

HOUSE BILL NO. 224

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 3/28/03

Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to a tobacco product manufacturer's compliance with certain statutory**
2 **requirements regarding cigarette sales; and providing for an effective date."**

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

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

6 FINDINGS AND PURPOSE. (a) The legislature finds that

7 (1) violations of AS 45.53 threaten the integrity of the tobacco product Master
8 Settlement Agreement recognized in AS 45.53.010, the fiscal soundness of the state, and the
9 public health; and

10 (2) enacting procedural enhancements will aid the enforcement of AS 45.53
11 and safeguard the Master Settlement Agreement, the fiscal soundness of the state, and the
12 public health.

13 (b) The purpose of this Act is to implement the findings set out in (a) of this section.

14 * **Sec. 2.** AS 43.50 is amended by adding new sections to read:

1 **Article 5. Compliance with Statutory Requirements Regarding Cigarette Sales.**

2 **Sec. 43.50.500. Tobacco product manufacturer certifications.** (a) Every
3 tobacco product manufacturer whose cigarettes are sold in this state whether directly
4 or through a distributor, retailer, or similar intermediary or intermediaries shall
5 execute and deliver on a form or in the manner prescribed by the commissioner a
6 certification to the commissioner, no later than April 30 of each year, certifying under
7 penalty of perjury that, as of the date of the certification, the tobacco product
8 manufacturer is either a participating manufacturer or is in full compliance with
9 AS 45.53.

10 (b) A participating manufacturer shall include in its certification a list of its
11 brand families. The participating manufacturer shall update the list 30 days before any
12 addition or modification to its brand families by executing and delivering a
13 supplemental certification to the commissioner.

14 (c) A non-participating manufacturer shall include in its certification a
15 complete list of all of its brand families. The non-participating manufacturer shall
16 update the list 30 days before any addition or modification to its brand families by
17 executing and delivering a supplemental certification to the commissioner. A non-
18 participating manufacturer's certification must

19 (1) separately list brand families of cigarettes and the number of units
20 sold for each brand family that was sold in the state during the preceding calendar
21 year;

22 (2) list all of its brand families that have been sold in the state at any
23 time during the current calendar year;

24 (3) indicate by an asterisk any brand family sold in the state during the
25 preceding calendar year that is no longer being sold in the state as of the date of the
26 certification; and

27 (4) identify by name and address any other manufacturer of the listed
28 brand families in the preceding calendar year.

29 (d) For a non-participating manufacturer, the certification required by (a) of
30 this section shall additionally certify that the non-participating manufacturer

31 (1) is registered to do business in the state or has appointed a resident

1 agent for service of process and provided notice of the appointment as required by
2 AS 43.50.530;

3 (2) has

4 (A) established and continues to maintain a qualified escrow
5 fund; and

6 (B) executed a qualified escrow agreement that has been
7 reviewed and approved by the Department of Law and that governs the
8 qualified escrow fund; and

9 (3) is in full compliance with AS 45.53 and this section, and any
10 regulations adopted under those statutes.

11 (e) For a non-participating manufacturer, the certification shall also include
12 the

13 (1) name, address, telephone number, and electronic mail address of
14 the financial institution where the non-participating manufacturer has established the
15 qualified escrow fund required under AS 45.53 and the regulations adopted under that
16 chapter;

17 (2) account number of the qualified escrow fund and sub-account
18 number for the State of Alaska;

19 (3) amount that the non-participating manufacturer placed in the
20 qualified escrow fund for cigarettes sold in the state during the preceding calendar
21 year, the date and amount of each such deposit, and the evidence or verification
22 considered necessary by the commissioner to confirm the information submitted under
23 this section; and

24 (4) amounts of and dates of any withdrawal or transfer of money the
25 non-participating manufacturer made at any time from the qualified escrow fund or
26 from any other qualified escrow fund into which the non-participating manufacturer
27 ever made escrow payments in accordance with AS 45.53 and the regulations adopted
28 under that chapter.

29 (f) A tobacco product manufacturer may not include a brand family in its
30 certification unless

31 (1) for a participating manufacturer, the participating manufacturer

1 affirms that the brand family is to be considered to be its cigarettes for purposes of
 2 calculating its payments under the Master Settlement Agreement for the relevant year,
 3 in the volume and shares determined under the Master Settlement Agreement; and

4 (2) for a non-participating manufacturer, the non-participating
 5 manufacturer affirms that the brand family is to be considered to be its cigarettes for
 6 purposes of AS 45.53.

7 (g) Nothing in this section shall be construed as limiting or otherwise affecting
 8 the state's right to maintain that a brand family constitutes cigarettes of a different
 9 tobacco product manufacturer for purposes of calculating payments under the Master
 10 Settlement Agreement or for purposes of AS 45.53.

11 (h) A tobacco product manufacturer shall maintain all invoices and
 12 documentation of sales of cigarettes and other information relied upon for the
 13 certification for a period of five years, unless otherwise required by law to maintain
 14 them for a greater period of time.

15 **Sec. 43.50.510. Directory of cigarettes approved for sale and importation.**

16 Not later than July 30 of each year, the commissioner shall develop and make
 17 available for public inspection a directory listing all tobacco product manufacturers
 18 that have provided current and accurate certifications conforming to the requirements
 19 of AS 43.50.500 and all brand families that are listed in those certifications, except as
 20 follows:

21 (1) the commissioner may not include or retain in the directory the
 22 name or brand families of any non-participating manufacturer that fails to provide the
 23 required certification or whose certification the commissioner determines is not in
 24 compliance with AS 43.50.500, unless the commissioner has determined that the
 25 violation has been cured to the satisfaction of the commissioner;

26 (2) neither a tobacco product manufacturer nor brand family shall be
 27 included or retained in the directory if the commissioner concludes that

28 (A) for a non-participating manufacturer all escrow payments
 29 required under AS 45.53 for any period for any brand family, regardless of
 30 whether listed by the non-participating manufacturer, have not been fully paid
 31 into a qualified escrow fund governed by a qualified escrow agreement that has

1 been approved by the Department of Law; or

2 (B) all outstanding final judgments, including interest on those
3 judgments, for violations of AS 45.53 have not been fully satisfied for the
4 brand family and the manufacturer;

5 (3) the commissioner shall update the directory as necessary in order to
6 correct mistakes and to add or remove a tobacco product manufacturer or brand
7 families to keep the directory in conformity with the requirements of AS 43.50.500 -
8 43.50.590;

9 (4) every licensee shall provide to the commissioner, and update as
10 necessary, an electronic mail address for the purpose of receiving any notifications
11 that may be required by AS 43.50.500 - 43.50.590.

12 **Sec. 43.50.520. Prohibition against sale or importation of cigarettes not in**
13 **the directory.** (a) A person may not sell, offer, or possess for sale in this state, or
14 import for personal consumption in this state, cigarettes of a tobacco product
15 manufacturer or brand family not included in the directory.

16 (b) Under regulations adopted by the department, the department may allow a
17 licensee a credit for the tax paid under this chapter on cigarettes that the licensee
18 destroys, or returns to the manufacturer or distributor, to avoid a violation of this
19 section if

20 (1) the tobacco product manufacturer and brand family of the
21 cigarettes were included in the directory at the time the licensee came into possession
22 of the cigarettes; and

23 (2) the tobacco product manufacturer or brand family was
24 subsequently removed from the directory while the licensee was still in possession of
25 the cigarettes.

26 **Sec. 43.50.530. Agent for service of process.** (a) A non-resident or foreign
27 non-participating manufacturer that has not registered to do business in the state as a
28 foreign corporation or business entity shall, as a condition precedent to having its
29 brand families listed or retained in the directory, appoint and continually engage
30 without interruption the services of an agent in this state to act as agent for the service
31 of process on whom all process, and an action or proceeding against the non-

1 participating manufacturer concerning or arising out of the enforcement of
 2 AS 43.50.500 - 43.50.590 and AS 45.53, may be served in any manner authorized by
 3 law. The non-participating manufacturer shall provide the name, address, phone
 4 number, electronic mail address, and proof of the appointment and availability of the
 5 agent to and to the satisfaction of the commissioner and the Department of Law.

6 (b) The non-participating manufacturer shall provide notice to the
 7 commissioner and the Department of Law 30 calendar days before termination of the
 8 authority of an agent and shall additionally provide proof to the satisfaction of the
 9 Department of Law of the appointment of a new agent no less than five calendar days
 10 before the termination of an existing agent appointment. If an agent terminates an
 11 agency appointment, the non-participating manufacturer shall notify the commissioner
 12 and the Department of Law of the termination within five calendar days and shall
 13 include proof to the satisfaction of the Department of Law of the appointment of a new
 14 agent.

15 (c) Any non-participating manufacturer whose products are sold in this state,
 16 without appointing or designating an agent as required by this section is considered to
 17 have appointed the commissioner of the Department of Community and Economic
 18 Development as its agent and may be proceeded against in courts of this state by
 19 service of process upon the commissioner of the Department of Community and
 20 Economic Development in the manner described by AS 10.06.175(b), regardless of
 21 whether the non-participating manufacturer is a corporation; however, the
 22 appointment of the commissioner of the Department of Community and Economic
 23 Development as the agent does not satisfy the condition precedent to having the non-
 24 participating manufacturer's brand families listed or retained in the directory.

25 **Sec. 43.50.540. Reporting and disclosure of information; escrow**
 26 **installments.** (a) Not later than the end of the month following the month in which
 27 cigarettes were imported or sold in the state, each licensee shall submit the
 28 information the commissioner requires to facilitate compliance with AS 43.50.500 -
 29 43.50.590, including a list by brand family of the total number of cigarettes or in the
 30 case of roll-your-own cigarettes, the equivalent stick count for which the licensee
 31 during the previous calendar month paid the tax due for the cigarettes. For a period of

1 five years the licensee shall maintain, and make available to the commissioner, all
 2 invoices and documentation of sales of cigarettes of all non-participating
 3 manufacturers and any other information relied upon in reporting to the commissioner.

4 (b) The commissioner is authorized to disclose to the Department of Law any
 5 information received under this chapter and requested by the Department of Law for
 6 purposes of determining compliance with and enforcing the provisions of this chapter.
 7 The commissioner and the Department of Law shall share with each other the
 8 information received under this chapter, and may share the information with other
 9 federal, state, or local agencies only for purposes of enforcement of AS 43.50.500 -
 10 43.50.590, AS 45.53, or corresponding laws of other states.

11 (c) The commissioner or Department of Law may require at any time that the
 12 non-participating manufacturer provide proof, from the financial institution in which
 13 the manufacturer has established a qualified escrow fund for the purpose of
 14 compliance with AS 45.53, of the amount of money in the fund being held on behalf
 15 of the state and the dates of deposits, and listing the amounts of all withdrawals from
 16 the fund and the dates of withdrawals.

17 (d) In addition to the information required to be submitted under (a) of this
 18 section, the commissioner or the Department of Law may require a licensee or tobacco
 19 product manufacturer to submit any additional information, including samples of the
 20 packaging or labeling of each brand family, necessary to enable the commissioner or
 21 the Department of Law to determine whether a tobacco product manufacturer is in
 22 compliance with AS 43.50.500 - 43.50.590.

23 (e) To promote compliance with the provisions of AS 43.50.500 - 43.50.590,
 24 the commissioner may adopt regulations requiring a tobacco product manufacturer
 25 subject to the requirements of AS 43.50.500 to make the escrow deposits required in
 26 quarterly installments during the year in which the sales covered by the deposits are
 27 made. The commissioner may require production of information sufficient to
 28 determine the adequacy of the amount of the installment deposit.

29 **Sec. 43.50.550. Penalties and other remedies.** (a) In addition to or in place
 30 of any other civil or criminal remedy provided by law, upon a determination that a
 31 licensee has violated AS 43.50.520(a) or any regulation adopted under that statute, the

1 commissioner may revoke or suspend the license issued under AS 43.50.010,
2 43.50.035, or 43.50.320 of any licensee. The department shall comply with the
3 provisions of AS 44.62 (Administrative Procedure Act). Each offer to sell cigarettes
4 in violation of AS 43.50.520(a) constitutes a separate violation. The commissioner
5 also may impose a civil penalty in an amount not to exceed the greater of 500 percent
6 of the retail value of the cigarettes sold or \$5,000 upon a determination of violation of
7 a provision of AS 43.50.520(a) or any regulations adopted under that statute. The
8 penalty shall be imposed in the manner provided by AS 43.05.245.

9 (b) Any cigarettes that have been sold, offered for sale, or possessed for sale in
10 this state, or imported for personal consumption in this state in violation of
11 AS 43.50.520(a) are contraband, regardless of whether the violation was knowing, and
12 the cigarettes are subject to seizure and forfeiture; seized and forfeited cigarettes shall
13 be destroyed and may not be resold. The department shall comply with the provisions
14 of AS 44.62 (Administrative Procedure Act).

15 (c) The Department of Law, on behalf of the commissioner, may seek an
16 injunction to restrain a threatened or actual violation of AS 43.50.500, 43.50.520(a), or
17 43.50.540 by a licensee and to compel the licensee to comply with those provisions.

18 **Sec. 43.50.560. Miscellaneous provisions.** (a) A determination of the
19 commissioner not to list in, or to remove from, the directory a brand family or tobacco
20 product manufacturer is subject to administrative review under AS 44.62.330 -
21 44.62.630.

22 (b) A person may not be issued a license or granted a renewal of a license
23 under AS 43.50.010, 43.50.035, or 43.50.320 unless the person has certified in
24 writing, under penalty of perjury, that the person will comply fully with
25 AS 43.50.500 - 43.50.590.

26 (c) The department shall adopt under AS 44.62 (Administrative Procedure
27 Act) reasonable regulations that it considers necessary to carry out the provisions of
28 AS 43.50.500 - 43.50.590.

29 (d) If a court determines that a person has violated the provisions of
30 AS 43.50.500 - 43.50.590, the court shall order any profits, gain, gross receipts, or
31 other benefit from the violation to be disgorged and paid to the state for deposit in the

1 general fund. Unless otherwise expressly provided, the remedies or penalties provided
 2 by AS 43.50.500 - 43.50.590 are cumulative to each other and to the remedies or
 3 penalties available under all other laws of this state.

4 **Sec. 43.50.590. Definitions.** In AS 43.50.500 - 43.50.590, unless the context
 5 otherwise requires,

6 (1) "brand family" means all styles of cigarettes sold under the same
 7 trade mark and differentiated from one another by means of additional modifiers or
 8 descriptors, including menthol, lights, kings, and 100s; "brand family" includes any
 9 brand name, alone or in conjunction with any other word, trademark, logo, symbol,
 10 motto, selling message, recognizable pattern of colors, or any other indicium of
 11 product identification identical or similar to, or identifiable with, a previously known
 12 brand of cigarettes;

13 (2) "cigarette" has the meaning given in AS 45.53.100;

14 (3) "commissioner" means the commissioner of revenue;

15 (4) "department" means the Department of Revenue;

16 (5) "directory" means the directory developed and made available
 17 under AS 43.50.510;

18 (6) "licensee" means a person licensed or required to be licensed under
 19 AS 43.50.010, 43.50.035 or 43.50.320;

20 (7) "Master Settlement Agreement" has the meaning given in
 21 AS 45.53.100;

22 (8) "non-participating manufacturer" means a tobacco product
 23 manufacturer that is not a participating manufacturer;

24 (9) "participating manufacturer" has the meaning given in Section II(jj)
 25 of the Master Settlement Agreement and all amendments to that agreement;

26 (10) "qualified escrow fund" has the meaning given in AS 45.53.100;

27 (11) "roll-your-own" has the meaning given in AS 45.53.100(4)(B);

28 (12) "tobacco product manufacturer" has the meaning given in
 29 AS 45.53.100;

30 (13) "units sold" has the meaning given in AS 45.53.100.

31 * **Sec. 3.** AS 44.62.330(a) is amended by adding a new paragraph to read:

1 (60) the Department of Revenue for administrative review of actions
2 taken under AS 43.50 relating to a tobacco product manufacturer's compliance with
3 statutory requirements regarding cigarette sales.

4 * **Sec. 4.** AS 43.50.145 is repealed.

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

7 TRANSITION. For the year 2003, if this Act takes effect after March 16, 2003, the

8 (1) first report of licensees required by AS 43.50.540, added in sec. 2 of this
9 Act, is due 30 days after the effective date of this Act;

10 (2) certifications by a tobacco product manufacturer described in
11 AS 43.50.500, added in sec. 2 of this Act, are due 45 days after the effective date of this Act;

12 (3) directory described in AS 43.50.510, added in sec. 2 of this Act, shall be
13 made available within 90 days after the effective date of this Act.

14 * **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).