the activity and they also provide sections regarding the specific duties of both the provider and the participant. This is generally thought of as the "legislative approach" in that the scope of legal duties and/or activities are listed in the statute. Again, the drafter of Senate Bill No. 175 appears to be unfamiliar with the differentiation between these two approaches.

While the common law provides for and establishes the inherent risk doctrine, there is really nothing wrong with codifying a State's intent to recognize the doctrine. I am assuming that the intended purpose of Senate Bill No. 175 was to codify that, as a matter of law, providers of recreational activities have no duty to protect participants from injuries resulting from the inherent risks of the activities.

I am also assuming that your bill intended to strengthen the ability of recreational operators to pursue motions to dismiss or motions for summary judgment in the event of law suits for injuries resulting from an inherent risk of a provided activity. Unfortunately, both of the intentions which I am presuming have supported your bill, will be roundly defeated if this bill is passed into law. It is extremely clear to me that the bill, the way it is currently drafted, will result in additional litigation, a basis for plaintiffs to establish a per se type of liability, an opportunity for insurers to argue against coverage, the inability or added burden to operators in successfully pursuing dispositive motion practice and additional legal liabilities against commercial recreational operators. While some form of inherent risk legislation may be desirable, the language in Senate Bill No. 175 is so inaccurate and problematic, it is difficult to even to imagine the ramifications of this legislation.

Beyond what I have noted above, my greatest fear is that, where a recreational operator attempts to enforce a release of liability, this proposed bill will allow a plaintiff to, perhaps very successfully,

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argue that the statute creates a duty of care that cannot, on public policy grounds, be released by a written document. Remember, that we have only had two cases go before the Alaska Supreme Court on the issue of the effectiveness of a pre-recreational release. See, Moore v. Hartley Motors, Inc., 36 P.3d 628 (Alaska 2001); Kissick v. Schmierer, 816 P.2d 188, 191 (Alaska 1991). In both of these cases the court found that the release did not contain a magic word or phrase - either negligence or death. It is clear that, as opposed to other states, the Alaska court is traveling down a road I call the "magic language" road when it comes to prerecreation releases. This express language of Senate Bill No. 175 which mandates the recreational operator to act in ". . . a reasonably safe and competent manner . . ." will, very effectively, negate a commercial recreational operator's arguments in favor of the viability of his liability release for negligence. Where liability releases are, literally, the first line of defense in recreational liability cases, you can expect increased litigation and decreased availability of insurance to outdoor recreation type providers in Alaska if this bill passes.

In addition, it has been my experience that the most effectively drafted legislation separates out issues which are unrelated. Senate Bill No. 175 also purports to amend AS 09.65 by adding a section regarding civil liability for aircraft and watercraft passengers. This proposed amendment seeks to relieve an owner or operator of an aircraft or watercraft for civil damages for transporting someone in the owner or operators air or watercraft where they are not being hired or compensated for transportation. Again, I would urge the Senator and his constituents to think long and hard about this style of legislation in the State of Alaska. I am not sure what was intended by this proposed amendment, though I would observe the following. The paragraph (a), attempts to relieve operators when they are not under hire. Paragraph (b) then says that this amendment will not apply to owners or operators who have insurance that would be available to compensate the claimant for civil damages. If the relief from liability is not available to people who carry insurance, this type of legislation is simply an incentive for private aircraft or watercraft owners to "go bare." In addition, if this bill is passed in to law, certainly insurers will begin to segregate the coverage products they are making available to owners of air or watercraft to prevent having to respond to or compensate passengers in the event of catastrophic injuries. In the State of Alaska, where so many of our families travel long distances by air and watercraft and where there are frequent catastrophic accidents, it is the insurance that often makes the victim families whole again, or able to continue on without their partners or loved ones.

#### Conclusion

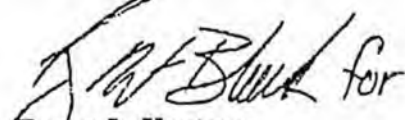
As you can see, I have copied this letter to numerous people who will have an interest in the inherent risk portion of Senate Bill No. 175. We will be happy to work with your office, and/or with any of the people on our copied list, to create legislation that may be more functional and or palatable to recreational operators in the State of Alaska. I would note, that, as you review the Wyoming

Senator Ralph Seekins  
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Legislation and the legislation currently being proposed in Montana, one additional recommendation that has been made by defense counsel in both of those states, and which I strongly favor, are that these bills be clarified to expressly state that nothing in the legislation is intended to render liability releases ineffectual. Certainly, any new legislation which is proposed in the recreational or inherent risk area in the State of Alaska should contain such specific qualifying language. Again, thank you for your consideration of the above and we will be happy to be of any further assistance.

Sincerely,

SISSON & KNUTSON, P.C.

  
Tracey L. Knutson

TLK/spd

Enclosures: Agenda of the Recreational Law and Liability Conference - Vail, Colorado.  
Wyoming Act  
Bill pending in front of the Montana Legislature

cc: Governor Frank Murkowski  
Senator Fred Dyson  
Senator Con Bunde  
Representative Pete Kott  
Representative Lesil McGuire  
Representative Ethan Berkowitz  
Brian Hove - Office of Senator Ralph Seekins  
Dave Hamre - Chugach Powder Guides  
Rich Weimer - Denali Alaska Insurance  
Jim Quist - Worldwide Outfitters and Guide Association  
Peggy Looney - Alaska Destination Specialists  
Chris Von Imhoff - Alyeska Resort  
Rich Dowd - Alyeska Resort  
Julie Saupé - Anchorage Convention & Visitors Bureau  
Keith Fiedorowicz - Alpine Air  
Kirsten & Carl Dixon - Within the Wild  
Per Bjorn-Roli

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Inaugural Conference!

# Recreation & Adventure Program Law and Liability

## Risk Management and Defense of Claims

April 10-11, 2003 • Sonnenalp Resort • Vail

Dear Colleagues:

Recreation and adventure programs are on the rise. Faced with pressure to provide diverse and unique programming in an increasingly competitive market, it is critical that these programs and their legal counsel understand basic legal and risk management issues. Understanding these issues is key to assisting organizations and their leaders in running a well organized and responsible operation, as well as minimizing potential legal exposure.



Catherine Hansen-Stamp, Esq.

**Special Rate for Government Employees: Only \$595 per person!**

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Charles R. 'Reb' Gregg, Esq.

We look forward to seeing you at the CLE International's first conference on Recreation & Adventure Program Law & Liability!

Regards,

*Catherine Hansen-Stamp*  
Catherine Hansen-Stamp, Esq.  
Program Co-Chair

*Reb Gregg*  
Charles R. 'Reb' Gregg, Esq.  
Program Co-Chair



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Conference Schedule Inside

Recreation & Adventure  
Program Law and Liabilityseminar **schedule**

Thursday, April 10

Friday, April 11

8:30 Registration

9:00 Introduction

*Charles R. "Reb" Gregg, Esq., Program Co-Chair*  
Houston, TX*Catherine Hansen-Stamp, Esq., Program Co-Chair*  
Golden, CO

9:30 Overview of Basic Legal Doctrines

Inherent Risks; Negligence

*Charles R. "Reb" Gregg, Esq., Program Co-Chair*

10:00 Morning Break

10:15 Information Exchange and Disclosure

Written and Oral Disclosure and Warnings; Screening Issues; Risk and Release Forms; Other Participant Agreements

*Catherine Hansen-Stamp, Esq., Program Co-Chair*

11:00 Litigation Issues

Lessons from the Field: Ultimate Goals of Crisis Response; Documents, Training and Program Procedures for Litigation Avoidance; Post Accident Crisis Management

*Deb Ajango, Director, Alaska Outdoor Education Department*

University of Alaska, Anchorage, AK

*Tracey L. Knutson, Esq.*

Sisson &amp; Knutson, Anchorage, AK

*Tod Schimelpfenig, Curriculum Director, Wilderness Medicine Institute*

National Outdoor Leadership School, Lander, WY

A Defense Attorney's Perspective

*Monty L. Barnett, Esq.*

White &amp; Steele, Denver, CO

12:15 Lunch Break

2:00 Hot Topics in Program  
and Safety Management

The Organization Perspective; Pre-Trip Medical Screening; Transportation Standards; 15 Passenger Vans; Managing Instructor Judgment Issues

*Tod Schimelpfenig, Curriculum Director, Wilderness Medicine Institute**Bob Box, Director Safety and Program*  
Outward Bound USA, Mesa, AZ

3:15 Providing Services to Minors

Significance of the Cooper Case; Indemnity and Release; Enforceability of Parent and Guardian Signatures; Unanswered Questions

*Stephen Hopkins, Esq.*

Higgins, Hopkins, McLain &amp; Roswell, Lakewood, CO

3:55 Afternoon Break

4:10 Premises Liability

Rocky Mountain Region, Interplay with Statutes for Specific Activities

*Arthur B. "Boots" Ferguson, Jr., Esq.*

Holland &amp; Hurl, Aspen, CO

4:50 Recreational Equipment Issues

Products Liability; Maintenance, Use and Rental; Provider Exposure; Instruction on Use; Modification; Use of Technology

*Laura L. Horton, Esq.*

Northridge, CA

5:30 Adjourn

9:00 Overview

Review of Day One; Issues for Day Two

*Catherine Hansen-Stamp, Esq., Program Co-Chair**Charles R. "Reb" Gregg, Esq., Program Co-Chair*

9:15 Choice of Entity

Structuring the Company for Limited Liability; Tax and Legal Issues; Choosing the Right Advisor Team

*James V. Pearson, Esq.*

Pearson &amp; Horowitz, Denver, CO

10:00 Morning Break

10:15 Grouping Risk Management Issues

Company Policies and Practices; Risk Management Plans;

Emergency Protocols and Procedures; Defense of Claims

*Peter W. Rietz, Esq.*

The Rietz Law Firm, Dillon, CO

11:00 Industry Standards and Practices

Determining the Standard; Peer Review; Accreditation

*Geraldine Link, Esq., General Counsel*

National Ski Areas Association, Lakewood, CO

11:45 Q&amp;A Panel

Members of the Faculty

12:00 Lunch Break

1:30 Staffing Issues

Employees and Independent Contractors; Interns and Volunteers; Selection, Training, Supervision and Vicarious Liability

*Betty van der Smissen, Esq., Re.D., Professor*

University of Northern Iowa, Cedar Falls, IA

2:15 Insurance Issues in the Industry

What Type? Coverage and Exclusions; How Much is Enough?

*Glenn Sudol, Underwriting Manager*

and Executive Vice-President

Gillingham &amp; Associates, Westminster, CO

*Frank L. Freeman, Senior Vice President,**Branch Manager, MountainGuard Insurance Program*

Willis of New Hampshire, Salt Lake City, UT

3:15 Ethics—Hunker Down or Cooperate?

Attorney/Client Privilege and Disclosure During a Crisis; Balancing the Duties of What to Say and to Whom

*Reb Gregg, Esq., Moderator**Jim Moss, Esq.*

Silverthorne, CO

*Peter W. Reitz, Esq.**Tod Schimelpfenig, Curriculum Director,**Wilderness Medicine Institute**Frank L. Freeman, Senior Vice President,**Branch Manager, MountainGuard Insurance Program*

4:15 Adjourn



## Recreation & Adventure Program Law and Liability

# meet your instructors

**Charles R. "Reb" Gregg, Program Co-Chair,** focuses on outdoor recreation matters and general litigation. He has served as legal counsel to NOLS since the late 1970s and is a frequent speaker in the outdoor recreation industry. He is co-editor of the *Outdoor Education and Recreation Quarterly*.

**Catherine Hansen-Stamp, Program Co-Chair,** represents recreation providers, recreational product manufacturers and other organizations on legal liability and risk management issues. She is the co-editor of the *Outdoor Education and Recreation Law Quarterly*.

**Martha D. Rehm, Featured Presenter,** serves as Senior Vice President, General Counsel and Secretary of Vail Resorts. She has also served as General Counsel of Corporate Express and as a private practitioner with a focus on corporate finance and securities transactions.

**Deb Ajango** provides risk management education and consultation services to programs nationwide and is the editor of *Lessons Learned: A Guide to Accident Prevention and Crisis Response*. She also serves on AEE's Accreditation Council.

**Monty L. Barnett** has 10 years of broad trial experience, including matters involving recreational activities and products. He is a recipient of the American Jurisprudence Award for Appellate Advocacy.

**Bob Box** has been with Outward Bound for 30 years. He recently led a collaborative effort with the St. Paul Companies to educate programs about best practices in safety management.

**Arthur B. "Boots" Ferguson, Jr.,** focuses on all aspects of recreation and resort development law. He is special counsel to the Colorado Ski Country U.S.A., and he serves on the board of directors of the American Mountain Guides Association.

**Frank L. Freeman** is responsible for the western operations of Willits' national ski program. He also co-manages the national program and is very involved in all aspects of ski-resort exposures.

**Stephen Hopkins** emphasizes the defense of claims regarding general liability and ski area liability. He was attorney of record for the respondents in the recent Colorado Supreme Court case, *Cooper v. Aspen Skiing Company*.

**Laura L. Horton** handles the defense of sport and recreational liability cases and has published articles on waiver and release and assumption of risk. She also specializes in product liability, professional liability and employment issues.

**Tracey L. Knutson** represents heli-ski, kayaking, rafting and hiking companies in risk management and litigation matters. She was closely involved in the successful defense of the State of Alaska in *McCubbins v. State of Alaska*, a case arising out of a diving accident at one of the State's recreation areas.

**Geraldine Link** directs public policy and in-house legal affairs for the NSSA, the trade group for resort owners and operators nationwide. She serves on the Board of Directors for the Continental Divide Trail Alliance.

**Jim Moss** is a risk management consultant and author of four books, including *Outdoor Recreation, Travel, and Hospitality Forms*. He represents the Wilderness Medical Society, the American Mountain Guides Association, the Colorado River Outfitters Association and over 100 college and university recreation programs.

**James V. Pearson** has 25 years of experience in business law, outdoor recreation and business management. He is Chairman of the Adventure Travel Society and previously served as a contributing editor for *Adventure Travel Business Magazine*.

**Peter W. Reitz** specializes in ski industry and sports-related litigation. He was a counsel of record for the United States Ski Association in the Colorado Supreme Court cases, *Cooper v. Aspen Skiing Company* and *Graven v. Vail Resorts*.

**Tod Schmelpfenig** has been a wilderness educator since 1973, is a past NOLS Risk Management Director and Rocky Mountain School Director. He is the founder of the Wilderness Risk Managers Committee, and he is a recipient of the WMS Warren Bowman Award for lifetime contribution to the field of wilderness medicine.

**Glenn Sudol's** company is the premiere provider of insurance for outdoor recreation businesses in the United States. He is responsible for the development and underwriting of The Great Outdoors Insurance Program, covering campgrounds, outfitters and guides, guest ranches and snowmobile tours, among others.

**Betty van der Smissen** teaches advanced undergraduate and graduate courses on Legal Aspects of Sport, Recreation, Parks & Leisure Services. She is the author of the three-volume reference work, *Legal Liability and Risk Management for Public and Private Entities*, and is the coordinating editor of *Management of Park and Recreation Agencies*.

## seminar information

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**CLE International Program Attorney:**  
Caroline R. Kert, [kert@cle.com](mailto:kert@cle.com)

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# Recreation & Adventure Program Law and Liability

## Risk Management and Defense of Claims

April 10-11, 2003 • Sonnenalp Resort • Vail

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# Recreation & Adventure Program Law and Liability

## Risk Management and Defense of Claims

April 10-11, 2003 • Sonnenalp Resort • Vail



*Wyo*

## WYOMING RECREATION SAFETY ACT

1-1-121. Recreation Safety Act; short title.

This act shall be known and may be cited as the "Recreation Safety Act".

1-1-122. Definitions.

(a) As used in this act:

(i) "Inherent risk" with regard to any sport or recreational opportunity means those dangers or conditions which are characteristic of, intrinsic to, or an integral part of any sport or recreational opportunity;

(ii) "Provider" means any person or governmental entity which for profit or otherwise, offers or conducts a sport or recreational opportunity. This act does not apply to a cause of action based upon the design or manufacture of sport or recreational equipment or products or safety equipment used incidental to or required by the sport or recreational opportunity;

(iii) "Sport or recreational opportunity" means commonly understood sporting activities including baseball, softball, football, soccer, basketball, swimming, hockey, dude ranching, nordic or alpine skiing, mountain climbing, river floating, hunting, fishing, backcountry trips, horseback riding and any other equine activity, snowmobiling and similar recreational opportunities;

(iv) "Equine activity" means:

(A) Equine shows, fairs, competitions, performances or parades that involve any or all breeds of equines;

(B) Any of the equine disciplines;

(C) Equine training or teaching activities, or both;

(D) Boarding equines;

(E) Riding, inspecting or evaluating an equine belonging to another, whether or not the owner has received some monetary consideration or other thing of value for the use of the equine or is permitting a prospective purchaser of the equine to ride, inspect or evaluate the equine;

(F) Rides, trips, hunts or other equine activities of any type however informal or impromptu;

(G) Day use rental riding, riding associated with a dude ranch or riding associated with outfitted pack trips; and

(H) Placing or replacing horseshoes on an equine.

(v) Repealed By Laws 1996, ch. 78, §§ 2.

(vi) "This act" means W.S. 1-1-121 through 1-1-123.

1-1-123. Assumption of risk.

(a) Any person who takes part in any sport or recreational opportunity assumes the inherent risks in that sport or recreational opportunity, whether those risks are known or unknown, and is legally responsible for any and all damage, injury or death to himself or other persons or property that results from the inherent risks in that sport or recreational opportunity.

(b) A provider of any sport or recreational opportunity is not required to eliminate, alter or control the inherent risks within the particular sport or recreational opportunity.

(c) Actions based upon negligence of the provider wherein the damage, injury or death is not the result of an inherent risk of the sport or recreational opportunity shall be preserved pursuant to W.S. 1-1-109.

Montana

58th Legislature

HB0227.01

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HOUSE BILL NO. 227  
INTRODUCED BY D. BROWN

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA RECREATION SAFETY ACT; PROVIDING THAT A PERSON WHO ENGAGES IN A SPORT OR RECREATIONAL OPPORTUNITY ASSUMES THE INHERENT RISKS IN THAT SPORT OR RECREATIONAL OPPORTUNITY AND IS RESPONSIBLE FOR INJURIES AND DAMAGES RESULTING FROM THOSE INHERENT RISKS; LIMITING THE LIABILITY OF THE PROVIDERS OF A SPORT OR RECREATIONAL OPPORTUNITY; CLARIFYING THAT A PROVIDER IS NOT REQUIRED TO ELIMINATE, ALTER, OR CONTROL THE INHERENT RISKS WITHIN A PARTICULAR SPORT OR RECREATIONAL OPPORTUNITY; SUBSTITUTING THE NEW RECREATION SAFETY STANDARD FOR FORMER RECREATIONIST RESPONSIBILITY LAWS REGARDING SKIING, SNOWMOBILING, OFF-HIGHWAY VEHICLE USE, AND EQUINE ACTIVITIES; LIMITING GOVERNMENTAL LIABILITY; REPEALING SECTIONS 23-2-651, 23-2-652, 23-2-653, 23-2-654, 23-2-731, 23-2-733, 23-2-736, 23-2-822, 27-1-725, 27-1-726, 27-1-727, AND 27-1-728, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, all sports and recreational activities involve inherent risks that provide the challenge and excitement that entice recreationists to participate in those activities; and

WHEREAS, recreationists should accept the risks inherent in sports and recreational activities and be responsible for injury or damage resulting from those inherent risks; and

WHEREAS, the state has a legitimate interest in maintaining the economic viability of the sports and recreation industries by discouraging claims based on damages resulting from risks inherent in a sport or recreational activity;

WHEREAS, providers of recreational opportunities should not be required to alter the challenge and excitement of recreational activities by controlling risks inherent in the activities; and

WHEREAS, the liability of providers of recreational opportunities should be limited to negligence that is not associated with the inherent risks of a sport or recreational activity.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:



58th Legislature

HB0227.01

1           NEW SECTION. Section 1. Short title -- purpose. (1) (Sections 1 through 3) may be cited as the  
2 "Montana Recreation Safety Act".

3           (2) The legislature finds that sports and recreational activities are major industries in Montana and that  
4 among the attractions of sports and recreation are risks, inherent and otherwise. The state has a legitimate  
5 interest in maintaining the economic viability of the sports and recreation industries by discouraging claims based  
6 on damages resulting from risks inherent in sports and recreation.

7           (3) The purpose of [sections 1 through 3] is to limit or eliminate the liability of a provider of a sport or  
8 recreational opportunity to a sport or recreation participant when an injury or damage caused by or to the  
9 participant is the result of risks inherent in the sport or recreational opportunity.

10           (4) The legislature intends that [sections 1 through 3] be broadly construed to effectuate the purpose  
11 of [sections 1 through 3] to shield providers of a sport or recreational opportunity from liability for injuries and  
12 damages caused by the inherent risks of a recreational activity.

13

14           NEW SECTION. Section 2. Definitions. As used in [sections 1 through 3], the following definitions  
15 apply:

16           (1) "Inherent risks" means those dangers or conditions that are characteristic of, intrinsic to, or an  
17 integral part of any sport or recreational activity.

18           (2) "Provider" means a person or governmental entity that promotes, offers, or conducts a sport or  
19 recreational opportunity, for profit or otherwise.

20           (3) (a) "Sport or recreational opportunity" means any commonly understood sporting activity, whether  
21 undertaken with or without permission, including but not limited to baseball, softball, football, soccer, basketball,  
22 bicycling, hiking, swimming, boating, hockey, dude ranching, nordic or alpine skiing, snow boarding, snow  
23 alding, mountain climbing, river floating, whitewater rafting, canoeing, kayaking, hunting, fishing, backcountry  
24 trips, horseback riding and other equine activity, snowmobiling, off-highway vehicle use, and any similar  
25 recreational activity.

26           (b) The term does not include amusement rides regulated pursuant to 27-1-741 through 27-1-745  
27 or equine activity conducted in conjunction with the horseracing and mule racing industries regulated pursuant  
28 to Title 23, chapter 4.

29

30           NEW SECTION. Section 3. Limitation on liability in sport or recreational opportunity. (1) A person

58th Legislature

HB0227.01

1 who participates in any sport or recreational opportunity assumes the inherent risks in that sport or recreational  
2 opportunity, whether those risks are known or unknown, and is legally responsible for all injury or death to the  
3 person or other persons and for all damage to property that result from the inherent risks in that sport or  
4 recreational opportunity.

5 (2) A provider is not required to eliminate, alter, or control the inherent risks within the particular sport  
6 or recreational opportunity that is provided.

7 (3) [Sections 1 through 3] do not preclude an action based on the negligence of the provider if the injury,  
8 death, or damage is not the result of an inherent risk of the sport or recreational opportunity.

9 (4) [Sections 1 through 3] do not apply to a cause of action based on the design or manufacture of  
10 sports or recreational equipment or products or safety equipment used incidental to or required by the sport or  
11 recreational activity.

12

13 NEW SECTION. Section 4. Repealer. Sections 23-2-651, 23-2-652, 23-2-653, 23-2-654, 23-2-731,  
14 23-2-733, 23-2-736, 23-2-822, 27-1-725, 27-1-726, 27-1-727, and 27-1-728, MCA, are repealed.

15

16 NEW SECTION. Section 5. Codification Instruction. [Sections 1 through 3] are intended to be  
17 codified as an integral part of Title 27, chapter 1, part 7, and the provisions of Title 27, chapter 1, part 7, apply  
18 to [sections 1 through 3].

19

20 NEW SECTION. Section 6. Severability. If a part of [this act] is invalid, all valid parts that are  
21 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
22 the part remains in effect in all valid applications that are severable from the invalid applications.

23

24 NEW SECTION. Section 7. Two-thirds vote required. Because [section 3] limits governmental  
25 liability, Article II, section 18, of the Montana Constitution requires a vote of two-thirds of the members of each  
26 house of the legislature for passage.

27

28 NEW SECTION. Section 8. Effective date. [This act] is effective on passage and approval.

29

- END -



# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB 175 (L&C)  
 () Publish Date: \_\_\_\_\_

Revision Date/Time: \_\_\_\_\_ Dept. Affected: Law  
 Title "An Act relating to civil liability for commercial BRU Civil Division  
recreational activities and for guest passengers..." Component Special Litigation  
 Sponsor Senator Seekins  
 Requester Senate Labor and Commerce Component No. 2213

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

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

| OPERATING EXPENDITURES | FY 2004    | FY 2005    | FY 2006    | FY 2007    | FY 2008    | FY 2009    |
|------------------------|------------|------------|------------|------------|------------|------------|
| 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> |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|

|                               |  |  |  |  |  |  |
|-------------------------------|--|--|--|--|--|--|
| <b>CHANGE IN REVENUES ( )</b> |  |  |  |  |  |  |
|-------------------------------|--|--|--|--|--|--|

**FUND SOURCE** (Thousands of Dollars)

|   |            |            |            |            |            |            |
|---|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts                   |            |            |            |            |            |            |
| 1003 GF Match                           |            |            |            |            |            |            |
| 1004 GF                                 |            |            |            |            |            |            |
| 1005 GF/Program Receipts                |            |            |            |            |            |            |
| 1037 GF/Mental Health                   |            |            |            |            |            |            |
| Other (Specify Type--Do not abbreviate) |            |            |            |            |            |            |
| <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 (FY2003) cost: 0.0

Check 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)

SB 175 establishes the responsibilities of persons who operate commercial recreational activities and persons who participate in those recreational activities and to decrease uncertainty regarding the legal responsibility for injuries that result from participation in commercial recreational activities. Under this bill, owners or operators of an aircraft or watercraft would not be liable for civil damages of a guest passenger if the owner or operator is not being compensated for the transportation, except under certain specified circumstances.

The Department of Law does not anticipate a fiscal impact as a result of this bill.

Prepared by: Kathryn Daughhelee  
 Division: Attorney General's Office  
 Approved by: Kathryn Daughhelee for Gregg D. Renkes, Attorney General  
 Agency: Department of Law

Phone (907) 465-3673  
 Date/Time 4/29/03 12:09 PM  
 Date 4/29/2003

**Fiscal Note to Come**

# ALASKA STATE SENATE

Session:  
State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-2327  
(907) 465-5241 Fax



Interim:  
119 N. Cushman, Suite 201  
Fairbanks, Alaska 99701  
(907) 456-8161  
Senator\_Ralph\_Seekins@legis.state.ak.us

**Senator Ralph Seekins**  
District D

## SB 175 Sponsor Statement

### Civil Liabilities for Commercial Recreational Activities

Alaska offers outdoor enthusiasts myriad recreational opportunities. Many visitors from Outside, as well as in-state recreationalists, enjoy commercial activities such as river rafting, guided hiking, snowboarding and sport fishing to name a few. However, the high cost of liability insurance presents a substantial barrier to these enterprises, the vast majority of which are small Alaska-based companies.

Senate Bill 175 delineates the burden of responsibility for the commercial recreation business as well as the person who elects to participate in that recreational activity. It addresses specific guidelines operators and participants must follow to minimize the possibility of accidents. Nevertheless, commercial businesses are still responsible for meeting safety standards and providing trained and competent personnel as required by the Bill.

Without exception, participation in outdoor recreational activities carries with it a degree of inherent risk. However, SB 175 adds the presumption that a participant accepts the inherent risks of a commercial recreation activity and as such has played a role in any damages resulting from that inherent risk. Likewise, a non-paying guest who is transported by a non-commercial aircraft or watercraft is considered to have assumed the same inherent risks as the commercial recreation user.

This legislation will decrease uncertainties regarding the legal responsibilities for injuries and encourage the continued viability of responsible businesses that offer commercial recreational activities to the public. Existing legal uncertainties have resulted in high liability insurance costs, which are prohibitive, especially for smaller businesses. This Bill will help avoid unfair and unreasonable claims that make it difficult to provide recreational and outdoor activities that are closely identified with the Alaska lifestyle and have come to be expected by visitors looking for exceptional experiences.

**Sectional Analysis**

**CS for HB 319**

(Same as SB 175)

**Section 1:** Establishes the purpose of the bill, which is to decrease the legal uncertainties regarding liability for injuries that result from participation in commercial recreational activities.

As well, the purpose of this legislation is to encourage the continued availability of businesses that offer recreational activities to the public.

**Section 2:** Amends Title 5 – Amusements & Sports, by adding a new chapter entitled, “Civil Liability for Commercial Recreational Activities.”

1. This chapter establishes an acceptance of inherent risk on the part of the participants and responsibilities of the operators. Specifically,
  - a. **Acceptance of inherent risks.** Participation in a commercial recreational activity constitutes acceptance of the inherent risks.
  - b. **Contributory negligence.** A person who accepts the inherent risks of a commercial recreational activity is contributorily negligent to the extent that the inherent risk caused the injury or loss. An action to recover damages shall be reduced for contributory negligence as provided under \*AS 09.50.030.
  - c. **Responsibilities of participants.** The participant is responsible to learn about and to expressly accept the risks of the activity and they must heed all relative warnings. They must act within the constraints of their health. The participant must heed all warnings regarding their The participant must maintain control of themselves, any minors under their control and any equipment or animals that the participant is using. The participant must not act in a fashion that could contribute to the injury of another participant.
  - d. **Responsibilities of operators of commercial recreational activities.** An operator must explain to the participants the fundamental inherent risks of the commercial recreational activity and must explain the skills and equipment that are not apparent to a novice. The operator must ensure that employees that assist participants are trained in basic first aid and in CPR. The operator must maintain all equipment, provide trained and competent employees and act in a reasonably safe and competent manner.
  - e. **Interaction with other laws.** This chapter doesn't affect the immunity of the ski area operator immunity or owner of unimproved land.

- f. **Effect of violations.** A commercial operator who breaches their responsibilities laid out in this chapter is negligent and liable to the extent that the breach caused injury or loss to a participant.

**Section 3:** Amends Title 9 by adding a new section entitled, "Civil liability for aircraft and watercraft guest passengers."

1. This chapter establishes that an owner or operator is not liable for civil damages of their guest except for damages resulting from:
  - a. gross negligence or reckless or intentional misconduct
  - b. an act or omission of a common carrier owner or operator
  - c. an act or omission that occurs while demonstrating an aircraft or watercraft to a prospective buyer
1. This new section also provides that if the owner or operator has insurance is not liable for damages that exceed their insurance coverage.
2. The owner or operator is not shielded by this chapter if they fail to provide notice to the guest that they are uninsured.

**Subject:** [Fwd: Please do not pass Recreational Liability Bill SB175!]

**Date:** Tue, 22 Apr 2003 09:53:02 -0800

**From:** Con Bunde <Senator\_Con\_Bunde@Legis.state.ak.us>

**Organization:** Alaska State Legislature

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

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

**Subject:** Please do not pass Recreational Liability Bill SB175!

**Date:** Mon, 21 Apr 2003 22:00:15 -0400

**From:** "Richard Dowd" <rdowd@alyeskaresort.com>

**To:** "Senator Con Bunde" <Senator\_Con\_Bunde@legis.state.ak.us>

Richard Dowd  
PO Box 249  
Girdwood, AK 99587

April 21, 2003

Dear Senator Bunde:

I am writing to urge you to withdraw your support of SB 175, the recreational liability bill.

Unfortunately, I and many other members of the Hospitality industry asked for your support, before a thorough legal analysis was performed. Following recent discussion and correspondence with attorneys who are experts in recreation law, it is imperative that SB 175 is defeated. For a detailed analysis, please refer to an 18 April 2003 letter to you from attorney Tracey Knutson. I also attended the same Recreational Law Conference in Vail, Co. she mentions and endorse her assessment.

Simply put, SB 175 will work against the common law doctrine of inherent risks, and make it more difficult for Alaskan operators to obtain insurance in an already difficult market, and avoid costly litigation.

This bill will certainly create more of a financial and legal burden on Alaska's Hospitality & Tourism industry, including our business operations and our vendor businesses.

Please reconsider and withdraw your support, pending a more thorough review. Our industry needs to sponsor a better piece of legislation and we are ready to assist our legislators in that effort.

Sincerely,

Richard Dowd - Alyeska Resort

**SB**

**176**

**SENATE COMMITTEE REPORT**  
**First Committee of Referral**

DATE: 4/7/03

FURTHER: Judiciary

Date of 5-Day Notice: \_\_\_\_\_  
 (in accordance with Uniform Rule 23)

DATE TURNED  
 IN TO OFFICE: \_\_\_\_\_

Labor and Commerce Committee considered SENATE BILL NO. 176

**SB 176 CIVIL LIABILITY FOR LIVESTOCK ACTIVITIES**

"An Act relating to civil liability for injuries or death resulting from livestock activities."

and recommends:

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

**Senate Bill:**

same title

new title

**House Bill:**

same title

technical title

new: SCR # \_\_\_\_\_


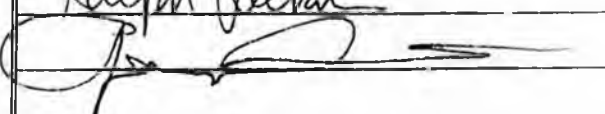
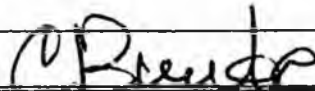
**NEW FISCAL NOTE(S):**

| Department | Date | Fiscal | Zero | FN# |
|------------|------|--------|------|-----|
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**PREVIOUS FISCAL NOTE(S):**

| Department | Date | Fiscal | Zero | FN# |
|------------|------|--------|------|-----|
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|            |      |        |      |     |
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APPROPRIATION - no fiscal note

| SIGNATURES AND RECOMMENDATIONS:  | Do PASS | Do NOT PASS | No REC | AMEND |
|--|---------|-------------|--------|-------|
|         |         |             | X      |       |
| Ralph Decker   | ✓       |             |        |       |
|         | X       |             |        |       |
|  |         |             |        |       |
|  |         |             |        |       |
| CHAIR:  | ✓       |             |        |       |

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB 176 (L&C)  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time: \_\_\_\_\_ Dept. Affected: Law  
 Title "An Act relating to civil liability for injuries  
or death resulting from livestock activities..." BRU Civil Division  
 Component Special Litigation  
 Sponsor Senator Seekins  
 Requester Senate Labor and Commerce Component No. 2213

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

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

| OPERATING EXPENDITURES | FY 2004    | FY 2005    | FY 2006    | FY 2007    | FY 2008    | FY 2009    |
|------------------------|------------|------------|------------|------------|------------|------------|
| 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> |

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| <b>CAPITAL EXPENDITURES</b> |  |  |  |  |  |  |
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| <b>CHANGE IN REVENUES ( )</b> |  |  |  |  |  |  |
|-------------------------------|--|--|--|--|--|--|

**FUND SOURCE** (Thousands of Dollars)

|   |            |            |            |            |            |            |
|---|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts                   |            |            |            |            |            |            |
| 1003 GF Match                           |            |            |            |            |            |            |
| 1004 GF                                 |            |            |            |            |            |            |
| 1005 GF/Program Receipts                |            |            |            |            |            |            |
| 1037 GF/Mental Health                   |            |            |            |            |            |            |
| Other (Specify Type--Do not abbreviate) |            |            |            |            |            |            |
| <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 (FY2003) cost: 0.0

Check 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)

SB 176 limits the civil liability of livestock activity sponsors, participants, and livestock professionals involved in livestock activities from injuries or death due to a livestock activity. Exceptions include: damages resulting from gross negligence or reckless or intentional misconduct, known faulty or defective equipment, or failure to determine ability of the participant to safely manage the livestock activity.

The Department of Law does not anticipate a fiscal impact as a result of this bill.

Prepared by: Kathryn Daughhete Phone (907) 465-3673  
 Division: Attorney General's Office Date/Time 4/29/03 12:09 PM  
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 4/29/2003  
 Agency: Department of Law

# ALASKA STATE SENATE



Session:  
State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-2327  
(907) 465-5241 Fax

Interim:  
119 N. Cushman, Suite 201  
Fairbanks, Alaska 99701  
(907) 456-8161  
Senator\_Ralph\_Seekins@legis.state.ak.us

**Senator Ralph Seekins**  
District D

## **SB 176 Sponsor Statement**

### **Civil Liabilities for Livestock Activity (aka The 4-H Bill)**

Senate Bill 176 is largely a reincarnation of House Bill 111 introduced in the 22<sup>nd</sup> Legislature. HB 111 was the product of several work sessions involving a group of 4-H members, stable owners and a veterinarian all located in the Tanana Valley. Like HB 111, SB 176 is intended to give livestock owners and those associated with livestock activities a certain measure of protection from frivolous lawsuits. Forty-four other states currently have similar legislation.

This Bill will recognize that a person assumes some degree of risk when placing themselves in the vicinity of livestock. The livestock owner, with the best of intentions, cannot completely prevent accidents from happening. For example, a bee could come along and sting a horse causing the horse to buck and throw a rider. Or, a bunny at a 4-H sponsored petting zoo could bite the finger of a small child attempting to feed it grain. Presently, both of these accidents could result in a lawsuit. Another example follows.

During the Miller Reach Fire in June of 1996, the Alaska State Fair in Palmer opened the fairgrounds to provide needed housing for evacuated animals. Pens were erected in the Farm Exhibition area and at the France Equestrian Center to hold a variety of animals. Both areas looked like Noah's ark had just unloaded. All the animals' owners made the best of the crowded situation and appreciated the Fair's hospitality.

That is with the notable exception of one individual who chose to ride her horse despite the crowded conditions. She happened to be bucked off the horse when it was spooked by a pig located in a nearby pen. Suffering from broken ribs and a punctured lung, she sued the fair because she had "warned" them about the problem of other animals spooking her horse. In November of 1997, the fairground's insurance company settled the case out of court for \$3,500 plus legal fees and medical expenses because to fight the suit would have cost them "four or five times as much."

SB 176 will not protect the livestock owner who acts in an unreasonable manner. But, by reducing some of the liability, the expectation is that this legislation will create an atmosphere which will encourage more livestock activity. It is important to note that this Bill is the work product of 4-H members statewide. These members will be following this proposal throughout the legislative process and participate in the passage of this Bill. A 4-H member in Fairbanks wrote the bulk of this sponsor statement.

SB

178

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB 178  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
 Title: State Lottery ERU: Revenue Operations  
 Component: Tax Division  
 Sponsor: Senator Taylor  
 Requester: Senate Labor and Commerce Component No. 2476

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

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

| OPERATING EXPENDITURES | FY 2004   | FY 2005   | FY 2006   | FY 2007   | FY 2008   | FY 2009   |
|------------------------|-----------|-----------|-----------|-----------|-----------|-----------|
| Personal Services      |           |           |           |           |           |           |
| Travel                 |           |           |           |           |           |           |
| Contractual            |           |           |           |           |           |           |
| Supplies               |           |           |           |           |           |           |
| Equipment              |           |           |           |           |           |           |
| Land & Structures      |           |           |           |           |           |           |
| Grants & Claims        |           |           |           |           |           |           |
| Miscellaneous          |           |           |           |           |           |           |
| <b>TOTAL OPERATING</b> | <b>**</b> | <b>**</b> | <b>**</b> | <b>**</b> | <b>**</b> | <b>**</b> |

|                             |           |           |           |           |           |           |
|-----------------------------|-----------|-----------|-----------|-----------|-----------|-----------|
| <b>CAPITAL EXPENDITURES</b> | <b>**</b> | <b>**</b> | <b>**</b> | <b>**</b> | <b>**</b> | <b>**</b> |
|-----------------------------|-----------|-----------|-----------|-----------|-----------|-----------|

|                               |           |           |           |           |           |           |
|-------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|
| <b>CHANGE IN REVENUES ( )</b> | <b>**</b> | <b>**</b> | <b>**</b> | <b>**</b> | <b>**</b> | <b>**</b> |
|-------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|

**FUND SOURCE (Thousands of Dollars)**

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

Estimate of any current year (FY2003) cost: 0.0  
 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:**

This bill establishes a public corporation for administering a State Lottery.

\*\*The Department of Revenue is not able to estimate the revenue or expenses associated with passage of this bill. The expenses and revenue will be completely contingent on the types of games chosen and how these games are administered. Because this Act does not specify either of these variables, no credible estimate is possible.

Per-capita sales vary from \$45 in Nebraska to \$1,151 in Rhode Island. In South Dakota per-capita sales are \$36 without video lottery terminals and \$843 with video lottery terminals. Some states, such as Oregon, have eight different games, while others, such as New Mexico, have just four state lottery games.

Expenses vary by type of game, by location and by ownership status. For example, Oregon owns and maintains all of its video lottery terminals and thus has large expenses relative to South Dakota, where the terminals are owned privately.

Prepared by: Larry Persily Phone 465-5469  
 Division: Tax Division and Commissioner's Office Date/Time April 27, 2003, 1 p.m.  
 Approved by: Larry Persily, Deputy Commissioner Date 4/27/2003  
 Agency: Larry Persily, Deputy Commissioner

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
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Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 25, 2003

**SUBJECT:** Sectional Summary - SB 178, (Work Order No. 23-LS0954\A)

**TO:** Senator Robin Taylor

**FROM:** Gerald P. Luckhaupt   
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

**Section 1.** This section is the statutory "meat" of the bill. It creates the Alaska State Lottery Corporation as a public corporation of the state. It provides for the membership of the corporation and its duties, powers, and employees, including an executive director. Requires the board to adopt regulations concerning the types of lotteries and lottery products and other matters. Authorizes the executive director to contract with lottery retail sales agents. Establishes prohibited acts and penalties for the commission of those acts.

**Sections 2 and 3.** Requires the Alaska State Lottery Corporation to adopt procurement regulations that are equivalent to those provided in AS 36.30 and authorize the corporation to use lists of vendors compiled by the Department of Administration for procurement.

**Section 4.** Adds employees of the Alaska State Lottery Corporation to the exempt service.

**Section 5.** Provides an effective date.

GPL:mdr  
03-091.mdr

**Subject: [Fwd: Gambling]**

**Date: Tue, 15 Apr 2003 15:59:35 -0800**

**From: Con Bunde <Senator\_Con\_Bunde@Legis.state.ak.us>**

**Organization: Alaska State Legislature**

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

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

Subject: Gambling

Date: Tue, 15 Apr 2003 23:25:40 +0000

From: dtinjum@att.net

To: Representative\_Beverly\_Masek@legis.state.ak.us (Beverly Masek),  
Representative\_Bob\_Lynn@legis.state.ak.us (Bob Lynn),  
Senator\_Georgianna\_Lincoln@legis.state.ak.us (Georgianna Lincoln),  
Representative\_Pete\_Kott@legis.state.ak.us (Pete Kott),  
Representative\_Beth\_Kerttula@legis.state.ak.us (Beth Kerttula),  
Representative\_Mary\_Kapsner@legis.state.ak.us (Mary Kapsner),  
Representative\_Reggie\_Joule@legis.state.ak.us (Reggie Joule),  
Representative\_Jim\_Holm@legis.state.ak.us (Jim Holm),  
Senator\_Lyman\_Hoffman@legis.state.ak.us (Lyman Hoffman),  
Representative\_Cheryll\_Heinze@legis.state.ak.us (Cheryll Heinze),  
Representative\_David\_Guttenberg@legis.state.ak.us (David Guttenberg),  
Senator\_Gretchen\_Guess@legis.state.ak.us (Gretchen Guess),  
Representative\_Max\_Gruenberg@legis.state.ak.us (Max Gruenberg),  
senator\_lyda\_green@legis.state.ak.us (Lyda Green),  
Representative\_Les\_Gara@legis.state.ak.us (Les Gara),  
Representative\_Richard\_Foster@legis.state.ak.us (Richard Foster),  
Senator\_Johnny\_Ellis@legis.state.ak.us (Johnny Ellis),  
Senator\_Bettye\_Davis@legis.state.ak.us (Bettye Davis),  
Representative\_Nancy\_Dahlstrom@legis.state.ak.us (Nancy Dahlstrom),  
Representative\_Eric\_Croft@legis.state.ak.us (Eric Croft),  
Representative\_Sharon\_Cissna@legis.state.ak.us (Sharon Cissna),  
Representative\_Mike\_Chenault@legis.state.ak.us (Mike Chenault),  
Senator\_Con\_Bunde@legis.state.ak.us (Con Bunde),  
Representative\_Ethan\_Berkowitz@legis.state.ak.us (Ethan Berkowitz),  
Representative\_Tom\_Anderson@legis.state.ak.us (Tom Anderson)

I am so happy to see you discussing gambling and want to encourage you all to legalize casinos, as well. Certainly it will enhance our revenues and won't only tap Alaskans for money, but will also give our visitors another way to contribute to our revenue source.

This will provide hundreds of jobs, will enhance the living conditions to many of our population, as well as diversify our economy.

Please give this your very serious consideration in this session. I feel it is time to really grab this deficit by the throat and get on top of revenues for our coffers.

Thank you and keep up the good work... We enjoy gavel-to-gavel alot.  
Ray

**Subject: Gambling and Voting**

**Date:** Tue, 22 Apr 2003 01:48:23 +0000

**From:** dtinjum@att.net

**To:** Representative\_Reggie\_Joule@legis.state.ak.us (Reggie Joule),  
Representative\_Jim\_Holm@legis.state.ak.us (Jim Holm),  
Senator\_Lyman\_Hoffman@legis.state.ak.us (Lyman Hoffman),  
Representative\_Cheryll\_Heinze@legis.state.ak.us (Cheryll Heinze),  
Representative\_Mike\_Hawker@legis.state.ak.us (Mike Hawker),  
Representative\_David\_Guttenberg@legis.state.ak.us (David Guttenberg),  
Senator\_Gretchen\_Guess@legis.state.ak.us (Gretchen Guess),  
Representative\_Max\_Gruenberg@legis.state.ak.us (Max Gruenberg),  
senator\_lyda\_green@legis.state.ak.us (Lyda Green),  
Representative\_Carl\_Gatto@legis.state.ak.us (Carl Gatto),  
Representative\_Les\_Gara@legis.state.ak.us (Les Gara),  
Senator\_Hollis\_French@legis.state.ak.us (Hollis French),  
Representative\_Richard\_Foster@legis.state.ak.us (Richard Foster),  
Representative\_Hugh\_Fate@legis.state.ak.us (Hugh Fate),  
Senator\_Kim\_Elton@legis.state.ak.us (Kim Elton),  
Senator\_Johnny\_Ellis@legis.state.ak.us (Johnny Ellis),  
Senator\_Fred\_Dyson@legis.state.ak.us (Fred Dyson),  
Senator\_Bettye\_Davis@legis.state.ak.us (Bettye Davis),  
Representative\_Nancy\_Dahlstrom@legis.state.ak.us (Nancy Dahlstrom),  
Representative\_Eric\_Croft@legis.state.ak.us (Eric Croft),  
Representative\_John\_Coghill@legis.state.ak.us (John Coghill),  
Representative\_Sharon\_Cissna@legis.state.ak.us (Sharon Cissna),  
Representative\_Mike\_Chenault@legis.state.ak.us (Mike Chenault),  
Senator\_Con\_Bunde@legis.state.ak.us (Con Bunde),  
Representative\_Tom\_Anderson@legis.state.ak.us (Tom Anderson)

Elected Officials: It is time to get serious about getting the budget in order. I have a strong desire to see gambling in this state, and encourage all of you to vote for a package that includes lotteries and video poker, along with casinos for our native population. Jobs, living conditions, and diversifying the economy come to mind as good reasons to enact this package.

I do not believe for a minute that this will endanger our lifestyle, or ruin our system socially. It cannot be as damaging as it will be if you don't get this budget in order, or if you balance the budget on the backs of the elderly, the children, or the disadvantaged.

So please vote in favor of this package. It is time..... Thank you, Ray Tinjum

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

A-C

Jan

April 18, 2003

Senator Carl Bundy

Dear Senator Bundy,

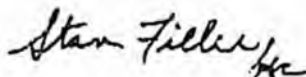
In 2002, Sitka CHARR had an ideal gross of \$1,085,922.00. At a tax rate of 5%, we would have paid \$54,296.10 in State tax. We paid \$7,124.82 State tax in 2002, 3% of the adjusted gross, a difference of \$47,171.28. For permittees, like Sitka CHARR, there is only one place from which the additional tax can come and that is to reduce the donations to charities.

Being a qualifying organization with a permit for charitable gaming using vendors to sell pull tabs, we receive 70% of the ideal net when we hand the game to the vendor. We pay for the pull tab cards and the tax out of our 70%. In 2002, Sitka CHARR gave away \$124,865.70. (A list of donations is attached.) Permittees who do charitable gaming through self-directed activities or vendors, give away a much higher percentage of their money than operators. Because of State cut backs in every area school activities are being curtailed, people who need assistance with food or heat are not receiving it from the State agencies. Donations from charitable gaming have helped to fill the gaps in these areas. Communities will be the ones hurt by this enormous tax increase.

The Borough of Sitka does not allow operators within its boundaries. Therefore, we use vendors instead of an operator and receive 70% of the ideal net. Allowing qualifying organizations to run their own gaming and the institution of electronic gaming would more do for the State and the municipalities than this tax increase on all charitable gaming.

We appreciate all that you do for Sitka. Please, look into electronic gaming as a revenue source and not such a high tax increase on charitable gaming as it is run now.

Sincerely,



Stan Filler  
President Sitka CHARR  
P.O. Box 777  
Sitka, AK 99835

**Subject: House Bill 240: No lottery! No video gaming!**

**Date:** Fri, 18 Apr 2003 15:04:15 -0700

**From:** boanak@juno.com

**To:** Senator\_Con\_Bunde@legis.state.ak.us, Senator\_John\_Cowdery@legis.state.ak.us,  
Senator\_Bettye\_Davis@legis.state.ak.us, Senator\_Fred\_Dyson@legis.state.ak.us,  
Senator\_Johnny\_Ellis@legis.state.ak.us, Senator\_Kim\_Elton@legis.state.ak.us,  
Senator\_Hollis\_French@legis.state.ak.us, Senator\_Lyda\_Green@legis.state.ak.us,  
Senator\_Gretchen\_Guess@legis.state.ak.us, Senator\_Lyman\_Hoffman@legis.state.ak.us,  
Senator\_Georgianna\_Lincoln@legis.state.ak.us, Senator\_Scott\_Ogen@legis.state.ak.us,  
Senator\_Donny\_Olson@legis.state.ak.us, Senator\_Ralph\_Seekins@legis.state.ak.us,  
Senator\_Ben\_Stevens@legis.state.ak.us, Senator\_Gary\_Stevens@legis.state.ak.us,  
Senator\_Robin\_Taylor@legis.state.ak.us, Senator\_Gene\_Therriault@legis.state.ak.us,  
Senator\_Thomas\_Wagoner@legis.state.ak.us, Senator\_Gary\_Wilken@legis.state.ak.us

April 18, 2003

To all lawmakers:

First, I've been an Alaskan resident since 1968. Second, I'm a Republican and a super-voter. And third, Pete Kott should be stretched over a crap table and flogged with a bag of dice!

No wise and decent person would ever be a party to the fleecing of a weaker brother. Nor would they treat lightly the imminent danger of addiction and ruin inherent in gambling. No matter what the rationale.

Pause for a moment and look at who is pushing this bill. The bar owners! The front men for an industry responsible for more heartache and social calamity than any other enterprise in America. Hellooooooo!

Shame on you who vote for this!

Robert O. Townsend  
3819 Young St. #1  
Anchorage, AK. 99508

**Subject:** [Fwd: MY THOUGHTS ON PROPOSED GAMING LEGISLATION]  
**Date:** Thu, 17 Apr 2003 08:19:11 -0800  
**From:** Con Bunde <Senator\_Con\_Bunde@Legis.state.ak.us>  
**Organization:** Alaska State Legislature  
**To:** Jane Alberts <Jane\_Alberts@legis.state.ak.us>

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

**Subject:** MY THOUGHTS ON PROPOSED GAMING LEGISLATION  
**Date:** Wed, 16 Apr 2003 22:15:02 -0800  
**From:** Maryann Brooks <wbrooks@gci.net>  
**To:** <Undisclosed-Recipient:;>

The people who engage in gambling activities are the people who can least afford it. The revenue we bring in is offset by the increased social program needs, so it zeros out. Even if there should be some overall gain in revenues, it would not justify the detrimental effects on family life - especially in the native communities. Cordially, Wiley Brooks, RPA District 28 Chairman

**Subject:** [Fwd: Re: Welcome to Legupdate!]  
**Date:** Thu, 17 Apr 2003 08:18:34 -0800  
**From:** Con Bunde <Senator\_Con\_Bunde@Legis.state.ak.us>  
**Organization:** Alaska State Legislature  
**To:** Jane Alberts <Jane\_Alberts@legis.state.ak.us>

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

**Subject:** Re: Welcome to Legupdate!  
**Date:** Thu, 17 Apr 2003 00:13:29 -0800  
**From:** "Barbara Mishler" <phbem@uaa.alaska.edu>  
**To:** Con Bunde <Senator\_Con\_Bunde@Legis.state.ak.us>

Dear Con,

Put me in the "Against" column for state lotteries and video gambling. It's a tawdry business for the state to be dealing with. Also, it just increases the number of people who need social services because somebody in the family gambles the money away before going home with the grocery money. THE STATE SHOULD NOT ENCOURAGE PEOPLE TO BE IRRESPONSIBLE! Actually the fairest tax is a graduated income tax; but since the rich own the lobbies, there's not a chance that will happen.

Hope you manage to get at least some sleep between now and the end of the session.

Cheers, Barbara Mishler

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

**From:** Con Bunde <Senator\_Con\_Bunde@Legis.state.ak.us>  
**Date:** Monday, March 17, 2003 1:42 pm  
**Subject:** Welcome to Legupdate!

> Welcome to my Legislative Update! I'm pleased that you are  
> interested  
> in receiving it. I have added your address to the mailing list. You  
> will receive future updates with a "blind" address to protect  
> recipients' privacy.  
>  
> I have appreciated the current feedback I've received. I would also  
> appreciate hearing your suggestions, concerns, or questions and  
> those of  
> your neighbors in Senate District P. So please do contact me at any  
> time.  
>  
> I have attached my Legislative Update about practice tests and  
> report  
> cards. I hope you find it useful. I have also attached a few  
> previous updates that I hope you will find useful as well.  
>  
> Also, if you change your e-mail address, please let me know so as to  
> avoid any interruption of service.  
>  
> Thanks again,  
> Con  
>  
>

[Fwd: No More Gambling]

**Subject:** [Fwd: No More Gambling]  
**Date:** Thu, 17 Apr 2003 10:38:36 -0800  
**From:** Con Bunde <Senator\_Con\_Bunde@Legis.state.ak.us>  
**Organization:** Alaska State Legislature  
**To:** Jane Alberts <Jane\_Alberts@legis.state.ak.us>

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

**Subject:** No More Gambling  
**Date:** Thu, 17 Apr 2003 09:23:21 -0800  
**From:** "Craig Wm. Black" <chilcoot@mtaonline.net>  
**Reply-To:** "Craig Wm. Black" <chilcoot@mtaonline.net>  
**Organization:** Al Peck's Used Fruit  
**To:** "Con Bunde" <Senator\_Con\_Bunde@Legis.state.ak.us>  
**References:** <3E9ED8A2.11C1FC66@Legis.state.ak.us>

I'm one of your Eagle River constituents. I love Las Vegas, was there last month. But I'd hate for Alaska to increase gambling in this state. Alaska simply doesn't have the population base to support an attractive form of gambling. Check out how dingy and depressing pull tab parlors are. Horrible!

Please, no expansions in gambling.

Craig Black

No Gambling

David Alexander wrote on 4/16/03:

> Dear Con,  
>  
> The gambling proposals from the Special Committee on Economic Development,  
> Trade, and Tourism and coming before the House Special ways and Means  
> Committee are an easy way out of a very tough situation. Gambling leads to  
> problems- period. This is one case where the domino theory operates in real  
> life. Pull tabs lead to lotteries lead to video poker lead to Alaska Native  
> casinos (I realize this represents mixed legal authority, especially with  
> regard to the possibility of Alaska Native involvement, but the Legislature  
> needs to exert some moral authority here by standing against an inherently  
> corrupt practice.) Why should we repeat the mistakes that other states  
> have made? I trust the Senate will deliberate differently. Gambling is to  
> all of crime what marijuana is to drug abuse.  
>  
> Thank you,  
>  
> Maribel and David Alexander